

<b>Matter of Tanner v New York City Police Dept.</b>
2007 NY Slip Op 31399(U)
May 15, 2007
Supreme Court, New York County
Docket Number: 0405204/2006
Judge: Lewis Bart Stone
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: STONE  
Justice

PART 42

RONALD TANNER

- v -

NYC POLICE DEPT

INDEX NO. 405204/06  
MOTION DATE \_\_\_\_\_  
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

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

*is decided <sup>neg</sup> in accordance with attached Decision & Order*

**FILED**  
MAY 31 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: May 16, 2007

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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 50S

-----X	:	
In the Matter of the Application of	:	
RONALD TANNER a/k/a RONALD TANAER	:	
	:	
Petitioner,	:	DECISION &
	:	ORDER
For the Judgment Pursuant to Article 78	:	
of the Civil Practice Law and Rules	:	
	:	
-against-	:	
	:	Ind. No. 405204/06
New York City Police Department,	:	
	:	
Respondent.	:	

**FILED**  
MAY 31 2007  
X  
NEW YORK  
COUNTY CLERK'S OFFICE

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Justice Lewis Bart Stone:

Petitioner, Michael Tanner ("Tanner") pro se, challenges the denial by the Records Access Officer ("RAO") of the New York City Police Department ("NYPD") of Tanner's 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 the Court lacks personal jurisdiction because they were not properly served, that Tanner has failed to exhaust his administrative remedies, that the proceeding barred the principles of res judicata, and that proceeding is moot because NYPD has been unable to locate the records.

On April 3, 2006, Tanner filed a FOIL request with the NYPD seeking records pertaining to an arrest on July 22, 1999. On May 1, 2006, the FOIL RAO for the

NYPD responded by letter to Tanner's 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 1, 2006. On November 8, 2006 the RAO denied Tanner's request as being duplicative of seven prior FOIL requests that he had previously made, and, without filing an administrative appeal of the RAO's determination, Tanner filed the instant CPLR Article 78 petition seeking review.

Prior to his 2006 FOIL request, in 2001, Tanner had sent previous requests to NYPD for records in which he sought documents pertaining to the July 22, 1999 arrest as well as the July 23, 1999 arrest for criminal sale and criminal possession of controlled substances. NYPD provided records for the July 23, 1999 arrest but advised Tanner by letter and certified that no records for the July 22, 1999 arrest could be located.<sup>1</sup>

On March 11, 2002, Tanner filed an Article 78 petition demanding that NYPD turn over the records for July 22, 1999. By Decision and Order dated October 28, 2002, Justice Leland DeGrasse dismissed Tanner's petition on the grounds that Tanner had failed to exhaust his administrative remedies, by not appealing and thus the proceeding was premature and moot.

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<sup>1</sup> Tanner is currently serving a state prison sentence for narcotics crimes.

In 2002, 2003 and 2005, Tanner sent FOIL requests to NYPD that were duplicated his original request for the July 22, 1999 records. These are the same records that were the subject of the previous Article 78 petition that was dismissed by Judge DeGrasse.

Tanner's petition must be denied in all respects. First, Tanner has not filed an administrative appeal of NYPD's denial of his 2006 FOIL request. Therefore, having failed to exhaust his administrative remedies, which is a condition precedent to filing a CPLR Article 78 petition, Tanner's motion must be denied.

Furthermore, Tanner's 2006 request duplicates his previous seven FOIL requests. The FOIL officers' determination and the previous decision of Judge DeGrasse provided prior final determination which cannot be re-litigated by the filing of yet another CPLR Article 78 petition. Tanner is barred from seeking these same documents on the basis of res judicata.

Finally, the NYPD certification in 2001 that after a diligent search the July 22, 1999 records could not be located after a diligent search is sufficient to meet the obligation by NYPD to produce such records.

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

This constitutes the Decision and Order of the Court.

DATED: MAY 15, 2007  
NEW YORK, NEW YORK



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Hon. Lewis Bart Stone  
Justice of the Supreme Court

**FILED**  
MAY 31 2007  
NEW YORK  
COUNTY CLERK'S OFFICE