RECEIVED NYSCEF: 04/20/2021

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ERIE

NEW YORK CIVIL LIBERTIES UNION,	
Petitioner,	INDEX NO:
vs.	
CITY OF BUFFALO and BUFFALO POLICE DEPARTMENT,	
Respondents.	

AFFIRMATION OF JOSHUA EBERSOLE IN SUPPORT OF THE VERIFIED <u>PETITION</u>

JOSHUA EBERSOLE, a member of the bar of New York, affirms the following to be true under the penalties of perjury:

- I am an attorney for the petitioner in this action. I make this Affirmation upon personal knowledge and in support of the Verified Petition dated April 20, 2021 ("Verified Petition"), in the above-captioned case.
- 2. Based on either my direct involvement in or supervision of other attorneys at my law firm who were directly involved in communications with the City of Buffalo and the Buffalo Police Department ("BPD") on behalf of the petitioner in the course of this Freedom of Information Law proceeding, I affirm that paragraphs 11-24 in the Verified Petition, which set forth the procedural history of the request, are true to my personal knowledge. I affirm that:
 - a. Attached as **Exhibit A** to the Verified Petition is a true and correct copy of the Annual Report to the Governor and State Legislature, dated December 2014, that I caused to be downloaded on December 2, 2020, at 9:44 am from

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.) INDEX NO. UNASSIGNED

RECEIVED NYSCEF: 04/20/2021

https://on.ny.gov/3fbCxGO. The report from the Department of State

Committee on Open Government describes how the scope of section 50-a was

steadily expanded in the courts.

b. Attached as Exhibit B to the Verified Petition is a true and correct copy of the

petitioner's FOIL Request dated September 15, 2020.

c. Attached as Exhibit C to the Verified Petition is a true and correct copy of the

letter dated September 21, 2020, from Jeff Rinaldo, the Records Access Officer

for the City of Buffalo, acknowledging the FOIL request.

d. Attached as **Exhibit D** to the Verified Petition is a true and correct copy of the

letter dated December 3, 2020, in which the petitioner administratively

appealed the constructive denial of the FOIL request.

e. Attached as Exhibit E to the Verified Petition is a true and correct copy of the

letter dated January 21, 2021, in which the respondent provided notice of its

production of the discipline file of Lt. Michael A. Delong.

f. Attached as **Exhibit F** to the Verified Petition is a true and correct copy of the

letter dated January 29, 2021, in which the petitioner requested clarification on

the production of remaining records responsive to the FOIL request.

g. Attached as **Exhibit G** to the Verified Petition is a true and correct copy of the

letter dated March 11, 2021, in which the petitioner administratively appealed

the constructive denial of the FOIL request.

Dated: April 20, 2021

accepted for filing by the County Clerk.

NYSCEF DOC. NO. 11

New York, New York

This is a copy of a pleading filed electronically pursuant t^2 New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been

2 of 3

NYSCEF DOC. NO. 11

RECEIVED NYSCEF: 04/20/2021

INDEX NO. UNASSIGNED

Respectfully Submitted,

By: /s/ *Joshua Ebersole* Joshua Ebersole SHEARMAN & STERLING LLP 599 Lexington Avenue New York, NY 10022 (212) 848-4000

Philip Urofsky (pro hac vice forthcoming) SHEARMAN & STERLING LLP 401 9th Street, NW Washington, DC 20004 (202) 508-8000

NEW YORK CIVIL LIBERTIES UNION FOUNDATION, by: Robert Hodgson Lisa Laplace 125 Broad Street, 19th Floor New York, NY 10004 (212) 607-3300

Counsel for Petitioner the New York Civil Liberties Union

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been 3 of 3 accepted for filing by the County Clerk.