

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RENSSELAER

NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

-against-

CITY OF TROY and TROY POLICE DEPARTMENT,

Respondents.

INDEX NO:

VERIFIED PETITION

PRELIMINARY STATEMENT

1. The New York Civil Liberties Union (the “NYCLU”) seeks relief from this Court because the City of Troy and the Troy Police Department (the “TPD”) (together, “Respondents”) have denied the NYCLU’s request under the Freedom of Information Law (“FOIL”) for records regarding police accountability (the “Request”). The records requested—including basic information about officer discipline, use of force, stops, and civilian complaints—are of immense public significance, not only to inform important debates about how the TPD’s policies and practices affect the community it serves, but also to ensure the public’s right to access such records.

2. Many of the records sought in the Request were previously shielded from the public by a 1976 law, Civil Rights Law section 50-a (“Section 50-a”), which served as the primary statutory barrier to the community’s ability to access police records. However, by the summer of 2020, there was a growing consensus in New York—catalyzed by high profile and historical instances of police misconduct—that Section 50-a impeded police accountability and racial justice. In June 2020, Governor Andrew Cuomo signed into law the repeal of Section 50-a.

3. On September 15, 2020, the NYCLU submitted the Request, seeking to vindicate the public’s right to increased transparency regarding police records, as mandated by the June 2020 repeal of Section 50-a.

4. However, over eight months later, Respondents have not granted or provided any

response to 75% of the Request, failing to address even the threshold question of whether they will grant access to records responsive to 24 of the Request's 32 portions, in clear violation of their FOIL obligations.

5. After nearly four months of repeated communications with Respondents in an unsuccessful effort to obtain a response to the Request, the NYCLU filed an administrative appeal based on Respondents' constructive denial of the Request. Respondents failed to respond to the administrative appeal within 10 business days, as required by statute, thereby exhausting the NYCLU's administrative remedies.

6. Having exhausted administrative remedies, the NYCLU now seeks judicial relief via this Article 78 proceeding to compel Respondents to respond to the Request and produce promptly all responsive records.

7. The NYCLU also seeks an award of attorneys' fees and costs in light of Respondents' failure to adhere to FOIL's statutory requirements.

VENUE

8. Pursuant to C.P.L.R. 7804(b) and 506(b), venue in this proceeding lies in Rensselaer County, the judicial district in which Respondents took the action challenged here and where the offices of Respondents are located.

PARTIES

9. Petitioner the NYCLU is a not-for-profit corporation that seeks to defend civil rights and civil liberties on behalf of individuals who have experienced injustice and to promote transparency in government. For almost 70 years, the NYCLU has been involved in litigation and public policy advocacy on behalf of New Yorkers to demand government accountability and transparency.

10. Respondent City of Troy is a public agency subject to the requirements of the Freedom of Information Law, New York Officers Law § 84 et seq.

11. Respondent Troy Police Department is a public agency subject to the requirements of the Freedom of Information Law, New York Officers Law § 84 et seq.

FACTUAL BACKGROUND

A. The Repeal of Section 50-a

12. Until the summer of 2020, the greatest obstacle to transparency regarding the conduct of police officers in New York was Section 50-a, which generally excluded from disclosure “police personnel records used to evaluate performance towards continued employment or promotion” that were otherwise presumptively public. C.R.L. § 50-a(1) (repealed June 12, 2020).

13. Although the intended breadth of Section 50-a when first enacted in 1976 was narrow, its scope quickly expanded, with police departments and unions leading the charge.

14. Indeed, according to a report from the Department of State Committee on Open Government, by 2014, Section 50-a had been “expanded in the courts to allow police departments to withhold from the public virtually any record that contains any information that could conceivably be used to evaluate the performance of a police officer.” A true and correct copy of the report is attached as **Exhibit A** to this Petition.

15. However, there was a growing consensus in New York that Section 50-a impeded police accountability and racial justice. Amid the nationwide reckoning with racism following the deaths of George Floyd, Breonna Taylor, and others, the recognition of the history of police abuses against communities of color, the deepening societal frustration with police secrecy and misconduct, and the public demand for increased police transparency and oversight, Governor

Andrew Cuomo signed the #Repeal50a Bill (S8496/A10611) on June 12, 2020. A true and correct copy of the #Repeal50a Bill is attached as **Exhibit B** to this Petition.

B. Upon the Repeal of Section 50-a, the NYCLU Submitted a FOIL Request to Respondents

16. The NYCLU submitted the Request to Respondents on September 15, 2020, seeking records related to TPD conduct and policies relevant to police accountability, including records that had previously been shielded from the public by Section 50-a. The Request seeks documents related to the following categories: (a) disciplinary records; (b) use of force; (c) stops, temporary detentions, and field interviews; (d) complaints about employee misconduct; (e) immigration and citizenship related enforcement; (f) complaints filed with the Troy New Police Review Board; (g) diversity in the ranks; and (h) all current governing policies. Each of these general categories is broken down further, the Request having a total of 32 discrete portions. A true and correct copy of the Request is attached as **Exhibit C** to this Petition.

17. Respondents acknowledged receipt of the Request in an electronic communication dated September 21, 2020. The communication stated that Respondents would provide a response to the Request on or before October 20, 2020. A true and correct copy of Respondents' acknowledgment is attached as **Exhibit D** to this Petition.

18. After receiving no further response by Respondents' own October 20, 2020 deadline, on October 29, 2020, the NYCLU sent an electronic communication to Respondents inquiring when a response to the Request would be forthcoming. A true and correct copy of this communication is attached as **Exhibit E** to this Petition.

19. In an electronic communication dated November 6, 2020, Respondents stated that they would respond to the Request on or before December 4, 2020. A true and correct copy of this communication is attached as **Exhibit F** to this Petition.

20. Respondents did not provide a response by their own December 4, 2020 deadline. Accordingly, on December 7, 2020, the NYCLU sent an electronic communication to Respondents inquiring when a response to the Request would be forthcoming. A true and correct copy of this communication is attached as **Exhibit G** to this Petition.

21. In an electronic communication dated December 8, 2020, Respondents stated that they would respond to the Request on or before January 8, 2021. A true and correct copy of this communication is attached as **Exhibit H** to this Petition.

22. On January 8, 2021, the NYCLU again received no further response to the Request, despite Respondents' representation that they would provide a response on or before that deadline.

23. In a letter dated January 11, 2021, the NYCLU filed an administrative appeal for the constructive denial of the Request, based on the fact that Respondents had missed three of their own self-imposed deadlines to provide a response to the Request, and that, after nearly four months, Respondents had neither provided a response to the Request nor produced a single record responsive to the Request. A true and correct copy of the NYCLU's appeal is attached as **Exhibit I** to this Petition.

24. On January 11, 2021, Respondents sent the NYCLU an electronic communication stating that they would provide a response to the Request on or before February 11, 2021. Respondents did not include access to any of the records sought in the Request, and the communication did not include reasons for further denial. A true and correct copy of this communication is attached as **Exhibit J** to this Petition.

25. Respondents did not respond to the NYCLU's administrative appeal on or before January 28, 2021, despite the statutory requirement to respond within 10 business days with access to the records sought or a written explanation providing reasons for further denial.

26. On February 11, 2021, the NYCLU received no further response to the Request,

despite Respondents' representation that they would provide a response on or before that deadline.

27. On February 19, 2021, over five months after receiving the Request, and after Respondents missed four consecutive deadlines (not counting the deadline Respondents missed to respond to the NYCLU's administrative appeal), Respondents provided some limited initial documents. The NYCLU received an electronic communication from Respondents, stating that "pursuant to response from the City's Appeals officer," they "released all of the responsive documents associated with the following [eight] portions of the Request." (*See infra* Exhibit K). Respondents attached some, but not all, records responsive to these eight portions of the request: 205 pages of collective bargaining materials, 26 pages of use of force guidelines, 10 pages of blank police forms, 3 pages of demographic information, and 2 pages about the Police Objective Review Board. Respondents did not provide documents regarding officer discipline, complaint history of active TPD officers, or any documents responsive to the other portions of the Request. Respondents concluded the communication stating that they anticipated having a response to the additional 24 portions of the Request on or before March 19, 2021. A true and correct copy of this communication is attached as **Exhibit K** to this Petition.

28. On March 19, 2021, the NYCLU received no further response to the Request, despite Respondents' representation that they would provide a response on or before that deadline.

29. As of the filing of this Petition, more than eight months after receiving the Request and more than four months after receiving the NYCLU's administrative appeal, Respondents have not provided records or responded to the threshold question of whether they will grant access to records responsive to 24 of the Request's 32 portions or provided all documents responsive to the other portions of the Request. Respondents have not claimed that the NYCLU does not have a right to records sought in the Request, nor have they proffered any exemption.

30. Having exhausted administrative remedies by filing an administrative appeal based

on Respondents' constructive denial of the Request, and having the appeal denied by Respondents' failure to respond within the statutorily required deadline, the NYCLU files this Article 78 Petition seeking immediate production of responsive documents.

CAUSE OF ACTION UNDER ARTICLE 78

31. The NYCLU repeats and realleges paragraphs 1 through 30 hereof as if fully set forth herein.

32. Article 78 is the appropriate method for review of agency determinations concerning FOIL requests.

33. The NYCLU has a clear right to the records responsive to each of the categories outlined in the Request.

34. There is no basis in law or fact for Respondents to fail to respond to the Request or the subsequent administrative appeal, or to withhold the requested records.

35. Respondents' obligation under FOIL to respond to a FOIL request, respond to a FOIL administrative appeal, and produce documents is mandatory, not discretionary.

36. The NYCLU exhausted its administrative remedies with the Respondents when it appealed the Respondents' constructive denial of the Request and did not receive records or an adequate response to the appeal within ten business days as required by Public Officers Law § 89 (4)(a).

37. The NYCLU has no other remedy at law.

38. This Petition is timely under C.P.L.R. § 217 as it is filed within four months of Respondents' denial of the NYCLU's administrative appeal on January 28, 2021.

REQUESTED RELIEF

WHEREFORE, Petitioner seeks judgment:

- (1) Pursuant to C.P.L.R. § 7806, directing Respondents to comply with their duty under FOIL and promptly disclose all the records sought by the NYCLU in the Request;
- (2) Awarding reasonable attorneys' fees and litigation costs as allowed under New York Public Officers Law § 89; and
- (3) Granting such other relief as the Court deems just and proper.

Dated: New York, New York
May 19, 2021

Respectfully submitted,

By /s/ Jamie L. Wine

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VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

Ben Herrington-Gilmore, an attorney admitted to practice in the State of New York, affirms pursuant to C.P.L.R. § 2106 under the penalties of perjury:

1. I am an attorney for the petitioner in the within proceeding. I make this Verification pursuant to C.P.L.R. § 3020 (d) (3).
2. I have read the attached Verified Petition and know its contents.
3. All of the material allegations of the Verified Petition are true to my personal knowledge or upon information and belief. As to those statements that are based upon information and belief, I believe those statements to be true.



 BEN HERRINGTON-GILMORE

Dated: May 19, 2021
New York, New York

Sworn and subscribed to me
this 19 day of May, 2021



