

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----	X	
	:	Index No. _____
THE NEW YORK CIVIL LIBERTIES UNION,	:	
	:	
Petitioner,	:	
	:	
-against-	:	VERIFIED PETITION
	:	
THE ALBANY POLICE DEPARTMENT,	:	
	:	
Respondent.	:	
	:	
For a Judgment Pursuant to Article 78	:	
Of the Civil Practice Law and Rules	:	
-----	X	

PRELIMINARY STATEMENT

1. This Article 78 proceeding pursuant to the Freedom of Information Law (FOIL), Article 6 of the Public Officers Law, seeks to vindicate the right of the public and of Petitioner the New York Civil Liberties Union (NYCLU) to obtain complete information about police departments' official policies governing the use of force, particularly with respect to TASER weapons.

2. TASERS, also known as conducted energy devices or CEDs, are electroshock devices utilized by law enforcement agencies to incapacitate people. In New York State and across the country, reports of law enforcement officers' inappropriate use of TASERS and the serious, and sometimes fatal, harm TASERS can cause have raised serious concerns.

3. Hoping to discover information that would shed light on this issue, the NYCLU initiated a statewide study by sending FOIL requests to ten New York law enforcement agencies, including Respondent, seeking information about TASER usage and the

agencies' use-of-force policies governing TASERs. Respondent the Albany Police Department remains the only agency that insists that substantial redactions to its TASER use-of-force policy are required.

4. Although Respondent asserts that such redactions are necessary to protect the "life or safety" of a person or persons, it has not provided the "particularized and specific" factual record required by the Court of Appeals to meet an agency's burden to justify redacting records pursuant to FOIL.

5. Petitioner therefore asks this Court to compel Respondent to comply with its statutory obligations and produce its TASER use-of-force policy without redaction.

VENUE

6. Pursuant to CPLR §§ 7804(b) and 506(b), venue in this proceeding lies in Albany County, in the judicial district in which Respondent took the action challenged here and where the offices of Respondent is located.

PARTIES

7. Petitioner New York Civil Liberties Union (NYCLU) is a not-for-profit corporation that defends and promotes civil rights and civil liberties, and ensures government openness in New York. For over fifty years, the NYCLU has been involved in litigation and public policy on behalf of New Yorkers, fighting against discrimination and advocating for individual rights and government accountability. New York's Freedom of Information Law is a crucial vehicle in the organization's efforts to ensure the accountability of the government, monitor state and municipal agencies, learn about governmental policies and, when appropriate, challenge the legality of problematic policies.

8. Respondent, the Albany Police Department, is a state agency subject to the requirements of the Freedom of Information Law (“FOIL”).

FACTS

9. In New York State and across the country, reports of law enforcement officers’ inappropriate and sometimes fatal use of TASERs have raised serious concerns.

10. According to an Amnesty International Report, TASERs deliver a high-voltage electric shock of typically 50,000 volts. Amnesty International reports that between 2001 and 2008, 334 individuals died in the United States after being electrocuted by police using TASERs. Alarming, at least 299 of the individuals killed were reportedly unarmed.

11. Incidents of law enforcement officers using TASERs inappropriately, either in situations where the use of force is plainly indefensible or against individuals who are especially vulnerable to the effects of electrocution, have been widely reported across the country and in New York State.

12. Prompted by these and other reports, on January 4, 2010, the NYCLU filed a FOIL request with Respondent Albany Police Department seeking records related to its use of TASER weapons.

13. This request was one of nine identical requests sent on that same day to a variety of law enforcement agencies around New York as part of a statewide inquiry into law enforcement officials’ use of TASERs. Other than Respondent, all of these agencies produced un-redacted versions of their use-of-force policies governing TASERs, except for two which reported that they do not use TASERs at all and thus had no policy to produce.

14. The NYCLU earlier had requested such records from a tenth police department, the Saratoga Springs Police Department. On October 14, 2009, the NYCLU brought an Article 78 proceeding because Saratoga Springs Police Department had not responded to the NYCLU's request.

15. In the course of that litigation, the City of Saratoga Springs agreed to produce records, but redacted portions of its use-of-force policy. The NYCLU challenged those redactions, and the Hon. Thomas D. Nolan, Jr., Supreme Court, Saratoga County, found that there was "no basis" to redact the policy pursuant to either the public safety exemption or the exemption for law enforcement investigative techniques, Public Officers Law § 87(2)(e)(iv).

16. Unlike these other law enforcement agencies, Respondent has not been forthcoming.

17. Despite acknowledging receipt of the NYCLU's request on January 15, 2010, and promising to respond within 10 business days, Respondent did not respond to the request for more than two months – well beyond FOIL's statutory time frame and only after the NYCLU formally demanded a response in writing.

18. In that belated response, Respondents invoked the public safety exemption to FOIL, Public Officers Law § 87(2)(f), to justify substantial redactions to its TASER use-of-force policy. Respondent provided no factual information or other information to support the invocation of this exemption.

19. The redactions black out nearly half of the text of the policy.

20. On April 15, 2010, the NYCLU administratively appealed this response, challenging the redactions, as well as other matters concerning other documents the

NYCLU requested that have since been resolved between the parties and are not at issue in this proceeding.

21. On May 14, 2010 – more than two weeks past FOIL’s 10 business-day deadline for responding to administrative appeals – Respondent denied that appeal. In its denial, Respondent again invoked the public safety exemption, explaining that the release of the un-redacted portions of the use-of-force policy “would lead to the perpetrators attempting to evade or thwart a police officers [sic] ability to perform his/her duties. Movements attempting to evade the police officer would lead to the inability to effectively administer the TASER, thus creating a heightened threat of safety [sic] to the subject, the police officer and any other civilians nearby.” The denial did not provide any factual or evidentiary basis for its conclusion that disclosure would “creat[e] a heightened threat of safety.”

22. Following the denial of the administrative appeal, Petitioner contacted the Albany County Attorney’s office to inform that office of the decision of the Supreme Court, Saratoga County, and attempt to resolve this matter without the need for litigation.

23. Unfortunately, these attempts were unsuccessful, as Respondent continued to assert the need to redact substantial portions of its TASER use-of-force policy.

**CAUSE OF ACTION: ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF
FOIL REQUEST**

24. Article 78 is the appropriate method for review of agency determinations concerning FOIL requests.
25. Petitioner, the NYCLU, and the public have a clear right to information about the Albany Police Department's TASER use-of-force policy.
26. Respondent has not met its burden to justify redactions to public records with specific and particularized factual justification.
27. The "public safety" exemption to FOIL, Public Officers Law § 87(2)(f), does not justify Respondent's redactions to its TASER use-of-force policy.
28. Petitioner NYCLU exhausted its administrative remedies when it administratively appealed the Albany Police Department's determination. Petitioner has no other remedy at law.
29. Petitioner is entitled to attorney's fees and litigation costs pursuant to Public Officers Law §89(4).

REQUESTED RELIEF

WHEREFORE, Petitioner seeks judgment:

- (1) Pursuant to C.P.L.R. § 7806, directing Respondent to comply with their duty under FOIL to disclose the complete TASER policy as requested in the Petitioner's January 4, 2010 FOIL request and to disclose all portions of the responsive records;
- (2) Awarding attorneys' fees and reasonable litigation costs as allowed under New York Public Officers Law § 89; and
- (3) Granting such other and further relief as the Court deems just and proper.

Respectfully Submitted,



COREY STOUGHTON

KATHARINE BODDE

CHRISTOPHER DUNN

New York Civil Liberties Union Foundation

125 Broad Street, 19th Floor

New York, NY 10004

(212) 607-3300

Dated: New York, NY
August 30, 2010

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Corey Stoughton, an attorney admitted to practice in the State of New York,
affirms pursuant to CPLR 2106 under the penalties of perjury:

1. I am the lead attorney for and an employee of the Petitioner in the within proceeding. I make this Verification pursuant to CPLR 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, and all statements in 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.



COREY STOUGHTON

Dated: New York, NY
August 30, 2010

Sworn and subscribed to me
this 30th day of August 2010



NOTARY PUBLIC

LAUREL P. BENJAMIN
Notary Public, State of New York
No. 24-4825914
Qualified in Kings County
Commission Expires *Sept* 30, 2010