

**MARCUS ROSENBERG & DIAMOND LLP**  
**488 MADISON AVENUE**  
**NEW YORK, NEW YORK 10022**

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**Telephone (212) 755-7500**  
**Telefax (212) 755-8713**

December 12, 2006

Mona Sehgal, Esq.  
General Counsel  
New York City Department of  
Buildings  
280 Broadway  
New York, New York 10007

Re: Shearith Israel  
6-10 West 70th Street  
New York, New York 10023  
Block 1122, Lot 37  
DOB BIN No. 1028510  
Your Reference No. 2324

Dear Ms. Sehgal:

I am writing to you as an attorney for Landmark West!, an award-winning non-profit grassroots community organization, which has worked for many years to protect the historic architecture of the Upper West Side and to improve the community for all of its residents.

To my knowledge, the members and staff of Landmark West! are well-respected, taxpaying and voting citizens of the United States and, for the most part, residents of the City of New York.

To my knowledge, no member or employee of Landmark West! has been accused of being a terrorist or a member of any real or imagined terrorist organization.

If the Department of Buildings possesses any contrary information, I would appreciate it if you would so advise me.

The Reason For The Letter

On November 22, 2006, a Landmark West! representative visited the Manhattan office of the Department of Buildings ("DOB") and requested access to the file

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on the above property (the "Property"), the owner of which has announced plans for a new building adjacent to its synagogue.

The desk attendant informed the Landmark West! representative that the records with respect to the Property were marked "sensitive" and that a FOIL request was required in order to obtain access to them. Obviously, this is contrary to the normal practice where such files are available to licensed design professionals, contractors, expeditors and members of the public (unless, as is frequently explained, they have been misplaced or otherwise cannot be located).

By letter dated November 28, 2006, Kate Wood, Executive Director of Landmark West!, filed a formal FOIL request for the file and described the prior unsuccessful attempt to obtain access.

Ms. Wood received what appears to be a form letter, dated November 30, 2006, from Angela Orridge, Records Access Officer, which stated, in relevant part:

All public records maintained by the Department of Buildings (DOB) are routinely made available for public inspection in the office/division of the New York City Department of Buildings at which said records are maintained. . . .

This was followed with a list of potential responses, with a "check" before the following paragraph:

Other: You will have to submit a letter from the owner on their letterhead explaining why you are looking for records also you must give the Record Room a copy of your photo Id. The record room staff will explain the process to you.

In turn, this was followed by a December 5, 2006 letter from Record Coordinator Rashem Clark, Record Division, Legal Processing/Notification Letter, which stated that the records were available at DOB's Manhattan office, but:

Due to the 9/11 tragedy, the records for the block and lot or address listed in your request are considered "sensitive". In order to obtain agency clearance to release these records, please forward a letter from the owner/managing agent (on record) authorizing you to have access.

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The Lack of Any Legal  
Basis For DOB's Actions

Section 87(2) of the Public Officers Law, cited in the November 30, 2006 letter of Angela Orridge, Records Access Officer, states:

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

(a) are specifically exempted from disclosure by state or federal statute;

(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;

(c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;

(d) are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury in the competitive position of the subject enterprise;

(e) are compiled for law enforcement purposes and which, if disclosed, would:

(i) interfere with law enforcement investigations or judicial proceedings;

(ii) deprive a person of a right to a fair trial or impartial adjudication;

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(iii) identify a confidential source or disclose confidential information relating to a criminal investigation; or

(iv) reveal criminal investigative techniques or procedures, except routine techniques and procedures;

(f) if disclosed would endanger the life or safety of any person;

(g) are inter-agency or intra-agency materials which are not:

(i) statistical or factual tabulations or data;

(ii) instructions to staff that affect the public;

(iii) final agency policy or determinations;

(iv) external audits, including but not limited to audits performed by the comptroller and the federal government; or

(h) are examination questions or answers which are requested prior to the final administration of such questions;

(i) are computer access codes. . . .

Section 87(2) contains ten subdivisions, none of which are cited in either letter. Nor has DOB otherwise provided an articulation of the particularized and specific justification which is required of an agency seeking to deny access to public records.

Moreover, the requirement to obtain "a letter from the owner on their [*sic*] letterhead explaining why you are looking for records. . . ." or "a letter from the

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owner/managing agent (on record) authorizing you to have access" is neither imposed by any statute nor applied to other properties.

The blanket suggestion that "the 9/11 tragedy" justifies this policy has no support in the statute or case law. Nor does it appear that DOB has adopted regulations defining "sensitive" properties.

Even if a Jewish synagogue is a potential target of some terrorist groups, so are many other buildings. Moreover, it is hard to imagine how it would be necessary for a terrorist to have DOB files to locate the entrances to such a building.

Nor is there any logical or legal basis for delegating DOB's determinations to the owner of the property.

Finally, in this case, the application of such a rule is absurd, in that plans already have been shown and discussed at the Landmarks Preservation Commission and, apparently, will be shown and discussed at Community Boards and at the Board of Standards and Appeals.

#### Requested Relief

Obviously, Landmark West! requests immediate access to the designated files so that it may review the plans and provide comments in a timely manner.

More than this, Landmark West! requests that DOB reconsider its present policy for "sensitive" buildings and eliminate it or, at least, promulgate standards consistent with the Public Officers Law after an opportunity for public comment.

The Freedom of Information Law is one of the landmarks of open and transparent government, providing access to information necessary for citizens to effectively petition their government, one of the rights guaranteed by the First Amendment to the United States Constitution. The Freedom of Information Law also serves as a protection against abuses by government which would deprive its citizens of their rights.

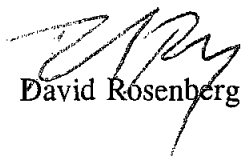
To the extent that the tragic events of September 11 are cited as the basis for limiting or eliminating such rights of our citizens, then the terrorists have achieved continuing and far-reaching success.

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Please consider this when reviewing this request.

Very truly yours,



David Rosenberg

DR/pab

cc: Committee on Open Government  
Landmark West!

# LANDMARK WEST!

THE COMMITTEE TO PRESERVE THE UPPER WEST SIDE

November 28, 2006

Records Access Officer  
New York City Department of Buildings  
280 Broadway, 7th floor  
New York, NY 10007

Dear Friends:

This is a Freedom of Information Law request. Please supply the undersigned with copies of all file materials relating to the following property:

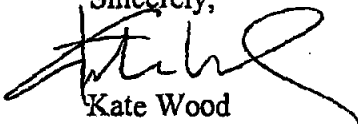
- BIN #1028510 (6-10 West 70<sup>th</sup> St., Manhattan, Block/Lot: 1122/37)

A member of my staff visited the Department of Buildings on Wednesday, November 22, 2006, and submitted a request for access to these files. The desk attendant informed her that the building records were marked "sensitive" and that a FOIL request should be filed in order to gain access.

Please notify me when these materials are available for review.

Thank you for your attention to this matter.

Sincerely,



Kate Wood  
Executive Director

REC'D DEPT OF BUILDINGS  
LEGAL AFFAIRS  
RECEIVED  
2006 NOV 30 P 4: 51



NYC Department of Buildings  
280 Broadway, New York, NY 10007

Patricia J. Lancaster, FAIA, Commissioner

**Mona Sehgal**  
General Counsel  
212.566.3353  
212.566.3843 fax  
monas@buildings.nyc.gov

November 30, 2006

Kate Wood  
Executive Director  
LandmarkWest!  
45 West 67<sup>th</sup> Street  
New York, New York 10023

Manhattan Borough Office  
280 Broadway, 3<sup>rd</sup> Fl.  
(212) 566-0248

Brooklyn Borough Office  
210 Joralemon Street  
(718) 802-3675

Re: 6-10 West 70<sup>th</sup> Street, New York, NY

Bronx Borough Office  
1932 Arthur Avenue  
(718) 579-6923

Dear Madam/Sir:

Queens Borough Office  
120-55 Queens Boulevard  
(718) 286-0795

This responds to your request for information governed by the Freedom of Information Law (FOIL).

Staten Island Borough Office  
10 Richmond Ave - Borough Hall  
(718) 816-2315

All public records maintained by the Department of Buildings (DOB) are routinely made available for public inspection at the office / division of the New York City Department of Buildings at which said records are maintained. Please contact the Manhattan Borough Office located at 280 Broadway - 3<sup>rd</sup> Floor (212) 566-0248 to determine the hours at which the records you have requested are available. Any further questions regarding your request should be directed to the Records Control Officer for the respective office/division of this Department. The records will not be available at the time you call.

Central Inspections  
280 Broadway, 4<sup>th</sup> Floor  
(212) 566-5475

- The documents you requested are available for inspection at the Municipal Library located at 31 Chambers Street, Suite 112, New York, NY 10007 (212) 788-8590.

Elevator Division  
280 Broadway, 4<sup>th</sup> Fl.  
(212) 566-4856

- The information you seek is not within the jurisdiction of DOB. Please direct your request to

Boiler Division  
280 Broadway, 4<sup>th</sup> Fl.  
(212) 566-4872

- A search of DOB files has revealed no such documents.

Cranes and Derricks  
280 Broadway, 5<sup>th</sup> Fl.  
(212) 566-4698

- Your request is denied under §87(2) of the Public Officer's Law because the documents requested are

BEST Squad  
1 Centre Street  
(212) 669-8132

Other: You will have to submit a letter from the owner on their letterhead explaining why you are looking for records also you must give the Record Room a copy of your photo Id. The record room staff will explain the process to you.

Enforcement Division  
280 Broadway, 5<sup>th</sup> Fl  
(212) 566-4847

You have the right to appeal this determination by writing to the Deputy General Counsel FOIL Appeals Officer, 280 Broadway, 7<sup>th</sup> Floor, New York, NY 10007, within 30 days of this letter.

Sincerely,

Angela Orledge  
Records Access Officer





# Record Division

Legal Processing / Notification Letter

12/5/2006

LANDMARKWEST  
45 WEST 67ST  
NEW YORK, NY 10023  
Attention: KATE WOOD

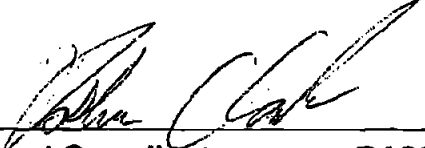
Premises: 6-10 WEST 70 ST  
Borough: MAHATTA  
Reference Number: 2324

Dear Customer,

The Department of Buildings / Record Division, located in Manhattan, received your F.O.I.L or Legal Request. We have researched and prepared all available records for veiwing. Please follow the instructions indicated with an "X" below:

- Please make an appointment, to view these available records, within ten (10) business days from the receipt of this letter. If we do not hear from you (within 10 business days), we must return all records to its original file to make accessible to the public.
- Due to the 9/11tragedy, the records for the block and lot or address listed in your request are considered "sensitive". In order to obtain agency clearance to release these records, please forward a letter from the owner / managing agent (on record) authorizing you to have access.

Thank you,

  
Record Coordinator: RASHEEM CLARK

Contact / Telephone No.: (212) 566- 0248

Note: If you do not respond within 10 business days, we will be glad to provide you with a list of available records that were researched by our office. You may come (in-person) to request these records, using the agency's standard request procedures. Please be advised that photocopying fees for certified documents, using standard procedures, are different from certified copies requested under FOIL.