

STATE OF NEW YORK
SUPREME COURT

ALBANY COUNTY

In the Matter of the Application of
NEW YORK CITY AND VICINITY
CARPENTERS LABOR-MANAGEMENT
CORPORATION,

Albany County Clerk
Document Number 10281512
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Petitioner,

-against-

DECISION & JUDGMENT

STATE OF NEW YORK OFFICE OF GENERAL
SERVICES,

Respondent.

For a Judgment Pursuant to Article 78 of the
Civil Practice Law & Rules of the State of New York.

Index No. 3753-08
(RJI No. 01-08-ST8850)

(Judge Richard M. Platkin, Presiding)

APPEARANCES:

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HON. ANDREW CUOMO
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Attorney for Respondent
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Hon. Richard M. Platkin, A.J.S.C.

Petitioner, the New York City and Vicinity Carpenters Labor-Management Corporation ("CLMC"), brings this application pursuant to CPLR Article 78 challenging respondent's redaction of certain information produced pursuant to petitioner's Freedom of Information Law ("FOIL") request. Respondent opposes the petition through an answer.

Pursuant to FOIL, petitioner requested copies of the certified payroll records of Vishal Construction, Inc., a private business with which respondent New York State Office of General Services ("OGS") contracted to perform certain construction services at a State mental health facility. Petitioner seeks such records as part of an investigation into possible violations of the prevailing wage law. According to petitioner, by examining documents such as certified payroll records and sign-in sheets at work sites, it can determine whether there have been violations of the prevailing wage law and, if so, make referrals to the appropriate authorities.

Petitioner received the following response from OGS:

The information you requested is available, however it should be noted that pursuant to Sections 87(2)(b) and 89(2)(b) of the Public Officers Law, certain identifying information pertaining to individuals (i.e., certified payroll records of Vishal Construction, Inc.) will be redacted on the copies you receive in order to avoid unwarranted invasion of personal privacy.

Certain of the records implied by your request (i.e. financial statements of Vishal Construction, Inc.), are exempt from mandatory FOIL disclosure by operation of section 87(2)(d) of the Public Officers Law. Accordingly, release of these records is denied.

This information is available from the Office of General Services and a total of 1,375 pages will be reproduced

With respect to the certified payroll records, respondent redacted the names, addresses, and social security numbers of Vishal Construction employees but otherwise provided the requested records. Petitioner appealed these redactions by letter dated December 18, 2007 "to the extent that the redacted information conceals the identity of the individuals, or conceals their identity such that the certified payroll records cannot be matched to the daily sign-in sheets."

By letter dated January 7, 2008, OGS denied the FOIL appeal, reciting, in pertinent part:

My research of your request and the Agency's response confirms that the initial response was appropriate and must be upheld. It is my determination, based upon the Freedom of Information Law, and its judicial interpretations as well as the Advisory Opinions issued by the New York State Department of State Committee on Open Government, that personally identifying details that appear on payroll records pertaining to employees of private entities, such as names, addresses and social security numbers, may be withheld on the ground that disclosure would constitute "an unwarranted invasion of personal privacy" [see Freedom of Information Law, §87(2)(b) and the attached Advisory Opinions #10325, #12209, #12640, #13108, and #13343].

By this application, petitioner "seeks solely the names which appear on the certified payroll reports." Respondent stands by its redaction of such information.

FOIL "imposes a broad duty on government to make its records available to the public [and] ... [a]ll government records are thus presumptively open for public inspection and copying unless they fall within one of the enumerated exemptions of Public Officers Law § 87 (2)" (*Matter of Gould v New York City Police Dept.*, 89 NY2d 267, 274-275 [1996]). "FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government" (*Matter of Newsday, Inc. v Sise*, 71 NY2d 146, 150 [1987], *cert. denied* 486 US 1056 [1987]).

“In this regard, the agency seeking to prevent disclosure bears the burden of demonstrating that the requested material falls squarely within the particular exemption claimed ‘by articulating a particularized and specific justification for denying access’ (*Matter of New York Times Company v New York State Dept. of Health*, 243 AD2d 157, 159 [3d Dept 1998] [internal citations omitted]).

The exemption relied upon by respondent is set forth in Public Officers Law § 87 (2) (b), which authorizes the denial of access to information that “if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article.” Public Officers Law § 89, in turn, provides, in pertinent part:

2. (a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it

Applying the foregoing principles, the Court concludes that the petition must be dismissed. It is well settled that an agency may redact identifying details to prevent an unwarranted invasion of personal privacy (*see Matter of Brown v Goord*, 45 AD3d 930, 933 [3d Dept. 2007]). Further, the Committee on Open Government (“COG”), the State entity charged

with overseeing FOIL and providing advice with respect to its implementation, has rendered an advisory opinion addressing the precise issue raised by this application. In its advisory opinion, COG held that identifying information such as “names, addresses and social security numbers are largely irrelevant [to the issue of whether employees are being paid in accordance with prevailing wage standards] and may . . . be deleted to protect against an unwarranted invasion of personal privacy” (Comm on Open Govt FOIL-AO-13343 [April 30, 2002]). In reaching this conclusion, COG observed that compliance with the prevailing wage law could be evaluated through disclosure of information such as the titles of the employees, duties, wages, hour worked and similar data.

COG’s opinion “is consistent with that of the agency administering the records at issue, and thus, that interpretation is entitled to deference so long as it is not irrational or unreasonable.” (*Matter of Brown v Goord*, 45 AD3d at 932 [3d Dept. 2007] [internal citations omitted]). Given the strong privacy interest of the private-sector employees whose personal data is sought, the potential hardship that disclosure could cause these individuals and the limited relevance of such information to petitioner’s stated objective, it cannot be said that respondent acted arbitrarily or irrationally in redacting personal information from the disclosed records.

Accordingly,¹ it is

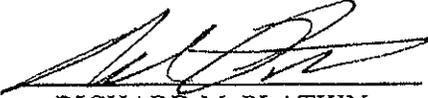
ORDERED and ADJUDGED that the petition is dismissed in its entirety.

This memorandum constitutes the Decision and Judgment of this Court. All papers including this Decision and Judgment are returned to attorney for the respondent. The signing of

¹ The Court has considered petitioner’s remaining arguments and finds them to be without merit.

this Decision and Judgment shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of this rule with regard to filing, entry and Notice of Entry.

Dated: Albany, New York
September 18, 2008



RICHARD M. PLATKIN
A.J.S.C.

Papers Considered:

Notice of Petition, dated May 8, 2008;
Verified Petition, sworn to May 8, 2008, with attached exhibits A-D;
Verified Answer, dated July 17, 2008;
Affidavit of Paul Larrabee, sworn to July 11, 2008;
Petitioner's Memorandum of Law, dated July 15, 2008;
Respondent's Memorandum of Law, dated July 18, 2008;
Petitioner's Reply, dated July 24, 2008.

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COUNTY OF ALBANY

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NOTICE OF ENTRY

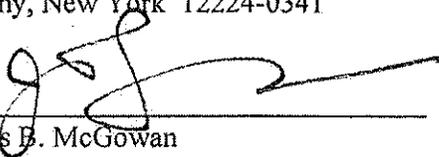
Index No. 3753-08
RJI 01-08-ST8850
July 25, 2008

Platikin, J.

PLEASE TAKE NOTICE that the within is a true copy of the Decision & Judgment in this
action entered in the Office of the County Clerk of Albany County on October 8, 2008.

Dated: Albany, New York
October 17, 2008

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New York State Executive Department
Office of General Services - Legal Division

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