

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Daniel R. Suhr,

Petitioner,

v.

New York State Department of Civil Service,

Respondent.

VERIFIED PETITION

Index No. _____

TO THE SUPREME COURT OF THE STATE OF NEW YORK FOR ALBANY COUNTY:

The Verified Petition of Daniel R. Suhr, complaining of Respondent New York State Department of Civil Service, respectfully alleges:

1. On April 24, 2019, Petitioner on behalf of his employer, the Liberty Justice Center, filed a Freedom of Information Law (FOIL) request with the New York State Department of Civil Service (Respondent or Department) seeking certain payroll records for state employees, namely:

- a. Name,
- b. Home Zip Code,
- c. Hire Date,
- d. Labor Organization,
- e. Bargaining Unit, and
- f. Payroll deduction selection.

Attached hereto as **Exhibit A** is a true and correct copy of the FOIL request dated April 24, 2019.

2. On May 28, 2019, Respondent informed Petitioner of its need for additional time to fulfill the request to which Petitioner responded on May 30, 2019. Attached hereto as **Exhibit B** is a true and correct copy of Respondent's letter dated May 28, 2019. Also attached hereto as **Exhibit C** is a true and correct copy of Petitioner's reply dated May 30, 2019.

3. On June 24, 2019, Respondent provided a partial release of records but denied Petitioner access to the home zip code correlated to the individual names of state employees. Attached hereto as **Exhibit D** is a true and correct copy of Respondent's letter dated June 24, 2019 in which it partially denied Petitioner's FOIL request.

4. On June 25, 2019, Petitioner filed an administrative appeal with the Respondent's FOIL hearing officer seeking reversal of this denial. Attached hereto as **Exhibit E** is a true and correct copy of Petitioner's letter dated June 25, 2019 in which it appealed the determination by Respondent.

5. On July 15, 2019, Respondent's FOIL hearing officer upheld the Department's denial. Attached hereto as **Exhibit F** is a true and correct copy of the determination made by the FOIL Appeals Officer dated July 15, 2019. This denial was based upon Executive Order 183 (Exhibit G) and the Public Officers Law. Attached hereto as **Exhibit G** is Executive Order 183.

6. For this Court's convenience, I am also attaching two Advisory Opinions that are referenced in the Memorandum of Law in Support of Petition, and which are on point. Attached hereto as **Exhibit H** is an advisory opinion issued by the New York Committee on Open Government on August 28, 2012; and Attached hereto as **Exhibit I** is an Advisory Opinion issued by the Pennsylvania Office of Open Records on June 30, 2017.

7. Petitioner therefore files this special proceeding with a Notice of Petition and Verified Petition within the appropriate statute of limitations.

8. Petitioner seeks a judgment pursuant to CPLR 7803(3) reviewing the determination made by the Respondent and declaring that the Respondent's denial was made based on an error of law interpreting and applying the Freedom of Information Law, as set forth and supported by the Memorandum of Law attached hereto and submitted in support of this Verified Petition.

WHEREFORE, Petitioner respectfully requests that a judgment be entered pursuant to Article 78 of the Civil Practice Law and Rules:

1. Declaring that Respondent made an error of law under CPLR 7803(3) and that Petitioner is entitled to the records sought;
2. Declaring that Executive Order 183 and the Public Officers Law do not prevent the Petitioner from receiving the records sought;
3. Directing Respondent to provide the records sought; and
4. Granting Petitioner an award for his reasonable attorney's fees.

Dated: October 25, 2019.
Rochester, New York

THE GLENNON LAW FIRM, P.C.



Peter J. Glennon, Esq.
Attorney for Petitioner

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PGlennon@GlennonLawFirm.com

VERIFICATION

STATE OF NEW YORK)
) ss.;
COUNTY OF MONROE)

PETER J. GLENNON, being duly sworn, deposes, and states: I am one of the attorneys for the Petitioner in the above-entitled action. I have read the foregoing Petition and its contents are true to my own knowledge, except those matters alleged to be on information and belief, and as to those matters, I believe them to be true.

This verification is being made by deponent instead of said petitioner because the petitioner resides outside the County of Monroe where deponent maintains his offices.


Peter J. Glennon

Sworn to before me
this 25th day of October, 2019


Notary Public

EMMA L RAMSEY
NOTARY PUBLIC-STATE OF NEW YORK
No 01RA6398294
Qualified in Monroe County
My Commission Expires 08-23-2023