

<b>Matter of Baez v Brown</b>
2013 NY Slip Op 30012(U)
January 2, 2013
Sup Ct, Queens County
Docket Number: 24221/09
Judge: Allan B. Weiss
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At an IAS Part 2 of the Supreme Court of the State of New York, Held in and for the County of Queens at the General Courthouse at Jamaica, New York, on the 2nd day of January, 2013.

SUPREME COURT : QUEENS COUNTY  
CIVIL TERM PART 2

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In the Matter of the Application of  
CANDIDO BAEZ, #90-A-3203

Petitioner,

FOR A JUDGMENT PURSUANT TO  
ARTICLE 78 OF THE CIVIL PRACTICE  
LAW AND RULES,

-against-

RICHARD A. BROWN, Queens County  
District Attorney; RAYMOND W. KELLY,  
Chief of Police, New York City Police  
Department,

Respondents.

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**Hon. Allan B. Weiss**

Index No.: 24221/09

Motion Seq. No. 1 On Remand

**ORDER and JUDGMENT**

This Article 78 proceeding has been remanded to this court, pursuant to the decision and order of the Appellate Division, Second Department, dated August 15, 2012 (*Matter of Baez v Brown*, (98 AD3d 609 [2012])), only with respect to petitioner's claims against Richard A. Brown, Queens County, District Attorney (District Attorney).

Candido Baez was convicted of murder in the second degree, assault in the second degree, two counts of criminal possession of a weapon in the fourth degree and possession of burglar tools. His conviction arises from an incident outside the Skyway Hotel, in Queens County, in the early morning hours of March 24, 1989. The People's witnesses testified that Baez was observed peering into a car parked outside the hotel's bar. At least

two witnesses saw Baez try the car's door handles. When confronted by the car's owner, Mike Lee, and several bar patrons, the defendant assaulted George Kurth with a beer bottle and subsequently fatally wounded Carlos Sepulveda with a screwdriver (*People v Baez*, 197 AD2d 527, 527-528 [1993],[affirming the conviction], *leave to appeal denied*, 82 NY2d 890 [1993]).

Self-represented petitioner Candido Brown is presently incarcerated in the Ossining Correctional Facility. On March 31, 2008, more than 18 years after he was sentenced, Baez requested, pursuant to the Freedom of Information Law (Public Officers Law §84 *et seq.* [FOIL]), that the District Attorney disclose certain documents relating to his trial and conviction. Specifically, Baez requested “names of E.M.S. workers that assisted Mr. Sepulveda, copies of all records, ambulatory and ambulance reports, E.M.S response team documents, diagrams, pictures, and/or recordings that were generated by the E.M.S. response team relating to this incident.” He also requested “photograph of the jacket; lab analysis report (Form #PD 244-1510); copy of the hotel video surveillance tape of the incident that was acquired from the Marriott’s Hotel’s Security Office on the morning of the incident; a color copy of my mug shot that was taken at the Queens County central booking; medical examiner body identification report, picture of the deceased and related reports; color copies of all photographs taken by the crime scene unit the morning of the incident; copies of all statements made or allegedly made by me to anybody, civilian, District Attorneys, or police officers; copies of all pictures of the crime scene that were taken by the District Attorney’s

Office that were submitted into evidence, together with those pictures that were not used at trial; copies of all reports of the ADA that interviewed me at the 115<sup>th</sup> precinct within minutes of the incident; ADA investigation reports, notes, scratch sheet, memo, and recordings of any and all investigation or interview of the Medical Examiner's Office; copies of all records and documents obtained by this office from my New York City Department of Correctional Services inmate files; copies of all interview reports, scratch sheets, notes, memos and recording of all the witnesses interviewed and investigations conducted by this ADA office; and copy of the index sheet or list containing name or titled [sic] of all reports, documents, file or evidence prepared or acquire in this case [sic]"

In a letter dated April 4, 2008, the District Attorney's then Record Access Officer, Josette Simmons, informed Baez she had received his FOIL request and that he would receive a response within 20 business days. In a letter dated May 2, 2008, ADA Simmons informed Baez that 78 pages of the documents he sought would be disclosed under FOIL; she listed all of the documents that she had determined were subject to disclosure under FOIL; and stated that Baez was required to remit a payment of \$19.50 in order to obtain the copies. She denied Baez' request for "names of E.M.S. workers that assisted Mr. Sepulveda, copies of all records, ambulatory and ambulance reports E.M.S response team documents, diagrams, pictures, and/or recordings that were generated by the E.M.S. response team relating to this incident"; "property index report", "supplementary arrest investigation report (Form #PD244-1510)"; "copy of the hotel video surveillance tape of the incident that

was acquired from the Marriott's Hotel's Security Office on the morning of the incident"; and the "copy of the index sheet or list containing name or titled [sic] of all reports, documents, file or evidence prepared of acquire in this case [sic]", as there was nothing in the file that met his description for those items.

In the same letter ADA Simmons informed Baez that certain requests were exempt from disclosure, including the prosecutor's memo, ADA reports, copies of grand jury questions, autopsy reports, and the Medical Examiner's paperwork; and that he was not entitled to a photograph of the deceased, as such disclosure would constitute an unwarranted invasion of personal privacy. He was informed that certain documents would be redacted in order to protect personal privacy and that color photographs would not be provided. Baez was informed that he had the right to appeal the determination within 30 days.

On July 8, 2008, following the receipt of a \$20.00 postal money order, then Records Access Officer Rebecca Kramer mailed 78 pages of documents to Baez. In a letter dated July 5, 2008, Baez appealed the May 2, 2008 determination, stating his objections to the redaction of certain documents, and the denial of certain requests he had made. He also "amended" his FOIL request and listed additional documents. In a letter dated July 28, 2008, Baez amended his July 5, 2008 FOIL appeal, asserting that he was constructively denied the documents because the black and white photographs did not show sufficient details and the photocopies were too light to be legible; asserted that the District Attorney's office had not disclosed all of the photographs in the file; and that witness statements and

police reports were unnecessarily redacted. He also requested additional laboratory reports regarding the jacket, and requested that the jacket be mailed to him at the correctional facility for inspection.

The District Attorney's FOIL Appeals Unit Assistant Michelene Edwards, in a letter dated August 7, 2008, informed Baez that she had received his letters of July 5, 2008 and July 5, 2008 [sic]; that the appeal was being processed; and that a determination would be forwarded in 30 days. In a letter dated September 22, 2008, styled a "3<sup>rd</sup> and final appeal" Baez inquired as to the status of his appeal, and stated that the failure to provide him with a timely determination would be deemed a constructive denial. In a letter dated September 26, 2008, Gary Fidel, an Executive District Attorney and FOIL Appeals Officer, informed Baez that his appeal was being processed and that a determination would be forwarded in twenty days.

Baez again inquired as to the status of his appeal in a letter dated October 28, 2008, styled a "4<sup>th</sup> and Final Appeal", and stated that the failure to provide him with a timely determination would be deemed a constructive denial. ADA Simmons, in a letter dated November 8, 2008, informed Baez that his appeal was being processed and that a determination would be forwarded in sixty days.

ADA Simmons, in a letter dated November 24, 2008, denied Baez's July 5, 2008 FOIL request for additional documents, on the grounds that the additional documents, additional lab reports, and additional photographs, were not in the file or did not exist. The

request for the jacket was denied on the grounds that such physical evidence is not a record for the purpose of FOIL. Baez' request for unredacted copies of the serology report and witness statements was denied on the grounds that an agency is permitted to redact information to protect an individual's privacy. Baez was informed that had 30 days in which to appeal this determination.

Mr. Fidel, in a letter dated December 1, 2008, reviewed and upheld the decision of ADA Simmons dated May 2, 2008 and denied Baez' FOIL July 5, 2008 appeal of the May 2, 2008 determination. Mr. Fidel stated that the request for additional information would be processed as a new request. Petitioner was advised that he was not entitled to unredacted documents containing personal information of trial witnesses; that he was not entitled to statements of non-testifying witnesses; that he was not entitled to color copies of photographs; that certain documents were not in the District Attorney's possession; that there were no photographs of the jacket in the case file; that a serology report regarding the results on the jacket had already been provided to him; that he was not entitled to an unredacted serology report and to unredacted witness statements containing personal information of the trial witness; and that he was previously provided with the statements of trial witnesses.

Baez, in a letter dated December 4, 2008, styled a "5<sup>th</sup> Appeal", acknowledged receipt of ADA Simmons' letter of November 24, 2008 letter. He stated that he had filed an Article 78 proceeding; that ADA Simmons had ignored his requests for "color photocopies of the photographs, records generated by the E.M..S and Paramedics response

team, Medical Examiner reports, Autopsy reports, Property Index report, Investigation reports, Supplemental Arrest Reports, Laboratory Analysis report of the jacket, Video Surveillance tape of the incident that was acquired from [sic] the Marriot Hotel, and the portion of the appeal, which she denied documents that were revealed in existence after she review [sic] my case file, without specifying the identity of the documents, together with many documents mentioned in my July 5, 2008.[sic]”. He also claimed that ADA Simmons had ignored the portion of his letter which sought to amend his FOIL request, and had ignored his July 28, 2008 appeal in which he complained about the poor quality of the documents provided to him, and reiterated his objections to the quality of the documents and photographs that he had received, the adequacy of the explanations for the denial of the documents, the necessity for the redactions and the denial of his requests with respect to the jacket. He asserted that he was entitled to all the documents sought, and requested that he be reimbursed for all expenses of “litigation”, including the \$20.00 he was charged for poorly copied and illegible documents.

Petitioner Baez sought to commence an Article 78 proceeding in this court on November 17, 2008, and again on February 23, 2009. The Appellate Division, Second Department, determined that respondent District Attorney failed to establish that the within proceeding was time-barred, reinstated the within petition, and remanded the proceeding to this court for determination (*Matter of Baez v Brown*, 98 AD3d 609 [2012]).

In his verified petition, Baez alleges that respondent constructively denied his

FOIL requests. In particular, petitioner alleges that he filed an administrative appeal with the respondent on July 5, 2008; that he amended said appeal on July 28, 2008; that ADA Edwards in a letter dated August 7, 2008, acknowledged receipt of petitioner's appeal and amended appeal and advised petitioner that a determination would be made within 30 days of said letter and that he was never provided with any determination. He alleges that he filed a third administrative appeal on September 22, 2008, in which he asserted a constructive denial of his previous appeals; that ADA Fidel in a letter dated September 26, 2008 acknowledged receipt of said appeal and advised that he would forward a determination within 20 days of said letter, and that he was never provided with a determination. Petitioner further alleges that he filed a fourth administrative appeal on October 28, 2008, in which he alleged his prior appeals had been constructively denied, and has not received an acknowledgment of said appeal from the respondent.

In his first cause of action, petitioner alleges that respondent District Attorney's failure to provide him with a written explanation setting forth the reasons for denial of the records, or to provide him with the records sought under FOIL within 10 business days of receipt of his administrative appeals constituted a constructive denial of his requests, and therefore all records sought should be made accessible to him.

The second cause of action seeks to compel respondent District Attorney to provide him with legible copies of the 78 pages previously provided, without redaction, together with 8" x 10" color photocopies of all the photographs requested, at no cost to

petitioner. Petitioner also asserts that respondent improperly denied of his request for records on the grounds that nothing in their file met the description of his request; that an agency cannot disclose what it does not possess; and that FOIL does not require agency to prepare any records not already possessed or maintained by the agency; and that FOIL is not a vehicle under which an agency is required to answer questions, but is only an means by which an individual may seek existing records, is without merit. Petitioner further asserts that he was improperly denied access to records on the grounds that the disclosure would interfere with pending judicial proceedings; that he was improperly denied disclosure of medical records and the victim's photographs, as these items were introduced into evidence at trial, and therefore disclosure would not constitute an unwarranted invasion of privacy. Finally, petitioner alleges that respondent's failed to respond to his amended FOIL application set forth in the July 5, 2009 appeal and the July 28, 2008 amended appeal, and therefore said requests are deemed denied. Petitioner therefore asserts that respondent's should be barred from asserting an exemption to the requested documents.

The third cause of action seeks to recover the costs incurred in bringing this proceeding, including reproduction and postage costs, and to recover the \$20.00 paid for illegible reproductions, pursuant to Public Officers Law §89(4)(c).

Respondent District Attorney, in an answer, and an affidavit submitted by counsel in opposition to the petition, asserts that the denial of portions of the FOIL request was proper, and that adequate explanations for the denials were set forth in the letters of

November 24, 2008 and December 1, 2008. As regards petitioner's requests for photographs, it is asserted that respondent is not required to provide color copies of photographs; that respondent is not required to provide petitioner with enhanced photographs; and that respondent provided petitioner with all photographs in its file. With respect to petitioner's request for unredacted documents, it is asserted that respondent is entitled to redact personal information of trial witness, such as dates of birth, home addresses and telephone numbers, in order to protect the personal privacy of those witnesses.

It is asserted that petitioner's requests for items which are not in District Attorney's possession were properly denied. That property is not a record for the purposes of FOIL, and therefore the denial of Baez's requests for the jacket was proper. Respondent further asserts that petitioner's request for a refund of his reproduction costs should be denied, as an agency is permitted to charge a fee of twenty-five cents per photocopy of the actual cost of reproducing any other document, pursuant to Public Officers Law §87(1)(b)(iii).

In New York State, FOIL provides a mechanism by which a prisoner may obtain evidence related to a prior conviction (Public Officers Law § 84; *Gould v N.Y.C. Police Dep't*, 89 NY2d 267 [1996]). Public Officers Law §89(3)(a) sets forth certain time frames for an agency's response to a FOIL request, and Public Officers Law §89(4)(a), sets forth certain time frames for an agency's response to an appeal from a denial of a FOIL request. Public Officers Law §89(4) (a) provides that an agency's failure to conform to the

provisions of Section 89(3) shall constitute a denial. Section 89(4)(b) provides that an agency's failure to conform with the provisions of subdivision (a) shall constitute a denial.

The failure of an agency to act within these time frames, however, does not destroy the exemptions set forth in the Public Officers Law, and does not entitle an applicant unfettered access to the materials set forth in the FOIL request. Rather, when an agency fails to timely respond to a FOIL request, said request is deemed denied, and permits the applicant to pursue his or her administrative remedies. When an agency fails to timely determine a FOIL appeal, the appeal is deemed to be denied, and the applicant will be deemed to have exhausted his or her administrative remedies and will be entitled to seek a judicial remedy ( *see Floyd v McGuire*, 87 AD2d 388, 390 [1982]; appeal dismissed 57 NY2d 774 [1982]; *see also Council of Regulated Adult Liquor Licensees v City of New York Police Department*, 300 AD2d 17 [2002]). Therefore, petitioner is not entitled to the relief sought in his first cause of action.

It is well settled that 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" (*Matter of Capital Newspapers, Div. of Hearst Corp. v Whalen*, 69 NY2d 246, 252 [1987]; *see Matter of Russo v Nassau County Community Coll.*, 81 NY2d 690, 697 [1993]). "FOIL defines a 'Record' subject to its provisions as 'any information kept, held, filed, produced or reproduced by, with or for an agency. . .in any physical form whatsoever' " (*Matter of City of Newark v Law Dept. of City of N.Y.*, 305 AD2d 28, 31

[2003], *quoting* Public Officers Law § 86 [4]; *see Capital Newspapers, Div. of Hearst Corp.*, 69 NY2d at 248 n 1). “All documents falling within this broad definition are under FOIL's purview (although potentially subject to a statutory exemption) regardless of ‘the function or purpose for which [such records] are generated or held’ ... and regardless of the fact that the documents may have originated outside a government agency subject to FOIL” (*Matter of City of Newark v Law Dept. of the City of New York*, 305 AD2d 28, 31-32 [2003]; *see Matter of Citizens for Alternatives to Animal Labs v Board of Trustees of State Univ. of N.Y.*, 92 NY2d 357, 361 [1998]; *Matter of Washington Post Co. v New York State Ins. Dept.*, 61 NY2d 557, 565 [1984]). Additionally, the scope of FOIL is not limited to “‘the purpose for which a document was produced or the function to which it relates' ” (*Russo*, 81 NY2d at 698, *quoting Matter of Westchester Rockland Newspapers v Kimball*, 50 NY2d 575, 581 [1980]; *see Capital Newspapers, Div. of Hearst Corp.*, 69 NY2d at 253).

Petitioner complains that respondent, in response to his FOIL request, provided 78 pages of documents that were poorly copied and are, for the most part, illegible. Petitioner has submitted a portion of these documents, which he copied, which demonstrate that they are illegible. Respondent does not dispute that the copies of the documents provided to Baez are illegible and makes no claim that the originals provided to petitioner were legible. In fact, respondent is silent on this issue. The court therefore finds that respondent failed to comply with petitioner's FOIL request as to these 78 pages of documents, and is required to provide petitioner with new and legible copies of each page of these 78 documents.

With respect to the photographs that were provided to petitioner, respondent is not required to make photographic reprints of the photographs requested by petitioner. Although "Public Officers Law § 86 (4) provides that a photograph is a record within the meaning of the statute, Section 87 (1) (b) merely requires an agency to provide copies or reproductions of records, and nowhere suggests that an agency must provide reprints of photographs" (*Matter of Adams v Hirsch*, 182 AD2d 583, 583 [1992]). Unlike computer and electronic records, which may be requested in a specific format (*see Matter of Brownstone Publs. v New York City Dept. of Bldgs.*, 166 AD2d 294 [1990]; *see also United Transp. Union-Illinois Legislative Bd. v Surface Transp. Bd.*, 328 U. S. App. D.C. 16, 132 F 3d 71, 75 [1998]), photocopies of photographs are "in a reasonably accessible form" and thus respondents have "no obligation under [FOIL] to accommodate [petitioner's] preference" (*Dismukes v Department of Interior*, 603 F Supp 760, 763 [1984]; *Pennington v Clark*, 307 AD2d 756, 757-758 [2003]; *see also Adam v Hirsch*, 182 AD2d 583 [1992] ). There is no requirement that original photographs be enlarged or enhanced in any manner ( *Russo v Fitzgerald*, 260 AD2d 738 [1999], *appeal denied* 93 NY2d 813[1999], *reargument denied*, 93 NY2d 1042 [1999]), and there is no requirement that an agency provide color photocopies or color reproductions of photographs or that it enhance the photocopies in any manner.

Petitioner also complains that the copies of the photographs provided by respondent are of such poor quality, as to render them useless. He has submitted copies of

the photocopies, which were reproduced by a copying machine on copying paper, which demonstrate that they are of extremely poor quality. Many of these copies are extremely grainy and indistinct. Respondent states that petitioner was provided with all photographs in the file. Respondent, however, does not dispute that the photocopies of the photographs provided to Baez are of poor quality, and makes no claim that the originals provided to petitioner were clear and distinct. In fact, respondent is silent on this issue. The court, therefore, finds that respondent complied with petitioner's FOIL request to the extent that it provided him with photocopies of all photographs in the District Attorney's file. However, to the extent that said photocopies lack clarity, respondent failed to comply with the FOIL request, and is required to provide petitioner with clear and distinct photocopies of the photographs previously provided. Petitioner, however, is not entitled to 8' x 10" color photocopies of these photographs.

Under FOIL, the burden rests on the governmental agency to provide particularized and specific reasons to justify the applicability of the statutory exemption upon which it relies (*see Matter of Citizens for Alternatives to Animal Labs, Inc. v Bd. of Trustees of the State Univ. of New York*, 92 NY2d 357, 362 [1998]). Agency records are presumptively disclosable, and exemptions from disclosure are to be narrowly construed (*Matter of Johnson v New York City Police Dept.*, 257 AD2d 343 ; "[E]ven when a document subject to FOIL contains...private, protected information, agencies may be required to prepare a redacted version with the exempt material removed" (*Matter of Data Tree, LLC*

*v Romaine*, 9 NY3d 454, 464 [2007], citing Public Officers Law § 89 [2] [c] [i] and *Matter of Scott, Sardano & Pomeranz v Records Access Officer of City of Syracuse*, 65 NY2d 294 [1985]; see also *Matter of New York Civ. Liberties Union v New York City Police Dept.*, 74 AD3d 632 [2010]).

Public Officers Law § 87 (2) (b) permits an agency to deny a FOIL request for records that would amount to an unwarranted invasion of personal privacy under the provisions of section 89 (2) if disclosed. “What constitutes an unwarranted invasion of personal privacy is measured by what would be offensive and objectionable to a reasonable [person] of ordinary sensibilities...This determination requires balancing the competing interests of public access and individual privacy” (*Matter of Dobranski v Houper*, 154 AD2d 736, 737 [1989]; see also *Matter of New York Times Co. v City of N.Y. Fire Dept.*, 4 NY3d 477, 485-486 [2005] *Matter of Empire Realty Corp. v New York State Div. of Lottery*, 230 AD2d 270, 273 [1997]). Neither an individual's status as a criminal defendant nor the personal purpose for which he or she seeks the records is relevant to whether their release is in the public's interest (see *Matter of Gould v New York City Police Dept.*, 89 NY2d at 274; *Matter of Pittari v Pirro*, 258 AD2d 202, 204 [1999], *lv denied* 94 NY2d 755 [1999]; see also *Matter of Mantica v New York State Dept. of Health*, 248 AD2d 30, 33 [1998], *affirmed* 94 NY2d 58 [1999]). Here, respondent's redaction of the copies of the serology and laboratory reports, as well as witness statements, which deleted personal information such as dates of birth, home addresses, and telephone numbers of witnesses, in order to protect

the personal privacy of those individuals, was proper. Petitioner's claim that he is entitled to unredacted copies of these documents, therefore, is without merit.

The court further finds that the deceased victim's family has a privacy interest in protecting his dignity and memory, and therefore, respondent's determination not to provide petitioner with photocopies of the victim's autopsy photograph, as well as crime scene photographs in which the victim's body appears, was proper (*see Matter of Edwards v New York State Police*, 44 AD3d 1216, 1216-1217 [2007]).

Contrary to petitioner's assertions, respondent, in denying the request for certain documents, did not state that Baez' description of these documents was inadequate. Petitioner made multiple requests for the "names of E.M.S. workers that assisted Mr. Sepulveda", "copies of all records, ambulatory and ambulance reports E.M.S. response team documents, diagrams, pictures, and/or recordings that were generated by the E.M.S. response team relating to this incident"; "property index report", "supplementary arrest investigation report (Form #PD244-1510)"; "copy of the hotel video surveillance tape of the incident that was acquired from the Marriott's Hotel's Security Office on the morning of the incident"; and the "copy of the index sheet or list containing name or titled [sic] of all reports, documents, file or evidence prepared or acquire in this case [sic]". The statement by the District Attorney's Records Access Officer that she conducted a search of the file and that these records do not exist, suffices to satisfy respondent's FOIL obligations as to those records. The District Attorney is under no obligation to furnish petitioner with records it

does not possess (*see He'ron v Office of the Dist. Attorney*, 96 AD3d 531 [2012]; *Badalamenti v Office of DA Nassau County*, 89 AD3d 1019, 1019-1020 [2011]; *Matter of Rattley v New York City Police Dept.*, 96 NY2d 873 [2001]; *Matter of Alicea v New York City Police Dept.*, 287 AD2d 286 [2001]; *Matter of Walsh v Wasser*, 225 AD2d 911, 911-912 [1996]; *Matter of Adams v Hirsch*, 182 AD2d 583 [1992]). Nor is the District Attorney required to create records in order to comply with a FOIL request (Public Officers Law § 89[3]; *see Matter of Data Tree, LLC v Romaine*, 9 NY3d 454, 464 [2007]).

Petitioner is not entitled to the disclosure of his jacket, as “physical evidence does not fall within the statutory definition of a ‘record’ ” (*Matter of Allen v Strojnowski*, 129 AD2d 700, 700-701 [1987]; *see Badalamenti v Office of DA Nassau County, supra*; *Matter of Sideri v Office of Dist. Attorney of N.Y. County*, 243 AD2d 423 [1997]; *Matter of Dobranski v Houper*, 154 AD2d 736, 739 [1989]). Furthermore, respondent’s counsel states in her opposing affidavit that the District Attorney’s office is not in possession of said jacket. Respondent was not required to provide Baez with another copy of the laboratory analysis report, summarizing the results of the scientific tests performed, as a copy of this report was provided to him as part of his original request.

Public Officers Law § 87 (2)(a) provides that an agency may deny access to records that are specifically exempted from disclosure by State or Federal statute. Records of autopsies performed by the Office of the New York City Chief Medical Examiner are specifically exempt from disclosure under New York City Charter § 557 (g), and, therefore,

respondent was not required to make the autopsy report available to petitioner (*Scott v Borakove*, 248 AD2d 175 [1998]; *Applegate v Hirsch*, 245 AD2d 213[1997]; *Matter of Mitchell v Borakove*, 225 AD2d 435[1996], *appeal dismissed* 88 NY2d 919[1996]). In addition, as attorney work products are protected from disclosure (CPLR 3101[c], respondent was not required to provide petitioner with ADA investigation reports, notes, scratch sheets, memos, and copies of grand jury questions

Respondent, however, incorrectly asserted that notes and memoranda prepared for litigation by the District Attorney's office were also exempt under Public Officers Law §87(2)(e)(i). Public Officers Law § 87 (2) (e) (i) ceases to apply after enforcement investigations and any ensuing judicial proceedings have run their course. Thus, the exemption does not bar disclosure of records compiled for law enforcement purposes in a criminal matter where the prosecution has been completed, absent some unusual circumstance such as the prospect that disclosure might compromise a related case (*Leshner v Hynes*, 19 NY3d 57, 68 [2012]). Here, petitioner was convicted and sentenced on February 6, 1990, and his first FOIL request was made some 18 years later on March 31, 2008, at which time all litigation regarding his conviction had long concluded.

Finally, respondent was not required to make available to petitioner statements made by petitioner, witnesses, or other individuals which respondent obtained in the course of preparing for the criminal case for trial, as such statements are generally exempt from disclosure under FOIL (*see Moore v Santucci*, 151 AD2d 677, 678-680 [1989]; *Matter of*

*Knight v Gold*, 53 AD2d 694 [1976], appeal dismissed 43 NY2d 841[1978]). In addition, respondent is not required to make available grand jury minutes, suppression hearing, or trial transcripts of a witness' testimony in its possession, as such transcripts are court records, not agency records (*Roque v Kings County District Attorney's Office*, 12 AD3d 374 [2004]; *Moore v Santucci*, 151 AD2d 677, 678-680 [1989]).

In view of the foregoing, it is

**ORDERED** and **ADJUDGED** that the petition is granted solely to the extent that the respondent, RICHARD A. BROWN, Queens County District Attorney, shall, within 45 days of entry of this Order and Judgment, provide petitioner with legible copies of the 78 pages of documents and legible, viewable photocopies of the photographs previously provided pursuant to petitioner's FOIL requests of July 5, 2008 and July 28, 2008, and it is further

**ORDERED** and **ADJUDGED** that since the petitioner has previously paid the sum of \$20.00 for the illegible copies he was provided, respondent shall provide the new legible copies at no cost to petitioner, and it is further

**ORDERED** and **ADJUDGED** that the remainder of the petition is denied in its entirety.

Dated: January 2, 2013

E N T E R:

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J.S.C.