

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

Montgomery Blair Sibley,

Index No.:2019-1132cv

Petitioner,

**VERIFIED PETITION PURSUANT TO
ARTICLE 78 OF THE NEW YORK CIVIL
PRACTICE LAW AND RULES**

vs.

Steuben County Pistol Permit Clerk,
Steuben County Sheriff's Office and
Licencing Officer Chauncey J. Watches,

Respondents.

_____ /

Petitioner Montgomery Blair Sibley ("Sibley") pursuant to 28 U.S.C. §1746, states that the factual matters stated herein are true under penalty of perjury:

PRELIMINARY STATEMENT

1. Pursuant to the Freedom of Information Law ("FOIL") and Article 78 of the New York Civil Practice Law and Rules ("CPLR"), Sibley seeks an order directing Respondents: (i) Steuben County Pistol Permit Clerk, (ii) Steuben County Sheriff's Office and (iii) Licencing Officer Chauncey J. Watches, to produce a complete copy of records or portions thereof pertaining to all Pistol /Revolver License applications and Pistol /Revolver License files for each person granted or denied a Pistol /Revolver License in Steuben County for the years 2016, 2017, 2018 and 2019 as more fully described below.

JURISDICTION AND VENUE

2. This proceeding is brought pursuant to CPLR Article 78 and Public Officers Law, Article 6, §89.4(b). A prior application has not been made for the relief now requested.

3. Venue is proper pursuant to CPLR §506 and §7804 as Steuben County, New York is where the Respondents made the determinations complained of herein.

PARTIES

4. Sibley, is *sui generis*, a “natural born Citizen” of the United States as he was born in Rochester, New York, the child of two United States citizens – Harper Sibley, Jr. and Beatrice Blair Sibley – and has continuously resided in the United States since his birth. Sibley at all times relevant herein has resided in the City of Corning, Steuben County, New York.

5. Respondent Steuben County Pistol Permit Clerk is the N.Y. Penal Law §400.00(4-a), “appropriate authority” for filing Pistol Permit Applications and as such is a “governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof” as defined by Public Officers Law, Article 6, §86.3.

6. Respondent Steuben County Sheriff’s Office is the N.Y. Penal Law §400.00.4 “duly constituted police authorit[y] of” Steuben County and as such is a “governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof” as defined by Public Officers Law, Article 6, §86.3.

7. Respondent Licencing Officer Chauncey J. Watches is a N.Y. Penal Law §265.00(10) Pistol/Revolver Licensing Officer for Steuben County, New York, and as such is a “governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof” as defined by Public Officers Law, Article 6, §86.3.

GENERAL ALLEGATIONS

8. On **July 5, 2019**, Sibley sent FOIL requests to each of the three Respondents. A copy of those FOIL requests is attached here as Composite Exhibit “A”.

9. As of **July 24, 2019**, the Respondents had neither acknowledged nor responded to Sibley's FOIL requests. Accordingly each of the Respondents failed to conform to the provisions of Public Officers Law, Article 6, §89.3(a) and thus, pursuant to Public Officers Law, Article 6, §89.4 denied Sibley's FOIL requests.

10. Accordingly, Sibley, on **July 24, 2019**, pursuant to Public Officers Law, Article 6, §89.4(a), filed his appeal to the appropriate officer, the Chairman, Steuben County Legislature. A copy of that **July 24, 2019**, letter is attached hereto as Exhibit "B".

11. Belatedly, on **July 25, 2019**, Respondents, through the Steuben County Records Access Officer, responded to Sibley's FOIL request denying each request. A copy of the **July 25, 2019**, letter is attached hereto as Exhibit "C". In that **July 25, 2019**, letter, the Record Access Officer based her denial upon the provisions of N.Y. Penal Law §400.00 and N.Y. Public Officers Law §87(2)(b).

12. On **August 5, 2019**, Sibley's administrative appeal was denied by the Chairman, Steuben County Legislature. A copy of that **August 5, 2019**, letter is attached hereto as Exhibit "D".

13. As such, Sibley has exhausted his administrative appeal options.

14. Sibley challenges the constitutionality of N.Y. Penal Law §400.00 and N.Y. Public Officers Law §87(2)(b) on their face and as applied as violating the Equal Protection clauses of the Federal and New York Constitutions as they impermissibly impinge upon a fundamental right recognized under the Second Amendment by allowing arbitrary and discriminatory granting of pistol permits. Sibley has an actual or threatened injury that is likely to be redressed by a favorable decision from this Court which would provide evidence of the

arbitrary and discriminatory granting of pistol permits.

REQUEST FOR RELIEF

WHEREFORE, Sibley seeks judgment pursuant to Article 78 of the Civil Practice Law and Rules, §7803(1), §7803(3) and §7806:

- Adjudging and declaring that the denial of Sibley’s FOIL requests by Respondents:
 - a. Was a failure to perform a duty enjoined upon them by law;
 - b. Was arbitrary and capricious;
 - c. Was an abuse of discretion;
 - d. Was in violation of Public Officers Law, Article 6; and
 - e. Violated the Equal Protection clauses of the Federal and New York Constitutions;
- Directing Respondents to promptly provide the information requested by Sibley;
- In the alternative, directing a trial of any triable issues raised by the pleadings and proof of the parties;
- Awarding Sibley his *quantum meruit* legal fees and expenses incurred in preparing and prosecuting this Petition;
- Retaining Jurisdiction to enforce its Orders if violated by the Respondents; and
- Awarding such other and further relief as the Court may deem just and proper.

By: _____
MONTGOMERY BLAIR SIBLEY
Petitioner
189 Chemung Street
Corning, NY 14830
(607) 301-0967
montybsibley@gmail.com

VERIFICATION

I declare under penalty of perjury that the foregoing factual matters are true and correct.

By: _____
MONTGOMERY BLAIR SIBLEY

Montgomery Blair Sibley

189 Chemung Street
Corning, N.Y. 14830
607-301-0967
mbsibley@gmail.com

July 5, 2019

USPS Tracking #: 9590940246028278729379
Steuben County Sheriff's Office
7007 Rumsey St. Ext.
Bath, NY 14810

Re: *Freedom of Information Law Request for Records*

Records Access Officer:

Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, I hereby request a copy of records or portions thereof pertaining to all Pistol /Revovler License applications and Pistol /Revovler License files for each person granted or denied a Pistol /Revovler License in Steuben County for the years 2016, 2017, 2018 and 2019, including, without limitation, mine.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the pistol permit application process in Stueben County which I intend to broadcast widely. This information is not being sought for commercial purposes.

As I am sure you are aware, pursuant to §89(3)(a) of the Freedom of Information Law, within five business days of the receipt of this written request for the records I have reasonably described, you shall: (i) make such records available to me, (ii) deny my request in writing or (iii) furnish a written acknowledgment of the receipt of my request and a statement of the approximate date, which shall be reasonable under the circumstances of my 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 §89(5) of the Freedom of Information Law. If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name, address and email address of the person or body to whom an appeal should be directed.

Yours,

Composite Exhibit "A"

Montgomery Blair Sibley

189 Chemung Street
Corning, N.Y. 14830
607-301-0967
mbsibley@gmail.com

July 5, 2019

USPS Tracking #: 9590940246028278729386
Steuben County Pistol Permit Clerk
3 E. Pulteney Square
Bath, N.Y. 14810

Re: *Freedom of Information Law Request for Records*

Records Access Officer:

Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, I hereby request a copy of records or portions thereof pertaining to all Pistol /Revovler License applications and Pistol /Revovler License files for each person granted or denied a Pistol /Revovler License in Steuben County for the years 2016, 2017, 2018 and 2019, including, without limitation, mine.

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If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

Yours,

Montgomery Blair Sibley

189 Chemung Street
Corning, N.Y. 14830
607-301-0967
mbsibley@gmail.com

July 5, 2019

USPS Tracking #: 9590940246028278729362
Licensing Officer Chauncey J. Watches
3 E. Pulteney Square
Bath, N.Y. 14810

Re: *Montgomery Blair Sibley NYS Pistol Permit Application*

Greetings:

I am in receipt of that certain letter dated **June 25, 2019**, from you in your capacity as a NY Penal Law §265.00(10) Licensing Officer to me. In response:

First: The notice of the hearing date contained in your letter failed to comply with NY Admin P Act §304(1) as it did not include: (i) a statement of the legal authority and jurisdiction under which the hearing is to be held and (ii) a reference to the particular sections of the statutes and rules involved.

Second: The hearing date you set of **July 31, 2019 at 10:30 a.m.** is impossible for me to attend for the following reasons:

- I will be out-of-the-country on a work-related trip from **July 27, 2019 through August 7, 2019**, which I scheduled in **January 2019**. A copy of my airline ticket voucher for this trip is attached. Moreover, I have many work-related commitments scheduled from now through November which I am unable to change without loss of income and loss of professional reputation and thus future employment making your *ex cathedra* setting of a hearing without consulting me first especially inconvenient for me;
- Practically, I will not be able to marshal the evidence I desire to produce at the July 31st hearing on such short notice¹; and

¹ For example, I requested a particularly relevant document – a police report from the Montgomery County, Maryland Sheriff's Office – on June 14, 2019. To date, my copying fee check has yet to be cashed and I have not received the requested report. Moreover, I have this day sent Freedom of Information Law requests to several New York and federal governmental entities. As I trust you know, each such entity has, pursuant to §89(3)(a) of the Freedom of Information Law, five business days to grant or deny access in whole or in part, or if more time is

- Your notice failed to state a duration for the hearing. I will not be able to provide an estimate of the time I will be requesting for the hearing until my pre-hearing evidence gathering process is completed.

In sum, given the mandate of NY Admin P Act §304(4) that: “In fixing the time and place for hearings and oral argument, **due regard shall be had for the convenience of the parties**” (emphasis added), the hearing date you set for **July 31, 2019**, must be continued *sine die*. Instead, I am requesting, pursuant to NY Admin P Act §304(5), a pre-hearing conference set anytime during the week of **August 12, 2019**, to: (i) allow me to update you as to the progress of my pre-hearing evidence gathering, (ii) set the time for filing of briefs, motions and other documents and (iii) address the simplification of the factual and legal issues – including, without limitation, the administrative law equivalent of judicial notice of some dozen state and federal lawsuits in which I was involved – hopefully by consent of the parties, all to the end of streamlining the hearing process.

Third: Pursuant to NY Admin P Act §304(2) & (3), I am requesting that you sign and issue subpoenas requiring the production of books, papers, documents and other evidence for the following entities:

- A. Steuben County Pistol Clerk for all Pistol /Revolver License applications and Pistol /Revolver License files for each person granted or denied a Pistol /Revolver License in Steuben County for the years 2016, 2017, 2018 and 2019, including, without limitation, mine.
- B. Steuben County Sheriff for all investigations for each person granted or denied a Pistol /Revolver License in Steuben County for the years 2016, 2017, 2018 and 2019, including, without limitation, mine.
- C. The New York State Police for all records regarding me in their possession.
- D. The Corning, New York, Police for all records regarding me in their possession.
- E. The Federal Bureau of Investigation for all records regarding me in their possession. Once issued, I will comply with the notice requirements of 28 CFR §16.24.

needed, to acknowledge the receipt of the request in writing and indicate the approximate date by which the entity will respond to the request. Hence, I will not even be able to advise you when I would be ready for a hearing until: (i) I have received the initial response from each entity, or (ii) I have been apprised of when I can expect a response and (iii) I determine whether I will have to challenge a denial of my request of access under Article 78 of the Civil Practice Law and Rules. Similar reasoning applies to the deposition subpoenas I am herein requesting.

Licensing Officer Chauncey J. Watches
July 5, 2019
Page 3

The relevance of the information sought by these *duces tecum* subpoenas is to demonstrate that there is no relevant information contained in the files of these agencies which would support a finding by you other than I am of good moral character or that there is no good cause for the denial of my requested license. I request a return date for the *duces tecum* subpoenas of **August 12, 2019**, to my address above. Upon receipt of the documents requested by these subpoenas *duces tecum*, I will advise of the hearing subpoenas I will be requesting you issue pursuant to NY Admin P Act §304(2). Please advise me if you have any logistical questions regarding these requested subpoenas *duces tecum*.

Fourth: In so much as you are acting as a New York Consolidated Laws, Penal Law §265.00(10) Licensing Officer and therefore, pursuant to New York Public Officers Law, Article 6, §86, a New York State or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function, you are clearly subject to the New York Public Officers Law, Article 6, §§84 *et seq.*, known as the Freedom of Information Law. Accordingly, please advise me of the appropriate time during normal business hours for inspecting, prior to obtaining copies, all Pistol /Revolver License applications and Pistol /Revolver License files for each person granted or denied by you a Pistol /Revolver License in Steuben County for the years 2016, 2017, 2018 and 2019, including, without limitation, mine.

As I am sure you are aware, pursuant to §89(3)(a) of the Freedom of Information Law, within five business days of the receipt of this written request for the records I have reasonably described, you shall: (i) make such records available to me, (ii) deny my request in writing or (iii) furnish a written acknowledgment of the receipt of my request and a statement of the approximate date, which shall be reasonable under the circumstances of my 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 §89(5) of the Freedom of Information Law. If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name, address and email address of the person or body to whom an appeal should be directed.

Last, I am available on relatively short notice to attend a telephone conference call regarding these issues if that would assist in addressing any questions, comments or concerns.

Yours,



cc: Brooks Baker, District Attorney
Steuben County
3 E Pulteney Square # 308
Bath, NY 14810

Montgomery Blair Sibley

189 Chemung Street
Corning, N.Y. 14830
607-301-0967
mbsibley@gmail.com

July 24, 2019

USPS Tracking #: 9590940246028278729317
Chairman, Steuben County Legislature
3 East Pulteney Square
Bath, NY 14810

Re: *FOIL Appeal*

Greetings:

I hereby appeal the denial of access regarding my FOIL requests, which were made on **July 5, 2019**, and sent to:

1. Steuben County Sheriff's Office, 7007 Rumsey St. Ext., Bath, NY 14810;
2. Steuben County Pistol Permit Clerk, 3 E. Pulteney Square, Bath, N.Y. 14810; and
3. Licensing Officer Chauncey J. Watches, 3 E. Pulteney Square, Bath, N.Y. 14810 (Page 3).

The records that were denied are described in the attached letters to each of the above referenced entities. Each of the above entities received my requests on **July 8, 2019**, as detailed in the attached Return Receipt Requested postcards.

As of this date – more than five (5) days since **July 8, 2019**, past the required response time thus violating Public Officers Law, Article 6, §89.3(a) – my FOIL requests are, pursuant to Public Officers Law, Article 6, §89.4 – statutorily denied.

As required by the Public Officers Law, Article 6, §89.4(a), you are required to respond to this letter within 10 business days of the receipt of this appeal. If the records are denied on appeal, please explain the reasons for the denial fully in writing as required by law.

In addition, please be advised that the Freedom of Information Law directs you to send all appeals and the determinations that follow to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, New York 12231.

Yours,

Exhibit "B"

STEUBEN COUNTY LEGISLATURE
OFFICE OF THE CLERK

BRENDA K. MORI
CLERK
bmori@steubencountyny.gov



AMANDA L. CHAPMAN
DEPUTY CLERK
achapman@steubencountyny.gov

COUNTY OFFICE BUILDING
3 EAST PULTENEY SQUARE
BATH, NY 14810-1557
(607) 664-2247
FAX (607) 664-2282

July 25, 2019

Montgomery Blair Sibley
189 Chemung Street
Corning, NY 14830

RE: FREEDOM OF INFORMATION LAW REQUEST – PISTOL PERMIT APPLICATIONS

Mr. Sibley,

Your requests for information made pursuant to Public Officers Law (Freedom of Information Law) and submitted to the Steuben County Sheriff's Office and the Steuben County Clerk's Office were forwarded to my office as the Records Access Officer for Steuben County. *Please direct all future requests to my attention to avoid a delay in processing.*

You have requested copies of records or portions thereof pertaining to all Pistol/Revolver License applications and Pistol/Revolver License files for each person granted or denied a Pistol/Revolver License in Steuben County from 2016 to 2019, including your own application.

Public Officers Law §87(2) states that all records are accessible except records or portions thereof that fall within one of nine categories of deniable records. Deniable records include records or portions thereof that (a) are specifically exempted from disclosure by state or federal statute; and (b) would, if disclosed, result in an unwarranted invasion of personal privacy.

New York State Penal Law §400.00 5. States "except as provided in paragraphs (b) through (f) of this subdivision, the *name and address* of any person to whom an application for any license has been *granted* shall be a public record. Paragraphs (b) through (f) refer to the *ability* of individuals to request an *exception* from his or her application information becoming public record, often referred to as "opting out". Specifically, paragraph (b) states the "forms shall provide each applicant an opportunity to specify the grounds on which he or she believes his or her application information should not be publicly disclosed. These grounds, *which shall be identified on the application with a box beside each for checking*", as applicable, by the applicant..."

Regarding your request for copies of records or portions thereof pertaining to all Pistol/Revolver License applications and Pistol/Revolver License files for each person *denied* a Pistol/Revolver License in Steuben County from 2016 to 2019, this portion of your request is denied pursuant to Public Officers Law §87(2) (a) as New York State Penal Law §400.00 5. *states only the name and address of any person to whom an application for any license has been granted shall be public record and also pursuant to Public Officers Law §87(2) (b) as release of any information on the applications of those individuals who were denied a pistol permit would be considered an unwarranted invasion of personal privacy.*

Exhibit "C"

Public Officers Law §89(3) requires you to "reasonably describe" the record in which you are interested. Whether a request reasonably describes records often relates to the nature of an agency's filing or recordkeeping system. For example, if records are kept alphabetically, a request for records involving an event occurring on a certain date might not reasonably describe the records. Locating the records in that situation might involve a "search for the needle in the haystack" and an agency is not required to engage in that degree of effort.

Regarding your request for copies of records or portions thereof pertaining to all Pistol/Revolver License applications and Pistol/Revolver License files for each person granted a Pistol/Revolver License in Steuben County from 2016 to 2019, this portion of your request is denied. The Steuben County Clerk's office maintains a database of *all* pistol permit holders within the county. However, New York State Penal Law §400.00 5 (b) stipulates that the opt out provision and reason need only be indicated on the application form and, as such, this information is not included in the County's pistol permit database. Therefore, the only way to determine which pistol permit holders names and addresses would be releasable from the database in compliance with Penal Law §400.00 5 would be to go through each and every paper application on file and, pursuant to Public Officers Law §89(3), we are not required to engage in that degree of effort.

Regarding your request for a copy of your pistol/revolver license application, I've been informed that your application was denied and that you have a hearing scheduled on that denial set for July 31, 2019. Due to this pending hearing, your application still resides with County Court Judge Watches. This means your record is currently a record of the Judiciary and pursuant to §255 of New York State Judiciary Law, judicial records are not subject to Freedom of Information Law. Therefore, this portion of your request is denied pursuant to Public Officers Law §87(2)(a) as they are exempt from disclosure pursuant to §255 of New York State Judiciary Law.

Under Freedom of Information Law you do have the right to appeal a denial of any portion of your application within thirty (30) days from the date hereof to the head of this agency:

Chairman, Steuben County Legislature
3 East Pulteney Square
Bath, NY 14810

Sincerely,


BRENDA K. MORI
RECORDS ACCESS OFFICER



STEUBEN COUNTY LEGISLATURE

Joseph J. Hauryski, Chairman

District 8

Carol A. Ferratella
Vice Chair
District 13

Gary D. Swackhamer
Majority Leader
District 1

Hilda T. Lando
Minority Leader
District 2

Kelly H. Fitzpatrick
District 3

K. Michael Hanna
District 5

Robin K. Lattimer
District 3

Steven Maitz, Esq.
District 2

John V. Malter
District 4

Aaron I. Mullen, Esq.
District 7

Robert V. Nichols
District 11

Frederick G. Potter
District 10

Gary B. Roush
District 12

Thomas J. Ryan
District 9

Brian C. Schu, Esq.
District 6

Scott J. Van Eppen
District 13

Randolph J. Weaver
District 1

Jack K. Wheeler, MPA
County Manager

Brenda K. Mori
Clerk of the Legislature

August 5, 2019

Montgomery Blair Sibley
189 Chemung Street
Corning, NY 14830

RE: FOIL APPEAL

Mr. Sibley,

I have received your appeal based upon Public Officers Law §89.4(a) which stipulates that "failure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial."

Following my review of the information you provided with your letter dated July 24, 2019, and received in my office on July 29, 2019, I met with Brenda Mori, the Records Access Officer for Steuben County. It appears the delay in responding to your request was due to your request not being sent directly to the Records Access Officer. The "return receipt requested" postcards you provided were signed by an employee in the mailroom and, therefore, do not indicate a true date received by the actual departments to which your requests were made. Once received from the mailroom by those departments, they needed to be read and then forwarded to the Records Access Officer as all FOIL requests are processed by her. Since your letters weren't addressed directly to the Records Access Officer they went to the addressed departments, then back to the mailroom before finally being delivered to the Records Access Officer. This, coupled with employee time off, caused the delay in acknowledging your request.

That being said, Ms. Mori provided me with a copy of the letter she sent to you dated July 25, 2019, which officially denied your request for records. Upon review of the reasons stipulated in her letter, I am upholding her decision and, therefore, denying your appeal. However, please be advised that this denial only applies to your FOIL requests described in items numbered 1 and 2 of your letter dated July 24, 2019. Your request addressed to "Licensing Officer Chauncey J. Watches" does not fall under the auspices of Steuben County as Judge Chauncey J. Watches is a New York State employee. Therefore, any FOIL requests addressed to Judge Watches would be handled by New York State Office of Court Administration.

As required by Public Officers Law §89(4)(a), I am forwarding a copy of my decision to the Committee on Open Government.

Sincerely,

JOSEPH J. HAURYSKI
CHAIRMAN
STEUBEN COUNTY LEGISLATURE

c: NYS Committee on Open Government
Steuben County Records Access Officer
Steuben County Attorney

Steuben County Office Building, 3 East Pulteney Square, Bath, New York 14810-1557
Telephone (607) 664-2243; Fax (607) 664-2282

Exhibit "D"