

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY

PRESENT:

HON. PAUL J. BAISLEY, JR., J.S.C.

DECISION and ORDER

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In the Matter of the Application of

INDEX NO.: 15364/2015

MOT. SEQ. NO.: 001 MG

Animal Rescue, Media & Education and Melissa
Andrews,

PETITIONER'S ATTORNEY:

Olshan Frome Wolosky, LLP
1325 Avenue of the Americas
New York, New York 10019

Petitioners,

-against-

RESPONDENTS' ATTORNEY:

State of New York
Office of the Attorney General
300 Motor Parkway, Suite 230
Hauppauge, New York 11788

The State University of New York at Stony Brook,
Douglas Panico and Kellie Dupuis,

Respondents,

For Relief Pursuant to Article 78 of the
New York Civil Practice Law and Rules.

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Petitioner Animal Rescue, Media & Education d/b/a Beagle Freedom Project ("Animal Rescue") is a nonprofit corporation whose stated mission is "to rescue animals from laboratories and to educate the public on animal research and exploitation." Petitioner Melissa Andrews is a supporter of Animal Rescue, and in March 2015 petitioners jointly made a "Freedom of Information Law" ("FOIL") request for records related to a certain dog identified as "CEEMCF" that was a research subject in a "Gene and Cell Therapy of Cardiac Rhythm Disorders Protocol" being conducted at the State University of New York at Stony Brook ("SUNY Stony Brook"). In particular, respondents requested:

[A]ny and all intake records, transfer records, daily care logs, animal health records, treatment and progress reports, veterinary reports, necropsy reports, photographs, and videos related to this animal (January 1, 2013-present)...[and] any IACUC-approved protocols for any project to which this animal has been assigned since January 1, 2013.

Only five pages of partially redacted documents were produced in response to petitioners' FOIL request. Petitioners appealed the determination, arguing that respondents had failed to produce numerous documents that animal research laboratories are required by law to maintain. After

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petitioners' appeal was denied, and additional – heavily redacted – documents were produced, petitioners commenced the instant Article 78 proceeding for an order and judgment annulling the final determination of respondents and ordering respondents to disclose all relevant records pursuant to FOIL. Respondents' pre-answer motion to dismiss the petition was denied by the judge to whom this matter was previously assigned (Hon. Ralph T. Gazzillo) pursuant to a short form order dated May 19, 2016, which also remanded petitioners' FOIL request to respondents' FOIL appeals officer "for further supplementation of the response dated September 28, 2015 and for additional review of any redactions made to ensure that redactions are consistent with the provisions of Public Officer Law §87."

This matter was ultimately reassigned to the undersigned justice, before whom a series of status conferences were conducted which resulted in production by respondents of a substantial number of additional documents and a reduction of the number and extent of the redactions. Notwithstanding the foregoing, the parties continued to dispute the validity and extent of the redactions alleged by respondents to be necessary to guard against the disclosure of trade secrets or proprietary information (Public Officers Law §87(2)(d)) and to protect the safety of individuals and their personal privacy (Public Officers Law §87(2)(b), (f)). Accordingly, at the request of the parties, this court conducted an *in-camera* review of the unredacted records produced by respondents.

The court notes in the first instance that respondents failed to number the numerous pages produced to the court. Moreover, respondents failed to identify which of the claimed exemptions was applicable to each redaction. Notwithstanding the foregoing deficiencies, the court undertook a detailed, page-by-page comparison of the redacted and unredacted documents produced by respondents. The court is constrained to conclude that a substantial amount of the redactions are not subject to exemption either as a "trade secret" or to protect the safety and personal privacy of individuals. To the extent that a particular redaction or portion thereof may be appropriate, the court is unable to identify and comment upon it with any specificity in light of the failure to number the pages.

FOIL requires that state and municipal agencies "make available for public inspection and copying all records," subject to certain exemptions (Public Officers Law § 87(2); *Matter of Data Tree v Romaine*, 9 NY3d 454 [2007]; *Matter of Madera v Elmont Pub. Lib.*, 101 AD3d 726, 957 NYS2d 129 [2012]). The exemptions from disclosure "are to be narrowly interpreted so that the public is granted maximum access to the records of government" (*Matter of Data Tree v Romaine*, supra at 462). To further the goal of FOIL, which is to provide access to government records, an agency claiming an exemption from disclosure bears the burden of showing that the requested material "falls squarely within the ambit of one of the statutory exemptions" (*Matter of Verizon N.Y. v Bradbury*, 40 AD3d 1113, 1114 [2007]). The agency must articulate a "particularized and specific justification for denying access" (*Matter of Capital Newspapers Div. of Hearst Corp. v Burns*, 67 NY2d 562, 566 [1986]).

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Here, respondents have failed to meet their burden of establishing that information pertaining to, for example, animal housing and care, pain levels, monitoring, anesthesia, or number of animals requested constitutes a trade secret or that disclosure of such information may cause substantial injury to SUNY Stony Brook's purported competitive position. (*Matter of Markowitz v Serio*, 11 NY3d 43 [2008]).

While the court agrees that the redaction of personally identifying information is appropriate and necessary to protect the safety and welfare of SUNY Stony Brook's student and employee researchers and others involved in animal research at their facility, respondents' submissions fail to establish that the remainder of the redactions are necessary to further that objective.

Upon consideration of all of the foregoing, the court finds and determines that respondents had no reasonable basis for denying petitioners access to the records that are the subject of this proceeding. Accordingly, petitioners must be deemed to have substantially prevailed herein. In light of the foregoing, the petition is granted to the extent that within 30 days of entry of judgment in accordance herewith, respondents are directed to provide petitioners with a complete copy of all of the documents produced to the court for its *in-camera* review, redacted only to eliminate personally identifying information in accordance with Public Officers Law §87(2)(b) and §89(2). Petitioners are also entitled to recover their reasonable attorney's fees and costs (Public Officers Law §89(4)(c); *Matter of Mazzone v New York State Dept. of Transp.*, 95 AD3d 1423 [2012]).

The court notes that prior to undertaking its *in-camera* review of the subject documents, it directed respondents to file and serve an answer to the verified petition, which is now part of the record of this proceeding and was considered in connection herewith.

Settle judgment on notice.

Dated: January 14, 2019

HON. PAUL J. BAISLEY, JR.

J.S.C.