

SUPREME COURT - STATE OF NEW YORK

Present:

HON. HENDERSON W. MORRISON

Justice.

~~TRIAL~~/SPECIAL TERM, PART 1
NASSAU COUNTY

PATRICK J. KING, JR.,

Petitioner,

- against -

DENIS DILLON, DISTRICT ATTORNEY OF
THE COUNTY OF NASSAU,

Respondent.

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By this application the petitioner, appearing pro se, seeks an order directing that the District Attorney of Nassau County permit him to inspect and copy the minutes of the meetings of the Village Board of the Incorporated Village of Hewlett Bay Park. The minutes are in the possession of the District Attorney pursuant to a Grand Jury subpoena. The Grand Jury, or the District Attorney's office, is presently investigating the activities of the petitioner who served as Clerk of the Village of Hewlett Bay Park. The petitioner has already been arrested and charged with grand larceny, forgery, and violations of the General Municipal Law.

The petitioner's prayer for relief is based upon those sections of the Public Officers Law known as the Freedom of Information Act (Public Officers Law Article 6). The petitioner's application is deemed to be a proceeding under Article 78 of the Civil Practice Law and Rules.

I begin by noting that the minutes of the Village Board of the Incorporated Village of Hewlett Bay Park are public records subject to inspection under the Freedom of Information Act. The claim that this Court lacks the authority to order their production is without merit, because we deal here not with minutes of Grand Jury proceedings but with public records temporarily in the possession of the District Attorney. Nor does the issuance of a Grand Jury subpoena create an automatic and absolute bar on further disclosure. Section 190.25 of the Criminal Procedure Law cloaks the proceedings of the Grand Jury in deserved secrecy (Peo. v DiNapoli, 27 NY 2d 229). It does not, by itself, eradicate records otherwise public in nature (cf Jones v State, 62 AD 2d 44).

In opposing a request for disclosure, the party resisting disclosure has the burden of proof in establishing entitlement to the exemption

(Hawkins v Kurlander, 98 AD 2d 14). I must note in the first instance that the records sought were not compiled for law enforcement purposes (P.O.L. 87[2]e). Minutes of Village Board meetings serve a quite different function. Moreover, there is no showing that any other impediment to production exists. These were public records, ostensibly prepared by the petitioner, so there can be little question of the disclosure of confidential material. Any threatened tampering can be prevented by adequate supervision and reasonable restrictions.

The application is granted to the extent that the respondent shall permit the petitioner to inspect and obtain copies of the minutes of the Village Board of the Village of Hewlett Bay Park. Such inspection shall be supervised by a representative of the District Attorney's office who may exclude writing implements from the scene. Copies of the minutes shall be prepared by respondent and furnished to petitioner at a reasonable charge.

Dated _____ DEC 19 1984

Henderson W. Maxwell

 J.S.C.

ENTERED

DEC 20 1984

WILLIAM W. MAXWELL
 COUNTY CLERK OF HENRIED COUNTY