

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

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In the Matter of	:
	:
GRACE RAUH, TWC NEWS AND LOCAL	:
PROGRAMMING LLC, YOAV GONEN, and NYP	:
HOLDINGS, INC.,	:
	:
	: Index No. _____
Petitioners-Plaintiffs,	:
	:
-against-	:
	: <b>VERIFIED PETITION</b>
BILL DE BLASIO, in his official capacity as Mayor of	:
the City of New York; and the OFFICE OF THE	:
MAYOR OF THE CITY OF NEW YORK,	:
	:
Respondents-Defendants,	:
	:
For a Judgment Pursuant to Article 78 of the Civil	:
Practice Law and Rules.	:
	:
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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioners Grace Rauh, TWC News and Local Programming LLC, Yoav Gonen, and NYP Holdings, Inc. (collectively “Petitioners”) for their Verified Petition and Complaint, by and through their undersigned counsel, respectfully allege as follows:

**INTRODUCTION**

1. This proceeding is brought under Article 78 of the New York Civil Practice Law and Rules (“C.P.L.R.”), New York Public Officers Law § 84 *et seq.* (the “Freedom of Information Law” or “FOIL”), and C.P.L.R. § 3001 against Respondents Mayor Bill de Blasio, in his official capacity, and the Office of the Mayor of the City of New York (collectively, “Respondents”).

2. Respondents refuse to produce public records in response to FOIL requests by Petitioners Grace Rauh and Yoav Gonen seeking communications between Mayor Bill de Blasio, members of Mayor de Blasio's staff, and public relations consultant Jonathan Rosen. The refusal violates the express statutory mandate of FOIL and is based on an improper application of the statutory exemptions to FOIL.

3. Having exhausted their administrative remedies, Petitioners now seek (1) a declaration pursuant to C.P.L.R. § 3001 that Respondents have acted unlawfully in failing to disclose the communications, or certain portions of communications, that are not properly exempt from disclosure under FOIL; (2) an Order pursuant to Article 78 of the New York Civil Practice Law and Rules, directing the Mayor's office to produce all disclosable records responsive to Petitioners' requests within twenty (20) days of the Court's order; and (3) an order awarding Petitioners their the costs and fees, together with such other and further relief the Court deems just and proper.

### **PARTIES**

4. Petitioner Grace Rauh is a reporter for the cable news television station NY1. NY1 broadcasts from its station headquarters located at 75 Ninth Avenue, New York, NY 10011. Ms. Rauh has worked as a political reporter for more than ten years. She has reported extensively about New York politics and public education. The focus of her reporting for the last nine years, approximately, has been New York politics and City Hall. She has won several awards for her reporting.

5. Petitioner TWC News and Local Programming LLC ("TWC NLP") is a limited liability company organized and existing under the laws of Delaware. TWC NLP owns and operates NY1.

6. Petitioner NYP Holdings, Inc. is a corporation organized and existing under the laws of Delaware with its principal place of business at 1211 Avenue of the Americas, New York, New York, 10036-8790. NYP Holdings, Inc. is the publisher of the *New York Post* (the “*Post*”), the oldest, continuously published daily newspaper in the United States, having first been published by Alexander Hamilton in 1801. Today, the *Post* is sold in many states in the United States, both at newsstands, by subscription, and digitally via the Internet.

7. Petitioner Yoav Gonen is an investigative reporter and has served as the City Hall Bureau Chief for the *Post* since June 2013. In this role, he has reported extensively on New York politics and education, as well as the workings of City Hall and the Mayor’s Office.

8. Respondent Bill de Blasio is the Mayor of the City of New York. Upon information and belief, his principal place of business is located at City Hall, New York, NY 10007.

9. Respondent Office of the Mayor of the City of New York (the “Mayor’s Office”) is an “agency” within the meaning of Public Officers Law § 86(3).

### **VENUE**

10. Venue is proper in New York County pursuant to C.P.L.R. § 506(b) and § 7804(b) because this County is within the judicial district where Respondents made their determination to withhold the requested communications and where Respondents’ principal offices are located.

### **JURISDICTION**

11. Respondents’ actions, which form the basis of this Verified Petition and Complaint, are final in nature and cannot be adequately reviewed by another court, entity, or officer. Thus, this Court has jurisdiction over this proceeding pursuant to Public Officers Law § 89(4)(b) and C.P.L.R. § 7801 *et seq.*

12. The court also has jurisdiction pursuant to C.P.L.R. § 3001 to render declaratory relief.

### **FACTS**

#### **A. Ms. Rauh’s FOIL Request (ID#2015-0052)**

13. On February 18, 2015, Ms. Rauh submitted an online FOIL request seeking copies of correspondence that Mayor de Blasio and senior members of his administration conducted with Jonathan Rosen during 2014, the Mayor’s first year in office. Specifically, Ms. Rauh requested:

[C]orrespondence including, but not limited to, e-mails, memos and text messages between Jonathan Rosen and Mayor de Blasio, Tony Shorris, Richard Buery, Alicia Glen, Lilliam Barrios-Paoli, Emma Wolfe, Maya Wiley, Peter Ragone, Laura Santucci, Dean Fuleihan, and Phil Walzak from January 1, 2014-Dec. 31, 2014.

*See* August 7, 2015 Letter from Mayor’s Office to Grace Rauh (the “First Rauh FOIL Response”), quoting Mr. Rauh’s February 18, 2015 request. (A true and correct copy of the First Rauh FOIL Response is attached hereto as Exhibit A.) The Mayor’s Office assigned Ms. Rauh’s request ID number 2015-0052. *Id.*

14. Almost six months after she submitted her FOIL request, Ms. Rauh received a response from the Mayor’s Office on or around August 7, 2015. *See* Ex. A, First Rauh FOIL Response. The First Rauh FOIL Response provided Ms. Rauh with only twenty-four email chains over a one-year period, many of them duplicative, which were deemed responsive to her FOIL request. No other correspondence, including text messages, were produced. The First Rauh FOIL Response informed Ms. Rauh that the Mayor’s Office had withheld “some responsive material” on the grounds that the information was exempt from disclosure pursuant to Public Officers Law §§ 87(2)(b) and (g)—that is, on the grounds that release of the materials would constitute an “unwarranted invasion of personal privacy” or that the materials were

exempt from disclosure as inter-agency or intra-agency records. The First Rauh FOIL Response indicated that the Mayor's Office would continue to search for additional responsive records and provide Ms. Rauh with a further determination regarding the existence of additional responsive records on or before October 9, 2015.

15. The Mayor's Office, however, did not provide Ms. Rauh with any additional information until approximately April 1, 2016. On or around April 1, 2016, the Mayor's Office sent Ms. Rauh a second letter informing her that additional records responsive to her FOIL request had been identified. *See* May 13, 2016 Letter from Mayor's Office to Grace Rauh (the "Second Rauh FOIL Response") (A true and correct copy of the Second Rauh FOIL Response is attached hereto as Exhibit B.) (Petitioner Rauh does not have a copy of the April 1, 2016 letter, but portions of that letter are referenced in the Second Rauh FOIL Response.) The April 1, 2016 letter stated that the Mayor's Office was withholding the additional documents in their entirety because they were exempt from disclosure as inter- or intra-agency records under Public Officers Law § 87(2)(g). *Id.*

16. On or around April 29, 2016, Ms. Rauh appealed the Second Rauh FOIL Response via email (the "April 29 Appeal"). *See* Ex. B, Second Rauh FOIL Response, containing excerpts from the April 29 Appeal. (Petitioner Rauh does not have a copy of the April 29 Appeal but portions of that appeal are referenced in the Second Rauh FOIL Response.) In her April 29 Appeal, Ms. Rauh expressed her belief that the withheld records were not exempt from disclosure. *Id.* She also demanded "a more detailed response from the administration" as to why the records were exempt from disclosure or "a wholesale reversal" of the administration's decision. *Id.*

17. On May 13, 2016, the Mayor's Office responded to Ms. Rauh's April 29 Appeal by letter, denying her appeal in its entirety. *Id.* The Second Rauh FOIL Response stated that the communications withheld from Ms. Rauh were exempt under the inter-agency and intra-agency exemption of Public Officers Law § 87(2)(g) because they "involved advice to the Mayor and other members of the Mayor's Office provided by Mr. Rosen as a consultant to the Mayoralty." *Id.* at 2.

18. The Second Rauh FOIL Response asserted that the communications with Mr. Rosen were not subject to disclosure because, in those communications, Mr. Rosen was not representing his own interests or those of other clients:

Acting as a consultant to the Mayor, Mr. Rosen's aim was to advance the Mayor's governmental agenda and thus the interests of the people of New York. Accordingly, the advice Mr. Rosen offered was part of the deliberative process. The withheld documents relate to communications in which Mr. Rosen was not acting on behalf of any clients nor interests they represent. In these particular communications Mr. Rosen's advice represents solely the interests of the Mayoralty and the City.

*Id.* at 2-3.

19. The Second Rauh FOIL Response advised Ms. Rauh that she could seek judicial review of the determination in the letter pursuant to C.P.L.R. Article 78.

20. After receiving the Second Rauh FOIL Response, Ms. Rauh asked the Mayor's Office to identify other individuals who were considered personal advisors to the Mayor and whose communications would be exempt from disclosure under FOIL due to the inter- or intra-agency exemption.

21. On May 19, 2016, Peter Kadushin, Communications Advisor to the Mayor's Office, responded via email to Ms. Rauh. The response contained a statement attributed to Maya Wiley, Counsel to the Mayor, identifying five individuals, including Mr. Rosen, who are

considered “personal advisors” to the Mayor and whose communications are exempt from disclosure.<sup>1</sup> See content of the email from Peter Kadushin to Grace Rauh dated May 19, 2016 (the “Kadushin email”) (A true and correct copy of the content of the Kadushin email is attached hereto as Exhibit C.)

22. The Kadushin email stated that these personal advisors, including Mr. Rosen, “are not paid or compensated by the City.” *Id.*

**B. The New York Post FOIL Request (2015-0110)**

23. Shortly after Ms. Rauh submitted her February 2015 FOIL request, on April 3, 2015, Mr. Gonen independently submitted a FOIL request seeking a slightly broader, though substantively, nearly identical set of records (the “Gonen FOIL Request”). (A true and correct copy of the Gonen FOIL Request is attached hereto as Exhibit D.)

24. Specifically, Mr. Gonen requested:

[A]ny and all email communications to or from Mayor de Blasio – using his city-issued or private email account – and any and all employees in the Mayor’s Office, to or from Jonathan Rosen or any and all employees of BerlinRosen, between Jan. 1, 2014 and April 3, 2015.

25. The same day that Mr. Gonen submitted his request, the Mayor’s Office sent him an email acknowledging receipt of his request, assigning it ID number 2015-0110, and stating that the Mayor’s Office anticipated providing a response by August 7, 2015. (A true and correct copy of the April 3, 2015 email acknowledging receipt of the Gonen FOIL Request is attached hereto as Exhibit E.)

26. On August 7, 2015, the same day that Ms. Rauh received the First Rauh FOIL Response, the Mayor’s Office sent Mr. Gonen a preliminary response to his request (the First Gonen FOIL Response”). (A true and correct copy of the First Gonen FOIL Response is attached

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<sup>1</sup> The other “personal advisors” identified by the Mayor’s Office were Nicholas Baldick, Bill Hyers, John Del Cecato, and Patrick Gaspard.

hereto as Exhibit F.) The First Gonen FOIL Response included contained sixty-nine email chains from the relevant time period.

27. The fact that the First Gonen FOIL Response is more voluminous than the First Rauh FOIL Response is attributable to the fact that Mr. Gonen requested communications between the Mayor's office and all of BerlinRosen's employees, not just Mr. Rosen himself.

28. Like the response to Ms. Rauh's request, the Mayor's Office's response to Mr. Gonen informed him that the Mayor's Office had withheld "some responsive material" on the grounds that the information was exempt from disclosure pursuant to Public Officers Law §§ 87(2)(b) and (g). *See* First Gonen FOIL Response at 1. In other words, on the grounds that release of the materials would constitute an "unwarranted invasion of personal privacy" or that the materials were exempt from disclosure as inter-agency or intra-agency records. The First Gonen FOIL Response also indicated that the Mayor's Office would continue to search for additional responsive records and provide Mr. Gonen with a further determination regarding the existence of additional responsive records on or before November 6, 2015. *Id.*

29. The Mayor's Office, however, did not provide Mr. Gonen with any additional information and instead repeatedly postponed the date that it claimed it would respond to his request. After waiting a total of thirteen months, on May 22, 2016, shortly after learning that in response to Ms. Rauh's similar request the Mayor's Office had taken the position that its communications with Mr. Rosen were exempt under FOIL, Mr. Gonen deemed his request constructively denied and filed an administrative appeal of the denial on or around May 22, 2016 (the "First Gonen Appeal"). (A true and correct copy of the First Gonen Appeal is attached hereto as Exhibit G).

30. On June 7, 2016, the Mayor's Office responded to the First Gonen Appeal, observing "it would be appropriate to grant your appeal to the limited extent of directing the Records Access Officer to provide any disclosure that you may be required by law no later than 10 business days from the date of this letter." (A true and correct copy of the Mayor's Office's June 7, 2016 response to the First Gonen Appeal (the "Second Gonen FOIL Response") is attached hereto as Exhibit H.

31. Then, on June 10, 2016, the Mayor's Office sent Mr. Gonen a letter informing him that additional records responsive to his FOIL request had been identified and that a final set of records responsive to his request was attached (the "Third Gonen FOIL Response"). (A true and correct copy of the Third Gonen FOIL Response is attached hereto as Exhibit I.)

32. Although the Mayor's Office attached a fairly large collection of email communications to the Third Gonen FOIL Response (all of which were responsive to the request for communications between the Mayor's Office and employees of BerlinRosen – not Mr. Rosen), it again stated that it was withholding "some responsive material" in their entirety because they were exempt from disclosure as inter- or intra-agency records under Public Officer's Law § 87(2)(g). *Id.*

33. On June 16, 2016, Mr. Gonen appealed the Third Gonen FOIL Response via email, claiming that the Mayor's office had provided "an incomplete set of responsive documents," and that based on public statements by the Mayor, "there exist additional emails that are responsive" to his request that the Mayor's Office has "no legal basis" for withholding (the "Second Gonen Appeal"). (A true and correct copy of the Second Gonen Appeal is attached hereto as Exhibit J.) Mr. Gonen argued that while many emails were withheld under Section 87(2)(g) on account of the determination by the Mayor's Office that Mr. Rosen is an "agent of

the city,” in fact, he argued, Mr. Rosen “is a member of the public not paid by the administration and, as such, his and his firm’s communications with and advice to the mayor’s office should be provided . . . .” *Id.*

34. On June 30, 2016, the Mayor’s Office responded to Mr. Gonen’s second appeal by letter, denying the appeal in its entirety (the “Fourth Gonen FOIL Response”). (A true and correct copy of the Fourth Gonen FOIL Response is attached hereto as Exhibit K.) As with the response to Ms. Rauh’s April 29 appeal, the Mayor’s Office stated that the communications withheld from Mr. Gonen were exempt under the inter-agency and intra-agency exemption of Public Officers Law § 87(2)(g) because they “involved advice to the Mayor and other members of the Mayor’s Office provided by Mr. Rosen as a consultant to the Mayoralty.” *Id.*

35. The Fourth Gonen FOIL Response claimed further that the communications with Mr. Rosen were not subject to disclosure because, in those communications, Mr. Rosen was not representing his own interests or those of other clients:

Acting as a consultant to the Mayor, Mr. Rosen’s aim was to advance the Mayor’s governmental agenda and thus the interests of the people of New York. Accordingly, the advice Mr. Rosen offered was part of the deliberative process. The withheld documents relate to communications in which Mr. Rosen was not acting on behalf of any clients nor interests they represent. In these particular communications Mr. Rosen’s advice represents solely the interests of the Mayoralty and the City.

*Id.*

The Fourth Gonen FOIL Response also advised Mr. Gonen that he could seek judicial review of the determination in the letter pursuant to C.P.L.R. Article 78. *Id.*

36. Upon information and belief, Mr. Rosen represents clients with business before various agencies of New York City and whose interests potentially or actually conflict with the interests of New York City, and used his access to the Mayor and his top staff to benefit some of these clients.

**CAUSE OF ACTION**  
**WRONGFUL DENIAL OF FOIL REQUEST**

37. Petitioners repeat and reallege paragraphs 1 through 36 as if fully set forth herein.

38. Article 78 is the appropriate method for review of agency determinations concerning FOIL requests.

39. Under FOIL, mayoral communications are presumed open and available for inspection by the public. Respondents may deny access to such communications only if expressly authorized to do so by one of FOIL's specific exemptions. The limited statutory FOIL exemptions are to be construed narrowly, and the government bears the burden of demonstrating that documents fall within an asserted exemption.

40. Respondents have erred in concluding that the requested communications with Mr. Rosen are exempt from disclosure as inter- or intra-agency records. The exemption for inter- or intra-agency records does not apply to communications with private individuals or consultants who (1) are not retained by the City or (2) may have a conflict of interest with respect to the topics on which they are rendering advice.

41. By their actions, Respondents have refused to perform their duty of disclosure under FOIL and otherwise acted arbitrarily and capriciously.

42. Respondents have caused, and continue to cause, immediate and irreparable harm to the rights guaranteed to Petitioners and to the public at large under FOIL.

43. Petitioners have exhausted their administrative remedies and have no other remedy at law.

44. Petitioners have not made any previous request for the relief requested herein.

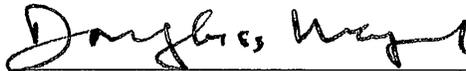
**RELIEF REQUESTED**

WHEREFORE, Petitioners respectfully request this Court to grant judgment:

- a. Declaring that Respondents have acted unlawfully in failing to disclose the communications, or certain portions of communications, that are not properly exempt from disclosure under FOIL;
- b. Directing Respondents to comply with their duty under FOIL to produce all portions of the requested communications not subject to any exemption or other privilege;
- c. Ordering, in the alternative, an *in camera* review of the requested communications to allow the Court to determine the applicability of the claimed exemption;
- d. Awarding attorneys' fees and reasonable litigation costs as allowed under Public Officers Law § 89; and
- e. Granting such other and further relief as the Court deems just and proper.

Dated: September 7, 2016  
New York, New York

Respectfully Submitted,



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*Counsel for Petitioners NYP Holdings, Inc. and  
Yoav Gonen*

VERIFICATION

STATE OF NEW YORK)  
:SS  
COUNTY OF NEW YORK)

DOUGLASS B. MAYNARD, being duly sworn, deposes and says:

I am one of the attorneys for Petitioners Grace Rauh and TWC News and Local Programming LLC in this Article 78 proceeding.

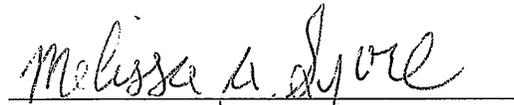
I have read the foregoing petition and the same is true to my own knowledge, except as to those matters stated herein to be alleged on information and belief, and as to those matters, I believe them to be true based on my review of pertinent documents and conversations with persons with personal knowledge.

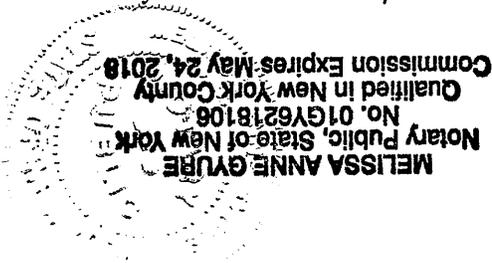
This verification is made by me rather than Petitioners Grace Rauh and TWC News and Local Programming LLC because at least one of the Petitioners acquainted with the facts resides outside of the County of New York where I maintain my office.

Dated: September 7, 2016  
New York New York

  
\_\_\_\_\_  
Douglass B. Maynard

Sworn to and subscribed before me  
this 7 day of September, 2016

  
\_\_\_\_\_  
Notary Public



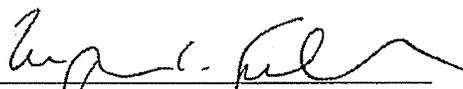
VERIFICATION

STATE OF NEW YORK    )  
  ) ss:  
COUNTY OF NEW YORK )

Eugenie C. Gavenchak, an attorney duly admitted to practice law in the State of New York, hereby affirms under penalty of perjury the following:

1. I am Senior Vice President and Deputy General Counsel of News Corporation, the parent corporation of NYP Holdings, Inc., Petitioner in the within proceeding. I make this verification pursuant to C.P.L.R. § 3020(d).
2. I have read the attached Verified Petition and know its contents.
3. The statements in the Verified Petition are true to my own knowledge, or upon information and belief. As to those statements that are made based upon information and belief, I believe those statements to be true.

September 7,  
Dated: ~~August~~, 2016  
New York, New York

  
\_\_\_\_\_  
EUGENIE C. GAVENCHAK