

COPY

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of
JAMES EDWARDS, 77-B-1874.

Petitioner,

DECISION and ORDER
RJI #01-06-ST6629
Index # 2076-06

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

- against-

THE NEW YORK STATE POLICE,

Respondent.

APPEARANCES

Cheryl L. Kates, Esq.
Attorney for the Petitioner
121 N. Fitzhugh Street, Suite 300
Rochester, New York 14614

Eliot Spitzer, Attorney General of the State of New York,
Jaime I. Roth, Esq., of counsel
Attorneys for the Respondent
The Capitol
Albany, New York 1224-0341

STEPHEN A. FERRADINO, J.

Petitioner seeks a judgment pursuant to Article 78 of the CPLR reversing a determination to deny Petitioner's Freedom of Information Law ("FOIL") request on the grounds that the same was arbitrary and capricious, based upon unlawful procedure, and erroneous as a matter of law. Respondent's Answer raises an objection in point of law that the Petition fails to state a cause of action.

Petitioner is currently serving a sentence of twenty-five years to life for his

conviction of Murder in the Second Degree. Petitioner has served twenty-nine years of his life sentence. The victim was killed on February 17, 1977. Petitioner alleges that he did not commit the murder and he is currently pursuing an appeal. Petitioner has retained a medical expert who has examined the testimony elicited at trial and some of the documentary evidence relied upon by the prosecution. The instant FOIL request seeks copies of documents pertaining to the criminal investigation by Respondent, including crime scene photographs. Respondent produced some of the information sought and informed Petitioner that it did not possess most of the remaining items. Respondent denied access to certain crime scene photos on the grounds that said photos were exempt from FOIL because their disclosure would constitute an unwarranted invasion of personal privacy. Petitioner's expert avers that he needs to review the crime scene photos in order to confirm his theory regarding the cause of the victim's death. The State Committee on Open Government issued an advisory opinion that the crime scene photos are not exempt. The disputed photos have been provided to the Court in-camera.

Public Officer's Law §87 makes it incumbent upon a government agency to provide for public inspection and copying of all records except those specifically exempt from disclosure by State or Federal statute, or those which would constitute an unwarranted invasion of personal privacy under Public Officer's Law §89(2). Public Officer's Law §87(2)(a),(b). The burden is on the agency to show that the materials fall squarely within the ambit of the exemptions. *Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 275 (1996). The provisions of FOIL are to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the

records of government. See, *Capital Newspapers, Div. of Hearst Corp. v. Whalen*, 69 N.Y.2d 246, 252 (1987); *Russo v. Nassau County Community College*, 81 N.Y.2d 690, 697 (1993).

Section 89(2) of the Public Officer's Law defines what constitutes an "unwarranted invasion of personal privacy" by way of a nonexclusive list of examples. Public Officer's Law §89(2). Since the materials do not fall within the enumerated examples set forth in the statute, the Court must determine whether the requested materials would be offensive and objectionable to a reasonable person of ordinary sensibilities. See, *Dobranski v. Houper*, 154 A.D.2d 736, 737 (3d Dept. 1989). The rights, and expectations of privacy, of individuals must be balanced with the legitimate interests of the public in obtaining disclosure. *Id.* at 737-738. The scope of FOIL is not limited to the purpose for which a document was produced or the function to which it relates. See, *Gould v. New York City Police Dept.* at 274; *Pennington v. Clark*, 16 A.D.3d 1049, 1051 (4th Dept. 2005), citing *Russo v. Nassau County Community College* at 698-699; *Capital Newspapers, Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566-567 (1980). While autopsy photographs are generally exempt from disclosure under County Law § 677(3)(b), a court may order that the photographs be made available for inspection to a person "having a substantial interest" in a criminal action related to the contents of the record or investigation. See, *Pennington v. Clark* at 150; *Diaz v. Lukash*, 82 N.Y.2d 211, 216 (1993).

The autopsy photos of the victim were released to Petitioner by the Albany County Sheriff's Department and the Office of the Albany County District Attorney. Petitioner contends that the crime scene photos of the victim should also be released

because the deceased victim does not possess personal privacy rights. Regardless of whether the victim is deceased, the victim's family has an interest in protecting the dignity and memory of their brutally murdered loved one. The photos depict the victim in an undignified manner; her half dressed lifeless body having apparently been discarded in the snow near some woods. The Court must consider the basis for the FOIL request not as a means of determining whether the agency should release the crime scene photos, but rather when weighing whether the need for the information sought outweighs the harm that may result from the release thereof. The Court cannot determine from the record before it the extent to which the crime scene photos may have been used at trial. See, *Moore v. Santucci*, 151 A.D.2d 677, 679 (2d Dept. 1989).

Petitioner's counsel avers that the information sought is going to be used for legal purposes only to pursue justice on Petitioner's behalf. The Court hereby grants the Petition to the extent that Petitioner, Petitioner's counsel, and Petitioner's expert witnesses shall be entitled to examine and copy the crime scene photos for the sole purpose of utilizing the same in connection with Petitioner's appeal.

With respect to the issue of counsel fees, the Court is limited to awarding counsel fees and other litigation costs only when

- I. The record involved was, in fact, of clearly significant interest to the general public; and
- ii. The agency lacked a reasonable basis in law for withholding the record.

Public Officer's Law §89[4][c][i],[ii]. The Court finds that the photos are not of significant interest to the general public, but are of monumental importance to the

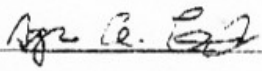
Petitioner. Furthermore, the State Police withheld the photos in good faith to protect the victim's family from potential embarrassment and humiliation that might arise from their release to the general public. The State Police relied upon the fact that the release of the crime scene photos would constitute an unwarranted invasion of personal privacy for the victim and her family. Although the victim and her family are deserving of that personal privacy right, it is outweighed by the need to avail Petitioner of every opportunity to pursue his appeal.

Accordingly, Petitioner's motion is granted to the extent that Respondent shall release the crime scene photos to Petitioner's counsel for the sole purpose of preparing the appeal of his conviction. The crime scene photos shall not be disseminated in any way except that they may be shared with counsel and expert witnesses in connection with the appeal. Petitioner's application for counsel fees and costs in connection with his FOIL request is in all respects denied.

Any relief not specifically granted is denied. No costs are awarded to any party. This decision shall constitute the order of the Court. The original papers shall be forwarded to the attorney for the Petitioner for filing and entry.

Dated: July 3, 2006

Malta, New York



STEPHEN A. FERRADINO, J.S.C.

Papers Received and Considered:

Notice of Petition dated March 27, 2006

Verified Petition of Cheryl L. Kates, Esq. sworn to March 27, 2006 with Exhibits A-C annexed including Affidavit of Dr. Kevin D. Whaley sworn to January 23, 2006

Verified Answer dated May 3, 2006

Affirmation of Jaime I. Roth, Esq. dated May 2, 2006 with Exhibits A-J annexed including those submitted for in-camera review

Reply and Affirmation of Cheryl L. Kates, Esq. sworn to May 11, 2006