

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

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In the Matter of, :
 :
NEW YORK CIVIL LIBERTIES UNION, :
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 : Petitioner, :
 :
 : -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. _____

VERIFIED PETITION

PRELIMINARY STATEMENT

1. As hundreds of thousands of students return to schools for the first time in months, children across New York City will be greeted by school safety agents and metal detectors. Unfortunately, there is little public data to back up what we already fear—that Black and Latinx students disproportionately will face this law enforcement apparatus.

2. The New York City Police Department (“NYPD”) is required by two different city laws to produce information about the deployment of its 5,200 school safety agents and its metal detector program, including the locations of the magnetometers, requests for them to be removed, and what was confiscated from them. But, despite years of requests and advocacy, the NYPD has never fully complied with this mandate, claiming that the information, if disclosed, would be a threat to public safety.

3. The New York Civil Liberties Union (“NYCLU”) now seeks to finally make this information public and to challenge the NYPD’s position that providing basic data on its activities

in schools would be dangerous. On January 3, 2020, the NYCLU submitted a request under the Freedom of Information Law (“FOIL”) to the NYPD to obtain records about school safety agent deployment and magnetometer use. The records sought by the NYCLU would help to shine a critical light on the racially disproportionate impact that law enforcement has on students of color. After months of correspondence, the NYPD has refused to produce all of the relevant records.

4. For more than two decades, the NYPD has operated with minimal public visibility into whether its activities—particularly those concentrated in schools serving predominantly students of color—are in response to any real threat, support improving school climate, or are simply an extension of the NYPD’s pattern of over-policing Black and Latinx New Yorkers. It is time for the NYPD to stop shielding fundamental information about its activities in New York City schools.

5. Because of the NYPD’s repeated failure to disclose all of this crucial information, the NYCLU now seeks judicial relief to compel the NYPD to produce records responsive to its request. The NYCLU also seeks an award of attorneys’ fees and costs in light of the NYPD’s failure to adhere to FOIL’s requirements.

VENUE

6. 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

7. Petitioner the New York Civil Liberties Union 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 nearly seventy years, the NYCLU has

been involved in litigation and public policy advocacy on behalf of New Yorkers to demand government accountability and transparency.

8. Respondent New York City Police Department is a law-enforcement agency administered under the New York City Administrative Code, Title 14. The NYPD is a public agency subject to the requirements of the Freedom of Information Law, New York Public Officers Law § 84 *et seq.* The NYPD maintains its office at 1 Police Plaza, New York, New York 10038.

FACTUAL BACKGROUND

9. The NYCLU has a long and vested interest in the campaign to increase transparency of the data sought in this request.

10. In 1998, the New York City Department of Education (“DOE”) voted to transfer the responsibility for school safety to the NYPD.¹

11. In 2005, as a result of an increased focus on school safety, the Administrative Code of the City of New York was amended to require the NYPD to submit information regarding school safety agents to the City Council in the form of a report:

detailing the number of uniformed personnel and civilian personnel assigned to each and every patrol borough and operational bureau performing an enforcement function within the police department... and such report shall also include, for each school operated by the department of education to which school safety agents are assigned, the number of school safety agents, averaged for the quarter, assigned to each of those schools.²

12. In 2007, following several high-profile arrests of teachers, students, and principals, the NYCLU convened the School Safety Coalition, a network of community-based and advocacy organizations to push for increased transparency and accountability. Following four years of

¹ The citations to these facts are provided in the Memorandum of Law accompanying the Petition.

² Administrative Code of the City of NY § 14-150 (a) (3).

advocacy and despite active resistance by the NYPD and then-Mayor Michael Bloomberg, the City Council adopted the Student Safety Act in 2011.

13. The act amended the Administrative Code of the City of New York to require the NYPD to provide quarterly reports to the City Council on agency activity, including:

(i) a list of school buildings with permanent metal detectors; (ii) a list of school buildings subjected to random scanning; (iii) a list of schools that have requested the removal of metal detectors; and (iv) a list of schools for which a requested removal of metal detectors has been honored. In addition, the department shall on an annual basis report on the amounts and types of contraband seized as a result of metal detector scanning, disaggregated by school building. Such types shall include but not be limited to firearms, knives, box cutters and laser pointers.³

14. In 2009, then-City Councilmember Albert Vann requested the NYPD to produce data pursuant to §14-150 (a) (3) of the Administrative Code because the department had failed to report as required by the 2005 amendments, which Councilmember Vann had introduced. A true and correct copy of the April 27, 2009 letter from the NYPD to Council Member Vann is attached as **Exhibit 1** to the Affirmation of Stefanie D. Coyle. The NYPD refused to produce this data.

15. Similarly, even though the Student Safety Act was signed in 2011, it was not until 2016 that the NYPD first publicly reported the total number of arrests of students in school and only after the law was amended to explicitly require it.

16. The NYPD continues to fail to disclose information pursuant to the Student Safety Act to the New York City Council. On March 7, 2019, the NYCLU submitted a FOIL request to the City Council seeking data on the use of metal detectors that had been produced by the NYPD pursuant to § 14-152 (e). A true and correct copy of the 2019 FOIL request is attached as **Exhibit 2** to the Affirmation of Stefanie D. Coyle.

³ Administrative Code of the City of NY § 14-152 (e).

17. On March 19, 2019, the City Council FOIL officer responded that “the New York City Council does not have responsive documents to the portion of your request that has asked for documentation provided to the New York City Council by the New York Police Department” because, despite its mandate, the NYPD did not report to the City Council the required information under § 14-152 (e) of the Administrative Code. A true and correct copy of the 2019 FOIL response from the City Council is attached as **Exhibit 3** to the Affirmation of Stefanie D. Coyle.

PROCEDURAL HISTORY

18. On January 3, 2020, the NYCLU submitted a FOIL request (the “Request”) to the NYPD for records related to metal detectors in schools and the assignment of school safety agents across the DOE via the NYPD’s OpenRecords platform. A true and correct copy of the FOIL request is attached as **Exhibit A** to this Petition.

19. Specifically, the NYCLU requested:

- (1) All records regarding metal detectors in schools collected since September 2015 pursuant to the NYPD’s reporting requirements under § 14-152 (e) of the New York City Administrative Code.
- (2) All records regarding the deployment of School Safety Agents collected since 2005 pursuant to the NYPD’s reporting requirements under § 14-150 (a) (3) of the New York City Administrative Code.

20. On January 7, 2020, the NYCLU received an email from the OpenRecords platform stating, “You can expect a response on or about Tuesday, May 19, 2020.” A true and correct copy of the NYPD’s acknowledgement is attached as **Exhibit B** to this Petition.

21. On February 4, 2020, the NYCLU appealed this response via email as a constructive denial of the FOIL request because the timeframe articulated was not reasonable given the circumstances of the Request. A true and correct copy of the NYCLU’s February 4, 2020 appeal is attached as **Exhibit C** to this Petition.

22. The following day, February 5, 2020, the NYCLU received a letter via email from the Records Access Officer stating that the “appeal is premature because, as of the date of your appeal, the [] RAO had not yet issued a determination on your request, and therefore, your appeal lacked the predicate denial of access.” A true and correct copy of the NYPD’s appeal response is attached as **Exhibit D** to this Petition.

23. On February 14, 2020, the NYCLU received an email through the OpenRecords platform granting access to some records partially responsive to Request 1 and denying access to records responsive to Request 2 on the basis of the “public safety exemption” and claiming that “such information, if disclosed, would reveal non-routine techniques and procedures.” A true and correct copy of the NYPD’s February 14, 2020 response is attached as **Exhibit E** to this Petition.

24. In its response, the NYPD provided a chart labeled “dangerous instruments,” including totals from what appeared to be school years starting in July 2014. The chart did not disaggregate the data on confiscated items by school building, as required under the Administrative Code, nor did it indicate the type of “contraband,” as is also required. The chart also did not define the term “dangerous instruments” or indicate whether any of the required categories, including firearms, knives, box cutters and laser pointers, were included within this definition. A true and correct copy of this chart which was part of the NYPD’s February 14, 2020 response is attached as **Exhibit F** to this Petition.

25. The NYPD also produced a chart containing what appeared to be the total number of metal-detector scanning sites across the DOE, including full-time and random scanning, from various months starting in 2017. This aggregate data did not reflect a list of school buildings, as required by the Administrative Code. A true and correct copy of this chart which was part of the NYPD’s February 14, 2020 response is attached as **Exhibit F** to this Petition.

26. In its response, the NYPD did not certify that it conducted a diligent search for the requested information.

27. On March 13, 2020, the NYCLU submitted a second appeal to Sgt. Jordan Mazur via email alleging that the NYPD's responses were incomplete and inappropriate. A true and correct copy of the NYCLU's March 13, 2020 appeal is attached as **Exhibit G** to this Petition.

28. On March 26, 2020, Sgt. Mazur acknowledged the appeal via email and asked for an extension of the time in which to respond to the appeal given the COVID-19 pandemic. A true and correct copy of this email is attached as **Exhibit H** to this Petition.

29. The NYCLU consented to this extension via email that same day. A true and correct copy of the email consenting to an extension is attached as **Exhibit I** to this Petition.

30. On April 27, 2020, the NYPD denied the appeal via email based on the "public safety exemption" under FOIL (Pub. Off. Law § 87 [2] [f]) and a provision within the Administrative Code itself (§ 14-150 [c]) ("information, data and reports ... shall be provided to the council except where disclosure of such material could compromise the safety of the public or police officers"). A true and correct copy of the NYPD's appeal response is attached as **Exhibit J** to this Petition.

31. Despite denying the appeal, in response to Request 1, the NYPD directed the NYCLU to a website⁴ containing data that can be used to identify schools where full-time or random scanning has taken place or whether certain contraband items were confiscated if there was an NYPD "incident" at the school.

⁴ City of New York, *School Safety Data*, <https://www1.nyc.gov/site/nypd/stats/reports-analysis/school-safety.page> (last accessed Aug. 26, 2020).

32. The website does not contain data related to requests to remove metal detectors, all items confiscated, or details about the deployment of school safety officers. The NYPD again did not certify that it had conducted a diligent search for the requested information.

33. Having exhausted its administrative remedies, the NYCLU files this Article 78 proceeding seeking immediate production of responsive documents, certification of a diligent search, and attorneys' fees.

CAUSE OF ACTION UNDER ARTICLE 78

34. Petitioner repeats and realleges paragraphs 1 through 33 hereof, as if fully set forth herein.

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

36. Petitioner NYCLU has a clear right to the records responsive to Requests 1 and 2.

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

38. Respondent has not produced the records sought by Petitioner. The respondent's obligation under FOIL to produce documents and to respond to requests with particularized, specific reasons for any denials is mandatory, not discretionary.

39. The petitioner exhausted its administrative remedies with the respondent when it appealed the respondent's denial of its request on March 13, 2020 and received a final denial of that appeal on April 27, 2020. The petitioner has no other remedy at law.

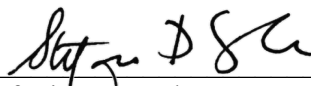
REQUESTED RELIEF

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 and 2 in the FOIL request dated January 3, 2020 and March 13, 2020 appeal;
- (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, by



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Counsel for Petitioner

Dated: August 26, 2020
New York, N.Y.

VERIFICATION

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

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

- 1. I am an attorney for the petitioner in the within proceeding. I make this Verification pursuant to CPLR § 3020 (d).
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.

Handwritten signature of Christopher Dunn
CHRISTOPHER DUNN

Dated: Aug. 26, 2020
New York, New York

Sworn and subscribed to me
this 26th day of August, 2020

Handwritten signature of Beth Haroules
NOTARY PUBLIC

BETH HAROULES
Notary Public, State of New York
No. 02HA4890292
Qualified in New York County
Commission Expires March 30, 2023