

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

In the Matter of,

NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

-against-

NEW YORK CITY POLICE DEPARTMENT,

Respondent.

Index No.

VERIFIED PETITION

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

PRELIMINARY STATEMENT

1. This Article 78 action seeks to vindicate the public’s right to essential information about the New York City Police Department’s encounters with New Yorkers through vehicle stops. It comes months after the NYCLU filed a lawsuit that sought identical vehicle stop data from the NYPD for the first half of 2022. Weeks after the NYCLU filed that lawsuit—arising, as here, out of the NYPD’s long FOIL response delays—the NYPD produced the requested records.

2. Vehicle stops are a central way that law enforcement interacts with the public. Across the country, Black and Latinx people are disproportionately stopped, searched, and arrested as a result of vehicle encounters—too often with fatal consequences.

3. This lawsuit arises out of the NYPD’s unreasonable delay in producing a database it maintains of details of the nearly 320,000 stops it conducted in the second half of 2022 and the hundreds of thousands of stops it has already conducted this year.

4. Pursuant to a mandate from the New York City Council, the NYPD last year started to produce for the first time quarterly reports about its vehicles stops. The NYCLU submitted a June

2022 FOIL request to the department for the information underlying these reports. After the NYCLU was forced to bring a lawsuit challenging the NYPD's constructive denial of that request, the NYPD produced the data sought.

5. In the course of that lawsuit, the NYCLU attempted to resolve the issue of how and when the NYPD would produce updated data, particularly since the NYPD's unreasonable delays led to the lawsuit's limited focus on year-old data. However, the NYPD refused to consider any negotiated schedule, refused to provide any estimate for further productions, and instructed the NYCLU to file a new FOIL request.

6. On June 6, 2023, the NYCLU promptly submitted the FOIL request at issue here for the exact same electronic spreadsheets, updated with more recent data. The NYPD replied with an estimated response date of "on or around October 23, 2023."

7. Because the NYPD has already identified, compiled, and produced the datasets requested here, its almost-five-month proposed delay is plainly unreasonable and constitutes a constructive denial of the NYCLU's latest FOIL request.

8. Having exhausted administrative remedies, the NYCLU now seeks judicial relief to require the NYPD to produce records responsive to its request by a reasonable date. The NYCLU also seeks an award of attorneys' fees and costs.

VENUE

9. Pursuant to CPLR 7804(b) and 506(b), venue in this proceeding lies in New York County, in the judicial district in which the respondent took the action challenged here and where the office of the respondent is located.

PARTIES

10. The petitioner, the New York Civil Liberties Union ("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 over seventy years, the

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

11. The respondent, the NYPD, is a public agency subject to the requirements of the Freedom of Information Law, New York Public Officers Law § 84 *et seq.*

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Racial Bias in Vehicle Stops

12. The NYPD stops hundreds of thousands of vehicles each year. According to the quarterly vehicle encounter reports published on the NYPD's website, in 2022 alone the NYPD made 673,000 vehicle stops.¹ This number nearly matches the number of pedestrians subject to the NYPD's "stop-and-frisk" policy in 2011 at the height of its prevalence and just prior to it being drastically curtailed pursuant to court order. (*Stop-and-Frisk Data*, NYCLU, available at <https://www.nyclu.org/en/stop-and-frisk-data> [last accessed July 5, 2023].)

13. The racial disparities in the occurrence and outcomes of these vehicle stops are stark. In 2022, of stops that reported the race of the civilian, 59 percent of civilians stopped were Black and Latinx, 90 percent of civilians searched during a vehicle stop were Black and Latinx, and 88 percent of civilians arrested because of a vehicle stop were Black and Latinx.² Black and Latinx people only make up 50 percent of the NYC population.³ Yet Black people, alone, make up about half of all vehicle searches and arrests that result from a vehicle stop, while Black people make up only 21 percent of the NYC population and 24 percent of the NYC population that commutes

¹ *Vehicle Reporting*, New York City Police Department, available at <https://www.nyc.gov/site/nypd/stats/reports-analysis/vehicle-stop-reports.page> [last accessed July 5, 2023].

² *Id.*

³ NYC population by race according to the US Census Bureau American Community Survey Table B03002: <https://data.census.gov/table?q=B03002:+HISPANIC+OR+LATINO+ORIGIN+BY+RACE&g=1600000US3651000&tid=ACSDT5Y2021.B03002>.

by car.⁴

14. The NYPD did not start reporting summary data on vehicle stops voluntarily. The NYPD was required to do so by a 2021 amendment to Local Law 45, which mandates the NYPD to publish a variety of statistics about vehicle stops on a quarterly basis starting in 2022. The statistics that the NYPD must report include the number of summonses issued, arrests made, vehicles seized, related use-of-force incidents, vehicles searched, and whether consent was provided, all “disaggregated by precinct, race/ethnicity, and age of the driver” (Local Law No. 2021/045 of New York City). The NYPD publishes quarterly reports with summary data on vehicles stops on its website.⁵

15. The first complete year of statistics about vehicle stops that were published by the NYPD—even in this summary form—has garnered a large amount of public interest. The magnitude of vehicle encounters and the racial disparities in vehicle enforcement has been covered by numerous news outlets including Gothamist, the New York Daily News, CBS News, News 12 Brooklyn, NY1, and Buffalo News, among others.⁶

⁴ *Id.*; <https://www.nyc.gov/site/nypd/stats/reports-analysis/vehicle-stop-reports.page>; NYC commuters by race according to the US Census Bureau American Community Survey 2016-2020 Table B08006: <https://data.census.gov/table?q=B08006&g=1600000US3651000&tid=ACSDT5Y2020.B08006>.

⁵ *Vehicle Reporting*, New York City Police Department, available at <https://www.nyc.gov/site/nypd/stats/reports-analysis/vehicle-stop-reports.page> [last accessed July 5, 2023].

⁶ Samantha Max, *About 90% of drivers searched or arrested by the NYPD in 2022 were Black or Latino*, Gothamist, Feb. 23, 2023, available at <https://gothamist.com/news/about-90-of-drivers-searched-or-arrested-by-the-nypd-in-2022-were-black-or-latino> [last accessed July 5, 2023]; *Over Pulling Over: NYPD vehicle stop data raises concerns*, New York Daily News, Feb. 26, 2023, available at <https://www.nydailynews.com/opinion/ny-edit-criminal-justice-policing-reform-statistics-cops-government-20230226-muav34i6izfhdkclwwohc7p5km-story.html> [last accessed July 5, 2023]; Christina Fan, *NYPD: More than 670,000 pulled over in 2022, with vast majority arrested and searched people of color*, CBS News New York, Feb. 23, 2023, available at <https://www.cbsnews.com/newyork/news/nypd-traffic-stops-racial-disparity/?intcid=CNM-00-10abd1h> [last accessed July 5, 2022]; *NYPD releases car stop data for first time, showing racial*

16. However, the summary information that is published by the NYPD is only a preview of the underlying information that the NYPD collects.

17. After obtaining access to the underlying information from the first half of 2022, the petitioner is requesting the year's worth of information that the NYPD has collected since then.

The NYCLU's Prior Efforts to Provide Transparency to Police Encounters

18. The NYCLU has been a leader in advocating for data transparency in police encounters for decades. As the NYPD's stop-and-frisk program expanded dramatically during the mayoralty of Michael Bloomberg, the NYCLU used New York's Freedom of Information Law to obtain and regularly report to the public information about NYPD pedestrian stops. (*Stop-and-Frisk in the De Blasio Era* (2019), NYCLU, Mar. 14, 2019, available at <https://www.nyclu.org/en/publications/stop-and-frisk-de-blasio-era-2019> [last accessed July 5, 2023].) The NYCLU expanded its reporting on pedestrian stops when it successfully sued to obtain the database the NYPD was compiling with the details of each stop. (*Id.*) Using information from the database, the NYCLU in May 2012 released a report analyzing NYPD stop-and-frisk activity in 2011 with a level of detail never before available to the public. (*Id.*)

19. Also in 2012—based in part on an analysis of the same data discussed above—the NYCLU, The Bronx Defenders, LatinoJustice PRLDEF and civil rights attorney Chris Fabricant filed a federal lawsuit challenging aspects of the stop-and-frisk program, including its racially-biased application. (*Ligon v City of New York*, 925 F Supp 2d 478 [SD NY 2013, No. 12 CIV 2274].)

disparity in traffic stops, News 12 Brooklyn, Feb. 21, 2023, available at <https://brooklyn.news12.com/nypd-releases-car-stop-data-for-first-time-showing-racial-disparity-in-traffic-stops> [last accessed July 5, 2023]; Rebecca Greenberg, *Report: 88% of drivers arrested by the NYPD during traffic stops in 2022 were Black or Latino*, NY1, Feb. 21, 2023, available at <https://www.ny1.com/nyc/all-boroughs/public-safety/2023/02/22/report--88--of-drivers-arrested-by-the-nypd-during-traffic-stops-in-2022-were-black-or-latino> [last accessed July 5, 2023]; *NYPD releases car stop data for first time; Black drivers were stopped the most*, Buffalo News, February 21, 2023, available at https://buffalonews.com/news/national/nypd-releases-car-stop-data-for-first-time-black-drivers-were-stopped-the-most/video_4a4549ac-361f-5bb5-9b75-2bbf89d8583b.html [last accessed July 5, 2023].

That case, along with several related cases, resulted in a series of federal judgments declaring the NYPD's racially biased stop-and-frisk practices unconstitutional and ordering major reforms. (*Floyd v City of New York*, 959 F Supp 2d 540 [SD NY 2013]; see also *Settlement Will End Unconstitutional NYPD Stops, Frisks and Arrests in Clean Hall Buildings*, NYCLU, Feb. 2, 2017, available at <https://www.nyclu.org/en/press-releases/settlement-will-end-unconstitutional-nypd-stops-frisks-and-arrests-clean-halls> [last accessed July 5, 2023].)

20. The NYPD now publishes an annual database of pedestrian stops on its website.⁷ But despite ostensibly collecting similar data for vehicle stops, the NYPD has not shared this information. Much like before the NYCLU obtained the database of pedestrian stop-and-frisks a decade ago, granular details about vehicle stops remain hidden from the public. The FOIL request at issue in this petition attempts to obtain a more complete dataset of information related to vehicle stops, so that this important information about NYPD-civilian encounters can be made available to the public.

Background of the Previous Litigation and the Instant Petition

21. On June 2, 2022, the NYCLU submitted a FOIL request seeking disaggregated, incident-level data of NYPD vehicle encounters collected by the police department pursuant to the 2021 Amendment to New York City Local Law 45 (Chikezie Affirmation ¶ 3).

22. The NYPD acknowledged this request by stating it would respond on October 19, 2022, and the department later extended its response date to December 19, 2022 (*Id.*).

23. The NYPD then missed its own extended, self-imposed deadline and provided no further response or update to the NYCLU, forcing the NYCLU to sue over the NYPD's constructive denial of the request on March 23, 2023 (*Id.*; see also *NYCLU v. NYPD*, No. 152726/2023 [Sup Ct, NY County]).

⁷ *Stop, Question and Frisk Data*, New York City Police Department, available at <https://www.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page> [last accessed July 5, 2023].

24. In response to that litigation, the NYPD never claimed that the requested material was exempt from FOIL. To the contrary, after the NYCLU filed suit, the NYPD quickly agreed to a production schedule and produced two electronic spreadsheets containing the requested data for Quarters 1 and 2 of 2022—the only data that existed at the time of the NYCLU’s original June 2022 FOIL request (Chikezie Affirmation ¶ 4).

25. Because the NYCLU anticipates making regular future requests for updated data and was prejudiced by the long delay between the June 2022 FOIL request and the resolution of the first litigation, the NYCLU sought to negotiate a production schedule for existing data and future requests as part of the resolution of that litigation (*Id.* ¶ 5).

26. The NYPD refused to consider these proposals, instead instructing the NYCLU to file a new FOIL request. The NYCLU promptly did so, and that request is at issue here (*Id.*).

27. The NYCLU’s June 6, 2023 FOIL request sought the same disaggregated, incident-level data of NYPD vehicle encounters collected by the police department pursuant to the 2021 Amendment to New York City Local Law 45 and shared with the NYCLU pursuant to its earlier FOIL request and subsequent lawsuit (*Id.*, Exhibit A, NYCLU June 6, 2023 FOIL Request).

28. Specifically, the NYCLU seeks: 1) a version of the spreadsheet produced on May 2, 2023, in response to FOIL Request No. #2022-056-09618 and the lawsuit *NYCLU v NYPD*, with the data for the third and fourth quarters of 2022 and the first and second quarters of 2023; and 2) a version of the supplemental spreadsheet produced on May 23, 2023, in response to FOIL Request No. #2022-056-09618 and the lawsuit *NYCLU v NYPD*, with the data for those same time periods. (*Id.*)

29. On June 8, 2023, the NYPD responded to the request informing the NYCLU that it could “expect a response on or about Monday, October 23, 2023” (*Id.*, Exhibit B, NYPD Acknowledgment Email dated June 8, 2023).

30. The NYCLU administratively appealed the NYPD's constructive denial of the request (*Id.*, Exhibit C, NYCLU Administrative Appeal dated June 9, 2023). The NYCLU argued that the date was not reasonable under the circumstances of the request because the request "is sufficiently narrowed to a single electronic dataset that the NYPD maintains—a dataset the NYPD *has already compiled and produced* for a separate time period in response to a previous FOIL request and litigation" and because "the dataset and the quarterly summaries that the NYPD publishes on its website are mandated by statute (the 2021 Amendment to New York City Local Law 45)" (*Id.* [emphasis in original]).

31. On June 9, 2023, the NYPD constructively denied the administrative appeal, ignoring the NYCLU's arguments regarding the reasonableness of the NYPD's proposed response date and stating that the "appeal is premature because, as of the date of your appeal, the Records Access Officer (RAO) had not yet issued a determination on your request, and, therefore, your appeal lacked the predicate denial of access" (*Id.*, Exhibit D, NYPD June 9, 2023 Response to the NYCLU's Administrative Appeal). This delay appears characteristic of the NYPD's standard practice of dramatic delays in responding to FOIL requests, a vast and growing problem affecting thousands of FOIL requestors around the city.⁸

32. Having exhausted administrative remedies, the NYCLU now files its Verified Petition pursuant to Article 78 of New York's Civil Practice Law and Rules seeking the prompt production of responsive records as well as attorneys' fees and costs.

CAUSES OF ACTION UNDER ARTICLE 78

33. The petitioner repeats and realleges paragraphs 1–32 hereof as if fully set forth herein.

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

⁸See Samantha Max, *Lawsuit: NYPD routinely delays requests for public records*, Gothamist, Mar. 23, 2023, available at <https://gothamist.com/news/lawsuit-nypd-routinely-delays-requests-for-public-records> [last accessed July 3, 2023].

requests.

35. The petitioner has a clear right to production of the records responsive to the June 6, 2023 FOIL request.

36. There is no basis in law or fact for the respondent to fail to respond to the request or the administrative appeals.

37. The respondent's obligation under FOIL to respond to a FOIL request, respond to a FOIL administrative appeal, and produce responsive documents is mandatory.

38. The petitioner exhausted administrative remedies.

39. The petitioner has no other remedy at law.

40. The petition is timely under CPLR § 217.

REQUESTED RELIEF

WHEREFORE, the petitioner seeks judgment:

- (1) Pursuant to CPLR § 7806, directing the respondent to comply with their duty under FOIL and disclose the records sought by the petitioner in the FOIL request dated June 6, 2023;
- (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: July 6, 2023
New York, New York

Respectfully Submitted,

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION

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