

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

-----X

STEPHEN J. CASSIDY, Individually,  
and as President of the Uniformed  
Firefighters Association,

Index No. 101255/15

Petitioner,

NOTICE OF PETITION

For a Judgment, Pursuant to CPLR  
Article 78, and for an Order,  
Pursuant to Public Officers Law,  
Article 6, Directing Respondents  
to Turn Over the Documents and  
Information Requested in the FOIL  
Requests Sent to the New York City  
Council on April 9, 2015 and  
Other Relief,

NEW YORK  
COUNTY CLERK'S OFFICE

JUL 13 2015

NOT COMPARED  
WITH COPY FILE

-against-

THE CITY OF NEW YORK, THE NEW YORK  
CITY COUNCIL and MELISSA MARK-VIVERITO,  
as COUNCIL SPEAKER of the NEW YORK  
CITY COUNCIL,

2015 JUL 13 PM 2:13  
KING COUNTY CLERK

Respondents.

-----X

S I R S :

PLEASE TAKE NOTICE, that upon the annexed Petition of  
STEPHEN J. CASSIDY, duly verified the 13<sup>th</sup> day of July, 2015, and  
the exhibits annexed thereto, the undersigned will move this  
Court at the Submission Part to be held at the Courthouse  
located at 60 Centre Street, Room 130, in the County of New  
York, State of New York, on the 10th day of August,  
2015, at 9:30 o'clock in the forenoon of that day, or as soon

thereafter as counsel can be heard, for a judgment, pursuant to  
CPLR Article 78 and Article 6 of the Public Officers Law:

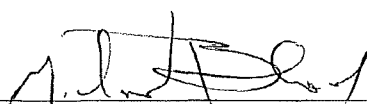
- (1) Directing Respondents to turn over the information requested in the FOIL Requests sent to the New York City Council on April 9, 2015;
- (2) Awarding reasonable attorney's fees and other litigation costs reasonably incurred pursuant to Public Officers Law § 89 4(c);
- (3) Granting such other and further relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that any and all papers to be used in opposition hereto shall be served upon the undersigned at least five (5) days before the return date hereof.

DATED: New York, New York  
July 13, 2015

Yours, etc.,

SULLIVAN PAPAIN BLOCK  
McGRATH & CANNAVO P.C.

By:   
MICHAEL N. BLOCK  
Attorneys for Petitioner  
Office & P.O. Address  
120 Broadway - 18<sup>th</sup> Floor  
New York, NY 10271  
(212) 732-9000

TO: CLERK OF THE COURT

ZACHARY W. CARTER, ESQ.  
Corporation Counsel  
100 Church Street  
New York, New York 10007

TO: NEW YORK CITY COUNCIL  
Attn: Ms. Danielle Barbato  
Council Records Officer  
250 Broadway  
New York, New York 10007

COUNCIL SPEAKER MELISSA MARK-VIVERITO  
105 East 116<sup>th</sup> Street  
New York, New York 10029

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

-----X

STEPHEN J. CASSIDY, Individually,  
and as President of the Uniformed  
Firefighters Association,

Index No. 101255/15

Petitioner,

VERIFIED PETITION

For a Judgment, Pursuant to CPLR  
Article 78, and for an Order,  
Pursuant to Public Officers Law,  
Article 6, Directing Respondents  
to Turn Over the Documents and  
Information Requested in the FOIL  
Requests Sent to the New York City  
Council on April 9, 2015 and  
Other Relief,

-against-

THE CITY OF NEW YORK, THE NEW YORK  
CITY COUNCIL and MELISSA MARK-VIVERITO,  
as COUNCIL SPEAKER of the NEW YORK  
CITY COUNCIL,

Respondents.

-----X

Petitioner, by his attorneys, SULLIVAN PAPAIN BLOCK McGRATH  
& CANNAVO P.C., as and for his Verified Petition, states:

THE PARTIES

1. Petitioner STEPHEN J. CASSIDY, at all times relevant  
hereto, was and is a firefighter employed by the Fire Department  
of the City of New York, and President of the Uniformed  
Firefighters Association, the duly certified collective  
bargaining agent for firefighters employed by said Department.

2. The respondent, THE CITY OF NEW YORK (hereinafter "CITY"), is a municipal corporation and political subdivision of the State of New York.

3. The respondent, THE NEW YORK CITY COUNCIL (hereinafter "CITY COUNCIL"), is the legislative body of New York City established by the New York City Charter and maintains its office and principal place of business in the County of New York, City and State of New York.

4. Respondent MELISSA MARK-VIVERITO (hereinafter "COUNCIL SPEAKER MARK-VIVERITO") is the COUNCIL SPEAKER, an elected position within the CITY COUNCIL, and maintains her office and principal place of business in the County of New York, City and State of New York.

#### FACTS

5. Prior to July 1, 2009, all firefighters and police officers who were hired by the FDNY and NYPD were covered for pension benefits under Tier 2 of the New York State Pension Fund. As members of Tier 2, amongst other benefits, a firefighter who is injured and disabled in the line of duty receives a pension of three quarters of his/her final compensation.

6. When then Governor David Patterson failed to sign legislation renewing the law, firefighters and police officers who were hired thereafter were unfortunately deprived of an

equal and just disability pension benefit. Instead, in their current pension tier, a firefighter hired on or after July 1, 2009, when disabled in the line of duty, receives a far lesser disability pension, which amounts to as little as \$27.00 dollars a day.

7. To correct this injustice, State Assemblyman Peter Abbate and State Senator Martin Golden have proposed legislation that would grant individuals hired on or after July 1, 2009 the same benefits as those hired prior thereto. Additionally, on November 25, 2014, Council Member Elizabeth Crowley introduced Resolution 474 to the City Council calling for the same relief.

8. This disability pension equalization legislation, which is publicly supported by Governor Andrew Cuomo, and a large majority of the New York State Senators and Assemblymen, requires a Home Rule from the New York City Council in order to be brought to a vote by the state legislature in Albany. (NY State Home Rule Law, § 10)

9. As a result, both Senator Golden and Assemblymen Abbate, together with Council Member Elizabeth Crowley and others, have tried to bring a Home Rule resolution before the City Council for a vote. I am informed that a substantial majority of City Council Members are in favor of such a Home Rule resolution. Nevertheless, every effort to obtain a vote on

a Home Rule resolution has been blocked by the Respondent, Speaker Mark-Viverito.

10. Council Member Crowley's request for a Home Rule resolution was made on January 14, 2015. By letters dated March 26, 2015, Council Member Crowley requested an explanation as to why the Council broke from its past practices and failed to act on said request. Copies of these letters are annexed hereto as Exhibit "A".

11. On April 1, 2015, Council Member Crowley spoke with Speaker Mark-Viverito's Chief of Staff, Ramon Martinez, and further inquired as to why her request for a Home Rule resolution wasn't addressed. She was informed that she was not the principal Council Member on the Home Rule request - that another Council Member filed an Legislative Service (LS) Request for a Home Rule ahead of her. Council Member Crowley wrote to Chief of Staff Martinez requesting that he confirm this position in writing, but he never responded.

12. Thereafter, in my capacity as UFA President, I also attempted to find out why that Home Rule request was not brought before the Council for a vote. I was informed by Speaker Mark-Viverito's Chief of Staff, Ramon Martinez, that only the Council Member who first requested a Home Rule on the pension equalization legislation in 2015 could bring said Home Rule request to a vote in the City Council.

13. When I inquired who first requested that Home Rule in 2015 ahead of Council Member Crowley, Speaker Mark-Viverito and Chief of Staff Martinez refused to provide the name of the Council Member or the date of the request, ridiculously claiming "attorney-client privilege."

14. I persisted in the discussion and asked Chief of Staff Martinez if his position is that the Speaker could put in a LS Request for a Home Rule on any bill she wishes to quash, then stall the hearing for the Home Rule resolution. He indicated that he would not provide the Council Member's name, but it was not the Speaker who did it in this instance.

15. The stone-walling by the Speaker and her Chief of Staff causes me to sincerely doubt that there was, in fact, a prior request for a Home Rule resolution. I suspect that Council Member Crowley's request was the first and that the Speaker and her staff have adopted a false position solely to thwart the will of the Council.

16. Each LS request is time stamped- documentary evidence that could validate their statements -if true. Instead, the Council FOIL Officer has blocked access to even the name of the Council Member who allegedly made the LS Request before Council Member Crowley and the date of the alleged request, let alone provide the document itself.



17. Thus, we have an outrageous situation whereby the will of the Governor of New York, the majority of the City Council, and the majority of the State Legislature is being frustrated by the unconscionable political maneuvering of Respondent Mark-Viverito in preventing a vote on the Home Rule.

18. It is sadly obvious that Respondent Speaker Mark-Viverito has embarked upon a strategy to oppose the Abbate/Golden legislation by cynically preventing the operation of the democratic process and blocking any vote on the proposed Home Rule resolution.

19. In an effort to verify the Speaker's ill-conceived strategy, I directed my counsel to file the Freedom of Information Law request that is the subject of this Article 78 proceeding.

20. Thus, on April 9, 2015, counsel to the Uniformed Firefighters Association (hereinafter "UFA"), Michael N. Block, Esq. transmitted a FOIL request to the City Council with a copy to Council Speaker Mark-Viverito. The request sought the following:

- a) The name of the Councilperson who first sought a Home Rule and/or "LS Request" in 2015 for the legislation sponsored by State Assemblyman Peter Abbate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits.

- b) The first date in 2015 that a Home Rule request and/or "LS Request" was made for the legislation sponsored by State Assemblyman Peter Abbate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits.
- c) The date of any upcoming hearing in the City Council for the Home Rule request and/or "LS Request" for the legislation sponsored by State Assemblyman Peter Abbate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits.
- d) Minutes from any meeting at which the Home Rule request and/or "LS Request" was discussed by the City Council regarding the legislation sponsored by State Assemblyman Peter Abbate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits.

A copy of the FOIL request is annexed hereto as Exhibit "B".

21. The Records Officer for the CITY COUNCIL, Ms. Danielle Barbato, denied all the requested information in an email on May 21, 2015. A copy of this email is annexed as Exhibit "C". The basis for the denial of the above information was the disingenuous claim of attorney-client privilege.<sup>1</sup>

22. In response, my counsel sent a letter of appeal to the FOIL Appeals Officer, Mr. Jason Otano. A copy of the appeal

---

<sup>1</sup> With regard to paragraphs "c" and "d" of the FOIL Request, the Council Records Officer advised that they do not have any responsive documents. Therefore, this proceeding concerns only the denials of "a" and "b".

letter is annexed hereto as Exhibit "D". In this letter, he pointed out that the FOIL Request asks for the name of the public official who first sought a Home Rule and/or "LS Request" on a bill before the Council and the date of the request. There was never a request for the content of discussions between an attorney and his/her client or for the deliberative process of the Council.

23. On June 4, 2015, Mr. Otano affirmed the denial of the information. A copy of his denial is annexed hereto as Exhibit "E". In so doing, he relied primarily upon attorney-client privilege.

24. Mr. Otano also asserted that the request was a demand for intra-agency and inter-agency communications that are likewise excluded from disclosure.

25. A review of that denial reveals either a total misunderstanding of the FOIL request or an overt attempt to evade the Council's obligation to obey the mandate of the FOIL law.

26. This Court is reminded that items (a) and (b) of the FOIL request seek only the name of the Councilperson who first sought a Home Rule on the relevant disability benefits legislation and the first date in 2015 that such Home Rule was requested. The FOIL request does not seek any communication,

opinions, or deliberations of any kind- much less between attorney and client.

27. Pursuant to Public Officers Law §§ 84-90, most particularly §87, Respondents are under a duty to make all their records available for copying unless the documents requested fall under an exception.

28. Respondents cannot articulate a valid exception upon which to base their denial of the instant request. In fact, the very case law upon which they rely, belies their reasoning.

29. Public Officer's Law § 84 articulates that "a free society is maintained when government is responsive and responsible to the public, and when the government is aware of governmental action."

30. The purpose, in part, of the Freedom of Information Law is to insure transparency- a tenet supposedly espoused by this Council. This denial, however, creates a veil of secrecy on the legislative process.

31. The idea that the people of the City of New York cannot know who requested a Home Rule on a particular bill and the date of such request is more emblematic of a Council seeking to conceal truth behind a wall of mis-cited precedent and steadfast obstructionism- in essence, government at its worst.

32. The language of the Freedom of Information Law, Public Officer's Law § 84, further illustrates the importance of an

open government. "The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality." (Emphasis added.)

33. This FOIL request seeks merely the name and date upon which a Home Rule was requested- not any privileged information contained in the substantive discussions between attorneys and their clients. A denial of access to this information contravenes the will of the people of the City and is a violation of the very principles of democracy- to have open government.

34. This Council cannot be permitted to shroud the legislative process in secrecy. The date and name of the Councilperson who requested a Home Rule on the instant bill must be provided in an appropriately transparent legislative process. The disclosure of that information cannot conceivably impede the Council's deliberative process or invade a privileged communication between attorney and client.

35. In attempting to manipulate the Freedom of Information Law to deny access to public information, the Respondents denied my union members and the public the transparency they deserve and are afforded in a democratic nation.

36. The obvious disregard of their obligations under FOIL requires that Respondents be compelled not only to promptly supply the requested information but also to pay Petitioner's attorney's fees. Such remedy is not only appropriate, but fully contemplated by the relevant statute.

FIRST CAUSE OF ACTION

37. Petitioner repeats, reiterates and realleges paragraphs "1" through "36" as if set forth more fully at length herein.

38. Failure of the Respondents to provide the information requested in Petitioner's valid FOIL request is a violation of their obligation under the Freedom of Information Law, Public Officers Law, Article 6.

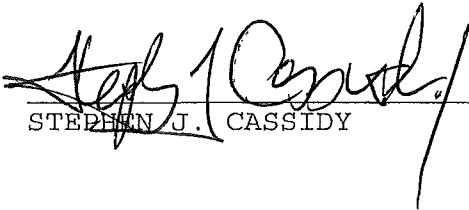
39. No prior application for this or similar relief has been made to any other Court or Judge.

WHEREFORE, it is respectfully requested that this Court issue an Order:

- (1) Directing Respondents to turn over the information requested in the FOIL Requests sent to the New York City Council on April 9, 2015;
- (2) Awarding reasonable attorney's fees and other litigation costs reasonably incurred pursuant to Public Officers Law § 89 4(c);

(3) Granting such other and further relief as to  
this Court may seem just and proper.

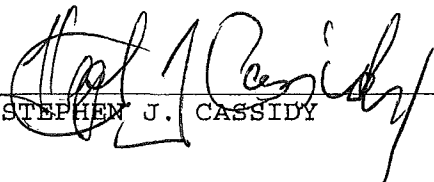
DATED: New York, New York  
July 13, 2015

  
STEPHEN J. CASSIDY

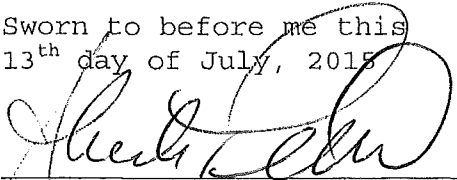
STATE OF NEW YORK     )  
                                  )SS.:  
COUNTY OF NEW YORK    )

STEPHEN J. CASSIDY, being duly sworn, deposes and says:

That he is the petitioner in the within action; that he has read the foregoing VERIFIED PETITION and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes them to be true.

  
STEPHEN J. CASSIDY

Sworn to before me this  
13<sup>th</sup> day of July, 2015

  
Notary Public

**SHEILA PETTIT**  
Notary Public, State of New York  
No. 01PE5066793  
Qualified in Nassau County  
Commission Expires Sept. 16, 2018



# EXHIBIT "A"

COMMUNITY OFFICE:  
71-19 80TH STREET, SUITE R-303  
GLENDALE, NY 11385  
(718) 366-3900  
FAX: (718) 326-3549

CITY HALL OFFICE:  
250 BROADWAY, SUITE 1765  
NEW YORK, NY 10007  
(212) 788-7381  
FAX: (212) 227-7164

EMAIL: [ecrowley@council.nyc.gov](mailto:ecrowley@council.nyc.gov)  
WEBSITE: [www.council.nyc.gov/crowley](http://www.council.nyc.gov/crowley)



THE COUNCIL OF  
THE CITY OF NEW YORK  
**ELIZABETH S. CROWLEY**  
COUNCIL MEMBER, 30<sup>TH</sup> DISTRICT, QUEENS

CHAIR  
FIRE AND CRIMINAL JUSTICE SERVICES

COMMITTEES  
CIVIL SERVICE AND LABOR  
COMMUNITY DEVELOPMENT  
CULTURAL AFFAIRS, LIBRARIES AND INTERNATIONAL  
INTERGROUP RELATIONS  
MENTAL HEALTH, DEVELOPMENTAL DISABILITY,  
ALCOHOLISM, DRUG ABUSE AND DISABILITY SERVICES  
WOMEN'S ISSUES

March 26, 2015

Brad Lander  
New York City Council  
250 Broadway  
New York, NY 10007

Re: Hearing on Res. 474

Dear Council Member Lander:

On November 25, 2014, I introduced a resolution (Res. 474) calling for parity in the pension disability benefits for all New York City police officers and firefighters. Presently, uniformed personnel hired prior to July 2009 have a disability benefit of seventy-five percent of pay with no social security offset and those hired afterwards have a benefit of fifty percent of pay with a further social security offset. This is simply unfair as police officers and firefighters, regardless of when they joined their respective Departments, respond to the same emergencies and therefore should receive equal benefits in the event disabling injuries ensue.

The resolution has been assigned to the State and Federal Legislation Committee and I write to request that we schedule a hearing if it is needed before March 31, 2015 so that the resolution can be placed on the calendar for a vote at the Stated Meeting on March 31, 2015.

Pursuant to the Council's Supermajority Bill Sponsorship Rule (Rule 7.110) it has been the Council's practice to have a substantive hearing on an introduction and resolution that meets the sponsorship threshold. Despite Res. 474 having met the threshold on January 21, 2015, more than sixty days have elapsed without a hearing. I urge you as Chairman of the Rules Committee to abide by the intent of the Supermajority rule and the Council's practice of scheduling a substantive hearing on legislation that satisfies the Rule's criteria.

Should you have any questions pertaining to this legislation, please contact my Legislative Director, Jeff Mailman, at (212) 788-7381.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth S. Crowley".

ELIZABETH S. CROWLEY  
Council Member, District 30, Queens

cc: Speaker Melissa Mark-Viverito  
Council Member Karen Koslowitz



COMMUNITY OFFICE:  
71-19 80TH STREET, SUITE 8-303  
GLENDALE, NY 11545  
(718) 366-3900  
FAX: (718) 326-3549

CITY HALL OFFICE:  
250 BROADWAY, SUITE 1765  
NEW YORK, NY 10007  
(212) 788-2581  
FAX: (212) 227-7164

EMAIL: [ecrowley@ council.nyc.gov](mailto:ecrowley@ council.nyc.gov)  
WEBSITE: [www.council.nyc.gov/ecrowley](http://www.council.nyc.gov/ecrowley)



THE COUNCIL OF  
THE CITY OF NEW YORK  
**ELIZABETH S. CROWLEY**  
COUNCIL MEMBER, 30<sup>TH</sup> DISTRICT, QUEENS

CHAIR  
FIRE AND CRIMINAL JUSTICE SERVICES

COMMITTEES  
CIVIL SERVICE AND LABOR  
COMMUNITY DEVELOPMENT  
CULTURAL AFFAIRS, LIBRARIES AND INTERNATIONAL  
INTERGROUP RELATIONS  
MENTAL HEALTH, DEVELOPMENTAL DISABILITY,  
ALCOHOLISM, DRUG ABUSE AND DISABILITY SERVICES  
WOMEN'S ISSUES

March 26, 2015

Matt Gewolb  
Legislative Director  
New York City Council  
250 Broadway  
New York, NY 10007

Dear Mr. Gewolb:

On January 14, 2015 I submitted a legislative service request (LS request) for a State Legislative Resolution (SLR) in connection with State bills S.3966, A.5295, and A.5311, all of which restore parity among the pension disability benefits for uniformed members within the New York police and fire departments. Despite the State legislature having requested an SLR, also known as a home rule, from the Council, my LS request has not been completed.

There is no reason why this LS request should not be fulfilled. As the prime sponsor, I write to request that it be completed and introduced at the Stated Meeting on March 31, 2015.

Should you have any questions pertaining to this request, please call me at my district office at (718) 366-3900.

Sincerely,

ELIZABETH S. CROWLEY  
Council Member, District 30, Queens

cc: Speaker Melissa Mark-Viverito  
Robert Newman  
Gary Altman



**EXHIBIT "B"**

# SULLIVAN PAPAIN BLOCK McGRATH & CANNAVO P.C.

120 BROADWAY • NEW YORK • NEW YORK 10271  
TELEPHONE: (212) 732-9000 • FACSIMILE: (212) 266-4141  
[SPBMC-NY@TrialLaw1.com](mailto:SPBMC-NY@TrialLaw1.com)

Robert G. Sullivan  
Nicholas Papain  
Michael N. Block  
Christopher T. McGrath  
Vito A. Cannavo  
John P. Nash  
Frank V. Floriani  
Marie Ng  
Eleni Coffinas

David J. Dean  
Hugh M. Turk  
Albert B. Aquila  
Brian J. Shoot  
Mary Anne Walling  
Erio K. Schwarz  
Elizabeth Montesano  
Deanne M. Caputo  
Liza A. Milgrim

Beth N. Jablon  
Susan M. Jaffe  
Terrence L. Tarver  
Clifford S. Argintar  
Thomas J. McManus  
Michael W. Lever  
Lauren M. Pennisi  
Sean A. McConnell  
Glenn W. Nick

Gabriel A. Aroc-Yee  
Carmen T. Rodriguez  
John D. Coville  
Ina Pecani  
Mark A. Apostolos  
Michael D. Kutner  
Eric C. Goldman  
Gonzalo G. Suarez

PLEASE REPLY TO:  
New York City Office

Hon. Joseph N. Giamboi (ret.)  
Stephen C. Glasser  
Paul F. Oliveri  
*Of Counsel*

John M. Tomsky  
Wendell Y. Tong  
*Counsel to the Firm*

Author's E-Mail Address:

Direct Telephone Line:

Private Fax Line:

April 09, 2015

Via mail and Email- [dbarbato@council.nyc.gov](mailto:dbarbato@council.nyc.gov)

Danielle Barbato  
Council Records Officer  
New York City Council  
250 Broadway  
New York, New York 10007

Re: FOIL request

Dear Ms. Barbato:

Please be advised that the undersigned are general counsel for the Uniformed Firefighters Association ("UFA").

Pursuant to the provisions of the Freedom of Information Law and Open Meetings Law, including but not limited to, Public Officer's Law §§ 87 and 88, please provide the undersigned, on behalf of the UFA, with the following:

- 1) The name of the Councilperson who first sought a Home Rule and/or "LS Request" in 2015 for the legislation sponsored by State Assemblyman Peter Abbate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits..
- 2) The first date in 2015 that a Home Rule request and/or "LS Request" was made for the legislation sponsored by State Assemblyman Peter Abbate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits.

SUFFOLK OFFICE  
33105 Main Road, Cutchogue, New York 11935  
TELEPHONE: (631) 734-2300 • FACSIMILE: (631) 734-2302  
[SPBMC-LI@TrialLaw1.com](mailto:SPBMC-LI@TrialLaw1.com)

NASSAU OFFICE  
1140 Franklin Avenue, Garden City, New York 11530  
TELEPHONE: (516) 742-0707 • FACSIMILE: (516) 742-7350  
[SPBMC-LI@TrialLaw1.com](mailto:SPBMC-LI@TrialLaw1.com)

NEW JERSEY OFFICE  
126 State Street, Hackensack, New Jersey 07601  
TELEPHONE: (201) 342-0037 • FACSIMILE: (201) 342-6461  
[SPBMC-NJ@TrialLaw1.com](mailto:SPBMC-NJ@TrialLaw1.com)

SULLIVAN PAPAIN BLOCK McGRATH & CANNAVO P.C.

- 3) The date of any upcoming hearing in the City Council for the Home Rule request and/or "LS Request" for the legislation sponsored by State Assemblyman Peter Abbate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits.
- 4) Minutes from any meeting at which the Home Rule request and/or "LS Request" was discussed by the City Council regarding the legislation sponsored by State Assemblyman Peter Abbate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits.

Very truly yours,

SULLIVAN PAPAIN BLOCK  
McGRATH & CANNAVO P.C.

By: 

Michael N. Block

MNB/amd  
(078343)

cc: Council Speaker Melissa Mark Viverito  
105 East 116<sup>th</sup> Street  
New York, NY 10029

# EXHIBIT "C"

## Block, Michael

---

**From:** Barbato, Danielle [DBarbato@council.nyc.gov]  
**Sent:** May 21, 2015 3:23 PM  
**To:** Block, Michael  
**Subject:** FOIL Request  
**Attachments:** HomeRuleRequestA6046S4269.pdf

Mr. Michael N. Block  
Sullivan Papain Block McGrath & Cannavo PC  
120 Broadway  
New York, New York 10007

Re: Freedom of Information Law Request  
April 10, 2015

Dear Mr. Block:

This letter serves as a response to your Freedom of Information Law (FOIL) request received in this office on the above date. Part one of your request asks for the name of the Council person who first sought a Home Rule and/or LS request in 2015 for legislation sponsored by Assembly Member Abatte (A6046) and State Senator Martin Golden (S4269). The New York City Council cannot confirm or deny the existence of the requested documentation. Please be advised that all documentation related to LS requests is denied pursuant to §87 (2)(a) of the Public Officer's Law, which permits documents or portions of documents to be withheld which are exempted from disclosure by state or federal statute. All documentation related to LS requests would be subject to the attorney-client privilege (see CPLR §4503 (a)).

The second part of your request asks for the date in which such request was received. As stated above to the extent such document may exist it would be denied pursuant to §87 (2)(a) of the Public Officer's Law, which permits documents or portions of documents to be withheld which are exempted from disclosure by state or federal statute. This portion of your request also asks for the first date in 2015 that a Home Rule request was made for legislation sponsored by Assembly Member Abatte (A6046) and State Senator Martin Golden (S4269). I have attached responsive documents to this part of your request.

The third and fourth portions of your request are denied. Please be advised that the New York City Council does not have responsive documents to either portion of your request. Under the Freedom of Information Law, this constitutes a denial of parts 3 and 4 of your request and you have an administrative right to appeal this decision.

If you wish to appeal, you may do so in writing, within thirty days, to Jason Otano, FOIL Appeals Officer, 15th Floor, 250 Broadway, New York, New York 10007 or [Jotano@council.nyc.gov](mailto:Jotano@council.nyc.gov). If you have any questions or concerns about this please contact me.

Very truly yours,



Danielle Barbato  
FOIL Officer

---

**CONFIDENTIALITY NOTICE:** This e-mail message is intended only for the person or entity to which it is addressed and may contain CONFIDENTIAL or PRIVILEGED material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

# EXHIBIT "D"

# SULLIVAN PAPAIN BLOCK McGRATH & CANNAVO P.C.

120 BROADWAY • NEW YORK • NEW YORK 10271  
TELEPHONE: (212) 732-9000 • FACSIMILE: (212) 266-4141  
[SPBMC-NY@TrialLaw1.com](mailto:SPBMC-NY@TrialLaw1.com)

[TrialLaw1.com](http://TrialLaw1.com)

Robert G. Sullivan  
Nicholas Papain  
Michael N. Block  
Christopher T. McGrath  
Vito A. Cannavo  
John F. Nash  
Frank V. Floriani  
Marie Ng  
Eleni Coffinas

David J. Dean  
Hugh M. Turk  
Albert B. Aquila  
Brian J. Shoot  
Mary Anne Walling  
Eric K. Schwarz  
Elizabeth Montesano  
Deanne M. Caputo  
Liza A. Milgrim

PLEASE REPLY TO:  
New York City Office

Beth N. Jablon  
Susan M. Jaffe  
Terrence L. Turver  
Clifford S. Argintar  
Thomas J. McManus  
Michael W. Lever  
Lauren M. Pennisi  
Sean A. McConnell  
Glenn W. Nick

Gabriel A. Arce-Yee  
Carmen T. Rodriguez  
John D. Coville  
Ina Pecani  
Mark A. Apostolos  
Michael D. Kutner  
Eric C. Goldman  
Gonzalo G. Suarez  
Katherine E. Mayo

Hon. Joseph N. Giamboi (ret.)  
Stephen C. Glasser  
Paul F. Oliveri  
*Of Counsel*

John M. Tomsky  
Wendell Y. Tong  
*Counsel to the Firm*

Author's E-Mail Address:

Direct Telephone Line:

Private Fax Line:

May 22, 2015

Via mail and Email- [Jotano@council.nyc.gov](mailto:Jotano@council.nyc.gov)

Mr. Jason Otano  
FOIL Appeals Officer  
250 Broadway, 15<sup>th</sup> Floor  
New York, New York 10007

Re: FOIL Request- Appeal

Dear Mr. Otano:

I hereby appeal the denial of access regarding my FOIL request dated April 9, 2015. On April 17, 2015, Ms. Barbato sent an email indicating that she would respond within twenty (20) business days to the request. The twenty days expired and I was not provided with the requested materials or any other response. Thus, I sent appeal letter to her attention on May 20, 2015. On May 21, 2015, I received an email response, which amounted to a complete denial of the public records.<sup>1</sup> The records denied include:

- 1) The name of the Councilperson who first sought a Home Rule and/or "LS Request" in 2015 for the legislation sponsored by State Assemblyman Peter Abbate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits..
- 2) The first date in 2015 that a Home Rule request and/or "LS Request" was made for the legislation sponsored by State Assemblyman Peter Abbate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits.

<sup>1</sup> A copy of each of the foregoing referenced documents is attached hereto.

SULLIVAN PAPAIN BLOCK McGRATH & CANNAVO P.C.

- 3) The date of any upcoming hearing in the City Council for the Home Rule request and/or "LS Request" for the legislation sponsored by State Assemblyman Peter Abbate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits.
- 4) Minutes from any meeting at which the Home Rule request and/or "LS Request" was discussed by the City Council regarding the legislation sponsored by State Assemblyman Peter Abbate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits.

Ms. Barbato indicates in her denial that "The New York City Council cannot confirm or deny the existence of the requested documentation" regarding requests "1" and "2". Ms. Barbato requested 20 business days to search the records, but is still uncertain whether the above items exist. The information requested above is not the sort that requires great effort to search, but rather should be easily ascertainable. Thus, this constitutes a denial of access to public information.

Similarly, Ms. Barbato articulates that even if she could confirm the existence of the above requested materials, disclosure to requests "1" and "2" is prohibited based upon Public Officer's Law § 87(2)(a)- the exemption based upon federal or state law. Interestingly, Ms. Barbato relies upon CPLR § 4503(a)- attorney/client privilege- as the statute that disclosure would violate. As is clear from the request, the undersigned is seeking the name of the public official who first sought a Home Rule and/or "LS Request" on a bill before the Council and the date of the request. Ms. Barbato has failed to cite any authority that would support a denial based upon this information being privileged. In so doing, Ms. Barbato has further denied access to public information.

With respect to requests "3" and "4", Ms. Barbato indicates that there are no documents responsive to this demand and she indicates that this constitutes a denial. Indeed, the undersigned appeals this determination, as well.

As required by the Freedom of Information Law, the head or governing body of an agency or whomever is designated to determine appeals, is required to respond within 10 business days of the receipt of an appeal. If the records are denied on appeal, please explain the reason for denial fully in writing as required by law.

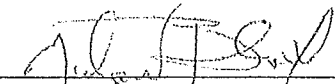
If you have any questions or need to discuss this matter, I can be reached at 212-732-9000.

SULLIVAN PAPAIN BLOCK McGRATH & CANNAVO P.C.

In addition, please be advised that the Freedom of Information Law directs that the affected agency send all appeals and the determinations that follow to the Committee on Open Government, Department of State, 1 Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

Very truly yours,

SULLIVAN PAPAIN BLOCK  
McGRATH & CANNAVO P.C.

By:   
Michael N. Block

MNB/amd  
(022352)

cc: Ms. Danielle Barbato  
Council Records Officer  
New York City Council  
250 Broadway  
New York, New York 10007

Council Speaker Melissa Mark Viverito  
105 East 116<sup>th</sup> Street  
New York, NY 10029

Committee on Open Government, Department of State  
1 Commerce Plaza  
99 Washington Avenue  
Albany, NY 12231

**EXHIBIT "E"**



THE COUNCIL  
OF  
THE CITY OF NEW YORK  
OFFICE OF THE GENERAL COUNSEL  
250 BROADWAY, 15TH FLOOR  
NEW YORK, N.Y. 10007

JASON ADOLFO OTAÑO  
MANAGING COUNSEL

TEL: (212) 788-6886  
FAX: (212) 513-0701  
jotano@council.nyc.gov

June 4, 2015

VIA E-MAIL (MBlock@triallaw1.com)

Michael N. Block  
Sullivan Papain Block  
McGrath & Cannavo P.C.  
120 Broadway, New York, NY 10271

Re: FOIL Appeal Dated May 22, 2015

Dear Mr. Block:

I write in response to your appeal, pursuant to the New York State Freedom of Information Law ("FOIL"), codified at §§ 84-90 of the Public Officers Law ("POL"), from the determination of Council staff in response to your April 9, 2015 FOIL request.

You have requested information contained in an LS Request concerning "legislation sponsored by State Assemblyman Peter Abate (A6046) and State Senator Martin Golden (S4269) relating to the disability benefits of members of the New York City police and fire pension funds or any similar legislation in regards to Fire and Police disability benefits." Subsequently, you appealed the Council FOIL Officer's decision to withhold information contained in the LS Request. Accordingly, I have reviewed the entire production. The following is a discussion of the applicable statutory exemptions from disclosure and my conclusions after reviewing the records.

**Privileged communications (POL § 87(2)(a))**

Public Officers Law Section § 87(2)(a) provides an exemption for release of records that are "specifically exempted from disclosure by state or federal statute." Communications between Council members or Council staff and Council attorneys for the purpose of receiving or rendering legal advice and accordingly, are subject to the attorney-client privilege (see CPLR §4503(a)). Such records, such as LS Requests are exempted from FOIL. See, e.g., Matter of Orange County Publications, Inc. v. County of Orange, 168 Misc.2d 346, 352 (Sup. Ct. Orange Co. 1995) (attorney-client privilege relating to facts

of which attorney was informed, an opinion on law, legal services, or assistance in some legal proceeding).

Upon review, I have concluded that Council staff properly withheld records containing privileged communications. Furthermore, even if these records were not privileged communications, they would be considered inter-agency communications and thus exempt.

**Intra-agency and inter-agency communications (POL §87(2)(g))**

Public Officers Law Section 87(2)(g) exempts from disclosure inter-agency or intra-agency records that are not (i) statistical or factual tabulations or data, (ii) instructions to staff that affect the public, (iii) final agency policy or determinations, (iv) external audits, including but not limited to audits performed by the comptroller and the federal government. This exception is intended to permit people within an agency or between agencies to exchange opinions, advice and criticism "freely and frankly." New York Times Co. v. City of New York Fire Dep't, 4 N.Y.3d 477, 488 (2005).

I have determined the FOIL Officer's withholding the LS Request was consistent with the relevant sections of the Freedom of Information Law (N.Y. Public Officers Law § 87(2)). Documents such as LS requests are intra-agency communications that include opinions, recommendations, or advice, or instructions to staff that do not affect the public. Such communications were properly withheld

You further requested the date of upcoming hearings and minutes from any meetings concerning the subject of your request. In response to this I would direct you to the Council's website at:

<http://legistar.council.nyc.gov/MeetingDetail.aspx?ID=400916&GUID=347614BD-2D18-4530-B40D-B0A9AA1DDB6E&Search=>

Here you will find the public information available (including documents and video) for the May 26 meeting of the Committee on State and Federal Legislation concerning the following:

File #	Prime Sponsor	Name	Type	Action
T2015-3082		Topic - Disability Pension Reform for Members of New York City Uniformed Services and Related New York State Legislature Home Rule Requests	Oversight	Hearing Held by Committee
T2015-3082		Topic - Disability Pension Reform for Members of New York City	Oversight	Filed, by Committee

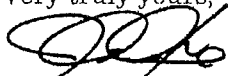


File #	Prime Sponsor	Name	Type	Action
		Uniformed Services and Related New York State Legislature Home Rule Requests		
Res 0474-2014	Elizabeth S. Crowley	Create parity among the different pension tiers for employees of the uniformed services.	Resolution	Hearing Held by Committee
Res 0474-2014	Elizabeth S. Crowley	Create parity among the different pension tiers for employees of the uniformed services.	Resolution	Laid Over by Committee

You will note in the video of the proceedings that Council Member Crowley identified herself as the Member that introduced the Legislation. You will also find on the text of the Resolution 0474-2014 that the final draft of the document was created on November 24, 2014.

This letter is a final determination of the agency. You have the right to seek review of this determination pursuant to Article 78 of the Civil Practice Law and Rules and Public Officers Law § 89(4)(b).

Very truly yours,



Jason A. Otaño  
FOIL Appeals Officer

cc (via e-mail):

Robert Freeman  
Committee on Open Government  
N.Y. Department of State  
162 Washington Avenue  
Albany, N.Y. 12231  
rfreeman@dos.state.ny.us

Danielle Barbato  
Records Access Officer  
Council of the City of New York  
250 Broadway, 15<sup>th</sup> Floor  
New York, NY 10007  
dbarbato@council.nyc.gov