

Court considers Cold War secrecy over Muslim surveillance

Posted 6:05 p.m. yesterday

Updated 6:06 p.m. yesterday

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ALBANY, N.Y. — The New York Police Department overstepped its reach when it used a Cold War-era legal tactic to conceal information about whether it put two Muslim men under surveillance, a lawyer representing the men argued Tuesday before New York's highest court.

Omar Mohammedi told the seven-member Court of Appeals on Tuesday that the police department improperly invoked the federal tactic known as the Glomar response in a case involving state Freedom of Information Law requests.

Assistant corporation counsel Devin Slack, representing police for New York City, contends the department was justified when it said it could "neither confirm nor deny" the records even existed in its response to a 2012 public records request related to the surveillance.

The two men's lawsuits over that so-called Glomar response were prompted by a series of Pulitzer Prize-winning stories by The Associated Press that detailed how New York City police searched for possible terrorists after 9/11, in part by infiltrating Muslim student groups and putting informants in mosques.

Former Rutgers University student Samir Hashmi and Manhattan imam Talib Abdur-Rashid filed formal requests seeking any New York Police Department records pertaining to surveillance of the two men or of any organizations they were affiliated with.

Their requests were denied, resulting in lawsuits that were initially heard separately, with two lower court judges issuing conflicting rulings. In Hashmi's case, a court denied a request to dismiss the lawsuit. In Abdur-Rashid's case, the court ruled the Glomar doctrine was allowable in response to state Freedom of Information Law requests.

The cases have since been combined, with Mohammedi, a Manhattan attorney, representing the men.

Mohammedi argued that the police department "could not support" using the Glomar response under any New York state law precedence. He said the department's use of certain exemptions for releasing information weren't valid because they didn't explain the reason for not wanting to produce the documents.

The police department's claims that it "cannot confirm nor deny the existence of documents" are "blanket exemptions," Mohammedi said.

"What the NYPD is trying to do is to foster secrecy, which is actually detrimental to the public," he said.

"We're not claiming that we're expanding any of the exemptions one iota. It's just a question of whether that information falls within the law enforcement and public safety sections" of the state law, Slack said.

Police officials have said the department "is not required to reveal the targets of counterterrorism surveillance."

A decision on the case is expected in March.

The Glomar doctrine is named for the Hughes Glomar Explorer, a massive salvage ship built by eccentric industrialist Howard Hughes, who died in 1976. Two years earlier, the CIA had used the ship to retrieve a portion of a Soviet submarine that had sunk in the Pacific Ocean in 1968, killing everyone aboard.

The Glomar featured technology designed to lift the sub more than 3 miles (4 kilometers) to the surface, but most of the sub broke apart and fell back to the ocean floor.