COURT OF APPEALS
STATE OF NEW YORK

In the Matter of the Application of:

LISA HARBATKIN,

Petitioner-Appellant,

For a Judgment Pursuant to Article 78 of the N.Y. Civil Practice Law & Rules,

-against-

NEW YORK CITY DEPARTMENT OF RECORDS AND INFORMATION SERVICES; BRIAN G. ANDERSSON, 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.

AFFIRMATION IN OPPOSITION

MICHAEL A. CARDOZO,
Corporation Counsel of the
City of New York,
Attorney for Respondents,
100 Church Street,
New York, New York 10007
(212) 788-1026 or 1055
efreedma@law.nyc.gov

LEONARD KOERNER,
MARILYN RICHTER,
ELIZABETH I. FREEDMAN,
Of Counsel.

July 22, 2011

COURT OF APPEAL
STATE OF NEW YORK

---------- x

In the Matter of the Application of:

LISA HARBATKIN,

Petitioner-Appellant,

For a Judgment Pursuant to Article 78 of the N.Y. Civil Practice Law & Rules,

-against-

NEW YORK CITY DEPARTMENT OF RECORDS AND INFORMATION SERVICES; BRIAN G. ANDERSSON, 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.

---------- x

AFFIRMATION IN OPPOSITION TO MOTION FOR LEAVE TO APPEAL

New York County
Index No. 104933/09

ELIZABETH I. FREEDMAN, an attorney admitted to practice law before the Courts of this State, affirms pursuant to CPLR 2106, the following statements to be true under penalty of perjury:

1. I am an attorney in the Appeals Division in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, and am handling this appeal on behalf of the respondents New York City Department of Records and Information

Services et al. ("Department of Records" or "respondents"). I respectfully submit this affirmation in opposition to petitioners' motion, returnable in this Court on July 25, 2011, seeking leave to appeal from a decision and order of the Appellate Division, First Department entered May 31, 2011. The Appellate Division unanimously affirmed an order and judgment of the New York County Supreme Court (Diamond, J.) entered March 18, 2010, which denied and dismissed petitioner's CPLR Article 78 petition pursuant to the Freedom of Information Law ("FOIL"), in which she seeks unrestricted access to files held by the Department of Records, relating to the New York City Board of Education's "anti-Communist investigation."

2. The background facts will be briefly summarized herein, and this Court is respectfully referred to the respondents' brief filed in the Appellate Division, First Department, a copy of which is being submitted herewith, for a full and complete statement of the relevant facts and proceedings in this case.

The FOIL Request, Decision and Appeal

3. Prior to petitioner's written FOIL request, petitioner was given access to numerous records regarding the New York City Board of Education's anti-Communist investigations

(R192).[1] Access to these documents was provided to petitioner on an unrestricted basis, with the exception of certain folders in Series 591. Altogether, petitioner was granted access to approximately 50,000 pages of materials related to the Board of Education's anti-Communist investigations prior to making her FOIL request (R192).

4. By letter dated October 17, 2008, petitioner requested from the New York City Department of Records and Information Services, pursuant to FOIL, access to approximately 140,000 pages of restricted documents (R16-19, R180-81, R192-93).

5. By letter dated November 6, 2008, petitioner was granted access to the requested records subject to certain restrictions, to protect the privacy of the individuals named in certain files (R33, R193). 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 (R68-69, R193).

---

[1] Numbers in parentheses preceded by the letter "R" refer to pages in the Record on Appeal filed in the Appellate Division, First Department.

6. By letter dated November 26, 2008, petitioner, by counsel, appealed the Department of Records' decision (R182-83, R193). Thereafter, by letter dated December 9, 2008, the Department of Records FOIL Appeal Officer affirmed the November 6, 2008 decision, and granted unredacted access to petitioner to the restricted files, provided that petitioner agree not to publish the names of individuals identified in those files, and agree to the other requirements concerning quotation and indemnification listed in Form MA-101D (R34-35, R70, R194).

7. By letter dated June 15, 2009, the Department of Records again offered petitioner unredacted access to the requested files, but eliminated the requirements concerning quotation and indemnification, leaving as the only requirement for access petitioner's agreement not to record, copy, disseminate or publish in any form any names or other identifying personal information obtained from the restricted materials. As an alternative, respondents also offered to petitioner the standard option utilized pursuant to FOIL for records containing some information that is protected by the personal privacy exemption. Petitioner may obtain copies of the records, with the personally identifying information concerning individuals discussed in these documents redacted, to protect the personal privacy of those individuals and, if deceased, the personal privacy of their surviving relatives. Respondents also

indicated that the standard copying fee of 25¢ per page would apply to this option. Since there is at present no set of redacted records available, the unredacted records would have to be copied and then redacted if petitioner chose this option (R202, R205-07).

The "anti-Communist" Records Series

8. In approximately 2003, as part of a reorganization of Teachers College Library, these Board of Education records in the "anti-Communist" series were transferred to the New York City Municipal Archives (R195). The Department of Records, through its Municipal Archives, preserves and makes available for research these historical records of the New York City Board of Education ("the Board") (R195).

9. 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 of Education from the 1930s through the 1960s (R195). The restricted records contain personal and confidential information relating to teachers and other school personnel who were investigated and/or questioned by the Board for alleged support of, or association with, the Communist Party (R195).

10. The individuals who are the subject of these files have a privacy right regarding information of a personal

nature contained in the files, which includes a privacy right regarding the fact that the subject case file exists (R195). 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 promises of strict confidentiality (R196). The records themselves indicate that the individuals providing the information contained within the records were given a promise of confidentiality, and were assured that their words would be kept secret and confidential (R196). This promise of strict confidentiality was part of the procedure routinely utilized in these interviews, including the January 13, 1956 interview of petitioner's mother, Margaret Harbatkin (R78-99, R196-98, R211, R214, R219, R223-24).

11. 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 (R198).

12. 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 (R198-99, R255-57). The information supplied by these

individuals forms the content of much of the material in the "restricted files" (R199).

The "anti-Communist" Records Privacy Procedures

13. Following the transfer of the records from the Teachers College Library to the Municipal Archives in or about 2003, the Department of Records undertook the major task of organizing the files and developing inventories and access tools (R201). Petitioner made the first inquiry about access to the anticommunist investigation files since the transfer of the files from the Teachers College Library (R201). At that time, the Municipal Archives began to formally establish its access procedures, which were substantially comparable to those that had been used at Teachers College Library, in accordance with the New York County Supreme Court's decision in Cirino v. Board of Education of the City of New York, N.Y.L.J., July 10, 1980, No. 001117/80 (Sup. Ct., N.Y. County 1980) (R201).

14. Specifically, access to and use of the Board's "anti-Communist" Case Files is governed by Title 49, Section 3-02 of the Rules & Regulations of the City of New York ("RCNY") (R68-69, R201). 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 (R201). 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 (R201).

15. When a researcher, such as petitioner, is engaged in general research not limited to a particular individual or individuals, the researcher may gain access to files in the restricted series either by obtaining copies of the records that have personally identifying details redacted, or upon certifying that the researcher will neither record nor use any names or personally identifying material obtained from such files (R201). The regulations exempt from these restrictions published materials, and materials created for general distribution (R202).

16. Thus, the only requirement for access to these restricted files is that petitioner agree not to record, copy, disseminate or publish in any form any names or other identifying personal information obtained from such restricted materials (R202, R207). The relevant form, MA-101D, has been revised to reflect this modification, and has been in use since July 2009, for all persons seeking access to the unredacted records (R313, R317).

17. Disclosure of the names of indviduals, 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, and such disclosure is accordingly not required under FOIL, as the Courts below correctly determined (R202-03).

CPLR Article 78 Proceeding

18. On or about April 6, 2009 petitioner commenced this CPLR Article 78 proceeding, challenging the determination of the Department of Records, and seeking 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 respondents 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 (R9-32).

19. Following respondents' offer in their June 15, 2009 letter, to allow petitioner access to the unredacted records subject only to her agreement not to publish the names or identifying details of the individuals mentioned in the records, and eliminating the requirements concerning quotation and indemnification, respondents filed a verified answer to the petition on or about June 16, 2009, averring that the FOIL

Appeal Officer's determination was in all respects legal, proper, reasonable, and in conformity with all applicable laws and regulations, and was neither arbitrary nor capricious.

New York County Supreme Court Order and Judgment

20. By order and judgment filed March 18, 2010, the Supreme Court, New York County (Diamond, J.) denied petitioner's Article 78 petition and dismissed the proceeding (R5-7). The Court rejected petitioner's arguments, ruling, inter alia, that FOIL, Public Officers Law § 89(2)(b), permits an agency to delete identifying details from records in order to prevent an unwarranted invasion of personal privacy; the City conducted these "anti-Communist" interviews with the express commitment to each person interviewed that each interview would remain confidential; the promises of confidentiality themselves did not violate any law; disclosure of individual names was of grave concern to these individuals; revealing the identity of the confidential informants would constitute an unwarranted invasion of privacy with respect to these confidential informants; and the age of the records involved does not mandate disclosure. The Supreme Court ruled as follows:

> ... In any event, whatever limited scholarship interest the petitioner may have in exposing the identities of those who named names is clearly outweighed by the City's promise of confidentiality made to its employees and the potential embarrassment to, and harassment of, at

> least some of these individuals and their families.
>
> In light of the sensitive nature of the information, the minimal burden that compliance with the respondents' offer places on the petitioner and the total absence or evidence that the respondents fabricated concern for employee confidentiality only to frustrate the petitioner in the conduct of her scholarship, the court is persuaded that the respondents have properly refused petitioner access to the unredacted files unless she agrees not to publish the names of individuals identified in the records.

A copy of the New York County Supreme Court's order and judgment is annexed to petitioner's motion for leave to appeal as Exhibit "1".

Appellate Division, First Department Decision and Order

21. By decision and order entered May 31, 2011, the Appellate Division, First Department unanimously affirmed the Supreme Court's order and judgment, expressly agreeing with the trial court's conclusion "that the privacy interests of the surviving subjects of the investigation and their relatives (*see Matter of New York Times Co. v. City of N.Y. Fire Dept.*, 4 NY3d 477 [2005]) outweigh petitioner's interest in being able to publish the names of teachers contained in the records at issue" (Dec. and Order at 2-3). The Appellate Division further declined to rule on petitioner's claim that the Rules of the City of New York Department of Records and Information Services, 49 RCNY § 3-02, which specifically addresses standards for

access to the "restricted files" in the anti-Communist records, violates her state and federal constitutional rights to free speech. The Appellate Division opined that as the Supreme Court decided the Article 78 petition solely on FOIL grounds, any ruling on petitioner's constitutional claim would be merely advisory. The Court accordingly affirmed the denial of the Article 78 petition. A copy of the Appellate Division's May 31, 2011 decision and order is annexed to petitioner's motion for leave to appeal as Exhibit "2".

Motion for Leave to Appeal

22. Petitioner now seeks leave to appeal to this Court, arguing that leave to appeal as of right is warranted under CPLR § 5601(b)(1), on the ground that it presents the "purely constitutional issue" of whether the City's regulation prohibiting the publication of names in the restricted anti-Communist files violates petitioner's First Amendment rights (Pet's Mot. at 13, 15-20). Petitioner alternatively argues that leave to appeal should be granted by permission pursuant to CPLR § 5602(a)(1)(i), to determine whether disclosure of the names of teachers and informants is exempt under FOIL, as the Courts below ruled, as an unwarranted invasion of personal privacy, and based on promises of confidentiality, pursuant to this Court's decision in New York Times Company v. City of New York Fire Department, 4 N.Y.3d 477, 484 (2005) (Pet.'s Mot. at 13-15, 20-

28). Petitioner argues that the rulings herein impermissibly extend this Court's holding in New York Times Company, regarding privacy interests of surviving relatives (Pet.'s Mot. at 20-25).

23. Petitioner, however, has not appealed as of right, and she does not present any reason for this Court to grant leave to appeal. There is no substantial constitutional issue directly involved, for any purported appeal as of right under CPLR § 5601(b)(1). Nor are there any conflicts with decisions of this Court, contrary to petitioner's claim, or among the Appellate Divisions, to warrant an appeal by permission pursuant to CPLR § 5602(a)(1). Nor are there any issues of true first impression or of Statewide significance warranting review by this Court. Nor was there any legal error in the lower Courts' determinations under FOIL, that the names of teachers and informants who gave information under a promise of confidentiality are exempt from public disclosure under FOIL's personal privacy exemption.

No Basis for Appeal as of Right

24. Petitioner has not appealed as of right, as she has not filed a notice of appeal to this Court from the Appellate Division's decision and order. In any event, petitioner's constitutional argument, that 49 RCNY § 3-02 is unconstitutional, and violates her First Amendment rights, provides no basis for an appeal, as there is no substantial

constitutional issue directly involved, as required by CPLR § 5601(b)(1). Neither the Appellate Division, nor the New York County Supreme Court, decided this proceeding on State or federal constitutional grounds, not did those Courts even need to reach the constitutional issues. Rather, the lower Courts ruled against petitioner solely on the basis of FOIL, New York Public Officers Law §§ 84 et seq., and the statutory exemption in that statute preventing an unwarranted invasion of personal privacy. Thus, those Courts correctly decided this case as a matter of statutory construction of State law, and there is no substantial constitutional question directly involved, for this Court to assume jurisdiction to review the issue in an appeal as of right, even if petitioner had sought to pursue this appeal as of right.

25. Petitioner's constitutional claim nevertheless lacks merit, and does not warrant consideration by this Court. Petitioner cites no cases holding that it is unconstitutional for the government to provide access to confidential information on the condition that the confidential information not be disseminated or published. Exemptions to disclosure of government documents, such as those at issue here, have consistently been upheld under the Constitution. "There is no discernible basis for a constitutional duty to disclose, or for standards governing disclosure of or access to information."

Houchins v. KQED, Inc., 438 U.S. 1, 14 (1978). In considering the question of whether the news media had a constitutional right of access to a county jail for publication and broadcasting, the United States Supreme Court reiterated that "[t]here is no constitutional right to have access to particular government information," and that the First Amendment does not mandate "a right of access to government information or sources of information within the government's control." Id. at 14, 15. The Supreme Court reached the same conclusion in rejecting a facial challenge to a California state statute limiting access to information about persons who had been arrested. See Los Angeles Police Department v. United Reporting Publishing Corporation, 528 U.S. 32, 40 (1999) (statute was not facially invalid based on governmental denial of access to information in government's possession; even the total nondisclosure of arrestee information would not violate the First Amendment); see also Whalen v. Roe, 429 U.S. 589, 605 (1977) (recognizing privacy concerns regarding regulations requiring physicians to report the identity of persons receiving certain prescription drugs, while upholding the regulatory scheme that protected those interests; and applauding New York's statutory scheme, and its implementing administrative procedures, as evincing a proper concern with and protection of the individual's privacy interests).

26. In the case at bar, the statutory exemptions under FOIL, and the implementing regulations and procedures, likewise establish the government's proper concern with, and protection of, individual privacy interests in issue here. These cases establish that there is no constitutional right to access or disclosure of government information. There was no substantial constitutional issue for the lower Courts to reach, and there is still no substantial constitutional issue for this Court to resolve.

No Basis to Grant Leave to Appeal

27. Nor does petitioner present any basis for this Court to grant leave to appeal, as she has not identified any error or misapprehension of law or fact in the Appellate Division's ruling affirming the Supreme Court's determination, which upheld the Department of Records' decision to condition access to the restricted files on maintaining the confidentiality of names and identifying information contained therein. As the lower Courts properly ruled, disclosure of the names of the individuals, or personally identifying 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, in violation of Public Officers Law §§ 87(2) and 89(2).

Accordingly, such disclosure is not required under FOIL, and petitioner's application was properly denied.

28. As the Appellate Division held, relying on this Court's ruling in New York Times Company v. City of New York Fire Department, 4 N.Y.3d 477 (2005), the privacy interests of the survivors and their relatives outweigh petitioner's interest in being able to publish the names of the people referenced in the records. As the Supreme Court likewise opined, petitioner's interest in publicly disclosing those who "named names" is outweighed by the City's express promise of confidentiality, and the potential embarrassment to and harassment of those individuals and their relatives. See Pub. Off. Law §§ 87(2)(b), 89(2)(b); see also New York State United Teachers v. Brighter Choice Charter School, 15 N.Y.3d 560, 564 (2010) (denying disclosure under FOIL of the names of teachers employed by the Charter Schools under Pub. Off. Law 89(2)(b)(iii)'s privacy exemption, noting that "ordering disclosure of the names would do nothing to further the policies of FOIL . . .").

29. In New York Times Company, the New York City Fire Department denied public access to unredacted recordings of 911 emergency service calls made by individuals who were killed in the terrorist attacks occurring on September 11, 2001, as well as survivors of the attacks who made 911 calls. This Court found that a privacy right exists "in the feelings and

experience of people no longer living." Id., 4 N.Y.3d at 484. This Court observed:

> Almost everyone, surely, wants to keep from public view some aspects not only of his or her own life, but of the lives of loved ones who have died. It is normal to be appalled if intimate moments in the life of one's deceased child, wife, husband or other close relative become publicly known, and an object of idle curiosity or a source of titillation. The desire to preserve the dignity of human existence even when life has passed is the sort of interest to which legal protection is given under the name of privacy. We thus hold that surviving relatives have an interest protected by FOIL in keeping private the affairs of the dead.

Id. at 484-85. This Court therefore decided that the callers' words in those records could be redacted to protect their privacy interests. Id. at 486-87. The Court thus made important rulings concerning the right of privacy under New York law, including, for the first time, a right of privacy that survives the death of an individual and vests in the decedent's surviving relatives. Subsequently, the Appellate Division, First Department further clarified this ruling, to include redaction of not only the words of the callers themselves, but also redaction of the words of the 911 operators which repeated the callers' words or which stated personally identifying information concerning the callers. New York Times Company v. City of New York Fire Department, 39 A.D.3d 414, 415, (1st Dept., 2007) (R260).

30. It is quite understandable that some of the persons interviewed, or their surviving relatives, would be distressed by public disclosure that they were members of the Communist Party, at a time when Joseph Stalin led the Soviet Union. In hindsight, some persons might believe that such membership showed a lack of judgment and/or naïveté. Even more readily apparent is the great concern that many subjects or their surviving relatives would have if the subject "named names" during the course of the interview, as many did. One has only to note the controversy that followed such well-known figures as Elia Kazan and Jerome Robbins until their deaths, for their similar actions, to understand the agony that the public release of such information could cause the subjects or their surviving relatives, and possibly result in much unwanted and unwelcome harassment and negative publicity. Finally, for the subjects who lied to their families about their involvement, it is readily apparent that it would be extremely painful for many of these subjects and their families, or their surviving relatives if the subject is deceased, if their lies were publicly exposed, or if family members or surviving relatives first learned of the subject's involvement through publication of that involvement. In summary, it would be an unwarranted invasion of the personal privacy of the subjects named in these records, and if deceased their surviving relatives, to publicly

disclose their names and identifying information, as the Courts below properly held.

31. In addition, it is significant that the persons interviewed were given explicit promises of confidentiality. In New York Times Company, in addition to the 911 calls, this Court also considered whether "oral histories," consisting of subsequent interviews with Fire Department personnel who were present at Ground Zero on September 11, 2001, were exempt from disclosure under the personal privacy exemption of Pub. Off. Law § 89(2). Id., 4 N.Y.3d at 488-90. Ultimately, this Court found that the oral histories were disclosable under FOIL, relying heavily on the fact that "the record did not reflect that any interviewee was given a promise of confidentiality or led to believe that his or her words would be kept secret." Id. at 489.

32. Here, the record establishes that the individuals who were interviewed in the Board's "anti-Communist" activities were promised confidentiality as a matter of course, not only regarding the fact that they had been interviewed but as to the information, including but not limited to the names of other individuals, that they were providing. The record reflects that the individuals interviewed were offered many specific assurances of confidentiality (R80, R211, R214, R219). There is no question here that the individuals called to be

interviewed were "led to believe that his or her words would be kept secret." See New York Times Company, 4 N.Y.3d at 489. This promise of confidentiality, notably missing in New York Times Company, is another reason supporting the lower Courts' conclusions that the redaction of personally identifying information is justified and proper under FOIL here, as it was in Cirino.

33. All that FOIL requires is access to these records with the individuals' identifying details redacted to preserve personal privacy. The Department of Records has offered petitioner an alternative form of access, to provide the maximum disclosure consistent with FOIL and the Department of Records' utmost efforts to provide unusually open access to historical government records. The Department of Records has offered petitioner unfettered access to the complete, unredacted set of records, including all of the restricted files, subject only to her agreement not to publish the identities of the private individuals contained within them (R317).

34. Petitioner does not, and cannot, offer a single reason why the public's interest would be served only through the *publication* of the identities of the specific teachers who were suspected or admitted Communists party members or sympathizers and those who acted as informants (i.e., "named names") during a time of national crisis. This is especially

true when considering the context of these investigations. Names were likely often provided based on surmise, rumor, speculation and conjecture. It can be assumed that the names provided in the context of such allegations were sometimes, if not often, untrue, and that the person suspected or identified was never a member of the Communist Party. In this sense, it is continued confidentiality, and not disclosure of the names, that serves the public's interest.

35. The Department of Records has already offered petitioner access to the records in redacted form, and has moreover remarkably offered petitioner full access to the case files, in exchange for petitioner's promise not to publish the identities of the individuals named within them. The Department of Records has thus made every effort to provide disclosure to the maximum extent possible, while respecting the privacy rights of the individuals referenced in the materials. Petitioner's challenge to this determination is without basis, and was properly rejected by the lower Courts.

36. The redacted interview transcripts in this record demonstrate that the redactions at issue do not conceal the government's procedures and methods. The words of the government representatives are not redacted, except and only to the extent these representatives repeat identifying information (R315). Nor are the words of the persons being interviewed

redacted, again except for any identifying information. Significantly, the parties here have used the redacted interview transcripts to show the reasons the subjects joined the Communist Party, and the subjects' feelings about being interviewed and providing information to the interviewer. The only information that is being protected by the disputed redactions is the identities of persons who were the subjects of these investigations, whom petitioner presumably considers were victimized by these investigations (R315-16).

37. Even, arguendo, if petitioner were able to articulate some public interest that would be served as a basis for the release of these names, the balancing test would still apply, and remain heavily weighted toward protecting the privacy interests of these countless individuals. Petitioner's failure to articulate any cognizable reason for her need to publish the names of these individuals only adds to the likelihood that such information is intended to be used as "an object of idle curiosity or source of titillation," see New York Times Company, 4 N.Y.3d at 485, rather than in support of some identifiable public objective. And even if petitioner's use of the information were completely scholarly and respectful, in this age of the Internet and widespread computerized access to information, there is no control of the treatment of, or

limiting the use of, information once it is in the public domain.

38. As the Courts below concluded, the Department of Records has a reasonable basis in law for its restriction pursuant to FOIL's personal privacy exemption. Respondents have offered a good-faith basis for the redaction and/or restriction on publication of the names and identifying details of the individuals found in the records. To publicly reveal the identifying information concerning the persons who are the subjects of the documents, without their consent or the consent of their surviving relatives, would forseeably be painful and possibly humiliating for many of these persons and their families, and could potentially subject them to harassment and public embarrassment. Publication of these names would constitute an unwarranted invasion of personal privacy, and therefore disclosure of the names and/or other identifying information is not required under FOIL, Public Officers Law §§ 87(2)(b) and 89(2)(b). The privacy interests of the surviving subjects of the investigation and their relatives outweigh petitioner's interest in being able to publicize the names and identifying information of the individuals named in the records, as the Appellate Division correctly ruled.

39. In sum, petitioner has not identified any error or misapprehension of law or fact. Nor has she identified any