MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

December 5, 2014

Ms. Karen McCarthy, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Ms. McCarthy:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	New York Central Mutual Fire Insurance Company and A. Central Insurance Company
Document Received:	Verified Petition
Name of Claimant:	NYCM Insurance Co./A. Central
Claimant's attorney:	Philip G. Fortino, Esq. Law Offices of Philip G. Fortino 1899 Central Plaza East Edmeston, New York 13335

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle Parker
First Assistant County Attorney

MMP:dld

Enc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter
Of
The Application of
New York Central Mutual Fire Insurance Company and
A. Central Insurance Company,

Petitioners,

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

-against-

Erie County Sheriff's Office,

Respondent.

PAID
CHECK ____ CASH ____
DEC 01 2014
ERIE COUNTY
CLERK'S OFFICE

Notice of Petition
Index Number: 2014-000217
RJI Number: _____

Assigned Judge: Judge Nemoyer

PLEASE TAKE NOTICE, that upon the annexed petition of New York Central Mutual Fire Insurance Company and A. Central Insurance Company, verified on the 24th day of November, 2014, and upon supporting papers submitted herewith, an application will be made to a Term of this court, to be held at the courthouse thereof, located at ___ Delaware Avenue, City of Buffalo, County of Erie, State of New York, on the 29 day of JANUARY, 2015 at 11:45 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for a order pursuant to N.Y. C.P.L.R. art. 78 directing the Erie County Sheriff's Office to furnish police accident reports at the rates specified in New York State Public Officers Law §87(1)(b)(iii,) and for such other and further relief as may be just, proper and equitable.

PLEASE TAKE FURTHER NOTICE, that an answer and supporting affidavits, if any, shall be served at least five days before the aforesaid date of hearing.

Petitioner designates Erie County as place of trial. The basis of venue is the Respondents are located in the County of Erie.

PLEASE TAKE FURTHER NOTICE that Petitioner requests a hearing on this matter.

Dated: November 24, 2014

Law Offices of Philip G. Fortino

Philip G. Fortino
Attorney for Petitioner
1899 Central Plaza East
Edmeston, New York 13335
Tel: (607) 965-3601
Fax: (607) 965-7793

2014 DEC -1 AM 10: 11

To: Erie County Sheriff's Office
10 Delaware Avenue
Buffalo, New York 14202

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter
Of
The Application of
New York Central Mutual Fire Insurance Company and
A. Central Insurance Company,

Petitioners,

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

Petition
Index Number:_____
RJI Number: _____

-against-

Erie County Sheriff's Office,

Respondent.

PRELIMINARY STATEMENT

1. This is a proceeding under CPLR Article 78 and Public Officers Law Article 6 (the New York State Freedom of Information Law "FOIL") challenging Respondent's denial in substantial part of Petitioner's FOIL requests for copies of the Police Accident Reports generated by Respondent for the insureds of New York Central Mutual Fire Insurance Company and A. Central Insurance Company who were involved in accidents in Erie County.

2. Petitioners assert that the Respondent's determination was affected by an error of law, was arbitrary and capricious and/or was an abuse of discretion pursuant to CPLR §7803(3).

3. The petitioners having exhausted their administrative appeals, now seek a judgment from this Court, pursuant to Article 78 of the New York Civil Practice Law and Rules, annulling a certain determination made by the Respondent in which Petitioner's FOIL request was denied in substantial part.

4. The petitioners now seek an order directing the Respondent to immediately provide copies of the Police Accident Reports at the rates specified in New York State Public Officer's Law §87(1)(b)(iii) and granting the Petitioners different or further relief as the Court shall deem appropriate.

VENUE

5. Pursuant to CPLR §§ 7804(b) and 506(b), venue in this proceeding lies in Erie County.

PARTIES

6. Petitioner, New York Central Mutual Fire Insurance Company, is a domestic corporation, with a principle place of business located at 1899 Central Plaza East, Edmeston, New York 13335.

7. Petitioner, A. Central Insurance Company, is a domestic corporation, with a principle place of business located at 1899 Central Plaza East, Suite 2000, Edmeston, New York 13335.

8. Respondent is a department of the County of Erie with offices located at 10 Delaware Avenue, City of Buffalo, County of Erie, State of New York.

FACTS

9. Petitioner New York Central Mutual Fire Insurance Company received claims for the following insureds:

a. Sherri Diehl - date of loss May 19, 2014;

b. Paul Kreutzer – date of loss May 30, 2014;

c. Jerome and Dawn Krull – date of loss May 30, 2014;

d. Deborah Abrams – date of loss May 12, 2014;

e. Raymond and Karen Francis – date of loss April 29, 2014;

f. Norman Taylor – date of loss May 8, 2014;

g. Nicholas Katrein, Jr. and Elise Katrein – date of loss May 17, 2014;

h. Michelle King – date of loss May 3, 2014;

i. Maryann and John Myers – date of loss June 19, 2014;

j. William and Marie Tokasz – date of loss May 26, 2014;

k. David Heckathorn and Jennifer Geiser – date of loss June 7, 2014;

l. Karen Marks and Robert Ball – date of loss May 18, 2014;

m. Alfred Roncska – date of loss April 12, 2014;

n. Julia Blendonohy – date of loss May 9, 2014;

o. Daniel and Mary Quigley – date of loss June 17, 2014;

p. Anneliese Waskow – date of loss July 2, 2014;

q. Dorothy Schaedel – date of loss July 5, 2014.

10. Petitioner A. Central Insurance Company received a claim for a loss that occurred in Erie County:

a. Tina Terwilliger – date of loss April 10, 2014.

11. At all times stated herein, Petitioner was the automobile insurance company for the listed insureds.

12. When the petitioners receive a claim for an automobile accident, it investigates the facts and circumstances for the loss and seeks to obtain as much information about the loss including but not limited to the Police Accident Report.

13. Pursuant to New York State Public Officers Law Article 6, there is a presumption of access to records unless one of the enumerated exceptions set forth in New York State Public Officers Law §87(2)(a) through (i) applies.

14. The Petitioners made written requests for the Police Accident Reports for each of the aforementioned claims. Copies of these written requests are annexed hereto and made a part hereof as Exhibit A.

15. Upon information and belief, respondent sent responses to the petitioners indicating that the fee for obtaining the Police Accident Report from the respondent was $15.00. Copies of respondent's letters are annexed hereto and made a part hereof as Exhibit B.

16. Respondent's letter also set forth that if the petitioners wanted the Police Accident Reports expeditiously, then they could purchase the reports from www.crashdocs.org for $20.00 or purchase the Reports from the New York State Department of Motor Vehicles for $15.00. See Exhibit B.

17. On July 29, 2014, the undersigned, as attorney for Petitioner, sent a letter to the Timothy B. Howard, Erie County Sheriff, John W. Greenan, Chief of Administrative Services for the Erie County Sheriff's Office, Captain Ronald Kenyon, Erie County Sheriff's Office and the Erie County Sheriff's Office (FOIL) Records Access Officer, requesting an appeal of the decision requiring the petitioners to pay for the police accident reports at rates above those specified in New York State Public Officer's Law §87(1)(b)(iii.) A copy of the letter is annexed hereto and made a part hereof as Exhibit C.

18. To date, no response has been forthcoming.

19. Petitioners are obligated to process their insureds' claims and are unable to properly do so without the Police Accident Reports.

FIRST CAUSE OF ACTION

RESPONDENTS' DENIAL WAS AFFECTED BY AN ERROR OF LAW.

20. Petitioner repeats and realleges paragraphs 1 to 19 above.

21. Petitioner has a right to receive the Police Accident Report it seeks under FOIL.

22. The Respondent is required to produce a copy of the Police Accident Report at the rates specified in New York State Public Officers Law §87(1)(b)(iii.)

23. New York State Public Officers Law §87(1)(b)(iii) sets forth that an agency may not charge more than $.25 per page for a copy of the record.

24. Respondent's denial was based upon its statement that in order to obtain the police accident report it may charge $15.00 yet this statement was made without setting forth the statutory authority permitting respondent to charge a rate other than the one set forth in New York State Public Officers Law §87(1)(b)(iii.)

25. Respondent indicated that if the petitioner wishes to obtain the report quickly, then the petitioner may purchase same from www.crashdocs.org for $20.00; said rate being in excess of the rates set forth in New York State Public Officers Law §87(1)(b)(iii.)

26. Respondent also gave the option of purchasing the report from the New York State Department of Motor Vehicles for a $15.00 fee which is in excess of the rate set forth in New York State Public Officers Law §87(1)(b)(iii.) .

27. New York State Public Officers Law §86(4) defines a record as ". . .any information kept, held, filed, produced, reproduced by, with or for an agency or the state legislature, in any physical form whatsoever . . .".

28. Upon information and belief, the requested record was generated by a member or employee of the Erie County Sheriff's Office therefore they produced the record.

29. The FOIL permits an agency to charge the actual cost of having an outside professional service prepare a copy when ". . . the agency's information technology equipment is inadequate to prepare a copy." New York Public Officers Law §87(1)(c)(iii.)

30. We respectfully submit that unless the Erie County Sheriff's Office is lacking computers, printers and/or photocopy equipment, then its information technology equipment is adequate to generate a copy of the MV-104-a Police Accident Report.

31. Respondent has failed to set forth any New York State Statute that permits it to charge more for Police Accident Reports than the rates specified in New York State Public Officers Law §87(1)(b)(iii.)

32. Respondent's determination was an error of law for denying the Petitioner's FOIL request. That Respondent set forth erroneous and speculative grounds for disapproval. The denial was not based on a rational or reasonable basis.

SECOND CAUSE OF ACTION

RESPONDENTS' DENIAL WAS ARBITRARY AND CAPRICIOUS.

33. Petitioner repeats and realleges paragraphs 1 to 32 above.

34. The Respondent has failed to articulate a "particular and specified justification" for not disclosing the requested documents as required when one of the statutory exceptions are raised by an agency.

35. It is well established that an act is arbitrary and capricious when the action of the administrative agency is without a sound basis in reason and is taken without regard to the facts.

36. In the present case, Respondent denied Petitioner's FOIL request without a sound reason and has ignored the facts, i.e. the maximum permissible fee per photocopy is $.25, and merely raised an exception to FOIL without substantiation.

37. The relief sought herein is based upon grounds that the Respondent's determination is arbitrary, capricious, abuse of discretion and unjust that will result in serious detriment to the Petitioner.

THIRD CAUSE OF ACTION

RESPONDENTS DENIAL WAS AN ABUSE OF DISCRETION.

38. Petitioner repeats and realleges paragraphs 1 to 37 above.

39. Respondent's denial of Petitioners' FOIL request is clearly an abuse of discretion that will result in serous detriment to the Petitioner.

40. FOIL specifically provides for access to Police Accident Reports pursuant to New York State Public Officers Law §86(4.)

41. In the present case, Respondent's denial of Petitioner's FOIL request exceeded the bounds of discretion as they have not met their burden of establishing that Petitioner's FOIL request squarely fits within one of the enumerated exceptions stated in Public Officers Law §87.

42. Petitioner has exhausted its administrative remedies with the Respondent when it requested and appealed its denied request and received a denied appeal.

43. Petitioner has no other remedy at law.

44. Petitioner has not previously requested the relief sought herein from this Court.

WHEREFORE, it is respectfully requested that the Petitioner be granted judgment pursuant to Article 78;

(a) annulling the final determination made by the Erie County Sheriff's Office in which it denied Petitioner's access to the requested specified records;

(b) directing Respondent to immediately provide copies of the Police Accident Reports at a rate of $.25 per page as well as any future reports;

(c) awarding the Petitioner such other, different or further relief as the Court shall deem just and proper.

Dated: November 24, 2014

Law Offices of Philip G. Fortino

Philip G. Fortino
Attorney for Petitioner
1899 Central Plaza East
Edmeston, New York 13335
Tel: (607) 965-3601
Fax: (607) 965-7793

To: Erie County Sheriff's Office
10 Delaware Avenue,
Buffalo, New York 14202

VERIFICATION

STATE OF NEW YORK)
) s.s.:
COUNTY OF OTSEGO)

MICHAEL LaCAVA, being duly sworn states that:

He is a Senior Vice-President of NEW YORK CENTRAL MUTUAL FIRE INSURANCE COMPANY and A. CENTRAL INSURANCE COMPANY, the Petitioners in the above-entitled action which is a corporation created under and by virtue of the laws of the State of New York; that he has read the foregoing Petition and knows the contents thereof; that the same is true to his knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

Michael LaCava
Senior Vice-President

STATE OF NEW YORK, COUNTY OF OTSEGO) s.s.:

On this 25th day of November in the year 2014 before me personally came Michael LaCava, to me known, who, being by me duly sworn, did depose and say that he resides in LaFayette, New York, that he is an Senior Vice-President of NEW YORK CENTRAL MUTUAL FIRE INSURANCE COMPANY and A. CENTRAL INSURANCE COMPANY, the corporations described in and which executed the above instrument; and the he signed his name thereto by authority of said corporations.

Notary Public

STEPHEN JOSEPH SICILIANO III
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SI6259569
Qualified in Oneida County
My Commission Expires 04/14/16