

Matter of Jaskaran v City of New York

2020 NY Slip Op 32423(U)

July 17, 2020

Supreme Court, New York County

Docket Number: 160222/19

Judge: Carol R. Edmead

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 35

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In the Matter of the Application of

JACK JASKARAN,

Petitioner,

Index No.: 160222/19
DECISION/ORDER

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

THE CITY OF NEW YORK and JAMES P. O'NEILL,
in his official capacity as the Police Commissioner of
the City of New York,

Respondents.

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HON. CAROL R. EDMOND, J. S.C.:

In this Article 78 proceeding, petitioner Jack Jaskaran (Jaskaran) seeks to compel the respondents City of New York and Commissioner of the New York City Police Department (respondents, or NYPD) to comply with a Freedom of Information Law (FOIL) request, while respondents cross-move to dismiss the petition (together, motion sequence number 001), and move separately for a protective order to strike Jaskaran's notice to admit (motion sequence number 002). For the following reasons, the petition is denied, the cross motion is granted, and the proceeding is dismissed.

FACTS

Jaskaran, who is currently an attorney, was formerly an NYPD officer who retired with the rank of captain on October 10, 2013. *See* verified petition, ¶¶ 1-16. Jaskaran states that he now "provides assistance to active and retired New York City Police Officers and other municipal workers in connection with their applications for disability retirement related to World

Trade Center illnesses that have incapacitated them from being able to perform the essential functions of their employment.” *Id.*, ¶ 17. In furtherance of this activity, Jaskaran submitted a FOIL request to the NYPD on May 17, 2019 that sought a document entitled the “Medical Screening Manual for Law Enforcement Officers” (the FOIL request). *Id.*, ¶ 24; exhibit A. On May 21, 2019, an NYPD Records Access Officer denied Jaskaran’s FOIL request (the RAO order). *Id.*, ¶ 27; exhibit D. On June 20, 2019, Jaskaran submitted an administrative appeal of the RAO order. *Id.*, ¶ 30; exhibit E. On June 21, 2019, an NYPD Records Access Appeals Officer issued a decision that modified the RAO order to the extent of granting Jaskaran’s FOIL request in part and denying it in part, and providing Jaskaran with a portion of the “Medical Screening Manual for Law Enforcement Officers” (the RAAO order). *Id.*, ¶¶ 32-34; exhibit F. Deeming that production to be insufficient, Jaskaran thereafter commenced this Article 78 proceeding on October 21, 2019. *See* notice of petition. Rather than answer the petition, respondents cross-moved to dismiss it on January 6, 2020 (together, motion sequence number 001). *See* notice of cross motion. On February 26, 2020, Jaskaran served respondents with a notice to admit. On March 13, 2020, respondents filed a second motion to strike that notice to admit (motion sequence number 002). *See* notice of motion. At that point, the Covid-19 national pandemic forced the court to suspend its operations indefinitely. Now, however, sufficient restrictions have been lifted so that the court may address this fully submitted dispute (motion sequence numbers 001 and 002).

DISCUSSION

The court’s role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether the determination had a rational basis in the record or was arbitrary and capricious. *See Matter of Pell v Board of Educ. of Union Free School Dist. No. 1*

of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222 (1974); *Matter of E.G.A. Assoc. Inc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 (1st Dept 1996). A determination will only be found arbitrary and capricious if it is “without sound basis in reason, and in disregard of the facts.” *See Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983); citing *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231. However, if there is a rational basis for the administrative determination, there can be no judicial interference. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232. Further, it is well settled that “[t]he interpretations of a respondent agency of statutes which it administers are entitled to deference if not unreasonable or irrational.” *Matter of Metropolitan Assoc. Ltd. Partnership v New York State Div. of Hous. & Community Renewal*, 206 AD2d 251, 252 (1st Dept 1994), citing *Matter of Salvati v Eimicke*, 72 NY2d 784, 791 (1988).

In his petition, Jaskaran argues that the RAAO order was arbitrary and capricious because it contravened the disclosure requirements of Public Officers Law § 87 (i.e., FOIL) by only permitting a limited production of the NYPD’s “Medical Screening Manual for Law Enforcement Officers” without asserting a statutory justification for the limitation. *See* verified petition, ¶¶ 41-54. In their cross motion, respondents assert that they conducted a “diligent search” for that document after receiving Jaskaran’s petition, located Sections I, II and III of the “Medical Screening Manual for Law Enforcement Officers” and provided them to Jaskaran, but were unable to locate Section IV, and so instead provided Jaskaran with a certification that they had searched for, but were unable to find, that portion of the manual. *See* notice of cross motion, Holt affirmation, ¶¶ 14-15. As a result, respondents argue that “the instant proceeding is moot

and academic as all responsive documents have been provided to petitioner.” *Id.*, ¶¶ 16-19.

Jaskaran’s reply papers deny this, and contend that (a) respondents’ own websites contain links to a medical history questionnaire that is part of the contents of Section IV of the NYPD’s “Medical Screening Manual for Law Enforcement Officers,” so it is reasonable to assume that the NYPD does indeed have access to the remainder of Section IV as well (even if it is located online rather than a hard copy in an NYPD office); and 2) even if the NYPD does not itself possess a copy of Section IV, there is nothing to prevent the NYPD from obtaining that portion of the document from the company that published the “Medical Screening Manual for Law Enforcement Officers.” *See* petitioner’s affirmation in opposition to cross motion, at 8-10.

Respondents did not submit any further response to these allegations.

For its part, the court is mindful that Public Officers Law § 89 (3) permits an agency unable to locate documents properly requested pursuant to FOIL to instead provide a certification that it does not have possession of a requested records or that such records cannot be found after diligent search. *See e.g., Matter of Abdur-Rashid v New York City Police Dept.*, 31 NY3d 217 (2018). Here, respondents’ cross motion relies entirely on the fact that they have provided Jaskaran with such a certification, rather than invoking any of the disclosure exceptions to Public Officers Law § 87 which were cited in the RAO order. *See* notice of cross motion, Holt affirmation, ¶¶ 14-15. The court thus deems that respondents have conceded that none of those exceptions are applicable to Jaskaran’s FOIL request. However, notwithstanding Jaskaran’s allegations that there is evidence that the NYPD may have access to Section IV of the “Medical Screening Manual for Law Enforcement Officers,” and notwithstanding the fact that respondents’ certification pursuant to Public Officers Law § 89 (3) was prepared by their attorney “on information and belief,” rather than by someone with actual knowledge of the

NYPD's records search, the Court of Appeals has long been clear that providing such a certification satisfies the NYPD's statutory disclosure duties, rectifies any alleged noncompliance, and renders any Article 78 challenge that is based on such alleged noncompliance moot and subject to dismissal. *See Matter of Rattley v New York City Police Dept.*, 96 NY2d 873 (2001). Accordingly, the court finds that the instant certification is sufficient to moot the open remainder of Jaskaran's FOIL request, and that his Article 78 petition to enforce that FOIL request should be dismissed.

Respondents' motion to strike asserted that Jaskaran's February 26, 2020 notice to admit should be stricken because it is untimely and seeks improper information. *See* respondents' mem of law at 3-9. Jaskaran replied that respondents' moving papers were defective because they were not accompanied by an affirmation of good faith, and also disputed that his notice to admit sought improper material. *See* petitioner's mem of law in opposition, at 9-38. However, respondent's request for a protective order against Jaskaran's discovery demands has been rendered moot by the court's decision to dismiss Jaskaran's petition. Accordingly, the court finds that respondents' motion to strike should also be denied for that reason.

DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner Jack Jaskaran (motion sequence number 001) is denied; and it is further

ORDERED that the cross motion, pursuant to CPLR 3211 (a), of respondents the City of New York and James P. O'Neill, in his official capacity as the Police Commissioner of the City

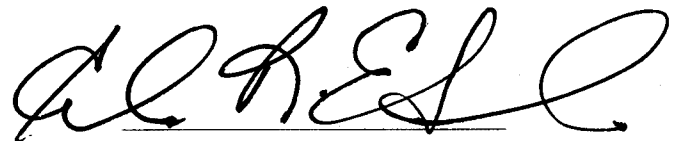
of New York (motion sequence number 001), is granted and this proceeding is dismissed; and it is further

ORDERED that the motion, pursuant to CPLR 408, 3103 and 3123, of respondents the City of New York and James P. O'Neill, in his official capacity as the Police Commissioner of the City of New York (motion sequence number 002), is denied as moot.

Dated: New York, New York

July 17, 2020

ENTER:

A handwritten signature in black ink, appearing to read 'C. Edmead', written over a horizontal line.

Hon. Carol R. Edmead, J.S.C.