

Matter of Lane v County of Nassau
2021 NY Slip Op 34322(U)
June 16, 2021
Supreme Court, Nassau County
Docket Number: Index No. 603034/2021
Judge: Christopher G. Quinn
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU CIVIL TERM PART 23

Present: HON. CHRISTOPHER G. QUINN
Justice of the Supreme Court

In the Matter of CHARLES LANE's Freedom of
Information Law Request,

Petitioner,
-against-

INDEX NO: 603034/2021

For a judgment under Article 78 of the Civil
Practice Law and Rules

-against-

COUNTY OF NASSAU; NASSAU COUNTY POLICE
DEPARTMENT, Records Access Officer NASSAU COUNTY
POLICE DEPARTMENT LEGAL DEPARTMENT BUREAU,
Records Access Appeals Officer PATRICK RYDER, each
individually and in their official capacity,

Respondents.

This Article 78 Proceeding was commenced by way of an Order to Show Cause signed by this Court on March 25, 2021. The Court ordered service on the respondents by a number of alternate means including "overnight/first class mail/facsimile and/or email with delivery confirmation". The Petition was served on COUNTY OF NASSAU ("COUNTY") and the NASSAU COUNTY POLICE DEPARTMENT ("NCPD").

The Petition seeks an Order:

- A) Annulling of the respondents final determination denying access to specified records;
- B) Requiring respondents to make such records available;
- C) Ordering respondents to pay reasonable attorney's fees;

- D) Ordering mandatory training of the respondents in Freedom of Information Law compliance and;
- E) Other and further relief.

These are sought in accordance with Article 6 of the Public Officers Law ("POL"), the Freedom of Information Law ("FOIL").

In an attempt to resolve this litigation the Court held three conferences with the parties. At the initial conference the discussion largely addressed the service of process, and the COUNTY's assertion that the major piece of the information sought was available to the Petitioner via the COUNTY Comptroller's website link. The Petitioner, by way of counsel, advised the Court that the "link" was not operational or functioning. The Court urged the Deputy County Attorney to investigate and resolve the problem. The Court adjourned the matter for a short date to verify any progress.

By Notice of Cross Motion, filed April 7, 2021, the COUNTY sought to dismiss, claiming insufficient service and therefore lack of jurisdiction over the named respondents. The Petitioner opposed the application, relying upon the arguments of counsel and the fact that the Corona Virus Pandemic has had a deleterious impact on the State, the Court system, and the litigants. The Court, in its discretion, authorized alternate means of service.

Based upon the evidence and arguments presented, the COUNTY's motion to dismiss is Granted as to the following parties: Records Access Officer, NCPD LEGAL DEPARTMENT BUREAU, and Records Access Appeals Officer PATRICK RYDER.

The Deputy County Attorney also sought time to formally answer the Petition. The application was Granted. The Answer was filed on April 20, 2021.

The crux of the information sought by the Petitioner falls into two categories. The first is any record listing all current employees of the NCPD that contains: (1)

their name; (2) department; (3) title; and (4) salary. The second is the phone directory of all NCPD employees.

These records were originally requested by Mr. Lane on or about November 30, 2020. On January 7, 2021, the NCPD stated two exemptions under the apparent belief that the information sought also requested exempt personal information. The Petitioner, by email dated January 24, 2021, sought an appeal of the denial. NCPD Commissioner Ryder (Appeals Officer) responded on Jan 27, 2021 directing Mr. Lane to the County Comptroller (Custodian of salary information) and provided a link to the information (see above). It again appeared that the Department was of the mistaken belief that the Petitioner was seeking personal telephone numbers. (Exh. A).

As stated above, the Court was of the belief that cooperation between the parties was a better path to resolving the matter than the vitriol the Court witnessed between counsel.

During the course of the final conference, the Deputy County Attorney advised the Court that when he spoke with the staff at the County Comptroller's Office he learned that the Petitioner had sought and had already been provided with access to the salary information. When Counsel for the Petitioner was asked to confirm this, he failed to do so. He, instead, stated that he wished to rely on the strict interpretation of the statute and continued with the position that the information was not in the format asked-for or required by the statute. This Court takes a very dim view of the legal posturing and of the fact that he failed to advise the Court of his client's acquisition of the sought- after salary information. The Court finds that the uncontested evidence presented demonstrates free and unfiltered access to this information was given to Petitioner thus the response by Respondents satisfies the POL and FOIL obligations.

This Court finds that most of the events leading up to the commencement of this proceeding were based upon the petitioner's mis-apprehension of where the salary records are

kept, and the police department's mis-apprehension of what specific information Mr. Lane was seeking regarding updated telephone numbers or an updated telephone directory.

Based on the proof and arguments presented, the Court finds and directs the following.

As far as the specific requests of the Petition:

- (a) the application to annul the final determination of Commissioner is Denied. The information regarding salaries is not kept within the NCPD and the Court finds the Commission's denial was appropriate.
- (b) the application to make such records available is Denied as moot.
- (c) the application for attorney fees is Denied. The Court finds that the Petitioner has not substantially prevailed on the request for public information.
- (d) application for mandatory training is Denied.
- (e) the Court grants no further relief.

Petitioner's counsel argues that the biased objective of the POL is openness and access to government. He states that the Petitioner is seeking to report on the fiscal policies of the Police Department. It is clear from the undisputed proof presented that had the Petitioner sought the information from the independently elected County Comptroller most of this dispute could have been avoided. NCPD Commission RYDER directed the Petitioner to their office, the Custodian of the records in his response. Rather than following that avenue, Petitioner chose to commence this proceeding, and continued a vigorous pursuit of his position nearly two weeks after his client had obtained access to the salary information. The record keeping and custody of such records by the COUNTY is within the purview of POL § 87.

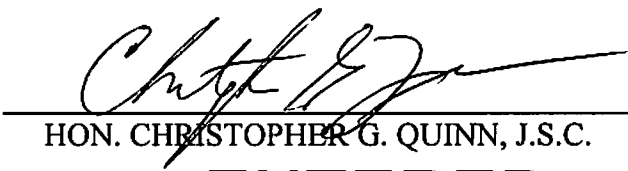
Finally, the Court finds that the phone directory provided by the Deputy County Attorney (Exhibit D) is the only directory that exists and providing it satisfies the objections of the Public Officer Law. The Deputy County Attorney was candid in his representation that although

outdated this is the current directory. There is an insufficient showing by the Petitioner that the items sought and withheld are not excerpted.

The Court finds that the Respondents did not wrongfully withhold information claiming exemptions pursuant to POL § 87.

Providing personal telephone numbers is not directed, as such information is specifically protected from disclosure under POL § 89 (2-b)(b). The NCPD provides telephone numbers on the COUNTY's website. This is sufficient [POL § 87(2)(f); Committee on Open Government, opinion FOIL-AO-f10671; Matter of *Weslowski v. Vanderhoeft*, 98 AD3d 1123 (2nd Dept 2012)].

It is **SO ORDERED**.


HON. CHRISTOPHER G. QUINN, J.S.C.**ENTERED****Jun 18 2021**NASSAU COUNTY
COUNTY CLERK'S OFFICE

Dated: JUN 16 2021