

452

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : SPECIAL TERM PART I

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In the Matter of the Application of

DANIEL SAMBUCCI,

Petitioner,

For Judgment Under Article 78 of the  
CPLR

- against -

ROBERT J. McGUIRE, Police Commissioner of  
the City of New York, FRANCIS C. HALL,  
Commanding Officer, License Division,  
Police Department of the City of New  
York,

Respondents.  
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NO: 5/13/81

INDEX NO. 25899/81

(Motion #140 of 9/10/82)

BLYN, J.:

Motion by petitioner for an order, pursuant to CPLR 3124 and 3126, striking the respondents' answer and granting the relief sought in the petition.

Petitioner had previously made a motion, pursuant to CPLR 408, for leave to serve interrogatories and a notice to produce which came on before this court. This court in a decision dated August 5, 1982 held that petitioner, on the issue of discrimination and unequal treatment, was entitled to discovery but limited to copies, at petitioner's expense, of all pistol license applications of those persons to whom current carry pistol licenses have been issued for the period January 1, 1976 through December 31, 1981 and further that petitioner is entitled to copies of whatever written criteria exist that have been promulgated by respondents for the determination of the proper cause standard for the issuance

of a carry permit.

Respondents have not complied stating that they would only do so upon payment of the sum of \$1,500.00. They support the request for said sum of money by explaining that all types of pistol licenses are stored in single file folders and maintained in alphabetical order according to the individual applicant's last name. They say that each such file folder not only includes the actual application form but supporting documentation such as birth certificate, social security records, a NYSID sheet, an investigator's report, letters of reference, the applicant's name check and fingerprints, and the report of the License Division's Hearing Officer assigned to evaluate an applicant's pistol license. They further state that the file room currently contains 55,000 file folders. They go on to state that they utilize a computer system which lists the current pistol licenses by police precinct to provide name, occupation and business address issued within the past 2 years in the police precincts in question. They report that the computer records show that in the past 2 years 238 carry pistol licenses have been issued in the 110th and 220 in the 109th.

Petitioner sought all current carry pistols issued in the 109th and 110th police precincts for the period January 1, 1976 through December 31, 1981 (6 years).

Petitioner in his reply affirmation points out that Section 87 of the Public Officers Law (Access to Agency Records) limits the fee for copies of records to 25¢ per photocopy for documents no greater in size than 9 inches by 11 inches. The court notes that the application form appears to be within that range. Petitioner states that he would make arrangements at his own expense to have copies made of the applications by hand or by electrical device. Respondents reply to this offer by stating that in light of their responsibility to maintain the integrity of the file folders they would have to have personnel assigned to supervise each of the petitioner's representatives and that this would not change the estimated expense.

The burden is upon those seeking discovery not to place the parties subject of the discovery to any unnecessary expense or trouble.

The court is persuaded that the petitioner must pay the \$1,500.00 in order to secure the copies of the application forms for the period requested. The only condition the court places on this determination is that after the discovery has been completed respondents furnish petitioner with a breakdown of the actual expenses caused to them, including the personnel reimbursement and cost of copying and if the \$1,500.00 represents an overpayment to provide a refund and in the event it does not cover such expenses then the petitioner shall be liable for any additional amount.

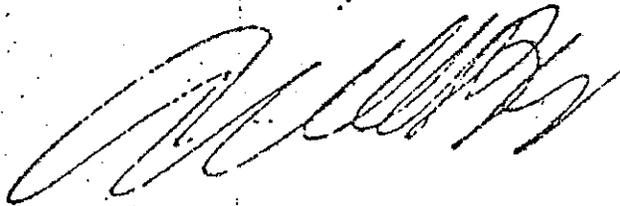
As to the court's direction that respondents provide copies of written criteria promulgated by respondents they provide an affidavit stating that there are no such written criteria other than the statutory requirements set forth in Section 400 of the Penal Law.

Petitioner contends that this court intended something broader than rules and regulations. In this he is mistaken. The court said "whatever written criteria exist that have been promulgated . . . ." Promulgated meant rules and regulations not forms or instruction sheets. The court determines that respondents have complied as to this direction. The motion is denied.

This decision shall constitute the order of the court.

Dated: November 4, 1982

FILED  
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COUNTY CLERK'S OFFICE  
NEW YORK



J. S. C.