

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

TAMMY A. HEPPS, BROOKE GANZ and
RECLAIM THE RECORDS,

Petitioners,

NOTICE OF PETITION

THE NEW YORK STATE DEPARTMENT OF
HEALTH,

Index No.

Respondent.

PLEASE TAKE NOTICE that upon the affirmation of David B. Rankin of Beldock
Levine & Hoffman, LLP, sworn to on August 24, 2018, and the attached exhibits, the
undersigned petitioner will request this Court, at 9:30 in the morning on the 21 day of September,
2018, or as soon thereafter as counsel can be heard, at the Courthouse located at 16 Eagle Street,
Albany, New York, for an Order and Judgment granting the following relief to the undersigned
petitioner:

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

Dated: New York, New York
August 24, 2018

Respectfully submitted,



By: _____

David B. Rankin, Esq.
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To: Supreme Court, State of New York
County of Albany
All Purpose Terms of Court
16 Eagle Street
Albany, New York 12207

New York State Department of Health
Corning Tower
Empire State Plaza,
Albany, NY 12237

Records Access Appeals Officer
Division of Legal Affairs
Empire State Plaza
2438 Corning Tower
Albany, New York 12237-0026

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

TAMMY A. HEPPS, BROOKE GANZ and
RECLAIM THE RECORDS,

Petitioners,

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

THE NEW YORK STATE DEPARTMENT OF
HEALTH,

Index No.

Respondent.

I, DAVID B. RANKIN, an attorney duly licensed to practice law in the Courts of the State of New York, do 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, Petitioners Tammy A. Hepps ("Ms. Hepps" or "Petitioner") and Brooke Ganz ("Ms. Ganz" or "Petitioner") of Reclaim The Records, seek an order directing Respondent The New York State Department of Health ("DOH") to produce a complete copy of the New York State marriage index from January 1, 1967 through December 17, 2017, inclusive.

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

3. Petitioners have exhausted all administrative remedies. Petitioners respectfully request 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

A. Brooke Ganz's FOIL and Appeal

4. On September 12, 2017, Ms. Ganz sent a Freedom of Information Law request ("Request") to the DOH. *See* Exhibit A, FOIL Request, Sept. 12, 2017.

5. This request was filed through Muck Rock, a non-profit information sharing platform that assists anyone filing, tracking, or sharing public records requests. *See* Muck Rock, (available at <https://www.muckrock.com/about/how-we-work/>). After receiving the response to a FOIL request, Muck Rock sends a physical or digital copy to the user. *Id.*

6. The letter sought "a copy of the New York State marriage index, from 1881 (or as early as such records are available) through December 31, 2016, inclusive." *Id.* Ms. Ganz indicated she was not requesting the materials for any commercial or for-profit purpose, but to assist in genealogical research. She also offered to pay for the cost of the records. *Id.*

7. As support for the right of public access to marriage records, the FOIL Request itself referenced the Court's decision in *Gannett Co. v. City Clerk's Office*, 596 N.Y.S.2d 968, 970 (Sup. Ct. Monroe Cnty. 1993) (finding "the names of marriage license applicants would not . . . ordinarily and reasonably be regarded as intimate, private information.") (internal citation omitted) *aff'd*, 197 A.D.2d 919, 604 N.Y.S.2d 848 (1993), attached hereto as Exhibit B. While the underlying marriage license or certificate may have increased privacy protections, the marriage "log" or index is open to the public. *Id.*

8. The Request also referenced a 2015 advisory opinion from the Committee On Open Government, which found that indices of marriage records were accessible under FOIL. Exhibit C, COOG Advisory Opinion, Aug. 12, 2015 (“Domestic Relations Law § 19, which deals specifically with access to marriage records [and is the city analog to Domestic Relations Law § 20], does not serve as a valid basis for denying the records sought.”); *see also* Exhibit D, COOG Memorandum on Access to Marriage Records, Feb. 11, 1998 (finding that marriage records, including the parties names, date of marriage, and location were all within the scope of FOIL, and would not involve an unwarranted invasion of privacy).

9. Petitioner’s FOIL specified, “this request is for the basic index only, which might also be known as a ‘marriage log’ or a ‘finding aid’ or a database extract’ or similar terms.” Exhibit A. Ms. Ganz clarified that she was “not requesting any actual marriage certificates or marriage licenses.” *Id.*

10. Additionally, Ms. Ganz referenced the settlement of an Article 78 petition filed against the City Clerk’s Office in 2016, in which the New York City Clerk’s office provided New York City marriage indices from 1930 through 1995 in electronic form and microfilm. A copy of the Petition and settlement agreement in that action, *Reclaim the Records, et al. v. The City of New York*, No. 100397/2016 (Sup. Ct. NY Cnty. 2016), is attached hereto. *See* Exhibit E and F. The Stipulation of Settlement of Petitioner’s attorneys’ fees in this matter is also attached hereto. *See* Exhibit F.

11. Ms. Ganz received a September 13, 2017, letter acknowledging receipt of her Request and stating that a “determination as to whether your request is granted or denied will be reached in approximately 20 business days.” *See* Exhibit G, September 13, 2017, DOH Letter.

12. She received a subsequent letter dated October 12, 2017, notifying her that the DOH was “unable to respond . . . by the date previously given” but would “complete its process by April 12, 2018.” *See* Exhibit H, October 12, 2017, DOH Letter.

13. On February 15, 2018, DOH Records Access Officer Rosemarie Hewig sent an email to Ms. Ganz. *See* Exhibit I, Response Email.

14. The email indicated that the DOH had finished processing her Request and that she should receive “response materials” via United States Postal Service. *Id.*

15. Attached to the email was a “Response Letter” dated February 15, 2018. *See* Exhibit J.

16. The letter stated, “I have enclosed documents responsive to your request.” *Id.* No other documents or letters were attached via email.

17. Neither the email nor the letter indicated that any of the requested documents had been withheld, or that Ms. Ganz’s Request had been denied in any way. *See* Exhibits I, J.

18. Public Officers Law § 89(3)(a) requires a response “mak[ing] such record available to the person requesting it, deny[ing] such request *in writing* or furnishing a written acknowledgement of the receipt of such request and a statement of the approximate date . . . when such request shall be granted or denied.” (emphasis added).

19. The physical letter was allegedly addressed, as explained in the DOH’s denial of Ms. Ganz’s appeal, to:

MuckRock (Brooke Ganz)
Dept MR 42930
411A Highland Avenue
Somerville, MA 02144-2516

Exhibit K, Appeal Denial.

20. On March 8, 2018, Muck Rock notified Ms. Ganz that they had received her records. They previously had been unable to identify the proper recipient. The records were then sent via USPS to Ms. Ganz on March 9, 2018, and were received the next day. *See* Exhibit L, USPS Tracking.

21. On or about March 15, 2018, Ms. Ganz realized that the dates of 1968 through 2016 had been excluded from the DOH's production.

22. Over the next few weeks, Ms. Ganz made numerous telephone calls attempting to learn whether the records were to be supplemented.

23. On March 30, 2018, Ms. Ganz was finally able to speak with Ms. Hewig. She informed Ms. Ganz that responsive records dating from 1968 through 2016 would not be produced.

24. Ms. Ganz's Request was never denied, or partially denied, *in writing* as required by Public Officers Law § 89(3)(a).

25. The verbal conversation on March 30, 2018, in which Ms. Hewig informed Petitioner that she would not be receiving the records from 1968 through 2016 constituted an actual or constructive denial. *See* Public Officers Law § 89(4)(a) (failure to "conform to the provisions of subdivision three of this section shall constitute a denial.").

26. On April 9, 2018, ten days after she was informed for the first time that her Request would not be filled in full, Ms. Ganz filed a letter of appeal addressed to the Records Access Appeals Officer at the New York State Division of Legal Affairs. *See* Exhibit M, Appeal of FOIL Request.

27. The appeal was also filed within 30 days after Ms. Ganz realized that the records had only been provided up to 1968.

28. Respondent, by letter dated April 24, 2018, denied Petitioner's appeal in its entirety. *See* Exhibit K, Appeal Denial.

B. Tammy Hepp's FOIL and Appeal

29. On July 11, 2018, Ms. Hepps sent a Freedom of Information Law request ("Request") to the DOH. *See* Exhibit N, FOIL Request, July 11, 2018.

30. The letter sought "a[n] [electronic] copy of the New York State marriage index, from January 1, 1967 through December 31, 2017, inclusive." *Id.* Ms. Hepps indicated she was not requesting the materials for any commercial or for-profit purpose, but to assist in genealogical research. She also offered to pay for the cost of the records. *Id.*

31. Ms. Hepp's Request cited the same case law and decisions as the Request submitted by Ms. Ganz. *Id.*

32. Petitioner's FOIL specified, "this request is for the basic index only, which might also be known as a 'marriage log' or a 'finding aid' or a database extract' or similar terms." *Id.* Ms. Hepps clarified that she was "not requesting any actual marriage certificates or marriage licenses." *Id.*

33. As of August 7, 2018, the DOH had failed to respond to Ms. Hepp's Request. As such, Petitioner's Request had been constructively denied. *See* Public Officers Law § 89(3)(a) (requiring a response within "five business days of the receipt of a written request for a record . . ."); *see also* Public Officers Law § 89(4)(a) (failure to "conform to the provisions of subdivision three of this section shall constitute a denial.").

34. On August 7, 2018, twenty-six days after submitting the Request, Ms. Hepps filed an appeal from the DOH's constructive denial, addressed to the Records Access Appeals Officer at the New York State Division of Legal Affairs. *See* Exhibit O, Appeal of Constructive Denial, August 7, 2018.

35. Respondent denied Ms. Hepp's Request on August 9, 2018, twenty-nine days after its initial submission to the DOH. *See* Exhibit P, Response Letter.

JURISDICTION AND VENUE

36. Pursuant to Article 78 of the Civil Practice Law and Rules, this proceeding is the proper mechanism for seeking judicial review of a state agency's determination with respect to a FOIL request. Public Officers Law § 89(4)(b) ("[A] person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules.").

37. Respondent DOH is an agent of the State of New York and subject to FOIL.

38. The undersigned has exhausted Respondent'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* ¶¶ 1-11.

39. Respondent New York State Department of Health has its central offices located in the County of Albany. Venue therefore is proper in this Court. C.P.L.R. §§ 7804(a), 506(b).

BASIS FOR RELIEF

40. The refusal to provide agency or state records under FOIL is not reviewable under the typical Article 78 “arbitrary and capricious” standard.

41. When reviewing a FOIL denial “a court must apply a far different rule. It is to presume that all records of a public agency are open to public inspection and copying, and must require the agency to bear the burden of showing that the records fall squarely within an exemption to disclosure.” *New York Comm. for Occupational Safety & Health v. Bloomberg*, 72 A.D.3d 153, 158 (2010) (citing Public Officers Law § 89(5)(e)).

42. As to Ms. Ganz’s Request: Respondent’s failure to ever provide a written denial, or note of partial fulfillment, in direct contravention of Public Officers Law § 89(3)(a), makes her appeal timely as it was filed within 30 days after she was verbally informed her Request would not be filled in its entirety.

43. Additionally, the April 9, 2018 date of appeal was also within 30 days of Ms. Ganz’s March 15, 2018, realization that the response did not contain records from 1968 to 2016.

44. Respondent is incorrect in its assertion that the names of marriage applicants are exempt from disclosure. *See Gannett Co. v. City Clerk's Office*, 596 N.Y.S.2d 968, 970 (Sup. Ct. Monroe Cnty. 1993) (finding “the names of marriage license applicants would not . . . ordinarily and reasonably be regarded as intimate, private information.”) (internal citation omitted) *aff’d*, 197 A.D.2d 919, 604 N.Y.S.2d 848 (1993). While the underlying marriage license or certificate may have increased privacy protections, the marriage “log” or index is open to the public. *Id.*

45. These records are stored in an electronic database. Any private information contained therein, such as social security numbers, could be easily redacted. This would simply require removing or redacting an entire column of data. This would not rise to the level of the creation of new records, but would constitute a permissible and acceptable manipulation of records under FOIL. *See Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 465 (2007) (“A simple manipulation of the computer necessary to transfer existing records should not, if it does not involve significant time or expense, be treated as creation of a new document.”).

46. This “simple manipulation” would vitiate the DOH’s privacy concerns, without requiring the production of new records. *See New York Comm. for Occupational Safety & Health v. Bloomberg*, 72 A.D.3d 153, 161 (2010) (ordering a hearing with expert testimony on the issue of whether the redaction of state worker compensation records amounted to the creation of new records, or merely manipulation.); *see also Archdeacon v. Town of Oyster Bay*, 12 Misc. 3d 438, 446 (Sup. Ct. Nass. Cnty. 2006) (“Given that the categories of value or amount are to be redacted from the annual financial statements, [it is] the Court’s view that disclosure and copying would not constitute an unwarranted invasion of privacy.”).

47. Respondent’s argument that this disclosure is exempted by 10 NYCRR § 35.5(b)(4) is unavailing. Rules and Regulations do not constitute a statute “sufficient to provide an exemption under FOIL.” *See Archdeacon*, 12 Misc. 3d 446 (finding “9 NYCRR 9978, the rules and regulations enacted to guide the temporary commission, does not constitute a “statute” sufficient to provide an exemption [to FOIL].”); Public Officers Law Article 6 § 87(2)(a) (agencies records may be “specifically exempted from disclosure by state or federal statute.”).

48. As to Ms. Hepp's Request: This Request and subsequent appeal were undeniably filed in a timely manner.

49. Respondent has not, and cannot, meet its burden to show, as explained *supra*, that indices of marriage records are exempt from FOIL.

REQUEST FOR RELIEF

WHEREFORE, the undersigned petitioner respectfully requests this Court enter an Order directing Respondent the New York State Department of Health to: (1) produce New York State marriage indices dated January 1, 1967 through December 31, 2017; (2) directing that these records be produced in a searchable database, if possible; (3) awarding the undersigned her legal fees and expenses incurred in making the instant petition for relief; (4) and awarding such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 24, 2018

Respectfully submitted,



David B. Rankin, Esq.
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All Purpose Terms of Court
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Albany, New York 12207

New York State Department of Health
Corning Tower
Empire State Plaza,
Albany, NY 12237

Records Access Appeals Officer
Division of Legal Affairs
Empire State Plaza
2438 Corning Tower
Albany, New York 12237-0026

ATTORNEY'S VERIFICATION

I, David B. Rankin, 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
August 24, 2018

A handwritten signature in black ink, appearing to be 'D. Rankin', written over a horizontal line.

David B. Rankin

From: Reclaim The Records

Subject: Freedom of Information Law Request: Index to New York State marriages, 1881 to 2016

Email

To Whom It May Concern:

Pursuant to the New York State Freedom of Information Law (1977 N.Y. Laws ch. 933), I hereby request the following records:

I would like to receive a copy of the New York State marriage index, from 1881 (or as early as such records are available) through December 31, 2016, inclusive. This request is for the basic index only, which might also be known as a "marriage log" or a "finding aid" or a "database extract" or similar terms. Please note that I am not requesting any actual marriage certificates or marriage licenses.

Through discussions with the attorneys at the New York State Committee on Open Government (COOG), I believe this basic statewide marriage index is legally available to the public under FOIL, based on the outcome of the 1993 lawsuit "Gannett Co., Inc. v. City Clerk's Office, City of Rochester" [596 NYS2d 968 (1993)]. A copy of that decision may be found online at this URL:

<https://www.leagle.com/decision/1993506157misc2d3491455.xml>

Furthermore, I recently used that case as the basis of two successful FOIL requests and legal petitions for the New York City (not State) marriage license index, one filed in 2015 against the New York City Department of Records and Information Services for the 1908-1929 portion of the marriage index, and one in 2016 against the New York City Clerk's Office for the 1930-1995 portion of the marriage index. In both cases, the agencies eventually conceded that the information was legally available under FOIL, and I received my records, and later published them. However, those two requests only covered New York City records, as the city and the rest of the state are considered entirely separate vital records jurisdictions, and the non-NYC records are held by the New York State Department of Health in Albany.

The Department of Health has already compiled and made available to the public some of the years of this statewide marriage index. For several decades now, the earlier years of this marriage index have been available for free public use at a number of New York libraries, albeit in an old-fashioned microfiche format with availability limited by their locations and operating hours, as well as the deteriorating quality of the microfiche sheets. While the Department of Education does control those libraries, the state vital records microfiche there are still the property of the Department of Health, and are merely on long-term loan to the libraries. Therefore this FOIL request is directed to you at the Department of Health, and not to them. Furthermore, a set of these marriage index microfiche have also been made available by the Department of Health to the National Archives and Records Administration (NARA) facility in Manhattan.

The public statewide marriage index on microfiche only covers marriages that took place through approximately 1965 or 1966; it does not extend up to the present day. Perhaps the state

felt (incorrectly) that because actual marriage certificates are restricted from the public for a rolling fifty-year period that the basic index to the marriages must also be restricted for fifty years. However, this is incorrect based on the plain reading of the 1993 Gannett case referenced above, and as evidenced by numerous Advisory Opinions issued by COOG in the years since then, not to mention our own 2016 success in winning the NYC marriage index records all the way up through 1995. Therefore, this FOIL request includes all years of the state marriage index up through 2016, and does not end merely when the publicly available microfiche production ended.

I would prefer to receive these records in raw database format, preferably in SQL or CSV format on a USB hard drive, wherever possible. Clearly at some point there was an original state database that was printed out to create the pre-1965 paper copies, which were then photographed and turned into the microfiche. However, if that database is no longer available -- and if not, why not? what happened to it? -- then I will settle for high quality digital scans of the microfiche sheets, although I recognize they may be damaged or degraded. For more recent years (post-1965 or so), I presume some sort of compiled or transcribed database does still exist, as those years were never turned into microfiche; for those recent years, I would like to receive the files in their raw database format. I am willing to pay the costs associated with the records production, along with the costs of the USB hard drive and any insured shipping costs to California, if needed. Please inform me of any potential charges in advance of fulfilling my request.

This request is not being made for commercial purposes. The requested records will be scanned and uploaded to the Internet, and will be made freely available to the general public. It is anticipated that some non-profit genealogical groups may choose to transcribe the information in the marriage index, to turn it into a new text-searchable database. We would be happy to share any such database with the Department of Health.

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

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

Sincerely,

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



User Name: Susan Cassell

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

Job Number: 23113117

Document(1)

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

Client/Matter: -None-

Narrowed by:

Content Type
Secondary Materials

Narrowed by
-None-

◆ 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.

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.

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.

Outcome

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

LexisNexis® Headnotes

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

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

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

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

Headnotes/Syllabus

Headnotes

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

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

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

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

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

Judges: AFFRONTI

Opinion by: Francis A. Affronti, J.

Opinion

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

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

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

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

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

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

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

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

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

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

NYSCEF DOC. NO. 4

RECEIVED NYSCEF: 08/24/2018

COMMITTEE ON OPEN GOVERNMENT

STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
TELEPHONE: (518) 474-2518
FAX: (518) 474-1927
WWW.DOS.NY.GOV

COMMITTEE MEMBERS

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STEPHEN B. WATERS

CHAIRPERSON
FRANKLIN H. STONE

EXECUTIVE DIRECTOR
ROBERT J. FREEMAN

August 12, 2015

E-Mail

TO: Brook Schreier Ganz (asparagirl@gmail.com)

FROM: Robert J. Freeman, Executive Director

CC: Ken Cobb (kcobb@records.nyc.gov)

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the facts presented in your correspondence, except as otherwise.

Dear Ms. Ganz:

As you are aware, I have received your correspondence. I hope that you will accept my apologies for the delay in response.

You have sought an advisory opinion concerning your request made to the New York City Municipal Archives for "copies of the 1908-1929 City Clerk's office marriage license series..." You were informed that the records at issue, which are not accessible online or via other electronic media, but rather are stored on microfilm, are available to view at the Municipal Archives. Because you reside in California, traveling to New York City to inspect the records would be unreasonable, and you have offered to pay for copies of the "48 microfilms for the indices to the City Clerk marriage license series" at the rate of 35\$ per roll, plus the cost of shipping. However, Kenneth Cobb, the Director of the Archives, wrote that "The indexes to vital records, in any format, are not subject to FOIL and are not available for purchase."

In consideration of the language of the law and its interpretation by the courts, I respectfully disagree with Mr. Cobb's response. In this regard, I offer the following comments.

First, the Freedom of Information Law (FOIL) pertains to all government agency records, and §86(4) of that statute defines the term "record" to mean "any information kept, held, filed, produced or reproduced by, with or for an agency...in any physical form whatsoever..." Based on that provision, it is clear in my opinion that the microfilms at issue constitute "records" that fall within the scope of FOIL and are subject to rights of access.

Second, the correspondence between you and Mr. Cobb indicates that the content of the records sought is clearly public. Although he wrote that the indices are neither subject to FOIL nor available for purchase, in the same paragraph, he added that they "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." For the reason expressed above, all



**Department
of State**

Brook Schreier Ganz

August 12, 2015

Page 2

government agency records fall within the scope of FOIL, and §87(2) has since its enactment required that accessible records be made available for inspection and copying. Further, pursuant to §89(3)(a), agencies must copy accessible records upon payment of the requisite fee.

Third, it has been found by the courts that analogous records are available under FOIL, and that the Domestic Relations Law, §19, which deals specifically with access to marriage records, does not serve as valid basis for denying access to the records sought. In Gannett Co., Inc. v. City Clerk's Office, City of Rochester [596 NYS2d 968 (1993)], the issue involved names of persons to whom marriage licenses were issued that were contained in "a log", which would appear to be the equivalent of the indices maintained by the Municipal Archives. In short, the court determined that disclosure of the names "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'", and that petitioners have the right to gain "unrestricted access to the names of couples to whom marriage licenses have been issued" (*id.*, 970). I point out that the Appellate Division affirmed for the same reasons as those expressed by Supreme Court (197 AD2d 919).

In an effort to enhance understanding of and compliance with applicable law, a copy of this opinion will be forwarded to Mr. Cobb.

I hope that I have been of assistance.



**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

M E M O R A N D U M

TO: Hank Greenberg

FROM: Bob Freeman

SUBJECT: Access to Marriage Records

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

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

Commercial or Fund-raising Purposes

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

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

"Zones" of Accessible and Deniable Information

Accessible Information

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

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

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

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

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

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

Deniable Information

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

NYSCEF DOC. NO. 5

RECEIVED NYSCEF: 08/24/2018

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

FILED: ALBANY COUNTY CLERK 08/24/2018 02:24 PM

NYSCEF DOC. NO. 5

INDEX NO. 905431-18

RECEIVED NYSCEF: 08/24/2018

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORKRECLAIM THE RECORDS and
BROOKE SCHREIER GANZ,

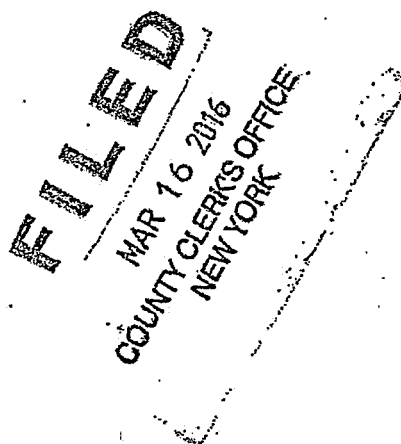
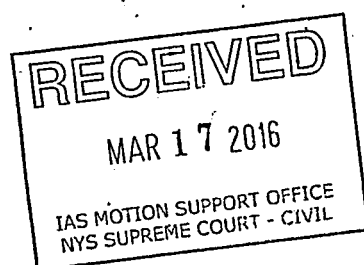
Petitioner,

NOTICE OF PETITIONTHE CITY OF NEW YORK and OFFICE OF THE
CITY CLERK,Index No. 100397/2016

Respondent.

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

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



Dated: New York, New York
March 16, 2016

Respectfully submitted,

By: _____



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

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

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

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

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

RECLAIM THE RECORDS and
BROOKE SCHREIER GANZ,

Petitioner,

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

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

Index No. 100397 - 2016

Respondent.

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

PRELIMINARY STATEMENT

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

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

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

17. Respondent City Clerk is an agency of respondent CITY and subject to FOIL.
18. The undersigned has exhausted respondent City Clerk's internal appeals process, and the instant petition has been filed within the four-month period thereafter specified in C.P.L.R. § 217(1). See supra ¶¶ 3-21.
19. Both respondents City Clerk and CITY have their central offices located in the County of New York. Venue therefore is proper in this Court. C.P.L.R. §§ 7804(a), 506(b).

BASIS FOR RELIEF

20. When a State or municipal agency makes a determination which is arbitrary and capricious, the aggrieved party may challenge that determination in an Article 78 petition. C.P.L.R. § 7803(3).
21. Respondents City and City Clerk failed to provide a specific articulation as to which records would and would not be provided and failed to provide a description of the records held at Petitioner's request.

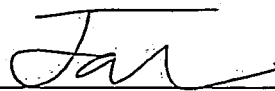
REQUEST FOR RELIEF

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

Dated: New York, New York
March __, 2016

Respectfully submitted,

By: _____



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

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

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

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

ATTORNEY'S VERIFICATION

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

I am the attorney of record for the Petitioner.

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

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

Dated: New York, New York
March __, 2016



Jane L. Moisan

EXHIBIT A

2/9/2016

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

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

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

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

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

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From: Reclaim The Records
12/30/2015

Subject: None

To Whom It May Concern:

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

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

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

2/9/2016

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

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

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

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

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

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

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

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

Sincerely,

Brooke Schreier Ganz
Founder, Reclaim The Records

2/9/2016

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

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

From: MuckRock.com

01/14/2016

Subject: None

To Whom It May Concern:

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

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

From: MuckRock.com

01/29/2016

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

To Whom It May Concern:

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

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

MuckRock is a collaborative news site that gives you the tools to keep our government transparent and accountable.

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SECTIONS

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2/9/2016

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

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EXHIBIT B



State of New York
Department of State
Committee on Open Government

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. Yudelsohn*, 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. Ct., 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 in an unwarranted invasion of personal privacy.

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

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

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

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

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

Deniable Information

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

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

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

Proper Purpose

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

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

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

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

Thanks.

RJF:jm

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



User Name: Susan Cassell

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

Job Number: 23113117

Document(1)

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

Client/Matter: -None-

Narrowed by:

Content Type
Secondary Materials

Narrowed by
-None-

EXHIBIT C



Positive

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

Gannett Co. v. City Clerk's Office

Supreme Court of New York, Monroe County

March 15, 1993, Decided

Index No. 92/12899

Reporter

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

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

Notice: [***1] EDITED FOR PUBLICATION

Subsequent History: As Amended June 23, 1993.

Core Terms

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

Case Summary**Procedural Posture**

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

Overview

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

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

Outcome

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

LexisNexis® Headnotes

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

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

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

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

Headnotes/Syllabus**Headnotes**

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

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

Susan Cassell

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

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

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

Judges: AFFRONTI

Opinion by: Francis A. Affronti, J.

Opinion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT D

Rankin & Taylor

Attorneys at Law

11 Park Place, Ste. 914
New York, NY 10007

Jane@DRMTLaw.com
Phone: 212-226-4507
Fax: 212-658-9480

VIA FIRST CLASS MAIL ONLY

February 10, 2016

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

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

Dear Records Access Appeals Officer:

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

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

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

Reclaim the Records
February 9, 2016
Page 2 of 2

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

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

Sincerely,

/s/

Jane L. Moisan
Associate Attorney
Encls.

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

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

Client

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

----- X
RECLAIM THE RECORDS and
BROOKE SCHREIER GANZ,

Petitioners,

— against —

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

Respondents.
----- X

**STIPULATION OF
SETTLEMENT AND
DISCONTINUANCE**

Index No. 100397/2016
IAS Part 17
Justice Shlomo S. Hagler

WHEREAS, Petitioners Reclaim the Records and Brooke Schreier Ganz commenced this proceeding on or about March 16, 2016, seeking to obtain marriage record indexes from Respondents the City of New York and the Office of the City Clerk of New York (“City Clerk”) pursuant to the Freedom of Information Law (“FOIL”), New York Public Officers Law §§ 84, *et seq.*; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-referenced proceeding is hereby dismissed with prejudice, and without costs, expenses, or attorneys’ fees to any party in excess of the amount specified in paragraph “3” below.

2. Respondents hereby agree that upon Petitioners’ payment of the invoice attached hereto as Exhibit A, Respondents will produce the following records to Petitioners: (i) 110 Microfilm rolls containing copies of marriage record indexes for the years 1930-1972; and (ii) a flash drive with data from the City Clerk’s electronically-stored indexes for the years 1950-1995, excluding data showing dates of birth. Respondents agree to mail the foregoing records by UPS or FedEx to Petitioners, directed to the address provided by Petitioners’ counsel, by September 16, 2016, subject to any reasonable and unforeseen delays.

3. The City of New York hereby agrees to pay Petitioners FOUR THOUSAND FIVE HUNDRED EIGHTY DOLLARS AND ZERO CENTS (\$4,580.00) in full satisfaction of all claims for attorneys' fees, costs, and expenses related to the above-referenced proceeding and Petitioners' December 30, 2015 FOIL request to which this proceeding relates. Payment will be made by check, payable to "Rankin & Taylor PLLC."

4. In consideration for the production of records set forth in in paragraph "2" above and the payment of the amount specified in paragraph "3" above, Petitioners agree to the dismissal with prejudice of all claims that were or could have been asserted against Respondents in this proceeding, and to release Respondents, their successors or assigns, and all present or former officials, employees, representatives or agents of Respondents from any and all liability, claims, and/or rights of action arising from the allegations asserted by Petitioner in this proceeding, including claims for costs, expenses, and attorneys' fees.

5. Petitioners shall execute and deliver to Respondents' counsel all documents necessary to effect this Stipulation of Settlement and Discontinuance (the "Stipulation"), including, but not limited to, a release from Petitioners based on the terms of paragraphs "2", "3", and "4" above, and a completed Substitute W-9 form for Petitioners' counsel. Payment of the amount specified in paragraph "3" above is conditioned upon delivery of these documents to Respondents' counsel.

6. This Stipulation contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

7. Nothing contained herein shall be deemed to be an admission by Respondents that they have in any manner or way violated the provisions of New York Public Officers Law §§ 84, *et seq.*, Petitioners' rights, or the rights of any other person or entity, as defined in the constitutions, statutes,

ordinances, rules, or regulations of the United States, the State of New York, the City of New York, or any other rules, regulations, or bylaws of any department or subdivision of the City of New York.

8. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or the City Clerk.

9. This Stipulation shall not be admissible in, nor is it related to, any other litigation, proceeding, or settlement negotiation, except as necessary to enforce its terms.

10. Facsimile and photocopied signatures on this Stipulation shall have the same effect as original signatures.

11. This Stipulation contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York
September ____, 2016

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(212) 356-0896
otuffaha@law.nyc.gov

By: _____
Jane L. Moisan, Esq

By: _____
Omar H. Tuffaha
Assistant Corporation Counsel

**Department
of Health****ANDREW M. CUOMO**
Governor**HOWARD A. ZUCKER, M.D., J.D.**
Commissioner**SALLY DRESLIN, M.S., R.N.**
Executive Deputy Commissioner

September 13, 2017

MuckRock News
DEPT MR 42930
411A Highland Ave
Somerville, MA 02144

FOIL # 17-09-123

Dear MuckRock News:

This will acknowledge receipt of your request for records under the Freedom of Information Law, received by this office on September 12, 2017.

Your request has been forwarded to the appropriate Department program area(s) to identify documents that are responsive to your request and which may be made available pursuant to all applicable provisions of the Freedom of Information Law.

A determination as to whether your request is granted or denied will be reached in approximately 20 business days or we will notify you in writing if the responsible program area(s) should require additional time to locate, assemble, and review documents that may be responsive to your request.

Please note that, pursuant to Article 6 of the Public Officers Law, a charge may be applied to your request, including the actual cost of the medium used to respond to your Freedom of Information Law request and/or other related costs. When responsive records have been identified, you will be informed of any cost and how payment should be made.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosemarie Hewig".

Rosemarie Hewig, Esq.
Records Access Officer

RH/dxd

**Department
of Health****ANDREW M. CUOMO**
Governor**HOWARD A. ZUCKER, M.D., J.D.**
Commissioner**SALLY DRESLIN, M.S., R.N.**
Executive Deputy Commissioner

October 12, 2017

Brooke Ganz
MuckRock News
DEPT MR 42930
411A Highland Ave
Somerville, MA 02144

FOIL #: 17-09-123

Dear Ms. Ganz:

This letter is in regard to your Freedom of Information Law request of September 12, 2017, which is currently being processed.

Please be advised this Office is unable to respond to your request by the date previously given to you because a diligent search for responsive documents is still being conducted.

We estimate that this Office will complete its process by April 12, 2018. The Department will notify you in writing when/if the responsive materials are available for release or if the time needed to complete your request extends beyond the above date.

Should you require additional information or wish to discuss this matter further, please do not hesitate to contact me at (518) 474-8734.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosemarie Hewig".
Rosemarie Hewig, Esq.
Records Access Officer

RH/jt

From: New York State Department of Health**02/15/2018****Subject: FOIL# 17-09-123****Email**

Good Afternoon Ms. Ganz,

Attached you will find the response letter to your FOIL request. Please be advised that the New York State Department of Health has finished processing your FOIL request. As the size of the response materials are too large to send via email, they have been put in the care of the United States Postal Service. You should be receiving your response materials within a few days.

Records Access Office

New York State Department of Health

Corning Tower, Rm 2364

Albany, NY 12237

P: (518) 474-8734

F: (518) 486-9144

Email: foil@health.ny.gov

Response Letter

 **View** **Embed** **Download**

**Department
of Health****ANDREW M. CUOMO**
Governor**HOWARD A. ZUCKER, M.D., J.D.**
Commissioner**SALLY DRESLIN, M.S., R.N.**
Executive Deputy Commissioner

February 15, 2018

Brooke Ganz
MuckRock News
DEPT MR 44580
411A Highland Ave
Somerville, MA 02144

FOIL #: 17-09-123

Dear Ms. Ganz:

This letter responds to your Freedom of Information Law request of September 12, 2017, in which you requested "a copy of the New York State marriage index, from 1881 (or as early as such records are available) through December 31, 2016, inclusive."

I have enclosed documents responsive to your request.

Should you feel that you have been unlawfully denied access to records, you may appeal such denial in writing within 30 days to the Records Access Appeals Officer, Division of Legal Affairs, Empire State Plaza, 2438 Corning Tower, Albany, New York 12237-0026.

If you require additional information or wish to discuss this matter further, please do not hesitate to contact me at (518) 474-8734.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosemarie Hewig".

Rosemarie Hewig, Esq.
Records Access Officer

RH/jt



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

April 24, 2018

David B. Rankin, Esq.
Beldock Levine & Hoffman LLP
99 Park Avenue PH/26th Floor
New York, NY 10016-1601

Re: FOIL Appeal # 17-09-123 (Brooke Ganz)

Dear Mr. Rankin:

This regards the administrative appeal to the New York State Department of Health ("DOH") as to the above-captioned request of your client, Brooke Ganz, for certain records pursuant to the Freedom of Information Law ("FOIL"), Public Officers Law ("POL") Article 6.

By email on September 12, 2017, your client requested under FOIL that DOH's Records Access Office ("RAO") provide:

...a copy of the New York State marriage index, from 1881 (or as early as such records are available) through December 31, 2016, inclusive. This request is for the basic index only, which might also be known as a "marriage log" or a "finding aid" or a "database extract" or similar terms. Please note that I am not requesting any actual marriage certificates or marriage licenses.

The RAO acknowledged your client's request on September 13, 2017, continued to communicate with your client, and on February 15, 2018 provided responsive records through December 31, 1965 on a drive by mailing them to your client. The RAO's response of February 15, 2018 specified your client's appeal rights. DOH received this appeal on April 10, 2018 (though it is dated April 9, 2018 and seemingly was mailed that date).

Your client's FOIL Request specified that the RAO's response should be mailed as follows:

For mailed responses, please address (see note):
MuckRock
DEPT MR 42930
411A Highland Avenue
Somerville, MA 02144-2516

The "note" says that if the requestor's name is used rather than MuckRock News and the department number, the mail might be returned as undeliverable. The RAO used the address exactly as specified and added the name "Brooke Ganz" but did not

change any elements of the prescribed address. The mail sent by the RAO to your client on February 15, 2018 was not returned as undeliverable.

POL §89(4)(a) provides that a person denied access to information requested under FOIL must appeal the denial in writing within 30 days. This appeal was sent by USPS mail well over 30 days after the RAO responded to your client's request. Accordingly, your appeal on behalf of your client is denied in its entirety as untimely. See, Tinker Street Cinema v New York Dept of Transportation, 254 AD2d 293, 294 (2d Dept. 1998).

Please be aware, however, that even if your client had timely-filed her appeal, she would not have prevailed on the merits because FOIL precludes DOH from releasing the records sought on appeal. The applications of POL §§87(2)(a), (b), (f), and (i) all require DOH to deny releasing the requested records apart from those already provided.

POL § 87(2)(a) provides an exception to the release of records under FOIL when the records are exempt from release by law. Here, Domestic Relations Law § 20 mandates DOH to keep an indexed file of all New York marriage records outside the City of New York; the regulations at 10 NYCRR §35.5(c)(4) specify that no information shall be released from a record of marriage unless the record has been on file for at least fifty years and the parties to the marriage are known to the applicant for the information to be deceased (unless the applicant for the information is a descendant or has been designated to act on behalf of a descendant of the parties to the marriage). Your client is not entitled to the indices of the fifty years subsequent to the records she has already received.

POL § 87(2)(b) provides an exception to the release of records under FOIL when their disclosure would constitute an unwarranted invasion of personal privacy. Here the fields in the more recent marriage indices include the date of the marriage, the location of the marriage, the full names of the two parties to the marriage, the social security numbers and dates of birth of both parties to the marriage, whether this is a second or subsequent ceremony, the previous married name for a spouse if previously married and changed names, the place where each party was born, and the gender of each spouse. Releasing each element of this information constitutes an unwarranted invasion of personal privacy for each of the couples in the index.

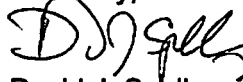
Moreover, the unintended consequences of such a release would provide the means for the most virulent form of unwarranted invasions of personal privacy from identity thieves and data brokers. Full names, social security numbers, and dates of birth are the informational coin of the realm for identity thieves. Even the release of limited information would allow these thieves to use other data they possess to extrapolate from these records and pin-point the identifying characteristics of individuals from whom they wish to phish or plunder. Likewise, data brokers and those who wish to use these records for marketing, voter fraud, and other illicit purposes would greatly profit from the release of these records. If released to your client for her legitimate purposes, there are no possible safeguards that the records will not wind-up in the hands of hackers globally. I take administrative notice that 87 million people had their personal information significantly compromised recently on Facebook. An agency that has provided such records in the past is not estopped from increasing its safeguards in the face of a newly-comprehended threat, such as with US Health and Human Services currently reissuing all Medicare cards to cease the practice of using the social security number as the basis for Medicare numbers (a practice that was efficient in more innocent times but now poses a great personal privacy security risk to those covered).

Indeed, Section 26 of the 2011 revisions to the Model State Vital Statistics Act and Regulations, promulgated by the US Department of Health and Human Services National Center for Health Statistics, urges doubling the time in which these records would be unavailable from 50 years to 100 years.

POL §87(2)(f) has application here because there are circumstances in which the life and safety of individuals could be endangered by disclosing these current marriage indices, most especially when there has been domestic violence or the threat thereof to one or both parties to a marriage and the information in the indices could be used by a perpetrator (most commonly an "ex" and/or stalker) to locate an intended victim. The exception of POL § 87(2)(i) is likewise applicable because the disclosure of the data within a number of the modern index fields that are designed for internal systemic purposes would jeopardize the capacity of DOH to guarantee the security of DOH's information technology assets.

For the reasons stated above, your appeal is denied in its entirety. Judicial review of this decision may be obtained pursuant to CPLR Article 78.

Sincerely,



David J. Spellman
DOH Records Access Appeals Officer

cc: Robert J. Freeman, Executive Director, NYS Committee on Open Government

March 9, 2018, 7:57 pm

Arrived at USPS Regional Origin Facility
BOSTON MA DISTRIBUTION CENTER

March 9, 2018, 6:42 pm

Accepted at USPS Origin Facility
CAMBRIDGE, MA 02138

March 9, 2018, 3:23 pm

USPS in possession of item
CAMBRIDGE, MA 02139

Product Information



See Less ^

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FAQs > (<http://faq.usps.com/?articleId=220900>)**Track Another Package +****Tracking Number:** 9470103699300036236683

Remove X

Scheduled Delivery by**MONDAY****12** MARCH 2018 ⓘ by **3:00pm** ⓘ **Delivered**

March 10, 2018 at 2:19 pm
Delivered, In/At Mailbox
MILL VALLEY, CA 94941

Proof of Delivery

Tracking History**March 10, 2018, 2:19 pm**

Delivered, In/At Mailbox
MILL VALLEY, CA 94941

Your item was delivered in or at the mailbox at 2:19 pm on March 10, 2018 in MILL VALLEY, CA 94941.

March 10, 2018, 11:29 am

Arrived at Post Office
MILL VALLEY, CA 94941

March 10, 2018, 6:59 am

Arrived at USPS Regional Destination Facility
SAN FRANCISCO CA INTERNATIONAL DISTRIBUTION CENTER

BELDOCK LEVINE & HOFFMAN LLP
99 PARK AVENUE, PH/26TH FLOOR
NEW YORK, N.Y. 10016-1601

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(JUSTICE, NYS SUPREME COURT, RET.)
FRANK HANDELMAN

REF:
828900.02000

WRITER'S DIRECT DIAL:
drankin@blhny.com
212-277-5825

Via United States Postal Service

April 9, 2018

Records Access Appeals Officer
Division of Legal Affairs
Empire State Plaza
2438 Corning Tower
Albany, New York 12237-0026

Dear Access Appeals Officer:

I am writing to appeal The New York State Department of Health Records Officer Rosemarie Hewig's denial of a portion of Ms. Brooke Ganz's FOIL Request 17-09-123, made pursuant to the New York Freedom of Information Law ("FOIL"), Public Officers Law § 84, *et seq.* and originally submitted September 12, 2017 ("Request").

The Request was submitted to the New York State Department of Health ("DOH") and it requested "a copy of the New York State marriage index, from 1881 (or as early as such records are available) through December 31, 2016, inclusive." *See* Exhibit 1, FOIL Request #17-09-123.

Ms. Ganz received a September 13, 2017 letter acknowledging receipt of her Request. *See* Exhibit 2, September 13, 2017 DOH Letter. She also received a subsequent October 12, 2017 letter notifying her of an extension of time to respond. *See* Exhibit 3, October 12, 2017 DOH Letter. On February 15, 2018, Ms. Ganz received both an E-Mail and a letter from DOH Records Access Officer Rosemarie Hewig indicating DOH had provided a substantive response, though providing no description of the records to be produced. *See* Exhibit 4 and 5, February 15, 2019 E-Mail and Letter. In the letter, Ms. Hewig stated, "I have enclosed documents responsive to your request," and made no mention of any records intended to be withheld. In the E-Mail of the same date, Ms. Hewig stated, "As the size of the response materials are too large to send via email, they have been put in the care of the United States Postal Service." The E-Mail also stated, "[p]lease be advised that the New York State Department of Health has finished

BELDOCK LEVINE & HOFFMAN LLP

Appeal of FOIL Request #17-09-123

April 9, 2018

Page 2

processing your FOIL request." The E-Mail, however, also made no mention of any records to be withheld.

On March 8, 2018, records were received from DOH via First Class Mail by colleagues of Ms. Ganz, who were able to determine that Ms. Ganz was the proper recipient, and to forward the records to her. Upon receipt of these records, Ms. Ganz realized the dates of 1968 through 2016 had been excluded from the DOH's production. Over the next few weeks, Ms. Ganz made numerous telephone calls attempting to learn whether the records were to be supplemented. On March 30, 2018, Ms. Ganz was finally able to speak with Ms. Hewig. At that time, Ms. Hewig informed Ms. Ganz that responsive records dating from 1968 through 2016 would not be produced.

Ms. Ganz was not informed during that March 30, 2018 telephone conversation, nor at any other point, as to the basis for withholding the 1968 through 2016 marriage index. Without being advised verbally or in writing of the basis for the denial, an appeal is necessarily based upon some guesswork. However, as support for the right of public access and her Request, the FOIL Request itself referenced the guidelines set forth by the New York State Committee on Open Government's advisory opinion dated February 11, 1998, and the Court's decision in *Gannett Co. v. City Clerk's Office*, 596 N.Y.S.2d 968 (N.Y. Sup. Ct. 1993), attached hereto. While records of underlying marriage license or certificate may have privacy protections, the marriage "log" or index is open to the public.

The Request specified, "this request is for the basic index only, which might also be known as a 'marriage log' or a 'finding aid' or a database extract' or similar terms." The Request clarified, "please note that I am not requesting any actual marriage certificates or marriage licenses." Additionally, Ms. Ganz referenced the settlement of an Article 78 petition filed against the City Clerk's Office in 2016, in which the New York City Clerk's office provided New York City marriage indices from 1930 through 1995 in electronic form and microfilm.¹ A copy of this Petition and settlement agreement in that action, *Reclaim the Records, et al. v. The City of New York*, No. 100397/2016 (Sup Ct, NY Cnty), is attached hereto. See Exhibit 6 and 7. The Stipulation of Settlement of Petitioner's attorneys' fees in this matter is also attached hereto. See Exhibit 8.

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 ... paper [and] computer tapes or discs." Public Officers Law § 86(4). While FOIL does not "require any entity to prepare a record not possessed or

¹ The data provided through that settlement excluded the dates of 1997 through 2016, owing to a record keeping change in 1997 resulting in data being directly input into the database rather than separately compiled.

BELDOCK LEVINE & HOFFMAN LLP

Appeal of FOIL Request #17-09-123

April 9, 2018

Page 3

maintained by such entity," *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." *See Public Officers Law* § 89(3)(a).

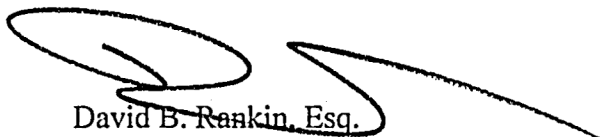
"[T]he burden of proof rests solely with the [agency] to justify the denial of access to the requested records." *See Matter of Data Tree, LLC v. Romaine*, 9 NY3d 454, 463 (2007); *Matter of Markowitz v. Serio*, 11 NY3d 43, 50-51 (2008). This burden must be met "in more than just a plausible fashion." *See Data Tree v. Romaine*, 9 NY3d at 462; *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).

Ms. Ganz specifically excluded marriage certificates or licenses themselves from the scope of her Request, and instead requested an index or records from the database maintained by DOH. DOH has acknowledged it maintains in a digital database in the regular course of its duties. We believe these records can be retrieved or extracted with reasonable effort.

Accordingly, DOH should be directed to provide the requested marriage index for the dates of 1968 through 2016, inclusive. As required by FOIL, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of receipt of an appeal. If any responsive records are denied upon appeal, please fully explain the reasons for the denial in writing, as required by law.

Thank you in advance for your consideration of this matter.

Best regards,



David B. Rankin, Esq.

JLM/alr
Enclosures

From: **Tammy Hepps** <hepps@post.harvard.edu>

Date: Wed, Jul 11, 2018 at 4:21 PM

Subject: NEW FOIL REQUEST FOR 1967-2017 NEW YORK STATE MARRIAGE INDEX

To: foil@health.ny.gov

To Whom It May Concern:

Pursuant to the New York State Freedom of Information Law (1977 N.Y. Laws ch. 933), I hereby request the following records:

I would like to receive a copy of the New York State marriage index, from January 1, 1967 through December 31, 2017, inclusive. This request is for the basic index only, which might also be known as a "marriage log" or a "finding aid" or a "database extract" or similar terms. Please note that I am not requesting any actual marriage certificates or marriage licenses.

According to the attorneys at the New York State Committee on Open Government (COOG), this basic statewide marriage index is legally available to the public under FOIL, based on the outcome of the 1993 lawsuit "Gannett Co., Inc. v. City Clerk's Office, City of Rochester" [596 NYS2d 968 (1993)]. A copy of that decision may be found online at this URL:

<https://www.leagle.com/decision/1993506157misc2d3491455.xml>

Please go read that decision. Note the part where the fifty-year privacy restriction does NOT apply to the basic marriage index, just to the actual marriage certificates or licenses.

Furthermore, this finding was upheld in two recent successful "Article 78" lawsuits in the Supreme Court of New York, both filed against the New York City Department of Health. They are "Reclaim the Records, et al, v. The City of New York", No. 100397/2016 [Sup Ct, NY Cnty], and "Reclaim the Records, et al, v. The City of New York", No. 150250/2018 [Sup Ct, NY Cnty]. In both cases, the index to marriage records that were less than fifty years old were turned over to Reclaim The Records in settlements, and in both cases the city was forced to pay Reclaim The Records' attorneys fees, too.

I would prefer to receive these records in raw text database format, preferably in SQL or CSV format, on a USB hard drive, if possible. If a text database is unavailable, then I would accept the information as images or PDF's. I am willing to pay the costs associated with the records production, along with the costs of the USB hard drive and any insured shipping costs, if needed. Please inform me of any potential charges in advance of fulfilling my request.

This request is not being made for commercial purposes. The requested records will be scanned and uploaded to the Internet, and will be made freely available to the general public. It is anticipated that some non-profit genealogical groups may choose to transcribe the information in the marriage index, to turn it into a new text-searchable database. I would be happy to share any such database with the Department of Health.

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

For the record, if your office chooses to deny this FOIL request, this
is absolutely going to turn into a lawsuit.

Sincerely,

Tammy A. Hepps
Treasurer of Reclaim The Records
<https://www.reclaimtherecords.org/>

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EMILY JANE GOODMAN
(JUSTICE, NYS SUPREME COURT, RET.)
FRANK HANDELMAN

REF: 828900.02000

WRITER'S DIRECT DIAL:
drankin@blhny.com
212-277-5825

Via Overnight Mail

August 7, 2018

Records Access Appeals Officer
Division of Legal Affairs
Empire State Plaza
2438 Corning Tower
Albany, New York 12237-0026

Dear Access Appeals Officer:

I am writing to appeal The New York State Department of Health's ("DOH") constructive denial of Ms. Tammy A. Hepps FOIL request, made pursuant to the New York Freedom of Information Law ("FOIL") and New York Public Officers Law § 84-89.

I. Statement of Facts

On July 11, 2018, Tammy A. Hepps ("Ms. Hepps or Petitioner") sent a Freedom of Information Law request ("Request") to the DOH. Petitioner requested "a copy of the New York State marriage index, from January 1, 1967 through December 31, 2017, inclusive." *See* Exhibit 1, FOIL Request, July 11, 2018.

To date the DOH has failed to respond to Petitioner's Request. As such, Petitioner's Request has been constructively denied. The Public Officers Law § 89(3)(a), states in relevant part that:

Each entity subject to the provisions of this article, within **five business days** of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgment of the receipt of such request . . .

BELDOCK LEVINE & HOFFMAN LLP
Appeal of Constructive Denial
August 7, 2018
Page 2

Under Public Officers Law § 89(4)(a), a failure to “conform to the provisions of subdivision three of this section shall constitute a denial.” On information more than five business days have passed since the Request was sent to the DOH. By failing to respond to Ms. Hepp’s Request within the statutorily mandated five days, the DOH has constructively denied the request.

This appeal is timely, because it is brought “within thirty days . . . [of] such denial.” Public Officers Law § 89(4)(a).

Ms. Hepps has never been informed the basis for withholding the January 1, 1967, through December 31, 2017, marriage index. Without being advised verbally or in writing of the basis for the denial, an appeal is necessarily based upon some guesswork. However, as support for the right of public access to information, the FOIL Request itself referenced the Court’s decision in *Gannett Co. v. City Clerk’s Office*, 596 N.Y.S.2d 968 (N.Y. Sup. Ct. 1993) (finding “the names of marriage license applicants would not . . . ordinarily and reasonably be regarded as intimate, private information.”) (internal citation omitted) *aff’d*, 197 A.D.2d 919, 604 N.Y.S.2d 848 (1993). While the underlying marriage license or certificate may have increased privacy protections, the marriage “log” or index is open to the public. *Id.*

The Request specified, “this request is for the basic index only, which might also be known as a ‘marriage log’ or a ‘finding aid’ or a database extract’ or similar terms.” Exhibit 1. Ms. Hepps clarified that she was “not requesting any actual marriage certificates or marriage licenses.” *Id.*

II. Law

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; *Capital Newspapers, Div. of Hearst Corp. v. Whalen*, 69 N.Y.2d 246, 252 (1987) (“We have held . . . that FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government.”).

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 . . . paper [and] computer tapes or discs.” Public Officers Law § 86(4). While FOIL does not “require any entity to prepare a record not possessed or maintained by such entity,” *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.” *See* Public Officers Law § 89(3)(a).

BELDOCK LEVINE & HOFFMAN LLP
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August 7, 2018
Page 3

“[T]he burden of proof rests solely with the [agency] to justify the denial of access to the requested records.” See *Matter of Data Tree, LLC v. Romaine*, 9 NY3d 454, 463 (2007); *Matter of Markowitz v. Serio*, 11 NY3d 43, 50-51 (2008). This burden must be met “in more than just a plausible fashion.” See *Data Tree v. Romaine*, 9 NY3d at 462; *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).

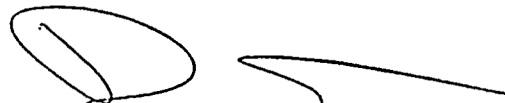
III. Conclusion and Further Request for Production

Ms. Hepps specifically excluded marriage certificates or licenses themselves from the scope of her Request, and instead requested an index of marriage records from the database maintained by DOH. DOH has acknowledged it maintains in a digital database in the regular course of its duties. We believe these records can be retrieved or extracted with reasonable effort.

Accordingly, DOH should be directed to provide the requested marriage index for the dates of January 1, 1967 through December 31, 2017, inclusive. As required by FOIL, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of receipt of an appeal. If any responsive records are denied upon appeal, please fully explain the reasons for the denial in writing, as required by law.

Thank you in advance for your consideration of this matter.

Best regards,



David B. Rankin, Esq.

DBR/ars
Enclosures

From: **Tammy Hepps** <hepps@post.harvard.edu>
Date: Wed, Jul 11, 2018 at 4:21 PM
Subject: NEW FOIL REQUEST FOR 1967-2017 NEW YORK STATE MARRIAGE INDEX
To: foil@health.ny.gov

To Whom It May Concern:

Pursuant to the New York State Freedom of Information Law (1977 N.Y. Laws ch. 933), I hereby request the following records:

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Please go read that decision. Note the part where the fifty-year privacy restriction does NOT apply to the basic marriage index, just to the actual marriage certificates or licenses.

Furthermore, this finding was upheld in two recent successful "Article 78" lawsuits in the Supreme Court of New York, both filed against the New York City Department of Health. They are "Reclaim the Records, et al, v. The City of New York", No. 100397/2016 [Sup Ct, NY Cnty], and "Reclaim the Records, et al, v. The City of New York", No. 150250/2018 [Sup Ct, NY Cnty]. In both cases, the index to marriage records that were less than fifty years old were turned over to Reclaim The Records in settlements, and in both cases the city was forced to pay Reclaim The Records' attorneys fees, too.

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Tammy A. Hepps
Treasurer of Reclaim The Records
<https://www.reclaimtherecords.org/>

**Department
of Health****ANDREW M. CUOMO**
Governor**HOWARD A. ZUCKER, M.D., J.D.**
Commissioner**SALLY DRESLIN, M.S., R.N.**
Executive Deputy Commissioner

August 9, 2018

VIA E-MAIL ONLYTammy A. Hepps
Reclaim the Records
hepps@post.harvard.edu
thepps@gmail.com

Re: 17-09-123

Dear Ms. Hepps:

This letter is in response to your e-mail of July 11, 2018, by which you re-submitted an earlier Freedom of Information Law request from another representative of Reclaim the Records for a copy of the New York State marriage index from January 1, 1967 to December 31, 2017.

By way of background, on February 15, 2018, the Department of Health (DOH) responded to the initial request for the marriage index submitted by Brooke Schreier Ganz, Founder and President of Reclaim the Records, granting the request, in part, by providing such records up through 1966. Ms. Ganz appealed the denial of access to the marriage index for the period 1967 through 2016. Ms. Ganz appeal was denied as untimely; however, in his April 24, 2018 letter, the Records Access Appeals Officer explained that even if Ms. Ganz's appeal had been timely, her appeal would be denied based on Public Officers Law §§87(2)(a), (b), (f), and (i), each of which preclude the DOH from releasing records of the marriage index for the time period. A copy of the determination letter is enclosed for your reference.

Accordingly, the Department of Health's denial of Reclaim the Records' request for these records has run its administrative course. The Freedom of Information Law does not require DOH to consider a request that is duplicative of a request we previously responded to and produced responsive records. Vann v. Callahan, 16 A.D.3d 849, 850 (3d Dep't 2005). Your recent request is a blatant attempt to contravene the statutory deadline to take an appeal of a FOIL determination pursuant to Public Officers Law § 89(4)(a), and therefore will not be reconsidered. See Greene v. City of New York, 196 Misc.2d 125, 130 (Sup. Ct. N.Y. Cnty. 2003).

If you require additional information or wish to discuss this matter further, please do not hesitate to contact me at (518) 474-8734.

Sincerely,

*Rosemarie Hewig*Rosemarie Hewig, Esq.
Records Access Officer

cc: David B. Rankin, Esq. (via first class mail only) (w/ enclosure)

Empire State Plaza, Corning Tower, Albany, NY 12237 | health.ny.gov