

Matter of Legal Aid Socy. v New York City Health & Hosps.

2024 NY Slip Op 30705(U)

March 6, 2024

Supreme Court, New York County

Docket Number: Index No. 159449/2021

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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MATTER OF THE LEGAL AID SOCIETY, A NONPROFIT CORPORATION

Petitioner,

- v -

NEW YORK CITY HEALTH AND HOSPITALS,

Respondent.

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INDEX NO. 159449/2021

MOTION DATE 03/04/2024¹

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-10, 11, 27, 28,² 29, 30, 31, 33, 36, 37

were read on this motion to/for ARTICLE 78 FOIL.

The petition to compel respondent to provide records sought pursuant to a Freedom of Information Law (“FOIL”) request is granted in part as described below.

Background

In this FOIL proceeding, petitioner seeks records concerning disciplinary complaints, disciplinary proceeding and misconduct complaints relating to Dr. Raul Ramos. The FOIL request demands, in part:

“all records reflecting disciplinary complaints, disciplinary proceedings, and complaints of misconduct against Raul Ramos, MD, who was a Correctional Health Services physician and who we understand recently passed away. This request includes but is not limited to the complaints, allegations, and charges against and investigations into Dr. Ramos; the transcript(s) of any disciplinary proceedings against Dr. Ramos, including any exhibits introduced at such trials or hearings; the

¹ The Court recognizes that this proceeding was scheduled for oral argument in 2022 with the judge initially assigned to this petition, although it is unclear whether oral argument actually occurred. In any event, even though this proceeding was only assigned to this part on March 4, 2024, the Court apologizes, on behalf of the court system, for the lengthy years-long delay in this Article 78 proceeding.

² The Court will consider respondent’s answer and affirmation in support of the answer (NYSCEF Doc. Nos. 27 and 28) which were improperly filed under motion sequence 002.

disposition(s) of all disciplinary or investigatory proceedings, including any punishments imposed; and all written opinions or memoranda supporting the disposition and discipline imposed including the agency's complete factual findings and its analysis of the conduct and appropriate discipline of Dr. Ramos" (NYSCEF Doc. No. 4).

Petitioner explains that Dr. Ramos worked for an entity called Corizon Health, Inc. ("Corizon"). Corizon, a third-party entity, provided medical care to individuals in the custody of Department of Corrections on Rikers Island. It contends that when respondent took over the management and care of these individuals, Dr. Ramos served as the chief physician responsible for providing care at the North Infirmity Center on Rikers Island.

Petitioner observes that there were countless complaints about the medical care provided on Rikers Island and that these complaints spiked when Dr. Ramos began working as the chief physician at the facility in 2014. It points out that there was a tragic death of an incarcerated person during Dr. Ramos' tenure and that he was the subject of many civil rights lawsuits and professional misconduct complaints. Petitioner alleges that respondent fired Dr. Ramos sometime in 2019 or 2020. He died on September 16, 2020.

After petitioner submitted the aforementioned FOIL request on May 19, 2021, respondent replied on May 21, 2021 that it had no responsive documents (NYSCEF Doc. No. 5). Petitioner then filed an administrative appeal on May 28, 2021 and asserted that it was implausible that no records could be identified (NYSCEF Doc. No. 6). On June 17, 2021, respondent acknowledged that it was able to find "certain complaints, which were investigated and found to be unsubstantiated. Unsubstantiated complaints and reports are exempt from disclosure as an unwarranted invasion of personal privacy pursuant to Public Officers Law 87(2)(b)" (NYSCEF Doc. No. 7).

Petitioner contends that the personal privacy exemption does not justify the denial of the FOIL request. It points out that the public's interest in the information outweighs the privacy interests. Petitioner acknowledges that Dr. Ramos' death did not extinguish his privacy interests but that they have nonetheless diminished over time. It demands that this Court direct respondent to conduct a good faith diligent search concerning Ramos' litigation history and for legal fees associated with bringing this proceeding.

In opposition, respondent contends that there are privacy concerns relating to both Dr. Ramos and to the individuals who asserted complaint or were witnesses. It maintains that there is a significant privacy right of physicians with respect to unsubstantiated charges. Respondent denies that it fired Dr. Ramos and that there would be substantial damage to his reputation if the unsubstantiated complaints were released.

In reply, petitioner asserts that respondent has only offered conclusory assertions to justify its denial of the FOIL request. It asserts that confidentiality is an express presumption in the context of disciplinary proceedings against physicians but respondent's reliance on that presumption is irrelevant to a FOIL proceeding. Petitioner also demands a "diligent search hearing" for records showing substantiated allegations of misconduct and for records concerning respondent's tracking of lawsuits judgments and settlements against its employees.

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]).

As a preliminary matter, the Court must consider the respondent’s only cited basis for denying petitioner’s FOIL request—the privacy exemption. When considering the privacy exemption, a Court must evaluate “whether any invasion of privacy here is ‘unwarranted’ by balancing the privacy interests at stake against the public interest in disclosure of the information” (*Matter of The New York Times Co. v City of New York Fire Dept.*, 4 NY3d 477, 485, 796 NYS2d 302 [2005]).

Here, the Court finds that the public interest clearly outweighs the privacy interests at stake. As petitioner points out, there is a well-documented public history of complaints and lawsuits against Dr. Ramos. There is little chance that the disclosure of unsubstantiated complaints will irrevocably damage his reputation to the extent that these other public records have not already done so. And, of course, unsubstantiated complaints are just that—unsubstantiated. They mean that there was a finding by the entity tasked with making such a determination that, for whatever reason, the events complained about either did not occur or that there was a lack of evidence for them.

Most critically, the Court observes that disclosure is warranted in this balancing analysis because Dr. Ramos died more than three years ago. Certainly, that does not mean his privacy

interests have completely evaporated, but they are certainly diminished (*Matter of Harbatkin v New York City Dept. of Records and Info. Services*, 19 NY3d 373, 380, 948 NYS2d 220 [2012] [noting that privacy interests fade over time]). Put another way, privacy concerns about the disclosure of unsubstantiated complaints about an actively practicing doctor are quite different from the privacy concerns of a deceased doctor. The privacy interests are significantly greater in the former scenario. And, here, the public's interest in learning about how incarcerated individuals were treated at a public facility on Rikers Island constitutes a strong public interest.

Although the Court finds that the unsubstantiated complaints should be disclosed, the Court also finds that respondents should redact identifying information for the complainants and any witnesses mentioned in these records. "Documents concerning unsubstantiated complaints or allegations should be disclosed to the extent that they can be redacted to prevent an unwarranted invasion of personal privacy, including the removal of identifying details" (*New York Civ. Liberties Union v New York City Dept. of Correction*, 213 AD3d 530, 531, 183 NYS3d 411 [1st Dept 2023], *lv to appeal denied*, 40 NY3d 909 [2024]).

The Court observes that Public Officers Law § 89(2)(b)(ii) states that personal privacy includes "disclosure of items involving the medical or personal records of a client or patient in a medical facility." This means that these records must also be redacted to the extent that they might include medical records of patients at a facility run by respondent. The Court cannot order the unredacted release of this type of information without any indication that these individuals, some of whom might have been patients, consent to the public disclosure of this information.

Other Issues

The Court denies petitioner's multiple requests for a "diligent search hearing." The first basis for such a hearing is that petitioner simply does not believe that there are no substantiated

complaints against Dr. Ramos and questions respondent's assertion that Dr. Ramos was not fired. But, in this Court's view, petitioner's request for a hearing on these issues is tantamount to a trial in a plenary action. FOIL is not intended to resolve disputed factual issues, such as whether or not Dr. Ramos was fired. That is the province of a traditional plenary action where routine discovery devices, such as depositions, can be utilized.

Similarly, the alternative basis for the hearing—that petitioner finds it not credible that respondent claims to not track lawsuits, judgments, and settlements against its employees—is not a reason to hold a hearing. Again, FOIL is a statutory scheme designed to ensure that requested records are turned over as long as they are not subject to exemptions. It is not intended to explore respondent's policy choices, however bizarre or questionable they may be.

Here, respondent insists that the only records it located were the unsubstantiated complaints. That satisfies its burden under FOIL to perform a diligent search (*Rattley v New York City Police Dept.*, 96 NY2d 873, 875, 730 NYS2d 768 [2001]). That petitioner disagrees with that assertion is not a basis to hold a hearing.

However, the Court grants petitioner's request for legal fees. "Since petitioner has substantially prevailed and respondent[] had no reasonable basis for denying access," it is entitled to reasonable legal fees (*NYP Holdings, Inc. v New York City Police Dept.*, 220 AD3d 487, 489, 220 AD3d 487 [1st Dept 2023]). Petitioner shall therefore file a motion for reasonable legal fees on or before March 28, 2024.

Accordingly, it is hereby

ADJUDGED that the petition is granted to the extent that respondent must turn over copies of the unsubstantiated complaints it identified in its denial of petitioner's FOIL request

that include appropriate redactions for the identifying information of complainants and witnesses; and it is further

ORDERED that petitioner is entitled to reasonable legal fees and shall make a motion for such fees on or before March 28, 2024; and it is further

ORDERED that petitioner is entitled to recover costs and disbursements upon presentation of proper papers (i.e., a bill of costs) to the County Clerk.

3/6/2024
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