

**Matter of Jewish Press, Inc. v New York City Police Dept.**

2022 NY Slip Op 33020(U)

September 9, 2022

Supreme Court, New York County

Docket Number: Index No. 155798/2021

Judge: William Franc Perry

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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. WILLIAM FRANC PERRY **PART** **23**

*Justice*

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IN RE APPLICATION OF JEWISH PRESS, INC.

Petitioner,

- v -

NEW YORK CITY POLICE DEPARTMENT

Respondent.

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**INDEX NO.** 155798/2021

**MOTION DATE** 06/16/2021

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

In this Article 78 proceeding, Petitioner Jewish Press, Inc. seeks an order, pursuant to the Freedom of Information Law (“FOIL”), directing Respondent New York Police Department (“NYPD”) to produce “a FOIL log for the past two years, reflecting whatever information the NYPD tracks regarding FOIL requests, preferably in Excel format.” (NYSCEF Doc No. 1, Petition, at ¶ 9; NYSCEF Doc No. 3.)

**Background**

Petitioner made its initial request on February 14, 2021 (NYSCEF Doc No. 3), which was denied on February 17, 2021. (NYSCEF Doc No. 19.) Petitioner appealed the denial, which was also denied on February 18, 2021 “because the requested records are not records maintained by the NYPD. The NYPD does not maintain a ‘FOIL Log’; rather, all FOIL requests are submitted through the Open Records Portal- which is maintained by an outside agency[.]” (NYSCEF Doc No. 4.) Respondent also stated that to the extent Petitioner sought “any of the underlying records related to each of the 44,900 requests received by this agency within the 25-month period identified in [the] request, [the] appeal is denied because the fulfilment of [the] request would require

extraordinary efforts not required under FOIL in that each of the individual records would require redactions” pursuant to Public Officers Law (“POL”) §§ 87[2][a] and [b]. (*Id.*) Petitioner commenced this action on June 16, 2021.

Subsequently, on September 1, 2021 and as noted in its cross-motion to dismiss, Respondent provided two Excel files to Petitioner, which were generated solely to comply with Petitioner’s request. (NYSCEF Doc No. 12, Cross-motion, at ¶ 22.) The Excel files contain the following data:

(1) all “information [NYPD] track[s]” on the roughly 42,061 FOIL cases submitted to NYPD between February 14, 2019 and February 16, 2021, i.e., the date each FOIL request was filed, whether each FOIL case remains open or is now closed, etc.; and

(2) a significant amount of personally identifying information about thousands of individual FOIL requestors, including, inter alia, their names, email addresses, phone numbers, fax numbers, street addresses, and apartment numbers.

In accordance with the Open Records website’s express assurances that the personal information of individual FOIL requestors would not be publicly disseminated, Respondent redacted “all requestor names, email addresses, phone numbers, fax numbers, street addresses, and apartment numbers.” (*Id.* at ¶ 23.) Accordingly, Respondent argues that the instant proceeding is now rendered moot, that the redactions were proper under POL § 87[2][b] to prevent unwarranted invasions of personal privacy, and that the proceeding should be dismissed.

In reply, Petitioner argues that “the NYPD should not be able to shield names of FOIL requestors. When a member of the public makes a records request of an agency, it is presumed that the requestor wants the information to be made public.” (NYSCEF Doc No. 26, Reply, at 4.) Petitioner also argues that it is entitled to costs and fees because it has substantially prevailed in this litigation.

### Discussion

It is well settled that all records of a public agency, including police records, are presumptively open for public inspection and copying, and that the burden rests at all times on the government agency to justify any denial of access to records requested under FOIL. (*See New York State Rifle and Pistol Assoc. v Kelly*, 55 AD3d 222, 224 [1st Dept 2008]; *New York Civil Liberties Union v New York City Police Dept.*, 20 Misc 3d 1108[A] [Sup Ct, NY County 2008]; *see also, Gould v New York City Police Dept.*, 89 NY2d 267, 274 [1996] [FOIL was enacted “[t]o promote open government and public accountability”]; Public Officers Law § 84; *Matter of Abdur-Rashid v New York City Police Dept.*, 31 NY3d 217, 224 [2018].)

In furtherance of FOIL's legislative policy favoring disclosure, “[e]xemptions are to be narrowly construed to provide maximum access, and the agency seeking to prevent disclosure carries the burden of demonstrating that the requested material falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access.” (*Matter of Capital Newspapers Div. of Hearst Corp. v Burns*, 67 NY2d 562, 566 [1986].)

The court finds that the Petition was rendered moot by Respondent’s production of the redacted records and certification that no additional records exist. (*Taylor v New York City Police Dept.*, 25 AD3d 347 [1st Dept 2006]; *Davidson v Police Dept. of the City of New York*, 197 AD2d 466 [1st Dept 1993] [holding that denial of petition as moot was proper in light of NYPD’s production of responsive records during pendency of litigation]; *Jaskaran v City of New York*, 2021 WL 3139767, at \*1 [Sup Ct, NY County 2021] [“an agency satisfies its obligation under FOIL when a diligent search is done, and either responsive records are disclosed, and/or the agency certifies that responsive records could not be located”]; *see also Rattley v New York City Dept.*, 96 NY2d 873 [2001] [“the Department satisfied the certification requirement by averring that all

responsive documents had been disclosed and that it had conducted a diligent search for the documents it could not locate”.) Petitioner’s argument to the contrary, relying on news articles, is speculative.

Further, Respondent’s redactions of the “requestor names, email addresses, phone numbers, fax numbers, street addresses, and apartment numbers” pursuant to POL §§ 87[2][b] and 89[2][b][v] were proper, as the foregoing constitutes “information of a personal nature reported in confidence to an agency[.]” Petitioner’s argument that the “NYPD should not be able to shield names of FOIL requesters” is conclusory and unsubstantiated. (NYSCEF Doc No. 26, Reply, at 4.) Although it may be true that any individual requester “wants the [requested] information to be made public,” there is no reason to believe that they would want their personal information to also be made public. (*Id.*)

Finally, Petitioner’s request for attorneys’ fees is denied in this court’s discretion, as the court finds that Respondent had a reasonable basis for denying access to the records based on the fact that the record did not exist at that time. (POL § 89[4][c][ii] [in FOIL proceedings, the court “shall assess” attorneys’ fees and costs against agency if petitioner “has substantially prevailed and the court finds that the agency had no reasonable basis for denying access”].) As such, it is hereby

ADJUDGED that the application is denied, the cross-motion is granted, and the Petition is dismissed.

9/9/2022  
DATE

  
WILLIAM FRANC PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE