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FRANK HANDELMAN

REF:

WRITER'S DIRECT DIAL:

November 17, 2017

VIA FIRST CLASS MAIL ONLY

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

RE: *FOIL Request Dated September 22, 2017 Brooke Schreier Ganz, Founder of Reclaim The Records*

Dear Ms. Fuentes:

This letter constitutes an appeal from the decision dated October 18, 2017, by Patrick Synmoie, Esq., Counsel to the City Clerk, denying Brooke Schreier Ganz's September 22, 2017 request made pursuant to the New York Freedom of Information Law ("FOIL"), Public Officers Law § 84, *et seq.*¹

On September 22, 2017, Ms. Ganz submitted a letter-request for "an extract of the database of all New York City marriage records from January 1, 1996, through December 31, 2016."² The City Clerk denied Ms. Ganz's request in their October 18th letter, which

¹ Copies of Ms. Ganz's September 22, 2017 FOIL request and the City Clerk's October 18, 2017, denial of that request are enclosed for your reference.

² As she notes in that letter, her request is a follow-up to a prior, partially fulfilled FOIL request in which Ms. Ganz had requested a copy of the index to all New York City marriage records for 1930 through 2015. Although initially unresponsive, the City Clerk ultimately complied with the request as part of a settlement agreement to an Article 78 proceeding (*see Reclaim the Records, et al., v. The City of New York*, No. 100397/2016 [Sup Ct, NY Cnty]). To expedite the settlement, Ms. Ganz agreed to receive production of records only through 1996 after being informed by a member of the City Clerk's office that, starting in 1996, the data comprising the database had become "born digital" and was input directly as opposed to being separately compiled.

Alisa Fuentes, Records Access Appeals Officer

November 17, 2017

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claimed that “no such records exist.” The City Clerk’s response is without merit.

It is beyond dispute that “government is the public’s business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article” (Public Officers Law § 84; *see Matter of Doolan v. Boces*, 48 NY2d 341, 347 [1979]). The term “record” is defined to mean any information kept, held, filed, produced or reproduced by, with or for any agency ... in any physical form whatsoever including ... papers [and] computer tapes or discs” (Public Officers Law § 86(4)). While FOIL does not “require any entity to prepare any record not possessed or maintained by such entity” (Public Officers Law § 89(3)(a); *see Matter of Locator Servs. Group, Ltd., v. Suffolk County Comptroller*, 40 AD3d 760, 761 [2007], “[a]ny programming necessary to retrieve a record maintained in a computer storage system and to transfer that record to the medium requested by a person or to allow the transferred record to be read or printed shall not be deemed to be the preparation or creation of a new record” (Public Officers Law § 89(3)(a)).

“[T]he burden of proof rests solely with the [agency] to justify the denial of access to the requested records” (*Matter of Data Tree, LLC v Romaine*, 9 NY3d 454, 463 [2007]; *see Matter of Markowitz v Serio*, 11 NY3d 43, 50-51 [2008]). This burden must be met “in more than just a plausible fashion” (*Matter of Data Tree, LLC v Romaine*, 9 NY3d at 462 [internal quotation marks omitted]; *see Matter of West Harlem Bus. Group v Empire State Dev. Corp.*, 13 NY3d 882, 885 [2009]; *Matter of Konigsberg v Coughlin*, 68 NY2d 245, 249 [1986]).

Here, Ms. Ganz has specifically requested production of “an extract of the database of all New York City marriage records” for January 1, 1996, through December 31, 2016. These are records that the City Clerk has acknowledged they maintain in a digital database in the regular course of their duties. We believe these records can be retrieved or extracted with reasonable effort. The City Clerk disingenuously claims that the requested records do not exist by characterizing Ms. Ganz’s request as having been made for a “basic index or finding aid.” While that language does appear in Ms. Ganz’s request, it was intended to exemplify the character of the information that we expect is responsive to the request. The request is clearly for an extract or records from the database maintained by the City Clerk’s Office.

Accordingly, the City Clerk should be directed to provide the requested extract from the New York City marriage record database for the specified dates. The requested information does not meet the requirements of any Public Officers Law exemption, and is precisely the type of information that should be released pursuant to FOIL: “[T]he public is vested with an inherent right to know and that official secrecy is anathematic to our form of government. Thus, the statute affords the public the means to attain information concerning the day-to-day operations of State government.” *Fink v. Lefkowitz*, 47 NY2d 567 [1979].

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Alisa Fuentes, Records Access Appeals Officer

November 17, 2017

Page 3

As required by the Freedom of Information Law, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of the receipt of an appeal. 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 the Freedom of Information Law directs that all appeals and the determinations that follow be sent to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, New York 12231.

Thank you for your consideration and continued public service.

Sincerely,



Marc A. Cannan

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

From nobody Fri Sep 22 14:06:36 2017
Content-Type: multipart/alternative;
boundary="=====
MIME-Version: 1.0
Subject: Freedom of Information Law Request: Index to all New York City
marriage records, 1996-2016
From: 43818-12634259@requests.muckrock.com
To: psynmoie@cityclerk.nyc.gov
Date: Fri, 22 Sep 2017 18:06:36 -0000
Message-ID: <20170922180636.13426.47728@58ed8e41-5907-4ffa-8fe9-
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Cc:
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MIME-Version: 1.0
Content-Transfer-Encoding: quoted-printable

September 22, 2017
New York City Clerk's Office
City Clerk of New York
ATTN: Record Room
141 Worth Street,
New York, NY 10013

To Whom It May Concern:

My name is Brooke Schreier Ganz and I am the founder and president of a 501(c)3 non-profit organization called Reclaim The Records. Pursuant to the New York State Freedom of Information Law (1977 N.Y. Laws ch. 933), I hereby request the following, on behalf of our organization:

We would like an extract of the database of all New York City marriage records from January 1, 1996 through December 31, 2016, inclusive. These records are held at your agency, the New York City Clerk's office. Please note that we are not asking for any actual marriage certificates or licenses, which we recognize have strict privacy rules. We are only seeking a basic index or finding aid to these records.

This request is a follow-up to a successful FOIL request that I made of your department last year, where I asked for a copy of the index to New York City marriage licenses from 1930-2015. After your office neglected to respond to both my FOIL request and my FOIL appeal in a timely manner, I filed an Article 78 petition in the Supreme Court of New York in mid-2016. Your office eventually settled that case with me, paid my attorneys fees, and delivered the index, which consisted of more than one hundred microfilm copies and several Microsoft Excel spreadsheets. However, I had asked in that original request for an index to all marriage records through 2015, but my attorney and I were told by your office that you could only provide me with an index up to 1995. Your office told us that starting in 1996, there was no longer a separately compiled "index" to marriages conducted in New York City, as the data started to become "born digital" at that point, and was inputted directly into a computer database. I accepted this as part of our legal settlement, and so I agreed to only accept the separate marriage index through 1995.

Therefore, our organization is now asking for an extract of the information

in this 1996-to-present marriage database, as this information would be analogous to a marriage index or a "marriage log" as defined in the law, and it would complete the years of information available to the public about New York City marriages.

We recognize that there may be parts of this marriage database that cannot be turned over in a FOIL request, as they would likely be infringing on people's privacy. Under FOIL, your agency is still required to provide us a sub-set of the information in the database, removing any columns of data that are too intrusive.

We request that the columns of data in this database extract include -- at the very least -- the same fields of data you already turned over to me in my previous FOIL request, which you agreed at that time were acceptable under the law. These database fields include:

- Bride (or Spouse #1) given name
- Bride (or Spouse #1) middle name
- Bride (or Spouse #1) surname
- Groom (or Spouse #2) given name
- Groom (or Spouse #2) middle name
- Groom (or Spouse #2) surname
- date of marriage license application
- county or Borough of marriage license application
- marriage license number

In this case, we would appreciate your including any other database fields which may reasonably be disclosed under the law, such as:

- Bride (or Spouse #1) name suffix (i.e. "Junior")
- Bride (or Spouse #1) sex
- Bride (or Spouse #1) city, state, and/or country of birth
- Bride (or Spouse #1) city, state, and/or country of residence
- Groom (or Spouse #2) name suffix (i.e. "Junior")
- Groom (or Spouse #2) sex
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- Groom (or Spouse #2) city, state, and/or country of residence
- any other database fields or columns that are not explicitly disallowed under the law

Please refer to the following case for a discussion of what has already been deemed to be public and not-public in a New York marriage index: "Gannett Co., Inc. v. City Clerk's Office, City of Rochester", 596 NYS 2d 968, affirmed unanimously, 197 AD 2d 919 (1993).

Please also read 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 They discuss what kinds of information in a marriage index or log are considered to be open to the public, and which ones can or should be withheld.

We would prefer to receive this database or database extract in SQL or CSV format, on a USB hard drive, with insured and trackable shipping to California; we will be happy to pay for all of this. The requested documents will be made available to the general public, and this request is not being made for commercial purposes. Please inform us of any potential charges in advance of fulfilling our request. 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. We look forward to receiving your response to this request within five business days, as the statute requires.

We very much hope that we will not have to take your office to court again.

Sincerely,

Brooke Schreier Ganz
Founder and President, Reclaim The Records
<https://www.ReclaimTheRecords.org/>

Filed via MuckRock.com

E-mail (Preferred): 43818-12634259@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/new-york-city-clerks-office-6264/index-to-all-new-york-city-marriage-records=-1996-2016-43818/?uuid-login=3D96b381e9-039b-4002-bf4c-2ea8edceb5fe&email=3Dpsynmoie%40cityclerk.nyc.gov#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock
DEPT MR 43818
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

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Content-Type: text/html; charset="utf-8"
MIME-Version: 1.0
Content-Transfer-Encoding: quoted-printable

<p>
September 22, 2017
New York City Clerk's Office
City Clerk of New York
ATTN: Record Room
141 Worth Street,
New York, NY 10013</p>

<p>To Whom It May Concern:</p>

<p>My name is Brooke Schreier Ganz and I am the founder and president of a 501(c)3 non-profit organization called Reclaim The Records. Pursuant to the New York State Freedom of Information Law (1977 N.Y. Laws ch. 933), I hereby request the following, on behalf of our organization:</p>

<p>We would like an extract of the database of all New York City marriage records from January 1, 1996 through December 31, 2016, inclusive. These records are held at your agency, the New York City Clerk's office. Please note that we are not asking for any actual marriage certificates or licenses, which we recognize have strict privacy rules. We are only seeking a basic index or finding aid to these records.</p>

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Sincerely,

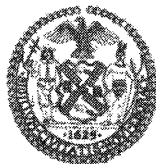
Brooke Schreier Ganz
Founder and President, Reclaim The Records
<https://www.ReclaimTheRecords.org/>

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Upload documents directly: https://www.muckrock.com/accounts/agency_login/new-york-city-clerks-office-6264/index-to-all-new-york-city-marriage-records-1996-2016-43818/?uuid-login=3D96b381e9-039b-4002-bf4c-2ea8edceb5fe&email=3Dpsynmoie%40cityclerk.nyc.gov#agency-reply
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</p>
=====1119595553012469162=====



THE CITY OF NEW YORK
OFFICE OF THE CITY CLERK
141 WORTH STREET
NEW YORK, N.Y. 10013

MICHAEL McSWEENEY
CITY CLERK, CLERK OF THE COUNCIL

PATRICK L. SYNMOIE, ESQ.
COUNSEL TO THE CITY CLERK

TEL: (212) 669-8171
FAX: (212) 669-4224
E-MAIL: paynmoie@cityclerk.nyc.gov

October 18, 2017

VIA ELECTRONIC MAIL

Brooke Schreier Ganz
Founder and President
Reclaim The Records

Re: FOIL request dated September 22, 2017

Dear Ms. Schreier Ganz:

I am writing in response to the above-captioned letter, received via electronic mail on September 22, 2017, in which you request, pursuant to the Freedom of Information Law ("FOIL"), "a basic index or finding aid" for "New York City marriage records from January 1, 1996 through December 31, 2016, inclusive." I am denying your request on the basis that no such records exist.

FOIL pertains to existing records and does not require an agency to create a record in response to a request for information. Section 89(3)(a) of the Public Officers Law states, in relevant part, that: "Nothing in this article [the Freedom of Information Law] shall be construed to require any entity to prepare any record not in possession or maintained by such entity except the records specified in subdivision three of section eighty-seven"

Should you wish to appeal this decision, you may send written notice within 30 days to Alisa Fuentes, Records Access Appeals Officer, at the following address:

Office of the City Clerk
141 Worth Street
New York, New York 10007

Sincerely,

Patrick Synmoie, Esq.
Counsel to the City Clerk