CPLR 3102(f): Disclosure Not Available When State Is Non-Party Witness

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terms when deciding disclosure motions and will deny them only where the information sought is totally useless, irrelevant or immaterial.

**CPLR 3102(f): Disclosure not available when state is non-party witness.**

Prior to the enactment of the CPLR disclosure was not available against the state in any court.\(^\text{102}\) With the enactment of the CPLR, disclosure against the state became available, first, in the Court of Claims by order of that court,\(^\text{103}\) and subsequently, by court order, in any action in which the state was properly a party.\(^\text{104}\) This liberal trend in favor of private litigants has, to some extent, remedied an unjust situation which previously existed.\(^\text{105}\)

CPLR 3102(f) presently provides that "[i]n an action in which the state is properly a party, whether as plaintiff, defendant or otherwise, disclosure by the state shall be available as if the state were a private person, except that it may be obtained only by order of the court in which the action is pending. . . ." In *Butironi v. Putnam County Civil Service Comm’n*,\(^\text{106}\) plaintiff sought disclosure against the state as a non-party witness. The court held that disclosure under 3102(f) was not available in such circumstances. Hopefully, a second liberalization process will begin with respect to disclosure against the state in actions where it is a non-party witness.

**CPLR 3120(b): Court disallows non-party's disclosure expenses temporarily.**

CPLR 3120(b) provides for the discretionary allowance of costs and for the defrayal of expenses of a non-party who is ordered to make disclosure. In a recent case, *In re Stauderman’s Will*,\(^\text{107}\) the surrogate’s court, Nassau County, disallowed a non-