

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of

Index No.

GOVERNMENT JUSTICE CENTER, INC.,

Petitioner,

-against-

VERIFIED PETITION

NEW YORK STATE PUBLIC CAMPAIGN
FINANCE COMMISSION and JAY JACOBS
in his capacity as a member on the New York
State Public Campaign Finance Commission,

Respondents.

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

Petitioner Government Justice Center, Inc., for its verified petition under CPLR 7804 and the Freedom of Information Law¹ against Respondents New York State Public Campaign Finance Commission and Jay Jacobs, alleges as follows:

Introduction

1. Decades ago, the Legislature declared that “a free society is maintained when government is responsive and responsible to the public,” “government is the public’s business,” and “the people’s right to know the process of governmental decision-making ... is basic to our society.”² Today, on the other hand, the Legislature passes laws creating unaccountable, unelected commissions to re-write laws, shrouded in a cloak of secrecy.

¹ Public Officers Law, Article 6 (“FOIL”).

² FOIL § 84.

2. Here, the Legislature created an unelected nine-member Public Campaign Finance Commission (“Commission”) that acknowledges it is re-writing the Election Law in less than three months’ time.

3. Ignoring its obligations under FOIL, the Commission does not have a records access officer.

4. A straightforward records request for an agenda, a proposed meeting schedule, and a resolution adopted at the Commission’s “organizational meeting” (and related communications) has gone unanswered, with no date for disclosure given. The constructively denied FOIL request cannot be appealed because the Commission does not have anyone to whom FOIL appeals can be directed, by legislative design.

5. Petitioner brings this Article 78 proceeding to seek the Court’s assistance enforcing the public’s right to know how the Commission is operating and re-writing laws.

Facts

6. The Government Justice Center is a non-profit public interest law center that promotes government accountability and transparency.

7. Respondent is an agency created as part of a budget bill passed by the Legislature in the spring, Part XXX of Chapter 59 of the Laws of 2019.

8. By legislative design, the nine-member Commission has no chairperson. L. 2019, ch. 59, Part XXX, § 1.

9. On July 3, 2019, the Governor’s Office announced the Commission’s members.

10. More than six weeks later, on August 18th, the New York Department of State issued a press release announcing that the Commission’s first public meeting would be held on August 21st.

11. The Commission streamed the meeting—by the sound and appearance using someone’s mobile phone— via the Department of State’s Facebook page.

12. At the meeting, Commission member Henry Berger, jointly appointed by the Governor and the Legislature, handed out a printed agenda. It appeared other Commission members were seeing this agenda for the first time.

13. At the outset of the meeting the Commission announced that it was an organizational meeting only and not a public hearing.

14. During the meeting, Governor’s appointee Jay Jacobs introduced a proposed schedule for public hearings around the state, including specific meeting locations.

15. Mr. Jacobs then circulated a written resolution not all Commissioners had previously seen and put it to a vote.

16. The Commission then went into a lengthy executive session vaguely described as needed to discuss personnel matters and litigation.

17. At no point in the meeting did the Commission make public the identity of a records access officer that it is obligated to appoint and identify under FOIL.

18. In the absence of an appointed chairperson, GJC submitted a FOIL Request on August 21st to one of the *de facto* chairs of the meeting, Mr. Jacobs. GJC sought the agenda, the resolution, and the proposed public hearing schedule discussed and approved at the meeting, along with all related communications. **Exhibit A.**

19. GJC also asked whether a records access officer had been appointed and whether the Commission had a website where records are made available for public access.

20. The next day, Commissioner Jacobs responded that he was heading out of town for a DNC meeting, but he represented that he would try to pull something together the following Monday.

21. GJC did not receive anything from the Commission the following Monday.

22. On Thursday of that week, GJC followed up with Mr. Jacobs and asked whether the Commission, in the absence of an appointed chairperson, had appointed an appeals officer to address the Commission's constructive denial of GJC's FOIL Request.

23. Mr. Jacobs responded and informed GJC that the Commission's staff had not started, that it was temporarily short-handed, but that the records would be forthcoming.

24. Mr. Jacobs did not provide a date certain when disclosure would be made.

25. The Commission has not disclosed any records to GJC as of the petition date.

Parties

26. Petitioner is a non-profit corporation with a principle place of business in Albany, New York.

27. Respondent New York State Public Campaign Finance Commission is an "agency" within the meaning of Public Officers Law § 86(3).

Jurisdiction and Venue

28. Venue is proper in Albany County because it is the location where the FOIL Request originated, and, upon information and belief, the Commission is a state agency with a principal office located in Albany County.

Cause of Action: Article 78**Review of Wrongful Denial of FOIL Request**

29. Petitioner repeats and re-alleges paragraphs 1 through 28 as if fully set forth in this paragraph.

30. Article 78 is the appropriate method of review of agency FOIL request determinations.

31. Petitioner has a right under FOIL to the records requested.

32. Petitioner has sought and has been denied production of the records.

33. The Commission's failure to produce documents under the circumstances of the request is not justified under FOIL.

34. The Commission has failed to provide information to meet its burden under FOIL to provide specific and particular reasons for withholding the records requested.

35. Petitioner has exhausted its administrative remedies and has no other remedy at law.

36. Petitioner has not made any prior application for the relief requested.

Relief Requested

37. Petitioner respectfully requests that this Court issue an order:

- a. Declaring that (i) Respondents acted unlawfully in failing to produce records in response to the FOIL Request; and (ii) the Commission must release the requested records;
- b. Directing the Commission to produce to petitioner within five days of the date of the order, the records requested in the petitioner's FOIL Request;
- c. Directing the Commission to appoint a FOIL records access officer and a FOIL appeals officer;

- d. Directing the Commission to establish a subject matter list of records available under FOIL and to establish a website records depository for public access;
- e. Awarding attorneys' fees and costs incurred in this litigation as allowed under FOIL; and
- f. Granting such other and further relief as this Court may deem just and proper.

Dated: Albany, New York
September 9, 2019

Respectfully submitted,



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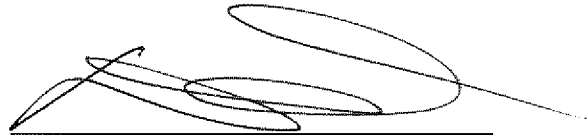
Counsel for Petitioner

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF ALBANY)

I, Cameron Macdonald, being duly sworn, deposes and says:

I am the Executive Director for Government Justice Center, Inc., the Petitioner in the above-captioned action. I have reviewed the foregoing Petition and know its contents to be true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true.



Cameron Macdonald

Sworn to and subscribed before me
this 9th day of September, 2019



Notary Public

AMANDA P ROBINSON
NOTARY PUBLIC STATE OF NEW YORK
SARATOGA
LIC. #01RO6390046
COMM. EXP. 04/08/2023