

STATE OF NEW YORK

SUPREME COURT

COUNTY OF SARATOGA

THE NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

-against-

DECISION AND ORDER

RJI No. 45-1-2009-1687

Index No. 2009-4158

THE CITY OF SARATOGA SPRINGS and
THE SARATOGA SPRINGS POLICE DEPARTMENT,

Respondents,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

PRESENT: HON. THOMAS D. NOLAN, JR.
Supreme Court Justice

APPEARANCES: NEW YORK CIVIL LIBERTIES UNION FOUNDATION
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In this CPLR Article 78 proceeding, petitioner seeks from respondent City of Saratoga Springs under the Freedom of Information Law (FOIL) [see Public Officers Law, Article 6] (hereinafter FOIL) certain records pertaining to the use by the City's police department of conducted energy devices a/k/a "stun guns" or "tasers".

Following several conferences between the parties and the court, the City has provided to petitioner certain records in response to the FOIL request. One of the documents the City provided, titled "General Order § 20.62 - Electronic Weapons", was redacted in three places. Petitioner contends that it is entitled to an unredacted copy of this document. Citing exemptions set forth in Public Officers Law § § 87 (2) (e) (iv) and 87 (2) (f), respondent City contends that the redactions are appropriate and justified.

The parties have agreed that the court decide on their written submissions whether the redactions are appropriate or whether petitioner should be provided an unredacted copy. To facilitate this review, the redacted version of General Order § 20.61 is marked "Court Exhibit 1" and an unredacted copy is marked "Court Exhibit 2". Respondent City contends that the three sections of General Order § 20.62 which it redacted, specifically, the last two lines of Section IV (c) (2); the entire subdivision (d) in Section IV (D); and the last nine (9) words of subdivision (e) in Section IV (D) constitute "information compiled for law enforcement purposes and which if disclosed would...reveal criminal investigative techniques or procedures [which are not routine] and/or "if disclosed could endanger the life or safety of any person".

FOIL exemptions are to be "narrowly construed, with the agency that seeks to prevent disclosure bearing the burden of demonstrating that the requested material falls squarely within an exemption by articulating a particularized and specific justification for denying access". Matter of Carnevale v City of Albany, 68 AD3d 1290 (3rd Dept 2009). The law enforcement investigative technique and procedures exemption is designed to "prevent violators of the law from being apprised of non-routine procedures by which law enforcement officials gather information": Matter of Spencer v New York State Police, 187 AD2d 919, 920-921 (3rd Dept

1992). Stated another way, an investigative technique or procedure is likely to be classified non-routine if “disclosure of those procedures would give rise to a substantial likelihood that violators could evade detection by deliberately tailoring their conduct in anticipation of avenues of inquiry to be pursued by [law enforcement] personnel”. Matter of Fink v Lefkowitz, 47 NY2d 567, 572 (1979). And, the exemption related to endangering the life or safety of any person covers information which “‘could, by its inherent nature, give rise to the implication that its release, in unredacted form, could endanger the life and safety of witnesses or have a chilling effect on future witness cooperation’ (citation omitted)”. Matter of Bellamy v New York City Police Dept., 59 AD3d 353, 355 (1st Dept 2009). The exemption additionally covers information which could jeopardize the well-being of police officers or other law enforcement officials. Matter of Beyah v Goord, 309 AD2d 1049 (3rd Dept 2006); Matter of Sanders v Bratton, 278 AD2d 10 (1st Dept 2000).

After an in camera review of the redacted sections of the document in their context in the complete document, the court finds no basis to conclude that the three redactions fall within cited exemptions.

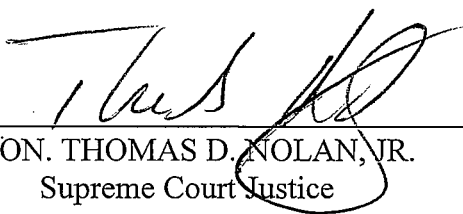
Petitioner is therefore entitled under FOIL to an unredacted copy of General Order § 20.62. Respondent City shall provide petitioner with an unredacted copy of General Order § 20.62 no later than 30 days following the service of a copy of this Order with notice of entry upon respondent City, unless within such 30 day period, respondent City files a notice of appeal and in such event, the time within which respondent City is to comply with this order is extended until the appeal is decided or otherwise terminated.

This constitutes the decision and order of the court. The original decision and order is

returned to petitioner's counsel for entry. Court Exhibits 1 and 2 are returned to respondent's City's counsel. Counsel for petitioner is not relieved from the applicable provisions of CPLR 2220 relating to filing, entry, and notice of entry of the decision and order.

So Ordered.

DATED: May 10, 2010
Ballston Spa, New York



HON. THOMAS D. NOLAN, JR.
Supreme Court Justice