

Ramos v Police Dept. of City of N.Y.
2009 NY Slip Op 33275(U)
June 22, 2009
Supreme Court, New York County
Docket Number: 402561/08
Judge: James A. Yates
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY
PRESENT: Hon. JAMES A. YATES PART 50Y
Justice

JOHN RAMOS,

Petitioner,

-against-

Index No.402561/08

Motion Seq. No. 001

**THE POLICE DEPARTMENT OF THE CITY
 OF NEW YORK, JONATHAN DAVID, RECORDS
 ACCESS APPEALS OFFICER and JAMES
 RUSSO, RECORDS ACCESS OFFICER,
 Respondents.**

FINAL ORDER

FILED

JUN 23 2009

**COUNTY CLERK'S OFFICE
 NEW YORK**

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

Papers Numbered

Notice of Motion/Order to Show Cause - Affidavits - Exhibits... | _____

Answering Affidavits - Exhibits _____ | _____

Replying Affidavits _____ | _____

Cross-Motion: ☒ Yes ☐ No

Petitioner made a FOIL request to the New York City Police Department (NYPD) in November 2007, requesting documents relating to his rape arrest. On September 16, 2008, Petitioner commenced an Article 78 proceeding to challenge a determination by the NYPD denying his request. On April 30, 2009, the NYPD submitted documents for an in camera inspection pursuant to this Court's Order and Decision filed on April 1, 2009.

The Court, after reviewing the documents in camera, finds that the NYPD has made the requisite showing of proving exemption for these documents.

Therefore, Respondent's cross-motion to dismiss the petition is granted (see attached Order).

This constitutes the Decision and Order of the Court.

Dated 6-22-09

ENTER:

HON. JAMES A. YATES

J.S.C.

Check one: ☒ FINAL DISPOSITION

☐ NON-FINAL DISPOSITION

FILED

JUN 23 2009

COUNTY CLERK'S OFFICE
NEW YORK

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

FILED

JUN 23 2009

COUNTY CLERK'S OFFICE
NEW YORK

-----X

JOHN RAMOS,

Petitioner,

For a Judgment under Article 78
of the Civil Practice Law and Rules :

-against-

Decision and Order
Ind. No. 402561/08

NEW YORK CITY POLICE DEPARTMENT,
JONATHAN DAVID, RECORDS ACCESS APPEAL:
OFFICER and JAMES RUSSO, RECORDS
ACCESS OFFICER,

Respondents.

-----X

Hon. James A. Yates, J.S.C.

Petitioner Juan Ramos, a prison inmate, demanded the production of certain records under the Freedom of Information Law (FOIL) (Public Officers Law §§ 84-90). The documents relate to an investigation conducted by Respondent New York City Police Department (NYPD) into a sex crime that led to petitioner's arrest and conviction. The NYPD Records Access Officer denied, in part, the request. Mr. Ramos then commenced this Article 78 proceeding to compel production in accordance with his request. Subsequently, the Court held that the NYPD had not established an exception from FOIL's disclosure requirements for all documents and ordered an in camera inspection of the documents as to which an exemption was claimed. The records responsive to his Freedom of Information Law (FOIL) request consist of an Aided Report, five Complaint Follow-up Reports and a Latent Print Evaluation/Comparison Report. On April 30, 2009, the NYPD submitted those documents for an in camera inspection pursuant to the Court's Order and Decision filed on April 1, 2009.

The Court, after reviewing the documents in camera, finds that the NYPD has met its burden of proving exemption for these reports. *Johnson v New York City Police Dept.*, 257 AD2d 343 (1st Dept 1999).

An agency does not need to make available for disclosure records specifically exempted from disclosure by other state statutes. See Public Officers Law § 87 (2)(a). Notably, the Court of Appeals has held that not even redacted materials may be disclosed in those circumstances. In *Matter of Short v Bd of Managers of Nassau County Medical Center* (57 NY2d 399 [1982]), petitioner sought copies of 29 medical claim records, arguing that the records could be disclosed by deleting personal identifying information. The Court of Appeals found that the only claimed exception for which a responding agency is required to attempt redaction is the exemption of unwarranted invasion of personal privacy contained in Public Officers Law (POL) 87 (2)(b).

In that case, section 87 (2)(a) of the Public Officers Law authorized the agency to deny access to records that "are specifically exempted from disclosure by state or federal statute." The Court noted that Public Officers Law sections 87 (2)(b) and 89 (2) explicitly provide for the deletion of identifying details relating to unwarranted invasions of privacy, however, no such provision was made regarding any of the other seven categories of exemptions in Public Officers Law 87 (2). The Court reasoned that "[u]nder familiar canons of construction, the explicit authorization of the deletion device with respect to this one category of records imports a legislative intention to restrict the deletion device to that single category" and does not extend to records excepted in consequence of specific exemption from disclosure by state or federal statute. *Id.* at 405. Because the medical records were specifically exempt from disclosure under the state's Public Health Law, the Court of Appeals refused to characterize the records as "otherwise available," hence subject to deletion of identifying details. *Id.* at 403-405. Therefore, the Court concluded that the medical facility was not required to create a "cleaned-up" version of the requested medical records.

Similarly, the Court of Appeals in *Matter of Karlin v McMahan* (96 NY2d 842 [2001]), afforded victims of sexual crimes the same protection. Petitioner, convicted of a sexual offense, sought documents which pertained to his arrest. The Court of Appeals stated that:

"[I]nsofar as the requested records are exempt from disclosure pursuant to State statute. . . the police are not obligated to provide the records even though redaction might remove all details which 'tend to identify the victim.'"

Matter of Karlin v McMahon, 96 NY2d at 843 citing to *Matter of Short v Bd. of Managers of Nassau County Medical Center*, 57 NY2d 399 [1982].

Respondent argues that the state's civil rights statute protects the privacy of victims of sex offenses. Specifically, Civil Rights Law section 50-b(1) and Public Officers Law section 87 (2)(a) provide a statutory exemption from disclosure for documents that tend to identify the victim of a sexual offense. Civil Rights Law section 50-b(1) states, in part:

"No report, paper, picture, photograph, court file or other documents, in the custody or possession of any public officer or employee, which identifies such a victim shall be made available for public inspection. No such public officer or employee shall disclose any portion of any police report, court file, or other document which tends to identify such a victim except as provided in subdivision two of this section."

Respondent essentially contends that the sentence "[n]o . . . paper. . . which identifies the victim shall be made available for public inspection" constitutes an absolute statutory prohibition on disclosure that applies to any public officer or employee in possession of such a record, with the exceptions provided by Civil Rights Law section 50-b(2). Civil Rights Law section 50-b(2)(a) allows disclosure of such documents to a person charged with a sex offense. That particular statutory exemption, however, is unavailable to petitioner since he already stands convicted. See *Matter of Fappiano v New York City Police Dept.*, 95 NY2d 738 [2001].

While Civil Rights Law 50-b(1) mandates caution by imposing civil liabilities upon governmental agencies that violate the statute, it does not require a blanket denial of a request for documents relating to a sex crime. *Matter of Fappiano v New York City Police Dept.*, 95 NY2d 738 [2001]. Accordingly, in cases where a requested document does not contain information that tends to identify a victim, and the FOIL request is otherwise valid, the document must be disclosed. If there exists a legitimate dispute as to whether the information contained in any given document tends to identify the victim, the agency bears the burden of making a particularized showing as to why it should not be disclosed. *Id.*; *Gould v New York City Police Dept.*, 89 NY2d 267 [1996].

Each of the eight pages of records submitted for the Court's review contains the name, address, or other identifying

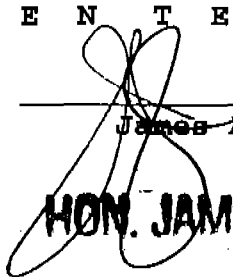
information of the victim of a sex crime. These records were afforded confidentiality under the state's civil rights laws thus "bringing them squarely within the exception of Section 87 (2) (a) of the Public Officers Law." *Matter of Short v Bd. of Managers of Nassau County Medical Center*, 57 NY2d at 405-406. Releasing the requested documents, even in redacted form, would be releasing some portion of a document that tends to identify the victim of a sex crime and thereby would violate the statute. *Matter of Karlin v McMahon*, 96 NY2d 842, 843 [2001]; see also *Doyen v McMahon*, 306 AD2d 708 [3d Dept 2003]; *Doe v Riback*, 7 Misc 3d 341 [Sup Ct, Albany County 2005] (doctor failed to show good cause required by statute restricting disclosure of documents tending to identify victim of sexual abuse).

Respondent NYPD has made the requisite showing that the documents requested are exempt from disclosure under FOIL. Accordingly, the cross-motion to dismiss the petition is granted.

This constitutes the Decision and Order of the Court.

Order signed this 22nd day of June, 2009.

E N T E R:


James A. Yates, J.S.C.

HON. JAMES A. YATES

FILED
JUN 23 2009
COUNTY CLERK'S OFFICE
NEW YORK