

APPELLATE DIVISION, FIRST DEPARTMENT

NYLJ, December 9, 2002

2452. IN RE APPLICATION OF JAMES M. CAPRUSO, pet-res, For a Judgment, v. NEW YORK STATE POLICE, res-ap— Judgment, Supreme Court, New York County (Joan Madden, J.), entered July 7, 2001, in a proceeding pursuant to the Freedom of Information Law, directing respondents State and City of New York to turn over to petitioner copies of the operator's manual for any radar devices used by the State and City police departments within the past two years, unanimously modified, on the law, to dismiss the proceeding as against respondent State of New York, and otherwise affirmed, without costs.

After an in camera inspection, we are not persuaded that speeding motorists could use the information contained in these manuals, primarily technical specifications, operational instructions and legal advice on how best to ensure successful prosecution of speeders, to evade detection by police officers using radar equipment (*see Matter of Fink v.*

*Lefkowitz*, 47 NY2d 567, 571, 572). Rather than do the geometry necessary to make the change in driving path necessary to evade detection, it is much more likely that a speeder, upon realizing the possibility of tracking radar, would simply apply his or her brakes, as respondents say they presently routinely do. In addition, respondents use numerous brands of these devices at any given time, each with its own frequencies and other distinctive specifications, such that a speeder intent on evasion would have to know which brand is going to be used on which highway on which day, information not contained in the manuals. Certainly, there is no expectation of secrecy concerning these manuals, which come with devices that are freely traded in public commerce. However, we modify to dismiss as against respondent State, which is not a "body or officer" against whom an article 78 proceeding may be brought (CPLR 7802[a]; *Ferrick v. State of New York*, 198 AD2d 822, 823).

This constitutes the decision and order of the Supreme Court, Appellate Division, First Department.