

Matter of Campbell v New York City Police Dept.

2012 NY Slip Op 30145(U)

January 20, 2012

Supreme Court, New York County

Docket Number: 401938/11

Judge: Cynthia S. Kern

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

PRESENT: _____
Justice

PART 52

Rohan Campbell

INDEX NO. 40LA38/11

- v -

MOTION DATE _____

NYCPD

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

Is decided in accordance with the annexed decision.

FILED

JAN 23 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/20/12 _____ *pk* _____
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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 52

FILED

JAN 23 2012

-----X
In the Matter of the Application of
ROHAN CAMPBELL,

NEW YORK
COUNTY CLERK'S OFFICE
Index No. 104522/11

Petitioner,

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

-against-

RECEIVED

JAN 23 2012

NEW YORK CITY POLICE DEPARTMENT,

Respondent.

MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

-----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.....	1
Answering Affidavits and Cross Motion.....	2
Replying Affidavits.....	3
Exhibits.....	4

Petitioner Rohan Campbell brings this petition seeking relief from the New York City Police Department's ("NYPD") denial of petitioner's request for records under the Freedom of Information Law ("FOIL") and seeking to compel production of those records. The NYPD cross-moves to dismiss the petition on the ground that disclosure of the requested documents would interfere with a pending judicial proceeding. For the reasons set forth below, the petition is denied and the NYPD's cross-motion to dismiss is granted.

The relevant facts are as follows. By letter dated December 3, 2010, petitioner requested

access to records pursuant to the New York Public Officers Law §84, also known as FOIL, from the NYPD pertaining to petitioner's arrest on August 10, 2004 for kidnapping and rape, for which he was subsequently convicted. By letter dated April 21, 2011, the NYPD's Records Access Appeals Officer ("RAAO") denied petitioner's access to the requested records stating that they were protected under §50-b of the New York Civil Rights Law which prohibits the disclosure of records that tend to identify the victim of a sex offense. The RAAO informed petitioner of his right to file an administrative appeal within thirty (30) days of the date of the determination.

By letter dated April 29, 2011, petitioner filed an appeal with the NYPD's RAAO. By letter dated June 14, 2011, petitioner's appeal was denied by the RAAO. The letter listed the following reasons for the denial of petitioner's request for records:

The appeal is denied because the sex crime records that you requested tend to identify the victim, and access is barred by statute (Civil Rights Law §50-b), which prohibits the disclosure of records that tend to identify the victim of a sex offense. Therefore, these records are exempt from disclosure under FOIL pursuant to Public Officers Law §87(2)(a). The appeal is also denied because Public Officers Law §87(2)(e)(iv) exempts from disclosure records which would reveal non-routine criminal investigative techniques or procedures. In addition, the appeal is denied pursuant to Public Officers Law §87(2)(b) and 89(2), which exempt from disclosure records whose disclosure would constitute an unwarranted invasion of privacy; Public Officers Law §87(2)(f), which exempts from disclosure records which could endanger the life or safety of any person, and Public Officers Law §87(e)(iii) because disclosure would reveal confidential information.

However, on June 6, 2011, prior to the issuance of the RAAO's final determination of petitioner's FOIL request, petitioner filed a "Petition for Writ of Habeas Corpus by a Person in State Custody" with the United States District Court for the Southern District of New York. On

or about July 19, 2011, petitioner filed the instant petition seeking to compel the production of the requested materials. Based on the existence of the petition for writ of habeas corpus, respondent now takes the position that the requested documents cannot be turned over to petitioner on the ground that it would interfere with a pending judicial proceeding. Respondent is no longer relying on the grounds for denial it stated in its June 14, 2011 letter.

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). While an agency *must* release records to which no exemption applies, it is within the agency’s discretion whether to withhold records to which an exemption applies (“such agency *may* deny access to records or portion thereof that... [exceptions listed]”) (emphasis added). Public Officers Law §87(2). The potentially relevant exception in this case pertains to records “compiled for law enforcement purposes and which, if disclosed, would... interfere with law enforcement investigations or judicial proceedings.” POL §87(2)(e)(i). The First Department has held that “the assertion that disclosure of records to a defendant in a pending criminal prosecution would interfere with that proceeding is a sufficiently particularized justification for the denial of access to those records under Public Officers Law §87(2)(e)(i).” *Legal Aid Society v. New York City Police Dept.*, 274 A.D.2d 207, 214 (1st Dept 2000). Additionally, FOIL’s Interference Exemption protects all types of judicial proceedings from the interference that would result from the premature disclosure of law enforcement records. *See* N.Y. Public Officers law § 87(2)(e)(I). The exemption does not specify a particular type of judicial proceeding or any particular phase within a judicial proceeding. The First Department recognizes an appeal of a criminal conviction as a “judicial

proceeding” under FOIL. *See Sideri v. Office of the District Attorney of New York County*, 243 A.D.2d 423 (1st Dept 1997) (finding that the disclosure of records under FOIL would interfere with the appeal of a criminal conviction).

NYPD’s motion to dismiss the petition is granted because it has sufficiently established that release of the requested records would interfere with pending judicial proceedings. As stated in *Legal Aid Society*, merely asserting that the release of such records would interfere with a judicial proceeding is a sufficient justification for non-disclosure. In the instant action, the documents concerning petitioner were created during the law enforcement investigation of a kidnaping and rape and were clearly compiled for law enforcement purposes pursuant to Public Officers Law §87(2)(e)(I). At the time petitioner filed the instant Article 78 petition, a petition for writ of *habeas corpus* was pending before the United States District Court for the Southern District of New York. Petitioner’s assertion that he requested the records prior to filing his *habeas corpus* proceeding is without merit as the First Department has held that the exemption also applies to future possible proceedings, even those that are not currently pending. *See Moreno v. New York County Dist. Attorney’s Office*, 28 A.D.3d 358 (1st Dept 2007) (stating that it would have affirmed a determination that petitioner was not entitled to certain documents “because disclosure of the sought materials would have interfered with petitioner’s then still pending criminal appeal *and any subsequent proceedings within the same prosecution*”) (emphasis added). Furthermore, petitioner has demonstrated that he intends to use the records sought herein to support his pending criminal matters. To the extent petitioner seeks to obtain disclosure during the pendency of his *habeas corpus* proceeding, that request should be made exclusively through the rules governing appeal proceedings. *See Hodge v. Gretner*, 269 F.3d 104

(U.S. Court of Appeals 2001). Following the First Department's decisions, this court finds that the NYPD has established that the disclosure of the requested records would interfere with petitioner's pending criminal appeal and the NYPD is therefore entitled to withhold those records.

Accordingly, NYPD's cross-motion to dismiss the petition is granted and the petition is denied in its entirety. This constitutes the decision, judgment and order of the court.

Dated: 1/20/12

Enter: PK
J.S.C.

FILED
JAN 23 2012
NEW YORK
COUNTY CLERK'S OFFICE