

Pegram v Metropolitan Transp. Auth.

2025 NY Slip Op 33583(U)

September 30, 2025

Supreme Court, New York County

Docket Number: Index No. 156726/2025

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

JOHN B PEGRAM

Plaintiff,

- v -

METROPOLITAN TRANSPORTATION AUTHORITY,

Defendant.

-----X

INDEX NO. 156726/2025

MOTION DATE 05/23/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

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

This petition arises out of a Freedom of Information Law (“FOIL”) request petitioner, John B. Pegram, made to respondent, Metropolitan Transportation Authority, seeking documents advertised in a Solicitation Notice “including all of the documents advertised there to have been available to vendors/suppliers/bidders on 10/30/2024.”¹ Petitioner made his original FOIL request on November 26, 2024. Thereafter, on April 21, 2025, the MTA responded providing some of the documents requested. On April 24, 2025, Petitioner sent the MTA a message seeking additional records that were available after October 30, 2024.

On April 28, 2025, Petitioner appealed certain redactions MTA made to the documents it produced. The MTA denied the appeal on May 15, 2025. Petitioner commenced this action on May 23, 2025. Thereafter, on June 13, 2025, the MTA produced unredacted versions of certain documents that Petitioner requested and that were available on October 30, 2024. However,

¹ The Court would like to thank Special Master to the Court, Jason Lowe, Esq. for his assistance in this matter.

Respondent has not produced the documents which were not available on October 30, 2024 but have subsequently become available.

The issues that remain are whether Petitioner is entitled to the documents that were not available on October 30, 2024 but have subsequently become available and whether Petitioner, who is an attorney and *pro se*, is entitled to attorney's fees for the efforts he made to obtain the unredacted documents that should have been produced in the original FOIL request and which have now been produced.

Discussion

Request for Documents

The Petitioner acknowledges that the documents requested in the original FOIL request have been produced. Thus, the request for the production of those documents is moot. *Aron L. PLLC v. Sullivan Cnty.*, 214 A.D.3d 1186, 1189 (3d Dept. 2023) The outstanding documents Petitioner is seeking were not requested in the original FOIL request. Since these documents were not requested in the original FOIL request, they were not addressed in the administrative appeal, and therefore this Court cannot decide this issue. *197 Madison Holdings LLC v. NYS Div. of Hous. & Cmty. Renewal*, 231 A.D.3d 440, 442 (1st Dept. 2024) (collecting cases).

Attorney's Fees

With regards to Petitioner's request for attorney's fees, in an Article 78 proceeding, a court "may assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case [when] such person has substantially prevailed, and when the agency failed to respond to a request or appeal within the statutory time." NY Pub. Off. Law § 89(4)(c)(i). But when a petitioner substantially prevails and "the court finds that the agency had no reasonable basis for denying access", the award of attorney's

fees and costs is mandatory. NY Pub. Off. Law § 89(4)(c)(ii). Further, a “petitioner's self-representation does not preclude an award of attorneys' fees.” *Matter of Kohler-Hausmann v. New York City Police Dept.*, 133 AD3d 437 (1st Dept. 2015).

As Respondent voluntarily produced the originally requested records shortly after this proceeding was commenced, the Court finds that Petitioner substantially prevailed with respect to those records only.

Respondent argues, that when a denial is based upon a policy prior to the enactment of a statute or legislation then, “it cannot be said that [the] respondents had no reasonable basis for denying access to the records at issue.” *Puig v. New York State Police*, 80 Misc. 3d 383, 394 (Sup. Ct. Albany Cnty 2023), *aff'd*, 233 A.D.3d 1121 (3d Dept. 2024). Respondent states that after the Committee on Open Government (“COOG”) issued an advisory opinion letter to the Petitioner, it produced the requested records and therefore, Respondent had a reasonable basis to deny the original request.

The Court finds that there was no reasonable basis to deny the original request. There is no evidence that Respondent was waiting on the advisory opinion letter from the COOG. Further, the COOG letter is not equivalent to the enactment of a statute or legislation. Finally, Respondent was aware of the law prior to the letter. Therefore, Respondent did not have a reasonable basis to deny access.

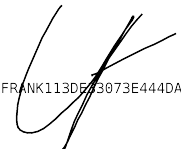
Accordingly, it is hereby

ORDERED that the petition is denied, to the extent it seeks the production of documents; and it is further

ORDERED that petitioner is entitled to legal fees and costs and shall file a separate motion for those fees on or before October 31, 2025; and it is further

ADJUDGED that Respondent's cross-motion is denied.

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9/30/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: