

Amaury Villalobos v New York City Fire Dept.

2013 NY Slip Op 34025(U)

May 23, 2013

Supreme Court, Kings County

Docket Number: 18865/11

Judge: Larry D. Martin

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At an I.A.S. Trial Term, Part 41 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 23rd day of May 2012.

PRESENT:

Hon. LARRY D. MARTIN, J.S.C.

AMAURY VILLALOBOS,
PETITIONER,

-VS-

INDEX No. 18865/11

NEW YORK CITY FIRE DEP'T.,
RESPONDENT.

The following papers numbered 1 to read on this motion

Notice of Motion - Order to Show Cause and Affidavits (Affirmations) Annexed _____

Answering Affidavit (Affirmation) _____

Reply Affidavit (Affirmation) _____

Papers Numbered _____

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Upon an *in camera* review of the records submitted by respondent New York City Fire Department ("Fire Department"), in accordance with this Court's January 20, 2012 short form order, the Court finds that the Fire Department has failed to meet its burden to demonstrate that the redacted records sought by petitioner Amaury Villalobos ("Mr. Villalobos") were properly withheld pursuant to an exemption, and that Mr. Villalobos is entitled to said records.

On January 20, 2011, Mr. Villalobos made a request pursuant to the Freedom of Information Law ("FOIL") to the Fire Department for all records it possessed in connection with a fire at 695 Sackett Street, Brooklyn, New York that occurred on February 7, 1980 which killed a mother and her five children. Mr. Villalobos along with two other persons were convicted and sentenced for the arson and murder charges arising from said fire. Mr. Villalobos has always maintained his innocence and is presently represented by the Pace Post-Conviction Project in his continued efforts to establish his innocence.

The Fire Department responded to the FOIL request by letter dated March 3, 2011 which stated that it would provide a copy of each record requested that existed and was not exempt from disclosure pursuant to FOIL. Having received none of the requested records, Mr. Villalobos commenced the instant Article 78

proceeding to compel compliance with FOIL. In an order dated January 20, 2012, this Court directed the Fire Department to produce all requested records that existed and are non-exempt to petitioner within 60 days. For those records the Fire Department claimed were exempt, the Court directed said documents be produced to the Court for an *in camera* inspection.

The Fire Department has complied with the January 20, 2012 order, and provided the Court with copies of the redacted documents sent to Mr. Villalobos and copies of the unredacted documents. The documents provided to Mr. Villalobos contain redacted information pertaining to the witnesses involved in the investigation of the subject fire and prosecution of Mr. Villalobos for the abovementioned crimes. This order and decision addresses two issues: (1) whether the Fire Department has produced all the records in its possession in connection to Mr. Villalobos's FOIL request; and (2) whether Mr. Villalobos is entitled to the unredacted records provided to the court.

To promote open government and public accountability, FOIL imposes a broad duty on government to make its records available to the public (*Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 274, [1996] citing Public Officers Law § 84). All government records are thus presumptively open for public inspection and copying unless they fall within one of the enumerated exemptions of Public Officers Law § 87(2) (*id.* at 274-275). To ensure maximum access to government documents, the "exemptions are to be narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption" (*Gould*, 89 N.Y.2d at 275 citing *Matter of Hanig v. State of New York Dept. of Motor Vehicles*, 79 N.Y.2d 106, 109, 580 N.Y.S.2d 715, 588 N.E.2d 750]). Only where the material requested falls squarely within the ambit of one of these statutory exemptions may disclosure be withheld (*Gould*, 89 N.Y.2d at 275 citing *Matter of Fink v. Lefkowitz*, 47 NY2d 567, 571 [1979]). To invoke one of these exemptions, the agency must articulate a "particularized and specific justification" for not disclosing the requested documents (*id.*).

At the outset,⁶ the Court finds that the records provided represent all the records in the Fire Department's possession relating to Mr. Villalobos's FOIL request. The affidavit of Maura J. Kugelman, the Records Access Officer at the Fire Department's Bureau of Legal Affairs, averring that all documents

responsive to Mr. Villalobos' request was provided to him after a diligent search satisfies the agency's obligation under Public Officer's Law § 89(3) (*see Rattley v New York City Police Dept.*, 96 NY2d 873, 875 [2001]).

Turning to the second issue, the Court finds that Mr. Villalobos is entitled to the responsive records in unredacted form. The Fire Department contends that the redacted information which pertains to witnesses are exempt from disclosure pursuant to Public Officers Law §§ 87(2)(b) as 87(2)(f), respectively as release of the information would constitute an unwarranted invasion of personal privacy and may endanger the safety of the witnesses. These generalized assertions do not satisfy the agency's burden to articulate a "particularized and specific justification" for not disclosing the redacted portion of said documents (*see Exonerated Initiative v New York City Police Dept.*, 2013 WL 1397435, *2-4 [2013] [holding that the NYPD has failed to carry its burden showing that the witness would be endangered by the release of documents containing his name and address and noting that there is no comprehensive prohibition on the disclosure of police records concerning information provided by witnesses]; *see also Chebere v Johnson*, 3 AD3d 365, 366 [2004] [holding that petitioner was allowed access to prosecutor's interview notes containing information about witness who testified at petitioner's trial]).

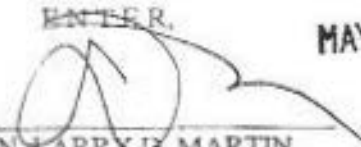
Additionally, to deny access to witness information due to the possibility that future witnesses to crime might decline to cooperate with governmental authorities if they know that their names and addresses might be revealed at some later expands the "unwarranted invasion of privacy" exemption to a breadth that thwarts FOIL's very purpose (*see Exonerated Initiative*, 2013 WL 1397435 at *4). The legislature struck a balance between the competing interests of public access and personal privacy (*id.* at *5). FOIL does not impose a blanket prohibition on the disclosure of witness testimony and identifying information, but instead limits non-disclosure to those "narrowly construed" exemptions (*id.*; *see also Gould*, 89 N.Y.2d at 275). Moreover, where as here, witnesses may possess exculpatory information, the interest of justice may warrant disclosure of their identities (*see Exonerated Initiative*, 2013 WL 1397435 at *2-3; *Matter of Johnson v New York City Police Dept.*, 257 AD2d 343, 349 [1999]).

Accordingly, it is

ORDERED and ADJUDGED that the New York City Fire Department shall provide petitioner Mr. Villalobos with legible¹ unredacted copies of all documents inspected by the court *in camera* within 30 days of service of this order with notice of entry.

The foregoing constitutes the decision and order of the Court.

For Clerks use only
MG ___
MD ___
Motion Seq. #

~~ENTER~~ MAY 23 2013

HON. LARRY D. MARTIN
J.S.C.

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¹ The Court finds that the print on the redacted copies previously provided to Mr. Villalobos was dark and blurred, rendering the documents practically illegible.