

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

NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

vs.

NASSAU COUNTY and NASSAU COUNTY POLICE  
DEPARTMENT,

Respondents.

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

**VERIFIED PETITION**

## PRELIMINARY STATEMENT

1. In this case concerning public access to police records, Petitioner New York Civil Liberties Union (“NYCLU”) seeks relief from this Court to remedy Nassau County and the Nassau County Police Department’s (“NCPD” and, collectively, “Respondents”) unlawful denials of a Freedom of Information Law (“FOIL”) request issued by Petitioner. The requested records are of immense public importance. The NYCLU seeks these records, not only to inform significant ongoing public policy discussions about how NCPD’s policies and practices affect the Nassau County 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, Petitioner submitted a FOIL request to NCPD seeking records related to police conduct. Many of the requested records would have been shielded from disclosure prior to the repeal to Section 50-a. 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. NCPD denied Petitioner’s September 15, 2020 FOIL request, in significant part, and later denied Petitioner’s May 20, 2021 administrative appeal of that partial denial, in clear violation of NCPD’s FOIL obligations.

4. Having exhausted its administrative remedies, Petitioner now seeks, through this Article 78 proceeding, to compel Respondents to produce—redacted as permitted by FOIL—the remaining responsive records to Petitioner’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 Respondents took the action challenged here and where the offices of Respondents are located.

### PARTIES

7. Petitioner 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, Petitioner has been involved in litigation and public policy advocacy on behalf of New Yorkers to demand government accountability and transparency.

8. Respondent Nassau County is a public agency subject to the requirements of the Freedom of Information Law, New York Public Officers Law ("POL") § 84 et seq.

9. Respondent Nassau County Police Department is a public agency subject to the requirements of the Freedom of Information Law, POL § 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 N.Y. Misc. LEXIS 10947, at \*19 (N.Y. Sup. Ct. Dec. 29, 2020).

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

12. When initially enacted in 1976, Section 50-a imposed modest limitations to the public disclosure of police disciplinary records. Over time, the cloak it placed over official records

expanded with police departments and unions using the provision as a basis to withhold all records and shield the conduct of law enforcement personnel from public scrutiny and civilian oversight.

13. According to a report from the Department of State Committee on Open Government (“COOG”), 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 1**.

14. In response to nationwide protest reckoning with biased policing on the heels of the widely viewed murder of George Floyd, on June 12, 2020, Senate Bill S8496/Assembly Bill A10611 (the “Repeal Bill”) was signed into law. 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. When the Repeal Bill was signed into law, New York dismantled the prior regime of categorical secrecy.

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

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

16. On September 15, 2020, following the enactment of the Repeal Bill, Petitioner sent a FOIL request to NCPD’s FOIL Officer seeking, *inter alia*, records from January 1, 2000 to the present pertaining to officer discipline, use of force, stops and field interviews, civilian complaints, NCPD’s Internal Affairs Unit, investigative reports, NCPD’s diversity statistics, NCPD’s policies and trainings, and collective bargaining agreements to which NCPD has been a party (the “Request”). A true and correct copy of the Request is attached to this Petition as **Exhibit 2**.

17. Later that day, NCPD confirmed receipt of the Request and stated that Petitioner “should receive a response within forty-five (45) business days.” A true and correct copy of NCPD’s September 15, 2020 response is attached to this Petition as **Exhibit 3**.

18. NCPD did not respond within the forty-five day time period and later informed Petitioner that the delay was due to an unexpected emergency medical leave and that Petitioner could expect a response by December 4, 2020. A true and correct copy of a letter memorializing this understanding is attached to this Petition as **Exhibit 4**. NCPD failed to meet this extended deadline as well.

19. On December 11, 2020, one week after the extended deadline had passed, NCPD sent its response to the Request (the “December Response”), wherein NCPD denied certain portions of the Request. A true and correct copy of NCPD’s December Response is attached to this Petition as **Exhibit 5**.

20. As a result of the December Response, Petitioner and NCPD had a series of meet-and-confers held on December 29, 2020 and January 7, 2021, in which the parties discussed Petitioner’s Request. After these meet-and-confers, NCPD sent Petitioner an email rescinding the December 11, 2020 denial stated in the December Response. A true and correct copy of NCPD’s email is attached to this Petition as **Exhibit 6**.

21. On February 10, 2021, Petitioner sent a letter clarifying several items in the Request to NCPD’s counsel, Mr. Christopher Todd, as part of Petitioner’s ongoing effort to work collaboratively with NCPD in locating and identifying records. A true and correct copy of this letter is attached to this Petition as **Exhibit 7**.

22. On February 19, 2021, Petitioner emailed Mr. Todd to inquire when Petitioner could expect a response to its Request. Mr. Todd did not respond. On February 24, 2021, Petitioner

again emailed Mr. Todd to inquire when Petitioner could expect a response. Mr. Todd responded that day stating that “[t]he Department is in the process of reviewing [Petitioner’s] amended request and will provide a response within twenty (20) business days.” True and correct copies of these emails are attached to this Petition as **Exhibits 8 and 9**.

23. Based on Mr. Todd’s representations, NCPD’s response to the Request was due on March 24, 2021. Petitioner did not receive a response on or prior to that date. On March 29, 2021, Petitioner again emailed Mr. Todd to inquire when Petitioner could expect a response to its Request. Petitioner received no response until April 13, 2021, when Mr. Todd’s assistant, Ms. Ann Calvo, confirmed by telephone that Mr. Todd was on leave and scheduled to return April 20, 2021. Ms. Calvo informed Petitioner that she would advise Mr. Todd to contact Petitioner promptly upon his return. Petitioner told Ms. Calvo that it expected a response to the Request by April 23, 2021. True and correct copies of emails memorializing Petitioner’s efforts to reach NCPD for a response to its Request between March and April 2021 are attached to this Petition as **Exhibits 10 and 11**.

24. After months of waiting, and following multiple efforts to obtain a response from NCPD, Petitioner informed NCPD on May 10, 2021 that, if Petitioner did not receive a response from NCPD by May 12, 2021, Petitioner would interpret that lack of response as a constructive denial and seek the appropriate remedies. NCPD did not respond. A true and correct copy of Petitioner’s May 10, 2021 email is attached to this Petition as **Exhibit 12**.

25. On May 20, 2021, in accordance with POL Section 89(4)(a), Petitioner filed an administrative appeal of NCPD’s constructive denial to NCPD’s FOIL Appeals Officer. A true and correct copy of Petitioner’s administrative appeal of the NCPD’s constructive denial of its FOIL request is attached to this Petition as **Exhibit 13**.

26. On June 3, 2021, NCPD replied to Petitioner's administrative appeal (the "June Response," and together with the December Response, the "Responses"). NCPD's June Response denied certain of Petitioner's Requests. A true and correct copy of the June Response is attached to this Petition as **Exhibit 14**.

27. As grounds for its denials, NCPD invoked various FOIL provisions, including POL Sections 87(2)(b), (e), (g), and 89(3)(a). NCPD also constructively denied two of Petitioner's requests for statistical information related to the filing and investigation of civilian complaints against officers. The June Response articulated certain arguments for the very first time—namely, that the repeal of Section 50-a allegedly does not apply to records created prior to June 12, 2020, and that officers' collective bargaining agreements purportedly override the Legislature's decision to repeal Section 50-a.

28. Having exhausted administrative remedies, Petitioner files this Petition pursuant to Article 78 of New York's Civil Practice Law & Rules seeking immediate production of responsive records as well as attorneys' fees and costs.

#### CAUSE OF ACTION UNDER ARTICLE 78

29. Petitioner repeats and realleges paragraphs 1 through 28 hereof as if fully set forth herein.

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

31. 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 and

records related to the investigation and discipline of officers regardless of the ultimate disposition of their cases.

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

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

34. Petitioner exhausted its administrative remedies with Respondents when it appealed Respondents' 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).

35. Petitioner has no other remedy at law.

36. 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 June 3, 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 22 in the FOIL request dated September 15, 2020, as clarified and supplemented on February 10, 2021;
- (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: October 1, 2021  
New York, New York

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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: October 1, 2021  
New York, New York

/s/   
KINGDAR PRUSSIEN

SUBORN BEFORE ME  
THIS 1ST DAY OF  
OCTOBER, 2021.



AMBER LYNN HALL  
Notary Public, State of New York  
No. 01HAG418179  
Qualified in New York County  
Certificate Filed in New York County  
Commission Expires June 7, 2025