

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

D32482
C/kmb

_____AD3d_____

Argued - September 19, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-07626

DECISION & ORDER

In the Matter of Legal Aid Society, respondent,
v New York State Department of Correctional
Services, et al., appellants.

(Index No. 1420/10)

Eric T. Schneiderman, Attorney General, New York, N.Y. (Richard P. Dearing and Sudarsana Srinivasan of counsel), for appellants.

Steven Banks, New York, N.Y. (John Boston and Milton Zelermyer of counsel), for respondent.

In a proceeding pursuant to CPLR article 78, inter alia, to compel the production of certain medical records pursuant to the Freedom of Information Law (Public Officers Law art 6) at a cost not in excess of 25 cents per page, the appeal is from stated portions of an order and judgment (one paper) of the Supreme Court, Dutchess County (Brands, J.), dated June 16, 2010, which, among other things, granted, without a hearing, that branch of the petition which was to compel the disclosure of those medical records under the Freedom of Information Law for a fee of 25 cents per page.

ORDERED that the order and judgment is affirmed insofar as appealed from, without costs or disbursements.

The petitioner sought disclosure under the Freedom of Information Law (Public Officers Law § 84 *et seq.*; hereinafter FOIL) of certain medical records. Though the appellants agreed to disclose the records, they did so under Public Health Law § 18, imposing a copying fee of

October 11, 2011

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50 cents per page. The petitioner objected on the ground that it made a FOIL request, subject to a copying fee of only 25 cents per page, rather than a request pursuant to the Public Health Law. The petitioner commenced this proceeding pursuant to CPLR article 78, and the Supreme Court determined that the petitioner had made a proper FOIL request for which a fee of only 25 cents per page should have been imposed. We agree.

“FOIL imposes a broad standard of open disclosure upon agencies of the government [and] [d]ocuments in the possession of public agencies are presumptively discoverable under FOIL, unless the agency can point to a specific statutory exemption” (*Matter of Mantica v New York State Dept. of Health*, 94 NY2d 58, 61 [citations omitted]). Here, there is no such statutory exemption. The fact that an individual “could obtain his records . . . pursuant to section 18 [of the Public Health Law] does not diminish his right to obtain them under FOIL” (*id.* at 63; *but see Matter of Pratt v Goord*, 20 AD3d 827, 827-828).

The appellants’ remaining contentions are without merit.

RIVERA, J.P., BALKIN, HALL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court