

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

In the Matter of the Application of

NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

- against -

SUFFOLK COUNTY and SUFFOLK COUNTY  
POLICE DEPARTMENT,

Respondents.

For Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules

Index No. \_\_\_\_\_

IAS Part \_\_\_\_

**VERIFIED ARTICLE 78  
PETITION**

**PRELIMINARY STATEMENT**

1. Following the New York State Legislature’s 2020 repeal of section 50-a of the Civil Rights Law and its amendment of the Freedom of Information Law (“FOIL”) to define the “law enforcement disciplinary records” subject to presumptive disclosure, the New York Civil Liberties Union (the “NYCLU”) made a FOIL request for disciplinary and other police records maintained by the Suffolk County Police Department (the “SCPD”). In response, the SCPD refused to produce any part of any complaint record in which the SCPD did not impose discipline. Further, while the SCPD did produce records where discipline was imposed, it over-redacted these records without proper justification. The NYCLU now challenges those denials.

2. Accordingly, this petition presents two questions: **(1)** can an agency categorically withhold every portion of every police disciplinary record where the agency chose not to impose discipline by invoking FOIL’s limited “unwarranted invasion of privacy” exemption—instead of producing redacted versions of those records as explicitly contemplated by the statute—and **(2)** can

an agency, pursuant to FOIL, redact the contents of responsive records without providing any explanation for how those redactions were applied? New York law is clear that the answer to both of these questions is no, and the NYCLU asks this Court to compel the SCPD and the County of Suffolk (“Suffolk County,” and together with the SCPD, the “Respondents”) to (1) produce the fully withheld records, redacted as permitted by the FOIL, and (2) revise the excessively redacted records it has produced to redact only information that is exempted under FOIL and provide the justifications for those redactions or submit those records for *in camera* review.

3. On September 15 of 2020, following repeal of Section 50-a of the Civil Rights Law (the “Repeal”), the NYCLU submitted a FOIL request (the “Request”) to the Freedom of Information Officer at the SCPD for certain disciplinary and other police records of Suffolk County Police Department officers.

4. Over the next year and a half, the NYCLU agreed to numerous extensions, filed a successful administrative appeal to ensure continued production, and agreed to production on a rolling basis. But in October 2021, the SCPD informed the NYCLU that it would not produce any portion of any record in which the SCPD has not chosen to impose discipline—collectively referred to by the SCPD as “‘Unsubstantiated,’ ‘Unfounded,’ or ‘Exonerated’” records (the “Withheld Records”), even though the amended FOIL requires the production of exactly these records subject to limited redaction.

5. Additionally, instead of complying with the limited redactions permitted by FOIL and providing specific justifications for such redactions in accordance with FOIL, the SCPD produced a limited amount of documents regarding “substantiated” disciplinary records (the “Redacted Records”) that contained pervasive unexplained redactions, which obscured the pertinent details related to any disciplinary action taken against an officer. Nor did the SCPD

produce a redaction log or any written justification that would explain the rationale for any redaction. The SCPD's excessive redactions and failure to even attempt to justify those redactions is another violation of the SCPD's FOIL obligations.

6. Seeking administrative remedy, the NYCLU appealed to Suffolk County through its FOIL Appeal Officer. But Suffolk County denied the appeal, claiming that releasing any part of any records that had not resulted in discipline would be a *per se* "unwarranted invasion of privacy" and that the Redacted Records were properly redacted (with no explanation for the statutory basis of any specific redaction).

7. The NYCLU has exhausted all available administrative remedies. It now files this Verified Petition pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR"), asking this Court to compel Respondents to (1) produce the Withheld Records subject to only the narrow redactions permitted by FOIL; (2) reproduce the Redacted Records with only the narrow redactions permitted by FOIL, including a written explanation or redaction log setting forth the particularized and specific justification for each redaction, or, in the alternative, conduct an *in camera* review of the Redacted Records; and (3) pay reasonable attorneys' fees and costs associated with this litigation.

### VENUE

8. Pursuant to CPLR 7804 (b) and 506 (b), venue in this proceeding lies in Suffolk County, the judicial district in which the Respondents took the action challenged here, and where the offices of the Respondents 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 seventy years, Petitioner has been involved in litigation

and public policy advocacy on behalf of New Yorkers to demand government accountability and transparency.

10. Respondent Suffolk County is a public agency subject to the requirements of the Freedom of Information Law, New York Public Officers Law (“POL”) § 84 et seq.

11. Respondent SCPD is a public agency subject to the requirements of the Freedom of Information Law, POL § 84 et seq.

### **FACTUAL BACKGROUND**

#### **I. STATUTORY FRAMEWORK**

12. 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 Assn. v City of Schenectady*, 2020 NY Slip Op 34346[U], \*19 [Sup Ct, Schenectady County 2020].)

13. Prior to the repeal, Section 50-a posed a substantial obstacle to transparency in the conduct of law enforcement in the State of New York. The law categorically excluded from disclosure under FOIL police “personnel records used to evaluate performance toward continued employment or promotion” that were otherwise presumptively public. (*See* Civil Rights Law § 50-a [1] [repealed June 12, 2020].) A true and correct copy of the bill jacket for the enactment of Section 50-a is attached as **Exhibit A to Michelle Six’s Aff. in Support of Pets.’ Verified Article 78 Pet.**

14. Although the intended breadth of Section 50-a when first enacted in 1976 was narrow, its scope quickly expanded, with police departments and unions utilizing the provision to shield the conduct of law enforcement personnel from public scrutiny and civilian oversight.

15. Nationwide protests following the murder of George Floyd in Minnesota encouraged lawmakers to reexamine the public’s interest in enhanced law enforcement

transparency and accountability. The New York Legislature responded to this renewed interest and debated the repeal of Section 50-a. A true and correct copy of the bill jacket for the repeal of Section 50-a is attached as **Exhibit B to Michelle Six’s Aff. in Support of Pets.’ Verified Article 78 Pet.** On June 12, 2020, the Legislature fully repealed Section 50-a and simultaneously amended several new provisions to the FOIL defining “law enforcement disciplinary records” now subject to presumptive disclosure, along with a detailed redaction scheme adding targeted privacy protections to the law enforcement records now subject to disclosure.

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

## **II. THE NYCLU’S FOIL REQUEST TO SCPD**

17. On September 15, 2020, following the repeal of Section 50-a, the NYCLU submitted a FOIL request to the SCPD seeking certain disciplinary and other police records. A true and correct copy of the Request is attached as **Exhibit C to Michelle Six’s Aff. in Support of Pets.’ Verified Article 78 Pet.**

18. Over the next year, the NYCLU agreed to several deadline extensions for the production, initiated a successful administrative appeal to ensure the SCPD adhered to a production timeline, and eventually agreed to rolling productions from the SCPD.

19. On October 15, 2021, the SCPD attached a letter to a production of the Redacted Records that formally denied the NYCLU’s request in part. The letter characterized the disciplinary records that it was fully withholding as containing allegations of misconduct that are “Unsubstantiated,” “Unfounded,” or “Exonerated”—covering every portion of every misconduct record in which the SCPD chose not to impose discipline—and argued that production of any portion of these records would constitute a categorical “unwarranted invasion of personal privacy.”

With regard to the Redacted Records produced, the letter furthermore stated that “[r]edactions have been effected to the attached / enclosed records pursuant to Public Officers Law Section 87 2(b) (disclosure would constitute an unwarranted invasion of personal privacy) and Sections 89 2-b(a) & 89 2-b(b) (mandatory redactions of police disciplinary records),” with no further elaboration. A true and correct copy of this letter is attached to this Petition as **Exhibit D to Michelle Six’s Aff. in Support of Pets.’ Verified Article 78 Pet.** True and correct copies of the Redacted Records are individually attached as **Exhibits E-1 through E-38 to Michelle Six’s Aff. in Support of Pets.’ Verified Article 78 Pet.**

20. On November 12, 2021, the NYCLU timely appealed the SCPD’s partial denial to the Suffolk County Attorney. A true and correct copy of NYCLU’s second administrative appeal is attached to this Petition as **Exhibit F to Michelle Six’s Aff. in Support of Pets.’ Verified Article 78 Pet.**

21. On November 30, 2021, the Suffolk County denied the NYCLU’s second administrative appeal, reasoning that “[d]isclosure of the records...of unsubstantiated matters, and of records that were provided in an un-redacted instead of redacted form would constitute an ‘unwarranted invasion of personal privacy’ within the meaning of Public Officers Law § 87(2)(b).” Further, the appeal response summarily bundled various reasons for the withheld portions of the Redacted Records without identifying which reason pertained to which redaction. Specifically, the appeal response stated that certain records contained “medical information of a private nature concerning police officers,” information of “private individuals who were victims of crimes or otherwise injured parties,” and “identities, addresses, dates of birth or other private information of witnesses to crimes”—but demurred to explain which reasons supported which redactions, even in outline form. A true and correct copy of Suffolk County’s denial of the second administrative

appeal is attached to this Petition as **Exhibit G to Michelle Six's Aff. in Support of Pets.' Verified Article 78 Pet.**

22. On March 8, 2022, the NYCLU received a letter from the SCPD asking for the opportunity to "rectify anything that remains outstanding without legal interaction, as it is truly my goal to finalize and fully satisfy your request." A true and correct copy of the letter is attached to this Petition as **Exhibit H to Michelle Six's Aff. in Support of Pets.' Verified Article 78 Pet.**

23. In order to resolve as many issues as possible without resort to litigation, the parties signed a tolling agreement on March 30, 2022 and agreed on several extensions. A true and correct copy of the tolling agreement is attached to this Petition as **Exhibit I to Michelle Six's Aff. in Support of Pets.' Verified Article 78 Pet.**

24. After nearly six months of additional time to review the redactions, the SCPD has not been very responsive and little progress has been made on the documents. To date, the SCPD has not reversed its decision to deny Petitioner the production of the Withheld Records and it has not amended the pervasive redactions it has made on the Redacted Records or produced a written explanation or redaction log setting forth the particularized and specific justification for each redaction.

25. Having exhausted administrative remedies, the NYCLU files this Petition pursuant to Article 78 of New York's Civil Practice Law & Rules seeking (1) production of the Withheld Records subject to only the narrow redactions permitted by FOIL; (2) reproduction of the Redacted Records with written explanations sufficient to justify any narrow redactions permitted by FOIL or, in the alternative, an *in camera* review of the Redacted Records; and (3) attorneys' fees and costs.

**CAUSE OF ACTION**  
**(Article 78)**

26. Petitioner repeats and realleges paragraphs 1 through 26 hereof, as if fully set forth herein.

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

28. Petitioner has a clear right to the production of the records withheld in their entirety regardless of disposition and subject to only the narrow redactions permitted by FOIL. For the Redacted Records, Petitioner has a clear right to written explanations or a redaction log setting forth the particularized and specific justification for each redaction to ensure that such redactions are in fact permitted by FOIL, or, in the alternative, an *in camera* review of the Redacted Records.

29. Absent a basis in law or fact to withhold materials, Respondents' obligations under FOIL to respond to a FOIL request for records reasonably described, respond to a FOIL administrative appeal, and produce documents are mandatory, not discretionary.

30. There is no basis in law or fact on which Respondents can refuse to produce the materials subject to this Petition. Similarly, there is no basis in law or fact for the pervasive unjustified redactions applied by Respondent.

31. Petitioner exhausted its administrative remedies with Respondents as required by POL § 89 (4) (a) when it appealed Respondents' partial denial of Petitioner's Request, received a denial of the appeal, and did not receive the records it requested as required by POL § 89 (4) (b).

32. Petitioner has no other remedy at law.

33. This Petition is timely pursuant to the tolling agreement entered between the parties.



**PRAYER FOR RELIEF**

WHEREFORE, Petitioner seeks judgment:

(i) Pursuant to CPLR 7806, directing Respondents to comply with their duty under FOIL and produce any disciplinary records they have fully withheld that are responsive to the Petitioner's FOIL request dated September 15, 2020, regardless of the disposition of those records, with only those narrow redactions permitted by FOIL;

(ii) Directing Respondents to reproduce redacted records that were previously produced in response to the Petitioner's FOIL request dated September 15, 2020, with only the narrow redactions permitted by FOIL, including a written explanation or a redaction log setting forth the particularized and specific justification for each redaction, or, in the alternative, conduct an *in camera* review of the redacted information;

(iii) Awarding reasonable attorneys' fees and litigation costs to Petitioner pursuant to POL § 89; and

(iv) Granting such other relief as the Court deems just and proper.

DATED: September 25, 2022  
New York, New York

Respectfully submitted,

/s/ Michelle Six

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COUNTY OF SUFFOLK**

NEW YORK CIVIL LIBERTIES UNION,  Petitioner,  For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,  - against -  COUNTY OF SUFFOLK and SUFFOLK COUNTY POLICE DEPARTMENT,  Respondent.	Index No.: _____     <u><b>VERIFICATION</b></u>
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STATE OF NEW YORK     )  
   ) ss:  
COUNTY OF QUEENS     )

Yosef Baruh, an attorney admitted to practice in the State of New York, affirms pursuant to CPLR § 2106 under the penalties of perjury:

1. I am an attorney for the petitioner in this Article 78 proceeding. I make this Verification pursuant to CPLR § 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.

  
YUSEF BARUH

*QUEENS (VH)*  
Dated: September 25, 2022  
New York, New York

Sworn and subscribed to me  
this 25 day of September, 2022

**DAVID HELMAN**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01-HE6107875  
Qualified in Nassau County  
Commission Expires April 12, 2024

