

Matter of Hill v New York City Police Dept.

2012 NY Slip Op 32471(U)

September 20, 2012

Supreme Court, New York County

Docket Number: 401379/12

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____
Justice

PART _____

Index Number : 401379/2012
HILL, WILLIAM
vs.
N.Y.P.D.
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

FILED

SEP 26 2012

NEW YORK
COUNTY CLERK'S OFFICE

RECEIVED

SEP 25 2012

MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

Dated: 9/20/12

PK, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X

In the Matter of the Application of

WILLIAM HILL,

Petitioner,

Index No. 401379/12

For a Judgment Pursuant to Article 78 of the
Civil Practice Laws and Rules and Claims
Under the Executive Law and the
Administrative Code of the City of New York,

FILED

-against-

SEP 26 2012

NEW YORK CITY POLICE DEPARTMENT,

**NEW YORK
COUNTY CLERK'S OFFICE**

Respondent.

-----X

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits and Cross Motion.....	<u>2</u>
Affirmations in Opposition to Cross Motion.....	<u>3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>5</u>

Petitioner William Hill commenced the instant proceeding pursuant to Article 78 of the Civil Practice Law & Rules ("CPLR") challenging respondent New York City Police Department's ("NYPD") denial of petitioner's request for materials under the Freedom of Information Law ("FOIL"). Respondent cross-moves to dismiss the petition. For the reasons set forth below, the petition is denied and respondent's cross-motion to dismiss is granted.

The relevant facts are as follows. Petitioner was arrested on May 12, 2006 and charged

with the May 2, 2006 murder of Jacob Gerstle. On January 21, 2010, petitioner was convicted of murder in the second degree and robbery in the first degree. On March 1, 2010, petitioner was sentenced to imprisonment for 25 years to life and is currently incarcerated. Petitioner filed a Notice of Appeal of his criminal conviction on March 1, 2010. Most recently, on July 24, 2012, the First Department enlarged petitioner's time to perfect his appeal to the January 2013 Term.

In a letter dated November 19, 2011, petitioner filed a FOIL request with respondent requesting access to "all documents, records and other materials generated in connection to calls made to the Crime Stopper's hotline by NYPD Officer Gregory Tuesday ("Officer Tuesday") in connection with the investigation of the murder of Mr. Gerstle on or about May 2, 2006, in the 34th Precinct, New York, New York." By letter dated December 7, 2011, respondent's Records Access Officer ("RAO") acknowledged receipt of petitioner's request and denied access to the requested documents based on Public Officers Law § 87(2)(f) because disclosure of the requested records would endanger the life or safety of witnesses. The letter further informed petitioner of his right to appeal the determination in writing within 30 days of the date of the decision and provided the name and address of the Appeals Officer.

By letter dated December 19, 2011, petitioner appealed the December 7, 2011 denial of access to the requested records. In the letter of appeal, petitioner argued that the request pertained solely to the calls made by Officer Tuesday whose identity as the caller in the subject Crime Stopper's calls is public. Petitioner also noted that Officer Tuesday testified, in open court, about the calls he made to the hotline and specifically that he voluntarily gave up his anonymity as a Crime Stoppers caller. By letter dated March 9, 2012, the RAO denied petitioner's appeal and cited several grounds such as (1) the records, if disclosed, would interfere

with judicial proceedings (POL § 87(2)(e)(i)); (2) the records would constitute an unwarranted invasion of privacy (POL § 87(2)(b) and 89(2)); (3) disclosure would reveal non-routine criminal investigative techniques or procedures (POL § 87(2)(e)(iv)); and (4) disclosure could endanger the life or safety of any person (POL § 87(2)(f)).

FOIL mandates the disclosure of agency records unless they are subject to a specific exemption. See NY Public Officers Law ("POL") §87(2) ("Each agency *shall*... make available for public inspection and copying all records, except...") (emphasis added). FOIL exempts from disclosure documents compiled for law enforcement purposes which, if disclosed, would interfere with a judicial proceeding. See POL § 87(2)(e)(I); see also *Legal Aid Soc. v. New York City Police Dept.*, 274 A.D.2d 207 (1st Dept 2000); see also *Pittari v. Pirro*, 258 A.D.2d 202 (2^d Dept 1999). The First Department has recognized that "a criminal appeal and any subsequent judicial proceedings within the same prosecution" constitute judicial proceedings under FOIL. *Matter of Moreno v. New York County Dist. Attorney's Off.*, 38 A.D.3d 358 (1st Dept 2007). Moreover, a respondent does not have to make a particularized showing as to how the requested documents may interfere with the pending judicial proceeding. A generic determination is sufficient to show that disclosure under FOIL would interfere with pending judicial proceedings, thereby exempting disclosure. See *Pittari*, 258 A.D.2d 202.

In the instant case, respondent properly denied petitioner access to the requested records pursuant to POL § 87(2)(e)(i). As an initial matter, the records sought by petitioner were compiled for law enforcement purposes as they were generated as part of the investigation of the murder of Mr. Gerstle, which petitioner was ultimately convicted of in 2010. Further, petitioner filed a Notice of Appeal of his criminal conviction in March 2010. During the pendency of his

