

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

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

**NEW YORK LAWYERS FOR THE PUBLIC,
INTEREST,**

**INDEX NO. 152402/2020
MOTION DATE
MOTION SEQ. NO. 1
MOTION CAL. NO.**

Petitioner,

- against-

Decision and Order

**NEW YORK CITY POLICE DEPARTMENT and
DERMOT SHEA, in his official capacity as
Commissioner of the New York City Police Department,**

Respondents.

The following papers, numbered 1 to ____ were read on this motion for/to

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answer — Affidavits — Exhibits _____

Replying Affidavits

PAPERS NUMBERED

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■
■

Cross-Motion: Yes X No

Petitioner New York Lawyers for the Public Interest (“Petitioner”) brings this Petition for an Order pursuant to CPLR § 7806, directing Respondents New York City Police Department (“NYPD”) and Dermot, Shea, in his official capacity as Commissioner of the NYPD (collectively, “Respondents”) to comply with their duty under FOIL to provide Petitioner access to the records requested in its March 18, 2019 and April 22, 2019 FOIL requests; in the alternative, ordering an in camera review of the records requested by Petitioner; and awarding Petitioner its reasonable attorney’s fees pursuant to Public Officers Law § 89(4)(c).

On October 12, 2021, the parties informed the Court that the only outstanding issue in this matter is Petitioner’s entitlement to attorneys’ fees.

On October 29, 2021, the Court held a conference. The parties were directed to submit documents in support of their positions on Petitioner’s entitlement to attorneys’ fees.

Pursuant to POL § 89(4)(c), a court may award reasonable attorneys’ fees and litigation costs incurred where a party has “substantially prevailed” and when the agency “failed to respond to a request or appeal within the statutory time”; and the agency had no “reasonable basis” for denial. *See* POL § 89(4)(c). The Court of Appeals has stated, “[p]ursuant to FOIL’s fee-shifting provision, a court may award

reasonable counsel fees and litigation costs to a party that ‘substantially prevailed’ in the proceeding if the court finds that (1) ‘the record involved was, in fact, of clearly significant interest to the general public,’ and (2) ‘the agency lacked a reasonable basis in law for withholding the record’(Public Officers Law § 89 [4] [c]). Only after a court finds that the statutory prerequisites have been satisfied may it exercise its discretion to award or decline attorneys' fees.” *Beechwood Restorative Care Ctr. v. Signor*, 5 N.Y.3d 435, 441 [2005].

The parties ultimately resolved the disputed FOIL request and the Court finds that Petitioner substantially prevailed. After reviewing the parties’ papers, the reasonable amount of attorney’s fees Petitioner is awarded is \$80,817.50 for the legal work performed in the Article 78 proceeding.

Wherefore, it is hereby

ORDERED that Petitioner New York Lawyers for the Public Interest’s application for attorney’s fees is granted only to the extent that Petitioner New York Lawyers for the Public Interest is awarded \$80,817.50; and it is further

ORDERED that the Clerk enter judgment in favor of Petitioner New York Lawyers for the Public Interest, and against Respondents New York City Police Department and Dermot, Shea, in his official capacity as Commissioner of the New York City Police Department, in the amount of \$80,817.50, together with interest as prayed for allowable by law (at the rate of 9% per annum) until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: November 9, 2021



EILEEN A. RAKOWER, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION