

**DECISION AND ORDER**

To commence the statutory period of appeals as of right CPLR (5515 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
IAS PART, PUTNAM COUNTY**

Present: Hon. Andrew P. O'Rourke  
Supreme Court Justice

\_\_\_\_\_  
ANTHONY S. FUSCO, X

Petitioner,

-against-

PUTNAM COUNTY SHERIFF'S DEPARTMENT AND  
PUTNAM COUNTY SHERIFF DONALD B. SMITH,

Respondent.

\_\_\_\_\_  
X

INDEX NO.: 2145/2008  
MOTION  
DATE: 8/22/2008

The following documents numbered 1 to 9 read on this motion by Petitioner to direct Respondent to provide Petitioner with requested records.

- Notice of Motion- Affidavits 1-3
- Cross Motion
- Answering Affidavits 9
- Replying Affidavits
- Affidavits
- Pleadings-Exhibits-Stipulations-Minutes 4-8
- Briefs: Plaintiff
- Defendant

Motion is decided as follows:

Petitioner was stopped and ticketed on March 29, 2008 at 2:40 a.m. for allegedly passing a stop sign. Petitioner denies same. Petitioner believes the vehicle of the Deputy who stopped him, was equipped with a video camera device.

On April 9, 2008, Petitioner filed a FOIL Request for information about the operation of the video camera and the contents thereof.

Petitioner was advised by the Sheriff's Department that said FOIL request could not be complied with because it was exempt.

Petitioner filed an appeal and was again denied stating release of said information would "interfere with judicial proceedings."

Petitioner believes the grounds for refusal are invalid and commenced this proceeding to enforce release of the information requested.

Petitioner states the failure to release information which could prove or disprove a factual matter is "absurd."

Since Petitioner is the party involved in the video, and he is requesting same, there exists no "invasion of privacy."

If the camera equipment was out of order, Petitioner requests an affidavit from Respondents indicating same and also the date when the camera was last operable.

In opposition Respondents allege Petitioner personally served the Petition herein.

A review of the affidavit of service, indicates personal service was made upon the Sheriff's Department and Sheriff Donald B. Smith on August 8, 2008 by one Lauren J. Pistone who is not a party to this action.

Additionally, Respondents claim that the release of the information would interfere with a judicial proceeding and be an invasion of privacy is unsubstantiated.

The information requested was in a proceeding with no discovery rules. Additionally the information requested is clearly Brady material. It will either exculpate Petitioner or convict him.

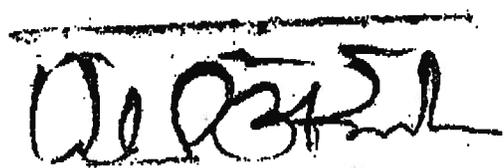
As to invasion of privacy, the Petitioner cannot claim invasion of his own privacy if he is seeking the information.

Furthermore, Petitioner requested a written statement that the video camera was or was not in operative order at the time of his incident, if that be the fact, and also when the camera was last operative. To provide this information would not invade his privacy and would be exculpatory information to which he is entitled.

After a review of all documents submitted, the Petition is granted. The Sheriff's Department will provide Petitioner with that segment of a video that refers to his incident or they will provide a sworn affidavit that at the time of Petitioner's incident the video camera was not operative and will indicate when it was last operative.

Said information shall be provided within 10 days of receipt of a copy of this order, by mail, with notice of entry.

This constitutes the order of the Court.



Andrew P. O'Rourke  
Justice of the Supreme Court

Dated: September 2, 2008  
Carmel, NY

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