

SCANNED ON 5/29/2008

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: HON. MARYLIN G. DIAMOND **PART 48**
Justice

Matter of NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

INDEX NO. 115154/07

MOTION DATE

For a Judgment pursuant to Article 78 of
The Civil Practice Law and Rules,

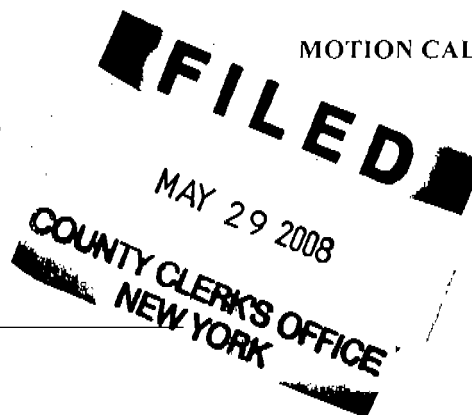
MOTION SEQ. NO. 001

-against-

MOTION CAL. NO.

NEW YORK CITY POLICE DEPARTMENT
and RAYMOND KELLY, in his official capacity as
Commissioner of the New York City Police
Department,

Respondents.



Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that: In this article 78 proceeding, the petitioner seeks review of the denial by the respondents New York City Police Department (“NYPD”) and Raymond Kelly, as the NYPD Commissioner, of its request, made under the Freedom of Information Law (“FOIL”) (Public Officers Law, article 6) for a copy of a database that contains information about approximately 850,000 police stops of civilians made since January 1, 2006. In lieu of an answer, the respondents have cross-moved to dismiss the petition for failure to state a cause of action, essentially arguing, as they would have in an answer, that the petition is without merit.

The petitioner alleges that officers of the NYPD who forcibly stop and/or search civilians are required to record information about those encounters on a worksheet known as a “Stop and Frisk Report Worksheet” or UF-250. The forms detail various aspects of the forcible stop, including the race and gender of the individual stopped and the reason for the stop. Also included in the report is identifying information about the officer who made the stop. In March, 2006, the NYPD directed that all of the information from the forms be entered into a centralized database.

On July 25, 2007, the petitioner New York Civil Liberties Union (“NYCLU”) submitted a FOIL request to the NYPD for “the complete NYPD database of information entered from stop-and-frisk worksheets for 2006, for the first two quarters of 2007, and for any calendar year prior to 2006 for which data exists in electronic form.” The request specifically excluded any “individually identifiable information or other private individual information that may be in the database: the name of the person stopped, the street address of the person stopped, and the tax ID number of the officer who completed the form.” On August 31, 2007, the NYPD denied the request for the release of the database, stating only that “Your request for data is denied on the basis of NY Public Officers Law sections 87(2)(a); 87(2)(b); 87(2)(e); 87(2)(f); 87(2)(i); and 89(2).” No further explanation for the denial was provided.

The NYCLU’s subsequent administrative appeal of this decision was denied in a letter, dated October 15, 2007, which merely repeated the list of allegedly applicable statutory exemptions that had been previously cited in the NYPD’s August 31, 2007 letter of denial and, in addition, briefly explained the

nature of each such exemption. The statutes relied on were (1) Public Officers Law § 87(2)(a), which exempts from disclosure records whose disclosure is otherwise barred by statute; (2) Public Officers Law §§ 87(2)(b) and 89(2), which exempt from disclosure records whose disclosure would create an unwarranted invasion of personal privacy; (3) Public Officers Law § 87(2)(e), which exempts from disclosure records which are compiled for law enforcement purposes and which, if disclosed, would: (i) interfere with law enforcement investigations or judicial proceedings, (ii) deprive a person of a right to a fair trial or impartial adjudication, (iii) identify a confidential source or disclose confidential information relating to a criminal investigation or (iv) reveal criminal investigative techniques or procedures, except routine techniques and procedures; (4) Public Officers Law § 87(2)(f), which exempts from disclosure records whose disclosure could endanger the life or safety of a person; and (5) Public Officers Law § 87(2)(i), which exempts from disclosure records which, if disclosed, would jeopardize an agency's capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures.

This proceeding then followed. In the petition, the NYCLU argues that the NYPD has never provided it with any explanation as to how the cited statutes exempt the stop-and-frisk database from disclosure. It seeks an order directing the NYPD to furnish it with a copy of the requested database.

Discussion

It is well settled that government records, including police records, are presumptively open for public inspection and copying unless they fall within one of the exemptions of Public Officers Law § 87(2). *See Matter of Gould v. New York City Police Department*, 89 NY2d 267, 274-275 (1996). In order to ensure that the public has maximum access to government documents, the "exemptions are to be narrowly construed, with the burden resting on the agency to demonstrate that the required material indeed qualifies for exemption." *Matter of Hanig v. State of New York Dept. Of Motor Vehicles*, 79 NY2d 106, 109 (1992). To invoke one of the exemptions contained in section 87(2), the NYPD must articulate "particularized and specific" justifications for not disclosing requested documents and, if appropriate and necessary to determine whether the withheld documents fall entirely within the scope of the asserted exceptions, the court can conduct an in camera inspection of representative documents and order the disclosure of all non-exempt material, appropriately redacted. *See Matter of Gould v. New York City Police Department*, 89 NY2d at 275.

Here, in its denial letter and in its rejection of the petitioner's appeal, the NYPD invoked six exemptions but failed to provide any explanation, much less a particularized and specific justification, as to why any of them was applicable to the stop-and-frisk report database. On its motion to dismiss, the NYPD now argues, as its sole justification for the denial of petitioner's FOIL request, that the release of the information in the report would provide the means by which an individual who wishes to inflict harm upon a particular officer could plot out the exact location of the officer at a given time based on the information contained in the database. According to the NYPD, the release of the database would create a danger to the safety of the officers conducting the stops and its refusal to provide the database was thus justified under Public Officers Law §§ 87(2)(e) and 87(2)(f).

The problem with this argument is that the NYPD does not address the feasibility of turning over the requested database with a redaction of the names and personal information of the police officers. As already noted, where a document contains both confidential and non-confidential material, a court may, consistent with FOIL, order its disclosure subject to a redaction of personal information necessary to protect a person's safety and/or prevent an unwarranted invasion of personal privacy. *See, e.g., Data Tree LLC v. Romaine*, 9 NY3d 454, 464 (2007); *Beyah v. Goord*, 309 AD2d 1049, 1050-53 (3rd Dept. 2003). *See also Matter of Gould v. New York City Police Department*, 89 NY2d at 277. Indeed, the record before the court indicates that the NYPD has, in fact, provided copies of the database to at least two other outside


organizations, the RAND corporation and a research institute located at the University of Michigan. The NYPD has not offered any reason why the petitioner should be denied access to the same database which it has already shared with other outside organizations. With proper redaction of personal information concerning the officers who made the stop and/or the individuals stopped, the records are clearly subject to FOIL disclosure and the NYPD has not met its burden to show that the database falls squarely within the claimed exemptions.

Accordingly, the respondents' motion to dismiss is denied and the petition is hereby granted to the extent that, within 60 days of service of a copy of this order with notice of entry, the NYPD shall furnish the petitioner with a copy of the requested database in electronic form, with the exception of the names and addresses of the persons forcibly stopped and the names, addresses and tax ID numbers of the officers who made the stops and/or completed the form, which shall be redacted prior to disclosure. Since no purpose would be served by the respondents' submission of an answer, judgment may be entered without the service and filing of such a pleading. *See Matter of Nassau BOCES Central Council of Teachers v. Board of Cooperative Educational Services of Nassau County*, 63 NY2d 100, 104 (1984); *Matter of Kane v. New York State Dept. Of Correction*, 21 AD2d 919, 920 (3rd Dept. 1964).

The Clerk Shall Enter Judgment Herein

Dated: 5/7/08

Check one: FINAL DISPOSITION



MARYLIN G. DIAMOND, J.S.C.
 NON-FINAL DISPOSITION

FILED
MAY 29 2008
COUNTY CLERK'S OFFICE
NEW YORK