

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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JOHN BLY,

Petitioner,

VERIFIED PETITION

- against -

Index No.:

CITY OF YONKERS, ERIC ARENA, and  
FRANK J. RUBINO

Respondents.

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Petitioner, JOHN BLY, by his attorney NEW YORK CIVIL LIBERTIES UNION FOUNDATION via JOANN PRINZIVALLI as cooperating attorney with NEW YORK CIVIL LIBERTIES UNION FOUNDATION, as and for his petition against the Respondents, respectfully states and alleges as follows:

PRELIMINARY STATEMENT

1. This is a proceeding under CPLR Article 78 and Public Officers Law Article 6 (the New York State Freedom of Information Law, or “FOIL”) challenging the City of Yonkers’ refusal to produce records maintained by the City of Yonkers Police Department containing specific information about the investigation into the 1952 murder of labor leader JOHN ACROPOLIS. Petitioner seeks judgment directing Respondents to comply with their duty under FOIL and provide the records and information as requested by Petitioner on May 6, 2008.

2. According to news reports, on August 26, 1952, at approximately 2:30 a.m., Teamsters Local 456 president JOHN ACROPOLIS was shot twice and killed after entering his apartment on Warburton Avenue in Yonkers. JOHN ACROPOLIS was a union reformer who was responsible for cleaning up corruption in the union local organization. Concerned about organized crime influence over the private carting industry, he convinced the local Chamber of Commerce to set up a private carting company (Rex Carting) that would employ only members of Local 456. This became a problem when the mob-controlled Local 27 from the Bronx and organized-crime-connected carting companies tried to intimidate Rex Carting and its customers, and it is possible that mob corruption may have influenced Yonkers public officials of the time, and possibly interfered with the police investigation into the Acropolis murder. A newspaper retrospective published fifty years after the murder indicated that “questions remain about just how vigorously Yonkers police investigated the case.” (*Sensational slaying remains unsolved*, New York Journal News, Sunday, August 25, 2002, p. 1A)
3. The records and materials connected with the police investigation were requested on a City of Yonkers Freedom of Information Law (FOIL) Request form enclosed with a letter dated and hand-delivered on May 6, 2008 and in compliance with Public Officers Law Article 7. The request specifically stated that materials containing information protected from disclosure as stated in Public Officers Law § 87(2)(e) could be redacted from the materials. The request was denied dismissively by a letter from the Yonkers FOIL Records Access Officer on May 7, 2008, the very next day, citing as the reason for the broad blanket refusal to be Public Officers Law § 87(2)(e), by statutory reference. The administrative appeal hand delivered on June 3, 2008 met the fate of being completely

ignored by the Yonkers FOIL Appeals Officer, despite the requirements of Public Officers Law Article 6, § 86.(4) that such officer “fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought.”

4. The documents requested include the following:
  - a. A copy of the official death inquest of John Acropolis, who resided at 1080 Warburton Avenue, Yonkers, New York, who was shot and killed in front of his home on August 27, 1952;
  - b. A copy of the ballistics report submitted by the New York City Police Department’s Ballistics Bureau to Detective Captain Joseph Delmonico, head of the Detective Bureau, relating to their tests on two .38 caliber bullets taken from the above murder victim on or about August 28, 1958;
  - c. A copy of the record of test results of tests performed by ballistics experts of the New York City Police Department on a stolen U.S. Army .38 caliber Smith and Wesson Chief Special and its “slugs” found on the grounds of the building at 1080 Warburton Avenue on April 28, 1958;
  - d. A copy of the official death inquest of John Acropolis, who resided at 1080 Warburton Avenue, Yonkers, New York, who was shot and killed in front of his home on August 27, 1952;
  - e. A copy of the ballistics report submitted by the New York City Police Department’s Ballistics Bureau to Detective Captain Joseph Delmonico, head of the Detective Bureau, relating to their tests on two .38 caliber bullets taken from the above murder victim on or about August 28, 1958;

- f. A copy of the record of test results of tests performed by ballistics experts of the New York City Police Department on a stolen U.S. Army .38 caliber Smith and Wesson Chief Special and its “slugs” found on the grounds of the building at 1080 Warburton Avenue on April 28, 1958;

Materials requested may be appropriately redacted prior to production, to the extent that the information disclosed might:

- i. interfere with law enforcement investigation by the City of Yonkers Police Department into the Acropolis murder;
  - ii. deprive any living person of a right to a fair trial or impartial adjudication in any prosecution that might result from the investigation;
  - iii. identify a confidential source or disclose confidential information relating to the criminal investigation into the murder of John Acropolis; or
  - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures.
5. Petitioner’s request falls squarely within the letter and purpose of FOIL, which is to encourage government accountability by increasing public access to agency records. Yet, the City of Yonkers through its FOIL Records Access Officer denied Petitioner’s FOIL request in toto, and through its FOIL Appeals Officer completely ignored Petitioner’s appeal of the denial of the request.
  6. It is the duty of the City of Yonkers to comply with Petitioner’s FOIL request, and if the police investigation at the time was properly conducted, the City should have had no problem complying with the request.

## VENUE

7. Westchester County is proper venue for this proceeding, pursuant to CPLR §504.2., as it is the county in which respondent City of Yonkers is located

## PARTIES

8. Petitioner, JOHN BLY, is a resident of the City of Dallas, County of Dallas and State of Texas. Petitioner is the younger brother of CARALEE BLY, who was the fiancée of JOHN ACROPOLIS before his murder, and Petitioner knew JOHN ACROPOLIS when Petitioner was a child.
9. Respondent, CITY OF YONKERS, is an agency for purposes of the New York State Freedom of Information Law, Public Officers Law Article 6, § 86.(3).
10. On information and belief, at all times hereinafter mentioned, Respondent ERIC ARENA was and still is the FOIL Records Access Officer at CITY OF YONKERS and is the person who, on behalf of the CITY OF YONKERS, denied Petitioner access to the information that was requested on May 6, 2008, by letter dated May 7, 2008.
11. On information and belief, at all times hereinafter mentioned, Respondent FRANK J. RUBINO is the Corporation Counsel and Records Appeals Officer for CITY OF YONKERS, and is the person who, by not responding to the administrative appeal letter dated and hand-delivered on June 3, 2008, either during or after the time specified to do so under the statute, constructively affirmed the denial of Respondent ERIC ARENA, for access to the information requested by the petitioner.

## FACTS

12. On May 6, 2008, Petitioner, by his attorney JOANN PRINZIVALLI, submitted by hand delivery a formal written request to Respondent CITY OF YONKERS, for access to certain records pursuant to Public Officers Law Article 6, in the format suggested by said Respondent, annexed to a cover letter (See Exhibit "A").
13. The submitted request sought information regarding certain specified documents and materials in the City of Yonkers Police Department file on the investigation into the 1952 murder of John Acropolis, such disclosures to be appropriately redacted so as to not be in violation of any of the matters excluded from disclosure as stated in the provisions of Public Officers Law § 87(2)(e).
14. By letter dated and mailed May 7, 2008, the Respondent CITY OF YONKERS, acting by its FOIL Records Access Officer, Respondent ERIC ARENA, acknowledged the receipt of Petitioner's request and advised that the request was reviewed and denied under Public Officers Law § 87(2)(e). (See Exhibit "B").
15. On June 3, 2008, Petitioner, by his attorney JOANN PRINZIVALLI, made and hand delivered to Respondent FRANK J. RUBINO a letter constituting an administrative appeal of the May 7, 2008 denial of Respondent ERIC ARENA, pursuant to Public Officers Law § 89. (See Exhibit "C").
16. No response, ruling or determination was made on the administrative appeal, and no response was ever communicated to the Petitioner or his attorney.

17. Respondent FRANK J. RUBINO, by not responding to the administrative appeal on a timely basis or otherwise, constructively denied the appeal to access any of the information requested by petitioner, despite it being pointed out in the appeal letter that the initial rejection by Respondent ERIC ARENA was arbitrary and capricious.
18. Petitioner has exhausted his administrative remedies, and review by this Court is ripe and otherwise appropriate pursuant to, and in accordance with, CPLR Article 78 and Public Officers Law Article 6.
19. Respondents' determination that the requested records be denied is arbitrary and capricious and constitutes an abuse of respondents' discretion.
20. Petitioner is legally entitled to the records they requested in that they are agency records as defined in the statute (Public Officers Law § 86(4)).
21. Under FOIL, if Respondents seek to withhold such records, they have the burden of proving that the documents sought fall within an exemption to FOIL.
22. The denials of petitioner's request by Respondents stated that the denials were based upon a mere reference to Public Officers Law § 87(2)(e) without specificity or explanation.
23. Petitioner's request is clearly does not fall into the exemption claimed because such portions of the materials requested that would fall under the exclusions from disclosure provided in Public Officers Law § 87(2)(e) were specifically requested to be redacted in the production of the requested documentation (see Paragraph 3 *supra*, and Exhibit "A").
24. Public Officers Law § 87(2)(e) does not exempt the requested materials from disclosure.
25. FOIL requires that Respondents provide a "particularized and specific justification" for nondisclosure under FOIL.

26. Respondents have failed to provide such a justification; they have not explained how the exemptions cited apply to Petitioner's FOIL request.
27. Merely listing statutes, or their subsections, as Respondents have done, is not sufficiently particularized and specific to meet the burden required of the agency seeking to prevent disclosure.
28. Respondents' obligation to provide a particularized and specific justification for nondisclosure under FOIL is mandatory, not discretionary.
29. Respondents' denial is premised on wrongful application of the exemptions to FOIL to Petitioner's FOIL request.
30. Petitioner exhausted his administrative remedies with the City of Yonkers when the administrative appeal made on June 3, 2008 was ignored.
31. Petitioner has no other remedy at law.
32. As a result of the constructive final determination of respondents, the petitioner has been denied his right of access to agency records as guaranteed by FOIL.
33. The public records requested by petitioner from the respondents are of clearly significant interest to the general public.
34. Respondents have withheld the requested records from petitioner despite the fact that they lacked a reasonable basis to do so.
35. If petitioner prevails in this proceeding, and for the aforesaid reasons, it is appropriate pursuant to Public Officers Law § 89(4)(c) for the court to order an award of reasonable attorney's fees and other litigation costs reasonably incurred.
36. No previous request under Article 78 has been made for the relief herein requested.



WHEREFORE, it is respectfully requested that this court make and enter a judgment:

- (a) annulling the final determination of the respondents in which they denied petitioners access to requested specified records;
- (b) requiring respondents to make such records available to petitioners pursuant to Public Officers Law Article 6 and in accordance with the request;
- (c) ordering respondents to pay the reasonable attorney's fees and other litigation costs reasonably incurred by petitioners for this proceeding, as allowed under New York Public Officers Law § 89; and
- (d) granting such other and further relief as the Court deems just, proper and equitable.

Dated: White Plains, New York  
September 24, 2008

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