

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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In the Matter of the Application of
SEAN MADDEN,

Petitioner,

for a Judgment pursuant to ARTICLE 78
Of the Civil Practice Laws and Rules

NOTICE OF PETITION

-against-

Index Number:

VILLAGE OF TUXEDO PARK, CLAUDIO GUAZZONI,
solely in his capacity as Village of Tuxedo Park Trustee,
and DEBBIE MATTHEWS, solely in her capacity
as VILLAGE CLERK for the Village of Tuxedo Park;

Respondents.
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Upon the Petition herein duly verified on the 6th day of June, 2017 and upon all the prior papers and proceedings heretofore had herein, an application will be made at the Orange County Supreme Courthouse, 285 Main Street, Goshen, New York on the 30th day of June 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 C.P.L.R. Article 78:

Petitioner seeks an Order (1) declaring that the Respondents violated FOIL; (2) directing that Respondents comply fully with Petitioner's FOIL request(s), as set forth more fully herein; (3) directing that Respondent GUAZZONI cease from further use of his personal email server to conduct official business of the VILLAGE; (4) exercising its equitable powers and directing that Respondents pay all costs and attorneys' fees associated with this proceeding; and (5) granting such other relief as this Court deems just and proper.

Any Verified Answer, Memorandum of Law and supporting affidavits, if any, must be served at least ~~seven~~ (7) days before the return date of this application.

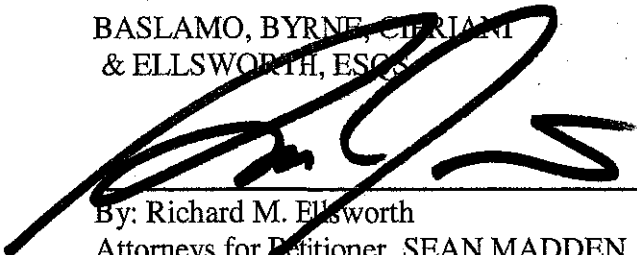
PLEASE TAKE NOTICE that pursuant to C.P.L.R. 7804(e) you are directed to file with the Clerk of the Court and serve upon the Petitioner together with your Answer, and answering affidavits a Certified Transcript of the record of the proceeding under consideration, together with the entire file containing the records of the Petitioner herein held by Respondents and referred to said proceedings as being in the record as official records kept by the Respondents herein.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, must be served no later than five (5) days before the return date, and if served by mail, no later than ten (10) days before the return date.

Orange County is designated as the venue of this proceeding based on the location of the subject property and of the Planning Board for the Village of Tuxedo Park, New York.

Dated: Suffern, New York
June 7, 2017

BASLAMO, BYRNE, CIPRIANI
& ELLSWORTH, ESQ.



By: Richard M. Ellsworth
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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SEAN MADDEN,

Petitioner,

for a Judgment pursuant to ARTICLE 78
Of the Civil Practice Laws and Rules

VERIFIED PETITION

-against-

VILLAGE OF TUXEDO PARK, CLAUDIO GUAZZONI,
solely in his capacity as Village of Tuxedo Park Trustee,
and DEBBIE MATTHEWS, solely in her capacity
as VILLAGE CLERK for the Village of Tuxedo Park;

Respondents.
-----X

Petitioner SEAN MADDEN, by his attorneys, BALSAMO, BYRNE, CIPRIANI &
ELLSWORTH, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. Petitioner brings this proceeding pursuant to Article 78 of the Civil Practice Law and Rules challenging (1) the Respondents' failure to comply fully with Petitioner's requests pursuant to the Freedom of Information Law (N.Y. Pub. Off. Law §§ 84-90 ("FOIL")); (2) Respondent VILLAGE CLERK'S failure to properly maintain custody of the records, books and papers of the Village of Tuxedo Park (hereinafter, the "VILLAGE") in violation of N.Y. Pub. Off. Law §§ 84-90, NY Town Law § 30, N.Y. Arts & Cult. Aff. § 57, and 21 NYCRR Part 1401; (3) Respondent VILLAGE CLERK'S failure to make records of the VILLAGE promptly available for inspection in violation of 21 N.Y.C.R.R. 1401.2 and the Tuxedo Park Code; and (4) Respondent CLAUDIO GUAZZONI'S (hereinafter, "GUAZZONI") use of a private email

server to conduct official business for the VILLAGE which has precluded the VILLAGE CLERK from fulfilling her statutory duties.

2. Petitioner argues that the above actions by the Respondents were arbitrary, capricious and an abuse of discretion, in excess of Respondents' authority and in violation of lawful procedure.

3. Petitioner submits that he has exhausted all administrative remedies as demonstrated herein, and a petition pursuant to Article 78 is the appropriate avenue to pursue the relief requested herein. See N.Y. Pub. Off. Law § 89.4(b).

4. Petitioner seeks an Order (1) declaring that the Respondents violated FOIL; (2) directing that Respondents comply fully with Petitioner's FOIL request(s), as set forth more fully herein; (3) directing that Respondent GUAZZONI cease from further use of his personal email server to conduct official business of the VILLAGE; (4) exercising its equitable powers and directing that Respondents pay all costs and attorneys' fees associated with this proceeding; and (5) granting such other relief as this Court deems just and proper.

PARTIES

5. The Petitioner, SEAN MADDEN (hereinafter, "MADDEN") is, at all times hereinafter mentioned, an individual who is an owner and resident at 64 Tower Hill Loop, Tuxedo Park, New York 10987.

6. Respondent VILLAGE is, at all times relevant hereto, a municipal corporation organized and existing by virtue of the laws of the State of New York.

7. Respondent GUAZZONI is, at all times relevant hereto, a Trustee of the Village of Tuxedo Park, an elected official duly sworn and obligated to uphold the laws of the Village of Tuxedo Park, the State of New York and the laws of the United States of America.

8. Respondent GUAZZONI is, at all times relevant hereto, Chairman and Co-founder and Chief Executive Officer of Zannet, Inc., an information technology management company which provides customized information technology solutions to corporations and mid-market companies in the United States. Bloomberg, <http://www.bloomberg.com> (last visited June 1, 2017).

9. Respondent DEBBIE MATTHEWS, in her capacity as VILLAGE CLERK, is at all times relevant hereto, the appointed Clerk of the Village of Tuxedo Park, sworn and obligated to uphold the laws of the Village of Tuxedo Park, the State of New York and the laws of the United States of America, as well as the Records Access Officer for the Village of Tuxedo Park and, as such, is charged with, among other things, management, custody, retention and disposal of all records kept by the VILLAGE.

BACKGROUND

10. As set forth more fully below, underlying the FOIL issue presented in this petition is an upcoming VILLAGE election on June 20, 2017, involving, among other things, positions for Mayor of Tuxedo Park and two members of the Board of Trustees. Petitioner MADDEN has been a resident of the VILLAGE for the last twelve years. His goal is to communicate to residents of the VILLAGE his position regarding the upcoming election and his views on the candidates, in particular, Respondent GUAZZONI. To that end, Petitioner MADDEN'S efforts, through the Freedom of Information Act, are to obtain email lists which Respondent GUAZZONI has used, in his official capacity as Trustee of the VILLAGE, to reach as many of the constituents of the VILLAGE as possible.

11. Petitioner MADDEN'S motivation for the FOIL requests at issue is no secret to Respondent GUAZZONI. It is in that vein that the instant matter has arisen. While Petitioner MADDEN has expended numerous hours and extended several accommodations to the Respondents to obtain the requested documents in a most reasonable and conciliatory manner, his simple request has been met with tactics intentionally meant to stall and delay his efforts. Such maneuvers have not only amounted to statutory violations on various levels, but have more seriously risen to a level of denying him the ability to exercise his First Amendment Rights under the United States Constitution. Moreover, the obstructive tactics are all the more transparent and egregious here, where the FOIL request in question is directed squarely at Respondent GUAZZONI, the very person whose candidacy Petitioner MADDEN opposes.

The Original FOIL Request

12. On February 22, 2017, Petitioner MADDEN filed a request pursuant to FOIL with the VILLAGE CLERK which stated, in pertinent part:

I respectfully request an electronic file with all of the names and email addresses of Tuxedo Park residents that are in the records of the Village for whatever purpose, including, without limitation for email distribution of the Mayor's Newsletter. I intend to use such records only to further public discourse on matters of public importance and concern in the Village, and I hereby certify that I will not use such information for solicitation, fundraising or any other commercial purpose. I am apprised that all of the major email vendors have the functionality to electronically reproduce such email lists, but in the unlikely event that the Village believes it cannot provide such records electronically, then I request a hard copy printout of such email addresses.

See email from Sean Madden to Debbie Matthews – Village of Tuxedo Park, dated February 22, 2017, a copy of which is annexed hereto as Exhibit "A." The February 22, 2017 email is hereinafter referred to as the "Original FOIL Request."

13. In response to the Original FOIL Request, on February 24, 2017, the VILLAGE CLERK forwarded to Petitioner MADDEN a list of approximately 70 email addresses used to send the Mayor's newsletter and noted, "[u]nfortunately, we do not have that many emails as we are not privy to anyone's personal mailing list." A copy of the February 24, 2017 email from Debbie Matthews to Sean Madden is annexed hereto as Exhibit "B" As set forth more fully herein, Trustee GUAZZONI uses a personal gmail account to conduct official business for the VILLAGE, which has further frustrated the ability of the VILLAGE CLERK to comply with Petitioner MADDEN'S FOIL requests and properly carry out her duties as Records Access Officer for the VILLAGE.

14. Petitioner MADDEN immediately responded in an email to the VILLAGE CLERK dated February 24, 2017, questioning whether the list provided was exhaustive of all email lists used to conduct VILLAGE business.

Are there any other separate email lists for other purposes such [sic] water or property tax bills, Code Red etc.? In other words, are these two lists the totality of what the Village has, or is this just what you have and you are awaiting further lists or confirmation that there are no such lists? I'm just trying to clarify whether I now have everything or there might be a few more emails that your search uncovers.

See February 24, 2017 email from Sean Madden to Debbie Matthews, a copy of which is annexed hereto as Exhibit "C."

15. The VILLAGE CLERK responded to Petitioner MADDEN'S by email dated February 24, 2017:

We don't have emails for the water or property tax billings. CodeRed information is maintained by the Police Department and we don't have access to that.

My email lists and John's email list are the only ones we have access to at the Village Office. I doubt that any of the trustees or the mayor have a list that they would consider 'foilable'. However, I will send out a request to them on Monday and ask. I will let you know what their responses are. I'll ask the Police as well, but I doubt the Chief would release resident information.

See February 24, 2017 email from Debbie Matthews to Sean Madden, a copy of which is annexed hereto as Exhibit "D."

16. Petitioner MADDEN immediately thereafter responded to the VILLAGE CLERK by email dated February 24, 2017:

Debbie, with respect to the Chief, you might check with Brian Nugent as I believe he cannot withhold emails ("records") the police has unless there is a valid law enforcement reason as provided under FOIL. The police do not have any type of blanket FOIL exemption.

See February 24, 2017 email from Sean Madden to Debbie Matthews, a copy of which is annexed hereto as Exhibit "E."

17. The VILLAGE CLERK responded in an email to Petitioner MADDEN, “[o]k, I will check.” See email dated February 24, 2017 from Debbie Matthews to Sean Madden, a copy of which is annexed hereto as Exhibit “F.”

18. Pursuant to FOIL, the VILLAGE CLERK was required to respond within five business days of receipt of the Original Foil Request by: (1) providing the record, (2) denying the request in writing or (3) providing a written acknowledgement of the request and a statement of the approximate date when his request would be granted or denied. Specifically, § 89(3)(a) provides, in pertinent part, as follows:

(a) Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with subdivision five of this section.

N.Y. Pub. Off. Law § 89.3(a).

19. As of March 1, 2017 (five business days after the Original FOIL Request), having not received the totality of the records sought, nor a written response denying the request or a written statement informing Petitioner MADDEN in writing of the approximate date by when his request would be granted or denied, the VILLAGE CLERK violated FOIL. Accordingly, the VILLAGE CLERK’S failure to comply with § 89.3(a) constituted a denial. See N.Y. Pub. Off. Law § 89.4(a)(“Failure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial.”)

20. Petitioner MADDEN sent a follow up email to the VILLAGE CLERK on March 17, 2017 which provided:

Debbie, I am following up on my FOIL request below. Have you provided all of the records in the Village's possession, or are you still searching? As I indicated previously, it seems the police have an email list (I received emails this week regarding the storm). Under FOIL, the Village must either produce these records or state a statutory basis for denying them. FWIW, I do not believe there is any valid statutory exception that would permit the Village to withhold records of email addresses.

A copy of the March 17, 2017 email from Sean Madden to Debbie Matthews is annexed hereto as Exhibit "G."

21. Again, Petitioner MADDEN received no response.

22. Based upon the March 1, 2017 constructive denial, Petitioner MADDEN filed an appeal within the thirty days prescribed by FOIL on March 31, 2017. See N.Y. Pub. Off. Law § 89.4(a).

The appeal provides, in pertinent part, as follows:

It seems the Village has emails that are within my FOIL request but that have not been produced. ...At this point, the Village must either certify that it has conducted a diligent search and disclosed all records responsive to my request or that it has withheld certain records based on a specifically identified statutory exemption to disclosure.

See March 31, 2017 email from Sean Madden to Debbie Matthews, a copy of which is annexed hereto as Exhibit "H."

23. On April 5, 2017, during the pendency of the appeal, Petitioner MADDEN discovered an email dated June 29, 2016 from Respondent GUAZZONI to "undisclosed recipients" which was sent from a google email address for Respondent GUAZZONI (TrusteeClaudio10987@gmail.com), which is the same google email address listed on the VILLAGE website under Respondent GUAZZONI'S contact information. Since the June 29th email was sent from the google email account and arguably would have been sent to all residents of the VILLAGE, Petitioner MADDEN requested in writing, Respondent GUAZZONI'S email list he uses "to communicate with constituents from his official [Village of Tuxedo Park] email address" which Petitioner MADDEN

further alleged was "within the parameters of [the] initial FOIL request." See April 5, 2017 email from Sean Madden to Village of Tuxedo Park Attorney Brian D. Nugent (hereinafter, "Attorney Nugent"), a copy of which is annexed hereto as Exhibit "I."

24. In another attempt to avoid compliance with Petitioner's FOIL request, by letter dated April 5, 2017 from Attorney Nugent to Petitioner MADDEN, Attorney Nugent noted that the Village of Tuxedo does not control the email account used by Respondent GUAZZONI which is listed on the Village of Tuxedo Park website. Specifically, Attorney Nugent wrote:

We note that although the email address used by Trustee Guazzoni is listed as a contact email on the Village website, the email address is not "official" in the sense that it is not an "@tuxedopark-ny.gov" address which is the official email domain of the Village. In other words, the Village does not control that email account. However, to the extent that the email address is used for Village business, such account would be subject to disclosure in the event of FOIL requests based on existing opinions and case law...If you are seeking a record of who that email was sent to, we would recommend that you submit a FOIL request for that purpose in order to avoid confusion with respect to the pending request and appeal as there has been no denial of that specific request by the Records Access Officer.

The April 5, 2017 email from Attorney Nugent to Sean Madden is annexed hereto as Exhibit "J."

25. In response to the above, Petitioner MADDEN sent an email to Attorney Nugent, criticizing his hyper-technical view of what the FOIL request was seeking, but attempted to again, accommodate Attorney Nugent's request by offering clarification of what Petitioner MADDEN plainly sought through FOIL. Petitioner MADDEN'S email stated, in pertinent part:

I reiterate my position that that [sic] my initial FOIL request clearly encompassed the email list (which necessarily includes a list of all individual email addresses to which Trustee Guazzoni addressed the aforementioned emails) utilized by Trustee Guazzoni to communicate with Village residents about official Village business in his capacity as a Village official, as per the email below (and others I believe). That said, in the alternative, you should construe this email as a clarification of my initial FOIL request, or in the last alternative as a Follow-up FOIL request, to include Trustee Gauzzoni's email

distribution list (i.e. a list of emails to whom Trustee Guazzoni's email(s) was sent).

See April 5, 2017 email from Sean Madden to Attorney Nugent, a copy of which is annexed hereto as Exhibit "K."

26. Attorney Nugent responded to the above in an email to Petitioner MADDEN dated April 5, 2017, "...so if you want the Guazzoni email with the list of actual recipients, please confirm and we will have Debbie forward that request to Trustee Gauzzoni." A copy of the April 5, 2017 email is annexed hereto as Exhibit "L."

The Follow-up FOIL Request

27. In the interests of accommodating Attorney Nugent and a strong desire to most effectively and efficiently ensure the VILLAGE'S compliance with his FOIL requests in light of the impending election, on April 5, 2017, Petitioner MADDEN made a follow-up FOIL request for the June 29, 2016 email record (the "Follow-up FOIL Request"), despite the fact that the Original FOIL Request would have covered the email sought in the Follow-up FOIL Request.

Specifically, Petitioner MADDEN stated, in pertinent part:

[y]es, with reference to your email below, I would like 'the Guazzoni email with the list of actual recipients,' as you described, and I appreciate that Debbie will follow up with Trustee Guazzoni to that end.

A copy of the April 5, 2017 from Petitioner MADDEN to Attorney Nugent, is annexed hereto as Exhibit "M."

28. After hearing nothing from the VILLAGE in response to the Follow-up FOIL Request within the five-day statutorily prescribed time frame (a violation under FOIL), Petitioner MADDEN sent an email dated April 25, 2017, to Attorney Nugent and Respondent VILLAGE

CLERK inquiring as to the status of the Follow-up FOIL Request. Respondent VILLAGE

CLERK promptly responded to Petitioner MADDEN stating:

I have not heard anything from Trustee Guazzoni. I mentioned to Brian Nugent last Friday that I have not received anything. Brian said he was going to follow up with Claudio. I haven't received anything from either.

See April 25, 2017 email from Debbie Matthews to Sean Madden, a copy of which is annexed hereto as Exhibit "N."

29. In an email dated May 21, 2017, Petitioner MADDEN again pointed out to the Respondents another method by which they could comply with his FOIL requests. He directed the Respondents to an electronic survey conducted in August, 2016, by the VILLAGE of all residents concerning the gate house in the VILLAGE. Specifically, the email stated:

This survey was disseminated via email and concerned a matter of great public interest in the community. These email records (the email addresses of residents to whom the survey was directed) are clearly records that should be retained by the Village and are within the scope of my original FOIL request. According to the Village's own data, over 250 residents responded to this survey so clearly it was directed to even more residents.

The May 21, 2017 email is annexed hereto as Exhibit "O."¹

The FOIL Appeal

30. The Respondents' failure to respond within FOIL'S statutorily prescribed time for a response amounted to a constructive denial of the Follow-up FOIL Request. N.Y. Pub. Off. Law

¹ Respondent GUAZZONI confirmed that he was the person who administered the Survey Monkey survey for the gate house in an entry made by him on a "Tuxedo Park FYI" website (a website maintained by VILLAGE residents for the purpose of providing a vehicle for polite public discourse and opinion regarding issues of relevance to the affairs of the town of Tuxedo and the village of Tuxedo Park). On the FYI website, Respondent GUAZZONI responded to a question posed to all candidates running for the upcoming VILLAGE election, concerning the gate house and stated, in pertinent part, "[i]t was only this past August, 9 months ago that I suggested a BOT sanctioned survey of all Village Residents as to which style booth was most desirable. I immediately designed and administered the survey myself, on the part of the BOT." Respondent GUAZZONI further confirmed that the total number of responses to the survey was 274. A copy of the relevant post by Respondent GUAZZONI is annexed hereto as Exhibit "P." Available at <http://www.tpfyi.com/village-bot-election-2017.html> (last visited June 5, 2017).

§ 89(4)(a). Accordingly, on May 11, 2017, Petitioner MADDEN filed an appeal in accordance with N.Y. Pub. Off. Law § 89.4(a) (hereinafter, the "FOIL Appeal"). A copy of the FOIL Appeal is annexed hereto as Exhibit "Q."

31. By letter dated May 24, 2017, in his capacity as designee of FOIL appeals for the Board of the Village of Tuxedo Park, Attorney Nugent made a determination that Petitioner MADDEN'S FOIL Appeal was approved (hereinafter, the "Appeal Decision.")

32. The Appeal Decision provides, in pertinent part, as follows:

[P]lease allow this correspondence to respond to your FOIL appeal concerning an email distribution list utilized by Trustee Guazzoni for the purposes of sending an email to constituents discussing Village of Tuxedo Park matters. We note that your appeal followed an earlier request for copies of email distribution lists used by Village Trustees. Your appeal is from a constructive denial, as no response was received to your request for copies of the email addresses utilized by Trustee Guazzoni to communicate with Village residents regarding Village matters.

Based upon a review of current law, the recipient email addresses utilized by Trustees of the Village for the purpose of sending communications to residents and other parties interested in Village business do not fall within any stated exemption under Section 87 of the New York State Public Officers Law and should therefore be disclosed in response to the request. Accordingly, to the extent that a Trustee is in possession of a list of recipient email addresses that is used for the purpose of communicating with such recipients concerning Village business, such email addresses should be disclosed.

A copy of the Appeal Decision is annexed hereto as Exhibit "R."

33. In response to the Appeal Decision, on May 25, 2017, Respondent VILLAGE CLERK sent an email to Petitioner MADDEN stating, in pertinent part:

As a follow-up to your FOIL appeal, I have received email lists from Trustee McFadden – in electronic format and from Trustee Guazzoni – in paper form. ...Attached are the items in the format in which I received them.

See May 25, 2017 email from Debbie Matthews to Sean Madden, a copy of which is annexed hereto as Exhibit "S. The attached list from Respondent Guazzoni is annexed hereto as Exhibit "T."

Post-Appeal Decision Communications

34. Per the May 25, 2017 email from the VILLAGE CLERK, Trustee McFadden provided his email lists in electronic format; Respondent GUAZZONI'S list was in paper form despite the Petitioner MADDEN'S original request that the lists be in electronic format. Additionally, Respondent GUAZZONI'S lists appear to be both under-inclusive and over-inclusive of the Original FOIL Request and the Follow-up FOIL Request. In fact, it appears that the list provided by Respondent GUAZZONI consisted of photocopies of the local church directory and the Tuxedo Club Directory, neither of which contains all the addresses of the residents of the Village of Tuxedo Park. Incidentally, the list also includes scores of email addresses of non-residents of Tuxedo Park -- again, non-responsive to either the Original FOIL Request or the Follow-up FOIL Request.

35. As such, this was not the list that Respondent GUAZZONI used for his June 29 email to constituents, and therefore was not the "record" which Petitioner MADDEN specifically requested in the Follow-up FOIL Request, nor was it the list of email addresses used by VILLAGE Trustees to conduct VILLAGE business, as was requested in the Original FOIL Request.

36. On May 25, 2017, Petitioner MADDEN responded to the VILLAGE CLERK'S production in an email to Attorney Nugent believing that there were two specific email records which would have satisfied his Original FOIL Request: (i) the list used for the June 29, 2016 email from Respondent GUAZZONI to residents of the VILLAGE concerning lighting within the VILLAGE; and (ii) the email list used to populate a survey for all VILLAGE residents

regarding the VILLAGE gate house (the "Survey Monkey List"). Specifically, Petitioner

MADDEN stated:

This was not the list of emails to whom the Village booth survey was sent last August nor is it the list that trustee Guazzoni utilized for his email of June 29 that was the subject of my appeal and still has not been produced. In addition, it is in a format that is designed to be difficult to use. I believe that Survey Monkey and Paperless Post, which trustee Guazzoni has utilized with his email list of residents, facilitates export of emails into an Excel file (as Trustee McFadden has so provided his email list).

See May 25, 2017 email from Sean Madden to Attorney Nugent, a copy of which is annexed hereto as Exhibit "U."

37. Petitioner MADDEN'S intent was to point out to the VILLAGE two places from which he believed was the full list of VILLAGE residents email addresses could be culled from Respondent GUAZZONI. Indeed, the methods suggested by Petitioner MADDEN would have afforded Respondent GUAZZONI, and thus, the VILLAGE a simple solution for compliance with Petitioner MADDEN'S FOIL requests. Yet, the VILLAGE and Respondent GUAZZONI continued to thwart their responsibilities to comply with FOIL.

38. Despite the passage of three months since the Original FOIL Request, and the Respondents' continued failure to comply properly under FOIL, Attorney Nugent responded to Petitioner MADDEN'S email above by offhandedly downplaying the instant dispute and shifting the blame of the Respondents' continued failure to comply under FOIL to Petitioner MADDEN. The email from Attorney Nugent stated, in pertinent part, as follows:

In the interests of trying to resolve unnecessary litigation over email addresses, I spoke with Trustee Guazzoni via telephone to assist him in attempting to retrieve the original email you request with recipients. Without getting into the technical aspects, Trustee Guazzoni was unable to view email addresses on the undisclosed recipient list when viewing the email. He was only able to view the name of recipients on the email client. However, I was able to assist Trustee Guazzoni in printing a hard copy that does show the recipient email addresses. However, if the email is forwarded

or sent directly to someone, it will not include or show the undisclosed recipients. Thus, the record cannot be provided in electronic format since the recipient emails [sic] addresses would not be displayed. Trustee Guazzoni will deliver a hard copy to the Village Clerk tomorrow in response to your original request.

If you are still requesting specific information that you feel has not been disclosed in response to a specific FOIL request, please provide a list of those requests by itself. Unfortunately, the length and volume of your emails on this issue, interspersed with references to other emails, legal assertions, and various opinions has made handling and deciphering what is a FOIL request and what is not burdensome.

The May 25, 2017 email from Attorney Nugent to Sean Madden is annexed hereto as Exhibit "V."

39. Incidentally, the hand-holding by Attorney Nugent to assist Respondent GUAZZONI with this process is ironic given Trustee GUAZZONI'S background as founder and executive of an information technology corporation for the past 17 years. These factors further highlight Respondent GAUZZONI'S gamesmanship and bad faith in failing to produce his e-mail distribution lists in response to Petitioner MADDEN'S numerous requests, which lists can be readily produced essentially with the push of a button. Such efforts are hardly beyond the capabilities of Respondent GUAZZONI whose technology expertise is arguably well beyond the average layperson.

40. In response to the above, in an email dated May 25, 2017, to Attorney Nugent,

Petitioner MADDEN wrote, in pertinent part:

I have already specified the most expedient remedy: trustee Guazzoni should export to Excel the list of email invitees to his recent "candidate forum" at his home. This can be done literally with the press of a button in Paperless Post. Everyone in Tuxedo Park that I know was invited. Even me; which demonstrates how broad the invite list was. Alternatively, he can produce from Survey Monkey in electronic format the email addresses that I understand he utilized on behalf of the [Board of Trustees] for the August 2016 survey. I expect that the two lists would be virtually identical and would largely match what he proposes to produce (after his time to do so has long passed) in hard copy. Under the circumstances,

production of email addresses in paper format is not acceptable to me and does not comply with FOIL.

...

Anything less than a fulsome list in electronic format is further evidence of [Trustee Guazzoni's] bad faith. He knows I will use these emails to vigorously oppose his candidacy, and so he has consistently and in bad faith obstructed production of them, thereby impeding my First Amendment rights. Notwithstanding the delays, deception and obfuscation put forth by trustee Guazzoni, I will consider not instituting litigation if I receive an Excel file with all of his email addresses by noon tomorrow.

A copy of the May 25, 2017 email from Sean Madden to Attorney Nugent is annexed hereto as Exhibit "W."

41. On May 30, 2017, Petitioner MADDEN received a copy of the June 29, 2016 email with a list of its recipients in paper form, instead of electronically, as required. It contained approximately 250 email addresses, 30 of which were duplicates for the same person. A copy of the June 29, 2016 email with its list of recipients is annexed hereto as Exhibit "X."

42. Thus, based upon the above, the Respondents failed to produce the requested records in their entirety, failed to produce the requested records in a timely fashion, and failed to produce the records in the proper electronic format – all in violation of FOIL and the Appeal Decision.

**RESPONDENTS' FAILURE TO COMPLY WITH
APPLICABLE LAW AND THE APPEAL DECISION
REGARDING PETITIONER'S FOIL REQUEST WAS
ARBITRARY, CAPRICIOUS AND AN ABUSE OF DISCRETION**

43. "To promote open government and public accountability, [the Freedom of Information Law] imposes a broad duty on government to make its records available to the public." Gould v. New York City Police Dep't., 89 N.Y.2d 267, 675 N.E.2d. 808 (1996)(citing Public Officers Law § 84 [legislative declaration]). Specifically, the legislative declaration for FOIL provides, in pertinent part:

Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality. The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

Public Officers Law, § 84.

44. It is against this backdrop that the instant dispute has arisen.

45. Various statutes and regulations govern the duties of government officials with respect to maintenance, custody and access to government records.

46. Section 89.1 of FOIL requires the Committee on Open Government to promulgate regulations concerning the procedural implementation of that statute (21 NYCRR part 1401) (see Public Officers Law § 89.1). In turn, § 87.1 requires the governing body of a public corporation to adopt rules and regulations consistent with those promulgated by the Committee and with the Freedom of Information Law. Further, 1401.2 of the regulations provide, in pertinent part:

- (a) The governing body of a public corporation and the head of an executive agency or governing body of other agencies shall be responsible for insuring compliance with the regulations herein, and shall designate one or more persons as records access officer by name or by specific job title and business address, who shall have the duty of coordinating agency response to public requests for access officers shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so.

21 NYCRR Part 1401.2.

47. Respondent VILLAGE CLERK has been designated by the VILLAGE as the Records Access Officer for the VILLAGE. Village of Tuxedo Park Code § 21-2. As such, pursuant to section 1401.2(b) of the NYCRR, the VILLAGE CLERK is charged with assuring that agency personnel...

- (3) upon locating the records, take one of the following actions:
 - (i) make records promptly available for inspection; or
 - (ii) deny access to the records in whole or in part and explain in writing the reasons therefor;
- (4) upon request for copies of records:
 - (i) make a copy available upon payment or offer to pay established fees, if any; or
 - (ii) permit the requester to copy those records...²

48. In addition, Town Law § 30 provides that the town clerk of each town:

1. Shall have the custody of all the records, books and papers of the town.

N.Y. Town Law § 30.

49. Moreover, "Local Government Records Law", N.Y. Art & Cult. Affr., Article 57-A, deals with the management, custody, retention and disposal of records by local governments.

Specifically, § 57.19 provides, in pertinent part:

The governing body, and the chief executive official where one exists, shall promote and support a program for the orderly and efficient management of records....Each local government shall have one officer who is designated as records management officer....In towns, the town clerk shall be the records management officer.

N.Y. Art & Cult. Affr. § 57.19.

50. While the statutory responsibility to produce VILLAGE records lies with the VILLAGE CLERK, the true blame here lies with Respondent GUAZZONI, who, through his use of a private email server and obstructive acts, has completely precluded the VILLAGE CLERK from carrying out her statutorily prescribed duties as Records Access Officer.

RESPONDENT GUAZZONI'S USE OF A PRIVATE SERVER

² Chapter 21 of the Code of the Village of Tuxedo Park essentially mirrors the FOIL regulations contained in 21 NYCRR 1401.2(b) and places responsibility of maintaining and providing access to VILLAGE business records on the VILLAGE CLERK.

FOR OFFICIAL VILLAGE BUSINESS IS AN ABUSE OF DISCRETION

50. Petitioner MADDEN'S efforts to obtain the records sought have been further stymied by Trustee GUAZZONI'S use of a personal email server to conduct official VILLAGE business. The VILLAGE concedes that this email server is not under the control of the VILLAGE, and thus not under the control of the VILLAGE CLERK, the statutorily designated Records Access Officer. This fact is confirmed by Attorney Nugent, the VILLAGE'S own attorney. In an email from Attorney Nugent to Sean Madden dated April 5, 2017, Attorney Nugent stated:

We note that although the email address used by Trustee Guazzoni is listed as a contact email on the Village website, the email address is not "official" in the sense that it is not an "@tuxedopark-ny.gov" address which is the official domain of the Village. In other words, the Village does not control that email account.

See Exhibit J, April 5, 2017 (5:15 p.m.) email from Attorney Nugent to Sean Madden.

51. This fact is further confirmed by the VILLAGE CLERK in her response to the Original FOIL Request for all of the email addresses of the Trustees used to conduct VILLAGE business. "Unfortunately, we do not have that many emails as we are not privy to anyone's personal mailing list." See Exhibit B (February 24, 2017 email from Debbie Matthews to Sean Madden).

52. Respondent GAUZZONI'S use of a private email server which cannot be controlled by the Records Access Officer results in the inability of the VILLAGE CLERK to carry out her statutorily mandated duties to manage and control public records of the VILLAGE, and make such records readily accessible to the public. The VILLAGE CLERK'S inability to carry out these duties results in a violation of FOIL (N.Y. Pub. Off. Law § § 84-90) and its implementing regulations (21 NYCRR Part 1401), Local Government Records Law (N.Y. Arts & Cult. Aff. § 57 et seq.), N.Y. Town Law § 30 and the Code of the Village of Tuxedo Park § Article 21.

53. An advisory opinion issued by the State of New York Committee on Open Government, on September 3, 2004 squarely addressed this issue which was presented by the town clerk of the Town of Richland. It states, in pertinent part:

While others may have physical possession of town records, it is reiterated that § 30(1) of the Town Law indicates that you are the legal custodian of all town records. Consistent with that provision is § 57.19 of the Arts and Cultural Affairs Law, which states in part that a town clerk is the 'records management officer' for a town.

A failure to share the records or inform you, as Clerk, of their existence may effectively preclude you from carrying out your duties as records management officer, and as records access officer for purposes of responding to requests under the Freedom of Information Law. In short, if you do not know the existence or location of Town records, or cannot obtain them, you would lose the ability to grant or deny access to records in a manner consistent with the requirements of the Freedom of Information Law.

Advisory Opn of Committee on Public Access to Records, Sept., 3, 2004, FOIL-AO-14883 (hereinafter, the "Advisory Opinion"). A copy of the Advisory Opinion is annexed hereto as Exhibit "Y."

54. Although not binding on the Courts, "[a]n agency's interpretation of the statutes it administers should generally be upheld if not unreasonable or irrational." Matter of Weslowski v. Vanderhoef, 98 A.D.3d 1123, 951 N.Y.S. 2d 538 (App. Div. 2d Dep't 2012) citing Matter of Rodriguez v. Perales, 86 N.Y.2d 361, 367, 657 N.E.2d 247, 633 N.Y.S2d 252 (1995).

55. The Advisory Opinion is neither unreasonable nor irrational and highlights the problem presented by Respondent GUAZZONI'S use of public email server and its resulting effect of (i) allowing Respondent GUAZZONI to circumvent FOIL, in this case, for his own personal and political purposes and (ii) inhibiting the VILLAGE CLERK from effectively carrying out her statutorily imposed duties under FOIL and other applicable laws, as Records Access Officer.

56. There is neither oversight nor accountability of Respondent GUAZZONI concerning his official VILLAGE business records, which is in plain contravention of the legislative purpose behind FOIL'S goal of "promoting open government and public accountability." N.Y. Pub. Off. Law § 84.

57. The VILLAGE CLERK, on the other hand, charged with the responsibility for complying with FOIL, has her hands tied regarding Petitioner MADDEN'S FOIL request since she has absolutely no control over such emails and thus, no access to them -- an undisputable fact confirmed by Attorney Nugent.

58. The conundrum is apparent. Accordingly, to the extent that Respondent GUAZZONI'S use of a private email server has resulted in the inability of the VILLAGE CLERK to carry out her statutorily prescribed duties pursuant to, FOIL and related laws, this Court should order Respondent GUAZZONI to comply fully with Petitioner MADDEN'S FOIL request and cease from further use of his personal email service to conduct business of the VILLAGE.

THE RESPONDENTS FAILED TO COMPLY WITH FOIL

59. FOIL and its implementing rules and regulations provide the statutory framework for the public's access to governmental records. See N.Y. Pub. Off. Law §§ 84-90. An agency must "make available for public inspection and copying all records" unless it can claim a specific exemption to disclosure. See N.Y. Pub. Off. Law § 87.2 § 89.3; Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 880 N.E.2d 10 (2007). Courts have held that "FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government." Matter of Time Warner Cable News NY1 v. New York City Police Dept., 53 Misc. 3d 657, 36 N.Y.S. 3d 579 (N.Y. Sup. Ct. 2016), citing Matter of Capital

Newspapers Div. of Hearst Corp. v Whalen, 69 N.Y.2d 246, 252, 505 N.E.2d 932, 513 N.Y.S.2d 367 (1987).

60. Here, there is no dispute that the subject matter of Petitioner MADDEN'S FOIL requests, i.e., all of the names and email addresses of Tuxedo Park residents that are in the records of the Village for whatever purpose" constitute "records"³ which are subject to FOIL, and for which no exemption was articulated under §87.2 applies. The Appeal Decision, by Attorney Nugent, the VILLAGE attorney designated to hear appeals under FOIL, confirmed this. It stated, in pertinent part:

Based upon a review of current law, the recipient email addresses utilized by Trustees of the Village for the purpose of sending communications to residents and others [sic] parties interested in Village business do not fall within any stated exemption under Section 87 of the New York State Public Officers Law and should therefore be disclosed in response to the request. Accordingly, to the extent that a Trustee is in possession of a list of recipient email addresses that is used for the purpose of communicating with such recipients concerning Village business, such email addresses should be disclosed.

See Exhibit R.

61. At issue is Respondents' failure to comply with FOIL and the Appeal Decision through their piecemeal production of random email address lists which was (i) not responsive to Petitioner MADDEN'S request(s); (ii) not timely produced; and (iii) not produced in proper form.

62. The Original FOIL Request specified "an electronic file with all of the names and email addresses of Tuxedo Park residents that are in the records of the Village for whatever purpose, including, without limitation for email distribution of the Mayor's Newsletter." See Exhibit

³ A "record" is defined under N.Y. Pub. Off. Law § 86 as any information kept, held, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules regulations or codes.

“___”, Original FOIL Request, email dated February 22, 2017 from Sean Madden to Debbie Matthews.

Respondents Failed to Produce the Requested Documents in Accordance with FOIL

63. Respondents produced far fewer email addresses than those used by the Trustees to conduct VILLAGE business which is what Petitioner MADDEN requested in his Original FOIL Request.

64. The only lists provided by Respondents to date are the following: (i) a list of approximately 70 email addresses used to distribute the Mayor's Newsletter; (ii) a paper copy of the St. Mary's Church directory – clearly not responsive to the FOIL request; (see Exhibit T); (iii) a paper copy of the Tuxedo Club directory (see exhibit T); and (iv) a paper copy of a June 29, 2016 email and its recipients which Respondent GUAZZONI sent to VILLAGE residents regarding a new lighting law (see Exhibit X) which contains approximately 250 email addresses, many of which are duplicates for the same person.⁴

65. The lists provided above do not constitute the totality of email lists used by the VILLAGE trustees to conduct official business of the VILLAGE and were not responsive to Petitioner MADDEN'S request for the following reasons:

- a. Both the St. Mary's Church directory and the Tuxedo Club directory contain scores of email addresses of non-residents of Tuxedo Park and are therefore non-responsive to Petitioner MADDEN'S FOIL request(s);
- b. In August, 2016, Respondent GUAZZONI conducted an electronic survey regarding the VILLAGE gate house through Survey Monkey. It was Respondent GUAZZONI's email distribution list which was used to populate the survey which went to all residents of the VILLAGE electronically. The VILLAGE received 274 responses to that survey. Even assuming a mere fifty percent response rate to the survey, 274 responses would suggest that the initial distribution list contained well

⁴ A separate email list was produced, in electronic format, by Village of Tuxedo Park Trustee McFadden which Trustee McFadden uses to conduct business of the VILLAGE. Notably, we have not received email addresses from any of the other VILLAGE trustees.

over 500 email addresses. Nothing close to that number of email addresses has been produced to date by Respondents;¹

- c. The June 29, 2016 email recipient list of 250 email addresses (approximately 30 of which contained secondary addresses for the same resident) contains fewer email addresses than even the number of responses to the gate house survey conducted through Survey Monkey, suggesting that this e-mail distribution list was not comprehensive, nor inclusive of all Village of Tuxedo park residents' e-mail addresses used by trustees to conduct village business.

66. Moreover, the Respondents' piecemeal production, most of which is in paper format, is both under and over-inclusive, requiring Petitioner MADDEN to sift through and identify which addresses belong to VILLAGE residents and which do not. This flies in the face of the legislative intent behind FOIL which is "to promote open government and public accountability." N.Y. Pub. Off. Law § 84.

67. The transparency of the Respondents, and in particular, Respondent GUAZZONI, is evident. Respondent GUAZZONI has gone to great lengths to ensure that Petitioner MADDEN is precluded from accessing the tools needed, in the form of email addresses, to communicate his concerns about the upcoming village election to all of the VILLAGE residents. Respondent GUAZZONI'S most recent email to VILLAGE residents which contains derogatory and defamatory statements regarding Petitioner MADDEN illustrates the issue which is before this Court -- Petitioner MADDEN'S inability to access the same email distribution list which is in the possession and control of Respondent GUAZZONI, outside of any reach of the Records Access Officer, or any other resident of the VILLAGE. As such, despite the obvious statutory violations, Petitioner MADDEN'S First Amendment rights are chilled and his goals of communicating to all VILLAGE residents about the candidates in an important village election, are effectively quashed.

The Production of Documents Was Not in the Proper Form

68. Petitioner MADDEN'S Original Request for the email addresses specifically requested that they be provided in "electronic format." See Exhibit A, Original FOIL Request.

69. Section 89.3(a) of FOIL provides, in pertinent part:

When an agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, it shall be required to do so.

N.Y. Pub. Off. Law § 89[3](a); Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 880

N.E.2d 10 (2007). Additionally, § 89[3] was amended to include paragraph (b) which reads:

All entities shall, provided such entity has reasonable means available, accept requests for records submitted in the form of electronic mail and shall respond to such requests by electronic mail, using forms, to the extent practicable, consistent with the form or forms developed by the committee on open government pursuant to subdivision one of this section and provided that the written requests do not seek a response in some other form.

N.Y. Pub. Off. Law § 89[3](b). Accordingly, there is statutory authority for the Respondents' obligation to produce the email addresses requested in electronic format, as requested by Petitioner MADDEN.

70. In Matter of Data Tree, supra, the New York Court of Appeals reversed the appellate division's denial of a FOIL request for certain public land records in electronic form. Id. The appellate division had found, in part, that since the FOIL response would necessitate certain steps to transfer the records via computer to a disc, the respondents were not required to produce the records electronically. The Court of Appeals reversed, reasoning:

A simple manipulation of the computer necessary to transfer existing records should not, if it does not involve significant time or expense, be treated as creation of a new document. Id. at 465.

The Court of Appeals then remanded, having found that there were questions of fact as to whether producing the requested documents (which notably, contained certain personal

information subject to redaction) could be accomplished by merely "retrieving information already maintained electronically by the Clerk's Office or whether complying with the [petitioner's] request would require creating a new record." Id. at 466.

71. Here, the FOIL request can be complied with with relative ease. First, Petitioner MADDEN pointed out various methods which could be utilized by the Respondents to produce the requested documents with "simple manipulation of the computer." Second, Respondent GUAZZONI, as CEO and founder of an information systems company, no doubt possesses the technological wherewithal himself necessary to produce the documents sought by Petitioner MADDEN with relative ease. Finally, there has been no suggestion by Respondents or Attorney Nugent that the records requested would require the creation of a new record and therefore not subject to FOIL. Accordingly, in light of applicable case law and the FOIL statute, to wit, sections 89[3] (a) and (b), to the extent documents produced by the Respondents were produced in paper format, they are in violation of FOIL. See N.Y. Pub. Off. Law §§ 89[3](a) and (b).

**THIS COURT SHOULD ORDER RESPONDENTS
TO PAY COSTS AND ATTORNEYS' FEES FOR THIS PROCEEDING**

72. FOIL provides for an award of costs and attorneys' for a prevailing petitioner in an action under FOIL. Specifically, § 89[4](c) provides:

The court in such a proceeding [pursuant to article 78] 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, when:

- i. The agency had no reasonable basis for denying access; or
- ii. The agency failed to respond to a request or appeal within the statutory time.

N.Y. Pub. Off. Law § 89[4](c).

73. Petitioner MADDEN substantially prevailed in the instant FOIL dispute. The Appeal

Decision confirms that the documents sought by Petitioner MADDEN were within his Original FOIL Request, were not subject to any statutory exemptions under FOIL and were required to be produced in response to the Original FOIL Request. See Exhibit R, Appeal Decision.

74. Regarding the requirement to provide a reasonable excuse, the only excuse offered for not providing the requested documents were Respondents' claims that the VILLAGE CLERK essentially had no control over a VILLAGE trustee's personal email accounts, despite the fact that they were used to conduct official VILLAGE business and were listed on the VILLAGE website as the contact addresses for such persons. Those excuses came in the form of the following responses from the VILLAGE and/or VILLAGE CLERK:

- (i) “[u]nfortunately, we do not have that many emails as we are not privy to anyone’s personal mailing list.” (See Exhibit B, February 24, 2017 email from Debbie Matthews to Sean Madden);
- (ii) “My email lists and John’s email list are the only ones we have access to at the Village Office. I doubt that any of the trustees or the mayor have a list that they would consider ‘foilage’. However, I will send out a request to them on Monday and ask. I will let you know what their responses are. I’ll ask the Police as well, but I doubt the Chief would release resident information.” (See Exhibit D, February 24, 2017 email from Debbie Matthews to Sean Madden); and
- (iii) We note that although the email address used by Trustee Guazzoni is listed as a contact email on the Village website, the email address is not “official” in the sense that it is not an “@tuxedopark-ny.gov” address which is the official email domain of the Village. In other words, the Village does not control that email account. However, to the extent that the email address is used for Village business, such account would be subject to disclosure in the event of FOIL requests based on existing opinions and case law. (See Exhibit J, April 5, 2017 email from Brian Nugent to Sean Madden).

75. The “excuses” were not reasonable or legitimate and effectively precluded the VILLAGE CLERK from carrying out her statutory duties as Records Access Officer in violation of FOIL and numerous other laws which charge the VILLAGE CLERK with responsibility for custody

and maintenance of VILLAGE records.

76. Additionally, the VILLAGE CLERK failed to certify, in accordance with § 89(3)(a) that she did not have possession of such records or such records could not be found after diligent search N.Y. Pub. Off. Law § 89(3)(a). Indeed, since she had no control over GUAZZONI's e-mail, the VILLAGE CLERK was unable to certify as to either the accuracy of the production or whether the documents were produced in their entirety.

77. The second prong of the test also failed, as the VILLAGE failed to respond to Petitioner MADDEN'S request(s) in the time prescribed by FOIL. Specifically, FOIL provides that, within 5 days of receiving a request pursuant to FOIL, the VILLAGE CLERK was required (1) make the record available, (2) deny the request in writing, or (3) furnish a written acknowledgement of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied...." N.Y. Pub. Off. Law § 89(3)(a).

78. The VILLAGE CLERK failed to comply with § 89(3)(a) as she did not (1) make the record available, (2) give a written denial of the request, or (3) furnish a written statement setting forth the date by which Petitioner MADDEN would receive a response to the Original FOIL Request on February 22, 2017. More specifically,

- a. As of March 1, 2017 (five business days after the Original FOIL Request), having not received the totality of the records sought, nor a written response denying the request or a written statement informing Petitioner MADDEN in writing of the approximate date by when his request would be granted or denied, the VILLAGE CLERK violated FOIL. Accordingly, the VILLAGE CLERK'S failure to comply with § 89(3)(a) constituted a denial. See N.Y. Pub. Off. Law § 89(4)(a) ("Failure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial");
- b. On March 17, 2017, Petitioner MADDEN sent a follow up email to the VILLAGE CLERK inquiring about the status of his request. See Exhibit G, March 17, 2017 email from Sean Madden to Debbie Matthews.

c. Again, Petitioner MADDEN received no response.

d. Based upon the March 1, 2017 constructive denial, Petitioner MADDEN filed an appeal within the thirty days prescribed by FOIL on March 31, 2017.

79. Additionally, Respondent failed to respond to the Follow-up FOIL Request within the statutorily prescribed time to do so, thus prompting the appeal.

80. Based upon the above, Petitioner MADDEN substantially prevailed and is entitled to an award of attorneys' fees associated with this Article 78 proceeding.

81. Notwithstanding the obvious violations as set forth above and as admitted in the Appeal decision, it is troubling to Petitioner that he and his fellow residents will, inevitably, bear the costs, not only of an award of attorney's fees, but also of the costs and fees expended by the VILLAGE to defend a proceeding that needed not be brought. This is even more concerning when the facts clearly show that the FOIL demand could have, and should have been complied with promptly, but for the brazen, obstructive insolence of Respondent GUAZZONI. This is not to say that the VILLAGE and the VILLAGE CLERK bear no responsibility but rather, that had Respondent GUAZZONI simply provided that which under the law he is obligated, then the question of improper record keeping and FOIL compliance may never have been before this Court.

82. It also does not require a leap of faith to conclude the reason that trustee GUAZZONI intentionally prevented Petitioner MADDEN from obtaining the e-mail lists; he is obviously afraid that he will lose the election if someone campaigns against him. Such actions by a person handed the public trust flies in the face of a democratic system and should not be tolerated in this any other forum

83. Based on the obvious indiscretions of Respondent GUAZZONI, is quite clear that the most equitable stance of Petitioner is to respectfully request that this Court, in the interest of

justice, order that the payment of Petitioner's reasonable attorney's fees, and costs be borne solely by Respondent GUAZZONI'S whose obstructive and deceitful actions have unilaterally been the cause of the VILLAGE and VILLAGE CLERK'S inability to comply with FOIL in this matter. Alternatively, Petitioner seeks the award of attorney's fees and costs in accordance with the statute.

WHEREFORE, it is respectfully requested that the relief requested in Petitioner's Notice of Petition and Petition be granted in all respects and that the Court (i) declare that the Respondents violated FOIL; (ii) direct that the Respondents comply fully with Petitioner's FOIL request(s); (iii) direct that Respondent GUAZZONI cease from further use of his personal email server to conduct business of the VILLAGE; (iv) order that Respondent GUAZZONI pay all costs and attorneys' fees associated with this proceeding; and (v) grant such other and further relief as is just and proper.

Dated: Suffern, New York
June 7 2017

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& ELLSWORTH, ESQS
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Richard M. Ellsworth

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

SEAN MADDEN, being duly sworn deposes and says that deponent is the Petitioner in the within proceeding and that deponent has read the foregoing Petition and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters deponent believes it to be true.


SEAN MADDEN

Sworn to before me this
6th day of June, 2017


Notary Public

ISAIAS MATEO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MA6274161
Qualified in New York County
My Commission Expires 12-31-2020