

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

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

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THE LEGAL AID SOCIETY, A NON-PROFIT CORPORATION

Plaintiff,

- v -

RECORDS ACCESS OFFICER, NEW YORK CITY POLICE DEPARTMENT,

Defendant.

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INDEX NO. 156967/2021

MOTION DATE 07/27/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9, 10, 11, 12, 13, 14, 15, 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, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72

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

Upon the foregoing documents, this petition is granted to the extent indicated below.

Background

Petitioners the Legal Aid Society (“Legal Aid”) move to obtain documents from the New York City Police Department (“NYPD”) which they allege were withheld in violation of the Freedom of Information Law (“FOIL”). Pursuant to FOIL, Legal Aid seeks access to and a copy of any and all documents relating to the New York City Police Department's ("NYPD") special expense purchase contracts ("SPEX contracts") for the time period of March 27, 2007, to October 27, 2020. Respondents have denied both petitioners initial FOIL request, as well as the administrative appeal of that request. The NYPD contends that the class of documents requested are so voluminous and contain a substantial amount of confidential information that requires redaction so as to make production unduly burdensome. Following Legal Aid’s filing of this action, the NYPD moved to dismiss, which this Court denied, finding that Legal Aid’s request

was not unreasonably described and at the very least, there was an outstanding question as to whether the request was unduly burdensome. On July 10, 2023, the Court held a hearing on the issue of whether the request was unduly burdensome.

Discussion

The New York State Public Officers Law §§ 84-90, also known as the New York Freedom of Information Law (“FOIL”) provides a mechanism for the public to access government records. In enacting FOIL, the New York State Legislature emphasized the importance of transparency in the government’s processes. Section 84 provides, “the people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.” Public Officers Law §84. As such, New York Courts have repeatedly held that FOIL imposes a broad duty on government agencies to make their records available to the public. See *Matter of Abdur-Rashid v New York City Police Dept.*, 31 N.Y.3d 217 [2018].

With that said, the public’s right to access records pursuant to FOIL is not unfettered. To balance the interests of the public with those of government, including public safety and preservation of resources, the legislature carved out exemptions to the general rule of production. Public Officers Law §87(2). Thus, an agency may deny a FOIL request where the information sought falls under one of the stated exceptions. See *Matter of Abdur-Rashid v New York City Police Dept.*, 31 N.Y.3d 217 [2018]. Additionally, in submitting a FOIL request, the onus is on the petitioner to reasonably describe the materials they request, to enable agencies to locate and identify the records. See *Konigsberg v. Coughlin*, 68 N.Y.2d 245, 249 [1986]; *Mitchell v. Slade*, 173 A.D.2d 226, 227 [1st Dep't. 1991].

In an Article 78 proceeding to compel an agency to comply with FOIL and produce material, the agency has the burden of demonstrating that the material requested falls within a statutory exemption and must articulate a specific justification for denying access. See *Matter of West Harlem Bus. Group v. Empire State Dev. Corp.*, 13 N.Y.3d 882, 885 [2009]; *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566 [1986].

Here, the NYPD argues that given the sheer volume of records associated with the SPEX contracts and the confidential nature of much of the information in the documents, it is unduly burdensome to produce. Additionally, the NYPD argues the FOIL request is now moot because Legal Aid has already received the SPEX contracts from the Comptroller. In response, Legal Aid argues the request is not moot because the NYPD did not provide the Comptroller with all documents related to the SPEX contracts. Moreover, Legal Aid argues that because the SPEX contracts and related documents provided to the Comptroller were preredacted at the time they were turned over, which in the case of the documents from 2007 would be over fifteen years ago, the redactions may no longer be needed.

First, with respect to the NYPD's argument that the petitioner's request is moot, the Court disagrees. While Legal Aid may have obtained some of the documents it seeks from the Comptroller, the Court agrees with Legal Aid that this does not excuse the NYPD from compliance in this particular circumstance. Here, because the Comptroller does not have all of the original unredacted documents, that Legal Aid has obtained some of the documents requested from the Comptroller does not render the NYPD FOIL request moot.

Next, the Court addresses the NYPD's central argument, that compliance with Legal Aid's request is unduly burdensome. The NYPD asserts that because the SPEX contracts contain information related to counter terrorism efforts and national security, each document needs to be

identified and reviewed on a page-by-page basis to redact information necessary for public safety and confidentiality. In support of this position, at the July 10th hearing, the NYPD produced Agency Attorney Kevin Murtaugh of NYPD's Contract Administration. Mr. Murtaugh testified that the SPEX contracts make up "60 banker's boxes" and only he and his colleague have the expertise and clearance to review the contracts so that they could redact confidential sensitive information. He testified that given the breadth of physical documents, it would require removing him and his colleague from performing their time sensitive obligations in the contracting office to review and produce these documents. Therefore, according to Mr. Murtaugh, it would take years to complete this project even if he were given "a team of three to four attorneys" to assist. However, other than his explanation as to the quantity of documents and work required to review and redact the documents, Mr. Murtaugh did not specify the basis for his estimate that such work would "take years."

Although based on Mr. Murtaugh's testimony it is clear the records requested are voluminous and contain sensitive information that requires attorney review, this alone is not enough to deny Legal Aid's request outright. As explained above, the very purpose of FOIL is to provide a mechanism for the public to obtain information about the innerworkings of its system of government. Here, while the documents requested contain sensitive and confidential information that must be redacted to protect public safety, the NYPD has not asserted that the documents cannot be produced at all for this reason. They have only argued it would be unduly burdensome because the process of completing the redactions would be too time consuming. However, that the SPEX contracts were special contracts outside of the typical government contracting process and thus had to be kept offline with detailed records, emphasizes that they are of public importance, and thus the very information FOIL intended to give the public access

to when it would no longer compromise public safety to reveal. Thus, pursuant to well settled case law and the legislative intent, the Court is obligated to err on the side of disclosure unless a statutory exception applies.

Therefore, weighing the arguments on both sides, the Court finds that Legal Aid’s request is not so unduly burdensome as to allow the NYPD to completely deny it. However, recognizing the NYPD contract administration office’s limited staff and heavy workload, the Court will provide the NYPD with an extended time period to produce the requested documents. This way the public can gain access to these records and at the same time the NYPD can conserve its resources as well as properly redact all sensitive information for public safety. It is the opinion of this Court that such a solution balances the goal of open government and administrative efficiency.

Accordingly it is hereby

ORDERED that respondent NYPD shall make best efforts to produce to petitioners, documents responsive to the subject FOIL request quarterly, beginning on or before March 31, 2024, and continuing every 3 months thereafter and along with such documents shall provide a status update of compliance with the FOIL request to the petitioner.

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10/26/2023
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
 REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: