

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

REMAPPING DEBATE,

Petitioner,

For a judgment under Article 78, etc.,

-against-

THE NEW YORK CITY POLICE
DEPARTMENT,

Respondent

Index No.: 100638/13

STIPULATION AND
ORDER OF SETTLEMENT

FILED RECEIVED

JUL 26 2013

JUL 11 2013

NEW YORK
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WHEREAS, Petitioner Remapping Debate ("Petitioner") submitted FOIL requests dated May 24, 2012 and May 25, 2012 to Respondent New York City Police Department ("NYPD" or "Respondent") (collectively, Remapping Debate and NYPD, the "Parties"), for certain records covering the time periods July 1, 1967 through June 30, 1969; July 1, 1991 through June 30, 1992; July 1, 2004 through June 30, 2005; and July 1, 2011 through "today" concerning, *inter alia*: (a) parade permits and documents related thereto ("Parade Permit FOIL Request"); and (b) sound-device permits and documents related thereto ("Sound Device FOIL Request"), respectively (collectively "the Requests");

WHEREAS, on April 23, 2013, Petitioner through its attorneys commenced a proceeding pursuant to Article 78 of the CPLR to compel disclosure of the requested records (the "Petition");

WHEREAS, Respondent responded to the Parade Permit FOIL Request and the Sound Device FOIL Request by letters dated May 31, 2013 (the "May 31 Letters") (Exhibits A and B);

WHEREAS, the Parties, seeking to avoid additional protracted, expensive, and unnecessary litigation, agree to entry of this Stipulation and Order of Settlement (the "Stipulation") to resolve Petitioner's claims:

NOW, THEREFORE, IT IS HEREBY STIPULATED, ORDERED, AND AGREED, by and between the undersigned as follows:

1. Consistent with the May 31 Letters, Respondent affirms that it has: (a) granted the Petitioner's Parade Permit FOIL Request insofar as it relates to records concerning the time periods July 1, 2004 through June 30, 2005, and July 1, 2011 through May 24, 2012; and has conducted a diligent search with negative results as to the time periods July 1, 1967 through June 30, 1969, and July 1, 1991 through June 30, 1992 (*see* Exhibit A); and (b) granted the Petitioner's Sound Device FOIL Request (*see* Exhibit B).

2. Respondent shall provide to Petitioner a copy of all records located pursuant to what Respondent asserts was a diligent search that are responsive to the Requests ("Responsive Records") as follows: (a) the Responsive Records relating to the Parade Permit FOIL request shall be disclosed to Petitioner within two weeks of the date of this Stipulation and (b) disclosure of the Responsive Records relating to the Sound Permit FOIL request shall commence within one month of the date of this Stipulation and shall continue on a rolling basis until completed, but shall be completed within six months of the date of this Stipulation. As of the date of the execution of this Stipulation, Respondent has identified and collected approximately 3,000 pages in Responsive Records.

3. Any expenses necessary to copy and produce the Responsive Public Records to Petitioner shall be borne exclusively by Respondent.

4. With regard to the Sound Device FOIL Request, Petitioner waives its right to file and pursue an administrative appeal of the May 31, 2013 "Interim Decision" (*see* Paragraph 1(b), *supra*, and Exhibit B) and agrees that it shall not commence or pursue any proceeding with respect to the Sound Device FOIL Request or the Interim Decision;

5. With regard to the Parade Permit FOIL Request, Petitioner reserves its right to file and pursue an administrative appeal of the May 31, 2013 decision, including an appeal challenging the asserted diligence of Respondent's search, only insofar as it relates to records concerning the time periods July 1, 1967 through June 30, 1969, and July 1, 1991 through June 30, 1992 (*see* Paragraph 1(a), *supra*, and Exhibit A). Petitioner waives its right to administratively appeal the May 31, 2013 decision insofar as it relates to records concerning the time periods July 1, 2004 through June 30, 2005; and, July 1, 2011 through the date of execution of this Stipulation, and it agrees that it shall not commence or pursue any proceeding with respect to the Parade Permit FOIL Request or the May 31 decision insofar as either relate to records concerning the time periods July 1, 2004 through June 30, 2005; and, July 1, 2011 through the date of execution of this Stipulation.

6. Petitioner's time to file an administrative appeal within the NYPD consistent with Paragraph 5 hereof concerning the Parade Permit FOIL Request is extended through and including September 30, 2013.

7. Petitioner reserves the right, solely within its discretion, to bring a new proceeding pursuant to Article 78 based upon the outcome of the administrative appeal referred to in Paragraph 5 above concerning the Parade Permit FOIL Request insofar as it relates to records concerning the time periods July 1, 1967 through June 30, 1969, and July 1, 1991 through June 30, 1992.

8. Respondent agrees that Petitioner has the rights reserved in Paragraphs 5, 6 and 7, above, and waives any objection or challenge to the exercise of such rights. Nothing in this Stipulation shall diminish, undermine, extinguish, or otherwise negatively affect Petitioner's rights: (i) as reserved in Paragraph 5, 6 and 7 above; and (ii) under the Freedom of Information Law, including its rights to file any future request thereunder for any public records.

9. Respondent agrees to pay reasonable costs and attorneys' fees incurred prior to May 31, 2013, in this Article 78. The precise amount of attorneys' fees and costs to be paid by Respondent will be negotiated in good faith by the Parties. Petitioner agrees to disclose its contemporaneous time records showing billable hours spent and costs incurred on this matter and information reflecting the experience of staff members, as reasonably requested by Respondent and not to include material protected by the attorney-client privilege (unless such privilege is waived by Petitioner), to assist the Respondent and other New York City agencies in evaluating the reasonableness of such fees and costs. In the event that the Parties cannot reach agreement on the precise amount of attorneys' fees and costs to be paid by Respondent, the Court shall determine, on an application of Petitioner and written submission by Respondent, what constitutes "reasonable" attorneys fees and costs pursuant to N.Y. Public Officers Law § 89(4)(c), and shall order and direct Respondent to make payment of same. Nothing herein is intended to waive Respondent's right to oppose Petitioner's claim of reasonableness of any attorneys fee and/or costs incurred by Petitioner in this matter.

10. The Petition shall be and hereby is dismissed with prejudice. The Court shall retain jurisdiction for the purpose of ruling on an application for reasonable attorneys' fees and costs pursuant to Paragraph 9 above, and to enforce the terms of this Stipulation.

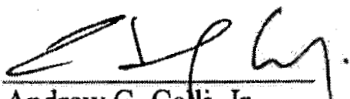
11. This Stipulation sets forth the entire Stipulation as and between Petitioner and Respondent and there are no other agreements or understandings between or among Petitioner and Respondent of any kind.

12. This Stipulation may be executed in any number of counterparts and each such counterpart shall be deemed to be an original. For purposes of executing this Stipulation, a document signed and transmitted by facsimile or email shall be treated as an original document. The signature of any party thereon shall be considered as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document.

13. The Parties knowingly and voluntarily sign this Stipulation as of the date(s) set forth below:


Dated: New York, New York
July 10, 2013

EMERY CELLI BRINCKERHOFF
& ABADY LLP
75 Rockefeller Plaza, 20th Floor
New York, NY 10019
(212) 763-5000

By: 
Andrew G. Celi, Jr.
Attorney for Petitioner

Dated: New York, New York
July 11, 2013

DOUGLASS B. MAYNARD
Deputy Commissioner, Legal Matters
New York City Police Department
One Police Plaza, Room 1406
New York, NY 10038
(646) 610-5400

By: 
Lori Hernandez
Attorney for Respondent

SO ORDERED:



HON. MARGARET A. CHAN

7/24/13

FILED
JUL 26 2013
NEW YORK
COUNTY CLERK'S OFFICE

EXHIBIT

A

RECYCLED PAPER www.klar-fax.com FSC® C014619

REMAPPING DEBATE

Asking "Why" and "Why Not"

May 24, 2012

VIA FEDERAL EXPRESS

Records Access Officer
NYC Police Department
F.O.I.L. Unit – Legal Bureau
One Police Plaza, Room 110-C
New York, New York 10038

Re: Request for records pursuant to Freedom of Information Law

Dear Records Access Officer:

These are requests for records, as that term is defined by Public Officers Law § 86(4), pursuant to Public Officers Law § 89(3)(a). I make this request on behalf of my not-for-profit public policy news publication, Remapping Debate, for which I work.

When used herein, the term "concerning" means relating to, referring to, describing, evidencing, or constituting. When you have the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, we are asking you to do so in conformance with the requirements of Public Officers Law § 89(3).

Each and all of the requests that follow concern only those applications for parade permits where the proposed parade route was wholly or partially in Manhattan.

Request No. 1. All records, whenever or by whom created, constituting or evidencing parade permit applications, whether made by current form PD637-041, a predecessor form, or by other means, where the application was submitted in any of the following periods:

- (a) July 1, 1967 through and including June 30, 1969;
- (b) July 1, 1991 through and including June 30, 1992;
- (c) July 1, 2004 through and including June 30, 2005; and
- (d) July 1, 2011 through and including today.

Request No. 2. All records, whenever or by whom created, and whether or not a copy of a document or other communication was sent or conveyed to an applicant, concerning the parade permits applications sought by Request No. 1 (other than the permits themselves), including but not limited to:

- (a) records evidencing the approval or denial of, or failure to act on, an application;
- (b) records concerning the reasons for the approval or denial of, or failure to act on, an application;
- (c) records making inquiry about or providing directions regarding an application; and
- (d) records describing the application or applicant.

Request No. 3. All records, whenever or by whom created, containing instructions to staff for handling parade permit applications, where such instructions were applicable in any portion of the time periods set forth in Request No. 1. The term "handling parade permit applications" is intended to include, but is not limited to the processing treatment, and determination of applications, including instructions on what considerations, if any, were mandatory or permissive, and what considerations, if any, were prohibited.

We are prepared to pay the fees associated with your providing us with copies of the records (and, as applicable, with data-related costs as permitted pursuant to Public Officers Law §§ 87(1)(b)(iii); 87(1)(c); and 89(3(a)).

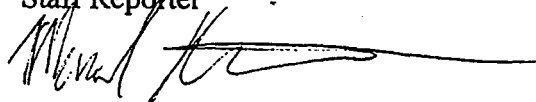
Please advise us promptly whether there are any records requested that you are not prepared to produce pursuant to Public Officers Law § 87(2) or otherwise.

For records that you do not claim are exempt from disclosure, please advise when you will be producing them. If the time frame for producing the records encompassed by each request varies, please advise us of that as well.

Thank you.

Very truly yours,

Mike Alberti
Staff Reporter



EXHIBIT

B

REMAPPING DEBATE

Asking "Why" and "Why Not"

May 25, 2012

VIA FEDERAL EXPRESS

Records Access Officer
NYC Police Department
F.O.I.L. Unit – Legal Bureau
One Police Plaza, Room 110-C
New York, New York 10038

Re: Request for records pursuant to Freedom of Information Law

Dear Records Access Officer:

These are requests for records, as that term is defined by Public Officers Law § 86(4), pursuant to Public Officers Law § 89(3)(a). I make this request on behalf of my not-for-profit public policy news publication, Remapping Debate, for which I work.

When used herein, the term "concerning" means relating to, referring to, describing, evidencing, or constituting. When you have the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, we are asking you to do so in conformance with the requirements of Public Officers Law § 89(3).

Each and all of the requests that follow concern only those applications for sound device permits where the application was submitted to one or more precincts in Manhattan.

Request No. 1. All records, whenever or by whom created, constituting or evidencing sound device permit applications, whether made by current form PD656-041A, a predecessor form, or by other means, where the application was submitted in any of the following periods:

- (a) July 1, 1967 through and including June 30, 1969;
- (b) July 1, 1991 through and including June 30, 1992;
- (c) July 1, 2004 through and including June 30, 2005; and
- (d) July 1, 2011 through and including today.

Request No. 2. All records, whenever or by whom created, and whether or not a copy of a document or other communication was sent or conveyed to an applicant, concerning the sound device permit applications sought by Request No. 1 (other than the permit applications themselves), including but not limited to:

- (a) records evidencing the approval or denial of, or failure to act on, an application;
- (b) records concerning the reasons for the approval or denial of, or failure to act on, an application;
- (c) records making inquiry about or providing directions regarding an application; and
- (d) records describing the application or applicant.

Request No. 3. All records, whenever or by whom created, containing instructions to staff for handling sound device permit applications, where such instructions were applicable in any portion of the time periods set forth in Request No. 1. The term "handling sound device permit applications" is intended to include, but is not limited to the processing treatment, and determination of applications, including instructions on what considerations, if any, were mandatory or permissive, and what considerations, if any, were prohibited.

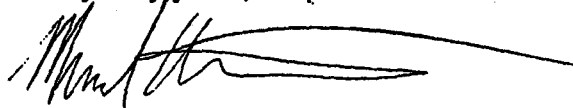
We are prepared to pay the fees associated with your providing us with copies of the records (and, as applicable, with data-related costs as permitted pursuant to Public Officers Law §§ 87(1)(b)(iii); 87(1)(c); and 89(3(a)).

Please advise us promptly whether there are any records requested that you are not prepared to produce pursuant to Public Officers Law § 87(2) or otherwise.

For records that you do not claim are exempt from disclosure, please advise when you will be producing them. If the time frame for producing the records encompassed by each request varies, please advise us of that as well.

Thank you.

Very truly yours,



Mike Alberti
Staff Reporter