

**Matter of Empire Ctr. for N.Y. State Policy v
Teachers' Retirement Sys. of the City of N.Y.**

2012 NY Slip Op 32216(U)

August 21, 2012

Supreme Court, New York County

Docket Number: 102055/12

Judge: Michael D. Stallman

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SCANNED ON 8/24/2012

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

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 21

Index Number : 102055/2012
EMPIRE CENTER FOR NEW YORK
vs.
TEACHERS' RETIREMENT SYSTEM
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. 102055/12
MOTION DATE 6/12/12
MOTION SEQ. NO. 001

The following papers, numbered 1 to 3 were read on this Article 78 petition

Notice of Petition— Verified Petition — Exhibits A-D _____ | No(s). 1-2
Answering Affirmation _____ | No(s). 3
Replying Affirmation — Exhibits _____ | No(s). _____


This petition is decided in accordance with the annexed memorandum decision and judgment.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 8/21/12
New York, New York


_____, J.S.C.
HON. MICHAEL D. STALLMAN

1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
2. Check if appropriate:..... PETITION IS: GRANTED DENIED GRANTED IN PART OTHER
3. Check if appropriate:..... SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21**

-----X

In re Application of
EMPIRE CENTER FOR NEW YORK STATE POLICY,

Petitioner,

For a Judgment under Article 78 of the Civil Practice
Law and Rules

Index No. 102055/12

-v-

Decision and Judgment

TEACHERS' RETIREMENT SYSTEM OF THE CITY
OF NEW YORK,

Respondents.

-----X

HON. MICHAEL D. STALLMAN, J.:

In this Article 78 petition, petitioner Empire Center for New York State Policy (Empire Center), seeks a judgment vacating, overruling and prohibiting enforcement of the final administrative decision of respondent, Teachers' Retirement System of the City of New York (TRS), and directing TRS to provide Empire Center with immediate access to the records specified in TRS's FOIL request (motion sequence 001). Respondent opposes the relief sought and moves for dismissal of the petition (motion sequence 002).

BACKGROUND

Petitioner alleges that it is a non-profit think tank which operates a website where taxpayers can obtain data from counties, towns, villages, school districts

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and public authorities throughout the state. It asserts that it has routinely made requests pursuant to FOIL for information concerning retirees participating in taxpayer-funded pension plans. Respondent is a public retirement system for New York City public school teachers.

By letter dated January 9, 2012, Empire Center requested records from TRS pursuant to FOIL. The records requested included a list of all retired members of the TRS and information including the name, last employer, cumulative years of service at retirement, gross retirement benefit for the years 2010 and 2011, retirement date and date of commencement of retirement system membership for each retiree. (Verified Petition, Ex. A.) By emails dated January 17, 2012 and January 18, 2012, TRS granted Empire Center's request except for the names of the retirees. (*Id.*, Ex. B.) By letter dated January 18, 2012, Empire Center administratively appealed the denial of its request for retirees' names. (*Id.*, Ex. C.) By letter dated February 7, 2012, TRS denied Empire Center's administrative appeal. (*Id.*) TRS then commenced this Article 78 proceeding. Respondent then moved to dismiss the petition.

DISCUSSION

Respondent has demonstrated that petitioner has failed to state a cause of action upon which relief can be obtained. This exact issue, brought by the exact

same petitioner, has already been decided in *Empire Ctr. For N.Y. State Policy v New York City Police Pension Fund*, (88 AD3d 520 [1st Dept 2011].) In that case, the Appellate Division, First Department held that the police pension fund correctly denied the FOIL request which sought the names of retirees receiving a pension and annuities. The Appellate Division, First Department followed precedent set in *Matter of New York Veteran Police Assn. v New York City Police Dept. Art. I Pension Fund*, (61 NY2d 659 [1983].) In that case, the Court of Appeals held that pursuant to Public Officers Law § 89 (7), a petitioner is not entitled under FOIL to obtain the names and address of all New York City Police Department retirees. In light of the two aforementioned decisions, TRS is not obligated under FOIL to release the names of its retirees. Even viewing the allegations of petitioner in the light most favorable to petitioner, petitioner fails to state a cause of action upon which relief can be granted, as a matter of law.

Furthermore, Public Officers Law § 87 (2) (b) excepts disclosure of information if it “would constitute an unwarranted invasion of personal privacy.” In this case, there is a legitimate concern that releasing retirees names “would in effect provide access to the addresses of these retirees, as well as to other personal information,” which could lead to an unwarranted invasion of privacy.

(Respondent’s Memorandum of Law in Support of Its Motion to Dismiss at 14.)

In this age of widespread internet access it is increasingly easy to obtain addresses and other personal information of individuals using only a name and, thereafter to disseminate the information to the world. Although the security interests of retired New York City police officers might arguably be different from those of other retired public employees, the Public Officers Law recognizes the interest in privacy of the names of retired public employees. (Public Officers Law §§ 87 [2] [b]; 89 [7].)

Pursuant to Public Officers Law § 89 (7)

“[n]othing in this article shall require the disclosure of the home address of an officer or employee, former officer or employee, or of a retiree of a public employees’ retirement system; nor shall anything in this article require the disclosure of the name or home address of a beneficiary of a public employees’ retirement system or of an applicant for appointment to public employment.”

The Appellate Division, First Department in *Empire Ctr v New York City Police Pension Fund*, (88 AD3d, *supra*) held that for the purposes of FOIL, the terms retiree and beneficiary are indistinguishable, and therefore the names of retirees may also be withheld. In *Matter of New York Times Co. v City of N.Y. Fire Dept.*, (4 NY3d 477, 484 [2005]), the Court of Appeals held that the words spoken to 911

operators by individuals on September 11, 2001 would constitute an “unwarranted invasion of personal privacy.” In so holding, the Court of Appeals once again articulated respect for privacy as an important public policy consideration, one recognized by FOIL itself. The privacy exceptions of Public Officers Law § 87 (2) (b) and § 89 (7) prevent petitioner from stating a cause of action as a matter of law.

CONCLUSION

Accordingly, it is hereby

ADJUDGED that this motion to dismiss the petition brought by respondent Teachers’ Retirement System of the City of New York is granted and the petition is dismissed in its entirety with costs and disbursements to respondent as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said respondent.

Dated: August 21, 2012

New York, NY

ENTER:



J.S.C.

HON. MICHAEL D. STALLMAN

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