

SUPREME COURT-STATE OF NEW YORK
TRIAL SPECIAL TERM, PART 5 SUFFOLK COUNTY

PRESENT:

Hon. ROBERT W. DOYLE
JUSTICE

MOTION DATE: 12-9-96
MOTION NO: Seq. #002-RRRR
MG

SIEGEL, FENCHEL & PEDDY, P.C.
Petitioner,

PLTF'S/PET'S ATTY:
SIEGEL, FENCHEL & PEDDY, P.C.
777 Zeckendorf Boulevard
Garden City, NY 11530

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

- against - }

DEF'S/RESP'S ATTY:
DENNIS C. VACCO, ESQ.
STATE OF NEW YORK
300 Motor Parkway
Hauppauge, NY 11788

CENTRAL PINE BARRENS JOINT PLANNING
AND POLICY COMMISSION and RAYMOND
CORWIN, as EXECUTIVE DIRECTOR OF
CENTRAL PINE BARRENS JOINT PLANNING
AND POLICY COMMISSION,

Respondents,

Upon the following papers numbers 1 to 4 read on this motion for to reargue: Notice of Motion/Order to Show Cause and supporting papers 1; Notice of Cross Motion and supporting papers; Answering Affidavits and supporting papers 2; Replying Affidavits and supporting papers 3; Other 4; (and after hearing counsel in support and opposed to the motion); it is,

ORDERED that this motion by petitioner for an order rearguing its prior petition for relief pursuant to CPLR Article 78 is considered by the Court and is granted.

Upon reargument, the Court grants the petition to the extent that respondent shall make available to petitioner a redacted inventory of land parcels within the "Central Pine Barrens Area" as requested in the original petition. The list shall be redacted to exclude the names and addresses of the owners of the property so as not to run afoul of Public Officers Law §89 subd 2 (b)(iii). In so holding, the Court is mindful that under the Freedom of Information Law, all records of governmental agencies are presumptively available for public inspection unless the record falls within one of ten specified exemptions. Indeed, it has been stated that the Act should be liberally construed and its exemptions narrowly interpreted to grant to the public maximum access to governmental records (Matter of Capital Newspapers v Walen, 69 NY2d 246, 513 NYS2d 367). In instances where the release of records could possibly reveal information that was otherwise exempt from disclosure, the Court of Appeals has sanctioned the redaction of the exempt portion of the records and directed the release of the balance (see Scott, Sardano & Pomerary v Records Access of

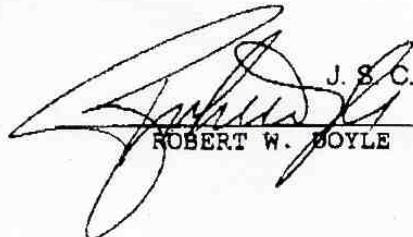
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Syracuse, 65 NY2d 294, 492 NYS2d 289).

Accordingly, respondents are directed to comply with petitioner's original written request for the list of the parcels within the Central Pine Barrens Area with the redaction of the names and addresses of the owners of the parcels. To this extent, the petition is granted.

Settle judgment

Dated: April 18, 1997



J. S. C.
ROBERT W. DOYLE J. S. C.

APPELLATE DIVISION, SECOND DEPARTMENT
NYLJ, JULY 8, 1998

MATTER OF SIEGEL, FENCHEL & PEDDY, P.C., *re*, v. CENTRAL PINE BARRENS JOINT PLANNING & POLICY COMMISSION, et al., ap QDS:16/0/674 — In a proceeding pursuant to CPLR article 78 to review a determination of the appellants, dated November 28, 1995, which denied the petitioner's request under the Freedom of Information Law (Public Officers Law art 8) for the inventory of all privately-owned real property within the Central Pine Barrens Area, the appeal is from a judgment of the Supreme Court, Suffolk County (Doyle, J.), entered June 18, 1997, which granted the petition to the extent of directing the appellants to make available to the petitioner an "inventory of real property parcels lying within the Central Pine Barrens Area *** subject to the [appellants'] option to redact only the names and addresses of the owners of such real property."

ORDERED that the judgment is reversed, on the law, with costs, the petition is denied, and the proceeding is dismissed on the merits.

The petitioner herein, a law firm specializing in the areas of tax certiorari and condemnation, sought access pursuant to the Freedom of Information Law (Public Officers Law art 8) (hereinafter FOIL) to the inventory of all privately-owned real property within the Central Pine Barrens Area. This inventory, which consisted of the tax map numbers of each parcel in the Central Pine Barrens Area and the names and addresses of the corresponding property owners, was prepared by the appellant Central Pine Barrens Joint Planning and Policy Commission (hereinafter the Commission). The Commission refused the petitioner access to the inventory, claiming that the information in the inventory would be used for "commercial *** purposes" (Public Officers Law §89(2)(b)(iii)) and would constitute an "unwarranted invasion of personal privacy" (Public Officers Law §87(2)(b)), a category specifically exempt from disclosure under FOIL (see, Public Officers Law §89(2)(a), (c)(ii)). The Commission also obtained an advisory opinion to the same effect from the Committee on Open Government (hereinafter the Committee), which is the administrative agency charged with oversight of FOIL (see, Public Officers Law §89(1)(b); (2)(a); (2)(b)(iii)).

The petitioner then commenced the instant CPLR article 78 proceeding challenging the Commission's refusal to disclose the inventory to it.

The Supreme Court initially denied the petition and dismissed the proceeding, but thereafter granted reargument and, upon reargument, granted the petition to the extent of directing the Commission "to provide to Petitioner the inventory of real property parcels lying within the Central Pine Barrens Area *** subject to [the appellants'] option to redact only the names and addresses of the owners of such real property parcels listed therein."

Under FOIL, all records of governmental agencies are presumptively available for public inspection and copying, without regard to the status, need, good faith, or purpose of the applicant requesting access (see, *Matter of Farbman & Sons v. New York City Health & Hospt. Corp.*, 68 NY2d 78, 79-80). In order to insure the maximum public access to government records, full disclosure is required unless the agency can demonstrate that the records fall within one of eight categories of exemptions. As one of the eight categories of exemptions, FOIL exempts from disclosure records that "if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-one of this article" (Public Officers Law §87(2)(b)). The Public Officers Law prescribes, *inter alia*, as an "unwarranted invasion of personal privacy" (Public Officers Law §89(2)(a)), the "release of lists of names and addresses if such lists would be used for commercial purposes" (Public Officers Law §89(2)(b)(iii)). It permits, however, disclosure of the records involved when "identifying details are deleted" (Public Officers Law §89(2)(c)(ii)).

Given the nature of the petitioner's law practice and the information it sought, as well as the petitioner's refusal to certify to the Commission that it would not use the inventory for commercial purposes, it was reasonable for the Commission and the Committee to infer that the petitioner was seeking the inventory for commercial purposes (see, *Matter of Corwin Selmon & Tanenbaum v. New York State Div. of the Lottery*, 239 AD2d 743, n 7; see, *Matter of Scott, Sardano & Pomerantz v. Records Access Office of City of Syracuse*, 95 NY2d 594; *Matter of Federation of N.Y. State Rifs & Pistol Clubs v. New York City Police Dept.*, 73 NY2d 98; *Matter of Goodstein v. Shaw*, 112 Misc 3d 40%; *Matter of Nicholas*, 111 Misc 3d 632). Under these circumstances, the deletion from the inventory of the names and addresses of the property owners would ordinarily be a proper and sufficient remedy (see, *Matter of Scott, Sardano & Pomerantz v. Records Access Office of City of Syracuse*, *supra*; *Matter of Federation of N.Y. State Rifs & Pistol Clubs v. New York City Police Dept.*, *supra*). However, the Commission and its Bureau of establishing that deletion of the inventory's tax map numbers would still allow the petitioner to identify the names and addresses of the property owners listed therein (see, *Matter of New York Times Co. v. New York State Dept. of Health*, 173 Misc 3d 310; cf., *Matter of Legal Aid Socy. of Northeastern N.Y. v. New York State Dept. of Social Servs.*, 195 AD2d 180). Accordingly, the Commission's determination denying the petitioner's request for the inventory in its entirety correctly balanced the competing interests of public access and individual privacy.

