

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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| In the Matter of, | : | |
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| NEW YORK CIVIL LIBERTIES UNION, and | : | Index No. _____ |
| AMERICAN CIVIL LIBERTIES UNION, | : | |
| | : | |
| Petitioners, | : | |
| | : | VERIFIED PETITION |
| -against- | : | |
| | : | |
| VILLAGE OF KIRYAS JOEL, | : | |
| | : | |
| Respondent, | : | |
| | : | |
| For a Judgment Pursuant to Article 78 | : | |
| of the Civil Practice Law and Rules. | : | |
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PRELIMINARY STATEMENT

1. This Article 78 proceeding seeks to vindicate the right of the public and of the petitioners, the New York Civil Liberties Union (“NYCLU”) and the American Civil Liberties Union (“ACLU”) (collectively “Petitioners”) to learn about the role of the Village of Kiryas Joel (“Village”) and an organization called the Committee of Modesty in the creation, financing, operation, and maintenance of a gender-segregated park on approximately 280 acres of unincorporated land in the Town of Monroe.

2. Media reports concerning the park led the NYCLU and the ACLU to seek records from the Village under New York’s Freedom of Information Law (“FOIL”). Specifically, the Petitioners sought records relating to the construction and operation of the park and ownership and financing of the property, as well as records relating to Village structure and outside public financing that would shed light on how government and taxpayer dollars might have been used to support the park.

3. In response, the Village denied the Petitioners' entire request, stating that no responsive records exist and claiming ignorance of the park and the Committee of Modesty. The response did not include a certification, required by law, that the Village had conducted a diligent search. In fact, under New York State law, the Village is required to maintain many of the documents that Petitioners requested, and websites tied to the Village cite other information likely maintained in responsive records.

4. The Petitioners then filed an appeal under FOIL. The Village did not acknowledge the appeal or respond within the statutory time frame.

5. The Village's position is plainly unsupported by law and contrary to evidence that indicates that the Village does possess responsive records. Thus, the primary issue presented in this Article 78 proceeding is whether the Village may deny a FOIL request without any indication that the Village searched for documents, much less the certification of a diligent search that is required by law.

6. Having exhausted administrative remedies, the NYCLU and the ACLU now seek judicial relief to compel the Village to comply with its legal obligation to produce responsive documents.

PARTIES

7. Petitioner the New York Civil Liberties Union is a not-for-profit corporation that seeks to defend civil rights and civil liberties on behalf of individuals who have experienced injustice and to promote transparency in government. For over fifty years, the NYCLU has been involved in litigation and public policy advocacy on behalf of New Yorkers, fighting against discrimination, advocating for individual rights, and demanding government accountability.

8. Petitioner the American Civil Liberties Union is a nationwide, not-for-profit, nonpartisan-corporation with over 500,000 members dedicated to defending the principles embodied in the federal and state constitutions and civil rights laws. For nearly a century, the ACLU has fought to preserve civil liberties, civil rights, and government accountability throughout the country.

9. Respondent the Village of Kiryas Joel is a municipality under § 714 of the New York General Municipal Law contained in the Town of Monroe in Orange County.

FACTS

10. Since its creation in 1977, the Village of Kiryas Joel has served as a religious enclave to the Satmar Hasidic Jewish community. Nearly all of the residents of Kiryas Joel, including government officials, are members of that religious community.

11. Since the incorporation of the Village, religion has pervaded all aspects of Village life, and the Village Grand Rebbe is consulted on all Village affairs.

12. The Village or government entities within the Village have been party to numerous lawsuits over the last twenty-five years claiming excessive entanglement between religion and the provision of public services.

13. Village government entities have also been party to at least one Article 78 proceeding brought by a media outlet to vindicate its right to access records that Village actors refused to produce in response to a FOIL request.

14. In early 2012, media outlets began reporting on the creation of a park on publicly-owned property for the use of Kiryas Joel residents. According to media reports published in 2013, the park is gender segregated – divided into four color-coded gender-segregated zones, accessible by gender-segregated walking paths.

15. Media reports state that the Village has been involved in the creation, funding, and operation of the park, and that the Village Grand Rebbe and the Committee of Modesty supervise the park on behalf of the Village to ensure that modesty principles are observed.

16. Some media outlets claim that the park is closed to individuals who are not residents of the Village or do not practice Hasidic Judaism.

17. The reports cite Village government leaders championing the park and describing its construction and operation.

18. The NYCLU and ACLU are not-for-profit, non-partisan organizations that seek to defend civil rights and civil liberties and to promote government accountability. Fighting against the establishment of religion by a government agency has long been a priority for the NYCLU and ACLU. Similarly, the organizations have long been concerned with discrimination generally, and gender-based discrimination more specifically. Thus, allegations concerning a gender-segregated, publicly-funded park, operated in the name of religion, raise concerns for the NYCLU and the ACLU.

19. Prompted by reports of possible publicly-funded, government-sanctioned, gender segregation the NYCLU and ACLU filed a FOIL request on July 23, 2013 ("Request"). The Request, sent to Village Administrator/Deputy Clerk Gedalye Szegedin, sought "information on the operation of the park, restrictions imposed on the use of the park, and financing of the park," with a list of specific categories of responsive records including "[r]ecords relating to the ownership of the land upon which the park stands," "[r]ecords relating to all sources of funding for construction and operation of the park," and "[r]ecords relating to any groups, organizations, or entities involved in the operation of the park."

20. The Village denied the request in its entirety in a letter dated August 9, 2013— five days beyond the allotted time under FOIL. In the letter, Village Attorney Donald Nichol asserted blanket ignorance of the park and the Committee of Modesty, and claimed that the Village does not possess a single responsive record. The denial did not inform the NYCLU and the ACLU of the right to appeal or include instructions for how to properly undertake that process.

21. The NYCLU and ACLU appealed the denial in a letter dated August 28, 2013 (“Appeal”). The Appeal challenged the Village’s claim that it does not possess any of the requested records and cited the Village’s duty “to conduct a ‘diligent search’ for each requested record and certify that such a search was conducted.” The Appeal also outlined evidence to suggest that the Village in fact maintains the requested records and noted the Village’s obligation to construe FOIL broadly.

22. The Village has not provided any response to the Appeal. Under New York state law, a failure to respond within ten business days amounts to a denial. N.Y. Pub. Off. Law § 89(4)(a).

23. Information about the park and the role of public resources in the creation, operations, and financing of the park remains largely obscured.

24. In an effort to uncover more information about the government’s role in the creation, financing, and maintenance of the park, which may implicate the rights of thousands of New York residents whose taxpayer dollars may be being used to promote religion and discriminate on the basis of gender, the NYCLU and ACLU seek relief through judicial intervention.

CAUSE OF ACTION UNDER ARTICLE 78

25. Article 78 is the appropriate method for review of agency determinations concerning FOIL requests.

26. Petitioners, the NYCLU and ACLU, have a clear right to the requested records.

27. The Village has not certified that it conducted a diligent search, has not asserted any exemptions, and has not produced any records.

28. The Village's obligation under FOIL to conduct a diligent search and to disclose the records is mandatory, not discretionary.

29. Petitioners exhausted their administrative remedies with the Village when they appealed the Village's initial denial of the request. The Village's failure to respond to the appeal amounts to a denial under FOIL. Petitioners have no other remedy at law.

REQUESTED RELIEF

WHEREFORE, Petitioners seek judgment:

- (1) Pursuant to C.P.L.R. § 7806, directing Respondent to comply with its duty under FOIL and search for and disclose the records sought by the Petitioners in their request dated July 23, 2013;
- (2) Awarding reasonable attorneys' fees and litigation costs as allowed under New York Public Officers Law § 89; and
- (3) Granting such other relief as the Court deems just and proper.

Respectfully Submitted,



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Dated: December 10, 2013
New York, NY