

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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In the matter of	:	
JESSICA HUSEMAN,	:	Index No.
	:	
Petitioner,	:	VERIFIED PETITION
	:	
For a Judgment Pursuant to Article 78	:	
of the Civil Practice Law and Rules	:	
	:	
-v-	:	
	:	
NEW YORK CITY	:	
DEPARTMENT OF EDUCATION,	:	
	:	
Respondents.	:	
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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Jessica Huseman (“Huseman” or “Petitioner”), by and through her undersigned counsel, respectfully alleges as follows:

1. This is a special proceeding brought against the New York City Department of Education (“NYC DOE” or “Respondent”) pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”), the Freedom of Information Law, Public Off. Law §§ 84, *et seq.* (“FOIL”), and CPLR § 3001.

2. This proceeding arises out of Respondent’s failure to provide certain information to Petitioner as required by FOIL.

JURISDICTION AND VENUE

3. Petitioner Jessica Huseman is an education reporter at The Teacher Project based at the Columbia Journalism School in New York City, New York. Each year, the Teacher Project hires three recent alumni of the Columbia Journalism School as fellows to report on education topics. Most of the stories from The Teacher Project appear in

Slate's education blog "Schooled." Petitioner's work has also appeared in *The Atlantic*, *The Hechinger Report*, *Chalkbeat New York*, and *The Dallas Morning News*, among other publications.

4. Respondent the New York City Department of Education consists of the Board of Education of the City School District of the City of New York, also known as the Panel for Educational Policy, established by Educ. Law § 2590(b), the Chancellor, and other school employees. See NYC DOE, *Bylaws of the Panel for Educational Policy of the Department of Education of the City School District of the City of New York*, <http://schools.nyc.gov/AboutUs/leadership/PEP/bylaws/default.htm> (last visited Jan. 29, 2016). Respondent is an "agency" within the meaning of Public Off. Law § 86(3). Its principal office is located at 52 Chambers Street, Room 308, New York, NY 10007.

5. The actions of Respondent that form the basis of this Petition are final in nature and cannot adequately be reviewed by another court, entity or officer. As set forth further below, Petitioner filed three FOIL requests with Respondent seeking (a) data from the Special Education Call Center between 2012 and 2015; (b) purchase records for schools purchasing instructional technology, and (c) databases of employee leave and investigations, copies of employee settlement agreements, and records of employees who received bonuses. After Petitioner administratively appealed the denial in part of the first request and the constructive denial of the second and third requests (detailed below), the General Counsel of the NYC DOE, on behalf of Respondent, rejected Petitioner's administrative appeals in two decisions dated October 7, 2015.

6. Petitioner has now exhausted her administrative remedies, and this Court thus has jurisdiction over this matter pursuant to FOIL § 89(4)(b), CPLR Article 78, and CPLR § 3001.

7. This proceeding is commenced in New York County pursuant to CPLR § 506(b) and CPLR § 7804(b) because that is where NYC DOE's principal office is located and because it is within the judicial district wherein NYC DOE made the determinations petitioned against and complained of and where it refused to perform the duties specifically enjoined upon it by law.

FACTS

I. The First Request

8. On June 11, 2015, Petitioner requested the following records from the NYC DOE (the "First Request"): data from the Special Education Call Center between 2012 and 2015 and, specifically, (a) the names of schools about which parents complained; (b) the names of school administrators or teachers named in the complaints; (c) the nature of the complaints; and (d) the action taken by the district to address the complaints. (A true and correct copy of the First Request is attached hereto as Exhibit 1.)

9. On June 18, 2015, Respondent sent a letter to Petitioner acknowledging receipt of Petitioner's requests for "various school records," including the First Request. The letter assigned FOIL reference number F11,422 to several FOIL requests submitted by Petitioner, including the First Request. The letter stated that Respondent anticipated providing Petitioner with a response to the requests by July 17, 2015. (A true and correct copy of Respondent's letter is attached hereto as Exhibit 2.)

10. Also on June 18, 2015, Respondent sent Petitioner another letter acknowledging receipt of the First Request and assigning it a second FOIL reference

number, F11,400. The letter stated that Respondent anticipated providing Petitioner with a response to the First Request by July 17, 2015. (A true and correct copy of Respondent's letter is attached hereto as Exhibit 3.)

11. Respondent did not use FOIL reference number F11,400 to refer to the First Request in any correspondence after the June 18, 2015 acknowledgment letter described in Paragraph 10. As described in more detail in Paragraph 28, Respondent clarified in an October 7, 2015 letter that FOIL reference number F11,422 applied to the First Request, alone.

12. On July 17, 2015, Respondent sent Petitioner a letter stating that Respondent required additional time to respond substantively to the First Request "due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2)." The letter stated that Respondent anticipated providing a response by August 14, 2015. (A true and correct copy of Respondent's letter is attached hereto as Exhibit 4.)

13. After July 17, 2015, Petitioner received no further letters extending the time period for response to the First Request. Petitioner did not receive a response to the First Request on or before August 14, 2015.

14. By letter dated September 14, 2015, Respondent provided a response to the First Request and attached one responsive record. The sole record provided was an excel file pertaining to 311 calls regarding special education complaints and containing the following fields: school District Bureau Numbers (DBN), opened date, status, SR resolution, SE source, topic, and sub-topic. The letter stated that "access to more detailed

information is denied pursuant to [the Family Educational Rights and Privacy Act (FERPA)] and to Public Officers Law §87(2)(a).” (A true and correct copy of Respondent’s letter and the record produced are attached hereto, collectively, as Exhibit 5.)

II. The Second Request

15. On June 11, 2015, Petitioner also requested the following records from the NYC DOE (the “Second Request”): purchase records for schools purchasing instructional technology (including laptops, tablets, and Smart Boards), including the name of the school, the product purchased, and the itemized cost of each product. (A true and correct copy of the Second Request is attached hereto as Exhibit 6.)

16. On June 18, 2015, Respondent sent a letter to Petitioner acknowledging receipt of the Second Request and assigning it FOIL reference number F11,402. The letter stated that Respondent anticipated providing Petitioner with a response to the Second Request by July 17, 2015. (A true and correct copy of Respondent’s letter is attached hereto as Exhibit 7.)

17. On July 17, 2015, Respondent sent Petitioner a letter stating that Respondent required additional time to respond substantively to the Second Request “due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2).” The letter stated that Respondent anticipated providing a response by August 14, 2015. (A true and correct copy of Respondent’s letter is attached hereto as Exhibit 8.)

18. After July 17, 2015, Petitioner received no further letters extending the time period for response to the Second Request. Petitioner has not received a response to the Second Request.

III. The Third Request

19. On July 1, 2015, Petitioner requested the following records from the NYC DOE (the “Third Request”): (a) the NYC DOE database of employees currently on paid and unpaid leave; (b) the database of NYC DOE investigations, open and closed, from the 2014-2015 school year to present; (c) copies of all employee settlement agreements from January 2014 to present; and (d) a list of all employees in the 2014-2015 school year who received bonuses, and the amount they received. (A true and correct copy of the Third Request is attached hereto as Exhibit 9.)

20. On July 9, 2015, Respondent sent a letter acknowledging receipt of the Third Request and assigning it FOIL reference number F11,472. The letter stated that Respondent anticipated providing Petitioner with a response to the Third Request by August 6, 2015. (A true and correct copy of Respondent’s letter is attached hereto as Exhibit 10.)

21. On August 6, 2015, Respondent sent Petitioner a letter stating that Respondent required additional time to respond substantively to the Third Request “due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2).” The letter stated that Respondent anticipated providing a response by September 3, 2015.

22. On September 3, 2015, Respondent sent Petitioner another letter stating that Respondent required additional time to respond substantively to the Third Request “due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2).” The letter stated that Respondent anticipated providing a response by October 2, 2015.

23. On October 2, 2015, Respondent sent Petitioner a third letter stating that Respondent required additional time to respond substantively to the Third Request “due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2).” The letter stated that Respondent anticipated providing a response by November 2, 2015.

24. Petitioner did not receive a letter extending the time period for response to the Third Request or a response to the Third Request on November 2, 2015.

25. On December 3, 2015, Respondent sent Petitioner a fourth letter stating that Respondent required additional time to respond substantively to the Third Request “due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2).” The letter stated that Respondent anticipated providing a response by January 6, 2016.

26. On January 6, 2016, Respondent sent Petitioner a fifth letter stating that Respondent required additional time to respond substantively to the Third Request “due to the volume and complexity of requests we receive and process, and to determine

whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2).” The letter stated that Respondent anticipated providing a response by January 6, 2016. On February 4, 2016, Respondent sent Petitioner a sixth letter stating that Respondent required additional time to respond to the Third Request “due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2),” and anticipated providing a response by March 4, 2016. (True and correct copies of Respondent’s extension letters described in Paragraphs 21, 22, 23, 25, and 26 are attached hereto, collectively, as Exhibit 11.)

IV. Petitioner’s Administrative Appeal of the First, Second, and Third Requests

27. Petitioner timely submitted an administrative appeal of the denial in part of the First Request on September 18, 2015, noting Respondent’s failure to provide of the names of school administrators about which parents complained, the nature of the complaints, and the action taken by the district to address the complaints. In the same administrative appeal, Petitioner also appealed the constructive denial of the Second and Third Requests. (A true and correct copy of this administrative appeal is attached hereto as Exhibit 12.)

28. By letter dated October 7, 2015 from NYC DOE General Counsel Courtenay Jackson-Chase, the NYC DOE denied Petitioner’s administrative appeal of the First Request. The NYC DOE General Counsel clarified that FOIL reference number F11,422 applied only to the First Request. The NYC DOE General Counsel held that data fields containing the content of complaints and the resolution action by the NYC DOE were exempt from disclosure under Pub. Off. Law § 87(2)(a) and FERPA because

these data fields “are replete with student-specific information.” With respect to the names of staff identified in complaints, the NYC DOE General Counsel held that access to names could not be provided because “no ‘staff member’ data field exists for the DOE to extract.” (A true and correct copy of this decision is attached hereto as Exhibit 13.)

29. By separate letter dated October 7, 2015 from the NYC DOE General Counsel, the NYC DOE denied Petitioner’s administrative appeal of the constructive denial of the Second and Third Requests. The NYC DOE General Counsel stated that the Central Records Access Officer (CRAO) had extended the reasonable approximate date by which Petitioners’ requests would be determined, “most recently to October 13, 2015, and November 2, 2015,” and had explained that “additional time was needed due to the volume and complexity of the requests received and processed” as well as “to determine whether any records or portions thereof would be subject to redactions permitted under Public Officers Law §87(2).” The NYC DOE General Counsel held that Petitioner’s administrative appeal of the Second and Third Requests had not been constructively denied because “the CRAO’s efforts to respond to the request within the applicable time limitations were ongoing, which [Petitioner was] informed of most recently in the October 2, 2015 correspondence”; the requests “involve records that contain sensitive information, and must be carefully reviewed for potential redactions”; and the requests “involve records of multiple DOE offices, and potentially extensive data extraction.” Although the General Counsel denied Petitioner’s administrative appeal, she directed the CRAO to respond to Petitioner’s request “as expeditiously as possible.” (A true and correct copy of this decision is attached hereto as Exhibit 14.)

30. Petitioner has exhausted her administrative remedies.

V. The Advisory Opinion and Letter from Petitioner's Counsel

31. On October 22, 2015, in response to a request from Petitioner, Robert J. Freeman, Executive Director of the Committee on Open Government, issued an advisory opinion regarding some of Petitioner's requests. (A true and correct copy of this advisory opinion is attached hereto as Exhibit 15.)

32. On October 30, 2015, counsel for Petitioner sent a letter, via email and first class mail, to NYC DOE CRAO Joseph Baranello, regarding several requests for records made by Petitioner to the NYC DOE. Among other issues, the letter noted that Petitioner had not received any records in response to the Second and Third Requests. The letter stated that counsel would contact Mr. Baranello by telephone at 2:00 p.m. on November 2, 2015 regarding the withheld records and asked Mr. Baranello to advise counsel if there was an alternative time he would prefer to speak. (A true and correct copy of this letter is attached hereto as Exhibit 16.)

33. Mr. Baranello did not respond to counsel's October 30, 2015 letter described in Paragraph 28 on or before November 2, 2015. Petitioner's counsel did not speak with Mr. Baranello over the telephone about Ms. Huseman's FOIL requests on or after November 2, 2015.

VI. The Fourth Request

34. On September 18, 2015, Petitioner requested the following records from the NYC DOE (the "Fourth Request"): copies of all emailed communication to or from the CRAO's office regarding the First Request, the Third Request, and another FOIL request filed on July 1, 2015 by Petitioner, assigned FOIL reference number F11,471. (A true and correct copy of the Fourth Request is attached hereto as Exhibit 17.)

35. On September 25, 2015, Respondent sent a letter acknowledging receipt of the Fourth Request and assigning it FOIL reference number F11,648. The letter stated that Respondent anticipated providing Petitioner with a response to the Fourth Request by October 26, 2015. (A true and correct copy of Respondent's letter is attached hereto as Exhibit 18.)

36. On October 26, 2015, Respondent sent Petitioner a letter stating that Respondent required additional time to respond substantively to the Fourth Request "due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2)." The letter stated that Respondent anticipated providing a response by November 24, 2015. (A true and correct copy of Respondent's extension letter is attached hereto as Exhibit 19.)

37. Petitioner did not receive letter extending the time period for response to the Fourth Request or a response to the Fourth Request on November 24, 2015.

38. On January 22, 2016, Petitioner submitted an appeal of the constructive denial of the Fourth Request. (A true and correct copy of the administrative appeal is attached hereto as Exhibit 20.)

39. On January 28, 2016, Respondent sent Petitioner a second letter stating that Respondent required additional time to respond substantively to the Fourth Request "due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2)." The letter stated that Respondent anticipated providing a

response by February 5, 2016. (A true and correct copy of Respondent's extension letter is attached hereto as Exhibit 21.)

40. By letter dated February 5, 2016 from NYC DOE General Counsel Courtenaye Jackson-Chase, the NYC DOE denied Petitioner's administrative appeal of the Fourth Request. The NYC DOE General Counsel held that Fourth Request had not been constructively denied, because the NYC DOE CRAO provided Petitioner "with a reasonable approximate date by which [her] request would be determined, most recently to today, February 5." (A true and correct copy of this decision is attached hereto as Exhibit 22.)

41. On February 5, 2016, Respondent sent Petitioner a third letter stating that Respondent required additional time to respond substantively to the Fourth Request "due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2)." The letter stated that Respondent anticipated providing a response by March 7, 2016. (A true and correct copy of Respondent's extension letter is attached hereto as Exhibit 23.)

CLAIM FOR RELIEF

42. Petitioner hereby repeats and realleges paragraphs 1 through 33 as if fully set forth herein.

43. Petitioner commences this proceeding, which is in the nature of a writ of prohibition and mandamus, pursuant to CPLR Article 78, Public Officers Law § 89(4)(b) and CPLR § 3001.

44. Under FOIL, all documents held by governmental entities, such as the NYC DOE, are presumed open for public inspection and copying. Documents may be withheld from public inspection only if expressly permitted by a specific statutory exemption. Such exemptions are to be construed narrowly. When records contain both exempt and non-exempt information, an agency must typically redact the exempt information from the records instead of withholding the records entirely.

45. NYC DOE has improperly withheld portions of documents in response to the First Request under a claimed statutory exemption that does not apply to the documents Petitioner seeks.

46. NYC DOE has failed to segregate exempt material from non-exempt material and to satisfy its legal obligation to provide redacted copies of documents with only exempt material withheld in response to the First Request.

47. NYC DOE has improperly withheld all documents in response to the Second Request. NYC DOE has constructively denied the Second Request by failing to respond to the Second Request within a reasonable time of the time limit set forth in the extension letter in response to the request or within a reasonable time period, as required by FOIL.

48. NYC DOE has improperly withheld all documents in response to the Third Request. NYC DOE has constructively denied the Third Request by failing to respond to the request within a reasonable time period, as required by FOIL.

49. NYC DOE has improperly withheld all documents in response to the Fourth Request. NYC DOE has constructively denied the Fourth Request by failing to respond to the request within a reasonable time period, as required by FOIL.

50. In responding to the First, Second, Third, and Fourth Requests NYC DOE has failed to provide specific and particularized justifications for withholding each requested document.

51. Respondent's actions have caused, and continue to cause, immediate and irreparable harm to the rights guaranteed to Petitioner and to the public at large under FOIL and Article 1, Section 8 of the New York State Constitution.

52. The information requested is of significant interest to the general public.

53. Petitioner has exhausted its administrative remedies and has not obtained the requested records in full.

54. As a result of the foregoing, Respondent has violated FOIL.

55. Petitioner has no adequate remedy other than this proceeding, and no previous application for the relief requested herein has been made to the court.

WHEREFORE, Petitioner respectfully requests this Court to grant judgment:

- (a) Declaring that NYC DOE has acted unlawfully in withholding from Petitioner documents or portions of documents that are not properly exempt from disclosure under FOIL.
- (b) Vacating, overruling and prohibiting the enforcement of the final administrative decisions, dated October 7, 2015 and February 5, 2016;
- (c) Directing NYC DOE to provide Petitioner with immediate access to the records specified in the First, Second, Third, and Fourth Requests;

VERIFICATION

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JESSICA HUSEMAN, being duly sworn, deposes and says under penalty of perjury:

- 1. I am a reporter at The Teacher Project at the Columbia Journalism School.
- 2. I have read the annexed Verified Petition. Based on information obtained

in the ordinary course of business from records and individuals with knowledge, the information contained herein is true to the best of my knowledge, information, and belief.



JESSICA HUSEMAN

Sworn to before me this
5th day of February, 2016



Notary Public

SCOTT BAILEY
Notary Public, State of New York
No. 01BA6201502
Qualified in New York County
Commission Expires March 2, 2017