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PUBLIC INTEREST PRIVILEGE - NEW YORK

Comptroller of City of New York v. City of New York

Supreme Court, Appellate Division, First Department, New York - August 12, 2021 - N.Y.S.3d - 2021 WL 3555807 - 2021 N.Y. Slip Op. 04685

Comptroller brought proceeding against city for an order compelling city to fully comply with subpoena comptroller issued after city failed to produce documents requested by comptroller in investigation under city charter regarding city's preparation, planning, and response to the COVID-19 pandemic.

City filed cross petition seeking an order dismissing proceeding and quashing, modifying, or fixing conditions on city's compliance with subpoena. The Supreme Court, New York County, granted in part and denied in part the petition and cross petition, ordering city to comply with the request for documents but quashing the request for documents relating to communications involving mayor or first deputy mayor, and denying city's request in cross petition to quash testimonial subpoenas.

The Supreme Court, Appellate Division, held that:

- Comptroller's investigation did not exceed his authority under city charter, and
- Public interest in protecting mayor's and first deputy mayor's predecisional and deliberative communications outweighed public interest in allowing comptroller to review and possibly publish those communications as part of his investigation, and thus, public interest privilege applied to such communications.

Comptroller's investigation into city's preparation, planning, and response to the COVID-19 pandemic did not exceed his authority under city charter; charter gave comptroller power to audit and investigate all matters relating to or affecting the finances of the city and to issue subpoenas, and although investigation into city's pandemic response was not strictly targeted to finding out how the response affected city finances, charter provided comptroller with broad investigative authority of matters that affected city finances and did not strictly limit investigations to only fiscal matters, and investigation addressed the impact of the city's response to the pandemic on the city's finances.

The public interest in protecting the mayor's and first deputy mayor's predecisional and deliberative communications outweighed the public interest in allowing comptroller to review and possibly publish those communications as part of his investigation into city's response to COVID-19 pandemic, and thus, public interest privilege applied to such communications; given the ongoing threat of the pandemic, mayor and leadership team needed access to information and advice from all sources, which required that the sources had some assurance that their advice would remain confidential and free from fear of reprisal, and public disclosure of confidential communications could chill future deliberations about pressing matters, potentially to the public's harm.