

<b>Roth &amp; Roth, LLP v New York City Tr. Auth.</b>
2025 NY Slip Op 34702(U)
December 4, 2025
Supreme Court, New York County
Docket Number: Index No. 159285/2024
Judge: Lynn R. Kotler
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

INDEX NO. 159285/2024
MOTION DATE 10/07/2024
MOTION SEQ. NO. 001

ROTH & ROTH, LLP,

Petitioner,

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY

Respondent.

DECISION + ORDER ON MOTION

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

This is an Article 78 proceeding challenging the denial of petitioner ROTH & ROTH, LLP's ("Roth") request for records, R000816-082823 pursuant to the Freedom of Information Law ("FOIL") and New York Public Officers Law Article § 84 et seq. Respondents NEW YORK CITY TRANSIT AUTHORITY and METROPOLITAN TRANSPORTATION AUTHORITY ("NYCTA", "MTA", or, collectively, "respondents") oppose the petition. The court's decision is as follows.

In an interim order dated July 11, 2025, the court directed respondents to provide to the court with a flash drive containing all records responsive to petitioner's FOIL request for an in camera review. In a letter dated September 9, 2025, respondents delivered a flash drive, containing all documents response to petitioner's FOIL request numbers 1 and 3, previously withheld pursuant to NY Public Officers Law Sec. 87(2)(f) as security sensitive information. As such, the Court conducted an in camera review of the documents contained on the flash drive.

Discussion

While agency actions are typically reviewed under an arbitrary and capricious standard, in the context of a FOIL request the court "is to presume that all records of a public agency are open to public inspection and copying, and must require the agency to bear the burden of showing that the

records fall squarely within an exemption to disclosure (*New York Comm. for Occupational Safety and Health v Bloomberg*, 72 AD3d 153, 158 [1st Dept 2010]; see also *Matter of Fink v Lefkowitz*, 47 NY2d 567, 571 [1979]). When seeking to exempt records from production “the party seeking exemption must present specific, persuasive evidence that disclosure will cause it to suffer a competitive injury; it cannot merely rest on a speculative conclusion that disclosure might potentially cause harm.” (*Matter of Markowitz v Serio*, 11 NY3d 43, 51 [2008]).

Under POL § 87(2)(f), a denial may be made of records that “if disclosed could endanger the life or safety of any person.” “The agency in question need only demonstrate a ‘possibility of endanger[ment]’ in order to invoke this exemption” (*Matter of Bellamy v New York City Police Dept.*, 87 AD3d 874, 875 [1st Dept 2011] quoting *Matter of Connolly v New York Guard*, 175 AD2d 372, 373 [3d Dept 1991], *affd* 20 NY3d 1028 [2013]). “The respondent need not demonstrate the existence of a specific threat or intimidation” to apply the exception. (*Matter of Luongo v Records Access Officer, Civilian Complaint Review Bd.*, 150 AD3d 13, 25 [1st Dept 2017] citing *Matter of Exoneration Initiative v New York City Police Dept.*, 114 AD3d 436, 438 [1st Dept 2014], *lv denied* 30 NY3d 908 [2017]).

The Court has reviewed the records *in camera* and agrees with petitioner that redacted versions of the documents should be provided. While the Court’s review of the documents reveal that the documents are not comprised entirely of exempted information and contains both exempted and nonexempt material, the agency should provide a redacted version of the record (*see Matter of Schenectady County Socy. for Prevention of Cruelty to Animals, Inc. v Mills*, 18 NY3d 42, 46 [2011]). However, the Court agrees with respondents that “publicizing equipment, communication and operational details, such as specific channels or encryption methods, could help those seeking to weaken Respondents’ safety measures” and its design, and therefore, respondents may redact any portion of the record that reveals security sensitive information prior to disclosure.

Petitioner requests attorney's fees and other litigation costs. POL § 89 provides an award for such fees "where the petitioner has substantially prevailed in the FOIL proceeding and the agency . . . lacked a reasonable basis for denying access to the requested records" (*Matter of Madeiros v. New York State Educ. Dep't*, 30 NY3d 67, 78 [2017] [internal quotation marks omitted]). While Respondents were correct that portions of the documents were exempt from discovery and their burden was met in terms of conducting a diligent search in response to request 2, petitioner has substantially prevailed under the meaning of the statute as respondents lacked a reasonable basis for failing to provide redacted versions of the responsive records.

Moreover, the Court of Appeals has made it clear that a petitioner can be deemed to have substantially prevailed when an agency failed to provide any disclosure in response to a FOIL request prior to the commencement of an action, but records were thereafter provided (*Matter of Madeiros v. New York State Educ. Dept.* 30 NY3d 67, 79 [2017]). Indeed, without commencing this proceeding, petitioner's FOIL request would likely have gone unanswered. Such a situation warrants the relief petitioner seeks.

Based on the foregoing, the petition is granted to the extent that respondents are directed to provide petitioner with redacted records for FOIL requests # 1 and #3 within 30 days of the date of this order.

### **Conclusion**

Accordingly, it is hereby **ORDERED** that the petition is granted to the extent that respondents are directed to provide petitioner with redacted records for FOIL requests # 1 and #3; and it is further

**ORDERED** that the issue of what reasonable attorney's fees and other litigation costs petitioner incurred in connection with commencing and litigating this proceeding is hereby referred to a special referee to hear and report; and it is further

ORDERED that petitioner shall, within 60 days from entry of this decision/order, serve a copy of this order with notice of entry, together with a complete Information Sheet , upon the Special Referee Clerk in the Motion Support Office (Room 119M), who is directed to place this matter on the calendar of the Special Referee’s Part for the earliest convenient date; and it is further

ORDERED that a final determination on petitioner’s request for attorney’s fees and costs is held in abeyance pending a motion to confirm the referee’s report; and it is further

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

12/4/2025

DATE

LYNN R. KOTLER, J.S.C.

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