

The State of New Hampshire

JUDICIAL BRANCH

MERRIMACK COUNTY

SUPERIOR COURT

NO. 217-2020-CV-491

JOSEPH ANDERSON

v.

DEPARTMENT OF SAFETY

DECISION AND ORDER

Maura Murray crashed her car in Haverhill, New Hampshire on February 9, 2004. Though spotted at the scene, she wasn't there when police arrived and her whereabouts are unknown. Her disappearance remains under investigation.

Before the court is a request by Joseph Anderson for an order directing the Department of Safety to give him access to seven photographs taken of the scene by the first responding official, Haverhill police officer Cecil Smith. Anderson first sought the photographs by way of a Right to Know Law request. The Department declined to produce them, citing the exemption under RSA 91-A for law enforcement records whose production "could reasonably be expected to interfere with enforcement proceedings." *Murray v. N.H. Division of State Police*, 154 N.H. 579, 582 (2006). The exemption mirrors that in the federal Freedom of Information Act (5 U.S.C. § 552(b)(7)(A)).

The nature of the photographs is not in issue. They are “investigatory” and were “compiled for law enforcement purposes,” and qualify for the exemption. *Murray*, 154 N.H. at 582. The question “is whether revelation of the documents could reasonably be expected to interfere with enforcement proceedings” that “are pending or reasonably anticipated.” *Id.* at 582-83.

The burden of establishing the exemption falls on the Department. To support withholding the photographs because their “revelation could reasonably be expected to interfere with enforcement proceedings,” it filed affidavits of Detective Charles West and Attorney Jeffrey Strelzin. Detective West is the lead investigator looking into Ms. Murray’s disappearance. West Aff. ¶ 7. Attorney Strelzin oversees homicide investigations and prosecutions for the Department of Justice as Associate Attorney General. Strelzin Aff. ¶ 1.

According to his filing, Detective West has experience in missing person investigations, including one that was solved through advances in technology almost two decades after the disappearance. West Aff. ¶ 3. He describes the Murray case as “open, ongoing, and actively being investigated.” West Aff. ¶ 7. Attorney Strelzin also avers the investigation is “open and ongoing,” and that releasing the photographs at this time “could reasonably be expected to interfere with enforcement proceedings” because they put in the public domain visual details of the crash site that could hinder investigators in determining whether a prospective witness claiming knowledge of the scene, obtained it through first-hand observation or by viewing the photographs. Strelzin Aff., ¶¶ 5; 5(B). See *Dickerson v.*

Dept. of Justice, 992 F.2d 1426, 1433 (6th Cir. 1993) (accepting that “verification of statements given by future witnesses becomes harder . . . where the factual information developed in the investigation has entered the public domain.”) Based on the number of false leads generated in the case, including photo-shopped images sent to police, Detective West’s affidavit discusses how computer generated alterations to released photographs could exacerbate the diversion of law enforcement resources to tracking down leads based on falsified photographs or deter actual witnesses from coming forward if their recollections do not match altered public photographic evidence. West Aff. ¶ 9(H), (I).

“[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of that evidence, [the exemption] applies.” *Juarez v. Department of Justice*, 518 F.3d 54, 59 (D.C. Cir. 2008). And in light of the specialized nature of criminal investigations, a court should “give ‘substantial weight’ to agency declarations absent contrary evidence or evidence of bad faith.” *Manning v. U.S. Department of Justice*, 234 F.Supp.3d 26, 34 (D.D.C. 2017) (citations omitted).

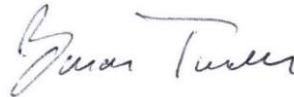
Mr. Anderson has not offered evidence to contradict the Department’s assertions that the investigation is on-going or to suggest the exemption is asserted in bad faith. I find the Department has met its burden, “having regard to the important public interest that [the exemption] was designed to protect, having regard to the fact that the language of the exemption . . . protect[s] records that ‘could’ be expected to interfere, as opposed to records

that 'would' interfere, and having regard to the obvious risks that public disclosure of these active investigation files would entail." *Dickerson*, 992 F.2d at 1433.

The complaint is dismissed.

SO ORDERED.

DATE: DECEMBER 11, 2020



BRIAN T. TUCKER
PRESIDING JUSTICE

Clerk's Notice of Decision
Document Sent to Parties
on 12/11/2020