

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

-against-

NEW YORK STATE POLICE,

Respondent.

INDEX NO:

**VERIFIED PETITION**

**PRELIMINARY STATEMENT**

1. The New York Civil Liberties Union (the “NYCLU”) seeks relief from this Court because the New York State Police (“NYSP” or “Respondent”) has denied the NYCLU’s request under the Freedom of Information Law (“FOIL”) for records regarding police accountability (the “Request”). The records requested—including information about officer discipline, civilian complaints, and complaints filed with the New York State Police Professional Standards Bureau—are of immense public significance.

2. Many of the records sought in the Request were previously shielded from the public by a 1976 law, Civil Rights Law section 50-a (“Section 50-a”), which served as the primary statutory barrier to the community’s ability to access police records. However, by the summer of 2020, there was a growing consensus in New York—catalyzed by high profile and historical instances of police misconduct—that Section 50-a impeded police accountability and racial justice. In June 2020, Governor Andrew Cuomo signed into law both the repeal of Section 50-a and concurrent amendments to FOIL explicitly defining the “law enforcement disciplinary records” now subject to disclosure.

3. On September 15, 2020, the NYCLU submitted the Request seeking to vindicate the public’s right to increased transparency regarding police records.

4. After 16 months of repeated communications with Respondent in an unsuccessful effort to obtain a fulsome response to the Request, Respondent indicated for the first time that it would not produce records responsive to three critical sections of the Request: Section A (disciplinary records), Section D(7) (investigative reports regarding each law enforcement officer cleared of, or found to have engaged in, wrongdoing in civilian complaints), and Section F (records regarding complaints filed with the New York State Police Professional Standards Bureau) (together, the “police disciplinary records”). Respondent alleged that these sections failed to reasonably describe the records sought by the Request, and that it would be overly burdensome to produce the police disciplinary records. Along with that same correspondence, Respondent also produced an excel spreadsheet as an attempt to respond to Section D(5) of the Request (total number of complaints against NYSP). However, it redacted all officer names from the spreadsheet. Respondent contended that officer names were exempt from disclosure under FOIL’s personal privacy exemption, claiming that to produce the names of officers on this spreadsheet who were the subject of complaints it did not substantiate would be an unwarranted invasion of personal privacy.

5. On February 15, 2022, the NYCLU filed an administrative appeal based on Respondent’s refusal to produce the three categories of documents and based on its improper redactions. On March 14, 2022, Respondent sent an email explicitly denying the NYCLU’s appeal. Respondent’s denials have exhausted the NYCLU’s administrative remedies.

6. Having exhausted administrative remedies, the NYCLU now seeks judicial relief via Article 78 proceeding to compel Respondent to respond to the Request and produce promptly all responsive records.

7. The NYCLU also seeks an award of attorneys’ fees and costs in light of Respondent’s failure to adhere to FOIL’s statutory requirements.

## VENUE

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

## PARTIES

9. Petitioner, the 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 70 years, the NYCLU has been involved in litigation and public policy advocacy on behalf of New Yorkers to demand government accountability and transparency.

10. Respondent New York State Police is a public agency subject to the requirements of the Freedom of Information Law, New York Officers Law § 84 et seq.

## FACTUAL BACKGROUND

### A. The Repeal of Section 50-a

11. Until the summer of 2020, the greatest obstacle to transparency regarding the conduct of police officers in New York was Section 50-a, which generally excluded from disclosure “police personnel records used to evaluate performance towards continued employment or promotion” that were otherwise presumptively public (*see* C.R.L. § 50-a[1] [repealed June 12, 2020]).

12. Although this section, which generally shielded police disciplinary records from public disclosure, was intended to be applied narrowly and sparingly, it rapidly expanded in scope and application.

13. Indeed, 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 as **Exhibit A** to this Petition.

14. However, there was a growing consensus in New York that Section 50-a impeded police accountability and racial justice. Amid the nationwide reckoning following the murders of George Floyd, Breonna Taylor, and others, the recognition of the history of police abuses against communities of color, the deepening societal frustration with police secrecy and misconduct, and the public demand for increased police transparency and oversight, Governor Andrew Cuomo signed the #Repeal50a Bill (S8496/A10611) on June 12, 2020. A true and correct copy of the #Repeal50a Bill is attached as **Exhibit B** to this petition.

**B. Upon the Repeal of Section 50-a, the NYCLU Submitted a FOIL Request to Respondents**

15. The NYCLU submitted the Request to Respondent on September 15, 2020, seeking records related to NYSP conduct and policies relevant to police accountability, including records that had previously been shielded from the public by Section 50-a. The Request seeks documents related to the following categories: (a) disciplinary records; (b) use of force; (c) stops, temporary detentions, and field interviews; (d) complaints about employee misconduct; (e) immigration and citizenship related enforcement; (f) complaints filed with the NYSP Professional Standards Bureau (formerly the Internal Affairs Bureau); (g) diversity in the ranks; and (h) all current governing policies. Each of these general categories is broken down further, the Request having a total of 32 discrete portions. A true and correct copy of the Request is attached as **Exhibit C** to this Petition.

16. Respondent acknowledged receipt of the Request in an electronic communication dated September 15, 2020. The communication stated that Respondent would provide a response to the Request on or before November 19, 2020. A true and correct copy of Respondent’s acknowledgement is attached as **Exhibit D** to this petition.

17. After receiving no further response by Respondent’s self-imposed November 19,

2020 deadline, on November 24, 2020, the NYCLU sent an electronic communication to Respondent, inquiring when a response to the Request would be forthcoming. A true and correct copy of this communication is attached as **Exhibit E** to this Petition.

18. In an electronic communication dated November 30, 2020, Respondent represented that it would respond to the Request on or before June 1, 2021, more than eight months after the NYCLU's initial request. A true and correct copy of this communication is attached as **Exhibit F** to this Petition.

19. In an electronic communication dated December 9, 2020, the NYCLU identified several categories of readily available documents responsive to the Request. The NYCLU proposed a rolling production arrangement under which Respondent could provide its readily available records while reviewing other categories of documents. A true and correct copy of this communication is attached as **Exhibit G** to this Petition.

20. After receiving no response to the NYCLU's December 9, 2020 communication, the NYCLU sent Respondent an electronic communication dated December 21, 2020, seeking further response by January 4, 2021. A true and correct copy of this communication is attached as **Exhibit H** to this Petition.

21. After receiving no response to the NYCLU's December 21, 2020 communication, the NYCLU again followed up on January 11, 2021. A true and correct copy of this communication is attached as **Exhibit I** to this Petition.

22. In an electronic communication dated January 27, 2021, Respondent finally replied, rejecting the NYCLU's proposal for a rolling production arrangement and adhering to its prior timeline, responding to the Request on or before June 1, 2021. Respondent did not address the NYCLU's proposal for a rolling production schedule or provide any further detail as to why Respondent required until June 1, 2021 to respond to the Requests. A true and correct copy of this communication is attached as **Exhibit J** to this Petition.

23. After receiving Respondent's January 27, 2021 communication, the NYCLU attempted to engage in a good faith effort to avoid litigation, and with the hope that Respondent would adhere to its self-imposed June 1, 2021 deadline.

24. On June 1, 2021, Respondent made a small initial production related to departmental policies, directives, and orders (responding to sections B(1-3), 4, 6(a), C(1-3), D(1-6, 6), E(1-3, 5), G, and H(1-2) of the Request). Respondent further indicated that it required additional time to respond to many portions of the Request. The communication stated that Respondent would provide a response to the remaining sections of the Request on or before July 30, 2021. A true and correct copy of this communication is attached as **Exhibit K** to this Petition.

25. After receiving no further response by Respondent's self-imposed July 30, 2021 deadline, on August 17, 2021, the NYCLU sent an electronic communication to Respondent, requesting Respondent produce all outstanding records by September 15, 2021. A true and correct copy of this communication is attached as **Exhibit L** to this Petition.

26. Without directly acknowledging the NYCLU's August 17, 2021 letter, on August 18, 2021, Respondent made a small production related to departmental policies, directives, and orders, and wrote that it would respond to sections A, B(5), D, and F of the Request on or before October 1, 2021. A true and correct copy of this communication is attached as **Exhibit M** to this Petition.

27. After receiving no further response by Respondent's self-imposed October 1, 2021 deadline, on October 6, 2021, the NYCLU sent an electronic communication to Respondent, requesting that Respondent produce all outstanding records by October 31, 2021. A true and correct copy of this communication is attached as **Exhibit N** to this Petition.

28. Without directly acknowledging the NYCLU's October 6, 2021 letter, on November 3, 2021, Respondent made a small production of documents related to critical incident deaths, and wrote that it would respond to sections A, D(5), D(7), and F of the Request on or before December

1, 2021. A true and correct copy of this communication is attached as **Exhibit O** to this Petition.

29. After receiving no further response by Respondent's self-imposed December 1, 2021 deadline, on December 21, 2021, the NYCLU sent an electronic communication to Respondent, requesting that Respondent produce all outstanding records by January 14, 2022. A true and correct copy of this communication is attached as **Exhibit P** to this Petition.

30. On January 20, 2022, Respondent produced a redacted spreadsheet regarding complaints about misconduct responsive to section D(5) of the Request. A true and correct copy of this spreadsheet is attached as **Exhibit Q** to this Petition. The spreadsheet listed case numbers, categories of allegations, redacted officer names, and dispositions. In its accompanying electronic communication, Respondent indicated for the first time in sixteen months that it would redact the names of officers on this spreadsheet who were the subject of unsubstantiated complaints in order to "prevent an unwarranted invasion of personal privacy of those concerned." This was the only portion of the Request to which Respondent asserted the personal privacy exemption. Respondent also alleged that sections A, D(7), and F of the Request—requesting records regarding officer discipline, civilian complaints, and complaints filed with New York State Police Professional Standards Bureau—failed to reasonably describe the records sought by the Request and were overly burdensome, and Respondent would not produce such records. Respondent indicated that it was unable to conduct a reasonable search of its files, and Respondent would not engage in "herculean or unreasonable efforts to locate records." Respondent's letter stated that its January 20, 2022 production and letter "completes our response to your request," and stated that "any person denied access to a record may appeal that determination within thirty days." A true and correct copy of this communication is attached as **Exhibit R** to this Petition.

31. On February 16, 2022, the NYCLU submitted an administrative appeal from Respondent's partial denial of the Request. The NYCLU explained that the FOIL statute expressly prohibits denials on the basis that the request is voluminous or burdensome, and similarly bars

redactions of officer names from complaint records. A true and correct copy of this communication is attached as **Exhibit S** to this Petition.

32. On March 14, 2022, Respondent denied the NYCLU's February 16, 2022 administrative appeal. Respondent reiterated its objection that sections A, D(7), and F of the Request failed to reasonably describe the records sought. Respondent also denied the appeal on the basis that it was "overly burdensome," arguing that the records would be costly and prohibitively time consuming to produce. A true and correct copy of this communication is attached as **Exhibit T** to this Petition.

33. Having exhausted administrative remedies by filing an administrative appeal based on Respondent's partial denial of the request, and Respondent having denied the appeal, the NYCLU files this Article 78 Petition seeking immediate production of the police disciplinary records.

## **II. CAUSE OF ACTION UNDER ARTICLE 78**

1. The NYCLU repeats and re-alleges paragraphs 1 through 34 hereof as if fully set forth herein.

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

3. The NYCLU has a clear right to the police disciplinary records, redacted only as permitted by FOIL and on a reasonable rolling basis where appropriate. It also has a clear right to an unredacted version of this spreadsheet.

4. There is no basis in law or fact for Respondent to withhold the police disciplinary records or to redact the names of officers on its responsive spreadsheet.

5. Respondent's obligation under FOIL to produce responsive documents is mandatory, not discretionary.

6. The NYCLU exhausted its administrative remedies with Respondent when it appealed Respondent's denial of the Request, and Respondent denied the NYCLU's appeal.



7. The NYCLU has no other remedy at law.
8. This Petition is timely under C.P.L.R. § 217 as it is filed within four months of Respondent's denial of the NYCLU's administrative appeal on March 14, 2022.

**III. REQUESTED RELIEF**

WHEREFORE, Petitioner seeks judgment:

- (1) Pursuant to C.P.L.R. § 7806, directing Respondent to comply with its duty under FOIL and disclose all the records sought by the NYCLU in the Request, redacted only as permitted by FOIL and on a reasonable rolling basis where appropriate;
- (2) Awarding reasonable attorneys' fees and litigation costs as allowed under New York Public Officers Law § 89; and
- (3) Granting such other relief as the Court deems just and proper.

Dated: New York, New York  
July 1, 2022

Respectfully submitted,

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*Counsel for Petitioner the New York Civil Liberties  
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## VERIFICATION

Margaret Babad, 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.



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Margaret Babad

Dated: New York, New York  
July 1, 2022