

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2007-0459, Frederick J. Murray v. Special Investigation Unit of the Division of State Police of the New Hampshire Department of Safety & a., the court on April 16, 2008, issued the following order:**

Having considered the parties' briefs and the appellate record, we conclude that oral argument is unnecessary for the disposition of this appeal. See Sup. Ct. R. 18(1). The petitioner, Frederick J. Murray, appeals the superior court's order after remand in Murray v. N.H. Div. of State Police, 154 N.H. 579 (2006) (Murray I), arguing that the trial court erred by finding that the respondents had met their burden of establishing that disclosure of the requested documents could reasonably be expected to interfere with enforcement proceedings. Finding no error, we affirm.

Although the trial court's legal conclusions and application of law to fact are, ultimately, questions for this court, and in the absence of disputed facts, we review the trial court's ruling *de novo*, see Murray I, 154 N.H. at 581, we generally defer to the trial court upon questions of fact properly before it, see Goode v. N.H. Legislative Budget Assistant, 145 N.H. 451, 455 (2000). It was the respondents' burden upon remand to demonstrate that enforcement proceedings were pending or reasonably anticipated, and that disclosure of the requested documents could reasonably be expected to interfere with such proceedings. See Murray I, 154 N.H. at 583.

We disagree with the petitioner that the respondents were required to prove "a high likelihood that an individual would be prosecuted." Rather, the exemption at issue requires proof of only "a reasonable chance that an enforcement proceeding will occur." Dickerson v. Department of Justice, 992 F.2d 1426, 1430 (6<sup>th</sup> Cir. 1993) (quotation and ellipsis omitted); see also Murray I, 154 N.H. at 583; Mapother v. Dept. of Justice, 3 F.3d 1533, 1540 (D.C. Cir. 1993).

Nor did the "[t]he Appellees in this case admit that there is no reasonably anticipated or contemplated enforcement proceeding." To the contrary, the record reflects an ongoing investigation, and that, in the opinion of the lead prosecutor assigned to the matter, there is a 75% likelihood that criminal charges will follow. The fact that the respondents could not unequivocally confirm that charges will be brought, or quantify with specificity how often the case is reviewed, does not mean that there is no ongoing investigation or that an enforcement proceeding is not reasonably anticipated. Upon this record, we

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conclude that the trial court could properly have found that the investigation is ongoing and that an enforcement proceeding is reasonably contemplated.

Having reviewed the affidavits submitted by the respondents, as well as both the public and in camera testimony of the respondents' witnesses, we likewise conclude that the trial court could properly have found that the documents sought by the petitioner could reasonably be expected to interfere with anticipated enforcement proceedings, and that there was no reasonably segregable portion of such documents suitable for release. See *Murray I*, 154 N.H. at 584. While the respondents' burden to withhold the documents under the Right-to-Know law is heavy, see *id.* at 581, we conclude that they carried their burden upon remand.

Affirmed.

Broderick, C.J., and Dalianis, Duggan, Galway and Hicks, JJ., concurred.

**Eileen Fox,  
Clerk**

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