

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D24158
O/prt

_____AD3d_____

Submitted - June 17, 2009

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
HOWARD MILLER
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2008-06021

DECISION & ORDER

In the Matter of Jonathan Zeigler, petitioner-respondent, v City of New York, et al., appellants, et al., respondents.

(Index No. 14702/08)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Barry P. Schwartz and Scott Shorr of counsel), for appellants.

Bonita E. Zelman, Lake Success, N.Y., for petitioner-respondent.

In a proceeding, inter alia, pursuant to CPLR 3102(c) to obtain pre-action disclosure, the City of New York and the New York City Police Department appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Rothenberg, J.), dated May 30, 2008, as granted that branch of the petition which sought production of the petitioner's May 13, 2008, arrest records.

ORDERED that the order is reversed insofar as appealed from, on the law and in the exercise of discretion, with costs, and that branch of the petition which sought the production of the petitioner's May 13, 2008, arrest records is denied.

The Supreme Court improperly granted that branch of the petition which sought production of the petitioner's May 13, 2008, arrest records because, inter alia, the discovery requested was not limited to obtaining the identities of prospective defendants, and the petitioner had sufficient information to frame a complaint without the discovery requested (*see* CPLR 3102[c]; *Matter of Kussman v GiveAnything.Com, Inc.*, 33 AD3d 1004; *Matter of Rann v Metropolitan*

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Transp. Auth., 22 AD3d 586). Moreover, there was nothing in the record to indicate that the requested pre-action disclosure of the arrest records was necessary to preserve information (*see* CPLR 3102[c]; *Matter of Rann v Metropolitan Transp. Auth.*, 22 AD3d 586; *cf. Matter of Stanco v Steinberg*, 254 AD2d 363).

MASTRO, J.P., FISHER, MILLER, DICKERSON and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court