

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

RECLAIM THE RECORDS and  
BROOKE SCHREIER GANZ,

Petitioner,

THE CITY OF NEW YORK and OFFICE OF THE  
CITY CLERK,

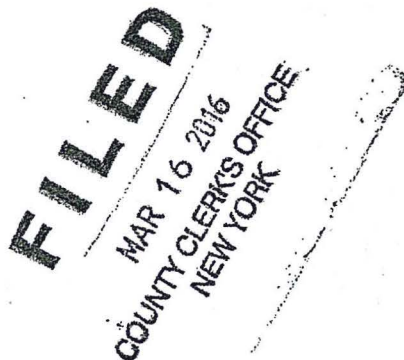
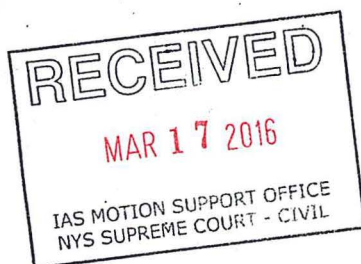
Respondent.

NOTICE OF PETITION

Index No. 100397/2016

PLEASE TAKE NOTICE that upon the affirmation of Jane L. Moisan of Rankin & Taylor, PLLC, sworn to on March 16, 2016, and the attached exhibits, the undersigned petitioner will request this Court, at 9:30 in the forenoon on the 7 day of April, 2016, or as soon thereafter as counsel can be heard, at the Courthouse located at 60 Centre Street, New York, New York, in the Motion Support Courtroom, IAS Part Room 130, for an Order and Judgment granting the following relief to the undersigned petitioner:


1. Ordering the respondents to release the requested documents pursuant to Public Officers Law Article 6 §§ 84 - 90, the New York State Freedom of Information Law;
2. Ordering the respondents pay the reasonable litigation costs and reasonable attorney's fees pursuant to Public Officers Law Article 6 §89(4)c; and
3. Other such relief as the Court finds just and proper.





Dated: New York, New York  
March 16, 2016

Respectfully submitted,

By: 

Jane L. Moisan  
Rankin & Taylor, PLLC  
11 Park Place, Suite 914  
New York, New York 10007  
t : 212-226-4507  
f: 212-658-9480  
e: Jane@drmtlaw.com

To: The City of New York  
100 Church Street  
New York, New York 10007

Office of the City Clerk  
141 Worth Street  
New York, New York 10013

Supreme Court, State of New York  
County of New York  
Motion Submission Term, Room 130  
60 Centre Street  
New York, New York 10007



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

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RECLAIM THE RECORDS and  
BROOKE SCHREIER GANZ,

Petitioner,

**VERIFIED PETITION PURSUANT TO  
ARTICLE 78 OF THE NEW YORK  
PRACTICE LAW AND RULES**

THE CITY OF NEW YORK and OFFICE OF THE  
CITY CLERK,

Index No. 100397 - 2016

Respondent.

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I, JANE L. MOISAN, an attorney duly licensed to practice law in the Courts of the State of New York, does hereby verify and affirm, under the penalties of perjury, that the following is true and accurate:

**PRELIMINARY STATEMENT**

1. Pursuant to the Freedom of Information Law ("FOIL") and Article 78 of the New York Civil Law and Rules, the undersigned, Petitioner Brooke Schreier Ganz of Reclaim The Records ("Ms. Ganz"), seeks an order directing respondents The City of New York ("City") and The Office of the City Clerk ("City Clerk") to produce a complete copy of the indices to the City Clerk's marriage license series from January 1, 1930 through December 31, 2015, inclusive.

2. Upon information and belief, the requested records exist in both microfilm format and in a searchable computer database format.

3. As Petitioner Ms. Ganz has exhausted all administrative remedies, Petitioner respectfully requests the Court order respondent to produce the records in accordance with the law of FOIL and the guidance of the State of New York Department of State Committee on Open Government.



## BACKGROUND

4. On December 30, 2015, Petitioner Ms. Ganz sent a FOIL request to the FOIL Records Access Officer at the Office of the City Clerk. *See* Letter dated December 30, 2015, attached hereto at *Exhibit A*.

5. The letter sought electronic copies of the index to all New York City marriage records for all boroughs for January 1, 1930 through December 31, 2015. Ms. Ganz's letter indicated she was not requesting the materials for any commercial or for-profit purpose, but to assist in genealogical research. She also inquired as to the cost of production of the records.

6. As support for the right of public access and her request, Ms. Ganz referenced the guidelines set forth by the New York State Committee on Open Government's advisory opinion dated February 11, 1998, and the Court's decision in *Gannett Co. v. City Clerk's Office*, 596 N.Y.S.2d 968 (N.Y. Sup. Ct. 1993), attached hereto at *Exhibits B and C*.

7. Upon information and belief, on January 14, 2016 and January 29, 2016, Ms. Ganz sent follow up letters requesting information on when she could expect a response to her December 30, 2015 request, attached hereto at *Exhibit A*.

8. Upon information and belief, two follow up voicemail messages were left with the office of counsel for the City Clerk, Mr. Patrick Symnoie at (212) 669-2610.

9. On February 10, 2016, thirty (30) days after submitting the request, Ms. Ganz filed an appeal from a constructive denial, addressed to the Records Access Appeal Officer at the Office of the City Clerk, attached hereto at *Exhibit D*.



10. On February 23, 2016, Mr. Patrick Synmoie, attorney for Respondent City Clerk, responded via telephone in some part to Petitioner's appeal and informed Petitioner that some records would be produced.

11. Between February 23 and March 7, 2016, Petitioner Ms. Ganz made requests over the telephone and four (4) requests over email to Respondent City Clerk and Mr. Synmoie for written and specific details regarding records to be produced, or alternately, for confirmation that the requested records would be produced in full.

12. Petitioner also made three (3) requests for a detailed description of the contents of the microfilm rolls dated 1930 through 1951 and for information regarding the manner of production.

13. Respondent City Clerk failed to respond to these requests, and therefore to respond to the December 30, 2015 request made pursuant to FOIL.

14. Respondent City Clerk should have made a written determination regarding the Administrative Appeal within 10 business days of receipt by the agency. *See* Section 89(a)(4) of FOIL; 34 R.C.N.Y. 1-06(d).

15. In the absence of a response, Petitioner Ms. Ganz's appeal is constructively denied at the termination of this ten (10) day period. *See Matter of Molloy v. New York City Police Dept.*, 50 A.D.3d 98, 99-100 (1<sup>st</sup> Dept. 2008).

#### **JURISDICTION AND VENUE**

16. Pursuant to Article 78 of the Civil Practice Law and Rules, this proceeding is the proper mechanism for seeking judicial review of a state agency's determination with respect to a FOIL request. N.Y. Pub. Off. § 89(4)(b).



17. Respondent City Clerk is an agency of respondent CITY and subject to FOIL.

18. The undersigned has exhausted respondent City Clerk's internal appeals process, and the instant petition has been filed within the four-month period thereafter specified in C.P.L.R. § 217(1). See supra ¶¶ 3-21.

19. Both respondents City Clerk and CITY have their central offices located in the County of New York. Venue therefore is proper in this Court. C.P.L.R. §§ 7804(a), 506(b).

#### **BASIS FOR RELIEF**

20. When a State or municipal agency makes a determination which is arbitrary and capricious, the aggrieved party may challenge that determination in an Article 78 petition. C.P.L.R. § 7803(3).

21. Respondents City and City Clerk failed to provide a specific articulation as to which records would and would not be provided and failed to provide a description of the records held at Petitioner's request.

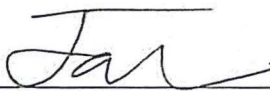
#### **REQUEST FOR RELIEF**

WHEREFORE, the undersigned petitioner respectfully requests this Court enter an Order directing Respondent City Clerk to produce New York City marriage indices dated January 1, 1930 through December 31, 2015; that a detailed description of the content of the microfilm rolls dated 1930 through 1951; directing that where searchable computer databases hold these records that format be produced; awarding the undersigned her legal fees and expenses incurred in making the instant petition for relief; and awarding such other and further relief as the Court may deem just and proper.



Dated: New York, New York  
March \_\_, 2016

Respectfully submitted,

By:   
Jane L. Moisan  
Rankin & Taylor, PLLC  
11 Park Place, Suite 914  
New York, New York 10007  
t : 212-226-4507  
f: 212-658-9480  
e: Jane@drmtlaw.com

To: The City of New York  
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Office of the City Clerk  
141 Worth Street  
New York, New York 10013

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Motion Submission Term, Room 130  
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ATTORNEY'S VERIFICATION

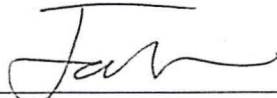
I, Jane L. Moisan, an attorney duly admitted to practice before the Courts of the State of New York, affirm the following to be true under the penalties of perjury:

I am the attorney of record for the Petitioner.

I have read the annexed Petition and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My beliefs, as to those matters therein not stated upon knowledge, are based upon facts, records, and other pertinent information contained in my files.

This verification is made by me because Petitioner does not reside in the county where I maintain my offices.

Dated: New York, New York  
March \_\_, 2016

  
\_\_\_\_\_  
Jane L. Moisan



# **EXHIBIT A**



[Create a FOIA request](#)[More](#)

## Index to all New York City marriage records, 1930-2015

Reclaim The Records filed this request with the New York City Clerk's Office of New York City, NY.

### Show details

MuckRock users can create, duplicate, track, and share public records requests like this one.

[Sign Up Today](#)

#### Request

[Filter communications](#)[Collapse All](#)

**From:** Reclaim The Records  
12/30/2015

**Subject:** None

To Whom It May Concern:

Pursuant to the New York State Freedom of Information Law (1977 N.Y. Laws ch. 933), I hereby request a copy of the index to all New York City marriage records held at the New York City Clerk's office, from January 1, 1930 through December 31, 2015 inclusive.

This information is available to the public under FOIL under the following case:

Gannett Co., Inc. v. City Clerk's Office, City of Rochester, 596 NYS 2d 968, affirmed unanimously, 197 AD 2d 919 (1993). See also the New York State Committee on Open Government (COOG)'s published Advisory Opinions on "Marriage Records" and "Matrimonial Records", some of which are available online on their public website: [http://www.dos.ny.gov/coog/foil\\_listing/fm.html](http://www.dos.ny.gov/coog/foil_listing/fm.html)



I request that the content of this marriage index be provided in full, except for any pieces of data that were explicitly declared by the 1993 Gannett case and by subsequent published Advisory Opinions from COOG to be infringing on the applicant couple's privacy. For example, certain pieces of data such as the applicant couple's names are clearly a matter of public record, while other pieces of data such as their exact street addresses may clearly be withheld for privacy.

But some pieces of data commonly contained in a marriage index, such as the applicant couple's ages or dates of birth or places of birth, were never explicitly ruled by New York State courts to be either permitted or denied. COOG has written that these pieces of data may potentially be available to a FOIL requestor if they can show a "proper purpose" for the release of the information. I request that these "extra" pieces of information be retained in the index, as they are crucial for researchers and genealogists who wish to use this marriage index to disambiguate amongst people with the same common names and thereby locate their own family members. An index to eighty-five years of marriage records for a city like New York will likely contain millions of couples' names; being able to separate out all the John Smith's by year of birth and/or country of birth and/or age at marriage would be crucial to researchers and genealogists hoping to use these records to search for individual relatives or to follow broader demographic trends in the data.

I have reason to believe that the City Clerk's office has copies of this index available in microfilm format for earlier years, possibly 1938-1950, and in computer database format for most later years, possibly post-1950. It is also possible that some years may have multiple formats available; for those years, I would prefer to receive the database format, unless the database is missing any information contained in the microfilm format.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

Please inform me of any potential charges in advance of fulfilling my request. Please be advised that any microfilm copies made will also require shipping fees to California.

Please also be advised that this FOIL request is being filed publicly through the website MuckRock.com, and all correspondence about this request will be immediately published to the general public.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

Sincerely,

Brooke Schreier Ganz  
Founder, Reclaim The Records



2/9/2016

Index to all New York City marriage records, 1930-2015

<https://www.ReclaimTheRecords.org/>

From: MuckRock.com

01/14/2016

**Subject: None**

To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on Dec. 30, 2015. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

From: MuckRock.com

01/29/2016

**Subject: RE: Freedom of Information Law Request: Index to all New York City marriage record...**

To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on Dec. 30, 2015. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

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2/9/2016

Index to all New York City marriage records, 1930-2015

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# **EXHIBIT B**





**State of New York  
Department of State  
Committee on Open Government**

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One Commerce Plaza  
99 Washington Ave.  
Albany, New York 12231  
(518) 474-2518  
Fax (518) 474-1927  
<http://www.dos.ny.gov/coog/>

February 11, 1998

**MEMORANDUM**

TO: Hank Greenberg

FROM: Bob Freeman

SUBJECT: Access to Marriage Records

I thank you for sharing your memorandum to Peter Carucci on the subject of access to marriage records. I believe that we can agree on a variety of points, and in an effort to reach a meeting of the minds, I offer the following observations and suggestions.

From my perspective, the difficulty involves harmonizing three standards: the presumption of access in the Freedom of Information Law, the ability to withhold records under that statute to the extent that disclosure would constitute "an unwarranted invasion of personal privacy", and the "proper purpose" standard in §19 of the Domestic Relations Law.

**Commercial or Fund-raising Purposes**

Before considering particular elements of marriage records, I think that we can agree that a request for a commercial or fund-raising purpose always involves an unwarranted invasion of personal privacy and never constitutes a proper purpose. As you may be aware, under the Freedom of Information Law, it has been established that the reasons for which a request is made and an applicant's potential use of records are irrelevant, and it has been held that if records are accessible, they should be made equally available to any person, without regard to status or interest [see e.g., *M. Farbman & Sons v. New York City*, 62 NYS 2d 75 (1984) and *Burke v. Yudelson*, 368 NYS 2d 779, aff'd 51 AD 2d 673, 378 NYS 2d 165 (1976)]. The only exception to that principle relates to §89(2)(b)(iii) of the Freedom of Information Law, which permits an agency to withhold "lists of names and addresses if such list would be used for commercial or fund-raising purposes" on the ground that disclosure would constitute an unwarranted invasion of personal privacy. Due to the language of that provision, the intended use of a list of names and addresses is relevant, and case law indicates that an agency can ask that an applicant certify that a list would not be used for commercial purposes as a condition precedent to disclosure [see *Golbert v. Suffolk County Department of Consumer Affairs*, Sup. Ct., Suffolk Cty., (September 5, 1980); also, *Siegel Fenchel and Peddy v. Central Pine Barrens Joint Planning and Policy Commission*, Sup. Cty., Suffolk Cty., NYLJ, October 16, 1996].



In my view, whether an applicant seeks a list of marriages or a single marriage record, the response should be the same if the request is made for a commercial or fund-raising purpose. Very simply, in that kind of situation, the request could justifiably be denied based on the privacy provisions in the Freedom of Information Law or the proper purpose standard in the Domestic Relations Law.

#### "Zones" of Accessible and Deniable Information

##### Accessible Information

For the remainder of this commentary, it should be assumed that requests are not made for commercial or fund-raising purposes. With that issue aside and perhaps resolved, I hope that we can agree that some elements of marriage records are always public, and that others would, if disclosed, result an unwarranted invasion of personal privacy.

It was established in *Gannett Co., Inc. v. City Clerk's Office, City of Rochester* [596 NYS2d 968, aff'd 197 AD2d 919 (1993)] that the names of applicants for marriage licenses are accessible, and that disclosure would not constitute an unwarranted invasion of privacy or be contrary to the proper purpose standard. The court did not address the disclosure of other items, and I do not believe that the name of an applicant is the only item within a marriage record that must routinely be disclosed.

The dates of validity of licenses indicate to the public and to government authorities the time within which certain activities may legally be performed, i.e., practicing law or medicine, teaching, possessing or carrying a firearm, hunting, fishing, etc. I believe that the same should be true in the case of marriage licenses. When a marriage begins or ends should be public, and the court in *Gannett* inferred that such a result should be reached with respect to marriage records. The decision referred with apparent favor to a contention offered by petitioner "that a final judgment of divorce dissolving a marriage is publicly available, as is the identity of other selected licensees and that common sense would dictate a similar result for the release of marriage applicants..." In short, the fact of a marriage and its duration should in my view be public, as is the fact of a divorce pursuant to §235 of the Domestic Relations Law..

Another element of the record that I believe should routinely be disclosed is the municipality of an applicant's residence. In most instances, at least one member of a couple applying for a marriage license resides in the municipality in which the license is sought. Therefore, disclosure of names alone would indicate that one of the two likely lives (or perhaps lived) in a certain municipality. Again, and as suggested by the court in *Gannett*, disclosure of that item would "not equate with the type of personal, confidential, or sensitive information precluding public access, or which would constitute an 'unwarranted invasion of personal privacy.'"

In short, I do not believe that reasonable people or the courts would find that disclosure of the kinds of items described above would be unreasonable, unwarranted or improper.

It is suggested with respect to those items that it might be worthwhile to consider the guidance offered by the courts in the cases dealing with lists of names and addresses. It may not be appropriate or efficient to ask in every instance the purpose of a request for those basic, largely innocuous items. But it would be appropriate in my view to ask for a written certification or statement that a request for those items does not involve a commercial or fund-raising purpose. It would be easy to devise a simple form and to suggest to local clerks that requests involving clearly public items by the news media and others should be routinely granted, so long as the requests are not made for a commercial or fund-raising purpose.

##### Deniable Information

You referred in your memorandum to a variety of other items, such as



social security numbers, ages, occupations, names of fathers and countries of birth, maiden names of mothers and their countries of birth, and whether former spouses are living or deceased. With respect to those and perhaps other items, it is likely in my view that it would be determined judicially that disclosure would constitute an unwarranted invasion of personal privacy. They are largely incidental to the qualifications of individuals to marry. In addition, while I believe that the municipality of residence should be disclosed, the street address of applicants could in my view be withheld as an unwarranted invasion of privacy.

As in the case of certain items being routinely disclosed (unless, of course, the request is made for a commercial or fund-raising purpose), the items referenced in the preceding paragraph might routinely be withheld.

#### Proper Purpose

In conjunction with the foregoing, if it can be agreed that certain items will routinely be public and that others can routinely be withheld, the proper purpose standard becomes important only with respect to the latter group. The age, the country of birth and similar items might be withheld as a matter of course, unless a proper purpose can be demonstrated. By means of analogy, in the case of death records, which are typically exempted from public disclosure under §4174 of the Public Health Law, there are exceptions that authorize disclosure, i.e., "when a documented medical need has been demonstrated" or "when a documented need to establish a legal right or claim has been demonstrated." That kind of justification would provide town and city clerks with the flexibility to make judgments regarding the ability, but only upon a showing of a good reason, a "proper purpose", to disclose items which could routinely be withheld on the ground that disclosure would result in an unwarranted invasion of privacy.

In essence, I am suggesting three zones regarding access. The first pertains to items that would always be public; the second to items which would always, if disclosed, result in an unwarranted invasion of privacy, and the third to items that would ordinarily be withheld to protect privacy, but which could be disclosed upon a showing of a proper purpose. Again, another absolute would pertain to the ability to withhold when a request is made for a commercial or fund-raising purpose.

If there is an accord, to make life a little easier for the clerks, it suggested that a new form be prepared to enable them to readily segregate the routinely public from the routinely deniable information.

I hope that you find the foregoing to be constructive, and I would appreciate your reaction to it.

Thanks.

RJF:jm

NOTE: The New York State Department of Health has agreed to use the parameters described in this memorandum as the basis for its consideration of requests for marriage records. FOIL-AO-f10608a  
10608





**User Name:** Susan Cassell

**Date and Time:** Aug 25, 2015 1:53 p.m. EDT

**Job Number:** 23113117

**Document(1)**

1. Gannett Co. v. City Clerk's Office, 157 Misc. 2d 349

**Client/Matter:** -None-

**Narrowed by:**

**Content Type**  
Secondary Materials

**Narrowed by**  
-None-



# **EXHIBIT C**





Positive

As of: August 25, 2015 1:53 PM EDT

## Gannett Co. v. City Clerk's Office

Supreme Court of New York, Monroe County

March 15, 1993, Decided

Index No. 92/12899

### Reporter

157 Misc. 2d 349; 596 N.Y.S.2d 968; 1993 N.Y. Misc. LEXIS 123; 21 Media L. Rep. 1668

In the Matter of Gannett Co., Inc., Petitioner, v. City Clerk's Office et al., Respondents.

Notice: [\*\*\*1] EDITED FOR PUBLICATION

Subsequent History: As Amended June 23, 1993.

### Core Terms

disclosure, exempt, marriage license, records, personal privacy, applicants, unwarranted invasion, proper purpose, Newspapers, commercial purpose, public record, marriage, subject to disclosure, unrestricted access, government records, public disclosure, commercial use, inspection, mandated, requires, couples, printed

### Case Summary

#### Procedural Posture

Petitioner, a journalistic organization, sought a judgment directing respondents, the city clerk's office and others, to provide the journalistic organization with access to the names of applicants to whom marriage licenses had been issued.

#### Overview

The city officials denied the journalistic organization access to the names of those couples to whom marriage licenses had been issued because the city officials contended that the records were exempted from disclosure under the Freedom of Information Law. The court granted the journalistic organization's petition for a judgment directing the city officials to provide access to the requested information because no statute exempted the records from disclosure and the disclosure of the names would not constitute an unwarranted invasion of privacy. The court held that the journalistic organization's purpose for obtaining the names was irrelevant because the limitation set forth in *N.Y. Dom.*

*Rel. Law § 19(1)*, which allowed the inspection of certain records only when there was a proper purpose, did not apply where only the names of the applicants were sought.

#### Outcome

The court granted the journalistic organization's petition and directed the city officials to provide the journalistic organization with unrestricted access to the names of marriage license applicants.

### LexisNexis® Headnotes

Administrative Law > Governmental Information > Freedom of Information > General Overview

Administrative Law > ... > Freedom of Information > Defenses & Exemptions From Public Disclosure > General Overview

Administrative Law > ... > Freedom of Information > Methods of Disclosure > General Overview

**HNI** The Freedom of Information Law (FOIL) requires public disclosure and inspection of agency or government records unless the records fall within one of a number of exceptions, such as when exempted by statute, or if such disclosure would constitute an unwarranted invasion of personal privacy. *N.Y. Pub. Off. Law § 87(2)(a), (b)*. FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government, with the burden placed upon the governmental agency to establish that the material requested falls squarely within the ambit of the statutory exemptions.

### Headnotes/Syllabus

#### Headnotes

Disclosure - Freedom of Information Law - Release of Marriage License Applicants' Names

The City Clerk's office is required under the Freedom of Information Law (*Public Officers Law art 6*) to provide



157 Misc. 2d 349, \*349; 596 N.Y.S.2d 968, \*\*968; 1993 N.Y. Misc. LEXIS 123, \*\*\*1

petitioner, a journalistic organization, with unrestricted access to the names of couples to whom marriage licenses have been issued, since the records do not fall within one of the number of exceptions, such as when exempted by statute, or if such disclosure would constitute an unwarranted invasion of personal privacy. Although section 19 (1) of the Domestic Relations Law unquestionably mandates a finding of "proper purpose" in those situations where disclosure is sought of affidavits containing essential marriage license information, the "proper purpose" standard is not applicable in the present case, where only the names of marriage license applicants are sought. Furthermore, respondents have failed to factually support their conclusory assertion that disclosure of the requested names would intrude upon anyone's personal privacy.

**Counsel:** Nixon, Hargrave, Devans & Doyle (Carol E. Warren of counsel), for petitioner. Louis N. Kash, Corporation Counsel of Rochester (Jeffrey Eichner of counsel), for respondents.

**Judges:** AFFRONTI

**Opinion by:** Francis A. Affronti, J.

## Opinion

[\*349] [\*\*969] Francis A. Affronti, J.

This court is presented with an issue of first impression, [\*350] relating to whether the names of marriage license applicants are subject to disclosure for general publication purposes.

Specifically, the petitioner, a journalistic organization, seeks a judgment under CPLR article 78 directing respondents to provide the names of those couples to whom marriage licenses have been issued, for publication in its "For the Record" column, which is printed daily in two Rochester area newspapers. Gannett has previously attempted to obtain this information but was denied access because respondents contend the records are exempt from disclosure. Petitioner urges that unrestricted access by the public to the requested information is mandated by Public Officers Law article 6, commonly known as the Freedom of Information Law [\*\*\*2] (FOIL), in that all government records are subject to disclosure unless specifically exempted by statute or binding regulations. Conversely, the respondents opine that Domestic Relations Law § 19 emphatically restricts public disclosure, and that under FOIL the records are exempt from disclosure as it would constitute an unwarranted

invasion of personal privacy because the material would be used for commercial purposes.

Clearly, HNI FOIL requires public disclosure and inspection of agency or government records unless the records fall within one of a number of exceptions, such as when exempted by statute, or if such disclosure "would constitute an unwarranted invasion of personal privacy." (See, Public Officers Law § 87 (2) (a), (b).) "FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government" (Matter of Capital Newspapers v Whalen, 69 NY2d 246, 252), with the burden placed upon the governmental agency to establish that "the material requested falls squarely within the ambit of [the] statutory exemptions." (Matter of Fink v Lefkowitz, 47 NY2d 567, 571.)

Domestic Relations [\*\*\*3] Law § 19 (1), in relevant part, requires the City Clerk to [\*\*970] keep a book where marriage license information is recorded, which is "part of the public records of [her] office," and further provides that affidavits, statements, and consents documenting essential marriage license information be considered public records open to inspection, but only when needed for "judicial or other proper purposes." Respondents admit that the applicants' names are contained in the affidavits, and recorded in a log, rather than a book, but that *both* the names and the affidavits are entitled to the same protection, and consequently, are disclosable only when "a proper [\*351] purpose" has been shown. They further assert that publishing this data in a daily newspaper merely to satisfy the readership's general interest and to stimulate sales, is not a "proper purpose," but instead, represents the release of personal information, and is an invasion of privacy for commercial purposes, so as to thus prohibit disclosure (see, Public Officers Law § 89 (2) (b) (iii); § 87 (2) (a), (b)).

While a plain reading of the statute unquestionably mandates a finding of "proper [\*\*\*4] purpose" in those situations where "affidavits" are to be disclosed, the "proper purpose(s)" standard is not applicable in the present case, where only the names of marriage license applicants are sought. Therefore, it is concluded that Domestic Relations Law § 19 does not exempt disclosure of the requested materials. (See, Public Officers Law § 87 (2) (a).)

The remaining issue of whether release of the lists of names constitutes an "unwarranted invasion of personal privacy," contended by respondents, as such lists would be used for commercial purposes, can now be considered. (See, Public Officers Law § 89 (2) (b) (iii).) In this regard, Gannett maintains that printing the names is desired because of their



157 Misc. 2d 349, \*351; 596 N.Y.S.2d 968, \*\*970; 1993 N.Y. Misc. LEXIS 123, \*\*\*4

"public record" status, and does not amount to commercial use, with which position this court agrees, since publishing the names, by itself, does not constitute a commercial use. The petitioner also analogizes, for example, that a final judgment of divorce dissolving a marriage is publicly available, as is the identity of other selected licensees, and that common sense would dictate a similar result for the release of marriage applicants. (See, Domestic [\*\*\*5] Relations Law § 235 [31].)

It must be stressed that our law does not definitively prohibit release of the requested names, which upon a clear reading of the statute does not equate with the type of personal, confidential, or sensitive information precluding public access, or which would constitute an "unwarranted invasion of personal privacy" (see, Public Officers Law § 89 [2] [b]).

Respondents have failed to factually support their conclusory assertion that disclosure would intrude upon anyone's personal privacy. (See, Matter of Capital Newspapers v Burns, 67 NY2d 562, 570; Matter of Buffalo News v Buffalo

Mun. Hous. Auth., 163 AD2d 830; Matter of Gannett Co. v County of Monroe, 59 AD2d 309, affd on opn below 45 NY2d 954.) Regardless, the names of marriage license applicants would not, in this court's opinion, "ordinarily and reasonably be [\*352] regarded as intimate, private information." (See, Matter of Hanig v State of New York Dept. of Motor Vehicles, 79 NY2d 106, 112.) Additionally, the New York State Committee on Open Government, in its advisory opinion dated July 28, 1988, was of the belief that Domestic Relations Law § 19 should [\*\*\*6] be read so as not to exempt the names of marriage applicants from disclosure, regardless of the purpose for which a request is made, and also, that under FOIL, disclosure would not represent an "unwarranted invasion of personal privacy."

Therefore, upon the foregoing, the petition herein is *granted*, and respondents are directed to provide Gannett unrestricted access to the names of couples to whom marriage licenses have been issued, as those names are recorded in the City Clerk's office, Rochester, New York.



# **EXHIBIT D**



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**VIA FIRST CLASS MAIL ONLY**

February 10, 2016

Records Access Appeals Officer  
City Clerk of New York  
141 Worth Street  
New York, NY 10013

**RE: *FOIL Request Dated December 30, 2015 Brooke Schreier Ganz, Founder of Reclaim The Records***

Dear Records Access Appeals Officer:

This letter constitutes an appeal from a constructive denial of a request for information made under the provisions of the New York Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law (the "Request"). Please note that no separate contact information is available for a FOIL Appeals Officer and therefore I am requesting that this letter be forwarded to the appropriate officer if necessary.

The Request was made on December 30, 2015 to the Office of the City Clerk, City of New York and it requested a copy of the New York City marriage index, for January 1, 1930 through December 31, 2015, inclusive. A copy of this request, as well as two follow up letters dated January 14, 2016 and January 29, 2016, are attached. Additionally, two follow up voicemail messages were left with the office of counsel for the City Clerk, Mr. Patrick Symnoie at (212) 669-2610. However, Reclaim the Records has received no response of any kind to their original Request, to follow up letters, nor to voicemail messages.

As of this writing, thirty (30) business days have elapsed since the request was made. Given the length of time that has elapsed since the Request, our office has no option but to consider this matter constructively denied. *See* 43 RCNY §1-05(d) ("[i]f the agency does not make a determination with respect to the request within ten business days from the date of such acknowledgement, the request may be deemed denied and an appeal may be taken . . ."). *See the Matter of Molloy v. NYPD.*, 2008 NY Slip Op 01090 (1<sup>st</sup> Dept. 2008).



*Reclaim the Records*  
*February 9, 2016*  
*Page 2 of 2*

I hereby appeal this denial and request documents responsive to the December 30, 2015 Request, namely the index to all New York City marriage records from January 1, 1930 through December 31, 2015 inclusive, as fully described in that document, be provided to our office.

If for any reason any portion of this appeal is denied, please inform me of the reason for the denial in writing within ten (10) days as required by statute. Please feel free to contact my office if there are any questions about this matter. Thank you for your consideration and continued public service.

Sincerely,

/s/

Jane L. Moisan  
Associate Attorney  
Encls.

cc: Patrick L. Synmoie  
*Executive Agency Counsel, City Clerk's Office*  
Email: psynmoie@cityclerk.nyc.gov

Kenneth Cobb  
*Assistant Commissioner, Department of Records Information Services*  
Email: kcobb@records.nyc.gov

*Client*