



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

May 2, 2022

Cameron Macdonald
Government Justice Center, Inc.
30 S. Pearl Street, Suite 1210
Albany, NY 12207

FOIL #: 22-01-051

Dear Cameron Macdonald:

This letter responds to your Freedom of Information Law (FOIL) request of January 4, 2022, in which you requested:

1. All records [the] department reviewed or considered for [our] determination that “Non-white race or Hispanic/Latino ethnicity should be considered a risk factor” for severe illness from COVID-19, as stated in [our] undated guidance “Prioritization of Anti-SARS-CoV-2 Monoclonal Antibodies and Oral Antivirals for the Treatment of COVID-19 During Times of Resource Limitations” . . .
2. All communications between or among [our] department and health care providers explaining or clarifying the meaning or application of [our] guidance advising that “Non-white race or Hispanic/Latino ethnicity should be considered a risk factor, as longstanding systemic health and social inequities have contributed to an increased risk of severe illness and death from COVID-19.”
3. All records Mary Basset or Kristen Proud or the author(s) of the guidance reviewed or considered for [our] department’s determination that “Non-white race or Hispanic/Latino ethnicity should be considered a risk factor” for severe illness from COVID-19, as stated in [our] undated guidance “Prioritization of Anti-SARS-CoV-2 Monoclonal Antibodies and Oral Antivirals for the Treatment of COVID-19 During Times of Resource Limitations.”
4. All draft versions of the guidance “Prioritization of Anti-SARS-CoV-2 Monoclonal Antibodies and Oral Antivirals for the Treatment of COVID-19 During Times of Resource Limitations.”
5. All records reflecting [our] department’s definitions of “non-white race” or “Hispanic/Latino ethnicity.”
6. All records establishing “non-white race or Hispanic/Latino ethnicity” as a medical condition.

7. All records reflecting evidence from any meta-analysis/systematic review establishing “non-white race or Hispanic/Latino ethnicity” as underlying medical conditions that increase a person’s risk of severe illness from COVID-19.
8. All records reflecting evidence from any cohort, case-control, or cross-sectional studies establishing “non-white race or Hispanic/Latino ethnicity” as underlying medical conditions that increase a person’s risk of severe illness from COVID-19.
9. All records reflecting evidence from any case series, case reports, or mixed evidence establishing “non-white race or Hispanic/Latino ethnicity” as underlying medical conditions that increase a person’s risk of severe illness from COVID-19.
10. All records reflecting calendar entries of Mary Basset or Kristen Proud or the author(s) of the guidance regarding meetings to discuss issuing the guidance “Prioritization of Anti-SARS-CoV-2 Monoclonal Antibodies and Oral Antivirals for the Treatment of COVID-19 During Times of Resource Limitations.”
11. Any records of Mary Basset and Kristen Proud or the author(s) of the guidance regarding meetings to discuss issuing the guidance “Prioritization of Anti-SARS-CoV-2 Monoclonal Antibodies and Oral Antivirals for the Treatment of COVID-19 During Times of Resource Limitations.”
12. All meeting notes or meeting presentations relating to [our] department issuing the guidance “Prioritization of Anti-SARS-CoV-2 Monoclonal Antibodies and Oral Antivirals for the Treatment of COVID-19 During Times of Resource Limitations.”
13. All written communications between or among Mary Basset, Kristen Proud and/or the author(s) of the guidance regarding the guidance “Prioritization of Anti-SARS-CoV-2 Monoclonal Antibodies and Oral Antivirals for Treatment of COVID-19 During Times of Resource Limitations.”
14. All written communications between or among the Executive Chamber and Mary Basset or Kristen Proud or the author(s) of the guidance regarding the guidance “Prioritization of Anti-SARS-CoV-2 Monoclonal Antibodies and Oral Antivirals for the Treatment of COVID-19 During Times of Resource Limitations.”
15. Any records from persons outside [our] department recommending that [we] identify “non-white race or Hispanic/Latino ethnicity” as underlying medical conditions that increase a person’s risk of severe illness from COVID-19.”

I have enclosed documents responsive to parts 1, 2, 7, 8, 9, and 12 of your request. Certain information contained in these documents has been redacted pursuant to New York Public Officers Law (POL) §87(2)(b), because disclosure “would constitute an unwarranted invasion of personal privacy.”

In response to parts 3, 4, 5, 6, 10, 11, 13, 14, and 15 of your request, records are being withheld pursuant to POL §87(2)(g), as “inter-agency or intra-agency materials” and §87(2)(a) precludes access to records that are specifically exempted from disclosure by state or federal statute in accordance with Civil Practice Law and Rules §§3101(c) and 4503(a) because they

constitute attorney work product or confidential communications made between an attorney and his or her client.

Should you feel that you have been unlawfully denied access to records, you may appeal such denial in writing within 30 days to the Records Access Appeals Officer, Division of Legal Affairs, Empire State Plaza, 2438 Corning Tower, Albany, New York 12237-0026.

If you require additional information or wish to discuss this matter further, please do not hesitate to contact me at (518) 474-8734.

Sincerely,

A handwritten signature in cursive script that reads "Rosemarie Hewig".

Rosemarie Hewig, Esq.
Records Access Officer

RH/jt