

Alan D. Sugarman
Attorney At Law

17 W. 70 Street
Suite 4
New York, NY 10023
212-873-1371
mobile 917-208-1516
fax 212-202-3524
sugarman@sugarlaw.com

December 18, 2006

Via Facsimile 212-788-8769

John Reisenger
Counsel/FOIL Appeals Officer
NYC Board of Standards and Appeals
40 Rector Street 9th Floor
New York, NY 10006-1705

Re: FOIL Request - Shearith Israel Project at 10 West 70th Street, New York, New York

Dear Mr. Reisenger:

I have received your letter of November 27, 2006 appearing to further deny my FOIL request. Am I correct in assuming that since you are the FOIL Appeals Officer, that your letter was deemed to be a denial of my appeal so that I may then initiate an Article 78 proceeding? In any event, please consider this letter to be an appeal or further appeal as the case may be.

I do have a couple of comments as to your letter.

Concerning a meeting with the BSA, I might wish to have a meeting, but, only with staff members. Were I to meet with a Commissioner, I would not wish to risk conceding my approval of ex parte meetings with Shearith Israel.

Prior to a meeting with staff, first, I want to know what occurred in the meeting with Shearith Israel. That is the simple reason for my FOIL request.

Next, you claim that the hand-written notes, which you admit exist, were not provided because you claim they are subject to attorney/client privilege or attorney work product privilege. Notes referring to the content of communications between the BSA staff and board to Shearith Israel are not privileged. There are innumerable court decisions on the issue of notes of meeting which do not support your position at all and I would be quite happy to litigate his issue.

You also provide a kitchen sink defense that the documents are exempt under FOIL 87.2. This provision states:

Page 2 of 2

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

- (a) are specifically exempted from disclosure by state or federal statute;
- (b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;
- (c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;
- (d) are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
- (e) are compiled for law enforcement purposes and which, if disclosed, would:
 - i. interfere with law enforcement investigations or judicial proceedings;
 - ii. deprive a person of a right to a fair trial or impartial adjudication;
 - iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
 - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;

This exemption is not applicable to the substance of statements made by the respective parties at this meeting. Again, I would be happy to litigate that.

So, if you are unwilling to go through the notes of the meeting made by of any and all the BSA staff and commissioners at that meeting and merely redact internal thoughts, but, importantly leave undisturbed all statements or summaries of statements made by anyone at the meeting, then we will have to have this decided by a court.

So, please either provide me with this information, or, advise me that my appeal has been denied so that I can go to court.

Sincerely,



Alan D. Sugarman
www.protectwest70.org