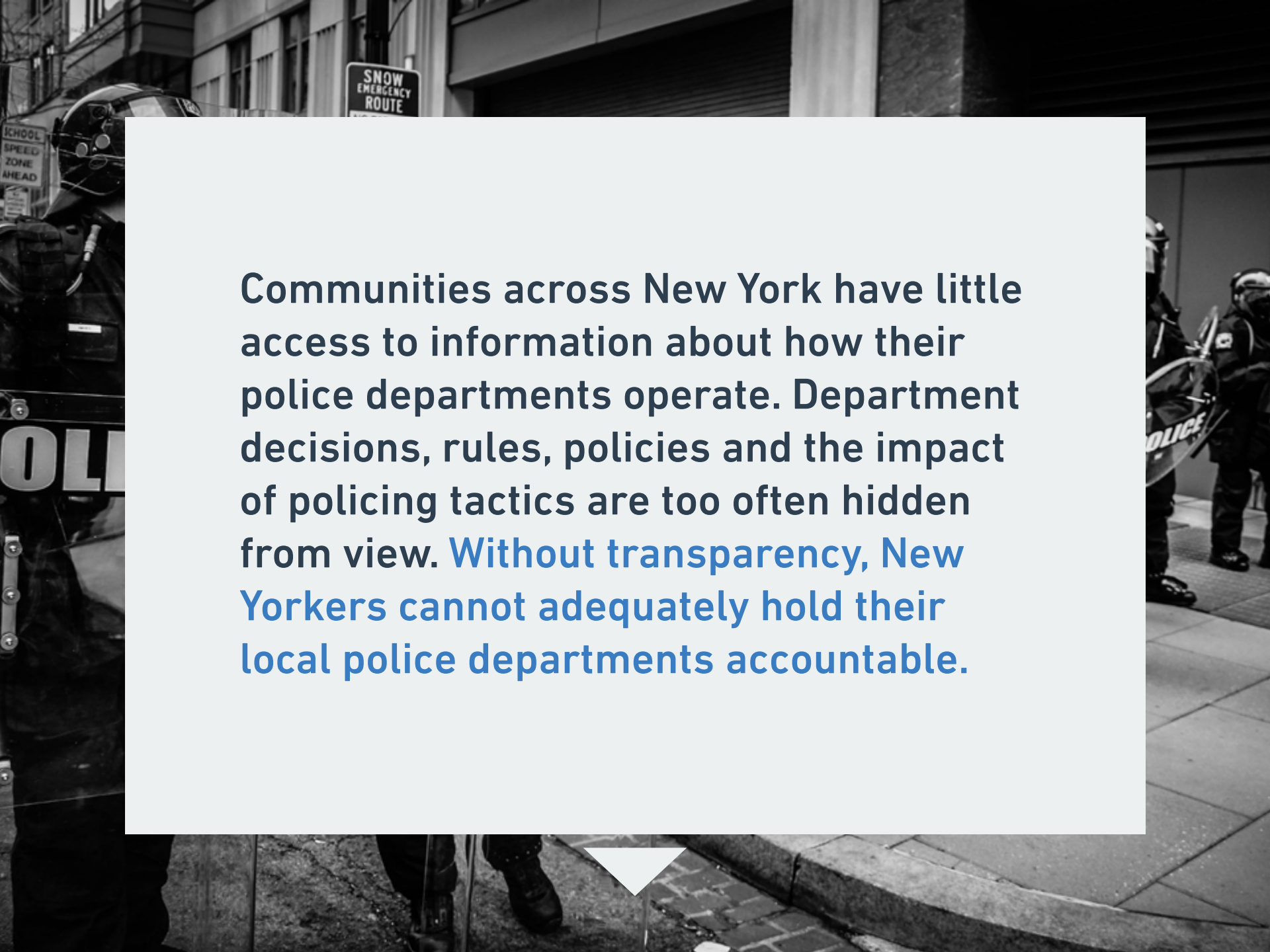


TAKING COVER

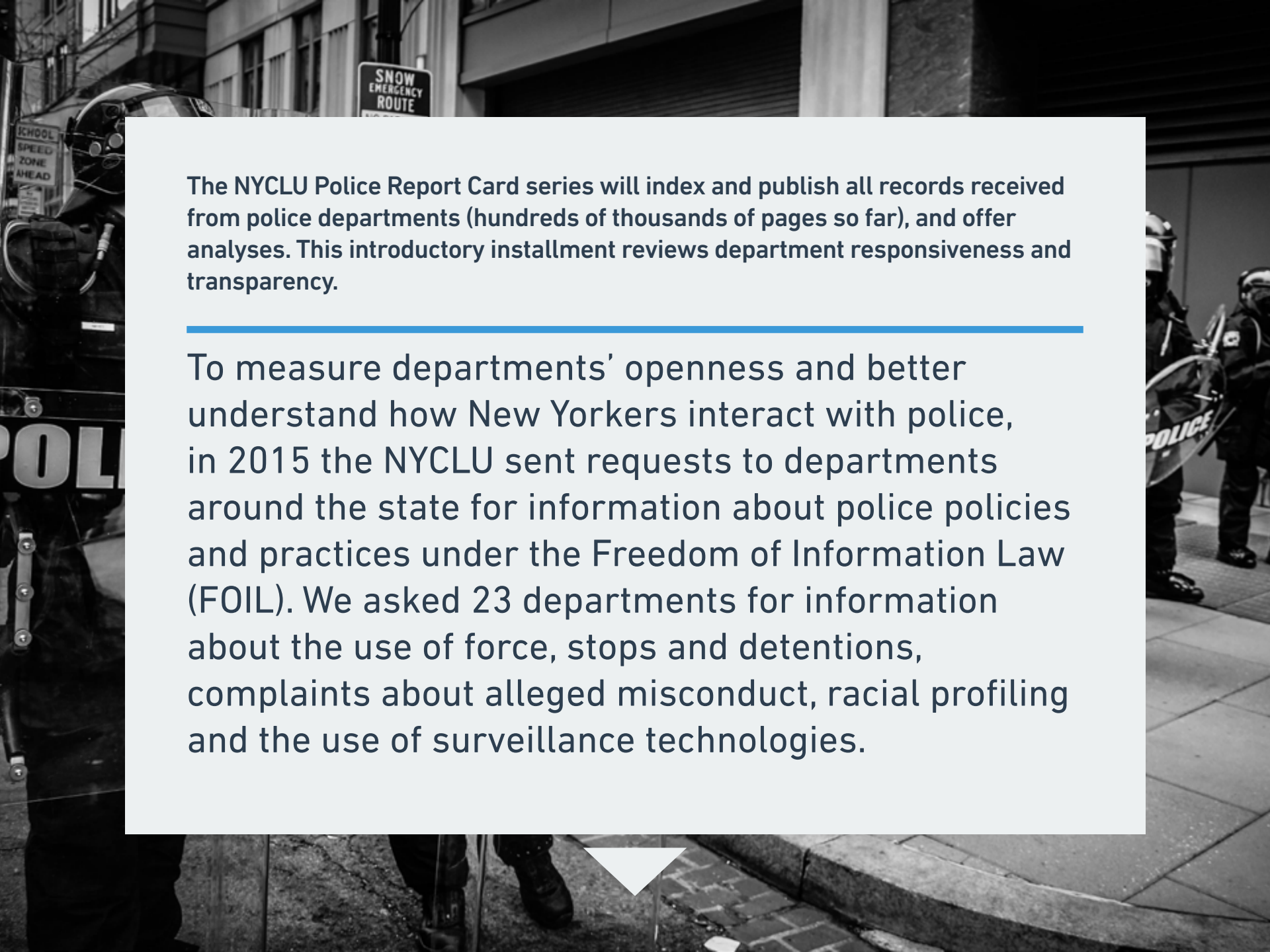
How New York Police Departments
Resist Transparency



POLICE REPORT CARD SERIES



Communities across New York have little access to information about how their police departments operate. Department decisions, rules, policies and the impact of policing tactics are too often hidden from view. **Without transparency, New Yorkers cannot adequately hold their local police departments accountable.**



The NYCLU Police Report Card series will index and publish all records received from police departments (hundreds of thousands of pages so far), and offer analyses. This introductory installment reviews department responsiveness and transparency.

To measure departments' openness and better understand how New Yorkers interact with police, in 2015 the NYCLU sent requests to departments around the state for information about police policies and practices under the Freedom of Information Law (FOIL). We asked 23 departments for information about the use of force, stops and detentions, complaints about alleged misconduct, racial profiling and the use of surveillance technologies.

WHAT NEW YORK'S FREEDOM OF INFORMATION LAW REQUIRES

The Freedom of Information Law gives everyone the right to access government records, not just lawyers or the powerful. Created and maintained with tax dollars, these records belong to The People — with few exceptions.

Under New York's law, government agencies must respond to a request for public records within five business days. If a delay is needed, a reason must be given as well as a date by which the records will be released. Agencies must give written justification for refusing to produce requested records. When an agency denies a request — or delays for so long as to practically deny it — the requester can file an appeal, which the agency has 10 business days to resolve. Further delays or denials can be challenged by bringing the agency to court.



HOW POLICE DEPARTMENTS RESIST TRANSPARENCY

01

DELAY & DODGE

02

**EXCESSIVE
REDACTION**

03

**INADEQUATE
RESOURCES**

04

**POOR
RECORDKEEPING**



01 DELAY & DODGE

Many departments completely ignored legal deadlines. Many did not respond to our request until we involved town or city attorneys. Out of 23 departments, 20 delayed their initial response to our request beyond what is permissible under the law. We were forced to file administrative appeals or lawsuits in 22 of our 23 requests. This is unacceptable.

Four months after the NYCLU's information request, and weeks after missing an extension, the Binghamton Police Department's FOIL officer told us he "didn't care" about the legal deadlines and he would refuse to comply even if we appealed. We called, faxed, and wrote. After bringing our concerns to the City of Binghamton's lawyer, we called the FOIL officer again. He promptly hung up on us.

We filed an appeal and only then got our first — though incomplete — response. We continued to call, write, and appeal until more than a year had passed. A new Binghamton city lawyer wrote that their office was embracing "the spirit and letter" of the law, and finally resolved our requests.



02 EXCESSIVE REDACTION

There are very limited circumstances under which a government agency is permitted to withhold or redact records — for example if disclosure of a record would mean an unwarranted invasion of personal privacy. We received hundreds of pages of responses in which entire policies that affect the public were blacked out with no explanation.

The NYCLU asked the Newburgh Police Department for information on its policies and trainings on cultural competency, language access and de-escalation techniques. None of these topics is exempt from disclosure under the law. Yet, we received heavily redacted documents in response. Despite line after line of blacked-out text, we ultimately deciphered that the documents were not even relevant to our request. It was as if the department had simply grabbed policies at random, slashed through them with a black marker, and sent them.

When we brought this to the attention of a lawyer for the City of Newburgh, we learned that he hadn't even reviewed the documents, let alone attempted to justify the redactions. We continue to ask for relevant — and less redacted — policies from Newburgh.



03 INADEQUATE RESOURCES

Many departments had not prepared to comply with the Freedom of Information Law. Staff had not been trained, records were not kept in searchable forms and internal policies had not been put in place.

The officer at the Hempstead Police Department who oversees FOIL requests also oversees payroll, setting up new recruits and coordinating the academy, among other huge responsibilities. The department has no systems or software for finding records, and does not keep copies of policies in a single place. The Hempstead Police Department has nearly 120 sworn police officers and an additional 50 civilian personnel on staff. A department of this size should be able to meet the requirements of the public records law. Yet, the Hempstead Police Department has still not fulfilled the NYCLU's request.



04

POOR RECORDKEEPING

Many departments do not practice basic recordkeeping, and the types of recorded information varied widely.

Seven departments could not provide data on the race of people stopped by police because they do not track this information. Another three only had partial data. Even when departments do track this information, the lack of uniform statewide standards means that each department records and maintains its data differently and with varying levels of detail. This makes it difficult to compare the same types of policies and practices across localities.



DELAY & DODGE:

HOW RESPONSIVE ARE NEW YORK POLICE TO RECORDS REQUESTS?

The following charts show how quickly — or really, how slowly — police departments responded to NYCLU requests. Nearly two years on, we have not received complete responses from eight departments.



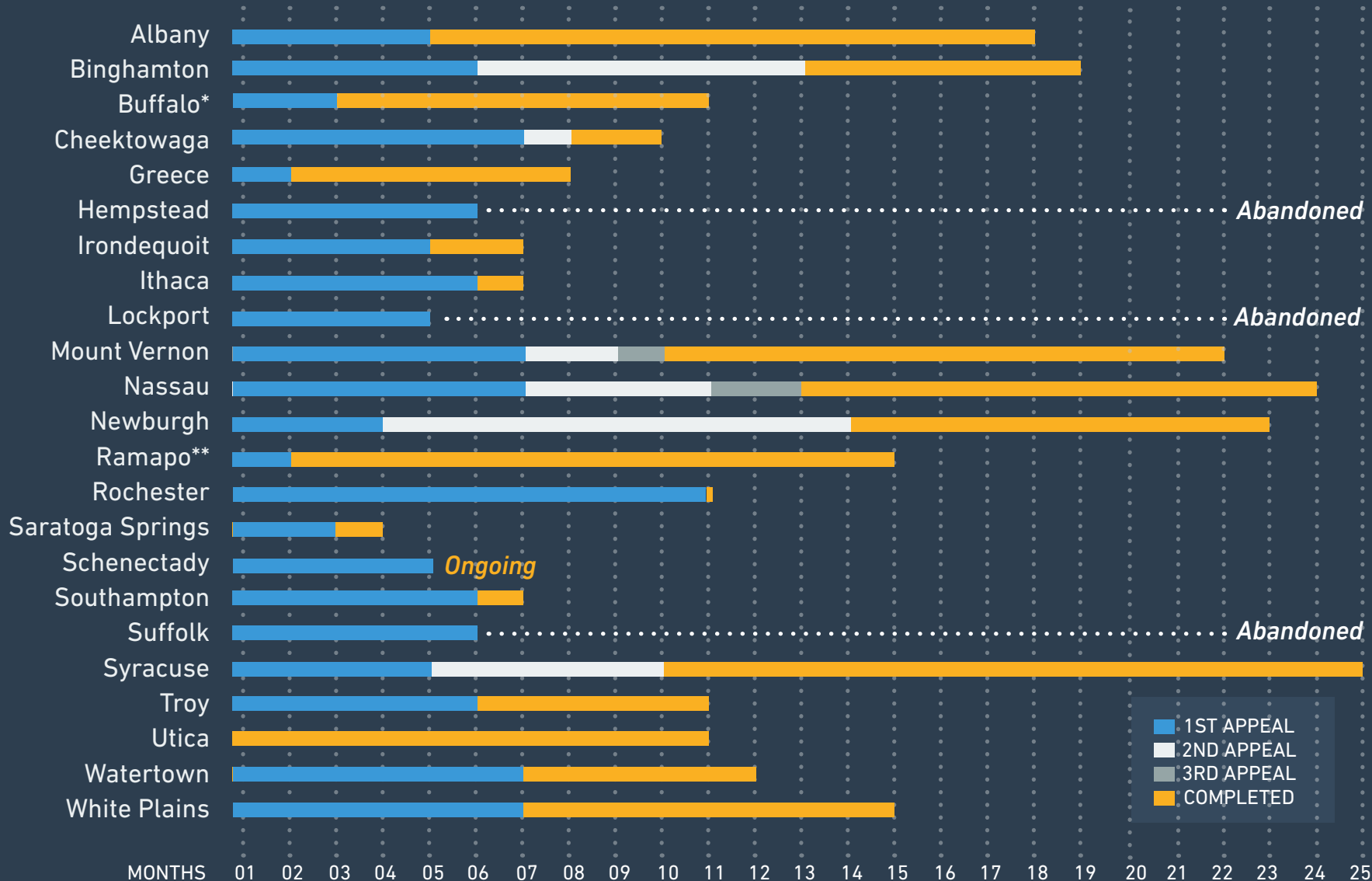
DELAY & DODGE: HOW RESPONSIVE ARE NEW YORK POLICE TO RECORDS REQUESTS?

First Response within Time Required by FOIL

	YES	NO
Albany	X	
Binghamton	X	
Buffalo*	X	
Cheektowaga	X	
Greece	X	
Hempstead		X
Irondequoit	X	
Ithaca	X	
Lockport		X
Mount Vernon		X
Nassau		X
Newburgh		X
Ramapo**		X
Rochester		X
Saratoga Springs	X	
Schenectady	X	
Southampton	X	
Suffolk		X
Syracuse	X	
Troy	X	
Utica		X
Watertown		X
White Plains		X

DELAY & DODGE: HOW RESPONSIVE ARE NEW YORK POLICE TO RECORDS REQUESTS?

Time Department Delayed before NYCLU Appeals



* NYCLU filed a lawsuit against the Buffalo Police Department seeking records on March 11, 2016

** NYCLU filed a lawsuit against the Ramapo Police Department seeking records on May 10, 2016

RECOMMENDATIONS

It is more important than ever for New Yorkers to understand the policies, practices, and impact of policing in their communities.

Conversations about police reform and accountability cannot happen in the dark. To improve transparency and accountability, and to comply with the law, police departments, local governments and the state should take action.



POLICE DEPARTMENTS

Maintain complete and comprehensive records on enforcement encounters

Every police department should be able to answer basic questions about how many times their officers use force, how many tickets they give out or how many stops and arrests they make – and about the impact of their policing practices across demographic lines. Collecting data that provides the complete picture of policing is the first step toward promoting transparency, accountability and improved relations with the community.

LOCAL GOVERNMENTS

Ensure agencies do not abuse FOIL exemptions

The Freedom of Information Law exists to provide the public with insight into how government operates. It is not enough for departments to claim an exemption applies without providing a specific justification. Vague and unspecific refusals to comply with requests undermines openness and accountability.

Ensure adequate resources for FOIL compliance

Agencies, including police departments, must have the resources necessary to comply with the law. This includes technologies that allow for the digital storage, maintenance, redaction and sharing of records. Such tools make compliance easier and cut down on the costs of assembling and reproducing records. Localities must also invest in training staff to remain current on FOIL rules and legal developments.

NEW YORK STATE LEGISLATURE

Pass the Police STAT Act

Departments across New York differ in the data they collect and report, if any. As a result, the public knows little about how public safety dollars are spent or the impact of police practices in their communities. The Police Statistics and Transparency (STAT) Act (A.5946/S.147) requires uniform data collection and reporting on low-level law enforcement and deaths in custody, including demographics.

Repeal Civil Rights Law § 50-a

To keep records secret, several departments erroneously invoked Civil Rights Law § 50-a, a narrow state law provision that bars public disclosure of personnel records used to evaluate officer performance. Despite the departments' misinterpretations, and because of their efforts to use this law to shield themselves from scrutiny, the State Legislature should repeal this law.