



Courts Deny FOILers' Attorneys' Fees in Nearly 1 in 4 Lawsuits Even When Records Provided and Agencies Have No Reason to Refuse Records

Reinvent Albany Analysis of 100 FOIL Lawsuits Makes Case for Governor Signing A.2750-A (Paulin)/S.2392-A (Gallivan)

Reinvent Albany estimates there are 200,000 FOIL requests made annually to New York State and local governments. If an agency does not grant a request for records, FOILers may file an Article 78 proceeding in New York Supreme Court, the lowest level state court. However, very few FOILers do so because of the expense, time and expertise involved in a court proceeding. According to the state's *Fastcase* database, during the 11 3/4 year period from 2006 to September 2017, there were 893 court cases in which members of the public asked judges to order agencies to release public records --- an average of 76 FOIL cases per year for New York's thousands of state and local governments. Based on an analysis of State and New York City agency and authority FOIL logs, Reinvent Albany conservatively estimates that there are at least 200,000 FOIL requests filed each year. Therefore, roughly one in every 2,631 FOIL requests leads to an Article 78.

Under current law, plaintiffs who do pursue records in court can seek attorneys' fees but they are awarded at the discretion of the court, and only when plaintiffs have substantially prevailed in winning the record requests, and the agency has no reasonable basis for denying the records or the agency failed to respond to a request or appeal within the statutory time.

Reinvent Albany advocated for A.2750-A (Paulin)/S.2392-A (Gallivan) this past legislative session, and it passed both houses of the legislature. The bill would make it easier for plaintiffs to win attorneys' fees by requiring courts to automatically award attorneys' fees in instances in which plaintiffs substantially prevailed in winning the record requests and the agency had no reasonable basis for denying the records. Courts

would still be able to use their discretion in awarding attorneys' fees in instances where agencies missed deadlines for responding to records requests.

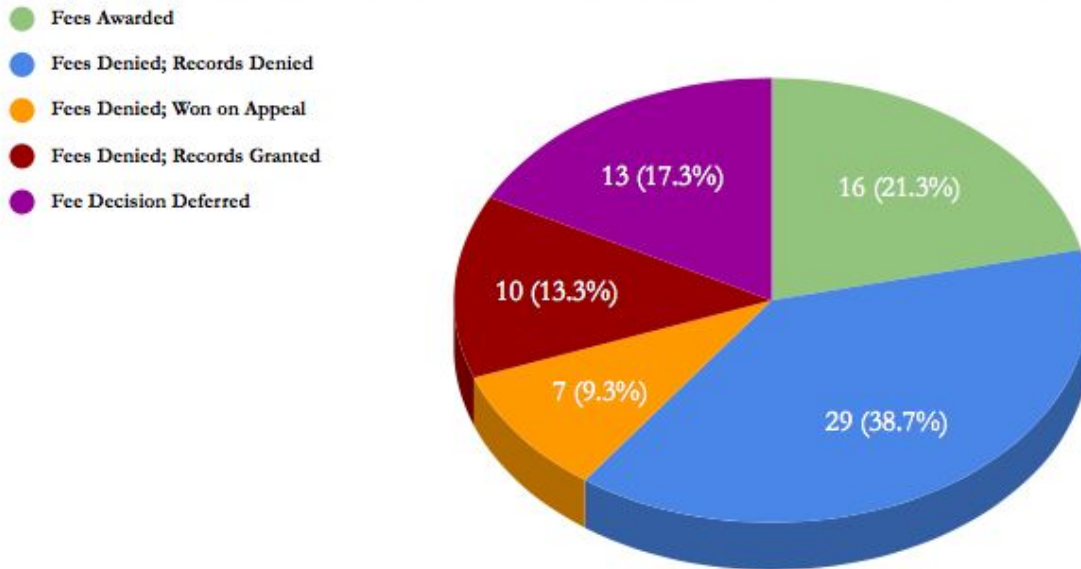
Reinvent Albany reviewed court decisions in New York related to FOIL and attorneys' fees between 2006 and 2017 to determine the number and nature of cases in which the plaintiff substantially prevailed in obtaining requested records, the agency had no reasonable basis for denying the records request, and yet the petitioner did not win attorneys' fees.

While Reinvent Albany undertook this research, we do not believe reviewing these cases is a complete measure of the potential impact of A.2750-A/S.2392-A, as the legislation will likely encourage additional lawsuits, result in fewer appeals related to attorneys' fees, and better compliance with FOIL by agencies. However, it is useful information in considering the larger effect of the legislation.

Reinvent Albany reviewed cases using the New York State Library's legal research software *Fastcase*. We reviewed the first 100 cases ranked by relevance from 2006-2017 in New York responding to the search terms "FOIL AND attorney fees." Seventy five cases were deemed relevant, as search results sometimes returned the same case multiple times or included cases in which attorneys' fees were not raised. Of the 75 relevant cases reviewed, 17 cases (or 22.67%) revealed attorneys' fees were initially or ultimately denied even while plaintiffs substantially prevailed on the records request and the agency had no reasonable basis for denying the records request. This contrasts with 16 cases in which attorneys' fees were awarded. This suggests A.2750-A/ S.2392-A would have a significant impact on FOIL cases that go to court with nearly 1 in 4 more cases resulting in fees awarded or fees being awarded without appeal. Easing the ability of FOILers to win attorneys' fees may also cause agencies to respond differently to the estimated 200,000 FOIL requests annually and encourage FOILers to bring more cases when they believe the records have been wrongly denied and for no reasonable basis.

The chart on the next page provides a tally of the cases we reviewed.

NY Court Determinations in Select FOIL Cases with Attorneys' Fees (2006-2017)



Fees Awarded: Attorneys' fees awarded by the Supreme Court or decision affirmed upon appeal.

Fees Denied; Records Denied: Attorneys' fees denied because plaintiffs failed to substantially prevail; the agency had a reasonable basis for denying the records; or the plaintiffs did not exhaust administrative options.

Fees Denied; Won on Appeal: Attorneys' fees awarded but a lower court first denied plaintiffs' attorney fees (does not include cases where the decision on the merits of the underlying FOIL request changed).

Fees Denied; Records Granted: Attorneys' fees denied even while plaintiffs substantially prevailed and agency had no reasonable basis for denying the records.

Fee Decision Deferred: Attorneys' fees decision deferred (fees put in abeyance; referred to a special counsel; directed to a lower court to determine whether fees will be awarded; directed to a lower court or special referee to consider issues related to the merits of the FOIL request).

Individual Cases Reviewed

Attorney Fees Denied Initially or Ultimately

Below are the individual cases tallied in the chart above. Cases are listed in order of relevance as ranked by Fastcase within each Category of Cases.

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Category of Cases:

Attorneys' fees awarded but a lower court first denied plaintiffs' attorney fees (does not include cases where the decision on the merits of the underlying FOIL request changed)

1. [N.Y. Civil Liberties Union v. City of Saratoga Springs, 2010 NY Slip Op 34045\(U\) \(N.Y. Sup. Ct., 2010\)](#)

Case Excerpt:

Petitioner substantially prevailed in this proceeding, and respondents implicitly conceded that they had no reasonable basis for initially denying access to the records requested. Also, respondent failed to comply with the statutory time periods to respond to the FOIL request. Thus, the court may award under § 89 (4) (c) attorney's fees and litigation costs to petitioner. see Matter of Purcell v Jefferson County District Attorney, ___AD3d___, 2010 WL 3817361 (4th Dept, Oct. 1, 2010). Yet, under the facts presented, particularly the essentially informal and voluntary adopted approach to resolving most of the controversy, the court, as an exercise of its discretion, declines to do so.

[In the Matter of N.Y. Civil Liberties Union v. City of Saratoga Springs, 87 A.D.3d 336, 926 N.Y.S.2d 732, 2011 N.Y. Slip Op. 5847 \(N.Y. App. Div., 2011\)](#)

Case Excerpt:

On this record—and particularly in view of the fact that it was only through the use of the judicial process that petitioner was able to obtain the required disclosure and respondents evinced a clear disregard of the public's right to open government—we find that the denial of petitioner's request for an award of counsel fees was an abuse of discretion (see generally Matter of Gordon v. Village of Monticello, 87 N.Y.2d 124, 128, 637 N.Y.S.2d 961, 661 N.E.2d 691 [1995]). To conclude otherwise would not only subvert the purposes of the statute, but would lead to a result where only a petitioner who fully litigated a matter to a successful conclusion could ever expect an award of counsel fees and a respondent whose position was meritless need never be concerned about the possible imposition of such an award so long as they ultimately settled a matter—however dilatorily—before the court heard the petition on the merits.

Notwithstanding the lack of opposition by respondents to the specific amount of counsel fees and costs requested by petitioner, judicial review of the

reasonableness of such amount is necessary. Inasmuch as Supreme Court was directly involved with this matter, that court is in the best position to make such determination in the first instance. Accordingly, we remit this matter to Supreme Court to fix the amount of counsel fees and costs to be awarded.

2. [Kohler-Hausmann v., 2015 NY Slip Op 8084, 133 A.D.3d 437, 18 N.Y.S.3d 848 \(N.Y. App. Div., 2015\)](#)

Remanded to Supreme Court for consideration of attorneys' fees.

Case Excerpt:

The attorney petitioner's self-representation does not preclude an award of attorneys' fees. Other similarly worded statutes have been interpreted to authorize an award of attorneys' fees to a prevailing litigant who represented himself or herself or had the benefit of free legal services (see [Maplewood Mgt. v. Best](#), 143 A.D.2d 978, 533 N.Y.S.2d 612 [1st Dept.1988] [Real Property Law § 234]; see also [Diaz v. Audi of Am., Inc.](#), 57 A.D.3d 828, 873 N.Y.S.2d 308 [2d Dept.2008] [General Business Law § 198–b (Lemon Law)]; [Senfeld v. I.S.T.A. Holding Co.](#), 235 A.D.2d 345, 652 N.Y.S.2d 738 [1st Dept.1997] [Real Property Law § 234], lv. dismissed 91 N.Y.2d 956, 671 N.Y.S.2d 717, 694 N.E.2d 886 [1998], lv. denied 92 N.Y.2d 818, 684 N.Y.S.2d 489, 707 N.E.2d 444 [1998]; [Thomas v. Coughlin](#), 194 A.D.2d 281, 606 N.Y.S.2d 378 [3d Dept.1993] [CPLR 8601]; [Sharp v. Sharp](#), 161 A.D.2d 624, 555 N.Y.S.2d 403 [2d Dept.1990] [Domestic Relations Law § 238], lv. dismissed 76 N.Y.2d 889, 561 N.Y.S.2d 550, 562 N.E.2d 875 [1990]; [Crooker v. United States Dept. of Treasury](#), 634 F.2d 48, 49 [2d Cir.1980] [FOIA]).

*Petitioner meets the statutory requirements for seeking “other litigation costs reasonably incurred” by her, since she “has substantially prevailed” and NYPD “failed to respond to [her request] ... within the statutory time” (Public Officers Law § 89[4][c][ii]; see *Matter of New York State Defenders Assn. v. New York State Police*, 87 A.D.3d at 195, 927 N.Y.S.2d 423).*

Accordingly, we remand to Supreme Court for consideration of petitioner's request for attorneys' fees and litigation costs.

3. [Legal Aid Soc'y v. N.Y. State Dep't of Corr. & Cmty. Supervision](#), 105 A.D.3d 1120, 962 N.Y.S.2d 773, 2013 N.Y. Slip Op. 2307 (N.Y. App. Div., 2013)

Attorneys' fees awarded. Remanded to Supreme Court to determine amount.

Case Excerpt:

[105 A.D.3d 1120]Appeal from that part of a judgment of the Supreme Court (Connolly, J.), entered October 25, 2011 in Albany County, which, in a proceeding pursuant to CPLR article 78, denied petitioner's request for an award of counsel fees and costs.

By commencing this proceeding to force respondent to respond to its request, after a tortuous history, petitioner finally “received all the information that it requested and to which it was entitled in response to the underlying FOIL litigation, [and [105 A.D.3d 1122]thus] it may be said to have substantially prevailed within the meaning of Public Officers Law § 89(4)(c)” ([Matter of New York State Defenders Assn. v. New York State Police](#), 87 A.D.3d 193, 196, 927 N.Y.S.2d 423 [2011]). The statute provides certain permitted responses from an agency to a proper FOIL request (see Public Officers Law § 89[3][a]; [Matter of Beechwood Restorative Care Ctr. v. Signor](#), 5 N.Y.3d at 440–441, 808 N.Y.S.2d 568, 842 N.E.2d 466), and the counsel fee provision does not distinguish between these responses for purposes of assessing whether a person has substantially prevailed in a FOIL proceeding (see Public Officers Law § 89[4][c]). The fact that full compliance with the statute was finally achieved in the form of a certification that the requested record could not be found after a diligent search, as opposed to the production of responsive documents, does not preclude a petitioner from being found to have substantially prevailed, for the petitioner received the full and only response available pursuant to the statute under the circumstances. As we have emphasized, the counsel fee provision was added in recognition that persons seeking to force an agency to respond to a proper FOIL request “must engage in costly litigation,” and the statute was recently amended “in order to ‘create a clear deterrent to unreasonable delays and denials of access [and thereby] encourage every unit of government to make a good faith effort to comply with the requirements of FOIL’ ” ([Matter of New York Civ. Liberties Union v. City of Saratoga Springs](#), 87 A.D.3d at 338, 926 N.Y.S.2d 732, quoting Senate Introducer Mem. in Support, Bill Jacket, L. 2006, ch. 492 at 5). Mindful of this goal, petitioner, who doggedly pursued its request for more than a year and never received a responsive reply to that request or its appeals prior to the commencement of this proceeding, has been subjected to the very kinds of “unreasonable delays and denials of access” which the counsel fee provision seeks to deter ([Matter of New York Civ. Liberties Union v. City of Saratoga Springs](#), 87 A.D.3d at 338, 926 N.Y.S.2d 732 [internal quotation marks and citation omitted]). Under the circumstances, we find an award of counsel fees and costs to be warranted and remit the matter to Supreme Court to determine the reasonable amount thereof.

ORDERED that the judgment is modified, on the law, without costs, by reversing so much thereof as denied petitioner's request for counsel fees and

costs; matter remitted to the Supreme Court for further proceedings not inconsistent with this Court's decision; and, as so modified, affirmed.

4. [In the Matter of N.Y. State Defenders Ass'n v. N.Y. State Police, 87 A.D.3d 193, 927 N.Y.S.2d 423, 2011 N.Y. Slip Op. 5839 \(N.Y. App. Div., 2011\)](#)

Case Excerpt:

Remanded to Supreme Court, overturning decision by the Supreme Court not to award attorneys' fees.

After an unsuccessful administrative appeal, petitioner commenced this CPLR article 78 proceeding, seeking an order directing respondents to comply with the FOIL request and an award of counsel fees and costs, among other things. Respondents answered the petition and, because all of the records requested by petitioner were attached to the answer, sought dismissal of the proceeding on the basis that it was now moot. Supreme Court dismissed the petition as moot and denied petitioner's request for counsel fees. Petitioner now appeals. ¹

Inasmuch as Supreme Court's judgment indicates that petitioner agreed that the portion of the petition seeking compliance with its FOIL request is moot and petitioner does not advance any arguments on appeal relative to that issue, any objection in that regard is deemed abandoned (see [Matter of Gathers v. Artus, 59 A.D.3d 795, 795, 873 N.Y.S.2d 753 \[2009\]](#)). Therefore, the issue before us concerns only the propriety of the denial of petitioner's request for an award of counsel fees.

Inasmuch as Supreme Court's denial of an award of counsel fees was based on its erroneous conclusion that the statutory prerequisites were not satisfied and, hence, that it lacked the authority to make such an award (see [Matter of Beechwood Restorative Care Ctr. v. Signor, 5 N.Y.3d at 441, 808 N.Y.S.2d 568, 842 N.E.2d 466](#)), we remit the matter to that court to determine, in its discretion, whether such an award is appropriate and, if so, the reasonable amount thereof.

5. [S. Shore Press, Inc. v. Havemeyer, 136 A.D.3d 929, 25 N.Y.S.3d 303 \(N.Y. App. Div., 2016\)](#)

Attorneys' fees awarded. Remanded to Supreme Court to determine amount. Overturned the Supreme Court decision to deny fees.

Case Excerpt:

In September 2010, the petitioner commenced this CPLR article 78 proceeding seeking, inter alia, to compel the respondents to comply with its FOIL request, as well as an award of an attorney's fee and costs pursuant to Public Officers Law § 89(4)(c). The Supreme Court concluded that the respondents' contentions that the requested documents fell within the statutory exemptions of Public Officers Law §§ 87(2)(b) and (i) were "general and conclusory" and, therefore, insufficient. The court further found that the respondents' other reasons for denying access, the voluminous nature of the request and failure to exhaust administrative remedies, were either contrary to the mandates of FOIL or otherwise without merit. The court granted that branch of the petition which was to direct the respondents to comply with the FOIL request, and denied that branch of the petition which was for an award of an attorney's fee and costs. The petitioner appeals.

ORDERED that the judgment is reversed insofar as appealed from, on the law, with costs, that branch of the petition which was for an award of an attorney's fee and litigation costs is granted, and the matter is remitted to the Supreme Court, Suffolk County, for a determination of the amount of the attorney's fee and litigation costs to be awarded to the petitioner and, thereafter, the entry of an amended judgment.

6. [Bottom v. Fischer, 2015 NY Slip Op 5319, 129 A.D.3d 1604, 10 N.Y.S.3d 786 \(N.Y. App. Div., 2015\)](#)

Attorneys' fees awarded. Remanded to Supreme Court to determine amount. Overturned the Supreme Court decision to deny fees.

Case Excerpt:

We agree with petitioner, however, that the court abused its discretion in denying, without explanation, that part of his petition seeking an award of reasonable attorney's fees and other litigation costs reasonably incurred in this proceeding. Petitioner satisfied the prerequisites for such an award pursuant to Public Officers Law § 89(4)(c). Inasmuch as respondent ultimately provided all but one of the documents in the FOIL request, petitioner "substantially prevailed" within the meaning of the statute (§ 89 [4][c] ; see [Matter of New York State Defenders Assn. v. New York State Police, 87 A.D.3d 193](#), 195–196, [927 N.Y.S.2d 423](#) ; [Matter of New York Civ. Liberties Union v. City of Saratoga Springs, 87 A.D.3d 336](#), 338, [926 N.Y.S.2d 732](#)). Further, respondent had no reasonable basis for its blanket denial of petitioner's request (see § 89[4][c][i]). Indeed, respondent's contention that it had a reasonable basis for denying access to all of the requested documents is belied by its release of the majority of

those documents when the court directed it to justify their nondisclosure (see *New York State Defenders Assn.*, 87 A.D.3d at 197, [927 N.Y.S.2d 423](#)). We conclude, therefore, that petitioner “has been subjected to the very kinds of ‘unreasonable delays and denials of access’ which the counsel fee provision seeks to deter” (*Matter of Legal Aid Socy. v. New York State Dept. of Corr. & Community Supervision*, [105 A.D.3d 1120 1122](#), [962 N.Y.S.2d 773](#)). Thus, we modify the judgment by granting that part of the petition seeking an award of reasonable attorney's fees and other litigation costs reasonably incurred by petitioner, and we remit the matter to Supreme Court to determine the amount thereof.

7. [ACME Bus Corp. v. Cnty. of Suffolk](#), 136 A.D.3d 896, 26 N.Y.S.3d 159 (N.Y. App. Div., 2016)

Attorneys’ fees awarded. Remanded to Supreme Court to determine amount. Overturned the Supreme Court decision to deny fees.

Case Excerpt:

Further, the Supreme Court improvidently exercised its discretion in denying the petitioner's request for attorney's fees and other costs (see *Matter of Jaronczyk v. Mangano*, 121 A.D.3d at 997, [996 N.Y.S.2d 291](#) ; cf. *Matter of Yang–Hao Lu v. Kings County Dist. Attorney's Off.*, 118 A.D.3d 815, 816, [987 N.Y.S.2d 177](#)). The award of attorney's fees is intended to “create a clear deterrent to unreasonable delays and denials of access [and thereby] encourage every unit of government to make a good faith effort to comply with the requirements of FOIL’ ” (*Matter of New York Civ. Liberties Union v. City of Saratoga Springs*, 87 A.D.3d 336, 338, [926 N.Y.S.2d 732](#), quoting Senate Introductor Mem. in Support, Bill Jacket, L. 2006, ch. 492, at 5). Here, as we have already discussed, the respondents had no reasonable basis for denying the petitioner's request for access to the records it sought. That circumstance in itself militates in favor of the award of reasonable attorney's fees (see *Matter of Jaronczyk v. Mangano*, 121 A.D.3d at 997, [996 N.Y.S.2d 291](#)). Although the respondents professed to be acting to protect the integrity of the competitive bidding process, they did not set forth any facts supporting their contention, but made only a conclusory assertion that delay in disclosure achieved that goal. Entities subject to the requirements of FOIL should not be permitted to evade them on a bare assertion that—contrary to the bedrock underpinnings of FOIL—withholding documents is in the public interest. In the context of the awarding of public contracts, even short delays in disclosure may have deleterious effects, because the timelines for challenges to the awarding of public contracts are so short (see *Cannon Point N., Inc. v. City of New York*, 87 A.D.3d 861, 864 n. 3, [928 N.Y.S.2d 711](#) ; *Matter of Bill's Towing Serv., Inc. v.*

County of Nassau, 83 A.D.3d 698, 699, 920 N.Y.S.2d 377). Accordingly, the matter is remitted to the Supreme Court, Suffolk County, for award of reasonable attorney's fees and other costs (see Public Officers Law § 89[4][c] ; *Matter of Jaronczyk v. Mangano, 121 A.D.3d at 997, 996 N.Y.S.2d 291*), and the entry of an appropriate amended judgment thereafter.

Category of Cases:

Attorney fees denied even while plaintiffs substantially prevailed and agency had no reasonable basis for denying the records

1. [Rodriguez v. Fischer, 36 Misc.3d 1241, 960 N.Y.S.2d 52, 2012 N.Y. Slip Op. 51792 \(N.Y. Sup. Ct., 2012\)](#)

Attorneys' fees denied.

Case Excerpt:

Even when statutory prerequisites are met for attorney's fees in an action under FOIL, the decision to grant or deny counsel fees still lies within the discretion of the court ([Maddux v. New York State Police, 64 AD3d 1069\[3d 2009\]](#)).

Regardless, the petitioner has not retained a lawyer to represent him in the proceedings and therefore is not entitled to award of attorney fees (see [Leeds v. Burns, 205 A.D.2d 540\[2d 1994\]](#)). Therefore, the petitioner's request for attorney's fees is denied.

2. [Benedict v. Albany County, 22 Misc.3d 597, 867 N.Y.S.2d 906, 2008 NY Slip Op 28469 \(N.Y. Sup. Ct., 2008\)](#)

Attorneys' fees denied. Court dismisses District Attorney's motion to dismiss the petition and requires they respond, and indicates respondent can release the record to avoid awarding attorneys' fees. Plaintiffs had to go to court simply to get the respondents to respond to their records request and the court has given the respondents an out to avoid paying attorney fees.

Case Excerpt:

Accordingly, it is ordered that the motion of the District Attorney to dismiss the petition is denied; and it is further ordered that respondents shall answer the petition, and further proceedings shall be conducted, in accordance with CPLR 7804 (f).

Of course, following review of this decision, the District Attorney may decide to release the requested records to petitioner, thereby avoiding the time and expense attendant to continued litigation, including the possibility of an award of attorney's fees and costs to petitioner's counsel (see Public Officers Law § 89 [4] [c]).

3. [Matter of Carnevale v. City of Albany, 68 A.D.3d 1290, 2009 NY Slip Op 9112, 891 N.Y.S.2d 495 \(N.Y. App. Div., 2009\)](#)

Plaintiffs appears to have substantially prevailed but the Appellate Division upholds the Supreme Court's decision to deny attorney fees.

Case Excerpt:

While courts may award counsel fees to litigants who substantially prevail in a FOIL proceeding (see Public Officers Law § 89 [4] [c]), the decision whether to award such fees is discretionary even when the statutory prerequisites have been established (see [Matter of Maddux v New York State Police, 64 AD3d 1069, 1070 \[2009\]](#), lv denied [13 NY3d 712 \[2009\]](#); [Matter of Capital Newspapers Div. of Hearst Corp. v City of Albany, 63 AD3d at 1339](#)). We cannot say that Supreme Court abused its discretion in denying petitioners' request for counsel fees here.

4. [Matter of Polokoff-Zakarin v. Boggess, 62 A.D.3d 1141, 879 N.Y.S.2d 244, 2009 NY Slip Op 3823 \(N.Y. App. Div., 2009\)](#)

Attorneys' fees denied. In confused logic, the court did not find the agency had no reasonable basis for denial of records even while having no rational basis.

Case Excerpt:

We find no rational basis for respondents' interpretation that "personnel payroll records" refer to the same records—pertaining to name, public office address, title and salary—referenced in Public Officers Law § 88 (3) (b) and no more (but see [Matter of Greene v Boggess, Sup Ct, Albany County, Oct. 19, 2005, Kavanagh, J., index No. 5049-05](#)). There is absolutely nothing in the record to support such an interpretation, nor do respondents explain why Senate rule XIV, § 1 (a) is necessary if it is merely a restatement of Public Officers Law § 88 (3) (b). Thus, accepting respondents' interpretation would render the rule meaningless—a result which cannot be countenanced (see generally [McKinney's Cons Laws of NY, Book 1, Statutes § 231](#); [Matter of R.A. Bronson, Inc. v Franklin Correctional Facility, 255 AD2d 723, 724 \[1998\]](#)). Furthermore, in our view, the

ordinary meaning of the term "personnel payroll record" is broader than "name, public office address, title, and salary" (Public Officers Law § 88 [3] [b]) and includes information concerning an employee's time and attendance—information that would typically be included in a time and attendance record such as those at issue here (see generally McKinney's Cons Laws of NY, Book 1, Statutes § 232).² Thus, we conclude that time and attendance records fall within the definition of personnel payroll records which are available for public inspection pursuant to Senate rule XIV, § 1 (a), and they must be disclosed. Significantly, this interpretation results in effectuating FOIL's purpose of promoting "access [to] governmental records, to assure accountability and to thwart secrecy" (*Matter of Buffalo News v Buffalo Enter. Dev. Corp.*, 84 NY2d 488, 492 [1994]; see *Matter of Weston v Sloan*, 84 NY2d at 466).³

Notwithstanding our conclusion that respondents' determination lacked a rational basis, we do not find that an award of counsel fees is warranted. Assuming, without finding, that Public Officers Law § 89 (4) (c) (i) is applicable, it cannot be said that there was no reasonable basis for respondents' position in view of the determination in *Matter of Greene v Boggess* (*supra*).

5. [McAllan v. Scoppetta, 2007 NY Slip Op 34504\(U\) \(N.Y. Sup. Ct., 2007\)](#)

Attorneys' fees denied. Plaintiff substantially prevailed but represented himself. Several decisions we reviewed denied attorney fees because plaintiffs were representing themselves. Yet in [Kohler-Hausmann v., 2015 NY Slip Op 8084, 133 A.D.3d 437, 18 N.Y.S.3d 848 \(N.Y. App. Div., 2015\)](#), which came after this case, the Court awarded attorney fees to a pro se attorney. This case is highlighted in the previous section.

Case Excerpt:

As a final matter, petitioner who is a pro se litigant did not retain a lawyer to represent him in this proceeding. As such, petitioner is not entitled to an award of attorney's fees and costs (see [Matter of Jackson Leeds v Burns, 205 AD2d 540 \[1994\]](#), lv denied [84 NY2d 811 \[1994\]](#)).

6. [Archdeacon v. Oyster Bay, 12 Misc.3d 438, 813 N.Y.S.2d 289, 2006 NY Slip Op 26110 \(N.Y. Sup. Ct., 2006\)](#)

Attorneys' fees denied. Court ruled in favor of the plaintiff to receive and copy annual statements of financial disclosure but denied his lawyer's request for attorneys' fees.

Case Excerpt:

Based upon the foregoing, the court, therefore, annuls the respondents' determination and directs respondents to permit the petitioner to copy the requested information. The respondents' motion for an order dismissing the petition is denied. All further requested relief not specifically granted is denied.

7. [N.Y. Times Co. v. N.Y. State Exec. Chamber, 2017 NY Slip Op 27241 \(N.Y. Sup. Ct., 2017\)](#)

The Court holds that the respondent's reasons for withholding the records are arguable. It is unclear if "arguable" provides a reasonable basis for withholding the records. If it does not, the Court in its discretion decided not to award attorneys' fees. If arguable is equivalent to a reasonable basis, plaintiffs are not eligible for attorneys' fees under the law.

Case Excerpt:

The Petitioner also seeks an award of attorneys fees and costs. Attorney's fees and other costs may be awarded to a FOIL requestor if the agency unreasonably denied access to the records sought, or failed to reply within the statutory time to the initial request, or to an administrative appeal. POL § 89 [4] [c]. Here, there is no allegation that the Chamber failed timely to respond either to the initial requests for records, or to petitioners' administrative appeals. While the Court has found that the records should be provided, the Chambers' reasons for withholding the records are, at least, arguable. Therefore, under the circumstances of this action, the Court declines to award attorney's fees.

ORDERED and ADJUDGED that the petition compelling the Executive Chamber to respond to petitioner's four (4) FOIL requests is granted to the extent that, within 45 days from the date of this decision, respondents are directed to deliver to petitioner documents that are responsive to the items listed on Page 2 of this Decision, Order, and Judgment to the extent that the items are within the Chamber's possession, and it is further

ORDERED and ADJUDGED that the petitioner's request for attorneys fees is denied.

8. [Jacobson v. Ithaca City Sch. Dist., 2016 NY Slip Op 26310, 53 Misc.3d 1091, 39 N.Y.S.3d 904 \(N.Y. Sup. Ct., 2016\)](#)

Attorneys' fees denied. Plaintiff appears to substantially prevail but is denied attorney's fees because he represented himself. Several decisions we reviewed denied attorney fees because plaintiffs were representing themselves. Yet in

[Kohler-Hausmann v., 2015 NY Slip Op 8084, 133 A.D.3d 437, 18 N.Y.S.3d 848 \(N.Y. App. Div., 2015\)](#), which came before this case, the Court awarded attorney fees to a pro se attorney. This case is highlighted in the previous section.

Case Excerpt:

*The petition also seeks an award of attorney's fees and litigation expenses. Petitioner is an attorney admitted to practice in New York who is self-represented in this proceeding. Accordingly, he is not entitled to an award of attorney's fees and costs, and his request therefor is denied (see [Village of Brockport v. Calandra, 191 Misc.2d 718, 729, 745 N.Y.S.2d 662 \[2002\]](#), *affd.* on other grounds [305 A.D.2d 1030, 758 N.Y.S.2d 877 \[2003\]](#), citing [Kay v. Ehrler, 499 U.S. 432, 111 S.Ct. 1435, 113 L.Ed.2d 486 \[1991\]](#), [Falcone v. Internal Revenue Serv., 714 F.2d 646 \[6th Cir.1983\]](#), *cert. denied* [466 U.S. 908, 104 S.Ct. 1689, 80 L.Ed.2d 162 \[1984\]](#)).*

9. [McAllan v. Bloomberg, 2006 NY Slip Op 30807\(U\) \(N.Y. Sup. Ct., 2006\)](#)

Attorneys' fees denied.

Case Excerpt:

*Petitioner who is a pro se litigant did not retain a lawyer to represent him in this proceeding. As such, petitioner is not entitled to an award of attorney's fees and costs (see [Matter of Jackson Leeds v Burns, 205 AD2d 540\[1994\]](#), *lv denied* [84 NY2d 811 \[1994\]](#)).*

10. [In the Matter of New York State Rifle & Pistol Assn. Inc. v. Kelly, 2006 NY Slip Op 51983\(U\) \(N.Y. Sup. Ct. 10/16/2006\), 2006 NY Slip Op 51983 \(N.Y. Sup. Ct., 2006\)](#)

Attorneys' fees denied. This decision appears to rely on a standard in the law for evaluating attorneys' fees regarding the significance of the information requested to the public which is no longer in the law, having been amended in 2006.

Case Excerpt:

As indicated previously, respondents lacked a reasonable basis in law for withholding the records sought by petitioner. However, the subject records are not of clear significant interest to the general public and, thus, petitioner's request for attorney's fees is denied.