

# EXHIBIT H

DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



CYRUS R. VANCE, JR.  
DISTRICT ATTORNEY

September 7, 2017

Miguel de los Santos  
DIN 14-A-5516  
Shawangunk Correctional Facility  
PO Box 700  
Wallkill, New York 12589

Re: F.O.I.L. Request  
People v. de los Santos, Ind. 3444/2002

Dear Mr. de los Santos:

I am an Assistant District Attorney in New York County and have been assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (F.O.I.L.). The original request was received by this office on or about September 5, 2017. I have reviewed the file, and am prepared to render a decision upon your request with respect to this case file.

Specifically, you requested documents which was utilized to "convince a judge that enough cause exists to make an arrest and thus allow him to sign the warrants." I will take notice that the records your are requesting relate to your August 10, 2017, request for warrants and the "Supporting Information for the warrant." As I have granted you access to four pages of warrants, and as you have remitted payment, I have included the records herein.

The warrants themselves state "the defendant not having been arraigned upon the accusatory instrument by which this criminal action against him was commenced and this Court requiring his appearance before it for the purpose of arraignment." The accusatory instrument is the Indictment. The "Supporting Information" to the Indictment is the Grand Jury proceeding. You are denied access to the Grand Jury minutes and any exhibits as Grand Jury proceedings are secret proceedings. As such, those records are inaccessible under F.O.I.L. Criminal Procedure Law § 190.25(4) specifically prohibits the disclosure of grand jury proceedings, which are secret and not subject to disclosure except by court order. *See Public Officers Law* § 87(2)(a); *see also Newton v. District Attorney of Bronx County*, 186 A.D.2d 57 (1st Dept. 1992); *Matter of Hall v. Bongiorno*, 305 A.D.2d 508, 509 (2d Dept. 2003).

The Freedom of Information Law Appeals Officer is Assistant District Attorney Patricia J. Bailey, Chief of the Special Litigation Bureau, at the above address.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Edelman-Reyes". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Karen Edelman-Reyes  
Assistant District Attorney  
Records Access Officer

DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



CYRUS R. VANCE, JR.  
DISTRICT ATTORNEY

October 3, 2017

Miguel de los Santos  
DIN 14-A-5516  
Shawangunk Correctional Facility  
PO Box 700  
Wallkill, New York 12589

Re: F.O.I.L. Request  
People v. Miguel delos Santos, Ind. 3444/2002

Dear Mr. de los Santos:

I am an Assistant District Attorney in New York County and have been assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (F.O.I.L.). The original request was received by this office on or about September 25, 2017. I have reviewed the file, and am prepared to render a decision upon your request with respect to this case file.

You are granted access to "any Warrants issued by Hon. Flora Duffy against ... Rafael delos Santos." It consists of one page and answers your request you labeled as 1. You are also granted access to the Voluntary Disclosure Form (Bill of Particulars) for Rafael delos Santos. It consists of 5 pages.

There are 6 pages in total and I will provide you with copies upon receipt of a check or money order payable to the New York County District Attorney's Office in the amount of \$1.50 (based upon a .25 cents per page reproduction fee).

You are denied access to "the extradition [sic] warrant signed by the Governor of the State of New York for Rafael delos Santos," (your request 2) "the Plea agreements for Rafael delos Santos and Juan Rincon," (your request 3) DD-5 "(7)" (your request 6) and "all notes submitted by the jury," (your request 7) as no such records exist in the above referenced file. Under F.O.I.L., an agency cannot provide a record which it does not possess. See Public Officers Law § 89(3); see also *Matter of Franklin Schwartz*, 57 A.D.3d 338 (1<sup>st</sup> Dept. 2008), *lv. dismissed* 12 N.Y.3d 880 (2008).

I hereby certify that I am an attorney for the New York County District Attorney's Office (DANY) and that I conducted a diligent search of the file kept and maintained by the DANY on October 3, 2017, for the above mention records related to Miguel delos Santos, Indictment 3444/2002, possessed by DANY and that no records responsive to the above description could be found in the file.

You are denied access to your Voluntary Disclosure Form/Bill of Particulars (your request 4) as this record was provided to you at your Supreme Court Arraignment. Likewise you are denied access to the People's Response to your Omnibus Motion (your request 5) as said response was provided to you on or about August 19, 2013. And you are denied access to DD-5 2, 3, 4, 6, 8, 9 (your request 6) as said records were provided to you prior to your trial. F.O.I.L. does not require the District Attorney's Office to provide duplicates of documents previously provided to you or your attorney. See *Franklin v. Keller*, 254 A.D.2d 83 (1st Dept. 1998); *Matter of Huston v. Turkel*, 236 A.D.2d 283 (1st Dept. 1993); see also *Matter of Brightley v. Lai*, 266 A.D.2d 131 (1st Dept. 1999); *Matter of Moore v. Santucci*, 151 A.D.2d 677 (2d Dept. 1989); *In re Swinton v. Records Access Officers for the New York City Police Department*, 198 A.D.2d 165 (1st Dept. 1993). Your trial attorney was Norman Williams, Jr., Esq., of the Williams Law Office, 27 Madison Avenue, 14<sup>th</sup> Floor, New York, New York 10016.

You are also denied access to the requested DD-5s as they were generated in connection with the investigation of the above captioned Indictment as said records not only contain witness statements, but they also provide a unique step by step process by which the investigating detectives in the case investigated and then apprehended the offenders, you being among them. Despite the general interest in disclosure, "[e]ffective law enforcement demands that violators of the law not be apprised of the nonroutine procedures by which an agency obtains its information." *Fink v. Lefkowitz*, 47 N.Y.2d 567, 572 (1979). And, Public Officers Law recognizes a law enforcement/investigatory exemption. *Public Officers Law* § 87(2)(e). The exemption is applicable here as it is likely that future violators of the law may tailor their criminal conduct so that they may avoid detection and apprehension based upon knowledge regarding the avenues of inquiry the investigating agencies pursue. *Bellamy v. New York City Police Dep't*, 59 A.D.3d 353, 355, (1st Dep't 2009); see also *Whitely v. New York County Dist. Atty's Office*, 101 A.D.3d 455, 455, 955 N.Y.S.2d 42 (1st Dep't 2012). This case involved the brutal beating of a person related to a drug conspiracy in which you were involved. The efforts undertaken by the New York City Police Department involve routine and non-routine police investigative actions. Each of your co-defendants ultimately plead guilty and are serving differing determinate terms in state prison. You were convicted after trial of Murder in the Second Degree and sentenced to an indeterminate life prison sentence.

In light of the brutality of the crime, the witness statements recorded by the investigators in summary in the DD5s also may not be released to you. Under Public Officers Law § 87 (2) (b) and 89 (2), records are exempt from a FOIL request if its disclosure "would constitute an unwarranted invasion of privacy." An unwarranted invasion

of privacy includes disclosing the information provided in § 89 (2) (b) (i) -- (vii). Whether disclosing information constitutes an unwarranted invasion of personal privacy is " measured by what would be offensive and objectionable to a reasonable person of ordinary sensibilities." Asian Am. Legal Defense, 41 Misc. 3d 471 (N.Y. County May 6, 2013), quoting Matter of Dobranski v. Houper, 154 A.D.2d 736 (3d Dept. 1989). Here, the DD5s contain names, home addresses, birthdates, phone numbers, and descriptions of the witnesses and persons of interest whom the NYPD investigated. Disclosing this information would constitute an unwarranted invasion of personal privacy under § 89 (2) (b).

The Freedom of Information Law Appeals Officer is Assistant District Attorney Patricia J. Bailey, Chief of the Special Litigation Bureau, at the above address.

Sincerely,



Karen Edelman-Reyes  
Assistant District Attorney  
Records Access Officer