

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

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LEONARD LEVITT,	:	
	:	
Petitioner,	:	Index No.
	:	
-against-	:	
	:	
NEW YORK CITY POLICE DEPARTMENT,	:	VERIFIED PETITION
and RAYMOND KELLY, in his official capacity as	:	
Commissioner of the New York City Police	:	
Department,	:	
	:	
Respondents.	:	
	:	
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 to learn basic facts about the work of high-level public officials. The petitioner Leonard Levitt is a journalist who has reported about the New York City Police Department for decades. Following reporting he did about extensive and previously unknown meetings that NYPD Commissioner Raymond Kelly had held at the Harvard Club in New York City, Mr. Levitt sought under the Freedom of Information Law copies of Mr. Kelly’s schedule to uncover information about Mr. Kelly’s meetings since becoming police commissioner in January 2002. The NYPD denied the request entirely. The New York Civil Liberties Union then filed an appeal on behalf of Mr. Levitt, and the department likewise denied that appeal. In doing so, it primarily asserted that none of

Commissioner Kelly's schedule for the last ten years could be disclosed because doing so could endanger the commissioner as well as those with whom he had met.

2. Commissioner Kelly is the most important appointed government official in New York City government. He commands the largest police department in the country, his accomplishments have been recognized internationally, and the prospect of his running to serve as the next mayor of New York City has been widely discussed. Upon information and belief, for the many years he has served as the commissioner of the NYPD, Mr. Kelly has met with a wide range of influential people. The public has a substantial interest in knowing the identity of those with whom Commissioner Kelly has met and the subject matter of those meetings.
3. Other high-level government officials, including the President of the United States, make portions of their schedules available to the public. There is no reason for Commissioner Kelly to withhold from public scrutiny his entire schedule of meetings for the last decade. To the extent disclosure of specific meetings would present a legitimate security threat to Commissioner Kelly or those with whom he has met, information about those meetings can be withheld. The department has no authority, however, to categorically withhold the entire schedule.
4. The department's actions violate the Freedom of Information Law and the strong policy of open government that underlies the law. Having exhausted his

administrative remedies, Mr. Levitt now seeks judicial relief to force the NYPD to comply with its legal obligations about this matter of pressing public importance.

PARTIES

5. Petitioner Leonard Levitt is a journalist who resides in Stamford, Connecticut.

6. Respondent New York City Police Department is a law-enforcement agency administered under New York 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.

7. Respondent Raymond Kelly is a public officer who is named in his official capacity as the Commissioner of the NYPD.

FACTS

8. Raymond Kelly was named commissioner of the New York City Police Department in January 2002 by Michael Bloomberg, who had been elected mayor of New York City in November 2001.

9. Prior to being appointed commissioner in 2002, Mr. Kelly had had an illustrious career in public service, including having served as commissioner of the NYPD from 1992 to 1994.

10. For over 20 years, petitioner Leonard Levitt worked at *Newsday*, reporting about the NYPD for much of that time. From 1994 to 2004 he authored a weekly column called “One Police Plaza” that focused on the inner workings of the NYPD. The column was widely read by upper-level members of the department.
11. After returning to the NYPD in January 2002, Commissioner Kelly was often the target of unflattering commentary by Mr. Levitt in his weekly column. Mr. Kelly became so unhappy about Mr. Levitt’s column that in 2003 he traveled to the Long Island offices of *Newsday* in an apparent effort to persuade the paper’s editors to remove Mr. Levitt from his position. That effort failed.
12. In 2004 Mr. Levitt retired from *Newsday*. At that point, he started an online version of his column, and he continues to publish the column on a weekly basis. The column, which is called “NYPD Confidential,” continues to enjoy wide readership within the NYPD.
13. In 2008 and 2009 it was widely reported that Mr. Kelly was considering running for mayor of New York City. At that time, term limits would have forced an end to Mr. Bloomberg’s tenure in 2009. However, changes to the City Charter engineered by Mr. Bloomberg and approved by the City Council allowed Mr. Bloomberg to run for a third term, and Mr. Kelly did not run for the position.

14. In 2009 Mr. Levitt published a book examining the history of the NYPD over the last several decades. A chapter of that book described Mr. Kelly's most recent tenure as commissioner and earlier parts of the book examined his original time as commissioner.
15. In October 2010 Mr. Levitt published a column revealing that since 2002 Commissioner Kelly had regularly met with prominent people for lunch at the Harvard Club in New York City and that a foundation controlled by Mr. Kelly had paid for the cost of those lunches. According to the column, Mr. Kelly had refused to tell even the foundation the identity of those he had hosted at the Harvard Club.
16. Mr. Levitt's disclosures about Mr. Kelly's Harvard Club meals triggered substantial press coverage. In a February 2011 column, Mr. Levitt noted that recent disclosures in the *New York Daily News* revealed that Mr. Kelly has spent more than \$15,000 at the Harvard Club in 2008, "the year he was seriously considering running for mayor."
17. On or about February 10, 2011, Mr. Levitt submitted a request, pursuant to the Freedom of Information Law, seeking records of the public schedule of Commissioner Kelly.

18. On May 5, 2011, the NYPD denied Mr. Levitt's request. In a letter from Sergeant James Russo, the department asserted that Mr. Levitt's request was "too broad, and fails to describe an NYPD record in a manner that can lead to its retrieval."

19. On June 3, 2011, the New York Civil Liberties Union filed a timely appeal of the NYPD's denial of Mr. Levitt's request. In that appeal, the NYCLU argued the original request was sufficiently clear in that it "plainly encompasses a paper or electronic calendar or log of the Commissioner's schedule, records that undoubtedly exist and that could easily be retrieved." In addition, the appeal clarified any ambiguity that might have existed in the original request as follows:

To the extent, however, the Department insists the request was too broad or vague, we are happy to clarify it. In seeking records of the Police Commissioner's schedule since January 2002, Mr. Levitt's request specifically includes a request for any paper or electronic calendars or logs maintained by or for the Commissioner about his daily appointments and activities as Police Commissioner. Production of such records would satisfy the request.

20. On June 21, 2011, the NYPD denied Mr. Levitt's request. In doing so, the department contended the original request could not be construed to encompass any record that in fact existed. As for the clarification offered in the appeal letter, the NYPD asserted it could withhold entirely any calendars or appointment logs of Commissioner Kelly's on the grounds that disclosure of such records could endanger the safety of the commissioner or of those with whom he had met, could impair

ongoing investigations, could involve information that was not final, and could violate the privacy rights of those with whom the commissioner had met.

21. Mr. Levitt has a substantial interest in learning the identity of those with whom Mr. Kelly has met and learning information about the substance of those meetings, and he believes the public has a similar interest. Given his long history of reporting about the NYPD and Mr. Kelly and given the leadership role Mr. Kelly plays in New York City's government and in the national and international law-enforcement community, Mr. Levitt believes it is important for the public to know who Mr. Kelly has met with as commissioner. That there has been widespread public reporting about his possibly running for Mayor of New York City simply adds to the legitimate public interest in Commissioner Kelly's meetings.
22. Many high-level government officials, including the President of the United States make portions of their schedules available to the public. Just last month, New York Governor Andrew Cuomo started posting detailed versions of his daily schedules.

CAUSE OF ACTION UNDER ARTICLE 78

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

24. Petitioner has a clear right to the records sought. Under FOIL, the respondents may redact portions of a document exempt from FOIL's disclosure obligations but must disclose the remaining portions of the document.

25. Respondent's has categorically withheld the records sought by the petitioner. Respondents' obligation under FOIL to disclose the records is mandatory, not discretionary. No basis exists in law or fact for this categorical denial.

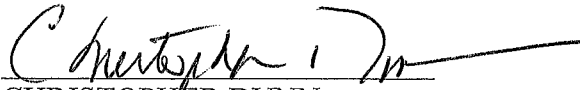
26. The petitioner has exhausted his administrative remedies with the NYPD when he appealed its initial denied of his request and received a denial of that appeal. Petitioner has no other remedy at law.

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 information sought by Petitioner in his request dated February 10, 2011;
- (2) Awarding attorneys' fees and reasonable litigation costs as allowed under New York Public Officers Law § 89; and
- (3) Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher Dunn", written over a horizontal line.

CHRISTOPHER DUNN
New York Civil Liberties Union
Foundation
125 Broad Street, 19th Floor
New York, NY 10004
(212) 607-3300

Dated: October 17, 2011
New York, NY

Counsel for Petitioner

VERIFICATION

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

Christopher Dunn, an attorney admitted to practice in the State of New York, affirms pursuant to C.P.L.R. § 2106 under the penalties of perjury:

1. I am the attorney for and an employee of the Petitioner in the within proceeding. I make this Verification pursuant to C.P.L.R. § 3020(d)(3).
2. I have read the attached Verified Petition and know its contents.
3. The statements in the Verified Petition are true to my own knowledge, or upon information and belief. As to those statements that are based upon information and belief, I believe those statements to be true.


CHRISTOPHER DUNN

Dated: New York, NY
October 17, 2011

Sworn and subscribed to me
this 17th day of October 2011


NOTARY PUBLIC

ADRIANA CECILIA PINON
Notary Public, State of New York
No. 02P16223552
Qualified in New York County
Commission Expires 06/14/14