In the Matter of Perry Bellamy, Respondent, v New York City Police Department, Appellant.

3997-3997A, 401463/98

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

87 A.D.3d 874*; *930 N.Y.S.2d 178*; *2011 N.Y. App. Div. LEXIS 6293*; *2011 NY Slip Op 6410

September 8, 2011, Decided
September 8, 2011, Entered

SUBSEQUENT HISTORY: Motion granted by *Matter of Bellamy v. N. Y. City Police Dept., 20 N.Y.3d 886, 980 N.E.2d 519, 2012 N.Y. LEXIS 3448, 956 N.Y.S.2d 471 (2012)*
Affirmed by, Certificate for question declined at *Matter of Bellamy v. New York City Police Dept., 2013 N.Y. LEXIS 118 (N.Y., Feb. 13, 2013)*

PRIOR HISTORY: *Matter of Bellamy v. New York City Police Dept., 80 A.D.3d 442, 913 N.Y.S.2d 225, 2011 N.Y. App. Div. LEXIS 30 (N.Y. App. Div. 1st Dep't, 2011)*
Matter of Bellamy v. New York City Police Dept., 2009 N.Y. Misc. LEXIS 5235 (N.Y. Sup. Ct., Nov. 13, 2009)

HEADNOTES

Records--Freedom of Information Law--Public Safety Exemption

COUNSEL: [***1] Michael A. Cardozo, Corporation Counsel, New York (Sharyn Rootenberg of counsel), for appellant.

Perry Bellamy, respondent Pro se.

JUDGES: Tom, J.P., Moskowitz, Freedman, Richter, Manzanet-Daniels, JJ. Concur--Tom, J.P., Moskowitz, Freedman, Richter and Manzanet-Daniels, JJ.

OPINION

[**179] [*874] Judgment, Supreme Court, New York County (Alice [*875] Schlesinger, J.), entered July 31, 2009, to the extent appealed from as limited by the briefs, granting the petition brought pursuant to the Freedom of Information Law to compel respondent to disclose police reports containing the names and statements of witnesses who did not testify at petitioner's trial, and order, same court and Justice, entered November 18, 2009, which, inter alia, denied respondent's motion to renew, unanimously reversed, on the law and the facts, without costs, and the petition denied.

In 1986, petitioner was convicted of the murder of a New York City Parole Officer. Petitioner made inculpatory statements to the police, in which he admitted to being present during the planning of the murder and to luring the victim to the scene. During the federal narcotics prosecution of other participants in the murder scheme, these individuals asserted that petitioner had not been involved. Petitioner's FOIL request for unredacted versions [***2] of documents he has received previously is part of his effort to obtain a new trial.

Public Officers Law § 87 (2) (f) permits an agency to deny access to records, that, if disclosed, would endanger

the life or safety of any person. The agency in question need only demonstrate "a possibility of endanger[ment]" in order to invoke this exemption (*see Matter of Connolly v New York Guard, 175 AD2d 372, 373, 572 NYS2d 443 [1991]*; *see also Matter of Rodriguez v Johnson, 66 AD3d 536, 886 NYS2d 695 [2009])*. "[A]ccess to government records does not depend on the purpose for which the records are sought" (*Matter of Bellamy v New York City Police Dept., 59 AD3d 353, 355, 874 NYS2d 60 [2009])*.

Respondent met its burden of establishing that the documents at issue fall within an exemption from disclosure as provided in *Public Officers Law § 87 (2)*. The documents here reflect the identities of certain persons who spoke with police during the course of an investigation into this gang-related homicide ordered from prison. Because these individuals never became testifying witnesses, neither respondent, nor anyone else, would know about them otherwise. It is therefore possible that the lives of persons who spoke with police could be endangered from [***3] the release of identifying information. After learning the names, all one would need is an Internet connection to determine where they live and work. Moreover, insofar as the documents mention individuals who did not provide information relied upon during the investigation, that information is exempt from FOIL under the privacy exemption (*see Public Officers Law § 87 [2] [b]*; *Matter of De Oliveira v Wagner, 274 AD2d 904, 711 NYS2d 592 [2000])*.

[*876] Accordingly, based on the facts and circumstances, we deny petitioner's FOIL request seeking unredacted versions of the documents (*see Matter of Rodriguez, 66 AD3d 536, 886 NYS2d 695 [2009]* [DA properly withheld, pursuant to the public interest privilege, statements of two witnesses who spoke with law enforcement personnel]). Concur--Tom, J.P., Moskowitz, Freedman, Richter and Manzanet-Daniels, JJ.

The decision and order of this Court entered herein on January 4, 2011 is hereby recalled and vacated (*see* 2011 NY Slip Op 82906[U] [decided simultaneously herewith]).

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