

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

NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

vs.

VILLAGE OF FREEPORT and FREEPORT POLICE  
DEPARTMENT,

Respondents.

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

**VERIFIED PETITION**

## PRELIMINARY STATEMENT

1. In this case concerning public access to police personnel records, the New York Civil Liberties Union (“NYCLU”) seeks relief from this Court to remedy the Village of Freeport’s and the Freeport Police Department’s (“FPD”) unlawful partial denial of a Freedom of Information Law (“FOIL”) request issued by the NYCLU. The requested records—which include civilian complaints against law enforcement officers—are of immense public importance. The NYCLU seeks these records, not only to inform significant ongoing public policy discussions about how FPD’s policies and practices affect the Freeport community, but also to ensure the community’s right to prompt access to public records and increased police department transparency, as mandated by the recent repeal of Section 50-a of the Civil Rights Law (“Section 50-a”).

2. On September 15, 2020, in response to the June 2020 repeal of Section 50-a and the elimination of that statutory barrier to accessing police disciplinary files, the NYCLU submitted a FOIL request to FPD seeking records related to police conduct. Many of the requested records would have been shielded from disclosure prior to repeal. In issuing its FOIL request, the NYCLU sought to vindicate the public’s right to information that the New York State Legislature recognized as vital to understanding how police disciplinary and accountability mechanisms function.

3. FPD denied the NYCLU’s September 15, 2020 FOIL request, in significant part, and later denied the NYCLU’s December 24, 2020 administrative appeal of that partial denial, in clear violation of FPD’s FOIL obligations. Specifically, FPD withheld in full all law enforcement discipline records associated with civilian complaints that did not result in discipline against an officer, instead of producing those records with the limited redactions permitted by FOIL.

4. Having exhausted its administrative remedies, the NYCLU now seeks, through this Article 78 proceeding, to compel Respondents to produce—redacted as permitted by FOIL—the

remaining responsive records to the NYCLU's FOIL request that they continue to unlawfully withhold in full.

5. Petitioner also seeks an award of attorneys' fees and costs due to Respondents' unjustifiable failure to adhere to FOIL's unequivocal statutory requirements.

### VENUE

6. Pursuant to C.P.L.R. 7804(b) and 506(b), venue in the proceeding lies in Nassau County, in the judicial district in which the respondents took the action challenged here and where the offices of respondents are located.

### PARTIES

7. Petitioner NYCLU 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.

8. Respondent Village of Freeport is a public agency subject to the requirements of the Freedom of Information Law, New York Public Officers Law § 84 et seq.

9. Respondent Freeport 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

10. In New York State, the repeal of Section 50-a was a watershed moment, intended to effect "not just a change in law but, rather, a change in the culture." *Schenectady Police Benevolent Ass'n v. City of Schenectady*, 2020 WL 7978093, at \*9 (N.Y. Sup. Ct. Dec. 29, 2020).

11. Prior to its repeal, Section 50-a comprehensively insulated police disciplinary records from public disclosure. *See* N.Y. Civ. Rights Law § 50-a(1) (repealed June 12, 2020).

12. Although the intended breadth of Section 50-a when first enacted in 1976 was narrow, its scope was quickly expanded in court decisions, with police departments and unions leading the charge.

13. According to a report from the Department of State Committee on Open Government, by 2014, Section 50-a had been “expanded in the courts to allow police departments to withhold from the public virtually any record that contains any information that could conceivably be used to evaluate the performance of a police officer.” A true and correct copy of the report is attached to this petition as **Exhibit A**.

14. In response to nationwide protest reckoning with biased policing on the heels of the widely viewed death of George Floyd, Governor Andrew Cuomo signed Senate Bill S8496/Assembly Bill A10611 (the “Repeal Bill”) on June 12, 2020. The Repeal Bill provided access to records bearing on police accountability that were previously shielded from public view and amended the FOIL to add privacy protections to the law enforcement records now subject to disclosure.

15. Despite the New York State Legislature’s unambiguous command for police transparency, Respondents continue to withhold crucial information regarding FPD officer conduct from the public.

#### **The NYCLU’s FOIL Request to FPD**

16. On September 15, 2020, following the enactment of the Repeal Bill, the NYCLU sent a FOIL request to FPD’s FOIL Officer seeking police disciplinary records, including use of force records and records of civilian complaints against police officers. A true and correct copy of the September 15, 2020 FOIL request is attached to this Petition as **Exhibit B**.

17. On November 17, 2020, in response to the NYCLU’s request for “[a]ll civilian complaints against law enforcement officers” from January 1, 2000 to present, FPD, through Chief

Michael Smith (then Deputy Chief Smith), provided 25 officer disciplinary reports. A true and correct copy of FPD's response is attached to this petition as **Exhibit C**.

18. On November 27, 2020, FPD denied access to information responsive to the NYCLU's request for "[a]ll civilian complaints," stating in an email that it "will only release information pertaining to founded civilian complaints." FPD explained that the 25 records produced were limited to the "founded complaints during the period requested." A true and correct copy of FPD's email is attached to this petition as **Exhibit D**.

19. On December 7, 2020, FPD, through Village Attorney Howard Colton, explained to the NYCLU's counsel that FPD's denial of access to civilian complaint records that remain open or that were deemed "unfounded" was based on FPD's interpretation of New York Public Officers Law ("POL") Section 89(2)(b)(iv). FPD contended that, pursuant to POL Section 89(2)(b)(iv), "unfounded complaints are a nullity and are void *ab initio*." FPD further invoked the public privacy exception, claiming that "[t]he only purpose such disclosure would serve is to bring 'personal hardship to the subject party.'" A true and correct copy of FPD's email to NYCLU's counsel is attached to this petition as **Exhibit E**.

20. On December 24, 2020, in accordance with POL Section 89(4)(a), the NYCLU filed an administrative appeal of FPD's partial denial with Lt. Michael Williams of FPD. A true and correct copy of the December 24, 2020 administrative appeal is attached to this petition as **Exhibit F**.

21. On January 7, 2021, FPD sent the NYCLU a response denying the December 24, 2020 administrative appeal (the "Response"). A true and correct copy of the January 7, 2021 administrative appeal response is attached to this petition as **Exhibit G**.

22. In the Response, FPD raised a new rationale for its denial, now also claiming that unfounded complaints are exempt from disclosure under the FOIL's life and safety exception of POL Section 89(2)(f). The Response cites no evidence, relying instead on the general FOIL exemptions and speculation about the hypothetical harms that might befall officers if unfounded complaints are made public.

23. As of the filing of this Petition, FPD categorically refuses to produce any civilian complaints beyond the small number that have resulted in discipline.

24. Having exhausted administrative remedies, the NYCLU files this Petition pursuant to Article 78 of New York's Civil Practice Law & Rules seeking immediate production of all outstanding documents responsive to NYCLU's FOIL request—redacted as permitted by FOIL—in accordance with POL Section 89(4)(b).

#### CAUSE OF ACTION UNDER ARTICLE 78

25. Petitioner repeats and realleges paragraphs 1 through 24 hereof as if fully set forth herein.

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

27. Petitioner has a clear right to the records responsive to each of the categories outlined in its request, including unfounded civilian complaints against law enforcement officers.

28. There is no basis in law or fact for Respondents to withhold the requested records.

29. Respondents' obligation under FOIL to respond to a FOIL request, respond to a FOIL administrative appeal, and produce documents is mandatory, not discretionary.

30. Petitioner exhausted its administrative remedies with Respondents when it appealed Respondents' partial denial of its FOIL request, received a denial of the appeal, and did not receive all the responsive records it requested as required by POL Section 89(4)(b).

31. Petitioner has no other remedy at law.

32. This Petition is timely under C.P.L.R. 217 as it is filed within four months of Respondents' denial of the NYCLU's administrative appeal on January 7, 2021.

### REQUESTED RELIEF

WHEREFORE, the petitioner seeks judgment:

- (1) Pursuant to C.P.L.R. 7806, directing Respondents to comply with its duty under FOIL to disclose the records sought by Petitioner in Requests 1 through 20 in the FOIL request dated September 15, 2020, including Request 6 seeking "[a]ll civilian complaints against law enforcement officers," with only those redactions permitted by FOIL;
- (2) Awarding reasonable attorneys' fees and litigation costs to Petitioner pursuant to POL Section 89; and
- (3) Granting such other relief as the Court deems just and proper.

Respectfully submitted,

Dated: May 6, 2021  
New York, New York

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*Counsel for Petitioner the New York Civil  
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VERIFICATION

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

Kingdar Prussien, 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 an attorney for 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) All of the material allegations of the Verified Petition are true to my personal knowledge or upon information and belief. As to those statements that are based upon information and belief, I believe those statements to be true.

Dated: May 6, 2021
New York, New York

/s/ Kingdar Prussien
KINGDAR PRUSSIEN

may 6th, 2021

Domenica DeGeorge

DOMINICA DeGEORGE
Notary Public, State of New York
No. 01DE4685284
Qualified in Richmond County
Commission Expires January 31, 2023