

STATE OF NEW YORK
SUPREME COURT

COUNTY OF SCHENECTADY

PRESENT: HON. MARK L. POWERS
SUPREME COURT JUSTICE

DECISION AND ORDER

Index No. 2020-1411
RJI No. 46-1-2020-0598

**SCHENECTADY POLICE BENEVOLENT ASSOCIATION, On Behalf of
BRIAN POMMER and On Behalf of All Other Similarly Situated Members of
the SCHENECTADY POLICE BENEVOLENT ASSOCIATION, and
BRIAN POMMER,**

Petitioners-Plaintiffs,

-against-

**CITY OF SCHENECTADY, MICHAEL C. EIDENS, in his official capacity
as Public Safety Commissioner for the City of Schenectady, CITY OF
SCHENECTADY POLICE DEPARTMENT,**

Respondents-Defendants.

NOTICE:

**PURSUANT TO ARTICLE 55 OF THE CIVIL PRACTICE LAW AND
RULES, AN APPEAL FROM THIS JUDGMENT MUST BE TAKEN
WITHIN 30 DAYS AFTER SERVICE BY A PARTY UPON THE
APPELLANT OF A COPY OF THE JUDGMENT WITH PROOF OF
ENTRY EXCEPT THAT WHERE SERVICE OF THE JUDGMENT IS BY
MAIL PURSUANT TO RULE 2103(B)(2) or 2103(B)(6), THE
ADDITIONAL FIVE DAYS PROVIDED SHALL APPLY, REGARDLESS
OF WHICH PARTY SERVES THE JUDGMENT WITH NOTICE OF
ENTRY.**

APPEARANCES:

John P. Calareso, Jr., Esq., Gleason, Dunn, Walsh & O'Shea, 40 Beaver Street, Albany, N.Y. 12207; Counsel for Petitioners-Plaintiffs, Schenectady Police Benevolent Association, on behalf of Brian Pommer and on behalf of all other similarly situated members of the Schenectady Police Benevolent Association, and Brian Pommer;

Andrew B. Koldin, Esq., Assistant Corporation Counsel, City Hall, 105 Jay Street, Room 201, Schenectady, New York 12305; Counsel for Respondents-Defendants, City of Schenectady, Michael C. Eidens, in his official capacity as Public Safety Commissioner for the City of Schenectady, and the City of Schenectady Police Department;

Michael Sisitzky, Esq., Julissa Reynoso, Esq., Sofia Arguello, Esq., Lauren E. Duxstad, Esq., Brett Waters, Esq., Erin Baldwin, Esq., Samantha Ruppenthal, Esq., WINSTON & STRAWN LLP, 200 Park Avenue, New York, New York 10016; Counsel for Intervenor-Party, New York Civil Liberties Union.

HON. MARK L. POWERS, JSC

The issue before this Court is whether a police officer's personnel and disciplinary record, to the extent it contains uncharged or unsubstantiated allegations of misconduct, or founded charges resolved without professional discipline, must be disclosed in response to a *Freedom of Information Law (FOIL)* request, in light of the repeal of *Civil Rights Law (CRL) §50-a*, on June 12, 2020.

Certainly, the repeal, which took effect immediately, removed the blanket of secrecy with which law enforcement records, statewide, were previously cloaked in their entirety. However, the scope of the general public's reach, through the simple submission of a *FOIL* request, as far as the content of such records is the question now

put to municipalities around the state.¹

At the outset, the Court recognizes that strong lobbying by advocacy groups, coupled with recent nationwide protests in the name of racial equality and demanding massive reform, were the catalysts for the statutory repeal of *CRL §50-a*. Indeed, our nation's recent history is forever marked by anger and sorrow surrounding controversial arrests involving the use and degree of force, particularly as against black men, women and children. Although not an exhaustive rendition, police-caused fatalities of minorities, which garnered national media attention, peaceful public outcry and/or violent social unrest include: the death of Eric Garner, on July 17, 2014, resulting from police choke hold, during arrest for selling untaxed cigarettes; the death of Tamir Rice, a child, on November 22, 2014, who was carrying a toy gun; the death of Freddie Gray, on April 19, 2015, caused by spinal cord injuries sustained while already in police custody; the death of Elijah McClain, on August 24, 2019, after being cuffed, administered ketamine (a sedative), and then held against the ground in a choke hold for more than fifteen minutes; the death of Breonna Taylor, on March 13, 2020, after officers blindly fired multiple shots into her home while executing a search warrant; the death of Daniel Prude, on March 23, 2020, after being held face down to the pavement in excess of two minutes with a "spit hood" over his head; and the death of George Floyd, on May 25,

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Upon information and belief, at the time of this writing, on-line databases are in the process of development, geared toward improved and more efficient responses to FOIL requests, as well as reduced costs for compilation, reproduction, and consistent records retention policies. The extent, if any, to which such database design has been delayed by the on-going global health pandemic (COVID-19) is unknown to this Court.