

COURT OF APPEALS OF THE STATE OF NEW YORK

Newsday, Inc. v. Empire State Development Corporation

Newsday, Inc. v. Empire State Development Corp., 98 N.Y.2d 359, 774 N.E.2d 1187, 746 N.Y.S.2d 855 (2002) ·
Decided June 13, 2002

SUMMARY

The New York Court of Appeals held that subpoenas issued by a district attorney and later held by the Empire State Development Corporation were agency records subject to disclosure under the Freedom of Information Law. The court rejected the argument that the subpoenas retained immunity from FOIL because they originated as judicial mandates, reasoning that FOIL applies based on the records’ possession by a covered agency unless a statutory exemption is established. The court reversed the Appellate Division and reinstated Supreme Court’s judgment requiring disclosure.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Levine, J.; Chief Judge Kaye; Judge Smith; Judge Ciparick; Judge Wesley; Judge Rosenblatt; Judge Graffeo
JURISDICTION	New York
DECIDED	June 13, 2002
DISPOSITION	reversed
PROCEDURAL POSTURE	Newsday appealed from an Appellate Division order reversing Supreme Court and dismissing its Freedom of Information Law petition seeking disclosure of subpoenas held by the Empire State Development Corporation.
STANDARD OF REVIEW	Not expressly stated; the Court independently interpreted the Freedom of Information Law and its statutory definitions.
PRECEDENTIAL VALUE	Published opinion of the New York Court of Appeals; binding precedent in New York.
PARTIES	Newsday, Inc. v. Empire State Development Corporation

TOPICS

- administrative law
- judicial review of agency action
- statutory interpretation
- plain meaning rule

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether subpoenas issued by a court or for a court remain exempt from disclosure under FOIL after coming into the possession of a governmental agency subject to FOIL.
2. Whether subpoenas held by the Empire State Development Corporation constitute agency records under the statutory definitions of agency and record in Public Officers Law § 86.
3. Whether ESDC established that a statutory exemption under Public Officers Law § 87(2) authorized withholding the subpoenas.

HOLDINGS

1. Subpoenas held by ESDC, a state public corporation and FOIL-defined agency, constitute agency records because they are information kept or held by an agency in physical form.
2. The subpoenas' status as court mandates does not make them permanently immune from FOIL once they are possessed by an agency subject to FOIL.
3. ESDC was required to disclose the subpoenas because it failed to demonstrate that they fell within a statutory exemption under Public Officers Law § 87(2).

KEY QUOTATIONS

“the material requested falls squarely within the ambit of one of these statutory exemptions” (362)

“The immunity of the subpoenas from FOIL when once possessed by a court, however, does not run with those records.” (363)

*“Unquestionably the Corning papers constitute “information * * * in [some] physical form” stored, “kept [or] held” by the city, a “governmental entity” and, as such, an “agency” for purposes of FOIL”* (364)

FACTUAL BACKGROUND

Newsday requested copies of subpoenas duces tecum that had been served by the New York County District Attorney's office during an investigation of the Empire State Development Corporation. ESDC possessed the subpoenas when Newsday made its FOIL request. ESDC did not claim that a statutory FOIL exemption applied or that it was acting as an arm of the judiciary within a judicial process.

PROCEDURAL HISTORY

Newsday sought to compel disclosure under New York's Freedom of Information Law of subpoenas duces tecum held by the Empire State Development Corporation. Supreme Court ruled that the subpoenas were subject to disclosure because they had been issued by the District Attorney's office, an agency subject to FOIL. The Appellate Division reversed and dismissed the petition, concluding that the subpoenas were judicial records outside FOIL. The Court of Appeals reversed and reinstated Supreme Court's judgment.

DISPOSITION

reversed

CASES CITED

- People v. Natal, 75 N.Y.2d 379, 385 (1990), cert. denied, 498 U.S. 862 (1990)
- Matter of Gould v. New York City Police Department, 89 N.Y.2d 267, 274-275 (1996)
- Matter of Encore College Bookstores v. Auxiliary Services Corp. of State University of New York, 87 N.Y.2d 410, 416-417 (1995)
- Matter of Fink v. Lefkowitz, 47 N.Y.2d 567, 571 (1979)
- Matter of Capital Newspapers v. Whalen, 69 N.Y.2d 246, 251 & n.4 (1987)
- Matter of Pasik v. State Board of Law Examiners, 102 A.D.2d 395, 400 (1984)

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