

Appellate judges to decide whether details of NYPD's program to spy on Muslims can be disclosed under Freedom of Information Law

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A Manhattan Supreme Court justice ruled against imam Talib Abdur-Rashid by saying the NYPD has "a rational basis in law" for refusing to disclose whether there are even documents in the department's possession about a Muslim surveillance program.

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The NYPD's program to spy on Muslims was the topic of heated debate Tuesday before a panel of appellate judges who must decide if any details about the department's practices must be disclosed under the state's Freedom of Information Law.

City lawyers argued that the program is protected from FOIL by a sweeping federal law known as the Glomar doctrine, which allows law enforcement and spying agencies to be totally silent about such activities.

Attorneys for a Rutgers University student and a well-known Harlem imam countered by saying the NYPD should not get a blanket exemption because it is not permitted under the state's law.

The Manhattan Appellate Division has the case because judges in two lower courts disagreed about whether Glomar applies to state law.

NYPD SETTLES POST-9/11 MUSLIM SURVEILLANCE LAWSUITS



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This year, the city settled lawsuits over the surveillance practices, allowing a civilian lawyer appointed by the mayor to attend meetings about secret investigations.

Manhattan Supreme Court Justice Peter Moulton ruled in a case by Rutgers student Samir Hashmi that allowing the police department to cite a Glomar exception "would build an impregnable wall against disclosure of any information concerning the NYPD's anti terrorism activities."

In contrast, Manhattan Supreme Court Justice Alexander Hunter ruled against the imam, Talib Abdur-Rashid, by saying the NYPD has "a rational basis in law" for refusing to disclose whether there are even documents in the department's possession about a Muslim surveillance program.

Hunter accepted the NYPD's argument that disclosing the existence of such information could jeopardize sources and methods, allow "individuals or groups to take counter measures to avoid detection of illegal activity, and undermine current and future" investigations.

Robert Freeman, the executive director of the state Committee on Open Government, said that if judges were to acknowledge Glomar, courts could be denied the right to inspect sensitive records to determine the appropriateness of disclosure.



ANTHONY DELMUNDO/FOR NEW YORK DAILY NEWS

Fordham Law students and community allies protest NYPD spying on Muslims in 2012.

In an amicus brief, the Reporters Committee for Freedom of the Press and 20 media organizations warn that Glomar impedes transparency, noting it has increasingly been used by federal agencies even for requests unrelated to national security.

The litigation was triggered by a series of Pulitzer Prize-winning stories by The Associated Press which detailed how the nation's largest police department searched for possible terrorists in city neighborhoods after the Sept. 11 attacks. Those efforts included cataloging Muslim neighborhoods, infiltrating Muslim student groups, putting informants in mosques and listening to sermons.

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