

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

Mineo v. New York State Police

119 A.D.3d 1140, 990 N.Y.S.2d 147 (N.Y. App. Div. 2014) · Decided July 10, 2014

SUMMARY

The New York Supreme Court, Appellate Division, Third Department reviewed cross appeals in a CPLR article 78 proceeding involving a Freedom of Information Law request for an incident report. The court upheld the denial of counsel fees but reversed the order requiring the New York State Police to refund \$14.50 of the \$15 statutory fee, holding that Public Officers Law § 66-a(2) authorized the fee.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Egan Jr., J.; Peters, P.J.; Rose, J.; Lynch, J.; Devine, J.
JURISDICTION	New York
DECIDED	July 10, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cross appeals from a judgment in a CPLR article 78 proceeding concerning a Freedom of Information Law request. The petitioner appealed the denial of counsel fees, and the New York State Police appealed the order requiring it to refund \$14.50 of the \$15 fee charged for the incident report.
STANDARD OF REVIEW	The denial of counsel fees under Public Officers Law § 89 (4) (c) is reviewed for abuse of discretion. The statutory fee issue presents a question of statutory interpretation.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Mineo, New York State Police v. Mineo, New York State Police

TOPICS

- judicial review of agency action
- administrative law
- appellate procedure
- statutory interpretation
- attorney fees

PRACTICE AREAS

administrative law

civil procedure

appellate procedure

freedom of information law

QUESTIONS PRESENTED

1. Whether Supreme Court abused its discretion by denying petitioner counsel fees and litigation expenses under Public Officers Law § 89 (4) (c).
2. Whether Public Officers Law § 66-a (2) authorized the New York State Police to charge a \$15 fee for the investigative incident report notwithstanding the general photocopying-fee provision in Public Officers Law § 87 (1) (b) (iii).

HOLDINGS

1. Even where a FOIL petitioner substantially prevails and one of the statutory criteria for an award is satisfied, the award of counsel fees remains discretionary. Under the circumstances, Supreme Court did not abuse its discretion by denying petitioner counsel fees.
2. Public Officers Law § 66-a (2) specifically authorized the New York State Police to charge a \$15 search fee for the investigative incident report, without an additional photocopying charge. Supreme Court therefore erred in ordering a refund of \$14.50.

KEY QUOTATIONS

“Notably, even if the statutory criteria have been satisfied, the decision to grant or deny counsel fees nonetheless remains a matter committed to the court’s sound discretion” (119 A.D.3d at 1141)

“Public Officers Law § 66-a (2) is such an exception, as it specifically permits respondent to charge a search fee of \$15 for investigative reports, such as the incident report in question, without any additional charge for photocopying.” (119 A.D.3d at 1142)

FACTUAL BACKGROUND

A state trooper prepared an incident report after responding to a 911 call concerning a neighborhood dispute involving petitioner, her husband, and two neighbors. Petitioner requested the report under FOIL and paid the statutory \$15 fee, but the New York State Police provided a copy with information about other parties redacted. After exhausting the administrative appeal, petitioner commenced a CPLR article 78 proceeding.

PROCEDURAL HISTORY

Supreme Court, Albany County, granted the petition and ordered the New York State Police to provide an unredacted incident report and refund \$14.50 of the \$15 fee, but denied counsel fees. The parties took cross appeals. On appeal, the parties did not challenge the order requiring production of the unredacted report, and the agency represented that it had complied with that directive during the appeal.

DISPOSITION

affirmed

CASES CITED

- Matter of Maddux v. New York State Police, 64 A.D.3d 1069, 1070 (N.Y. App. Div. 2009), leave to appeal denied, 13 N.Y.3d 712 (2009)
- Matter of New York State Defenders Assn. v. New York State Police, 87 A.D.3d 193, 195 (N.Y. App. Div. 2011)
- Matter of Legal Aid Socy. v. New York State Dept. of Corr. & Community Supervision, 105 A.D.3d 1120, 1122 (N.Y. App. Div. 2013)
- Matter of New York Civ. Liberties Union v. City of Saratoga Springs, 87 A.D.3d 336, 339-40 (N.Y. App. Div. 2011)
- Matter of Norton v. Town of Islip, 17 A.D.3d 468, 469-70 (N.Y. App. Div. 2005), leave to appeal denied, 6 N.Y.3d 709 (2006)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-supreme-court-of-the-state-of-new-york-appellate-division-third-department/2014/mineo-v-new-york-state-police-nzd4fixe>