

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: SECOND DEPARTMENT

In the Matter of the Investigation into the Death  
of Eric Garner,

Index No. S.Ct. 080304/14

LETITIA JAMES, New York City Public  
Advocate,  
Petitioner-Applicant,

-against-

DANIEL DONOVAN, Richmond County District  
Attorney,  
Respondent.

**AFFIRMATION OF MATTHEW D. BRINCKERHOFF**  
**PURSUANT TO CPLR 5704(b)**

MATTHEW D. BRINCKERHOFF, an attorney duly admitted to practice law in the Courts of the State of New York, and counsel for Petitioner-Applicant Letitia James, Public Advocate for the City of New York hereby affirms under penalty of perjury, the following:

1. I am a member of Emery Celli Brinckerhoff & Abady LLP, counsel for the Public Advocate in this matter. I submit this affirmation in support of the Public Advocate's application, pursuant to CPLR 5704(a), seeking to modify the Order of Judge Rooney in Richmond County Supreme Court, insofar as it directed that the Public Advocate's order to show cause be filed under seal.

2. On the morning of December 10, 2014, the Public Advocate filed a Special Proceeding by Order to Show Cause in Richmond County Supreme Court. The Special Proceeding is civil in nature, was filed under a civil index number, and seeks an order directing the unsealing and release of the minutes and all other records and evidence presented to the

grand jury in the Matter of the Investigation into the Death of Eric Garner.

3. Justice Stephen J. Rooney signed the Order to Show Cause but directed that it be filed under seal without providing a reason, in writing, for that directive. The Order to Show Cause and Affirmation commencing the proceeding contain no privileged or sealed information. It is not secret that the Public Advocate seeks this relief.

4. The Public Advocate seeks to modify and vacate the portion of the Order directing that the filing be made under seal because it collides with the well-established constitutional right of the public to access court documents and proceedings. This “broad constitutional proposition, arising from the First and Sixth Amendments” provides that “the public as well as the press are generally entitled to have access to court proceedings. Since the right is of constitutional dimension, any order denying access must be narrowly tailored to serve compelling objectives.” *Danco Labs., Ltd. v. Chem. Works of Gedeon Richter, Ltd.*, 274 A.D.2d 1, 6 (1st Dep’t 2000); *see also Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 605–606 (1982). These rights are essential to ensuring the actual and perceived fairness of the judicial system, as the “the bright light cast upon the judicial process by public observation diminishes the possibilities for injustice, incompetence, perjury, and fraud.” *Mancheski v. Gabelli Grp. Capital Partners*, 39 A.D.3d 499, 501 (2d Dep’t 2007) (citation omitted); *see also Matter of Twentieth Century Fox Film Corp.*, 190 A.D.2d 483, 486, 601 N.Y.S.2d 267, 269 (1st Dep’t 1993) (“There is no question that there is a general public interest in disclosure of court records”).

5. Furthermore, the Order runs afoul of the procedural requirements promulgated for the sealing of court documents. Rule 22 NYCRR 216.1(a) provides that: “(a) Except where otherwise provided by statute or rule, a court shall not enter an order in any action or

*proceeding sealing the court records*, whether in whole or in part, *except upon a written finding of good cause*, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.” (emphasis added); *see also Mancheski*, 39 A.D. 3d at 501-2 (examining the requirements for court records). The Order has made no finding of good cause. *See Danco Labs*, 274 A.D.2d at 7–8 (conclusory sealing of court documents is improper).

6. The Order to proceed under seal is particularly troubling in this case, which was brought to gain access to sealed information and in which it is argued that the need for public disclosure outweighs the need for secrecy. And, it is particularly troubling that the Public Advocate has been directed to file this proceeding under seal. The Public Advocate is, by the dictates of the New York City Charter, charged with ensuring the accountability of, and access to City agencies and actions.

7. The Order to Show Cause and Affirmation is a *request* to unseal grand jury materials. These documents contains no confidential materials or information that is not public or widely reported by the media. There is no justification for sealing the papers commencing the action.

**WHEREFORE**, it is respectfully requested that this Court enter an order under CPLR 5704 modifying the Order of Justice Rooney, of the Supreme Court of Richmond County, New York, by directing that the Order to Show Cause referenced herein and all other papers in the underlying action be publicly filed.

Dated: December 10, 2014  
Richmond County, New York

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Matthew D. Brinckerhoff