

**SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY**

PRESENT:

Hon. **DENISE F. MOLIA**
Justice

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC.,

Petitioner,

- against -

THE STATE UNIVERSITY OF NEW YORK AT STONY BROOK,

Respondent,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules.

CASE DISPOSED: NO
MOTION R/D: 5/22/17
SUBMISSION DATE: 12/7/18
MOTION SEQUENCE No.: 001 MOT D
002 MD

ATTORNEY FOR PETITIONER
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Upon the following papers filed and considered relative to this matter:

Notice of Petition dated March 13, 2017; Verified Petition dated March 10, 2017; Exhibits 1 through 18 annexed thereto; Petitioner's Memorandum of Law; Notice of Motion dated May 19, 2017; Affirmation dated May 19, 2017; Exhibits 1 through 18 annexed thereto; Petitioner's Memorandum of Law in Opposition; and upon due deliberation; it is

ORDERED, that the Petition of People for the Ethical Treatment of Animals, Inc., pursuant to CPLR Article 78, for a judgment (1) prohibiting the enforcement of the determination of Respondent denying Petitioner's request made pursuant to the New York Freedom of Information Law (Public Officers Law §§84 *et seq.*) with respect to the redacted protocols and veterinary care and medical records, excluding redactions applied to names and contact information; (2) directing Respondent to supply Petitioner with unredacted copies of the requested IACUC research protocols and veterinary care and medical records except for those redactions applied to names and contact information; and (3) awarding attorney's fees and reasonable litigation costs pursuant to Public Officer's Law §89, is granted to the extent that it is

ORDERED, that within twenty (20) days from receipt of a copy of this Order, with notice of entry, the respondent shall provide petitioner with all remaining documents that were requested in petitioner's omnibus request for records dated in or about July 29, 2016, with redactions for names and contact information only; and it is further

ORDERED, that the parties are directed to appear for a conference at the Courthouse, One Court Street, Courtroom 431, Riverhead, New York, on April 23, 2019 at 10:00 a.m., on the issue of whether the petitioner is entitled to reasonable attorney's fees and other litigation costs reasonably incurred in this proceeding, pursuant to Public Officers Law §89(4)(c).

ORDERED, that the motion by respondent, pursuant to CPLR 3211, for an Order dismissing the Verified Petition on the grounds that the Verified Petition fails to state a cause of action, is denied.

On or about July 29, 2016 the petitioner sent an omnibus request for records concerning research protocols at Stony Brook related to the care and use of animals in laboratory testing. The request was made pursuant to the New York Freedom of Information Law ("FOIL"), Public Officers Law §87 et seq. The request was responded to on October 3, 2016, and 338 pages of relevant documents were provided. A letter signed by Allison Matos on behalf of the Records Access Officer, advised petitioner that the documents were redacted under Public Officers Law §87(2)(d) to guard against disclosure of trade secrets or proprietary information, as well as to protect the safety of individuals and their personal privacy.

Petitioner filed an appeal to the SUNY system FOIL Appeals Officer. By letter dated November 16, 2016, the decision of the Records Access Officer was affirmed. That decision cited that the denial of the records was based upon, *inter alia*, the trade secret exemption as well as concerns for the invasion of privacy of the research personnel. The petitioner then filed the instant Article 78 proceeding, challenging the determination of the FOIL decision and directing the respondent to supply petitioner with unredacted copies of the requested research protocols. Inasmuch as the petitioner has agreed to accept documents with redactions for the names and contact information of the personnel involved in the research and testing, the issue to be resolved herein is whether the respondent has met its burden of demonstrating that the "trade secrets" exemption [Public Officers Law §87(2)(d)] is applicable in this matter. The respondent has moved to dismiss the petition on the grounds that it fails to state a cause of action.

In determining a motion to dismiss pursuant to CPLR 3211(a)(7), a court should liberally construe the pleadings in the plaintiff's favor, accept the facts alleged as true, and determine whether plaintiff can succeed upon any reasonable view of the facts. Blumenreich v. North Shore Health System, Inc., 287 A.D.2d 529, 530, 731 N.Y.S.2d 638; Board of Education of City School District v. County of Westchester, 282 A.D.2d 561, 562, 724 N.Y.S.2d 422. Upon the circumstances presented herein, the Court finds that the petitioner's pleadings set forth a credible and viable cause of action that is not contradicted by any of the documentary evidence submitted. The respondent has failed to demonstrate that the petitioner's submissions fail to establish any cognizable legal theory.

It is not disputed that New York does not provide exemptions from disclosure in some form for scholarly research, nor does the Public Officers Law §87(2)(d) provide a definition for trade secrets. Instead, state agencies are guided by case law, which has opined that a trade secret is information which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise (see, Encore College Bookstores, Inc. v. Auxiliary Service Corp. of State University of New York at Farmingdale, 87 N.Y.2d 410, 420). In a similar case against the same respondent, which respondent has not distinguished from the circumstances in the instant matter, this Court determined that the type of research records sought herein did not constitute “trade secrets”, and that “conclusory assertions by respondents without interjection of specifics related to the documents” were not the “particularized and specific justification[s]” required under FOIL to justify withholding materials. A.S.P.C.A. v. Board of Trustees fo State University of New York at Stony Brook, 556 N.Y.S.2d 447, 452. The Court further observed that Stony Brook University “chose to use a broad brush and redact all responses to these questions[,] a policy judgment by respondents which neither the statute nor the facts support.” *Id.*

The submission by respondents relies solely on the affirmation of counsel and does not include an affidavit from any Stony Brook researchers or other officials setting forth how disclosure of the requested records could harm the respondent’s competitive position. The conclusory assertions of trade secrets are devoid of any facts as to the identity of competitors and the processes which, if disclosed, would lead to competitive harm. Without specific proof of economic injury, the respondent has not demonstrated that Public Officers Law §87(2)(d) is applicable to the instant facts (see, Verizon N.Y., Inc. v. Bradbury, 40 A.D.3d 1113, 1115). In the age of governmental transparency, together with FOIL’s broad public disclosure mandate, and in the absence of proof that the redacted portions of the requested records constitute trade secrets, the subject records should be provided to petitioner without redaction, except for names and contact information.

The foregoing constitutes the Order of this Court.

Dated: March 5, 2019


HON. DENISE F. MOLIA A.J.S.C.