

Dearie Law Firm, P.C. v New York City Hous. Auth.

2026 NY Slip Op 30380(U)

January 27, 2026

Supreme Court, New York County

Docket Number: Index No. 159514/2024

Judge: Verna L. Saunders

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

Justice

INDEX NO. 159514/2024

THE DEARIE LAW FIRM, P.C. Petitioner, MOTION SEQ. NO. 001

- v -

DECISION + ORDER ON MOTION

NEW YORK CITY HOUSING AUTHORITY, Respondent.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 were read on this motion to/for ARTICLE 78

The facts as set forth in the amended verified petition are as follows (NYSCEF Doc. No. 27). Petitioner THE DEARIE LAW FIRM, P.C. is a law firm retained by Cheryl Shuler and Latasha Shuler, mother and daughter, to pursue an action for injuries allegedly sustained during a fire in the Shulers' former apartment at 1408 Webster Avenue, Apt. # 15H, Bronx NY 10456, on November 28, 2022. The subject building is one of six apartment buildings in a housing development known as the "Butler Development", which is owned by respondent NEW YORK CITY HOUSING AUTHORITY ("NYCHA"). In a Bronx County action styled Cheryl Shuler et al. v New York City Housing Authority, pending under index No. 803074/2024E, the Shulers allege that water-damaged electrical wiring in the building caused the November 2022 fire (NYSCEF Doc. No. 31, summons and complaint).

On September 12, 2023, petitioner filed a request pursuant to the Freedom of Information Law ("FOIL") (request # LS-2023-1385978), seeking records for certain maintenance, repair and complaint records (NYSCEF Doc. No. 2, FOIL request). Petitioner claims that NYCHA has either failed to respond, has denied access, has improperly redacted numerous records or has unilaterally extended their deadline to respond. It therefore commenced the instant proceeding, pursuant to Public Officers Law §§ 84-90, to compel respondent to grant it access to the records requested in LS-2023-1385978. NYCHA's action, argues petitioner, amounts to a denial of petitioner's records access request, without a reasonable basis. Petitioner filed an amended petition wherein it states that after the filing of this petition, on October 31, 2024, respondent issued a "final determination" and provided fourteen (14) inspection reports from October 2021-November 2022 (NYSCEF Doc. No. 43). Petitioner filed an administrative appeal on November 15, 2024, claiming that denial of the requested items 1, 8, 9 and 10 and of the redacted information in the partial responses to requested items 2-7, were incomplete (NYSCEF Doc. No. 44). Petitioner further represents that the bulk of its appeal was denied (NYSCEF Doc. No. 45, FOIL Appeal response letter).

The procedural history as set forth in the petition and as supported by the exhibits annexed thereto is as follows. Petitioner submitted to respondent its FOIL request on September 12, 2023 (NYSCEF Doc. No. 29). On September 18, 2023, respondent acknowledged receipt of the FOIL request and set a response date of approximately December 11, 2023 (NYSCEF Doc. No. 32). By letter dated December 29, 2023, respondent enclosed records as partial response to the subject FOIL request, i.e., the Fire Incident Report, responsive to request # 2, and indicated that it would gather, review and provide any additional responsive records within forty (40) business days (NYSCEF Doc. No. 33, *December 29, 2023, response*). On March 8, 2024, respondent provided spreadsheet of building work orders for November 28, 2019 through November 28, 2020, with the location of "Seibel SR#" columns redacted, responsive to items #2, 3, 4, 5, 6, and 7, pursuant to NY Public Officers Law § 87(2)(b), claiming that disclosure of the identifiable information would cause unwarranted invasion of personal privacy under § 89 of the Public Officers Law, section 159 of the NY Public Housing, federal law, regulations and applicable guidance. Respondent stated that remaining documents would be provided within thirty (30) days (NYSCEF Doc. No. 34). On April 23, 2024, respondent provided a partial response to the FOIL request, i.e., NYCHA Occurrence Report and spreadsheet of building work orders for November 28, 2020, through November 26, 2021, with the location column redacted. It indicated that the remaining responsive records would be provided in approximately thirty (30) business days (NYSCEF Doc. No. 85). Two photographs were provided to petitioner on May 8, 2024 (NYSCEF Doc. No. 96). Respondent provided no records to petitioner in June, July or August of 2024 (NYSCEF Doc. Nos. 37-39). On September 16, 2024, petitioner filed an administrative appeal with NYCHA's records Appeal Officer relating to respondent's constructive denial of items 1, 8, 9 and 10, and the redactions in the partial responses to items 2 through 7, of FOIL-LS-2023-1385978 (NYSCEF Doc. No. 40). By letter dated September 27, 2024, respondent provided Butler Houses' employee list without any indication of employment status or last known address, and a spreadsheet of building work orders for November 29, 2021 through November 28, 2022, with the location and work order description columns redacted, in response to items 3-7 and 10 (NYSCEF Doc. No. 41). Said appeal was denied (NYSCEF Doc. No. 42). In October 2024, petitioner filed the instant petition, seeking to compel respondent's disclosure of the requested records and for attorney's fees. On October 31, 2024, respondent issued a "final determination", which included fourteen (14) inspection reports from October 2021 through November 2022, responsive to item #8. It further indicated that a diligent search of its records did not reveal responsive records for items # 1 and 9 (NYSCEF Doc. No. 43). On November 15, 2024, petitioner filed an administrative appeal with respondent's Records Appeals Officer of respondent's denial of requested items 1, 8, 9 and 10 and of the redacted information for the partial responses to requested items 2-7, asserting that the responses were incomplete and challenging the bases for respondent's conclusion that no further responsive records exist (NYSCEF Doc. No. 43).

On December 2, 2024, the appeal was largely denied (NYSCEF Doc. No. 45), giving rise to the instant petition. Respondent has interposed an answer in this special proceeding, raising several affirmative defenses (NYSCEF Doc. No. 48, *answer*).

By memorandum of law, petitioner argues that respondent must be compelled to provide full information as it relates to items 8 and 3-7.¹ As it relates to item 8, petitioner argues that it sought inspection reports from November 2019 through November 2022. Petitioner contends that, from the reports provided in October 2024, it could be implied that reports were generated every month. Thus, petitioner maintains that respondent should have provided twenty-four (24) reports for the time period requested. Moreover, it contends that only one inspection report from August 2022 is consistent with an actual inspection; the remainder appears to be blank forms that indicate at the top of each, “inspection not performed.” None of respondents’ responses, argues petitioner, shed light on why this would be the case. To the extent respondent granted petitioner’s appeal of “directing the NYCHA FOIL Unit to work with NYCHA Property Management staff to conduct an additional search of the property management office for paper records of Monthly Building Inspection Reports and Daily Caretaker Checklists that may predate the electronic conversion” and to “produce any additional responsive records within twenty (20) business days”, petitioner argues that judicial oversight of this response is required.

Specific to items 3-7, petitioner argues that the documents disclosed suggest that further information from respondent remains outstanding. It contends that the fourteen (14) inspection reports provided are each marked with an identifying “Work Order Number.” The last few pages of each of the reports consist of “Child Work Order Numbers” (identified as “Child Wonums”). Petitioner argues, “[m]ost of the inspection reports contain exactly 119 Child Work Order Numbers, but one of them contains 112 and one—the only substantive inspection report, from August 2022—contains 137. This yields a total of 1677 Child Work Order Numbers. Notably, none of the Child Work Order Numbers listed on these inspection reports have entries for the Failure Code or Problem Code column.” Of the spreadsheets provided in March, April and September 2024, eighteen (18) of the “Child Wonums” are associated with the August 2022 inspection and are reflected in the three spreadsheets provided. However, the 1659 child work order numbers, listed in the other thirteen (13) inspection reports, are not reflected in the spreadsheets. Petitioner contends that no records or credible explanation is provided by respondents regarding the Child Work Order Numbers noted.

Additionally, petitioner argues that respondent’s redactions are not justified by an exemption because respondent’s reliance on Public Officer Law § 89(2)(c) is misplaced because the redacted information does not constitute an unwarranted invasion of personal privacy when, as here, it relates to a record or group of records that relate to the inventory, status or characteristics of real property. Since petitioner seeks to know the location of the various work orders, it insists that redaction of the apartment numbers was improper. Moreover, it argues that petitioner has not requested the identity of the tenants, but rather, the location of the subject work orders requested. To the extent respondent relies on Public Housing Law § 159, which exempts certain information from FOIL, providing that “[i]nformation acquired by an authority ... from tenants of dwellings thereof ... shall be for the exclusive use and information of the authority”, petitioner posits that an exemption applies when respondent is a party to such underlying action or proceeding, as it is here. Thus, it maintains that there is no justification for the redactions.

¹ Although petitioner sought relief related to items 1 and 9, said claims were withdrawn at oral argument on the motion.

Additionally, petitioner argues that respondent's issuance of a "final determination" does not negate petitioner's request for attorney's fees because respondent failed to provide a valid reason for its delay in providing the requested documents. Moreover, since respondent has not responded fully to the request, the petition, argues petitioner, is not moot.

Respondent interposed an answer to the amended petition (NYSCEF Doc. No. 48). By memorandum of law, respondent argues that respondent granted petitioner's FOIL request and, thus, that any request for an order compelling production is moot. As to the claim that respondent unreasonably delayed in producing responsive records, it posits that this argument is belied by the fact that respondent had made substantial productions of documents even before commencement of this proceeding. According to respondent, to the extent petitioner now claims constructive denial based on the alleged delay in producing documents, its remedy was to administratively appeal the alleged constructive denial before respondent produced the responsive records and before respondent granted the request. However, in the administrative appeal filed on April 24, 2025, petitioner did not challenge the constructive denial; rather, it challenged the withholding of portions of the fire incident report pursuant to an exemption under Public Officers Law. Although respondent denied that appeal, petitioner did not commence an Article 78 proceeding challenging that determination.

As to the specific argument about the fourteen (14) inspection report, respondent argues that petitioner misconstrues respondent's obligation under the Public Officers Law because, to the extent petitioner claims that the responses shed no light on why only one inspection was performed, respondent's obligation is limited to providing the records in its possession after a reasonable and diligent search and it is not required to provide an explanation as to why most of the inspection reports reflect that the inspections were not performed. Should petitioner wish to seek answers to these questions, it may seek information through discovery.

Addressing items 3 through 7, which concern the child work order, respondent argues that requests 3 through 7 sought work orders specific to certain electrical and plumbing issues and that the child work orders reflecting standardized inspection tasks as opposed to requests for repairs were not responsive. Respondent argues that it properly redacted the unit numbers on the work order records because it has an interest in protecting the privacy of the tenants associated with the units listed. Petitioner, argues respondent, has failed to explain why it cannot seek said information during discovery in the pending underlying action against respondent, where mechanisms for protecting privacy concerns may be implemented. Respondent further argues that the details on repairs made by the tenants do not relate to the inventory, status or characteristics of the property. Respondents also argue that petitioner is not entitled to attorney's fees because it has not "substantially prevailed" in this proceeding in light of the fact that respondent has complied with its obligations under FOIL (NYSCEF Doc. No. 55, *memo of law*).

In reply, petitioner contends that the application is not moot because records remain outstanding and, thus, respondent's production is not complete. Petitioner argues that, at the very least, it should be entitled to an evidentiary hearing as to whether respondent performed a diligent search of the records. It posits that respondent's partial response does not negate petitioner's entitlement to attorney's fees (NYSCEF Doc. No. 56, *reply affirmation*).

“While typically an agency action is reviewed under an ‘arbitrary and capricious’ standard, . . . [w]hen reviewing the denial of a FOIL request, a court must apply a far different rule” (*Matter of NY Comm. for Occupational Safety & Health v Bloomberg*, 72 AD3d 153, 158 [1st Dept 2010]; see *Matter of Berger v NY City Dept. of Health & Mental Hygiene*, 137 AD3d 904, 906 [2d Dept 2016].) “[T]he standard of review is whether the denial of the FOIL request was ‘affected by an error of law’, for which judicial review is ‘limited to the grounds invoked by the agency’ in its determination.” (*Matter of Barry v O’Neill*, 185 AD3d 503, 505 [1st Dept 2020] [internal quotation marks and citations omitted].) “To promote open government and public accountability, the FOIL imposes a broad duty on government to make its records available to the public.” (*Gould v NY City Police Dept.*, 89 NY2d 267, 274 [1996], citing Public Officers Law § 84 [legislative declaration].) “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.” (*Gould v NY City Police Dept.*, 89 NY2d at 274-275 [internal quotation marks and citations omitted]; see Public Officers Law § 87 [2]; *Hanig v State Dept. of Motor Vehs.*, 79 NY2d 106, 109 [1992]; *Matter of Fink v Lefkowitz*, 47 NY2d 567, 571 [1979].) The agency “is required to articulate particularized and specific justification and, if necessary, submit the requested materials to the court for *in camera* inspection, to exempt its records from disclosure.” (*Matter of Fink v Lefkowitz*, 47 NY2d at 571; see *Gould v NY City Police Dept.*, 89 NY2d at 275.)

“The FOIL requester’s statutory remedy for an untimely response or ruling is to deem the response a denial and commence a CPLR article 78 proceeding ‘for review of such denial’” (*Matter of New York Times Co. v City of N.Y. Police Dept.*, 103 AD3d 405, 406 [1st Dept 2013], quoting Public Officers Law § 89 [4] [a], [b]; see *Matter of Miller v New York State Dept. of Transp.*, 58 AD3d 981, 983, 871 NYS2d 489 [3d Dept 2009], *lv denied* 12 NY3d 712, 909 NE2d 1235, 882 NYS2d 397 [2009]).

Here, the court finds that petitioner’s claim of constructive denial is rendered moot by the voluntary disclosure of responsive records provided prior to the filing of the amended petition (*Matter of Kohler-Hausmann v New York City Police Dept.*, 133 AD3d 437, 437 [1st Dept 2015]). Petitioner has also failed to establish that responsive documents remain outstanding and that records were improperly redacted/withheld. As to the branch of the motion challenging the response to items 3-7 and as is relevant to the redactions, pursuant to § 87(2)(f), an agency is authorized to withhold records if disclosure of said records “could endanger the life or safety of any person.” Inasmuch as respondent has rationally concluded that the redactions of the units are necessary to protect the unwarranted disclosure of personal information of persons occupying the redacted units, the court denies that branch of the motion challenging respondent’s redaction of the work order records. Notably, although petitioner has failed to establish entitlement to said information in *this* proceeding, petitioner is free to explore discovery of said information in the underlying proceeding (see *Roth & Roth LLP v Long Is. R.R.*, 2024 NY Slip Op 30346(U), 2024 NY Misc LEXIS 497 [Sup Ct, NY County 2024]). Moreover, petitioner has failed to show that the additional work orders identified, which respondent represents are related to “standardized inspection tasks”, are responsive to the request for certain electrical and plumbing issues and its claim of responsiveness is speculative at best. As it pertains to item 8 and petitioner’s claim that

“no records or credible explanation is provided by respondents regarding the Child Work Order Numbers noted”, respondent is not required under FOIL to provide any said explanation, but rather, to provide responsive documents. To the extent respondent contends that the child work orders reflecting standardized inspection tasks were not responsive to the request for certain electrical and plumbing issues, that branch of the motion is denied. All other requests have been considered and are hereby denied. Accordingly, it is hereby

ORDERED and **ADJUDGED** that the petition is denied, and the proceeding is dismissed; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded, counsel for respondent shall serve a copy of this decision and order upon respondent.

This constitutes the decision and order of this court.

January 27, 2026

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		SUBMIT ORDER	<input type="checkbox"/>
	<input type="checkbox"/>			FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE
					OTHER