

**Carr v New York City Police Dept.**

2025 NY Slip Op 30828(U)

March 14, 2025

Supreme Court, New York County

Docket Number: Index No. 158461/2021

Judge: Jeffrey H. Pearlman

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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. JEFFREY H. PEARLMAN PART 44M

Justice

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GWEN CARR, COMMUNITIES UNITED FOR POLICE REFORM, JUSTICE COMMITTEE

Petitioner,

INDEX NO. 158461/2021

MOTION DATE 09/09/2024

MOTION SEQ. NO. 003

- v -

THE NEW YORK CITY POLICE DEPARTMENT,

Respondent.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118

were read on this motion to/for REARGUMENT/RECONSIDERATION.

In this case, Petitioners Gwen Carr et. al. ("Petitioners") seek reargument and renewal of the Court's November 17, 2023 Interim Decision and Order on Motions 001 and 002 ("The Interim Order"), regarding records, including documents, data, and other information related to the 2014 death of Eric Garner requested from Respondent New York City Police Department ("NYPD," "Respondent"). While Petitioners literally combine their motion for reargument and renewal by using a hashmark (/) between the words, under CPLR §2221(f) "[a] combined motion for leave to reargue and leave to renew shall identify separately and support separately each item of relief sought." Pursuant to CPLR § 2221(d)(2), a motion for reargument must be "based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." While CPLR § 2221(d)(3) provides that a motion for reargument "shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry," the

First Department has deferred to judicial discretion in allowing motions after the thirty day period has passed. *See QBE Ins. Corp. v. Hudson Specialty Inc. Co.*, 82 A.D.3d 595 (1st Dep’t 2011); *Trinidad v. Lantigua*, 2 A.D.3d 163 (1st Dep’t 2003). Under CPLR § 2221(e), an argument for renewal requires “new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination” and a “[r]easonable justification for the failure to present such facts on the prior motion.”

Petitioners’ motion for renewal is improper and consequently, dismissed. The threshold is set out under CPLR § 2221(e) is not met. There was no failure to present facts that must now be presented; instead, Petitioners argue that previously available information should be presented in a new hearing. This is not the intent of the provisions in the CPLR. The Court declines to rule on Petitioners’ further assertion that the court has discretion to hear information that was available but not presented “at the time of the original motion, provided the movant offers a reasonable excuse for the failure to submit additional facts on the original motion.”

Petitioners’ motion for reargument is granted, as the order rendered on November 17, 2023 overlooked or misapprehended key aspects of New York’s Freedom of Information Law (“FOIL”).

While FOIL § 87(2) allows agencies to claim exemptions from disclosure for certain records contained within FOIL requests, the Interim Order grants impermissibly broad exemptions. Petitioner’s exhibits demonstrate that among what information was turned over, redactions are so numerous as to render documents unreadable. Exhibit 8 to the Wang Affirmation, for instance, has dozens of pages entirely redacted and almost no pages with meaningfully legible information, nor is there any justification for such extensive redactions.

That wanton method of redacting information is replicated across each exhibit provided to the Court. Redaction and withholding can, of course, be appropriate, even at high rates. However, Respondent did not take the procedural steps required by FOIL, instead treating redactions as compulsory.

As articulated in *Matter of New York Civ. Liberties Union v. City of Rochester*, “[FOIL] § 87(2) requires an agency to evaluate each record individually and determine whether ‘a particularized and specific justification’ exists for denying access on the ground that disclosing all or part of the record would constitute an unwarranted invasion of privacy.” 2025 NY Slip Op 01010, 3. On the contrary, the Interim Order allowed Respondent to withhold records in their entirety, leaving out potentially relevant and non-exempt information without any such justification. Documents were rendered exempt from disclosure in the name of privacy protections, but there is no evidence that indicates that, for example, identifying information could be redacted from witness statements while the statements themselves remained unredacted. Moreover, “blanket exemptions for particular types of documents are inimical to FOIL’s policy of open government.” *Matter of Gould v New York City Police Dept.*, 89 NY2d 267, 274 (1996) (establishing that “[a]ll government records are thus presumptively open for public inspection and copying unless they fall within one of the enumerated exemptions” and that “to invoke one of the exemptions of section 87(2), the agency must articulate ‘particularized and specific justification’ for not disclosing requested documents.”); see also, *Matter of Sanders v. Bratton*, 278 AD 2d 10, (App Div., 1st Dept., 2000) (“Not all police records produced during a criminal investigation are exempt from disclosure under FOIL—a police report may be withheld or redacted in part, if such information was compiled for law enforcement purposes and, if

disclosed, would, inter alia, identify confidential sources or disclose confidential information relevant to law enforcement investigations.”) (Emphasis added).

Not only was it incorrect for the NYPD to withhold entire records, to claim that the exemptions should apply to groups of documents instead of the portions of the record that may be exempt along with an explanation why each specific exemption or exemptions applied to each individual documents was a clear violation of established law. *Matter of New York Civ. Liberties Union*, 2025 NY Slip Op 01010, 3; see also *NYCLU v. NYPD* 32 NY 3d 556 (2018) ([T]he "decisive factor" in determining whether a personnel record is exempted from FOIL disclosure under Civil Rights Law § 50-a is "the potential use of the information," rather than "the specific purpose of the particular individual requesting access," or "whether the request was actually made in contemplation of litigation”).

Because the testimony provided by the Petitioner listed records that had been completely denied from disclosure in its entirety, rather than only the portions that fall squarely within an enumerated exception being redacted, the records should be reviewed again. In lieu of an in-camera review conducted by the Court, the proper solution in the instant case is for the NYPD to conduct a new review of the previously denied documents, returning them in compliance with FOIL, as clarified by *Matter of New York Civ. Liberties Union v. City of Rochester*.<sup>1</sup> The NYPD must “evaluate each record individually and determine whether ‘a particularized and specific justification’ exists for denying access on the ground that disclosing all or part of the record would constitute an unwarranted invasion of privacy.” *Matter of N.Y.C.L.U.* 2025 NY Slip Op 01010, 3. For documents that reach that threshold, the NYPD

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<sup>1</sup> The Court’s ability to send the documents back to the NYPD for review is also confirmed by *Matter of New York Civ. Liberties Union v. City of Rochester*, which found it proper to “[direct] respondents to [undertake the redaction] process, subject to further judicial review.” 2025 NY Slip Op 01010, 6.

retains the ability to claim an exemption. However, “[w]here redactions would prevent such an invasion and can be made without unreasonable difficulty, the agency must disclose the record with those necessary redactions.” *Matter of N.Y.C.L.U.*, 2025 NY Slip Op 01010, 6. Simply invading privacy is not enough for withholding documents or information; the NYPD must release documents with only private information redacted where possible. This standard shall apply to all exemptions that the NYPD seeks to invoke when withholding or redacting, not merely those having to do with privacy.

Therefore, upon the foregoing documents and prior proceedings in this matter it is:

ADJUDGED that the application of Petitioner to reargue Motions 001 and 002 is granted.

ADJUDGED that in lieu of oral arguments, the NYPD shall conduct a new review process, subject to judicial review, pursuant to the above decision, to be completed by June 15.

3/14/2025  
DATE

**HON. JEFFREY H. PEARLMAN**  
J.S.C.

*(Handwritten signature of Jeffrey H. Pearlman)*  
JEFFREY H. PEARLMAN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE