

Corbett v New York City Dept. of Fin.

2025 NY Slip Op 32353(U)

July 2, 2025

Supreme Court, New York County

Docket Number: Index No. 156738/2024

Judge: Arthur F. Engoron

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

PRESENT: HON. ARTHUR F. ENGORON **PART** **37**

Justice

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<p>JONATHAN CORBETT,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">- v -</p> <p>NEW YORK CITY DEPARTMENT OF FINANCE,</p> <p style="text-align: center;">Respondent.</p> <p>-----X</p>	<p>INDEX NO. <u>156738/2024</u></p> <p>MOTION DATE <u>07/24/2024</u></p> <p>MOTION SEQ. NO. <u>001</u></p>
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**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 18, 20, 21, 22, 23, 24, 25, 26, 27,

were read on this motion for ARTICLE 78 (BODY OR OFFICER) RELIEF.

Upon the foregoing documents, for the reasons stated hereinbelow, and after oral argument on April 15, 2025, the petition is granted in part and denied in part.

Background

On October 10, 2023, petitioner filed a Freedom of Information Law (“FOIL”) request, 2023-836-00950, with respondent, New York City Department of Finance, seeking “a copy of all final decisions relating to parking ticket appeals of the NYC Dept. of Finance, Parking Violations Adjudication Division, Appeals Board, dated between June 1st, 2023 and August 31st, 2023.” NYSCEF Doc. No. 9.

On October 17, 2023, respondent acknowledged the request, and anticipated a response by January 17, 2024, as it needed “time to locate and compile responsive records and subject each records page to legal review while processing other FOIL requests.” NYSCEF Doc. No. 10.

On January 17, 2024, respondent unilaterally extended its time to respond to February 14, 2024, “because we are working on locating and compiling responsive records, after which we must subject records to legal review.” NYSCEF Doc. No. 12.

On February 14, 2024, respondent extended its time to respond to March 14, 2024, requesting additional information, seeking a specific “violation/summons number or license plate state and numbers associated with” petitioner’s request because “Appeals Board decisions are maintained and stored in relation to their summons number, not by the date of decision.” NYSCEF Doc. No. 13.

On March 11, 2024, petitioner replied to respondent, “I have received your request for summons numbers rather than a date range. I don’t have summons numbers. A date range is a reasonable way of describing records.” NYSCEF Doc. No. 14.

On March 14, 2024, respondent closed petitioner's request, on the grounds that petitioner had failed "reasonably [to] describe" the records sought by "provid[ing] sufficient detail to allow [respondent] to search for the requested records." NYSCEF Doc. No. 15. Petitioner appealed. NYSCEF Doc. No. 16.

On March 28, 2024, respondent denied petitioner's appeal, explaining that:

The Department of Finance does not maintain its files in a manner that would allow DOF to search for responsive records using the provided date range. This is because the appeals decisions are not filed by the date of the decision, and the records are kept instead by summons number. As a result, as the agency maintains its records, the date range did not provide the information needed to search for the requested records.

NYSCEF Doc. No. 17.

Petitioner now moves, pursuant to CPLR 7801, for an order directing respondent to comply and, pursuant to Public Officers Law § 89, for reasonable attorney's fees. NYSCEF Doc. Nos. 1, 2.

Respondent asserts an affirmative defense that it does not index its records in a manner that is conducive to petitioner's request. NYSCEF Doc. No. 7. In support, respondent submits an affirmation from Sheryl Montour, the Records Access Officer and Legal Counsel in respondent's Legal Affairs Division, who explains that "Agency records for the parking ticket appeals are not filed by the date of the decision, thus Petitioner's provision of a date range as the sole search parameter did not provide the information needed to search for the requested records." NYSCEF Doc. No. 8.

In reply, petitioner notes respondent's affirmation raises questions, rather than provides answers, including

a) how the appeal decisions are stored (e.g., Electronically? In a filing cabinet? In Bankers Boxes at Mar-a-Lago?), b) how many decisions would need to be searched in order to return responsive records, and c) how long that process might take (e.g., if they are paper documents with a date at the top, would it be possible for a human to sort hundreds or thousands per hour?).

NYSCEF Doc. No. 20 ¶ 9.

On November 5, 2024, respondent filed an unauthorized sur-reply¹ in the form of a "supplemental affirmation" from Damien Laugher, an attorney in respondent's Legal Affairs

¹ After petitioner filed a notice of rejection (NYSCEF Doc. No. 27), the Court accepted Mr. Laugher's sur-reply and gave petitioner leave to file a sur-sur-reply, which he did on February 18, 2025.

Division, further explaining that Appeals Board Decisions of the sort sought by petitioner are “hand written on triplicate paper” which “at no time” are scanned. NYSCEF Doc. No. 24 ¶ 3. Further, the Administrative Law Judges who work for the Parking Adjudication Division,

only kee[p] a record of the Respondents name and Appeal No. along with the number of summonses adjudicated. Their decision copy goes into their work folder which at the end of the day is put in numbered bankers’ box[es] and sent to the warehouse. The clerks take their copy of the decision and enter the information into “STARS”, the Summons Tracking And Recording System, a ’70’s era mainframe computer system.

NYSCEF Doc. No. 24 ¶ 4.

On February 18, 2025, petitioner filed a sur-sur-reply, arguing Mr. Laughner’s attorney affirmation is procedurally defective and improperly submits new evidence in the form of sample appeal decisions, and also lacking in merit, as respondent concedes records are stored, unscanned, in bankers’ boxes in a warehouse. NYSCEF Doc. No. 28.

On April 15, 2025, oral argument was held and the parties, at the Court’s suggestion, agreed to attempt to reach a settlement.

In a letter dated June 12, 2025, petitioner wrote the Court that the settlement talks had failed, as petitioner was requesting in-person access to the bankers’ boxes of documents, a request respondent had denied, claiming the bankers’ boxes contain personally identifying information and DMV information that is protected under the Driver Privacy Protection Act. NYSCEF Doc. No. 29.

Discussion

To promote open government and public accountability, the FOIL imposes a broad duty on government to make its records available to the public ... All government records are thus presumptively open for public inspection and copying unless they fall within one of the enumerated exemptions of Public Officers Law § 87(2). To ensure maximum access to government documents, the “exemptions are to be narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption.” As this Court has stated, “[o]nly where the material requested falls squarely within the ambit of one of these statutory exemptions may disclosure be withheld.”

Gould v New York City Police Dept., 89 NY2d 267, 274-75 (1996) (citations omitted).

Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the

person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date ... when such request will be granted or denied ... An agency shall not deny a request on the basis that the request is voluminous or that locating or reviewing the requested records or providing the requested copies is burdensome because the agency lacks sufficient staffing or on any other basis if the agency may engage an outside professional service to provide copying, programming or other services required to provide the copy, the costs of which the agency may recover...

Public Officers Law § 89(3)(a)

The requirement of Public Officers Law § 89(3) “that documents be ‘reasonably described’ was to enable the agency to locate the records in question. Thus [an] agency had to establish that ‘the descriptions were insufficient for purposes of locating and identifying the documents sought’ before denying a FOIL request for reasons of overbreadth.” Konigsberg v Coughlin, 68 NY2d 245, 249 (1986) (internal citations omitted).

Pursuant to Public Officers Law § 89(4)(c)(ii), the courts “shall assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed and the court finds that the agency had no reasonable basis for denying access.”

Here, petitioner’s request for “a copy of all final decisions relating to parking ticket appeals of the NYC Dept. of Finance, Parking Violations Adjudication Division, Appeals Board, dated between June 1st, 2023 and August 31st, 2023” is reasonably described.

Respondent’s argument that because respondent does not “maintain its files in a manner that would allow DOF to search for responsive records” does not mean that the request was not reasonably described; rather, it is a long-winded way of saying that it would be burdensome to respond to the request. Further, respondent’s filings imply that while there may not be digital records that respond to petitioner’s request, there are copies of the requested decisions in work folders that are put “at the end of each day in numbered bankers’ box[es]” which are kept in a warehouse. As respondent has not asserted any of the enumerated FOIL exemptions, petitioner, as a member of the public, has a presumptive right to those decisions, no matter how burdensome responding to the request may be. This is why Public Officers Law § 89(c) describes how agencies can calculate the costs of reproducing records.

In the final analysis, were one to ask any New Yorker who has ever received a parking violation, let alone appealed one, if petitioner’s request is “reasonably described” the answer would be a resounding “yes.” As petitioner succinctly puts it: the “notion that parking ticket appeals decisions should be held in secret is repugnant to the public’s right-of-access.”

Therefore, the petition of Jonathan Corbett is hereby granted and respondent, New York City Department of Finance, is hereby directed to comply with the underlying request and to perform an adequate search for the records requested in Petitioner's FOIL request dated October 17, 2023, and produce the responsive records.

However, although petitioner's request was reasonably described, and petitioner has substantially prevailed in this special proceeding, because of the complex manner in which respondent has stored the subject records, this Court cannot find that respondent had no reasonable basis for denying access, and, therefore, the part of the petition seeking attorney's fees is denied.

HON. ARTHUR F. ENGORON

ARTHUR F. ENGORON, J.S.C.

7/2/2025

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE