

Amnesty Intl. USA v New York City Police Dept.

2023 NY Slip Op 30080(U)

January 9, 2023

Supreme Court, New York County

Docket Number: Index No. 156672/2021

Judge: Laurence L. Love

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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. LAURENCE L. LOVE **PART** **63M**

Justice

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AMNESTY INTERNATIONAL USA

Petitioner,

- v -

NEW YORK CITY POLICE DEPARTMENT,

Respondent.

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INDEX NO. 156672/2021

MOTION DATE 10/11/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents, Respondent’s motion seeking leave to renew and reargue this Court’s decision dated July 29, 2022 is decided as follows:

In a FOIL request dated September 15, 2020, Petitioner sought from Respondent various documents relating to Respondent’s use of facial recognition technology, surveillance drones, gait recognition technology, cell-site simulators, ambient sound recording devices, electronic surveillance tools and donated materials. Almost eight months following the filing of the instant action, on the date that its response to the instant Petition was due, Respondent in a letter dated March 4, 2022, disclosed a copy of the First Amendment Agreement between the Police Department of the City of New York and Flymotion LLC in partial satisfaction of its FOIL duties alleging that same “was the only documentation found pursuant to a diligent search of items 1 through 5 of your client’s FOIL request.” and records from the New York City Police Foundation, Inc. (“NYCPF”) documentation, documenting donations from the NYCPF to the New York City Police Department, responsive to item 7 of Petitioner’s FOIL request.

Respondent further contended that providing the requested documents would be unreasonably burdensome and hiring an outside contractor is not a viable solution given the privacy concerns involved, *See Huseman v. New York City Dep't of Educ.*, 2016 N.Y. Slip. Op. 30959(U) at *14-15 (Sup. Ct. N.Y. Cnty. May 25, 2016) (*citing New York Comm. for Occupational Safety and Health v. Bloomberg*, 72 A.D.3d 153, 892 (1st Dep't 2010)). Specifically, Respondent argues that Petitioner did not supply a narrow list of document titles being sought and that the search terms used returned upwards of 30,000,000 emails.

During the pendency of this proceeding Petitioner's counsel affirmed that "Since the commencement of this proceeding in July 2021, counsel for AI USA and the NYPD engaged in numerous meet and confers to potentially narrow down the number of responsive documents in order to reduce the production burden on the NYPD" which "reduced number of documents that NYPD asserted it would need to review to approximately 2,700 documents" Based upon same, this Court ordered petitioner to re-submit its Foil request seeking the approximately 2,700 documents currently requested and upon receipt of same directed Respondent to either provide the demanded documents, subject to any necessary redaction, and/or allege with specificity that each document falls within one of the enumerated exemptions of Public Officers Law § 87(2). Respondent now moves to renew and reargue.

A motion to renew must be based upon new facts that were not offered in the prior motion, and the party must set forth a reasonable justification for the failure to present such facts in the prior motion (see, CPLR § 2221[e]; *Delvecchio v. Bayside Chrysler Plymouth Jeep Eagle Inc.*, 271 AD2d 636 [2d Dept 2000]; *McNeill v. Sandiford*, 270 AD2d 467 [2d Dept 2000]; *Shapiro v. State*, 259 AD2d 753 [2d Dept 1999]); or the motion must demonstrate that there has been a change in the law that would change the prior determination (see, CPLR § 2221[e]; *Delvecchio*

v. Bayside Chrysler Plymouth Jeep Eagle Inc., supra). Renewal is not applicable here because no newly discovered material facts have been submitted by plaintiff. As such, leave to renew must be denied.

A motion to reargue is addressed to the sound discretion of the court and is designed to afford a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts or misapplied controlling principles of law (see, *Schneider v. Solowey*, 141 AD2d 813 [2d Dept 1988]; *Rodney v. New York Pyrotechnic Products, Inc.*, 112 AD2d 410 [2d Dept 1985]). A “motion to reargue is not an opportunity to present new facts or arguments not previously offered, nor it is designed for litigants to present the same arguments already considered by the court” (see, *Pryor v. Commonwealth Land Title Ins. Co.*, 17 AD3d 434 [2d Dept 2005]; *Simon v. Mehryari*, 16 AD3d 664 [2d Dept 2005])

Respondents contend, *inter alia*, that the Court misapprehended that the 2,700 documents in dispute actually refers to a count of over 50,000 estimated pages, which Respondent argues would be unduly burdensome to produce. Respondent estimates it would take 899 hours to identify responsive records, and another 1,799 hours to redact those records. Said assertions could not have been made in the prior papers as settlement discussions were then ongoing. As such, Respondent has established a reasonable justification for why said issue was not in the prior motion. The portion of Respondent’s motion briefing the attorney’s fees issue is irrelevant as there has been no award of attorney’s fees in this petition. As such, Respondent’s motion is GRANTED to the following extent:

ORDERED that Respondent shall respond to Petitioner’s updated FOIL request, dated August 25, 2022 by either provide the demanded documents, subject to any necessary redaction, and/or allege with specificity that each document falls within one of the enumerated exemptions

of Public Officers Law § 87(2) and/or provide a detailed explanation of why production would be unduly burdensome.

1/9/2023
DATE


LAURENCE L. LOVE, 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