

**S'D**

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

-----X  
**TZVI WALDMAN, individually and as President of the NYS JEWISH GUN CLUB,**

**Index No.**

**Petitioners,**

**VERIFIED PETITION**

**-against-**

**SUFFOLK COUNTY, SUFFOLK COUNTY POLICE DEPARTMENT, Rodney Harrison, individually and as head of Respondent Agency SUFFOLK COUNTY POLICE DEPARTMENT, Jacqueline Caputi, individually and as Records Access Appeals Officer for SUFFOLK COUNTY POLICE DEPARTMENT, Janine Keleghan, individually and as Records Access Officer for SUFFOLK COUNTY POLICE DEPARTMENT**

**Respondents,**

**For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules**

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**TO THE ABOVE-NAMED RESPONDENT(S):**

Petitioner, TZVI WALDMAN, individually and as President of the NYS JEWISH GUN CLUB, by his attorneys, The Law Officers of Cory H. Morris, Cory H. Morris, P.C. as and for this Verified Petition alleges as follows:

## PRELIMINARY STATEMENT

1. Sometimes the Second Amendment protects the First Amendment. Sometimes the First Amendment protects the Second Amendment. When the Government refuses to honor either, what is left?

2. This Article 78 proceeding pursuant to the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law, seeks to vindicate the rights of Petitioners, TZVI WALDMAN, individually and as President of the NYS JEWISH GUN CLUB (“Petitioner”), and of the public to access records regarding Respondents, SUFFOLK COUNTY, SUFFOLK COUNTY POLICE DEPARTMENT (“SCPD”), RODNEY HARRISON (“Harrison”), individually and as head of Respondent Agency SUFFOLK COUNTY POLICE DEPARTMENT, JACQUELINE CAPUTI (“Caputi”), individually and as Records Access Appeals Officer for SUFFOLK COUNTY POLICE DEPARTMENT, JANINE KELEGHAN (“KELEGHAN”), individually and as Records Access Officer for SUFFOLK COUNTY POLICE DEPARTMENT, (collectively referred to herein as (“Respondents”).

3. That, Respondents have refused to produce public records in response to two FOIL requests by Petitioners.

4. That Respondents have denied Petitioner’s attempts to resolve these matters at the administrative level with two FOIL appeals.

5. That, having exhausted administrative remedies, Petitioners now asks the Court to order the production of requested records in an accessible unredacted format within thirty (30) days of this Court's order, or in the alternative to award a proper response to its FOIL appeal, awarding Petitioners costs and attorney's fees in this proceeding, finding that individual Respondents did violate the Public Officers Law §§ 84-89, *et seq.* and issue relief pursuant to Public Officers Law § 89(8) against each individual or issuing a factual hearing to issue said violation of each individual Respondent insofar as Respondent violated the Public Officers Law and granting such other and further relief as this Court deems just and proper.

#### PARTIES/BACKGROUND/VENUE

6. That, Petitioner, TZVI WALDMAN, individually, is an individual residing in the County of Rockland, State of New York, who requested records.

7. TZVI WALDMAN is the President of the NYS JEWISH GUN CLUB, a Corporation duly incorporated in the state of Delaware. NYS JEWISH GUN CLUB is involved in ensuring the First Amendment and Second Amendment rights of Jewish citizens are not violated and also requested records.

8. By way of background, the United States Supreme Court recently issued *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. \_\_\_\_ (2022), which greatly expanded recognition of the Second Amendment right

codified in the United States Constitution. The constitutional test set forth by the Bruen Court requires an analysis of historical firearms regulations to see whether such regulations are consistent with the nation's tradition.

9. Additionally, two NYS Supreme Courts recently passed on NY's red flag laws CPLR Article 63-A, finding that they were unconstitutional, and adding a different type of red flag on Westlaw and Lexis to CPLR Article 63-A. See G.W. v. C.N., 78 Misc.3d 289 (Monroe County Supreme Court, 2022), and R.M. v. C.M., 2023 N.Y. Slip Op. 23088 (Orange County Supreme Court, 2023).

10. Further, in *David Goldstein v. Suffolk County Police Department et al*, 23-CV-00053(JMA), the Jewish complainant filed a federal lawsuit alleging that the Suffolk Police Department confiscated David Goldstein's firearms through "red flag laws" without any basis satisfying CPLR Article 63-A.

11. United States District Court Judge Joan M. Azrack did Order Respondents to return Plaintiff David Goldstein's firearms and firearm license.

12. We note that none of this background information was required for TZVI WALDMAN or the NYS JEWISH GUN CLUB to request records from Respondents, as Public Officer's Law § 86 allows any person to request records from the government.

13. That, upon information and belief, Respondent **SUFFOLK COUNTY**, is a municipal agency organized under the laws of the State of New

York with its principal place of business in Suffolk County, and is otherwise subject to the requirements of the Freedom of Information Law.

14. That, upon information and belief, Respondent **SUFFOLK COUNTY POLICE DEPARTMENT**, is a municipal agency organized under the laws of the State of New York with its principal place of business in Suffolk County, and is otherwise subject to the requirements of the Freedom of Information Law.

15. Respondent SUFFOLK COUNTY is an "agency" as defined by Public Officers Law § 86.

16. Respondent SUFFOLK COUNTY POLICE DEPARTMENT is an "agency" as defined by Public Officers Law § 86.

17. Upon information and belief, RODNEY HARRISON, is the head of Respondent Agency SUFFOLK COUNTY POLICE DEPARTMENT.

18. JACQUELINE CAPUTI is the Records Access Appeals Officer for SUFFOLK COUNTY POLICE DEPARTMENT.

19. JANINE KELEGHAN is the Records Access Officer for SUFFOLK COUNTY POLICE DEPARTMENT.

20. RODNEY HARRISON, JACQUELINE CAPUTI and JANINE KELEGHAN have duties and responsibilities pursuant to the Public Officers Law §§ 84-89.

21. Together, SUFFOLK COUNTY, SUFFOLK COUNTY POLICE DEPARTMENT, RODNEY HARRISON, individually and as head of Respondent Agency SUFFOLK COUNTY POLICE DEPARTMENT, JACQUELINE CAPUTI, individually and as Records Access Appeals Officer for SUFFOLK COUNTY POLICE DEPARTMENT, JANINE KELEGHAN, individually and as Records Access Officer for SUFFOLK COUNTY POLICE DEPARTMENT are referred to herein collectively as “Respondent” or “Respondents”.

NEW YORK FREEDOM OF INFORMATION LAW

22. FOIL is based on a presumption that all government records are accessible.

23. “In our judicial system, ‘the public has a right to every man’s evidence.’” *Trump v. Vance*, 140 S. Ct. 2412, 591 U.S. (2020) (quoting Fn. 1) (citing 12 Parliamentary History of England 693 (1812)).

24. The courts have consistently recognized that “the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government,” *Capital Newspapers v. Whalen*, 69 N.Y.2d 246, 252.513 N.Y.S.2d 367, 370 (1987) (quoting *Fink v. Lefkowitz*, 47 N.Y.2d 567, 571, 419 N.Y.2d 467, 470 (1979)), and that the Legislature enacted FOIL to: “achieve[] a more informed electorate and a more responsible and responsive [government].”

*Westchester Rockland Newspapers, Inc. v. Kimball*, 50 N.Y.2d 575, 579, 430 N.Y.S.2d 574, 576 (1980); in accord *Buffalo News, Inc. v. Buffalo Enterprise Dev. Corp.*, 84 N.Y.2d 488, 492, 619 N.Y.S.2d 695, 697 (1994) (“to assure accountability and to thwart secrecy.”).

25. Time and again, the Court of Appeals has observed that the statute “can be a remarkably effective device in exposing waste, negligence and abuses on the part of government; in short ‘to hold the governors accountable to the governed.’” *Fink v. Lefkowitz*, 47 N.Y.2d at 571, 419 N.Y.S.2d at 470 (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242, 98 S.Ct. 2311,2327 (1978)).

26. Records, or portions thereof, cannot be withheld by Respondent's on the basis of simply repeating the statutory language of an exemption but must be specific to the matters withheld and justified by the administrative record created prior to litigation.

### **FACTS**

27. That, on February 19, 2023, Petitioners submitted a FOIL request to the Respondents. **Exhibit 1.**

28. Specifically, the FOIL request sought records containing the words "PISTOL LICENSE NOTICE OF SUSPENSION" by Respondent Suffolk County Police Department.

29. These were the same bold words printed on the “red flag” notice received by David Goldstein, and presumably were in Respondent’s Red Flag notice template. But again, Petitioners do not need to provide a reason why they need these records.

30. Respondents, individually and collectively, were required to respond to Freedom of Information Law Requests within five (5) business days. Public Officers Law §§ 84-89.

31. Respondents did not respond to **Exhibit 1** within five (5) business days.

32. On March 1, 2023, Petitioners submitted an appeal to FOIL Appeals Officer of Suffolk County Police Department. **Exhibit 2**.

33. Respondent Jacqueline Caputi submitted a March 3, 2023 response to Petitioner's FOIL Appeal, denying the appeal “as moot since your request is now being addressed”. See **Exhibit 3**.

34. Respondent Janine Keleghan submitted a March 3, 2023 response to Petitioner's FOIL Appeal. See **Exhibit 4**.

35. The March 3, 2023 Keleghan letter does not state when the records would be produced and referred the production to the “IT Department”.

36. The March 3, 2023 Keleghan letter further insisted that the request for records be limited to a smaller time frame.



37. On March 14, 2023 Petitioners sent two (2) letters.

38. Petitioner's March 14, 2023 letter was addressed to Respondent Janine Keleghan and insisted that the request was relevant for records in all time frames bearing the words "PISTOL LICENSE NOTICE OF SUSPENSION".

**Exhibit 5.**

39. The March 14 letter to Keleghan explained why Petitioners needed records going back as far as they could, although Petitioners were not required to provide this explanation. *Id.*

40. On March 14, 2023, Petitioner sent a second letter to Respondent Jacqueline Caputi asking that the appeal denial be reconsidered. **Exhibit 6.**

41. To date, Respondent Jacqueline Caputi has not responded to the March 14 letter.

42. On March 19, 2023, Respondent Janine Keleghan did respond to their March 14th letter, stating that the words "FOIL denial" were never used, therefore, Petitioners had no reason to complain. **Exhibit 7.**

43. The March 19 Keleghan letter continued to explain that there was an IT breach in September of 2022, whereby another department would have to extract such data, at some future period to be determined by the IT team.

44. As of the date of this Petition, we have not received any updated time frame from Respondent Janine Keleghan or any other correspondence.

45. As of the date of this Petition, we have not received a single record from Respondent Janine Keleghan responsive to the request.

46. On March 24, 2023, Petitioners filed a second FOIL appeal to FOIL Appeals Officer of Suffolk County Police Department. **Exhibit 8.**

47. Respondents, individually and collectively, were required to respond to the FOIL appeal within ten (10) business days. Public Officers Law §§ 84-89.

48. Respondents did not respond to **Exhibit 8** within ten (10) business days.

49. On April 5, 2023, Respondent Jacqueline Caputi issued an email requesting another ten (10) business days to respond to the FOIL appeal. **Exhibit 9**

50. That request was not and could not have been granted, as Respondent Jacqueline Caputi was informed by automated email that the attorney was celebrating Passover and was not in the office. **Exhibit 10.**

51. Without receiving any consent to delay the appeals process, Respondents did not issue a ruling on the FOIL appeal within ten (10) days.

52. The April 5, Jacqueline letter further explained that she was directing Respondent SCPD to search for records that were not affected by the data breach in September of 2022.

53. To date, not a single record has been turned over and not a single exception has been claimed over any record.

54. The legal arguments contained in Petitioner's Memorandum of Law dated April 14, 2023, are incorporated herein by reference.

AS AND FOR THE FIRST CAUSE OF ACTION

55. Petitioners repeat, reiterate, and reallege each and every allegation set forth in the proceeding paragraphs of this Verified Petition with the same force and effect as if same were more fully set forth at length herein.

56. Respondent has engaged in a practice of failing to comply with its obligations under New York Public Officers Law section 84 *et seq.*, Section 1401.5 of the Rules and Regulations of the State of New York, and Article 6-a of the Personal Privacy Protection Law by improperly denying requests, which Petitioner is entitled.

57. Respondent failed to produce records in violation of the Freedom of Information Law. See Exhibits "1-10".

58. Respondents claim that certain records are not within their possession.

59. Respondents do not certify what records are not in their possession.

60. Respondents' excuse for failing to provide such records was not timely made.

61. Respondents admit there are other responsive records within their possession.

62. Respondents do not proffer any excuse or exemption for failing to turn over records responsive to Petitioner's records request.

63. Respondents must be bound by the administrative record. No additional excuses can be produced to this Court.

64. Petitioners exhausted its administrative remedies when it appealed once, twice and, perhaps, three times.

65. Respondents' denials are not permitted by the New York Public Officers Law.

66. Respondents did not comply with the statutory time requirements under the Public Officers Law § 89(3)(a).

67. There is no "mootness" exception provided in the New York Public Officers Law.

68. Mootness does not apply here because Respondents never turned over a single record and did not provide a time frame(s) for production.

69. It would certainly be nice for a litigant to grant an extension to another party litigating in good faith.

70. Petitioners could not respond to Respondents request for an extension.

71. Public Officers Law does not provide for a waiver of time frames when a party asks.

72. There is no provision in the Public Officers Law §§ 84-89 for time extensions of requests.

73. Furthermore, Petitioners are bound by a short, four (4) month statute of limitations to bring this action.

74. Petitioner's Counsel cannot in good faith delay a jurisdictional deadline.

75. Respondents could have simply granted Petitioners' appeal by ordering the production of documents: there was no need for an extension.

AS AND FOR A SECOND CAUSE OF ACTION

76. Petitioners repeat, reiterate, and reallege each and every allegation set forth in the proceeding paragraphs of this Verified Petition with the same force and effect as if same were more fully set forth at length herein.

77. Respondents had a non-delegable duty to provide the full basis for the denial of records or portions thereof by providing a specific justification for withholding records or portions of records.

78. Respondents withheld all of records responsive to Petitioners' FOIL Request without tying a specific exemption to each record, or portion thereof, withheld by Respondent.

79. Respondents thus did not comply with the Freedom of Information Law.

80. Petitioners have no other remedy at law.

AS AND FOR THE THIRD CAUSE OF ACTION

81. Petitioners repeat, reiterate, and reallege each and every allegation set forth in the proceeding paragraphs of this Verified Petition with the same force and effect as if same were more fully set forth at length herein.

82. Lawmakers designed the Public Officers Law to provide one remedy for the violation of Public Officers Law §§ 84-89 *et seq.*

83. The award of attorney's fees to Petitioner is the only available deterrent at law for violations of the FOIL.

84. Petitioners seek a mandatory award should they substantially prevail in the release of records and this Court finds that Respondents did not have a reasonable basis for FOIL Appeal denials one, two or three.

85. Attorney's fees and costs are the only available remedy for Respondent's violation of the Freedom of Information Law.

86. Thus, Petitioner should obtain an award of reasonable attorney's fees for substantially prevailing in this Freedom of Information Law litigation.

AS AND FOR THE FOURTH CAUSE OF ACTION

87. Petitioners repeat, reiterate, and reallege each and every allegation set forth in the proceeding paragraphs of this Verified Petition with the same force and effect as if same were more fully set forth at length herein.

88. RODNEY HARRISON, is the head of Respondent Agency SUFFOLK COUNTY POLICE DEPARTMENT, that has violate the FOIL.

89. HARRISON is responsible for the implementation of the FOIL.

90. HARRISON, individually and on behalf of those designated to provide the public with access to records, have violated the FOIL.

91. This Court should Declare that HARRISON, individually if not as the titular head of the Suffolk County Police Department agency, did violate the Public Officers Law and either issue such finding based on the Verified Petition and Exhibits annexed hereto or issue a hearing pursuant to Public Officers Law § 89(8) for violating the FOIL.

92. JACQUELINE CAPUTI is designated as the Records Access Appeals Officer for Respondent Agency SUFFOLK COUNTY POLICE DEPARTMENT.

93. JACQUELINE CAPUTI is responsible for issuing administrative appeals under the FOIL as per Public Officers Law § 89(4)(a).

94. JACQUELINE CAPUTI, individually and on behalf of those designated to provide the public with access to records, have violated the FOIL.

95. JACQUELINE CAPUTI has acted to willfully violate the FOIL or conceal records that Petitioner should otherwise receive within five (5), ten (10) or twenty (20) business days as contemplated by the FOIL. See Public Officers

Law § 89(3)(a).

96. This Court should Declare that CAPUTI, individually if not as the Records Access Appeals Officer of the Suffolk County Police Department did violate the Public Officers Law and either issue such finding based on the Verified Petition and Exhibits annexed hereto or issue a hearing pursuant to Public Officers Law § 89(8) for violating the FOIL.

97. JANINE KELEGHAN is designated as the Records Access Officer for Respondent Agency SUFFOLK COUNTY POLICE DEPARTMENT.

98. JANINE KELEGHAN is responsible for timely responding to the FOIL and assisting the public in obtaining records as per Public Officers Law § 89(3)(a).

99. JACQUELINE CAPUTI violated the FOIL in failing to timely provide the responses required under the FOIL.

100. JACQUELINE CAPUTI violated the FOIL in failing to provide access to records to Petitioner required under the FOIL.

101. JACQUELINE CAPUTI has acted to willfully violate the FOIL or conceal records that Petitioner should otherwise receive within five (5), ten (10) or twenty (20) business days as contemplated by the FOIL. See Public Officers Law § 89(3)(a).



102. This Court should Declare that CAPUTI, individually if not as the Records Access Officer of the Suffolk County Police Department did violate the Public Officers Law and either issue such finding based on the Verified Petition and Exhibits annexed hereto or issue a hearing pursuant to Public Officers Law § 89(8) for violating the FOIL.

**WHEREFORE**, Petitioner prays for an order:

1. Compelling Respondents to perform the duties required by New York Public Officers Law section 84 et seq. by producing the responsive records, or portions thereof, without redaction within thirty (30) days of this Honorable Court's Decision and Order;

2. Compelling Respondents to fully and properly respond to Petitioner's FOIL appeal within thirty (30) days of Court Order;

3. Declaring that Respondents violated the Freedom of Information Law;

4. Awarding Petitioners costs and attorney's fees in this proceeding;  
and

5. Granting such other and further relief as this Court deems just, proper, and equitable.

Dated: Melville, New York  
April 14, 2023

Respectfully submitted,

THE LAW OFFICE OF  
CORY H. MORRIS

\_\_\_\_\_  
/S/

Cory H. Morris, Esq.  
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**BS'D**

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

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**TZVI WALDMAN, individually and as President of the NYS JEWISH GUN CLUB**

**Index No.**

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**Respondents,**

**For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules**

- X

**STATE OF NEW YORK     )  
  )ss.:  
COUNTY OF SUFFOLK     )**

I, the undersigned, an attorney admitted to practice in the courts of New York State, state that I am CORY H. MORRIS, ESQ., attorney of record for the Petitioners TZVI WALDMAN and NYS JEWISH GUN CLUB in the within action:

I have read the foregoing Petition and know the contents thereof; the same is true to my own knowledge, except to the matters therein stated to be alleged on information and belief, and so to those matters I believe it to be true.

The reason for my verification in lieu of my client is that TZVI WALDMAN and NYS JEWISH GUN CLUB does not reside in the county in which I maintain my law office. The grounds of my belief as to all matters not stated upon my own knowledge are as follows: review of the file, investigation, and research.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: Melville, New York  
April 14, 2023

THE LAW OFFICE OF  
CORY H. MORRIS

*/S/*

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Cory H. Morris, Esq.  
CORY H. MORRIS, P.C.

**BS'D**

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

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**Respondents,**

**For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules**

**X**

Pursuant to Part 202.8-b, the undersigned hereby certifies that this **Verified Petition** contains Three Thousand and seventy-two (3,072) words and complies with the word count limit of Part 202.8-b.

Dated: Melville, New York  
April 14, 2023

Respectfully submitted,  
/S/  
THE LAW OFFICE OF  
CORY H. MORRIS

/S/

Cory H. Morris, Esq.

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