

STATE OF NEWYORK
SUPREME COURT COUNTY OF SCHENECTADY

In the Matter of the Application of

PAUL S. HUDSON,

Petitioner,

- against -

ALBERT P. JURCZYNSKI, as Records Access Officer
and Mayor, and CAROLYN FRIELLO, as Records Access
Officer and City Clerk, and ROBERT BENEDICTI, as Acting
Assessor and Custodian of Assessment Records of the City of
Schenectady,

Respondents.

DECISION/
JUDGMENT

Index No. 97-2067

Court Control No.
46-1-97-1325

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County Clerk
John J. Woodward
SCHENECTADY COUNTY, NY

SUPREME COURT: Motion Returnable 10/23/97

APPEARANCES:

✓ Law Offices of Paul S. Hudson, P.C.
Attorney for Petitioner
124 Lancaster Street
Albany, NY 12210

Corporation Counsel
Attorney for Respondent
City Hall - Jay Street
Room 201
Schenectady, NY 12305

LYNCH, J.

Papers considered:

- 1). Notice of Petition dated September 19, 1997; Petition verified the 19th day of September, 1997; Exhibits "A" through "H";

2). Answer to Petition verified 3rd day of October, 1997.

In this Proceeding brought pursuant to CPLR Article 78, Petitioner seeks a judgment annulling and/or modifying the Respondent Jurczynski's decision denying Petitioner access to the 1997 complaints filed with the Board of Assessment Review and its Decisions related to such complaints, and granting Petitioner unrestricted access to the requested records.

Specifically, Petitioner requested the right to inspect the following City of Schenectady records: (1) Decisions by the Board of Assessment Review on Tax Grievances or Protests in 1997 and (2) Complaints regarding tentative assessments filed by property taxpayers in the City of Schenectady in May, 1997.

Petitioner initially requested access to these records from the City's Records Access Officer. Such officer, the Schenectady City Clerk, by letter dated July 18, 1997 (Exhibit "B"), denied the request "unless (Petitioner) provide[d] an Affidavit stating that you will not use the information for commercial purposes." Petitioner appealed the denial to Mayor Jurczynski who by letter dated July 28, 1997 affirmed the denial but offered to provide complete access upon submission of the previously requested Affidavit or to provide partial access to records specific to individual clients of the Petitioner upon proof of authorization to act on such clients' behalf.

Respondents submitted an Answer to the Petition alleging the following as "Affirmative Defenses": (1) Petitioner's request would create an unwarranted invasion of personal privacy; (2) Petitioner intended to use the required information for commercial purposes; (3) Petitioner failed to make any assurances that he would not use the requested information for commercial purposes; (4) upon information and belief (the grounds for which were not disclosed) Petitioner intended to

use the requested information to create a mailing list for commercial purposes and/or to create an unwarranted invasion of personal privacy. Respondents submitted nothing further in this proceeding beyond the Answer.

As the Court of Appeals in M. Farbman & Sons, Inc. v. NYC Health and Hospital Corp.,

62 NY2d 75, 79-80, held:

FOIL implements the legislative declaration that "government is the public's business" (Public Officers Law, Sec. 84), and imposes a broad standard of open disclosure upon agencies of the government. The statute "proceeds under the premise that the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government." (Matter of Fink v. Lefkowitz, 47 NY2d 567, 571, 419 NYS2d 467, 393 NE2d 463). In furtherance of the legislative objective, all records of an agency are presumptively available for public inspection and copying, unless they fall within one of eight categories of exemptions. (Public Officers Law, Sec. 87, subd. 2). To give the public maximum access to records of government, these statutory exemptions are narrowly interpreted, and the burden of demonstrating that requested material is exempt from disclosure rests on the agency. (Matter of Washington Post Co. v. New York State Ins. Dept., 61 NY2d 557, 475 NYS2d 263, 463 NE2d 604). FOIL does not require that the party requesting records make any showing of need, good faith or legitimate purpose, while its purpose may be to shed light on government decision-making; its ambit is not confined to records actually used in the decision-making process. (Matter of Westchester Rockland Newspapers v. Kimball 50 NY2d 575, 581 430 NYS2d 574, 408 NE2d 904). Full disclosure by public agencies is, under FOIL, a public right and in the public interest, irrespective of the status or need of the person making the request.

Very little more need be said after applying this holding to the instant case. It matters not that Petitioner represents one or more litigants or potential litigants or that he may intend to solicit future clients from the information obtained pursuant to this request. More importantly, Respondents have not shown in this proceeding that the requested materials are exempt from disclosure under any of the statutory exemptions.

Unsupported claims to exemptions contained in the Respondents' Answer are insufficient.

Moreover, the Decision of the Board of Assessment Review and the Complaints which prompted such decisions can only be found to be public records. A similar argument to that raised by Respondent herein was made by Cattaraugus County in Szikszay v. Buelow 107 Misc2d 886 (Sup. Ct., Erie Co., 1981). In that case, Respondents argued that the assessment roll and levy module computer tapes sought by the Petitioner would be used for commercial purposes to aid Petitioner in finding and exploiting timber land in Cattaraugus County and that providing copies of those tapes pursuant to FOIL would amount to an unwarranted invasion of personal property (Public Officers Law Sec. 87 Subd. 2) in that it involves the "Sale or release of lists of names and addresses for commercial or fund-raising purposes (Szikszay, supra, p. 891). That Court rejected the County's argument saying the assessment roll is a public record (Real Property Tax Law Sec. 516 subd. 2; General Municipal Law Sec. 51; County Law Sec. 208 subd. 4) and that such records are open to public inspection and copying except as otherwise provided by law. That Court concluded (at p. 894) that:

Assessment records are public information pursuant to other provisions of law and have been for sometime. The form of the records and petitioner's purpose in seeking them do not alter their public character or petitioner's concomitant right to inspect and copy. It is therefore improper for respondent to deny petitioner's request for copies of the County assessment rolls in computer tape format.

Clearly, the same conclusion must be drawn here with regard to the Complaints filed by taxpayers against their assessments and with regard to the Decisions of the Board of Assessment Review issued on such complaints. While the Court understands the City's desire to avoid even more assessment challenges than it has suffered of late, such understanding cannot interfere with the Court's reading of the statute which requires disclosure absent proof demonstrating the

application of one of the statutory exceptions.

Since Respondents have not shown that any of the exemptions to disclosure apply, this Court must find that the denial of access to the requested information was arbitrary and capricious and that the attempt to extract a promise from Petitioner that he would not use the information for a commercial purpose, at the risk of being liable for damages equal to \$1,000.00 or 50% of the revenue generated from the commercial purpose is without statutory authority and is, therefore, unlawful.

Respondents shall provide access to Petitioner to the material requested during regular business hours. The Court, in the exercise of its discretion, chooses not to award reasonable attorney fees or litigation costs pursuant to Public Officers Law Sec. 89 (4)(c) since Petitioner has not demonstrated that the record involved was, in fact, of clearly significant interest to the general public as opposed to individual taxpayers.

THIS DECISION SHALL CONSTITUTE THE JUDGMENT OF THE COURT.

THE ATTORNEY FOR THE PETITIONER SHALL ENTER THIS ORIGINAL DECISION/JUDGMENT ALONG WITH THE ACCOMPANYING MOTION PAPERS AND PROVIDE A COPY WITH PROOF OF ITS ENTRY ON THE OPPOSING ATTORNEY(S).

ENTER.

Dated at Schenectady, New York, this 2nd day of February, 1998.

Robert E. Lynch

HON. ROBERT E. LYNCH
Supreme Court Justice

