

<b>Matter of Lynch v City of Troy</b>
2011 NY Slip Op 34299(U)
September 7, 2011
Supreme Court, Rensselaer County
Docket Number: 234897
Judge: Michael C. Lynch
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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF RENSSELAER

In the Matter of the Application of

GRACE LYNCH,

Petitioner,

Received  
County Clerks Office  
Sep 26, 2011 10:18A  
Rensselaer County  
Frank J Merola

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

-against-

THE CITY OF TROY,

Respondent.

(Supreme Court, Rensselaer County  
Index No. 234897  
RJI No. 41-1265-2010)

(Justice Michael C. Lynch, Presiding)

APPEARANCES:

CARUSO, POPE, SMITH, EDELL, PICINI, PC  
Attorneys for Petitioner  
(Timothy R. Smith, Esq., of Counsel)  
60 Route 46 East  
Fairfield, New Jersey 07004

CITY OF TROY  
OFFICE OF THE CORPORATION COUNSEL  
Attorneys for Respondent  
(Jaime B. Thomas, Esq., of Counsel)  
City Hall  
1776 Sixth Avenue  
Troy, New York 12180

LYNCH, J.:

By Decision and Order (Lynch, J.) dated June 21, 2011, the Court directed  
Respondent to submit the records pertaining to the December 16, 2008 death of

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John Frances Curry to the Court for an in camera review. The records were delivered to the Supreme Court Clerk's Office under cover of letter dated July 22, 2011 from respondent's counsel. The Court acknowledges that petitioner's counsel, by letter dated April 7, 2011, has offered to be bound by a confidentiality agreement governing the requested release of the records, and consents to any necessary redactions to prevent disclosure of any confidential source.

Having now reviewed the file, the Court finds that a release of the file to petitioner would not interfere with or compromise respondent's "open" investigation, especially given the confidentiality provisions noted above.

Notably, petitioner has received a copy of the medical examiner's February 13, 2009 "Final Autopsy Report" describing the "manner of death" as a "homicide". In so finding, the medical examiner observed that there was "no evidence of powder tattooing or charring" on the decedent's jacket; and further "no evidence of contact or close range discharge".

Respondent's file documents an active investigation into July, 2009. During July 2009, respondent received the results of a lab analysis concerning gun shot residue (GSR). Information was also provided through the NYS Police concerning the proximity of the fatal gunshot. Thereafter, the file does not document any further activity, with the exception of a few supplemental lab

reports received in late 2010, based on items obtained in December, 2008.

Given the above, respondent has failed to demonstrate with any particularity how the release of this file would interfere with their investigation. While the investigation may be considered “open”, the file does not reveal an active, continuing investigation after July, 2009 (see Matter of Feerick v. Safu, 297 AD2d 212; Brown v. Town of Amherst, 195 AD2d 979).

Accordingly, the petition is granted and respondent is directed to provide the requested records to petitioner within twenty (20) days, subject to an appropriate confidentiality agreement and the redaction of any confidential sources.

Given the above, the Court further finds that respondent did not demonstrate a reasonable basis for the blanket denial of petitioner’s request and that petitioner is entitled to an award of counsel fees (Public Officers Law §89[4]; In the Matter of New York Civil Liberties Union v. City of Saratoga Springs, et al., \_\_\_ AD3d \_\_\_ [7/7/11, 3<sup>rd</sup> Dept.]). Petitioner’s counsel may submit an affirmation of services provided on or before September 30, 2011; any responding papers must be filed on or before October 21, 2011.

Finally, while petitioner’s request for the return of her son’s personal belongings is not directly before the Court, the Court reiterates the suggestion

made at oral argument on March 24, 2011, that respondent renew the discussion with petitioner concerning this request.

This Memorandum constitutes the Decision and Order of the Court. This original Decision and Order is being returned to the attorney for petitioner. The below referenced original papers are being mailed to the Rensselaer County Clerk. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the provision of that rule regarding filing, entry, or notice of entry.

Dated: September 7, 2011  
Albany, New York

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\_\_\_\_\_  
Michael C. Lynch  
Justice of the Supreme Court

Papers Considered:

- (1) Summons dated November 1, 2010; Verified Petition dated November 1, 2010 with Exhibits "A"- "K"; Notice of Petition dated December 8, 2010;
- (2) Verified Answer dated January 6, 2011; Affidavit in Support of Verified Answer sworn January 11, 2011 (Deputy Chief of Police McEvoy);
- (3) Correspondence dated February 16, 2011 with Affidavit in further support sworn February 3, 2011 (Edward Fitzgerald);
- (4) Correspondence dated February 23, 2011 (Jaime B. Thomas, Esq.);
- (5) Correspondence dated March 16, 2011, with Affidavits in further Support sworn March 15, 2011 (Grace Lynch, Peter Lynch, Josephine Grace Curry, and Dr. Karen Webb);