

Empire Ctr. for NYS Policy v NYC Police Pension Fund

2010 NY Slip Op 34068(U)

December 6, 2010

Supreme Court, New York County

Docket Number: 105839/2010

Judge: Carol E. Huff

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

CAROL E. HUFF

PRESENT: _____

Justice

PART 32

Index Number : 105839/2010

EMPIRE CENTER FOR NYS POLICY

vs.

NYC POLICE PENSION FUND

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

_____ motion is decided in accordance
with accompanying memorandum decision

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: DEC 06 2010

CAROL E. HUFF

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

-----X
THE EMPIRE CENTER FOR NEW YORK STATE : Index No. 105839/10
POLICY,
A Project of the Manhattan Institute for Policy Research, :
Inc.,

Petitioner, :

- against - :

NEW YORK CITY POLICE PENSION FUND,

Respondent, :

UNFILED JUDGMENT

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-----X
CAROL E. HUFF, J.:

In this Article 78 proceeding, petitioner seeks an order directing full compliance with its Freedom of Information Law request, made pursuant to Public Officers Law § 89(4)(b), for information in connection with all retired members of respondent, the New York City Police Pension Fund (that is, all retired New York City police officers receiving a pension).

By letter dated January 22, 2010, petitioner sought the following information for each retiree: name; retirement system registration number; last employer; gross retirement benefits for calendar years 2006, 2007, 2008 and 2009; indication of which system the retiree belongs to; retirement date; and date of commencement of retirement system membership.

The Pension Fund provided all of the information in its possession (it contends there is no "retirement system registration number") except for the names of the retirees. Petitioner appealed the decision not to provide the names, and the appeal was denied in a letter dated April 1, 2010, on the grounds that POL § 89(7) exempts the names of beneficiaries of public

3] employees' retirement systems, and that the disclosure of the names would endanger the retirees, who are former police officers.

Respondent first contends that petitioner lacks standing as a self-described "project," but petitioner does have standing as a non-profit corporation organized and existing under the laws of New York. Respondent also contends that petitioner is barred by the four-month statute of limitations pertaining to Article 78 proceedings (CPLR 217[1]), arguing that its 2010 request is merely duplicative of its 2009 request. However, petitioner's seeking an additional year's information in its 2010 request is sufficient to establish that it is non-duplicative.

Public Officers Law § 84 is a Legislative declaration that the public "should have access to the records of government in accordance with the provisions of this article." Such access is not unrestricted. For example, POL § 87 provides that agencies may deny access where the information would constitute an unwarranted invasion of privacy (§ 87[2][b]) or could endanger the life or safety of any person (§ 87[2][b]).

POL § 89(7) further provides that the name and address of a "beneficiary" of a public employees' retirement system should not be disclosed. In New York Veteran Police Assn. v New York City Police Dept. Article I Pension Fund, 61 NY2d 659, 660 (1983), the Court of Appeals found that this provision applies to "all retirees of the New York City Police Department currently receiving pensions and annuities."

In addition, the argument that § 87(2)(b) applies is persuasive (endangering of life or safety). Considering the ease with which internet searches using only a name can identify the address associated with it, and the common perception that retired police officers possess firearms, the possibility of such retirees becoming the target of burglaries is significant.

Accordingly, it is

ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: DEC 08 2010


CAROL E. HUFF
J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
17-101)