

Roth & Roth LLP v Long Is. R.R.
2022 NY Slip Op 33944(U)
November 22, 2022
Supreme Court, New York County
Docket Number: Index No. 158366/2022
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

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ROTH & ROTH LLP,

Petitioner,

- v -

LONG ISLAND RAILROAD, METROPOLITAN
TRANSPORTATION AUTHORITY

Respondents.

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INDEX NO. 158366/2022

MOTION DATE 11/21/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for ARTICLE 78= FOIL.

The petition for an order directing respondents to provide documents in response to three Freedom of Information Law (“FOIL”) requests is denied.

Background

Petitioner submitted three FOIL requests to respondents on April 11, 2022, April 14, 2022, and May 11, 2022. The April 11 request sought ARNE reports for incidents that occurred at the Syosset train station from 2010 through 2014 (NYSCEF Doc. No. 3). Respondents observe that ARNE is an abbreviation for Accident Report- Non-Employee and is a form upon which railroad customers can report injuries and incidents on the Long Island Rail Road (“LIRR”).

Respondents acknowledged this request and insisted it would provide a response within 60 days (NYSCEF Doc. No. 4). Then, respondents substantively responded and insisted that the requests were not reasonably described because the records sought by petitioner are not

“organized or kept in a manner that allows for practical retrieval by the agency” (NYSCEF Doc. No. 5). They observed that they would have to “manually review thousands of records in order to identify and locate records responsive to your request” (*id.*). Respondents suggested that petitioner include a specific date of an accident (*id.*).

Petitioner appealed the decision and claimed that it now wanted records from January 1, 2005 through December 31, 2009 (NYSCEF Doc. No. 6). Respondents denied the appeal and stressed that the manner in which the ARNE reports are kept does not permit disclosure of records in response to a broad-based search over many years (NYSCEF Doc. No. 7).

Petitioner’s other FOIL requests sought ARNE reports from 2015 through 2019 at the Syosset train station (NYSCEF Doc. No. 8) and ARNE reports from the Syosset train station from January 1, 2020 to the present (NYSCEF Doc. No. 12). Respondents denied both of these FOIL requests on virtually the same grounds as the first FOIL request at issue.

Discussion

“To promote open government and public accountability, FOIL imposes a broad duty on government agencies to make their records available to the public. The statute is based on the policy that the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government. Consistent with the legislative declaration in Public Officers Law § 84, FOIL is liberally construed and its statutory exemptions narrowly interpreted. All records are presumptively available for public inspection and copying, unless the agency satisfies its burden of demonstrating that the material requested falls squarely within the ambit of one of the statutory exemptions. While FOIL exemptions are to be narrowly read, they must of course be given their natural and obvious meaning where such interpretation is consistent with the legislative intent and with the general purpose and manifest policy underlying FOIL” (*Abdur-*

Rashid v New York City Police Dept., 31 NY3d 217, 224-25, 76 NYS3d 460 [2018] [internal quotations and citation omitted]).

Petitioner argues that its requests were reasonably described and that respondents are required to disclose the records under FOIL. It argues that respondents did not assert the records are unavailable or that they do not know where the records are located. Petitioner argues that the burden required to compile the requested records is not an appropriate basis for respondents to deny the request. Petitioner argues that respondents have violated FOIL and seek reasonable legal fees incurred in connection with this proceeding.

Respondents submit the affidavit of Kristin Woodhouse, Director of Claims and Investigations for the LIRR, who asserts that an ARNE form is completed by the customer (NYSCEF Doc. No. 23, ¶ 5). She contends that these forms are maintained in paper form and are not electronically logged and that the LIRR does not make digital copies (*id.* ¶ 8). Ms. Woodhouse contends that when LIRR receives an ARNE, the document is then included in a file (if one already exists) or one is created (*id.* ¶ 11). She points out that not every file will have an ARNE (for instance, a litigation file may not have one) and that the ARNE forms are not “independently logged, indexed, recorded, or filed separately from the case or claim files” (*id.*).

The Court denies the petition based on the affidavit of Ms. Woodhouse. Respondents demonstrated that the records sought are not reasonably described under FOIL (*see Aron Law, PLLC v New York City Dept. of Educ.*, 192 AD3d 552, 146 NYS3d 7 [1st Dept 2021]). The fact is that the ARNE reports are simply not stored in a way that makes searching for all such reports for years at a time a feasible task. As respondents observe, ARNE reports are typically put into existing claims or litigation files although not every file has an ARNE report.

The Court agrees with petitioner's point in reply that this system seems, on its face, questionable. Forcing customers to mail in an ARNE form in the 21st century and storing these files in paper form only is absolutely absurd. But it is not this Court's role, particularly in a FOIL petition, to make an agency store records in a logical way. And although petitioner argues that it is simply unbelievable to credit respondents' assertions about how it stores these ARNE documents, petitioner did not include anything to discredit respondents' account other than conjecture. With a sworn affidavit and nothing to adequately contradict it, the Court credits Ms. Woodhouse's affidavit, even though it makes the LIRR look like it is operating in the 1980s.

That respondents admit they have an electronic database for claims does not change the Court's conclusion. That database, according to respondents, is only for claims (as stated above, a claim may or may not contain an ARNE). To conduct a broad search for ARNE forms would require respondents to search every single file for Syosset for the last 12 years (the time period sought by petitioner) by hand and it is unclear whether that would actually locate all of the requested ARNE files. The Court declines to make respondents engage in that significant task (*id.* at 553).

Summary

In this Court's view, the issue appears to be that respondents maintain these documents in way that is apparently best for their claims department. The ARNE forms are simply placed in an open file under the assumption that it will be a part of a broader investigation or possible litigation relating to an incident. Respondents clearly are not interested, for whatever reason, in storing these documents in a way that makes broad based searches feasible. According to respondent's description about how it keeps records of ARNEs, respondent would likely not be able to notice a trend of injuries or complaints at a specific station and therefore would be unable


to address the issue before litigation was commenced. Whether or not that is a wise practice is beyond this Court’s purview in a FOIL proceeding. This Court cannot order respondents to change the way they store documents or force them to engage in what would likely be thousands of hours of labor to manually find ARNE documents for the last 12 years at a single train station. That may not be the answer petitioner desires but FOIL does not require an agency to store documents in a way that makes it easier to respond to FOIL requests.

There is no doubt that storing customer-generated ARNE records in this way is baffling to the Court but petitioner provided no reason for this Court to suspect that respondents are storing documents this way as part of an effort to deliberately undermine public access.

Accordingly, it is hereby

ORDERED that the petition is denied, this proceeding is dismissed and the Clerk is directed to enter judgment in favor of respondents and against petitioner along with costs and disbursements upon presentation of proper papers therefor.

11/22/2022
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE