

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

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THE DAILY DOT,	:	Index No.
	:	<u>VERIFIED PETITION</u>
Petitioner,	:	Assigned Judge:
- against -	:	
NEW YORK CITY POLICE DEPARTMENT,	:	
RICHARD MANTELLINO as Lieutenant and	:	
Records Access Officer, and JORDAN S.	:	
MAZUR as Sergeant and Records Access	:	
Appeals Officer,	:	
	:	
Respondents.	:	
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Petitioner The Daily Dot (“Daily Dot” or “Petitioner”), by and through its undersigned counsel, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. Petitioner brings this special proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”), New York Public Officers Law §§ 84 *et seq* (“Freedom of Information Law” or “FOIL”), and CPLR § 3001, against the New York City Police Department (“NYPD”), Richard Mantellino, as Lieutenant and Records Access Officer, and Jordan S. Mazur, as Sergeant and Records Access Appeals Officer (collectively, “Respondents”), to obtain handgun license applications submitted to the NYPD by President Donald Trump and his sons, Donald Trump Jr. and Eric Trump (collectively, the “Trumps”).

2. This proceeding arises out of Daily Dot’s ongoing efforts to report on issues concerning guns, gun violence and gun laws, including the NYPD’s handgun licensing practices. In light of the public debate concerning the right to bear arms, heightened scrutiny of gun violence, and security concerns in New York City and beyond, these are indisputably matters of

great public interest. President Trump and his two adult sons hold hand gun permits in New York City and have made numerous public statements acknowledging their gun ownership and advocating expanded gun rights for individuals.

3. The Daily Dot and the public have a right to access public records evidencing the Trumps' ability and need to carry handguns in one of the strictest arms licensing states in the country. The public is entitled to transparency, not secrecy, with respect to their gun license applications. Indeed, the types of licenses for which the Trumps are deemed eligible, the kinds of weapons they carry, and the underlying rationale for any request they may have made for an exception to FOIL's public access mandate are all newsworthy concerns relevant to the public debate on guns and gun control.

4. Exercising this right, on January 25, 2018, The Daily Dot made a FOIL request for the handgun applications of President Trump, Donald Trump Jr. and Eric Trump. The NYPD denied the request in its entirety.

5. In light of the Trump family's high-profile and round the clock Secret Service protection, neither the President nor his sons qualify for any public records exemption to FOIL's public records requirements.

6. Respondents' refusal to grant Daily Dot access to the Trumps' handgun license applications violates the Freedom of Information Law and the strong policy of open government that underlies the law.

7. Having exhausted their administrative remedies, Petitioners now seek an Order pursuant to Article 78 of the New York Civil Practice Law and Rules, declaring that the NYPD, its Records Access Officer, and its Records Access Appeals Officer have acted unlawfully in withholding these documents; directing them to produce all disclosable records responsive to

Daily Dot's January 25, 2018 request within twenty (20) days of the Court's order; and granting Daily Dot their reasonable attorney's fees and costs, together with such other and further relief the Court deems just and proper.

PARTIES

8. Petitioner The Daily Dot is a digital media limited liability company organized and existing under the laws of Delaware with its principal place of business at 3112 Windsor Road A391, Austin, Texas 78703. Petitioner maintains office space, employs staff, and transacts business in New York. The Daily Dot has been described by fellow publications like the New York Observer as "NYC media's best-kept secret," and in 2015 was nominated by Digiday Publishing Awards for "Publisher of the Year." It has reported extensively on gun control, the Trump presidency, and other topics related to the documents sought here.

9. Respondent New York Police Department is a law enforcement agency administered under the New York City Administrative Code, Title 14. The NYPD is a public agency subject to the requirements of the Freedom of Information Law, New York Public Officers Law §§ 84 *et seq.*

10. Respondent Richard Mantellino is a public officer who is named in his official capacity as a Lieutenant and Records Access Officer.

11. Respondent Jordan S. Mazur is a public officer who is named in his official capacity as a Sergeant and Records Access Appeals Officer.

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to CPLR §§ 7801 *et seq* to review the actions by bodies and/or officers who have failed to perform a duty enjoined on them by law.

13. Venue properly lies in New York County pursuant to CPLR § 506(b) and CPLR § 7804(b) because that is where NYPD's principal office is located and because it is where the

NYPD made the determinations complained of and where it refused to perform the duties specifically enjoined upon it by law.

STATEMENT OF FACTS

14. The Daily Dot's mission is to report on and cover Internet culture and life on the web. Although just seven years old, the self-proclaimed "hometown newspaper" of the Internet seeks to shape public opinion with non-traditional, yet classic, entrepreneurial journalism.

15. In the midst of the ongoing public controversy concerning America's gun laws and mass shootings, the Daily Dot has provided the public with intensive coverage about guns and gun control in general and the NYPD's handgun licensing practices in particular, as well as extensive coverage of the President and his family.¹

16. Pursuant to the N.Y. Public Officers law §§ 87 and 89, by letter dated January 25, 2018, The Daily Dot wrote to the NYPD Records Access Office requesting the handgun license applications for President Donald Trump and his two sons, Donald Trump Jr., and Eric Trump.

17. The documents requested by Daily Dot have been the subject of many press reports generated not only by Petitioner, but by other publications such as Politico and the New York Post.² In turn, many of these news reports have also generated significant public comments either directly in response to a digital version of the article or through other social media outlets.

¹ See, e.g., Kris Seavers, *Trump Administration Moves To Ban 'Bump Stock' Firearm Attachments*, The Daily Dot (March 23, 2018) available at <https://www.dailydot.com/layer8/trump-administration-moves-ban-bump-stocks/>; David Covucci, *Trump Proposes Taking People's Guns Without 'Due Process'*, The Daily Dot (Feb. 28, 2018) available at <https://www.dailydot.com/layer8/donald-trump-proposes-taking-guns-without-due-process/>; David Covucci, *Donald Trump Jr. Likes Parkland Shooting Conspiracy Theories On Twitter*, The Daily Dot (Feb. 20, 2018) available at <https://www.dailydot.com/layer8/donald-trump-jr-parkland-conspiracy/>; Andrew Wyrich, *Donald Trump Jr.'s Youtube Shooting Tweet Is Not Going Over Well*, The Daily Dot (April 4, 2018) available at <https://www.dailydot.com/layer8/trump-jr-youtube-shooting-tweet/>.

² Several news articles note that President Trump has made inconsistent statements in the past year regarding his handgun license and use since becoming the President of the United States and Commander in Chief of the United States Armed Forces. See, e.g., Lorraine Woellert, *Missing From The Gun Debate: Trump's Own Experience With Concealed Carry*, Politico (Feb. 28, 2018) available at <https://www.politico.com/story/2018/02/28/trump-guns-concealed-carry-430824>; Chelsea Stewart, *Donald Trump Jr. Got a Gun Permit While Everyone Was Debating Gun Reform, Report Says*, Elite Daily (March 28, 2018) available at <https://www.elitedaily.com/p/donald-trump-jr-got-a->

18. On or about February 1, 2018, Lieutenant Richard Mantellino, Records Access Officer with the NYPD, responded to the Daily Dot and denied access to the requested handgun applications on the asserted basis that the request constituted an unwarranted invasion of personal privacy under N.Y. Public Officers law § 87(2)(b).

19. On or about February 20, 2018, Daily Dot appealed the NYPD's denial of its request for the Trump records, noting that the NYPD's denial failed to include the particularized justification for denial required by FOIL, and that the Trumps did not fit any of the grounds for exemption from public disclosure set forth in New York Public Officers Law § 89(2)(b), New York Public Officers Law § 87(2)(f), or Penal Law § 400.00(5). Daily Dot's appeal relied in part on the facts that the Trumps are extremely public figures who have been outspoken on gun rights.

20. On or about February 22, 2018, the NYPD again denied Daily Dot's request, in a letter from Sergeant Jordan S. Mazur, Records Access Appeals Office. The denial letter stated that, in addition to constituting an unwarranted invasion of personal privacy, disclosure of the requested handgun license applications "would endanger the life or safety of the applicant" pursuant to N.Y. Public Officers law § 87(2)(f), and that disclosure of the handgun license applications was specifically exempted by statute (*see* N.Y. Public Officers Law § 87(2)(a)) under Penal Law § 400.00(5), on the purported basis that Penal Law § 400.00(5) "states that the application itself is not subject to disclosure; rather only that, 'the name and address of any person to whom an application for any license has been granted shall be a public record.'"

21. None of the grounds for nondisclosure cited by the NYPD apply. Disclosure of the information sought by The Daily Dot would not constitute an unwarranted invasion of the

[gun-permit-while-everyone-was-debating-gun-reform-report-says-8624925](http://people.com/politics/donald-trump-jr-permit-concealed-gun-pa/); Tierney McAfee, *Donald Trump Jr. Gets Permit to Carry Concealed Weapon in PA Amid Divorce News, Gun Control Marches*, People Politics (Marcy 27, 2018) available at <http://people.com/politics/donald-trump-jr-permit-concealed-gun-pa/>.

personal privacy of President Trump or his sons. Nor would disclosure of the requested information endanger the life or safety of any person.

22. Under Penal Law § 400.00(5), the only permissible grounds for a handgun license applicant to request an exception from public disclosure of her or his application is that (i) an applicant's life or safety may be endangered by disclosure³, (ii) the applicant has reason to believe his or her life or safety may be endangered by disclosure due to reasons stated by the applicant, or (iii) the applicant has reason to believe he or she may be subject to unwarranted harassment upon disclosure of such information. All of these grounds are inapplicable on their face. Upon information and belief, not one of the three Trump men is a retired officer, under a valid order of protection, a witness to criminal proceedings, a jury participant, and/or a spouse or household member of anyone in the aforementioned categories. It is not conceivable that President Trump, Donald Jr., and/or Eric's lives would be endangered or that they would be harassed because of the disclosure of the requested records.

23. Even if any exemptions were applicable, the Trumps have waived the exemptions by virtue of their many public statements disclosing their gun ownership and other information contained in their handgun license applications.

24. Respondents failure to fulfill their public disclosure obligations has stifled public knowledge of matters of great public interest regarding the President and his sons (who are also his advisors on gun-related issues), their applications for and ownership of guns, and hand gun

³ Specifically, under Section § 400.00(5)(b)(i), the applicant's life or safety must be endangered because: (a) the applicant is an active or retired police officer, peace officer, probation officer, parole officer, or corrections officer; (b) the applicant is a protected person under a currently valid order of protection; (c) the applicant is or was a witness in a criminal proceeding involving a criminal charge; (d) the applicant is participating or previously participated as a juror in a criminal proceeding, or is or was a member of a grand jury; or (e) the applicant is a spouse, domestic partner or household member of a person identified in (i)(a) through (d).

licensing practices in New York City in general. Such secrecy benefits no one and erodes public trust in government. The documents should be disclosed.

FIRST CAUSE OF ACTION
(Article 78 Review of Wrongful Denial of FOIL Request)

25. Petitioner repeats and realleges paragraphs 1 through 24 as if fully forth herein.

26. Article 78 of New York's Civil Practice Law and Rules is the appropriate method for review of agency determinations concerning FOIL requests.

27. Petitioner has exhausted its administrative remedies to seek the requested records, and the NYPD has refused to provide them the requested records, in either unredacted or redacted form.

28. The Daily Dot's FOIL request reasonably described the requested records.

29. The information requested by Daily Dot is of significant interest and concern to the general public.

30. None of the FOIL exemptions cited by Respondents as the bases for their denial of Daily Dot's records request apply to President Trump or his sons. Disclosure of the Trumps' handgun license applications would not constitute an unwarranted invasion of privacy under New York Public Officers Law § 87(2)(b) or 89(2)(b).

31. Disclosure of the Trumps' handgun license applications would not endanger the life or safety of the applicants under New York Public Officers Law § 87(2)(f).

32. Disclosure of the Trumps' handgun license applications is not exempted by Penal Law § 400.00(5) or by any other statute. The exemptions invoked by Respondents do not exempt any of the requested records from disclosure. Disclosure of the information sought by Petitioner is, therefore, required under FOIL.

33. Even if any exemption claimed by Respondents applies, the documents requested by Daily Dot are not subject to a blanket exemption from disclosure; any exempt information may be redacted before disclosure.

34. Even if any or all of the exemptions claimed by Respondents would otherwise apply, because the Trumps are public figures who have been outspoken on guns and gun rights and who have made numerous public statements disclosing information the NYPD now seeks to withhold, any exemption to public disclosure has been waived.

35. Respondents also waived any assertion of New York Public Officers Law § 87(2)(f) and Penal Law § 400.00(5) because they did not initially assert these bases in the NYPD's February 1, 2018 response to petitioner.

36. Respondents have not produced the information sought by the Petitioner. Respondents' obligation under FOIL to disclose the requested documents is mandatory, not discretionary.

37. Respondents have acted contrary to law in failing to produce all documents requested in Daily Dot's January 25, 2018 request and did not meet their burden to provide a specific, particularized, or reasonable justification for withholding the requested records from disclosure under FOIL.

38. NYPD's actions have caused, and continue to cause, immediate and irreparable harm to the rights guaranteed to Petitioner and to the public at large under FOIL, Article 1, Section 8 of the New York State Constitution, and the First Amendment to the United States Constitution.

39. As a result of the foregoing, Respondents have violated FOIL.

PRIOR APPLICATION

40. No application has been made for the relief requested herein.

PRAYER FOR RELIEF

WHEREFORE, Petitioner seeks judgment:

1. Declaring that Respondents have acted unlawfully in failing to disclose the requested records, or certain portions of the requested records, that are not properly exempt from disclosure under FOIL;
2. Directing Respondents to comply with their duty under FOIL to produce all portions of the requested records not subject to any exemption;
3. Ordering, in the alternative, an *in camera* review of the requested records to allow the Court to determine the applicability of the claimed exemptions;
4. Awarding Petitioner its reasonable attorneys' fees and litigation costs as allowed under Public Officers Law § 89; and
5. Awarding Petitioner such other and further relief as the Court deems just and proper.

Dated: New York, New York
June 21, 2018

Respectfully submitted,

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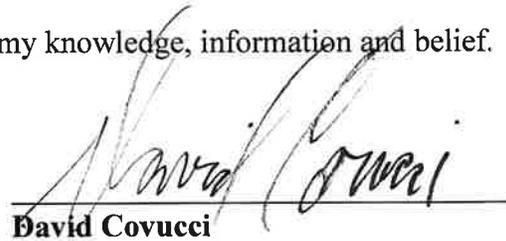
Attorneys for The Daily Dot

VERIFICATION

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

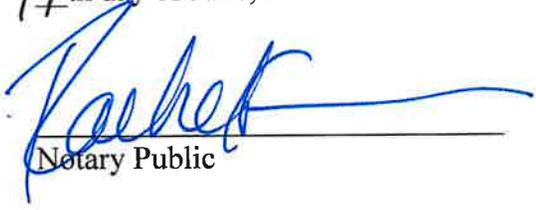
DAVID COVUCCI, being duly sworn, says:

1. I am the Politics Editor of The Daily Dot, the Petitioner in this action.
2. I have reviewed the annexed Petition of The Daily Dot. Based on information obtained in the ordinary course of business from records and individuals with knowledge, the information contained therein is true, to the best of my knowledge, information and belief.



David Covucci

Sworn to before me this
19th day of June, 2018



Notary Public

RACHEL STROM
Notary Public, State of New York
No. 02ST6171616
Qualified in Kings County
Commission Expires October 17, 2019