

Burrell v State of New York

2024 NY Slip Op 34589(U)

April 24, 2024

Court of Claims

Docket Number: Claim No. 138946

Judge: Frank P. Milano

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FILED
05/10/2024
NY COURT OF CLAIMS
ALBANY, NY

STATE OF NEW YORK COURT OF CLAIMS

RICHARD BURRELL,

Claimant,

DECISION AND ORDER

-v-

THE STATE OF NEW YORK,

Claim No. 138946
Motion No. M-100582

Defendant.

BEFORE: HON. FRANK P. MILANO
Judge of the Court of Claims

APPEARANCES: For Claimant:
COHEN & FITCH, LLP
By: Ilyssa Fuch, Esq.

For Defendant:
HON. LETITIA JAMES
New York State Attorney General
By: Thomas Reilly, Esq.
Assistant Attorney General

Claimant moves for an order pursuant to CPLR 3124 compelling defendant to respond to claimant's demand for personnel and disciplinary records of five (5) correction officers in this claim alleging that defendant negligently failed to protect the incarcerated claimant from attack by a fellow incarcerated person.

The claim alleges, among other things, that on January 2, 2023, at Shawangunk Correctional Facility, the incarcerated claimant was attacked and injured by a fellow incarcerated person due to the negligence of defendant in failing to: Protect claimant, prevent the attack,

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intervene to stop the attack, take adequate safety measures and in failing to have correction officers at assigned posts.

Defendant argues that disclosure of personal confidential information in the personnel/disciplinary records would constitute an unwarranted invasion of privacy pursuant to Public Officers Law § 96 (1) (c) which prohibits disclosure of “information [which] would constitute an unwarranted invasion of personal privacy as defined in paragraph (a) of subdivision two of section eighty-nine of [the Public Officers Law].”

The defendant provided to the Court for *in camera* review, via electronic transmission, unredacted copies of the personnel/disciplinary records, presumptively responsive to the claimant’s demand.

The Court begins by noting the repeal of Civil Rights Law § 50-a and the amendment of Public Officer’s Law §§ 86, 87 and 89 on June 12, 2020. Civil Rights Law § 50-a had previously prohibited the disclosure of police personnel and disciplinary records in litigation or pursuant to the New York Freedom of Information Law (FOIL) without the affected officer’s written consent or a court order.

The defined scope of the repeal and the statutory amendments includes the personnel and disciplinary records of correction officers.

Public Officers Law § 86 provides definitions of terms relevant to the amendments and §§ 87 and 89, respectively, define the personnel and disciplinary records subject to FOIL disclosure and set forth parameters of both mandatory and permissive redaction of certain information contained in such personnel and disciplinary records.

Public Officers Law § 87 provides, at relevant part:

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“4-a. A law enforcement agency responding to a request for law enforcement disciplinary records as defined in section eighty-six of this article shall redact any portion of such record containing the information specified in subdivision two-b of section eighty-nine of this article prior to disclosing such record under this article.

4-b. A law enforcement agency responding to a request for law enforcement disciplinary records, as defined in section eighty-six of this article, may redact any portion of such record containing the information specified in subdivision two-c of section eighty-nine of this article prior to disclosing such record under this article.” (NY Pub Off Law § 87).

Public Officers Law § 89 provides, at relevant part:

“2. (a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

2-b. For records that constitute law enforcement disciplinary records as defined in subdivision six of section eighty-six of this article, a law enforcement agency shall redact the following information from such records prior to disclosing such records under this article:

(a) items involving the medical history of a person employed by a law enforcement agency as defined in section eighty-six of this article as a police officer, peace officer, or firefighter or firefighter/paramedic, not including records obtained during the course of an agency's investigation of such person's misconduct that are relevant to the disposition of such investigation;

(b) the home addresses, personal telephone numbers, personal cell phone numbers, personal e-mail addresses of a person employed by a law enforcement agency as defined in section eighty-six of this article as a police officer, peace officer, or firefighter or firefighter/paramedic, or a family member of such a person, a complainant or any other person named in a law enforcement disciplinary record, except where required pursuant to article fourteen of the civil service law, or in accordance with subdivision four of section two hundred eight of the civil service law, or as otherwise required by law. This paragraph shall not prohibit other provisions of law regarding work-related, publicly available information such as title, salary, and dates of employment;

(c) any social security numbers; or

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(d) disclosure of the use of an employee assistance program, mental health service, or substance abuse assistance service by a person employed by a law enforcement agency as defined in section eighty-six of this article as a police officer, peace officer, or firefighter or firefighter/paramedic, unless such use is mandated by a law enforcement disciplinary proceeding that may otherwise be disclosed pursuant to this article.

2-c. For records that constitute ‘law enforcement disciplinary records’ as defined in subdivision six of section eighty-six of this article, a law enforcement agency may redact records pertaining to technical infractions as defined in subdivision nine of section eighty-six of this article prior to disclosing such records under this article.” (NY Pub Off Law § 89).

Here, of course, the Court is not considering a FOIL request, but is, rather, exercising its judicial role in supervising the scope of disclosure which requires, pursuant to CPLR 3101 (a),:

“(F)ull disclosure of all matter material and necessary in the prosecution or defense of an action.”

Unlike a FOIL request, a “party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is ‘material and necessary’—i.e., relevant” Forman v Henkin, 30 NY3d 656, 661 [2018]; Catlyn & Derzee, Inc. v Amedore Land Developers, LLC (166 AD3d 1137, 1141 [3d Dept 2018]).

In that regard, the Court’s inquiry is guided by the maxim that it has “broad discretion in managing disclosure, and absent an abuse of discretion or unreasonable interference with the disclosure of relevant and necessary material,” that discretion will not be disturbed (Czarnecki v Welch, 23 AD3d 914, 915 [3d Dept 2005]).

It is equally clear that “[w]hile disclosure provisions are to be liberally construed, the trial court is vested with broad discretion to supervise discovery and determine what is ‘material and necessary’ under CPLR 3101 (a)” (Mora v RGB, Inc., 17 AD3d 849, 851 [3d Dept 2005]). The

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standard of materiality is “one of usefulness and reason,” with the goal of “sharpening the issues and reducing delay and prolixity” (Allen v Crowell-Collier Publ. Co., 21 NY2d 403, 406 [1968]).

The Court further recognizes that security within a correctional facility is a proper basis for denial of access to sensitive or confidential facility records (Lowrance v State of New York, 185 AD2d 268, 269 [2d Dept 1992]).

With those principles in mind, the Court has carefully reviewed, *in camera*, the submitted records and considered, in the context of the claim’s allegations, the repeal of Civil Rights Law § 50-a, the amendment of Public Officers Law §§ 86, 87 and 89 and the Court’s role in supervising disclosure, including whether the defendant’s need to protect its methods and manner of insuring the privacy, safety and security of inmates, correction officers and the public outweighs the claimant’s right to disclosure of information potentially relevant and material to the claim.

Recognizing the distinction between policies encouraging broad disclosure and the task of assessing admissibility of evidence at trial, the Court finds that the submitted records contain information potentially relevant to the issues raised in the claim and are to be disclosed as follows: 1) The entire personnel file of Correction Officer K. Hindley with all appropriate personal privacy redactions including, but not limited to, telephone numbers, addresses, social security information, contact information, motor vehicle information, medical treatment information, birth date, and any other categories of information set forth in Public Officers Law Section 89(2-b); 2) October 18, 2019 letter from the Office of the Attorney General advising Sergeant Michael Colon that the Attorney General would be representing Sergeant Colon in a US District Court (Northern District of New York) action numbered 19-CV-0722.

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Claimant is instructed and ordered that any unredacted material disclosed after the Court's *in camera* review is to be used solely for the purpose of this claim to the extent necessary for the litigation of the claim and shall be disclosed only to counsel, personnel employed to assist counsel, claimant, experts, court personnel, court reporters and/or monitors.

Claimant's motion for an order compelling defendant to produce the demanded personnel/disciplinary records is granted to the extent set forth above and is otherwise denied.

Albany, New York
April 24, 2024



FRANK P. MILANO
Judge of the Court of Claims

Papers Considered:

1. Claimant's Notice of Motion, filed March 4, 2024;
2. Affirmation of Ilyssa S. Fuchs, dated March 4, 2024, and attached exhibits;
3. Affirmation of Thomas Reilly, dated April 4, 2024;
4. Defendant's letter of March 11, 2024 enclosing unredacted records responsive to claimant's demands, submitted for *in camera* review.