

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 DEPARTMENT OF  
CORRECTION,

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 misconduct and accountability within law enforcement.
2. As a result, the New York State legislature repealed Civil Rights Law Section 50-a, known to many as New York’s “secrecy law” because, for decades, it insulated a wide-range of law enforcement misconduct and disciplinary records from public access.
3. This secrecy had a damaging effect on marginalized communities, particularly communities of color, which are disproportionately impacted by misconduct in law enforcement, as well as a damaging effect on the public’s trust in the government’s ability to hold its law enforcement agencies and officers accountable for abuse and misconduct.

4. While much of the attention around the repeal of section 50-a focused on misconduct and disciplinary records held by police departments, the public's call for a new era of transparency and accountability applied with equal force to corrections officers and agencies.
5. Unlike police officers, corrections officers exclusively operate outside of the public arena, while suffering from many of the same pressing institutional problems plaguing police departments and other law enforcement agencies—reports of systemic violence and abuse and high levels of impunity that disproportionately and gravely harm people from marginalized communities.
6. Thus, following section 50-a's repeal, on April 30, 2021, the New York Civil Liberties Union submitted a detailed yet narrow request under the Freedom of Information Law to the New York City Department of Correction for records relating to the department's misconduct and disciplinary databases. Specifically, the request sought electronic databases that the NYC DOC maintains to collect and organize reports of employee misconduct and discipline, including at least one database that is partly publicly available, as well as records identifying and describing the databases.
7. In response, the NYC DOC violated its obligations under FOIL by failing to respond to the request within a reasonable amount of time, failing to produce a single record, and failing to respond to the NYCLU's subsequent administrative appeal.
8. In light of the current crisis at the NYC DOC facilities on Rikers Island, the respondent's failure to adhere to its obligations under FOIL comes at a time when the public's interest in information on how the NYC DOC operates has reached a critical point.

9. The chaotic and dysfunctional situation at Rikers Island is one in which individuals are subjected to grossly inhumane conditions, including egregious violence by staff and some detained individuals who operate in the absence of staff intervention, and deteriorating facilities that help facilitate such violence and put the health and well-being of detained individuals at high risk.<sup>1</sup> Thus, the NYC DOC's failure to respond to the request at this moment in particular undermines FOIL and the repeal of section 50-a's purpose of increased transparency, as well as the public's enormous interest in monitoring and holding accountable its correctional institutions.
10. Having exhausted administrative remedies, the NYCLU now seeks judicial relief to compel the NYC DOC to respond to the FOIL request and produce promptly all responsive records.
11. The NYCLU also seeks an award of attorney's fees and costs in light of the NYC DOC's failure to adhere to FOIL's statutory requirements.

### VENUE

12. 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

13. The New York Civil Liberties Union ("NYCLU" or "petitioner") 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

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<sup>1</sup> See Aguirre Affirmation, Exhibit I, Jan Ransom, et al., *Inside Rikers: Dysfunction, Lawlessness, and Detainees in Control*, NY Times, Oct. 11, 2021.

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

14. The New York City Department of Correction (“NYC DOC” or “respondent”) is a public agency subject to the requirements of the Freedom of Information Law, New York Public Officers Law § 84 *et seq.*

## FACTUAL BACKGROUND AND PROCEDURAL HISTORY

### The Repeal of Section 50-a

15. Until June 2020, Civil Rights Law Section 50-a (“section 50-a”) posed a substantial obstacle to transparency and accountability in law enforcement, including around allegations of misconduct by corrections officers, as well as disciplinary matters, in the State of New York. The statute generally excluded from disclosure all “personnel records used to evaluate performance toward continued employment or promotion”—interpreted in the FOIL context to bar the release of misconduct complaints, investigative records, and disciplinary records.
16. Section 50-a was criticized as the most secretive record-shielding law in the nation. The New York State Committee on Open Government noted that the law “had been expanded in the courts to allow . . . departments to withhold from the public *virtually any record that contains any information that could conceivably* be used to evaluate the performance of a[n] . . . officer” (*see* Committee on Open Government, 2014 Annual Report 3–6, available at <https://video.dos.ny.gov/coog/pdfs/2014AnnualReport.pdf> [last accessed Oct. 28, 2021] [emphasis added]).

17. Though many of these legal developments occurred in the context of police misconduct and disciplinary records, the law applied equally in other law enforcement contexts, including corrections.
18. Following the murder of George Floyd by a Minneapolis police officer, nationwide protests erupted, prompting public outrage and dialogue around the issues of violence, misconduct, and a lack of accountability within law enforcement.
19. As a result, lawmakers across the country began to reexamine the public's interest in changing a culture of lack of transparency and accountability in law enforcement.
20. New York State was no exception, especially given the long-standing criticism of section 50-a as an overly strict barrier to accountability.
21. In response, New York made the landmark decision to repeal the law in June 2020 (*see* Civil Rights Law § 50-a, repealed by 2020 NY Senate-Assembly Bill S8496, A10611; *Schenectady Police Benevolent Assn. v. City of Schenectady*, No. 2020-1411, 2020 WL 7978093, \*6 [Sup Ct, Schenectady County, Dec. 29, 2020] ["It strikes the Court that the legislature intended not just a change in law, rather, a change in culture."]).
22. Since the repeal, some law enforcement agencies have published narrow sets of data and records that were previously covered by section 50-a.
23. The NYC DOC itself maintains a public database, published in March of 2021, related to a narrow universe of disciplinary records that appear to cover only substantiated complaints of misconduct.
24. In addition to omitting non-substantiated allegations, the NYC DOC's website indicates that the public database does not include records related to cases involving drug smuggling or sexual violence, and only covers cases resolved in 2019 and 2020 (New

York City Dept. of Corrections, Statistics and Compliance, *Uniform Staff Discipline Reports*, <https://www1.nyc.gov/site/doc/about/statistics-and-compliance.page> [last accessed Oct. 28, 2021]).

25. Long-standing issues within the NYC DOC, including years-long delays in the resolution of complaints, issues of impunity, and a lack of consistent corrective disciplinary action imply a large universe of unresolved and unsubstantiated complaints within the NYC DOC (*see, e.g.*, Steve Martin et al., Eleventh Report of the *Nunez* Independent Monitor 221-258 [May 11, 2021], available at [https://www1.nyc.gov/assets/doc/downloads/pdf/11th\\_Monitor\\_Report.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/11th_Monitor_Report.pdf) [last accessed Oct. 28, 2021] [“[T]he lack of timely accountability allows Staff to act with impunity and the culture of violence to persist.”]). Thus, in all likelihood, the NYC DOC’s public database covers only a small portion of the NYC DOC’s misconduct and disciplinary records, and any non-published internal version of that same database could reveal a great deal about the numbers of unresolved, unsubstantiated, or abandoned misconduct complaints that have yet to see the light of day.

### **The NYCLU’s FOIL Request to the NYC DOC**

26. On April 30, 2021, following the repeal of section 50-a and the publication of the NYC DOC’s 2019 and 2020 databases, the NYCLU sent a FOIL request to the NYC DOC’s Foil Officer seeking four categories of records relating to those databases—plus any other similar databases of misconduct complaints and discipline maintained by the agency:
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).

(Aguirre Affirmation, Exhibit A, FOIL Request by the NYCLU dated April 30, 2021 [“FOIL Request”].)

27. On May 5, 2021, the NYC DOC acknowledged the NYCLU's FOIL request and set an expected response date of June 7, 2021<sup>2</sup> (Aguirre Affirmation, Exhibit B, FOIL Request Acknowledgment dated May 5, 2021 ["Acknowledgment Letter"]).
28. On June 3, 2021, the NYC DOC provided an "interim response" to the FOIL request seeking an additional two months, until August 2021, to respond to the request (Aguirre Affirmation, Exhibit D, NYC DOC Interim Response dated June 3, 2021 ["Interim Response"]).
29. On June 10, 2021, the NYCLU timely filed an administrative appeal in accordance with Public Officers Law 89 [4] [a] (Aguirre Affirmation, Exhibit E, NYCLU Administrative Appeal Letter dated June 10, 2021 ["Administrative Appeal Letter"]). The appeal noted that the proposed response date, in August 2021,<sup>3</sup> which was about three months after the May 5, 2021 date of acknowledgment, was not reasonable under the circumstances "[g]iven that the request is sufficiently narrowed to existing *electronic* databases that the Department maintains or has access to." (*Id.* [emphasis in original]).
30. On June 22, 2021, after the NYCLU contacted the NYC DOC to request an acknowledgement and the status of the administrative appeal, the NYC DOC requested that the appeal be submitted to Adjuwa Thomas and provided an email for Ms. Thomas (*see* Aguirre Affirmation, Exhibit F, NYC DOC June 22, 2021 Response Email).
31. The NYCLU submitted the appeal to Ms. Thomas, as directed, that same day (Aguirre Affirmation, Exhibit G, NYCLU Email to Adjuwa Thomas dated June 22, 2021).

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<sup>2</sup> The acknowledgement letter also sought clarification on two discrete aspects of the request, which the NYCLU provided in two follow up emails dated the same day (Aguirre Affirmation, Exhibit C, NYCLU Emails Clarifying FOIL Request).

32. To date, the NYCLU has received no response to its June 22 appeal.
33. The NYC DOC also failed to provide any further response in August 2021, the timeframe it originally proposed as a deadline to respond to the NYCLU's FOIL request, or at any point thereafter.
34. Despite the push for transparency within law enforcement and corrections agencies in New York, the NYC DOC continues to withhold crucial information regarding potential misconduct and disciplinary matters from the public by denying the request in the manner challenged here.

### CAUSES OF ACTION UNDER ARTICLE 78

35. The petitioner repeats and realleges paragraphs 1–34 hereof as if fully set forth herein.
36. Article 78 is the appropriate method for review of agency determinations concerning FOIL requests.
37. The petitioner has a clear right to production of the records responsive to items 1 through 4 of the request.
38. There is no basis in law or fact for the respondent to fail to respond to the initial FOIL request or the administrative appeal.
39. The respondent's obligation under FOIL to respond to a FOIL request, respond to a FOIL administrative appeal, and produce documents is mandatory, not discretionary.
40. The petitioner exhausted its administrative remedies with the respondent when it appealed the respondent's constructive denial of the request and did not receive records or an adequate response to the appeal within ten business days as required by Public Officers Law § 89 [4][a].
41. The petitioner has no other remedy at law.

42. The petition is timely under CPLR § 217.

### 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

By: Guadalupe Victoria Aguirre  
Robert Hodgson  
Christopher Dunn  
125 Broad St., Floor 19  
New York, NY 10004  
Tel: (212) 607-3300  
Fax: (212) 607-3318  
Email: [laguirre@nyclu.org](mailto:laguirre@nyclu.org)

Date: October 29, 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 C.P.L.R. § 2106 under penalties of perjury:

- 1. I am an attorney for the Petitioner in the within proceeding. I make this Verification pursuant to C.P.L.R. § 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 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]
GUADLUPE V. AGUIRRE

Dated: Oct. 29, 2021
New York, New York

Sworn and subscribed to me
this 29 day of October, 2021

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

