

**New York Civ. Liberties Union v New York City
Dept. of Corr.**

2022 NY Slip Op 31113(U)

April 19, 2022

Supreme Court, New York County

Docket Number: Index No. 159851/2021

Judge: Lyle E. Frank

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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: HON. LYLE E. FRANK PART 11M

Justice

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NEW YORK CIVIL LIBERTIES UNION

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF CORRECTION,

Respondent.

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INDEX NO. 159851/2021

MOTION DATE 12/09/2021, 03/25/2022

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 18, 27, 28, 29, 30, 35

were read on this motion to/for RELEASE RECORDS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34

were read on this motion to/for CHANGE VENUE

Petitioner initiated the instant proceeding seeking an order directing respondent, New York City Department of Corrections (DOC), to comply with its duty under the Freedom of Information Law (FOIL) to provide records relating to the department's misconduct and disciplinary databases. Petitioner argues that the initial and continuing responses from respondent constitutes an arbitrary and capricious failure to comply with both the repeal of Civil Rights Law Section 50-a and the timeline requirements for the disclosure of information pursuant to FOIL. Respondent opposes the instant petition and separately moves to change venue.

Factual and Procedural Background

On April 30, 2021, petitioner submitted a FOIL request to DOC seeking (1) documents sufficient to identify Agency databases that include complaints, reports of misconduct or

1 The Court would like to thank Alyson Bass Esq., for her assistance in this matter.

discipline of Agency employees in response to complaint(s); (2) a description of fields, format, columns, structure and abbreviations of any such databases; (3) access to the databases maintained by or on behalf of the agency that include information about complaints or reports of misconduct, and/or discipline records including the name, position and duty station of the Agency employee, the type, date and location of complaint or report, whether the complaint or report was investigated, the investigating division or agency and the outcome of the investigation, and for each substantiated complaint, whether discipline was imposed. This FOIL request followed the March 21, 2021 creation of a public database with limited disciplinary records of Agency employees.

On May 5, 2021, DOC acknowledged receipt of the FOIL request and issued an estimated response date of June 7, 2021. On June 3, 2021, DOC sent a notification of delay and requested two (2) additional months, until August 3, 2021, to respond. On June 10, 2021, petitioner filed an administrative appeal directly to DOC. On June 22, 2021, petitioner sought acknowledgment of its appeal and submitted the appeal directly to Adjuwa Thomas as directed. No further response was received from DOC with regard to the FOIL request or the administrative appeal.

On December 10, 2021, the parties entered into an interim stipulation wherein the respondent agreed to produce responsive records to petitioner, however, there remain the following disputed issues: (1) whether the limited privacy exemption of FOIL shields unsubstantiated claims; (2) whether the repeal of 50-a applies to information contained in databases that existed prior to the appeal; (3) A timeframe for any database information ordered to be produced².

² The parties have resolved respondent's claim of trade secrets with regard to the manuals that describe the databases, and as such, the Court shall not address that issue.

Discussion

Preliminarily, the Court denies respondent's motion to change venue. The Court is unpersuaded that respondent, having offices in all five boroughs as well as administrative trials held in New York County, has established that venue is improper in this county.

In the instant matter, respondent contends that its responses are limited by the privacy exemption of FOIL that shields the disclosure of unsubstantiated claims. Respondent further alleges that the 2020 repeal of Civil Rights Law Section 50-a and amendment in the same Chapter of the Public Officers Law as it relates to law enforcement disciplinary records does not affect the public's limited access to unsubstantiated claims and that pursuant to the Public Officer's Law unsubstantiated claims are protected as privileged information.³ The Court, respectfully disagrees. The Court finds, as petitioners contend, that if the legislature's intent was to shield unsubstantiated records it could have specified as such. On the contrary, in its 2020 amendment in adding new subdivisions of Public Officers Law Sections 86, 87 and 89, the Legislature made it clear that the records sought by petitioners are well within the scope of the law. The records that are required to be disclosed are for charges against a law enforcement officer, and is thus not limited to where there is a finding that leads to discipline. The Court therefore finds that the privacy exemption is limited to the information that is specifically allowed to be redacted and kept private in the Public Officers Law Sections discussed above. To the extent that the 2020 amendment to the Law is contrary to existing law not referenced in the 2020 amendment, it is readily apparent that the Legislature deemed for the 2020 amendment to control.

³ The Court, through this analysis, and as it refers to the "2020 amendment" is referring to Chapter 96 of the 243rd Legislative Session, Senate Bill 8496, enacted into law June 12, 2020.

As the 2020 amendment is new to the law and the respondent has shown a good faith basis in their belief that the disclosure sought by petitioner is not warranted, the Court declines to award attorney's fees in this matter. Based on the foregoing, it is hereby

ORDERED within four months of the date of this order respondent shall produce Excel Spreadsheets of the Time Matters Database that include all columns, including the "Memo" column, identifying proposed redactions and providing justifications for the same; and it is further

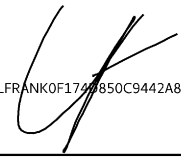
ORDERED that within two months of completion of the Time Matters database, respondent shall produce Excel spreadsheets of the CMS database, including all columns, identifying proposed redactions and providing justifications for the same; and it is further

ORDERED that upon production of the CMS Database, respondent produce Excel spreadsheets of the Service Desk Database, including all columns, identifying redactions and providing a justification for those proposed redactions, at a rate of 5,000 Excel Spreadsheet rows per month, working backwards from the most recent to the oldest entries, until production is complete; and it is further

ORDERED that should there be any redactions or non-disclosure of records which the parties cannot agree on whether such records or portions thereof should be disclosed, unredacted versions of such records, or such records in full if applicable, shall be submitted to this Court for an *in camera* review but such a review should not delay the production of other such records consistent with this order; and it is further

ADJUDGED that the venue in his action is not changed.

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4/19/2022

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE