

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

REMAPPING DEBATE,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules,

-against-

NEW YORK CITY POLICE DEPARTMENT

Respondent.

Index No. 13-100638

Assigned to Justice

---

**VERIFIED ARTICLE 78 PETITION**

Petitioner, Remapping Debate, for its verified petition, alleges as follows:

**PRELIMINARY STATEMENT**

1. Petitioner Remapping Debate, a not-for-profit news website devoted to reporting on a wide variety of public policy issues, brings this proceeding pursuant to the Freedom of Information Law (“FOIL”), Article 6 of the N.Y. Public Officers Law, and CPLR 7803, to vindicate its right to access public records in the possession of the New York City Police Department (“NYPD”): (a) relating to a sample of applications for “parade” permits (the type of permit needed to engage in a protest demonstration); and (b) relating to a sample of applications for sound-device permits (the type of permit needed to use sound amplification equipment). Contrary to the requirements of FOIL, and contrary to the public interest, the NYPD has denied Petitioner’s access to these records for more than 10 months. In so doing, the NYPD has deprived Remapping Debate of its ability to analyze for the public the extent to which the Police Department burdens citizens in their exercise of their First Amendment rights and the extent to which Police Department practices have changed over time.

2. In May 2012, Petitioner submitted its FOIL requests. To date, Respondent has not produced a single document. Instead, Respondent has provided serial letters stating that the records have not been produced because the “records have not been received from other NYPD units.”

3. The NYPD has failed to offer any legitimate reason for non-compliance. The NYPD as a whole that has obligations pursuant to FOIL and, here, no justification was offered as to why the units or personnel in the NYPD who *did* have custody of the records had not produced them.

4. After the NYPD failed to produce a single record, Remapping Debate appealed the constructive denial of its requests.

5. The NYPD denied the appeals by relying on its own failure to act: since the Department had not *formally* denied the requests, it argued, the appeals were “premature.” In denying the appeal, Respondent again ignored its statutory mandate to provide the public with access to public records within a reasonable time frame.

6. More than six months after the filing of the appeals, and well after their denial as “premature,” no records have been produced.

7. Having exhausted its administrative remedies, Petitioner now asks the Court to hold that Respondent has violated its obligations under FOIL and to order Respondent to immediately provide to Petitioner all documents responsive to Petitioner’s FOIL requests. Because Respondent lacked and lacks a reasonable basis for denying the requested public records or for its delay, Petitioner also requests that the Court award Petitioner its attorneys’ fees and litigation costs.

## VENUE

8. Pursuant to CPLR § 7804(b) and 506(b), venue in this proceeding lies in New York County, in the judicial district where Respondent refused to perform the duty enjoined upon them by law and where the office of Respondent is located.

## PARTIES

9. Petitioner REMAPPING DEBATE is a not-for-profit news publication that engages in original reporting on a variety of issues relating to public policy. Petitioner's publications include reporting relating to the right to assemble and engage in political demonstrations. *See, e.g.,* Mike Alberti, *Demonstrators beware: you won't be seen or heard*, Remapping Debate (May 16, 2012), *available at* [www.remappingdebate.org/node/1274](http://www.remappingdebate.org/node/1274). Remapping Debate is a registered assumed name of the Anti-Discrimination Center, Inc. ("ADC"), a New York not-for-profit corporation.

10. Respondent NEW YORK CITY POLICE DEPARTMENT is a law enforcement agency administered under the New York City 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 § 86 et seq. The NYPD requires applicants to submit applications for parade permits and for sound-device permits to the New York City Police Department. N.Y. Code § 10-110(a); N.Y. Code § 10-108(e).

## FACTS

### Parade Permit FOIL Request

11. On May 24, 2012, Petitioner submitted the Parade Permit FOIL request.  
Ex. A. <sup>1</sup> That request was carefully time-limited to reduce the burden on Respondent: out of a

---

<sup>1</sup> All numbered exhibits referenced herein are attached to the Affidavit of Andrew G. Celli, Jr., which is attached to the Petitioner's Memorandum of Law In Support Of an Order to Show Cause and Verified Article 78 Petition.

45-year period, Petitioner asked for records from two fiscal years in the Vietnam War era, one fiscal year during the administration of former Mayor David Dinkins, the fiscal year in the Bloomberg era that encompassed the 2004 Republican National Convention, and the period beginning July 1, 2011. In other words, Remapping Debate decided *not* to ask for 45 years of records.

12. Likewise, Remapping Debate limited its request by geography. Rather than seeking records relating to parade permit applications for parades anywhere in the city, it limited the request to those where the parade route was wholly or partially in Manhattan.

13. On information and belief, the Police Department handles parade permit applications on a centralized basis.

14. Petitioner received an acknowledgment of the FOIL Request by a letter dated June 5, 2012 that was signed by Richard Mantellino, NYPD Lieutenant and Records Access Officer. Ex. B. Lt. Mantellino stated that the NYPD expected to respond within twenty (20) days informing Petitioner of the status of the FOIL Request. Petitioner received nothing within twenty days.

15. In the second week of July, Petitioner received a letter signed by Lt. Mantellino. Ex. C. The letter informed Petitioner that Officer Rivera had been assigned to the request and revised the date by which the Department expected to complete its determination of the request to September 6th. Ex. C. The only reason given was because “records have not been received from other NYPD units.” The letter did *not* state that “records are located in several locations and are difficult to search or locate,” that the “records are archived and are difficult to locate and retrieve, that “numerous records must be reviewed in order to determine whether disclosure is required,” or that the “request is extremely voluminous and/or complex”—even

though the form provided by the NYPD listed these as potential reasons Respondent could check off to explain the delay.

16. On July 16, 2012, Mike Alberti, the Remapping Debate reporter who had submitted the FOIL requests, had a telephone conversation with Officer Rivera in which he requested that any documents related to the FOIL requests be provided as they become available, at the earliest possible date. Officer Rivera responded that it would not be possible to comply with that request.

17. September 6, 2012, the date specified in Respondent's delay letter of July 3rd, came and went and no records were produced. Instead, by letter dated September 6th, Respondent once again informed Petitioner that Officer Rivera had been assigned to the request. Once again, the expected date of substantive response was extended (this time to October 9th). Once again, the *only* reason cited was because "records have not been received from other NYPD units." Ex. D.

18. In sum, the NYPD was repeating its July boilerplate delaying tactic.

19. On September 19, 2012, Petitioner filed an administrative appeal. Ex. E. The basis for the appeal was Respondent's constructive denial of Petitioner's requests, its failure to produce records within the statutory time period, and its failure to provide any specific or substantive explanation for the continuing delay in processing Petitioner's request.

20. Respondent did not provide Petitioner with any written update on the status of its FOIL request during the period from September 2012 to March 2013.

21. Petitioner received a letter dated March 8, 2013 from the Records Access Appeals Officer denying Petitioner's appeal on the grounds that it was premature. Ex. F.

22. Petitioner has exhausted its administrative remedies.

23. Petitioner has still not received any records from Respondent, and it has still not received any letter from respondent updating its September 2012 letter setting forth October 9, 2012 as the expected time for the Department's response.

#### Sound-Device FOIL Request

24. On May 25, 2012, Petitioner submitted the Sound-Device FOIL request. Ex. G. That request contained the same temporal limitations as the Parade Permit FOIL request and further limited the request to records concerning applications made to Manhattan precincts.

25. Petitioner received an acknowledgment of the FOIL Request by a letter dated June 5, 2012 that was signed by Lt. Mantellino. Ex. H. Lt. Mantellino stated that the NYPD expected to respond within twenty (20) days and inform Petitioner of the status of the FOIL Request. Petitioner did not receive a response to the FOIL request by July 3, 2012, twenty (20) business days after Lt. Mantellino's June 5, 2012 letter.

26. On July 10, 2012, Petitioner submitted a follow up request to Lt. Mantellino and informed him that Petitioner had received no records or correspondence in regard to the Sound-Device FOIL request. Ex. I.

27. Shortly thereafter, Petitioner received a letter from Respondent that was dated July 3rd. Ex. J. The letter informed Petitioner that Officer Rivera had been assigned to the request and revised the date by which the Department expected to complete its determination of the request to September 5th. Ex. J. The only reason given was because "records have not been received from other NYPD units." The letter did *not* state that "records are located in several locations and are difficult to search or locate," that the "records are archived and are difficult to locate and retrieve, that "numerous records must be reviewed in order to determine

whether disclosure is required,” or that the “request is extremely voluminous and/or complex” — even though the form provided by the NYPD listed these as potential reasons Respondent could check off to explain the delay.

28. In short, the response to the Sound-Device FOIL request was in all material respects identical to that made in response to the Parade Permit FOIL Request.

29. September 5, 2012, the date specified in Respondent’s delay letter of July 3rd, came and went and no records were produced. Instead, by letter dated September 5th, Respondent once again informed Petitioner that Officer Rivera had been assigned to the request. Once again, the expected date of substantive response was extended (this time to October 5th). Once again, the *only* reason cited was because “records have not been received from other NYPD units.” Ex. K.

30. In sum, the NYPD was repeated its July boilerplate delaying tactic in respect to the Sound-Device FOIL request as well. Ex. K.

31. On September 20, 2012, Petitioner filed an administrative appeal. Ex. L. The basis of the appeal was Respondent’s constructive denial of Petitioner’s requests, its failure to produce records within the statutory time period, and its failure to provide any specific or substantive explanation for the continuing delay in processing Petitioner’s request.

32. During the pendency of the appeal (in a letter dated October 5th, *see* Ex. M.), Respondent sent another letter that moved the estimated date for completion back to November 8th. It again stated that Officer Rivera was being assigned, and again recited only the “records not received from other units” language. Notwithstanding that letter, no records were received on or before November 8th. Petitioner never received an explanation for the delay or for the complete failure to produce any records.

33. Petitioner received no further communication from Respondent other than a letter dated January 4, 2013, denying Petitioner's appeal on the grounds that it was "premature." Ex. N.

34. Petitioner has exhausted its administrative remedies.

35. Petitioner has still not received any records from Respondent.

**FIRST CAUSE OF ACTION**

(Article 78 Review of Wrongful Denial of FOIL Request)

36. Petitioner repeats and realleges the preceding paragraphs as though fully set forth herein.

37. Section 89(4)(b) authorizes any person denied access to a public record to bring a proceeding for the review of such denial pursuant to Article 78 of the CPLR.

38. Petitioner and the public have a clear right to the requested Parade Permit documents.

39. Respondent has not provided any documents in response to this request, and has provided no statutorily-complaint explanation of its failure to do so.

40. Respondent's actions constitute a constructive denial of Petitioner's FOIL Requests.

41. Respondent failed to provide an adequate justification for its failure to produce the requested records.

42. Respondent is estopped from introducing new reasons for its failure to produce the requested records.

43. Respondent in any event lacks an adequate justification for its failure to produce the requested records.



44. Respondent's actions violate its statutory obligations, N.Y. Pub. Off. Law § 89(3)(a) and N.Y. Pub. Off. Law § 89(4)(a).

45. Petitioner exhausted its administrative remedies when it appealed to Respondent's denial of its FOIL Requests. Petitioner has no other remedy at law.

**SECOND CAUSE OF ACTION**  
(Article 78 Review of Wrongful Denial of FOIL Request)

46. Petitioner repeats and realleges the preceding paragraphs as though fully set forth herein.

47. Section 89(4)(b) authorizes any person denied access to a public record to bring a proceeding for the review of such denial pursuant to Article 78 of the CPLR.

48. Petitioner and the public have a clear right to the requested Sound-Device documents.

49. Respondent has not provided any documents in response to this request, and has provided no statutorily-compliant explanation of its failure to do so.

50. Respondent's actions constitute a constructive denial of Petitioner's FOIL Requests.

51. Respondent failed to provide an adequate justification for its failure to produce the requested records.

52. Respondent is estopped from introducing new reasons for its failure to produce the requested records.

53. Respondent in any event lacks an adequate justification for its failure to produce the requested records.

54. Respondent's actions violate its statutory obligations, N.Y. Pub. Off. Law § 89(3)(a) and N.Y. Pub. Off. Law § 89(4)(a).

55. Petitioner exhausted its administrative remedies when it appealed to Respondent's denial of its FOIL Requests. Petitioner has no other remedy at law.

**THIRD CAUSE OF ACTION**

(Attorneys' Fees Under N.Y. Pub. Off. Law § 89(4)(c))

56. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

57. Petitioner is entitled to recover its reasonable attorneys' fees and other litigation costs reasonably incurred pursuant to N.Y. Public Officers Law § 89(4)(c).

RELIEF

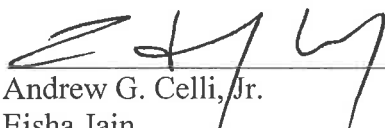
Petitioner respectfully requests that this Court grant the following relief:

- (a) Pursuant to CPLR 7806, directing Respondent to comply with its duty under FOIL to provide the requested public records:
  - 1. Each of the public records responsive to the Parade Permit FOIL Request, as sought in Petitioner's request dated May 24, 2012, Ex. A.
  - 2. Each of the public records responsive to the Sound-Device FOIL Request, as sought in Petitioner's request dated May 25, 2012, Ex. G.
- (b) Awarding attorneys' fees and reasonable litigation costs as allowed under N.Y. Public Officers Law § 89; and
- (c) Granting such other and further relief as the Court deems just and proper.

Dated: April 23, 2013  
New York, New York

EMERY CELLI BRINCKERHOFF  
& ABADY LLP

By:

  
\_\_\_\_\_  
Andrew G. Celli, Jr.

Eisha Jain  
75 Rockefeller Plaza, 20<sup>th</sup> Floor  
New York, New York 10019  
(212) 763-5000  
*Attorneys for Petitioner*