

**Matter of Ramos v New York City Dept. of
Corrections**

2008 NY Slip Op 32621(U)

September 24, 2008

Supreme Court, New York County

Docket Number: 0401717/2008

Judge: Joan B. Lobis

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

PRESENT: JOAN B. LOBLIS
Justice

PART 6

John Ramos

INDEX NO. 401717/08

MOTION DATE 9/16/08

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

- v -

NYC Dept

The following papers, numbered 1 to 7 were read on this ~~motion to/for~~ Article 78 proceeding

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

75

6-7

—

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ petition is decided in accordance with the accompanying decision and order.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1202).

Dated: 9/24/08

JBL
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
NEW YORK COUNTY: IAS PART 6

-----X
In the matter of the Application of John Ramos - 04A3060,

Petitioner,

Index No. 401717/08

For a Judgment Pursuant to C.P.L.R. Article 78

**Decision, Order
and Judgment**

- against -

N.Y.C. Department of Corrections,

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

JOAN B. LOBIS, J.S.C.:

Petitioner, John Ramos, pro se, who is currently incarcerated at the Coxsackie Correctional Facility in Coxsackie, New York, commenced this Article 78 proceeding to compel respondent, New York City Department of Corrections ("NYCDOCS"), to provide petitioner access to certain NYCDOCS records pursuant to the provisions of the Freedom of Information Law ("FOIL"). Respondent opposes the motion on the grounds that petitioner fails to state a cause of action and/or that petitioner's claim is moot because respondent provided a response to the FOIL request.

By letter dated November 27, 2007, petitioner filed a FOIL request for certain legal reports and logs regarding legal mail he sent and received, property vouchers, and reports of the final disposition of his personal property; this information was sought as related to the period petitioner was detained at the George Motchan Detention Center, from July 2003 through May 2004, as well as a short period of time he was housed at the Manhattan Detention Complex, which petitioner refers to as "the Tombs". By letter dated December 12, 2007 from NYCDOCS' Deputy Commissioner

Stephen J. Morello, respondent acknowledged receipt of petitioner's request and stated that petitioner should expect notification within thirty (30) days as to whether his request would be granted or denied.

Between January 2008 and March 2008, a series of letters were exchanged between petitioner and respondent, by which petitioner attempted to obtain respondent's compliance with his FOIL request. By letter dated March 26, 2008, Deputy Superintendent Morello advised petitioner that respondent was unable to process petitioner's request, because petitioner had not provided his "Book & Case Number" and/or his "NYSID Number." The March 26 letter asks petitioner to provide his NYSID Number and Book & Case Number, along with a copy of his request, if he still needs copies of the requested documents. By letter dated April 2, petitioner responded that he did not have his Book & Case Number, but provided his NYSID number. By letter dated June 7, petitioner wrote to Martin F. Horn, Commissioner of NYCDOCS, complaining that there still had been no response to his FOIL request sent in November 2007, and informing Commissioner Horn of petitioner's intent to file an Article 78 proceeding on June 15, 2008. Thereafter, by letter dated June 27, petitioner wrote to Commissioner Horn that respondent refused to make a determination on his request without informing him to whom he could appeal, that he had sent two letters requesting Mr. Horn's intervention, and that his administrative remedies were now exhausted. Also in that letter, petitioner informed Commissioner Horn that his previous letter of June 7 was his final appeal and that he intended to file an Article 78 proceeding for a writ of mandamus in July 2008. Petitioner filed the instant petition on July 18, 2008.

Meanwhile, by letter dated June 7, Mr. Morello advised petitioner that NYCDOCS

was still in the process of gathering materials that might be responsive to petitioner's FOIL request; petitioner was informed that it would take at least four (4) weeks to gather and review the records that may be responsive to his request. By letter dated July 21, Deputy Commissioner Morello sent petitioner a copy of his "IPTS Receipt History," which detailed the facilities at which petitioner had been housed between July 5, 2003, and October 4, 2004 (these facilities were the Manhattan Detention Complex, the George Motchan Detention Center, and the Robert N. Davoren Center). The July 21 letter also advised petitioner that on October 4, 2004, his property was transferred to the Inmate Property Unit and subsequently destroyed. With respect to the legal mail log, petitioner was advised that respondent was still in the process of gathering materials, and that it would take at least four (4) weeks to gather and review the records that may be responsive to his request. Finally, by letter dated August 6, 2008, respondent provided a further response to petitioner's FOIL request; respondent set forth that it had conducted a diligent search for the legal mail logbooks for the time frames of petitioner's request, but they were not found. Annexed to respondent's answering papers are memoranda from the wardens at each of the three facilities at which petitioner had been housed at between July 5, 2003, and October 4, 2004. The memoranda explain that searches were conducted for the requested records but that the facilities were unable to locate the records.

Respondent provided petitioner with some of the records responsive to his FOIL request during the pendency of this proceeding; as such, the petition is moot. Tellier v. N.Y.C. Police Dept., 267 A.D.2d 9, 10 (1st Dep't 1999). With respect to the documents that were not located, "[w]hen an agency is unable to located documents properly requested under FOIL, Public Officers Law § 89(3) requires the agency to 'certify that it does not have possession of [a requested] record or that such record cannot be found after diligent search.'" Rattley v. N.Y.C. Police Dept.,

96 N.Y.2d 873, 875 (2001) (brackets in internal quotation in original). Respondent's counsel's affirmation that a diligent search was performed satisfies the certification requirement and renders a petitioner's FOIL application moot. Id. Accordingly, it is hereby

ORDERED that the petition is denied and dismissed in its entirety. This constitutes the decision, order, and judgment of the court.

Dated: September 2nd, 2008



JOAN B. LOBIS, J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representatives must appear in person at the Judgment Clerk's Desk (Room 1415).