Matter of Chiaroscuro Found. v New York State Dept. of Health
2015 NY Slip Op 30783(U)
April 9, 2015
Supreme Court, Albany County
Docket Number: 3252-13
Judge: Jr., George B. Ceresia

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of the Application of
CHIAROSCURO FOUNDATION,

Petitioner,

For A Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

NEW YORK STATE DEPARTMENT OF HEALTH,

Respondent.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-13-ST4749 Index No. 3252-13

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INTERIM
DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner commenced the above-captioned CPLR Article 78 proceeding seeking review of the constructive denial of disclosure of records sought under the New York State Freedom of Information Law, commonly known as "FOIL" (see Public Officers Law Article

6).

FACTS

On April 11, 2013, Greg Pfundstein, President of the petitioner, submitted the following FOIL request to the respondent:

> "Pursuant to the New York State Freedom of Information Law. § 87 et. seq..., I request on behalf of the Chiaroscuro Foundation records regarding New York Law, 10 NYCRR Part 756:
> "1. How many inspections have been conducted of Article 78 licensed diagnostic treatment centers that offer abortion services since January 1, 2000?
> "2. How many inspections have been conducted of facilities that offer abortion services but are not licensed under Article 28 since January 1, 2000?
> "3. Please provide all records of any violations that were found, and the corrective/enforcement action taken resulting from inspections of Article 28 licensed diagnostic treatment centers that offer abortion services since January 1, 2000 and resulting from inspections of facilities that offer abortion services but are not licensed under Article 28 since January 1, 2000.
> 4. Please provide any records relating to investigations or civil enforcement actions for operating a facility that performs abortion services, for failure to comply with the requirements of Public Health Law Section 2801-A."

In a letter dated April 11, 2013, James P. O'Hare, respondent's Records Access Officer acknowledged receipt of the FOIL demand, and stated: "[i]t is estimated that within 20 business days we will complete your request or we will notify you in writing if the responsible program area(s) should require additional time to locate, assemble and review responsive documents." Thus the letter estimated that the Records Access Officer would submit a further response on or before May 9, 2013 (twenty business days after April 11, 2013).

By letter dated May 9, 2013 (apparently not issued until May 15, 2013 - four business

days beyond the estimate), the respondent estimated that it could produce the documents by June 7, 2013. In the meantime, however, the petitioner appealed what it deemed to be the constructive denial of the FOIL request. The appeal was denied by the Records Access Appeals Officer on May, 28, 2013. Thereafter, on June 7, 2013, Records Access Officer James P. O'Hare, issued a letter estimating that the search for records relevant to the FOIL request would be completed by July 8, 2013. This was followed by a letter dated July 8, 2013indicating that the search would be completed by August 19, 2013. However by that time the petitioner (on June 10, 2013) had already commenced the instant CPLR Article 78 proceeding. Respondent served an answer to the CPLR Article 78 petition on July 26, 2013. The Court thereafter heard oral argument on the matter, and ultimately issued an interim decision-order dated November 7, 2013 which directed the following: (1) the respondent must produce 325 such documents on or before November 25, 2013[1]; and (2) that the respondent produce the remaining documents within ninety days.

The documents produced by the respondent contained numerous redactions. After a conference with the Court, the petitioner prepared and served an amended petition objecting to the redactions, and requesting that copies of the unredacted documents be produced. The respondent served an answer to the amended petition in August 2014. At that time it submitted a copy of the unredacted documents to the Court for *in camera* review.

DOCUMENTS NOT SUBMITTED FOR *IN CAMERA* REVIEW

[1]Respondent's counsel, during oral argument, indicated that 325 pages of documents were ready to be produced.

Accompanying the documents which were submitted for *in camera* review was the affirmation dated August 20, 2014, of Danielle L. Levine, Esq., the respondent's Acting Records Access Officer. In paragraph 3 of Ms. Levine's affirmation, she indicated that the petition should be dismissed because the respondent had produced "all available and releaseable documents" responsive to petitioner's FOIL demand. It was unclear to the Court what was meant by this, since it was the Court's understanding that it had in its possession all documents subject to the FOIL request. Ms. Levine's statement was all the more problematic since the petitioner argues here that the 1,708 pages of documents produced by the respondent is 144 pages short of the number of documents which respondent initially indicated it had found. The Court is (and was then) aware that under FOIL, an agency discharges its responsibility by certifying "that all responsive documents had been disclosed and that it had conducted a diligent search for the documents it could not locate" (Matter of Rattley v New York City Police Department, 96 NY2d 873, 875 [2001]). Because Ms. Levine's statement left considerable doubt with regard to whether the respondent had fully complied with its statutory obligation, the Court, in a letter-order dated March 16, 2015, directed respondent to inform the Court, without qualification, whether the respondent had produced all documents responsive to petitioner's FOIL request. In the same letter-order, the Court cautioned respondent that at this stage of the proceeding it was the Court, not the respondent, who determines what documents (or portions thereof) should be released.

On April 6, 2015 the Court received a second affirmation of Ms. Levine. As in the first affirmation, she indicated she is familiar with the facts set forth herein, based upon her personal knowledge, Department records and discussions with Department staff. She stated

the following:

> "8. In all my affirmations to the Court, I have consistently stated the total amount of responsive production materials consist of 1708 pages. The Records Access Office has produced all documents responsive to petitioner's FOIL request that are not exempt under POL. We do not have any additional responsive materials to disclose to the petitioner in compliance with the November 7, 2013 decision/order/judgment issued by this Court.
>
> "9. It is the general policy of my office, that if the information redacted pursuant to POL occupies the full page of a document, the entire page is removed from the final response to the requester, rather than providing the requester with potentially hundreds or thousands of 'blacked-out' pages in their release, such as in this matter. This general policy is in place because it is believed to benefit the requester by not unfairly overburdening them with voluminous amounts of 'blacked-out' materials which provide no value.
>
> "10. However, due to Internal oversight and due to numerous employees simultaneously working on this matter, the Department inadvertently did not provide the Court with approximately 2,000 pages for the in-camera review that were fully redacted and not released to the petitioner pursuant to the general policy (as a result of my office's thorough review and legal analysis).
>
> "11. The approximately 2,000 pages of fully redacted pages that were not released to petitioner are not the 144 pages that petitioner claims were missing due to the discrepancy when the AAG missspoke. I still emphatically maintain that the total amount of responsive production pursuant to the POL remains 1,708 pages, and there are no additional records that are responsive to petitioner's FOIL request."
>
> "12. At this time, our office is seeking to correct its oversight by diligently preparing the pages of fully redacted material for in-camera review by the Court, along with a privilege log for those pages that require it."

Thus, it was only after the Court raised the issue with regard to the completeness of respondent's document production, that the respondent, for the first time, disclosed that there were 2,000 additional documents which had not been produced for *in camera* review.

The Court will direct the respondent to produce the additional documents to the Court, unredacted, within thirty (30) days. The Court is mindful that "blanket exemptions for particular types of documents are inimical to FOIL's policy of open government" (Gould v NYC Police Dept. 89 NY2d 267, 274-275 [1996]). The Court will direct the respondent to prepare a privilege log which indicates, with specificity, each and every exemption which is claimed to be applicable to the redacted material.

Respondent must also submit, within thirty (30) days, an affidavit or affirmation to address the issue of why it should not be sanctioned for its failure to mention and initially produce the additional 2,000 pages of documents to the Court for *in camera* review.

Inasmuch as the Court has reviewed 1,708 pages of documents, the Court will issue a decision as to those documents at this time.

DISCUSSION

"'It is settled that FOIL is based on the overriding policy consideration that 'the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government'" (Matter of Town of Waterford v. New York State Dept. of Envtl. Conservation, 18 NY3d 652, 656-657 [2012] quoting Matter of Capital Newspapers, Div. of Hearst Corp. v Whalen, 69 NY2d 246, 252, [1987]). Thus, "all government records are presumptively available to the public unless they fall within a specific statutory exemption" (Matter of TJS of New York, Inc. v New York State Department of Taxation and Finance,

89 AD3d 239, 241 [3d Dept., 2011], citations omitted). In addition, the Court of Appeals has repeatedly held that FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government (see Matter of Town of Waterford v New York State Dept. of Envtl. Conservation, supra, at 657; Capital Newspapers v Whalen, supra, at 252; Matter of Washington Post Co. v New York State Ins. Dept., 61 NY2d 557, 564 [1984]; Matter of Data Tree, LLC v Romaine, 9 NY3d 454, 462 [2007]). All agency records are presumptively available for public inspection and copying, unless the documents in question fall within one of the enumerated exemptions set forth in Public Officers Law § 87 (2) (see Matter of Encore Coll v Auxiliary Serv, 87 NY2d 410, 417 [1995]; Matter of Hanig v State of New York Dept. of Motor Vehicles, 79 NY2d 106, 109 [1992]; Matter of Humane Society of the United States v Fanslau, 54 AD3d 537 [3rd Dept., 2008]; Matter of Data Tree, LLC v Romaine, supra).

Unwarranted Invasion of Personal Privacy

The respondent cites two provisions of the Public Officers Law in support of its argument that redactions are required to protect the personal privacy of individuals: POL § 87 (2) and POL § 89 (2) (b). POL § 87 (2) (b) recites:

> "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: [] (b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article" (see POL § 87)

POL § 89 (2) recites:

> "2. (a) The committee on public access to records may

> promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.
>
> (b) An unwarranted invasion of personal privacy includes, but shall not be limited to: []
>
> ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility" (POL § 89 [2])

The respondent also points out that POL § 89 sanctions a process whereby records are redacted to remove identifying information:

> "(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision: i. when identifying details are deleted" (see POL § 89 [2] [c] [i]")

Respondent indicates that in construing POL § 89, the respondent has followed the protocol established by the federal Department of Health and Human Services pursuant to the provisions of the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"; see Public L 104-191, 110 US Stat 1936 [1996]). With respect to the issue of personal privacy, HIPAA focuses on whether "the information could be used alone or in combination with other information to identify an individual who is a subject of the information" (45 CFR 164.514 [b] [1] [i]; 45 CFR 164.514 [b] [2] [ii]). It is indicated that the respondent relied upon the personal privacy exemption only for purposes of redacting patient information including names, medical histories and/or other data which might directly identify a patient or which, through an assemblage of such information, lead to the identity of a patient. The Court finds that the respondent's action, in adopting the methodology

prescribed under HIPAA, has a rational basis. Under all of the circumstances, the Court finds the redaction of all patient identifiers was proper and rationale, and within the scope of POL § 89 (2) (b) (ii).

Endangers The Life or Safety of Any Person

POL § 87 (2) provides:

> "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: [] (f) if disclosed could endanger the life or safety of any person (see POL § 87 [2])

The respondent maintains that there have been numerous incidents where abortion clinics throughout the United States have been bombed, set on fire, vandalized, burglarized and exposed to anthrax; and there are instances of doctors and staff members being physically attacked, with some being killed. The petitioner counters by arguing that abortion providers widely publicize their services. The respondent argues that it is not in a position to determine which individual facilities publicize their services, and which do not. The respondent points out that Congress recognized the potential danger at abortion clinics when it enacted the Freedom of Access to Clinic Entrances Act of 1994 (see 18 USC § 248).

Courts have liberally construed the legislative intention to protect individuals who might be harmed by a FOIL disclosure. As stated in Stronza v Hoke (148 AD2d 900, 901 [3d Dept., 1989]) "there need only be a possibility that such information would endanger the lives or safety of individuals" (id., at 901; see also Matter of Bellamy v New York City Police Dept., 87 AD3d 874, 875 [1st Dept., 2011], aff'd 20 NY3d 1028, mot to reargue

denied 21 NY3d 974 [2013]; Matter of Exoneration Initiative v New York City Police Dept., 114 AD3d 436, 438 [1st Dept., 2014]; Matter of Williamson v Fischer, 116 AD3d 1169, 1170-1171 [3d Dept., 2014]). Notably, the New York State Committee On Open Government, a strong proponent of the principle of transparency in state and local government, expressly approved the withholding of information which would identify the names of abortion clinics "in view of the violence that has been committed in New York and elsewhere in relation to abortion providers" (State of New York, Committee on Open Government, Advisory Opinion FOIL-AO-11239 [Jan. 6, 1999]). The Court is also mindful of the case of Danco Lab. Ltd. v Chemical Works of Gedeon Richter, Ltd. (274 AD2d 1 [1st Dept., 2000]), involving a newspaper's application to vacate a sealing order, where the Appellate Division directed the redaction of the identities of persons involved in the manufacturing and marketing of RU-486, commonly known as the abortion pill.[2]

The petitioner, in support of its argument that abortion providers publicize their services, makes reference to three internet web-sites which identify abortion providers, "abortion.com", National Abortion Federation (www.prochoice.org); and www.plannedparenthood.org). The foregoing is not evidence in admissible form, and does not serve to demonstrate that the individual abortion clinics gave their approval to be so listed on the websites. Phrased differently, there is no evidence before the Court that any of the individual abortion clinics listed on such websites publicized their services. In this respect, the Court finds that the petitioner did not satisfy its burden of proof to demonstrate which

[2]The Court notes that the case does not involve a Freedom of Information Law request under Public Officers Law article six.

abortion providers have publicized their services.

In addition, the Court finds that respondent's underlying methodology for redaction of identifying information of abortion providers and staff (in which the respondent follows the general protocol for redaction of patient information under HIPAA) has a rational basis. In other words, the Court finds that redaction of identifying data which, either alone, or in combination with other data, could lead to the identity of the abortion provider or staff member, has a rational basis.

Quality Assurance

Under POL § 87 (2) (a), an agency is prohibited from disclosing records which "are specifically exempted from disclosure by state or federal statute" (POL § 87). The respondent maintains that certain of the records contain information protected from disclosure under state law, namely Public Health Law §§ 2805-j, 2805-k, 2805-l, 2805-m, and Education Law § 6527. Public Health Law § 2805-j provides for the creation of committees to oversee quality assurance:

> "1. Every hospital shall maintain a coordinated program for the identification and prevention of medical, dental and podiatric malpractice. Such program shall include at least the following:
>
> > (a) The establishment of a quality assurance committee with the responsibility to review the services rendered in the hospital in order to improve the quality of medical, dental and podiatric care of patients and to prevent medical, dental and podiatric malpractice. Such committee shall oversee and coordinate the medical, dental and podiatric malpractice prevention program and shall insure that information gathered pursuant to the program is utilized to review and to revise

> hospital policies and procedures. At least one member of the committee shall be a member of the governing board of the hospital who is not otherwise affiliated with the hospital in an employment or contractual capacity; []" (Public Health Law § 2805-j [1])

Public Health Law § 2805-m, entitled "Confidentiality", provides that information gathered by a quality assurance committee shall not be disclosed.

> "1. The information required to be collected and maintained pursuant to sections twenty-eight hundred five-j and twenty-eight hundred five-k of this article[3], reports required to be submitted pursuant to section twenty-eight hundred five-l of this article[4] and any incident reporting requirements imposed upon diagnostic and treatment centers pursuant to the provisions of this chapter shall be kept confidential and shall not be released except to the department or pursuant to subdivision four of section twenty-eight hundred five-k of this article." (Public Health Law § 2805-m)

Said section makes pointed reference to Public Officers Law Article Six:

> "2. Notwithstanding any other provisions of law, none of the records, documentation or committee actions or records required pursuant to sections twenty-eight hundred five-j and twenty-eight hundred five-k of this article, the reports required pursuant to section twenty-eight hundred five-l of this article nor any incident reporting requirements imposed upon diagnostic and treatment centers pursuant to the provisions of this chapter shall be subject to disclosure under article six of the public officers law or article thirty-one of the civil practice law and rules, except as hereinafter provided or as provided by any other

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[3]Public Health Law § 2805-k, entitled "Investigations prior to granting or renewing privileges", as the title suggests, requires that the facility report certain information to the Department of Health, prior to granting or renewing privileges to, as relevant here, physicians.

[4]Public Health Law § 2805-l, entitled "Adverse event reporting" requires hospitals to report certain specified incidents, among them, deaths or injuries to patients under unusual circumstances, fires in a facility, poisonings, strikes by staff, and disasters or emergency situations.

provision of law. []" (Public Health Law § 2805-m)

In addition, Education Law § 6527 recites:

> "(3) Neither the proceedings nor the records relating to performance of a medical or a quality assurance review function or participation in a medical and dental malpractice prevention program nor any report required by the department of health pursuant to section twenty-eight hundred five-1 of the public health law described herein, including the investigation of an incident reported pursuant to section 29.29 of the mental hygiene law, shall be subject to disclosure under article thirty-one of the civil practice law and rules except as hereinafter provided or as provided by any other provision of law.[]" (Education Law § 6527 [3])

Many of the documents submitted for *in camera* review consist of documents referred to as "statements of deficiency", issued to various abortion providers by the New York State Department of Health. In Smith v Delago (2 AD3d 1259 [3d Dept., 2003]) the Court, in a medical malpractice action, permitted limited discovery of statements of deficiency which had been issued by the Department of Health to the defendant hospital. The Appellate Division acknowledged that some documents remain confidential under the provisions of Public Health Law § 2805-m (2). Nevertheless, the Court found that factual portions of these records, which did not contain confidential information and were redacted to remove conclusions of law and opinions of the Department of Health, must be produced (id., at 1260-1261).

Turning to the case at bar, in reviewing those portions of documents redacted by the respondent under the quality assurance exemption, the Court found many references to quality assurance committees, quality assurance sub-committees, and their records. The subcommittees include the Infection Control Committee, Credentialing Committee,

Therapeutics Committee, Pharmacy Committee, Pharmaceutical Services Committee, Medical Advisory Committee, CQI/RM or CQ/RM (Continuous Quality Improvement Risk Management) Committees, RQM (Risk and Quality Management) Committees, and QA Committees. Many comments redacted by respondent contain a citation to a specific Department of Health requirement which imposed upon a quality assurance committee the responsibility to oversee the particular task, issue or problem at issue. In such situations, or where the statement of deficiency made direct reference to a quality assurance committee or subcommittee, the Court upheld the redaction. The Court also upheld redaction of an abortion provider's response, where the response indicated that the issue was being addressed by, or referred to, a quality assurance committee (or subcommittee). Redaction of records relating to performance of a medical or a quality assurance review function was upheld under Education Law § 6527 (3). Several redactions were upheld with respect to incident reports which are confidential under the provisions of PHL § 2805-l (see PHL 2805-m; Education Law § 6527 [3]). Where the Court could not discern from review of the record whether the redacted material had any connection with a quality assurance committee or a medical or quality assurance review function, or an incident report, the Court found that the respondent had not carried its burden of proof with respect to the issue.

The Court finds that the data set forth in the redaction boxes identified on the following pages must be produced.[5] All other redactions are upheld. Identifying information contained within any text box described below should remain redacted.

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[5]References are to pages of the documents in three loose leaf binders submitted to the Court for *in camera* review .

Page 53	Right Column, lower redaction box.
Page 205	Left Column, redaction box at T2070, T2160
Page 206	All three redaction boxes
Page 300	Left Column, lower redaction box
Page 318	Left Column redaction box
Page 319	Right Column redaction box
Page 697	Right Column, redaction box in paragraph 3
Page 774	Left Column redaction box
Page 984	Right Column redaction box
Page 1563	Right Column redaction box

The Court will direct that the unredacted pages (exclusive of identifiers) be forwarded to the petitioner within thirty (30) days.

144 Missing Pages

With regard to the issue concerning the number of pages of documents which should have been produced, as noted, the petitioner indicates that during a conference with the Court held on February 10, 2014 counsel for the respondent indicated that 1,852 pages of documents had been reviewed as of that date. In her affirmation dated April 6, 2015, Danielle L. Levine, Esq. indicates that the discrepancy arose when the Assistant Attorney General representing the respondent, inadvertently misrepresented the number of pages of

documents which had been produced as 1,852, when it was actually 1,708[6]. Ms. Levine indicates that there are no other records, and that the 144 missing pages are not part of the 2,000 pages (which were completely redacted) that have yet to be produced. Under such circumstances, in the absence of any evidence to the contrary, the Court finds that it must accept respondent's explanation (see Matter of Kindred v City of Albany Office of the City Clerk, 97AD3d 1043, 1044 [3d Dept., 2012]).

Petitioner's Request for Attorneys Fees

"A court may award such fees where the party seeking disclosure has 'substantially prevailed' in the proceeding and the agency did not have a 'reasonable basis for denying access' to the records in question" (Matter of Mazzone v New York State Department of Transportation, 95 AD3d 1423, 1426 [3d Dept., May 3, 2012], quoting excerpts of Public Officers Law § 89 [4] [c], and citing Matter of Capital Newspapers Div of Hearst Corp. v City of Albany, 63 AD3d 1336, 1339 [2009], mod 15 NY3d 759 [2009]). "'[E]ven when these statutory prerequisites are met, the decision to grant or deny counsel fees still lies within the discretion of the court'" (Matter of Maddux v New York State Police, 64 AD3d 1069, 1070 [3d Dept., 2009], lv denied 13 NY3d 712 [2009], quoting Matter of Henry Schein, Inc. v Eristoff, 35 AD3d 1124, 1126 [2006]; and citing Matter of Todd v Craig, 266 AD2d 626, 627 [1999], lv denied 94 NY2d 760 [2000])

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[6]The Court is aware that while the parties are in apparent agreement that 1,708 pages of documents were produced, the final page in Volume III of Respondent's Exhibit W is numbered 1,723. The Court has no explanation for this relatively minor discrepancy, which might be attributable to an error in pagination, or possibly due to the inclusion of respondent's letter of transmittal for each separate "roll out" of documents.

In view of the procedural posture of the instant proceeding, the Court finds that the issue of attorneys fees must be held in abeyance until completion of *in camera* review of the additional 2,000 pages, and final judgment.

Accordingly, it is

ORDERED and ADJUDGED, that the amended petition is granted in part and denied in part, in keeping with this decision-order-judgment; and it is

ORDERED, that within thirty (30) days, the respondent deliver to the petitioner the unredacted portions of pages set forth above; and it is further

ORDERED, that within thirty (30) days, the respondent produce the remaining 2,000 pages of documents to the Court for *in camera* review, together with a detailed privilege log, all in keeping with this decision/order/judgment; and it is further

ORDERED, that the respondent, within thirty (30) days, submit an affidavit or affirmation to address the issue of why it should not be sanctioned for its failure to produce the additional 2,000 pages of documents to the Court for *in camera* review, and for respondent's failure to inform the Court that such records existed, while leading the Court to believe that all documents subject to petitioner's FOIL request had been submitted to the Court; and it is further

ORDERED and ADJUDGED, that petitioner's request for attorneys fees and costs be held in abeyance in keeping with this decision.

This shall constitute the interim decision, order and judgment of the Court. The original interim/decision/order/judgment is returned to the attorney for the petitioner. All other papers will be retained until final disposition of the proceeding.

ENTER

Dated: April 9 , 2015
Troy, New York

George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Notice of Petition dated June 6, 2013, Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated July 26, 2013, Supporting Papers and Exhibits
3. Reply Affirmation of John P. Margand, Esq. dated August 15, 2013 and Exhibits
4. Notice of Amended Petition dated July 7, 2014, Amended Petition, and Exhibits
5. Respondent's Verified Answer dated August 20, 2014
6. Affirmation of Danielle L. Levine, Esq., dated August 20, 2014 and Exhibits
7. Documents Submitted by Respondent For In Camera Review: Three loose leaf volumes totaling 1,723 pages
8. Reply Affirmation of John P. Margand, Esq., dated September 3, 2014 and Exhibits
9. Affirmation of Danielle L. Levine, Esq., dated April 6, 2015.