

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

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In the Matter of

RONALD CASTORINA, JR. and NICOLE MALIOTAKIS,

Petitioners,

-against-

BILL DE BLASIO, in his official capacity as Mayor of the City of New York, THE OFFICE OF THE MAYOR OF THE CITY OF NEW YORK, MELISSA MARK-VIVERITO, in her official capacity as the Speaker of the New York City Council, STEVEN BANKS, Commissioner of the New York City Human Resources Administration/Department of Social Services, in his official capacity, MATTHEW BRUNE, Chief Operating Officer of the New York City Human Resources Administration/Department of Social Services, in his official capacity, and RICARDO BROWN, Executive Deputy Commissioner, Management Information Systems, Human Resources Administration/Department of Social Services, in his official capacity,

Respondents.

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

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**MARTHA CALHOUN**, being an attorney admitted to practice before the courts of this State, hereby affirms under the penalties of perjury:

1. I am the General Counsel for the New York City Human Resources Administration ("HRA"). I also serve as HRA's Records Access Appeals Officer. In that capacity, I review administrative appeals submitted by individuals who have been denied access to records requested of HRA by HRA's Records Access Officer under the Freedom of Information Law, and decide whether such appeals should be granted or denied. As such, I am

Index No.  
DCM 6  
(Minardo, J.)

**AFFIRMATION OF  
MARTHA CALHOUN  
IN SUPPORT OF  
VERIFIED ANSWER**

familiar with the facts and circumstances set forth below. I submit this affirmation in support of Respondents' Verified Answer.

**The IDNYC Program**

2. On June 26, 2014 the New York City Council passed Local Law 35 of 2014, creating a New York City identity card program ("IDNYC program") designed to provide government-issued photo identification cards to individuals seeking to access City benefits and programs.

3. Mayor Bill de Blasio signed Local Law 35 of 2014 into law on July 10, 2014. See N.Y.C. Admin. Code § 3-115.

4. Mayor de Blasio designated HRA to administer the IDNYC program, through Executive Order 6 of 2014.

5. HRA administers the IDNYC program through Chapter 6 of Title 68 of the Rules of the City of New York.

6. To obtain an IDNYC card, applicants are required to submit a completed application form, supported by documents establishing the applicant's identity and residency within the City. The acceptable forms of proof of identity and residence are specified in Local Law 35 and 68 RCNY §§ 6-04 – 06-06.

7. If on or before December 31, 2016 HRA determines that there is no continuing need to retain records provided by applicants to establish proof of identity and residency in order to effectively administer the IDNYC program, or if HRA fails to make any determination regarding such continuing need by December 31, 2016, then the City is required to destroy such records by December 31, 2016. N.Y.C. Admin. Code § 3-115(e)(3). See 68 RCNY § 6-11(c).

8. On December 7, 2016, HRA determined that there is no continuing need to retain records provided by applicants to establish proof of identity and residency to effectively administer the IDNYC program. See Executive Order No. E-739, dated December 7, 2016, annexed hereto as Exhibit A.

### **Petitioners' FOIL Requests**

9. On November 29, 2016, Petitioner Castorina submitted a FOIL request seeking "all scanned application materials associated with IDNYC (also known as New York City's Municipal ID program) program maintained by HRA and any other City Agency including the Mayor's Office in digital format." See FOIL request form annexed to Respondents' Answer as Exhibit 7.

10. On December 2, 2016, Petitioner Malliotakis submitted an identical FOIL request seeking "all scanned application materials associated with IDNYC (also known as New York City's Municipal ID program) program maintained by HRA and any other City Agency including the Mayor's Office in digital format." See FOIL request form annexed to Respondents' Answer as Exhibit 8.

11. By emails to each of Petitioners Castorina and Malliotakis dated December 7, 2016, HRA's Records Access Officer responded to the FOIL requests, explaining that access to the requested records was denied

pursuant to Public Officers Law (POL) §89(2)(b)(iv) which exempts from disclosure "information of a personal nature when disclosure would result in economic or personal hardship of the subject party and such information is not relevant to the work of the agency requesting or maintaining it,"; and POL § 89(2)(b)(v) exempting "information of a personal nature reported in confidence and not relevant to the work of the agency requesting or maintaining it."

Furthermore, as FOIL's personal privacy exemption is not limited to the categories specifically listed in the statute, and extends to any document as to which the privacy interests outweigh the public interest in disclosure, the particular records are similarly denied pursuant to POL §87(2)(b), which permits an agency to deny access to records insofar as disclosure would constitute "an unwarranted invasion of personal privacy."

Finally, the records sought are being denied pursuant to POL § 87(2)(f), which allows the agency to withhold materials where disclosure "could endanger the life or safety of any person," – here, the applicants themselves and their loved ones.

See emails dated December 7, 2016 from HRA to Petitioners Castorina and Malliotakis, annexed collectively to Respondents' Answer as 9.

12. I have reviewed Petitioners' FOIL requests and HRA's determinations denying those requests. In my view, the requested records are exempt for the reasons stated in HRA's determinations and that, therefore, the determinations by HRA's Records Access Officer to deny access were proper.

13. Were Petitioners to administratively appeal the denial of their FOIL Requests, I would uphold HRA's determinations and deny those administrative appeals.

14. Additionally, HRA waives any defense it may have based on Petitioners' failure to exhaust their administrative remedies.

Dated: New York, New York  
December 16, 2016

  
MARTHA CALHOUN

Executive Order No. E-739  
December 7, 2016

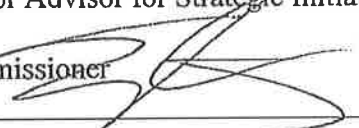
THE CITY OF NEW YORK  
HUMAN RESOURCES ADMINISTRATION

**RETENTION OF COPIES OF RECORDS PROVIDED BY NEW YORK  
CITY IDENTITY CARD (IDNYC) PROGRAM APPLICANTS TO PROVE  
IDENTITY AND RESIDENCY**

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**TO:** Martha Calhoun, General Counsel  
Maritere Arce, Chief External Affairs Officer, HRA  
Saratu Gharthey, Chief Program Accountability Officer, HRA  
Matthew Brune, Chief Operating Officer  
Colette Samman, Executive Director, IDNYC Program  
Lauren Friedland, Privacy Officer

**CC:** Nisha Agarwal, Commissioner, Mayor's Office of Immigrant Affairs  
Mindy Tarlow, Director, Mayor's Office of Operations  
Jennifer Yeaw, Chief of Staff, HRA  
Jennifer Tavis, Senior Advisor for Strategic Initiatives, HRA

**FROM:** Steven Banks, Commissioner 

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Pursuant to New York City Administrative Code Section 3-115 and the Mayor's Executive Order No. 6 of 2014, the New York City Human Resources Administration (HRA) is designated as the administering agency of the New York City Identity Card (IDNYC) Program.

Section 3-115(e)(2) of the Administrative Code states that on or before December 31, 2016, the administering agency will make a determination regarding the continuing need to retain records provided by applicants to prove identity or residency for an IDNYC Card in order to effectively administer the IDNYC Card Program, and will make any appropriate modifications to the policy for retention of records related to the IDNYC Card Program.

Pursuant to Section 3-115(e)(2), HRA has determined that there is no need to retain copies of records provided by applicants to establish identity and residency after IDNYC either approves or denies the application.

Accordingly, beginning on the date of this Executive Order, the IDNYC program will not retain copies of records provided by applicants to establish identity and residency.