

**Abosch v Kings County Dist. Attorney's Off.**

2025 NY Slip Op 35200(U)

September 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 505261/2025

Judge: Francois A. Rivera

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 11th day of September 2025

HONORABLE FRANCOIS A. RIVERA

-----X  
DANNY ABOSCH,

Petitioner,

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

-against-

THE KINGS COUNTY DISTRICT  
ATTORNEY'S OFFICE

Respondent.  
-----X

**DECISION & ORDER**

Index No.: 505261/2025

Oral Argument: 7/31/2025

Ms. Seq. No.: 1 & 2

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of petition filed on February 13, 2025, under motion sequence number one, by Danny Abosch (hereinafter petitioner) for a judgment 1) pursuant to CPLR 7806 directing the Kings County District Attorney's Office (hereinafter respondent or KCDA) to a) comply with its duty under FOIL to conduct a diligent search for all records responsive to petitioner's 10/7/2024 request, the scope of which KCDA may not redefine, b) review each such record, whether or not KCDA anticipates it will be disclosable, c) promptly disclose to petitioner all non-sealed records, without redactions, and the respective exemption showings (as defined in the petition) for all remaining records, d) submit all allegedly-exempt records, and their respective exemption showings, to the Court for an *in camera* review to determine whether each record falls entirely within the scope of the asserted exemption, e) further disclose to petitioner all records the Court finds, upon review, to be nonexempt, f) provide to petitioner, for each portion of the request that KCDA does not possess, or cannot locate after a diligent search, regardless of whether or not such records would be otherwise disclosable if KCDA did possess them, a certification that KCDA does not have possession of such records or that such records cannot be found found after a diligent search, as the case may be; and g) "fully explain" in writing to petitioner the reasons for any further denials, including denials, if any, predicated on KCDA's claimed non-possession of any records relating to Mr. Dementov

which do not also relate to Mr. Reznikov, and 2) awarding reasonable litigation costs as allowed under New York State Public Officers Law § 89 (4) (c). The petition is opposed.

- Notice of petition
- Verified petition
  - Exhibits 1-17
- Memorandum of law in support
- Affirmation in opposition
  - Exhibits A-E
- Memorandum of law in reply

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on May 12, 2025, under motion sequence number two, by petitioner to memorialize the Court's April 17, 2025 oral decision in a written appealable order in accordance with CPLR 2219 (a) and *Charalabidis v Elnagar*, 188 AD3d 44, 52 [2d Dept 2020] and for an order pursuant to CPLR 2221 (a) and CPLR 5019 (a) to modify, correct, or resettle the Court's April 17, 2025 order, under NYCSEF Doc. No. 32 to comply with CPLR 2219 (a) by reciting the papers considered on the motion, to enable Petitioner to establish the record on appeal in compliance with CPLR 5526, or alternatively if any submitted papers were not considered, for an amended or corrected order considering such papers, or for leave to reargue pursuant to CPLR 2221 (d). The motion is opposed.

- Notice of motion
- Affirmation in support
  - Exhibits A
- Affirmation in opposition
  - Exhibits A
- Affirmation in reply

## BACKGROUND

On February 13, 2025, petitioner Danny Abosch commenced the instant CPLR article 78 proceeding against the Kings County District Attorney (hereinafter KCDA) by filing a notice of petition, verified petition, seventeen annexed exhibits labeled 1-17, and a memorandum of law (hereinafter the commencement papers) and a request for judicial intervention with the Kings County Clerk's office (hereinafter KCCO). The verified petition contains 218 numbered paragraphs in support of the relief requested.

On April 7, 2025, respondent KCDA filed an affirmation in opposition, five annexed exhibits labeled A-E.

On April 14, 2025, petitioner filed a memorandum of law in reply.

Abosch's verified petition alleges the following salient facts. On October 7, 2024, petitioner requested pursuant to New York Freedom of Information Law seeking "[a]ll records relating to the death of Rakhmil Dementev in Brooklyn, New York on January 1, 1981, including the investigation thereof and any determinations made about whether or not to bring charges related to this incident." KCDA denied the request, initially on the basis that no records could be identified and subsequently on the basis that the records might be sealed pursuant to CPL 160.50. KCDA violated its legal duties under FOIL by among other things issuing a deficient appeal determination, unilaterally modifying the subject of the request to narrow its scope, refusing to conduct a search, claiming exemptions for records it had not actually reviewed, and adopting erroneous interpretations of law.

Having exhausted administrative remedies, petitioner seeks to review the denial and compel KCDA to produce responsive records, or appropriate certifications as to the disposition of the requested records or KCDA's inability to locate them after a diligent search, along with the required, appropriately particularized, written explanations justifying any records or information redacted or withheld, by a prompt date certain. Petitioner also seeks an award of court fees and other reasonable costs and expenses in consideration of petitioner's pro se representation, and respondent's failure to comply with FOIL, including by denying access without any reasonable basis to do so.

By short form order dated April 17, 2025 and filed April 18, 2025, the Court denied the petitioner's petition under motion sequence number one pursuant to CPLR article 78 as follows. Petitioner is seeking records that are sealed pursuant to CPL 160.50 as attested to by Assistant District Attorney Zachary Sider. The petitioner did not request to unseal the records.

By short form order dated July 31, 2025 and filed August 5, 2025, the Court granted petitioner's motion under motion sequence number two pursuant to CPLR 2221 (a) and CPLR 5019 (a) to modify, correct, or resettle the Court's April 17, 2025 order.

The instant decision and order resettles motion sequence number one.

#### LAW AND APPLICATION

"Under FOIL, government records are 'presumptively open' for public inspection and copying, unless they fall within an enumerated statutory exemption of Public Officers Law § 87(2)" (*Matter of Villalobos v New York City Fire Dept.*, 130 AD3d 935, 936 [2d Dept 2015], citing *Matter of Gould v New York City Police Dept.*, 89 NY2d 267, 274 [2005]). "The exemptions are to be 'narrowly construed' so as to ensure maximum public access" (*Matter of Villalobos v New York City Fire Dept.*, 130 AD3d 935, 936 [2d Dept 2015], citing *Matter of Gould v New York City Police Dept.*, 89 NY2d 267, 275 [2005]). The "burden rests on the agency to demonstrate that the requested material in fact qualifies for exemption" (*Matter of Villalobos v New York City Fire Dept.*, 130 AD3d 935, 936 [2d Dept 2015]). "To meet that burden, the agency must 'articulate particularized and specific justification' for the nondisclosure at issue" (*id.*, citing *Matter of Fink v Lefkowitz*, 47 NY2d 567, 571 [1979]). "Conclusory assertions that certain

records fall within a statutory exemption are not sufficient; evidentiary support is needed” (*Matter of Berger*, 137 AD3d at 906 [internal quotation marks omitted]).

Public Officers Law § 87 (2) (a) provides that an agency may deny access to records that “are specifically exempted from disclosure by state or federal statute.” Criminal Procedure Law § 160.50 (c) specifies that, where a criminal action or proceeding terminates in favor of the accused, “all official records and papers . . . relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be sealed[.]” (CPL § 160.50 [1] [c]). Such records “shall be sealed and not made available to any person or public or private agency” (*id.*). However, such records “shall be made available to the person accused or to such person's designated agent” and to six (6) specifically enumerated categories of public officials or entities, none of which are applicable here (*see* CPL § 160.50 [1] [d]).

“Specifically, CPL section 160.50 was enacted to ensure protection for exonerated individuals that is consistent with the presumption of innocence, which simply means that no individual should suffer adverse consequences merely on the basis of an accusation, unless the charges were ultimately sustained in a court of law” (*Lino v City of New York*, 101 AD3d 552, 556 [1st Dept 2012] [internal quotation marks and citations omitted], citing *Matter of Joseph M. [New York City Bd. of Educ.]*, 82 NY2d 128, 131-32 [1993]). “The language employed in CPL sections 160.50 and 160.55 requires that records must be sealed upon termination of a criminal action” (*Lino v City of New York*, 101 AD3d

552, 557 [1st Dept 2012]. This is a mandatory sealing requirement (*see id.*). “If there is to be an exception to the general rule proscribing the release of sealed records – upon a showing of extraordinary circumstances [ ] – it should be created by the Legislature, not by the courts” (*Matter of Joseph M. [New York City Bd. of Educ.]*, 82 NY2d 128, 134 [1993] [internal citations and quotation marks omitted]).

Here, it is undisputed that records requested to a person who has been acquitted.

The exceptions under CPL 160.50 for access by former defendant, prosecutor, law enforcement, named parties, do not apply.

At oral argument on April 17, 2025, the KCDA confirmed that the certificate of disposition was sealed pursuant to CPL 160.50. Furthermore, petitioner has not made or been granted a motion to unseal those records. On this basis the petition is denied and dismissed.

Consequently, the branch of the petition seeking an award of reasonable litigation costs as allowed under New York State Public Officers Law § 89 (4) (c) is also denied.

## CONCLUSION

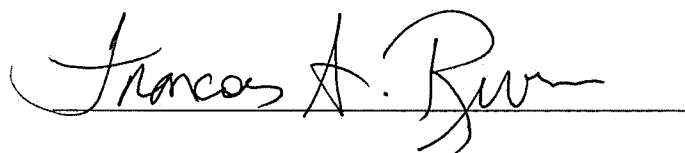
The branch of the petition by Danny Abosch for a judgment 1) pursuant to CPLR 7806 directing the Kings County District Attorney’s Office (hereinafter respondent or KCDA) to a) comply with its duty under FOIL to conduct a diligent search for all records responsive to petitioner’s 10/7/2024 request, the scope of which KCDA may not redefine, b) review each such record, whether or not KCDA anticipates it will be disclosable, c)

promptly disclose to petitioner all non-sealed records, without redactions, and the respective exemption showings (as defined in the petition) for all remaining records, d) submit all allegedly-exempt records, and their respective exemption showings, to the Court for an *in camera* review to determine whether each record falls entirely within the scope of the asserted exemption, e) further disclose to petitioner all records the Court finds, upon review, to be nonexempt, f) provide to petitioner, for each portion of the request that KCDA does not possess, or cannot locate after a diligent search, regardless of whether or not such records would be otherwise disclosable if KCDA did possess them, a certification that KCDA does not have possession of such records or that such records cannot be found after a diligent search, as the case may be; and g) “fully explain” in writing to petitioner the reasons for any further denials, including denials, if any, predicated on KCDA’s claimed non-possession of any records relating to Mr. Dementov which do not also relate to Mr. Reznikov is denied.

The branch of the petition seeking an award of reasonable litigation costs as allowed under New York State Public Officers Law § 89 (4) (c) is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA