

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of :  
NEW YORK STATE DEFENDERS ASSOCIATION, :  
Petitioner, :  
-against- :  
NEW YORK STATE POLICE; :  
LAURIE M. WAGNER, in her official capacity as :  
Records Access Officer of the N.Y. State Police; :  
and WILLIAM CALLAHAN, in his official capacity :  
as Administrative Director of the N.Y. State Police, :  
Respondents. :  
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. This Article 78 proceeding seeks to vindicate the right of the petitioner New York State Defenders Association (“NYSDA”) and of the public under the Freedom of Information Law (“FOIL”) to have access to New York State Police (“State Police”) records concerning the department’s policies pertaining to the videotaping, audio taping, or electronic recording of interviews, interrogations, confessions, or statements of criminal suspects in police custody.
  
2. The State Police have refused to produce responsive records, asserting that they are protected by FOIL’s exemption for “records which were compiled for law enforcement purposes, and which, if disclosed, would reveal non-routine investigative

techniques and procedures.” However, the responsive records clearly would not give rise to a substantial likelihood that violators could evade detection by deliberately tailoring their conduct, and thus the records cannot fall under the law enforcement exemption.

### **VENUE**

3. Pursuant to C.P.L.R. §§ 7804(b) and 506(b), venue in this proceeding lies in Albany County, in the judicial district in which Respondents took the action challenged here.

### **PARTIES**

4. Petitioner New York State Defenders Association (“NYSDA”) is a not-for-profit membership organization, which has provided support to New York’s criminal defense community since 1967. Its mission is to improve the quality and scope of publicly supported legal representation to low income people.

5. Respondent New York State Police (“State Police”) is a law-enforcement agency. The NYSP is a public agency subject to the requirements of the Freedom of Information Law (“FOIL”).

6. Respondent Laurie M. Wagner is a public officer who is named in her official capacity as Records Access Officer of the State Police.

7. Respondent William Callahan is a public officer who is named in his official capacity as Administrative Director of the State Police.

## PROCEDURAL HISTORY

8. NYSDA's mission is to improve the quality and scope of publicly supported legal representation to low income people. NYSDA is the largest criminal defense bar association in New York and among the first statewide defense organizations to be established in the country. NYSDA long has been concerned about coerced confessions as a result of abusive police conduct.

9. NYSDA supports videotaping of interrogations, both as a procedural protection for suspects and a way to avoid wrongful convictions. As a result of this organizational interest, NYSDA sent a Freedom of Information Law request to the State Police on November 2, 2009, in an effort to gather written policies or memoranda concerning the State Police's policies pertaining to the videotaping, audio taping, or electronic recording of interviews, interrogations, confessions, or statements of criminal suspects in police custody.

10. In response to the NYSDA's FOIL request, the State Police, in a letter dated November 12, 2009, stated that the Department would need up to twenty business days to determine whether it would grant or deny NYSDA's request.

11. On December 16, 2009, Captain Laurie Wagner of the State Police denied the request, stating that the responsive records are "records which were compiled for law

enforcement purposes, and which, if disclosed, would reveal non-routine investigative techniques and procedures.”

12. NYSDA filed an administrative appeal with the State Police on December 18, 2009. William Callahan, the Administrative Director of the State Police, rejected the appeal in a letter dated January 22, 2010, citing the same grounds as Captain Wagner cited in her initial denial.

13. The New York Civil Liberties Union (“NYCLU”), which represents NYSDA in this matter, as part of its ongoing effort to defend civil liberties and civil rights, as well as to ensure government openness in New York, sent identical FOIL requests to over thirty police departments throughout the state in July and October of 2009.

14. Of the departments issued FOIL requests by NYCLU, 33 police departments responded fully to the NYCLU’s request, without invoking any law enforcement exemption, stating that they did not videotape suspect interrogations or providing full policies.

**CAUSE OF ACTION: ARTICLE 78 REVIEW OF WRONGFUL  
DENIAL OF FOIL REQUEST**

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

16. Petitioner NYSDA has a clear right to information about the State Police's written policies or memoranda concerning the department's policies pertaining to the videotaping, audio taping, or electronic recording of interviews, interrogations, confessions, or statements of criminal suspects in police custody. The State Police responded with a wholesale denial of NYSDA's FOIL request, asserting the law enforcement exemption which shields from disclosure documents that would "reveal non-routine investigative techniques or procedures."

17. Respondents have not produced the information sought by the petitioner NYSDA. Respondents' obligation under FOIL to disclose information about the videotaping of interrogations is mandatory, not discretionary.

18. Petitioner NYSDA exhausted its administrative remedies when it appealed the Department's denial of its FOIL request and the Department denied that appeal. Petitioner has no other remedy at law.

**REQUESTED RELIEF**

WHEREFORE, Petitioner seeks judgment:

(1) Pursuant to C.P.L.R. § 7806, directing Respondents to comply with their duty under FOIL and provide the information sought by Petitioner in its November 2, 2009 request;

(2) Awarding attorneys' fees and reasonable 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,

NEW YORK STATE DEFENDERS  
ASSOCIATION, by its counsel,



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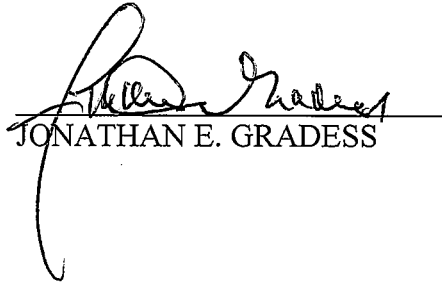
Dated: New York, NY  
April 2, 2010

VERIFICATION

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

Jonathan E. Gradess, 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 Executive Director 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. The statements in the Verified Petition are true to my own 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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JONATHAN E. GRADESS

Dated: Albany, NY  
April 2, 2010

Sworn and subscribed to me  
this 2nd day of April 2010

  
\_\_\_\_\_  
NOTARY PUBLIC

**BARBARA A. BAGGOTT**  
Notary Public, State of New York  
Qualified in Rensselaer County  
Reg. No. 4752460  
Commission Expires June 30, 20 11