

Matter of Mays v New York City Police Dept.

2007 NY Slip Op 30835(U)

April 2, 2007

Supreme Court, New York County

Docket Number: 0405063/2006

Judge: Lewis Bart Stone

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

PRESENT: STONE
~~HON. LEWIS BART STONE~~ Justice

PART 585

MICHAEL MAYS

- v -

NYC POLICE DEPT

INDEX NO. 405063/06
MOTION DATE _____
MOTION SEQ. NO. 1
MOTION CAL. NO. _____

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion
is decided in accordance with
attached Decision & Order,

FILED
APR 20 2007
NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 4/2/07

Lewis Bart Stone
HON. LEWIS BART STONE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Handwritten initials/signature

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50S

-----X
 In the Matter of the Application of :
 MICHAEL MAYS, :
 :
 Petitioner, :
 :
 For the Judgment Pursuant to Article 78 :
 of the Civil Practice Law and Rules :
 :
 -against :
 :
 New York City Police Department, :
 :
 Respondent. :
 -----X

DECISION &
ORDER

Ind. No. 405063/06

FILED
 APR 20 2007
 X
 NEW YORK
 COUNTY CLERK'S OFFICE

Justice Lewis Bart Stone:

Petitioner, Michael Mays (“Mays”) pro se, challenges the denial by the Records Access Officer of the New York City Police Department (“NYPD”) of Mays’ Freedom Information (“FOIL”) (Public Officers Law §84 et seq.) request for records allegedly in the possession of NYPD. NYPD opposes the petition on the grounds that Mays’ petition is barred the principles of res judicata and collateral estoppel.

On May 18, 2006, Mays filed a FOIL request with the NYPD seeking “records...which are assigned under Kings County Indictment 1282/85,” and listed numerous records which he was seeking. On June 20, 2006, the FOIL Records Access Officer for the NYPD responded by letter to Mays’ request, informing him that due to the large volume of FOIL requests and the fact that the records may be

kept in different locations, it was estimated that NYPD would not be able to make a determination until approximately September 30, 2006. The letter also stated that this should not be considered a denial of his request for records. On January 19, 2007 the Records Access Officer denied Mays' request as being duplicative of a prior FOIL request that he had made in 1995. On January 22, 2007, the Records Appeals Officer also upheld the denial as duplicate of the 1995 FOIL request.

On June 16, 1995, Mays had filed a previous FOIL request where an identical request for "records/documents photographs" under Indictment No. 1282/85 was made. Both the 1995 and 2006 FOIL letters generally and specially asked for records pertaining to the same indictment. NYPD provided Mays with some of the available records and advised him that NYPD was in the process of locating others.

In September, 1996, Mays filed an Article 78 petition demanding that NYPD turn over the remaining records. By Decision and Order dated April 14, 1997, Justice Paula Omansky granted NYPD's cross motion and dismissed the petition as premature, as Mays had not filed an administrative appeal, but also held that Mays' request for police records (the "DD-5s") should be considered a separate FOIL request. On January 19, 1997, NYPD advised Mays that it was providing seven partially redacted DD-5's to him but denying access to three DD-5's, stating that disclosure would reveal confidential information or sources. On March 24, 1998, Mays filed another Article 78 petition which appealed that determination. By

Decision and Order, Justice Bruce Allen ordered NYPD to present the ten unredacted DD-5's for in camera review. On November 22, 1999, Judge Allen upheld the NYPD determination in part, and held that Mays was not entitled to the seven DD-5's in unredacted form and that NYPD had proper reasons for removing certain information from them. Judge Allen, however, determined that of the three DD-5's that were not provided to Mays, two should have been provided. These two DD-5's were attached to the decision in redacted form and thus provided to Mays. Judge Allen also held that the last DD-5 was properly withheld by NYPD.

In this proceeding, Mays' request duplicates his 1995 FOIL request. While the 2006 request may be more specific in the names of the records, it is clear from both the decisions of Judges Allen and Omansky that the 1995 request was for all the records pertaining to that indictment. The FOIL officers' determinations and the previous Court decisions provide prior final determinations which cannot be re-litigated by the filing of yet another CPLR Article 78 petition. Mays is barred from seeking these same documents on the basis of res judicata.

Accordingly, NYPD's cross motion to dismiss is granted and the petition is denied.

This constitutes the Decision and Order of the Court.

DATED: APRIL 2, 2007
NEW YORK, NEW YORK



Hon. Lewis Bart Stone
Justice of the Supreme Court

FILED
APR 20 2007
NEW YORK
COUNTY CLERK'S OFFICE