

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

In the Matter of

EMPIRE CENTER FOR PUBLIC POLICY,

Petitioner,

-against-

METROPOLITAN TRANSIT AUTHORITY,

Respondent.

Index No.

VERIFIED PETITION

For a Judgment Under Article 78 of the Civil
Practice Law and Rules

Petitioner Empire Center for Public Policy, for its Verified Petition against Respondent Metropolitan Transit Authority, alleges as follows:

BACKGROUND

1. Petitioner Empire Center informs taxpayers and policymakers about issues such as public spending and public employment, including public employees' pay.

2. For example, Empire Center's work has resulted in greater public awareness and transparency regarding overtime abuse by LIRR employees, among many other things.

3. To accomplish its mission, Empire Center operates a web portal through which taxpayers can share, analyze, and compare data from counties, cities, towns, villages, school districts, and public authorities throughout New York.

4. Empire Center obtains public employee payroll information through regular requests under the Freedom of Information Law. Public Officers Law §§ 84-90 ("FOIL").

Empire Center's FOIL Request to MTA.

5. On January 2, 2020, Empire Center sent FOIL Requests to MTA requesting an electronic document or a CD of the complete payroll of the MTA Police and Headquarters (and any subsidiaries) for monies paid out in calendar year 2019. Empire Center requested that the disclosed file include all full-time and part-time employees sorted by agency, including:

- Name;
- Title;
- Compensation rate;
- Hire date;
- Pay basis;
- Location; and
- Year-to-date employee compensation (including overtime and other extras, but excluding expense reimbursements).
- Separate from year to date employee compensation, individual columns for regular earnings, overtime, retro pay and any other extra pay excluding expense reimbursements.

Exhibits A and B.

6. MTA acknowledged the requests on January 9 and informed Empire Center that it anticipated responding within 60 business days. **Exhibits A and B.**

7. MTA next contacted Empire Center on April 6 and stated that it needed an additional 30 business days to respond. **Exhibits A and B.**

8. In other words, MTA informed Empire Center that it would not respond until more than *five months* after the FOIL Requests.

9. FOIL requires agencies to either disclose reasonably described records or deny access within five business days of a FOIL request. Alternatively, if records are not to be disclosed within five business days, agencies must provide a requestor with an approximate date “which shall be reasonable under the circumstances of the request” for when a request will either be granted or denied. FOIL § 89 (3)(a).

10. MTA constructively denied Empire Center's FOIL Request when it failed to provide a response date "reasonable under the circumstances."

11. Empire Center appealed MTA's constructive denial on April 7 and stated, in part:

We understand that we're all currently living in a unique situation that presents unusual challenges to all of our tasks, including the fulfillment of FOIL requests. However, the records we are requesting should be contained online, so the records access officer should be able to access and disclose the data remotely.

Exhibits C and D.

12. Empire Center also stated that "[if] you personally do not handle your agency's FOIL appeals, please forward this letter to the appropriate person."

Exhibits C and D.

13. MTA responded on April 13 and instructed Empire Center to send its appeal by mail. MTA further stated that "[i]n light of New York State's reduction in workforce as part of the ongoing response to the COVID-19 pandemic, there may be delays in response to FOIL Request." **Exhibits A and B.**

14. Empire Center, however, submitted its FOIL Request on January 2, more than two months before state shutdown orders related to the COVID-19 pandemic went into effect.

15. Empire Center re-sent the appeal on April 22 by mail. Empire Center again informed MTA that it requested records that are maintained electronically. Empire Center further informed MTA that requiring Empire Center to send its appeal by regular mail rather than email risks "health and safety and add[s] undue time to the [FOIL] process." **Exhibit E.**

16. MTA finally disclosed records on June 3. However, MTA stated that it withheld the "names of certain MTA police officers" under the life and safety exception in FOIL § 87(2)(f). MTA further stated that this was MTA's

“complete” response to Empire Center’s FOIL Request and that the FOIL requests “will now be closed.” **Exhibit F.**

17. Empire Center analyzed the partially disclosed records and determined that certain police officer records were *completely* removed, not just officer names. To confirm, Empire Center asked MTA:

[W]hen you say some police officers names were removed from the report, are their payroll records completely removed, or are just the names redacted? It looks like their records were completely removed from the report, again, just want to confirm this.

Exhibit G.

18. MTA responded and stated that “[t]he names and payroll records of certain MTA police officers were completely removed.” **Exhibit G.**

19. MTA offered Empire Center no explanation as to why it omitted the officers’ payroll records.

20. On June 8, Empire Center requested clarifying information regarding the undisclosed police officer payroll information, including:

- How many individual pay records were omitted;
- What were the titles of the individuals;
- What was their total pay; and
- Whether MTA has previously withheld this information.

Exhibit G.

21. MTA informed Empire Center that it would answer these questions on June 17. On that day, however, MTA requested even more time to respond.

Exhibit G.

22. Empire Center appealed MTA’s nondisclosure on June 22. Empire Center pointed out that MTA “[o]ffered no evidence even to suggest that release of the payroll records may cause a threat to the life and safety of the removed police officers.” **Exhibit H.**

23. MTA responded to Empire Center's June 8 correspondence on June 26. MTA again informed Empire Center that the names and number of officers were withheld because disclosure could endanger the life or safety of any person. **Exhibit I.**

24. MTA responded to Empire Center's appeal on July 6 and stated that the appeal is moot because MTA already answered the questions Empire Center asked in its June 8 correspondence. Therefore, MTA denied Empire Center's appeal. **Exhibit J.**

25. MTA improperly failed to disclose MTA police officer payroll information without justification under FOIL.

26. Disclosure of these records will not endanger anyone.

PARTIES

27. Petitioner Empire Center is a domestic non-profit corporation based in Albany, New York.

28. Respondent MTA is an "agency" under FOIL § 86(3).

JURISDICTION AND VENUE

29. This Court has jurisdiction under CPLR § 7804(b) and CPLR § 506(b) because all actions at issue in this case took place within New York County and because MTA's main offices are in New York County.

CAUSE OF ACTION

Wrongful Denial of FOIL Request

30. Empire Center repeats and re-alleges paragraphs 1 through 29 as if fully set forth in this paragraph.

31. An Article 78 proceeding is appropriate to review agency FOIL request denials.

32. MTA police officer pay information are public records that must be disclosed under FOIL.

33. Empire Center sought and MTA denied disclosure of the pay records.

34. MTA failed to provide any information to meet its burden under FOIL to provide specific and particular reasons for withholding public records.

35. Empire Center has exhausted its administrative remedies and has no other remedy at law.

36. Empire Center has not made any prior application for the relief requested.

RELIEF REQUESTED

37. Empire Center respectfully requests that this Court issue an order:

- A. Declaring that MTA acted unlawfully in failing to produce MTA police officer pay records;
- B. Declaring that MTA must release the records within five days of the date of the Order;
- C. Awarding attorney's fees and costs to Empire Center as permitted under FOIL; and
- D. Granting such other and further relief as this Court may deem just and proper.

Dated: Albany, New York
July 14, 2020

Respectfully submitted,



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