

Matter of Collins v New York City

2013 NY Slip Op 32549(U)

October 16, 2013

Sup Ct, New York County

Docket Number: 402084/11

Judge: Peter H. Moulton

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: MOULTON
Justice

PART YOB

D JUAN COLLINS
- v -
CITY OF NY

INDEX NO. 402084/11
MOTION DATE _____
MOTION SEQ. NO. 3
MOTION CAL. NO. _____

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

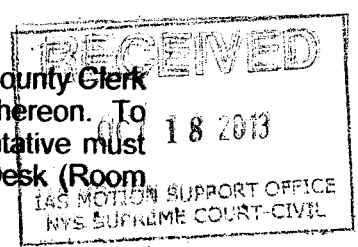
Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

*Decided in accordance with the
written decision issued on 10/16/13.*

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).



Dated: 10/16/13

[Signature]
HON. PETER H. MOULTON ^{J.S.C.}
SUPREME COURT JUSTICE

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: New York County
Part 40B

-----X
In the Matter of the Application of

D' JUAN COLLINS,

Petitioner,

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

-against-

Index No. 402084/11

NEW YORK CITY, THE NEW YORK CITY POLICE
DEPARTMENT, and the RECORDS ACCESS

Respondents.

-----X
Peter H. Moulton, Justice

UNFILED JUDGMENT
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and no entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
1400)

In this Article 78 proceeding respondents move to renew and reargue this court's decision dated January 7, 2013. The January 7th decision denied respondents' motion to dismiss the petition. The motion to renew and reargue was adjourned for petitioner pro se to submit opposition papers. Despite the elapse of more than four months, he has failed to do so.

The motion to renew is granted on default as set forth below.

BACKGROUND

Petitioner was convicted of criminal possession of a controlled substance in the third and fifth degree in 2007.

By letter dated July 21, 2010, petitioner requested pursuant

to FOIL copies of certain documents in the possession of respondent New York City Police Department ("NYPD").

The Records Access Officer ("RAO") denied petitioner's FOIL request in a letter dated January 14, 2011. By letter dated February 13, 2011, petitioner administratively appealed the RAO's determination. The appeal was denied by the Records Access Appeals Officer ("RAAO") in a letter dated March 29, 2011.

Petitioner timely brought this Article 78 proceeding to compel respondents to provide the records within the ambit of his FOIL request.

During the pendency of this proceeding, respondents provided 67 pages of documents responsive to petitioner's FOIL request. According to respondents these documents pertain to the laboratory analysis for the cocaine evidence relating to petitioner's conviction. These records include the original laboratory analysis in 2007 as well as a re-testing in 2010.

Respondents argued that the remaining responsive documents, numbering 115 pages, which apparently consist of laboratory procedures embodied in manuals dated 2007 and 2010, were exempt from disclosure under FOIL. According to respondents, the manuals describe in precise detail each step taken by the NYPD in testing narcotics evidence. Respondents base this claim of exemption on the assertion that the production of such laboratory procedures would

essentially provide disclosure to numerous other defendants charged with narcotics crimes who are awaiting prosecution [as well as convicted felons pursuing appeals or post-conviction relief] at a time when such disclosure is not available to them pursuant to the specific discovery provisions of the CPL and the Habeas Corpus Act... . This disclosure would allow such individuals to circumvent the discovery provisions governing the particular proceedings that they are subject to, thereby interfering with those judicial proceedings.

(Affirmation of Krista Ashbery, dated February 6, 2012, ¶ 6.)

Respondents moved to dismiss the petition on the basis of this argument, citing POL § 87(2)(e)(i). That provision exempts from production records "compiled for law enforcement purposes" that would "interfere with law enforcement investigations or judicial proceedings." At the time respondents brought their motion to dismiss Collins had no judicial proceedings pending. Respondents argued that disclosure of the manuals will "interfere" with judicial proceedings involving other criminal defendants. For reasons explained in the January 7th decision, I did not find this argument to be persuasive and I denied respondents' motion to dismiss.

In the instant motion, respondents offer new facts not available to it at the time they filed their motion to dismiss. Petitioner brought a habeas corpus proceeding in the Southern District of New York after the motion to dismiss was initially filed. Accordingly Collins did have a judicial proceeding pending

when the motion to dismiss was before this court.

DISCUSSION

To demonstrate its entitlement to reargue this court's January 7th decision respondents must demonstrate that this court "overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law." (Foley v Roche, 68 AD2d 558, 567.) Respondent fails to carry that burden. Accordingly, respondents have failed to state grounds for a motion to reargue. (See William P. Pahl Equipment Corp. v Kassis, 182 AD2d 22, lv denied 80 NY2d 1005.)

However, respondents have offered relevant facts that were unknown to it at the time it made its motion to dismiss. Respondents have shown that petitioner brought a habeas proceeding in Federal Court. This meant that he did have a judicial proceeding pending at the time he was pursuing this Article 78 proceeding to reverse the RAAO's determination. This new fact provides a valid basis for respondents' motion to renew. (See Forteau v Westchester County, 227 AD2d 245.)

Under POL § 87(2)(e)(i), disclosure of law enforcement records under FOIL is not warranted where it could interfere with a judicial proceeding. Disclosure is limited in Federal habeas proceedings, and granting petitioner's FOIL request would allow him to do an end run around those limitations. (Legal Aid Society v

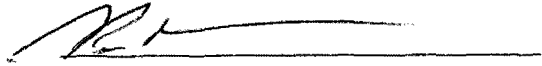
New York City Police Dep't, 274 AD2d 207.)

Accordingly, upon renewal this court grants respondents' motion to dismiss the petition.

CONCLUSION

For the reasons stated, respondents' motion to renew is granted and upon renewal, respondents' motion to dismiss the petition is granted. It is accordingly ORDERED AND ADJUDGED that this proceeding is dismissed. This constitutes the decision and judgment of the court.

Date: October 16, 2013



AJSC

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