

**Matter of New York City Civ. Complaint Review Bd. v
Office of the Comptroller of the City of N.Y.**

2016 NY Slip Op 30512(U)

March 24, 2016

Supreme Court, New York County

Docket Number: 452927/15

Judge: James E. d'Auguste

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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: D'AUGUSTE
Justice

PART 62

THE NEW YORK CITY CIVILIAN COMPLAINT
REVIEW BOARD

INDEX NO. 452927/15

MOTION DATE

THE OFFICE OF THE COMPTROLLER
OF THE CITY OF NEW YORK

MOTION SEQ. NO. 01

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

Notice of Motion/Order to Show Cause - Affidavits - Exhibits No(s).
Answering Affidavits - Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER

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

Dated: 3/24/16

[Signature] J.S.C.
HON. JAMES E. d'AUGUSTE

- 1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 62**

-----X

In the Matter of the Application of

The New York City Civilian Complaint Review Board,
Petitioner,

DECISION/ORDER

Index No. 452927/15

-against-

The Office of the Comptroller of the City of New York,
Respondent.

-----X

Hon. James E. d'Auguste

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

<u>PAPERS</u>	<u>NUMBERED</u>
Motion Seq. 001	
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....	1 (Exs. A-L)
MEMORANDUM OF LAW IN SUPPORT.....	2
AFFIDAVITS IN OPPOSITION TO MOTION.....	3 (Exs. A-D)
MEMORANDUM OF LAW IN OPPOSITION.....	4
Motion Seq. 002	
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....	5, 6 (Exs. A-DD) ¹

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

This special proceeding brought pursuant to CPLR 2308(b), General Municipal Law (“GML”) 50-h(3), and Judiciary Law (“JL”) 2-b(3). Petitioner The New York City Civilian Complaint Review Board (the “CCRB”) seeks an order compelling respondent The Office of the Comptroller of the City of New York (the “Comptroller”) to produce a GML 50-h hearing transcript and other documents relating to the settlement of a wrongful death claim for use in its ongoing investigation of potential misconduct by members of the New York Police Department.²

¹ The exhibits annexed in Motion Seq. 002 are included in consideration of Motion Seq. 001 since they are “a supplemental submission containing decisions not published by the Official Reporter electronically or in its print volumes that [The New York City Civilian Complaint Review Board] relies upon in its memorandum of law submitted in support” of Motion Seq. 001, per this Court’s interim order dated November 4, 2015 (NYSCEF Dkt. No. 20).

² While the underlying alleged wrongful death took place on July 17, 2014, the CCRB commendably honored prosecutorial agency requests to refrain from interfering with other pending investigations.

In this proceeding, the CCRB is primarily seeking to enforce a subpoena *duces tecum* that it served on the Comptroller.³ The CCRB cannot, under the applicable statutory scheme, subpoena the transcripts of hearings conducted pursuant to GML 50-h. The statute states, in relevant part, that “[t]he transcript of the record of an examination shall not be subject to or available for public inspection, except upon court order upon good cause shown, but shall be furnished to the claimant or his attorney upon request.” GML § 50-h(3). The context of the statutory language provides that a court order is required, upon good cause shown, to obtain a GML 50-h hearing transcript outside of the claim adjustment process. While the transcripts cannot be subpoenaed, they can be produced in this proceeding because good cause has been established for their production. A good faith investigation of alleged police misconduct constitutes a *prima facie* showing of the good cause required to obtain a court order seeking relevant portions of a GML 50-h hearing transcript. Therefore, the Court will conduct an *in camera* review of the two GML 50-h hearing transcripts that the Comptroller submitted to the undersigned after oral argument.

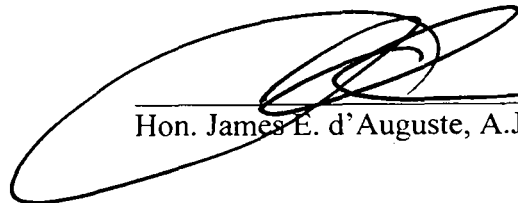
The CCRB is not entitled to obtain access to the Comptroller’s internal documents that were used to settle the subject wrongful death claim. While there is little direct legal guidance on this exact subject, the Court finds that the Comptroller’s investigative files are privileged pursuant to several different legal doctrines. First, the Comptroller’s internal claim adjudication files are subject to the intra-agency and inter-agency privileges. *See Cirale v. 80 Pine St. Corp.*, 35 N.Y.2d 113 (1974), *superseded by statutory amendment*, CPLR 3101(a)(4), *as recognized in Kooper v. Kooper*, 74 A.D.3d 6 (2d Dep’t 2010). Second, the Comptroller’s internal claim adjustment files are also protected by the attorney-client privilege and the attorney work-product

³ The Court finds it unnecessary to reach the Comptroller’s argument that the subpoena is defective because it was not issued pursuant to a specific majority vote of the CCRB’s members.

doctrine. *Cf. Hickman v. Taylor*, 329 U.S. 495 (1947). Thus, for instance, legal provisions that would otherwise provide the public with access to government records exempt from production the very type of documents sought by the CCRB. N.Y. City Charter § 1058 (“The provisions of this section [requiring disclosure] shall not apply to any papers prepared by or for the comptroller for use in any proceeding to adjust or pay a claim against the city or any agency, or by or for counsel for use in actions or proceedings to which the city or any agency is a party, or for use in any investigation authorized by this charter.”); *id.* § 1059 (same).

Accordingly, the CCRB’s application is granted to the extent that this Court will conduct an *in camera* review of the two GML 50-h hearing transcripts submitted by the Comptroller, and is otherwise denied. This constitutes the decision and order of this Court.

Dated: March 24, 2016



Hon. James E. d'Auguste, A.J.S.C.