

Suarez v Bialystoker Ctr.
2019 NY Slip Op 34122(U)
July 16, 2019
Supreme Court, New York County
Docket Number: 114710/2009
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

-----x
SUSAN SUAREZ,

Plaintiff

- against -

BIALYSTOKER CENTER and BIKUR CHOLIM INC.,

Defendants
-----x

Index No. 11471⁰/2009

DECISION AND ORDER

FILED

JUL 17 2019

LUCY BILLINGS, J.S.C.:

COUNTY CLERK'S OFFICE
NEW YORK

The court grants plaintiff's motion for issuance of a subpoena duces tecum to nonparties to the following extent. The court grants her motion insofar as it seeks documents, including forms, logbooks, and handwritten notes, and computer entries in the New York City Police Department's possession, custody, or control pertaining to plaintiff's arrest December 10, 2008. The documents and computer entries to be produced include any documents or computer entries showing Police Department personnel present or accompanying or assisting Detective Kevin Madden at plaintiff's arrest December 10, 2008, or recording interviews of witnesses to or other investigation of her arrest December 10, 2008, or the charges for which she was arrested. C.P.L.R. § 2307; Patrolmen's Benevolent Assn. of the City of N.Y. v. de Blasio, 171 A.D.3d 636, 637 (2019); Espady v. City of New York, 40 A.D.3d 475, 476 (1st Dep't 2007). The court denies plaintiff's motion insofar as it seeks any other unspecified complaints, complainants, criminal background searches, arrested

persons' or witnesses' statements, or surveillance videotapes unrelated to plaintiff's arrest December 10, 2008, or the charges for which plaintiff was arrested.

The court also denies plaintiff's motion insofar as it seeks Police Department roll calls for the 7th Precinct or Police Service Area 4 December 9-10, 2008, as these documents involve over 100 police officers, most of whom were uninvolved in the incident December 10, 2008, about which plaintiff complains, and neither the City of New York nor the Police Department itself is a defendant. The officers involved in the incident are identified in other documents plaintiff seeks. See Espady v. City of New York, 40 A.D.3d at 477.

Finally, the court denies plaintiff's motion insofar as it seeks personnel or disciplinary records pertaining to any police officers, including Civilian Complaint Review Board (CCRB) records or reports. N.Y. Civ. Rights Law § 50-a; Doe v. New York City Police Dept., 156 A.D.3d 518, 519 (1st Dep't 2017); Espady v. City of New York, 40 A.D.3d at 476. Any documents pertaining to police officers' misconduct or used to evaluate their performance are records that New York Civil Rights Law § 50-a keeps confidential. New York Civ. Liberties Union v. New York City Police Dept., 32 N.Y.3d 556, 564 (2018); Daily Gazette Co. v. City of Schenectady, 93 N.Y.2d 145, 157 (1999); Prisoners' Legal Servs. of N.Y. v. New York State Dept. of Correctional Servs., 73 N.Y.2d 26, 31 (1988); Luongo v. Records Access Appeals Officer, 168 A.D.3d 504, 504 (1st Dep't 2019). Because the CCRB

receives and investigates complaints of police officers' misconduct and submits findings and recommendations to the Police Department, CCRB's records and reports comprise personnel records pertaining to police officers protected by Civil Rights Law § 50-a. N.Y.C. Charter § 440(c)(1); New York Civ. Liberties Union v. New York City Police Dept., 32 N.Y.3d at 560-61.

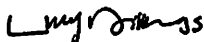
Plaintiff has not shown a legitimate need for any such records, how they are material to this action, or other facts sufficient to warrant review of these confidential documents protected from disclosure by Civil Rights Law § 50-a, particularly when neither the City, nor the Police Department, nor any police officer is a defendant. New York Civ. Liberties Union v. New York City Police Dept., 32 N.Y.3d at 563-64; Daily Gazette Co. v. City of Schenectady, 93 N.Y.2d at 155; Prisoners' Legal Servs. of N.Y. v. New York State Dept. of Correctional Servs., 73 N.Y.2d at 33; Doe v. New York City Police Dept., 156 A.D.3d at 519. In short, plaintiff's interest in obtaining disclosure of such records does not outweigh the Police Department's and police officers' statutorily recognized interest in preserving the records' confidentiality. Espady v. City of New York, 40 A.D.3d at 476-77.

Consequently, within 20 days after receipt of this order, the New York City Police Department shall produce to plaintiff all documents, including forms, logbooks, and handwritten notes, and computer entries in the Police Department's possession, custody, or control pertaining to plaintiff's arrest December 10,

2008. The documents and computer entries to be produced shall include any documents or computer entries showing Police Department personnel present or accompanying or assisting Detective Kevin Madden at plaintiff's arrest December 10, 2008, or recording interviews of witnesses to or other investigation of her arrest December 10, 2008, or the charges for which she was arrested. C.P.L.R. § 2307. The court has mailed this order to the attorney for the Police Department who appeared for plaintiff's motion.

For the reasons explained above, the court otherwise denies plaintiff's motion for issuance of her proposed subpoena duces tecum to nonparties. Plaintiff shall serve and file a note of issue by August 12, 2019.

DATED: July 16, 2019



 LUCY BILLINGS, J.S.C.

LUCY BILLINGS
 J.S.C.

FILED

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 NEW YORK