

**Mian v Special Commr. of Investigation for the N.Y.
City Sch. Dist.**

2022 NY Slip Op 32555(U)

July 28, 2022

Supreme Court, New York County

Docket Number: Index No. 154775/2021

Judge: Frank P. Nervo

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANK NERVO PART 04

Justice

-----X

ALI MIAN

Plaintiff,

- v -

THE SPECIAL COMMISSIONER OF INVESTIGATION FOR
THE NEW YORK CITY SCHOOL DISTRICT,

Defendant.

-----X

INDEX NO. 154775/2021
MOTION DATE 05/17/2021
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

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

In this Article 78 FOIL matter, petitioner seeks reversal of respondent's partial denial of petitioner's FOIL request and attorney's fees related to this special proceeding. Respondent partially opposes the petition, although it has agreed to provide the previously withheld material subject to redactions for witnesses' privacy and safety.

As relevant here, petitioner was a public-school teacher in the Bronx. In 2011, petitioner was alleged to have harassed another teacher, and respondent began an investigation regarding same. Respondent's investigation concluded with a letter, dated March 9, 2011, detailing the sexual-type harassment

uncovered by the investigation, finding the allegations against petitioner substantiated, and recommending his employment be terminated. Thereafter, petitioner filed a request for records pursuant to FOIL, and respondent granted that request to the extent of providing a redacted version of its March 9, 2011, letter (NYSCEF Doc. No. 6), and otherwise denied the request as unreasonably invading personal privacy and endangering the safety of persons involved in the investigation. Petitioner administratively appealed, and respondent affirmed the Records Access Officer's determination. Ten years later, petitioner filed the instant Article 78 petition seeking to reverse respondent's determination.

“FOIL imposes a broad duty on government to make its records available to the public,” and “access to government records does not depend on the purpose for which the records are sought” (*Gould v. New York City Police Dept.*, 89 NY2d 267 [1996]). Stated differently, FOIL requires the disclosure of agency records absent an enumerated exemption (Public Officers Law § 87[2]; *Matter of Fink v. Lefkowitz*, 47 NY2d 567 [1979]; see also *Mulgrew v. Board of Educ. of the City of N.Y.*, 31 Misc.3d 296 [Sup. Ct. 2011; Kern, J.] *aff'd as modified* 87 AD3d 506 [1st Dept 2011] *lv. denied* 18 NY3d 806 [2012]). Where an exemption to disclosure applies, the agency retains discretion to withhold or release such records (*id.*). However, the government bears the burden of proving the record

falls into an enumerated exemption to disclosure. When it has denied a FOIL request, the agency must articulate its “particularized and specific justification” for doing so (*Matter of Fink v. Lefkowitz*, 47 NY2d at 571; see also *Gould v. New York City Police Dept.*, 89 NY2d at 275; Public Officers Law § 89[4][b]). The Court is constrained to deny disclosure of records deemed confidential by the Public Officers Law (*Abdur-Rashid v. New York City Police Department*, 31 NY3d 217, 225 [2018]). To the extent that the government seeks to withhold records, in part or whole, the Court retains inherent authority to conduct in camera review of same (*id.*). Where an agency has withheld records, this Court’s inquiry under Article 78 is limited to whether the agency’s determination was affected by an error of law (CPLR § 7803[3]; see also *Mulgrew v. Board of Educ. of the City of N.Y.*, 87 AD3d 506 [1st Dept 2011]).

Given that respondent has consented to the release of its entire investitive file, subject to redactions, the Court limits its inquiry to whether the redactions are proper.¹ Public Officers Law § 89(2)(b) provides, in relevant part, that identifying details may be deleted or redacted by the disclosing agency when such details constitute an unwarranted invasion of personal privacy.

¹ Respondent has waived law enforcement exemption under Public Officers Law § 87(2)(e) (NYSCEF Doc. No. 22, Memorandum of Law at ¶ 16).

Likewise, Public Officers Law § 89(2)(f) exempts disclosure where same could endanger the safety of any person.

Here, the file does not contain the type of information that is of a compelling interest to the public; the file relates to an investigation of sexual-type harassment occurring between two schoolteachers (*compare Mulgrew v. Board of Educ. of the City of N.Y.*, 87 AD3d at 508, disclosure of public teachers' names in proficiency report of public interest; "compelling interest to the public, namely, the proficiency of public employees in the performance of their job duties"). Disclosing the identity and contact information of the complaining teacher or witnesses to the investigation is not a benefit to the public, nor is it in the public's interest ten years after the investigation's conclusion, and constitutes an unwarranted invasion of personal privacy. Furthermore, respondent's investigation revealed that petitioner's conduct caused the complaining teacher to fear for her personal safety and documents petitioner's belief – unrequited at best and deluded at worst – that the complaining teacher was interested in marriage with petitioner despite the complainant's unequivocal statements to the contrary. The letter further references written statements of witnesses regarding petitioner's attempts at marriage with the complainant and attempts to involve at least one witness in

assisting same. Under these circumstances, releasing identifying information related to the complaining teacher and witnesses potentially endangers their safety and redacting same is warranted.

To the extent that respondent's redactions are pursuant to the intra-agency exception, they are proper (*The New York Times Co. v. City of New York Fire Dept.*, 4 NY3d 477 [2005]). "The point of the intra-agency exception is to permit people within an agency to exchange opinions, advice and criticism freely and frankly, without the chilling prospect of public disclosure" (*id.*; citing *Xerox v. Town of Webster*, 65 NY2d 131 [1985]). Here, respondent provided its findings and report to the Office of Legal Services and the New York State Education Department, fellow agencies, for appropriate further action, if necessary. Public disclosure of opinions, advice, and criticism contained in the investigative file which were intended to aide these other agencies is exactly the chilling the Court of Appeals identified as improper (*The New York Times v. City of New York Fire Dept.*, *supra*).

Finally, turning to attorney's fees, "to be considered a prevailing party, a party must be successful with respect to the central relief sought" (*Fatsis v. 360 Clinton Ave. Tenants Corp.*, 272 AD2d 571 [2d Dept 2000]). "Such a determination

requires an initial consideration of the true scope of the dispute litigated, followed by a comparison of what was achieved within that scope” (*Excelsior 57th Corp., v. Winters*, 227 AD2d 146 [1st Dept 1996]). Here, petitioner sought the complete unredacted investigative file. The Court has denied that relief. It cannot be said that the production of redacted documents amounts to a success where a petitioner has sought the production of unredacted documents. Consequently, petitioner has not prevailed on the central relief sought and attorney’s fees are not properly awarded.

Accordingly, it is

ORDERED that the petition is granted, on consent of respondent, solely to the extent of providing petitioner with the redacted investigative file, consistent with this decision and order, within 60 days of this decision and order, and otherwise denied; and it is further

[continued on following page]

ORDERED that to the extent petitioner seeks attorney's fees, such relief is denied as petitioner has not succeeded on his claim, the production of unredacted documents and the investigative file; and it is further

ORDERED that the matter shall be marked disposed.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

7/28/2022
DATE


HON. FRANK P. NERVO
J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: