

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

NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules,

v.

CITY OF SYRACUSE and SYRACUSE  
POLICE DEPARTMENT,

Respondents.

INDEX NO: \_\_\_\_\_

**VERIFIED PETITION**

**PRELIMINARY STATEMENT**

1. Following the June 2020 repeal of Civil Rights Law (“CRL”) Section 50-a, which had shielded certain police records from disclosure, thus insulating law enforcement departments from public accountability, the New York Civil Liberties Union (the “NYCLU” or “Petitioner”) filed a request pursuant to New York Public Officers Law Section 84 *et seq.* (the “Freedom of Information Law” or “FOIL”) to the Syracuse Police Department (the “SPD”). That request (the “Request”), submitted on September 15, 2020, in part sought records that might reveal patterns of discriminatory policing. A true and correct copy of the Request is attached as Exhibit A. On September 23, 2020, the City of Syracuse (together with the SPD, “Respondents”) replied to the Request, informing the NYCLU it would take up to one full year to respond to even those aspects of the Request to which the SPD did not object. A true and correct copy of the Respondents’ September 23 letter is attached as Exhibit B.

2. After a meet and confer among counsel for Petitioner and Respondents in November 2020, Respondents committed to a rolling production of documents partially responsive to the Request; Respondents anticipate that their response will not be completed until July 2021, ten months after the Request was submitted.

3. Respondents also categorically denied the NYCLU's request for officer disciplinary records and instead sought to produce materials associated only with complaints that were both finally adjudicated and substantiated. A true and correct copy of the denial is attached as Exhibit C. That denial—the focus of this petition—is unlawful.

4. By precluding the disclosure of complaints that remain “open,” which may be due to unilateral decisions by the SPD as to how and when to advance the disciplinary process, and disclosure of complaints as to which the SPD concluded the alleged misconduct did not occur, the SPD has created an exception that allows it to selectively withhold disciplinary records for certain matters.

5. This Article 78 proceeding seeks to compel the SPD to respond to the FOIL Request by the NYCLU because Respondents inappropriately have denied the NYCLU's request under FOIL for SPD disciplinary records, based solely on the SPD's own assertion that the conduct, which warranted creating certain disciplinary records, has not been “substantiated.” The records requested are crucial not only to inform the public understanding of the effects of the SPD's policies and practices on the Syracuse community, but also to encourage increased transparency and police accountability, as the Legislature intended when it repealed CRL Section 50-a.

6. In denying the NYCLU's request, the SPD ignored the plain language of the statute, as well as its legislative history, which support the NYCLU's right to the requested records. Furthermore, every court that has considered the issue has rejected the SPD's reasoning and

position. See *Uniformed Fire Officers Ass'n v. de Blasio*, No. 20-2789-cv(L), 2021 U.S. App. LEXIS 4266 (2d Cir. Feb. 16, 2021); *Schenectady Police Benevolent Ass'n v. City of Schenectady*, No. 2020-1411, 2020 N.Y. Misc. LEXIS 10947 (N.Y. Sup. Ct. Dec. 29, 2020).

7. The NYCLU promptly responded to the SPD on November 30, 2020 to inform Respondents that it disagreed with the SPD's analysis that the Public Officers Law ("POL") and a July 27, 2020 advisory opinion from the New York Committee on Open Government (the "July 27 Advisory Opinion"), as Respondents claimed, supported the SPD's decision to withhold materials relevant to complaints that had not been finally adjudicated or substantiated. In that letter, the NYCLU alerted the SPD that it planned to file an administrative appeal. A true and correct copy of the November 30 letter is attached as Exhibit D.

8. The SPD did not respond to the NYCLU's November 30, 2020 letter.

9. On December 10, 2020, the NYCLU timely and properly appealed the SPD's partial denial of the Request, via a letter to the Office of Corporation Counsel for the City of Syracuse ("Corporation Counsel"), and to the Office of Syracuse Mayor Ben Walsh. A true and correct copy of that appeal is attached as Exhibit E.

10. On December 22, 2020, the Corporation Counsel denied the NYCLU's FOIL appeal and affirmed the SPD's original FOIL response. A true and correct copy of that denial is attached as Exhibit F.

11. Having exhausted its administrative remedies, the NYCLU now seeks judicial relief to require Respondents to produce records responsive to its request for all law enforcement disciplinary records, including any unsubstantiated complaints.

12. Petitioner also seeks an award of attorneys' fees and costs in light of Respondents' failure to adhere to FOIL.

## VENUE

13. Pursuant to Civil Practice Law and Rules (“CPLR”) Sections 7804(b) and 506(b), venue in this proceeding lies in Onondaga County, the judicial district in which Respondents took the action challenged here and in which the offices of Respondents are located.

## PARTIES

14. 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 almost seventy years, the NYCLU has been involved in litigation and public policy advocacy on behalf of New Yorkers to demand government accountability and transparency.

15. Respondent City of Syracuse is a public body subject to the requirements of the Freedom of Information Law, New York Public Officers Law § 84 *et seq.*

16. Respondent Syracuse Police Department is a public agency subject to the requirements of the Freedom of Information Law, New York Public Officers Law § 84 *et seq.*

## FACTUAL BACKGROUND

17. Until June 2020, Civil Rights Law Section 50-a posed a substantial obstacle to transparency in the conduct of law enforcement in the State of New York. That statute generally excluded from disclosure under FOIL police “personnel records used to evaluate performance toward continued employment or promotion” that were otherwise presumptively public.

18. Although the intended breadth of Section 50-a when first enacted in 1976 was narrow, its scope quickly expanded, with police departments and unions utilizing the provision to shield the conduct of law enforcement personnel from public scrutiny and civilian oversight.

19. Nationwide protests following the police killing of George Floyd in Minnesota

encouraged lawmakers to reexamine the public's interest in enhanced law enforcement transparency and accountability. On June 12, 2020, the repeal of Section 50-a became law. The text of the repeal bill permits disclosure of disciplinary records, without exceptions or carve-outs related to the status or ultimate disposition of disciplinary proceedings. The law states:

Section 86 of the public officers law is amended by adding four new subdivisions . . . to read as follows: "Law enforcement disciplinary records" means *any* record created in furtherance of a law enforcement disciplinary proceeding, including, but not limited to: (a) the complaints, allegations, and charges against an employee; (b) the name of the employee complained of or charged; (c) the transcript of any disciplinary trial or hearing . . . (d) the disposition of any disciplinary proceeding; and (e) the final written opinion or memorandum supporting the disposition and discipline imposed including the agency's complete factual findings and its analysis of the conduct and appropriate discipline of the covered employee. "Law enforcement disciplinary proceeding" means the commencement of any investigation and any subsequent hearing or disciplinary action conducted by a law enforcement agency.

S. 8496, 243rd Leg., Reg. Sess. § 2 (N.Y. June 12, 2020) (emphasis added).

20. The extensive legislative history of the repeal shows that, consistent with the language of the statute, the legislature broadly defined "law enforcement disciplinary records" to include the "complaints, allegations and charges[,] . . . the name of the employee complained of or charged; the transcript of any disciplinary trial or hearing . . . [and] the disposition of any disciplinary proceeding." *Id.*

21. Access to records related to unsubstantiated complaints was addressed during the Assembly debate on the repeal: the bill's sponsor noted that the proposed legislation did not distinguish between substantiated and unsubstantiated complaints; he explicitly recognized the value of unsubstantiated complaints as a potential means to establish patterns of misconduct and

to identify officers “who might be a risk to the public.” N.Y. Assembly Debate on Senate Bill S. 8496, June 9, 2020 at 61, 100. Moreover, opponents to the bill also recognized that with the repeal all disciplinary records would be open to the public regardless of the disposition of the officer disciplinary proceeding. *Id.* at 61-67.

22. Further, the legislature considered—and rejected—competing, narrower proposals that allowed for the release of narrow categories of records only in situations in which allegations had been substantiated. *See* S. 4213, 243rd Leg., Reg. Sess. (N.Y. Mar. 4, 2019).

23. Despite this push for transparency in New York, and the legislature’s decision to define law enforcement disciplinary records broadly, Respondents continue to withhold crucial information regarding potential police misconduct from the public by denying the Request in the manner challenged here.

#### **The NYCLU’s FOIL Request to the SPD**

24. The NYCLU submitted a FOIL request to the SPD on September 15, 2020, seeking records related to the SPD’s conduct that had previously been shielded from public scrutiny by Section 50-a. The request sought documents related to the SPD’s disciplinary records, use of force, stops, civilian complaints, policies, investigative reports, diversity, trainings, and collective bargaining agreements. *See* Exhibit A.

25. Corporation Counsel acknowledged the NYCLU’s request in a letter dated September 23, 2020. Its letter stated that “[the SPD’s] initial estimate is that the collection, review, and redaction of these records will require one (1) year from the date of this letter.” The letter did not clarify whether the City was granting or denying any part of the request. *See* Exhibit B.

26. Following that acknowledgement, the NYCLU’s counsel sent a letter to the Corporation Counsel on September 28, 2020 asking to meet and confer regarding the scope of the

FOIL request. A true and correct copy of the September 28 letter from the NYCLU's counsel is attached as Exhibit G.

27. On October 14, 2020, the Corporation Counsel replied via email to the September 28 letter. In its response, the Corporation Counsel restated its view that the Request would impose substantial "administrative burden[s]" on Syracuse, but again did not state whether the City was granting or denying anything in the Request or whether the City would make any substantive determination earlier than one year from the September 23 letter. A true and correct copy of the City's communication is attached as Exhibit H.

28. In a call on November 12, 2020 between the NYCLU's counsel and counsel for Respondents, Respondents made clear for the first time that they intended to produce disciplinary records related only to "substantiated" complaints and were denying, in part, the NYCLU's request for "all law enforcement disciplinary records collected by the SPD." By agreeing to provide only "substantiated" complaints, the SPD refused to provide all records related both to complaints that are fully reviewed but not "substantiated," and to all claims that remain open and unresolved.

29. On November 17, 2020, Respondents sent the NYCLU a letter providing anticipated dates of completion for the department's rolling production of documents in response to the NYCLU's Request. In their letter, Respondents again denied the NYCLU's request for all disciplinary records, agreeing only to produce disciplinary records related to "substantiated complaints and other misconduct" and denying the request as related to "unfounded or unsubstantiated [complaints], or those that are still open." *See Exhibit C.*

30. In denying the NYCLU's request, the SPD relied, in part, on the July 27 Advisory Opinion, which was prepared at the request of the City of Syracuse to outline the City's obligations following the repeal of Section 50-a. That opinion contemplated withholding unsubstantiated or

unfounded complaints where disclosure would “constitute an unwarranted invasion of personal privacy.” Comm. on Open Gov’t FOIL AO 19775 (July 27, 2020).

31. The NYCLU’s counsel responded to the November 17 letter on November 30. In its response, the NYCLU noted its intent to file an administrative appeal, as provided by POL Section 89(4)(a). *See* Exhibit D.

32. The administrative appeal was lodged with the Office of Corporation Counsel on December 10, 2020. *See* Exhibit E.

33. The NYCLU’s administrative appeal was denied in a letter from the Office of Corporation Counsel dated December 22, 2020. *See* Exhibit F.

34. On February 1, 2021, the NYCLU’s counsel sent Respondents a letter further explaining the NYCLU’s position, and citing to recent and relevant authority in New York that was contrary to Respondents’ position. A true and correct copy of the February 1 letter from the NYCLU’s counsel is attached here as Exhibit I.

35. Having now exhausted its administrative remedies, the NYCLU files this Article 78 Petition seeking production of all of the SPD’s disciplinary records from 2014 to 2020, regardless of disposition.

### **Respondents’ Rolling Production**

36. Respondents’ November 17 letter laid out anticipated completion dates for most of the categories from the Request and stated Respondents’ intent to produce documents on a rolling basis. *See* Exhibit C. Respondents continue to make rolling productions of documents responsive to portions of the NYCLU’s Request. The NYCLU reserves all administrative and judicial remedies should the NYCLU determine any further aspect of the SPD’s response to be deficient.



**CAUSE OF ACTION UNDER ARTICLE 78**

37. Petitioner repeats and realleges paragraphs 1 through 35 hereof as if fully set forth herein.

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

39. Petitioner has a clear right to production of the disciplinary records responsive to the section of the Request concerning disciplinary records.

40. Absent a statutory or other valid basis to withhold materials, Respondents' obligations under FOIL to respond to a FOIL request for records reasonably described, respond to a FOIL administrative appeal, and produce documents are mandatory, not discretionary.

41. There is no statutory or other valid basis on which Respondents can refuse to produce the materials subject to this Petition.

42. Petitioner exhausted its administrative remedies with Respondents as required by POL Section 89(4)(a) when it appealed Respondents' partial denial of its initial request and the appeal was denied.

43. Petitioner has no other remedy at law.

44. This Petition is timely under CPLR Section 217 as it is filed within four months of the City's denial of the NYCLU's administrative appeal on December 22, 2020.

**REQUESTED RELIEF**

WHEREFORE, Petitioner seeks judgment:

- (1) Pursuant to CPLR Section 7806, directing Respondents to comply with its duty under FOIL to disclose copies of all law enforcement disciplinary records collected by the SPD, regardless of disposition, sought by Petitioner in the FOIL Request dated September 15, 2020;
- (2) Awarding reasonable attorneys' fees and litigation costs as allowed under CPLR Sections 8101 and 8601 and POL Section 89(4)(c); and
- (3) Granting such other relief as the Court deems just and proper.

Dated: March 18, 2021  
New York, New York

Respectfully submitted,

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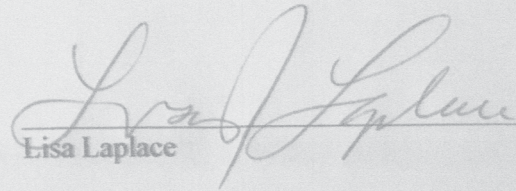
VERIFICATION

State of New York                    )  
  ) ss.:  
County of New York                 )

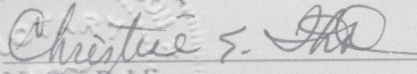
LISA LAPLACE hereby affirms under the penalties of perjury that:

1. I am a Senior Staff Attorney and Counsel for Pro Bono at New York Civil Liberties Union, the petitioner in this Article 78 proceeding.
2. I have read the petition and know the contents to be true, except to those statements made on information and belief, which I believe to be true.

DATED:        March 18, 2021  
                  New York, New York

  
\_\_\_\_\_  
Lisa Laplace

Sworn to and subscribed before me,  
this 18<sup>th</sup> day of March 2021

  
\_\_\_\_\_  
Notary Public

