

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

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In the Matter of, :
 :
MILLIONS MARCH NYC, an unincorporated :
association; and VIENNA RYE, ARMINTA :
JEFFRYES, and NABIL HASSEIN, in their individual :
capacities and as representatives of Millions March :
NYC, :
 :
Petitioners, :
 :
-against- :
 :
NEW YORK CITY POLICE DEPARTMENT, :
 :
Respondent, :
 :
For a Judgment Pursuant to Article 78 :
of the Civil Practice Law and Rules. :
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Index No. 100690/17

VERIFIED PETITION

2017 MAY 23 A 11:46
CITY OF N.Y. LAW DEPT.
OFFICE OF CORP. COUNSEL
COMMUNICATIONS UNIT

PRELIMINARY STATEMENT

1. Through this Article 78 Petition, and the underlying Freedom of Information Law request, Millions March NYC and its organizers seek to address mounting concerns among activists that the NYPD is using new technologies to interfere with and surveil their communications as they organize and participate in protests.

2. Millions March NYC is a multiracial grassroots collective of activists committed to building and strengthening the movement for Black lives in New York City. The group organized the march that brought over 70,000 people to the streets of New York City on December 13, 2014, to protest the grand juries' failure to indict the police officers who murdered Eric Garner and Michael Brown.

3. During and since that march, Millions March NYC organizers have experienced repeated problems in using their cell phones to organize and publicize protest activities. Given the troubling reporting on unwarranted government surveillance of and interference with Black Lives Matter protests across the nation and the continuing and urgent importance of the right to protest police abuse, Millions March NYC and its organizers filed a Freedom of Information Law request with the NYPD to investigate whether the NYPD has adopted certain policies and practices that would have a chilling effect on the First Amendment right to protest.

4. The NYPD denied the majority of Millions March NYC's request and claimed that it can neither confirm nor deny the existence of responsive records. This is known as a "Glomar response." To the extent that such a response is even permissible under FOIL (an issue that is pending before the New York State Court of Appeals), it is the most serious form of secrecy that the NYPD can claim.

5. Having exhausted administrative remedies, Millions March NYC and its organizers Vienna Rye, Arminta Jeffryes, and Nabil Hassein now seek judicial relief to compel the NYPD to comply with its legal obligation to produce responsive documents.

VENUE

6. Pursuant to C.P.L.R. 7804(b) and 506(b), venue in this proceeding lies in New York County, in the judicial district in which the respondent took the action challenged here and where the office of the respondent is located.

PARTIES

7. Petitioner Vienna Rye is a resident of the state of New Jersey. She is a representative and an organizer of Millions March NYC. She is suing in her individual capacity and as a representative of Millions March NYC.

8. Petitioner Arminta Jeffryes is a resident of the state of New Jersey. She is a representative and an organizer of Millions March NYC. She is suing in her individual capacity and as a representative of Millions March NYC.

9. Petitioner Nabil Hassein is a resident of the state of New York. He is a representative and an organizer of Millions March NYC. He is suing in his individual capacity and as a representative of Millions March NYC.

10. Petitioner Millions March NYC, also known as Millions March, is an unincorporated association committed to building and strengthening the movement for Black lives in New York City. Millions March NYC is a grassroots collective without a president or a treasurer. Rye, Jeffryes, and Hassein currently serve as functional equivalents of the president of the association by determining the direction of the organization, its political activities, and its social media presence. Millions March NYC brings this lawsuit through Rye, Jeffryes, and Hassein.

11. Respondent New York City Police Department (“NYPD”) is a law-enforcement agency administered under New York Administrative Code, Title 14. The NYPD is a public agency subject to the requirements of the Freedom of Information Law, New York Officers Law § 84 et seq.

FACTUAL BACKGROUND

12. Rye, Jeffryes, and Hassein are all organizers of Millions March NYC and activists who frequently lead and take part in protests against police abuse of Black communities. In the past few years, some of the organizers have experienced strange problems when using cell phones to organize and publicize protest activities.

13. The first time that Rye encountered these problems was on December 13, 2014. On that day, Rye, on behalf of Millions March NYC, organized a large march in New York City to protest the grand juries' failure to indict the police officers who killed Eric Garner and Michael Brown. Rye's cell phone shut down during the march while she was trying to film what was happening. The phone indicated that it was out of battery power even though it was fully charged.

14. Subsequently, during an April 29, 2015, protest that began at Union Square in solidarity with the protests in Baltimore over the killing of Freddie Gray, and during an April 14, 2016, protest against Donald Trump, which took place at the New York State Republican Committee's annual gala at the Grand Hyatt Hotel near Grand Central, Rye and Jeffryes lost reception on their phones.

15. At certain protests from around the summer through the fall of 2015, Rye's cell phone would not allow her to post to Millions March NYC's Twitter account.

16. In addition, Rye and Jeffryes, as well as other advocates, have received messages indicating the possibility of interference with their messages sent and received on Signal, a secure communication tool available on smart phones, to plan for their protests. These problems began around August 2015.

17. Other activists whom Rye, Jeffryes, and Hassein know have reported similar problems with using their cell phones to organize and lead protests, including loss of cell phone service, battery failures, and inability to film the surroundings or post on social media.

18. Rye and Jeffryes have heard comments from NYPD police officers about monitoring of Millions March NYC's organizing and protest activities. On July 17, 2015, Rye and Jeffryes were arrested for disorderly conduct while protesting and taken to 1 Police Plaza.

While they were being processed, they saw officers make duplicates of arrest records and heard them saying to each other that a copy would be placed in “movement files.” On other occasions, they have heard comments from police officers indicating that they are monitoring social media accounts of activists.

19. Rye, Jeffryes, and Hasein are aware of the reporting of police surveillance of protests across the country. Some police departments have even purchased advanced social media monitoring software to facilitate analysis of social media data and to target surveillance of Black Lives Matter activities.

20. These incidents and reports have spurred concerns of unwarranted interference and surveillance of their protest activities.

PROCEDURAL BACKGROUND

21. By letter dated October 24, 2016, Rye, Jeffryes, and Hasein, on behalf of themselves individually and as representatives of Millions March NYC (together, “petitioners”), filed a FOIL request with the NYPD, together with a reasonable proof of their identity in the form of affidavits and copies of their identification documents. The request, a true and correct copy of which is attached as **Exhibit A** to this Petition,¹ sought the following categories of records:

1. Records relating to the NYPD’s use of technology to engage in targeted or blanket interference with the use of cell phones or cell phone applications by protestors (excluding intercept of contents of communications, but including interference with battery life and cell phone reception), specifically:
 - a. Records identifying and describing the software or technology that the NYPD uses to engage in such interference;
 - b. Policies or guidelines relating to the NYPD’s engagement in such interference; and

¹ To maintain the petitioners’ privacy in this public filing Exhibit A excludes the attachments to the FOIL request, which consisted of a verification of the petitioners’ identity and their identification documents. The NYPD has not questioned the identities of the petitioners in the administrative process.

- c. Records describing the occasions in which the NYPD has engaged in such interference.
2. Records relating to the NYPD's access to or acquisition of contents of Requestors' cell phones, including emails or text messages or Signal messages or video, without a court order, specifically:
 - a. Records identifying and describing any software or technology that the NYPD uses to engage in such access or acquisition;
 - b. Policies or guidelines relating to the NYPD's engagement in such access or acquisition; and
 - c. Records describing the occasions in which the NYPD has engaged in such access or acquisition.
3. Records relating to the NYPD's monitoring of social media accounts of protestors and protest groups, regardless of privacy settings, specifically:
 - a. Records identifying and describing any software or technology (including for example Geofeedia, MediaSonar, X1 Social Discovery, or similar products) that the NYPD uses to engage in such monitoring;
 - b. Policies or guidelines relating to the NYPD's engagement in such monitoring; and
 - c. Records reflecting the NYPD's monitoring of the following social media accounts of the Requestors:
 - i. Facebook accounts of:
 1. Millions March NYC
 2. Vienna Rye
 3. Cleo Jeffries
 - ii. Twitter accounts of:
 1. @millionsmarch
 2. @nabilhassein
 3. @armintasade
 - iii. Instagram accounts of:
 1. @millionsmarchnyc
 2. @vrye
 3. @armie_sade
4. Records maintained by the NYPD relating to protest and organizing activities of Millions March, including copies of any "movement files." With regard to this request, on July 17, 2015, while Rye and Jeffries were being processed at 1 Police Plaza for disorderly conduct arrests arising from their protest activities, they saw officers make duplicates of arrest records and heard them saying to each other that a copy would be placed in "movement files."

22. By letter dated November 4, 2016, the NYPD acknowledged receipt of the FOIL request and estimated that a determination will be issued within ninety business days. A true and correct copy of this acknowledgment is attached as **Exhibit B** to this Petition.

23. By letter dated November 8, 2016, the petitioners administratively appealed the estimated delay in responding to the FOIL request, construing the acknowledgment as a constructive denial of their FOIL request. A true and correct copy of this administrative appeal is attached as **Exhibit C** to this Petition.

24. By letter dated November 15, 2016, the NYPD denied the administrative appeal as premature. A true and correct copy of this administrative appeal is attached as **Exhibit D** to this Petition.

25. By letter dated January 10, 2017, the NYPD issued a response to the FOIL request. The NYPD disclosed records responsive to Request 4 relating to the petitioners' "movement files" and arrest records, and denied Request 1-3 on the basis that the records, "if in existence, are exempt from disclosure pursuant to Public Officers Law Section 87(2) and/or other statutes." A true and correct copy of this denial, without the records produced,² is attached as **Exhibit E** to this Petition.

26. By letter dated January 23, 2017, the petitioners filed a timely administrative appeal of the January 10, 2017 decision. The petitioners appealed the denial of records responsive to Requests 1-3. With respect to Request 4, the petitioners asked that the NYPD produce any other responsive records or certify that no other records could be found after a

² To maintain the petitioners' privacy in this public filing, Exhibit E excludes the documents that the NYPD produced in response to Request 4, which consist of petitioners' sealed arrest records. Request 4 is not at issue in this Petition.

diligent search. A true and correct copy of this administrative appeal, without the attachments, is attached as **Exhibit F** to this Petition.

27. By letter dated February 3, 2017, the NYPD issued a final determination on the request, a true and correct copy of which is attached as **Exhibit G** to this Petition. With respect to Requests 1-3, the NYPD claimed a “Glomar” response, stating that it can “neither confirm nor deny the existence of records responsive to [the] FOIL request, as knowledge of the existence or non-existence of such records would interfere with a law enforcement investigation, could impair the life and safety of others and would reveal confidential information,” pursuant to Public Officers Law §§ 87(2)(e)(i), 87(2)(f) and 87(2)(e)(iii). The NYPD further claimed, without any explanation, that to the extent that the records responsive to Request 1-3 exist they are exempt from disclosure under Public Officers Law §§ 87(2)(b), 87(2)(e)(i), 87(2)(e)(iii), 87(2)(e)(iv), and 87(2)(f). With respect to Request 4, the NYPD certified that a diligent search was conducted and that the records disclosed were the sole records responsive to the request.

28. The petitioners file this Article 78 Petition to seek disclosure of records responsive to Requests 1-3.

CAUSE OF ACTION UNDER ARTICLE 78

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

30. Petitioners have the clear right to the records responsive to Requests 1 through 3.

31. There is no basis in law or fact for the respondent to withhold the requested records.

32. The respondent's obligation under FOIL to produce documents and to respond to requests with particularized, specific reasons for any denials or redactions is mandatory, not discretionary.

33. Petitioners exhausted their administrative remedies with the respondent when they appealed the respondent's denial of the request and received a final denial of that appeal. Petitioners have no other remedy at law.

34. This Petition is timely under CPLR § 217 as it is filed within four months of the respondent's final denial of the administrative appeal.

REQUESTED RELIEF

WHEREFORE, the petitioners seek judgment:

- (1) Pursuant to CPLR § 7806, directing the respondent to comply with its duty under FOIL and disclose the records sought by the petitioners in Requests 1, 2, and 3 in the FOIL request dated October 24, 2016;
- (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.

Respectfully Submitted,



Robert Hodgson

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Christopher Dunn

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New York, NY