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FOIL AO 19835

November 4, 2022

By Electronic Mail Only: luckystarfarm13@msn.com

The Committee on Open Government is authorized to issue advisory opinions. The ensuing advisory opinion is based solely upon the information presented in your correspondence.

Dear Mr. Schaller:

The Committee on Open Government (Committee) received your request for an advisory opinion regarding Freedom of Information Law (FOIL) questions and the "Search IQS" service offered by Jefferson County and others throughout New York State. We understand from your correspondence with Jefferson County that Search IQS is a service that allows users to access government records online for a fee or subscription price.

After our discussion, the Committee located two previously prepared advisory opinions relevant to your inquiry. See [FOIL-AO-16169](#); [FOIL-AO-15884](#). In these opinions, the Committee advised that subscription services like Search IQS, for which fees for access to government records are higher than those authorized by FOIL, are not inconsistent with the Law because, by providing immediate online access to records, the services provide access beyond that required by FOIL. Essentially, because the subscription services offer online access that goes above and beyond what is required by law, the fee structure of FOIL does not apply to the services.

However, an agency cannot replace its legal obligations under FOIL with a service like Search IQS. Put differently, while an agency can offer a service like Search IQS, it must also still accept and process requests for records through FOIL, consistent with the obligations imposed by Public Officers Law § 87(2). Similarly, because services like Search IQS cannot replace the public right to access records through FOIL, a contract between an agency and subscription service cannot impair the right of the public to inspect or copy agency records under FOIL. See POL § 87(5)(b). As such, if the County Clerk's Office refused to process your FOIL request and instead directed you to use a service like Search IQS, the Office, in my opinion, did not comply with the legal requirements of FOIL.

Finally, the Committee previously prepared an advisory opinion relating to the public right to photograph County Clerk records and, depending on the reasonableness of the circumstances, make

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copies of such records using their own equipment, if those records are available for inspection. See [FOIL AO 19252](#).

Thank you for your inquiry.

/s/ Jake Forken

Jake Forken
Excelsior Fellow
NYS Committee on Open Government