

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

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NEW YORK CIVIL LIBERTIES UNION, :  
 :  
Petitioner, :  
 :  
-against- :  
 :  
NEW YORK COUNTY DISTRICT ATTORNEY, :  
 :  
Respondent. :  
 :  
For a Judgment Pursuant to Article 78 :  
of the Civil Practice Law and Rules :  
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Index No. 12/100682

**VERIFIED PETITION**

**PRELIMINARY STATEMENT**

1. This Article 78 proceeding seeks to vindicate the right of the public to learn which residential apartment buildings New York City Police Department (“NYPD”) police officers are permitted to regularly patrol pursuant to enrollment in the Manhattan District Attorney’s Trespass Affidavit Program (“TAP”). Although the purpose of TAP is to combat illegal activity in enrolled buildings, the New York Civil Liberties Union (“NYCLU”) has received numerous reports that NYPD officers make unconstitutional, suspicionless stops—and even arrests for criminal trespassing—of TAP buildings’ residents and their invited guests.

2. These reports, in combination with the high substantiation rate of complaints lodged with the Civilian Complaint Review Board (“CCRB”) against NYPD police officers patrolling TAP buildings and public housing complexes in 2008 and 2009, led the NYCLU to seek documents and records from the Manhattan District Attorney’s Office (the “District Attorney”) concerning TAP under the Freedom of Information Law (“FOIL”). Specifically, the

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NYCLU requested policies and procedures related to the program, a roster of buildings currently enrolled in TAP (the "TAP Roster"), data concerning arrests for trespassing made pursuant to TAP and information related to all misdemeanor and violation trespass arrests within New York County during 2009 and 2010. In response, the District Attorney denied the portion of the request seeking disclosure of the TAP Roster, claiming that release would constitute an unwarranted invasion of landlords' personal privacy. The NYCLU then filed an appeal and the District Attorney likewise denied that appeal, invoking FOIL's law enforcement and public safety exemptions in addition to its initial personal privacy claim.

3. The District Attorney's position is both plainly unsupported by law and highly curious because a residential building's enrollment in TAP is no secret. Indeed, the District Attorney requires that all buildings participating in TAP post conspicuous signage to that effect at building entrances, thereby publicizing each participating building's enrollment to residents, guests and passers-by. Thus, the primary issue presented in this Article 78 proceeding is whether the District Attorney may invoke FOIL exemptions to withhold from the public a record containing the addresses of buildings enrolled in a program which mandates that buildings publicly announce their participation in that program as a condition of enrollment.

4. Relying on mere speculation and conjecture, the District Attorney has failed to meet its burden to establish that a list of building addresses falls within the personal privacy, law enforcement or public safety exemptions of FOIL. By concealing its list of TAP building addresses, the District Attorney has violated FOIL and the strong policy of government transparency that underlies the law. Having exhausted its administrative remedies, the NYCLU now seeks judicial relief to compel the District Attorney to comply with its legal obligation to produce a roster of addresses of buildings currently enrolled in TAP.

## PARTIES

5. 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 over fifty years, the NYCLU has been involved in litigation and public policy advocacy on behalf of New Yorkers, fighting against discrimination, advocating for individual rights, and demanding government accountability.

6. Respondent, the New York County District Attorney, is an elected official required under New York County Law Article 18, § 700 and Article 24, § 927 to prosecute all crimes and offenses cognizable by the courts in New York County. The District Attorney is a public officer subject to the requirements of FOIL, New York Public Officers Law § 84 *et seq.*

## FACTS

7. Since 1991, the District Attorney has collaborated with the NYPD to enroll private apartment buildings in TAP, a program that permits police officers to patrol the public areas of enrolled buildings and arrest individuals on the premises who are neither tenants nor tenants' guests. A building's enrollment in TAP is accomplished when the building's landlord or managing agent confers with the Community Affairs Unit of the Manhattan District Attorney's Office about illegal activity in their buildings, signs an affidavit prepared by the District Attorney, and provides a tenant roster and building keys to the local precinct.

8. Upon enrollment, the landlord or managing agent is required to post signs supplied by the District Attorney's Office outside of the building that indicate that trespassing is prohibited. These signs also explicitly announce the building's participation in TAP. They state: "Manhattan District Attorney's Office Trespass Affidavit Program. For further information,

please contact the District Attorney's Office Community Affairs Unit at 212-335-9082 or your precinct."

9. TAP is part of a citywide NYPD trespass affidavit program called Operation Clean Halls. Individual county programs under the umbrella of Operation Clean Halls take various forms throughout New York City's five boroughs, but the purpose of each is the same: to allow police officers to access the interior of private residential buildings to remove non-residents who remain on the properties unlawfully. Once a residential building is enrolled in an Operation Clean Halls program such as TAP, two or more uniformed NYPD police officers may conduct "vertical patrols" inside the building at designated times and locations. The vertical patrol consists of a tactical tour of the interior hallways, stairwells, and rooftops and requires patrolling officers to "take appropriate police action" when they encounter illegal activity.

10. Upon information and belief, the NYPD conducts hundreds of thousands of vertical patrols in Operation Clean Halls-enrolled buildings within New York City, resulting in thousands of arrests, annually. As of May 2010, the District Attorney reported hundreds of arrests in New York County alone, stemming from police patrols of the over 3,200 private residential buildings participating in TAP.

11. The systematic NYPD patrols in privately-owned apartment buildings participating in Operation Clean Halls are similar to those conducted by police officers at New York City Housing Authority ("NYCHA") properties. And, the propriety of police conduct at both Operation Clean Halls and NYCHA locations has been the subject of recent scrutiny. In September 2010, a Board Member of the Civilian Complaint Review Board ("CCRB"), the City's independent mayoral agency which investigates and recommends action related to civilian complaints about police misconduct, testified before the New York City Council Committees on

Civil Rights, Public Safety and Public Housing about an escalation in 2009 of complaints lodged with the CCRB concerning police misconduct at Operation Clean Halls and NYCHA locations. In reviewing the complaints filed between July 1, 2008 and November 10, 2009 alleging improper stop or questioning at patrolled housing locations, the CCRB determined that, when compared with the “universe of complaints stemming from other locations,” there was a 10% higher arrest or summons rate for patrolled housing incidents and found that “the substantiation rate of nearly 32% in public housing and Clean Halls complaints [wa]s close to three times higher than the substantiation rate of 11% in complaints stemming from locations other than patrolled housing.”

12. Recently, the NYCLU has also received numerous reports from civilians about illicit police tactics being used in residential buildings enrolled in Operation Clean Halls throughout New York City, including locations participating in the Manhattan District Attorney’s TAP program. Tenants of certain buildings report that police presence is commonplace and many complainants suggest that NYPD officers patrolling building premises routinely stop, and sometimes arrest, tenants or their guests for trespassing without the requisite suspicion to do so.

13. The NYCLU is a not-for-profit, non-partisan organization that seeks to defend civil rights and civil liberties and to represent the constitutional interests of ordinary individuals who have experienced injustice. Police misconduct generally, and unlawful stop, question, frisk and arrest practices more particularly, have long been a concern of the NYCLU. Thus, the allegations of misconduct by NYPD police officers patrolling Operation Clean Halls and NYCHA buildings and conducting Fourth Amendment searches and seizures of civilians at those locations raises concern for the NYCLU.

14. But, while the locations of NYCHA properties are publicly accessible in an online NYCHA “Property Directory,” the NYCLU is not aware of any such publicly available directory identifying the addresses of the similarly-policed buildings enrolled in TAP or Operation Clean Halls. Police activity in buildings enrolled in Operation Clean Halls in general, and the TAP program in particular, remains largely obscured.

15. In light of the lack of transparency surrounding TAP, a law enforcement program that implicates the rights for thousands of New York County residents in their daily lives to be free from unreasonable searches and seizures at home or at the home of family and friends, the NYCLU seeks relief through FOIL to understand more about this joint Manhattan District Attorney and NYPD program, including to discern the locations where improper police activity may be taking place.

#### **CAUSE OF ACTION UNDER ARTICLE 78**

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

17. Petitioner, the NYCLU, has a clear right under FOIL to the TAP Roster sought.

18. There is no basis in law or fact for Respondent to withhold the TAP Roster. Respondent’s obligation under FOIL to disclose the records is mandatory, not discretionary.

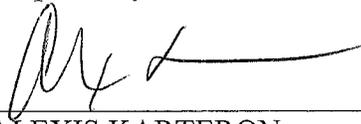
19. Petitioner exhausted its administrative remedies with the District Attorney’s Office when it appealed the District Attorney’s initial denial of its request for the TAP Roster and received a denial of that appeal. Petitioner has no other remedy at law.

**REQUESTED RELIEF**

WHEREFORE, Petitioner seeks judgment:

- (1) Pursuant to C.P.L.R. § 7806, directing Respondent to comply with its duty under FOIL and provide the records sought by Petitioner in its request dated May 10, 2011;
- (2) Awarding reasonable attorney's fees and litigation costs as allowed under New York Public Officers Law § 89; and
- (3) Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Foundation  
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Counsel for Petitioner

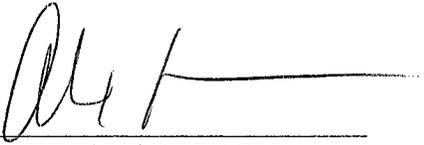
Dated: January 20, 2012  
New York, New York

**VERIFICATION**

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

Alexis Karteron, an attorney admitted to practice in the State of New York, affirms pursuant to C.P.L.R. § 2106 under the penalties of perjury:

1. I am the lead attorney for and an employee of 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.

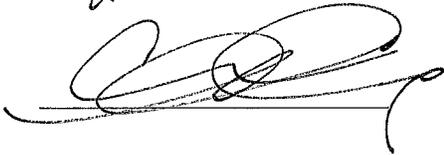



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ALEXIS KARTERON

Dated: January 20, 2012  
New York, New York

Sworn and subscribed to me  
this 20<sup>th</sup> day of January 2012



**CORINNE A. CAREY**  
**Notary Public, State of New York**  
**No. 02CA6039440**  
**Qualified in Kings County**  
**Commission Expires April 17, 2014**