

Maurad v New York City Police Dept.

2014 NY Slip Op 30766(U)

March 27, 2014

Sup Ct, New York County

Docket Number: 401819/13

Judge: Joan B. Lobis

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

PRESENT: LOBIS
Justice

PART 6

MAURAD, JOSE

INDEX NO. 401819/13

MOTION DATE _____

- v -
N.Y.C. POLICE DEPT.,
ETA

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

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

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

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION

FILED

MAR 28 2014

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 3/27/14

JOAN B. LOBIS J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X
JOSE MAURAD,

Petitioner,

Index No. 401819/13

-against-

Decision and Order

NEW YORK CITY POLICE DEPARTMENT,

Respondent.

-----X
JOAN B. LOBIS, J.S.C.:

Petitioner Jose Maurad, proceeding pro se, and who is currently incarcerated at Sing Sing Correctional Facility in Ossining, New York, commenced this Article 78 proceeding to compel Respondent, the New York City Police Department (“NYPD”), to provide Petitioner with records pursuant to the provisions of the Freedom of Information Law (“FOIL”). N.Y. Public Officers Law § 84 et seq. Respondent cross moves to dismiss pursuant to Section 7804(f) and 3211 of the Civil Practice Law and Rules. For the following reasons, the petition is denied, and the cross-motion is granted.

Petitioner filed a FOIL request in July 2012 requesting an arrest report, complaint report, follow-up reports, investigative reports, unusual occurrence reports, forensic reports, and DNA comparison reports. Petitioner’s request was denied on May 14, 2013. Petitioner administratively appealed by letter dated May 25, 2013. Petitioner’s appeal was denied by an Appeals Officer on June 28, 2013.

FILED

MAR 28 2014

The Appeals Officer stated that Petitioner's appeal was denied under Section 50-b of the Civil Rights Law, which prohibits the disclosure of records that tend to identify the victim of a sex offense, Public Officers Law Sections 87(2)(a)-(b) and 89(2) because disclosure of the requested records would constitute an unwarranted invasion of privacy, and Section 87(2)(f) because disclosure would reveal confidential information. Jose Maurad now petitions for an order directing Respondent to set aside its June 28, 2013, determination and directing Respondent to furnish Petitioner with DNA typing and comparison reports, including medical reports, which were conducted on the victim of Mr. Maurad's crime. In his petition, Mr. Maurad seeks for an order only related to the DNA typing and comparison reports, and not any other previously requested documents.

Petitioner argues that because the victim was not a stranger and was known to him that Public Officers Law Section 87 does not apply. He contends that it also does not apply where DNA evidence might tend to reverse the judgment of his conviction. He also asserts that he has a constitutional right to confront his witnesses against him, which would include the victim. He claims that Section 50-b of the New York Civil Rights Law is also inapplicable because the identity of the victim is known to the Petitioner, and the victim testified against him at trial. He adds that the victim was a family relative.

Respondent cross-moves to dismiss. The NYPD argues that the petition is moot, in part, because a number of requested documents were the subject of a diligent search and were not located. Respondent claims that the remaining records, which were located, are exempt from

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disclosure by Section 50-b(1) of the New York Civil Rights Law and Section 87(2)(a) of the Public Officers Law. Respondent alleges that by letter dated May 25, 2013, Mr. Maurad withdrew his request for DNA reports conducted on the victim of the crime for which he was convicted.

Respondent argues that Section 50-b(1) of the New York Civil Rights Law bars disclosure of documents that identify or tend to identify the victim of a sex crime. Respondent avers that the requested records are related to Petitioner's conviction for sodomy and endangering the welfare of a child. It contends that each document requested identifies the victim of the sex offense by name, address, telephone number, date of birth, or relationship to the witnesses and report. Respondent asserts that knowledge of the victim's identity does not render the confidentiality provisions of the New York Civil Rights Law moot. It claims that disclosure of the documents is not an option under the New York Civil Rights Law. The NYPD argues that where a statute establishes the confidentiality of records, it precludes providing access to the requested documents even in redacted form.

In opposition to the cross-motion, Petitioner argues that the identification of the victim is not enough to bar disclosure because the victim testified at his trial, resided in the same building as Petitioner during the alleged incident, and was related to the Petitioner. He denies having withdrawn his appeal of Respondent's determination related to DNA testing and comparison reports.

In reply, Respondent contends that Petitioner's interpretation of Section 50-b of the New York Civil Rights Law is erroneous. In particular, the NYPD claims that knowledge of the

victim's identity is not a basis to allow disclosure under Fappiano v. New York City Police Department, 95 N.Y.2d 738 (2001). Respondents argues that since all documents requested identify the victim of a sex crime, that all documents are barred from disclosure.

Petitioner then submitted an "addendum to reply" with the Court, dated March 4, 2014. The "addendum to reply" was dated nearly a month after the return date. As a result, the Court could not consider the addendum for this decision.

In an Article 78 proceeding, the Court reviews agency decisions to determine whether an action violates lawful procedures, is arbitrary or capricious, or is affected by an error of law. E.g., Pell v. Bd. of Educ., 34 N.Y.2d 222, 231 (1974); Roberts v. Gavin, 96 A.D.3d 669, 671 (1st Dep't 2012). The agency withholding disclosure bears the burden of proving the exception applies. Mulgrew v. Bd. of Educ., 87 A.D.3d 506, 507 (1st Dep't 2011). Where an issue is limited to "pure statutory interpretation," a court is not required to defer to an administrative agency but rather should consider the plain language of the statute. E.g., Dunne v. Kelly, 95 A.D.3d 563, 564 (1st Dep't 2013); see also County of Westchester v. Bd. of Trustees, 9 N.Y.3d 833, 835-36 (2007) (administrative agency's regulations must not conflict with state statute or that statute's underlying purposes).

Under FOIL, "government records are 'presumptively open,' statutory exemptions are 'narrowly construed,' and the City must articulate a 'particularized and specific justification' for nondisclosure." N.Y. Civ. Liberties Union v. Schenectady, 2 N.Y.3d 657, 661 (2004) (citing Gould

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v. N.Y. City Police Dep't, 89 N.Y.2d 267, 274 (1996)). The agency seeking to prevent disclosure has the burden to establish the applicability of an exemption. Gould, 89 N.Y.2d at 275 (citing Hanig v. Dep't of Motor Vehicles, 79 N.Y.2d 106, 109 (1992)). Withholding disclosure requires that "the material requested falls squarely within the ambit of one of these statutory exemptions." Gould, 89 N.Y.2d. at 275 (citing Fink v. Lefkowitz, 47 N.Y.2d 567, 571 (1979)).

Section 87(2)(a) of the Public Officers Law allows an agency to deny access to records or portions of records that "are specifically exempted from disclosure by state or federal statute." Section 50-b of the New York Civil Rights Law states, in pertinent part:

"The identity of any victim of a sex offense, as defined in article one hundred thirty . . . shall be confidential. 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."

Sex offenses are defined by Article 130 of the New York Penal Code. Prior to 2001, sodomy was listed in the New York Penal Code, though presently the relevant crime would be "Criminal sexual act[.]" N.Y. Penal Code §§ 130.40 - 130.50 (1965) (amended 2000). Section 50-b(2) of the New York Civil Rights Law has three exceptions to its prohibition on disclosure. Disclosure is not prohibited for a person charged with the commission of an offense, a person who demonstrates good cause to the satisfaction of the a court having jurisdiction over the alleged offense, or to any person with written consent of the victim or other person legally responsible

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for the care of the victim. N.Y. Civil Rights Law §§ 50-b(2)(a)-(c).

The Court finds that under Section 87(2) of the Public Officers Law and Section 50-b of the New York Civil Rights Law Respondent is prohibited from releasing the requested documents. Petitioner was convicted of a sexual offense, as defined by Article 130 of the Penal Code in 1999, the year Petitioner was indicted, as indicated by his New York County Indictment number. The victim identified by these documents is a victim of a sexual offense, and disclosure of such documents is, therefore, barred by the New York Civil Rights Law.

Petitioner's argument that his knowledge of and relationship to the victim renders the statutes moot is erroneous. The New York Court of Appeals has held that the purpose of New York Civil Rights Law "is to protect the privacy of sex crime victims" and this "cannot be negated by a litigant's assertion that he knows the identity of the victim." Fappiano, 95 N.Y.2d at 747. Petitioner's claim that disclosure is required when it can tend to lead to a reversal of a conviction is also incorrect. Section 50-b(2) of the New York Civil Rights Law has an exception to the prohibition of disclosure for a person charged with a crime. A person charged with a crime "cannot be equated with a convicted person for purposes of Civil Rights Law § 50-b." Id. Similarly, Section 50-b(2) does not provide an exception for post-conviction litigants to confront witnesses. Id. at 747-48. Accordingly, it is

ORDERED that the petition is denied and dismissed in its entirety.

Dated: Mar. 27, 2014

ENTER:

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MAR 28 2014

COUNTY CLERK'S OFFICE
NEW YORK



JOAN B. LOBIS, J.S.C.