

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF MONROE

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In the Matter of the Application of

THEODORE FORSYTH,  
Petitioner

V.

Index No. E2018007067  
DECISION AND ORDER

CITY OF ROCHESTER and  
ROCHESTER POLICE DEPARTMENT,  
Respondents,  
For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules.

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Hon. Ann Marie Taddeo, JSC,

Upon a Verified Petition pursuant to CPLR Article 78 submitted by Elliot D. Shields, Esq.; and upon an Affidavit in Opposition by Stephanie A. Prince, Esq., a Memorandum of Law in Opposition by Ms. Prince, an Affidavit in Opposition by Matthew Ehlers; and upon a Reply Affirmation and a Reply Memorandum of Law by Mr. Shields; and oral argument having been conducted and all exhibits attached to Counsels' papers having been considered, the Court renders the following Decision:

On March 24, 2018, Petitioner Theodore Forsyth (Forsyth) served a Freedom of Information Law (FOIL) request upon Respondent City of Rochester (City) seeking Body Worn Camera (BWC) footage. The FOIL application made a specific request for BWC recordings taken from Rochester Police Department (RPD) officer Jonathan P. Laureano on March 15, 2018 while at the corner of Culver Road and Hazelwood Terrace between 4:00 p.m. and 5:00 p.m.

On April 3, 2018, City responded to Petitioner's request, stating that his request had been "granted in full." *Petitioner's Exhibit "C"*. Respondent further informed Petitioner "that per Rochester Police Department procedure, Freedom of Information Law (FOIL) requests for body-worn camera (BWC) footage are fulfilled by providing a complete redaction using full-screen blur and posted on YouTube at no charge. If a more detailed redaction is requested, the cost would need to be estimated by the RPD BWC Unit. These fees must be paid in advance of the redaction...If you wish to appeal this determination, you must do so in writing within 30 days..."

Both parties agree that, in response to Petitioner's FOIL request, City provided a link to a YouTube site where Petitioner could watch a heavily blurred version of the video

with the soundtrack removed.

On April 19, 2018, Petitioner appealed what he considered to be Respondent's denial of his FOIL request. By letter dated May 3, 2018, Rochester Corporation Counsel Timothy R. Curtin, Esq. Informed Petitioner that, as he had not paid for a redacted copy of the video, his appeal was premature. Notwithstanding this statement, Mr. Curtin informed Petitioner that "I believe your appeal is premature, as nothing has been denied. To the contrary, you were provided the full video with the standard blanket redactions with additional instructions as to next steps. However, I will respond to your appeal with the information you would have received from our Records Access Officer had you requested a pre-payment quote...Here, the video you have requested is estimated to require approximately twelve hours of redactions. ...prepayment in the amount of \$295.50 is required in advance of the redaction process...This letter constitutes my final decision regarding your request."

City maintains that in an effort to reduce the cost of redaction services paid by the FOIL applicant, they have instituted a policy whereby an initial "blanket blurred" video lacking sound is provided to the applicant. While POL §87(1)(b)(iii) empowers agencies to create their own policies regarding charging fees for records, these policies must be "promulgated ... pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article..."

The City relies on §87(1) without reference to §87(2). That section states that agencies must make all records available for public inspection and copying unless the records fall within one of fifteen specific exceptions, including where records:

- (b) if disclosed would constitute an unwarranted invasion of personal privacy;
- (e) are compiled for law enforcement purposes and which, if disclosed, would:
  - i. interfere with law enforcement investigations or judicial proceedings;
  - ii. deprive a person of a right to a fair trial or impartial adjudication;
  - iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
  - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- (f) if disclosed could endanger the life or safety of any person.

Respondents argue that the use of such a video allows requesting parties "a no-cost access to body camera footage on a nearly immediate basis rather than waiting weeks or months and paying a premium for the records they seek." *Petitioner's Exhibit "E"*. The Court can find no provision in §87 which allows for such a "blanket-blurred" video. Further, Respondents' contention that delivery of a blurry and soundless video *helps* the requestor strains credibility. Mr. Curtin's claim that "...our requestors appreciate this option, because it allows them no-cost access to body camera footage on a nearly immediate basis rather than waiting weeks or months and paying a premium for the records they seek" is unsupported in the record.

The Court next turns to Respondents' policy regarding the charging of a fee to provide redacted versions of the BWC footage. While Respondent is correct that they may charge a fee *directly related* to the redaction of electronic records, such fee may not be so onerous as to defeat the stated purpose of FOIL. According to the Affidavit of Mr. Ehlers, RPD's media specialist, the City only charges for the time spent actual performing the necessary redactions, not for the time spent locating, organizing, reviewing or preparing the BWC footage, yet the City claims that it will take approximately twelve hours to redact the requested records.

The Court finds it surprising that Respondents claim, in the first quarter of the 21<sup>st</sup> century, it will take a trained professional twelve hours to perform redactions to a one-hour video. The Court's confusion is exacerbated by the knowledge that if the BWC is not engaged and recording the entire hour, there will be even fewer redactions to be preformed.

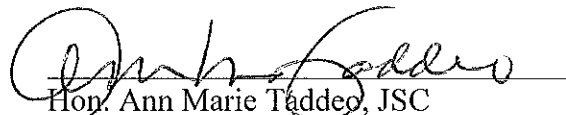
Respondents have also failed to explain from which section of §87(2) they believe their power to perform these expected redactions derives. In the Court's view, in order to comply with not only the letter of §87 but its spirit, Respondents must provide the equivalent of a "privilege log" to a requestor, detailing which sections of the video must be redacted *and for what reason*. Absent the production of such a document, the Court has no ability to determine whether Respondent's actions complied with the requirements of §87(2).

The Court holds that Respondents shall reconsider Petitioner's FOIL request. If Respondents believe redaction is warranted by §87(2)(a-o), they must make clear exactly which portion of the video they need to redact and they must specify which section of §87(2) they rely on to do so. In proposing these redactions, Respondents must bear in mind that §87 does not provide for the rededaction of the arresting officer's image or voice

Accordingly, it is

ORDERED, that this matter is remanded back to Respondents for their consideration, consistent with this Decision, of Petitioner's FOIL request.

Dated: 12/18/18  
Rochester, New York

  
Hon. Ann Marie Taddeo, JSC