Joshua Huckabee

[redacted] Newburgh, NY 12550
[redacted] mail@joshhuckabee.com

DATE October 23, 2026

TO Mark C. Taylor, Town Attorney, Town of Newburgh; Rider, Weiner & Frankel, P.C., 655 Little Britain Road, New Windsor, NY 12553 (filed with the Town Clerk and sent by email)

RE **Appeal under Public Officers Law § 89(4)(a) and Town Code § 144-7, FOIL 2026-00988**

Dear Mr. Taylor:

I appeal, under Public Officers Law § 89(4)(a) and Town Code § 144-7, the Town's denial of access to records requested under FOIL 2026-00988. This is a separate request from 2026-00936, which I appealed to you on September 28, 2026 and which you decided on October 13, 2026. I am filing this appeal with the Town Clerk and sending it to you by email.

I address this appeal to you because § 144-7(C) of the Town Code provides: "The Town Attorney shall hear appeals for denial of access to records under the Freedom of Information Law." My request asked that any denial state "the specific exemption per record, its particularized basis, and my appeal rights and appeal officer per Sec. 89(4)(a)." Neither Lt. Adam Zeilberger's letter of September 23, 2026 for the Town of Newburgh Police Department (the Department) on this request (the 00988 letter of September 23) nor the Town's letter of September 25, 2026 marking this request filled (the 00988 letter of September 25) advised me of the right to appeal, as § 144-7(A) and 21 NYCRR § 1401.7(b) require, or identified the appeals officer, as § 1401.7(b) requires.

As § 144-7(D) of the Town Code requires:

- **Date of this appeal:** October 23, 2026.
- **Date and location of the request:** FOIL 2026-00988, dated September 3, 2026, submitted through the Town's online FOIL request form to the Town Clerk's office, Town of Newburgh, and received on September 4, 2026, as the Town's acknowledgment of that date shows.
- **Records denied:** the records set out in Grounds 1 and 2 and in the relief requested below.
- **Form of denial:** item 6 of the request was denied in writing by the 00988 letter of September 23. The other records were denied in writing by the 00988 letter of September 25, which marked the request filled without producing them. If that letter is not treated as a written denial of them, they are denied under § 144-7(B) for failure to provide them within a reasonable time, and under § 89(4)(a) and 21 NYCRR § 1401.5(e), because the Town gave no date certain under § 89(3)(a) within twenty business days of its acknowledgment of September 4, and it marked the request filled on September 25 without producing them.
- **Name and return address:** Joshua Huckabee, [redacted] Newburgh, NY 12550.

What is appealed

1. **The denial of item 6** by the 00988 letter of September 23.

2. **The denial of every other record listed in this appeal** by the 00988 letter of September 25, which states that the request "has been filled." The records listed in Ground 2 and in the relief requested were not produced. No certification of a diligent search under § 89(3)(a) was given for any of them, and none was withheld under a stated exemption. Section 89(4)(a) provides that "Failure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial."

The request is not pending under an extension. The Town's email of September 18 relayed the Department's request for "a 30 day extension to complete this one along with 988, and 989." It gave no date certain by which the request would be granted in whole or in part, which § 89(3)(a) requires when a request cannot be granted within twenty business days of its acknowledgment. Those twenty business days ended on October 5, 2026, and no date certain was given. A request for more time is not a date certain, and the Town ended any extension itself when it marked the request filled on September 25. The 00988 letter of September 23 said that for "the metadata request, and access to prior emails from the police department administrator that retired, we are going to need more time," and gave no date. Two days later the Town closed the request.

The request covers "June 1, 2026 to date." Nothing in this appeal narrows it: each record named below is within a filed item, not a new request. If you regard any record as outside the request, please say which in your determination, and do not hold back the rest because of it.

Ground 1. Item 6: the denial cites no exemption

Item 6 asks for "Internal communications among Town officers, employees or Board members about the presentation or the Town's public response to ALPR criticism." The presentation is the Department's "Flock Facts" presentation (the presentation). The 00988 letter of September 23 says: "This request would fall under intra agency communications, and is denied under public officer's law sec 89(3)."

Section 89(3) is not an exemption. It governs how an agency responds to a request. The exemptions are in § 87(2), which provides that "A denial of access shall not be based solely on the category or type of such record and shall be valid only when there is a particularized and specific justification for such denial." A denial of every internal communication on a subject, as a category, is what that sentence rules out (see also *Matter of Gould v. New York City Police Department*, 89 N.Y.2d 267 (1996)).

If the Town relies on § 87(2)(g), it must say so for each record. That exemption does not reach "statistical or factual tabulations or data," "instructions to staff that affect the public," or "final agency policy or determinations." The 00988 letter of September 23 states that "Chief Donald Campbell reviewed, and approved the decision to publish the video to social media." A record of that decision, and any direction to post, is a final determination or an instruction to staff. Objective information in the communications, as distinct from opinion or advice, is factual data (*Gould*). Material sent to or received from the media or residents is not inter-agency or intra-agency material at all, even when it is forwarded internally. Material from Flock Group, Inc. is a vendor's material. If the Town claims that any of it is intra-agency material because Flock acted as a consultant to the Town, please identify the record and state the basis for that claim. These parts must be produced even where the rest of a record is withheld. Where a record is withheld in whole, please give its date, author and recipients so the claim can be reviewed.

Ground 2. Items 1 to 5: records not produced

The production was a single scanned file of 24 pages: the Clerk's transfer form, the 00988 letter of September 23, a paper print of the nine-slide presentation, 2024 emails with Flock staff about installing the cameras, and two Flock daily deployment digests from May 2024.

- **Item 1, the presentation in its native format with metadata.** Not produced. The request asked for the native file, "Not a PDF or other flattened copy in place of the native file." A scan of a paper print is that flattened copy. The presentation carries the Department's name, and the Department published it. Section 87(5)(a) requires an agency to provide records on the medium requested if it can reasonably make the copy or have it made by an outside professional service. The file's author and its creation and modification dates are system metadata, which is a record under § 86(4) (*Matter of Irwin v. Onondaga County Resource Recovery Agency*, 72 A.D.3d 314 (4th Dept 2010)). The 00988 letter of September 23 does not say the file cannot be found. It says the Department needs "more time" for "the metadata request." If the Department does not hold the native file, please certify so under § 89(3)(a).
- **Item 2, drafts, prior versions, and the video as posted.** The 00988 letter of September 23 says "We do not possess any drafts or prior versions, see public officers' law 89(3)." If that is the Department's certification under § 89(3)(a), please confirm it as one. It cannot cover the version history kept inside the native file, or by the software in which the presentation was made, until the native file under item 1 has been located, so please address that history when the native file is produced or certified. The video was not produced, and the letter's answer to item 2 does not mention it. The same letter says the Chief "approved the decision to publish the video to social media," so the Department holds the file or can download it from the account where it was posted with reasonable effort (§ 89(3)(a)). The request's exclusion of "plate data, images, video, audio or any investigative file" is of camera data: the same sentence limits the request to "public-communications records," and item 2 names this video.
- **Item 3, records identifying each person who created, edited, reviewed or approved the presentation, and reflecting the decision to publish it.** No record was produced. The letter's sentence that the Chief approved publication of the video is not the records asked for, and says nothing of who created or edited the presentation. The native file's metadata, under item 1, is one such record. The approval the letter describes is a record if it was made in an email, text message, memorandum or social media account log. Please produce it, or certify that no record of the approval exists.
- **Item 4, templates, talking points, FAQs and the other materials the item lists, received from Flock Group, Inc., its employees, agents, resellers, contractors or public affairs staff, or from any other outside source.** Not produced and not addressed. There is reason to believe such material exists: the presentation grounds the Department's control of the data in "Flock's policy and contract framework" (slide 5), and says "Flock describes camera-to-cloud encryption" (slide 7). If the Town certifies under § 89(3)(a) that it holds none, please say which accounts and files were searched, including the Department's Flock customer account.
- **Item 5, communications between Flock Group, Inc. and the Town or Police Department.** The emails produced date from March to May 2024, before the request period, which begins June 1, 2026. Nothing from the request period was produced. There is reason to believe such communications exist or existed. A reply the Department sent on September 24, 2026 from the Town's flock-questions-

comments mailbox, which the Town produced under FOIL 2026-00989, says: "Flock has recently given us the option of reducing the retention period to as short as 7 days." It also says: "Flock itself has initiated additional safeguards in response to some of the incidents that have brought negative feedback." The 00988 letter of September 23 says "The police administrator that was handling the implementation of the flock LPRs retired in June of this year, and his email account was deactivated. We are currently unable to gain access." That an account has been deactivated does not mean its records cannot be found. The Town's email system is kept by or for the Town, and § 89(3)(a) requires the Town to retrieve records "maintained in a computer storage system" where it can do so "with reasonable effort." If the Town cannot open the account itself, § 89(3)(a) bars a denial on that basis where the Town may engage an outside professional service, such as its email provider. If any part of the account no longer exists, please say when it was deleted and whether backups or archives exist. Item 5 is also not limited to that one account: it covers every account, Town or personal, in which a Town officer, employee or Board member corresponded with Flock on Town business during the period, as the request asked. It does not seek automated alert or hot-list notifications, which carry plate data the request already excludes. The 2024 emails name the Flock staff assigned to the Town's account, including Flock's territory sales manager and project managers. Those names should help the search.

Relief requested

1. **Item 6.** Reverse the denial and produce the internal communications about the presentation or the Town's public response to ALPR criticism, including Town business kept in personal accounts or devices, as the request asked. If any part is withheld, identify the record and that part, state the exemption relied on, give a particularized and specific justification, and produce the rest.
2. **Item 1.** Produce the presentation in its native format with its metadata intact, electronically.
3. **Item 2.** Produce the video as posted, in its original file format, and any drafts and prior versions, or certify under § 89(3)(a) for each as set out in Ground 2.
4. **Item 3.** Produce the records identifying who created, edited, reviewed or approved the presentation, and the records reflecting the decision to publish it, including the record of the Chief's approval.
5. **Item 4.** Produce the records, or certify under § 89(3)(a) that the Town does not have possession of them or that they cannot be found after diligent search.
6. **Item 5.** Produce the communications with Flock Group, Inc. from June 1, 2026 through at least September 3, 2026, the date of the request, from every Town and Department account, including the retired administrator's account, and from any personal account or device used for Town business, as the request asked. Retrieve them with the help of the Town's IT staff or its email provider as needed.
7. **Certification record by record.** Where the Town does not hold a record listed in this appeal, certify so under § 89(3)(a) for that record, as your decision of October 13, 2026 directed for 2026-00936, naming the record and the period searched, and stating whether the Town does not have possession of it or it cannot be found after diligent search.
8. **Withholding.** For anything withheld, state the exemption relied on for each record, with a particularized and specific justification.
9. **Format.** Produce records electronically, as my request asked under § 87(5).

10. **Determination.** Issue a written determination within ten business days of receiving this appeal, as § 89(4)(a) and § 144-7(F) require, and send a copy of this appeal and of your determination to the Committee on Open Government, as § 89(4)(a), § 144-7(E) and (F), and 21 NYCRR § 1401.7(g) and (h) require. If you grant this appeal in whole or in part, please state a date by which the records will be produced and any certification made. Reopening the request or giving a new estimated date would not decide this appeal; § 89(4)(a) asks for access or a written explanation of any further denial within ten business days.

If no determination is made within ten business days, I will treat this appeal as denied (21 NYCRR § 1401.7(f)). Records that are ready may be sent as they become available; that does not extend the time for the determination. I do not object to redaction of personal cell phone numbers and personal email addresses.

Enclosed: the Town's acknowledgment of September 4, 2026; the 00988 letter of September 23 (page 2 of the Department's production); and the 00988 letter of September 25.

Respectfully,

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Joshua Huckabee
[redacted]Newburgh, NY 12550

Copy: Supervisor Gilbert J. Piaquadio and the Town Board; Lisa M. Vance Ayers, Town Clerk and Records Access Officer; Committee on Open Government, NYS Department of State

Joshua Huckabee
[redacted]
Newburgh, NY 12550

RE: FOIL Reference #2026-00988
TNPD "Flock Facts" ALPR presentation - authorship, source materials, and communications with Flock

RE: Under Article 6 of the Public Officers Law I request the following, June 1, 2026 to date, held by the Police Department or any Town office, officer, employee or Board member, including Town business kept in personal accounts or devices. Administrative and public-communications records only; I am not requesting plate data, images, video, audio or any investigative file.

1. The "Flock Facts" presentation in its native format (.pptx, .key or Google Slides export) with metadata intact, including author, company, template, and creation and modification dates. Not a PDF or other flattened copy in place of the native file.
2. All drafts and prior versions, and the video made from it as posted to social media, in its original file format.
3. All records identifying each person who created, edited, reviewed or approved it, and reflecting the decision to publish it.
4. Any template, slide deck, talking points, FAQ, "myth versus fact" document, community engagement guide or sample social media content received from Flock Group, Inc. or its employees, agents, resellers, contractors or public affairs staff, or from any other outside source.
5. All communications between Flock Group, Inc. and the Town or Police Department, including any concerning the Town's ALPR messaging, public criticism, media coverage, FOIL 2206-00897, and the presentation.
6. Internal communications among Town officers, employees or Board members about the presentation or the Town's public response to ALPR criticism.

Provide records electronically in the format maintained per Sec. 87(5); as to item 1, Sec. 87(5)(a) requires the medium requested where reasonable. Certify non-possession per Sec. 89(3)(a) where applicable. For any denial state the specific exemption per record, its particularized basis, and my appeal rights and appeal officer per Sec. 89(4)(a).

FREEDOM OF INFORMATION - ACKNOWLEDGEMENT LETTER

09/04/2026

Dear Joshua Huckabee:

Your FOIL request dated 09/03/2026 was received by the Town of Newburgh on 09/04/2026.

The request is being reviewed and we anticipate you will be contacted regarding your request no later than 10/02/2026.

Access to the records, in whole or part, will be determined in accordance with Article 89 section 5 of the Freedom of Information Law.

Once the research has been completed and the requested documents are made available to the Town Clerk's office, we in turn will forward the information via email. However, some information requested, such as full property inspections or property survey's, are too large to be sent by email and will need to be reviewed or picked up in person at the Town Clerk's office. Pursuant to FOIL, a fee of $.25 per page for photocopies not exceeding 9'x14' will be charged. All other fees will be based on the material requested. You may make an appointment to view the records prior to copying to avoid cumbersome fees.

Thank you in advance for your cooperation. If you have any questions, or require further information, please do not hesitate to contact us.

TOWN OF NEWBURGH POLICE DEPARTMENT

300 Gardnertown Road, Newburgh, New York 12550

Donald B. Campbell
CHIEF OF POLICE

Ph: (845)564-1100
Fax: (845)566-8477

September 23, 2026

To: Joshua Huckabee

Re: Foil request 2026-988

Please find the enclosed USB flash drive with the items that you requested.
In reference to item #2- We do not possess any drafts or prior versions, see public officers' law 89(3).
In reference to item #3- Chief Donald Campbell reviewed, and approved the decision to publish the video to social media.
In reference to item #5- The police administrator that was handling the implementation of the flock LPRs retired in June of this year, and his email account was deactivated. We are currently unable to gain access.
In reference to item #6-This request would fall under intra agency communications, and is denied under public officer's law sec 89(3).
With respect to the metadata request, and access to prior emails from the police department administrator that retired, we are going to need more time to have our IT department look into this so that we can complete this request.

Respectfully,

Lieutenant Adam Zeilberger
Town of Newburgh Police Department
300 Gardnertown Rd
Newburgh, NY 12550
845-564-1100
azeilberger@townofnewburghpd.org

Joshua Huckabee
[redacted]
Newburgh, NY 12550

RE: FOIL Reference #2026-00988
TNPD "Flock Facts" ALPR presentation - authorship, source materials, and communications with Flock

FREEDOM OF INFORMATION (F.O.I.L) REQUEST HAS BEEN FILLED

09/25/2026

Dear Joshua Huckabee,

The Freedom of Information records request that you submitted to Town of Newburgh as referenced above has been filled.

If you have any questions, or require further information, please do not hesitate to contact us.

Sincerely,

Lisa M. Ayers - FOIL Officer
Dominique Rivera - Deputy FOIL Officer