



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

Writer Direct: 518-776-2599

June 22, 2015

Albany County Clerk
Albany County Courthouse
16 Eagle Street
Albany, NY 12207

Re: *Robinson v. Cuomo, et al*
Supreme Court, Albany County
Index No. 5118-14

Dear Gentlepersons:

Enclosed for filing with the Court is the Answer with Exhibits 1 and 2 on behalf of Respondents in the above-referenced proceeding, together with proof of service.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joshua Farrell".

Joshua Farrell
Assistant Attorney General

Enclosure

cc: Paloma A. Capanna, Esq.
633 Lake Road
Webster, NY 14580

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

**In the Matter of the Application of
BILL ROBINSON,**

Petitioner,

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

ANSWER

Index No. 5118-14

-against-

**ANDREW M. CUOMO, in his official capacity as
Governor of the State of New York; NEW YORK
DIVISION OF STATE POLICE; and, JOSEPH
D'AMICO, in his official capacity as Superintendent of
the New York Division of State Police,**

Respondents.

**Respondents Andrew M. Cuomo, NYS Division of State Police and Joseph D'Amico, by
their attorney, Eric T. Schneiderman, Attorney General of the State of New York, Joshua Farrell
of counsel, answer the petition as follows:**

- 1. Deny each and every allegation contained in the petition that alleges or tends to
allege that the challenged action was in any way contrary to constitutional, statutory, regulatory
or case law.**
- 2. Admit the allegations contained in paragraphs 3, 6, 13, 14, and 27 of the petition.**
- 3. Admit the allegations contained in paragraphs 5 and 23 only to the extent that
Petitioner alleges that Andrew Cuomo is the Governor of the State of New York, with an office
at the State Capitol, and that the New York State Police are a division of the State of New York.**

To the extent these paragraphs assert any cause of action against Governor Cuomo, they are denied.

4. Admit the allegations contained in paragraphs 10 and 11 for purposes of establishing venue only, and otherwise deny the balance of the allegations. To the extent these paragraphs assert any cause of action against Governor Cuomo, they are denied.

5. As to the allegations contained in paragraphs 12(i) – 12(xv), 15, 16, 17, 19, 21, 22, 33, 34, 35, 36, and 37 of the petition, Respondents respectfully refer the Court to the Exhibits referred to in each paragraph as the best evidence and most accurate version of its contents and deny the allegations to the extent that they are inconsistent with the exhibit referred to in the numbered paragraph.

6. Deny sufficient knowledge or information to form a basis for responding to paragraphs 4 and 32 of the petition.

7. Deny the allegations contained in paragraphs 2, 8, 9, 28, 29, 30, 31, 40, 41, and 42 of the petition

8. Deny the allegations contained in paragraphs 18, 20, 24, 25, and 26 as they are inconsistent with Petitioner's receipt of Respondent New York State Police's letters dated December 15, 2014 and June 22, 2015 (attached hereto as Exhibits 1 and 2 respectively).

9. The allegations in paragraphs 1 and 7 of the verified petition are petitioner's characterization of this proceeding, to which no response is required. To the extent any response is required, Respondents deny each and every allegation of non-compliance set forth therein.

10. The allegations in paragraphs 38 and 39 of the verified petition contain only conclusions of law and no allegations of fact to which a response is required. To the extent any

response is required, Respondents deny each and every allegation of non-compliance set forth therein.

11. Deny each and every allegation of the petition not specifically responded to above.

OBJECTIONS IN POINT OF LAW

12. Because Petitioner obtained all of the relief sought in his FOIL request, dated January 20, 2014, by Respondent New York State Police's June 22, 2015 letter (attached as Exhibit 2 hereto), Petitioner's claims are moot. Matter of Almodovar v. Altschuller, 232 A.D.2d 700 (3d Dept. 1996); see also Rattley v. New York City Police Dep't, 96 N.Y.2d 873 (2001); Tellier v. New York City Police Dep't, 267 A.D.2d 9 (1st Dept. 1999); Covington v. Cirincione, 307 A.D.2d 554 (3d Dept. 1993).

13. Because Petitioner did not serve his FOIL request on Respondent Andrew Cuomo and made no showing that Respondent Andrew Cuomo's office had an obligation to respond to his FOIL request, Petitioner failed to state a cause of action against Respondent Andrew Cuomo. Shooters Committee on Political Education (SCOPE) v. Andrew Cuomo, Et. Al., Index No. 5119-14 (NYS Sup Ct, Albany County, McNamara, AJSC, April 30, 2015).

THE FOLLOWING CONSTITUTES THE RECORD AND RETURN:

14. Respondent hereby incorporates and adopts into its record before the agency below, as if fully set forth herein, the following exhibits attached to the Verified Petition, dated September 29, 2014, that Petitioner filed in this proceeding: A, B, C, D, and E.

15. Exhibit 1 — Letter of T/Lieutenant Debra L. Benziger, dated December 5, 2014.
16. Exhibit 2 — Letter of T/Lieutenant Debra L. Benziger, dated June 22, 2015.

WHEREFORE, Respondents Andrew M. Cuomo, NYS Division of State Police, and Joseph D'Amico respectfully request that the relief requested in the petition be denied, that the petition and this action be dismissed, together with such other relief as may be right and just.

Dated: Albany, New York
June 22, 2015

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Respondents Andrew M. Cuomo, NYS
Division of State Police and Joseph D'Amico
The Capitol
Albany, New York 12224-0341

By: 

Joshua L. Farrell

Assistant Attorney General, of Counsel
Telephone: 518-776-2599
Fax: 518-915-7738 (Not for service of papers)

TO: Paloma A. Capanna, Esq.
633 Lake Road
Webster, NY 14580

Verification

Ryan P. O'Malley, being a duly licensed attorney in the State of New York, affirms the following under penalties of perjury pursuant to CPLR 2106:

I am an attorney employed by the New York State Police. As part of my duties with New York State Police I have become fully acquainted and familiar with the facts and circumstances underlying this Article 78 proceeding and have personally examined the exhibits accompanying the foregoing verified answer.

I have read the foregoing answer. The same is true to my knowledge, except as to matters alleged on information and belief, and as to those matter I believe them to be true. The basis of my knowledge and belief is my personal involvement in this proceeding and my review of the records maintained by the New York State Police.

This verification is made by me, pursuant to CPLR 3020(d)(2), because Respondents are governmental subdivisions and public officers thereof and I am acquainted with the facts of this proceeding.

**Dated: Albany, New York
June 22, 2015**


Ryan P. O'Malley

Exhibit 1



JOSEPH A. D'AMICO
SUPERINTENDENT

NEW YORK STATE POLICE
BUILDING 22
1220 WASHINGTON AVE.
ALBANY, N. Y. 12226-2252

December 5, 2014

Paloma A. Capanna, Esq.
Attorney & Policy Analyst
633 Lake Road
Webster, New York 14580

Dear Ms. Capanna:

This is in response to your January 22, 2014, correspondence in which you enclosed a copy of your client, William Robinson's Freedom of Information Law (FOIL) request for various numbers pertaining to the registration of "assault weapons," "pistols," "rifles," and "shotguns."

Please be advised that Public Officers Law § 87(2)(a) states that an "agency may deny access to records or portions thereof that . . . are specifically exempted from disclosure by state or federal statute." FOIL broadly defines "record" as "any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever" (Public Officers Law § 86(4) (emphasis added)).

Penal Law § 400.02 provides, among other things, that "[t]here shall be a statewide license and record database which shall be created and maintained by the division of state police Records assembled or collected for purposes of inclusion in such database shall not be subject to disclosure pursuant to article six of the public officers law. . . . Records assembled or collected for purposes of inclusion in the database established by this section shall be released pursuant to a court order" (emphasis added); see also Penal Law § 400.00(5)(a).

The records your client seeks are specifically exempted from disclosure under FOIL by Penal Law § 400.02. The "numbers" he seeks are information kept by the State Police in a physical form and, thus, plainly constitute "records." Further, section 400.02 prohibits disclosure of any record assembled or collected for purposes of inclusion in the State Police database. Because the records your client seeks are derived from documents that were assembled or collected for purposes of inclusion in the State Police's database, they are not subject to disclosure under FOIL.

Any appeals must be in writing and mailed to the Records Appeal Officer, Administration, at the above address.

Sincerely,

Debra L. Benziger

**T/Lieutenant Debra L. Benziger
Records Access Officer
Central Records Bureau**

DLB/tpo

Exhibit 2



ANDREW M. CUOMO
Governor

JOSEPH A. D'AMICO
Superintendent

June 22, 2015

Paloma A. Capanna, Esq.
Attorney & Policy Analyst
633 Lake Road
Webster, New York 14580

Dear Ms. Capanna:

Reference is made to your January 22, 2014 correspondence in which you enclosed a copy of your client, William Robinson's Freedom of Information Law (FOIL) request for various numbers pertaining to the registration of "assault weapons," "pistols," "rifles," and "shotguns."

Pursuant to the court's April 30, 2015 judgment and order, enclosed please find the records responsive to Mr. Robinson's FOIL request.

Sincerely,

A handwritten signature in black ink that reads "Debra L. Benziger". The signature is written in a cursive, flowing style.

T/Lieutenant Debra L. Benziger
Records Access Officer
Central Records Bureau

Records as of 06/16/2015

1. The total number of applications to register “assault weapons” submitted to the New York State Police on or after January 15, 2013:
25536
2. The number of applications to register pistols that may qualify as “assault weapons” submitted to the New York State Police on or after January 15, 2013:
800
3. The number of applications to register rifles that may qualify as “assault weapons” submitted to the New York State Police on or after January 15, 2013:
24542
4. The number of applications to register shotguns that may qualify as “assault weapons” submitted to the New York State Police on or after January 15, 2013:
801
5. The number of individuals who submitted applications to register “assault weapons” on or after January 15, 2013:
23847
6. The number of applications to register “assault weapons” by county, zip code, or other geographic identifier on or after January 15, 2013:

484	Albany
83	Allegany
35	Bronx
351	Broome
137	Cattaraugus
194	Cayuga
311	Chautauqua
195	Chemung
116	Chenango
203	Clinton
124	Columbia
97	Cortland
96	Delaware
731	Dutchess
1593	Erie
107	Essex
113	Franklin
102	Fulton
131	Genesee
113	Greene
21	Hamilton
140	Herkimer

291	Jefferson
54	Kings
60	Lewis
128	Livingston
160	Madison
1408	Monroe
87	Montgomery
2755	Nassau
1640	New York
492	Niagara
451	Oneida
916	Onondaga
260	Ontario
985	Orange
87	Orleans
281	Oswego
126	Otsego
1	Out of Country
17	Out of State
411	Putnam
109	Queens
334	Rensselaer
52	Richmond
451	Rockland
259	Saint Lawrence
573	Saratoga
274	Schenectady
78	Schoharie
49	Schuyler
69	Seneca
208	Steuben
3865	Suffolk
229	Sullivan
122	Tioga
134	Tompkins
463	Ulster
2	Unknown
181	Warren
124	Washington
244	Wayne
1498	Westchester
84	Wyoming
47	Yates

7. The number of "assault weapons" registered with the New York State Police on or after January 15, 2013:
44485 – Total Number of Weapons in Approved Registrations

8. The number of pistols classified as "assault weapons" that were registered with the New York State Police on or after January 15, 2013:
1133 – Total Number of Pistols in Approved Registrations

9. The number of rifles classified as "assault weapons" that were registered with the New York State Police on or after January 15, 2013:
42230 – Total Number of Rifles in Approved Registrations

10. The number of shotguns classified as "assault weapons" that were registered with the New York State Police on or after January 15, 2013:
842 – Total Number of Shotguns in Approved Registrations

11. The number of "assault weapons" registered by county, zip code, or other geographic identifier on or after January 15, 2013:
Total Number of Weapons in Approved Registrations based on County

738	Albany
202	Allegany
50	Bronx
550	Broome
201	Cattaraugus
365	Cayuga
500	Chautauqua
314	Chemung
156	Chenango
342	Clinton
239	Columbia
168	Cortland
159	Delaware
1314	Dutchess
2476	Erie
147	Essex
180	Franklin
143	Fulton
188	Genesee
171	Greene
61	Hamilton
188	Herkimer
459	Jefferson
77	Kings
88	Lewis
190	Livingston
258	Madison

2201	Monroe
121	Montgomery
5924	Nassau
2772	New York
743	Niagara
681	Oneida
1596	Onondaga
453	Ontario
1639	Orange
109	Orleans
408	Oswego
165	Otsego
1	Out of Country
12	Out of State
697	Putnam
185	Queens
565	Rensselaer
77	Richmond
784	Rockland
395	Saint Lawrence
939	Saratoga
434	Schenectady
206	Schoharie
72	Schuyler
128	Seneca
335	Steuben
7323	Suffolk
406	Sullivan
206	Tioga
199	Tompkins
787	Ulster
2	Unknown
304	Warren
209	Washington
374	Wayne
2914	Westchester
141	Wyoming
54	Yates

12. The number of individuals who have registered "assault weapons" on or after January 15, 2013:
23344
13. The number of individuals who have registered "assault weapons" (firearms) by county, zip code, or other geographic identifier on or after January 15, 2013:
444 Albany

80	Allegany
33	Bronx
311	Broome
123	Cattaraugus
171	Cayuga
281	Chautauqua
178	Chemung
107	Chenango
183	Clinton
115	Columbia
95	Cortland
90	Delaware
678	Dutchess
1459	Erie
100	Essex
105	Franklin
92	Fulton
118	Genesee
108	Greene
21	Hamilton
132	Herkimer
275	Jefferson
52	Kings
52	Lewis
117	Livingston
151	Madison
1290	Monroe
81	Montgomery
2523	Nassau
1526	New York
458	Niagara
425	Oneida
862	Onondaga
247	Ontario
893	Orange
78	Orleans
267	Oswego
115	Otsego
1	Out of Country
5	Out of State
377	Putnam
105	Queens
311	Rensselaer
45	Richmond
411	Rockland
237	Saint Lawrence

536	Saratoga
245	Schenectady
71	Schoharie
47	Schuyler
67	Seneca
195	Steuben
3496	Suffolk
207	Sullivan
114	Tioga
124	Tompkins
428	Ulster
2	Unknown
157	Warren
117	Washington
220	Wayne
1351	Westchester
76	Wyoming
46	Yates

14. The number of determinations made by the New York State Police on applications to register "assault weapons" of whether an individual applicant is prohibited from possessing a firearm under 18 U.S.C. § 922(g), under New York Penal Law § 265.00, under Mental Hygiene Law § 9.46, or other state or federal law on or after January 15, 2013:
25536

15. The number of determinations made by the New York State Police on applications to register "assault weapons" that found an individual was prohibited from possessing a firearm under 18 U.S.C. § 922(g), under New York Penal Law § 265.00, under Mental Hygiene Law § 9.46, or other state or federal law, including the statute pursuant to which the individual was determined to be prohibited from possessing a firearm on or after January 15, 2013:
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

In the Matter of the Application of
BILL ROBINSON,

Petitioner,

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

AFFIDAVIT OF SERVICE

Index No. 5118-14

-against-

**ANDREW M. CUOMO, in his official capacity as Governor of
the State of New York; NEW YORK DIVISION OF STATE
POLICE; and, JOSEPH D'AMICO, in his official capacity as
Superintendent of the New York Division of State Police,**

Respondents.

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

BRITTANY ERICSEN, being duly sworn, deposes and says:

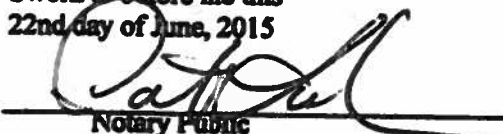
I am over eighteen years of age and an employee in the office of Eric T. Schneiderman, Attorney General of the State of New York, attorney for Respondents Andrew M. Cuomo, NYS Division of State Police, and Joseph D'Amico, herein.

On June 22, 2015, I served the annexed Answer with Exhibits 1 and 2 upon the following individual, by depositing a true copy thereof, properly enclosed in a sealed, postpaid wrapper, in a U.S. Mail box in the City of Albany, a depository under the exclusive care and custody of the United States Postal Service, directed to the said counsel for petitioner at the address designated by him for that purpose, as follows:

Paloma A. Capanna, Esq.
633 Lake Road
Webster, NY 14580


BRITTANY ERICSEN

Sworn to before me this
22nd day of June, 2015


Notary Public

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PATRICK LAWLOR
Notary Public, State of New York
Reg. No. 01LA6048003
Qualified in Albany County
Commission Expires Nov. 4, 2018