Matter of Jewish Press Inc v New York City Dept. of Fin.
2024 NY Slip Op 32264(U)
June 28, 2024
Supreme Court, Kings County
Docket Number: Index No. 500019/2022
Judge: Katherine A. Levine

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of
THE JEWISH PRESS INC,
Petitioner,

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

-against-

NEW YORK CITY DEPARTMENT OF FINANCE,
Respondent.

Index No. 500019/2022

DECISION/ORDER
HON. KATHERINE A. LEVINE

Petitioner Jewish Press Inc. ("Jewish Press" or "petitioner"), a newspaper focusing on news in the Jewish community, brings this CPLR Article 78 proceeding challenging respondent Department of Finance's ("Finance" or "DOF") denial of its request for a plethora of information pursuant to the Freedom of Information Law ("FOIL") as set forth in Public Officers Law ("POL") §§ 89, *et seq.* Petitioner avers that the Sheriff's Office is the "enforcement arm" of the DOF.

Petitioner made requests for the following categories of records relating to COVID enforcement: 1) directives and communications from the Mayor's Office regarding enforcement of COVID-19 related orders ("Part 1" or "Mayor's Office"); 2) directives and communications from the NYPD regarding enforcement of COVID-19 related orders ("Part 2" or "NYPD"); 3) documents indicating the amount of summonses and violations issued for violating COVID-19 related orders, broken down by month and zip code ("Part 3" or "summons by zip code"); 4) directives and communications from the Governor's Office regarding enforcement of COVID-19 related orders ("Part 4" or "Governor's Office"); and 5) applications for search warrants related to enforcement of COVID-19 related orders and their respective determinations ("Part 5"or "search warrants").

With respect to Part I, the DOF stated that the information was publicly available on the Mayor's Office Counsel website. Respondent denied Parts 2 and 4, claiming that it had conducted a diligent search but did not have records responsive to either NYPD or the Governor's Office's directive or communications. As to Part 3, respondent provided a spreadsheet of COVID-19 related summonses returnable to OATH, with the names redacted and which did not include zip codes. Respondent denied Part 5, claiming that after a diligent search, it did not have any records pertaining to search warrants issued pursuant to COVID orders.

In its appeal of the denial, petitioner claimed with respect to Part 1 that it was seeking not only publicly posted directives, but also emails and other communications between the Mayor's Office and other agencies. Regarding Parts 2 and 4, petitioner stated that it did "not seem plausible" that the DOF did not maintain directives and communications from the NYPD and the Governor's office related to COVID in light of media reports to the contrary. Regarding Part 3, petitioner stated that the spreadsheet that was produced was "woefully deficient" to the extent that it did not contain named individuals or their addresses and zip codes. Regarding Part 5, petitioner stated that it did not seem plausible that the DOF did not maintain any records in light of media reports indicating that the sheriff applied for ex parte warrants from the court in relation to enforcing and issuing violations for various COVID-19 related infractions.

On appeal, the DOF affirmed its denial of Part 3 , stating that it did not maintain responsive records on Summons since DOF did not track violations by zip codes, and that the redaction of names was proper, pursuant to Public Officer's Law § 87(2)(b), to "prevent an unwarranted invasion of personal privacy." The DOF also affirmed its denial of Part 5, stating that it did not have "applications for search warrants related to COVID-19 orders and their respective determinations." Following further review re Part 1, the DOF contended that the emails between the Mayor's Office and the DOF regarding enforcement of COVID-19 are "not reasonably described," but did not deny their existence. Regarding Parts 2 and 4, the DOF reiterated its initial response that email communications and directives from either the NYPD or the Governor's Office and the DOF do not exist.

Petitioner seeks an order declaring that respondent acted unlawfully in withholding documents that are not exempt from disclosure under FOIL, mandating that respondent comply with its FOIL request, and awarding petitioner its costs and attorneys' fees pursuant to Public Officers Law § 89(4)©. Specifically, petitioner contends that the DOF improperly withheld documents requested in Parts 1 and 3 by "merely pointing" to the Mayor's counsel's webpage for guidance on COVID 19 directives and providing a "heavily redacted" spread sheet of COVID related summonses returnable to OATH. Petitioner also reiterated its arguments in its appeal of the initial denial with respect to Parts 2, 4 and 5.

FOIL was enacted to promote open government and further governmental transparency and accountability to the public, and therefore imposes a "broad duty on government to make its records available to the public." *Mtr. Of Lisbon v Town of Greenburgh*, 141 A.D. 3d 658, 659-60 (2d Dept. 2016); *Newsday, Inc. v. State DOT*, 10 A.D. 3d 201, 202 (3d Dept. 2004). *See, Mtr. Of Gould v. NYC Police Dept.*, 89 N.Y. 2d 267, 274 (1996); POL §84. FOIL declares that "(t)he 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." POL § 84; *Mtr. of Suhr v New York State Dept. of Civ. Serv.*, 193 A.D.3d 129, 135 (3d Dept. 2021). Therefore, all agency and governmental records are presumptively available for public inspection, without regard to the need or purpose of the applicant, unless the requested documents fall within one of

the enumerated exemptions contained in POL § 87 (2)" [1]. *Mtr of Police Benevolent Assn. of N.Y. State, Inc. v State of N.Y.*, 145 A.D.3d 1391, 1392 (3rd Dept. 2016); *Mtr. of Aurigemma v N.Y. State Dept. of Taxation & Fin.*, 128 A.D. 3d 1235, 1236-1237 (3d Dept. 2015). See, *Fappiano v. N.Y. City Police Dept*, 95 N.Y.2d 738, 746. (2001); *Newsday, Inc. v. State DOT*, 10 A.D.3d 201 (3d Dept. 2004).

The "(e)xemptions are to be narrowly construed to provide maximum access," and the agency seeking to prevent disclosure bears the burden of demonstrating that "the requested material falls squarely within a FOIL exemption" *Mtr of Capital Newspapers Div. of Hearst Corp. v Burns*, 67 N.Y.2d 562, 566 (1986); *Police Benevolent Assn, supra*, 145 A.D. 3d at 1392; *Mtr of Porco v Fleischer*, 100 A.D.3d 639, 640 (2d Dept. 2012). The agency "does not have carte blanche to withhold any information it pleases," and it must articulate particularized and specific justification" for denying access to the requested documents. *Mtr of Fink v Lefkowitz*, 47 N.Y.2d 567, 571 (1979). *See, Mtr of West Harlem Bus. Group v Empire State Dev. Corp.*, 13 N.Y.3d 882, 885 (2009); *Mtr of Livson v Town of Greenburgh*, 141 A.D.3d 658, 660 (2d Dept. 2016). *Accord, Police Benevolent Assn, supra*, 145 A.D. 3d at 1392; *Mtr of Thomas v N.Y.C. Dept. of Educ.*, 103 AD3d 495, 498 (3d Dept 2013).

With respect to Part 1 the DOF contends that the emails between the Mayor's Office and the DOF regarding enforcement of COVID-19 are "not reasonably described," as required by POL § 89(3)(a). Documents requested must be "reasonably described" to enable the agency to locate the records in question. *Konigsberg v. Coughlin*, 68 N.Y.2d 245, 249 (1986); *Mtr. of Kirsch v Bd. of Educ. of Williamsville Cent. Sch. Dist.* 152 A.D.3d 1218, 1219 (4th Dept. 2017). 23 NYCRR § 3.5, defines "reasonably described" to include the "applicable dates, titles, names, and other identifying information that will assist the department to locate the requested records."

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[1]POL § 87 (2) provides in pertinent part: "Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except those records or portions thereof that may be withheld pursuant to the exceptions of rights of access appearing in this subdivision. 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....
(a) are specifically exempted from disclosure by state or federal statute;
(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;...
(e) are compiled for law enforcement purposes only to the extent that disclosure would:
i. interfere with law enforcement investigations or judicial proceedings, provided however, that any agency, which is not conducting the investigation that the requested records relate to, that is considering denying access pursuant to this subparagraph shall receive confirmation from the law enforcement or investigating agency conducting the investigation that disclosure of such records will interfere with an ongoing investigation;
ii. deprive a person of a right to a fair trial or impartial adjudication;...

The FOIL regulations further provide that upon receipt of a FOIL request, governmental agency employees are required to "assist persons seeking records to identify the records sought, if necessary, and when appropriate, indicate the manner in which the records are filed, retrieved or generated to assist persons in reasonably describing records." 21 NYCRR § 1401.2(b)(2). *Mtr. of Goldstein v. Incorporated Vil. of Mamaroneck*, 221 A.D.3d 111, 122 (2d Dept. 2023). When an agency is able to retrieve a record maintained in a computer storage system with reasonable effort, it shall be required to do so. POL § 89(3)(a); *Mtr. of Goldstein, supra*, 221 A.D.3d at 117 (2d Dept. 2023); *Mtr. of Jewish Press, Inc. v. NYC Dept. of Corr.*, 200 A.D.3d 1038, 1039 (2d Dept. 2021).

This court finds that petitioner's request for emails between the Mayor's Office and the DOF regarding enforcement of COVID-19 are reasonably described. Respondent's claim that additional clarification and specificity was needed, fail as it has not demonstrated that the description provided is insufficient for purposes of retrieving the requested emails and other communications from the virtual files through an electronic search or other reasonable technological effort. *See, Mtr. Of Kirsch, supra*, 152 A.D.3d at 1219 (respondents "cannot evade the broad disclosure provisions of [the] statute . . . upon the naked allegation that the request will require review of thousands of records"). In *Mtr. of Pflaum v. Grattan*, 116 A.D.3d 1103, 1104 (3d Dept. 2014), the petitioner, in an attempt to determine whether a former Assistant County Attorney had held a no-show job, submitted a FOIL request to the County Attorney office for "any document that shows that [the attorney] did some kind of work for Columbia County" in specified types of files over a specified period of time." While finding that the respondent had a valid basis for denying the FOIL request with respect to the actual files, as they were not "indexed in a manner that would enable the identification and location of documents" (*Mtr of Konigsberg, supra*, , 68 N.Y.2d at 250), the court found that respondent failed to establish a valid basis for not complying with the request for those files that were maintained electronically. Respondent offered no evidence that the descriptions provided were insufficient to extract or retrieve the requested document from the virtual files through an electronic word search of the former Assistant County Attorney's name or other reasonable technological effort (see Public Officers § 89 [3].

Respondent also claims that the requested e mails are shielded from disclosure pursuant to FOIL's enumerated exception to disclosure for inter-agency materials which may be denied if they do not fall within the following categories: "I) statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii) final agency policy or determinations." POL§ 87(2)(g). The parties debate whether the emails and other communications from the Mayor's Office to the DOF regarding enforcement of COVID-19 related orders that are not publicly posted constitute "instructions to staff that affect the public" or are"final agency policy or determinations." In *Mtr of Aron Law PLLC v. Sullivan County*, 214 A.D.3d 1186, 1190 (3rd Dept. 2023), the court held that inter-agency email communications between county employees and the Census Bureau regarding project logistics were exempt and did not fall into any of the enumerated categories of POL § 87 (2) (g) that would negate the exemption. *See also, Mtr. of Shooters Comm. On Political Educ., Inc. v Cuomo*, 147 A.D.3d 1244, 1245-1246 (3rd Dept.

2017) (email from deputy counsel at Office of General Services to governor's counsel regarding the agencies' response to a FOIL inquiry which did not contain statistical or factual tabulation or data was exempt from disclosure because it constitutes an inter-agency communication in furtherance of the decision-making process).

The record before this court precludes a determination as to whether the requested communications fall within the enumerated exempt categories. Accordingly, respondent is directed to produce the email communications between the Mayor's Office and the DOF for an in camera inspection, so that the court can determine whether they are either "instructions to staff that affect the public," or "final agency policy or determinations." *See*, *Mtr. of Lepper v Village of Babylon*, 190 A.D.3d 738, 743 (2d Dept. 2021) (Matter remitted to court for in camera inspection of representative documents to determine whether the material fell within the asserted FOIL exemptions as court cannot determine whether the village met its burden of demonstrating the applicability of the exemptions to the aforementioned material).

DOF's representation that after a diligent search, it could not locate documents responsive to the requests in Parts 2, 4 and 5 satisfies its obligation under POL§ 89(3), which provides that when an agency is unable to locate records that are requested under FOIL, it must "certify that it does not have possession of [a requested] record or that such record cannot be found after diligent search." The statute does not specify the manner in which an agency must certify that documents cannot be located; neither a "detailed description of the search nor a personal statement from the person who actually conducted the search is required. *Rattley v. N.Y. City Police Dept*, 96 N.Y.2d 873, 875 (2001); *Mtr. of Goldstein, supra, 221* A.D.3d at 118; *Mtr. of Jackson v Albany County Dist. Attorney's Off.*, 176 A.D.3d 1420, 1421 (3rd Dept. 2019). However, even if an agency provides such certification, a petitioner is entitled to a hearing on the issue if it can articulate a "demonstrable factual basis" to support the contention that the requested document exists and were within the agency's control. *Gould v. New York City Police Dept*, 89 N.Y.2d 267, 279 (2012); *Mtr. of Jewish Press, Inc. v. New York State Police*, 207 A.D.3d 971, 973 (3rd Dept. 2022); *Mtr of Curry v Nassau County Sheriff's Dept.*, 69 AD3d at 622-623.

Erin M. Price, the DOF Records Access Officer, averred that after a diligent search of agency records, he could certify that there were no records responsive to petitioner's requests for directives or communications from and between the NYPD and the DOF or the Governor's Office and DOF, or for search warrants. He certified these findings based upon his direct discussions with the Sheriffs Office, who explained that any communications from these entities would most likely have been received by the Mayor's Office and City Hall, not DOF, but that he was unaware of any such communications between these entities and the Mayor's Office. Further, neither the DOF nor the Sheriffs Office received any such requests directly from either party.

This averment satisfies the requirement under FOIL that the officer conducted a diligent search for the requested records in order to satisfy the certification requirement under POL§

89(3). *See, Bellamy Mtr. of King v. Castellano*, 220 A.D.3d 863, 864 (2d Dept. 2023) (certification from District Attorney's office that the requested X-rays could not be found despite a diligent search satisfied obligation under Public Officers Law § 89 (3)); *Mtr. of Cocchiaraley v. Westchester County Health Care Corp.*, 209 A.D.3d 1018, 1019 (2d Dept. 2022) (Westchester County Health Care Corp.'s certification that requested documents could not be found despite a diligent search satisfied its obligation under Public Officers Law § 89(3)).

However, petitioner contends that the news articles annexed to its petition "show that the Governor stated that his office would take over enforcement of rules to slow the spread of COVID, and that one of the state agencies involved in this effort would be the "Sheriff," and "[t]herefore there must have been directives and communications in this regard, as requested by request 2." The voluminous directives from the Governor, which petitioner annexes to its petition (Doc. 26), sets forth rules limiting operations and the number of people who occupy certain facilities and provides that "any state, county or local code enforcement official..." is authorized to enforce laws and to "remove persons from such space or facility" (Exec. Order 202.11). Furthermore, petitioner attaches news reports from the N.Y. Times which state that both the NYC police and subsequently the Sheriffs Office were involved in "serving and executing orders from city and state agencies, including many that are now handling" COVID restrictions. Petitioner also alleges that the Sheriff's Office is the "enforcement arm" of the DOF.

These news reports, combined with the Governor's directives, and the alleged connection between the DOF and NYC Sheriff's Office, provide a minimal factual basis to support the contention that the DOF somehow was in possession of or aware of "directives and communications from the Governor regarding the enforcement of COVID-19 related orders" and a hearing will be held on this facet of Part 2. This court notes that the petition fails to set forth why the Jewish Press is suing DOF, rather than the Mayor's office or other city agency, to ascertain policies and procedures regarding the enforcement of COVID regulations, although it does allege that the Sheriff is the enforcer of judgments and reports to the DOF. It stands to reason that if the Sheriff's office was the "enforcer," of COVID violations, then it must have had some contact with DOF in order for the latter to assess the fines DOF may very well claim at the hearing that it had a ministerial role in collecting fines from all entities that the City found had violated COVID regulations, and that it received nothing from either the Police Department or the Governor's Office. However this must be clarified at a hearing before the court. Accordingly, petitioner has shown a demonstrable factual basis for its belief that records responsive to Part 2 are within respondent's possession. *See, Mtr. of Binghamton Precast & Supply Corp. v. N.Y. State Thruway* Auth. 196 A.D.3d 944 (3rd Dept. 2021) (Notwithstanding respondent's representation that "backdrop contracts" were not used with respect to Fort Miller, a letter from the Comptroller indicated that the Authority procured precast products, including the concrete barriers, . . . pursuant to other competitively bid backdrop contracts." Since Fort Miller was the only supplier of precast concrete barriers per the specifications for the construction projects, there was a question as to whether a backdrop contract procured through a competitive bidding process existed with respect to Fort Miller, and a hearing was therefore necessary); *Mtr.*

Of Oddoe v. Suffolk Co. Police Dept., 96 A.D.3d 758 (2d Dept. 2012) (allegations contained in the petition, if proven, would provide a factual basis to support the petitioner's contention that additional documents relating to the criminal investigation of the petitioner's case exist and are within the Police Department's control).

The DOF certified that there are no search warrants responsive to petitioner's request in Part 5. Petitioner countered by producing the Mayor's Office of Special Enforcement's petition to Supreme Court, Kings County, for a warrant for an administrative inspection of premises to determine whether they were being used as an indoor food and dining venue for large-scale gatherings in excess of 50 people, in violation of safety requirements designed to halt and contain the spread of COVID-19. This petition does not provide a factual basis that the DOF, not named in the warrant application, is in possession of the search warrants and this court upholds the DOF's denial of Part 5.

The DOF contends that it does not have records responsive to the Part 3 request since the DOF did not track violations by zip codes, and that the redaction of names was proper pursuant to Public Officer's Law § 87(2)(b), to "prevent an unwarranted invasion of personal privacy." To the extent the DOF contends that it did not track violations by zip codes, it is not required to create new data that it does not already possess or maintain under Public Officers Law § 89(3)(a), which provides: "Nothing in this article shall be construed to require any entity to prepare any record not possessed or maintained by such entity." *See, Mtr. of Felici v. Nassau County Off. of Consumer Affairs*, 217 A.D.3d 765, 767 (2d Dept. 2023); *Mtr. of Madden v Village of Tuxedo Park*, 192 A.D.3d 802, 804 (2d Dept. 2021). *See also, Mtr. of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 464 (2007) ("An agency is not required to create records in order to comply with a FOIL request").

With respect to DOF's contention that its redaction of names was proper pursuant to POL§ 87(2)(b), to "prevent an unwarranted invasion of personal privacy," the court must first ascertain whether the divulsion of names on search warrants falls within any of the enumerated specifications of privacy. POL § 89 (2) (b) provides that "(a)n unwarranted invasion of personal privacy includes, but shall not be limited to" a non exclusive list of eight specifications. [2] *Mtr. of*

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[2]"i. disclosure of employment, medical or credit histories or personal references of applicants for employment; ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility; iii. sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes; iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency; vi. information of a personal nature contained in a workers' compensation record, except as provided by section one hundred ten-a of the workers' compensation law; vii. disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred

Romaine, supra, 9 N.Y.3d at 462. The DOF fails to assert which of the eight specifications apply and this court finds that none of them are applicable. The closest specifications are iv and v, which bar disclosure of information of a personal nature when disclosure would result in either economic or personal hardship to the subject party, or which were reported in confidence to the agency, and such information is not relevant to the work of the agency requesting or maintaining it. Here the DOF has failed to even assert how the disclosure of names would result in economic or personal hardship or that the names were reported in confidence to the DOF. Nor will this court assume that some undercover agent surreptitiously informed the City of entities that violated COVID regulations. Furthermore, DOF admits that this information is quite relevant to the sine quo non of what it does as an agency.

Where none of the eight specifications is applicable, a court "must decide whether any invasion of privacy … is 'unwarranted' by balancing the privacy interests at stake against the public interest in disclosure of the information." *Mtr. of Harbatkin v. N.Y.C. Dept. of Records & Info. Servs.*, 19 N.Y.3d 373, 380 (2012), *citing to Mtr of N.Y. Times Co. v City of N.Y. Fire Dept.*, 4 NY3d 477, 485 (2005); *Mtr. of Newsday, LLC v. Nassau County Police Dept.*, 222 A.D.3d 85, 90 (2d Dept. 2023); *Mtr. Of Massaro v. N.Y. State Thruway Auth.*, 111 A.D. 3d 1001, 1002 (2d Dept. 2015). To meet its burden, the agency seeking the exemption must present "specific, persuasive evidence " that the material being sought falls within the exemption." *Mtr. of Newsday, supra*, 222 A.D. 3d at 91 citing to *Mtr of Markowitz v. Serio*, 11 N.Y.3d 43, 51(2008). Conclusary assertions not supported by any facts are insufficient. *Mtr. Of Newsday, supra*, 222 A.D. 3d at 91. Other than citing in a boilerplate fashion that privacy concerns would be implicated, the DOF utterly fails to meet its burden of showing whose or what privacy interests would be implicated and how someone would be harmed or that the statutory exemption applied.

The underlying purpose of FOIL, which is the public interest, is "to promote transparency in governmental operations so that the process of governmental decision-making is on public display and governmental actions can be more readily scrutinized." *Mtr. of Hepps v New York State Dept. of Health*, 183 A.D.3d 283, 288 (3d Dept. 2020). An "unwarranted invasion of personal privacy" has been characterized as "that which would be offensive and objectionable to a reasonable person of ordinary sensibilities." *Mtr. of Spence v. New York State Dept. of Civ. Serv.*, 223 A.D.3d 1019, 1020 (3d Dept. 2024); *Mtr. of Gruber v. Suffolk County Bd. of Elections*, 218 A.D.3d 682, 684 (2d Dept. 2023). For example, in *Mtr. of Spence v. New York State Dept. of Civ. Serv.*, 223 A.D.3d 1019, 1021 (3rd Dept. 2024), the court noted that a "reasonable person of ordinary sensibilities would find the disclosure of their name tied to a failed civil service examination to be offensive and objectionable," therefore, such disclosure would result in unwarranted invasion of personal privacy. The court noted that the disclosure of

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four of the real property tax law; or viii. disclosure of law enforcement arrest or booking photographs of an individual, unless public release of such photographs will serve a specific law enforcement purpose and disclosure is not precluded by any state or federal laws."

names of individuals who failed the civil service exam might impact their future job prospects. In this case, the public interest is transparency in how the Covid-19 rules were enforced in the communities.

Here there is no suggestion by the DOF that the disclosure of names of individuals who received summonses for Covid-19 violations would be offensive and objectionable to a reasonable person of ordinary sensibilities. Indeed, there is no evidence that their names would be disclosed for any purposes other than to study the pattern of Covid-19 enforcement in the community. The court notes the irony that DOF is apparently asserting privacy interests of the very entities who it implicated in the first instance. The weighing of the privacy interests at stake and the public interest in transparency of government actions, including Covid-19 enforcement, militates in favor of granting petitioner's request.

Accordingly, the Court directs that the DOF produce before this court for an in camera inspection emails and other communication between the Mayor's Office and the DOF regarding COVID-19 enforcement that are not among the publicly posted directives so that the court can determine whether they are either "instructions to staff that affect the public," or "final agency policy or determinations." If the court finds that the DOF unlawfully withheld these documents and that they are not exempt from disclosure under FOIL, the court will consider awarding petitioner its proportionate costs and attorneys' fees pursuant to POL § 89(4)©. The court will also hold a hearing to determine whether the DOF was somehow in possession of or aware of "directives and communications from the Governor regarding the enforcement of COVID-19 related orders." Finally, the court grants that portion of the petition seeking the names of individuals who received summonses and violations for violating COVID-19 related orders, and will award petitioner its costs and attorneys' fees proportionately. The remaining portions of the petition are denied. This constitutes the decision and order of the court.

DATED: June 28, 2024

KAL

Hon. Katherine A. Levine, J.S.C.

HON. KATHERINE A. LEVINE
JUSTICE SUPREME COURT

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