

SUPREME COURT, SUFFOLK COUNTY

SPECIAL TERM PART I

In the Matter of the Application  
of JOSEPH GOLBERT,

BY THOM, J. S. C.

Petitioner,

~~vs.~~

DATED September 5, 19 80

For Judgment Pursuant to CPLR  
Article 78

Index No. 80-9249  
Motion No. 11,811  
Motion Date: 7/30/80

- against -

SUFFOLK COUNTY DEPARTMENT OF  
CONSUMER AFFAIRS and COUNTY OF  
SUFFOLK,

Respondents.

JASPAN, KAPLAN, LEVIN & DANIELS, ESQS.  
Attorneys for Petitioner  
200 Garden City Plaza  
Garden City, NY 11530

DAVID J. GILMARTIN, ESQ.  
Suffolk County Attorney  
Attorney for Respondents  
Veterans Memorial Highway  
Hauppauge, NY 11787  
By: FREDERIC C. FOSTER, ESQ.

In this proceeding under CPLR Article 78 petitioner seeks review of a determination made by respondents denying petitioner access to a list of home improvement contractors licensed in Suffolk County.

By letter dated January 23, 1980 petitioner's attorney requested that the Department of Consumer Affairs provide petitioner with a copy of the list of approved home improvement contractors licensed in Suffolk County. That request was denied by letter dated January 29, 1980. An appeal was taken by petitioner's attorney to the County Attorney, by letter dated February 4, 1980. The County Attorney denied the appeal by letter dated February 15, 1980. It was the opinion of the County Attorney that petitioner's request was properly denied by Consumer Affairs since petitioner's attorney could not assure Consumer Affairs that the information was not being sought for a business purpose.

By letter dated February 20, 1980 petitioner's attorney submitted a request for reconsideration to Consumer Affairs, stating that the petitioner "does not intend to use the list for competitive purposes."

Petitioner's request for a list was denied by letter dated March 19, 1980. An appeal was taken by petitioner's attorney to the County Attorney by letter dated March 21, 1980. The County Attorney denied the appeal by letter dated March 31, 1980. The County Attorney found that Consumer Affairs had properly denied petitioner's request "to prevent an unwarranted invasion of privacy." This letter also stated that petitioner's attorney had failed to assure respondents that the information requested "would not be used for commercial purposes."

Petitioner contends that respondents' refusals to provide petitioner with a photocopy of a list of approved home improvement contract licensed in Suffolk County are arbitrary and capricious, without any authority in law, and violative of petitioner's rights pursuant to the Freedom of Information Law. Petitioner's attorney states that nowhere in the record does it appear that petitioner intends to use the information sought for commercial or fund raising purposes, and that it is an equally likely possibility that petitioner wishes to have home improvement work performed, and wishes for that purpose to obtain a list of licensed contractors with whom petitioner could deal.

Respondents contend that Consumer Affairs denied petitioner's request for information and that denial was upheld by the County Attorney on appeal because petitioner's attorney failed to obtain a certification from petitioner that the requested information would not be used for commercial purposes. Respondents obtained a written opinion dated June 5, 1980 issued by the State of New York Committee on Public Access to Records, which found that the request was properly denied. The written opinion stated, in part, that:

— "It is emphasized that, as a general rule, the purpose for which a request is made is irrelevant. The Committee has advised and the courts

have upheld the notion that accessible records should be made equally available to any person without regard to status or interest.

. . .

Due to the language of §89(2)(b)(iii) (Public Officers Law), I believe that it is entirely appropriate to request that an applicant for a list of names and addresses provide the purpose for which the list is sought. Under the circumstances, since no assurance was given that the list would be used for other than commercial or fund-raising purposes, it would appear that disclosure would indeed result in an unwarranted invasion of personal privacy and therefore could justifiably be withheld under the Freedom of Information Law."

Section 85 of the Public Officers Law (Freedom of Information Law) contains a statement of legislative intent reflecting a strong policy in favor of complete disclosure of governmental records (Gannett Co., Inc. v. County of Monroe, 59 AD 2d 309). Section 87, subd. 2(b), of the Public Officers Law, exempts from disclosure records which, "if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article." The relevant portion of Section 89, subd. 2, which defines an unwarranted invasion of personal privacy is (b)(iii) which exempts disclosure for the "sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising purposes" (see, Montes v. State, 94 Misc. 2d 972). Respondents have the burden of demonstrating the applicability of the exemption (Matter of Burke v. Yudelson, 81 Misc. 2d 870, affirmed 51 AD 2d 673).

The Court agrees with petitioner's attorney that nowhere in the record does it appear that petitioner intends to use the information sought for commercial or fund raising purposes. However, the reason for that deficiency in the record is that all efforts by respondents to

receive petitioner's assurance that the information sought would not be so used apparently were unsuccessful. Without that assurance the respondents could reasonably infer that petitioner did want to use the information for commercial or fund-raising purposes.

In the case at bar, petitioner failed to establish to the satisfaction of the respondents that the information sought would not be used by petitioner for commercial or fund raising purposes. The statement by petitioner's attorney in the letter dated February 20, 1980 that petitioner "does not intend to use the list for competitive purposes" is insufficient. The Court notes that the record in this case for the most part consists of a series of letters between petitioner's attorney and the respondents, and which letters contain the alleged substance of telephone conversations between petitioner's attorney and respondents' representatives. Furthermore, in this proceeding, petitioner's verified petition contains no allegation that the information sought will not be used for commercial or fund raising purposes, nor has petitioner submitted any supporting affidavit to that effect.

Under the circumstances, the Court finds that it was not unreasonable for respondents to require petitioner to submit a certification that the information sought would not be used for commercial purposes. Petitioner has failed to establish that the respondents' denials of petitioner's requests for information constituted an abuse of discretion as a matter of law, and the Court declines to substitute its judgment for that of the respondents.

This decision is without prejudice to petitioner making further application to Consumer Affairs for the information sought on submission

by petitioner to Consumer Affairs of a proper certification that said information will not be used for commercial purposes.

Petition dismissed without costs and disbursements.

Settle judgment.

**CHARLES R. THOM**

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J.S.C.