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VIA EMAIL (coog@dos.ny.gov)

Committee on Open Government
New York State Department of State
One Commerce Plaza
99 Washington Avenue, Suite 650
Albany, NY 12231

**Re: Request for advisory opinion — Department of State FOIL Request R000654-041926;
§ 87(2)(d) redaction of contract pricing; silent non-determination of request categories**

Dear Committee on Open Government:

I respectfully request an advisory opinion concerning the Department of State's July 1, 2026 determination in FOIL Request R000654-041926, which granted in part and denied in part my April 19, 2026 request for records concerning the Department's contract with West Publishing Corporation (Thomson Reuters) for publication of the Official Compilation of Codes, Rules and Regulations of the State of New York (Contract C1001200). Copies of the request, the Department's July 1, 2026 determination, its July 2, 2026 determination of my first appeal, and my administrative appeals of June 21, 2026 and July 6, 2026 are enclosed.

Issue One — The § 87(2)(d) Redactions

The Department redacted the "Private Rate" columns of contract-amendment pricing tables — the prices the public pays for the official printed compilation of New York's regulations — citing Public Officers Law § 87(2)(d) in a single block quotation. The following facts appear from the Department's own production: the executed contract, produced unredacted in the same response, states at Section 32 that "The Contractor claims no exceptions from disclosure under Public Officers Law section 87(2)(d) for any materials in Exhibit 2," Exhibit 2 being the Contractor's entire proposal including its pricing schedule; the solicitation (RFP 18-ADM-11, § 5.1.5) required any exemption request to be made in writing, with reasons, at the time of submission, and expressly discouraged blanket requests, and no such designation was made beyond a generic cover-page legend; the same response produced the 2019 Private Rate schedule unredacted (e.g., \$4,294.91 for a full set), the contractor's letters disclose each annual increase percentage, and the redacted tables display the State Rate, which the contract fixes at a forty

percent discount from the Private Rate — so the redacted figures are recoverable by dividing the visible figure by 0.6 (for 2026: $\$2,884.99 \div 0.6 = \$4,808.32$); and the contractor openly offers NYCRR products for public sale, with prices, on its public web store. During the contract term the contractor holds the State’s official-publication franchise by the contract’s own terms (§ 36), and the Department has identified no actual competitive injury from disclosure of a public-facing rate schedule that is already disclosed at baseline, mechanically adjusted, publicly sold, and arithmetically derivable.

On these facts, I respectfully ask the Committee’s opinion on four questions:

1. May an agency assert § 87(2)(d) on behalf of a contractor with respect to pricing information where the contractor expressly claimed no § 87(2)(d) exceptions for its proposal materials in the executed contract?
2. Where trade-secret pricing is withheld, does § 89(5) require the agency to be able to produce the submitter’s written exemption request, the agency’s notice to the submitter, the submitter’s statement of necessity, and the agency’s written determination — and what follows if no such records exist?
3. Do prior disclosure of the baseline rate schedule, public advertising of the same products and prices, and arithmetic derivability of the withheld figures from the agency’s own production defeat, or materially undermine, a claim of “substantial injury to the competitive position” under § 87(2)(d)?
4. Does a single statutory block quotation, applied to an entire eleven-document production with no index of redactions and no record-specific explanation, satisfy § 87(2)’s requirement that a denial be supported by “a particularized and specific justification” — particularly where the request expressly asked for the statutory basis for each redaction?

I note that § 87(2) provides that a denial of access “shall be valid only when there is a particularized and specific justification for such denial.” I also note the Committee’s prior advisory opinion FOIL-AO-19356 (Jan. 20, 2016), concluding that the terms of a contract, particularly those indicating amounts to be paid by an agency and therefore the taxpayers, are outside the considerations of § 87(2)(d) and that the entirety of such a contract must be disclosed; and the holdings of *Matter of Markowitz v. Serio*, 11 N.Y.3d 43, 51 (2008), *Matter of Encore College Bookstores v. Auxiliary Service Corp.*, 87 N.Y.2d 410 (1995), and *Matter of Washington Post Co. v. New York State Ins. Dept.*, 61 N.Y.2d 557, 565 (1984) (assertions of confidentiality are irrelevant to whether an exemption applies). I further ask whether an agency asserting § 87(2)(d) must be able to identify regulations promulgated under § 87(4)(a), and a designation made under them, covering the withheld material.

Issue Two — Silent Non-Determination and the § 89(3)(a) Certification

What is the proper agency response under FOIL where a request seeks (a) records of annual payments under a contract the agency characterizes as “no cost,” (b) the award determination and evaluation records for the underlying procurement, and (c) the agency’s procedures for providing photocopies of codes, rules and regulations to the public at not more than twenty-five cents per page under Executive Law § 102(4)(d) — and the agency produces no responsive records, issues no denial, and provides no certification pursuant to Public Officers Law § 89(3)(a) that responsive records do not exist or cannot be located after diligent search? I ask specifically whether silence as to enumerated categories of a request constitutes a denial, and whether the requester is entitled to the certification on demand.

Background

The April 19 request sought five categories: the contract and amendments; the solicitation with vendor responses and the award determination; three fiscal years of payment records; term, renewal, and exclusivity records; and the Executive Law § 102(4)(d) photocopy procedures. On July 1, after two extensions and a constructive-denial appeal, the Records Access Office produced the executed contract, six amendments, the RFP, and the contractor’s three proposal volumes, redacting only the Private Rate columns of the amendment pricing tables and citing “Trade Secrets” in a single paragraph. The determination was silent as to the award determination, payment records, and photocopy procedures. On July 2, an Assistant Records Appeals Officer declared my constructive-denial appeal moot in a single sentence, without addressing the redactions or the undetermined categories; on July 6, 2026, I filed a substantive administrative appeal from both determinations; a copy is enclosed. This request is my first communication with the Committee concerning this matter.

For context only — not as a basis for the advisory request — I note that public-facing state agency pages describe the online NYCRR arrangement inconsistently: some direct users to Thomson Reuters/Westlaw or “West Publishing” for the official version while disclaiming the free online version as unofficial, non-evidentiary, or not current. A one-page excerpt of examples is available on request. This underscores the public importance of the withheld contract and pricing records: they concern the terms on which New Yorkers may obtain the official text of their own regulations.

Thank you for your consideration. I am available to provide any of the underlying records.

Respectfully,

Stephen Murphy

Enclosures: (1) FOIL Request R000654-041926 (Apr. 19, 2026); (2) Determination (Jul. 1, 2026); (3) Determination of Appeal Z000016-062126 (Jul. 2, 2026); (4) My administrative appeals (June 21, 2026 constructive-denial appeal; July 6, 2026 appeal from the July 1 and July 2 determinations); (5) Contract C1001200 excerpts (§§ 1(d), 32, 36); (6) RFP § 5.1.5; (7) Vol. III Attachment 1 (unredacted 2019 rates); (8) 2026 amendment pricing table as produced (redacted); (9) Rate-derivation exhibit.