

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

-----	X	Index No. _____
In the Matter of	X	
	X	
NEW YORK CIVIL LIBERTIES UNION, and	X	
LEONARD LEVITT,	X	
	X	
Petitioners,	X	
	X	
-against-	X	VERIFIED
	X	PETITION
NEW YORK CITY POLICE DEPARTMENT, and	X	
RAYMOND KELLY, in his official capacity as	X	
Commissioner of the New York City Police	X	
Department,	X	
	X	
Respondents.	X	
	X	
For a Judgment Pursuant to Article 78	X	
Of the Civil Practice Law and Rules.	X	
-----	X	

PRELIMINARY STATEMENT

1. This Article 78 proceeding seeks to vindicate the right of petitioners the New York Civil Liberties Union (“NYCLU”) and journalist Leonard Levitt to access documents related to New York City Police Department (“NYPD”) policies and procedures governing the issuance and denial of NYPD press passes.

2. For over twenty years prior to January of 2007, Len Levitt held an NYPD press pass in his capacity as a reporter for New York Newsday and as an independent journalist covering stories related to the NYPD. On January 10, 2007, Mr. Levitt was notified that his press pass would not be renewed by the NYPD.

3. On May 14, the NYCLU and Mr. Levitt filed a Freedom of Information Law (“FOIL”) request seeking the documents related to NYPD policies and procedures

governing the issuance and denial of press passes, as well as documents related to the NYPD's denial of Mr. Levitt's application to renew his press pass. The NYPD has constructively denied this request by failing to produce responsive documents and by denying a timely administrative appeal, necessitating this Article 78 petition.

4. The NYPD's refusal to produce the requested information violates the Freedom of Information Law. Petitioners now seek an order from this Court, pursuant to Article 78 of the New York Civil Practice Law and Rules, directing the NYPD to produce the documents as requested by the NYCLU and Mr. Levitt.

VENUE

5. Pursuant to C.P.L.R. §§ 7804(b) and 506(b), venue in this proceeding lies in New York County, the judicial district in which Respondents took the action challenged here and where the offices of Respondents are located.

PARTIES

6. Petitioner NEW YORK CIVIL LIBERTIES UNION is a not-for-profit corporation that defends civil rights and civil liberties in New York. A central component of the NYCLU's mission and work is public education and dissemination of information to the public. Specifically, NYCLU publishes newsletters, news briefings, right-to-know documents, studies, and other educational and informational materials that are broadly disseminated to the public.

7. Petitioner LEONARD LEVITT is the owner, editor and reporter for www.NYPDCConfidential.com, a weekly on-line chronicle presenting news articles about the NYPD.

8. Respondent NEW YORK CITY POLICE DEPARTMENT is a law-enforcement agency administered under New York City Administrative Code, Title 14. The NYPD is a public agency subject to the requirements of the Freedom of Information Law, New York Public Officers Law §84, et seq.

FACTS

The Denial of Mr. Levitt's Press Pass

9. The NYPD is responsible for issuing press passes, a special credential that entitles to certain benefits. According to the Rules of the City of New York, to be eligible for a press pass, an individual must be a “full-time employee of a news gathering organization covering spot or breaking news events on a regular basis...” or “newspersons (such as freelancers)...who demonstrate a need to cover the above-described spot or breaking news events on a regular and routine basis...” 38 RCNY §11-01.

10. Leonard Levitt is a reporter for www.NYPDCConfidential.com, a news gathering organization that covers spot or breaking news events on a regular basis. He provides in-depth investigative reporting of NYPD events, often exposing behavior and events the NYPD would rather be shielded from the public. From 1995-2005, Mr. Levitt was also employed by Newsday, where he wrote a column on the NYPD entitled “One Police Plaza.” Affidavit of Leonard Levitt at ¶ 2.

11. Mr Levitt's articles focus upon the corruption, brutality and inefficiency of the NYPD. Articles from Mr. Levitt's website have reported the NYPD's failure to pay its bills in a timely manner, the arrest of an NYPD Narcotics Officer's who was involved in drug-smuggling, and the unwarranted use of force upon citizens. Affidavit of Leonard Levitt at ¶ 3.

12. Mr. Levitt's reporting has often put him at odds with the NYPD. In 2003, for example, NYPD Commissioner Raymond W. Kelly visited Newsday's Long Island offices to complain about Mr. Levitt's critical coverage of the NYPD in his column. Affidavit of Leonard Levitt at ¶ 4-6. In 2005, the NYPD revoked Mr. Levitt's building pass for One Police Plaza, a public building that Mr. Levitt visits in order to cover police department trials and NYPD events. Mr. Levitt had to retain legal assistance from the NYCLU to gain access to the building. In January of 2006, the NYPD attempted to ban Mr. Levitt from One Police Plaza again. Notwithstanding the fact that he had a valid press pass, the officer guarding the entrance refused to grant Mr. Levitt access, stating that he was not permitted to allow Mr. Levitt into the building. Again, legal counsel from the NYCLU intervened on Mr. Levitt's behalf to ensure his appropriate access to the building. *Id.*

13. Mr. Levitt left Newsday in 2005 and started his own on-line column reporting about the NYPD, www.NYPDCConfidential.com. Even after Mr. Levitt left Newsday, the NYPD renewed his press pass for the year 2006. Affidavit of Leonard Levitt at ¶ 2, 7.

14. On December 28, 2006, Mr. Levitt timely applied for the yearly renewal of his pass. On January 10, 2007, as instructed by the NYPD, he went to pick up his

renewed press pass. Affidavit of Leonard Levitt at ¶ 8. Instead of receiving his press pass, however, the NYPD presented him with a letter stating his application for renewal had been denied. Affidavit of Leonard Levitt at ¶ 8; Denial of Press Pass (Jan. 10, 2007) (attached to Levitt Affidavit as Exhibit B).

15. On January 18, 2007, petitioners wrote to the NYPD seeking an appeal of the denial of Mr. Levitt's press pass as allowed under the Rules of the City of New York. 38 RCNY § 11-11 (attached to Stoughton Affirmation as Exhibit A). On February 28, 2007, the NYPD held a hearing to address the appeal. Levitt Affidavit at ¶ 9. On March 19, 2007, Commanding Officer Michael Collins of the NYPD informed petitioners that he was upholding the denial of Mr. Levitt's press pass because he found no basis for reversing the denial. Letter from Michael Collins (Mar. 19, 2007) (attached to Stoughton Affirmation as Exhibit B).

The NYPD's Constructive Denial of Petitioners' FOIL Request

16. On May 14, 2007, the NYCLU and Mr. Levitt filed a FOIL request for access to documents related to the NYPD's policies and procedures governing the issuance and denial of press passes, as well as any documents related to Mr. Levitt's application for a renewal of his press pass. NYCLU FOIL Request (May 14, 2007) (attached to Stoughton Affirmation as Exhibit C).

17. On May 24, 2007, the NYPD responded to the request stating that it "anticipated that a determination [would] be reached on September 14, 2007," a full five months after the filing of Petitioners' narrowly-drawn FOIL request. NYPD Response to FOIL Request (May 24, 2007) (attached to Stoughton Affirmation as Exhibit D).

18. Petitioners did not receive a response to their request on September 14, 2007, or at any time thereafter.

19. The FOIL statute requires an agency to respond on or before the approximate date it sets for determining whether to grant or deny a FOIL request. § 89(3). Failure of an agency to comply with this provision is deemed a constructive denial of the request and the requestor is authorized to seek relief from the court to compel agency action. §§ 89(3), 89(4).

20. On October 3, 2007, almost six months after filing their request and more than two weeks after the expiration of the NYPD's self-selected deadline for responding to the request, Petitioners filed a timely appeal of the NYPD's constructive denial of their request. Appeal of Denial of FOIL Request (Oct. 3, 2007) (attached to Stoughton Affirmation as Exhibit E).

21. On October 26, 2007, the NYPD appeals officer denied Petitioners' appeal, incorrectly stating that the request had not been constructively denied, and thus Petitioners' appeal was untimely. NYPD Response to Appeal (Oct. 26, 2007) (attached to Stoughton Affirmation as Exhibit F).

22. Along with the denial of Petitioners' appeal, the NYPD released eighteen pages of documents responsive to the request, most of which consisted of copies of correspondence from Mr. Levitt to the NYPD, copies of which were already in Mr. Levitt's possession. Although the appeals officer indicated that a more thorough search was underway and more documents would be forthcoming, the NYPD did not provide any indication of when the remaining responsive documents would be produced, and

provided no explanation for the NYPD's failure to meet its September 14, 2007 deadline for final determination of Petitioners' request.

23. On November 19, 2007, Petitioners wrote to the NYPD FOIL Unit requesting information about the status of their request and asking the NYPD to provide the requested documents or determine a new reasonable and certain date on which Petitioners could expect to receive all responsive documents. NYCLU Letter to NYPD (Nov. 19, 2007) (attached to Stoughton Affirmation as Exhibit G).

24. The NYPD has not responded to Petitioners' November 19 letter. Nine months have passed since Petitioners' filed their FOIL request; six months have passed since the expiration of the NYPD's self-selected date for response; and more than three months have passed since the NYPD denied Petitioners' appeal and refused to provide a date certain for the production of documents.

25. Pursuant to N.Y. Pub. Off. L. §§ 89(3), 89(4), the NYPD has constructively denied Petitioners' FOIL request.

**CAUSE OF ACTION: ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF
FOIL REQUEST**

26. Article 78 is the appropriate method for review of agency determinations concerning FOIL requests. N.Y. Pub. Off. L. §§ 89(4)(b).

27. Petitioners have a clear right to the records they seek; under FOIL, Respondents are required to produce the documents the Petitioners seek. *See generally* N.Y. Pub. Off. L. §§ 84-90.

28. Respondent has not produced the records sought by Petitioners. Respondents' obligation to disclose the documents to the public under FOIL is mandatory, not discretionary. *See* N.Y. Pub. Off. L. §§ 84-90.

29. Respondent has failed to identify any lawful justification for denying the petitioners' FOIL request.

30. Petitioners exhausted their administrative remedies with the NYPD when they requested and appealed their constructively denied request for the documents and received a denial of appeal. Petitioner has no other remedy at law.

31. No previous application has been made for any of the relief sought herein.

REQUESTED RELIEF

WHEREFORE, Petitioner seeks judgment:

(1) Pursuant to C.P.L.R. § 7806, directing Respondents to comply with their duty under FOIL, and provide the documents sought by Petitioners in their May 14, 2007 request and October 3, 2007 appeal;

(2) Awarding attorney's fees and reasonable litigation costs as allowed under New York Public Officer's Law § 89(4)(c); and

(3) Granting such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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*Appearing as co-counsel pursuant to Student Practice Order.

DATED: February 20, 2008
New York, NY

