

FILED
AND
ENTERED
ON
March 18, 2009

WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of:

JOHN BLY,

Petitioner,

**DECISION, ORDER
AND JUDGMENT**

Index No. 08-22008

For an Order and Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

CITY OF YONKERS, ERIC ARENA, and
FRANK J. RUBINO

Respondents.

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Hubert, J.

This is an Article 78 proceeding to annul a decision and final determination of the City of Yonkers that denied Petitioner's request, pursuant to New York's Freedom of Information Law ("FOIL"), for disclosure of certain documents concerning the 1952 murder of Yonkers labor activist John Acropolis. Acropolis, the president of Teamsters Local 456, was shot twice in the back of the head in the early morning hours of August 26, 1952, inside the entrance of his apartment in Yonkers, New York. The case was never solved, and the murder investigation remains open. The Petitioner knew Acropolis and is researching his life and role in the labor movement.

Petitioner's FOIL request sought documents from the City of Yonkers Police Department file pertaining to the investigation, namely: (a) a copy of the official death inquest; (b) a copy of a

ballistics report concerning the bullets recovered from the victim; (c) a copy of ballistics test results conducted on a weapon found on the grounds of the building; (d) notes and reports of a detective assigned to investigate the case; (e) notes and documents of actions undertaken by the Yonkers Police department; (f) a copy of a state investigations investigative report sent to the Westchester County District Attorney; and (g) a copy of New York State Police reports and a copy of a report detailing the findings of its three month investigation. By letter dated May 7, 2008, Respondent City of Yonkers denied petitioner's request, in its entirety, on the grounds that Public Officers Law § 87(2)(e) exempted disclosure of these documents.¹

Respondents now state that they are not in possession of the documents requested in paragraphs a, b, c, f, and g of the FOIL request. Thus, the Court need only address the relevant FOIL exemptions as they apply to paragraphs d and e of Petitioner's request.

As a general matter, FOIL imposes upon governmental agencies a broad duty to disclose agency records. *See* Public Officers Law § 84. An agency must make available for public inspection and copying all records requested under FOIL unless a document falls within a statutory exemption. *DJL Restaurant corp. v. Department of Blds. of City of New York*, 273 A.D.2d 167, 710 N.Y.S.2d 564 (1st Dep't 2000); Public Officers Law § 87 (2); § 89 (3). Here, Respondents contend that the documents sought by Petitioner are exempt from disclosure under Public Officer Law § 87 (2)(e) because they consist of records compiled of law enforcement purposes which, if disclosed, would (1) interfere with law enforcement investigations or judicial proceedings; (2) deprive a person of a right to a fair trial or impartial adjudication; (3) identify a

¹The Petitioner filed an administrative appeal, but received no response, ruling or determination. The Court therefore finds that Petitioner exhausted his administrative remedies.

confidential source or disclose confidential information relating to a criminal investigation; or (4) reveal criminal investigative techniques or procedures. Respondents also contend that “[d]isclosure of the documents could result in undermining any possibility of obtaining information and solving the case” and that disclosure of the documents could reveal leads which are currently being pursued or may be pursued in the future.

Since the purpose of FOIL is to promote open government and public accountability, the exemptions are to be narrowly interpreted, and the burden is placed upon the government agency to establish that a given document is exempt from disclosure. *Capital Newspapers, Div. of Hearst Corp. v. Whalen*, 69 N.Y.2d 246, 252, 513 N.Y.S.2d 367 (1987); *Fappiano v. New York City Police Dep’t*, 95 N.Y.2d 738, 724 N.Y.S.2d 658 (2001); Public Officers Law § 89 (4)(b); *Hanig v. State Dept. of Motor Vehicles*, 79 N.Y.2d 106, 109, 580 N.Y.S.2d 715 (1992). If a FOIL request is denied, the agency denying the request “must show that the requested information “falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access.” *Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462-463, 849 N.Y.S.2d 489 (2007), quoting *Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566 (1986); see also *Matter of Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 89 N.Y.267 (1996). Affidavits that merely repeat the statutory phrasing of an exemption are insufficient to establish the requirement of particularity. *City of Newark v. law Dep’t of City of New York*, 305 A.D.2d 28, 760 N.Y.S.2d 431 (1st Dep’t 2003), quoting *DLJ Res. Corp. v. Dep’t of Bldgs.*, 273 A.D.2d 167, 168-69, 710 N.Y.S.2d 564 (1st Dep’t 2000).

While there is precedent for delaying disclosure of police reports until the completion of a pending law enforcement investigation or prosecution of criminal charges, the Court finds that

under the facts and circumstances of this case, Respondents have failed to articulate sufficient reasons why the requested documents are exempt from disclosure. *See Gould v. New York City Police Department, supra* (blanket exemptions for particular types of documents are inimical to FOIL's policy of open government"). There is no question that law enforcement agencies have legitimate needs to keep certain records confidential so that their investigations are not hindered. Here, however, the affidavit submitted by the detective assigned to investigate the murder states that "the recent publicity of John Bly's FOIL request and the related litigation has apparently gotten people talking, and thinking, about this case again" which resulted in new investigative leads. Thus, this fact actually favors disclosure.

The detective's affidavit also details the important policy considerations concerning releasing information on "cold" cases, and details the many old homicides—some dating back to the early 1970s—that the cold case squad is actively investigating. However, the affidavit fails to set forth how these concerns related specifically to the 1952 murder of John Acropolis. To the contrary, Respondents' justification of the claim to exemption consists mostly of conclusory and generalized policy concerns. Public Officers Law § 87 (2)(e) does not authorize automatic or wholesale withholding of records or information simply because the material is related to a criminal investigation. Respondents must show, by more than general policy concerns, how disclosure of the police records requested would specifically interfere with a pending law enforcement investigation, or otherwise contravene the criteria of Section (2)(e).

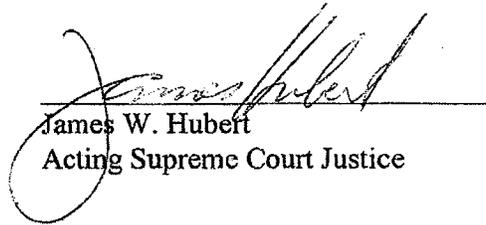
Thus, under the unique circumstances of this case—especially the fact that more than 50 years have elapsed since the murder occurred—the Court finds that Respondents have failed to articulate sufficient reasons why the requested documents are exempt from disclosure.

Accordingly, it is hereby

ORDERED, that the determination of Respondents is annulled and the matter is remitted back to the City of Yonkers FOIL records officer for further consideration in accordance herewith.

The foregoing constitutes the decision, order and judgment of this Court.

Dated: White Plains, New York
March 17, 2009



James W. Hubert
Acting Supreme Court Justice

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