

Exhibit C



New York Civil Liberties Union
125 Broad Street, 19th Fl.
New York, NY 10004
(212) 607-3300
www.nyclu.org

December 16, 2022

Via Electronic Mail FOILAPPEALS@nypd.org

Sergeant Jordan Mazur
Records Access Appeals Officer
New York City Police Department
One Police Plaza, Room 1406
New York, New York 10038

Re: Appeal of Constructive Denial of FOIL Request #2022-056-22971.

Dear Sergeant Mazur:

On behalf of the New York Civil Liberties Union (“NYCLU”), we write to appeal under the Freedom of Information Law (Article 6 of the Public Officers Law) the NYPD’s unreasonable estimated deadline to respond to the NYCLU’s request dated December 13, 2022, for records related to the Mayor’s Plan to Provide Care for Individuals Suffering from Untreated Severe Mental Illness Across NYC announced on November 29, 2022.

In an email sent on December 15, 2022, we were notified that we could “expect a response on or about Monday, May 1, 2023.” This deadline is not reasonable.

As you are aware, FOIL requires an agency to grant or deny a request within five business days of receiving a written request for a record or to acknowledge receipt of the request in writing and to state the approximate date when the request will be granted or denied. When an agency gives an approximate date that a decision will be made, the date must be “reasonable under the circumstances of the request.” N.Y. PUB. OFF. LAW § 89(3)(a). Failure of an agency to comply with these provisions constitutes a constructive denial of the request. The NYCLU appeals the NYPD’s proposed response date, which falls afoul of Section 89(3)(a)’s reasonableness requirement.

Here, the NYPD’s approximate deadline for its response—May 1, 2023, more than four (4) months after date of acknowledgement—is not “reasonable under the circumstances of the request.” The requested records relate to a discrete and recent Directive: the aforementioned plan announced by the Mayor on November 28, 2022. The NYCLU has made three specific and targeted requests related to this lone Directive. The responsive records should be both readily identifiable and available for production.¹

¹ Public statements made by the Mayor and his team on November 29, 2022, at the press conference announcing the initiative indicated that NYPD trainings had begun that day. *See Transcript: Mayor Eric Adams Delivers Address on Mental Health Crisis in New York City and Holds Q-and-A November 29, 2022*, <https://www.nyc.gov/office-of-the->

The NYCLU therefore appeals the NYPD's FOIL response and reiterates its request for the records outlined in its December 13, 2022 request. We have attached a copy of our December 13, 2022 FOIL request and the NYPD's December 15, 2022 response to this letter for your convenience.

Should you have any questions about this request, you may contact me at bharoules@nyclu.org.

Sincerely,



Beth Haroules
Director of Disability Justice Litigation

Ify Chikezie
Legal Fellow

mayor/news/871-22/transcript-mayor-eric-adams-delivers-address-mental-health-crisis-new-york-city-holds. The NYPD also issued a "Finest Message" on December 6, 2022 which was produced to the United States District Court for the Southern District of New York in a litigation captioned *Baerga, et al. v. New York City, et al.*, .21-cv-05762 (PAC) on December 16, 2022.



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New York, NY 10004
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December 13, 2022

via email to FOIL@NYPD.ORG

New York City Police Department
One Police Plaza, Room 110-A
New York, NY 10038

Attention: Records Access Officer
Lt. Richard Mantellino
Legal Bureau – FOIL Unit

Re: New York City Mental Health Involuntary Removals Policy announced November 29, 2022

Dear Lt. Mantellino:

On behalf of the New York Civil Liberties Union, we write to request records pursuant to the Freedom of Information Law concerning the Mayor's Plan to Provide Care for Individuals Suffering from Untreated Severe Mental Illness Across NYC announced on November 29, 2022. In conjunction with the Mayor's public announcement of the plan, the City released a document titled "Mental Health Involuntary Removals," <https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2022/Mental-Health-Involuntary-Removals.pdf>. I have attached a copy of this document for your convenience.

That document provides that a number of city and state agencies, including the NYPD, "will update their policies and protocols" and "train" specified personnel.

In light of this directive, the NYCLU seeks the following under FOIL:

1. All policies and protocols developed pursuant to the Mental Health Involuntary Removals directive, including any pre-existing policies or protocols that have been modified pursuant to the directive.
2. To the extent not otherwise produced, records concerning any training provided pursuant to Mental Health Involuntary Removals directive, including but not limited to training materials or curricula and attendance rosters.
3. To the extent not otherwise produced, any other records created pursuant to the Mental Health Involuntary Removals directive.

The Freedom of Information Law requires agencies to respond within five business days of a records request. Please provide an estimated timeframe within which the requested records will be produced. In the event that some records can be located sooner than others, we request that records be provided on a rolling basis as they are located. If any of the requested records are available in an electronic format, we request that they be provided in that format.

Please note that we expressly exclude from this request any individually identifiable information or other private individual information that may be in any responsive materials. To the extent that you determine that certain portions of a record cannot be disclosed, please redact only that information that you consider to be protected and provide us with the remaining information. As you are aware, pursuant to Public Officers Law 84-90(9), "When records maintained electronically include items of information that would be available under this article, as well as items of information that may be withheld, an agency in designing its information retrieval methods, whenever practicable and reasonable, shall do so in a manner that permits the segregation and retrieval of available items in order to provide maximum public access."


In the event that all or part of this request is denied, please cite each specific applicable FOIL exemption and notify us of appeal procedures available under the law. We request to be notified of any fees over \$50.00.

Please furnish records to:

Beth Haroules
Senior Staff Attorney
New York Civil Liberties Union
125 Broad Street, 19th floor
New York, New York 10004

If you have any questions regarding this request, please contact me at bharoules@nyclu.org or by phone at 212-607-3325. Thank you in advance for your time.

Sincerely,



Beth Haroules
Director of Disability Justice Litigation

Ify Chikezie
Legal Fellow

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Mental Health Involuntary Removals

Background:

To support more effective application of Article 9 of the Mental Hygiene Law (hereinafter MHY), NYPD, DSS, FDNY EMS, MTA, MTAPD and DOHMH have worked together to clarify roles and responsibilities in involuntary removals under MHY sections 9.41 and 9.58. These agencies will update their policies and protocols governing this work and train all 9.58 Designated Clinicians, NYPD officers, MTAPD officers, and FDNY EMTs and paramedics accordingly.

Standard for Involuntary Removal:

As detailed in the February 18, 2022 memorandum from NYS Office of Mental Health (OMH) entitled "Interpretative Guidance for the Involuntary and Custodial Transportation of Individuals for Emergency Assessments and for Emergency and Involuntary Inpatient Psychiatric Admissions," the following is the City's standard for removal under sections 9.41 and 9.58:

Section 9.41 authorizes a peace officer or police officer to take into custody, for the purpose of a psychiatric evaluation, an individual who appears to be mentally ill and is conducting themselves in a manner likely to result in serious harm to self or others.

Likewise, a Section 9.58 Designated Clinician (either a physician or one of the following who is a member of an approved mobile crisis outreach team approved by the State Commissioner of Mental Health: a licensed psychologist, registered professional nurse, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker) may remove or direct the removal of any person to a hospital for the purpose of evaluation for admission if such person appears to be mentally ill and is conducting themselves in a manner likely to result in serious harm to the person or others.

According to OMH's memorandum, both sections 9.41 and 9.58 authorize the removal of a person who appears to be mentally ill and displays an inability to meet basic living needs, even when no recent dangerous act has been observed. The City concurs with OMH on this interpretation of the law. If the circumstances support an objectively reasonable basis to conclude that the person appears to have a mental illness and cannot support their basic human needs to an extent that causes them harm, they may be removed for an evaluation. Case law does not provide extensive guidance regarding removals for mental health evaluations based on short interactions in the field. But it does suggest that the following circumstances could be reasonable indicia of an inability to support basic needs due to mental illness that poses harm to the individual: serious untreated physical injury, unawareness or delusional misapprehension of surroundings, or unawareness or delusional misapprehension of physical condition or health.

Agency Responsibilities:

DOHMH:

- Designate individuals authorized to issue orders under Section 9.58
 - Conduct Section 9.58 training for clinicians (part of outreach team in the community)
 - Issue Section 9.58 ID cards to Section 9.58 Designated Clinicians (every 2 years)
 - Communicate Section 9.58 process to existing Section 9.58 Designated Clinicians
- Design, deliver, and update Section 9.58 training for participating agencies

AS OF 11/28/2022**9.58 Designated Clinicians:**

Once it has been determined by the Section 9.58 Designated Clinician that transport to an ER is necessary:

- Exhaust all voluntary transportation options, if feasible
 - Communicate to the individual to give them an option to voluntarily go to the hospital when appropriate
- If peace officer or police officer is on scene:
 - Assess the client and clearly communicate intention around Section 9.58 to peace officer or police officer
 - Fill out and produce required documents
 - Carry and show Section 9.58 ID card and letter from DOHMH to peace officer or police officer and FDNY EMS when ordering a Section 9.58 removal
 - Assessment for Hospital Triage (option to use OMH form)
 - OMH 482 Form – authorization for transport (includes EMT and precinct responding)
 - Provide peace officer or police officer with requested documentation.
 - Allow peace officer or police officer to digitally capture an image of the ID card, OMH 482 form, as well as any other associated documentation.
 - Peace officer or police officer will request EMS
- If peace officer or police officer is not on scene:
 - Call 911 to request that NYPD assist with an involuntary removal
 - Give information about whether patient is violent and/or will likely need assistance getting into an ambulance. Clearly identify yourself as a mobile crisis team or mental health professional
- Follow the individual to the hospital and give assessment to the ER triage nurse
 - Call ahead to the hospital, when possible, to inform the hospital that a person is being brought in pursuant to Section 9.58
 - Be onsite when, or shortly after, the ambulance gets to the ER
 - Provide assessment of client to the hospital and provide a copy of the OMH form to the hospital staff to be included in the patient's chart

Peace Officers or Police Officers:**For MHY § 9.58**

- Ask to see Section 9.58 ID and form from Section 9.58 Designated Clinician
- Digitally capture an image of the ID card, OMH 482 form, as well as any other associated documentation.
- When a removal is determined to be required by the Section 9.58 Designated Clinician, the peace officer or police officer must ensure that the individual is transported to the hospital, even if the officer disagrees about the need for involuntary transport
- Peace officer or police officer will request EMS and ensure that the individual stays on scene.
- Escort the individual to the hospital, ensuring that an officer rides in the back of the transport vehicle
 - Once the individual has been removed to a hospital for evaluation and has been registered by the hospital as a patient, the peace officer or police officer presence is no longer required
- Complete Aided Report

AS OF 11/28/2022**For MHY § 9.41**

- Request EMS, if not on scene or already called, to effectuate transport to hospital
- Ensure that the individual stays on scene.
- Escort the individual to the hospital, ensuring that an officer rides in the back of the transport vehicle
 - o Provide the context of the removal to the hospital
 - o Once the individual has been removed to a hospital for evaluation and registered by the hospital as a patient, the peace officer or police officer presence is no longer required
- Complete Aided Report

Agency (NYPD, NYC Sheriff, MTAPD, etc)

- Update appropriate policies and procedures and Training Guide
- Facilitate training for peace officer or police officers

FDNY/EMS:**For All Involuntary Removals****EMT/ Paramedic**

- Transport the individual to the closest appropriate hospital
- Perform EMS assessment and treatment per protocols
- Remain with patient until they have been registered by the hospital as a patient
- Clearly inform Section 9.58 Designated Clinician and peace officer or police officer what hospital patient is being transported to
- Document the removal pursuant to Section 9.58 in ePCR

Agency

- Update policies and procedures
- Facilitate training for all 911 EMS Providers (FDNY and Voluntary)

Receiving Hospital:**For All Involuntary Removals**

- Designate 24/7 point of contact(s) for involuntary removals for evaluation for psychiatric admission)
 - Receive information in a timely manner from Section 9.58 Designated Clinicians and for Section 9.41 removals, peace officers or police officers
- Receive and take responsibility for the individual in the hospital
- Assess the patient and obtain collateral information
- Complete a comprehensive psychiatric evaluation for the removed individual
- Provide an involuntary removal point of contact to liaise with teams conducting removals

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Process:

While the processes might be different for each type of involuntary removal, there are core conditions that must be in place for a removal to happen. First, a determination needs to be made that the individual must be removed. Second, the peace officer or police officer will ensure that the individual stays on scene. Lastly, EMS must take the individual to the hospital.

MHY § 9.41 (*Emergency assessment for immediate observation, care, and treatment; powers of certain peace officers and police officers*):

- 1) Individual observed as meeting Section 9.41 criteria by peace officer or police officer
- 2) Peace officer or police officer may request EMS transport (NYPD must request EMS transport), if psychiatrically required or if transport is needed, and ensure that the individual stays on scene until EMS arrives
 - a. Peace office or police officer, except NYPD, may transport the individual if the situation calls for an immediate removal, such as if the individual is in a degree of danger to self or others that waiting for EMS may increase that risk of danger
- 3) **WHEN EMS IS CALLED:** EMS, with peace officer or police officer assistance, transports the individual to the nearest appropriate hospital
 - a. Peace officer or police officer must ride with patient in the back of ambulance to facilitate the transport
- 4) Peace officer or police officer, with EMS assistance, transfers individual to the care of the nearest appropriate Emergency Department and provides details of the involuntary removal
 - a. Once removed to an Emergency Department for evaluation and the individual has been registered by the hospital as a patient, the peace officer or police officer presence is no longer required
- 5) Hospital evaluates individual for admission to the hospital

MHY § 9.58 (*Transport for evaluation; powers of approved mobile crisis outreach teams*):

- 1) Section 9.58 Designated Clinician determines that an observed individual needs to be transported to a hospital
 - a. Section 9.58 Designated Clinician exhausts voluntary options with the patient
 - b. Clinician evaluates individual and determines whether they meet removal criteria
- 2) **IF PEACE OFFICER/POLICE OFFICER IS ON-SCENE:** Section 9.58 Designated Clinician informs peace officer or police officer that the individual meets Section 9.58 criteria
 - a. 9.58 Designated Clinician shows Section 9.58 ID card and provides Peace officer or police officer/EMS with OMH 482 Form
 - b. Peace officer or police officer will request EMS transport and ensure that the individual stays on scene
 - i. Peace office or police officer, except NYPD, may transport the individual if the situation calls for an immediate removal, such as if the individual is in a degree of danger to self or others that waiting for EMS may increase that risk of danger
- 2) **IF PEACE OFFICER/POLICE OFFICER IS NOT ON-SCENE:** Clinician calls 911 to request NYPD to assist with an involuntary removal
 - a. Clinician shows Section 9.58 ID card and provides NYPD/EMS with OMH 482 Form
 - b. NYPD arrives and will request EMS for transport, if not already en route, and ensure that the individual stays on scene

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- 3) **WHEN EMS IS CALLED:** EMS, with peace officer or police officer assistance, transports the individual to the nearest appropriate Emergency Department
 - a. Peace officer or police officer must ride with patient in the back of ambulance to facilitate the transport
 - b. EMS will consider, within EMS policy, the Section 9.58 Designated Clinician's guidance on which hospital to transport to
- 4) Peace officer or police officer, with EMS assistance, transfers client to the care of the hospital
- 5) Section 9.58 Designated Clinician follows the individual to the hospital and provides their assessment to the hospital
 - a. Once removed to an emergency department for evaluation and the individual has been registered by the hospital as a patient, the peace officer or police officer and the Section 9.58 Designated Clinician presence are no longer required
- 6) Hospital evaluates individual for admission to the hospital

From: donotreply@records.nyc.gov
To: [Beth Haroules](#)
Subject: [OpenRecords] Request FOIL-2022-056-22971 Acknowledged
Date: Thursday, December 15, 2022 11:58:31 AM

The New York City Police Department (NYPD) has **acknowledged** your FOIL request [FOIL-2022-056-22971](#).

You can expect a response on or about Monday, May 1, 2023.

Additional Information:

Your request has been assigned to Police Officer Lao (646-610-6430).

Note: Due to issues caused by the COVID-19 pandemic there may be extensive delays, lasting up to one year, in determining your request.

Please visit [FOIL-2022-056-22971](#) to view additional information and take any necessary action.