

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

-----X	:	
In the Matter of,	:	
	:	
NEW YORK CIVIL LIBERTIES UNION,	:	Index No. _____
	:	
Petitioner,	:	
	:	<b>VERIFIED PETITION</b>
-against-	:	
	:	
ERIE COUNTY; and CHERYL GREEN, County	:	
Attorney for Erie County,	:	
	:	
Respondents,	:	
	:	
For a Judgment Pursuant to Article 78	:	
Of the Civil Practice Law and Rules.	:	
-----X	:	

**PRELIMINARY STATEMENT**

1. This Article 78 proceeding pursuant to the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law, seeks to vindicate the right of Petitioner the New York Civil Liberties Union (“NYCLU”) and of the public to access records regarding Respondent Erie County’s use of taxpayer resources to fund the County’s defense against to state and federal investigations and legal challenges regarding inhumane and unconstitutional conditions at Erie County correctional facilities. The County’s effort to block such investigations and vigorously litigate such legal challenges has generated controversy among Erie County residents, in the press, and within the Erie County government, some of whose officials have questioned the County’s approach. Much of this controversy has centered on the expense of taking such an aggressive stance.

2. Respondents have refused to produce public records in response to a FOIL request by Petitioner the NYCLU seeking information about the cost of this approach to the taxpayer. In so doing, the County flouted its statutory obligation to justify withholding records with specific and

particular findings, instead issuing vague pronouncements that merely parroted the terms of certain statutory exemptions and did not discuss their application to the records sought.

3. Moreover, the County invoked plainly inapplicable exemptions – some of which are not even recognized under law – in its attempt to circumvent FOIL’s principles of open government and public accountability.

4. Having exhausted its administrative remedies, the NYCLU now asks the Court to order Erie County and County Attorney Cheryl Green to comply with their obligations under FOIL and provide the public with these records about government expenditures. Because of the patent inadequacy of the County’s response, Petitioner also requests that the Court award Petitioner its attorneys’ fees.

#### **VENUE**

5. Pursuant to CPLR 7804(b) and 506(b), venue in this proceeding lies in Erie County, in the judicial district in which Respondents took the action challenged here and where the offices of Respondents are located.

#### **PARTIES**

6. Petitioner the New York Civil Liberties Union (“NYCLU”) is a not-for-profit corporation that defends and promotes civil rights and civil liberties and ensures government openness in New York. For over fifty years, the NYCLU has been involved in litigation and public policy advocacy on behalf of New Yorkers, fighting against discrimination and advocating for individual rights and government accountability. New York’s Freedom of Information Law is a crucial vehicle in the organization’s efforts to ensure the accountability of the government, monitor state and municipal agencies, learn about governmental policies and, when appropriate, challenge the legality of problematic policies.

7. Respondent Erie County is a state agency subject to the requirements of the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law.

8. Respondent Cheryl Green is the Erie County Attorney. She is responsible for the County’s compliance with the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law and directed the actions of the County alleged herein.

### FACTS

9. Erie County maintains two correctional facilities administered by the Erie County Sheriff’s Department – the Erie County Holding Center (“ECHC”) and the Erie County Correctional Facility (“ECCF”).

10. Numerous state and federal investigations and lawsuit have arisen regarding the conditions of confinement and the failure to meet constitutional standards at these facilities.

11. On October 8, 2009, the NYCLU filed a Freedom of Information Law (“FOIL”) request seeking records related to the “expenditure of county funds to defend against formal investigations and legal actions related to [ECCF and ECHC].”

12. In particular, the FOIL request focused on expenditures related to investigations and legal actions dealing with “allegations of unconstitutional conditions, excessive force, denial of medical or psychological care, or wrongful injury or death” at the two facilities.

13. Because of a recent change in address, the FOIL request was not received by the County until October 16, 2009.

14. On October 19, 2009, the County stated that it would respond to the request within twenty business days.

15. On November 23, 2009, having received no response from the County, the NYCLU filed an administrative appeal based on the County's failure to respond within its self-selected twenty-day deadline.

16. Thereafter, the County requested an additional thirty business days to respond to the request.

17. On January 6, 2010, the County denied the NYCLU's request in a letter from County Attorney Cheryl Green.

18. The denial was based on six grounds: (1) the NYCLU did not adequately describe the records sought to enable the County to locate them; (2) some of the records were protected by the attorney-client privilege; (3) some of the records were protected attorney work product; (4) disclosure of some of the records would constitute an unwarranted invasion of privacy; (5) some of the records are exempt as intra-agency materials; and (6) disclosure of some of the records "could cause substantial injury to the competitive position of the County in both pending and future litigation."

19. The County did not provide any justification for applying these exemptions to the records requested and did not explain the manner in which the NYCLU's request was inadequate for purposes of locating responsive records.

20. On February 2, 2010, the NYCLU administratively appealed the County's denial.

21. In addition to questioning the basis for applying the invoked exemptions and asking for a more specific and particularized justification for their application, the appeal challenged the County's assertion that the request was insufficiently specific to allow the County to locate the records and, to the extent that the County continued to feel unable to locate the records, requested a

conference with the County's records access officer to resolve the alleged deficiency in the request in light of the method by which the County maintains its records.

22. On February 19, 2010, Erie County's FOIL Appeals Officer denied the NYCLU's administrative appeal, repeating the same blanket justifications offered in the County's original denial and citing various cases without explaining how they applied to the records at issue.

23. Respondents did not respond to the NYCLU's request for a conference with the County's records access officer.

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

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

25. Petitioner NYCLU and the public have a clear right to the records requested.

26. Respondents have not produced the information sought by the NYCLU.

27. The exemptions invoked by Respondents do not exempt the requested records from disclosure under FOIL.

28. Respondents did not meet their burden to provide specific and particularized justification for withholding the requested records from disclosure under FOIL.

29. Petitioner NYCLU exhausted its administrative remedies when it appealed Respondents' denial of its FOIL request. Petitioner has no other remedy at law.

**REQUESTED RELIEF**

WHEREFORE, Petitioner seeks judgment:

(1) Pursuant to CPLR 7806, directing Respondents to comply with their duty under FOIL to disclose all portions of the requested records not subject to any exemption or other privilege;

(2) Awarding attorneys' fees and reasonable litigation costs as allowed under Public Officers Law § 89; and

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

Respectfully Submitted,



---

COREY STOUGHTON  
CHRISTOPHER DUNN

New York Civil Liberties Union Foundation  
125 Broad Street, 19<sup>th</sup> Floor  
New York, NY 10004  
(212) 607-3300

Dated: New York, NY  
June 7, 2010

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) ss:  
COUNTY OF NEW YORK )

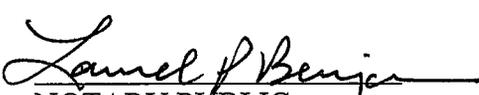
Corey Stoughton, an attorney admitted to practice in the State of New York, affirms pursuant to CPLR 2106 under the penalties of perjury:

1. I am the lead attorney for and an employee of the Petitioner in the within proceeding. I make this Verification pursuant to CPLR 3020(d)(3).
2. I have read the attached Verified Petition and know its contents.
3. All of the material allegations of the Verified Petition are true to my personal knowledge, and all statements in the Verified Petition are true to my personal knowledge or upon information and belief. As to those statements that are based upon information and belief, I believe those statements to be true.

  
\_\_\_\_\_  
COREY STOUGHTON

Dated: New York, NY  
June 7, 2010

Sworn and subscribed to me  
this 3<sup>rd</sup> day of June 2010

  
\_\_\_\_\_  
NOTARY PUBLIC

**LAUREL P. BENJAMIN**  
**Notary Public, State of New York**  
**No. 24-4825914**  
**Qualified in Kings County**  
**Commission Expires Sept 30, 2012**