

**Davenport v New York State Dept. of Fin. Servs.**

2023 NY Slip Op 33980(U)

November 9, 2023

Supreme Court, New York County

Docket Number: Index No. 160242/2021

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

JONATHAN W. DAVENPORT,
Plaintiff,

- v -

NEW YORK STATE DEPARTMENT OF FINANCIAL
SERVICES, LINDA A. LACEWELL

Defendant.

-----X

INDEX NO. 160242/2021
MOTION DATE 11/08/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, Petitioner’s Article 78 Petition is denied.<sup>1</sup> Petitioner, Jonathon Davenport, brought this action against Respondents, New York State Department of Financial Services (“DFS”) and Lina Lacewell, in her official capacity as Superintendent of the New York State Department of Financial Services, for a judgment pursuant to Article 78 of the CPLR.

On August 7, 2020, Petitioner submitted the Request to the Records Access Officer of DFS pursuant to the Freedom of Information Law (“FOIL”) for all documents related to DFS’s investigation of Deutsche Bank AG, Deutsche Bank AG New York Branch, and Deutsche Bank Trust Company of the Americas’ involvement with Danske Bank A/S’s Estonian Branch. DFS, in a letter dated April 26, 2021, denied the Request in its entirety based on N.Y. Public Officers Law (“POL”) § 87(2)(a) and N.Y. Banking Law § 36(10). Petitioner now seeks an order to compel DFS to disclose the records requested in its possession under FOIL.

<sup>1</sup> The Court would like to thank Madison Huberman for her assistance in this matter.

Article 78 of CPLR N.Y. POL Section 89(4)(b) provides that “a person denied access to a record in an appeal determination ... may bring a proceeding for review” of the agency’s determination after exhausting available administrative remedies. A petitioner may seek judicial relief on a FOIL request after exhausting administrative remedies if the proceeding is “commenced within four months after the determination to be reviewed becomes final and binding on the petitioner.” *Murphy v. N.Y.S. Educ. Dep’t, Office of Prof’l Discipline*, 534 N.Y.S.2d 70, 73 (1st Dep’t 1989); CPLR § 217(1).

Additionally, exemptions from FOIL disclosure are carefully circumscribed and “narrowly interpreted so that the public is granted maximum access to the records of government.” *Matter of Grabell v. N.Y. City Police Dep’t*, 996 N.Y.S.2d 893, 898 (2014), *aff’d as modified*, 139 A.D.3d 477 (1st Dep’t 2016). To meet the burden of demonstrating that the requested material falls squarely within a FOIL exemption, the agency must articulate “a particularized and specific justification for denying access.” *Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566 (1986).

N.Y. POL § 87(2)(a) provides that an agency is not required to make a record available for public inspection or copying if the records or portions of it “are specifically exempted from disclosure by state or federal statute.”

Here, Respondents have a particularized and specific justification for denying access. Pursuant to NYBL § 36(10), “all reports of examinations and investigations, correspondence and memoranda concerning or arising out of [a DFS superintendent examination and investigation]... shall not be subject to subpoena and shall not be made public unless” the superintendent believes that “the ends of justice and the public advantage will be subserved by the publication thereof. NYBL § 36(10), therefore, explicitly prohibits the disclosure of all

records reviewed, created by, or otherwise within the control of DFS in connection with an investigation or examination under this Section.

Petitioner seeks records that came into DFS's possession via its correspondence with Deutsche Bank concerning DFS's investigation and inquiry. Respondent denied Petitioner's original request for the documents stating that the requested records that were transmitted by Deutsche Bank to DFS were related to a DFS regulatory investigation. Therefore, the records constitute correspondence concerning or arising out of an investigation and are required to be kept confidential and exempt from disclosure under NYBL § 36(10) unless the Superintendent believes that disclosure would serve the ends of justice.

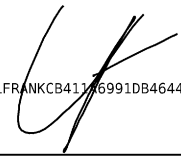
Here, the Superintendent did not abuse her disclosure when not providing the requested documents. The Superintendent may only disclose protected documents based on a finding that disclosure is in the public interest. However, the public interest weighs strongly against disclosure in this case.

Additionally, Respondent does not have to disclose the documents as there is an exemption to FOIL if documents "are specifically exempted from disclosure by state or federal statute" as they are here. N.Y. POL § 87(2)(a). Redacted disclosure cannot be compelled if the records are exempt from disclosure pursuant to POL § 87(2)(a). *See Matter of N.Y. Civ. Liberties Union v. N.Y. City Police Dep't*, 32 N.Y.3d 556 (2018). Since the records requested exempt from disclosure under NYBL § 36(10) which falls in the categorical exemption of N.Y. POL § 87(2)(a), disclosure of the records in some partial form or a piecemeal production of parts of the investigation records cannot be compelled.

Accordingly, it is hereby

ADJUDGED that Petitioner's Article 78 Petition is denied.

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11/9/2023

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE