

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.

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

Index No.: \_\_\_\_\_

**VERIFIED PETITION**

**PRELIMINARY STATEMENT**

1. In the summer of 2020, high-profile incidents of police killings of Black people and other egregious forms of police violence nationwide sparked a new wave of public protest and dialogue about police misconduct and accountability.
2. As a result, the New York State legislature repealed Civil Rights Law Section 50-a, known to many as New York’s “police secrecy law” because, for decades, it insulated a wide-range of police misconduct and disciplinary records from public access.
3. This secrecy had a damaging effect on the public’s trust in the government’s ability to police itself and on marginalized communities, particularly communities of color, which are disproportionately impacted by police violence and misconduct.
4. Following this repeal, on April 30, 2021, the New York Civil Liberties Union (“NYCLU”) submitted a detailed request under the Freedom of Information Law

(“FOIL”) to the New York City Police Department for records relating to the department’s misconduct and disciplinary databases. The request clearly sought databases that the NYPD maintains to connect and organize reports of police misconduct and discipline, including at least one database that is publicly available, as well as records identifying and describing the databases.

5. In response, the NYPD categorically denied the request and produced no records. The NYPD based its denial on conclusory assertions that the request was not specific enough, was too voluminous, and that a response would require the NYPD to create a new record.
6. Having exhausted administrative remedies, the NYCLU now seeks judicial relief to relief to require the NYPD to search, identify, locate, and produce responsive records.
7. The petitioner also seeks an award of attorneys’ fees and costs in light of the NYPD’s failure to adhere to FOIL’s statutory requirements.

#### **VENUE**

8. Pursuant to CPLR 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**

9. The 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 seventy years, the NYCLU has been involved in litigation and public policy advocacy on behalf of New Yorkers to demand government accountability and transparency.

10. The respondent, the NYPD, is a public agency subject to the requirements of the Freedom of Information Law, New York Public Officers Law § 84 *et seq.*

### FACTUAL BACKGROUND

#### The Repeal of Section 50-a

11. Until June 2020, Civil Rights Law Section 50-a (“section 50-a”) posed a substantial obstacle to transparency and accountability in law enforcement, particularly around allegations of misconduct by officers, as well as disciplinary matters, in the State of New York. The statute generally excluded from disclosure under FOIL police “personnel records used to evaluate performance toward continued employment or promotion” that were otherwise presumptively public.
12. Although the intended breadth of Section 50-a when first enacted in 1976 was narrow, its scope expanded broadly, with police departments, including the NYPD, utilizing the provision to shield the conduct of law enforcement personnel from public scrutiny and civilian oversight.
13. Section 50-a was criticized as the most secretive record-shielding law in the nation. The Committee on Open Government noted that the law “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” (*see* Committee on Open Government, 2014 Annual Report 3–6, available at <https://video.dos.ny.gov/coog/pdfs/2014AnnualReport.pdf> [last accessed Sept. 29, 2021] [emphasis added]).
14. Following the murder of George Floyd by a Minneapolis police officer, along with numerous other high-profile killings of Black people by law enforcement, nationwide

protests erupted, prompting a new wave of public outrage and dialogue around the issues of police violence, misconduct, and accountability.

15. As a result of increasing public attention and pressure on these issues, lawmakers in New York began to reexamine the public's interest in changing a culture of lack of transparency and accountability in law enforcement.
16. In response, New York State passed the landmark repeal of section 50-a in June 2020 (*see* Civil Rights Law § 50-a, repealed by 2020 NY Senate-Assembly Bill S8496, A10611).
17. The Sponsoring Memorandum to the bill repealing section 50-a stated that the public's inability to access "complaints or findings of law enforcement misconduct" was the primary purpose behind the repeal (Senate Bill S8496, *Justification*, available at <https://www.nysenate.gov/legislation/bills/2019/s8496> [last accessed September 29, 2021]).
18. Corresponding amendments to FOIL underscored the repeal's primary purpose, "Police-involved killings by law enforcement officials who have had histories of misconduct complaints, and in some cases recommendation of departmental charges, have increased the need to make these records more accessible." (*Id.*) And one New York State court noted, "[i]t strikes the Court that the legislature intended not just a change in law, rather, a change in culture" (*Schenectady Police Benevolent Assn. v. City of Schenectady*, No. 2020-1411, 2020 WL 7978093, \*6 [Sup Ct, Schenectady County, Dec. 29, 2020]).
19. Immediately following the repeal, the NYCLU submitted a FOIL request to the New York City Complaint Review Board ("CCRB")—an independent agency that is

authorized to investigate civilian complaints of certain forms of misconduct by NYPD officers—for records related to a misconduct complaint database that it maintained.

20. As a result of the request, the CCRB supplied the NYCLU with a trove of data and information on complaints spanning over 35 years from its database.
21. In August 2020, the NYCLU published these records, garnering significant public attention and prompting important public discussions about what those historical documents revealed about the CCRB complaint process (*see* Aguirre Affirmation, Exhibit E, Ashley Southall, NY Times, *323,911 Accusations of N.Y.P.D. Misconduct Are Released Online*, Aug. 20, 2020).
22. Since the repeal, other law enforcement agencies have published more narrow sets of data and records that were previously covered by Section 50-a. The NYPD itself maintains a public database, published in March of 2021, related to the investigative findings and internal administrative prosecution of certain misconduct allegations against NYPD officers—part of the NYPD’s departmental “trial” process and distinct from records maintained by the CCRB.
23. The NYPD’s webpage that hosts this database provides that the “Trial Decision Library . . . allow[s] members of the public to view [internal NYPD] trial decisions along with the Police Commissioner’s final determination in each matter.” (NYPD, Trial Decision Library, <https://nypdonline.org/link/15> [last accessed on September 29, 2021] [hereinafter “Trial Decision Library”].) The webpage also notes that the NYPD is “working on including decisions prior to 2016.” (*Id.*)
24. The Trial Decision Library lists the date of the decision, name of the subject officer, and a link to a downloadable document which contains, among other things, a memorandum

prepared for the Deputy Commissioner of Trials and related “Report and Recommendation” regarding the charged misconduct and disciplinary recommendation. (*Id.*) But the Library reportedly does not include records related to unsubstantiated allegations, cases where an officer was found “not guilty”, or investigations that did not proceed to an internal administrative trial (*see id.*; Aguirre Affirmation, Exhibit F, Jake Offenhartz, Gothamist, *New NYPD Database Offers “Narrow” Glimpse at Police Disciplinary Records*, Mar. 9, 2021; *see also* Hon. Mary Jo White et al., *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department* at 7–10 [2019] [explaining the process of allegations that proceed to a NYPD “trial”], available at <https://www.independentpanelreportnypd.net/assets/report.pdf> [last accessed Sept. 29, 2021]).

25. Because many, if not most, allegations are never substantiated and/or never proceed through an internal administrative trial—for a host of reasons that are relevant to understanding the NYPD’s systems of accountability and discipline<sup>1</sup>—the NYPD’s public database only covers a small portion of misconduct and disciplinary records possessed by the NYPD.

### **The NYCLU’s FOIL Request to the NYPD**

26. Following the repeal of section 50-a and the NYPD’s publication of its Trial Decision Library, the NYCLU submitted a FOIL request on April 30, 2021 to the NYPD’s FOIL

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<sup>1</sup> For example, a 2019 independent investigative report by the Office of the Inspector General for the NYPD revealed that the NYPD had failed to substantiate any of nearly 2500 complaints of racial profiling or biased policing made between 2014–2018, in part due to gross inadequacies with the NYPD’s Internal Affairs Division’s investigatory practices. (*See* DOI Report, [https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt\\_62619.pdf](https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt_62619.pdf)).

Officer. The request sought records related to NYPD databases of misconduct complaints and discipline. A true and correct copy of the FOIL request is attached as **Exhibit A** to the Affirmation of Guadalupe Aguirre.

27. The request sought four categories of records:

1. Documents sufficient to identify all databases maintained by or on behalf of the Department that include information about (a) complaints or reports of misconduct against Department employees, or (b) discipline of Department employees in response to a complaint or set of complaints.
2. For each database identified in request 1 (above), please provide any documents that include the following:
  - a. A description of the database's structure or format;
  - b. A description of each field or column in the database;
  - c. An explanation of all abbreviations or acronyms in the database.
3. Any databases maintained by or on behalf of the Department that include information about complaints or reports of misconduct against Department employees, including the following data regarding each complaint or report of misconduct:
  - a. The name, position, and duty station of the Department employee;
  - b. The type of complaint (e.g. use of force, discourtesy, racial profiling or bias, etc.);
  - c. The date and location of the alleged incident that is the subject of the complaint or report;
  - d. Whether the complaint or report of misconduct was investigated;
  - e. The division of the Department or the name of the entity that investigated the complaint or report;
  - f. What the outcome of the investigation was (e.g. substantiated/found to be true and not compliant with policy; exonerated/found to be true and compliant with policy; unfounded/found to be untrue; unsubstantiated/insufficient evidence to determine truth or falsity or compliance with policy); and
  - g. For each substantiated complaint, whether the investigation resulted in the initiation of a disciplinary process, any disciplinary settlement, or the imposition of discipline.
4. Any databases maintained by or on behalf of the Department that include information about discipline of Department employees in response to a complaint or set of complaints, including the following data regarding each instance in which a disciplinary process was initiated other than for a technical infraction that did not involve a member of the public:

- a. The name, position, and duty station of the Department employee;
- b. The type of disciplinary charges (e.g. use of force, discourtesy, racial profiling or bias, etc.);
- c. The date and location of the alleged incident that is the subject of the disciplinary charges;
- d. The outcome of the disciplinary charges (e.g. sustained, not sustained, settled); and
- e. The discipline, if any, imposed (e.g. termination, suspension, loss of pay or vacation days, admonition).

28. On May 5, 2021, the NYPD denied the NYCLU's request with a one-line email "on the basis that [the] request is too broad in nature and does not describe a specific document."

A true and correct copy of the NYPD's denial via email is attached as **Exhibit B** to the Aguirre Affirmation.

29. The NYCLU timely filed an administrative appeal of the decision on June 3, 2021 and in accordance with Public Officers Law § 89 [4] [a]. The appeal noted that the NYCLU provided sufficient information to allow the NYPD to locate responsive records, including providing examples of the type of information the records would include, and defining the term "database". A true and correct copy of the NYCLU's administrative appeal is attached as **Exhibit C** to the Aguirre Affirmation.

30. The appeal also clarified how, for example, the material in the Trial Decision Library plainly implies the existence of at least one or more responsive NYPD databases collecting, organizing, and publishing those Trial Decision Library documents.

31. That same afternoon, the NYPD Records Access Appeals Officer denied the appeal. A true and correct copy of the Letter from Sergeant Jordan S. Mazur, Records Access Appeals Officer, dated June 3, 2021 is attached as **Exhibit D** to the Aguirre Affirmation.

32. The denial reasserted the original reason for the NYPD's denial, stating that the "request failed to reasonably describe a record in a manner that could enable a search," and raised

new rationales to support its decision: 1) that some of the requested records “would require the creation of a new record”; 2) that the request was burdensome or voluminous; 3) that the NYCLU failed to identify actual databases; and 4) the request was “overbroad in that the scope of records responsive to [the] request cannot be determined since a ‘database’ could include not only Department-wide systems but also documents like Excel spreadsheets maintained at a precinct-level . . .”

33. Despite the push for transparency in New York, the NYPD continues to withhold crucial information regarding potential police misconduct and disciplinary matters from the public by denying the request in the manner challenged here.

#### **CAUSES OF ACTION UNDER ARTICLE 78**

34. The petitioner repeats and realleges paragraphs 1–33 hereof as if fully set forth herein.
35. Article 78 is the appropriate method for review of agency determinations concerning FOIL requests.
36. The petitioner has a clear right to production of the records responsive to items 1 through 4.
37. There is no basis in law or fact for the respondent to fail to respond to the initial FOIL request or the administrative appeal.
38. The respondent’s obligation under FOIL to search, identify, locate, and produce responsive records is mandatory.
39. The petitioner exhausted its administrative remedies with the respondent when it appealed the respondent’s denial of its initial request and did not receive responsive records.
40. The petitioner has no other remedy at law.

41. The petition is timely under CPLR § 217 as it is filed within four months of June 3, 2021, the date of the respondent's denial of the petitioner's appeal.

### REQUESTED RELIEF

WHEREFORE, the petitioner seeks judgment:

- (1) Pursuant to CPLR § 7806, directing the respondent to comply with its duty under FOIL and disclose the records sought by the petitioner in Requests 1 to 4 in the FOIL request dated April 30, 2021;
- (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,



NEW YORK CIVIL LIBERTIES UNION  
FOUNDATION

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Date: September 30, 2021  
New York, New York

*Counsel for Petitioner*

VERIFICATION

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

Guadalupe Victoria Aguirre, an attorney admitted to practice in the State of New York, affirms pursuant to CPLR § 2106 under penalties of perjury:

- 1. I am an attorney for 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 Petitioner 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.

[Handwritten Signature]
GUADALUPE V. AGUIRRE

Dated: Sept 30, 2021
New York, New York

Sworn and subscribed to me
this 30 day of September, 2021

[Handwritten Signature]

THOMAS G. MEI
Notary Public, State of New York
Reg. No. 01ME6222532
Qualified in Queens County
Commission Expires Sept. 07, 2022

