

Aron Law PLLC v New York City Police Dept.

2022 NY Slip Op 33026(U)

September 9, 2022

Supreme Court, New York County

Docket Number: Index No. 158164/2021

Judge: William Perry

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY **PART** **23**

Justice

-----X

ARON LAW PLLC

Petitioner,

- v -

NEW YORK CITY POLICE DEPARTMENT,

Respondent.

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INDEX NO. 158164/2021

MOTION DATE 09/01/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

In this Article 78 proceeding, Petitioner Aron Law PLLC seeks an order, pursuant to the Freedom of Information Law (“FOIL”), directing Respondent New York Police Department (“NYPD”) to produce “any and all arrests report, complaint reports, and online booking sheet, for arrests made on May 19, May 20, 2021 in connection with protests held in and around Times Square.” (NYSCEF Doc No. 1, Petition, at ¶ 9; NYSCEF Doc No. 3.)

Background

Petitioner made its initial request on May 25, 2021 (NYSCEF Doc No. 3), which was denied on May 27, 2021 “on the basis that [the] request is too broad in nature and does not describe a specific document.” (NYSCEF Doc No. 4.)

On June 1, 2021, a Records Access Appeals Officer (“RAO”) denied Petitioner’s appeal, pursuant to Public Officers Law (“POL”) § 87[2][e][i], on the grounds that disclosure of the records sought “would interfere with law enforcement investigations or judicial proceedings.” (NYSCEF Doc No. 5.) The RAO explained that the records pertained to arrestees whose prosecutions remained pending, and disclosure “could result in witness tampering or the tainting

of a jury pool and/or the perpetrator evading detection or prosecution.” (*Id.*) The RAO also stated that, pursuant to POL § 87[2][b], disclosure “would constitute an unwarranted invasion of personal privacy” of the individuals.

Petitioner commenced this action on September 1, 2021 and the parties repeatedly stipulated to adjourn the motion to April 5, 2022. (NYSCEF Doc Nos. 9-12, 14-24.) On February 9, 2022, Respondent provided seven non-sealed arrest records and corresponding police reports to Petitioner, with redactions made to “NYPD web page addresses and [the home addresses, dates of birth, and NYSID numbers of the defendants], although the names of the defendants were not redacted.” (NYSCEF Doc No. 26, Cross-motion, at ¶ 14; NYSCEF Doc No. 32, Redacted Arrest Records; NYSCEF Doc No. 33, Redacted Reports.)

Respondent cross-moves for dismissal, arguing that the instant proceeding is rendered moot as a result of its production of the redacted records, that all redactions were proper, and that, although there are relevant records pertaining to one more arrest, those records are sealed. (Cross-motion at ¶¶ 21-33.) Respondent also argues that Petitioner’s request for attorneys’ fees is premature because it has not demonstrated that it has substantially prevailed in this proceeding. (*Id.* at ¶¶ 34-35.)

Petitioner replies that certain news articles (attached as NYSCEF Doc No. 37) indicate that 26 individuals were arrested, rather than 8, the figure given by Respondent, suggesting that Respondent made misrepresentations in bad faith either to Petitioner or to the court. (NYSCEF Doc No. 36, Reply, at 7.) Petitioner also states that “the NYPD should not be able to shield information other than the dates of birth, NYSID numbers and the individual street number of the addresses of the defendants arrested.” (*Id.* at 9.) Finally, Petitioner argues that it is entitled to fees, regardless of the voluntariness of Respondent’s disclosure, and that such disclosure does not

render the portion of the Petition seeking fees moot. (*Id.* at 9-14, citing *Kohler-Hausmann v New York City Police Dept.*, 133 AD3d 437 [1st Dept 2015].)

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 arrestees’ birth dates, home addresses, and NYSID numbers were proper, pursuant to POL § 89 [2][b]. Petitioner’s argument that the “NYPD should not be able to shield [such] information” is conclusory and unsubstantiated. (NYSCEF Doc No. 36, Reply, at 9.)

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, as the records pertained to ongoing prosecutions. (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.

<u>9/9/2022</u> DATE		 WILLIAM PERRY, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE