FILED AND
ENTERED ON

March 20, 2012

WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
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In the Matter of the Application of

THE JOURNAL NEWS, A DIVISION OF GANNETT SATELLITE INFORMATION NETWORK, INC.,

Petitioner,

-against-

CITY OF WHITE PLAINS, CITY OF WHITE PLAINS BOARD OF ETHICS, MAYOR OF THE CITY OF WHITE PLAINS, and CORPORATION COUNSEL FOR THE CITY OF WHITE PLAINS,

Respondents.

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DECISION

Index No. 7781/11

Hubert, J.

Before the Court is an Article 78 proceeding initiated by Petitioner, The Journal News, for a judgment declaring that Section 2-5-1119(a)(14) of the Code of Ethics of the City of White Plains does not prohibit access to information that is governed by New York's Freedom of Information Law ("FOIL"), and declaring that the City of White Plains Board of Ethics' denial of Petitioner's FOIL request was a mistake of law insofar as the denial was based on the personal privacy exception and the intra-agency exception to FOIL requests. Petitioner also seeks an order compelling disclosure of the documents it requested.

The facts underlying Petitioner's FOIL request involve an investigation by the City of

White Plains Board of Ethics ("the Board") of former mayor Adam Bradley ("the Mayor"). The investigation concerned allegations of favoritism and conflicts of interest in connection with the Mayor's rental of an apartment, allegedly below market cost, from a developer who had active business before the City of White Plains.

On August 12, 2010, the Board made a finding of probable cause to believe that the Mayor had violated the Code of Ethics of the City of White Plains ("the Ethics Code"), and initiated a full investigation. The Board's investigation consisted of reviewing documents obtained from the City of White Plains, the Mayor, and from other sources through voluntary disclosure, disclosure pursuant to subpoena, and by conducting sworn interviews, including interviewing the Mayor himself. The purpose of the investigation was to determine whether formal charges were warranted, in which case a public hearing would have been conducted under Ethics Code § 2-5-112.[1]

After conducting a full investigation, the Board served a statement of formal charges on Mayor Bradley. *See* Ethics Code § 2-5-113 (1). On February 18, 2011, Mayor Bradley resigned from office. On March 1, 2011, the Board dismissed the complaint on the grounds that it no longer had jurisdiction over Mayor Bradley.

During the course of the Board's inquiry, a reporter from the Journal News published several stories about the Board's investigation. On February 21, 2011, Petitioner also submitted a document request to the Board pursuant to the Freedom of Information Law. *See* Public Officers Law § 84 et. seq.

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[1]After such a hearing, the Board issues recommended findings of fact and conclusions of law to the White Plains Common Council and its report is filed with the City Clerk for public review. *See* Ethics Code § 2-5-113 (12).

New York's Freedom of Information Law, patterned after the Federal Freedom of Information Act, makes all government records "presumptively available to the public for inspection" unless they fall under a limited number of exceptions. *Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566, 505 N.Y.S.2d 576 (1986). The general philosophy underpinning the statute is full agency disclosure in order to "achieve maximum public access to government documents." *Encore Coll. Bookstores v. Auxiliary Serv. Corp. of State Univ. of NY at Farmingdale*, 87 N.Y.2d 410, 416, 639 N.Y.S.2d 990 (1995).

In this case, Petitioner sought disclosure of:

> a. Any and all documents, photographs and other materials relating to an ethics probe into former White Plains Mayor Adam Bradley, including but not limited to a written complaint, acknowledgment of receipt of the complaint, forms of proof for an inquiry, preliminary written analysis of the complaint with any information and documentation included, legal written analysis of the complaint, all parts of a full investigation with subpoenas, transcripts of testimony or written statements from Bradley and witnesses, and other pertinent material, documentation of any and all actions taken by the Ethics Board following a full investigation, any determination for a hearing, any referrals to appropriate authorities, any formal charges and any answers to the formal charges.
>
> b. Any and all paperwork calling for or requesting a dismissal of the Bradley investigation.
>
> c. Any and all meeting dates and minutes of the Ethics Board related to the Bradley Investigation.
>
> d. Any and all publicly available e-mail or paper correspondence maintained by the mayor's office or Corporation Council's [sic] office involving the Bradley Investigation.
>
> e. Total Payment made to outside counsel, with a breakdown of payments made to each outside firm.

By letter dated March 5, 2011, the Board denied Petitioner's FOIL the request (with the

exception of disclosing certain invoices from its legal counsel). On March 7, 2011, Petitioner appealed the partial denial of its FOIL request to City of White Plains Corporation Counsel. On March 21, 2011, corporation counsel issued a final determination upholding the Ethics Board's denial. For the reasons explained more fully below, the relief sought by Petitioner is granted in part and denied in part.

Discussion

Petitioner first argues that the denial of its FOIL request was a mistake of law inasmuch as Respondents relied on Section 2-5-111(a)(14) of the Ethics Code. That section provides that "the complaint, records and other proceedings related thereto prior to the filing of charges or dismissal of the complaint for lack of jurisdiction are deemed confidential." Petitioner argues that the Board erred in relying on this confidentiality provision because it is pre-empted by FOIL, and therefore void as applied.

Respondents counter that the Court need not resolve this issue because the Board did not rely on the confidentiality provision set forth in Section 2-5-111(a)(14). This Court disagrees. The Board's March 5, 2011 decision denying Petitioner's FOIL request specifically states:

> The White Plains Code of Ethics provides at section 2-5-111(a)(14) that "[t]he complaints, records and other proceedings related thereof prior to the filing of charges or dismissal of the complaint for lack of jurisdiction are deemed confidential.

Similarly, Respondents' March 21, 2011 letter relies, in part, on the confidentiality provision, stating:

> After a review of Article 6 of the Public Officers Law, case law, advisory opinions from the Executive Director of the Committee on Open Government, Section 2-5-113 (12) of the

> White Plains Code of Ethics emphasizing the advisory role of the Board of Ethics, and the plain language of Section 2-5-111(a)(14) of the Code of Ethics of the City of White Plains, providing that "the complaint, records and other proceedings related thereto prior to the filing of charges or dismissal of the complaint for lack of jurisdiction are deemed confidential," [the Ethics Board's] denial of your FOIL request is upheld for the reasons stated in his letter dated March 5, 2011.

The March 1, 2011 dismissal for lack of jurisdiction, filed with the City Clerk's Office, also states that:

> The City Code of Ethics provides at section 2-5-111(a)(14) that "[the complaint, records and other proceedings related thereto prior to the filing or charges or dismissal of the complaint for lack of jurisdiction are deemed confidential." The dismissal of a complaint for lack of jurisdiction prior to a fact-finding hearing deprives the subject individual of an opportunity to assert defenses, confront and cross-examine adverse witnesses, or to present exculpatory evidence. Thus, the confidentiality of the record in matters that have been dismissed for lack of jurisdiction by the Board of Ethics prior to the filing of formal charges or the trial of those charges at a fact-finding hearing is an important protection of the privacy and due process rights of City offices and employees who are be subject [sic] to investigation by the Board of Ethics.

In any event, the Court agrees that FOIL's statutory disclosure requirements pre-empt any conflicting confidentiality requirements contained in a local ordinance such as the one at issue here. The plain language of Public Officers Law § 87 (2) (a) states that agencies may deny access to records or portions thereof that "are specifically exempted from disclosure by state or federal statute." This language means that records are exempt from disclosure under FOIL where the plain language contained in a state or federal statute reveals that public access to the records was not intended. A local agency, by contrast, cannot immunize a document from disclosure

under state law by designating it as confidential. *See Morris v. Martin*, 55 N.Y.2d 1026, 449 N.Y.S.2d 712 (1982)(material requested by petitioner is not exempted from disclosure under Public Officers Law, § 87 (2) (a), (b) or (g)); *Brownstone Publishers, Inc. v. New York City Dep't of Finance*, 150 A.D.2d 185, 540 N.Y.S.2d 796 (1st Dep't 1989)("secrecy provision" set forth in New York City Administrative Code concerning real property does not constitute exemption from disclosure under FOIL since it is not a State or Federal statute); *see also Washington Post Co. v. New York State Ins. Dept.*, 61 N.Y.2d 557, 565, 475 N.Y.S.2d 263 (1984)(promises of confidentiality by state agency do not affect status of documents as records subject to disclosure under FOIL); *LaRocca v. Board of Education*, 220 A.D.2d 424, 632 N.Y.S.2d 576 (2d Dep't 1995)(school's assurance to principal that settlement agreement resolving disciplinary charges would remain confidential does not affect applicability of FOIL); *Bello v. State of NY Dep't of Law*, 208 A.D.2d 832, 617 N.Y.S.2d 856 (2d Dep't 1994); *City of Newark v. Law Dep't of N.Y.*, 305 A.D.2d 28, 760 N.Y.S.2d 431 (1st Dep't 2003)(confidentiality order issued by an arbitration panel does not override public's right of access to government records under FOIL). Accordingly, to the extent that Section 2-5-111(a)(14) creates a confidentiality exemption which does not exist under the Public Officers Law, the Court concludes that it is not enforceable.

Having established that Section 2-5-111(a)(14) is inapplicable to the extent that it conflicts with FOIL, the next question is whether the documents requested by Petitioner fall within one of the enumerated exemptions set forth in the statute. The documents (or portions thereof) which governmental agencies may withhold from disclosure under FOIL are records that:

> (a) are specifically exempted from disclosure by state or federal

statute;
(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;
(c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;
(d) are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
(e) are compiled for law enforcement purposes and which, if disclosed, would:

> i. interfere with law enforcement investigations or judicial proceedings;
> ii. deprive a person of a right to a fair trial or impartial adjudication;
> iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
> iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;

(f) if disclosed could endanger the life or safety of any person;
(g) are inter-agency or intra-agency materials which are not:

> i. statistical or factual tabulations or data;
> ii. instructions to staff that affect the public;
> iii. final agency policy or determinations; or
> iv. external audits, including but not limited to audits
> performed by the comptroller and the federal government; or

(h) are examination questions or answers which are requested prior to the final administration of such questions;
(i) if disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; or
(j) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-a

of the vehicle and traffic law. Pub. Off. Law § 87 (2).

Case law makes clear that FOIL's limited exemptions must be "narrowly construed," and "the agency that seeks to prevent disclosure bear[s] the burden of demonstrating that the requested material falls squarely within an exemption by articulating a particularized and specific justification for denying access." *Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 275, 653 N.Y.S.2d 54, 57 (1996). "Blanket exemptions for particular types of documents are inimical to FOIL's policy of open government." *Gould* at 275; *Carnevale v. City of Albany*, 68 A.D.3d 1290, 1292, 891 N.Y.S.2d 495 (3d Dept 2009). Moreover, a party seeking public records is not required to make "any showing of need, good faith or legitimate purpose." *M. Farbman & Sons, Inc. v. New York City Health and Hosps. Corp.*, 62 N.Y.2d 75, 80, 476 N.Y.S.2d 69, 71 (1984).

It is true, as Petitioner asserts, that the Board did not describe with particularity the records that it withheld, or set forth the specific reasons it believed that each document was exempt from disclosure. *See Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 275, 653 N.Y.S.2d 54 (1996); *Grune v. Alexanderson*, 168 A.D.2d 496, 562 N.Y. S.2d 739 (2d Dep't 1990). As explained above, in order to withhold disclosure of records, a government agency "must show that the requested information 'falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access.'" *Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 464, 849 N.Y.S.2d 489 (2007), *quoting Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 505 N.Y.S.2d 576 (1986). Affidavits merely repeating the statutory phrasing of an exemption are insufficient to establish the requirement of particularity. *DJL Restaurant Corp. v. Department of Bldgs.*, 273 A.D.2d 167, 710 N.Y.S.2d 564 (1st Dep't 2000).

However, Respondents submitted the records responsive to Petitioner's request for *in camera* review, which the Court has loosely grouped into three categories. The first group of documents include the Mayor's calendar, the Mayor's canceled checks and a check register, invoices from Con Ed, a deed for real property, correspondence to and from Mayor Bradley, emails between various employees of the City of White Plains, and print-outs from publicly available sources, including New York's Department of State, and multiple listing service reports. These documents are bates numbered 1-190. The second group of documents consists of sworn interviews conducted by the Board of the Mayor and Walter C. Gabrielle. These records are bates numbered 191-267. The third group of documents includes a statement of formal charges, a document issued by the Board dismissing the investigation for lack of jurisdiction, and correspondence between members of the Board. These documents are bates numbered 302-405.

With respect to the first group of documents, the Court finds that only some of the records are exempt from disclosure based on the personal privacy exception. FOIL authorizes a municipal agency to deny access to records when disclosure of the record would result in an unwarranted invasion of personal privacy. Pub. Officers § 87 (2) (b) provides that an unwarranted invasion of personal privacy includes, but shall not be limited to "various categories of data illustrated by a list of six items including employment, medical and credit histories, information that would be used for solicitation or fund-raising purposes, information that would result in economic or personal hardship or simply personal information that is not relevant to the work of the agency." The statute specifically states that this list is not comprehensive.

In order to determine whether the release of records would constitute an "unwarranted"

invasion of personal privacy, the Court must balance the "privacy interests at stake" against the "public interest in disclosure of the information." *The New York Times Co. v. City of New York Fire Dept.*, 4 N.Y.3d 477, 485, 796 N.Y.S.2d 302 (2005). "What constitutes an unwarranted invasion of personal privacy is measured by what would be offensive and objectionable to a reasonable [person] of ordinary sensibilities. [. . .] This determination requires balancing the competing interests of public access and individual privacy." *Dobranski v. Houper*, 154 A.D.2d 736, 737, 546 N.Y.S.2d 180 (3d Dep't 1989)(internal citation omitted); *see also Empire Realty Corp. v. New York State Div. of Lottery*, 230 A.D.2d 270, 273, 657 N.Y.S.2d 504 (1997).

With respect to Mayor Bradley's calendar, the Court finds that, insofar as the calendar reflects the Mayor's public schedule and/or official duties, Respondents have not sufficiently demonstrated that disclosure would result in an unwarranted invasion of personal privacy, or that the calendar is otherwise exempt from disclosure under FOIL or under any common law privilege. The Court is not suggesting that daily, weekly or monthly appointment calendars and schedules of elected officials are subject to ongoing disclosure under FOIL. In some instances, disclosing the identity of persons with whom an elected official has met and consulted may be the functional equivalent of revealing the substance or direction of that official's judgment and mental processes. In this case, however, Respondents have failed to articulate with specificity why the Mayor's calendar is exempt from disclosure. *See, e.g. Matter of Hawley v. Village of Penn Yan*, 35 A.D.3d 1270, 827 N.Y.S.2d 390 (4th Dep't 2006)(FOIL request for list of telephone calls made and received by respondent Mayor during a two-month period on a cellular telephone paid for by village, properly disclosed); *see also, e.g.*, Comm. on Open Gov't OML-AO-2347 (May 26, 1994)(disclosure of schedules indicating appointments and meetings in which public

employee has engaged are relevant to performance of that person's official duties and disclosure is permissible, not unwarranted invasion of personal privacy).

With respect to the cancelled checks, financial records, and other bills of Mayor Bradley that are now in the possession of the Board, the Court finds that the public interest in these specific records–even assuming they fall within the definition of "records" under FOIL–does not outweigh the privacy interest of Mayor Bradley. First, The Court is not convinced that Mayor Bradley's financial documents qualify as "records" under FOIL. The term "record" is defined in Section 86 (4) as:

> any information kept, held, filed, produced, reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

This definition is broad, and it is true that public officials cannot reasonably have as great an expectation of privacy as individuals who are not public servants. The Court of Appeals has stated in at least one case that a practice of co-mingling private and public records stored within a public office can convert private records into records that must be disclosed under FOIL. *Capital Newspapers v. Whalen*, 69 N.Y.2d 246, 253, 513 N.Y.S.2d 367 (1987). But this Court does not view the current situation of one of co-mingling. The documents were subpoenaed and/or otherwise disclosed by Mayor Bradley as part of the Board's investigation. In addition, the Court must strike a proper balance between the protection of the individual's right of privacy and the preservation of the public's right to government information. Here, the Court finds that Mayor Bradley's privacy interest in the financial records at issue outweighs any public interest in such

documents, which are not relevant to the performance of the Mayor's duties.

With respect to the correspondence to and from Mayor Bradley, and correspondence to, from and between officials and employees of the City of White Plains, the Court notes that these records are presumptively public under FOIL. Respondents have failed to demonstrate that any of these documents fall squarely within a FOIL exemption, nor have they articulated a particularized and specific justification for denying access to any of the individual documents. *Capital Newspapers v. Whalen*, 69 N.Y.2d 246, 253, 513 N.Y.S.2d 367 (1987). The fact that these documents are within the possession of the Board, or have been obtained as the result of the Board's investigation, does not render such documents immune from FOIL disclosure. *See, e.g, City of Newark v. Law Dep't of N.Y.*, 305 A.D.2d 28, 760 N.Y.S.2d 431 (1st Dep't 2003)(fact that documents in hands of government have been created or obtained solely as the result of an arbitration does not *ipso facto* render such documents immune from FOIL disclosure).

The second group of documents that Respondents have submitted to the Court for *in-camera* review consist of sworn interviews of Mayor Bradley and Walter Gabriele. These interviews, in question and answer format, were conducted as part of the Board's investigation in order to aid it in determining whether to prepare formal charges against the Mayor. Respondents make no specific arguments as to why these interviews are exempt from disclosure under FOIL, but argue generally that records in the Board's possession are pre-decisional materials that would result in an unwarranted invasion of personal privacy. Specifically, Respondents state:

> Confidentiality at the preliminary stage of an ethics investigation serves to protect the privacy and reputation of a presumptively innocent City officer or employee who is the subject of an ethics complaint that has not yet resulted, and may never result, in the filing of formal charges; it encourages the reporting of suspected ethical

> violations by protecting the identity of whistleblowers in the preliminary stages of an investigation; it avoids subornation of perjury, witness tampering and spoliation of evidence; and it fosters freedom of deliberation amount members of the Board of Ethics without fear that the Board's preliminary view of a matter will be made public before formal charges are filed and before a due process hearing is conducted.

There are sound policy reasons to keep ethics investigations and related documents confidential. These considerations are reflected in a variety of advisory opinions issued by the Committee on Open Government,[2] which has stated that local ethics boards may withhold records relating to charges of misconduct that have not yet been determined or that did not result in disciplinary action, because such disclosure would result in an unwarranted invasion of personal privacy. The Court notes that these advisory opinions are not binding, and such a policy is not specifically reflected in FOIL.

Nevertheless, the Court finds that these sworn interviews were relied upon by the Board in the course of its decision-making process, and the questions posed to the interviewees by the Board constitute "an integral part of the deliberative process" of the Board. The "deliberative process privilege covers 'documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.'" *Tigue v. U.S. Dept. of Justice*, 312 F.3d 70, 76 (2d Cir. 2002), *quoting Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001). The purpose of the privilege is to "permit people within an agency to exchange opinions, advice and criticism freely

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[2]The Committee on Open Government is responsible for overseeing and advising with regard to the Freedom of Information Law, the Open Meetings Law and the Personal Privacy Protection Law (Public Officers Law, Articles 6, 7 and 6-A). The Committee may issue written advisory opinions in response to questions from the government, the public and the news media.

and frankly, without the chilling prospect of public disclosure." *New York Times Co. v City of N.Y. Fire Dept.*, 4 N.Y.3d 477, 488, 796 N.Y.S.2d 302 (2005); *Matter of Tuck-It-Away Assoc., L.P. v. Empire State Dev. Corp.*, 54 A.D.3d 154, 861 N.Y.S.2d 51 (1st Dep't 2008)("the deliberative process privilege's object is to enhance the quality of agency decisions, by protecting open and frank discussion among those who make them within the Government" (internal quotation marks omitted)).

Here, the Court finds that the sworn interviews are entitled to the protection offered by the deliberative process privilege. *See, e.g., Elentuck v. Green*, 202 A.D.2d 425, 608 N.Y.S.2d 701 (2d Dep't 1994)(chancellor's committee reports and hearing panel reports are predecisional material exempt from disclosure under Public Officers Law § 87(2)(g)); *Boulware v. Triborough Bridge & Tunnel Auth.*, 161 Misc. 2d 435, 613 N.Y.S.2d 580 (Sup. Ct. New York Co. 1994) (transcript of disciplinary hearing held pursuant to Civil Service Law § 75 is "predecisional intra-agency memoranda" and, if this were a Freedom of Information request, would be exempt from disclosure under Public Officers Law § 87 (2) (g)); *Sinicropi v. County of Nassau*, 76 A.D.2d 832, 428 N.Y.S.2d 312 (2d Dep't 1980), *lv. den.* 51 N.Y.2d 704 (1980)(disciplinary records of probation officer, including intra-agency memoranda concerning the investigation into her performance as a probation officer, notes and communications made in preparation of her hearing, and transcript of the hearing are pre-decisional intra-agency memoranda that are not reflective of final agency policy or determinations and, as such, are exempt from disclosure); *also see Scaccia v. State Police*, 138 A.D.2d 50 (3d Dept 1988)(denial of the disclosure of written notification of proposed imposition of penalty pursuant to 9 NYCRR § 479.3 proper where the document sought represented an intermediate step leading to a decision to proceed to a formal

disciplinary hearing.)

The third group of documents includes a statement of formal charges, the Board's decision dismissing the complaint for lack of jurisdiction, and certain correspondence between members of the Board. With respect to the communications between the members of the Board, the Court finds that these records are exempt from disclosure under the deliberative process privilege. Such correspondence contains opinions, ideas, or advice exchanged as part of the consultative or deliberative process of government decision making and are exempt from disclosure as inter-agency or intra-agency deliberative materials pursuant to Public Officers Law § 87 (2) (g).

With respect to the written determination dismissing the matter for lack of jurisdiction, this document was filed with the City Clerk in White Plains and was attached as an exhibit to Respondent's Answer in this proceeding. Respondents have advanced no specific argument for withholding this document from disclosure, which is already public. Accordingly, this document is subject to disclosure.

With respect to the statement of formal charges[3], the Court cannot find, based on the arguments presented by Respondents, that this document is pre-decisional, intra-agency, or deliberative. The statement of formal charges reflects the determination of the Board following a full investigation; it is not a reflection of any opinions, ideas, or advice exchanged as part of the consultative or deliberative process of government decision making. *Mothers on the Move v. Messer*, 236 A.D.2d 408, 652 N.Y.S.2d 773 (2d Dept 1997)("the exemption applies only to

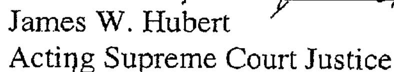
[3]Although Respondents state that formal charges were never filed, the record discloses that the Board prepared a statement of formal charges on January 24, 2011, and served the charges on the Mayor pursuant to Section 2-5-113 of the Code of Ethics.

deliberative materials, i.e., communications exchanged for discussion purposes not constituting final policy decisions). Moreover, Section 2-5-114 (4) of the Code of Ethics provides that "[t]hirty (30) days after charges have been served, the charges and the answer, if any, shall be made public, unless otherwise stipulated by the parties or extended by an order of a court of competent jurisdiction." Thus, there is a presumption that the statement of formal charges becomes public after 30 days. Respondents have not established that the statement of formal charges falls within one of the exemptions under FOIL, nor have they articulated a particularized justification for denying the right to access this document. Accordingly, under the specific circumstances of this case, Respondents have not met their burden of demonstrating that the statement of formal charges should be withheld under FOIL. *See Sinicropi v. County of Nassau*, 76 A.D.2d a 832 (Petitioner given access to the charges preferred against probation officer, her answer, the demand and bill of particulars and the stipulation of settlement; further disclosure prohibited).

The Court has considered all of the remaining arguments of the parties, and to the extent not specifically discussed herein, finds these arguments to lack merit. Petitioner is directed to settle an order within forty-five days after service of this decision.

The foregoing constitutes the opinion, decision, order and judgment of this Court.

Dated: White Plains, New York
March 20, 2012



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