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

BROOKE SCHREIER GANZ and
RECLAIMTHERECORDS.ORG,

Petitioner,

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

THE CITY OF NEW YORK and DEPARTMENT OF
RECORDS AND INFORMATION SERVICES,

Index No. 101643-15

Respondent.

I, GILLIAN CASSELL-STIGA, 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.org ("Ms. Ganz"), seeks an order directing respondents The City of New York ("City") and Department of Records and Information Services ("DORIS") to produce a complete copy of the microfilm indices to the City Clerk's marriage license series from 1908-1929.
2. The requested records exist on microfilm currently accessible to the public only on location at the Municipal Archives. Petitioner has agreed to pay the cost of copying the rolls of microfilm so that they may be accessible to her and the public without travel to the Municipal Archives. Respondent DORIS denied petitioner's request after itself acknowledging the records contain information already in the public domain and yet declared the records not subject to FOIL.

As petitioner 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

3. On January 5 2015, Ms. Ganz sent a FOIL request to the FOIL Records Access Officer at DORIS. See Letter dated January 5, 2015, attached hereto at Exhibit A.

4. The letter sought electronic copies of the index to all New York City marriage records for all boroughs. 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.

5. As support 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). See Id.; Exhibit B.

6. By email dated January 6, 2015, Assistant Commissioner Kenneth R. Cobb (also the FOIL Records Access Officer at DORIS) acknowledged receipt of Ms. Ganz's request and stated he would provide an answer in due course. See Exhibit C.

7. On January 13, 2015, Ms. Ganz again emailed Assistant Commissioner Kenneth R. Cobb to request a date by which she could expect a response. See Exhibit D.

8. By letter dated January 20, 2015, Assistant Commissioner Cobb described to Ms. Ganz the universe of marriage license records publically available in different formats. See Letter from Assistant Commissioner Cobb dated January 20, 2015, attached hereto at Exhibit E. He noted

the original ledger index for the City Clerk's marriage license series (1908-1929) is only publically accessible on microfilm in the Municipal Archives.

9. Ms. Ganz replied to Assistant Commissioner Cobb by letter dated January 29, 2015. See Letter dated January 29, 2015, attached hereto at Exhibit F. She confirmed that there are no official electronic indices of marriage records held by DORIS and then inquired as to the number of microfilm rolls that compromise each distinct category of marriage records. She also requested confirmation that the "index ledgers" to the City Clerk marriage license series (1908-1929) *are* available to the public, but only on microfilm located at the Municipal Archives at 31 Chambers Street, New York, NY, 10007.

10. By emails dated January 29, 2015 and February 13, 2015, Assistant Commissioner Cobb acknowledged receipt of Ms. Ganz's additional questions, and further informed her that he was working her request and would respond in February. See Exhibit G.

11. By letter dated February 26, 2015, Assistant Commissioner Cobb informed Ms. Ganz, "[t]he indexes to the City Clerk marriage license series (1908-1929) comprise 48 rolls of microfilm. They would also be available for purchase at \$35.00 per roll, plus shipping." See Letter dated February 26, 2015, attached hereto at Exhibit H.

12. By email sent March 19, 2015, Ms. Ganz informed Assistant Commissioner Cobb that she was working with nonprofits to finance the cost of the 48 rolls of microfilm comprising the indexes to the City Clerk marriage license series (1908-1929) and would have an answer to him in "a week or two." See Exhibit I.

13. Ms. Ganz further expressed that she was working on a means by which to make the microfilm images freely available online, to be followed by the creation of an electronically accessible index by volunteers. See Id.

14. By email dated April 7, 2015, Ms. Ganz confirmed that she was now requesting the microfilm copies and was willing to make payment. See Exhibit J.

15. By email dated April 9, 2015, Assistant Commissioner Cobb suggested Ms. Ganz review indices to records made available at FamilySearch.org. See Exhibit K.

16. By email dated April 9, 2015, Ms. Ganz confirmed that the records available at FamilySearch.org did not include the indexes to the City Clerk marriage license series (1908-1929). She reiterated and confirmed her previous request for copies of these microfilm records. See Exhibit L.

17. By email dated April 28, 2015, Ms. Ganz inquired as to the status of her request having received no response to her previous email. See Exhibit M.

18. By email dated April 28, 2015, Assistant Commissioner Cobb retracted his previous offer to produce the records and denied Ms. Ganz's request, stating:

In my message of February 26, 2015, I indicated that the microfilm of the marriage license index was available for purchase. This is incorrect. The indexes to vital records, in any format, are not subject to FOIL and are not available for purchase. The indexes are available to the public, at no cost, in our facility at 31 Chambers Street, and in some instances they are available online at no cost. See Exhibit N.

19. By email dated April 28, 2015, Ms. Ganz expressed her disappointment in the reversal of DORIS's position, and requested an appeal. See Exhibit O. She restated the basis for her belief that the documents were subject to disclosure, and again referenced 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). See Exhibit B.

20. By email dated May 6, 2015, Assistant Commissioner Cobb did not acknowledge Ms. Ganz's appeal and simply stated:

As previous indicated, it is not an appropriate use of FOIL to request a copy of a record that is accessible to the public in the Municipal Archives. We are in the planning stages of a project to digitize the marriage license series and to create an index to the records that will be available online at no charge. I will let you know as we progress with the project. See Letter Denial of Appeal at Exhibit P.

21. Respondent DORIS should have made a determination regarding the Administrative Appeal within 10 business days of receipt by the agency. See 34 R.C.N.Y. 1-06(d). In the absence of a response, Ms. Ganz's appeal is constructively denied at the termination of this 10 day period. See Matter of Molloy v. New York City Police Dept., 50 A.D.3d 98, 99-100 (1st Dept. 2008).

JURISDICTION AND VENUE

22. This proceeding pursuant to Article 78 of the Civil Practice Law and Rules 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).

23. Respondent DORIS is an agency of respondent CITY subject to FOIL.

24. The undersigned has exhausted respondent DORIS'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.

25. Both respondents DORIS 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

26. 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).

27. In rejecting the request for copies of documents already publically accessible - but only on microfilm at the Municipal Archives - respondent DORIS incorrectly asserted the requested records were not subject to FOIL and failed to provide any additional "articulation of a particularized and specific justification for denying access" as required to establish the applicability of an exemption. *Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562 (N.Y. 1986); *DJL Restaurant Corp. v. Department of Bldgs.*, 273 A.D.2d 167 (N.Y. App. Div. 1st Dep't 2000).

REQUEST FOR RELIEF

WHEREFORE, the undersigned petitioner respectfully requests this Court enter an Order directing respondent DORIS to produce the requested microfilm copies; 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
September 1, 2015

Respectfully submitted,

By: 

Gillian Cassell-Stiga
Rankin & Taylor, PLLC
11 Park Place, Suite 914
New York, New York 10007

t : 212-226-4507
f: 212-658-9480
e: gillian@drmtlaw.com

To:

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

New York City Department of Records and Information Services
Office of the Commissioner
31 Chambers Street, Suite 305
New York, New York 10007

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

ATTORNEY'S VERIFICATION

I, Gillian Cassell-Stiga, 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
 September 1, 2015



Gillian Cassell-Stiga

Exhibit A



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Asparagirl <asparagirl@gmail.com>

Mon, Jan 5, 2015 at 12:14 PM

To: Kenneth Cobb <kcobb@records.nyc.gov>

Dear Mr. Cobb,

Attached to this e-mail is a PDF with a FOIL request for the New York City marriage index. Please feel free to contact me via e-mail at asparagirl@dca.net or via cellphone at 917-572-3834 if you have any questions or concerns with the request.

Thank you, and looking forward to hearing from you soon.

- Brooke Schreier Ganz

FOIL request for NYC marriage index.pdf
105K

January 5, 2015

Mr. Kenneth Cobb
FOIL Records Access Officer
New York City Department of Records and Information Services
and New York City Clerk's Office

Dear Mr. Cobb,

Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, I am writing to request that the following records be released: I would like to receive an electronic copy of the index to all New York City marriage records, for all boroughs, from 1881 (or as early as such records are available) to the present day.

Please note that I am *not* requesting access to any of the actual marriage license certificates nor affidavits, and I am *not* requesting a records search be done for any particular certificate or couple: those sorts of requests are already possible through existing channels, with fees per search and per copy determined through regulations. Rather, I am requesting that I receive a copy of the metadata file that allows for New York City Municipal Archives and New York City Clerk's office employees to look up basic information about marriages conducted in the city of New York, used by the employees in their daily business of determining whether such a certificate exists, and whether or not to fulfill the requests for copies.

This sort of basic metadata file, commonly referred to as a marriage index, is already broadly available to the public in many other states and municipalities around the country. I am requesting that New York City now join those other locales in releasing its own marriage index as open data. I originally made this request twenty months ago, as part of a broader request for vital records, submitted through New York City's open data web portal (located at nycopendata.socrata.com). But despite the optimistic follow-up conversations I've had with multiple New York City authorities about the data request – conversations conducted through e-mail, phone calls, and social media – I still have yet to hear about any real progress or timeline for the data release. Therefore, I felt it was time for me to resort to a formal FOIL request to receive the data.

This request is not being made for any commercial or for-profit purposes; I am requesting the release of this data for genealogical and informational purposes. I am a genealogist, born in New York but now living in California, with all eight of my great-grandparents either born in or eventually immigrating to the city of New York, as did many of their siblings, parents, and other relations. One of the key ways in which genealogists research their family trees is through the reconstruction of relationships using government documents, particularly vital records like marriages. It is currently extremely difficult to search for these relationships in New York City, because the City Clerk's office not only holds tightly to the actual post-1930 marriage certificates, but even to any basic finding aid to know if a marriage ever happened in the first place, and therefore whether a certificate can potentially be requested from them.

Currently, there is a makeshift sort of marriage index publicly available for all five boroughs

only going through the year 1937, with varying start years based on borough. It is comprised of an index of grooms' names and a separate index of brides' names, each series up made of seventy-year-old handwritten index cards arranged alphabetically. Each card includes the name of the groom or the bride, but not both, along with his or her date of marriage, borough of marriage, and marriage certificate number. This finding aid then allows a genealogist or researcher to easily order the exact certificate number from either the New York City Municipal Archives (pre-1930) or the New York City Clerk's office (post-1930), depending on the year the marriage was performed. Both indices have been microfilmed and are publicly available to be searched onsite at the Municipal Archives in lower Manhattan, as well as at a series of private libraries across the world run through the non-profit genealogy organization FamilySearch, which is run by the Mormon/LDS Church. In the past several years, a team of over one hundred volunteer genealogists has painstakingly typed up this grooms index and brides index into two large online databases, allowing them to be searched for free, but hosted at the expense of a non-profit group.

While this is all helpful, it is not an ideal situation. This New York City marriage information is only available up through the year 1937, the grooms and brides are not available together within the same master database, the unofficial volunteer-created database has some errors, and the entire system is maintained through the goodwill and financial generosity of the public, rather than the responsibility of the city. And unless one forgoes the microfilms altogether and uses additional online tools from a private third party website, it's not intuitive how to search for records with common alternative spellings or soundalike names or nicknames, such as "Schwartz" versus "Shwartz", or "Elizabeth" versus "Betty". An official electronic version of the complete New York City marriage index would make it possible for many more marriage certificates to be located by researchers — and presumably then ordered from the Municipal Archives or City Clerk's office, with appropriate payment, assuming the requestor can prove a right to receive such a certificate.

I am requesting that the following fields be included in this metadata release:

- Given name of bride (or spouse #1)
- Middle name or middle initial of bride (or spouse #1)
- Surname or maiden name of bride (or spouse #1)
- Town or municipality of residence of bride (or spouse #1)
- State of residence of bride (or spouse #1)
- Country of residence of bride (or spouse #1)
- Age (or birth year) of bride (or spouse #1)
- Given name of groom (or spouse #2)
- Middle name or middle initial of groom (or spouse #2)
- Surname or maiden name of groom (or spouse #2)
- Town or municipality of residence of groom (or spouse #2)
- State of residence of groom (or spouse #2)
- Country of residence of groom (or spouse #2)
- Age (or birth year) of groom (or spouse #2)
- The date the marriage was conducted and/or the license was issued
- The borough/county or other location where the license was issued
- The marriage certificate number and/or other identification number

(The terminology "spouse #1" and "spouse #2" is being purposely used here to accommodate all marriage records, including more recent records of same-sex marriages.)

I am limiting the scope of this request based on guidelines set forth by the New York State Committee on Open Government in their advisory opinion dated February 11, 1998, reference identifier *FOIL-AO-f10608a*. It is accessible online at this address: <http://docs.dos.ny.gov/coog/ftext/f10608a.htm> . The relevant parts of this advisory opinion are:

"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."

The end of that advisory opinion has an important footnote: *"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."* And as previously noted, this FOIL request is not even asking for the marriage records themselves, merely the metadata about the marriages. Therefore, as stated in the opinion, the New York Public Officers Law exemption to FOIL concerning "unwarranted invasion of personal privacy" would not appear to be applicable in this case.

Note that the memorandum primarily references the case *Gannett Co., Inc. v. City Clerk's Office, City of Rochester*, which concerned whether or not the Gannett chain of newspapers could publish the names and towns of residences of people seeking marriage licenses at the Rochester City Clerk's office. Even though the full contents of the actual marriage certificates would be off-limits to the newspapers under privacy laws, the court clearly found that publishing the basic information about the licenses was not considered an infringement on people's privacy:

"[I]t is concluded that Domestic Relations Law § 19 does not exempt disclosure of the requested materials...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...Respondents have failed to factually support their conclusory assertion that disclosure would intrude upon anyone's personal privacy."

It would seem that the *Gannett* decision with regards to the Rochester City Clerk's office could reasonably be held to be directly analogous to this FOIL request of the New York City Clerk's office. While *Gannett* dealt with publication of marriage license information in physical newspaper format, as the case was decided in 1993 before the Internet was widely available, there is no basis to believe that its findings would not also apply to electronic publishing, based on multiple subsequent advisory opinions from the New York State Committee on Open Government, published on their website.

While advisory opinion *FOIL-AO-f10608a* clearly states that much basic information about the marriage licenses and the licensees should be made public based on the *Gannett* decision — e.g. the licensees' names, their residence locations, the municipality granting the license, and so on — the author of the advisory opinion was unsure whether granting more detailed information might be considered an invasion of privacy. On the other hand, in another advisory opinion dated January 4, 2002 (*FOIL-AO-13120*), the author writes "[w]hile the court [in *Gannett*] focused on names of applicants, nowhere was it stated that other items are confidential."

For that reason, I am not requesting any overly personal details be included in the marriage index, such as the names of the licensees' parents, the licensees' street addresses, or anything like that. There is one exception, however: I am requesting that the Municipal Archives and City Clerk's office include either the ages of the licensees or else their years of birth. Advisory opinion *FOIL-AO-f10608a* from 1998 states:

"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..."

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."

Advisory opinion *FOIL-AO-13120* in 2002 confirms this interpretation of "proper purpose" and explains that it "provides town and city clerks with the flexibility to make judgements...to disclose items which could be routinely withheld."

If the entire point of releasing a public marriage index is to enable genealogists and researchers to find marriages between relatives or persons of interest, then adding a key distinguishing field such as the licensee's age or birth year to disambiguate between people of the same name who were seeking marriage licenses in the same city in the same timeframe should be considered a proper purpose.

For example, between the years 1900 and 1930 inclusive, there were 422 grooms in New York City named Sam or Samuel Schwartz (or soundalike or spelled-alike variations such as Shwartz,

Swartz, etc.). It is somewhat impractical to expect a researcher to search through 422 marriage certificates to find the right one, or else to order copies of 422 certificates from the New York City Municipal Archives, where even if an exact date, exact borough, and exact certificate number is already known before a request is made, the cost for copies of those 422 records would still be over \$6,300. Much more concerning is that there is presently no way to know how many grooms were named Sam Schwartz in, say, the 1950 to 1980 time period, much less be able to request those certificates (should the requestor be eligible to receive a copy), because those post-1930 files are stored at the City Clerk's office, which does not even have the luxury of a volunteer-created imperfect grooms index for the public to search through.

It is important to keep in mind that in other states and municipalities where marriage indices have long been made available to the public as open data, either the age or the year of birth of the licensees are routinely made available as part of the file. For example, Cook County, Illinois published its marriage index several years ago, and they included the ages of the licensees, as do the states of Missouri and California in their statewide marriage indices, among others. The state of Texas even published both the birth year and the age of its licensees in its statewide marriage index. Therefore, the existence of a field for a licensee's age and/or a year of birth in this requested New York City marriage index metadata would not be considered uncommon, nor an unreasonable violation of the licensees' personal privacy.

Finally, while access to the actual New York City marriage certificates from the past fifty years (post-1965) are strongly protected by state regulations, the *Gannett* decision makes it clear that merely publishing basic information about the people receiving marriage licenses is not affected by that fifty-year regulation, and that the data is open up to and including the present day's licensees. (After all, a newspaper would like to be timely in its reporting of wedding announcements!)

As for the fulfillment of this FOIL request, I would like the records I am requesting be made available in whatever electronic format is easiest for the city of New York to supply. Presumably, a comma-separated value (CSV) format file, or a spreadsheet, or even a raw SQL database dump would be available, or some other machine-readable format. I would like the copy e-mailed to me, or made available for me to download at a private link, or burned onto a DVD or CD and physically mailed to me, or whatever is most convenient for the city to share the data. This data should presumably also be uploaded to the City of New York's Open Data (Socrata) portal, to make it available to anyone who wants it, not just to this requestor.

I recognize that it is likely that a "data dump" directly from the City Clerk's office employee-use marriage index database would contain several database fields that are not relevant to this request, or which contain sensitive information. However, FOIL clearly directs that the Clerk's office would still have a duty to redact the inappropriate fields from the database as needed, and that they cannot deny the entire request just because some of the information may be exempt (see *Matter of Schenectady County Society for the Prevention of Cruelty to Animals, Inc. vs. Mills*, [74 AD3d 1417 (2011)]).

If there is any issue with any aspect of this FOIL request, or if it fails to reasonably describe the records, please contact me to discuss it further, preferably via e-mail at asparagirl@dca.net, or alternately by phone at 917-572-3834. My mailing address is:

Brooke Schreier Ganz
905 Ventura Way
Mill Valley, CA 94941

If there are any fees for copying the records requested, please inform me before filling the request, as well as providing a list of methods of payment accepted by the city.

As you know, the New York Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly. If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

sincerely,

Brooke Schreier Ganz

Exhibit B



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

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. Yudelton*, 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.

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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



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

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 [3].)

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 C



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Cobb, Ken (Records) <kcobb@records.nyc.gov>

Tue, Jan 6, 2015 at 7:44 AM

To: Asparagirl <asparagirl@gmail.com>

Dear Ms. Brooke Schreier Ganz:

I am writing to acknowledge receipt of your FOIL request dated 05 January 2015. I will provide the response in due course in accordance with the FOIL guidelines.

Sincerely,
Kenneth R. Cobb

Kenneth R. Cobb | Assistant Commissioner
31 Chambers Street, Suite 305 | New York, NY 10007
P: 212-788-8604 | F: 212-788-8614 | kcobb@records.nyc.gov
[Quoted text hidden]

Exhibit D



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Asparagirl <asparagirl@gmail.com>

Tue, Jan 13, 2015 at 4:46 PM

To: "Cobb, Ken (Records)" <kcobb@records.nyc.gov>

Dear Mr. Cobb,

Thank you for acknowledging the receipt of my FOIL request last Tuesday, January 6th. However, it has now been more than five business days and I have not yet been given a timeline when I may expect an approval or a denial of that request.

The New York State Committee on Open Government states on its website: "When an acknowledgement [of a FOIL request] is given, it must include an approximate date within twenty business days indicating when it can be anticipated that a request will be granted or denied." (see <http://www.dos.ny.gov/coog/explanation.html>) Your e-mail receipt unfortunately did not provide me with that date.

Please let me know an expected date for the determination of my FOIL request and please confirm that you will let me know on or before Tuesday, February 3rd, i.e. twenty business days from your receipt of my request.

If no answer to my FOIL request is received by Wednesday, February 4th, I will consider my request to have been constructively denied and will move on to the appeal process, as per Section 89(4)(a) of the Freedom of Information Law.

sincerely,
Brooke Schreier Ganz

Sent from my iPhone
[Quoted text hidden]

Exhibit E



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Cobb, Ken (Records) <kcobb@records.nyc.gov>
To: Asparagirl <asparagirl@gmail.com>

Tue, Jan 20, 2015 at 11:39 AM

Dear Ms. Ganz:

I have attached my response to your FOIL request of 05 January 2015.

Sincerely,
Kenneth R. Cobb

Kenneth R. Cobb | Assistant Commissioner
31 Chambers Street, Suite 305 | New York, NY 10007
P: 212-788-8604 | F: 212-788-8614 | kcobb@records.nyc.gov

-----Original Message-----

From: Asparagirl [mailto:asparagirl@gmail.com]
Sent: Monday, January 05, 2015 3:14 PM
To: Cobb, Ken (Records)
Subject: FOIL Request - New York City marriage index

[Quoted text hidden]

FOIL response to GANZ 01-20-2015.pdf
125K



**NEW YORK CITY DEPARTMENT OF RECORDS AND
INFORMATION SERVICES
OFFICE OF THE COMMISSIONER**

31 Chambers Street, Suite 305
New York, NY 10007
(212) 788-8604
FAX (212) 788-8614
kcobb@records.nyc.gov
www.nyc.gov/records

Kenneth R. Cobb, Assistant Commissioner

January 20, 2015

Brooke Shreier Ganz
905 Ventura Way
Mill Valley CA 94941

Dear Ms. Ganz:

I am writing in response to your FOIL request dated 5 January 2015. The marriage record database that you have requested does not exist at the Department of Records and Information Services (DORIS). Our collection of historical marriage records consists of certificates of marriage for marriages reported to the Health Department in the five Boroughs (and predecessor jurisdictions) prior to 1938, and records of marriages (affidavit, license and certificate) filed by the City Clerk in the five Boroughs from 1908 through 1929. The original index to the Health Department series consists of a variety of hand-written and printed cards and books, based on location (Borough, County, Town, or Village, etc.) indicating name of bride and/or groom and the date of the marriage. There are separate indexes for bride and groom. The index to the City Clerk's license series consists of hand-written ledgers with groom and bride names listed according to the first two letters of the last name and then chronologically; groom names appear on the left page and bride names on the right side. There are separate ledgers for each year and Borough. As you noted in your letter, several years ago, volunteers in local genealogy groups volunteered to enter the Health Department marriage certificate index information into searchable databases. The databases were created from the original indexes; no additional data fields were included. These databases are used by Archives' staff as well as the public, and are available at no charge via the websites of the German and Italian Genealogy Groups and Ancestry.com. An electronic index to the license/affidavit series has not been produced. In order to search for a marriage record in this series it is necessary to examine the original ledger index, available on microfilm in the Municipal Archives.

Please let me know if you require any further information.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth R. Cobb".

Kenneth R. Cobb

Exhibit F



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Asparagirl <asparagirl@gmail.com>

Thu, Jan 29, 2015 at 2:01 PM

To: "Cobb, Ken (Records)" <kcobb@records.nyc.gov>

Dear Mr. Cobb,

Thank you for your reply to my FOIL request. It was very thorough and helpful. Attached are my follow-up questions and more narrowly-tailored requests for New York City marriage data under FOIL. Please feel free to contact me via e-mail at asparagirl@dca.net or via cellphone at 917-572-3834 if you have any questions or concerns with the request.

Thank you, and looking forward to hearing from you soon.

- Brooke Schreier Ganz

[Quoted text hidden]

FOIL request for NYC marriage index 2.pdf
49K

January 29, 2015

Dear Mr. Cobb.

Thank you for your recent thorough reply to my FOIL request from January 5, 2014. It seems that unfortunately there are no "official" electronic indices for New York City marriages held by the Department of Records and Information Services (DORIS) and the Municipal Archives, just the incomplete volunteer-created ones for a portion of the marriage records that were once held by the Health Department. If that is the case, then I still have some additional questions and requests:

- 1) For the certificates of marriage through 1938 that were once held by the Health Department, I understand that the original certificates are already available on microfilm on site at the Municipal Archives and on loan through the non-profit organization FamilySearch. The "brides index" and the "grooms index" are also available on microfilm at the Municipal Archives and through FamilySearch. Furthermore, volunteer genealogists have created searchable electronic copies of the brides and grooms index through the year 1937, have put those electronic indices online for free searches, and will presumably finish transcribing the 1938 indices at a later date.

How many microfilm rolls comprise the Municipal Archives' copy of the brides index and grooms index in total? Would copies of these microfilms be available to be requested under FOIL? They are, after all, the official indices to public data that are used by your office in the fulfillment of your daily government duties (i.e. fulfilling document copy requests), although I would assume that doing look-ups in the unofficial electronic database are faster and easier for your staff to accomplish.

Again, I recognize that copies of the brides index and grooms index already exist on microfilm, but those microfilm copies are copyrighted to FamilySearch, and are not public domain, even though the underlying information should be considered public data. I further recognize that the cost of copying a single microfilm through a commercial copying service generally is somewhere between \$50 and \$85 per roll, going by prevailing rates I've seen quoted online, and that I would be responsible for covering the costs if this option is available under FOIL. (Which, if it is not too financially onerous, I may request.)

- 2) The other set of marriage records held by DORIS/Municipal Archives is the City Clerk's license series, 1908-1929, which usually a three-sheet package that includes the original affidavit, the license, and the certificate. There is a handwritten index ledger of the grooms' and brides' names in this set of records, broken down as a separate ledger for each year and Borough. These index ledgers are available on microfilm at the Municipal Archives, but they are not available anywhere else, and unlike the Health Department series they have not yet been microfilmed by any non-profit groups or for-profit companies (i.e. FamilySearch, Ancestry.com, etc.). The only place they seem to be available is on site at 31 Chambers Street. Furthermore, for this series of documents there is no electronic index at all, volunteer-created or otherwise.

How many microfilm rolls comprise these bride and groom annual index ledgers?

Would copies of these microfilms be available to be requested under FOIL? I may also be interested in acquiring and making copies of these ledger index films, if they are not too numerous.

Is it correct that the original 1908-1929 City Clerk records (the three-part affidavit, license, and certificate) are also not available on microfilm anywhere in the world other than on site at the Municipal Archives? How many microfilms comprise these City Clerk records? Would copies of these microfilms be available to be requested under FOIL? I imagine there are quite a lot of microfilms for these three-part records, making the potential duplication costs quite high, but I may be able to find a sponsoring organization to cover the costs of duplication.

- 3) Finally, I intended my original FOIL request to you to cover electronic copies of the entire New York City marriage index through the present day. However, thanks to your helpful and thorough reply, I realize now that I will have to break this overly ambitious FOIL request up into two parts, one being this smaller request to you at DORIS/Municipal Archives for the pre-1938 marriages, and a new request created and sent to the City Clerk's office for their post-1938 marriages, as your two agencies do not share data nor a FOIL officer.

The New York City Clerk's office does not list a contact name for their FOIL records officer anywhere on their website, which is quite uncommon for a city agency, but I was recently able to determine that their FOIL officer is Patrick Synmoie, their general counsel. I will be creating a separate FOIL request to send to his office in the near future to cover the acquisition of any 1938-2015 electronic marriage index they may hold, using similar legal grounds (i.e. the 1993 *Gannett* case) cited in my FOIL request to the Municipal Archives. I would be happy to send your agency a copy if I am successful.

For the record, I find it curious that the City Clerk's office is only supposed to hold on to marriage-related materials for fifty years, i.e. marriages through 1965, and yet for some reason they have not yet transferred to you their 1938-1965 holdings as they should have under statute. This may be the subject of a future FOIL request to them, separate from the issue of my requesting their electronic marriage index.

I am looking forward to your timely response to this request and the questions I have posed herein. Feel free to e-mail or call me if you have any questions or need further clarification on any point. Please be advised that a lack of response within the twenty business day timeframe established by FOIL will be treated as a constructive denial and I will move to appeal. Thank you.

Sincerely,

Brooke Schreier Ganz

Exhibit G



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Cobb, Ken (Records) <kcobb@records.nyc.gov>
To: Asparagirl <asparagirl@gmail.com>

Thu, Jan 29, 2015 at 2:11 PM

Dear Brooke Schreier Ganz:

I am writing to acknowledge receipt of your follow-up questions. I am shortly leaving on a vacation; returning to the office on 12 February. I expect that I will be able to prepare a reply and send it to you by the end of the week of 16 February.

Sincerely,

Ken Cobb

From: Asparagirl [mailto:asparagirl@gmail.com]
Sent: Thursday, January 29, 2015 5:02 PM
To: Cobb, Ken (Records)
Subject: Re: FOIL Request - New York City marriage index

Dear Mr. Cobb,

Thank you for your reply to my FOIL request. It was very thorough and helpful. Attached are my follow-up questions and more narrowly-tailored requests for New York City marriage data under FOIL. Please feel free to contact me via e-mail at asparagirl@dca.net or via cellphone at 917-572-3834 if you have any questions or concerns with the request.

Thank you, and looking forward to hearing from you soon.

- Brooke Schreier Ganz

On Tue, Jan 20, 2015 at 11:39 AM, Cobb, Ken (Records) <kcobb@records.nyc.gov> wrote:

Dear Ms. Ganz:

I have attached my response to your FOIL request of 05 January 2015.

Sincerely,
Kenneth R. Cobb

8/27/2015

Gmail - FOIL Request - New York City marriage index

Kenneth R. Cobb | Assistant Commissioner
31 Chambers Street, Suite 305 | New York, NY 10007
P: 212-788-8604 | F: 212-788-8614 | kcobb@records.nyc.gov

-----Original Message-----

From: Asparagirl [<mailto:asparagirl@gmail.com>]
Sent: Monday, January 05, 2015 3:14 PM
To: Cobb, Ken (Records)
Subject: FOIL Request - New York City marriage index

Dear Mr. Cobb,

Attached to this e-mail is a PDF with a FOIL request for the New York City marriage index. Please feel free to contact me via e-mail at asparagirl@dca.net or via cellphone at 917-572-3834 if you have any questions or concerns with the request.

Thank you, and looking forward to hearing from you soon.

- Brooke Schreier Ganz



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Cobb, Ken (Records) <kcobb@records.nyc.gov>
To: Asparagirl <asparagirl@gmail.com>

Fri, Feb 13, 2015 at 11:21 AM

Dear Ms Schreier Ganz:

Just to let you know I will need a few more days to reply to your follow-up questions. I expect to send answers by the end of next week.

Thank you.

Ken Cobb

From: Asparagirl [mailto:asparagirl@gmail.com]
Sent: Thursday, January 29, 2015 5:02 PM
To: Cobb, Ken (Records)
Subject: Re: FOIL Request - New York City marriage index

Dear Mr. Cobb,

Thank you for your reply to my FOIL request. It was very thorough and helpful. Attached are my follow-up questions and more narrowly-tailored requests for New York City marriage data under FOIL. Please feel free to contact me via e-mail at asparagirl@dca.net or via cellphone at 917-572-3834 if you have any questions or concerns with the request.

Thank you, and looking forward to hearing from you soon.

- Brooke Schreier Ganz

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Dear Ms. Ganz:

I have attached my response to your FOIL request of 05 January 2015.

Sincerely,
Kenneth R. Cobb

Kenneth R. Cobb | Assistant Commissioner
31 Chambers Street, Suite 305 | New York, NY 10007
P: 212-788-8604 | F: 212-788-8614 | kcobb@records.nyc.gov

-----Original Message-----

From: Asparagirl [mailto:asparagirl@gmail.com]
Sent: Monday, January 05, 2015 3:14 PM
To: Cobb, Ken (Records)
Subject: FOIL Request - New York City marriage index

Dear Mr. Cobb,

Attached to this e-mail is a PDF with a FOIL request for the New York City marriage index. Please feel free to contact me via e-mail at asparagirl@dca.net or via cellphone at 917-572-3834 if you have any questions or concerns with the request.

Thank you, and looking forward to hearing from you soon.

- Brooke Schreier Ganz



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Asparagirl <asparagirl@gmail.com>

Fri, Feb 13, 2015 at 12:22 PM

To: "Cobb, Ken (Records)" <kcobb@records.nyc.gov>

Thanks for the update, I appreciate it.

- Brooke Schreier Ganz

On Fri, Feb 13, 2015 at 11:21 AM, Cobb, Ken (Records)

[Quoted text hidden]

Exhibit H



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Cobb, Ken (Records) <kcobb@records.nyc.gov>

Thu, Feb 26, 2015 at 2:46 PM

To: Asparagirl <asparagirl@gmail.com>

Dear Ms. Schreier Ganz:

I am attaching my response to the questions in your letter of 29 January 2015.

Sincerely,

Kenneth Cobb

-----Original Message-----

From: Asparagirl [mailto:asparagirl@gmail.com]

[Quoted text hidden]

**Brooke Shreier Ganz Feb 26, 2015.pdf**

518K



**NEW YORK CITY DEPARTMENT OF RECORDS AND
INFORMATION SERVICES
OFFICE OF THE COMMISSIONER**

31 Chambers Street, Suite 305
New York, NY 10007
(212) 788-8604
FAX (212) 788-8614
kcobb@records.nyc.gov
www.nyc.gov/records

Kenneth R. Cobb, Assistant Commissioner

February 26, 2015

Brooke Shreier Ganz
905 Ventura Way
Mill Valley CA 94941

Dear Ms. Ganz:

I am writing in response to the questions in your letter dated 29 January 2015.

- 1) The original card and book indexes to Health Department marriage certificates comprise approximately 135 rolls of microfilm. As I previously indicated, all of the information recorded in the original indexes has been input into electronic databases. Free access to the databases is provided online and in our facility. However, if you wished to purchase copies of the microfilm, the cost would be \$35.00 per roll, plus shipping.
- 2) The indexes to the City Clerk marriage license series (1908-1929) comprise 48 rolls of microfilm. They would also be available for purchase at \$35.00 per roll, plus shipping. Yes, you are correct; the three-part City Clerk records are available exclusively from the Department of Records & Information Services Municipal Archives, either on-site, or via mail order or online request. The license series has been microfilmed for preservation and access; I do not have a precise count of the number of rolls—there are hundreds. They are not subject to FOIL, and you could not request to purchase a copy of the entire series (you could, of course, purchase copies of individual records).

Please let me know if you require any further information.

Sincerely,

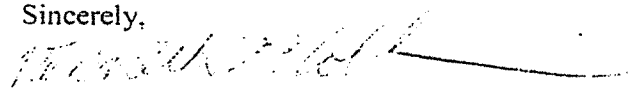

Kenneth R. Cobb

Exhibit I



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Asparagirl <asparagirl@gmail.com>

Thu, Mar 19, 2015 at 11:54 AM

To: "Cobb, Ken (Records)" <kcobb@records.nyc.gov>

Dear Mr. Cobb,

Thank you so much for your reply, and my apologies for taking so long to give you a response. Because they are available nowhere else in any form, except for onsite at the Municipal Archives, I am very interested in obtaining copies of the 48 rolls of microfilm that hold the indices to the City Clerk marriage license series. At your stated price of \$35 per roll -- and thank you for such a reasonable price for the duplication costs! -- that works out to be \$1680 for the whole set. I assume I would also have to provide a little extra to cover the costs of shipping to me in California, which is fine.

Right now, I am in the process of talking to some non-profit organizations who may be able to help me cover the costs of the duplication. Better yet, they would hopefully cover the costs of digitizing every image on those 48 microfilm rolls and making those images freely available online. Ideally, that would then be followed by volunteers starting an indexing project so that there would finally be a searchable electronic index to the City Clerk marriage license series. I would of course be happy to share the digital images and any eventual electronic index file with you at the Municipal Archives -- and with anyone else who wants it, as open data. I am also planning on eventually donating my physical microfilm copies to a non-profit or library who could best make use of them; I was thinking of getting in contact with the New York Public Library, maybe the Milstein Division that handles the big genealogy reading room at the 42nd Street branch.

In the meantime, just knowing that there are going to be more people able to use a series of genealogical records that previously had such limited availability is pretty exciting. As an example from my own research, I've found that these City Clerk records have uniquely enabled me to break down "brick walls" in my family tree, due to the fact that the two witnesses to a marriage must list their addresses on the City Clerk version of the marriage certificate (on the second page), but they do not list their addresses on the actual "regular" marriage certificate, the one that most people more commonly request. Those addresses led me to finally tracking down a brother of my great-great-grandfather who served as a witness to my great-grandparents' marriage and who lived in upstate New York, rather than in New York City, as I had wrongly assumed for years. (Finding the right "Jacob Eisenberg" in Binghamton was a lot easier than trying to find the right one in New York City...)

I hope to have a definitive answer for you in another week or two about ordering copies of the 48 microfilms. I'll e-mail you as soon as I know more details, but for now, please assume that somehow that duplication will go ahead within the next few months.

Finally, the idea for this FOIL request originally came about because

of a New Year's Resolution I made to myself this past January: to stop the cycle where genealogists must grovel before government records holders for access, and instead to start demanding them as public domain open data. Specifically, I was hoping to test whether or not FOIL (or FOIA, at the federal level) could be a useful tool for genealogists and researchers to obtain access to more records, and it looks like my hunch was correct: in some cases, it can be useful as an avenue for getting access to records. So, thank you for being a test case for that project. :-)

And next up: I'll be filing FOIL requests with the City Clerk's office in NYC, and then with non-NYC records in New York State separately. And after marriage records, I'll be moving on to divorce records and domestic partnership records. I've already had phone calls with people at the New York State Committee on Open Government, who agreed that this sounded feasible, so it looks like this might be the start of a lot of great new records being made available to the public in the next year or two. I'm pretty excited.

- Brooke Schreier Ganz

On Thu, Feb 26, 2015 at 2:46 PM, Cobb, Ken (Records)

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Exhibit J



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Asparagirl <asparagirl@gmail.com>

Tue, Apr 7, 2015 at 6:25 PM

To: "Cobb, Ken (Records)" <kcobb@records.nyc.gov>

Hi Mr. Cobb,

I'd like to move forward with acquiring copies of the 48 microfilms for the indices to the City Clerk marriage license series. At \$35 per roll, that works out to be \$1680 for the whole set, and presumably a little more than that to cover the shipping costs. Please let me know how to proceed.

(I don't suppose the Municipal Archives takes credit cards?)

- Brooke Schreier Ganz

Exhibit K



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Cobb, Ken (Records) <kcobb@records.nyc.gov>
To: Asparagirl <asparagirl@gmail.com>

Thu, Apr 9, 2015 at 12:04 PM

Ms. Ganz:

Before you place this order you might want to investigate the FamilySearch.org "indices" to NYC vital records they recently made available on their website. Their index (they created it) contains many more fields (i.e. parents' names, places of residence, etc.) than the original indexes that have been automated by the volunteer groups and now available online.

Ken Cobb

-----Original Message-----

From: Asparagirl [mailto:asparagirl@gmail.com]
Sent: Tuesday, April 07, 2015 9:26 PM
To: Cobb, Ken (Records)
Subject: Re: FOIL Request - New York City marriage index

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Exhibit L



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Asparagirl <asparagirl@gmail.com>

Thu, Apr 9, 2015 at 12:15 PM

To: "Cobb, Ken (Records)" <kcobb@records.nyc.gov>

Hi Mr. Cobb,

Thanks for the heads up, but I did see the three new databases that FamilySearch just put online late last month, including their new NYC marriage records database through 1938. It's pretty great, despite some fairly, um, "creative" transcription problems for some of the surnames (not wholly their fault, given the variable handwriting on those things).

But that database is still just pulling data from the Health Department certificates, right? It's not from the City Clerk's index books nor the City Clerk's affidavit/license records. Those records still exist solely at the Municipal Archives, right? So, I might as well get a copy of them, and scan them and get those online too, somehow. The City Clerk's affidavits/licenses have slightly different and sometimes more complete information than the Health Department certificates (i.e. witnesses' addresses, the bride's occupation, sometimes the exact town of birth name and not just the country name, different and sometimes better handwriting), so more information is always better.

- Brooke

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Exhibit M



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Asparagirl <asparagirl@gmail.com>

Tue, Apr 28, 2015 at 11:51 AM

To: "Cobb, Ken (Records)" <kcobb@records.nyc.gov>

Hi Mr. Cobb,

I haven't heard back from you, so I just wanted to check in and ask about the status of my FOIL request. Any news? Do you need anything from me? Do you have an approximate timetable when I can receive the microfilms -- or at least the invoice for them? I'm ready to send payment whenever you are.

- Brooke Schreier Ganz

[Quoted text hidden]

Exhibit N



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Cobb, Ken (Records) <kcobb@records.nyc.gov>

Tue, Apr 28, 2015 at 12:54 PM

To: Asparagirl <asparagirl@gmail.com>

Dear Ms. Schreier Ganz:

In my message of February 26, 2015, I indicated that the microfilm of the marriage license index was available for purchase. This is incorrect. The indexes to vital records, in any format, are not subject to FOIL and are not available for purchase. The indexes are available to the public, at no cost, in our facility at 31 Chambers Street, and in some instances they available online at no cost.

Sincerely,
Kenneth Cobb

-----Original Message-----

From: Asparagirl [mailto:asparagirl@gmail.com]

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Exhibit O



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Asparagirl <asparagirl@gmail.com>

Tue, Apr 28, 2015 at 2:36 PM

To: "Cobb, Ken (Records)" <kcobb@records.nyc.gov>, robert.freeman@dos.ny.gov

Dear Mr. Cobb,

That is very unfortunate to hear, and frankly a surprising development in light of your previous letter to me stating that the indices were indeed available under FOIL, including to the point of quoting me an actual figure on the cost to fill my request (48 microfilms at \$35 per film), which I was and remain happy to pay.

I will therefore be treating this e-mail from you as a FOIL denial and will be moving my FOIL request on to the formal appeal stage.

The Municipal Archives' denial of my request for copies of the 1908-1929 City Clerk's office marriage license series indices contradicts the assessments of the New York State Committee on Open Government (COOG), with whom I consulted on the phone both before making my original FOIL request to you in January, and again today after receiving your e-mail. Please be advised that they find the legal basis of my request, including the Gannett case, to be an appropriate one. The Gannett case applies specifically to the open publication of the indices to marriages, which are state-issued "licenses", much like a hunting license or business license, and which are treated differently than other vital records such as births and deaths. Furthermore, a basic index to licenses has been held by the courts not to be infringing on people's privacy, provided that a few intrusive details such as exact street addresses are removed from the index beforehand. The types of information confirmed by you to be in the 1908-1929 indices I seek do not have any of that overly-intrusive information included.

For more information about the Gannett decision and how it impacts requests for marriage indices, please see my original PDF request to the Municipal Archives (attached), or the guidelines set forth by COOG in their advisory opinion dated February 11, 1998, reference identifier FOIL-AO-f10608a (online at <http://docs.dos.ny.gov/coog/ftext/f10608a.htm>), or the decision *Gannett Co., Inc. v. City Clerk's Office, City of Rochester* [596 NYS2d 968, aff'd 197 AD2d 919 (1993)].

Furthermore, the Municipal Archives' claim that various New York City marriage indices are somehow freely available solely because they are available on site at 31 Chambers Street still denies their availability to anyone who may have legitimate research interests in New York City genealogy but who resides out of state -- as I do. And as we both know, the indices to these 1908-1929 City Clerk's office marriage license series are not online, and not available in other libraries, and never have been. And FOIL explicitly allows for the copying of official government records used in the course of regular business, provided the requestor is willing to pay for the copies, which I am. The statute does not limit these record copy requests merely because the records are also available in some other location

on site. See FOIL, §87 sub 1 b and c, which concerns access to agency records and fees that can be assessed, as well as §87 sub 2, which concerns the obligation of an agency to make records available for public inspection *and copying* (emphasis mine). Finally, please see §89 sub 3 a, which concerns an agency's obligations to make copies of a record upon payment of or offer to pay. The key words in that section are the affirmative "shall provide a copy", not a more lenient "may" provide. I emphasize once again that I am seeking access to marriage indices, not actual marriage records, and the privacy statutes do not apply in the same way to indices.

As required by the Freedom of Information Law, either you or the head or governing body of your agency, or whomever is designated to determine appeals, is required to respond to my appeal within 10 business days of the receipt. If the records are denied on appeal, please explain the reasons for the denial fully, in writing, as required by law.

In addition, please be advised that FOIL directs that copies of all appeals and the determinations that follow should also be sent to:

NYS Committee on Open Government (COOG)
Department of State
One Commerce Plaza
99 Washington Ave.
Albany, New York 12231

I have asked that COOG issue an advisory opinion to the Municipal Archives based on my request and this appeal, and the attorney on staff advised me on the phone today that he will do so. I am copying him on this e-mail and am attaching my original FOIL request to you and my follow-up letter, both from this January, so that he has copies. The Municipal Archives will still need to provide your appeal response to him, too, separately.

I await your reply within the next ten business days.

sincerely,

Brooke Schreier Ganz
(cc: Robert Freeman, Executive Director of the NYS Committee on Open Government)

On Tue, Apr 28, 2015 at 12:54 PM, Cobb, Ken (Records)
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2 attachments

 **FOIL request for NYC marriage index 2.pdf**
49K


 **FOIL request for NYC marriage index.pdf**
105K

Exhibit P



Brooke Ganz <asparagirl@gmail.com>

FOIL Request - New York City marriage index

Cobb, Ken (Records) <kcobb@records.nyc.gov>

Wed, May 6, 2015 at 11:31 AM

To: Asparagirl <asparagirl@gmail.com>

Ms. Ganz

As previously indicated, it is not an appropriate use of FOIL to request a copy of a record that is accessible to the public in the Municipal Archives. We are in the planning stages of a project to digitize the marriage license series and to create an index to the records that will be available online at no charge. I will let you know as we progress with the project.

Kenneth Cobb

-----Original Message-----

From: Asparagirl [mailto:asparagirl@gmail.com]

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