

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

In the Matter of the Application of
THE BRONX DEFENDERS

Index No.: 156520/2016
(Bluth, J.)

Petitioner,
– against –

The NEW YORK CITY POLICE DEPARTMENT, and
WILLIAM BRATTON, in his official capacity as
Commissioner of the New York City Police
Department,

**AFFIDAVIT IN SUPPORT
OF PETITIONER’S REPLY**

Respondents.

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

STATE OF NEW YORK)
) ss:
COUNTY OF SENECA)

ROBERT PESNER, being duly sworn, states that the following is true under penalty of perjury:

1. I was retained by The Bronx Defenders to consult on this matter. I submit this affidavit in support of The Bronx Defender’s reply memorandum in the above-captioned case.

Qualifications

2. I am an expert in the field of information technology (“IT”), including the architecture, design, and implementation of computer and network operating systems; the development, integration, and maintenance of databases and database management systems; and the support of end users interacting with complex technical and computer applications.

3. I earned a Master's in Comparative Culture at the University of California Irvine in 1979 where I was also awarded a National Science Foundation Graduate Fellowship. I also hold a Bachelor's in Social Science from California State University.

4. For more than 35 years I have worked in the public and private sector in IT roles relating to data and information systems. For much of that time I have specialized in systems integration, which focuses on how to get systems based on different hardware and software to communicate and share information.

5. From April 2009 to December 2014, I was the Chief Enterprise Architect for the New York City Department of Housing Preservation & Development. In this role, I designed architecture for the entire agency's technological applications, managed the agency's IT systems, and supervised a staff of 75 people including developers, data/information analysts, quality assurance analysts and database administrators. In particular, I was responsible for the agency's response to Freedom of Information Law ("FOIL") requests involving information managed by the agency's IT systems, and for meeting the agency's legal responsibilities under the City's Open Data legislation.

6. I am currently the President of PC Dialogs Inc. I develop and conduct classes on many computer-related topics such as networking, network security, system design, and systems integration. I teach extensively about various IBM applications, including teaching classes for IBM. I also work as a consultant for public and private sector clients, where I have done numerous major projects to custom-design IT applications.

7. I hold the following professional certifications: Cisco Certified Systems Instructor; IBM Certified System Administrator and Solution Developer; Scrum Alliance Certified ScrumMaster.

8. A full list of my education, skills, experience, and publications is provided in my resume, which is attached as Exhibit A.

Assignment and Materials Reviewed

9. Based on my review of the records, it is my understanding that The Bronx Defenders' FOIL request seeks documents and data about how much private property and money is seized by the NYPD. I also understand that the "NYPD maintains a database that inventories property seized or recovered by its officers called PETS," which stands for Property and Evidence Tracking System. (Morales Aff. Dated September 18, 2017 at 1-2). I understand that NYPD has stated in its Answer that PETS cannot produce the data and records sought in the FOIL request (Answer paragraph 81).

10. I was asked to evaluate whether PETS can, as a technological matter, produce data and records regarding seized property as sought in the FOIL request.

11. Prior to preparing this affidavit, I reviewed the following materials:

- Petitioner's Freedom of Information Law Request dated July 29, 2014 (Docket No. 5);
- Affidavit of Timothy Hollywood dated October 26, 2016 (Docket No. 43);
- Affidavit of Sgt. Feliciano Morales dated December 19, 2016 (Docket No. 56);
- Respondents' Answer dated September 18, 2017 (Docket No. 65);
- Affidavit of Sgt. Feliciano Morales dated September 18, 2017 and the exhibits attached thereto (Docket No. 67);
- Affidavit of Christian G.W. Schnedler dated September 15, 2017 (Docket No. 69);

- Testimony of Assistant Deputy NYPD Commissioner Robert F. Messner to the New York City Council dated September 15, 2016 (Exhibit B);
- Appendices A and B of the 2009 agreement between the New York City Police Department and Capgemini US LLC to create a Property and Evidence Tracking System;
- Capgemini publication titled “New York City Police Department Successfully Implements a Property and Evidence Tracking System,” dated 2013 and available online as of September 27, 2017 at https://www.capgemini.com/gb-en/wp-content/uploads/sites/3/2017/07/ss_nypd_0.pdf. A PDF of this brochure is attached as Exhibit C; and
- Sample property invoices generated from NYPD’s PETS application, attached as Exhibit D.

Background on Database Technology and Terminology

12. PETS is referred to in NYPD’s papers as a “database.” The NYPD’s explanation of the query limitations of PETS, however, refers only to a user interface, rather than a database. As I will explain below, this distinction is important. In order to assist the Court in assessing the Petition in this action, therefore, I begin by defining the structure and terms used to describe a program like PETS and its components.

13. Any electronic system such as PETS consists of the following:
- a. An underlying data repository, where all data is stored, which is usually a database.

- b. The software application that contains the logic to manage the information the system was designed to deal with and provides the interface between the data repository and the user interface.
- c. The user interface, which is the means by which the end-user interacts with the computer system. In the case of PETS, the user interface describes the screens that a police officer would see when inputting data into PETS, printing a property invoice, or accessing PETS to review or change information maintained in the system. As I discuss below, when the affidavits of Ms. Morales and Mr. Schnedler refer to PETS, they are primarily referring to this user interface, not the software application or data repository.

14. Ultimately, the information a system was designed to deal with is stored in the data repository. While end-users interact with the system and its information through the user interface, data repositories always provide a means for direct access to the information they store.

15. In the usual case, the data repository is a relational database management system, which is a sophisticated system for organizing and storing data in tables, rather than files, making it easier to access and reassemble the data in many different ways without having to reorganize the database tables.

The PETS System

16. According to information published by the vendor that built PETS, the data repository underlying the PETS system is an IBM DB2 database, which is a relational database management system. See Capgemini brochure at Exhibit C.

17. Data managed by a relational database management system such as DB2 can be accessed using Structured Query Language (“SQL”), which is a computer language designed for specifying, among other things, criteria for retrieving information stored in the database. These criteria are known as “queries”.

18. According to the NYPD, the PETS system is used to input data and then print invoices referring to property in the custody of NYPD. Therefore, the existence of a piece of information on the printed property invoice means that information exists within the database. By reviewing invoices printed using the PETS system (Exhibit D), I was able to confirm that much of the information relevant to The Bronx Defenders’ FOIL request is contained in the PETS database.

19. Based on the information I have reviewed about the technical specifications of PETS’s hardware and software, it is my opinion that it is technologically feasible to retrieve much of the data sought from PETS by running queries directly on the underlying DB2 database.

20. During my time as Chief Enterprise Architect for the City’s Department of Housing Preservation & Development (HPD), it was usually the case that FOIL requests involved information that could not be generated using an existing system user interface. System user interfaces are designed to meet the owning organization’s day-to-day operational needs, not the needs of parties who seek the underlying information the system was designed to handle. I therefore frequently arranged for SQL queries to be run against HPD’s relational database in order to satisfy FOIL requests and Open Data mandates.

21. Based on my experience working for HPD and other City agencies, I know that most IT Departments develop methods to address the competition for system resources between complex queries and reporting on the one hand and the regular daily operation of an application

on the other. This enables organizations to run queries on the database without disrupting regular operations.

22. In their affidavits and other papers, the NYPD makes statements about why the information and data The Bronx Defenders seeks cannot be retrieved from the NYPD's PETS system. However, these statements and observations appear limited to the user interface level of PETS. I do not offer an opinion on whether the existing end-user interface of PETS includes the type of functionality necessary to run queries or generate the reports requested.

23. Nevertheless, in my opinion, the SQL query facility supported by DB2 can be used to retrieve the data that is contained in the printed invoices.

24. In the Affidavit of Christian G.W. Schnedler dated September 15, 2017 it is stated that "The original PETS vendor did not provide documentation for upgrades or changes to the software." This is not relevant to whether The Bronx Defenders' FOIL request can be met using SQL queries against the PETS DB2 database. All City agencies employ database administrators who are responsible for the reliability and performance of City databases, and the PETS DB2 database administrators either are familiar with the structure of the information in that database or can easily acquire the necessary familiarity, and have, as part of their job requirements, the knowledge to issue SQL queries.

25. Furthermore, the discussion in Mr. Schnedler's affidavit regarding "web scraping" pertains only to the process of mining data through the existing PETS front-end user interface. Therefore, in my opinion, the risks he describes of security breaches or database disruption are not applicable to the technical solutions I discuss here.

Conclusion

26. Based on my IT knowledge and expertise, and in particular my experience working in NYC government IT, it is my conclusion that NYPD could provide the information sought from PETS about the property they confiscated.

Dated: October 5, 2017
Seneca falls, New York

Robert Pesner
ROBERT PESNER

Sworn to before me this 5th
day of October, 2017

Edna m. Kriegelstein
Notary Public

EDNA M. KRIEGELSTEIN
Notary Public in the State of New York
Qualified in Seneca County No. 01KR619780
My Commission Expires Dec. 8, 2020