

John Doe 19574 v Archdiocese of N.Y.

2025 NY Slip Op 32243(U)

May 19, 2025

Supreme Court, New York County

Docket Number: Index No. 951375/2021

Judge: Alexander M. Tisch

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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. Alexander M. Tisch **PART** **18**

Justice

-----X **INDEX NO.** 951375/2021

John Doe 19574,

Plaintiff,

- v -

DECISION + ORDER

ARCHDIOCESE OF NEW YORK et al

Defendants.

-----X

-----X **INDEX NO.** 950236/2020

JOHN MCQUADE,

Plaintiff,

- v -

DECISION + ORDER

ARCHDIOCESE OF NEW YORK and ARCHBISHOP
STEPINAC HIGH SCHOOL

Defendants.

-----X

-----X **INDEX NO.** 950368/2021

ARK405 Doe,

Plaintiff,

- v -

DECISION + ORDER

ARCHDIOCESE OF NEW YORK et al

Defendants.

-----X

-----X

INDEX NO. 950343/2020

ARK291 Doe,

Plaintiff,

- v -

DECISION + ORDER

ARCHDIOCESE OF NEW YORK et al

Defendants.

-----X

-----X

INDEX NO. 950181/2020

ARK210 Doe,

Plaintiff,

- v -

DECISION + ORDER

ARCHDIOCESE OF NEW YORK et al

Defendants.

-----X

-----X

INDEX NO. 950075/2020

S.F.,

Plaintiff,

- v -

DECISION + ORDER

ARCHDIOCESE OF NEW YORK et al

Defendants.

-----X

-----X

INDEX NO. 950152/2019

K.H.,

Plaintiff,

- v -

DECISION + ORDER

ARCHDIOCESE OF NEW YORK et al

Defendants.

-----X

-----X

INDEX NO. 950709/2021

ARK526 Doe,

Plaintiff,

- v -

DECISION + ORDER

ARCHDIOCESE OF NEW YORK et al

Defendants.

-----X

On November 12, 2024, the Honorable Sabrina Kraus signed a compliance conference stipulation and order which stated the Court would conduct an *in-camera* review of Father Malone’s file (NY St Cts Elec Filing [NYSCEF] Doc No. 25, in *ARK526 v. Archdiocese of New York et al.*, Sup Ct, New York County, Index No. 950709/2021, Compliance Conference Order; see also NY St Cts Elec Filing [NYSCEF] Doc No. 27, in *John McQuade v. Archdiocese of New York et al.*, Sup Ct, New York County, Index No. 950236/2020 Status Conference Order). This Court conducted an *in-camera* inspection of The Archdiocese of New York’s (Archdiocese) file for Fr. Donald Malone, labeled by defendant as Exhibit E, Exhibit F, and Feb. 2025 production which were redacted or withheld based primarily upon First Amendment, attorney-client privilege, attorney work product, and relevancy as outlined in the corresponding privilege logs. The

Archdiocese also redacted the names of all alleged victims of Fr. Malone. According to counsel for the Archdiocese, the remaining exhibits were also redacted as to victims' names only and were not provide to the Court.

As discussed in *Melfe v. Roman Catholic Diocese of Albany*:

“CPLR 3101 mandates full disclosure of all matter material and necessary in the prosecution or defense of an action. The words, ‘material and necessary’, are to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial. The party seeking the discovery bears the burden of proving that the discovery request is reasonably calculated to yield material and necessary information. Supreme Court is vested with broad discretion in controlling discovery and disclosure, and generally its determinations will not be disturbed in the absence of a clear abuse of discretion.

The party opposing the discovery request bears the burden of showing the requested items are exempt or immune from disclosure, and the opposing party cannot satisfy this burden “with wholly conclusory allegations”

(196 AD3d 811 [3d Dept. 2021] [internal citations and quotations omitted]).

The Archdiocese argues that the names of other alleged victims of Fr. Malone should be redacted because of victim confidentiality. Courts have repeatedly held that in Child Victim Act (CVA) cases no privilege exists for “names and contact information of other alleged victims. . . [which] is plainly discoverable by plaintiff as they are potential fact and notice witnesses” (*E.T. v Diocese of Brooklyn*, 2023 N.Y. Misc. LEXIS 7707, at *7 [Sup Ct, Queens County Feb. 14, 2023, No. 400044/2020]; *see also Harmon v Diocese of Albany*, 204 AD3d 1270, 1272 [3d Dept 2022]; list of alleged victims by same alleged abuser is discoverable). Outside the CVA context, Courts have also ordered disclosure of victims' names (*see Newman v Mount Sinai Med. Ctr., Inc.*, 205 AD3d 548, 550 [1st Dept 2022]).

For similar reasons, the Archdiocese seeks to preclude most documents related to the IRCP, which included a confidentiality clause. In this respect, the IRCP is similar to other settlement confidentiality clauses. Courts have declined to shield settlement materials from discovery. “[C]onfidentiality agreements are not an absolute bar to discovery,” “[t]here is no privilege for documents merely because they are subject to a confidentiality agreement, and confidentiality agreements do not necessarily bar discovery that is otherwise permissible and relevant” (*Matter of NY City Asbestos Litig.*, 37 Misc 3d 1232[A], 1232A, 2012 NY Slip Op 52298[U], *9 [Sup Ct, NY County 2012][internal quotations and citations omitted]). Instead, Courts have ordered disclosure of settlement documents if they are material and relevant despite agreement that the settlement would be confidential (*Masterwear Corp. v Bernard*, 298 AD2d 249, 250 [1st Dept 2002]; aff’d *Masterwear Corp. v Bernard*, 3 AD3d 305, 307-308 [1st Dept 2004]). This reasoning was followed in a recent CVA case where the Court held that despite the confidentiality agreement, IRCP files should be provided to plaintiffs after an in-camera review (NY St Cts Elec Filing [NYSCEF] Doc No. 90, decision, in *J.L. v. The Archdiocese of New York, and Cardinal Hayes High School*, Sup Ct, Bronx County, August 5, 2024, Kraus, J., Index No. 70029/2019E).

The Court notes that a number of pages or portions of pages of Fr. Malone’s personnel file sought to be withheld or redacted on First Amendment, attorney work product, attorney-client privilege, and relevancy grounds should be granted. Those pages contain information primarily about other members of the Archdiocese.

After an *in-camera* inspection of the documents provided by the Archdiocese, this Court determines that victims’ names that relate to Father Malone and all identifying information except social security numbers and bank account numbers should be unredacted. Although the Court finds that IRCP documents should be turned over, the settlement amounts should be redacted. Further,

the Court makes the determination that the following pages should be unredacted (this does not include victims' names as they relate to Father Malone as they were numerous and not all included in the privilege logs but should also be unredacted):

Exhibit E

- 00220-00222 (except votum section on 00222), 00551-00552 (starting with Dear Mr.), 00563-00567, 00569-00570, 00573-00574, 00576-00598, 00600-00603, 00604 (misabeled as 00698 on privilege log), 00607-00608, 00610-00649, 00651-00654, 00656-00674, 00676-00679, 00681-00682, 00684-00685, 00687-00688, 00690-00691, 00693-00696, 00824-00826, 00869-00871, 00877-00879, 00894-00895 (starting with Dear Mr.), 00915-00919, 00921-00926, 00929-00933, 00934-00936, 00935-00936, 00938-00951, 00966-00986, 00987-00990, 01024-01030, 01032-01033, 01035-01056, 01058-01063, 01065-01073, 01075-01076, 01078-01098, 01107-01109, 01142-01153, 01155-01156, 01158-01181, 01182-01198, 01200-01201, 01203-01204, 01206-01234, 01236-01240, 01242-01251, 01253-01281, 01283-01288, 01290-01329, 01331-01334, 01335-01363, 01365-01366, 01368-01371, 01372-01378, 01380-01381, 01382-01392, 01394-01395, 01398-01425, 01427-01452, 01454-01457

Exhibit F

- 000053-000062 (redactions granted except paragraph number 13 and information regarding Fr. Malone on 000060), 000065-000066

Feb 2025 production

- All pages should be turned over, unredacted, except the bracketed first paragraph that appears on pages 16-19 and corresponding attachment line

ORDERED that defendant's redaction requests are granted in part and denied in part to the extent set forth above; and it is further

ORDERED that defendant shall exchange the records detailed in this order within thirty days after service of a copy of the order with notice of entry; and it is further

ORDERED that counsel for plaintiff shall not distribute or disclose the records without Court order.

This constitutes the decision and order of the Court.

5/19/25

DATE



Alexander M. Tisch, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: