

STATE OF NEW YORK

COUNTY OF ALBANY

SUPREME COURT

In the Matter of CAPITAL NEWSPAPERS, DIVISION OF THE
HEARST CORPORATION,

Petitioner,

-against-

JOHN J. POKLEMBIA, as Director of Criminal Justice and Commissioner
of the Division of Criminal Justice Services, State of New
York, and JOHN J. BIGGINS, as Assistant Counsel and Freedom
of Information Officer of the Division of Criminal Justice
Services, State of New York,

Respondents.

For an Order and Judgment pursuant to Article 78 of the CPLR.

Supreme Court - Special Term

December 30, 1988 - RJI 0188 ST1805 Index No. 6308-88

Calendar No. 3

JUSTICE LAWRENCE E. KAHN, Presiding

APPEARANCES:

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KAHN, J.

In the above-captioned Article 78 proceeding, petitioner seeks a judgment ordering that all conviction records held by the Division of Criminal Justice Services (DCJS) be made available for inspection and copying.

Petitioner is the publisher of the Albany Times Union and seeks the conviction records for use in connection with a series of articles concerning alcoholic-related motor vehicle accidents. DCJS is the facility where there has been a centralization and computerization of the conviction records from courts throughout the state. The affidavit of the Deputy Commissioner indicates that the records sought by petitioner would require the release of information on approximately one million residents of this state.

On or about April 28, 1988, petitioner requested a copy of all the computer records of the criminal convictions in New York which are maintained by DCJS. On or about May 25, 1988, petitioner made a second request, seeking the conviction records maintained by DCJS on two specifically named individuals. Both requests were made pursuant to the provisions of the Freedom of Information Law (Public Officers Law, Article 6). Both requests were denied. Ultimately, the instant Article 78 proceeding was commenced. Petitioner asserts that the First and Fourteenth Amendments to the United States Constitution, Article (1) of the New York State Constitution, the Common Law, and the Freedom of Information Law all entitle it to access to the requested information.

Article 35 of the Executive Law provides that there shall be, within the Executive Department, a Division of Criminal Justice Services. Its establishment predates the Freedom of Information Law provisions and had as one of its functions, the centralization of criminal justice information for the purpose of making this information available to "appropriate agencies of government." Executive Law, section 837 (8), mandates that DCJS "adopt appropriate measures to assure the security and privacy of identification and information data."

It is now without doubt that the cornerstone of the Freedom of Information Law is the presumption of access by the public to governmental records. (Matter of Farbman & Sons v New York City Health & Hosps. Corp., 62 NY2d 75, 79-80). There is no burden whatsoever to establish the reasonableness of any particular request. Such records are to be had merely for the asking. (Matter of Scott, Sardano & Pomeranz v Records Access Officer of City of Syracuse, 65 NY2d 294, 296). This is so unless a particular document is protected from disclosure by one of the exemptions enumerated in Public Officers Law, section 87 (2). Case law also makes it abundantly clear that the exemptions are to be narrowly construed (Matter of Pink v Lefkowitz, 47 NY2d 567, 571). Respondents have premised the denials herein upon Public Officers Law, sections 87 (2)(a) and (b) which provide for denial of records specifically exempted from disclosure by statute or, which constitute an unwarranted invasion of personal privacy.

It appears that the information requested by petitioner are matters of public record and generally available through the local courts where the convictions occurred. It is equally clear that attempting to obtain the information requested by resort to each separate locality is, if not nearly impossible, cumbersome and burdensome at best. In this regard, petitioner is correct when it asserts that the transmittal of an otherwise publicly available document to a centralized facility for inclusion in a government computer bank does not per se render it immune from disclosure. However, the issue is not whether the records under the control of DCJS should be released, but rather whether the provisions of FOIL and the Executive Law, as presently constituted, mandate the result sought by petitioner.

Certainly, the Legislature has the authority to provide for public access from a centralized location. It is equally clear that, unless otherwise sealed, a conviction record is a public document. Much has been said about potential abuses, given the ease with which these records may be obtained if the petition is sustained. Such fears are not determinative however. To argue that a criminal conviction obtained in a public proceeding in an open court system suddenly should be clothed with secrecy merely because an individual doesn't have to struggle to obtain it, makes a mockery of the right of public access. To suggest that public disclosure of conviction records is available only when it is through a difficult and time-consuming search of individual courthouse

files or in local police stations, when the exact same information might be freely available if housed within a centralized computer bank, would be to create an irrational burden. Resolution of the question should not be resolved by how hard it is to discover the information sought. However, as aforesaid, the issue is not whether the information should be available, but rather, whether the Division of Criminal Justice Services has been statutorily directed to guard against public disclosure, thereby exempting it from the provisions of FOIL.

There is no requirement that a statute specifically identify records as confidential or make precise reference to a FOIL exemption (See: Capital Newspapers v Burns, 67 NY2d 562, 565-567). The legislative history establishing the centralized criminal data facility indicates an intent by the Legislature to create a closed system whereby dissemination of information would be severely restricted and limited to specifically delineated agencies for law enforcement and criminal justice purposes only. Additions to those entitled to access have been few and far between, and only when authorized by specific statutory amendment. Adopting petitioner's view that there is no statutory basis exempting these records from disclosure would require the court to ignore this entire body of legislative history. That it cannot do. Both the language of the statute and the consistent history of limited access to the criminal records maintained by DCJS lead this court to conclude that an

exception to the mandate of FOIL exists with respect to the disclosure sought by petitioner.

Having determined that POL, section 87 (2)(a) is applicable to the records sought by petitioner, this court shall not address the issue of whether a further exemption might be had pursuant to POL 87 (2)(b) as an unwarranted invasion of personal privacy, or whether the records may be available from any other centralized source.

Finally, the court has reviewed petitioner's claims that it has a right of access to the requested information under the provisions of both the Federal and State Constitutions, as well as its common law right to copy and inspect judicial records, and finds that they are inapplicable to the facts at bar. Richmond Newspapers, Inc. v Virginia, (448 U.S. 555), acknowledges a constitutionally protected right to assure freedom of communication vis-a-vis issues dealing with governmental functions. However, denial of access to the data base assembled to facilitate the free flow of information between various criminal jurisdictions within the state does not impinge upon those rights of public access recognized by the line of cases culminating in Richmond Newspapers, Inc. v Virginia, supra.

The Legislature has determined that the data base compiled by the DCJS is not to be accessible by the public. The wisdom of that determination is beyond the purview of this court.

The petition for a judgment pursuant to Article 78 of the CPLR ordering all conviction records requested of Respondents by Petitioner, Capital Newspapers, be made available for inspection and copying subject to the provisions of the Freedom of Information Law, shall be dismissed. All papers are being returned to attorneys for respondents, who shall submit a judgment in conformance herewith, with a copy of this decision annexed.

DATED: April 6, 1989
Albany, New York