

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ESSEX

In re Application for a Judgment Pursuant to
Article 78 of the Civil Practice Law and Rules by

THOMAS JORLING,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

VERIFIED PETITION

Index No.:

Date Filed:

Petitioner Thomas Jorling by and through his attorney Braymer Law, PLLC, for his
Verified Petition herein alleges as follows:

PRELIMINARY STATEMENT

1. This is an Article 78 proceeding seeking a judgment finding that Respondents failed to comply with the Freedom of Information Law (“FOIL”), requiring disclosure of all records sought by Petitioner, and directing payment of Petitioner’s attorney’s fees and other litigations costs. See Public Officers Law §§ 87, 89.

2. Petitioner is seeking records from Respondent Adirondack Park Agency (“Agency”) relating to meetings between Agency staff and representatives for an applicant seeking a permit from the Agency.

3. The Agency has not provided the requested records in response to Petitioner’s FOIL request.

4. The Agency’s Records Access Officer denied access to the records, and upon appeal of that denial, the Agency’s Records Access Appeals Officer failed to provide the records.

5. The Agency's denial of access to the requested documents, and failure to provide the documents in response to Petitioner's FOIL appeal, was arbitrary and capricious, and violates FOIL.

6. This Article 78 proceeding seeks the Agency's compliance with FOIL by requiring disclosure of the requested documents and directing the Agency to pay Petitioner's attorney's fees and costs pursuant to Public Officers Law § 89(4)(c).

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter, and venue is properly sited in the County of Essex, pursuant to CPLR §§ 506(b) and 7804(b).

PARTIES

8. Petitioner Thomas Jorling is the person who submitted the FOIL request to the Agency's Records Access Officer and the FOIL appeal to the Agency's Records Access Appeals Officer.

9. Respondent Adirondack Park Agency is an agency of the State of New York created pursuant to APA Act § 803. Its office is located at Ray Brook in the Town of North Elba, County of Essex, New York.

FACTS

10. Petitioner repeats and realleges each of the preceding allegations as if set forth in full herein.

11. In an earlier response to a FOIL request, the Agency provided to Petitioner's attorney an exchange of email messages between officials of the Agency and an applicant, LS Marina LLC, for a permit to build and operate a marina on Lower Saranac Lake. As apparent in the emails, the Agency and the applicant arranged to meet to discuss a "path forward" following the unanimous decision of the Appellate Division in a case brought by Petitioner, Jorling v APA, (copy annexed hereto as Exhibit A) annulling a permit the Agency had issued to the applicant.

12. On or about March 14, 2023 Agency staff held a closed door meeting with the applicant's representatives. Upon information and belief, there were other meetings between Agency staff and the applicant's representatives.

13. On April 3, 2023, Petitioner sent a letter to John Ernst and Barbara Rice regarding the review process for the application to build and operate the commercial marina on Lower Saranac Lake, and about APA staff's meeting(s) with the applicant and its representatives.

14. As part of that letter, Petitioner included a FOIL request for the Agency's records "describing the participants and content of the meeting any agreements reached with" the applicant's representatives regarding the proposed marina project. A copy of the letter is annexed hereto as Exhibit B.

15. On April 3, 2023, the Agency's Records Access Officer sent me a notice stating that Petitioner's FOIL request was denied. A copy of the denial letter is annexed hereto as Exhibit C.

16. In the denial letter, the Agency's Records Access Officer did not deny that such meeting or meetings were held and that records of the meeting(s) existed. Nevertheless, the Agency withheld the records from release. The denial was based upon the exemption from FOIL for inter or intra Agency communications.

17. On April 8, 2023, Petitioner submitted an appeal of the FOIL denial to the Agency's Records Access Appeals Officer. A copy of the appeal is annexed hereto as Exhibit D.

18. On April 19, 2023, the Agency's Records Access Appeals Officer denied Petitioner's appeal. A copy of the appeal denial is annexed hereto as Exhibit E.

19. The denial of the appeal stated:

While the meetings with the applicant were not intra-agency meetings, the internal memoranda regarding staff's impressions of the meetings are intra-agency communications that are not mere statistical or factual tabulations or data, instructions to staff that affect the public, or final determinations.

20. Accordingly, Petitioner now brings this proceeding pursuant to Public Officers Law § 89(4)(b) for review of Respondent Appeals Officer's decision on the FOIL appeal.

AS AND FOR A CAUSE OF ACTION:

FAILURE TO COMPLY WITH FOIL

21. Petitioner repeats and realleges each of the preceding allegations as if set forth in full herein.

22. "The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society." Public Officer's Law § 84.

23. The Agency's failure to provide the requested records to Petitioner was arbitrary and capricious and violated the basic tenet of the Public Officer's Law – the public shall have access to all public records. See Public Officer's Law § 87(2).

24. The public, including Petitioner, who was the successful party in challenging the earlier issued permit, has an interest in what the Agency and the applicant were discussing in

meeting(s) to discuss the “path going forward”, a path that presumably would be a repeat of a permit process subject to the State of New York’s Administrative Procedures Act.

25. No matter what scholarly descriptions of Administrative Procedure one references they all contain some version of the following purpose:

“Administrative law embodies general principles applicable to the exercise the powers and duties of authorities in order to ensure that the myriad and discretionary powers available the executive conform to basic standards of legality and fairness. The ostensible purpose of these principles is to ensure that there is accountability, transparency and effectiveness in exercising of power in the public domain, as well as observance of the rule of law. It embodies positive principles facilitate good administrative practice; for example, in ensuring that the rules of natural justice or fairness are adhered to. It operates to provide accountability and transparency, including participation by interested individuals and parties in the process of government.” (P. Leyland and T. Woods, Textbook on Administrative Law, 4th ed.

26. Fairness and transparency requirements placed on an agency by standard practice of Administrative Law prevent an agency from meeting behind closed doors with an applicant to discuss “a path forward” without providing an account of such meeting to the public and parties of interest. Holding such a meeting without such accounting smacks of favoritism at best and unsavory conduct at worst, which are precisely the abuses FOIL and principles of administrative law seek to prevent.

27. The Agency’s denial states that it is based on the exception for inter or intra agency material “which is not instructions to staff that affect the public”. Yet the Agency’s admitted purpose of the meeting with an applicant (not an internal meeting with staff) was to discuss a “path forward”, subject matter that clearly affects the public when the public Agency is making decisions about the status of the marina that impact the public and public waters of Lower Saranac Lake.

28. Withholding an account of the meetings Agency personnel have held with an applicant is contrary to the transparency requirements of Administrative Law and certainly the purposes and legal standards of FOIL.

29. Respondent Records Access Appeals Officer's response to Petitioner's FOIL appeal violates FOIL. See Public Officer's Law § 87(2).

30. Respondent Records Access Appeals Officer admitted that "the meetings with the applicant were not intra-agency meetings" but claimed that the records regarding the meetings are exempt from disclosure because they allegedly "are not mere statistical or factual tabulations or data, instructions to staff that affect the public, or final determinations".

31. Pursuant to FOIL, "the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two". Public Officers Law § 89(4)(b).

32. "A denial of access shall not be based solely on the category or type of such record and shall be valid only when there is a particularized and specific justification for such denial". Public Officers Law § 87(2).

33. Here, the Agency failed to meet its burden of proving that the entirety of the records denied fall within the narrow exception from FOIL's broad requirement that an agency "make available for public inspection and copying all records". Public Officers Law § 87(2).

34. Therefore, the Agency denial of Petitioner's FOIL request and appeal was arbitrary and capricious and violates FOIL.

WHEREFORE, Petitioner respectfully requests that this Court enter judgment as follows:

1. Finding that the Agency failed to comply with FOIL and reversing the Agency's denial of Petitioner's FOIL request and appeal;
2. Requiring full, unredacted release to Petitioner of all records sought by Petitioner's FOIL request; and

3. Directing payment of Petitioner's attorney's fees and other litigations costs incurred in connection with this proceeding; and

4. Awarding Petitioner such other and further relief as this Court shall deem just, proper, or equitable.

Dated: May 18, 2023

BRAYMER LAW, PLLC

By: 
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VERIFICATION

STATE OF NEW YORK)
)SS.:
COUNTY OF WARREN)

I, the undersigned, am an attorney admitted to practice in the courts of New York State. I am an attorney for the petitioner herein. I have read the foregoing petition and know the contents thereof and the same are true to my knowledge, except those matters therein stated to be alleged on information and belief, and to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon my review of documents maintained at my office, correspondence and other writings furnished to me by the petitioner and interviews with petitioner. The reason I make this verification, instead of the petitioner, is that the petitioner resides outside of the county wherein I maintain an office for the practice of law.

Claudia K. Braymer

Claudia K. Braymer

Sworn to before me this
18th day of May, 2023

Laura M. Hayden

Notary Public

LAURA M. HAYDEN
Notary Public, State of New York
Warren County #01HA6433297
Commission Expires May 16, 2026