



April 17, 2013

**VIA E-MAIL AND CERTIFIED MAIL**

Lisa Lim, Senior Counsel  
Empire State Development Corporation  
Records Access Officer  
633 3rd Avenue  
37th Floor  
New York, NY 10017  
E-mail: LLim@esd.ny.gov

**RE: Freedom of Information Law Request**

Dear Ms. Lim:

We write on behalf of Cause of Action, a nonprofit, nonpartisan organization that educates the public on government accountability.

We are researching Forest City Ratner Companies (FCRC)'s development of its Atlantic Yards property and its relationship with the Empire State Development Corporation (ESDC). Public records indicate that when the ESDC was evaluating the Atlantic Yards property for blight designation in 2006, FCRC spent \$2,105,141 on lobbying New York public entities, including the ESDC.<sup>1</sup> Federal and state courts in New York ultimately affirmed the ESDC's designation of some of the properties included in the Atlantic Yards footprint as blighted, thereby justifying eminent domain condemnations in support of FCRC's Atlantic Yards project.<sup>2</sup>

Because we believe there is a public interest in knowing more about FCRC's interactions with the ESDC and its effect on the ESDC's decision to designate an area in downtown Brooklyn, New York blighted, Cause of Action hereby requests that the ESDC produce, within five (5) business days, the following records pursuant to the provisions of the Freedom of Information Law (FOIL)<sup>3</sup>: all records of communications, including e-mails, from January 1, 2003 to December 8, 2006 to or from any employee of the ESDC and any employee, agent, contractor, consultant or lobbyist of FCRC.

<sup>1</sup> N.Y. STATE JOINT COMM'N ON PUB. ETHICS, 2007 ANNUAL REPORT APPENDIX H. (Mar. 2008), [http://www.jcope.ny.gov/public/annual\\_report\\_2007/appendices.html](http://www.jcope.ny.gov/public/annual_report_2007/appendices.html) (last visited Apr. 11, 2013).

<sup>2</sup> *Develop Don't Destroy (Brooklyn) v. N.Y. State Urban Dev. Corp.*, 874 N.Y.S.2d 414 (N.Y. App. Div. 2009), *Goldstein v. Pataki*, 516 F.3d 50 (2<sup>nd</sup> Cir. 2008), *Goldstein v. N.Y. State Urban Dev. Corp.*, 921 N.E.2d 164 (N.Y. 2009).

<sup>3</sup> 5 N.Y. Public Officers Law §§ 84-90.

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**Production of Information and Contact Information.**

If it is your position that any portion of the requested information is exempt from disclosure, Cause of Action requests that you provide a detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.

In the event that some portions of the requested information are properly exempt from disclosure, please redact such portions and produce all remaining reasonable segregable non-exempt portions of the requested record. If you contend that information contains non-exempt segments, but those non-exempt segments are so dispersed throughout as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. If a request is denied in full, please outline that it is not possible to segregate portions of the record for release.

In an effort to facilitate record production within the statutory limit, Cause of Action prefers to accept information and/or documents in electronic format (*e.g.*, e-mail, .pdf). When necessary, Cause of Action will accept the "rolling production" of information and/or documents, but requests that you provide prompt notification of any intent to produce information on a rolling basis. Once all responsive records are found, please inform us of the number of pages and the copying costs before production begins.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact me (Adam.Butschek@causeofaction.org) or Alexander Robinson, (Alec.Robinson@causeofaction.org) immediately, at (202) 499-4232. Please note that, for the purposes of responding to this request, the attached Definition of Terms should be interpreted consistently. Thank you for your attention to this matter.



ADAM BUTSCHEK  
DEPUTY DIRECTOR OF INVESTIGATIONS

Encl. Responding to Document Requests, Definitions

## **Responding to Document Requests**

1. In complying with this request, you should produce all responsive documents that are in your possession, custody or control, whether held by you or your past or present agents, employees and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to Cause of Action.
2. In the event that any entity, organization or individual denoted in this request has been or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. Cause of Action's preference is to receive documents in electronic form (i.e., CD, memory stick or thumb drive) in lieu of paper productions.
4. When you produce documents, you should identify the specific document request or portion thereof in Cause of Action's request to which the documents respond.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
6. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with Cause of Action staff to determine the appropriate format in which to produce the information.
7. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
8. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
9. If any document responsive to this request was, but no longer is, in your possession, custody or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody or control.
10. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is

otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

11. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2003 to December 8, 2006.
12. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
13. All documents shall be Bates-stamped sequentially and produced sequentially.

### **Definitions**

1. The term "document" means any written, recorded or graphic matter of any nature whatsoever regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmation, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks and recordings) and other written, printed, typed or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities and all subsidiaries, affiliates, divisions, departments, branches or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.