

**Matter of Dawkins v David**

2011 NY Slip Op 30562(U)

March 9, 2011

Supreme Court, New York County

Docket Number: 401237/09

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER  
*Justice*

**IA PART 16**

David Dawkins

INDEX NO.

401237/09

MOTION DATE

Jonathan David, et al

MOTION SEQ. NO.

601

MOTION CAL. NO.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this ~~motion~~

Article 78

proceeding is granted in accordance with the accompanying memorandum decision.

**FILED**

MAR 11 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: MAR 09 2011

Alice Schlesinger  
**ALICE SCHLESINGER** *s.c.*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
In the Matter of the Application of

DAVID DAWKINS,  
Petitioner,

For a Judgment under Article 78 of the Civil  
Practice Law and Rules,

-against-

JONATHAN DAVID, Records Access Appeals  
Officer for the New York City Police Department,

Respondent.  
-----X

SCHLESINGER, J.:

David Dawkins is incarcerated in State Prison, having been sentenced to five years for a Violation of his Parole. On August 2008, while he was on Parole for a conviction for Attempted Robbery in the Second Degree, he was charged with Criminal Contempt of Court, a misdemeanor. That charge was predicated on a complaint made by Tamesha Dawkins, the mother of his son, on August 19, 2008. She told the police that on the day before, August 18 at approximately 15:20 (3:20 p.m.), Dawkins had been annoying her near a subway station, on a street at the corner of Archer Avenue and Parsons Boulevard in Queens, by demanding to see his son. This was allegedly a violation of an outstanding Order of Protection issued by Family Court, which was to run through May 29, 2009. He was arrested pursuant to this complaint on August 27, 2008, when he kept an appointment to see his Parole Officer. The Police were waiting for him there.

The reason for the above material is to provide some background for Mr. Dawkins' Freedom of Information Law (FOIL) requests which he made on January 3 and

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January 7, 2009. As detailed in this Court's November 13, 2009 and March 18, 2010 interim decisions, the requests were first denied solely on grounds of interference with law enforcement investigations or judicial proceedings. When Mr. Dawkins challenged this decision at an Administrative Appeal, the denial was on this basis as well as on the added grounds of "an unwarranted invasion of privacy", that disclosure "could endanger the life or safety of a person," and because disclosure "would reveal confidential information."

After Mr. Dawkins commenced these proceedings, respondent cross-moved to dismiss and I then gave petitioner an opportunity to address case law cited for the first time in the Department's Reply, on the issue of interference with a pending appeal. He did, and respondent then filed a Verified Answer. In that document, respondent claimed that disclosure would interfere with Mr. Dawkins' then pending appeal of his January 6, 2009 conviction after trial for violation of the before-mentioned Order of Protection, as well as a pending Habeas Corpus proceeding in the Eastern District. Absolutely no details were provided, in other words, no specifics were given vis-a-vis these fully submitted appeals and the information in the requested documents.

After asserting the above arguments and others, the Department then agreed to the in camera inspection. This Court then ordered such an inspection, though this direction did follow my statement that "it appears that the rationale behind the claimed exemption did not apply here at all" (page 5). I reasoned as such because first, it was clear that none of the requested documents were presented as evidence at the trial and thus could not be a part of the record on appeal. Also, I pointed out that respondent had already segregated 15 pages and thus could easily provide them without delaying or interfering with any proceeding.

But since I wanted the Department to have a final opportunity to be heard on the claimed exemptions at the time the documents were being reviewed by me, rather than simply order them turned over, to repeat, I then acceded to the suggestion by Mr. Dawkins and agreed to by Sergeant James Russo, on behalf of respondent, to review them in camera.

But the Department chose not to do this. In what this Court believes was a display of bad faith to all concerned, respondent, on April 20, 2010, filed a Notice of Appeal of my March 2010, decision. The Department later on notified petitioner and this Court, as late as December 17, 2010, that it still had until January 20, 2011 to perfect the appeal and intended to do that, all the while invoking the automatic stay provided to them pursuant to §5519 of the CPLR. Thus, they had not turned over the material to the Court. Then on January 18, 2011, respondent filed a motion for an enlargement of time to perfect its appeal. Finally, fairness prevailed, the motion was denied by the Appellate Division, who directed the Department to produce the documents. The respondent then withdrew its appeal, but not until February 14, 2011 when they so advised the Clerk of the Court of the Appellate Division, First Department.

Therefore, an eleven month delay occurred because of the conduct of the Department, first agreeing to the in camera inspection, then filing a notice of appeal, then never perfecting the appeal, and then at the last possible moment withdrawing it.

Finally, I have received the requested fifteen pages along with a sixteen page letter from counsel for respondent, reiterating all of their previous legal arguments, generally and then with specificity going over each of the pages and explaining why certain information must be withheld or redacted.

I find in the first instance that far too many pages have been spent in this relatively straightforward FOIL request. I further find that disclosure of the documents will not interfere with any pending proceeding (see this Court's prior decision), will not endanger anyone (certainly Mr. Dawkins knows that Ms. Dawkins complained that he violated her Order) or invade someone's privacy or reveal any non-routine investigative techniques. I do not think it would surprise anyone that here, under these circumstances, the Police would wait a week and go to the office of petitioner's Parole Officer to pick up Mr. Dawkins, rather than ascertain his address and pick him up earlier at his home.

Therefore, I am directing that the documents be turned over in their entirety. However, pursuant to the request of respondent, the police tax numbers may be redacted. Also, the complainant's home address, phone number and date of birth can be redacted to protect her privacy, though one would think Mr. Dawkins already knows this information.

Finally, before complying, respondent may have an additional 48 hours as requested to pursue its right to appeal. This might insure that the whole delay process will begin anew and perhaps even last until petitioner is released from prison in 2012.

The respondent, after the 48 hours from receipt of this decision, will comply with it within 5 days or no later than March 17, 2011.

Dated: March 9, 2011

**MAR 09 2011**

**FILED**

**MAR 11 2011**

NEW YORK  
COUNTY CLERK'S OFFICE

*Alice Schlesinger*  


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 J.S.C.  
**ALICE SCHLESINGER**