

FILED
AND
ENTERED
 ON 3-5 - 2014
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER

-----X Index No. 003564/13

In the Matter of the Application of
 GANNETT SATELLITE INFORMATION
 NETWORK, INC.,

Petitioner,

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

- against -

DECISION AND ORDER
 Seq. No. 1

COUNTY OF PUTNAM and OFFICE OF PUTNAM
 COUNTY CLERK,

Respondents.

-----X
 NEARY, J.

The Petitioner commenced this proceeding, by way of Notice of Petition, pursuant to CPLR Article 78, seeking an order, *inter alia*, directing the Respondents to provide, in electronic form, the names and addresses of firearm permit holders in Putnam County who have not properly opted out of disclosure and declaring that the Respondents' failure to provide such

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names was in violation of the Freedom of Information Law. The Respondents oppose the Petition in all respects.

The Court has reviewed the following submitted papers by the parties:

Petitioner's Notice of Petition with exhibits and
Memorandum of Law in Support of Petition
Respondents' Memorandum of Law in Opposition
to Petitioner's Article 78 Petition with exhibits and
Certified Transcript
Petitioner's Reply Memorandum of Law in Further
Support of Petition
Affirmation of Mark A. Flowers with exhibit
Affidavit of Richard Liebson with exhibits
Affidavit of Dwight Worley with exhibit.

On May 15, 2013, a reporter employed by the Petitioner submitted a records request, pursuant to the New York Freedom of Information Law, Article 6 of the Public Officers Law, to the First Deputy County Clerk of Putnam seeking the names and addresses of all non-exempt pistol permit holders in the County database. The County Clerk denied the request on May 23, 2013 citing exceptions provided for in the law. Specifically, Section 87(2)(b) which provides that access to records may be denied if the disclosure would constitute an unwarranted invasion of personal privacy and Section 87(2)(f) which permits withholding records when their disclosure could endanger the life or safety of any person. The County Clerk also stated that a foil request may be denied "especially when [petitioners] seek the names and addresses in

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electronic form . . . [and] disclosing a person's home address implicates a heightened privacy concern."

The Petitioner timely appealed the decision of the County Clerk to the Putnam County Executive who upheld the decision of the County Clerk. The Petitioner then timely commenced the instant proceeding.

In January 2013, Penal Law Section 400.00 was amended to establish a procedure for the disclosure of names and addresses of pistol permit holders. While Penal Law Section 400.00 had already provided that the names and addresses of pistol permit holders shall be a "public record," the statute as amended went further and directed that the names and addresses shall be "publically disclosed." The statute provided procedures for permit holders to prevent their names from being publicly disclosed. Penal Law Section 400.00(5)(b) provides that each applicant shall have an opportunity to request an exception from his or her application information becoming public record. The grounds for non disclosure are listed as follows:

- (I) the applicant's life or safety may be endangered by disclosure:
 - (A) the applicant is an active or retired police officer, peace officer, probation officer, parole officer or corrections officer;
 - (B) the applicant is a protected person under a currently valid order of protection;
 - (C) the applicant is or was a witness in a criminal proceeding involving a criminal charge;
 - (D) the applicant is participating or previously participated as a juror in a criminal proceeding, or is or was a member of a grand jury; or

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- (E) the applicant is a spouse, domestic partner or household member of a person identified in this subparagraph or subparagraph (ii) of this paragraph, specifying which subparagraphs and clauses apply.
- (ii) the applicant has reason to believe his or her life or safety may be endangered by disclosure due to reasons stated by the applicant.
- (iii) the applicant has reason to believe he or she may be subject to unwarranted harassment upon disclosure of such information.

These provisions address legitimate issues of privacy and safety held by pistol license holders. However, they also unequivocally direct the public disclosure of names and addresses of license holders who did not choose to seek an exception.

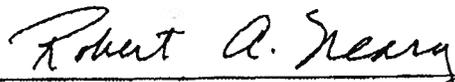
The authority cited by the Respondents in denying access to the records, while generally sound, is not applicable in the present case as it predates the amendment to the statute mandating "public disclosure." Moreover, the statute specifically addresses the issues of privacy and safety of permit holders while directing disclosure of the information in question. The Petition is, therefore, granted to the extent that the Respondents are directed to comply with the Petitioner's request for the names and addresses of all pistol permit holders in Putnam County who had not qualified under the SAFE Act to exempt themselves from disclosure.

The Court declines to award attorney's fees as it cannot be said that the Respondents had no reasonable basis for denying access to the records in question. While the Court does not accept the Respondents' arguments, the authority cited does appear to provide a rationale for the decision.

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

Dated: White Plains, New York
March 5, 2014



ROBERT A. NEARY
ACTING SUPREME COURT JUSTICE

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