

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.

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

**PETITIONER’S MEMORANDUM OF LAW IN SUPPORT OF THE VERIFIED
PETITION**

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PRELIMINARY STATEMENT

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 2022.¹ 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.

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. 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.

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. 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.

¹ On March 23, 2023, the NYCLU brought an Article 78 action challenging the NYPD’s constructive denial of the NYCLU’s June 2, 2022 FOIL request for the department’s vehicle stop data for the first half of 2022 (*see NYCLU v NYPD*, No. 152726/2023). On May 23, 2023, the NYPD completed production of the requested electronic database.

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.” 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.

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.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Racial Bias in Vehicle Stops

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.² 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].)

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

² *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].

percent of civilians arrested because of a vehicle stop were Black and Latinx.³ Black and Latinx people only make up 50 percent of the NYC population.⁴ 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 by car.⁵

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.⁶

³ *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].

⁴ 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>.

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

⁶ *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].

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.⁷

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

B. The NYCLU's Prior Efforts to Provide Transparency on Police Encounters

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

⁷ 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-muav34i6izfhdcklwwohc7p5km-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, 2023]; *NYPD releases car stop data for first time, showing racial 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].

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.*)

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].) 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].)

The NYPD now publishes an annual database of pedestrian stops on its website.⁸ But despite collecting similar data for vehicle stops, the NYPD has not shared much of this information, namely the data it has collected over the past year. Much like before the NYCLU obtained the database of pedestrian stop-and-frisks a decade ago, granular details about vehicle

⁸ *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].

stops remain hidden from the public. The FOIL request at issue in this petition attempts to obtain a more complete, recent dataset of information related to vehicle stops, so that this important information about NYPD-civilian encounters can be made available to the public.

C. Background of the Previous Litigation and the Instant Petition

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). 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.*). 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]).

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).

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

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). 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.*)

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). 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].) On June 9, 2023, the NYPD constructively denied the administrative appeal, ignoring the NYCU'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.⁹

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.

ARGUMENT

I. THE NYPD VIOLATED FOIL BY FAILING TO PROVIDE A LAWFUL TIMEFRAME BY WHICH IT WOULD RESPOND TO PETITIONER’S REQUEST.

Under FOIL, an agency responding to a FOIL request may not ignore a request or unreasonably delay its response (*see* Public Officers Law § 89 [3] [a]). Here, the NYPD’s imposition of an unreasonable deadline by which it expects to respond to the NYCLU’s FOIL request constitutes an unwarranted denial of the NYCLU’s request and undermines the purpose of FOIL. The Court should order the NYPD to provide responsive records promptly.

A. The NYPD’s Proposed Timeframe to Respond to the NYCLU’s Request Is Unreasonable Under the Circumstances and Therefore Violates FOIL.

The NYPD failed to meet its obligations under FOIL by proposing an unreasonable timeframe by which it would respond to the NYCLU’s request. In response to a written request for records, ““an agency must either disclose the record sought, deny the request and claim a specific exemption to disclosure, or certify that it does not possess the requested document and that it could not be located after a diligent search”” (*Legal Aid Socy. v New York State Dept. of*

⁹ *See* 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]; *see also* *Steven Lee v The City of New York and New York City Police Department*, No. 154862/2023, *44 [Sup Ct, New York County] [class-action challenging the NYPD’s practice of “stonewalling FOIL requestors”].

Corr. & Community Supervision, 105 AD3d 1120, 1121 [3d Dept 2013] [quoting *Matter of Beechwood Restorative Care Ctr. v Signor*, 5 NY3d 435, 440–441 [2005]]; see also Public Officers Law § 89 [3] [a]). An agency is required to provide a statement of the approximate date, which should be reasonable under the circumstances, when the request will be granted or denied (Public Officers Law § 89 [3] [a]). “The determination of whether a period is reasonable must be made on a case by case basis taking into account the volume of documents requested, the time involved in locating the material, and the complexity of the issues involved in determining whether the materials fall within one of the exceptions to disclosure” (*Matter of Linz v NYPD*, NYLJ, Dec. 17, 2001 [Sup Ct, NY County 2001] [copy attached as Exhibit E to Chikezie Affirmation]).

State courts have held that delays of multiple months, even for voluminous records, can be unreasonable under the circumstances. In one instructive case involving a FOIL request seeking 30 categories of documents and over 11,000 responsive files, including both electronic and hard copy pages, the Third Department noted that the respondent could reasonably take three months to provide access to all of the documents. (See *Miller v New York State Dept. of Transp.*, 58 AD3d 981, 983 [3d Dept 2009]; see also *Linz*, NYLJ, Dec. 17, 2001 at *2 [rejecting as “unreasonable” the NYPD’s proposed delay of four months to respond to an extremely voluminous request for records involving every 911 call made in the City of New York over a period of three years—plus related code books and dispatch information].)

Here, the NYPD’s proposed response-by date of October 23, 2023, or nearly five months after the NYCLU’s FOIL request, is unreasonable under the circumstances. To start, the NYCLU’s request is narrowed to electronic data that the NYPD has already identified, compiled, and produced after the NYCLU was similarly forced to litigate the NYPD’s constructive denial of its June 2022 FOIL request (see Chikezie Affirmation ¶ 3). Moreover, the 2021 Amendment to New

York City Local Law 45 mandates the NYPD to collect the information sought here, underscoring that the data is readily identifiable and that the Legislature recognized the importance of collecting and sharing this information (Local Law No. 2021/045 of New York City). These circumstances illustrate the unreasonableness of the NYPD's proposed timeframe; as in *Linz*, the NYPD is not "entitled to a 'waiting period' of [over] 120 days" to provide a response (*see Linz*, NYLJ, Dec. 17, 2001 at *1).

For all these reasons, this Court should order the NYPD to produce promptly all records responsive to the request.

II. THE NYCLU IS ENTITLED TO ATTORNEYS' FEES.

The NYCLU respectfully requests an award of reasonable attorneys' fees and litigation costs. Courts are required to assess reasonable attorneys' fees and costs when the agency had "no reasonable basis for denying access" to the records in dispute and a party has "substantially prevailed" (Public Officers Law § 89 [4] [c] [ii]).

First, the NYPD had "no reasonable basis" for constructively denying the NYCLU's FOIL request, particularly since the NYPD has recently identified and produced the exact database that the NYCLU seeks here for a different time period. And on the second prong, if this Court orders the NYPD to disclose requested documents in response to this petition, or if the NYPD voluntarily provides documents after the filing of the petition, the NYCLU will have "substantially prevailed" for the purposes of this provision (*see Matter of Madeiros v New York State Educ. Dept.*, 30 NY3d 67, 79–80 [2017] [finding that the petitioner "substantially prevailed" when the respondent had made "no disclosures, redacted or otherwise, prior to petitioner's commencement of [a] CPLR article 78 proceeding"]; *Matter of Powhida v City of Albany*, 147 AD2d 236, 239 [3d Dept 1989] [finding that the petitioner substantially prevailed when it was "the initiation of this proceeding which brought about the release of the documents"]).

CONCLUSION

For the foregoing reasons, the petitioner, the NYCLU, respectfully requests that the Court order the New York City Police Department to abide by Article 6 of the New York Public Officers Law and promptly disclose the records the petitioner requested in its June 6, 2023 FOIL request.

Dated: July 6, 2023
New York, N.Y.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH 22 NYCRR §202.8-b

I hereby certify that:

This brief complies with the word count limitation of 22 NYCRR §202.8-b because the total word count, according to the word count function of Microsoft Word, the word processing program used to prepare this document, of all printed text in the body of the brief, exclusive of the caption, table of contents, table of authorities and signature block, is 3,200.

Dated: July 6, 2023
New York, N.Y.



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