

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

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In the Matter of the Application of

LISA HARBATKIN

Petitioner,

For Judgment Pursuant to Article 78 of the Civil Practice
Law & Rules

VERIFIED ANSWER

Index No. 104933/09
I.A.S. Part 48
(Diamond, J.)

- against -

NEW YORK CITY DEPARTMENT OF RECORDS AND
INFORMATION SERVICES; BRIAN G. ANDERSON, in
his official capacity as Commissioner of the New York City
Department of Records and Information Services;
KENNETH R. COBB; in his official capacity as Assistant
Commissioner and Records Access Officer, New York City
Department of Records and Information Services; and
EILEEN M. FLANNELLY, in her official capacity as
Deputy Commissioner and FOIL Appeal Officer, New York
City Department of Records and Information Services,

Respondents.

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Respondents New York City Department of Records and Information Services,
Brian G. Anderson, Kenneth R. Cobb, and Eileen M. Flannelly, by their attorney, Michael A.
Cardozo, Corporation Counsel of the City of New York, as and for their verified answer to the
petition herein, respectfully allege as follows:

1. Deny the allegations set forth in paragraph "1" of the verified petition,
except admit that Petitioner purports to proceed as set forth therein and respectfully refer the
Court to Exhibits 1 and 2 of the verified petition for a complete and accurate statement of their
contents.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “2” of the verified petition.

3. Admit the allegations set forth in paragraph “3” of the verified petition.

4. Deny the allegations set forth in paragraph “4” of the verified petition, and respectfully refer the Court to Chapter 72 of the Charter of the City of New York for a complete and accurate statement of its contents.

5. Deny the allegations set forth in paragraph “5” of the verified petition, and respectfully refer the Court to Chapter 72 of the Charter of the City of New York for a complete and accurate statement of its contents.

6. Deny the allegations set forth in paragraph “6” of the verified petition, except admit that Kenneth R. Cobb is the Assistant Commissioner and Records Access Officer for the Department of Records and Information Services and that Kenneth R. Cobb issued a determination pursuant to FOIL regarding Petitioner’s request, dated November 6, 2008.

7. Deny the allegations set forth in paragraph “7” of the verified petition, except admit that Eileen M. Flannelly is the Deputy Commissioner and FOIL Appeal Officer for the Department of Records and Information Services and that Eileen M. Flannelly issued a determination pursuant to FOIL regarding Petitioner’s request, dated December 9, 2008.

8. Admit the allegations set forth in paragraph “8” of the verified petition.

9. Deny the allegations set forth in paragraph “9” of the verified petition.

10. Deny the allegations set forth in paragraph “10” of the verified petition, except admit that Saul Moskoff, an Assistant Corporation Counsel for the City of New York, was assigned to assist in the then-Board of Education’s anti-Communist investigations.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “11” of the verified petition.

12. Deny the allegations set forth in paragraph “12” of the verified petition, except admit that the Department of Records and Information Services is currently the custodian of records concerning the Board of Education’s anti-Communist investigations including Series 590, Series 591, Series 596 and Series 594 and affirmatively state that Petitioner’s quoted descriptions of those four Series omit the words “Restricted Access” and omit the portions of each description that provide an explanation of the reasons for the restrictions, and respectfully refer the Court to the relevant sections of “Guide to the Records of the New York City Board of Education,” available at <http://www.nyc.gov/html/records/html/collections/education/guide.pdf>, for a complete and accurate statement of its contents.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the verified petition, except admit that the Municipal Archives is the official repository of the Board of Education’s anti-Communist records series.

14. Deny the allegations set forth in paragraph “14” of the verified petition, and respectfully refer the Court to Exhibit 4 of the verified petition for a complete and accurate statement of its contents.

15. Deny the allegations set forth in paragraph “15” of the verified petition, and respectfully refer the Court to Exhibit 4 of the verified petition for a complete and accurate statement of its contents.

16. Deny the allegations set forth in paragraph “16” of the verified petition, and respectfully refer the Court to Exhibit 5 of the verified petition for a complete and accurate statement of its contents.

17. Deny the allegations set forth in paragraph “17” of the verified petition, and respectfully refer the Court to Exhibit 6 of the verified petition for a complete and accurate statement of its contents.

18. Deny the allegations set forth in paragraph “18” of the verified petition, and respectfully refer the Court to Exhibit 6 of the verified petition for a complete and accurate statement of its contents.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “19” of the verified petition.

20. Deny the allegations set forth in paragraph “20” of the verified petition, and respectfully refer the Court to Exhibit 7 of the verified petition for a complete and accurate statement of its contents.

21. Deny the allegations set forth in paragraph “21” of the verified petition, and respectfully refer the Court to Exhibit 8 of the verified petition for a complete and accurate statement of its contents.

22. Deny the allegations set forth in paragraph “22” of the verified petition, and respectfully refer the Court to Exhibit 9 of the verified petition for a complete and accurate statement of its contents.

23. Deny the allegations set forth in paragraph “23” of the verified petition, and respectfully refer the Court to Exhibit 10 of the verified petition for a complete and accurate statement of its contents.

24. Deny the allegations set forth in paragraph “24” of the verified petition, and respectfully refer the Court to Exhibit 11 of the verified petition for a complete and accurate statement of its contents.

25. Deny the allegations set forth in paragraph “25” of the verified petition, and respectfully refer the Court to Exhibit 11 of the verified petition for a complete and accurate statement of its contents.

26. Deny the allegations set forth in paragraph “26” of the verified petition, except admit that, at that time, Petitioner was required to sign form MA-101D prior to accessing unredacted copies of the restricted materials, respectfully refer the Court to Exhibit 12 of the verified petition for a complete and accurate statement of its contents and affirmatively state that on June 15, 2009, Petitioner was provided with an amended agreement, attached hereto as Exhibit 1.

27. Deny knowledge for information sufficient to form a belief as to the truth of the allegations set forth in paragraph “27” of the verified petition, except admit that Petitioner was allowed to access redacted versions of certain agency records, including those relating to Sidney Harbatkin and Margaret Horvath Harbatkin, and respectfully refer the Court to Exhibits 13 and 14 of the verified petition for a complete and accurate statement of their contents.

28. Deny the allegations set forth in paragraph “28” of the verified petition, and respectfully refer the Court to Exhibit 13 of the verified petition (incorrectly referred to as Exhibit 12 in the verified petition) for a complete and accurate statement of its contents.

29. Deny the allegations set forth in paragraph “29” of the verified petition, and respectfully refer the Court to Exhibit 13 of the verified petition for a complete and accurate statement of its contents.

30. Deny the allegations set forth in paragraph “30” of the verified petition, and respectfully refer the Court to Exhibit 13 of the verified petition for a complete and accurate statement of its contents.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “31” of the verified petition, except deny that each and every name contained in “Sprint’s” interview, except for Petitioner’s parents, was redacted in the version produced to Petition, and deny that Petitioner’s ability to research and report on newsworthy historical events was prejudiced, and respectfully refer the Court to Exhibit 15 of the verified petition for a complete and accurate statement of its contents.

32. Deny the allegations set forth in paragraph “32” of the verified petition, except admit that Petitioner was provided with access to a number of materials, including records from Series 591, Box 10, Folder 3.

33. Deny the allegations set forth in paragraph “33” of the verified petition, except admit that Petitioner made a request pursuant to FOIL, dated October 17, 2008, and respectfully refer the Court to Exhibit 16 of the verified petition for a complete and accurate statement of its content.

34. Deny the allegations set forth in paragraph “34” of the verified petition, and affirmatively state that Respondent Cobb granted Petitioner access to the requested records and respectfully refer the Court to Exhibit 1 of the verified petition for a complete and accurate statement of its content.

35. Deny the allegations set forth in paragraph “35” of the verified petition, except admit that Petitioner purported to appeal Kenneth R. Cobb’s determination by letter dated

November 26, 2008, and respectfully refer the Court to Exhibit 17 of the verified petition for a complete and accurate statement of its content.

36. Deny the allegations set forth in paragraph “36” of the verified petition, and respectfully refer the Court to Exhibit 2 of the verified petition for a complete and accurate statement of its contents.

37. Deny the allegations set forth in paragraph “37” of the verified petition, and respectfully refer the Court to Exhibit 2 of the verified petition for a complete and accurate statement of its contents.

38. Deny the allegations set forth in paragraph “38” of the verified petition, except admit that Section 89(2) of FOIL authorizes the withholding of public access to agency records or the deletion of identifying details to prevent “unwarranted invasion of personal privacy” and respectfully refer the Court to Public Officers Law § 89(2) for a complete and accurate statement of its contents.

39. Deny the allegations set forth in paragraph “39” of the verified petition.

40. Deny the allegations set forth in paragraph “40” of the verified petition, except deny knowledge or information sufficient to form a belief as to the truth of the allegations relating to the dates of death for Sidney Harbatkin and Margaret Horvath Harbatkin.

41. Deny the allegations set forth in paragraph “41” of the verified petition.

42. Deny the allegations set forth in paragraph “42” of the verified petition.

43. In response to the allegations set forth in paragraph “43” of the verified petition, Respondents repeat and reallege the responses set forth in paragraphs “1” through “42” inclusive of their verified answer, as if fully set forth herein.

44. Deny the allegations set forth in paragraph “44” of the verified petition, except admit that Petitioner purports to proceed as set forth therein.

45. Deny the allegations set forth in paragraph “45” of the verified petition, except admit that Petitioner purports to proceed as set forth therein.

46. Deny the allegations set forth in paragraph “46” of the verified petition, except admit that Petitioner purports to proceed as set forth therein.

47. Deny the allegations set forth in paragraph “47” of the verified petition.

48. Deny the allegations set forth in paragraph “48” of the verified petition.

49. Deny the allegations set forth in paragraph “49” of the verified petition.

50. Deny the allegations set forth in paragraph “50” of the verified petition, except admit that Petitioner purports to proceed as set forth therein.

51. Deny the allegations set forth in paragraph “51” of the verified petition, except admit that Petitioner purports to proceed as set forth therein.

52. Deny the allegations set forth in paragraph “52” of the verified petition, except admit that Petitioner purports to proceed as set forth therein.

53. In response to the allegations set forth in paragraph “53” of the verified petition, Respondents repeat and reallege the responses set forth in paragraphs “1” through “52” inclusive of their verified answer, as if fully set forth herein.

54. Deny the allegations set forth in paragraph “54” of the verified petition.

55. Deny the allegations set forth in paragraph “55” of the verified petition.

56. Deny the allegations set forth in paragraph “56” of the verified petition.

57. Deny the allegations set forth in paragraph “57” of the verified petition.

58. In response to the allegations set forth in paragraph “58” of the verified petition, Respondents repeat and reallege the responses set forth in paragraphs “1” through “57” inclusive of their verified answer, as if fully set forth herein.

59. Deny the allegations set forth in paragraph “59” of the verified petition.

60. Deny the allegations set forth in paragraph “60” of the verified petition.

61. Deny the allegations set forth in paragraph “61” of the verified petition.

62. Deny the allegations set forth in paragraph “62” of the verified petition.

**FOR A STATEMENT OF PERTINENT AND
MATERIAL FACTS, RESPONDENT
RESPECTFULLY ALLEGES:**

The FOIL Request, Decision and Appeal

63. Prior to any written FOIL request by Petitioner, Petitioner was given access to numerous records regarding the Board’s anti-Communist investigations, including records from: Series 315, Charles Bensley Papers; Series 354, James Marshall Papers; Series 386, Charles Silver Files; Series 471, Superintendent of Schools William Jansen, General Correspondence; Series 591, Anticommunist Investigations, Subject Files; Series 595, Anticommunist Investigations, Published Material; and Series 664, Division of Curriculum Development, “Strengthening Democracy.” Access to these Series was provided to Petitioner on an unrestricted basis, with the exception of certain folders in Series 591. Altogether, Petitioner had been granted access to approximately 50,000 pages of materials related to the Board’s anti-Communist investigations prior to making her FOIL request.

64. By letter dated October 17, 2008, Petitioner requested from the New York City Department of Records and Information Services, pursuant to the New York Freedom of Information Law, access to:

- (a) All boxes and folders in Records Series Nos. 572, 593, and 595;

- (b) All boxes and folders in Records Series Nos. 590: List of names, Index of Publications, and Filing Records, *circa* 1940-1962;
- (c) All boxes and folders in Records Series No. 591: Subject Files, *circa* 1936-1961;
- (d) All boxes and folders in Records Series No. 594: Individual Case Files, *circa* 1952-1962;
- (e) All boxes and folders in Records Series No. 596: General Index File of Suspected Communists, *circa* 1955;
- (f) All boxes and folders in Records Series No. 597: Feinberg Law Loyalty Forms, *circa* 1955; and
- (g) Any and all other individual records and/or Records Series which pertain to the New York City Board of Education's Anti-Communist investigations and/or activities as generally described in the section titled, "Guidelines for Archival Use of Board of Education 'Anti-Communist Case Files'" contained within the *Guide to Records of the New York City Board of Education*.

65. The files of the anticommunist investigations comprise about 72 cubic feet of records, or about 140,000 pages of documents.

66. By letter dated November 6, 2008, the Assistant Commissioner of the Department of Records, Kenneth R. Cobb, granted Petitioner access to the requested records subject to certain restrictions in place to protect the privacy of the individuals named in certain files. Specifically, pursuant to Section 3-02 of the Rules & Regulations of the City of New York, researchers may access the files in the "restricted" series upon certifying that they will neither record nor use any names or personally identifiable material obtained from such files.

67. By letter dated November 26, 2008, petitioner, by counsel, purported to appeal the Department of Records' decision.

68. Thereafter, by letter dated December 9, 2008, the Department of Records FOIL Appeal Officer affirmed the decision of Kenneth Cobb, and granted unredacted access to Petitioner to the restricted files, provided that Petitioner agreed not to publish the names of individuals identified in those files.

69. Petitioner brings the instant proceeding to challenge the determination of the Department of Records that the disclosure and publication of the names of the individuals identified in anti-Communist files would constitute an unwarranted invasion of personal privacy pursuant to Public Officers Law § 89(2)(b).

70. Petitioner likewise challenges the constitutionality of the procedures set forth in Section 3-02 of the Rules & Regulations of the City of New York and the accompanying implementing form MA-101D.

71. Petitioner seeks an order: (1) overruling the determinations made on November 6, 2008 and December 9, 2008 by the Department of Records in response to Petitioner's FOIL request; (2) declaring Section 3-02, Title 49 of the Rules of the City of New York and the accompanying form MA-101D unconstitutional and unenforceable; (3) directing and ordering the City to furnish Petitioner with immediate access to unredacted copies of the information and records specified in Petitioner's FOIL requests; and (4) awarding Petitioner costs, disbursements, and attorneys' fees.

72. The Affirmation of Marilyn Richter, dated June 17, 2009, corrects certain statements made in Petitioner's moving papers concerning the case N.Y. Times Co. v. City of New York Fire Dep't, 4 N.Y.3d 477 (2005).

The “anti-Communist” Records Series

73. In approximately 1976 the New York City Board of Education (“the Board”) recognized that it had records of historical significance stored in basements and closets and entirely inaccessible to educators or other researchers.

74. The Board of Education then entered into an agreement with Teachers College, Columbia University, under which such records would be placed in the custody of Teachers College Library, which would leave them under professional archival management and make them accessible to researchers.

75. In approximately 2003, as part of a reorganization of Teachers College Library, those Board of Education records were transferred to the New York City Municipal Archives.

76. The Department of Records, through its Municipal Archives, preserves and makes available for research these historical records of the Board.

77. This collection of records includes several records series (including nos. 590, 591, 593, 594, 595, 596 and 597), some restricted and some open, that pertain to the “anti-Communist” activities of the Board from the 1930s through the 1960s.

78. The restricted records contain personal and confidential information relating to teachers and other school personnel investigated and/or questioned by the Board for alleged support of or association with the Communist Party.

79. The individuals who are the subject of these files have a privacy right regarding information of a personal nature contained in them; this includes a privacy right regarding the fact that the subject case file exists.

80. This is so not only because of the sensitive nature of the information contained within, and surrounding the creation of, the files, but also because apparently all of the information in the restricted series was provided under promise of strict confidentiality.

81. The records themselves indicate that the individuals providing the information contained within the records were given a promise of confidentiality and led to believe that their words would be kept secret.

82. At page two of the January 13, 1956 interview of Petitioner's mother, Margaret Harbatkin, attached as Exhibit 13 to the Verified Petition, the interviewer, Saul Moskoff, makes clear the confidential nature of the information sought:

[Mr. Moskoff:] [T]his is merely an inquiry to ascertain information and needless to say, there has been given and will be given no publicity to the fact that you and I are having this discussion. It is regarded as a matter of strict confidence between yourself and [Superintendent of Schools] Dr. Jansen, acting through me.

83. This promise of confidentiality was not limited to the interview with Petitioner's mother.

84. In an interview randomly selected from "Series 591: Anti-Communist Investigations. Subject Files," an excerpt of which is attached hereto as Exhibit C, the interviewee was given a similar promise, reflected on page two of the interview transcript:

[Mr. Moskoff:] The fact that you are here today, needless to say, has been given and will be given no publicity. This interview is regarded as a confidential matter between Dr. Jansen, myself, yourself, and of course, [teacher's adviser – name redacted]. And I shall expect, [adviser's name redacted], that you will keep confidential the fact that you were here and that we had a discussion at all.

(Ex. C at 2.)

85. In this particular interview, there was additional discussion concerning the confidential nature of the discussions:

[Interviewee:] Well, as I said, I don't know, I have every reason to believe what you said at the beginning, that this is a confidential matter, and I believe [the stenographer] Mr. Dunne is included?

[Mr. Moskoff:] Yes. You may rest assured that whatever I say binds the members of this unit.

(Ex. C at 5.)

86. Likewise, in another transcript from a randomly selected file from the main series of individual case files, "Series 594," an excerpt of which is attached hereto as Exhibit D, the interviewee was given the same promise of confidentiality during a March 8, 1955 interview:

[Mr. Moskoff:] I want to make it clear that there has been and will be no publicity given to the fact that you and I are having this discussion this afternoon. This is regarded as a matter of strict confidence between the Superintendent of Schools, acting through me, and yourself, and of course, there are no charges whatever of any kind against you.

(Ex. D at 2.)

87. Such promises of confidentiality were apparently made to individuals as a routine matter, as demonstrated by this February 17, 1955 interview from "Series 591: Anti-Communist Investigations. Subject Files," an excerpt of which is attached hereto as Exhibit E:

[Mr. Moskoff:] I will make the same preliminary statement that I do in every case. . . [..] Needless to say, there has been and will be absolutely no publicity of any nature given to the fact that you and I had this talk, this is a matter of strict confidence between yourself and [Superintendent of Schools] Dr. Jansen.

(Ex. E at 1-2.)

88. In fact, in a review of 23 interviews selected at random from the approximately 1,100 of such interviews in the requested restricted records, such a promise of confidentiality was present in all of them.

89. Moreover, individuals who were asked about Communist Party membership, among other things, were not only concerned about their own privacy, but also that of their family members. They were likewise promised total confidentiality, as in this October 21, 1954 interview, attached hereto as Exhibit F:

[Mr. Moskoff asks the interviewee, a teacher, if she is willing to affirm under oath that she has not been a Communist Party member since 1941.]

[Interviewee:] Yes. I wouldn't want to do this publicly because I wouldn't want anything to reflect on my son. [...] And another thing that's very important to me—I know that the sins of the parents are visited upon their children, and it's quite a thing for my son—

[Mr. Moskoff:] Well, nobody would know. This is strictly confidential.

[Interviewee:] I wouldn't want him, under any circumstance, to find out.

[Mr. Moskoff:] No, he won't, don't you worry about that.

[Interviewee:] . . . but rather than have any repercussion on my son, I would—

*[Mr. Moskoff:] Please accept my word for it—so just don't talk about it any more, there will be none, because, believe me, you are not the first teacher we have spoken to under these circumstances—there have been a substantial number, **believe me—nobody knows they have been here, not even their principals; in some cases, like in your case, the members of their family don't know; they will***

never know, it's a closed door, so don't be concerned about it.

[Interviewee:] My family thinks I am at a Guidance meeting.

(Ex. F at 28-30 (emphasis added).)

90. The information supplied by these individuals forms the content of much of the material in the “restricted files.”

The “anti-Communist” Records Privacy Procedures

91. In approximately 1980, while the records were maintained by the Teachers College Library, a researcher, Linda Cirino, a researcher and historian, requested access to some of the anti-communist files.

92. The Board initially denied Ms. Cirino access, contending, *inter alia*, that the disclosure would violate several privileges and would also be an unwarranted invasion of privacy of the subjects investigated.

93. Ms. Cirino challenged this determination in Cirino v. Board of Education of the City of New York. N.Y.L.J., July 10, 1980, No. 001117/1980 (N.Y. Co. Sup. Ct. 1980), attached hereto as Exhibit B.

94. The court ruled that FOIL required the Board to release the requested records to the petitioner, but directed the Board to redact identifying details from the records to protect those individuals who had not provided Petitioner with consent. Although not mentioned in the decision in Cirino, the judgment in that case specified that redaction would be available for the names and indentifying information for individuals who were still alive. This was consistent with the privacy interest that existed prior to the Court of Appeals decision in N.Y. Times Co. v. City of New York Fire Dep't, 4 N.Y.3d 477 (2005). In that case, the court held that a privacy

interest remains even after death. Id. at 484. Thus, this qualification in the judgment is no longer applicable, under current law.

95. In order to comply with the court's ruling in Cirino and to assure maximum access while protecting teachers from unwarranted invasion of personal privacy, the library developed an access policy for these records. It consisted of several elements:

- a. Records that did not involve matters involving the privacy rights of individual teachers would be made available to researchers without restriction.
- b. When a researcher had the permission of an individual teacher to have access to (or to have copies of) their individual case file, access would be provided. The file would be inspected to determine if it included the names of other teachers or individual targets of investigation (whose permission had not been obtained) and if so, such names would be redacted before the file was made available.
- c. A special procedure was developed to provide access to historians and other researchers concerned with learning about the investigations as an event of historical, sociological, and educational significance. Such researchers were to be given full access to the files, provided that they promised to respect the privacy of the teachers named in them. Such researchers signed a written agreement to that effect.

96. A number of researchers used the files under the provision described in paragraph 93(b), above. These included several teachers or their family members, as well as

other researchers. A number of historians also used the files under the provision described in paragraph 94(c), above.

97. Following the transfer of the records from the Teachers College Library to the Municipal Archives in approximately 2003, the Department of Records set about the major task of organizing the files and developing inventories and access tools.

98. The first inquiry about access to the anticommunist investigation files since the transfer of the files from the Teachers College Library came from Petitioner.

99. At that time, the Municipal Archives set about formally establishing its access procedures, which were substantially comparable to those that had been used at Teachers College Library, in accordance with the court's decision in Cirino.

100. Specifically, access to and use of the Board's "anti-Communist" Case Files was governed by Title 49, Section 3-02 of the Rules & Regulations of the City of New York.

101. Pursuant to these procedures, researchers who request access to a specific file for the purpose of researching the views or activities of a person named in that file must obtain permission for such access from the subject individual and from the named individual, as applicable.

102. If the subject or named individual is deceased or unable to give or deny permission, such permission must be obtained from the individual's legal heirs or custodians.

103. Where a researcher, such as Petitioner, is engaged in general research not limited to a particular individual or individuals, the researcher may access files in the restricted series upon certifying that the researcher will neither record nor use any names or personally identifiable material obtained from such files.

104. The regulations exempt published materials and materials created for general distribution from these restrictions.

105. Prior to accessing the restricted series, researchers interested in general research, like Petitioner, were asked to sign Form MA-101D.

106. Form MA-101D required the researcher to agree to a series of conditions, including: (1) an agreement not to disseminate or publish in any form any names or identifying personal information obtained from the restricted materials; (2) an agreement to request permission from the Department of Records for any direct quotation from the restricted materials to be used in any publication and not to use any such quotation without permission; and (3) an agreement to indemnify the Department of Records and the City of New York with respect to any claim, liability, or expense arising from the researcher's unauthorized publication of the restricted material.

107. By letter dated June 15, 2009, attached hereto as Exhibit A, Marilyn Richter, Assistant Corporation Counsel, informed Petitioner that the Department of Records had modified this agreement, omitting the requirement that Petitioner request and receive permission prior to using any direct quotation and omitting the requirement that Petitioner agree to indemnify the City of New York for any claims arising from the Petitioner's unauthorized publication of any of the restricted material.

108. The only remaining requirement is Petitioner's agreement not to record, copy, disseminate or publish in any form any names or other identifying personal information obtained from such restricted materials. (Ex. A.)

109. Disclosure of the names of individuals, or personally identifiable material obtained from these files, without restriction as to the publication of this information, would

constitute an unwarranted invasion of the personal privacy of such individuals. Accordingly, such disclosure is not required under FOIL.

**AS AND FOR A FIRST DEFENSE,
RESPONDENTS ALLEGE:**

110. The verified petition should be dismissed because petitioner fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND DEFENSE,
RESPONDENTS ALLEGE:**

111. The verified petition should be dismissed in part because petitioner's claims are moot.

Dated: New York, New York
June 16 2009

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for the Respondents
100 Church Street, Room 2-165
New York, New York 10007
(212) 788-1165

By:




MARILYN RICHTER
THADDEUS HACKWORTH
Assistant Corporation Counsel

TO: Michael J. Grygiel
William A. Hurst
Attorneys for Petitioner
7 Times Square
New York, New York 10036

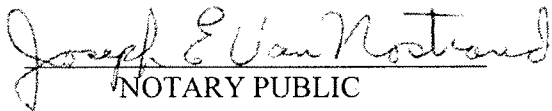
VERIFICATION

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

KENNETH COBB, being duly sworn, states that he is employed by the New York City Department of Records and Information Services, that he has read the foregoing VERIFIED ANSWER in Lisa Harbatkin v. New York City Department of Records and Information Services, et al., Index No. 104933/09, filed in the Supreme Court of the State of New York, County of New York, and knows the contents thereof to be true, except as to the matters therein alleged upon information and belief and as to those matters, he believes them to be true, that the source of this information and the basis for his belief are the books and records of the New York City Department of Records and Information Services and from statements made to him by certain officers or agents of the New York City Department of Records and Information Services.


KENNETH COBB

Sworn to before me this
16th day of June, 2009


NOTARY PUBLIC

JOSEPH E. VAN NOSTRAND
Notary Public, State of New York
Reg. No. 31-4982969
Qualified in New York County
Commission Expires July 23, 2009

Index No. 401047/09

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

LISA HARBATKIN,

Petitioner,

-against-

NEW YORK CITY DEPARTMENT OF RECORDS AND INFORMATION SERVICES; BRIAN G. ANDERSON, in his official capacity as Commissioner of the New York City Department of Records and Information Services; KENNETH R. COBB; in his official capacity as Assistant Commissioner and Records Access Officer, New York City Department of Records and Information Services; and EILEEN M. FLANNELLY, in her official capacity as Deputy Commissioner and FOIL Appeal Officer, New York City Department of Records and Information Services,

Respondents.

RESPONDENTS' VERIFIED ANSWER

MICHAEL A. CARDOZO

Corporation Counsel of the City of New York
Attorney for Respondents
100 Church Street, Room 2-165
New York, N.Y. 10007-2601

Of Counsel: Marilyn Richter

Tel: (212) 788-0931

Matter No.: 2009-012400

Due and timely service is hereby admitted.

New York, N.Y......, 200..

..... *Esq.*

Attorney for