

**Matter of Campney v Fischer**

2008 NY Slip Op 32571(U)

September 24, 2008

Supreme Court, Albany County

Docket Number: 0017502/0081

Judge: Joseph C. Teresi

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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of  
RANDY S. CAMPNEY, SR., # 03-A-3264

*Petitioner,*

**DECISION and ORDER**  
**RJI NO. 01-08-ST8667**  
**INDEX NO.: 1750-08**

-against-

BRIAN FISCHER, COMMISSIONER DOCS,  
GEORGE B. ALEXANDER, CHAIRMAN  
DIVISION OF PAROLE, & ANDREW M.  
CUOMO, ATTORNEY GENERAL,

*Respondents.*

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Albany County Supreme Court All Purpose Term, August 18, 2008  
Assigned to Justice Joseph C. Teresi

**APPEARANCES:**

Randy S. Campney, Sr., # 03-A-3264  
Pro Se Petitioner  
Bare Hill Correctional Facility  
Caller Box 20, 181 Brand Road  
Malone, NY 12953

Hon. Andrew M. Cuomo  
Attorney General of New York State  
Aaron M. Baldwin, Esq.  
Assistant Attorney General, of counsel  
The Capitol  
Albany, NY 12224

**TERESI, J.:**

Petitioner, an inmate at Bare Hill Correctional Facility, brings this Article 78 proceeding to compel Respondents to comply with his numerous Freedom of Information Law ("FOIL"), Public Officers Law Article 6, demands. Respondents oppose the Petition.

The party seeking to prevent disclosure of a FOIL request has the burden of

demonstrating that the requested material falls within an established FOIL exemption. (Matter of John H. v. Goord, 27 A.D.3d 798 [3d Dept. 2006]; Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454 [2007]). The burden is on the party seeking exemption to “present specific, persuasive evidence” that disclosure would cause the injury the exemption is trying to prevent, “a speculative conclusion that disclosure might potentially cause harm” is insufficient. (Matter of Markowitz v. Serio, 2008 NY Slip Op 5775, \*4 [2008]; Capital Newspapers Div. of Hearst Corp. v. Burns, 67 N.Y.2d 562 [1986]).

On July 24, 2007, Petitioner submitted a FOIL request seeking his own parole records. Respondents complied with such request, and provided the documents requested with some redactions due to their inclusion of law enforcement material. (Public Officer’s Law § 87[2][e]). This petition seeks an unredacted copy of the documents provided but failed to properly specify which documents he sought. Due to the ambiguity of the petition, Respondents failed to provide unredacted copies of the documents to this Court for in camera review. As such, an issue of fact exists relative to whether the redactions contain law enforcement material and are thereby exempt from Petitioner’s request. (Public Officer’s Law § 87[2][e]). Accordingly, Respondents are ordered to submit unredacted copies of Petitioner’s parole records, as specified in his Reply, to this Court within 20 days of this order for in camera review.

On November 29, 2007, Petitioner submitted a FOIL request seeking documents submitted, in camera, to the New York Supreme Court, Appellate Division, Fourth Department, in People ex rel. Adler v. Beaver, 12 A.D.3d 1136 (4th Dept. 2004). Respondents denied the request claiming the law enforcement material exception. (Public Officer’s Law § 87[2][e]). This petition seeks disclosure of those documents but Respondents failed to provide this Court

with a copy of such documents for in camera review. As such, an issue of fact exists relative to whether the documents contain law enforcement material and are exempt. Accordingly, Respondents are ordered to submit a copy of such documents to this Court within 20 days of this order for in camera review.

On December 19, 2007, Petitioner submitted a FOIL request seeking information regarding inmate Charles Friedgood's hearing and release. Petitioner's request and appeal were properly denied because Respondents are exempt from disclosing another inmate's parole records. (Zarvela v. N.Y.S. Div. of Parole, 252 A.D.2d 696 [3d Dept. 1998]; Collins v. N.Y.S. Div. of Parole, 251 A.D.2d 738 [3d Dept. 1998]; Carty v. N.Y.S. Div. of Parole, 277 A.D.2d 633 [3d Dept. 2000]). Accordingly, this portion of Petitioner's claim is dismissed.

On November 2, 2007, Petitioner requested specific Department of Correctional Service ("DOCS") manuals. Respondents informed him that the manuals were "not mandated for inclusion in DOCS Law Library collections," but that he could purchase redacted copies at twenty-five cents per page. This petition challenges such policy. Respondents' policy of charging a fee for photocopies in response to a FOIL request is not arbitrary and capricious. (Public Officer's Law § 87(1)(b)(iii); Brown v. Goord, 45 A.D.3d 930 [3d Dept. 2007], appeal dismissed, 10 N.Y.3d 796 [2008]). Accordingly, this portion of Petitioner's claim is dismissed.

On December 24, 2007, Petitioner filed a Petition for a Declaratory Ruling with the Chairman of the Division of Parole, pursuant to the State Administrative Procedure Act ("SAPA"). Respondent claims to be exempt from SAPA. However, pursuant to SAPA §102(1), the Division of Parole is an exempt agency "except for purposes of article two of this chapter." SAPA Article 2 states that non-exempt agencies "shall issue either a declaratory ruling or a

statement declining to issue a declaratory ruling . . .” and “prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition.” (SAPA §§ 204[2][a] and 204[1]). As such, Respondents are not exempt from SAPA Article 2 and must comply with its provisions. Accordingly, Respondents are hereby directed to prescribe by rule the form for a Petition for Declaratory Ruling and the procedures for their submission, consideration and disposition, and reply to Petitioner’s Declaratory Ruling Petition in accord with SAPA §204(2)(a) within thirty (30) days.

Petitioner’s motion, pursuant to CPLR §3215(a), for default judgment based upon Respondents’ failure to serve a timely answer is denied. Prior to the due date of their answer or petitioner’s motion for default, the Court granted Respondents an adjournment to submit their answer and opposition papers. Accordingly, Respondents’ answer was filed and served in a timely manner, and Petitioner’s motion for default judgment is denied.

In accord with the foregoing, Respondents are hereby Ordered to submit, in camera, unredacted copies of Petitioner’s parole records, as specified in Petitioner’s Reply, and copies of the documents submitted, in camera, to the New York Supreme Court, Appellate Division, Fourth Department, in People ex rel. Adler v. Beaver, 12 A.D.3d 1136 (4th Dept. 2004) from the New York State DOCS’ Inspector General, within 20 days of this order. Respondents are further ordered to comply with SAPA Article 2, in accord with this Decision and Order within thirty (30) days. Additionally, Petitioner’s claims relating to his December 18, 2007 FOIL request and his November 2, 2007 request are dismissed, and his motion for a default judgment is denied.

All papers are being held by the Court for continued consideration upon receipt of the documentation to be provided. Respondents shall comply with CPLR §2220 for the filing and

service of this Decision and Order. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: September 24, 2008  
Albany, New York

  
JOSEPH C. TERESI, J.S.C.

**PAPERS CONSIDERED:**

1. Order to Show Cause, dated March 10, 2008.
2. Petition of Randy Campney, Sr., dated February 14, 2008 with Attached Exhibit A-G.
3. Answer of Aaron Baldwin, dated July 2, 2008 with Attached Exhibit A-U.
4. Affirmation of Aaron Baldwin, dated July 2, 2008.
5. Reply of Randy Campney, Sr., dated July 9, 2008 with Attached Exhibit A-D.
6. Notice of Motion to Court for Default Judgment of Randy Campney, Sr., dated May 27, 2008, and Affidavit in Support of Motion for Default Judgment of Randy Campney, Sr., dated May 27, 2008.
7. Letter of Aaron Baldwin, dated June 2, 2008.