

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

D25565
C/nl

_____AD3d_____

Argued - November 30, 2009

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2008-08050

DECISION & ORDER

In the Matter of Ernest Curry, appellant, v Nassau County
Sheriff's Department, et al., respondents.

(Index No. 998/06)

Mitchell Dranow, Mineola, N.Y., for appellant.

John Ciampoli, Acting County Attorney, Mineola, N.Y. (Jackie L. Gross of counsel),
for respondents.

In a proceeding pursuant to CPLR article 78 to compel the production of certain videotapes pursuant to the Freedom of Information Law (Public Officers Law art 6), the petitioner appeals from an order of the Supreme Court, Nassau County (LaMarca, J.), entered July 7, 2008, which denied, without a hearing, his motion to hold the respondents in civil contempt for violation of a judgment of the same court entered July 7, 2006, which, inter alia, granted the petition in part.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied the petitioner's motion to hold the respondents in civil contempt without holding a hearing to determine whether they conducted a diligent search to locate the videotapes he requested pursuant to the Freedom of Information Law (Public Officers Law § 84 *et seq.*; hereinafter FOIL). The respondents' letter certifying that the requested videotapes could not be located after a diligent search satisfied their obligation under Public Officers Law § 89(3), which "does not specify the manner in which an agency must certify that documents cannot be located" (*Matter of Rattley v New York City Police Dept.*, 96 NY2d 873, 875; *see Matter of Boomer v New York State Police Dept.*, 60 AD3d 1218, 1219; *Matter of Covington v Sultana*, 59 AD3d 163,

164; *Matter of Franklin v Schwartz*, 57 AD3d 338; *Matter of Robert v LoCicero*, 28 AD3d 566, 567; *Matter of Daum v Tessler*, 24 AD3d 214, 215; *Matter of Marino v New York City Police Dept., Records Access Officer*, 16 AD3d 193; *Matter of Rodriguez v Dillon*, 210 AD2d 416, 417). The letter also was sufficient to comply with the court's judgment requiring the respondents to reconsider the petitioner's August 11, 2005, FOIL request. Furthermore, the petitioner failed to offer a factual basis upon which to reject the respondents' certification that the requested videotapes could not be located after a diligent search (see *Matter of Daum v Tessler*, 24 AD3d at 215; *Matter of Calvin K. of Oakknoll v DeFrancesco*, 200 AD2d 619; *Matter of Ahlers v Dillon*, 143 AD2d 225, 226).

SKELOS, J.P., DICKERSON, ENG and SGROI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court