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publication in the New York Reports.

No. 77
In the Matter of Empire Center
for New York State Policy,
Appellant,
v.
New York State Teachers'
Retirement System,
Respondent.

No. 78
In the Matter of Empire Center
for New York State Policy,
Appellant,
v.
Teachers' Retirement System of
the City of New York,
Respondent.

Case No. 77:
Alia L. Smith, for appellant.
Jeffrey W. Lang, for respondent.
New York State United Teachers; Albany Times Union et
al.; New York State Public Employees Federation, AFL-CIO; and
Citizens Budget Commission, amici curiae.

Case No. 78:
Alia L. Smith, for appellant.
Elizabeth I. Freedman, for respondent.
New York State United Teachers; Albany Times Union et
al.; New York State Public Employees Federation, AFL-CIO; and
Citizens Budget Commission, amici curiae.

SMITH, J.:

We hold that Public Officers Law § 89 (7) exempts from
the Freedom of Information Law (FOIL) only the home addresses,

not the names, of retirees who receive benefits from public employees' retirement systems.

Petitioner, Empire Center for New York State Policy, describes itself as a "think tank" whose purpose is "to inform voters and policymakers" about issues including pension reform. Petitioner sought disclosure under FOIL from the New York State Teachers' Retirement System and the Teachers' Retirement System of the City of New York of the names of the retired members of the systems. The retirement systems refused to provide the names, and petitioner brought these article 78 proceedings to vacate the refusals and to compel disclosure. Supreme Court dismissed both petitions, and the Appellate Division affirmed in each case (Matter of Empire Ctr. for N.Y. State Policy v New York State Teachers' Retirement Sys., 103 AD3d 1009 [3d Dept 2013]; Matter of Empire Ctr. for N.Y. State Policy v Teachers' Retirement Sys. of the City of New York, 103 AD3d 593 [1st Dept 2013]). We granted leave to appeal in both cases (21 NY3d 859 [2013]), and now reverse.

The governing statute, Public Officers Law § 89 (7), says:

"Nothing in this article [i.e., FOIL] shall require the disclosure of the home address of an officer or employee, former officer or employee, or of a retiree of a public employees' retirement system; nor shall anything in this article require the disclosure of the name or home address of a beneficiary of a public employees' retirement system or of an applicant for appointment to public employment; provided however, that

nothing in this subdivision shall limit or abridge the right of an employee organization, certified or recognized for any collective negotiating unit of an employer pursuant to article fourteen of the civil service law, to obtain the name or home address of any officer, employee or retiree of such employer, if such name or home address is otherwise available under this article."

The answer to the question before us -- are retirees' names exempt from disclosure? -- is plain from the face of the statute. It exempts "the home address . . . of a retiree," but not the retiree's name. By contrast, it exempts both the name and home address of "a beneficiary of a public employees' retirement system." A "beneficiary" of a retirement system, as the term is commonly used, is a family member of an employee or retiree who is entitled to benefits after the employee's or retiree's death; it is so used on the website of one of the retirement systems in this case (NYSTRS, "Glossary of Benefit Terms," at <http://www.nystrs.org/main/glossary/html> [last visited April 21, 2014]). In some contexts, "beneficiary" might be read more broadly to include a retiree, for retirees do benefit from retirement systems. But "beneficiary" was obviously not used in that sense in this statute, because the statute provides a separate and more limited exemption for a "retiree."

The courts below were not blind to this logic (see Matter of Empire Ctr. for New York State Policy v New York State Teachers' Retirement System, 103 AD3d at 1010 ["Well-settled principles of statutory construction lend support to the

interpretation advanced by petitioner"])). But they believed themselves bound to deny disclosure of the names by our decision in Matter of New York Veteran Police Assn. v New York City Police Dept. Art. I Pension Fund (61 NY2d 659 [1983]). The lower courts read that case too broadly.

The Veteran Police case was brought by an organization of retired police officers, seeking "access to the names and addresses of all retirees of the New York City Police Department currently receiving pensions and annuities" (61 NY2d at 660). The Association's purpose was to use the list to solicit new members. When the proceeding was commenced, Public Officers Law § 89 (7) did not exist, and the Appellate Division, interpreting more general provisions of FOIL and relying on its previous decision in Matter of New York Teachers Pension Assn. v Teachers' Retirement Sys. of the City of New York (70 AD2d 250 [1st Dept 1979]), granted the relief requested (Matter of New York Veteran Police Assn. v New York City Police Dept. Art. I Pension Fund, 92 AD2d 772 [1st Dept 1983], reversed 61 NY2d 659 [1983]). The police pension funds appealed to this Court.

While the appeal was pending, the Legislature enacted section 89 (7), specifying that it was to take effect immediately and was to apply to any requests for information as to which judicial review had not been completed (L 1983, ch 783, § 2). The obvious effect, and apparent intention, of the new law was to overrule the Appellate Division's Veteran Police holding, and we

accordingly reversed the Appellate Division decision in a memorandum, saying:

"The provisions of the amendment apply to this proceeding which was pending before the court at the time it became effective and foreclose relief to petitioner"

(61 NY2d at 661).

The Veteran Police case involved a request for the names and home addresses of retirees. The petitioner in that case clearly wanted and needed both; a list of names without addresses, in 1983, would have been of little use to an organization that wanted to send out a membership solicitation. We have seen nothing to indicate that any party in the Veteran Police case ever suggested, or that we ever considered requiring, the disclosure of a list of names without addresses.

The lower courts in this case, however, read our statement in Veteran Police that the provisions of section 89 (7) "foreclose relief to the petitioner" as meaning that it foreclosed even partial relief -- though partial relief was never in issue in Veteran Police. Thus, the courts below concluded that Veteran Police held that the statute exempted the names of retirees from disclosure (see also Empire Ctr. for N.Y. State Policy v New York City Police Pension Fund, 88 AD3d 520 [1st Dept 2011]). In this they erred. Our decisions are not to be read as deciding questions that were not before us and that we did not consider.

The retirement systems also argue that the disclosure

petitioner seeks should be denied as an "unwarranted invasion of personal privacy" (Public Officers Law § 87 [2] [b]). They suggest that, by the use of modern technology, it might not be difficult for someone with a list of the names of retirees to find most, if not all, of their home addresses, thus frustrating the purpose of section 89 (7) and exposing the retirees to intrusive communications. On this record, however, the idea that anyone's privacy will be invaded is speculative. This petitioner is not, as the petitioner in the Veteran Police case was, interested in sending membership solicitations to retirees. When a FOIL request that seems to have such a purpose is made, it will be time to consider the effect of the privacy exemption (see Public Officers Law § 89 [2] [b] [iii] ["unwarranted invasion of personal privacy" includes "sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes"; Matter of New York State United Teachers v Brighter Choice Charter School, 15 NY3d 560 [2010])).

Accordingly, in each case, the order of the Appellate Division should be reversed, with costs, and the retirement system directed to disclose the requested names.

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For Case No. 77: Order reversed, with costs, and the New York State Teachers' Retirement System is directed to disclose the requested names. Opinion by Judge Smith. Chief Judge Lippman and Judges Graffeo, Read, Pigott and Rivera concur. Judge Abdus-Salaam took no part.

For Case No. 78: Order reversed, with costs, and the Teachers' Retirement System of the City of New York is directed to disclose the requested names. Opinion by Judge Smith. Chief Judge Lippman and Judges Graffeo, Read, Pigott and Rivera concur. Judge Abdus-Salaam took no part.

Decided May 6, 2014