

STATE OF NEW YORK  
COUNTY OF COLUMBIA  
COUNTY, FAMILY AND SURROGATE'S COURTS  
CHAMBERS

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RICHARD M. KOWEEK  
Judge

ROBERT J. GAGEN  
Court Attorney

April 30, 2020

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Shannan C. Krasnokutski, Esq.  
Assistant Attorney General  
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RE: Daniel R Suhr v. New York State Department of Civil Service  
Index No. 907373-19  
RJI No. 01-19-ST0670

Dear Mr. Glennon and Ms. Krasnokutski:

Attached please find a COPY of the Decision and Order executed by me regarding the above matter. This document will be uploaded to NYSCEF system as well.

Very truly yours,



RICHARD M. KOWEEK

bjb  
Enclosure

VIA EMAIL ONLY

CC: Albany County Supreme and County Courts (via email only)  
Attention: Amy L. Moore, Court Clerk

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ALBANY

Daniel R. Suhr,

Petitioner,

-vs.-

**DECISION/ORDER**  
Index No. 907373-19

New York State Department of Civil  
Service,

Respondent.

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(Supreme Court, Albany County, All Purposes Term)

APPEARANCES:

THE GLENNON LAW FIRM, P.C.  
Attorney for Petitioner  
(Peter J. Glennon, Esq., of counsel)  
160 Linden Oaks  
Rochester, New York 14625

HON. LETITIA JAMES  
Attorney General of the State of New York  
Attorney for Respondent  
(Shannan C. Krasnokutski, Assistant Attorney General, of counsel)  
The Capitol  
Albany, New York 12224

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Koweck, J.

This is a hybrid CPLR article 78/declaratory judgment action challenging Respondent New York State Department of Civil Service's ("DCS") partial denial of Petitioner Daniel R. Suhr's Freedom of Information Law ("FOIL") request. Petitioner sought certain payroll data from DCS. For the reasons that follow, this Court grants the relief Petitioner seeks in his Verified Petition to the extent of (1) declaring that DCS made an error of law under CPLR 7803 (3) and, therefore, Petitioner is entitled to any records responsive to Part 2 of its FOIL request; (2) declaring that Executive Order 183 and Public Officers Law do not preclude Petitioner from receiving the records sought;

and (3) directing DCS to provide the records sought. This Court denies that portion of Petitioner's Verified Petition seeking an award of reasonable attorney's fees.

### Facts and Procedural History

Petitioner is an attorney at Liberty Justice Center in Chicago, Illinois. On April 24, 2019, pursuant to FOIL, Petitioner sought a listing of the full name, home zip code, hire date, labor organization, bargaining unit, and payroll deduction type of all classified State employees as of June 1, 2018 (NY St Cts Elec Filing [NYSCEF] Doc No. 4, Initial Request). DCS responded on April 29, 2020, within the five-day acknowledgment window under Public Officers Law § 89 (3) (a), stating, "If the Department is able to identify records responsive to your request, we expect to make those records available by **May 28, 2019**" (NY St Cts Elec Filing [NYSCEF] Doc No. 25, Acknowledgment Letter)(emphasis in original). Shortly thereafter, on May 16, 2019, DCS emailed Petitioner requesting that he complete a "Certification Commercial Purposes" document, certifying he will not use "any responsive records provided to [him] in response to [his] FOIL request . . . for any solicitation or fund-raising purposes" (NY St Cts Elec Filing [NYSCEF] Doc No. 26, 5.16.19 Email). Petitioner emailed a signed certification the next day (NY St Cts Elec Filing [NYSCEF] Doc No. 27, 5.17.19 Email).

On May 28, 2019, DCS wrote Petitioner again advising that his request "still remain[ed] under review" (NY St Cts Elec Filing [NYSCEF] Doc No. 27, 5.28.19 Correspondence). DCS stated further, "Should the Department identify responsive records, we expect to make those records available to you or update you regarding the status of your request by June 25, 2019" (*id.*). Petitioner emailed DCS on May 30, 2019 asking for "a fuller explanation as to the reasons for the further delay in fulfilling [his]

request and why June 25 is a reasonable timeframe” (NY St Cts Elec Filing [NYSCEF] Doc No. 29, 5.30.19 Email).

In its June 24, 2019 letter, DCS issued a determination on Petitioner’s request, providing records responsive to Parts 1 (full name) and 3 through 5 (hire date, labor organization, and bargaining unit) of the request. DCS advised that it withheld records responsive to Part 2 (zip code) of Petitioner’s request pursuant to Public Officers Law §§ 87 (2) (a)(records exempted from disclosure by state or federal statute); 87 (2) (b)(records constituting an unwarranted invasion of personal privacy); and 89 (7)(home addresses of public employees)(NY St Cts Elec Filing [NYSCEF] Doc No. 30, FOIL Appeal).<sup>1</sup> In withholding those records, the Records Access Officers stated,

“Records have been withheld pursuant to Public Officers Law §87 2(a), which exempts from disclosure records that may be withheld by state or federal statute. Relevant statutes include POL §87 2(b), which precludes from disclosure release of records which would constitute an unwarranted invasion of personal privacy, and POL §89 7, which protects from disclosure the home addresses of public employees. In addition, Executive Order 183 protects the personal privacy of public employees” (*id.*).

By letter dated June 25, 2019, Petitioner appealed DCS’s partial denial of the FOIL request (NY St Cts Elec Filing [NYSCEF] Doc No. 8, LJC Appeal). Petitioner asserted three grounds for his appeal. First, Petitioner argued that Public Officers Law § 89 (2) (b) does not apply to his records request because the disclosure of home zip code date of State employees does not constitute an unwarranted invasion of privacy. He cited NY Common Open Gov’t FOIL-Adv-Op-18959 (Aug 28, 2012) for his first ground.

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<sup>1</sup> DCS also advised Petitioner that it maintained no records responsive to Part 6 (payroll deduction type) of Petitioner’s records request. He is not contesting this point and, therefore, this Court will not address the nondisclosure of information pertaining to Part 6 of Petitioner’s records request.

Petitioner argued further that the Record Access Officer's statements on the alleged unwarranted invasion of privacy is insufficient to justify withholding the records.

Second, Petitioner argued that Public Officers Law § 89 (7) and Executive Order 183 do not apply to his request because Part 2 does not seek the employees' "home addresses" but, rather, "a distinct sub-part of the address". He cited Advisory Opinion-18959 again and out-of-state caselaw to support his argument on this ground. Petitioner also relied on *Matter of Daily News L.P. v City of New York Office of Payroll Admin.* (9 AD3d 308 [1st Dept 2004]), arguing that the Appellate Division's holding is directly on point.

Third, Petitioner argued that Executive Order 183 does not preempt the public's right to public information pursuant to FOIL.

On July 15, 2019, DCS FOIL Appeals Officer Marc Hannibal issued a final determination upholding DCS's determination (NY St Cts Elec Filing [NYSCEF] Doc No. 9, Appeal Denial). Officer Hannibal confirmed that DCS reviewed the complete file after receiving Petitioner's initial request and again after Petitioner appealed its determination (NY St Cts Elec Filing [NYSCEF] Doc No. 23, Affidavit of J. Marc Hannibal). Officer Hannibal states that he reviewed the DCS file and conducted an independent search of the complete FOIL record as a FOIL Appeals Officer (*id.*). In upholding the determination, Appeals Officer Hannibal relied on Public Officers Law §§ 87(2) (a), 87(2) (b), 89 (7), 96 (1) (c), 96 (1) (h) and Executive Order 183. Appeals Officer Hannibal wrote, in relevant part:

"Employees' home zip codes bear no relation to their positions or official duties. Therefore, release of such information would constitute an unwarranted invasion of personal privacy, and the requested records may properly be withheld pursuant to EO 183, the POL provisions cited above

and §§ 96(1)(c) of the New York State Personal Privacy Protection Law [POL Art. 6-A] (regarding withholding records which, if released, would constitute an unwarranted invasion of personal privacy and 96(1)(h) (permitting release of protected personal information regarding data subjects, but only upon advance written assurance to the NYSDCS that the records will be used solely for the purpose of statistical research and reporting, but only if it is to be transferred in a form that does not reveal the identity of any data subject). You had sought the zip code data in a format that would correlate home zip codes with identifiable employees, which therefore makes that record unreleasable under FOIL” (NY St Cts Elec Filing [NYSCEF] Doc No. 8, FOIL Appeal)(emphasis in original).

On October 25, 2019, Petitioner filed the Verified Petition at issue seeking an order (1) declaring that DCS made an error of law under CPLR 7803 (3) and Petitioner is entitled to the records, (2) declaring that Executive Order 183 and Public Officers Law do not prevent Petitioner from receiving the records sought, (3) directing DCS to provide the records sought, and (4) granting Petitioner an award for reasonable attorney’s fees.

DCS interposed the Verified Answer on December 16, 2019, stating objections in point of law that the Verified Petition fails to state a cause of action pursuant to CPLR 3211 (a) (7). The Verified Answer incorporates by reference Officer Hannibal’s affidavit in response to the Verified Petition.

### Discussion

#### 1. Standard of Review

When an agency denies record access, the entity seeking the records may commence a special proceeding for judicial review of the denial of the FOIL request (POL § 89 [5] [d]). The standard “affected by an error of law” applies to judicial review of FOIL requests rather than an “arbitrary and capricious” standard (*Mulgrew v Bd of Educ of City Sch. Dist. of City of NY*, 87 AD3d 506, 507 [1st Dept 2011], *lv denied* 18 NY3d 806 [2012]).

## 2. Applicable Law on FOIL Disclosure

The Legislature enacted FOIL with a presumption of access to public records; FOIL imposes a broad standard of open disclosure upon agencies of the government (*Matter of Mantica v New York State Dept of Health*, 94 NY2d 58, 61 [1999][citing *Matter of Farbman & Sons v New York City Health & Hosps. Corp.*, 62 NY2d 75 (1984); Public Officers Law § 84]). “All agency records are presumptively available for public inspection and copying, unless they fall within 1 of 10 categories of exemptions, which permit agencies to withhold certain records” (*Matter of Hanig v New York State Dept of Motor Vehicles*, 79 NY2d 106, 108 [1992]).

“Exceptions to disclosure ‘are to be narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for an exemption’” (*Matter of Mantica*, 94 NY2d at 61 [quoted case omitted]). In order to deny disclosure, the records officer or clerk must show that the requested information “falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access” (*Matter of Capital Newspapers Div. of Hearst Corp. v Burns*, 67 NY2d 562, 566 [1986]). If the records officer or clerk fails to prove that a statutory exemption applies, FOIL “compels disclosure, not concealment” (*Matter of Westchester Rockland Newspapers v Kimball*, 50 NY2d 575, 580 [1980]). Courts must give the exemptions their natural and obvious meaning where such interpretation is consistent with the legislative intent and the general purpose and policy underlying FOIL (*Matter of Capital Newspapers v Whalen*, 69 NY2d 246, 251 [1987]).

**3. DCS Did Not Provide a Specific Justification for Denying the FOIL Request for Zip Data**

Petitioner argues that DCS failed to articulate a particularized and specific justification for denying disclosure of agency documents. He points to the following language in Officer Hannibal's Appeal Determination to argue that DCS's denial of disclosure of the zip code data is conclusory and provides no substantive justification or evidence:

"Employees' home zip codes bear no relation to their position or official duties. Therefore, release of such information would constitute an unwarranted invasion on personal privacy . . . [because Petitioner] had sought the zip code data in a format that would correlate to home zip codes with identifiable employees which makes that record unreleasable under FOIL". (NY St Cts Elec Filing [NYSCEF] Doc No. 9, Appeal Denial).

Relying on Public Officers Law §§ 87 (2) (a), (b)<sup>2</sup>, 89 (7)<sup>3</sup> and Executive Order 183<sup>4</sup>, DCS argues that it properly withheld the requested information because release of it will constitute an unwarranted invasion of personal privacy.<sup>5</sup>

This Court agrees with Petitioner that DCS did not articulate a particularized and

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<sup>2</sup> Public Officers Law § 87 (2) provides, in relevant part:

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

(a) are specifically exempted from disclosure by state or federal statute;

(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article . . . .

<sup>3</sup> Public Officers Law § 89 (7) provides, in relevant part: "Nothing in this article shall require the disclosure of the home address of an officer or employee, former officer, or employee, or a retiree of a public employees' retirement system . . . ."

<sup>4</sup> Executive Order 183 provides, in pertinent part: "No State entity, including any of its officers or employees, shall disclose: (a) the home address(es) . . . of a public employee, as the term "public employee" is defined in Article 14 of the Civil Service Law."

<sup>5</sup> Neither Petitioner, nor DCS addresses the applicability of Public Officers Law § 96 (1) (c) and (1) (h). Thus, this Court does not address those subsections.

specific justification to withhold records responsive to Part 2 of Petitioner's FOIL request. The Record Access Officer's June 24, 2019 determination letter merely set forth the provisions of the Public Officers Law and the Executive Order upon which DCS relied and a cursory statement of what those provisions protect. Appeals Officer Hannibal's July 15, 2019 determination letter was no more specific. He incorporated the cursory determination in DCS's June 24, 2019 determination letter, merely adding, "[e]mployees' home zip codes bear no relation to their positions or official duties."<sup>6</sup> Such bare explanations and lack of proof as to how the disclosure of the zip code data would cause an economic or personal hardship are insufficient to justify withholding the requested documents (*see, e.g., Matter of Carnevale v City of Albany*, 68 AD3d 1290, 1291-1292 [3d Dept 2009]) holding that the respondent failed to meet its burden in overcoming the presumption of availability because the agency offered only "conclusory statements" to deny access to the requested records).

The Appellate Division's holding in *Daily News, L.P.* (9 AD3d 308, *supra*), illustrates the point. In *Daily News, L.P.*, pursuant to FOIL, the petitioner sought records of the age and home zip code of every person the City of New York Office of Payroll Administration employed during a defined time period. The respondent withheld the records claiming that the requested information was exempt from disclosure pursuant Public Officers Law § 89 (2) (b) (v). Because the respondent did not particularize the justification for withholding the documents and merely "parrot[ed]" the statutory

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<sup>6</sup> Officer Hannibal's appeal determination, as best that can be gleaned from the conclusory language, partially cites Public Officers Law § 89 (2) (b) (iv). That subsection states: "An unwarranted invasion of personal privacy includes, but shall not be limited to: . . . disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it . . ." (*id.*).

language, the Appellate Division held that the respondent failed “to satisfy its burden of demonstrating that the requested material indeed qualifies for the exemption . . .” (*id.*).

Like the respondent in *Daily News, L.P.*, DCS’s response in this case merely parroted the statutory language of the Public Officers Law and the Executive Order. Those conclusory assertions do not satisfy the DCS’s burden of demonstrating that the requested material falls within the ambit of the exemptions, especially considering this State’s strong presumption of availability under FOIL (*id.*).

**4. The Disclosure of Zip Code Data Does Not Constitute an Unreasonable Invasion of Privacy**

Petitioner argues next that DCS erred by treating the zip code data the same as home address data, asserting that providing the zip code data does not constitute an unreasonable invasion of privacy. In response, DCS argues that, where an employee’s zip code can be correlated to an individual’s name, disclosing such information is the functional equivalent to disclosing a home address and unreasonably invades the privacy of those State employees. DCS relies on *Matter of Hassig v New York State Dept. of Healthy* (294 AD2d 781 [3d Dept 2002]), to support its argument.

As an initial point, the plain language of Public Officers Law § 89 (7) does not support DCS’s position. As stated, exceptions to disclosure are to be narrowly construed (*Matter of Mantica*, 94 NY2d at 61). The plain language of § 89 (7) states that nothing in CPLR article 6 requires the disclosure of the addresses of current or former public employees; the statute does not preclude the disclosure of such information (POL § 89[7]; *see also* Comm on Open Govt FOIL-AO-18959 [2012][Note: FOIL Advisory Opinion][NY St Cls Elec Filing (NYSCEF) Doc No. 11, FOIL Ad Op][“While FOIL clearly indicates that home addresses of present or former public employees need not be

disclosed, there is nothing in the language of that provision that would prohibit disclosure . . . .”][citing *Buffalo Teachers Fed. v Buffalo Bd of Educ.*, 156 AD2d 1027, 1028 (4th Dept 1989)(concluding that the agency could withhold home addresses of its employees, but that it could choose to disclose the addresses)].<sup>7</sup> Furthermore, DCS’s reliance on § 89 (7) assumes that the disclosure of a zip code constitutes the disclosure of a home address. As discussed in the next paragraph, there is no support for such conclusion.

DCS’s expansive reading of the word “zip code” to mean “address” also conflicts with the statutory mandate to interpret exceptions to FOIL narrowly. A narrow reading of the term “home address” in Public Officers Law § 89 (7) and “home address(es)” in Executive Order 183 indicates that the terms mean a complete address allowing others to locate them (*cf Goldstein v Perez*, 133 Misc 2d 303, 305-306 [Civ Ct of NYC, Kings Cty 1986][stating in context of interpreting 22 NYCRR 208.42(g) that “The concept of address necessarily implies the ability to locate it . . . .”]). The term “zip code” is merely a part of an “address”.

Albeit in the context of analyzing service of process, the Court in *New York City Hous. Auth. v Fountain* (172 Misc 2d 784, 786 [Civ Ct of NYC, Kings Cty 1986]), analyzed the United States Postal Service’s definition of “address”. The definition shows that a zip code is one component of an “address” (*id.*). Other Supreme Court decisions support the same interpretation of the word “address” (*see Regency Towers LLC v Landou*, 10 Misc 3d 994, 996 [NYC Civ Ct, NY Cty 2006][referring to “zip code” and “address” in the disjunctive in the context of service of process in holdover proceeding];

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<sup>7</sup> This Court recognizes that the FOIL Advisory Opinion is not binding authority (*Matter of Buffalo News, Inc. v Buffalo Enters. Dev. Corp.*, 84 NY2d 488, 492 [1994]). This Court cites the Opinion as persuasive authority.

*Karlsson & Ng v Cirincione*, 186 Misc 2d 359, 360 [Civ Ct of NYC, NY Cty 2000][“(T)he zip code is part of a mailing address . . . .”]). Thus, this Court narrowly reads the references in § 89 (7) to “home address” and “home address(es)” in Executive Order 183 to mean a complete address and not any of its component parts, such as a zip code.

Moreover, as Petitioner points out, DCS does not cite any authority supporting its argument that disclosing zip code data correlating to the disclosure of the State employees’ names is the functional equivalent of disclosing their home addresses. The crux of DCS’s argument is that the format of the zip code data correlates to home zip codes with identifiable employees and allows Petitioner to learn the home addresses through searching the Web. The Court of Appeals rejected a similar argument concerning FOIL disclosure in *Matter of Empire Ctr. for New York State Policy v New York State Teachers’ Retirement Sys.* (23 NY3d 438 [2014]).

*Matter of Empire Ctr.* concerned the applicability of Public Officers Law § 89 (7) to the petitioner’s FOIL request of names from the New York State Teachers’ Retirement System and Teachers’ Retirement System of the City of New York of the retired members of the system. The Court concluded that the courts below misinterpreted a prior Court of Appeals’ decision— *Matter of New York Veteran Police Assn. v New York City Police Dept. Art. 1 Pension Fund* (61 NY2d 659 [1983])— to hold that § 89 (7) exempted the discovery of the names and addresses of the retired members. The Court noted that the courts below read *Matter of New York Veteran* too broadly, and that § 89 (7) exempts disclosure the “home address” of the retiree but not his or her name.

DCS's reliance on *Matter of Hassig v New York State Dept. of Health* (294 AD2d 781 [3d Dept 2002]), is misplaced. The case is inapposite because the zip code records at issue concerned information on a State cancer registry, and the respondent denied the request of zip code data from the registry in accord with Public Health Law § 2402 and 42 USC § 280e(2)(D)(v), which protect information of cancer patients.

The foregoing demonstrates that DCS made an error of law by withholding records responsive to Part 2 of Petitioner's records request based on the grounds that the information caused an unwarranted invasion of privacy and came within the ambit of the exception set forth in § 89 (7) and the language set forth in Executive Order 183.

**5. The Executive Order Must Yield Where It Conflicts with Statutory Authority**

Petitioner also argues that an executive order cannot take precedence over a citizen's statutory rights under FOIL. Executive Order 183 states, in relevant part, "No State entity, including any of its officers or employees, shall disclose: (a) the home address(es) . . . (iii) to the extent compelled to do so by lawful service of process, subpoena, court order, or as otherwise required by law" (Executive Order [Cuomo] No. 183 [9 NYCRR 8.183][emphasis added]).

As stated in the previous section, a home zip code does not mean "home address" as the term is stated in the narrow exception in Public Officers Law § 89 (7). Second, even assuming zip code means "home address(es)" stated in Executive Order 183, the constitutional principle of separation of powers means the Executive Order must give way to FOIL (*Rapp v Carey*, 44 NY2d 157, 163 [1978])[“(T)he executive has the power to enforce legislation and is accorded great flexibility in determining the methods of enforcement . . . but [he or she] may not . . . ‘go beyond stated legislative policy and

prescribe a remedial device not embraced by the policy.”). Therefore, even accepting Petitioner’s interpretation of Executive Order 183, it does not trump the statutory mandate of FOIL.

**6. Petitioner Has Not Demonstrated His Entitlement to Attorney’s Fees**

Petitioner seeks attorney’s fees in the Verified Petition but does not address the issue in any of his submissions. DCS does not address the issue, either. In any event, this Court denies that portion of the Verified Petition seeking attorney’s fees.

Public Officers Law § 89 (c) addresses attorney’s fees in the context of a FOIL request, stating,

“The court in such a proceeding: (i) may assess, against such agency involved, reasonable attorney’s fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed, and when the agency failed to respond to a request or appeal within the statutory time, and (2) shall assess, against such agency, involved, reasonable attorney’s fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed and the court finds that the agency had no reasonable basis for denying access.”

As discussed, this Court grants that part of Petitioner’s Verified Petition to the extent of directing DCS to disclose the withheld records. Therefore, Petitioner has substantially prevailed in this proceeding. Nevertheless, Petitioner fails to meet either ground set forth in § 89 (c) that he is entitled to attorney’s fees.

The record reflects that DCS complied with the five-day window under Public Officers Law § 89 (3) (a). DCS set an adjusted deadline for May 28, 2019 in its April 29, 2019 acknowledgment letter (NY St Cts Elec Filing [NYSCEF] Doc No. 5, Extension Notice). On May 28, 2019, DCS wrote Petitioner and adjusted the response deadline for the second time for June 25, 2019 (NY St Cts Elec Filing [NYSCEF] Doc No. 28,

5.28.19 Letter). DCS responded to Petitioner on June 24, 2019 (NY St Cts Elec Filing [NYSCEF] Doc No. 7; Dept Denial). Even though DCS adjusted its anticipated response date two times over the course of two months, it did so each time in writing before the expiration of the previously set anticipated response date. Therefore, DCS's unsupported request for attorney's fees does not satisfy the timeliness prerequisite under § 89 (c) (*see Matter of Gannett Satellite Info. Network LLC v New York State Thruway Auth.*, 181 AD3d 1072 [3d Dept 2020][noting that the trial court did not abuse its discretion in denying fees and stating, "although (the) respondent . . . adjusted its anticipated response date several times over the next nine months, it did so each time in writing before the expiration of the previously set anticipated response date, during which it continued to search for and review possible responsive records."]).

Petitioner has not demonstrated that DCS lacked a reasonable basis for withholding records of the zip code data, either. Whether the disclosure of a public employee's name and zip code constitutes an unwarranted invasion of privacy under FOIL is a novel issue. The caselaw provides little direction on the issue, and the record in this case implies that, under the circumstances, DCS balanced the important presumption of access under FOIL against the equally important interest of the privacy of the State employees.<sup>8</sup> By denying disclosure of the subject records and providing all records responsive to the other requested information, it appears that DCS erred on the side of

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<sup>8</sup> This Court recognizes that the facts in *Daily News, L.P.* (9 AD3d 308, *supra*), concern a request for the disclosure of public employee's names and zip codes pursuant to FOIL. The First Department's holding in *Daily News, Inc.* is not determinative on whether the disclosure of names correlated with zip codes constitutes an unwarranted invasion of privacy under the Public Officers Law. The First Department's holding addresses whether the respondent demonstrated that the petitioner's request sought records that fell within an exception to FOIL. Thus, the decision provides little guidance on the precise issue raised in this matter.

caution to protect the privacy interests of the State employees. This Court cannot say that DCS doing so, under the circumstances, lacked a reasonable basis.

The foregoing demonstrates that Petitioner failed to show that either of the statutory prerequisites were met to support an award of attorney's fees. Therefore, this Court denies that request for relief set forth in the Verified Petition.

Therefore, it is hereby

**ORDERED** that judgment be entered declaring that Respondent made an error of law under CPLR 7803(3) and that Petitioner is entitled to the records sought; and it is further

**ORDERED** that Executive Order 183 and the Public Officers Law do not prevent Petitioner from receiving the records sought; and it is further

**ORDERED** that Respondent provide the records sought; and it is further

**ORDERED** that the portion of Petitioner's Verified Petition seeking an award for his attorney's fees is denied.

SO ORDERED AND ADJUDGED.

ENTER

Dated: Hudson, New York  
April 30, 2020

  
\_\_\_\_\_  
Richard M. Koweek  
Acting Supreme Court Justice

Papers Considered:

1. Verified Petition, dated October 25, 2019; Notice of Petition, dated October 25, 2019; Memorandum of Law in Support of Verified Petition, dated October 25, 2009, with annexed exhibits.

2. Verified Answer, dated December 16, 2019; Affidavit of J. Marc Hannibal, sworn to December 16, 2019, with annexed exhibits; Memorandum of Law in Support of Answer, dated December 16, 2019.
3. Affirmation of Peter J. Glennon, Esq., dated December 19, 2019; Petitioner's Memorandum of Law in Support of Verified Petition, dated December 19, 2019.