

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of,

NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

-against-

NEW YORK CITY POLICE DEPARTMENT,

Respondent.

Index No.

For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules.

**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF THE VERIFIED  
PETITION**

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FOUNDATION

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Dated: March 23, 2023  
New York, N.Y.

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## **PRELIMINARY STATEMENT**

This Article 78 action seeks to vindicate the public’s right to essential information about the New York City Police Department’s encounters with New Yorkers through vehicle stops. Vehicle stops are a central way that law enforcement interacts with the public. Across the country, Black and Latinx people are disproportionately stopped, searched, and arrested as a result of vehicle encounters—too often with fatal consequences. This lawsuit arises out of the NYPD’s refusal to produce a database it maintains of details of the nearly 675,000 vehicle stops it conducted last year.

Pursuant to a mandate from the New York City Council, the NYPD last year started to produce for the first time quarterly reports about its vehicles stops. Because these reports provide limited information about the stops, the NYCLU submitted a request to the agency for the database underlying the quarterly reports. Access to the database would provide the public with a much more comprehensive understanding of NYPD’s vehicle stops, including the demographics of New Yorkers stopped in specific parts of the city, the units of the NYPD making those stops, and the outcomes of those stops. This dispute closely parallels prior litigation in which the NYCLU sought and ultimately obtained the NYPD database for pedestrian stops, which the NYCLU then used to produced detailed analyses of the NYPD’s stop-and-frisk program.

After providing an initial, unreasonable deadline by which it would respond to the NYCLU’s June 2022 request for the vehicle-stop database and related documents, the NYPD informed the NYCLU it would produce a response in December 2022. To date, however, the NYPD has failed to produce any responsive documents. Having exhausted administrative remedies, the NYCLU now seeks judicial relief to require the NYPD to produce records responsive to its request. The NYCLU also seeks an award of attorneys’ fees and costs.

## **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

### A. Racial Bias in Vehicle Stops

The NYPD stops hundreds of thousands of vehicles each year. According to the quarterly vehicle

encounter reports published on the NYPD’s website, in 2022 alone the NYPD made 673,000 vehicle stops.<sup>1</sup> This number nearly matches the number of pedestrians subject to the NYPD’s “stop-and-frisk” policy in 2011 at the height of its prevalence and just prior to it being drastically curtailed pursuant to court order. (*Stop-and-Frisk Data*, NYCLU, available at <https://www.nyclu.org/en/stop-and-frisk-data> [last accessed Mar. 20, 2023].)

The racial disparities in the occurrence and outcomes of these vehicle stops are stark. In 2022, of stops that reported the race of the civilian, 59 percent of civilians stopped were Black and Latinx, 90 percent of civilians searched during a vehicle stop were Black and Latinx, and 88 percent of civilians arrested because of a vehicle stop were Black and Latinx.<sup>2</sup> Black and Latinx people only make up 50 percent of the NYC population.<sup>3</sup> Yet Black people, alone, make up about half of all vehicle searches and arrests that result from a vehicle stop, while Black people make up only 21 percent of the NYC population and 24 percent of the NYC population that commutes by car.<sup>4</sup>

The NYPD did not start reporting summary data on vehicle stops voluntarily. The NYPD was required to do so by a 2021 amendment to Local Law 45, which mandates the NYPD to publish a variety of statistics about vehicle stops on a quarterly basis starting in 2022. The statistics that the NYPD must report include the number of summonses issued, arrests made, vehicles seized, related use-of-force

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<sup>1</sup> *Vehicle Reporting*, New York City Police Department, available at <https://www.nyc.gov/site/nypd/stats/reports-analysis/vehicle-stop-reports.page> [last accessed Mar. 23, 2023].

<sup>2</sup> *Id.*

<sup>3</sup> NYC population by race according to the US Census Bureau American Community Survey Table B03002: <https://data.census.gov/table?q=B03002:+HISPANIC+OR+LATINO+ORIGIN+BY+RACE&g=1600000US3651000&tid=ACS5Y2021.B03002>.

<sup>4</sup> *Id.*; <https://www.nyc.gov/site/nypd/stats/reports-analysis/vehicle-stop-reports.page>; NYC commuters by race according to the US Census Bureau American Community Survey 2016-2020 Table B08006: <https://data.census.gov/table?q=B08006&g=1600000US3651000&tid=ACS5Y2020.B08006>.

incidents, vehicles searched, and whether consent was provided, all “disaggregated by precinct, race/ethnicity, and age of the driver” (Local Law No. 2021/045 of New York City). The NYPD publishes quarterly reports with summary data on vehicle stops on its website.<sup>5</sup>

The first complete year of statistics about vehicle stops that were published by the NYPD—even in this summary form—has garnered a large amount of public interest. The magnitude of vehicle encounters and the racial disparities in vehicle enforcement has been covered by numerous news outlets including Gothamist, the New York Daily News, CBS News, News 12 Brooklyn, NY1, and Buffalo News, among others.<sup>6</sup>

However, the summary information that is published by the NYPD is only a preview of the underlying information that the NYPD collects and that the petitioner is requesting.

#### B. The NYCLU’s Prior Efforts to Provide Transparency on Police Encounters

The NYCLU has been a leader in advocating for data transparency in police encounters for decades.

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<sup>5</sup> *Vehicle Reporting*, New York City Police Department, available at <https://www.nyc.gov/site/nypd/stats/reports-analysis/vehicle-stop-reports.page> [last accessed Mar. 23, 2023].

<sup>6</sup> Samantha Max, *About 90% of drivers searched or arrested by the NYPD in 2022 were Black or Latino*, Gothamist, Feb. 23, 2023, available at <https://gothamist.com/news/about-90-of-drivers-searched-or-arrested-by-the-nypd-in-2022-were-black-or-latino> [last accessed Mar. 15, 2023]; *Over Pulling Over: NYPD vehicle stop data raises concerns*, New York Daily News, Feb. 26, 2023, available at <https://www.nydailynews.com/opinion/ny-edit-criminal-justice-policing-reform-statistics-cops-government-20230226-muav34i6izfhdckclwwohc7p5km-story.html> [last accessed Mar. 15, 2023]; Christina Fan, *NYPD: More than 670,000 pulled over in 2022, with vast majority arrested and searched people of color*, CBS News New York, Feb. 23, 2023, available at <https://www.cbsnews.com/newyork/news/nypd-traffic-stops-racial-disparity/?intcid=CNM-00-10abd1h> [last accessed Mar. 15, 2022]; *NYPD releases car stop data for first time, showing racial disparity in traffic stops*, News 12 Brooklyn, Feb. 21, 2023, available at <https://brooklyn.news12.com/nypd-releases-car-stop-data-for-first-time-showing-racial-disparity-in-traffic-stops> [last accessed Mar. 15, 2023]; Rebecca Greenberg, *Report: 88% of drivers arrested by the NYPD during traffic stops in 2022 were Black or Latino*, NY1, Feb. 21, 2023, available at <https://www.ny1.com/nyc/all-boroughs/public-safety/2023/02/22/report--88--of-drivers-arrested-by-the-nypd-during-traffic-stops-in-2022-were-black-or-latino> [last accessed Mar. 15, 2023]; *NYPD releases car stop data for first time; Black drivers were stopped the most*, Buffalo News, February 21, 2023, available at [https://buffalonews.com/news/national/nypd-releases-car-stop-data-for-first-time-black-drivers-were-stopped-the-most/video\\_4a4549ac-361f-5bb5-9b75-2bbf89d8583b.html](https://buffalonews.com/news/national/nypd-releases-car-stop-data-for-first-time-black-drivers-were-stopped-the-most/video_4a4549ac-361f-5bb5-9b75-2bbf89d8583b.html) [last accessed Mar. 15, 2023].



As the NYPD's stop-and-frisk program expanded dramatically during the mayoralty of Michael Bloomberg, the NYCLU used New York's Freedom of Information Law to obtain and regularly report to the public information about NYPD pedestrian stops. (*Stop-and-Frisk in the De Blasio Era (2019)*, NYCLU, Mar. 14, 2019, available at <https://www.nyclu.org/en/publications/stop-and-frisk-de-blasio-era-2019> [last accessed Mar. 15, 2023].) The NYCLU expanded its reporting on pedestrian stops when it successfully sued to obtain the database the NYPD was compiling with the details of each stop. (*Id.*) Using information from the database, the NYCLU in May 2012 released a report analyzing NYPD stop-and-frisk activity in 2011 with a level of detail never before available to the public. (*Id.*)

Also in 2012—based in part on an analysis of the same data discussed above—the NYCLU, The Bronx Defenders, LatinoJustice PRLDEF and civil rights attorney Chris Fabricant filed a federal lawsuit challenging aspects of the stop-and-frisk program, including its racially-biased application. (*Ligon v City of New York*, 925 F Supp 2d 478 [SD NY 2013, No. 12 CIV 2274].) That case, along with several related cases, resulted in a series of federal judgments declaring the NYPD's racially biased stop-and-frisk practices unconstitutional and ordering major reforms. (*Floyd v City of New York*, 959 F Supp 2d 540 [SD NY 2013]; see also *Settlement Will End Unconstitutional NYPD Stops, Frisks and Arrests in Clean Hall Buildings*, NYCLU, Feb. 2, 2017, available at <https://www.nyclu.org/en/press-releases/settlement-will-end-unconstitutional-nypd-stops-frisks-and-arrests-clean-halls> [last accessed Mar. 15, 2023].)

The NYPD now publishes an annual database of pedestrian stops on its website.<sup>7</sup> But despite ostensibly collecting similar data for vehicle stops, the NYPD has not shared this information. Much like before the NYCLU obtained the database of pedestrian stop-and-frisks a decade ago, granular details about vehicle stops remain hidden from the public. The FOIL request at issue in this petition attempts to obtain a more complete dataset of information related to vehicle stops, so that this important information about

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<sup>7</sup> *Stop, Question and Frisk Data*, New York City Police Department, available at <https://www.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page> [last accessed Mar. 23, 2023].

NYPD-civilian encounters can be made available to the public.

C. Background of the Instant Petition

On June 2, 2022, the NYCLU submitted a FOIL request seeking disaggregated, incident-level data of NYPD vehicle encounters collected by the police department pursuant to the 2021 Amendment to New York City Local Law 45 (Hodgson Affirmation, Exhibit A, NYCLU June 2, 2022 FOIL Request). Specifically, the NYCLU seeks: 1) the disaggregated, incident-level data used to produce the NYPD quarterly vehicle encounter reports in electronic spreadsheet or comma-separated format (Excel or CSV), and 2) records, manuals, keys, and/or legends that describe or explain how to understand that data. (*Id.*)

On June 6, 2022, the NYPD responded to the request informing the NYCLU that it could “expect a response on or about Wednesday, October 19, 2022” (Hodgson Affirmation, Exhibit B, NYPD Acknowledgment Email dated June 6, 2022). The NYCLU administratively appealed the NYPD’s constructive denial of the request (Hodgson Affirmation, Exhibit C, NYCLU First Administrative Appeal dated June 13, 2022). The NYCLU argued that the date was not reasonable under the circumstances of the request because the “request is sufficiently narrowed to a single *electronic* dataset that the NYPD maintains” and because “the dataset and the quarterly summaries that the NYPD publishes on its website are mandated by statute (the 2021 Amendment to New York City Local Law 45).” (*Id.* [emphasis in original].) On June 13, 2022, the NYPD responded to the administrative appeal, stating that the “appeal is premature because, as of the date of your appeal, the Records Access Officer (RAO) had not yet issued a determination on your request, and, therefore, your appeal lacked the predicate denial of access” (Hodgson Affirmation, Exhibit D, NYPD June 13, 2022 Response to the NYCLU’s First Administrative Appeal). On October 3, 2022, the NYCLU emailed the NYPD confirming that “we are expecting to get a full production” by October 19, 2023, the initial response date that the NYPD provided. (Hodgson Affirmation, Exhibit E, NYCLU October 3, 2022 Email).

On October 17, 2022, the NYPD extended its response date to “on or about Monday, December 19,

2022.” (Hodgson Affirmation, Exhibit F, NYPD October 17, 2022 Email). On October 26, 2022, the NYCLU administratively appealed the NYPD’s denial (Hodgson Affirmation, Exhibit G, NYCLU Second Administrative Appeal dated October 26, 2022). The NYCLU argued that the newly-extended deadline was unreasonable and improper. The NYCLU reiterated that the narrow request was specific and targeted at a single electronic dataset that the NYPD maintains pursuant to law. (*Id.*) On October 27, 2022, the NYPD responded to the administrative appeal, again deeming the appeal “premature.” (Hodgson Affirmation, Exhibit H, NYPD October 27, 2022 Response to the NYCLU’s Second Administrative Appeal).

The NYPD failed to produce responsive records by its own extended, self-imposed deadline of December 19, 2022. The NYCLU has received no additional response or update from the NYPD. Verified Petition (“VP”) ¶ 29.

Having exhausted administrative remedies, the NYCLU filed its Verified Petition pursuant to Article 78 of New York’s Civil Practice Law and Rules seeking the prompt production of responsive records as well as attorneys’ fees and costs.

## **ARGUMENT**

### **I. THE NYPD VIOLATED FOIL BY FAILING TO PRODUCE RECORDS WITHIN A LAWFUL TIMEFRAME.**

Under FOIL, an agency responding to a FOIL request may not ignore a request or unreasonably delay its response (*see* Public Officers Law § 89 [3] [a]). Here, the NYPD’s failure to produce any responsive records before or after its own initial self-imposed deadline and its own extended deadline constitutes an unwarranted denial of the NYCLU’s request and undermines the purpose of FOIL. The Court should order the NYPD to provide responsive records promptly.

#### **A. The NYPD’s Failure to Provide a Threshold Response to the NYCLU’s Request Violates FOIL.**

The NYPD violated its obligations under FOIL by failing to respond to the NYCLU’s request within a reasonable amount of time. In response to a written request for records, “an agency must either disclose

the record sought, deny the request and claim a specific exemption to disclosure, or certify that it does not possess the requested document and that it could not be located after a diligent search” (*Matter of Beechwood Restorative Care Ctr. v Signor*, 5 NY3d 435, 440–441 [2005]; *see also* Public Officers Law § 89 [3] [a]). An agency is required to provide a statement of the approximate date, which should be reasonable under the circumstances, when the request will be granted or denied (Public Officers Law § 89 [3] [a]). “The determination of whether a period is reasonable must be made on a case by case basis taking into account the volume of documents requested, the time involved in locating the material, and the complexity of the issues involved in determining whether the materials fall within one of the exceptions to disclosure” (*Matter of Linz v NYPD*, NYLJ, Dec. 17, 2001 [Sup Ct, NY County 2001] [copy attached as Exhibit I to Hodgson Affirmation]). The failure of an agency to comply with its own self-imposed deadlines constitutes a denial of the request (*see* 21 NYCRR 1401.5[e]; *Kohler-Hausmann v New York City Police Dept*, 133 AD3d 437, 437 [1st Dept 2015] [finding that the NYPD's failure to respond to the petitioner's FOIL request months after the agency's self-imposed deadline constituted a constructive denial of the request]).

Here, leaving aside the reasonableness of the NYPD's proposed deadlines—with its extended response date being over six months after the NYCLU's FOIL request<sup>8</sup>—the NYPD has failed to provide a response by its self-imposed deadline and thus fails to meet its obligations under FOIL. It has now been over three months since the NYPD's proposed deadline in December 2022, and the NYPD has neither produced responsive records nor followed up on the NYCLU's FOIL request in any manner. By “failing to respond for months after [the agency's self-imposed] deadline,” the NYPD has constructively denied the NYCLU's request (*Kohler-Hausmann*, 133 AD3d at 437). And by failing to make threshold determinations required under FOIL, the NYPD has flouted its obligations under FOIL and undermined the important

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<sup>8</sup> The NYCLU's first and second administrative appeals challenged the unreasonableness of the NYPD's initial and extended proposed deadlines (*see* Hodgson Affirmation, Exhibit C, NYCLU's First Administrative Appeal and Exhibit G, NYCLU's Second Administrative Appeal).

policy goals of FOIL (*see Matter of Beechwood Restorative Care Ctr.*, 5 NY3d at 440-441 [stating that if an agency does not disclose requested documents, it must “deny the request and claim a specific exemption to disclosure, or certify that it does not possess the requested document and that it could not be located after a diligent search”]; *see also* Public Officers Law § 89 [3] [a]). Therefore, this Court should order the NYPD to produce promptly all records responsive to the NYCLU’s request.

## **II. THE NYCLU IS ENTITLED TO ATTORNEYS’ FEES.**

The NYCLU respectfully requests an award of reasonable attorneys’ fees and litigation costs. Courts are required to assess reasonable attorneys’ fees and costs when a party has “substantially prevailed” and the agency had “no reasonable basis for denying access” to the records in dispute. (Public Officers Law § 89 [4] [c] [ii].)

On the first prong, if this Court orders the NYPD to disclose requested documents in response to this petition, or if the NYPD voluntarily provides documents after the filing of the petition, the NYCLU will have “substantially prevailed” for the purposes of this provision (*see Matter of Madeiros v New York State Educ. Dept.*, 30 NY3d 67, 79–80 [2017] [finding that the petitioner “substantially prevailed” when the respondent had made “no disclosures, redacted or otherwise, prior to petitioner’s commencement of [a] CPLR article 78 proceeding”]; *Matter of Powhida v City of Albany*, 147 AD2d 236, 239 [3d Dept 1989] [finding that the petitioner substantially prevailed when it was “the initiation of this proceeding which brought about the release of the documents”]). And on the second prong, the NYPD had “no reasonable basis” for categorically denying access to the requested records and for extending and failing to meet its own projected deadlines.

## **CONCLUSION**

For the foregoing reasons, the petitioner, the NYCLU, respectfully requests that the Court order the New York City Police Department to abide by Article 6 of the New York Public Officers Law and disclose the records the petitioner requested in its June 2, 2022 FOIL request.

Dated: March 23, 2023  
New York, N.Y.

Respectfully Submitted,

NEW YORK CIVIL LIBERTIES UNION  
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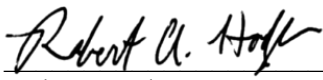
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**CERTIFICATE OF COMPLIANCE WITH 22 NYCRR §202.8-b**

I hereby certify that:

This brief complies with the word count limitation of 22 NYCRR §202.8-b because the total word count, according to the word count function of Microsoft Word, the word processing program used to prepare this document, of all printed text in the body of the brief, exclusive of the caption, table of contents, table of authorities and signature block, is 2,697.

Dated: March 23, 2023  
New York, N.Y.

  
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Robert Hodgson

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