

Whitfield v Bailey

2009 NY Slip Op 30391(U)

February 13, 2009

Supreme Court, New York County

Docket Number: 110706/08

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11

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JOHN WHITFIELD,

Index No. 110706/08

Petitioner,

- against -

PATRICIA J. BAILEY, FOIL Officer
Of the New York County District Attorney's Office,

Respondent

For A Judgment Pursuant to Article 78
Of the Civil Practice Laws and Rules.

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JOAN A. MADDEN, J.:

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

In this Article 78 proceeding, petitioner, John Whitfield, appearing pro se, seeks to compel respondent to comply with New York's Freedom of Information Law ("FOIL"), Public Officers Law Article 6. Respondent opposes the petition which, for the reasons below, is denied and dismissed.

Background

Petitioner is an inmate serving a twenty-five year sentence for second degree murder. Richard Doyle ("Doyle") is an inmate serving a twenty-five year sentence for manslaughter. Doyle had testified against the petitioner at the trial that resulted in the petitioner's conviction of second degree murder. The two were formerly housed at the same correctional facility. After violent encounters between petitioner and Doyle, the New York State Department of Corrections ("NYSDOC") enforced a "Separation Order," which separated and precluded them from being housed at the same correctional facility.

By letter dated May 20, 2008, petitioner made a FOIL request to the District Attorney's

Records Access Officer seeking the following documents relating to Doyle's arrest for petit larceny: (1) All DD-5s; (2) All Early Case Assessment Bureau Data Sheets; (3) All Data Analysis Forms; (4) All Notices (CPL §240.20 & CPL §710.30); (6) All Interview Notes; (7) All Memo Book Entries; (8) All Bureau Information Sheets; (9) All Agreement Forms; (10) All Warrant Reports from Other Counties; (11) All Sentencing Assessment Reports; (12) All CPL §560.10(2) Notices in Connection with Doyle's Confinement; (13) All Miranda Warning Sheets along with Responses; (14) All Statements Made by Doyle and His Codefendant Kyle Wilson; (15) All Supplemental Reports, Documents, Notes, Forms.

By letter dated June 3 2008, the District Attorney's FOIL Records Access Officer denied petitioner's request, noting that providing access to such records would violate NYCRR Title VII §270.2(14) (xvii), which prevents an inmate from obtaining records regarding crime and sentencing information pertaining to another inmate. Additionally, the FOIL Records Access Officer noted that petitioner failed to mention that he had violent encounters with Doyle and that a Separation Order was enforced by the NYSDOC. The Records Access Officer also denied the request on the grounds that access to records would compromise Doyle's safety and privacy under the exemptions contained in Public Officers Law 87(2)(b) and (f).

By letter dated June 9, 2008, petitioner appealed the denial of his request to the FOIL Appeals Officer, arguing that NYCRR Title VII, §270.2(14) (xvii) does not forbid an inmate from gaining access to another inmate's files and that Doyle's records were public property.

By letter dated July 16, 2008, the FOIL Appeals Officer denied the petitioner's appeal for the same reasons that the Records Access Officer rejected petitioner's FOIL request.

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On August 7, 2008, petitioner filed this proceeding seeking Article 78 relief, asserting that Doyle's records are public property and not entitled to confidentiality. Respondent opposes the petition on the grounds that the records are exempt from disclosure based on the NYSDOC regulation that bars inmates from accessing the records of other inmates and on as access to the records would violate Doyle's privacy and possibly put his safety at risk, and thus are exempted from disclosure under FOIL.

Discussion

In considering this matter, the court notes that "[a]ll government records are ... presumptively open for public inspection and copying unless they fall within one of the enumerated exemptions of Public Officers Law § 87 (2)." Matter of Gould v New York City Police Dept., 89 N.Y.2d 267, 274-275 (1996). Moreover, the exemptions under FOIL are to be "narrowly construed" and there are no blanket exemptions for particular categories of documents. Id., at 275.

At the same time, however, the courts have denied FOIL requests by inmates seeking access to the records of other inmates on privacy and safety grounds under Public Officers Law § 87(2)(b) and (f). See Collins v. New York State Div. of Parole, 251 A.D.2d 738 (3rd Dept. 1998) (holding that an inmate could not obtain the parole records of another inmate because doing so would compromise the privacy of the individual even if some material was redacted); Carty v. New York State Div. of Parole, 277 A.D.2d 633, (3rd Dept. 2000) (affirming trial dismissal of a FOIL petition by an inmate seeking parole records relating to two former inmates who testified against petitioner at his criminal trial, noting inter alia, that the release of such records could endanger the life and safety of a person and were exempt under FOIL).

Applying these principles to the instant case, the court finds that the records sought by petitioner, which would disclose the criminal and security information regarding an inmate who testified against petitioner at his criminal trial and who was separated from petitioner while incarcerated as a result of violent encounters, are exempt from disclosure under FOIL. In particular, the disclosure of such records may endanger the safety of Doyle and would constitute an unwarranted invasion of his privacy. Public Officers Law § 87(2)(b) and (f). See Collins v. New York State Div. of Parole, 251 A.D.2d at 738 .

Moreover, disclosure of the information sought by petitioner is prohibited under a NYSDOC regulation. Specifically, NYCRR Title VII, §270.2(B) (14) (xvii) states that “[a]n inmate shall not solicit, possess or exchange any disciplinary or grievance document pertaining to another inmate, or any document which contains crime and sentence information pertaining to another inmate who is not a co-defendant [.]” While the regulation alone may not be a sufficient basis for exempting the documents from disclosure,¹ as the NYSDOC has a legitimate security interest in preventing inmates from obtaining documents relating to other inmates, it cannot be said that the denial of access to these records “infringes a petitioner’s constitutional right to submit a Freedom of Information Law request [.]” Siao-Pao v. Selsky, 274 A.D.2d 698, 699 (3rd Dept. 2000).

Finally, petitioner’s argument that he should have access to Doyle’s files since they are

¹Respondent argues that based on NYCRR Title VII, §270.2(B) (14) (xvii), the documents sought by petitioner are exempt from disclosure under Public Officers Law § 87(2)(a), which bars access to records “specifically exempted from disclosure by state...statute.” However, it would appear that this exemption does not apply since respondent relies on a regulation barring access to the records and not a statute. In any event, since the documents sought by petitioner are exempt from disclosure on privacy and safety grounds under Public Officers Law § 87(2)(b) and (f), the court need not reach this issue.


public records ignores that public records may be withheld when, as here, the government agency demonstrates that the documents fall under one or more of the FOIL exemptions. Public Officers Law §87 (2).

Conclusion

In view of the above, it is

ORDERED and ADJUDGED that the petitioner for Article 78 relief under FOIL is denied and the petition is dismissed.

DATED: February 13 2009



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 representative must appear in person at the Judgment Clerk's Desk (Room 141B).