



Eric Gonzalez
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February 14, 2023

VIA REGULAR AND ELECTRONIC MAIL

Neil Anand
1313 Cheltenham Drive
Bensalem, PA 19020
cardiacgasman@gmail.com

Re: Freedom of Information Law request
ADA Debra Jaroslawicz
APPEAL DETERMINATION

Dear Dr. Anand,

Please accept this correspondence as the Kings County District Attorney's determination of your recent administrative appeal pursuant to Public Officers Law § 89(4)(a). Specifically, on or about January 10, 2023, this office issued a determination granting your FOIL request, in part, providing you with twenty-one (21) pages of records, which included, *inter alia*, "a list of all the filed criminal . . . cases of Debra Jaroslawicz [while working at the Kings County District Attorney's Office.]" You now challenge the Record Access Officer's (RAO) decision to redact from that list references to persons prosecuted by Ms. Jaroslawicz whose cases are now sealed pursuant to Criminal Procedure Law § 160.50 and which, consequently, fall outside the ambit of FOIL disclosure pursuant to Public Officers Law § 87(2)(a). The RAO's analysis concerning this exemption to disclosure was correct and the determination is **AFFIRMED**. It is well settled that records (or references therein) pertaining to such cases are exempt from disclosure under FOIL. See Matter of Johnson Newspaper Corp. v. Stainkamp, 61 N.Y.2d 958 (1984); Matter of McDevitt v Suffolk County, 183 A.D.3d 826 (2d Dep't 2020); Matter of Leibowitz v. Safir, 251 A.D.2d 581 (2d Dep't 1998).

You assert, over the course of some twenty-nine (29) pages, a "due process" entitlement to the names of these persons because you are the defendant in an ongoing federal prosecution in the United States District Court for the Eastern District of Pennsylvania, in which Ms. Jaroslawicz is one of the prosecutors. However, your status in relation to that case is irrelevant. See People v. Seeley, 179 Misc. 2d 42 (Sup. Ct. Kings County, 1998). Indeed, under FOIL, the entitlement to a record or document is based upon a petitioner's status as a member of the public. See Matter of John P. v. Whalen, 54 N.Y.2d 89 (1981). A FOIL applicant's status as a criminal defendant or former defendant does not enhance that person's right to records that the public cannot attain. See Matter of Pittari v. Pirro, 258 A.D.2d 202 (2d Dep't 1999) ("The petitioner's standing in an effort to seek disclosure under FOIL was based upon [the petitioner's] status as a member of the general public, which standing was neither restricted nor enhanced by his status as a litigant or potential

litigant.”); see also Matter of Farbman & Sons v. New York City Health and Hosps. Corp., 62 N.Y.2d 75 (1984).

This Office will take no further action with regard to this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. O'Connell", with a long horizontal flourish extending to the right.

Douglas O'Connell
FOIL Appeals Officer

cc: Committee on Open Government (via regular mail only)