

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JUDICIAL WATCH, INC.,

Petitioner,

Index No.

-against-

VERIFIED
PETITION

THE CITY OF NEW YORK and THE NEW YORK
CITY POLICE DEPARTMENT,

Respondents.
-----X

Judicial Watch, Inc., ("Judicial Watch") as and for its Petition seeking an Order pursuant to Article 78 of the Civil Practice Law and Rules ("CLPR") and FOIL: a) directing the City of New York (the "City") and the New York City Police Department ("NYPD") immediately respond to Judicial Watch's outstanding Freedom of Information Law ("FOIL") requests and, specifically, to immediately produce: (1) The audio tape of the 10-13 "officer in distress" call recorded by the Police Communications Division at 11:41 a.m. on April 14, 1972; and (2) The Major Case Squad report and files on the homicide of NYPD Patrolman Philip Cardillo; b) granting Judicial Watch its costs and expenses, including reasonable attorneys' fees in being forced to file the instant action based on Respondent's failure to respond to a valid FOIL request and for failing to meet its own deadlines and mandates in failing to so respond; and c) granting Judicial Watch any such other or further relief as this Court deems fit and proper, states and avers as follows:

Preliminary Statement

1. The relief sought in this Petition is based on the need for reasonable compliance with FOIL by the City of New York ("City") and the New York City Police Department

("NYPD", and together with City, the "Respondents") Office of the Mayor; for those entities to be held accountable for the decisions and determinations of their own Records Access Appeals Officer; for the strictures of FOIL to be adhered to for the good of all citizens of the State and Country; and to vindicate the rights of Judicial Watch in seeking the requested documentation identified in the legitimate FOIL requests that are outstanding.

2. Petitioner has made valid requests for the limited documents identified in the FOIL requests at issue (discussed at further length below), but, to date, despite the fact that the documents stem from a forty-five (45) year old matter and certain of the requested items were provided to the NYPD by retired Detective Randy Jurgensen who has submitted an Affidavit in Support of the relevant Order to Show Cause seeking the same relief as sought herein, Respondents have yet to provide one responsive document and only have provided conclusory, unsubstantiated, non-specific bases for denial by an individual with no personal knowledge of the underlying investigation.

Jurisdiction and Venue

3. This Court has jurisdiction over like Article 78 proceedings based on FOIL request denials by State, City or other municipal entities or agencies, a category in which Respondents clearly fall. Venue is proper as the complained of acts and denial occurred in this County and Respondents' principal offices are in this County.

Parties

4. Judicial Watch is a 501(c)(3) nonprofit organization with principal office in Washington, D.C.

5. The City of New York and the NYPD are municipal entities that are subject to the

requirements of FOIL.

Background Facts

6. The relevant FOIL requests were made on June 5, 2017 to the NYPD's Record Access Officer, at One Police Plaza - Room 110-c. FOIL Unit - Legal Bureau, New York, New York 10038. (True copies of the requests are attached hereto as Exhibits "A" and "B").

7. The first request -- which was received on June 8, 2017 and assigned FOIL #7627 -- sought "The audio tape of the 10-13 "officer in distress" call recorded by the Police Communications Division at 11:41 a.m. on April 14, 1972."

8. The second request -- which was also received on June 8, 2017 and assigned FOIL #7628 -- as explained by the NYPD sought the Major Case Squad report / the investigative file on the homicide of NYPD Patrolman Philip Cardillo.

9. On June 23, 2017, the NYPD denied both FOIL requests at issue.

10. On July 17, 2017 Petitioner timely appealed both denials in separate correspondence (see true copies of the appeal letters attached hereto as Exhibits "C" and "D").

11. In correspondence dated July 25, 2017, the NYPD denied Petitioner's appeals (see copy of July 25, 2017 correspondence attached hereto as Exhibit "E").

10. The sole stated basis for the denial was that:

...disclosure of the records would interfere with a pending criminal investigation [Public Officer's Law §87(2)(e)(I)]. This statute specifically provides that an agency, "may deny access to records or portions thereof that are compiled for law enforcement purposes and which, if disclosed, would interfere with law enforcement investigations or judicial proceedings." As of this writing, the criminal investigation into the incident remains active and ongoing. Accordingly, disclosure must be denied as the release of the requested documents would interfere with this pending criminal investigation.

11. The denial letter went on to discount the representations of retired Detective Randy Jurgensen ("Jurgensen") and misrepresent both the import and relevance of Jurgensen's statements. The letter went on to allege that, "[a]s of this writing, a review of official Department records indicates that the case is still being actively investigated and that numerous updates have been made to the case file since Mr. Jurgensen alleged that the "prove [sic] was over."

12. The reasons that the Respondents' denials are without merit are myriad. Each of the following indisputable facts are reason on their own to reject the Respondents' denial and grant the relief sought by Petitioner herein.

13. First, per NYPD policy, the case was closed upon the arrest and indictment of Lewis 17X Dupree in 1974 and passed on to the District Attorney's office for trial.

14. Second, the denial was not substantiated by any affidavit, testimony or relevant detail whatsoever, much less by an individual with personal knowledge of the underlying investigation -- both as required by relevant law. The denial of the appeal of the FOIL requests herein does not even allege that the signer has any personal knowledge of the relevant facts.

15. Third, and similarly, the conclusory basis for denial of the relevant FOIL requests provides no details, specifics or even any potential basis for how disclosure of the documents sought in the relevant FOIL requests could, much less would, have any effect whatsoever on any "law enforcement investigations" or "judicial proceedings" -- also as required by relevant law.

16. Fourth, in early 2015, Detective Sergeant Francis "Buddy" Murnane, who was the Major Case Squad Leader for the re-investigation, specifically re-affirmed to me that the re-opened investigation or probe was "over"; that the Major Case Squad's report was "finished";

and that there was no more investigation to be done. Similarly, on March 19, 2012, Deputy Commissioner Browne of the NYPD advised the New York Daily News that the case was closed. While recognizing that there had been a new investigation, he also acknowledged that “[i]t didn’t turn up any useful information.” Moreover, Jurgensen – the individual with more first-hand knowledge of the entirety of facts surrounding this matter than any other person and who was made a part of the re-investigation commenced in 2006 (to the point where he was given a desk among the other Major Case Squad Detectives) has testified that the re-investigation ascertained no new facts about Phil Carillo’s murder and that no new investigations or judicial proceedings arose from the re-opened inquiry.

17. Fifth, it must be remembered that the records sought involve events that took place over forty (40) years ago. The documents sought are reviews of records from four decades ago or those records themselves. The only suspect in the killing of Officer Cardillo was tried two times in the 1970s. The NYPD’s Major Case Squad confirmed that they developed no new suspects and that Jurgensen and his team got the right individual some forty (40) years ago. There has been no relevant judicial proceeding for over forty (40) years. The City’s and the NYPD’s failure to disclose this records is an outrage and wholly without support in fact, equity or common sense, much less the relevant statutes and case law.

18. Sixth, it must be noted also that many of the records now being sought were provided by Jurgensen to the NYPD at the request of the NYPD. These transfers include the recording sought in FOIL Request #7627. With regard to that Request, the denial of the City and the NYPD is particularly egregious additionally because of the fact that the transcript of that recording has been made public in various media over the intervening forty-five (45) years.

There can be nothing about the recording itself that could interfere with any of the phantom investigations or judicial proceedings that Sergeant Mazur, an individual with no personal knowledge of the relevant matters, has now purported.

19. It should also be noted that Sergeant Mazur is very careful to note that “numerous updates have been made to the case file since Mr. Jurgensen alleged that the ‘prove [sic] was over’” referencing a January 2015 conversation between Jurgensen and lead Detective Sergeant Murnane. To the extent that any additions have been made since January 2015, it is likely that they are merely DD5 forms, “green sheets” reflecting non-substantive additions; including, by way of example, the completion of the Major Case Squad’s report, the transmission of the file upstairs and likely the filing of requests for information concerning the same or articles concerning the now-close re-investigation. In any event same have not been tied to any specific investigation, much less any actual threat to any such investigation should the file and the 911 tape be released at this time.

20. Judicial Watch’s instant FOIL requests have been denied unlawfully.

21. An Article 78 proceeding is the appropriate method for denial of or undue delay regarding FOIL requests like the ones at issue herein.

22. The refusal to respond to Petitioner’s FOIL requests is arbitrary and capricious, constitutes an abused of discretion and a clearly unreasonable denial of Petitioner’s FOIL request.

23. Petitioner has a right to the documents sought.

24. Petitioner has exhausted its administrative remedies and has no other remedy at law as the Respondents have improperly denied Petitioner’s lawful requests. Further

administrative proceedings would clearly be pointless as the Respondents refuse to adhere to the applicable legal standards.

WHEREFORE, it is respectfully requested that an Order be entered pursuant to Article 78 of the Civil Practice Law and Rules ("CLPR") and FOIL:

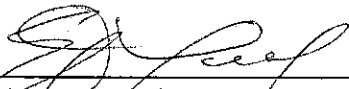
a. directing the City of New York (the "City") and the New York City Police Department ("NYPD") immediately respond to Judicial Watch's outstanding Freedom of Information Law ("FOIL") requests and, specifically, to immediately produce:

- 1) The audio tape of the 10-13 "officer in distress" call recorded by the Police Communications Division at 11:41 a.m. on April 14, 1972; and
- 2) The Major Case Squad report and files on the homicide of NYPD Patrolman Philip Cardillo.

b. granting Judicial Watch its costs and expenses, including reasonable attorneys' fees in being forced to file the instant action based on Respondents' failure to respond to a valid FOIL request; and

c. granting Judicial Watch any such other or further relief as this Court deems fit and proper.

Dated: New York, New York
November 16, 2017



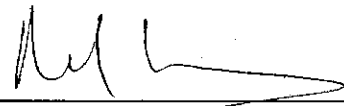
Ethan Leonard
The Law Offices of Neal Brickman, P.C.
Counsel for Judicial Watch, Inc.
420 Lexington Avenue - Suite 2440
New York, New York 10170
(212) 986-6840

VERIFICATION

State of New York }
 } ss.:
County of New York }

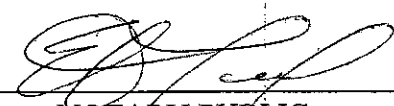
Micah Morrison, being duly sworn, deposes and says:

I am an employee Petitioner, Judicial Watch, herein, serving as Chief Investigative Reporter. I have read the foregoing Petition, and know the contents thereof. The same are true to my own knowledge, except as to matters alleged on information and belief, and as to those matters, your affiant believes them to be true.



Micah Morrison

Sworn to before me this
16th day of November, 2017



NOTARY PUBLIC

ETHAN Y. LEONARD
Notary Public, State of New York
No 021E5085475
Qualified in New York County
Commission Expires September 22, 2021