

STATE OF NEW YORK : COUNTY OF ERIE
SUPREME COURT

MATTHEW SPINA and THE BUFFALO NEWS,
INC.,

Petitioners,

vs.

Index # 812735/2022
MEMORANDUM
DECISION

ERIE COUNTY SHERIFF'S OFFICE and CHIEF
JOHN W. GREENAN, in his Official Capacity as FOIL
Appeals Officer for the Erie County Sheriff's Office,

Respondents.

Hon. Catherine Nugent Panepinto, J.S.C.

This is a Freedom of Information case. Petitioners noticed a Verified Petition with exhibits, pursuant to CPLR § 78 and New York Freedom of Information Law (FOIL). They seek judicial review of Respondents' decision denying access to video recordings of a February 24, 2022 incident involving an Officer of Respondents and an inmate at the Erie County Holding Center. Petitions seek an Order compelling Respondents to produce the recordings, and granting Petitioners' attorneys' fees and costs. Respondents answered the Petition stating among other things, "Respondent believes that the footage, particularly if posted on social media or the internet, would be degrading and humiliating for the inmate." Further, Respondents argue they acted in good faith when they withheld the recordings and releasing them would constitute an unwarranted invasion of privacy. The parties appeared for oral argument January 26, 2023 and this Court reserved. The Court reviewed the parties' arguments and e-filed documents ##1- 16.

§ 84. Legislative declaration

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible.

The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

N.Y. Pub. Off. Law § 84 (McKinney)

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except those records or portions thereof that may be withheld pursuant to the exceptions of rights of access appearing in this subdivision. A denial of access shall not be based solely on the category or type of such record and shall be valid only when there is a particularized and specific justification for such denial. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:...

(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;

N.Y. Pub. Off. Law § 87, in relevant part, (McKinney)

(c) The court in such a proceeding: (I) may assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed, and when the agency failed to respond to a request or appeal within the statutory time; and (ii) shall assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed and the court finds that the agency had no reasonable basis for denying access.

N.Y. Pub. Off. Law § 89, in relevant part, (McKinney)

With respect to the privacy of inmates, as you pointed out in the appeal of the initial denial of access, it has been determined that those persons have no general expectation of privacy, and that records or portions of records pertaining to them may be withheld insofar as they display nudity (i.e., inmates showering) or other intimate details [see e.g., *Buffalo Broadcasting Co., v. NY State*, 155 A.D.2d 106 (3rd

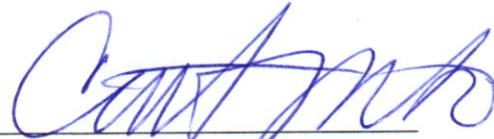
Dept., 1990); *Bensing v. LeFevre*, 506 N.Y.S.2d 822 (Sup. Ct., 1986)]. As I understand its content, the video at issue does not include or depict the kind of intimate detail that would, if disclosed, constitute an unwarranted invasion of personal privacy. In sum, for the reasons expressed in the preceding commentary, I believe that the record sought must be disclosed to comply with FOIL.

FOIL-AO-19202 (November 7, 2014)

The involved inmate was in the booking/processing area of the subject facility, where officers were attempting to fingerprint him. Based upon the narrative already provided by Respondents, the inmate was not in a state of nudity, nor was he being subjected to a strip search. According to the submitted/disclosed report, the inmate spat on the Officer's leg and the Officer appeared to kick the inmate in the head. There were 12 videos recorded on 6 body-worn-cameras of involved personnel. The involved Officer was fully exonerated and returned to duty after investigation. Respondents made an admirable effort showing concern for the inmate their employee allegedly kicked in the head almost a year ago. They state the recordings, if posted on the internet, would be degrading and humiliating to the inmate. Apparently, said concern did not extend to determining the current location or health & wellness of the inmate, nor his opinion on the FOIL request. No inmate affidavit was submitted.

Although the Court is sympathetic to Respondents' concern, recordings on the internet may actually prove beneficial to the inmate and the public seeking to understand what happened. Perhaps it will garner sympathy for the inmate. Regardless, potential repercussions of open government are largely irrelevant under the FOIL. See, *New York Lawyers for the Public Interest v. NYC Police Dept.*, No. 158010/2019, 2020 WL 2933630 (N.Y. Sup.Ct. June 01, 2020) [releasing body-worn camera footage promotes transparency, accountability, and public trust-building. It provides a contemporaneous, objective record of encounters between the public and police. The inherent right of the public to know outweighs privacy concerns. To hold otherwise is contrary to the spirit of the FOIL law and objectives of the NYPD's body-worn camera footage program.]; *Brown v. Town of Amherst*, 195 A.D.2d 979, 979-80 (4th Dept., 1993) [FOIL imposes a broad standard of open disclosure upon government agencies and all records are presumptively available for public inspection and copying unless they fall within one of FOIL's eight exemptions The statutory exemptions are to be narrowly interpreted and the burden lies upon the agency to show that the requested material falls squarely within the statutory exemption" (*Matter of Buffalo News v Buffalo Mun. Hous. Auth.*, 163 AD2d 830, 830-831 (4th Dept., 1990); see also, *Matter of Capital Newspapers Div. v Burns*, 67 NY2d 562, 566 (1986)). The agency resisting disclosure must articulate "a particularized and specific justification for denying access. (*Matter of Capital Newspapers Div. v Burns*, supra, at 566)]; *Matter of Mack v. Howard*, 91 AD3d 1315 (4th Dept., 2012)

Accordingly, Petitioners' request is hereby granted. Respondents are hereby Ordered to produce in their entirety certain recordings requested in Petitioners' FOIL request. Petitioners' request for payment of their attorney fees and litigation costs is also granted. The Court finds Respondents had no reasonable basis for denying access to the subject recordings. See, *Forsyth v. City of Rochester*, 207 A.D.3d 1236, 1240 (4th Dept., 2022) [We conclude that petitioner "has been subjected to the very kinds of unreasonable delays and denials of access which the counsel fee provision seeks to deter" (*Bottom*, 129 AD3d 1604, at 1605-1606 (4th Dept., 2015) [internal quotation marks omitted])] Petitioners are hereby ordered to submit documentation of their "reasonable attorney's fees and other litigation costs". Petitioners are also hereby Ordered to submit the appropriate Order on Notice.



Hon. Catherine Nugent Panepinto
Supreme Court Justice

Dated: February 17, 2023
Buffalo, New York

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