

Matter of Scantlebury v David

2007 NY Slip Op 30326(U)

March 20, 2007

Supreme Court, New York County

Docket Number: 0403012

Judge: Carol R. Edmead

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EDMEAD
Justice

PART 35

STANISLAWS SCANTERBY
- v -
JONATHAN DAVID

INDEX NO. 403012/06
MOTION DATE 1/31/07
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

FILED

MAR 26 2007

Upon the foregoing papers, it is ordered that this motion

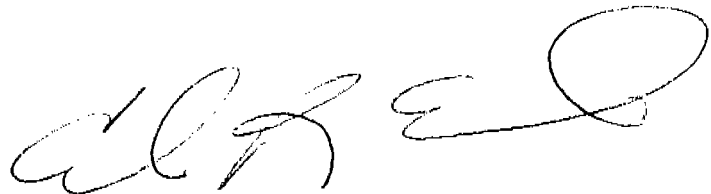
It is hereby

ORDERED that the motion by Petitioner for an order, pursuant to CPLR Article 78, (1) reversing the determination of Respondents and (2) directing that Respondents produce the Investigatory File to Petitioner, or in the alternative to the court for an *in camera* review, is denied. It is further

ORDERED that the cross-motion of Respondents for an order, pursuant to CPLR §§ 7804(f), 3211(a)(5), and 217(1), directing the Clerk to enter a judgment denying the petition and dismissing the proceeding is granted on the ground that the matter is time-barred pursuant to CPLR 217(1).

This constitutes the decision and order of the court.

Dated: 3/20/07



HON. CAROL EDMEAD J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK; PART 35

-----X
In the Matter of the Application of
STANISLAUS SCANTLEBURY,

Index No. 403012-2006

Petitioner,

Sequence 001
DECISION/ORDER

For a Judgment under Article 78
of the Civil Practice Law and Rules,

-against-

JONATHAN DAVID, RECORDS ACCESS
APPEALS OFFICER, NEW YORK CITY POLICE
DEPARTMENT,

Respondents.

-----X
HON. CAROL ROBINSON EDMOND, J.S.C.

MEMORANDUM DECISION

In this CPLR Article 78 proceeding, Petitioner Stanislaus Scantlebury ("Petitioner") moves for an order reversing the determination of Jonathan David, Records Access Appeals Officer for the New York City Police Department, denying access to certain documents and records relating to Petitioner's arrest (the "Arrest") on May 4, 1989 (hereinafter the "Investigatory File") on the ground that the Investigatory File is exempt from disclosure under the Freedom of Information Law (Public Officers Law § 84 *et seq.*) (hereinafter "FOIL"), and directing that Respondents produce the Investigatory File to Petitioner. Alternatively, Petitioner requests that the court order Respondents to submit the Investigatory File to the court for an *in camera* review, so that the court can determine if the Investigatory File is exempt from disclosure.

Respondents cross-move for an order pursuant to CPLR §§ 7804(f), 3211(a)(5), and

217(1), directing the Clerk to enter a judgment denying the petition and dismissing the proceeding on the grounds that (1) the matter is time-barred pursuant to CPLR 217(1); (2) relief is barred by the doctrine of *res judicata*; (3) Petitioner failed to timely exhaust his administrative remedies; and/or (4) Petitioner's request interferes with an ongoing judicial proceeding and is, therefore, exempt from disclosure pursuant to Public Officers Law § 87(2)(c)(I).

For the reasons set forth below, Petitioner's motion is denied and Respondents' cross-motion is granted on the ground that the matter is time-barred.

FACTUAL BACKGROUND

Pursuant to FOIL, Petitioner sought records from the New York City Police Department (the "NYPD") related to the Arrest on three occasions, the last request made on January 31, 2006 (the "2006 Request"). The 2006 Request sought "all arrest and identification materials" including: (1) PD244-1511-Arrest Information Report; (2) All UF-61 Reports; (3) All UF-250 Reports; (4) PD377-081 Case Investigation Reports; (5) PD306-101 Detective Case Log; (6) PD378-151 Intelligence Reports; (7) PD 313-153 Investigating Officer Reports; (8) PD373-142 Physical Description Sheet; (9) PD439-15 Investigator's Daily Activity Reports. Petitioner stated that he was "yet on the final stages of my appeals and am in dire need of arrest informations [sic] to present to the District Court." The request was denied on February 27, 2006 "on the basis of Public Officers Law § 87(2)(e)(i) as such records/information, if disclosed would interfere with law enforcement investigations or judicial proceedings."

On March 6, 2006, Petitioner appealed to the NYPD's Records Access Appeals Officer, Jonathan David. Mr. David denied Petitioner's appeal, stating that the records requested were "exempt from disclosure on the basis of Public Officers Law § 87(2)(e)(I), in that such records, if disclosed, would interfere with judicial proceedings, including litigation, such as a criminal trial

or appeal.” Such determination further stated that “records which are unavailable under FOIL are not necessarily rendered completely unavailable to you,” referring to Petitioner.

Petitioner thereafter commenced this CPLR Article 78 proceeding.

Petitioner's Contentions

In the instant application, Petitioner contends that he has “a right to review any and all materials described in each of his FOIL requests....” He further contends that Respondents’ failure to provide said records deprives him of evidence necessary to effectuate a full and fair review of his conviction. Petitioner also contends that section 87(2)(e)(i), as relied upon by Respondents, is inapplicable because the requested documents do not fall within the exemption.

Respondents' Contentions

Respondents cross-move to dismiss the petition pursuant to CPLR §§ 3211(a)(5) and 7804(f), arguing that the petition is time-barred pursuant to CPLR § 217(1). Respondents argue that the petition constitutes a belated attempt to challenge the disposition of Petitioner’s 1992 FOIL request (the “1992 Request”); in sum, Respondents allege that the 2006 Request is duplicative of the 1992 Request. To establish the duplicity of Petitioner’s 2006 Request, Respondents submit NYPD records kept in the regular course of business regarding the 1992 Request (the “NYPD Records”). According to Respondents, the NYPD Records indicate that Petitioner made a request pursuant to FOIL for, *inter alia*, documents held by the NYPD relating to the Arrest. The NYPD Records indicate that Petitioner requested documents containing arrest details, arrest reports, a UF61, the crime scene unit report and photos, and the detective [sic] homicide folder. Respondents further contend that the NYPD Records indicate that documents were produced in response to the 1992 Request and that Petitioner never administratively

appealed this decision.¹ Respondents argue that the more detailed 2006 Request is duplicative and cannot be used to extend or toll the statute of limitations.

Respondents also argue that judicial review is not possible where the second request, *i.e.*, the 2006 Request, is a “more detailed” request for a subset of the subject matter of a prior FOIL request. In support, Respondents provide a copy of Petitioner’s 2004 FOIL request (the “2004 Request”) seeking “all records pertaining to a [1989] lineup” that he participated in at the 67th Precinct. Petitioner specifically requested reports made by “Detective Silver.” This request was denied on December 21, 2004 on the basis that the same records had previously been requested and provided in connection with the 1992 Request. At the same time, Petitioner was also informed of both the proper process for filing an administrative appeal and that he had 30 days to do so. According to Respondents, Petitioner did not administratively appeal the decision. Rather, Petitioner responded to the denial notification by letter on December 29, 2004 and sought “reconsideration” of the denial. In his letter he acknowledged receiving a set of documents in response to the 1992 Request, but contended that the documents requested in the 2004 Request were not the same as those requested in 1992. Respondents argue that it is the final denial of the first request that defines the moment of accrual of the statute of limitations. In the instant matter, the denial of the 2004 Request allowed for appeal within 30 days; even if Petitioner had brought an appeal within the specified window, the four month statute of limitations on bringing an Article 78 proceeding has expired.

Respondents also cross-move to dismiss the petition on the ground that relief is barred by the principles of *res judicata*. Respondents contend that the 2006 Request sought the same

¹ According to the NYPD, Petitioner was provided with copies of five (5) pages of records responsive to his request on February 25, 1993.

documents as the 1992 Request. Since there was a prior administrative determination of the 1992 Request, the 2006 Request is barred by the principles of *res judicata*.

In its third argument for dismissal, Respondents contend that Petitioner failed to exhaust his administrative remedies. Since Petitioner admitted to receiving documents pursuant to the 1992 Request, he cannot now appeal the denial of a subsequent request for the same documents because his time to appeal the disposition of the 1992 Request has passed.

Lastly, Respondents seek dismissal on the ground that section 87(2)(e)(I) “exempts from disclosure documents compiled for law enforcement purposes which, if disclosed, would interfere with a judicial proceeding” and that the term “judicial proceeding” has been recognized to include an appeal from a criminal conviction. Respondents argue that, pursuant to Petitioner’s 2006 Request, Petitioner is seeking the requested documents in order to effectuate an appeal of his criminal conviction, but that the proper way for Petitioner to obtain this information is through discovery and not through FOIL.

Petitioner’s Opposition

In opposition to Respondents’ cross motion, Petitioner contends that Respondents’ reliance on the 2004 Request in order to prove its case for dismissal is inappropriate since the 2004 Request and the 2006 Request sought completely different items.

Additionally, Petitioner contends that the court cannot determine whether the 2006 Request is duplicative of the 1992 Request because Respondents have not included the 1992 Request as a part of its cross-motion. Petitioner further contends that Respondents’ reliance on *Mendez v New York City Police Dept.*, 260 AD2d 262 (1st Dept 1999), is misplaced since the court was able to compare the original request and the alleged duplicative request. Petitioner also contends that Respondents’ reliance on *Kelly v New York City Police Dept.*, 286 AD2d 58

(1st Dept 2001) is misplaced for the same reason. Petitioner argues that because Respondents are unable to produce the 1992 Request, the court cannot determine whether the 2006 Request is duplicative of the 1992 Request. Petitioner further contends that a comparison of the NYPD Records and the 2006 Request would reveal that the 1992 Request and the 2006 Request are substantially different, with the exception of the first two items of the 2006 Request, which were also requested in the 1992 Request.

Petitioner also argues that the relief he seeks is not barred by the principles of *res judicata* since, as Petitioner alleges, a “prior administrative determination” is not within the definition of *res judicata*.²

Petitioner also alleges that he has no reason to exhaust his administrative remedies with regard to the 1992 Request because the items that he received pursuant to the 1992 Request were either to his satisfaction or no longer needed for review. Additionally, the 2006 Request seeks completely different items than the 1992 Request, with the exception of the first two items, as previously noted.

Lastly, Petitioner submits to the court that in making the 2006 Request, he utilized a pre-printed form containing boilerplate language that indicated that he needed the information in order to present it to the District Court. Petitioner asserts that he has not been involved in any litigation relating to his criminal case since 1993, that he does not have any action pending in the District Court, and that pursuant to the Prisoner Litigation Reform Act he cannot now further challenge his conviction. Accordingly, Petitioner alleges that Respondents’ justification for denying Petitioner’s 2006 Request is without merit.

² Petitioner cites Black’s Law Dictionary (8th Edition) as defining *res judicata* as “[a]n issue that has been definitively settled by judicial decision.” Petitioner also states that the term “judicial” is defined as “[o]f, relating to, or by the court or a judge; In court.”

DISCUSSION

Under FOIL, government agencies have a broad duty of disclosure (*see Matter of Hanig v State of New York Dept. of Motor Vehicles*, 79 NY2d 106, 109, 580 NYS2d 715, 717 [1992]; *Matter of Fink v Lefkowitz*, 47 NY2d 567, 571, 419 NYS2d 467, 470 [1979]; Public Officers Law § 84 *et seq.*). Agency records are presumptively available to the public, unless they fall within one of the categories of statutory exemption, which permit agencies to withhold certain records (*see Matter of Hanig*, 79 NY2d at 109, 580 NYS2d at 717; Public Officers Law § 87[2]). Since the issues raised by a FOIL request are not within the particular and specialized expertise of an administrative agency, courts make their own determinations with respect to issues of FOIL coverage and exclusion. Thus, the usual “standard of review in Article 78 proceedings, *i.e.*, that the agency’s determination will not be set aside unless arbitrary or capricious or without rational basis, is not applicable. Rather, the person resisting disclosure must prove entitlement to one of the exceptions” (*Laureano v Grimes*, 179 AD2d 602, 603-04 [1st Dept 1992]).

However, pursuant to CPLR § 217, an Article 78 proceeding must be commenced within four months after the administrative determination to be reviewed becomes final and binding upon the petitioner, unless a shorter time is provided in the law authorizing the proceeding (*see Yarbough v Franco*, 95 NY2d 342, 717 NYS2d 79 [2000]; CPLR § 217[1]; *New York State Assn. of Counties v Axelrod*, 78 NY2d 158, 165, 573 NYS2d 25). The statute of limitations does not toll or extend when a subsequent FOIL request is duplicative of a prior request (*see Kelley v New York City Police Dept.*, 286 AD2d 581, 581, 730 NYS2d 84, 85 [1st Dept 2001]). A subsequent FOIL request that is more specific than a prior request is considered duplicative (*see Garcia v Div. of State Police*, 302 AD2d 755, 756, 754 NYS2d 913, 913 [3d Dept 2003]). Thus, if two FOIL requests are duplicative, the court may dismiss the proceeding challenging a

determination of the latter request as a belated attempt to seek judicial review of the denial of the first request (*see Kelley v New York City Police Dept.*, 286 AD2d 581, 581, 730 NYS2d 84, 85 [1st Dept 2001]).

In the instant case, even assuming that the stated exemption relied upon by Respondents to deny the 2006 Request is inapplicable, the Court finds that the 2006 Request is duplicative of 1992 Request. The 2006 Request is more specific than the 1992 Request, in that the 2006 Request specifically seeks nine (9) documents, some of which were sought in the 1992 Request and may have already been provided. The final administrative determination of the 1992 Request was rendered on February 25, 1993; Petitioner's 30-day window to effectuate an administrative appeal expired on March 26, 1993. Therefore, Petitioner lost his right to seek judicial review of the determination related to his 1992 Request, regardless of whether he was satisfied with the documents he received. By seeking review of a later, duplicative request, Petitioner is making a belated attempt for review of the disposition of the earlier, 1992 request. Accordingly, the Court cannot grant the relief requested by Petitioner.

Petitioner's argument that the Court cannot decide this matter without his original 1992 Request is without merit. Case law cited by Petitioner does not support his position as those cases address issues of whether a criminal defendant was prejudiced by the discarding of *Rosario* material (*see People v Wallace*, 76 NY2d 953, 563 NYS2d 722 [1990] and *People v Joseph*, 86 NY2d 565, 635 NYS2d 123 [1995]). The instant case is not a criminal matter and there is no evidence that the 1992 Request was destroyed. Moreover, Petitioner does not dispute the information contained in the NYPD Records. Therefore, Respondents' submission of records kept in the regular course of business regarding the 1992 Request are sufficient establish the duplicity of the 2006 Request.

The Court also finds that the 2006 Request is nothing more than a detailed request for a subset of the subject matter of the 2004 Request. Both requests sought records that were generated as part of the same event. The 2006 Request merely sought a different subset of the same records, *to wit*: a list of items relating to the Arrest as compared to all records pertaining to the lineup. Petitioner's argument that the 2004 Request and the 2006 Request are different is equally without merit because the latter request is clearly a request for a subset of the same records as the former request.

Petitioner is bound by CPLR § 217[1] and cannot rely on subsequent requests that are nearly identical in order to skirt this statute. Otherwise, these requests would go on *ad infinitum* and "make an absurdity of the statute" (*Mallon v Morton*, 199 Misc 805, 811 [Sup Ct, NY County 1950]). Under the circumstances herein, it is the final determination of Petitioner's first request that triggers the accrual of the statute of limitations.

The Court finds that the statute of limitations expired as to Petitioner's 1992 Request, and the subsequent duplicative requests made by Petitioner do not serve to toll the statute of limitations.

In light of the statute of limitations bar to this proceeding, the Court does not reach the merits of Respondents' remaining arguments.

CONCLUSION

Based on the above, it is hereby

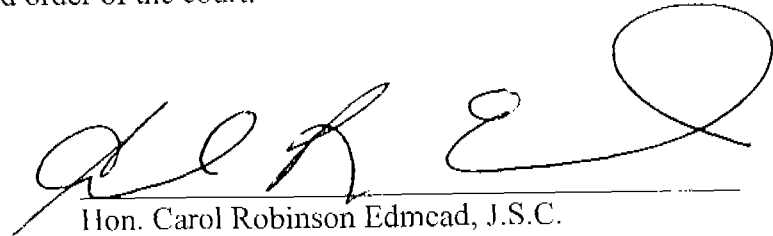
ORDERED that the motion by Petitioner for an order, pursuant to CPLR Article 78, (1) reversing the determination of Respondents and (2) directing that Respondents produce the Investigatory File to Petitioner, or in the alternative to the court for an *in camera* review, is

denied. It is further

ORDERED that the cross-motion of Respondents for an order, pursuant to CPLR §§ 7804(f), 3211(a)(5), and 217(1), directing the Clerk to enter a judgment denying the petition and dismissing the proceeding is granted on the ground that the matter is time-barred pursuant to CPLR 217(1).

This constitutes the decision and order of the court.

Dated: March 20, 2007



Hon. Carol Robinson Edmead, J.S.C.

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