

<b>Robinson v City of New York</b>
2022 NY Slip Op 34055(U)
November 30, 2022
Supreme Court, New York County
Docket Number: Index No. 157802/2022
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

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TAMMY SCOTT ROBINSON,

Petitioner,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT  
OF CORRECTION

Respondent.

-----X

INDEX NO. 157802/2022

MOTION DATE 11/10/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 9, 10, 11, 12 were read on this motion to/for ARTICLE 78 FOIL.

The petition to compel respondents to release requested documents pursuant to the Freedom of Information Law (“FOIL”) is denied without prejudice to bring it again.

**Background**

On April 4, 2022, petitioner submitted a FOIL request to respondents for information relating to the death of her brother while in a holding cell at Manhattan Criminal Court in October 2021. Petitioner alleges that her brother hanged himself while in the custody of respondent Department of Correction (“DOC”) and seeks records, including details about the employees on duty and any discipline imposed on the employees.

On April 5, 2022, respondents acknowledged the FOIL request and observed that some of the records might constitute intra-agency and inter-agency material, which might be withheld (NYSCEF Doc. No. 4). Petitioner appealed this acknowledgement and observed that it was hard to determine how to characterize the April 5, 2022 response (NYSCEF Doc. No. 5). Petitioner

insisted that it was unclear whether it was a final agency determination because the response noted that an appeal had to be made within thirty days (*id.*).

Respondents denied the appeal and insisted that the records sought would interfere with a pending law enforcement investigation (NYSCEF Doc. No. 6). Respondents insisted that petitioner could resubmit the request at the conclusion of the investigation (*id.*). They also concluded that the requested records were not final agency determinations subject to disclosure under FOIL (*id.*).

Petitioner claims that she has yet to receive any records whatsoever and has not provided a reasonable date by which they would disclose documents not subject to any FOIL exemptions. Petitioner argues that respondent's denial is a blanket denial and does not meet the requirements to justify its denial.

In opposition, respondents contend that they need not release records subject to a law enforcement investigation. They claim that no determinations regarding discipline or criminal prosecution have been made with respect to the death of Mr. Scott. Respondents also insist that the requested materials are for intra-agency documents and so are not subject to disclosure under FOIL. Respondents submit the affidavit of Mr. Bardales (an employee of the Department of Correction) who claims that DOC's investigation into Mr. Scott's death remains ongoing.

In reply, petitioner claims that respondents failed to establish a sufficient justification for not turning over the requested documents and that she should be awarded legal fees.

## **Discussion**

“To promote open government and public accountability, FOIL imposes a broad duty on government agencies to make their records available to the public. The statute is based on the policy that “the public is vested with an inherent right to know and that official secrecy is

anathematic to our form of government. Consistent with the legislative declaration in Public Officers Law § 84, FOIL is liberally construed and its statutory exemptions narrowly interpreted. All records are presumptively available for public inspection and copying, unless the agency satisfies its burden of demonstrating that “the material requested falls squarely within the ambit of one of the statutory exemptions. While FOIL exemptions are to be narrowly read, they must of course be given their natural and obvious meaning where such interpretation is consistent with the legislative intent and with the general purpose and manifest policy underlying FOIL” (*Abdur-Rashid v New York City Police Dept.*, 31 NY3d 217, 224-25, 76 NYS3d 460 [2018] [internal quotations and citation omitted]).

The central issue on this petition is whether an ongoing investigation by respondent Department of Correction justifies a denial of a FOIL request. As an initial matter, petitioner is correct to point out that typically, the law enforcement investigation exemption to disclosure under FOIL applies to the agencies that can issue charges against individuals. That often implicates FOIL requests made to police departments or district attorneys’ offices (*see id.* at 225-26). Here, respondent Department of Correction claims it is conducting an investigation.

The Court finds that this agency can invoke the law enforcement investigation exemption and denies the petition (*see Disability Rights New York v New York State Commn. of Correction*, 194 AD3d 1230, 1234, 149 NYS3d 290 [3d Dept 2021] [finding that the law enforcement investigation exemption justified the denial of a FOIL request that sought records about inmate deaths that were under investigation by the New York State Commission of Correction]). The affidavit from DOC’s investigator makes clear that this agency is performing an investigation and that “Release of those documents at this point would interfere and potentially hinder the Department’s internal administrative and any external criminal investigations, and any/or

subsequent disciplinary proceedings” (NYSCEF Doc. No. 11, ¶ 4). The DOC investigator also provided an internal case number (*id.* ¶ 2).

The purpose of this exemption is to protect the integrity of an investigation and to prevent “the inherent dangers of premature disclosure” (*Abdur-Rashid*, 31 NY3d at 227). Disclosure of materials while an investigation is pending can affect how decisions are made about the progress of the investigation or affect a final determination about disciplinary charges or criminal referrals.

The Court recognizes the frustration expressed by petitioner in these papers. She wants documents relating to her brother’s tragic death and respondents contend there is a pending investigation without identifying when that investigation will conclude. While respondent cannot hide behind “we are doing an investigation” forever, this Court finds that, at this point, this stated exemption justifies denying the petition. Mr. Scott’s untimely death was in October 2021. While that means the investigation has been pending for just over a year, that length of time is not so long as to evince an unwarranted delay.

Certainly, at some point (although the Court makes no bright line ruling about a specific length), an agency cannot cite a pending investigation as a reason to deny a FOIL request. Such a determination would rely heavily on the specific facts and circumstances of the particular request. The purpose of this exemption is not to provide a blanket shield to deny a FOIL request indefinitely. “Unlike other FOIL exemptions, the law enforcement exemptions contained in Public Officers Law § 87(2)(e)(i) and (ii) are temporary in nature and will no longer justify the denial of records once the underlying investigation or judicial proceeding has concluded” (*New York State Funeral Directors Assn. v New York State Dept. of Health*, 200 AD3d 1255, 1257 n2 160 NYS3d 398 [3d Dept 2021]). Citizens have a right to disclosure of public records. The

Court simply finds that the circumstances of this case permit respondents to continue their investigation without disclosing the records at this point.

Accordingly, it is hereby

ORDERED that the petition is denied, this proceeding is dismissed and the Clerk is directed to enter judgment in favor of respondents and against petitioner without costs or disbursements upon presentation of proper papers therefor. This is without prejudice to bring it again.

11/30/2022

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE