

**SUPREME COURT - STATE OF NEW YORK  
IAS PART XXVI**

**PRESENT:  
HON. MICHAEL F. MULLEN, J.S.C.**

**INDEX NO. 19018-03**

**DATE: DECEMBER 15, 2003**

Matter of the Application of HOWARD  
NORTON,

Petitioner,

For a Judgment Under Article 78

**PLAINTIFF'S ATTY:  
COSTA & CUTHBERTSON, LLP  
By: Thomas L. Costa, Esq.  
One Huntington Quadrangle  
South Wing, Suite 3S03  
Melville, New York 11747**

-against-

TOWN OF ISLIP, PATRICIA PASCUTUTTI,  
IN HER CAPACITY AS PRESS  
INFORMATION OFFICER, MICHELLE  
REMSEN, in her capacity as DIRECTOR OF  
THE OFFICE OF PUBLIC INFORMATION  
and RICHARD HOFFMAN in his capacity as  
DEPUTY TOWN ATTORNEY and FOIL  
APPELLATE OFFICER.

**RESPONDENTS' ATTORNEY:  
VINCENT J. MESSINA, JR., ESQ.  
Town Attorney, Town of Islip,  
Office of the Town Attorney  
655 Main Street  
Islip, New York 11751**

Respondents.

This is an Article 78 proceeding in which the petitioner Howard Norton seeks a judgment annulling a determination by the respondents which denied his application for disclosure of certain records pursuant to Article 6 of the Public Officers Law, the so-called Freedom of Information Law ("FOIL"). By decision and order dated October 2, 2003, this Court denied respondents' motion to dismiss the petition.

Thereafter, on or about October 23, 2003, respondents served and filed a verified answer. The answer simply denied the allegations of the petition, and raised one "objection in point of law," viz., that petitioner lacked standing to maintain this proceeding. That issue has already been decided by this Court's decision of October 2, 2003. The answer contained no supporting affidavits or proof showing any evidentiary facts (see, CPLR 7804[e]).

The petition is granted in its entirety. Respondents are directed to comply with petitioner's request for (1) all retainer agreements, (2) record of payments and (3) all billing invoices involving the Town and certain "outside" law firms retained by the Town, and generated in an action brought by petitioner in federal court pursuant to 42 U.S.C. §1983. The requested documents do not fall within the attorney-client privilege (*Matter of Priest et al. v Hennessey*, 51 NY 2d 62).

The request for attorney's fees is also granted.

Public Officers Law §89(4)(c) provides that reasonable attorney's fees may be awarded when a court finds that: (a) the record involved was one of significant interest to the general public; and (b) the agency lacked a reasonable basis for withholding the record. At bar, both criteria have been met.

A decision by United States District Judge Nicholas G. Garaufis, dated January 2, 2003, involving these same litigants, is particularly telling in this regard. In holding that the Town violated petitioner's right to procedural due process, the Court concluded that the Town had pursued a course of "dilatory tactic"(s) that were "intended to further prolong a course of litigation that has needlessly consumed a vast amount of resources -- all because the Town has been unable to afford plaintiff the most rudimentary elements of due process" (see, Norton v Town of Islip et al., 239 F., Supp. 2d 264, 276).

The records requested are of significant public interest, in that they expose the cost of unnecessarily prolonged litigation and its drain on public resources.

The matter is set down for a hearing on January 5, 2004 at 210 Center Drive, Riverhead, New York 11901 at 11:00 AM to determine the amount of reasonable attorney's fees to be awarded.

DATED: December 15, 2003

Michael F. Mullen  
HON. MICHAEL F. MULLEN, J.S.C.