

Matter of Jaronczyk v Mangano
2012 NY Slip Op 33728(U)
June 27, 2012
Supreme Court, New York County
Docket Number: 2819/12
Judge: Denise L. Sher
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SHORT FORM ORDER**SUPREME COURT OF THE STATE OF NEW YORK**

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

In the Matter of the Application of

TRIAL/IAS PART 31
NASSAU COUNTY

JOHN JARONCZYK, as President of the Sheriff Officers Association, Inc., COREY C. TIMO, as Second Vice President of the Sheriff Officers Association, Inc., and the SHERIFF OFFICERS ASSOCIATION, INC.,

Petitioners,

Index No.: 2819/12
 Motion Seq. No.: 01
 Motion Date: 03/30/12

for a Judgment Pursuant to NY Civil Practice Law and Rules Article 78

- against -

EDWARD P. MANGANO, as the Executive of Nassau County, NASSAU COUNTY, MARGARET RADZEWSKY, as the record access officer of the Nassau County Sheriff's Department, ELIZABETH LOCONSOLO, as the appeals officer of the Nassau County Sheriff's Department, MICHAEL A. SPOSATO, as the Sheriff of the Nassau County Sheriff's Department, and the NASSAU COUNTY SHERIFF'S DEPARTMENT,

Respondents.

The following papers have been read on this application:

	<u>Papers Numbered</u>
<u>Notice of Verified Petition, Verified Petition and Exhibits</u>	<u>1</u>
<u>Petitioners' Affirmation and Exhibits</u>	<u>2</u>
<u>Verified Answer/Pertinent & Material Facts/Objections in Points of Law and Exhibits</u>	<u>3</u>
<u>Petitioners' Reply Memorandum of Law</u>	<u>4</u>

Upon the foregoing papers, it is ordered that the application is decided as follows:

Petitioners move, pursuant to CPLR Article 78 and New York Public Official Law § 89(4), for a judgment that the documents which petitioners requested pursuant to the New York State Freedom of Information Law ("FOIL") are not exempt from disclosure; and move for an order directing respondents to release the requested documents to petitioners and pay petitioners' attorneys' fees and costs related to this action. Respondents oppose the application.

By letters dated January 17, 2012 and January 23, 2012, petitioners requested, under FOIL, (1) overtime slips from September 13, 2011, through January 17, 2012 for all department captains, who happen to be members of petitioner Sheriff Officers Association, Inc.; and (2) holiday overtime slips for department captains for various holidays in 2010, 2011 and 2012. Respondent Margaret Radzewsky ("Radzewsky"), the Nassau County Sheriff's Department's records access officer and, after petitioners' appeal, respondent Elizabeth Loconsolo ("Loconsolo") the Nassau County Sheriff's Department's appeals officer, denied both requests on the basis that disclosure of such documents, in their entirety, would constitute an "unwarranted invasion of privacy" under Public Officers Law § 87(2)(b).

In sum, respondents assert, in their Verified Answer/Pertinent & Material Facts/Objections in Points of Law ("Verified Answer"), that (1) disclosure of overtime slips without redacting social security numbers and certain (but not all) signatures would constitute an "unwarranted invasion of privacy" under Public Officers Law § 87(2)(b); (2) this Court should not award attorneys' fees and costs; and (3) petitioners failed to exhaust their administrative remedies or are not a proper party to this proceeding.

In response thereto, petitioners contend that respondents' arguments are entirely without

merit, and, accordingly, request that the Verified Petition be granted in its entirety ordering that the respondents disclose the requested overtime slips without any redaction, except for any social security numbers, and that the Court award attorneys' fees and costs.

Initially, the Court notes that petitioners are not contesting the redaction of the employee social security numbers in the responses to the FOIL requests at issue (*see* Respondents' Verified Answer ¶ 62) and, more importantly, respondents have provided a copy of the redacted overtime slips. *See* Petitioner's Castro Affirmation Exhibit B. Hence, the Court need only address the disclosure of the overtime slips without the redaction of signatures and the award of attorneys' fees.

As to the disclosure of the signatures, petitioners contend that respondents should be required to disclose the overtime slips without redaction of any signatures.

Respondents argue that they appropriately redacted the signatures on the requested documents because disclosure of such signatures could be an unwarranted invasion of the signatory's privacy under Public Officers Law § 87(2)(b).

Public Officers Law § 87(2)(b) states:

Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

* * *

(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;

Public Officers Law § 89(b)(iv) explains that an “unwarranted invasion of personal privacy” includes, but is not limited to:

disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it;

“What constitutes an unwarranted invasion of personal privacy is measured by what would be offensive and objectionable to a reasonable [person] of ordinary sensibilities.” *Matter of Dobranski v. Houper*, 154 A.D.2d 736, 546 N.Y.S.2d 180 (3d Dept. 1989).

It is axiomatic that FOIL “impos[es] a broad standard of open disclosure” in that all government records are presumptively available to the public unless they fall within a specific statutory exemption. *See Matter of Schenectady County Socy. for the Prevention of Cruelty to Animals, Inc. v. Mills*, 74 A.D.3d 1417, 904 N.Y.S.2d 512 (3d Dept. 2010) *aff’d* 18 N.Y.3d 42, 935 N.Y.S.2d 279 (2011) *quoting Matter of Encore Coll. Bookstores v. Auxiliary Serv. Corp. of State Univ. of N.Y. at Farmingdale*, 87 N.Y.2d 410, 639 N.Y.S.2d 990 (1995). For FOIL purposes, the term “record” is broadly defined as including “any information kept, held, filed, produced or reproduced by, with or for an agency..., in any physical form whatsoever, including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.” *See Public Officers Law § 86(4)*.

Statutory “[e]xemptions are to be narrowly construed to provide maximum access, and the agency seeking to prevent disclosure carries the burden of demonstrating that the requested material falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access.” *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 505 N.Y.S.2d 576 (1986). *See also Matter of Carnevale v. City of Albany*, 68

A.D.3d 1290, 891 N.Y.S.2d 495 (3d Dept. 2009); *Matter of TJS of New York, Inc. v. New York State Department of Taxation and Finance*, 89 A.D.3d 239, 932 N.Y.S.2d 243 (3d Dept. 2011).

In view of the “narrow construction afforded the statutory exemptions” (see *Matter of TJS of New York, Inc. v. New York State Department of Taxation and Finance*, *supra*; *Matter of Data Tree LLC v. Romaine*, 9 N.Y.3d 454, 849 N.Y.S.2d 489 (2007)), the Court finds that respondents have not demonstrated that the “requested material falls squarely within a FOIL exemption.” See *Matter of TJS of New York, Inc. v. New York State Department of Taxation and Finance*, *supra*. Hence, respondents are directed to furnish the overtime slips without the redaction of the signatures.

In order to obtain reasonable attorneys’ fees in a FOIL proceeding, petitioners must establish that (1) they have “substantially prevailed,” (2) the record involved was “of clearly significant interest to the general public” and (3) “the agency lacked a reasonable basis in law for withholding the record.” See Public Officers Law § 89(4)(c)(i) and (ii); *Matter of Beechwood Restorative Care Center v. Signor*, 11 A.D.3d 987, 784 N.Y.S.2d 750 (4th Dept. 2004); *Matter of Todd v. Craig*, 266 A.D.2d 626, 697 N.Y.S.2d 722 (3d Dept. 1999) *lv denied* 94 N.Y.2d 760, 706 N.Y.S.2d 80 (2000). A pertinent consideration is whether the agency reasonably claimed the records were exempt from disclosure under Public Officers Law § 87(2). Even if the petitioners meet those statutory requirements, an award of attorneys’ fees is still discretionary and a court’s determination will not be disturbed unless an abuse of discretion is shown. See *Matter of New York State Defenders Ass’n v. New York State Police*, 87A.D.3d 193, 927 N.Y.S.2d 423 (3d Dept. 2011); *Hamilton v. Board of Educ. of Jordan-Elbridge Cent. School Dist.*, 29 Misc.3d 1201(A), 2010 WL 3769215 (N.Y.Sup.); *Beechwood Restorative Care Center v. Signor*, *supra*. See also *Matter of Grace v. Chenago County*, 256 A.D.2d 890, 681 N.Y.S.2d 695 (3d Dept.

1998).

Upon our review of the record, we cannot say that it was reasonable for respondents to initially withhold the entirety of the records sought by petitioners and then release the overtime slips with the redaction of social security numbers only after petitioners retained and paid for counsel and filed an Article 78 proceeding. *See Matter of New York State Defenders Ass'n v. New York State Police, supra.*

Furthermore, the records at issue should be disclosed without any redaction of the employee signatures. In so holding, we reject respondents' contentions that petitioners did not substantially prevail in this proceeding as they were not successful on their claim for social security number and that petitioners were aware that respondents were concerned only with the integrity of the signatures and were willing to identify the signor's name.

In view of the foregoing, we find that an award of attorneys' fees is appropriate and the matter shall be set down for a hearing on the reasonable amount of attorneys' fees.

This Court has reviewed respondents' remaining contentions and find them to be unavailing.

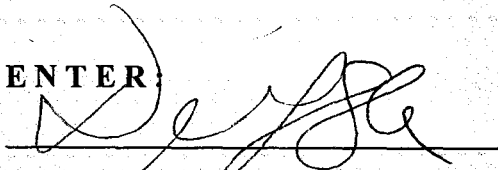
Accordingly, petitioners' application, pursuant to CPLR Article 78 and New York Public Official Law § 89(4), for a judgment that the documents which petitioners requested pursuant to FOIL are not exempt from disclosure and for an order directing respondents to release the requested documents to petitioners and pay petitioners' attorneys' fees and costs related to this action is hereby **GRANTED**.

The matter is set down for an Inquest, for an assessment of attorneys' fees, to be held before the Calendar Control Part (CCP) on the 27th day of August, 2012, at 9:30 a.m.

Petitioners shall file a Note of Issue on or before August 11, 2012. A copy of this Order shall be served upon the County Clerk when the Note of Issue is filed. Failure to file a Note of Issue or appear as directed shall be deemed an abandonment of the claim giving rise to the Inquest. A copy of this Order shall be served upon the respondents by August 11, 2012.

This constitutes the Decision and Order of this Court.

ENTER


DENISE L. SHER, A.J.S.C.

ENTERED

JUL 02 2012

NASSAU COUNTY
COUNTY CLERK'S OFFICE

Dated: Mineola, New York
June 27, 2012