

From: donotreply@yonkersny.gov
Sent: Saturday, May 29, 2021 12:32 AM
To: [REDACTED]
Subject: FOIL for Police

A new entry to a form/survey has been submitted.

Form Name: Freedom of Information Request Form (FOIL) for Police
Date & Time: 05/29/2021 12:31 AM
Response #: 1181
Submitter ID: [REDACTED]
IP address: [REDACTED]
Time to complete: 19 min. , 18 sec.

Survey Details

Page 1

If you are an attorney, insurance company or investigator, you must indicate the name(s) of the party or company you represent:

Name	[REDACTED]
Representing	Myself
Mailing Address	[REDACTED]
City	[REDACTED]
New York	
Zip Code	[REDACTED]
Work Phone	[REDACTED]
Home Phone	[REDACTED]
Cell Phone	[REDACTED]
Email Address	[REDACTED]

Please describe the documents you seek in as thorough and detailed a manner as possible. All requests are subject to State and Federal Law.

Yonkers Police Department Special Investigations Division S.I.D. 2097 - Case Summary, June 2, 1998, by Detective Kevin Murphy #680. Investigation reviewing the serial murders perpetrated by David Berkowitz ("Son of Sam"), former resident of 35 Pine Street, Yonkers, NY.

Thank you,
City of Yonkers, NY

This is an automated message generated by Granicus. Please do not reply directly to this email.

Mike Spano
Mayor

John Mueller
Police Commissioner



CITY OF YONKERS
POLICE DEPARTMENT

Robert W. Cacace
Justice Center
104 South Broadway
Yonkers, NY 10701-4007
(914) 377-7211

June 03, 2021

██████████
██████████
████████████████████

Re: FOIL Request 122-2021

Mr. ██████████

This letter is to acknowledge your request for "Yonkers Police Department Special Investigations Division S.I.D. 2097 - Case Summary, June 2, 1998, by Detective Kevin Murphy #680. Investigation reviewing the serial murders perpetrated by David Berkowitz ("Son of Sam"), former resident of 35 Pine Street, Yonkers, NY. ". Please be advised that all Yonkers Police Department Records/Reports prior to 1986 were destroyed with approval from the New York State Archives pursuant to Section 185.6 (b) of 8NYCRR.

I hereby certify as a Records Access Officer for the City of Yonkers Police Department that a search was performed and no were located.

For this reason no records can be provided.

A handwritten signature in black ink, appearing to read "Lt. Sean Looney".

Lt. Sean Looney
YPD Records Access Officer

Any appeal from the foregoing determination must be submitted within 30 days to:

Matthew Gallagher
Corporation Counsel
City of Yonkers
40 South Broadway, Room 300
Yonkers, New York 10701

Yonkers Police Records Section
914-377-7232 914-377-7234

Mobile: [REDACTED]

Email: [REDACTED]

June 23, 2021

Matthew Gallagher
Corporation Counsel
City of Yonkers
40 South Broadway, Room 300
Yonkers, New York 10701

Re: FOIL Request 122-2021 - APPEAL

Mr. Gallagher:

This letter constitutes an administrative appeal under the Freedom of Information Act.

On May 29, 2021, I requested documents under the Freedom of Information Act for records relating to the following (request attached):

Yonkers Police Department Special Investigations Division S.I.D. 2097 - Case Summary, June 2, 1998, by Detective Kevin Murphy #680. Investigation reviewing the serial murders perpetrated by David Berkowitz ("Son of Sam"), former resident of 35 Pine Street, Yonkers, NY.

My request was assigned the following identification number: **Request 122-2021.**

On June 3, 2021, I received a response to my request in a letter (attached) signed by Lt. Sean Looney, Yonkers Police Department Records Access Officer, indicating the following:

"Please be advised that all Yonkers Police Department Records/Reports prior to 1986 were destroyed with approval from the New York State Archives pursuant to Section 185.6 (b) of 8NYCRR. I hereby certify as a Records Access Officer for the City of Yonkers Police Department that a search was performed and no were located. For this reason, no records can be provided."

I dispute the adequacy of the search in response to my FOIA request.

With regards to Lt. Looney's response to my request, Lt. Looney advises that all Yonkers Police Department Records/Reports prior to 1986 were destroyed with approval from the New York State Archives. This statement seems irrelevant, as the report/document referenced in my FOIA request was a case summary of an investigation that was initiated sometime around 1995-1996, with the actual case summary being prepared in 1998. The timeframe of this investigation, and its corresponding written case summary, is 10-12 years beyond the NYS Archives authorization date for the destruction of police documents.

As an aside, even if the requested documents were indeed dated prior to 1986, it is difficult to believe that reports or investigatory materials relating to one of the most infamous serial murder cases in United States history were simply scheduled for destruction without regard to their historical significance – again, this is simply not plausible.

To assist you in your investigation, allow me to provide some additional information.

According to a recent interview given by retired Yonkers Police Detective Kevin Murphy (badge #680) in the Netflix documentary series, *“The Sons of Sam: A Descent Into Darkness (2021),”* Detective Murphy indicated that sometime around 1996 (approximately) he was directed by the Yonkers Mayor’s Office to initiate an investigation into the murders perpetrated by David Berkowitz (aka, “Son of Sam”), former resident of 35 Pine Street, Yonkers, NY - specifically, whether Mr. Berkowitz had co-conspirators (residing in Yonkers, NY, Westchester County, NY or the state of North Dakota) which had not been investigated or followed-up by the New York Police Department. According to Detective Murphy, in 1998 his investigation culminated in a written report titled, *“Yonkers Police Department Special Investigations Division S.I.D. 2097 - Case Summary, June 2, 1998.”* Parts of this report might be labeled *“Supplemental Report”* and/or *“Investigation Summary.”*

For your review, **I have enclosed a thumb-drive containing a video file** (6-minutes/30-seconds in length) of retired Yonkers Police Department Detective Kevin Murphy’s dialogue in the Netflix documentary series, *“The Sons of Sam: A Descent into Darkness (2021).”*

An additional document that was not originally requested, but was referenced by Detective Murphy, is a **Supplemental Detective Report** with reference numbers **4520-N** and **43,609** (date obscured) – a screenshot of which has been attached to this appeal. This document appears to be directly related to this case, so I request that it be researched, identified, and provided as well.

In conclusion, FOIA requires agencies to undertake a search that is reasonably calculated to uncover ALL relevant documents. It does not appear, however, that the Yonkers Police Department has conducted an adequate search in response to my request. I appeal the unlawful withholding of the information I requested and ask for your prompt review and release of the aforementioned documents, or any other written reports or investigatory documents detailing the David Berkowitz (“Son of Sam”) murders. This includes any information relating to potential co-conspirators or groups that were not apprehended - co-conspirators which may still be at large.

Upon reconsideration of this matter, should you continue to deny my request in whole or in part, and if you do not provide a satisfactory explanation detailing the extent to which a reasonable search has been conducted, I may take legal action to compel disclosure under FOIA.

Sincerely,



Attachments: Original FOIA Request (May 29, 2021)
Yonkers PD FOIA Response (June 3, 2021)
Screenshot – Supplemental Detective Report – Yonkers Police Bureau

Enclosure: Thumb-drive (containing digital video file of retired Yonkers Police Department Detective Kevin Murphy)

Mobile: [REDACTED]

Email: [REDACTED]

August 9, 2021

Matthew Gallagher
Corporation Counsel
City of Yonkers
40 South Broadway, Room 300
Yonkers, New York 10701

Re: FOIL Request 122-2021 - APPEAL NON-RESPONSE

Mr. Gallagher:

On June 23, 2021, I filed an appeal to your office under the Freedom of Information Act for records relating to the following (request attached):

Yonkers Police Department Special Investigations Division S.I.D. 2097 - Case Summary, June 2, 1998, by Detective Kevin Murphy #680. Investigation reviewing the serial murders perpetrated by David Berkowitz ("Son of Sam"), former resident of 35 Pine Street, Yonkers, NY.

My request was assigned the following identification number: **Request 122-2021.**

As of this date, the Corporation Counsel of the City of Yonkers has failed to respond to the appeal of the denial of my FOIL request (122-2021), which I made on June 23, 2021.

As you know, Section 89(4)(a) of FOIL states, in pertinent part, that the individual designated by an agency to handle FOIL appeals, in this case, the Corporation Counsel of the City of Yonkers, "shall within ten (10) business days of the receipt of such appeal, fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought." Additionally, there is nothing in the Law that authorizes a FOIL appeal officer to remand a FOIL request back to the records access officer for further review. The Law states that the appeal officer is obligated to either fully explain in writing the reasons for further denial, "or provide access to the record(s) sought."

As an aside, should the further inaction of the Yonkers Corporation Counsel force me to take this matter to court, Section 89(4)(c) deals with the award of attorney's fees. If a lawsuit is initiated and the court finds that my denied access "substantially prevails", the court may award attorney's fees if the Yonkers Corporation Counsel failed to respond within the proper time. If the court finds that the Yonkers Corporation Counsel had no reasonable basis for denying access, it must award attorney's fees payable by the agency.

To aid in your review of this matter, and to further shed light on the fact that there indeed must be records and files still being held by the Yonkers Police Department or Mayor's Office, please review the information below, and attached document.

On July 2, 2004 John Hockenberry wrote an online article (interview) for NBC News entitled, "Did 'Son of Sam' really act alone?" I have attached a .pdf file of the article for your review. On page eleven (11) of the attached article, I have highlighted in yellow a footnote within the interview that indicates the following:

"The Yonkers Police Department would not comment on our story, but after we sent them a Freedom of Information request, they sent us a letter, which confirms that an investigation was started in 1996, and has not been closed to this day."

In addition to all other information requested to date, I would also appreciate a copy of the FOIL request that was sent by NBC News to the Yonkers Police Department, as well as, the response letter written by the Yonkers Police Department to NBC News, wherein, the Yonkers Police Department indicates that ***"an investigation was started in 1996, and has not been closed to this day (2004)."***

Thank you.

[REDACTED]

[REDACTED]

Sincerely,

[REDACTED]

CC: Helen Aggrey, Second Deputy Corporation Counsel

Attachments: Original FOIL Request (May 29, 2021)
Yonkers PD FOIL Response (June 3, 2021)
FOIL Appeal (June 23, 2021)
NBC New Article (July 2, 2004)

MIKE SPANO
MAYOR

Matthew Gallagher
CORPORATION COUNSEL

Karen A. Ramos
DEPUTY CORPORATION COUNSEL



CITY OF YONKERS
DEPARTMENT OF LAW

CITY HALL ROOM 300
40 SOUTH BROADWAY
YONKERS, NEW YORK 10701-3883
(914) 377-6240

VIA CERTIFIED MAIL: 7006 2760 0002 3661 2840

August 12, 2021

[REDACTED]

Re: FOIL APPEAL- Police Records
Denial of FOIL Request 122-2021

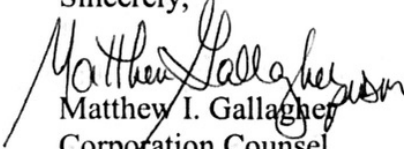
Mr. [REDACTED],

This letter is in response to your letter dated June 23, 2021 and August 9, 2021 appealing the denial of "*Yonkers Police Department Special Investigations Division S.I.D. 2097 - Case Summary, June 2, 1998, by Detective Kevin Murphy #680. Investigation reviewing the serial murders perpetrated by David Berkowitz ("Son of Sam"), former resident of 35 Pine Street, Yonkers, NY.*". Upon review of the matter, please be advised that the initial denial of records is hereby upheld for the following reasons:

My office reached out to the Police Department to recheck their files for the specific records you requested. After another diligent search, the Police Department again confirmed that they are unable to locate the records responsive to your request. Records sought through FOIL can be denied when those records no longer exists.

Therefore, the denial of the records is upheld. This is a final determination.

Sincerely,


Matthew I. Gallagher
Corporation Counsel

cc: Executive Director of NYS Committee on Open Government
1 Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, New York 12231

From: donotreply@yonkersny.gov
To: [REDACTED]
Subject: FOIL for Police
Date: Wednesday, August 18, 2021 8:59:12 PM

A new entry to a form/survey has been submitted.

Form Name: Freedom of Information Request Form (FOIL) for Police
Date & Time: 08/18/2021 8:59 PM
Response #: 1275
Submitter ID: [REDACTED]
IP address: [REDACTED]
Time to complete: 3 min. , 40 sec.

Survey Details

Page 1

If you are an attorney, insurance company or investigator, you must indicate the name(s) of the party or company you represent:

Name [REDACTED]
Representing myself
Mailing Address [REDACTED]
City [REDACTED]
New York
Zip Code [REDACTED]
Work Phone [REDACTED]
Home Phone [REDACTED]
Cell Phone [REDACTED]
Email Address [REDACTED]

Please describe the documents you seek in as thorough and detailed a manner as possible. All requests are subject to State and Federal Law.

I am currently researching the investigation into the "Son of Sam" case - the murders perpetrated by David Berkowitz ("Son of Sam"), former resident of 35 Pine Street, Yonkers, NY. Of specific interest to me is:

1. CONFIRMATION of ANY Yonkers police or city investigation initiated in 1996 relating to the murders perpetrated by David Berkowitz (aka, "Son of Sam"), former resident of 35 Pine Street, Yonkers, NY, including, confirmation relating to whether Mr. Berkowitz had co-conspirators (residing in Westchester County, the City of Yonkers, or, the state of North Dakota) which had not been investigated or followed-up by the New York Police Department.
2. CONFIRMATION of ANY Yonkers police or city investigation relating to the murder of former Yonkers resident John C. Carr (DOB: 10/12/1946), a victim of a homicide that occurred in Ward County, North Dakota (Minot Air Force Base) on or about 02/17/1978. Mr. Carr was known to be a neighbor and friend of David Berkowitz.

3. ANY written reports, presentations, or investigatory documents (from 1977 to PRESENT DAY) detailing the David Berkowitz ("Son of Sam") murders, including any potential co-conspirators or groups that were not apprehended along with Mr. Berkowitz in or after August of 1977 – co-conspirators who have either passed away after David Berkowitz' apprehension, or who may still be at large to this day.

4. ANY information (investigation and autopsy reports, documents, crime scene photos) which may have been obtained from the Ward County Sheriff's Department, or, Westchester County Police Department (from 1977 to PRESENT DAY) relating to the criminal investigation of Mr. Carr, any of his associates, and satanic/occult groups possibly relating to the "Son of Sam" murders.

5a. (Background Information) On July 2, 2004 investigative journalist John Hockenberry wrote an article (and interview) for NBC News entitled, "Did 'Son of Sam' really act alone?" Weblink below:

<https://www.nbcnews.com/id/wbna5351509>

A footnote within the interview indicates the following:

"The Yonkers Police Department would not comment on our story, but after we sent them a Freedom of Information request, they sent us a letter, which confirms that an investigation was started in 1996, and has not been closed to this day."

5b. CONFIRMATION of ANY Yonkers police or city communication with NBC News in 2004 regarding the background information in above 5a.

5c. ANY FOIL requests received from NBC News (or John Hockenberry) in 2004, and/or relating to information in above 5a.

5d. ANY FOIL responses written and provided by the Yonkers Police Department or City of Yonkers to NBC News (or John Hockenberry), wherein, the City of Yonkers indicates that "an investigation was started in 1996, and has not been closed to this day (2004)."

6. Confirmation of ANY investigation or inquiry CURRENTLY open by the Yonkers Police Department or City of Yonkers into the David Berkowitz (Son of Sam) murder case, or whether Mr. Berkowitz had co-conspirators (residing in Westchester County, the City of Yonkers, or, the state of North Dakota).

Thank you,
City of Yonkers, NY

This is an automated message generated by Granicus. Please do not reply directly to this email.

Mike Spano
Mayor

John Mueller
Commissioner of Police



CITY OF YONKERS
POLICE DEPARTMENT

Robert W. Cacace
Justice Center
104 South Broadway
Yonkers, NY 10701-4007
(914) 377-7211

8/23/2021

[REDACTED]
[REDACTED]
[REDACTED]

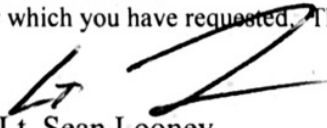
Re: Foil Request 203-2021

[REDACTED]

This letter is to acknowledge your request for "of ANY Yonkers police or city investigation initiated in 1996 relating to the murders perpetrated by David Berkowitz (aka, "Son of Sam"), former resident of 35 Pine Street, Yonkers, NY", "whether Mr. Berkowitz had co-conspirators (residing in Westchester County, the City of Yonkers, or, the state of North Dakota) which had not been investigated or followed-up by the New York Police Department.", "CONFIRMATION of ANY Yonkers police or city investigation relating to the murder of former Yonkers resident John C. Carr (DOB: 10/12/1946), a victim of a homicide that occurred in Ward County, North Dakota (Minot Air Force Base) on or about 02/17/1978. Mr. Carr was known to be a neighbor and friend of David Berkowitz", "ANY written reports, presentations, or investigatory documents (from 1977 to PRESENT DAY) detailing the David Berkowitz ("Son of Sam") murders, including any potential co-conspirators or groups that were not apprehended along with Mr. Berkowitz in or after August of 1977 - co-conspirators who have either passed away after David Berkowitz' apprehension, or who may still be at large to this day.", "ANY information (investigation and autopsy reports, documents, crime scene photos) which may have been obtained from the Ward County Sheriff's Department, or, Westchester County Police Department (from 1977 to PRESENT DAY) relating to the criminal investigation of Mr. Carr, any of his associates, and satanic/occult groups possibly relating to the "Son of Sam" murders.". Please be advised that the Yonkers Police Department has no records concerning this incident.

In regards to your request for "(Background Information) On July 2, 2004 investigative journalist John Hockenberry wrote an article (and interview) for NBC News entitled, "Did 'Son of Sam' really act alone?" Weblink below". Please be advised that per Section 89(3)(c.) of the New York State Public Officers Law does not require an agency to prepare any record not possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight of this article.

The Yonkers Police Department does not maintain records in the manner which you have requested. Thank you.


Lt. Sean Looney
YPD Records Access Officer

Any appeal from the foregoing determination must be submitted within 30 days to:
Matthew Gallagher
Corporation Counsel
City of Yonkers
40 South Broadway, Room 300
Yonkers, NY 10701

Yonkers Police Records Unit
914-377-7232 914-377-7234

Mobile: [REDACTED]

Email: [REDACTED]

September 10, 2021

Matthew Gallagher
Corporation Counsel
City of Yonkers
40 South Broadway, Room 300
Yonkers, New York 10701

Re: APPEAL - FOIL Request 203-2021

Mr. Gallagher:

This letter constitutes an administrative appeal under the Freedom of Information Act.

On **August 18, 2021** I filed an online information request (copy attached) under the Freedom of Information Act.

On **August 24, 2021** a copy of my FOIL request, along with a printed copy of the NBC News article that was referenced as a “weblink” in my original request, was hand-delivered to the Yonkers Police Department Records Unit (see attached cover letter and date-stamped receipt).

On **August 23, 2021** I received the attached written response from Lt. Sean Looney of the Yonkers Police Department. The purpose of this letter is to seek clarification of Lt. Looney’s response letter, as it is unclear to me what elements of my request are being denied.

On **August 23, 2021** I contacted the Yonkers police Department by telephone and spoke to an individual in the Records Unit. I indicated that I had several questions and concerns regarding the written response to my FOIL request, and requested to speak with Lt. Looney. The individual I spoke with indicated that Lt. Looney wasn’t involved in the FOIL process, and that random police officers were assigned to the Records Unit to respond to FOIL requests. Response letters were generated under Lt. Looney’s name, but he did not research FOIL requests, or write the response letters. My contact information was taken, and I was promised that the officer who was assigned to information requests and FOIL responses would get back to me. **To date, I have NOT heard from anyone in the Yonkers Police Department.**

On **August 29, 2021** I forwarded a letter to Yonkers Corporation Counsel detailing my concerns regarding how poorly written and unclear the Yonkers Police Department response was to my FOIL request. Specifically:

The opening paragraph of Lt. Looney’s letter seems to acknowledge elements #1-4 of my FOIL request, and then concludes with the following statement, ***“Please be advised that the Yonkers Police Department has no records concerning this incident.”***

It is unclear to me what “incident,” or element(s) of my FOIL request, Lt. Looney is referring. Is he referring to the “Son of Sam” case in general (elements #1-4), OR, is he referring to the elements of my FOIL request relating only to Mr. John Carr?

The remaining paragraph of Lt. Looney's letter appears to be referencing element #5 of my FOIL request. Lt. Looney states the following:

“In regards to your request for "(Background Information) On July 2, 2004 investigative journalist John Hockenberry wrote an article (and interview) for NBC News entitled, "Did 'Son of Sam' really act alone?" Weblink below". Please be advised that per Section 89(3Xc.) of the New York State Public Officers Law does not require an agency to prepare any record not possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight of this article. The Yonkers Police Department does not maintain records in the manner which you have requested.”

It is unclear to me how to interpret the above response.

The reference to the NBC News article in element #5a in my original online FOIL request, and subsequent hand-delivered printed copy, were provided to the Yonkers Police Department so elements #5b–5d of my request could be fully understood by the assigned records officer. I do not understand what is meant by, *“the Yonkers PD does not maintain records in the manner which you have requested.”* I believe elements #5b–5d of my FOIL request are clearly delineated and unambiguous.

Additionally, it doesn't appear that element #6 of my FOIL request was acknowledged or addressed in anyway.

Again, I believe that I have taken the time to adequately delineate, in an organized manner, requests for eight (8) specific informational elements (#1, 2, 3, 4, 5b, 5c, 5d, 6). **To date, not one of these informational elements have been addressed satisfactorily, or as required by law.**

I concluded my **August 29, 2021** letter to Yonkers Corporation Counsel by requesting reclarified written response from the Yonkers Police Department that delineated, in a clear and unambiguous manner, the following:

- 1) acknowledgement of each specific element included in my FOIL request;
- 2) clear indication of the specific elements of my FOIL request which will be searched for, and an approximate date by which appropriate records, or follow-up response, may be produced;
- 3) clear indication of the specific elements of my FOIL request which have been denied.

It was made clear in my letter that the above information was required in order for me to determine whether an administrative appeal was warranted.

To date, I have NOT received the requested clarification of my FOIL request (#203-2021) from either the Yonkers Police Department or the Yonkers Corporation Counsel, or acknowledgement that my original FOIL request items will be searched for and provided.

FOIL requires agencies to undertake a search that is reasonably calculated to uncover ALL relevant documents. It does NOT appear, however, that the Yonkers Police Department has conducted an adequate search in response to my request. Additionally, the Yonkers Police Department (or Corporation Counsel) has failed to respond to my written request for clarification of the Police Department's original response/denial letter regarding FOIL request #203-2021.

In conclusion, I **APPEAL** the unlawful withholding of the information I requested in **FOIL request #203-2021**, and ask for your prompt review and release of the aforementioned documents and/or confirmations, as well as any other written reports or investigatory documents detailing the David Berkowitz (“Son of Sam”) murders that may be discovered subsequently.

Upon reconsideration of this matter, should you continue to deny my request in whole or in part, and if you do not provide a satisfactory explanation detailing the extent to which a reasonable search has been conducted, I may take legal action to compel disclosure under FOIA.

Your assistance is greatly appreciated.

Sincerely,

[REDACTED]

[REDACTED]

CC: Helen Aggrey, Second Deputy Corporation Counsel

Attachments: Request for Clarification Letter to Mr. Gallagher (August 29, 2021)
Original Online FOIL Request (August 18, 2021)
Hand-Delivered Copy with Delivery Receipt (August 24, 2021)
Yonkers PD FOIL Response (August 23, 2021)
NBC New Article (July 2, 2004)

MIKE SPANO
MAYOR

Matthew Gallagher
CORPORATION COUNSEL

Karen A. Ramos
DEPUTY CORPORATION COUNSEL

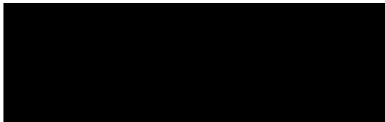


CITY OF YONKERS
DEPARTMENT OF LAW

CITY HALL ROOM 300
40 SOUTH BROADWAY
YONKERS, NEW YORK 10701-3883
(914) 377-6240

VIA CERTIFIED MAIL: 7006 2760 0002 3661 2871
-and-
EMAIL: [REDACTED]

September 15, 2021



Re: FOIL APPEAL- 203-2021

Dear [REDACTED],

This letter is in response to letter dated September 10, 2021 appealing the denial of police records relating to the "Son of Sam" on the basis that the records do not exist. Upon review of the matter, please be advised that the initial denial of records is hereby upheld for the following reasons.

Records Do Not Exist. Records sought through FOIL can be denied when those records do not exist or no longer exists. After several diligent searches of the Police Records, the Police Department informed me that they are unable locate any records relating to any investigations opened by the City of Yonkers on the "Son of Sam". Nor is the Police Department in possession of the requested FOIL requests filed in 2004 by NBC News or any possible response thereof. Therefore Numbers 3, 4, 5c, and 5d of your FOIL request are hereby denied.

Furthermore, FOIL is for the production of records. Under those provisions of law, FOIL Officers are not required to answer questions from requestors, create a record that does not exist, or correct or explain records that do exists. Requests for confirmations of an investigation, absent of such a record existing showing such confirmation, would improperly require the FOIL Officer to create a new record. Therefore, Numbers 1, 2, 5b, and 6 of your FOIL requests are hereby denied.

Therefore, the denial of the records is upheld. This is a final determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Gallagher".

Matt Gallagher
Corporation Counsel

Cc: Executive Director of NYS Committee on Open Government
1 Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, New York 12231

Subject: FOIL for Police

A new entry to a form/survey has been submitted.

Form Name: Freedom of Information Request Form (FOIL) for Police
Date & Time: 09/27/2021 3:10 PM
Response #: 1306
Submitter ID: [REDACTED]
IP address: [REDACTED]
Time to complete: 3 min. , 35 sec.

Survey Details

Page 1

If you are an attorney, insurance company or investigator, you must indicate the name(s) of the party or company you represent:

Name [REDACTED], Esq.
Representing [REDACTED]
Mailing Address [REDACTED] LLP 1250 Broadway 27th floor
City New York
New York
Zip Code 10001
Work Phone [REDACTED]
Home Phone [REDACTED]
Cell Phone [REDACTED]
Email Address [REDACTED]

Please describe the documents you seek in as thorough and detailed a manner as possible. All requests are subject to State and Federal Law.

1. All documents related to the "approval of the New York State Archives pursuant to Section 185.6 (b) of 8 NYCRR" regarding destruction of Yonkers Police Department Records/Reports prior to 1986 (as referenced in the June 3, 2021, FOIL response to John Curcio from Lt. Sean Looney, YPD Records Access Officer). This request includes, but is not limited to, 1) YPD or COY request(s) for approval to destroy; 2) Approval(s), denial(s) and/or requests for additional information from the State; 3) inventory or summary of records destroyed; 4) Records destroyed related to YPD investigation(s) regarding murders committed by David Berkowitz a/k/a Son of Sam, as well as investigative activities of any possible co-conspirator, for murder; 5) Records destroyed related to investigations of: a) homicides b) suicides c) arson in the first second or third degree d) unlocated missing persons e) sexual assault (first degree), course of sexual conduct against a child (first degree), active warrants, and stolen or missing firearms (until recovered or destroyed).

2. All documents related to approval(s) from the New York State Archives pursuant to Section 185.5 (b) of 8 NYCRR" regarding destruction of Yonkers Police Department Records/Reports prior to 1980 and all records between 1980-1986 (as referenced on the webpage of the YPD Police Records Unit website at www.yonkers.ny.gov). This request includes, but is not limited to: 1) YPD or COY request(s) for approval to destroy records; 2) Approval(s), denial(s) and/or requests for additional information from the State regarding the destruction of said records; 3) inventory or summary of records requested to be destroyed, approved to be destroyed, and actually destroyed; 4) Records destroyed related to YPD investigation(s) regarding murders committed by David Berkowitz a/k/a Son of Sam, as well as investigative activities of any

possible co-conspirator, for murder; 5) Records destroyed related to investigations of: a) homicides b) suicides c) arson in the first second or third degree d) unlocated missing persons e) sexual assault (first degree), course of sexual conduct against a child (first degree), active warrants, and stolen or missing firearms (until recovered or destroyed).

3. All records in the possession, custody or control of the City of Yonkers (including but not limited to the YPD and past or present officials of the City of Yonkers) of all investigative activities and reports regarding murders committed by David Berkowitz a/k/a Son of Sam as well as investigative activities of any possible co-conspirators for murder. This request includes, but is not limited to, correspondence with law enforcement agencies and/or district attorneys' offices outside the City of Yonkers regarding the investigation, arrest and prosecution of David Berkowitz or possible co-conspirators.

Thank you,
City of Yonkers, NY

This is an automated message generated by Granicus. Please do not reply directly to this email.

Mike Spano
Mayor

John Mueller
Police Commissioner



CITY OF YONKERS
POLICE DEPARTMENT

Robert W. Cacace
Justice Center
104 South Broadway
Yonkers, NY 10701-4007
(914) 377-7211

November 29, 2021

1

[REDACTED]
1250 Broadway 27th floor
New York, New York 10001

Re: FOIL Request 230-2021

[REDACTED]

This letter is to acknowledge your request for records pertaining to "murders committed by David Berkowitz a/k/a Son of Sam, as well as investigative activities of any possible co-conspirator, for murder; 5) Records destroyed related to investigations of: a) homicides b) suicides c) arson in the first second or third degree d) unlocated missing persons e) sexual assault (first degree), course of sexual conduct against a child (first degree), active warrants, and stolen or missing firearms (until recovered or destroyed)". I hereby certify as a Records Access Officer for the City of Yonkers Police Department that a search was performed and no written police report was located. For this reason no records can be provided.


Lt. Sean Looney
YPD Records Access Officer

Any appeal from the foregoing determination must be submitted within 30 days to:

Matthew Gallagher
Corporation Counsel
City of Yonkers
40 South Broadway, Room 300
Yonkers, New York 10701

Yonkers Police Records Section
914-377-7232 914-377-7234

Mike Spano
Mayor

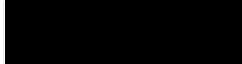
John Mueller
Police Commissioner



CITY OF YONKERS
POLICE DEPARTMENT

Robert W. Casace
Justice Center
104 South Broadway
Yonkers, NY 10701-4007
(914) 377-7211

November 29, 2021



1250 Broadway 27th floor
New York, New York 10001

Re: FOIL Request 230-2021



This letter is to acknowledge your request for records pertaining to "murders committed by David Berkowitz a/k/a Son of Sam, as well as investigative activities of any possible co-conspirator, for murder; 5) Records destroyed related to investigations of: a) homicides b) suicides c) arson in the first second or third degree d) unlocated missing persons e) sexual assault (first degree), course of sexual conduct against a child (first degree), active warrants, and stolen or missing firearms (until recovered or destroyed)". I hereby certify as a Records Access Officer for the City of Yonkers Police Department that a search was performed and no written police report was located. For this reason no records can be provided.

A handwritten signature in black ink, appearing to read "Sean Rooney".

Lt. Sean Rooney
YPD Records Access Officer

Any appeal from the foregoing determination must be submitted within 30 days to:

Matthew Gallagher
Corporation Counsel
City of Yonkers
40 South Broadway, Room 300
Yonkers, New York 10701

Yonkers Police Records Section
914-377-7232 914-377-7234

Mr. Gallagher,

The above response was received from the YPD on 12/8/21 (postmarked 12/6/21 but dated 11/29/21). Please be advised it is not responsive to the actual FOIL request. Therefore, the appeal filed on 11/29/21 (below) still requires your review and response. Please feel free to contact me with any questions. Additionally I note that an identical FOIL request was sent to the Office of Corporation

Counsel but I was told it would have to be sent to the correct individual department. I did not receive a response to the concern I then expressed that there was no way for me to know what City department would hold records seeking approval and/or receiving authorization from NYS for the destruction of these public documents. It is not in anyone's interest to turn this request into litigation but the City of Yonkers does not appear to be complying with the letter or spirit of the FOIL.

Your prompt response is appreciated,

[REDACTED] LLP
[REDACTED]
[REDACTED]
[REDACTED]

CONFIDENTIALITY NOTICE: The accompanying e-mail transmission is protected by the attorney-client privilege and is intended to be read by the designated individual/entity. If you are not the recipient so named, or the employee or authorized agent responsible for delivery of this transmission to the intended recipient, you are prohibited from reading, disseminating, distributing, or copying this transmission. If you have received this communication in error, please notify the sender immediately and delete any copy of the original transmission from your computer system. Although this e-mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free.

From: [REDACTED]
Sent: Monday, November 29, 2021 2:02 PM
To: 'matt.gallagher@yonkersny.gov' <matt.gallagher@yonkersny.gov>
Cc: 'coog@dos.ny.gov' <coog@dos.ny.gov>
Subject: FOIL Appeal re Yonkers Police Department

This e-mail appeals the constructive denial of the attached FOIL request to the Yonkers Police Department, certified as received by the YPD on 9/27/21. Also attached is correspondence from Lt. Sean Looney, YPD Records Access Officer, advising that a response would be mailed within twenty business days. No such response has been received. I have made three telephone calls to Lt. Looney and left messages attempting to follow up on this request, without any response being received. The failure of the YPD to provide a response to this request is therefore appealed as a constructive denial of access to these records.

Pursuant to Public Officers Law s 89 (4)(a), please provide the documents or a written explanation as to why access is denied. Production via e-mail is requested, if possible. Please feel free to contact me with any questions.

Thank you for your timely assistance with this matter so that legal action is not required.

[REDACTED]

CONFIDENTIALITY NOTICE: The accompanying e-mail transmission is protected by the attorney-client privilege and is intended to be read by the designated individual/entity. If you are not the recipient so named, or the employee or authorized agent responsible for delivery of this transmission to the intended recipient, you are prohibited from reading, disseminating, distributing, or copying this transmission. If you have received this communication in error, please notify the sender immediately and delete any copy of the original transmission from your computer system. Although this e-mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free.

[REDACTED]

From: [REDACTED]
Sent: Monday, December 20, 2021 12:30 PM
To: [REDACTED]
Subject: FW: FOIL Appeal 230-2021

From: [REDACTED]
Sent: Monday, December 20, 2021 12:26 PM
To: 'Matt Gallagher' <matt.gallagher@yonkersny.gov>
Cc: Debbie McLaughlin <debbie.mclaughlin@YonkersNY.gov>
Subject: RE: FOIL Appeal 230-2021

Thank you for your response to my FOIL appeal. However, it does not seem to satisfy the COY's obligations under FOIL and New York State laws regarding records retention. My initial FOIL request went to Corporation Counsel as well as to the YPD. I will send a separate request to the City Clerk. Your office should be able to advise me if any other City department or office would have responsive records. I have just spoken with the New York Archives to confirm the procedures required for destruction of records, including police department records regarding a homicide. While my client I consider next steps I would appreciate your office continuing to determine whether there is documentation of destruction of records that fall within this request.

Regards.

From: Matt Gallagher <matt.gallagher@yonkersny.gov>
Sent: Friday, December 17, 2021 10:56 AM
To: [REDACTED]
Cc: Debbie McLaughlin <debbie.mclaughlin@YonkersNY.gov>
Subject: FOIL Appeal 230-2021

Good morning.

Please see attached.

Matthew J. Gallagher
Corporation Counsel
City of Yonkers
40 South Broadway – Room 300
Yonkers, New York 10701
(914) 377-3005

This message (including attachments) is privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

MIKE SPANO
MAYOR

Matthew Gallagher
CORPORATION COUNSEL

Karen A. Ramos
DEPUTY CORPORATION COUNSEL



CITY OF YONKERS
DEPARTMENT OF LAW

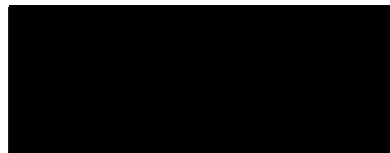
CITY HALL ROOM 300
40 SOUTH BROADWAY
YONKERS, NEW YORK 10701-3883
(914) 377-6240

VIA CERTIFIED MAIL: 7006 2760 0002 3661 4554

-and-

EMAIL: [REDACTED]

December 13, 2021



Re: FOIL APPEAL- 230-2021 .

Dear [REDACTED],

This letter is in response to email dated November 29, 2021 appealing the constructive denial of records pertaining to destruction of police records. Upon review of the matter, and the attached response from the Police Department, please be advised that the denial of records be hereby upheld for the following reasons.

Records Do Not Exist. Records sought through FOIL can be denied when those records do not exist or no longer exists. After several diligent searches of the Police Records, the Police Department informed me that they are unable locate any records relating to numbers 1, 2, or 3, of your enumerated requests submitted September 27, 2021.

Therefore, the denial of the records is upheld. This is a final determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Gallagher".

Matt Gallagher
Corporation Counsel

Enc.

Cc: Executive Director of NYS Committee on Open Government
1 Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, New York 12231