

Matter of Citizens for a Better Maspeth, Inc. v City of New York
2017 NY Slip Op 32024(U)
September 27, 2017
Supreme Court, Queens County
Docket Number: 2648/17
Judge: Allan B. Weiss
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ALLAN B. WEISS

IA PART 2

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In the Matter of the Application of
CITIZENS FOR A BETTER MASPETH, INC.

Index No.: 2648/17

Petitioner,

Motion Date: 5/24/17

-against-

Motion Seq. No.: 1

THE CITY OF NEW YORK, THE NEW YORK
CITY DEPARTMENT OF BUILDINGS, THE
NEW YORK CITY DEPARTMENT OF HOMELESS
SERVICES, LIN+ASSOCIATES ARCHITECTS PC,
KCM REALTY COMPANY, LP and NEW RAM
REALTY, LLC,

Respondents.

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The following papers read on this Article 78 proceeding by petitioner Citizens For A Better Maspeth Inc. (Citizens) for an order compelling respondents to comply with its Freedom of Information Law (FOIL) request to produce all documents of any kind or nature which are responsive to several FOIL requests submitted to various respondents, and for an assessment of attorney's fees and costs against respondents New York City Department of Homeless Services (DHS) and New York City Department of Buildings (DOB).

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Upon the foregoing papers the petition is determined as follows:

On August 5, 2016, Dawn Scala submitted a FOIL request to the DHS, via its website, requesting the following: “Most recent data available pertaining to the number of homeless, stratified by type (ex. families with children, adult families, single adults), data pertaining to their last residence/last known address (country, state, borough, city zip code, and community board of last residence), primary reason for homelessness, indicator if currently employed, if employed, indicator if full time or part time, gross monthly income, if any, indicator of mental health issues, indicator of drug abuse/dependency, indicator of alcohol abuse/dependency, shelter entry date, current length of shelter stay (in days), anticipated length of shelter stay, shelter provider, shelter location (borough, city, zip code and community board of shelter location) repeat shelter status (meaning they have returned to the shelter system after being transitioned out). For families with children, please indicate number of adults and ![sic] number of children by school age group (ex. preschool, elementary, middle and high school) and school district the children were enrolled prior to entering the shelter system and the school district in which they are currently enrolled. For adult families, please indicate number of people in the family. Please provide all requested data at a granular level. Please provide all data in electronic format (example.comma delimited file, excel file). In the event that the data is too large, please separate the data into smaller more manageable files”.

Conor Sheehan, a DHS agency attorney, in an email dated October 19, 2016, provided a partial response to Ms. Scala’s FOIL request. The DHS provided her with system-wide demographic data by population, including: (1) reasons for eligibility for adult families and for families with children; (2) reasons for homelessness for single adults; (3) the number of households currently employed;(4) the number of single adults receiving services at mental health or substance abuse use shelters; (5) average length of stay for DHS clients; (6) a distribution of length of stay; (7) a list of shelter providers; (8) a breakdown of the number of clients in each borough; (9) the number of shelters in each borough; (10) return to shelter rate; and (11) data on family composition.

Mr. Sheehan stated that due to the complexity of her request and limited staff availability, the Agency was still in the process of retrieving records related to her request for data responsive to her request for data pertaining to last known address, and anticipated that said data would be available on November 16, 2016. Although the term “at the granular level” was not defined in Ms. Scala’s Foil request, DHS interpreted it as a request for

information corresponding to each shelter resident (DHS client) in New York City.¹ Mr. Sheehan denied Ms. Scala's client-level requests, citing the following exemptions: Public Officers Law §87(2)(b) which exempts from disclosure records that "would constitute an unwarranted invasion of personal privacy; §87(2)(f) which exempts from disclosure records that "if disclosed could endanger the life or safety of any person"; and § 87(2)(a) which exempts from disclosure records that "are specifically exempted from disclosure by state or federal statute", and Social Services Law §136.

Daniel J. Schneider, an attorney of counsel to the law firm of Klein Slowik PLLC, in a letter dated October 7, 2016, submitted a FOIL request to Mr. Sheehan at DHS, which referred to the "Holiday Inn Express Conversion to Homeless Shelter, in Maspeth, New York", located at 59-04 55th Road, Maspeth. Mr. Schneider sought "documents received, in the possession of and maintained" by the DHS relating to the a "Request for Proposal" (RFP), including any "application documents to convert the above referenced location from a hotel to a facility which houses any homeless population". Said FOIL request sought the production of the following:

- " (1) Any and all plans submitted which demonstrates to DHS that the space would be a conforming use under the Zoning Resolution;
- (2) Any and all permits and approvals to perform any build-outs, alterations and/or changes of use of the space.
- (3) Any and all documents concerning any violation, concern or stop-work order issued; and
- (4) Any and all other documents including, without limitation, plans, permits, approvals and/or violations submitted in connection with the above referenced application which relate to any alterations made at the Location".

Mr. Schneider, in a letter dated October 11, 2016, submitted a FOIL request to DHS, which referred to the "Holiday Inn Express Conversion to Homeless Shelter, Maspeth, New York Fair Share Analysis", and sought documents "relating to the Fair Share Analysis in connection with the above referenced location and its conversion from a hotel to a facility which houses any homeless population."

Mr. Sheehan, in an email dated October 19, 2016, denied Mr. Schneider's FOIL requests dated October 7, 2016 and October 11, 2016, stating that the agency "does not maintain records responsive to your request for documents relevant to the Holiday Inn

¹Ms. Scala, in her August 5, 2016 FOIL request did not identify herself as a member of Citizens. In her affidavit in support of the petition, she states that she is "affiliated with" Citizens.

Express conversion to a homeless shelter in Maspeth, New York.”

Mr. Schneider, in a letter dated October 28, 2011, appealed the DHS’ October 19, 2016 denial of his October 7 and October 11, 2016 FOIL requests, as well as the October 19, 2016 partial denial of Ms. Scala’s FOIL request, which he characterized as a client request. With respect to the denial of the October 7 and October 11, 2016 FOIL requests, Mr. Schneider argued that given the fact that homeless individuals were residing at the subject Holiday Inn Express, that there were myriad of news stories and protests, and that two public hearings had been scheduled, that there was a “demonstrable factual basis for believing” that the documents sought were in the possession of the DHS. He further stated that there was “no doubt” that the property was being used “for the purpose of housing any homeless population and that the operator of the Property is attempting to contract with DHS and the City for that purpose. In addition, it is impossible that the operator of the property (either Acacia Network, Inc., Acacia Network Housing Inc., New Ram Realty, LLC or Harshad Patel) has not already submitted a proposal pursuant to the open RFP or an application for a contract pursuant to the open RFP for full time status as a homeless shelter”.

Mr. Schneider further argued that “[s]ince homeless people were already there, it is further difficult to believe that there has been no proposal, no application no contract (draft or final), no permit, plans or proof of conforming use submitted in relation to the Property’s anticipated or current use to house any of the City’s homeless population. Finally, in light of DHS’s procedures, it is difficult to believe that no fair share analysis has yet been completed”. Mr. Schneider also asserted the DHS had failed to certify that it does not have possession of the requested documents, or after a diligent search such documents could not be found.

With regard to Ms. Scala, Mr. Schneider asserted that her FOIL request did not seek the names and identities of specific individuals or families who make up the homeless in New York City and that the provisions of the Public Officers’ Law and Social Services Law §136 were inapplicable.

DHS’ Records Access Appeals Officer Jason Tuttle, in a letter dated November 16, 2016, denied the appeal of the October 7 and October 11, 2016 FOIL requests submitted by Mr. Schneider. Mr. Tuttle stated that the agency acknowledged that the October 19 denial of said requests failed to provide a comprehensive response to the October 7 and October 11, 2016 requests. The DHS, however, affirmed its determination, stating that with respect to the October 7, 2016 request for “RFP, communications regarding RFP, and item (1) of your 10/7 Request, the Agency cannot provide proposals or other preliminary, draft contract documents that have not been approved by the Comptroller’s Office pursuant to Public Officers Law (“POL”) §87(2) (c), as such records, if disclosed, would impair present or

imminent contract awards. Second, after a diligent search, the Agency has not identified documents responsive to items (2),(3) or (4).”

As regards the October 11, 2016 FOIL request, Mr. Tuttle stated that “the Agency has not completed a fair share analysis for the Maspeth Holiday Inn. Consequently, the Agency does not maintain documents responsive to your request.”

With respect to the Ms. Scala’s FOIL request, Mr. Tuttle stated that she sought “comprehensive demographic information about DHS clients at the individual case level”, and affirmed the agency’s “determination to withhold this data at the individual case level while providing the analogous system wide demographic data by population”. He stated that “[a]lthough the Client Request did not seek the names and identities of specific DHS clients, the level of detail requested on a per household basis would, in totality, tend to identify DHS clients.”

Mr. Schneider, in a letter dated October 13, 2016, submitted a FOIL request to the DOB, which referred to the “Holiday Inn Express Conversion to Homeless Shelter, Maspeth, New York”, in which he sought documents “related to the construction of the above referenced location including, without limitation, a full set of the approved plans for construction of the building at that location” and requested “architectural, plumbing, electrical and any other plans related to said construction.” He stated that the FOIL request was being made, as the local DOB office was unable to provide the construction plans in the “ordinary course”.

David Bowles, the DOB’s Assistant Record Access Officer, in a letter dated October 31, 2016, responded to the FOIL request, stating that all public records maintained by the DOB are routinely made available for public inspection and copying at the office/division of the DOB at which records are maintained, and directed Mr. Schneider to contact the Queens Borough Office to make arrangements to obtain or view the records.

Mr. Schneider, in a letter dated November 10, 2016, stated that Mr. Bowles had not specified the date of FOIL request, and noted that he had sent the DOB several requests for documents²; and that he had previously noted in his prior letter that they had been to the local DOB office and were informed that they were unable to provide the requested plans.

In a letter dated November 23, 2016, Mr. Schneider appealed Mr. Bowles’ response of October 31, 2016, stating that said response was vague, and that as the local DOB office

²Petitioner has not submitted evidence of any other FOIL requests that were made to the DOB.

was not in possession of the documents, he was seeking clarification as to what Mr. Bowles was responding to. He also stated the DOB should provide a statement that it was no longer in possession of the requested records, or advise as to why they were not on file when they searched the local office, and confirm that they are available.

On December 30, 2016, Appeals Officer Wallace emailed Mr. Schneider to confirm which records he was seeking, noting that according to the DOB's Building Information System (BIS) that there was no job application matching the description included in Mr. Schneider's correspondence of "Holiday Inn Express Conversion to Homeless Shelter", but that the "BIS does include New Building Job Application No. 401962523, that does appear to have been for the construction of the hotel". It was noted that said records were viewable in BIS and Mr. Schneider was provided with a link to said records. Mr. Wallace requested that Mr. Schneider confirm whether he was seeking the records under New Building Job Application No. 401962523, and if so, he would direct DOB's FOIL unit to review the request and provide any responsive material.

Mr. Schneider, in an email dated January 3, 2017, stated that: "This is correct. Those are the plans and drawing that I have been requesting. Job 401962523". The same day, Mr. Wallace responded that the FOIL Unit would review the request for this specific information and provide any responsive material. Mr. Wallace did not specifically deny Mr. Schneider's appeal of Mr. Bowles' response.

Petitioner Citizens commenced the within Article 78 proceeding on March 13, 2017, pursuant to an order to show cause in lieu of a notice of petition. The petition alleges that Citizen, by one of its members, Dawn Scala, submitted the August 5, 2016 FOIL request to DHS. It is also alleged Citizen, by its counsel Klein, Slowik PLLC, filed the two FOIL requests with the DHS, as well as the FOIL request filed with the DOB.³ The petition alleges that respondent KCM Realty Company, L.P. is the owner of the real property located at 59-40 55th Road, Maspeth, New York and that it has entered into a ground lease with respondent New Ram Realty LLC. It is alleged that the Holiday Inn Express, situated on said real property, is being operated as a homeless shelter without a City contract. Petitioner alleges that the subject premises, a Holiday Inn Express, is being used as a homeless shelter in violation of the New York City Building Code, Construction Code, Zoning Resolution, Rules and Charter.

³It is noted Mr. Schneider's FOIL requests filed with DHS and DOB made no mention of Citizens or any other client, and that the only client he identified in the FOIL appeals was Ms. Scala. Respondents, however, do not assert that Citizens lacks standing to challenge the subject FOIL determinations.

Petitioner seeks a judgment directing respondents to comply with FOIL and to disclose all portions of the requested records not subject to any exemption or other privilege, and an award of attorney's fees and reasonable litigation costs, pursuant to Public Officers' Law §89.

Following the commencement of the within proceeding and prior to the service of respondents' answer, Mr. Wallace provided Corporation Counsel of the City of New York with a CD containing electronic copies of the documents contained in the publically accessible job folder under New Building Application Number 401962523, and said CD was delivered to Mr. Schneider's law firm on May 10, 2017.

Respondents City of New York, DOB and DHS have served an answer and interposed four affirmative defenses. Respondents assert that it properly denied the October 7 and October 11 FOIL requests pertaining to the subject premises. Respondents allege that although the City previously sought to convert the Holiday Inn Express, a privately-owned commercial hotel, to a shelter for homeless; that the City maintains an open-ended Request for Proposal (RFP) process, through which nonprofit social services submit proposals to open shelters in neighborhoods throughout New York City, as needed to meet demand; that through said open-ended RFP process DHS received a proposal from Acacia Network, a non-profit organization, to operate a shelter at said premises; that pursuant to said proposal the entire building would operate as a shelter; and that during the contract negotiations, issues pertaining to site control made the project unviable and the project was discontinued; and that the DHS and Acacia did not enter into a contract to convert the building into a shelter.

Respondents allege that on October 10, 2016, DHS began placing homeless adult men in commercial hotel rooms rented directly from the Holiday Inn Express, pursuant to its commercial hotel program; and that at no time have more than half of the hotel's 115 rooms been rented by DHS or Acacia for shelter purposes. It is alleged that as the conversion plan was discontinued, no Fair Share Analysis was conducted and that there are no records responsive to the October 11th, request. It is also alleged that as the plan to convert the building to a shelter was discontinued, the documents requested in categories 2, 3, and 4 of the October 7th request do not exist. Respondents further assert that the proposal submitted by Acacia, which did not result in a contract, is exempt from disclosure pursuant to Public Officers Law §87(2)(c).

Respondents allege that the DHS properly denied the client-level information sought in the Scala request, and that the FOIL request submitted to the DOB is now moot as the requested documents have been provided.

Petitioner has discontinued this proceeding against respondent Lin + Associates Architects PC, and filed a notice of discontinuance on April 28, 2017.

Petitioner has not submitted affidavits of service, and thus has not established that this court has jurisdiction over respondents KCM Realty Company, L.P. and New Ram Realty LLC. However, these respondents are not subject to FOIL, as they are not an “agency” within the meaning of Public Officers Law § 87 (*see Lugo v Scenic Hudson, Inc.*, 258 AD2d 626, 627 [2nd Dept 1999]), and therefore are not necessary parties to this proceeding.

“In a proceeding pursuant to CPLR article 78 to compel the production of material pursuant to FOIL, the agency denying access has the burden of demonstrating that the material requested falls within a statutory exemption, which exemptions are narrowly construed (*see* Public Officers Law § 89 [5] [e], [f]; *Matter of West Harlem Bus. Group v Empire State Dev. Corp.*, 13 NY3d 882, 885 [2009]; *Matter of Data Tree, LLC v Romaine*, 9 NY3d 454, 462[2007]). This showing requires the entity resisting disclosure to articulate a particularized and specific justification for denying access (*see Matter of Capital Newspapers Div. of Hearst Corp. v Burns*, 67 NY2d 562, 566 [1986]; *Matter of Berger v New York City Dept. of Health & Mental Hygiene*, 137 AD3d 904, 906 [2d Dept 2016]; *Matter of Dilworth v Westchester County Dept. of Correction*, 93 AD3d 722, 724[2d Dept 2012]). Conclusory assertions that certain records fall within a statutory exemption are not sufficient; evidentiary support is needed (*see Matter of Prall v New York City Dept. of Corr.*, 129 AD3d 734, 736 [2015]; *Matter of Baez v Brown*, 124 AD3d 881, 883 [2d Dept 2015]; *Matter of Madera v Elmont Pub. Lib.*, 101 AD3d 726, 727 [2d Dept 2012]; *Matter of Dilworth v Westchester County Dept. of Correction*, 93 AD3d at 724). If the court is unable to determine whether withheld documents fall entirely within the scope of the asserted exemption, it should conduct an in camera inspection of representative documents and order disclosure of all nonexempt, appropriately redacted material (*see Matter of Gould v New York City Police Dept.*, 89 NY2d 267, 275 [1996]; *Matter of Newsday, LLC v Nassau County Police Dept.*, 136 AD3d 828, 830 [2d Dept 2016])” (*Matter of Mazza v Vil. of Croton-on-Hudson*, 140 AD3d 878, 879 [2nd Dept 2016]).”

Public Officers Law §87(2)(a) provides that any agency need not disclose records that “are specifically exempted from disclosure by state and federal statute”. Social Services Law §136 (1) protects from disclosure “[t]he names and addresses of persons applying for or receiving public assistance”. Subdivision 1 of the statute sets forth an exception for “bona fide news disseminating firms and organizations” to receive certain information, so long as they provide written assurance that they will not publish the names and addresses of public assistance applicants or recipients.

Social Services Law §136 (2) which extends confidentiality to “all communications

and information relating to persons receiving public assistance or care obtained by any social services official, service officer, or employee in the course of his or her work”. Such communications and information may only be disclosed under a specific regulatory exceptions (*see 225 5th, L.L.C. v Fiori Fiori, Inc.*, 90 AD3d 517, 517 [1st Dept 2011]; *Matter of Commissioner of Social Servs. v Paul C.*, 73 AD3d 469 [1st Dept 2010], *affd* 16 NY3d 846[2011]; *D & Z Holding Corp. v City of N.Y. Dept. of Fin.*, 179 AD2d 796, 798 [2d Dept 1992], *lv denied* 79 NY2d 758 [1992]).

The purpose of these restrictions is “to preserve the dignity and self-respect of a recipient of public assistance” (*Rampe v Giuliani*, 253 AD2d 486, 487 [2d Dept 1998]). Although the protections accorded such records are not absolute, the petitioner must show some entitlement to the information under some regulatory exception (*D & Z Holding Corp. v City of N.Y. Dept. of Fin.*, 179 AD2d at 796), or demonstrate that their suppression would “exceed the purpose of the statute” (*Rampe v Giuliani*, 253 AD2d at 487).

Respondents correctly state that contrary to petitioner’s assertions Ms. Scala’s FOIL request specifically sought individual addresses-both the last known addresses and the current shelter location- of each New York City shelter resident, and that said information is specifically protected from disclosure pursuant to Social Services Law §136(1), as it is undisputed that Citizens is not a bona fide news disseminating firm or organization. Respondent DHS, thus, have demonstrated that it complied with FOIL, as regards said request.

As to the remainder of the Scala request, petitioner is clearly seeking specific confidential information pertaining to DHS clients in the City of New York. Said information, pursuant to Social Services Law §136(2) is specifically protected from disclosure, and petitioner does not claim that it falls within any of the statutory exemptions. Nor has petitioner established that the suppression of said information would exceed the purpose of the statute. In addition, as there is a “specific exemption from disclosure by State...statute”, an agency is not required to disclose records with identifying details redacted” (*Matter of NY Civ. Liberties Union v NY City Police Dept.*, 148 AD3d 642, 643 [1st Dept 2017], *quoting Matter of Short v Board of Mgrs. of Nassau County Med. Ctr.*, 57 NY2d 399, 401[1982]; *see also Karlin v McMahon*, 96 NY2d 842, 843 [2001]; *Matter of Xiao He Lu v NY City Police Dept.*, 143 AD3d 616, 617 [1st Dept 2016]; *Rabinowitz v Hammons*, 228 AD2d 369 [1st Dept 1996], *leave denied*, 89 NY2d 802 [1996]). Respondent DHS, thus, has demonstrated that its response to the Scala request fully complied with FOIL.

Respondents reliance upon Social Services Law § 136(4), which provides that “[n]o

person or agency shall..disclose...or knowingly permit...any information relating to any applicant for or recipient of public assistance or care for commercial or political purpose”, is misplaced. Although Citizens, a community advocacy group, may in the broadest sense have a political purpose, respondents have failed to establish that the Scala FOIL request was made for political purposes.

The October 11, 2016 FOIL request to DHS sought documents “relating to the Fair Share Analysis in connection with the ...location [of the Holiday Inn Express] and its conversion from a hotel to a facility which houses any homeless population”. In view of the fact that a Fair Share Analysis was not conducted in connection with the subject real property and therefore no such documents exist, respondent DHS has established that it fully complied with FOIL as regards said request (*see; Matter of Robert v LoCicero*, 28 AD3d 566 [2nd Dept 2006]; see also *Rivette v District Attorney of Rensselaer County*, 272 A.D.2d 648, 649 [3d Dept 2000][“an agency is under no obligation to furnish documents which it does not possess”]; *Brown v New York City Police Department*, 264 AD2d 558, 561-562 [1st Dept 1999][“an agency has no duty to create documents that are not in existence... .”[citations omitted]; *Curro v Capasso*, 209 AD2d 346 [1st Dept 1994] [“FOIL does not ‘require any entity to prepare any record not possessed or maintained by such entity’ ”, quoting Public Officers Law § 89(3)]).

The October 7, 2016 FOIL request sought the RFP for the subject Holiday Inn Express, and related documents. The DHS’s FOIL Appeals Officer denied said request pursuant to Public Officers Law §87(2)(c), which provides, in pertinent part, that such records “if disclosed, would impair present or imminent contract awards”. Said exemption “primarily protects the interests of an agency in achieving the optimum result in awarding a contract to a supplier of goods or services or in reaching a collective bargaining agreement” (*Matter Verizon NY, Inc. v Bradbury*, 40 AD3d 1113, 1115 [2nd Dept 2007]).

Citizens, however, is not a competitor for the operation of a homeless shelter, and as respondents assert the proposal to convert the subject premises to a homeless shelter has been discontinued, the disclosure of the RFP to the petitioner will not impair respondent DHS’s discussions and negotiations with Acacia or other non-profit organizations. Respondent DHS, thus, has failed to establish that disclosure of the RFP falls squarely within the ambit of Public Officers Law § 87 (2) (c). In addition the DHS has failed to establish that no documents exist with respect to item (1) of said request which sought “[a]ny and all plans submitted which demonstrates to DHS that the space would be a conforming use under the Zoning Resolution”. Therefore, said documents are not exempt from disclosure, and the DHS is required to provide petitioner with copies of the RFPs that were received in

connection with the proposal to convert the subject Holiday Inn Express to a homeless shelter, and any and all plans submitted along with the RFPs which demonstrate that the space would be a conforming use under the Zoning Resolution.

The October 7, 2016 FOIL request sought additional documents under items (2), (3) and (4). The DHS FOIL Appeals Officer in his letter of November 15, 2016, stated that “after a diligent search, the Agency has not identified documents responsive to items (2),(3) or (4).” It is well established that “[w]hen an agency is unable to locate documents properly requested under FOIL, Public Officers Law § 89 (3) requires the agency to “certify that it does not have possession of [a requested] record or that such record cannot be found after diligent search.” The statute does not specify the manner in which an agency must certify that documents cannot be located. Neither a detailed description of the search nor a personal statement from the person who actually conducted the search is required” (*Rattley v NY City Police Dept.*, 96 NY2d 873, 875 [2001]).

Here, the DHS satisfied the certification requirement by averring that it had conducted a diligent search for the subject documents it could not locate (*Rattley v NY City Police Dept.*, 96 NY2d at 875). Respondent DHS, therefore, has established that it complied with FOIL as regards the documents identified under items (2), (3) and (4) of the October 7, 2016 FOIL request.

As regards the DOB FOIL requests and appeal, petitioner’s counsel’s repeatedly referred to the “Holiday Inn Express Conversion to Homeless Shelter in Maspeth, New York”. In an email exchange, the DOB’s Records Appeals Officer informed petitioner’s counsel that there was no job application that matched said description, and petitioner’s counsel confirmed that he was actually seeking records under New Job Application No. 401962523. Therefore, to the extent that respondent DOB provided the petitioner with records pertaining to New Building Job Application No. 401962523, during the pendency of this proceeding, that portion of the petition which seeks said documents pursuant to the DOB FOIL request, is now moot (*see Tellier v New York City Police Dept.*, 267 AD2d 9, 10 [NY App. Div, 1st Dept 1999]). To the extent that petitioner now asserts that the DOB’s response is insufficient, this claim is not properly before the court, as petitioner’s FOIL request did not specifically seek records under New Job Application No. 401962523, and petitioner has not sought to amend its petition.

Finally, this court finds that as petitioner has not “substantially prevailed” in this proceeding, the request for attorney’s fees and litigation costs, is denied (*see Public Officers Law § 89 [4] [c]*).

In view of the foregoing, it is hereby

ORDERED and ADJUDGED that the petition is granted solely to the extent that respondents are directed to provide petitioner with copies of the RFPs that were received in connection with the proposal to convert the subject Holiday Inn Express to a homeless shelter, and any and all plans submitted along with the RFPs which demonstrate that the space would be a conforming use under the Zoning Resolution; and it is further

ORDERED and ADJUDGED that the remainder of the petition is denied in its entirety.

This constitutes the **JUDGMENT** of the court.

Dated: September 27 , 2017

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J.S.C.