

**Matter of Jewish Press, Inc. v New York City Dept. of
Fin.**

2023 NY Slip Op 32779(U)

August 11, 2023

Supreme Court, New York County

Docket Number: Index No. 154846/2023

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

-----X

In re Application of
THE JEWISH PRESS, INC.,

Petitioner,

For a Judgment under Article 78 of the Civil Practice Law
and Rules

- v -

NEW YORK CITY DEPARTMENT OF FINANCE,

Respondent.

**DECISION + ORDER ON
MOTION**

INDEX NO. 154846/2023MOTION DATE 06/12/2023MOTION SEQ. NO. 001

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for

ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, the court denies Petitioner The Jewish Press, Inc.'s ("Petitioner") unopposed Verified Petition seeking a declaration that Respondent New York City Department of Finance ("Respondent") acted unlawfully by withholding most of the records Petitioner sought in its "Freedom of Information Law" ("FOIL") request and seeking a court order directing Respondent to provide access to the records requested.

On February 4, 2021, Petitioner filed a FOIL request with Respondent seeking to obtain records from the previous five (5) years seeking all applications, supporting documentation, communications, appeals and determinations relating to applications for the religious exemption/clergy exemption, pursuant to Real Property Tax Law ("RPTL") § 460.

On December 28, 2022, after Respondent's numerous extensions of time to respond without providing a response or documents, Petitioner appealed Respondent's constructive denial of its FOIL Request. On February 8, 2023, Respondent issued a response stating that it denied in part and granted in part Petitioner's request. In its response, Respondent provided an excel spreadsheet that lists owners, houses of worship, addresses and other information. Thereafter, Respondent closed out Petitioner's FOIL request.

Petitioner argues in substance that the spreadsheet provided by Respondents does not provide adequate responses to the documents requested (*e.g.*, individual applications), because it fails to specify the breakdown of hours for those individuals who engaged in secular employment, or proof of clergy status. On March 4, 2023, Petitioner appealed for the second

time Respondent's constructive denial by not providing documents and reiterated its demand for documents in its FOIL request.

On March 20, 2023, Respondent issued an extensive final determination to Petitioner's administrative appeal. In its final determination, Respondent stated in substance that the information provided in the spreadsheet was the same information found on the application that was not exempt from disclosure due to confidentiality protections. Respondent also stated that it agreed that the information previously provided by its Records Access Officer ("RAO") was responsive to Petitioner's request because the excel spreadsheet contained data for approximately 1271 properties including, benefit status, property block and lot, names of the owners and houses of worship, and property address. Additionally, in its final determination, Respondent stated that a significant amount of property information is publicly available on its website. Moreover, Respondent stated that after a diligent search, it determined that it does not maintain records regarding appeals and determinations of appeals for clergy exemptions because the appeals are conducted by the New York City Tax Commission. Respondent also noted that Petitioner was previously notified that its request for "communications" was too broad for Respondent to conduct a proper search. The RAO gave Petitioner the opportunity to clarify its request which would allow Respondent to reopen that portion of the FOIL request.

Petitioner now appeals Respondent's final determination and partial denial of its FOIL request.

Public Officers Law § 89(5)(d), provides for a judicial review of a denial of a FOIL request through a CPLR 78 proceeding. (*Capital Newspaper Div. of Hearst Corp. v Burns*, 109 AD2d 92, 94 [3d Dept 1985], *affg* 67 NY2d 562 [1986]). The person or agency claiming an exception to disclosure has the burden of proving entitlement to the exception (Public Officers Law § 89[5][e]). The question of whether a document is exempt from disclosure under FOIL, "the oft-stated standard of review in CPLR article 78 proceedings, i.e., that the agency's determination will not be set aside unless arbitrary or capricious or without rational basis, is not applicable" (*Capital Newspaper Div. of Hearst Corp.*, 109 AD2d at 94). The person or agency refusing to disclose information must show entitlement to an exemption from disclosure (*M. Farbman & Sons, Inc. v New York City Health & Hosps. Corp.*, 62 NY2d 75, 80 [1984]).

A FOIL request for a record must be "reasonably described" (Public Officers Law § 89[3]; *see Konigsberg v Coughlin*, 68 NY2d 245, 249-50 [1986]). In a FOIL request, the petitioner has the burden to reasonably describe the documents requested in such a way that they can be located (*Mitchell v Slade*, 173 AD2d 226, 227 [1st Dept 1991]; *see M. Farbman & Sons, Inc.*, 62 NY2d at 83). The agency refusing to disclose the requested information must show entitlement to an exemption from disclosure (*id.* at 80-83). Therefore, the agency must make some showing that "the descriptions were insufficient for purposes of locating and identifying the documents sought" (*id.* at 83). If the description of the records is sufficiently specific to ascertain their location and permit retrieval, an agency "cannot evade the broad disclosure provisions of that statute upon the naked allegation that the request will require review of thousands of records" (*Konigsberg*, 68 NY2d at 249).

In a judicial review of an agency's determination to deny a FOIL request, the court must determine whether "the requested material falls squarely within a FOIL exemption" and whether the agency "articulated a particularized and specific justification for denying access" (*Capital Newspapers Div. of Hearst Corp.*, 67 NY2d at 566). Therefore, a court's limited review of an agency's FOIL determination is solely to ascertain if the decision to assert a statutory exemption was a result of an error of law (*see Matter of Asian Am. Legal Defense & Educ. Fund v New York City Police Dept.*, 125 AD3d 531[1st Dept 2015]).

In the present case, the court denies Petitioner's unopposed Verified Petition seeking a declaration that Respondent acted unlawfully by withholding most of the records Petitioner sought in its FOIL request and seeking a court order directing Respondent to provide access to the records requested. Petitioner in this action requested "all applications, supporting documentation, communications, appeals and determination, relating to applying for the religious exemption/clergy exemption," pursuant to RPTL § 460. Respondent granted in part and denied in part Petitioner's request.

On February 8, 2023, approximately two years after Petitioner's FOIL request and in response to Petitioner's appeal of Respondent's constructive denial, Respondent provided Petitioner with an excel spreadsheet that listed the clergy exemption recipients, including a blank copy of the clergy exemption application form. The RAO explained that in lieu of the actual paper filings, the spreadsheet contained the information requested that were not exempt from disclosure due to privacy concerns. The RAO stated in the disclosure that the confidential information that was withheld was protected under Public Officer's Law ("POL") §§ 87 (2)(b) and 89(2-b)(c) because the data included social security numbers, dates of birth, marital status, primary residence, and military service.

On March 4, 2023, Petitioner filed a second appeal of Respondent's partial denial to its FOIL request including the appeal of the redaction of any information other than social security numbers and birthdates.

On March 20, 2023, in its final determination of Petitioner's appeal, Respondent stated that the information provided to Petitioner in the excel spreadsheet, which listed approximately 1271 properties, was responsive to the demands and it only withheld protected information. Additionally, Respondent stated that a large amount of information is already publicly available through its website, including ACRIS records, notice of value, statement of account, billing histories, ownership, property descriptions, property documents and exemption information for the properties.

Furthermore, Respondent explained it did not maintain records responsive to Petitioner's demand for appeals and determinations of appeals to the clergy exemption because appeals are handled by the New York City Tax Commission. Moreover, with regards to Petitioner's request for "communications," Respondent advised Petitioner that its request was not sufficiently specific such that Respondent could identify and locate records because the term was too broad to conduct the search. Petitioner was given the opportunity to clarify and refine that portion of its request in writing. Respondent stated that if Petitioner chose to refine and clarify that portion of the request that sought "communications," Respondent would re-open that portion of its request

and search for responsive documents. Respondent also advised Petitioner that if it wanted to clarify or provide additional information for a specific application or supporting document records, then Respondent would review the refined request and conduct a search for responsive records.

For the above-mentioned reasons, the court finds that Respondent articulated a particularized and specific justification in its denial of providing certain documents, including withholding the personal confidential information of respective applicants. Additionally, the court finds that Respondent appropriately responded to Petitioner's FOIL request, including invoking a proper exemption. Moreover, the court finds that Petitioner had an opportunity to clarify its request in such a manner to allow Respondent to conduct a proper search, but Petitioner opted not to do so. Therefore, the court denies Petitioner's unopposed Verified Petition.

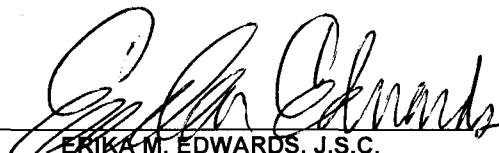
To the extent not addressed herein, the court considered all arguments and requests for relief and nonetheless the court denies Petitioner's Verified Petition.

As such, it is hereby

ORDERED and ADJUDGED that the court denies Petitioner The Jewish Press, Inc.'s unopposed Verified Petition and dismisses the Petition as against Respondent New York City Department of Finance without costs to any party.

This constitutes the decision and order of the court.

8/11/2023
DATE


ERIKA M. EDWARDS, 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
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT

<input type="checkbox"/>	OTHER
<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: