

2. Following public disclosures about the LMSI last year, the NYCLU served a FOIL request on the NYPD seeking a range of documents pertaining to the planned surveillance system. Given the system's enormous implications for privacy rights and the lack of any public input into the system, the NYCLU was particularly interested in public disclosure about the scope of the information the system would collect about law-abiding New Yorkers, about how the police would use that information, about who the police would share the information with, about how long the police would keep the information, about any privacy protections that would be part of the system, about which private surveillance cameras would become part of the NYPD system, and about the extent to which New York City funds were being used to create the system.

3. In light of the size, cost, and complexity of the system and in light of public statements made by NYPD officials about the system, the Department must have hundreds if not thousands of documents that would be responsive to the NYCLU's FOIL request. Nonetheless, in April 2008 the NYPD responded to the NYCLU's request by producing a single, one-page document. After the NYCLU appealed that initial response, the Department produced another handful of documents comprising a total of 91 pages, some of them redacted.

4. The NYPD's response to the NYCLU's request for information about the LMSI violates the Freedom of Information Law. Having exhausted its administrative appeals, the NYCLU now seeks an order from this Court, pursuant to Article 78 of the New York Civil Practice Law and Rules, directing the NYPD to produce the information the

NYCLU requests. The NYCLU also seeks attorneys' fees and any other relief the Court deems appropriate.

VENUE

5. Pursuant to C.P.L.R. §§ 7804(b) and 506(b), venue in this proceeding lies in New York County, in the judicial district in which Respondents took the action challenged here and where the offices of Respondents are located.

PARTIES

6. Petitioner New York Civil Liberties Union is a not-for-profit corporation that defends civil rights and civil liberties in New York.

7. Respondent New York City Police Department is a law-enforcement agency administered under New York Administrative Code, Title 14. The NYPD is a public agency subject to the requirements of the Freedom of Information Law ("FOIL").

8. Respondent Raymond Kelly is a public officer who is named in his official capacity as the Commissioner of the NYPD.

FACTS

9. The NYCLU's mission is to defend civil liberties and civil rights in New York and to ensure government openness. For over fifty years, the NYCLU has been involved in litigation and public policy on behalf of New Yorkers, advocating for individual rights, like privacy, and for government accountability. The NYCLU long has been concerned about the privacy implications of police surveillance of lawful public activity.

10. In July 2007 *The New York Times* reported that the NYPD was moving forward with a \$90 million surveillance project called the Lower Manhattan Security Initiative (“LMSI”). According to the story, which quoted NYPD Commissioner Raymond Kelly and NYPD Deputy Commissioner Paul Browne, the system would use 3,000 government and private cameras to capture vehicle license plates, suspicious behavior, and the faces of pedestrians in the area of Manhattan south of Canal Street. All of this information would be fed into a central database maintained at an NYPD command center, where the information would be instantly analyzed to determine whether immediate action should be taken against a vehicle or person. According to the story, the Department had obtained \$25 million of federal money and \$10 million of New York City money to pay for the system. The story noted that the NYPD system was modeled on a similar system in place in London known as the “Ring of Steel.”

11. Based on public statements about the LMSI made by senior NYPD officials, public reporting about the LMSI, and the information contained in the handful of documents obtained by the NYCLU, the NYPD must have documents about the LMSI with the following information:

- detailed descriptions of the information the LMSI will collect about vehicles and individuals (e.g., license plate numbers, human faces, human behavior);
- how the NYPD will use the information collected by the LMSI;
- the extent to which the NYPD will share information collected by the LMSI with other law-enforcement agencies or other entities, like the New York City Council or vendors of goods/services;
- the form in which NYPD will retain information collected by the LMSI (i.e., in an electronic database or some other form);

- how long the NYPD will retain information collected by the LMSI before being destroyed;
- privacy protections included in the LMSI;
- which private video surveillance systems (e.g. banks) will become part of the LMSI;
- the particulars of funding provided by the New York City Council to support the LMSI;
- descriptions or assessments of London's Ring of Steel, upon which the LMSI is modeled.

PROCEDURAL HISTORY

12. Concerned about the privacy implications of LMSI and about the lack of any public input into the system, the petitioner NYCLU filed a FOIL request for records relating to the LMSI in October 2007. The NYCLU specifically asked for: (1) documents sent by the City of New York or the NYPD to the United States Department of Homeland Security dating back to January 1, 2002 concerning the LMSI, with a specific request for documents or portions of documents containing "privacy protections, such as provisions concerning types of information collected, access to information collected, use of information collected, retention of information collected, and destruction of information collection"; (2) documents received by the City of New York or the NYPD from the U.S. Department of Homeland Security dating back to January 1, 2002 concerning the LMSI, with a specific request for documents or portions of documents containing "privacy protections, such as provisions concerning" types of, access to, use of, retention of, and destruction of information collection; (3) documents sent by the City of New York or the NYPD to the New York City Council dating back to January 1, 2002 concerning the LMSI, with a specific request for documents or portions of documents containing "privacy protections, such as provisions concerning" types of, access to, use

of, retention of, and destruction of information collection; (4) documents received by the City of New York or the NYPD from the New York City Council dating back to January 1, 2002 concerning the LMSI, with a specific request for documents or portions of documents containing “privacy protections, such as provisions concerning” types of, access to, use of, retention of, and destruction of information collection; (5) documents sent by the City of New York or the NYPD to other entities, including vendors of goods/services, dating back to January 1, 2002 concerning the LMSI; (6) documents received by the City of New York or the NYPD from other entities, including vendors of good/services, dating back to January 1, 2002 concerning the LMSI; (7) documents that otherwise “evaluate, assess, describe, authorize, or otherwise discuss” the proposed LMSI; and (8) documents in the NYPD’s possession that “evaluate, assess, describe, authorize or otherwise discuss camera surveillance systems proposed or employed in places other than New York City,” including, but not limited to, systems like London’s “Ring of Steel,” upon which the LMSI is modeled.

13. In response to the NYCLU’s FOIL request, the NYPD, in a letter dated October 23, 2007, stated that the Department would need until February 20, 2008 to determine whether it would grant or deny, even in part, the NYCLU’s request.

14. The NYCLU, believing the NYPD’s lengthy delay in a response time constituted a constructive denial of the FOIL request, administratively appealed on October 31, 2007.

15. In a letter dated November 19, 2007, the NYPD responded that the Department's delay was reasonable and that it would reach a determination by February 20, 2008. The NYCLU, relying on the NYPD's representation that it would reach a determination by February 20, 2008, and having an interest in avoiding litigation over this matter, decided to wait until February 20 for the NYPD to make its determination on the October 5 FOIL request.

16. By March 14, 2008, the NYCLU still had not received any response from the NYPD, even after multiple phone calls to the Department's FOIL officer. Therefore, on March 18, 2008, the NYCLU administratively appealed the NYPD's constructive denial of the FOIL request.

17. In a letter dated April 7, 2008, the NYPD notified the NYCLU that a search for responsive records was conducted at the Office of the Deputy Commissioner, Counter Terrorism, and that no responsive records were located. The letter also stated that access to other responsive records was denied because the records concerned critical infrastructure and are exempt from disclosure. The Department did, however, disclose one responsive record in the form of a July 10, 2007 letter to Police Commissioner Raymond Kelly from Manhattan Borough President Scott M. Stringer requesting a briefing on the LMSI.

18. On April 9, 2008, the NYCLU administratively appealed the nearly blanket denial of the October 5 FOIL request, pointing out that the NYPD had not met its obligation to

provide particularized and specific reasons for its denial of access to the requested records.

19. In a letter dated May 8, 2008, and mailed to the NYCLU, the NYPD notified the NYCLU that, as a result of a further search, 89 additional pages of responsive records had been located and would be produced upon receipt of payment by the NYCLU. It also stated that no responsive records were located with respect to the NYCLU's request for records sent to by the NYPD to the City Council or to outside entities (such as potential vendors). Finally, the NYPD asserted, without providing any specific explanation or justification, and that all other responsive records were exempt from disclosure under various provisions of the Freedom of Information Law.

20. After the NYCLU promptly submitted payment to the NYPD, the Department on May 30, 2008 produced the 89 pages of records plus two additional pages. The 91 total pages that the NYPD disclosed consisted primarily of three documents: (1) a ten-page statement, dated March 19, 2008, that Commissioner Kelly delivered to the New York City Council's Public Safety Committee in conjunction with a budget hearing for fiscal year 2009 and that included some discussion of the LMSI; (2) an 11-page, redacted funding request for fiscal year 2006 made by the NYPD to the U.S. Department of Homeland Security's Office of Grants and Training for the "Lower Manhattan Security Initiative-Critical Infrastructure Protection" plus two pages of the full text of paragraphs cut short within the funding request; and (3) a 12-page, heavily redacted LMSI funding request for fiscal year 2007 made by the NYPD to the U.S. Department of Homeland

Security's Office of Grants and Training. In addition, the Department produced five pages of redacted budget worksheets regarding the fiscal years 2006 and 2007 "State Homeland Security Grants" and "Law Enforcement Terrorism Prevention Program" grants given to the NYPD by the U.S. Department of Homeland Security. Finally, the NYPD produced fourteen faxes and emails, comprising 51 pages, sent to the NYPD from various minor vendors of security surveillance technologies regarding the LMSI, mostly for the purpose of bidding on the LMSI project, with some including brochures of their products and services.

21. The NYPD's response to the NYCLU's FOIL request did not include any documents with information about the following:

- detailed descriptions of the information the LMSI will collect about vehicles and individuals (e.g., license plate numbers, human faces, human behavior);
- how the NYPD will use the information collected by the LMSI;
- the extent to which the NYPD will share information collected by the LMSI with other law-enforcement agencies or other entities;
- the form in which NYPD will retain information collected by the LMSI (i.e., in an electronic database or some other form);
- how long the NYPD will retain information collected by the LMSI before being destroyed;
- privacy protections included in the LMSI;
- which private video surveillance systems (e.g. banks) will become part of the LMSI;
- the particulars of funding provided by the New York City Council to support the LMSI;
- descriptions or assessments of London's Ring of Steel, upon which the LMSI is modeled.

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

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

23. Petitioner NYCLU has a clear right to information about the LMSI and the privacy implications of the plan. The NYPD responded with a nearly wholesale denial of the NYCLU's FOIL request, claiming numerous FOIL exemptions. This response does not satisfy the NYPD's heavy burden of demonstrating that the withholding of each document or portion thereof is supported by a specific and particularized justification. In addition, while Respondents may redact portions of documents exempt from FOIL's disclosure obligations, it must disclose the remaining portions of those documents, which it has not done here.

24. Respondents have not produced the information sought by the petitioner NYCLU. Respondents' obligation under FOIL to disclose information about LMSI and the privacy implications of the plan is mandatory, not discretionary.

25. Petitioner NYCLU exhausted its administrative remedies when it appealed the Department's denial of its FOIL request and the Department largely 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 October 5, 2007 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 CIVIL LIBERTIES UNION
FOUNDATION, by

CHRISTOPHER DUNN
MATTHEW FAIELLA
ARTHUR EISENBERG
New York Civil Liberties Union
125 Broad Street, 19th Floor
New York, NY 10004
(212) 607-3300

Dated: New York, NY
September 5, 2008

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 C.P.L.R. § 2106 under the penalties of perjury:

1. I am the 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. 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.

CHRISTOPHER DUNN

Dated: New York, NY
September 5, 2008

Sworn and subscribed to me
this ___ day of September 2008

NOTARY PUBLIC