



City of Rochester Records Access Response

Communications Bureau, 30 Church St. RM 202A, Rochester, NY 14614

TO:

[REDACTED]

01/08/2016

RE: Your Records Access Request, **REFERENCE #:** **57299**
Received by the City on 12/21/2015
Requesting information about:
for 2005 through 2015: number of sexual offense evidence collection kits submitted to the Mo Co Lab - broken down by year

STATUS:

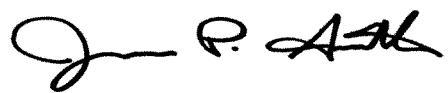
Your records access request is approved in part. Below are the number of sexual offense evidence collection kits submitted to the Monroe County Crime Lab by our police department - broken down by year:

2005 - 107
2006 - 109
2007 - 122
2008 - 114
2009 - 121
2010 - 149
2011 - 115
2012 - 128
2013 - 70
2014 - 67
2015 - 105

For all other requested information, you must contact the Monroe County Crime Laboratory at 85 W Broad St, Rochester, NY 14614.

If you wish to appeal any part of this response you must do so within thirty days by writing to our Corporation Counsel, 30 Church Street, Room 400A, Rochester NY 14614.

Sincerely,

A handwritten signature in black ink, appearing to read "James P. Smith".

James P. Smith
Records Access Officer



**Department of Communications
Monroe County, New York**

Cheryl Dinolfo, County Executive William W. Napier, Director

January 27, 2016

[REDACTED]

RE: Freedom of Information Request # 15-3376

Dear Mr. [REDACTED],

Your request for information under the Freedom of Information Law (F.O.I.L.) has been denied. After reasonable effort, the information cannot be compiled because the electronic database is not maintained in such a way to retrieve the specific records requested. Pursuant to Public Officers Law Section 89(3), an agency is not required to create a record in an effort to be responsive to FOIL requests.

At this time the Monroe County Department of Communication now considers this request closed.

You may appeal this decision, in writing, within 30 days. The Appeals Officer for Monroe County is Thomas Van Strydonck, 39 W. Main Street, Suite 110, Rochester, New York, 14614.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Napier".

William W. Napier
Records Access Officer



City of Rochester

Department of Law
City Hall Room 400A, 30 Church Street
Rochester, New York 14614-1295
www.cityofrochester.gov

Brian F. Curran
Corporation Counsel

February 18, 2016

[REDACTED]
Boston, MA 02109

Re: FOIL Appeal—Reference #57299

Dear Mr. [REDACTED]:

I have carefully reviewed your request for information about sexual offense testing kits collected by the Rochester Police Department, your appeal of the Records Access Officer's response to your request, and your additional FOIL request. Your additional request will be treated as a new FOIL request and given a new reference number. With respect to your former request, reference #57299, I am affirming the determination of the Records Access Officer.

Your first request was for the number of sexual offense evidence kits submitted by the Rochester Police Department to the Monroe County Lab in the last 10 years. This information was provided in full, as you point out in your appeal.

Your second and third requests were for the number of sexual offense evidence kits submitted by the Rochester Police Department to the Monroe County Crime Lab that were processed or left unprocessed in the last 10 years. It is our understanding that whether a kit is tested or not tested is specific to the case and not recorded in a macro form, such as a spreadsheet or database. Accordingly, the descriptions in your request were insufficient for purposes of locating and identifying the statistics sought, and were not described in a manner that allows retrieval of the records that may or may not contain the information you have requested. However, if you can better describe your request, meaning you can point out cases that can be individually checked to see if testing was performed, for example, then we can search for the requested information on a case-by-case basis. The New York Court of Appeals has held that whether or the extent to which a request is "reasonably described" may be dependent on the nature of an agency's filing, indexing, or records retrieval mechanisms. See Konigsburg v. Coughlin, 68 N.Y.2d 245 (1986). Accordingly, in order to comply with your request, the Rochester Police Department requires more detailed information.

Purely to expedite your request, and as stated in the FOIL response, the Monroe County Crime Laboratory can provide you with the statistics you are seeking in



requests numbered two and three. The Crime Lab is a county entity and is not controlled by the City of Rochester.

Your fourth and final request was for the Monroe County Crime Laboratory's written policies and procedures. These are not records in the custody of the Rochester Police Department, so we are unable to provide them to you. Again, however, the Monroe County Crime Laboratory would have the records you seek.

This letter constitutes my final decision regarding this matter. If you disagree with this decision, you may seek judicial review of it pursuant to Article 78 of the Civil Practice Law and Rules. Your time to seek judicial review begins immediately.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian F. Curran".

Brian F. Curran
Corporation Counsel

xc: Amalia Bellucci, Records Access Officer



City of Rochester Records Access Response

Communications Bureau, 30 Church St. RM 202A, Rochester, NY 14614

TO:

02/24/2016

[REDACTED]
Boston, MA 02109

RE: Your Records Access Request,

REFERENCE #: **57821**

Claimant: Joyful Heart

Received by the City on 02/09/2016

Requesting information about:

*for last 10 years: have all rape kits collected by police
have been sent to Crime Lab; If not, how many are still
with RPD, with another agency (with total #s and year)*

STATUS: Your records access request has been approved.

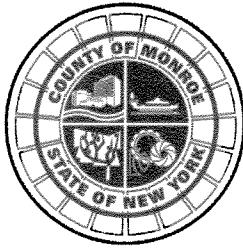
The answers to your questions, as provided by the Rochester Police Department (RPD) are as follows:

All rape kits have not been sent to the Monroe County Crime Lab for testing. The RPD currently has in its possession 153 rape kits. Thirty (30) of the 153 rape kits are being sent to the FBI Lab to be tested. The RPD can only send 30 kits at a time to the FBI Lab for testing, and will sent the next 30 kits once the testing is done on the first batch of 30 kits. The breakdown by year for the 153 kits in RPD's possession is 1 from 2012, 36 from 2013, 54 from 2014, 58 from 2015 and 4 from 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "J. P. Smith".

James P. Smith
Records Access Officer



Office of the County Executive

MONROE COUNTY, NEW YORK

Cheryl Dinolfo
County Executive

Thomas Van Strydonck
Deputy County Executive

April 4, 2016



Re: Freedom of Information Request #15-3376

Dear [REDACTED]:

This letter is in response to your Freedom of Information Law appeal #15-3376 dated February 24, 2016.

In your original request dated December 18, 2015, you requested records related to policies and procedures on evidence processing for the crime of rape, as well as records regarding processing rape kits. Mr. Napier denied your request in a letter dated January 27, 2016.

After further review of your appeal, I partially disagree with Mr. Napier's decision. With respect to Item #1 of your original request, the Monroe County Crime Laboratory's records indicate that the City of Rochester Police Department submitted the following number of sexual assault kits:

2005: 98
2006: 103
2007: 108
2008: 98
2009: 117
2010: 117
2011: 98
2012: 107
2013: 50
2014: 53
2015: 94

**The above-referenced numbers do not include sexual assault kits that may have been submitted and/or packaged in such a manner that would prohibit the Laboratory from confirming the presence of a kit until the outer packing was opened.*

With respect to Item #2 of your original request, no records were located. The requested records are not maintained in a format that would allow the Laboratory to retrieve the information. Pursuant to Public Officers Law Section 89-3(a), an agency is not required to create a record in order to comply with a FOIL request.

In regards to Item #3, there are 34 sexual offense evidence collection kits received by the Laboratory from the Rochester Police Departments that are unprocessed or untested and remain in any storage facilities currently under the Laboratory's jurisdiction and control.

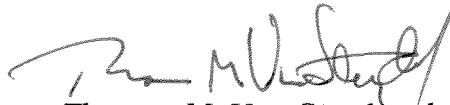
**The above-referenced number does not include sexual assault kits that may have been submitted and/or packaged in such a manner that would prohibit the Laboratory from confirming the presence of a kit until the outer packing was opened.*

Lastly, enclosed herein please find the Laboratory practices on handling sexual offense evidence collection kits.

I therefore partially approve your request as to existing records and consider this matter closed.

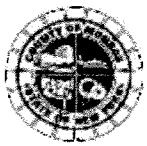
You may seek judicial review of a final agency denial pursuant to Article 78 of the New York Civil Practice Law and Rules.

Very truly yours,



Thomas M. Van Strydonck
Record Appeals Officer

Xc: William W. Napier, Records Access Officer
Robert Freeman, Committee on Open Government



Sexual Assault Evidence: Analysis Protocol

Forensic Biology

Version 1.9

PURPOSE: New York State has developed standardized Sexual Offense Evidence Collection Kits (Sexual Assault Kits) to ensure the uniform collection of evidence items by medical personnel for examination by a Forensic Biologist and/or a Criminalist (Trace Examiner). Currently, there are two versions of kits in circulation, one which was officially released for use in October of 2008, and an older version. The newer kits have slightly different contents, and can be visually distinguished from the older kits by their larger size and by black print on the box (instead of blue). This protocol provides instructions for processing both generations of kits, as it will take some time for hospitals and police agencies to complete the transition to the new kits.

In addition to the standardized evidence, clothing and bedding that may be stained with biological material or have trace material present may be submitted as a part of a sexual assault case. This evidence may link the victim and suspect to each other or to a crime scene, and may be processed as a part of the investigation.

PROCEDURES:

1. Inventory collected items within the Sexual Assault Kit using the "Inventory Worksheet New York State Sexual Assault Evidence Collection Kit", PSL-486.
2. If a "Sexual Assault Examination Form" is included in the kit, photocopy it for the case folder.
 - 2.1. If only consent forms are included in the kit, the forms need not be copied.
 - 2.2. Forms attached to the outside of a kit and not included inside the kit, should be opened and photocopied for the case folder if not previously copied at the time of intake.
3. Examine slides, using the "Microscopic Examination for Spermatozoa" procedure.
 - 3.1. Generally, one slide is prepared from the swabs collected from each of the following areas: vaginal, cervical, vulvar (or penile), oral and anal (or perianal).
 - 3.2. If there is a clear indication on the "vulvar or penile" and "anal or perianal" containers to indicate which region was swabbed, make that clear in the notes and the report.
 - 3.3. If oral contact (victim on the assailant) is not indicated in the Sexual Assault Examination Form, it is not necessary to examine the Oral smear.
 - 3.4. At the discretion of the analyst, if the slides prepared by the Sexual Assault Nurse Examiner (SANE) are determined to be of poor quality, the analyst may choose to prepare slides from the respective swabs, provided there are AT LEAST TWO SWABS collected for each of the areas.
 - 3.4.1. The definition of "poor quality slides" may include, but is not limited to:
 - 3.4.1.1. Material smeared is either too heavy or insufficient.
 - 3.4.1.2. Poor staining of the original smears prepared by the SANE.

Approved By	Ellyn D. Colquhoun	Issued on	October 6, 2015
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**MONROE COUNTY CRIME LABORATORY**

85 W. Broad Street, Rochester, NY 14614

(585)-753-3535

John R. Clark*Laboratory Administrator***Sexual Assault Evidence: Analysis Protocol**

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- 3.5. The analyst may choose to stop analysis at the first positive slide, provided that the positive slide has AT LEAST 21 sperm heads observed, and as long as the results are consistent with the case scenario (e.g. sperm observed on vaginal slide and forms indicate vaginal penetration).
- 3.6. If the smear from the anal/perianal area is positive and it is unclear as to which swabs were used to prepare the smear, and there is limited sample (only one swab per box) the analyst may retain all swabs labeled as "Anal" or "Perianal" without further analysis.
- 3.7. The analyst must continue to examine the kit or examine all smears if:
 - 3.7.1. information is not clear or,
 - 3.7.2. there are questions regarding the evidence submitted (e.g. items labeled vaginal found in the envelope labeled anal) or,
 - 3.7.3. there is information regarding a possible drug facilitated assault or,
 - 3.7.4. the kit was submitted from a homicide victim.
- 3.8. All slides prepared by the analyst will be packaged, sealed and retained with the sexual assault kit.

4. Analyze swabs using the following steps, if necessary.
 - 4.1. These analyses are performed on swabs for which :
 - 4.1.1. respective slides were negative,
 - 4.1.2. swabs contained within the Dried Secretions envelope of kit.
 - 4.1.3. both anal and perianal swabs were collected and it is unclear which swabs were used to make the smear.
 - 4.1.3.1. If there are two swabs in each box, examine one swab from each of the two boxes.
 - 4.1.3.2. If there is only one swab in each box, see Step 4.3.4.
 - 4.1.4. When more than one swab from an anatomical area is submitted (four vaginal swabs, for example), only one swab is analyzed as a representative.
 - 4.2. For suspected bloodstains, perform Phenolphthalein protocol.
 - 4.3. Proceed with Acid Phosphatase Protocol.
 - 4.3.1. If smears examined are negative and if AP result is negative, no further analysis is required, but may be performed, at the discretion of the analyst.
 - 4.3.1.1. The exceptions are bloody swabs from kits collected by the Medical Examiner's Office and swabs of condoms, which are carried through microscopic examination.
 - 4.3.2. If smears examined are negative and the swabs from the anatomical area are bloody and the Acid Phosphatase result is negative, an additional slide is not required, but may be performed, at the discretion of the analyst.
 - 4.3.3. If result is positive; proceed with Swab/Suspect Stain Extraction protocol.

Approved By	Ellyn D. Colquhoun	Issued on	October 6, 2015
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4.3.4. For suspected semen, if sample size is limited (only one swab per area submitted), the analyst may proceed straight to Microscopic examination with prior approval of the DNA Technical Leader or Designee.

4.4. For suspected saliva stains, perform Amylase protocol.

5. Examine clothing or bedding using the following steps, if necessary.

5.1. The analyst should take case specific information into account when proceeding to examine clothing or bedding.

5.1.1. Depending on case specific information, if the contents of the kit are positive for the presence of semen and/or amylase, it may not be necessary to examine the clothing or bedding.

5.1.2. Underwear submitted as part of the sexual assault kit may be examined.

5.2. Examine clothing for suspected seminal stains as referenced in "Evidence Handling: Biological Material" procedure.

5.3. For suspected bloodstains, perform Phenolphthalein protocol.

5.4. For suspected seminal stains perform Acid Phosphatase protocol:

5.4.1. If result is negative, no further analysis is required, but may be performed at the discretion of the analyst.

5.4.1.1. Note that if an item is stained with blood or fecal material, a sperm search should be performed even if the AP result is negative.

5.4.2. If result is positive; proceed with Swab/Suspect Stain Extraction protocol.

5.5. For suspected saliva stains, perform Amylase protocol.

6. If spermatozoa are detected on the slides, the corresponding swabs or stains are retained for DNA analysis.

7. If semen is detected on swabs or stains, the remaining swabs or stain portions collected from the same area are retained for possible further analysis.

7.1. If the sample is extremely limited, retain the cell pellet (or entire stain extract if the pellet is very small) in addition to swabs or stain portions.

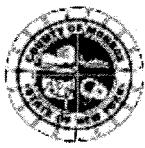
8. If amylase is detected on swabs or stains, the items are retained for DNA analysis.

8.1. Since amylase can be detected in vaginal secretions and fecal material, such items are retained based on case specific information and at the discretion of the analyst.

8.2. If a trace amount of DNA is suspected {for example, a swab of a suspected bite mark tests negative for the presence of amylase}, that sample is retained for DNA analysis.

9. If blood is detected on the clothing or bedding, the stain or stains are retained only at the discretion of the analyst.

Approved By	Ellyn D. Colquhoun	Issued on	October 6, 2015
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John R. Clark
Laboratory Administrator

Sexual Assault Evidence: Analysis Protocol

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10. Fingernail scrapings are retained if case specific information indicates that the patient scratched her/his assailant.
11. A DNA reference sample (bloodstain card, saliva sample, buccal swab, negative oral swab, or pulled hair) from the victim is retained when:
 - 11.1. Semen and/or sperm are detected
 - 11.2. Amylase is detected
 - 11.3. Fingernail scrapings have been collected and retained
 - 11.4. An item with suspected trace levels of DNA has been retained
 - 11.5. other probative evidence is retained, at the discretion of the analyst.
12. The items are assigned to Trace, and the evidence is transferred to the appropriate storage location when the following conditions are met:
 - 12.1. Appropriate trace controls have been submitted {e.g. pulled hairs from the victim}
 - 12.2. No biological fluid has been detected
 - 12.3. As dictated by case scenario or communications with Trace Analyst(s).
13. If the above conditions are not met, the evidence is returned to the submitting agency.

Approved By	<input checked="" type="checkbox"/> Ellyn D. Colquhoun	Issued on	<input checked="" type="checkbox"/> October 6, 2015
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MONROE COUNTY CRIME LABORATORY
85 W. Broad Street, Rochester, NY 14614
(585)-753-3535

John R. Clark
Laboratory Administrator

Sexual Assault Evidence: Analysis Protocol

Forensic Biology

Version 1.9

DOCUMENTATION:

PSL-486: Inventory Worksheet New York State Sexual Assault Evidence Collection Kit

REFERENCES:

Acid Phosphatase Protocol
Amylase Protocol
Evidence Handling: Biological Material procedure
Microscopic Examination for Spermatozoa procedure
Phenolphthalein protocol
Swab/Suspect Stain Extraction protocol

Approved By	<input checked="" type="checkbox"/> Ellyn D. Colquhoun	Issued on	<input checked="" type="checkbox"/> October 6, 2015
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City of Rochester Records Access Response

Communications Bureau, 30 Church St. RM 202A, Rochester, NY 14614

TO:

11/18/2016

[REDACTED]
Boston, MA 02210

RE: Your Records Access Request, **REFERENCE #:** **60829**
Received by the City on 11/07/2016
Requesting information about:

*for 10 years PRIOR to 2012: number of untested rape kits in
RPD's possession for each year; or confirmation that there
are no such untested kits*

STATUS: Your records access request has been approved.

Rochester Police Department's procedure prior to 2012 was to take every rape kit submitted directly to the lab for testing on the next business day, so there are no untested rape kits prior to 2012.

Sincerely,

A handwritten signature in black ink, appearing to read "James P. Smith".

James P. Smith
Records Access Officer