

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. _____

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, Public Officers Law Article 6 §§ 84 - 90 (“FOIL”) and C.P.L.R. § 7803(1) of the New York Civil Law and Rules, the undersigned, Petitioner Brooke Schreier Ganz of and on behalf 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 an extract of the information in the City Clerk’s marriage database, from the time period of January 1, 1996 through December 31, 2016, inclusive, containing information that was previously collected in marriage indices or “marriage logs.” The data-fields requested from the marriage database include:

- a) Bride (or Spouse #1) given name;
- b) Bride (or Spouse #1) middle name;

- c) Bride (or Spouse #1) surname;
- d) Bride (or Spouse #1) name suffix (i.e. "Junior");
- e) Bride (or Spouse #1) sex;
- f) Bride (or Spouse #1) city, state, and/or country of birth;
- g) Bride (or Spouse #1) city, state, and/or country of residence;
- h) Groom (or Spouse #2) given name;
- i) Groom (or Spouse #2) middle name;
- j) Groom (or Spouse #2) surname;
- k) Groom (or Spouse #2) name suffix (i.e. "Junior");
- l) Groom (or Spouse #2) sex;
- m) Groom (or Spouse #2) city, state, and/or country of birth;
- n) Groom (or Spouse #2) city, state, and/or country of residence;
- o) Date of marriage license application;
- p) County or borough of marriage license application;
- q) Marriage license number; and
- r) Any other database fields or columns that are not explicitly disallowed under the law.

2. The requested records exist 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 September 22, 2017, Petitioner Ms. Ganz sent a FOIL request to the FOIL Records Access Officer at the Office of the City Clerk. *See* E-Mail dated September 22, 2017, attached hereto at *Exhibit 1*.

5. The email sought electronic copies of information contained in the New York City marriage database, from January 1, 1996 through December 31, 2016. 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. The email is attached hereto as *Exhibit 2*.

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 3 and 4*. She also referenced the settlement of an Article 78 petition she filed against the City Clerk's Office in 2016, in which the New York City Clerk's office provided the New York City marriage indices from 1930-1995 in electronic form and microfilm. The data provided through that settlement included fields 1(a)-(c) and 1(h)-(j), and 1(o)-(q).

7. On September 29, 2017, Ms. Ganz sent a follow-up email requesting an update on her FOIL request submitted via email on September 22, 2017. The email is attached hereto as *Exhibit 5*.

8. On September 29, 2017, Patrick L. Synmoie, Counsel to the City Clerk, replied to Ms. Ganz's September 29, 2017 email with a letter, sent *via* email, acknowledging receipt of her September 22, 2017 FOIL request. This letter is attached hereto as *Exhibit 6*.

9. On October 18, 2017, Mr. Symnoie sent Ms. Ganz a letter, via email, informing her that her request for "a basic index of finding aid" for "New York City marriage records from January 1, 1996 through December 31, 2016, inclusive) was denied on the basis that no such records exist. This letter is attached hereto as *Exhibit 7*.

10. On November 17, 2017, within thirty (30) days of receiving the denial, Ms. Ganz filed an appeal from the decision to deny her request, addressed to the Records Access Appeal Officer at the Office of the City Clerk, attached hereto at *Exhibit 8*.

11. Ms. Ganz never received a response from the Records Access Appeals Officer regarding her November 17, 2017 appeal.

12. 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).

13. 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

14. 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). Respondent City Clerk is an agency of respondent CITY and

subject to FOIL.

15. 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 ¶¶ 4–15.

16. 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

17. 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).

18. Respondents City and City Clerk failed to provide a valid basis for the denial of the requested records failed to respond to Petitioner's administrative appeal.

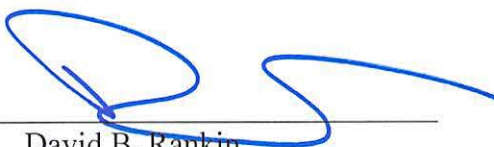
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REQUEST FOR RELIEF

WHEREFORE, the undersigned petitioner respectfully requests this Court enter an Order directing Respondent City Clerk to produce datafields that constitute the equivalent of New York City marriage indices dated January 1, 1996 through December 31, 2016; 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: January 8, 2018
New York, New York

Respectfully submitted,

By: 

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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, 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: January 8, 2018
 New York, New York



David B. Rankin