SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOHN J. KELLEY** **PART** **56M**

Justice

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In the Matter of

JOHN B. PEGRAM,

Petitioner/Plaintiff

- v -

METROPOLITAN TRANSPORTATION AUTHORITY,

Respondent/Defendant

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INDEX NO. 162910/2025

MOTION DATE 10/31/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37

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

In this hybrid proceeding pursuant to CPLR article 78 and action for declaratory relief, the petitioner/plaintiff (hereinafter the petitioner) seeks judicial review of the September 22, 2025 determination of the Records Access Appeal Officer (RAAO) of the respondent/defendant, Metropolitan Transportation Authority (hereinafter the MTA), denying his administrative appeal of the MTA's constructive denial of his request for agency records pursuant to the Freedom of Information Law (Public Officers Law § 84, *et seq*.; hereinafter FOIL) under request number R010394-082425. In his petition/complaint, the petitioner also sought a judgment declaring (a) that an administrative agency's statement purporting to set the date or period for response to a FOIL request beyond 20 business days from acknowledgement of the request is invalid and does not extend the period unless it sets a "date certain" for the response, (b) that an agency's statement purporting to set the date or period for response to a FOIL request beyond 20 business days from acknowledgement of the request is invalid and does not extend the period unless the agency shows that "circumstances prevent disclosure" of the requested records within 20 business days, and states in writing the reasons why there was an "inability to grant"

the request within 20 business days, (c) that the MTA's FOIL unit lacks sufficient staffing to handle the reasonably expected volume of FOIL requests in a timely fashion, (d) that the volume of non-FOIL requests received by an agency is not a factor that it may consider in determining the reasonableness of the time that it fixes for a substantive response to a FOIL request, unless that volume is unusual and could not reasonably have been expected, (e) that FOIL and its implementing regulations permit a party requesting agency records to file an administrative appeal via an email addressed to the designated person, and (f) that, where a person at the agency has been designated by the party requesting records, the statutory 10-business-day period within which an agency must respond to a FOIL appeal should be measured from the *agency's* receipt of the appeal, and not by the date of actual receipt by the designated person. In the October 3, 2025 order to show cause initiating the proceeding and action, the court struck the petitioner's request for summary relief in connection with his causes of action seeking declaratory relief.

Rather than answering the CPLR article 78 cause of action, the MTA cross-moves pursuant to CPLR 7804(f) and 3211(a)(7) to dismiss the entirety of petition/complaint for failure to state a cause of action. The petitioner opposes the cross motion. The cross motion is denied, and, on or before January 30, 2026, the MTA shall serve an answer to the petition/complaint, along with the administrative record, after which the court shall determine the petition on the merits, and the parties shall thereupon address the causes of action for declaratory relief in a procedurally appropriate fashion.

In striking the petitioner's request for summary relief in connection with his declaratory judgment causes of action, the court explained, in the order to show cause itself, that

> "[d]eclaratory relief is not available as a remedy in a CPLR article 78 proceeding (*see Matter of Cuffy v Pesce*, 178 AD3d 695, 695 [2d Dept 2019]; *Matter of Krichevsky v Dear*, 172 AD3d 1370, 1370 [2d Dept 2019]; CPLR 3017). To the extent that the petitioner seeks declaratory relief that is not otherwise subsumed in his request for relief pursuant CPLR article 78, the disposition of such claims must await the service of an answer or a pre-answer motion to

> dismiss those claims. If the respondent either serves an answer or such a motion is denied, the claims may thereafter only be resolved either pursuant to a motion for summary judgment or a trial in connection with such claims (*see Matter of Lake St. Granite Quarry, Inc. v Town/Village of Harrison*, 106 AD3d 918, 920 [2d Dept 2013]), and a motion for summary judgment on a complaint presupposes the joinder of issue (*see White House Manor, Ltd. v Benjamin*, 11 NY3d 393 [2008]; *Spagnoletti v Chalfin*, 131 AD3d 901 [1st Dept 2015]; *Wittlin v Schapiro's Wine Co*., 178 AD2d 160 [1st Dept 1991*]; Four Seasons Hotels v Vinnik*, 127 AD2d 310, 320 [1st Dept 1987])."

The MTA elected to make a pre-answer cross motion to dismiss the petition/complaint.

"In considering a motion to dismiss a CPLR article 78 proceeding pursuant to CPLR 3211(a)(7) and 7804(f), all of the allegations in the petition are deemed to be true and are afforded the benefit of every favorable inference" (*Matter of Eastern Oaks Dev., LLC v Town of Clinton*, 76 AD3d 676, 678 [2d Dept 2010]; *see Leon v Martinez*, 84 NY2d 83 [1994]; *Matter of Gilbert v Planning Bd. of Town of Irondequoit,* 148 AD3d 1587, 1588 [4th Dept 2017]; *Matter of Schlemme v Planning Bd. of City of Poughkeepsie*, 118 AD3d 893, 895 [2d Dept 2014]; *Matter of Ferran v City of Albany*, 116 AD3d 1194, 1195 [3d Dept 2014]; *Matter of Marlow v Tully*, 79 AD2d 546, 547 [1st Dept 1980]). "In determining motions to dismiss in the context of [a CPLR] article 78 proceeding, a court may not look beyond the petition . . . where, as here, no answer or return has been filed" (*Matter of Scott v Commissioner of Correctional Servs*., 194 AD2d 1042, 1043 [3d Dept 1993]; *see Matter of Ball v City of Syracuse*, 60 AD3d 1312, 1313 [4th Dept 2009]). "Whether a plaintiff [or petitioner] can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*EBC I, Inc. v Goldman Sachs & Co*., 5 NY3d 11, 19 [2005]). Thus, as long as the petition alleges specific facts "giving rise to a fair inference" (*Matter of Vyas v City of New York*, 133 AD3d 505, 505 [1st Dept 2015]) that the MTA's determination was affected by an error of law (*see Matter of Abdur-Rashid v New York City Police Dept*., 31 NY3d 217, 246 & n 2 [2018], *affg* 140 AD3d 419, 420-421 [1st Dept 2016]; *Matter of Asian Am. Legal Defense & Educ. Fund v New York City Police Dept.*, 125 AD3d 531, 531 [1st Dept 2015]; CPLR 7803[3]), dismissal for failure to state a cause of action is not warranted. Contrary to the MTA's contention, the petition states a cause of action for judicial

review of its determination (*see Matter of Fanizzi v Planning Bd. of Patterson*, 146 AD3d 98, 105-107 [2d Dept 2016] [petition/complaint challenging an agency's determination under FOIL stated a cause of action for CPLR article 78 relief, and motion to dismiss for failure to state a cause of action was properly denied]). Hence, that branch of the MTA's motion which sought to dismiss the CPLR article 78 cause of action must be denied.

A respondent in a CPLR article 78 proceeding is generally required to answer the petition after its motion to dismiss is denied (*see Matter of Kickertz v New York Univ*., 25 NY3d 942 [2015]), although, where "it is clear that no dispute as to the facts exists and no prejudice will result," a court, upon denial of the motion, may nonetheless decide the petition on the merits (*Matter of Nassau BOCES Cent. Council of Teachers v Board of Coop. Educ. Servs. of Nassau County,* 63 NY2d 100, 102 [1984]; *see Matter of Arash Real Estate & Mgt. Co. v New York City Dept. of Consumer Affairs*, 148 AD3d 1137, 1138 [2d Dept 2017]; C*hestnut Ridge Assoc, LLC v 30 Sephar Lane, Inc*., 129 AD3d 885, 887-888 [2d Dept. 2015]; *Matter of Applewhite v Board of Educ. of the City Sch. Dist. of the City of N.Y.*, 115 AD3d 427, 428 [1st Dept 2014]; *Matter of Kuzma v City of Buffalo*, 45 AD3d 1308, 1310-1311 [4th Dept 2007]). Under the circumstances presented here, the court concludes that the MTA must serve an answer to the petition, along with the relevant administrative record (*see Matter of Camacho v Kelly*, 57 AD3d 297, 298-299 [1st Dept 2008] [answer required]; *cf. Matter of Nassau BOCES Cent. Council of Teachers v Board of Coop. Educ. Servs. of Nassau County,* 63 NY2d at 102 [no answer required because no facts were in dispute, and matter could be determined on a purely legal basis]; *Matter of Applewhite v Board of Educ. of the City Sch. Dist. of the City of N.Y.*, 115 AD3d at 428 [same]).

Similarly, a court may not summarily determine the merits of a properly pleaded declaratory judgment cause of action based on the pleadings alone (*see Matter of 24 Franklin Ave. R.E. Corp. v Heaship*, 74 AD3d 980, 980-981 [2d Dept 2010]). Nonetheless, a court may reach "the merits of a properly pleaded cause of action for a declaratory judgment upon a motion to dismiss for failure to state a cause of action where 'no questions of fact are presented

[by the controversy]'" (*Matter of Tilcon N.Y., Inc. v Town of Poughkeepsie*, *Matter of Tilcon N.Y., Inc. v Town of Poughkeepsie*, 87 AD3d 1148, 1150 [2d Dept 2011], quoting *Hoffman v City of Syracuse*, 2 NY2d 484, 487 [1957]; *see Minovici v Belkin BV*, 109 AD3d 520, 524 [2d Dept 2013]). Under such circumstances, the motion to dismiss the cause of action for failure to state a cause of action "should be taken as a motion for a declaration in the defendant's favor and treated accordingly" (Siegel, NY Prac § 440 [5th ed]; *see Lanza v Wagner*, 11 NY2d 317, 334 [1962]; *Minovici v Belkin BV*, 109 AD3d at 524; *Matter of Tilcon N.Y., Inc. v Town of Poughkeepsie*, 87 AD3d at 1150).

Contrary to the MTA's contention, while a declaratory judgment action is not an appropriate procedural vehicle for challenging an administrative determination on the ground that it was affected by an error of law (CPLR 7803[3]), and such matter is properly prosecuted only as a CPLR article 78 proceeding (*see Matter of Potter v Town Bd. of Town of Aurora,* 60 AD3d 1333, 1334 [4th Dept 2009]; *see also Matter of Legacy at Fairways, LLC v McAdoo*, 67 AD3d 1460, 1461 [4th Dept 2009]; *Rosenthal v City of New York*, 283 AD2d 156, 158 [1st Dept 2001]; *Matter of Schiavone Constr. Co. v McGough*, 112 AD2d 81, 82 [1st Dept 1985]), that is not the type of relief that the petitioner is seeking in connection with his causes of action seeking a declaratory judgment. Inasmuch as those causes of action seek declarations that the MTA must conform its future behavior to what the petitioner argues are the proper methods of implementing FOIL, or declarations as to underlying facts that are relevant to whether the MTA will be able to conform its future behavior to those standards, those claims are properly asserted as causes of action for declaratory relief, rather than in the context of a CPLR article 78 proceeding (*see New York State Pub. Empl. Relations Bd. v New York City Off. of Collective Bargaining*, 86 Misc 3d 562, 581 [Sup Ct, N.Y. County 2025] [because Public Employment Relations Board (PERB) "is challenging an overall pattern and practice of respondents and seeking to have respondents conform their future conduct to the requirements of the Taylor Law, an article 78 proceeding is an inappropriate vehicle for resolution of PERB's claims"]; *see*

also Town of Huntington v County of Suffolk, 79 AD3d 207, 211 [2d Dept 2010] ["complaint seeks a statutory interpretation . . . alleging a continuing wrong and the need for an injunction, that is, the County's purported failure to fulfill its statutory duty"]; *cf. Saunders v City of New York*, 283 AD2d 166, 167 [1st Dept 2001] [article 78 proceeding was appropriate vehicle to challenge an agency's conduct because plaintiff did not challenge an ongoing, overarching policy; claims "emanate[d] . . . from the alleged displacement of union employees," and "each employment determination that adversely affected a City clerical employee violated Social Services Law § 336-c(2)(e) can be determined by examining each individual case"]).

Finally, the court notes that the petitioner has commenced four proceedings and one hybrid proceeding and action, arising from the denials of his numerous requests for agency records from governmental transportation agencies, that have been assigned to this Part. The petitioner is advised that this court presides over a dedicated medical malpractice part, and that his initial proceedings challenging those agencies' FOIL determinations were assigned to this Part during a time when it was agreeing to preside over special proceedings to relieve the overflow of such matters from other Parts of the court. The most recent FOIL matters that the petitioner commenced were assigned to this Part only because he designated those matters as "related" to his prior proceedings on the relevant request for judicial intervention (RJI) form. The court concludes that any new proceedings arising from the denial of the petitioner's different FOIL requests, even if those requests had been made to the same agencies, are not "related" to the prior proceedings involving different requests. The court thus directs the petitioner to refrain from designating any future proceedings or actions involving his numerous FOIL requests as "related" to his prior matters.

Accordingly, it is,

ORDERED that the respondent/defendant's cross motion is denied; and it is further,

ORDERED that, on or before January 30, 2026, the respondent/defendant shall serve and file an answer to the petition/complaint along with the administrative record; and it is further,

ORDERED that, on or before February 10, 2026, the petitioner/plaintiff shall serve and file any reply (CPLR 7804[c]) if he be so advised; and it is further,

ORDERED that the merits of the CPLR article 78 portion of the petition is held in abeyance, and will be determined after the respondent/defendant has filed the answer and administrative record, and the petitioner/plaintiff has filed any reply, or after the time within which the petitioner/plaintiff must file a reply has lapsed, whichever is applicable.

This constitutes the Decision and Order of the court.

12/24/2025
DATE

JOHN J. KELLEY, J.S.C.

PETITION/MOTION:	[ ]	**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[X]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**
CROSS MOTION:	[ ]	**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**