

Zuppa v New York City Police Dept.

2026 NY Slip Op 31428(U)

April 6, 2026

Supreme Court, New York County

Docket Number: Index No. 152961/2025

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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RAYMOND J ZUPPA,

Petitioner,

- v -

NEW YORK CITY POLICE DEPARTMENT, JESSICA TISCH

Respondent.

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INDEX NO. 152961/2025

MOTION DATE 03/05/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Petitioner filed this Article 78 petition after filing a Freedom of Information Law (FOIL) request with the New York Police Department ("NYPD"). Petitioner requested public records related to NYPD's investigation of Natasha Jugo, who went missing on or about March 16-18, 2013. Petitioner states that Respondents provided him with incomplete documents containing redactions of "factual details which should not have been redacted" (Petition, NYSCEF Doc. No 1 at 7). Specifically, Petitioner asserts a cause of action that his FOIL request was "constructively denied" by being late, that there was no justification for such constructive denial, and that Respondents production of documents after filing this petition was improper. Petitioner further argues that of the documents that Respondents produced, the redacted portions of the documents were improperly redacted. Petitioner also requests attorneys' fees and costs.

Respondents cross-move to deny Petitioner's petition and dismiss the proceeding.

Respondents state that the petition is moot, as Petitioner has been provided with the materials sought in the FOIL request, and that the information redacted is exempt from public disclosure pursuant to Public Officer Law ("POL") §§ 87(2)(b), 89(2)(b), and 87(2)(e)(iv). Respondents argue that the relevant portions were redacted to protect the privacy of the victim's family members, witnesses, and third parties; and to prevent non-routine criminal investigative techniques and procedures from being revealed. Respondents also state that Petitioners' request for attorneys' fees and costs is premature. For the reasons outlined below, the Court is granting Respondents' cross-motion to deny the petition and dismiss the petition.

Judicial review of an administrative determination is limited to whether the determination was made "in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion..." CPLR § 7803(3). In *Matter of Pell v Board of Educ.* (34 NY2d 222, 231 [1974]), the Court of Appeals held that an action is "arbitrary and capricious" when it is "...without sound basis in reason and is generally taken without regard to the facts." If the Court finds that the determination is supported by a rational basis, it must sustain the determination (*id.*) Further, CPLR § 7803 allows judicial review only to "the final determination or order of the state review officer."

i. Constructive Denial of Petitioner's FOIL request

Regarding the alleged constructive denial of Petitioner's FOIL request, Petitioner argues that he did not receive any documents responsive to his FOIL request for more than seven months. Petitioner states that the lateness of said documents constitutes a constructive denial of his FOIL request, where the remedy is Respondents' production of all documents in unredacted form. However, Petitioner fails to cite caselaw in support of this remedy (*Matter of Kohler-Hausmann*

v New York City Police Dept, 133 AD3d 437 [1st Dept 2015] [lateness in FOIL requests rendered the merits of the petition moot, but petitioner’s claim for attorney’s fees and other litigation costs was not moot]; *Matter of New York Times Co v City of NY Police Dept*, 103 AD3d 405, 406 [1st Dpet 2013] [“The FOIL requester’s statutory remedy for an untimely response or ruling is to deem the response a denial and commence a CPLR article 78 proceeding ‘for review of such denial’ ... Review of a FOIL determination does not provide for mandamus relief”] [internal citations omitted]). Petitioner argues that the NYPD fails to articulate a particularized and specific justification for its constructive denial of records. Petitioner states that no reason was provided for the constructive denial; just that Respondents failed to meet FOIL response deadlines.

While an agency’s untimely response to a FOIL request constitutes a constructive denial, the proper remedy is not the production of unredacted documents (*Matter of New York Times Co*, 103 AD3d at 406). The proper remedy would be attorneys’ fees and other litigation costs (*Matter of Kohler-Hausmann*, 133 AD3d at 437), which the Court addresses below (*see infra*, Section iii).

However, the Court does not find constructive denial at present. Under POL § 89(3)(a), an agency may “furnish a written acknowledgement of the receipt of [a FOIL] request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied.”

Respondents extended their deadline for providing the records and kept Petitioner fully apprised of the timeline and reasons for the delay (Respondents’ Affirmation, NYSCEF Doc. No. 24 at 5-6). Petitioner was given an original approximate response date of July 3, 2024. On July 9, 2024, the approximate response date was extended to September 27, 2024, because “[t]he search

for responsive records is still in progress” (Respondents’ Exhibit C, NYSCEF Doc. No. 27). This is different from the “constructive denial” cases cited by Petitioner in his papers, wherein NYPD failed to respond for “months after [a] deadline” (*Matter of Kohler-Hausmann*, 113 AD3d at 437). The Court therefore finds that there was no constructive denial of Petition’s FOIL request, as the deadline was extended for a reason grounded in a rational basis.

ii. Redaction of FOIL-requested documents

Petitioner states that his FOIL request yielded redacted documents. Among the redactions include dates of birth, social security numbers, vehicle registration information, etc., that Petitioner “do[es] not want” (Petition, at 5). Instead, Petitioner states that he is seeking: “the blacked out information at the bottom of Page 22 above ‘U61 Audit;’ [all of] Page 23... [and] P[age] 43 in the ‘summary of investigation’ [section] – the name of a member of the NCPD with knowledge is redacted” (*id.* at 5-6). Respondents state that they redacted the documents requested by Petitioner based on POL § 87(2)(b), which allows for withholding information responsive to a FOIL request if such information “would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of § 89;” and POL § 87(2)(e)(iv), which would “reveal criminal investigative techniques or procedures, except routine techniques and procedures.” Each is discussed in turn, below.

a. POL § 87(2)(b)

Respondents state that the redacted information includes: the address, date of birth, telephone number, license plate number, credit card number, and vehicle registration information of the victim; the names, addresses, and telephone numbers of the victim’s family members and other non-testifying witnesses; and unlisted phone numbers of investigators and detectives (Respondents’ Cross-Motion, NYSCEF Doc. No. 36 at 7). Respondents note the disclosure of

such information may have a chilling effect on the cooperation of future witnesses for fear of having their private information disclosed in a FOIL request (*id.*, at 6). Petitioner seems to agree that this information is covered by POL § 87(2)(b), but reiterates that he is not seeking such information (Petitioner's Reply, NYSCEF Doc. No. 41 at 11). Rather, "Petitioner is seeking the names of witnesses and what they said" (*id.*).

The First Department has held that disclosure of a witness' name may constitute an unwarranted invasion of privacy. In *Exoneration Initiative v. New York City Police Dept*, 114 AD3d 436, 439 (1st Dept 2014), the Court found that the public release of names, addresses, and phone numbers may impact the cooperation of future witnesses, and found that redaction of a name was proper. Here, Respondents argue that the public interest in releasing witness names and statements does not overcome those witness' privacy interests, especially in light of the chilling effect such disclosure may have on future investigations. Instead, Respondents argue that the already-released investigatory case file satisfies the public interest, and that any further information released would be personal to the interests of Petitioner, not the public. The Court agrees, and therefore finds that the redactions of witness names and statements is supported by a rational basis, and is not arbitrary or capricious.

b. POL § 87(2)(e)(iv)

Respondents argue that POL § 87(2)(e)(iv) provides another basis for the subject redactions, as the redactions ensure that non-routine criminal investigative techniques and procedures are not revealed to the public (Opposition at 10). Respondents posit that the redactions were made "to prevent the release of detailed step by step instructions on how any potential homicide investigation should be conducted" (*id.*). Such a redaction was made to avoid a situation where "perpetrators armed with this knowledge would be able to identify evasive

counter-measures they can use to evade detection in a suspected homicide investigation” (*id.*).

Respondents state that the redacted material “does not contain information specific to the investigation of the victim’s disappearance and death” (*id.*).

In response, Petitioner argues that “this matter has been ruled to be non-criminal,” and points to Respondents’ inconsistency that all the records indicate that the matter at issue was not a homicide investigation (Petitioner’s Reply, NYSCEF Doc. No. 41 at 15-16). Since this matter was not a homicide investigation, Petitioner argues that the report should be released in un-redacted form, as Petitioner, not Respondents, is “the only one who suspects the possibility of foul play” (NYSCEF Doc. No. 21 at 27). Moreover, Petitioner states that he is merely seeking the findings of the investigation, not the steps of the investigation itself.

Respondents stated that redactions were made to prevent the release of step-by-step instructions on a potential homicide investigation, and that disclosure would reveal investigative procedures to allow perpetrators to evade capture in the future. Moreover, Respondents state that the redacted material “does not contain information specific to the investigation of the victim’s disappearance and death” (Opposition at 10). The fact that Respondents ultimately did not find a homicide does not mean that a homicide was not investigated. The above satisfies rational basis review, is not arbitrary or capricious, and cannot be overcome by Petitioner’s assertion that Respondents simply never conducted a homicide investigation.

iii. Attorneys’ Fees and Costs

POL § 89(4)(c)(i) states that a court may assess attorney’s fees “in any case under the provisions of this section in which such person has substantially prevailed, and when the agency failed to respond to a request or appeal within the statutory time.” The award of attorney’s fees is

required if “such person has substantially prevailed and the court finds that the agency had no reasonable basis for denying access” (POL § 89[4][c][ii]).

Petitioner states that he is entitled to attorneys’ fees and costs because Respondents’ post-litigation responses are “alone [] a substantial prevalence” (Petitioner’s reply at 17). The Court declines to award attorneys’ fees and costs. Respondents extended their deadline for providing the records and kept Petitioner fully apprised of the timeline and reasons for the delay (Respondents’ Affirmation, NYSCEF Doc. No. 24 at 5-6; Respondents’ Exhibit C, NYSCEF Doc. No. 27 [“[t]he search for responsive records is still in progress”]). This is different from the “constructive denial” cases cited by Petitioner in his papers, wherein NYPD failed to respond for “months after [a] deadline” (*Matter of Kohler-Hausmann*, 113 AD3d at 437).

In light of the foregoing, the Court declines to award attorneys’ fees and costs to Petitioner because NYPD provided a “reasonable basis” for its late delivery of files, namely, that the search for responsive records was still in progress.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied; and it is further

ORDERED and ADJUDGED that the cross-motion to dismiss the petition by Respondents New York City Police Department and Jessica Tisch is granted and the proceeding is dismissed; and it is further

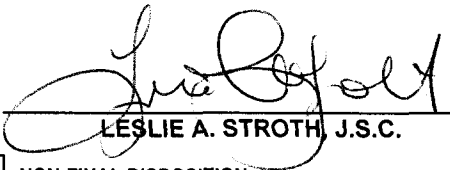
ORDERED that within 30 days of the entry of this order, Respondents shall serve a copy of this order upon all parties, with notice of entry, and shall file such notice via NYSCEF; and it is further

ORDERED that Respondents shall, within ten days of the date of this decision and order, serve a copy, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B)

and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to enter judgment accordingly.

The foregoing constitutes the decision and order of the Court.

4/6/2026
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE