

Exhibit 14

Nassau County**Police Department**

LAURA CURRAN
COUNTY EXECUTIVE

1490 Franklin Avenue
Mineola, New York 11501
(516) 573-8800

PATRICK J. RYDER
COMMISSIONER

June 3, 2021

Atara Miller
Partner
Milbank LLP
55 Hudson Yards
New York, New York 10001-2163
amiller@milbank.com

Re: Freedom of Information Law Appeal
Legal Bureau Number 649-2020

Dear Ms. Miller:

Please accept this correspondence as the response of the Nassau County Police Department (the "Department") to your appeal of what you purport to be the "constructive denial" of the New York Civil Liberties Union's (the "NYCLU's") request made pursuant to Article 6 of the Public Officers Law ("POL") on September 15, 2020, amended on February 10, 2021.¹ Following review of your request, I hereby render the following determinations:

Regarding your request for "all disciplinary records of all law enforcement members" employed by the Department between January 1, 2000 and February 10, 2021, it is denied in part to the extent it seeks records created prior to the repeal of Civil Rights Law ("CRL") § 50-a on June 12, 2020. Prior to its repeal, CRL § 50-a provided that "[a]ll personnel records...under the control of any police agency...shall be confidential and not subject to inspection or review without the express written consent of such police officer...except as may be mandated by lawful court order." This statute created a reasonable expectation for Department members that records relating to complaints made against them were statutorily exempt from disclosure. The repeal of CRL § 50-a and the amendments to Article 6 of the Public Officers Law ("POL") regarding law enforcement disciplinary records do not extinguish the expectation of privacy created by CRL § 50-a prior to June 12, 2020, when it was a lawful statute. Reliance on a statutorily created right to

¹ Your correspondence dated February 10, 2021, contains seven (7) unnumbered headings, each which reference a specific category of records: Disciplinary Records; Use of Force; Stop/Temporary Detentions/Field Interviews; Civilian Complaints; Internal Affairs Unit; Investigative Reports; and Trainings. Each heading then contains numbered paragraphs, some of which are further broken down into subparagraphs. Each paragraph and/or subparagraph, absent paragraph 21, starts with a request for "all" records, directives, orders, reports, and/or materials, etc. In addition to "all" of the aforementioned records, your request references more than forty-five (45) specific Department forms, five (5) specific training topics, and more than twelve (12) specific policies.

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privacy is a factor considered when responding to allegations of misconduct, regardless of their gravity, veracity, or frivolity. Therefore, your request for Department disciplinary records prior to June 12, 2020, is denied pursuant to POL §§ 87(2)(b) and 89(2)(b), as disclosure of such records would be an unwarranted invasion of the subject members' privacy rights.

Additionally, sworn members of the Department are represented by one (1) of three (3) employee organizations, each with their own respective Collective Bargaining Agreements ("CBAs"). These CBAs and the bargained-for rights they provide predate the repeal of CRL § 50-a, and the members have a reasonable expectation that the provisions of their lawful, bargained-for employment agreements will be given their full force and effect. Each CBA has a provision that addresses the availability of records associated with Department disciplinary cases and their availability *irrespective* of CRL § 50-a. These provisions were lawful at the time they were bargained for and created an expectation of privacy in the members regarding records associated with disciplinary cases that were adjudicated prior to the repeal of CRL § 50-a. Assuming *arguendo* CRL § 50-a was not in effect prior to June 12, 2020, the records associated with disciplinary cases would nevertheless have been guided by the New York Records Retention and Disposition Schedule CO-2, which provides that disciplinary records of civil service personnel are to be retained for three (3) years after a final decision is rendered. 8 NYCRR 185.13. However, the regulation further provides that "[r]ecords by this item may be destroyed *before this retention period has been reached, if specified either in a union contract or settlement between the employer and employee.*" *Id.* (emphasis added). As the CBAs provide limitations on the availability of records associated with Department disciplinary cases, they create an expectation of privacy that further justifies the denial of your request under POL §§ 87(2)(b) and 89(2)(b).

As for records associated with Department disciplinary cases created between June 12, 2020 and February 10, 2021, to the extent your request seeks records of complaints that were determined to be exonerated, unfounded, or undetermined, and any subsequent records associated therewith, it is denied pursuant to POL § 87(2) as disclosure would constitute an unwarranted invasion of privacy. *New York Civil Liberties Union v. City of Syracuse*, No. 002602/2021, 2021 WL 1804382, at *5 (N.Y. Sup. Ct. May 5, 2021), citing *LaRocca v. Board of Educ.*, 220 A.D.2d 424, 427, 632 N.Y.S.2d 576 (2d Dept. 1995). Further, records relating to allegations or charges of misconduct that have not yet been determined or did not result in disciplinary action are exempt from disclosure pursuant to POL §§ 87(2)(b) and 89(2)(b), as the Committee on Open Government has opined that based on its prior analyses of the disclosure requirements relating to disciplinary records of government employees generally, "when allegations or charges of misconduct have not yet been determined or did not result in disciplinary action, the records relating to such allegations may be withheld where the agency determines that the disclosure would result in an unwarranted invasion of personal privacy." *Committee on Open Government FOIL AO 19775* (July 27, 2020)(emphasis added); *Committee on Open Government FOIL AO 19785* (March 19, 2021)(COOG affirmed its opinion on the legal standard applicable to records of pending complaints of misconduct made against law enforcement officers). Such records are also exempt from disclosure pursuant 87(2)(g)(iii) as pre-decisional records prepared to assist the Department in its decision-making process – whether the allegations are in fact true and warrant disciplinary action. See *Goodstein & W. v. O'Rourke*, 201 A.D.2d 731 (2d Dept. 1994). The records prior to disposition are merely intermediate steps leading up to a decision by the Department whether to

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proceed to formal discipline and impose disciplinary action. *Scaccia v. New York State Division of State Police*, 138 A.D.3d 50, 53 (3d Dept. 1988).

Further, records relating to an open Department disciplinary action are exempt from disclosure pursuant to POL § 87(2)(e), as they are records compiled for law enforcement purposes that if disclosed would interfere with judicial proceedings and deprive a person of a right to a impartial adjudication.

Notwithstanding the aforementioned denials, please be advised that the Department is conducting a search to determine if it possesses records relating to disciplinary cases initiated between June 12, 2020 and February 10, 2021, that have reached a final disposition. Any responsive, non-exempt records will be provided to you upon completion of this search. Please allow approximately thirty (30) days for the search to be completed.

Considering next your request for “[a]ll directives, orders, guidance, procedures, memoranda, rules, regulations, forms, and other statements of policy concerning officers’ use of force” between January 1, 2000 and February 10, 2021, please be advised that the Department has located the following records responsive to paragraphs 2(a) and 2(b) of your request:

1. Nassau County Police Department Use of Force Reference Guide (Policies and Procedures), Effective Date July 8, 2016;
2. Nassau County Police Department Use of Force Reference Guide (Policies and Procedures), Effective Date June 25, 2020;
3. Department Policy POL 4200, Use of Force, Revision 0, Effective Date July 1, 2014;
4. Department Policy POL 4200, Use of Force, Effective Date February 5, 2021;
5. Department Procedure ADM 1220, Firearm Discharge, Revision 0, Effective Date April 10, 1998;
6. Department Procedure ADM 1220, Unintentional Firearm Discharge, Revision 1, Effective Date July 1, 2014;
7. Department Procedure ADM 1222, Deadly Force Review Board, Revision 0, Effective Date July 1, 2014;
8. Department Procedure ADM 1222, Deadly Force Review Board, Revision 1, Effective Date July 8, 2016;
9. Department Procedure OPS 12410, Use of Force, Revision 0, Effective Date July 8, 2016;
10. Department Procedure OPS 12410, Use of Force, Revision 1, Effective Date November 20, 2020;
11. Department Procedure OPS 12420, Use of Deadly Force, Revision 0, Effective Date July 1, 2014;
12. Department Procedure OPS 12420, Use of Deadly Force, Revision 1, Effective Date October 8, 2014;
13. Department Procedure OPS 12420, Use of Deadly Force, Revision 2, Effective Date July 8, 2016;

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14. Department Procedure OPS 12420, Use of Deadly Force, Revision 3, Effective Date June 25, 2020;
15. Department Procedure OPS 12420, Use of Deadly Force, Revision 4, Effective Date November 16, 2020;
16. Department Procedure OPS 12420, Use of Deadly Force, Revision 5, Effective Date November 20, 2020;
17. Department Procedure OPS 12430, Use of Electronic Control Device (ECD)/Taser, Revision 0, Effective Date April 14, 2014;
18. Department Procedure OPS 12430, Use of Electronic Control Device (ECD)/Taser, Revision 1, Effective Date October 8, 2014;
19. Department Procedure OPS 12430, Use of Electronic Control Device (ECD)/Taser, Revision 2, Effective Date July 8, 2016;
20. Department Procedure OPS 12430, Use of Electronic Control Device (ECD)/Taser, Revision 3, Effective Date August 18, 2016;
21. Department Procedure OPS 12430, Use of Electronic Control Device (ECD)/Taser, Revision 4, Effective Date June 12, 2017;
22. Department Procedure OPS 12440, Use of Intermediate Weapons, Revision 0, Effective Date July 1, 2014;
23. Department Procedure OPS 12440, Use of Intermediate Weapons, Revision 1, Effective Date October 8, 2014;
24. Department Procedure OPS 12440, Use of Intermediate Weapons, Revision 2, Effective Date July 8, 2016;
25. Department Procedure OPS 12440, Use of Intermediate Weapons, Revision 3, Effective Date February 5, 2021;
26. Department Procedure OPS 12450, Use of Oleoresin Capsicum (OC), Revision 0, Effective Date October 1, 1997;
27. Department Procedure OPS 12450, Use of Oleoresin Capsicum (OC), Revision 1, Effective Date July 1, 2014;
28. Department Procedure OPS 12450, Use of Oleoresin Capsicum (OC), Revision 2, Effective Date October 8, 2014;
29. Department Procedure OPS 12450, Use of Oleoresin Capsicum (OC), Revision 3, Effective Date July 8, 2016;
30. Department Procedure OPS 12450, Use of Oleoresin Capsicum (OC), Revision 4, Effective Date February 5, 2021;
31. Department Procedure OPS 12460, Deadly Force Response Team (DFRT), Revision 0, Effective Date July 1, 2014;
32. Department Procedure OPS 12460, Deadly Force Response Team (DFRT), Revision 1, Effective Date October 8, 2014;
33. Department Procedure OPS 12460, Deadly Force Response Team (DFRT), Revision 2, Effective Date July 8, 2016;
34. Department Procedure OPS 12470, Rifle Deployment, Revision 0, Effective Date August 18, 2016;
35. PDCN 32, Case Report Worksheet, Effective Date December 2018;
36. PDCN 85A, Crime Report, Effective Date June 1978;

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37. PDCN 161 – Unintentional Firearm Discharge Report, Effective Date July 2014;
38. PDCN 258 – Use of Force Report, Effective Date February 2021;
39. PDCN 453 – Use of Force Review Form, Revision 1, Effective Date May 6, 2016;
40. PDCN 469 – Animal Destruction Form, Effective Date July 2014;
41. PDCN 470 – Deadly Force Response Team Firearm Discharge Investigation Report, Effective Date December 2018; and
42. Department Rule Article 5, Rule 16, Use of Force, Effective Date July 8, 2016.

Your request for “all reports documenting use of force,” including the PDCN Form 32, Case Report Worksheet, and PDCN Form 32SJ, Case Report Swift Justice, between January 1, 2000 and February 10, 2021 is denied pursuant to POL § 89(3)(a), as the records sought were not reasonably described. “Force” is defined as any of the following actions by a member of the Department: any physical strike or instrumental contact with a person or any significant physical contact that restricts movement of a person, which includes, but is not limited to, the use of firearms, electronic control devices, chemical spray, empty hands, the taking of a person to the ground, physical force such as kicks, punches or martial arts techniques; compliance and control holds such as twist locks, wrist locks, pressure point; or the deployment of a canine. Please reasonably describe the specific type of “force” your request references to enable the Department to initiate a search for responsive records.

As for your request for “all” PDCN Form 258s, Use of Force Reports, PDCN Form 161s, Unintentional Firearm Discharge Reports, PDCN Form 453s, Use of Force Review Forms, and PDCN Form 470s, Deadly Force Response Team Firearm Discharge Investigation Reports, it is denied pursuant to POL § 87(2)(g) as intra-agency materials which are not statistical or factual tabulations or data, instructions to staff that affect the public or final agency policy or determinations. *Gannett Co. v. James*, 86 A.D.2d 744, 745 (4th Dept. 1982), *lv. denied*, 56 N.Y.2d 502 (1982); *see Newsday, Inc. v. New York City Police Dept.*, 133 A.D.2d 4 (1st Dept. 1987)(relying on the decision in *Gannet* in affirming the denial of petitioner’s request for “Use of Force” forms, as the forms requested in *Gannet* were quite similar to those as to which disclosure was denied and the raised essentially the same legal issue, noting that the Court of Appeals denied leave to appeal from the determination in *Gannet*). Notwithstanding the foregoing, please be advised that the Department has located certain records responsive to paragraph 3 of your request for “*any* analyses and statistics generated regarding use of force” for the year 2020.

Your request for “all records documenting stops and/or field interviews” between January 1, 2000 and February 10, 2021 is denied pursuant to POL § 89(3)(a), as the records sought were not reasonably described. The term “stop” can cover a wide range of Department activities and must be further specified to enable the Department to initiate a search for responsive records. For example, if “stop” means a temporary stop pursuant to Criminal Procedure Law (“CPL”) § 140.50(1), that search would differ than if “stop” means activity at a traffic checkpoint or if “stop” meant enforcement of violation of the Vehicle and Traffic Law (“VTL”). Please reasonably describe the specific type of “stop” your request references to enable the Department to initiate a search for responsive records. To the extent your request can be interpreted to be one for any

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report that identifies the race, gender, and location of any person issued a traffic summons, please be advised that the Department has located certain records responsive records for the year 2019.

Regarding your request for “all civilian complaints against law enforcement officers” between January 1, 2000 and February 10, 2021, to the extent it seeks records prior to June 12, 2021, your request is denied for the reasons stated *supra*. To the extent your request seeks records of complaints that were determined to be exonerated, unfounded, or undetermined subsequent to June 12, 2021, it is denied pursuant to POL § 87(2), as disclosure would be constitute an unwarranted invasion of privacy. To the extent it seeks records of complaints that have not yet been determined or did not result in disciplinary action, your request is denied pursuant to POL §§ 87(2)(b) and 89(2)(b). Notwithstanding the aforementioned denials, please be advised that the Department is conducting a search to determine if it possesses records relating to civilian complaints initiated between June 12, 2020 and February 10, 2021, that have reached a final disposition. Any responsive, non-exempt records will be provided to you upon completion of this search. Please allow approximately thirty (30) days for the search to be completed.

Please be advised that the Department has located the following records responsive to paragraphs 7, 8, 9, and 13 of your request for “*current and prior Nassau County Police Department policies and/or procedures* regarding the manner in which civilian complaints against law enforcement officers are investigated,” “*current and prior* directives, orders, guidance, procedures, memoranda, rules, regulations, forms, and other statements of policy concerning civilian complaints against law enforcement officers,” “all forms made available to members of the public to file a complaint against the NCPD or specific officer,” and “*current and prior* directives, orders, guidance, procedures, memoranda, rules, regulations, forms, and other statements of policy concern the IAU” between January 1, 2000 and February 10, 2021:

1. Department Procedure ADM 1211, Civilian Complaint Investigations, ADM 1211 Revision 0, Effective Date June 8, 2004;
2. Department Procedure ADM 1211, Civilian Complaint Investigations, ADM 1211 Revision 1, Effective Date August 7, 2009;
3. Department Procedure ADM 1211, Civilian Complaint Investigations, ADM 1211 Revision 2, Effective Date November 18, 2020;
4. PDCN 360, Civilian Complaint Report Worksheet, Effective Date December 2018;
5. PDCN 361, Civilian Complaint Disposition, Effective Date November 2020;
6. PDCN 362, Civilian Complaint Information Card, Effective Date November 2020;
7. Electronic Complaint Form; and
8. IAU Complaint Report Tracking “Findings”

Your request for “all investigative reports regarding each law enforcement officer cleared of wrongdoing...in a civilian complaint” is denied pursuant to POL §§ 87(2) and 89(2)(b), as disclosure would be an unwarranted invasion of privacy. *New York Civil Liberties Union v. City of Syracuse*, No. 002602/2021, 2021 WL 1804382, at *5, citing *LaRocca v. Board of Educ.*, 220 A.D.2d at 427, and pursuant to POL 87(2)(b) and 89(2)(b); *Committee on Open Government FOIL*


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AO 19755 (“when allegations or charges of misconduct...did not result in disciplinary action, the records relating to such allegations may be withheld...”). Your request for such reports, as well as reports regarding each law enforcement officer found to have engaged in wrongdoing in a civilian complaint, that were completed prior to June 12, 2020, is denied pursuant to POL §§ 87(2)(b) and 89(2)(b) for the reasons stated *supra*. Regarding reports completed after June 12, 2020 in which an officer has been found to have engaged in misconduct, those associated with disciplinary cases that have not reached a disposition are exempt from disclosure pursuant to POL § 87(2)(g)(iii) as pre-decisional reports prepared to assist the Department in its decision making process, and POL § 87(2)(e) as records compiled for law enforcement purposes that if disclosed would interfere with judicial proceedings and deprive a person of a right to an impartial adjudication. Any such report that is associated with inactive disciplinary cases is also exempt from disclosure pursuant to POL § 87(2)(g)(iii), as such reports are merely intermediate steps leading up to a decision by the Department whether to initiate formal disciplinary proceedings and impose disciplinary action.

As for your requests for “all training materials used by the NCPD” concerning: (a) investigation of civilian complaints; (b) Use of Force; (c) De-escalation strategies and tactics; (d) Conducting pedestrian stops, vehicle traffic stops, and/or field interviews; and (e) cultural diversity, procedural justice, and/or cross-cultural awareness and cross-cultural competency,” and “records sufficient *to identify the frequency of the training programs, and the number of cadets, police officers, detectives, sergeants, lieutenants, captains, and all ranks above captain who participate in each program.*” please be advised that the Department is conducting a search to determine if it possesses responsive records. Any responsive, non-exempt records will be provided to you upon completion of this search. Please allow approximately thirty (30) days for the search to be completed.

Pursuant to POL § 87(1)(b)(iii), the fee for copies of the responsive records is twenty-five cents (\$0.25) per photocopy, which is required to be paid in advance of the preparation of such copies. 21 NYCRR 1401.8(f). As referenced above, the Department has located four hundred twenty-six (426) pages of responsive records. Please submit payment to the Department in the amount of one hundred six dollars and fifty cents (\$106.50), noting your Legal Bureau Number on the check or postal money order. In accordance with POL § 89(3)(a), upon receipt of your payment, the Department will make the records available to you.

Very truly yours,



Patrick J. Ryder
Commissioner

cc: Shoshanah Bewlay, Executive Director
Committee on Open Government