

Matter of Hoffman v New York City Police Dept.

2023 NY Slip Op 33971(U)

November 6, 2023

Supreme Court, New York County

Docket Number: Index No. 150164/2023

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

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INDEX NO. 150164/2023

In the matter of the Application of
THOMAS HOFFMAN

MOTION DATE 01/27/2023

Petitioner,

MOTION SEQ. NO. 001

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules

- v -

**DECISION + ORDER ON
MOTION**

NEW YORK CITY POLICE DEPARTMENT,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

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

Upon the foregoing documents, the court grants in part Petitioner Thomas Hoffman's ("Petitioner") Verified Petition, to the extent that the court directs Respondent New York City Police Department ("Respondent") to disclose to Petitioner copies of the police reports sought under his Freedom of Information Law ("FOIL") request with unredacted names of the non-testifying witnesses within thirty (30) days of the date of service of this decision and order with notice of entry. The court denies Respondent's cross-motion to dismiss the Petition, or in the alternative, to file an Answer to the Petition.

In 1999, Kareim Broxton was convicted after a jury trial and sentenced to ninety (90) years' imprisonment in connection with a 1997 shooting at the Owl Night Club, where one person was killed and more than ten people were injured.¹ Petitioner represents Mr. Broxton in the reinvestigation of his conviction.

On February 9, 2021, Petitioner served Respondent with his FOIL request to obtain certain records for Mr. Broxton's case. On January 18, 2022, after there was no response to his FOIL request from Respondent, Petitioner appealed Respondent's constructive denial to the Record Access Appeal Officer ("RAAO"). On February 1, 2022, the RAAO advised Petitioner that his appeal was premature, and Respondent would produce records in approximately ninety (90) days. However, Respondent failed to do so. On July 15, 2022, Petitioner filed his second

¹ Two other men, Clifton Lyerly and Frank Straker, pled guilty to their involvement with the shootings and they were sentenced to 10 years and 5 years' imprisonment, respectively. Mr. Broxton went to trial after refusing to take a plea deal which offered 5-10 years' imprisonment.

appeal of Respondent's constructive denial. On August 18, 2022, Respondent produced four items of the forty-eight (48) items enumerated in Petitioner's request. Thereafter, Respondent closed Petitioner's FOIL request. On September 12, 2022, Petitioner appealed Respondent's response, or lack thereof, to his FOIL request for a third time stating that Respondent constructively denied his initial request for documents. On September 12, 2022, the RAAO denied Petitioner's appeal. Subsequently, Petitioner filed this Verified Petition.

Petitioner's Verified Petition seeks an order directing Respondent to comply with Petitioner's FOIL request within thirty (30) days of the date of the order, a hearing to determine whether the documents requested by Petitioner are in existence, and if so, the extent of the search conducted to locate them, and reasonable legal fees. Petitioner seeks copies of Respondent's investigation records from the 1997 shooting. Petitioner argues in substance that the investigation of the 1997 shooting was large in scope and Respondent failed to conduct a proper search to produce the requested documents. Petitioner further argues in substance that Respondent failed to certify that it conducted a diligent search to locate the requested records as required by Public Officers Law ("POL") § 89(3)(a). Additionally, pursuant to POL § 89(4)(c), Petitioner seeks legal fees if it is determined that he substantially prevailed in his Petition to obtain the records.

Respondent opposes Petitioner's Petition and cross-moves to dismiss the Petition, or alternatively, Respondent moves to file an Answer to the Petition. Respondent argues that the action is now moot. More specifically, Respondent argues in substance that in response to the Petition, it conducted a more thorough search for responsive documents. The search yielded over 400 pages of additional documents that were turned over to Petitioner. Respondent now certifies that it conducted a diligent search and produced all responsive documents. As such, Respondent contends that the Petition is baseless. Respondent further argues in substance that under FOIL exemptions, POL §§ 87(2)(b), 87(2)(f), and 89(2)(b), it has the right to redact the personal information of non-testifying witnesses and withhold photographs of the deceased victim of the shooting at the Owl Night Club. Respondent argues in substance that the redactions are necessary to protect the non-testifying witnesses from the unwarranted invasion of their privacy and protect them from any threat to their personal safety. Respondent further argues that disclosure of such information to assist in the case for Mr. Broxton's exoneration is likely to offend the senses of reasonable people. Respondent contends that witnesses in an investigation which resulted in the conviction of an individual for murder indicates a heightened privacy interest.

Petitioner opposes Respondent's cross-motion to dismiss and argues in substance that the Petition is not moot. Petitioner confirms that Respondent's subsequent document production was more responsive to his FOIL request. However, Petitioner contends that Respondent is unable to make broad redactions of the information contained in the police reports for all of the non-testifying witnesses.

Pursuant to POL § 87(2)(b), a government agency may withhold records "if disclosure would constitute an unwarranted invasion of personal privacy. . ." (see POL § 87[2][b]). POL § 89(2)(b), defines an unwarranted invasion of personal privacy as including, but is not limited to:

- i. disclosure of employment, medical or credit histories or personal references of applicants for employment;
- ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;
- iii. sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes;
- iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it;
- v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency;
- vi. information of a personal nature contained in a workers' compensation record, except as provided by section one hundred ten-a of the workers' compensation law;
- vii. disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law; or
- viii. disclosure of law enforcement arrest or booking photographs of an individual unless public release of such photographs will serve a specific law enforcement purpose and disclosure is not precluded by any state or federal laws (see POL § 87[2][b]).

Pursuant to POL § 87(2)(f), a government agency may also withhold records if the disclosed records could endanger the life or safety of any person (*see* POL § 87 [2][f]).

All government records are presumptively open for public inspection and copying unless they fall within enumerated exemptions of POL § 87(2) (*see Gould v New York City Police Dep't*, 89 NY2d 267, 275 (1996)). Exemptions to FOIL's policy of broad disclosure are to be narrowly interpreted as to permit maximum access to the government records (*see Matter of Data Tree, LLC v Romaine*, 9 NY3d 454, 462 [2007]). In circumstances where none of the enumerated exemptions to disclosure are applicable, the court "must decide whether any invasion of privacy ... is 'unwarranted' by balancing the privacy interests at stake against the public interest in disclosure of the information" (*see Matter of Harbatkin v New York City Dept. of Records & Info. Servs.*, 19 NY3d 373, 380 [2012], *quoting Matter of N.Y. Times Co. v City of N.Y. Fire Dep't*, 4 NY3d 477 [2005]).

POL § 89(4)(c) provides, in its pertinent part, that the court "may assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provision of this section in which such person has substantially prevailed, when: i. the agency had no reasonable basis for denying access" (*see* POL § 89[4][c]).

In the present case, the court disagrees that the non-testifying witnesses who gave statements during the investigation of the 1997 shooting at the Owl Night Club maintain a heightened privacy interest, particularly if these witnesses were not previously guaranteed anonymity. Although Respondent asserts that it met its burden by producing the non-testifying witnesses' statements, the court finds that such disclosure is incomplete without identifying who

made the statements. Additionally, the court finds that any suggestion that there is a threat to the safety of the non-testifying witnesses twenty-four (24) years after Mr. Broxton's conviction is speculative. As such, the court grants the remaining portion of Petitioner's Petition seeking to obtain the police reports without the redaction of the non-testifying witnesses' names.

Additionally, the court denies Respondent's cross-motion to dismiss the Petition in its entirety, as Respondent failed to demonstrate that dismissal is warranted in this matter.

The court grants the portion of the Petition seeking reasonable attorney's fees as the court finds that Petitioner substantially prevailed on his Petition and that Respondent had no reasonable basis for its constructive denials of Petitioner's FOIL request. If Petitioner had not filed this Petition, then Respondent would not have conducted a more thorough search for records which revealed the records that it was required to disclose. Additionally, Respondent would not have certified that it had performed a diligent search for the records. Therefore, Respondent's failure to disclose the records and conduct a diligent search for the records without a reasonable basis, along with its decision to redact the records, all necessitated Petitioner's filing of the Petition, upon which he substantially prevailed. As such, the court grants Petitioner's request for reasonable attorney's fees, costs and disbursements in connection with this proceeding.

Therefore, the court grants in part Petitioner's Verified Petition, to the extent that the court directs Respondent to disclose to Petitioner copies of the police reports sought under his FOIL request with unredacted names of the non-testifying witnesses within thirty (30) days of the date of service of this decision and order with notice of entry and the court denies Respondent's cross-motion to dismiss Petitioner's Petition.

The court has considered any additional arguments raised by the parties which were not specifically discussed herein and the court denies any additional requests for relief which were not expressly granted herein.

As it is hereby

ORDERED and ADJUGED that the court grants in part Petitioner's Thomas Hoffman's Verified Petition, to the extent that the court directs Respondent New York City Police Department to turn over to Petitioner copies of the police reports requested in Petitioner's FOIL request regarding Respondent's investigation of the 1997 shootings at the Owl Night Club with the unredacted names of the non-testifying witnesses within thirty (30) days of Petitioner's service of a copy of this decision and order on Respondent with notice of entry; and it is further

ORDERED that the court denies in its entirety Respondent New York City Police Department's cross-motion to dismiss Petitioner Thomas Hoffman's Petition; and it is further

ORDERED that the court grants, pursuant to § 89(4)(c), Petitioner Thomas Hoffman's request for reasonable attorney's fees, costs and disbursements in connection with this proceeding.

This constitutes the decision and order of this court.

11/6/2023

DATE



ERIKA M. EDWARDS, 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