

**Matter of Caldwell v New York City Police  
Department**

2002 NY Slip Op 30079(U)

February 27, 2002

Supreme Court, New York County

Docket Number: 0404902/2001

Judge: Eileen Bransten

Republished from New York State Unified Court  
System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. BRAMSTER

PART 6

Caldwell

Justice

404902/01

INDEX NO.

MOTION DATE

12-11-01

MOTION SEQ. NO.

1

MOTION CAL. NO.

- v -  
NYCPD

The following papers, numbered 1 to 4 were read <sup>article</sup> 78 petition seek to

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Notice of Cross-Motion  
Answering Affidavits — Exhibits

PAPERS NUMBERED

1  
2  
3  
4

to vacate  
FOIL  
determine

Replying Affidavits by [unclear]  
Repy affirmed by cross-movant

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance  
with the accompanying memorandum decision.

This constitutes the decision and order of the  
Court.

SCANNED  
MAR 01 2002

Dated: 2-27-02

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO  
JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
In the Matter of the Application of  
DERRICK CALDWELL,

Petitioner,

Index No. 404902/01  
Motion Date: 12/11/01  
Motion Seq. No.: 001

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

-against-

NEW YORK CITY POLICE DEPARTMENT, et al.,

Respondents.

-----X

PRESENT: EILEEN BRANSTEN, J.

In this Article 78 proceeding, petitioner, a *pro se* inmate, seeks an order reversing and vacating Freedom of Information Law (“FOIL”) determinations by the New York City Police Department (the “Department”). Respondent cross-moves to dismiss the petition.

Background

This proceeding involves two FOIL requests, one made in 2000 and the other the following year in 2001.

The 2000 FOIL Request

The history of Caldwell’s 2000 FOIL request is long and complicated. On March 21, 2000, Caldwell requested documents pertaining to his November 15, 1991 arrest and “all reports relating to Police Officer Mary Flinn.” Petition, at 1. The request “included all reports filed and doctored by her in relation to [the petitioner’s] arrest [and all] medical

reports relating to any substance abuse problem, and or treatment, and all promotional data.”

*Id.* The Department’s Records Access Officer responded that some documents related to petitioner’s arrest had been located and would be produced, that disciplinary records were exempt from disclosure pursuant to Civil Rights Law § 50-a, that the request for all of Officer Flynn’s reports was too broad, and that certain items were only available from the Office of the District Attorney.

Caldwell appealed this determination to the Records Access Appeals Officer. On July 24, 2000, the Appeals Officer informed him that:

“While the letter of the Records Access Officer indicates that some records have been denied, it is unclear to me as to which records, if any, they were. Therefore your appeal is granted to the following extent: I have overturned the Records Access Officer’s denial, and have remanded your file to him for clarification as to which, if any, records have been denied to you. He will forward a response within 30 business days of the date of this letter.”

On September 1, 2000, Caldwell informed the Appeals Officer that he never received a response from the Access Officer and that he deemed his request constructively denied. In October 2000, he commenced an Article 78 proceeding in Supreme Court, Kings County challenging the Department’s determination.

By letter dated May 30, 2001, the court informed Caldwell that his proceeding was marked off the calendar for failure to prove service on the Attorney General. The court

further informed Caldwell that he was not foreclosed from bringing another Article 78 proceeding but that his motion was no longer on the calendar.

On June 14, 2001, Caldwell filed a notice of appeal to the Appellate Division, Second Department. Caldwell stated that the issue before the appellate court was whether his petition should have been dismissed or whether he should have been afforded an opportunity to either prove that he served the Attorney General's Office or mail the Attorney General an additional copy of his petition. On July 20, 2001, the Appellate Division, Second Department's Clerk's Office returned Caldwell's papers to him, explaining that "the May 30, 2001 letter [informing him that his petition was marked off the calendar] does not appear to constitute an appealable judgment or order" and that, in any event, Caldwell had failed to properly file his appeal.

A few days later--on July 26, 2001--Caldwell instituted this Article 78 proceeding, which challenges the same determination that was the subject of his Kings County petition.

#### The 2001 FOIL Request

On January 20, 2001 Caldwell sought access to documents related to various of his arrests in 1983, 1984, and 1988. On November 7, 2001--after commencement of this proceeding--the Department's Records Access Officer provided Caldwell with certain responsive documents and informed him that a "search [was] being conducted for the other documents," which would be forwarded as soon as possible. A week later--on November 14,

2001--the Department informed Caldwell that certain documents would be provided to him. In response to this motion, the Department submitted an attorney's affirmation stating that Caldwell has "been provided with all records responsive [to] his 2001 FOIL Request that could be located pursuant to the NYPD's diligent search."

#### Analysis

The Department argues that the petition should be dismissed in its entirety. As to the 2000 FOIL Request, without addressing the merits of the petition, the Department urges that:

"The pendency of the appeal in the Kings County Proceeding precludes this court from acting on any matter pending therein. Moreover, this court must refrain from considering the subject matter of the Kings County Proceeding also because the 'off calendar' status of the case (as per the prior ruling of the Supreme Court, Kings County) defers any arguments relative to the merits of the Kings County Proceeding until such time as that case may be restored to the calendar, pursuant to the pending appeal or otherwise."

Contrary to the Department's position, however, the evidence establishes that there is no appeal pending in the Appellate Division. Moreover, in marking Caldwell's initial Article 78 proceeding off the calendar, Supreme Court, Kings County explicitly informed him that he was not foreclosed from bringing another Article 78 proceeding. Because the Department's Appeals Officer overturned the Access Officer's denial and remanded to him for clarification of which, if any, records were denied, Caldwell's petition will be granted to the limited extent of ordering the Department to clarify its response to Caldwell's 2000 FOIL request within 60 days.

As to the 2001 FOIL request, by contrast, the petition must be denied. The Department has provided Caldwell with responsive documents and affirmed that he “has been provided with all records responsive to his [request] that could be located pursuant to the [Department’s] diligent search.” Supplemental Affirmation in Support of Cross-Motion to Dismiss, at ¶ 8. Thus, his petition is moot. *Matter of Rattley v. New York City Police Department*, 96 N.Y.2d 873 (2001); *Matter of Tellier v. New York City Police Department*, 267 A.D.2d 9, 10 (1st Dep’t 1999).

Accordingly, it is

ORDERED that the petition is granted to the limited extent of directing the Department, consistent with the determination of its Records Appeals Officer, to provide petitioner with a clarified response to his 2000 FOIL request (processed under file number 00PL100522) within 60 days; it is further

ORDERED that the petition is otherwise denied.

This constitutes the decision and judgment of the Court.

Dated: New York, New York  
February 27, 2002

ENTER

  
Hon. Eileen Bransten