

NYLJ - March 9, 1979

Nassau County - Supreme Court

Justice Roselle

MATTER OF MITCHELL - In this Article 78 proceeding in which petitioner seeks access to certain budget records of the respondent School District pursuant to the Freedom of Information Law (Public Officers Law, Section 84-90), the respondents have moved to dismiss the petition on the ground that it was not timely commenced within the four month Statute of Limitations contained in CPLR 217. The motion must be granted and the petition dismissed.

Both petitioner and respondents properly followed the procedures contained in Public Officers Law, Section 89 (3) and (4) and 21 NYCRR 25, for the processing of requests for access to agency records. Final denials by the district appeals officer (21 NYCRR Section 1401.7) to the petitioner's three requests were made on May 4, May 12, and June 8, 1978. The four month period within which to seek judicial review of these final determinations pursuant to Public Officers Law, Section 89 (4) (b) and 21 NYCRR, Section 1401.7 (h), began to run from those dates. Clearly, since this proceeding was not commenced until Nov. 21, 1978, the petitioner failed to timely commence this proceeding.

There is no provision for further review of the district appeals officer's decision contained in the Public Officers Law or 21 NYCRR 25, except through the commencement of an Article 78 proceeding. As such, petitioner's letter of Sept. 16, 1978, and the response of Mr. Walker dated Sept. 28, 1978, are not applicable for Statute of Limitations purposes. Likewise, petitioner is incorrect in her assertion that the Statute of Limitations is, in effect, forever tolled because the respondents have a continuing duty to provide access to the records in question. Contrary to her assertion, while the Statute of Limitations may act as a bar to a particular proceeding under the Freedom of Information Law, a member of the public is not forever barred as a result from again seeking those same records under the applicable procedures.

Settle judgment on notice.