

Paramus man's lawsuit could have effect on release of police information



VIOREL FLORESCU / STAFF PHOTOGRAPHER

Samir Hashmi and community leaders hold a press conference after court on Tuesday, March 8, 2016.

BY HANNAN ADELY

STAFF WRITER | THE RECORD



MANHATTAN – A Paramus man’s lawsuit against the New York Police Department could have wide-ranging implications for how far police are able to go to keep information from the public, the plaintiff’s lawyer said on Tuesday.

Omar Mohammedi, attorney for Samir Hashmi of Paramus, who sued to get surveillance records he believes the NYPD kept about him, said at the heart of the case is whether municipal police have the right to invoke a federal doctrine to deny the public information. But a lawyer for the city said in court that to give up the authority to refuse to release sensitive information could aid terrorists.

The case is related to a wider surveillance program targeting Muslims in their houses of worship, businesses and university groups that was initiated following the terrorist attacks of Sept. 11, 2001. The surveillance stretched into New Jersey and included collection of information in Muslim neighborhoods of Paterson and Newark.

Related: [Paramus man wins court victory in surveillance case against NYPD](#)

On Tuesday, Mohammedi argued before the state Supreme Court Appellate Division that police wrongly invoked the rare federal doctrine to state that they could not “confirm or deny” that the records Hashmi sought even existed.

Police gave the same response to a records request by Imam Talib Abdur-Rashid of Harlem, who also is represented by Mohammedi. The imam also sued under the New York State’s Freedom of Information Law.

“The Freedom of Information Law was established for a specific purpose – to be an open government, not for the NYPD to say we cannot confirm or deny. This is ludicrous,” Mohammedi said.

Devin Slack, a lawyer for New York City, argued in response on Tuesday that for the police to reveal the existence of such records could lead to the release of sensitive information. For instance, potential terrorists or groups might learn if they were monitored in an investigation, he said.

Lower court judges issued different rulings in Hashmi’s and Abdur-Rashid’s cases – with a judge upholding the use of the federal doctrine in the imam’s case, while another ruling rejected it in Hashmi’s case. The cases were heard jointly on appeal Tuesday in Manhattan.

The doctrine has never been used by any state and the New York police have no authority to use it as an exemption to the Freedom of Information Law, Mohammedi argued in court. The police actions also leave citizens with no remedy or recourse if they fall under surveillance, he said.

“They are treating citizens as enemies,” he said, noting that the cannot “confirm or deny” response was first used by the Central Intelligence Agency to guard information about a sunken Soviet submarine.

Hashmi, 27, who graduated from Rutgers University in 2011 and now is a New Jersey Institute of Technology graduate student, spoke Tuesday at a press conference following the hearing Tuesday, with the support of two dozen clergy and civil rights activists. He said he joined the Muslim Student Association at Rutgers to help his community and show a positive side of Islam after the Sept. 11 terrorist attacks.

He requested records after reading press reports that New York investigators reportedly monitored the Rutgers group online. Undercover officers also had a safe house in an apartment near the Rutgers New Brunswick campus, which was discovered when a building superintendent found suspicious items there and called 911 thinking it was occupied by a terrorist cell. The FBI investigated and found that an NYPD operation had been monitoring Rutgers students, the Associated Press reported.

Hashmi said the surveillance has made him wary of talking about politics and made it harder for him to trust strangers.

“It’s not fair for Muslim students, who are law-abiding citizens, to have to be afraid of people watching what they do and watching what they say,” said Hashmi, who was born and raised in New Jersey and whose parents are from Pakistan.

Abdur-Rashid, the Harlem imam, said he believed he was spied upon for his activism after the verdict in the case of Sean Bell, who was shot and killed by New York City police in 2008. He was upset, he said, that he was being treated like an enemy combatant after having worked for civil rights, safety and security in his community for decades.

The department has argued it does not spy on Muslims and that it investigates leads and follows up on tips that could prevent terrorist activity.

But in a settlement of two civil rights lawsuits that challenged surveillance in Muslim communities, the city agreed to appoint a civilian representative to monitor counter-terrorism efforts at the NYPD and to change guidelines to prohibit investigations that target communities based on their race, ethnicity or religion.

Several people at the Tuesday press conference said the settlement, announce in January, did not go far enough and that the police reply to records requests was proof of that.

A separate lawsuit filed by Muslim residents, clergy and business owners in New Jersey, claiming that New York police surveillance violated their civil rights, is still pending.

Email: adely@northjersey.com