

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

NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

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

v.

NEW YORK STATE POLICE,

Respondent.

INDEX NO: _____

VERIFIED PETITION

PRELIMINARY STATEMENT

1. On April 19, 2023, the New York Civil Liberties Union (the “NYCLU”) submitted a request (the “Request”) under the Freedom of Information Law (“FOIL”) for an unredacted copy of a Spreadsheet (the “Spreadsheet”) listing basic information about complaints against members of the New York State Police (“NYSP” or “Respondent”). Respondent had previously disclosed a version of the Spreadsheet, but only after redacting all officer names associated with complaints it did not substantiate. The sole dispute at issue here is whether FOIL’s unwarranted-invasion-of-personal-privacy exemption justifies this blanket redaction—it does not.

2. FOIL requires that Respondent produce the unredacted Spreadsheet because the plain text of the statute mandates the disclosure of “complaints” and “allegations” against officers, including “the name of the [officer] complained of,” regardless of whether the complaint was substantiated (*see* N.Y. Pub. Off. L. § 86[6][a]-[b]). The legislative history of the statute and court decisions across the state confirm that officer names in complaint records are presumptively subject to disclosure, regardless of the disposition of an investigation.

3. Respondent's only purported justification for its categorical redaction of officer names—the privacy exemption—fails, because it requires a much more specific showing of an unwarranted invasion of personal privacy than NYSP can identify. Here, the Spreadsheet lists only general information about officers' alleged public conduct: case numbers, categories of allegations, dispositions, and disciplinary action taken, if any. FOIL's narrow personal privacy exemption does not and cannot reach—as a blanket matter—every officer name associated with such general and non-personal information.

4. In addition, the public interest in disclosure here far outweighs any de minimis privacy interest that might be implicated. The unredacted Spreadsheet is of immense public significance because it would, for example, shed light on patterns of alleged officer misconduct and facilitate systemic analyses of NYSP's investigation practices that are hindered by the widespread redactions that currently obscure the data. For these reasons and those discussed in the corresponding memorandum of law, Respondent must produce an unredacted copy of the Spreadsheet.

VENUE

5. 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

6. Petitioner, the NYCLU, located at 125 Broad Street, 19th Floor, New York, NY 10004, 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.

7. Respondent New York State Police, located at 1220 Washington Avenue, Building 22, Albany, NY 12226, 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 and Amendment of FOIL

8. From its enactment in 1976 until its repeal, Civil Rights Law Section 50-a (“Section 50-a”) served as the greatest obstacle to transparency regarding the conduct of police officers in New York. Although Section 50-a, which generally shielded police disciplinary records from public disclosure, was intended to be applied narrowly and sparingly, it rapidly expanded in scope and application. 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” (*see* ROBERT J. FREEMAN ET AL., ANNUAL REPORT TO THE GOVERNOR AND STATE LEGISLATURE 3 (State of N.Y., Dep’t of State, Comm. On Open Gov’t, 2014)).

9. However, a consensus grew in New York that Section 50-a impeded police accountability and racial justice. Amid the nationwide reckoning following the deaths of George Floyd, Breonna Taylor, and others, the deepening societal frustration with police secrecy, and the public demand for increased transparency, the legislature enacted the #Repeal50a Bill (S8496/A10611), which was signed on June 12, 2020. The #Repeal50a Bill and corresponding amendments to FOIL made “complaints” and “allegations” against police officers subject to public disclosure, as well as “the name of the [officer] complained of” (*see* N.Y. Pub. Off. L. § 86[6][a]-

[b)].

10. The legislative history at issue confirms that officer names in complaint records are to be disclosed, regardless of disposition (*see, e.g.*, N.Y. Assembly, Floor Debate, 243rd N.Y. Leg., Reg. Sess. at 60-61 [June 9, 2020] [“Q: . . . [T]he items that will be disclosed . . . is essentially any complaint . . . [i]t makes no distinction regarding substantiated or unsubstantiated? MR. O’DONNELL: . . . [W]e don’t distinguish between those two things in this law.”], 98 [when asked whether information about “unsubstantiated cases” is “discoverable . . . the public can see it, right? MR. O’DONNELL: The public will have access to it through the FOIL process. . .”], 133 [describing the bill as “providing a form of transparency in terms of being able to get unsubstantiated claims”]). A true and correct copy of this legislative history is attached as **Exhibit A** to this petition.

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

11. The NYCLU submitted a request to Respondent on September 15, 2020 (the “Initial Request”), seeking a variety of police records—many of which had previously been shielded from the public by Section 50-a—related to NYSP’s accountability systems. A true and correct copy of this Initial Request is attached as **Exhibit B** to this petition.

12. Respondent disclosed some records responsive to the Initial Request, and on January 20, 2022, Respondent produced the redacted Spreadsheet which contains basic information regarding investigations of misconduct involving NYSP members, including case numbers, categories of allegations, dispositions, any disciplinary action taken, and officer names associated with the investigations, but with all officer names associated with complaints it did not substantiate redacted. A true and correct copy of this Spreadsheet is attached as **Exhibit C** to this petition.

13. Respondent claimed in a January 20, 2022 email that it redacted the officer names on the Spreadsheet “to prevent an unwarranted invasion of personal privacy of those concerned.” A true and correct copy of this communication is attached as **Exhibit D** to this petition.

14. On July 1, 2022, the NYCLU filed an article 78 petition seeking an order compelling disclosure of certain records sought in the Initial Request, including the unredacted Spreadsheet. A true and correct copy of this article 78 petition is attached as **Exhibit E** to this petition.

15. On April 14, 2023, the Albany County Supreme Court granted portions of the NYCLU’s petition but denied the portion “seeking an order compelling disclosure of [the] unredacted spreadsheet,” reasoning that “[t]he issue of whether the names of officers involved in ‘unsubstantiated complaints’ were properly redacted in the spreadsheet . . . is not ripe for decision,” because the NYCLU’s “request did not ask for the names of officers.” A true and correct copy of this decision, order and judgment is attached as **Exhibit F** to this petition.

C. The NYCLU Submitted the Present FOIL Request Seeking the Unredacted Spreadsheet

16. In response to the Court’s decision holding that the issue of redactions to the Spreadsheet was not ripe because an unredacted version of the spreadsheet had not been requested, on April 19, 2023, the NYCLU submitted the present Request explicitly seeking all officer names in the unredacted Spreadsheet. A true and correct copy of the Request is attached as **Exhibit G** to this petition.

17. The next day, on April 20, 2023, Respondent sent an email acknowledging receipt of the Request and noting that “[a] determination as to whether [the] request is granted or denied will be reached by or before October 12, 2023,” nearly six months later. A true and correct copy of this communication is attached as **Exhibit H** to this petition.

18. On April 28, 2023, the NYCLU submitted an administrative appeal, arguing that Respondent extending itself nearly six months to provide a basic response to the Request—which seeks a single record that is readily available to Respondent and that it has already analyzed for exempt information—“is not reasonable and constitutes a constructive denial.” A true and correct copy of this administrative appeal is attached as **Exhibit I** to this petition.

19. On May 17, 2023, Respondent denied the Request for an unredacted copy of the Spreadsheet, claiming as a blanket matter that disclosure of “the names of those public employees who were accused of misconduct, and the allegations were determined to be unfounded or unsubstantiated, would constitute an unwarranted invasion of their personal privacy.” A true and correct copy of this denial is attached as **Exhibit J** to this petition.

20. On May 25, 2023, the NYCLU appealed Respondent’s denial of the Request, noting that Respondent “cannot meet its burden to establish that the personal privacy exemption applies.” A true and correct copy of this appeal is attached as **Exhibit K** to this petition.

21. On June 8, 2023, Respondent denied the NYCLU’s administrative appeal. A true and correct copy of this denial is attached as **Exhibit L** to this petition.

22. Having filed an administrative appeal based on Respondent’s denial of the Request, and receiving Respondent’s subsequent denial of that appeal, the NYCLU has exhausted its administrative remedies and now files this article 78 petition seeking production of an unredacted copy of the Spreadsheet.

II. CAUSE OF ACTION UNDER ARTICLE 78

1. The NYCLU repeats and re-alleges paragraphs 1 through 22 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 an unredacted version of the Spreadsheet.

4. There is no basis in law or fact for Respondent to redact the names of officers on the Spreadsheet.

5. Respondent's obligation under FOIL to produce responsive information 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 June 8, 2023.

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 the unredacted Spreadsheet sought by the NYCLU in the Request;
- (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
October 5, 2023

Respectfully submitted,

By /s/Jamie L. Wine
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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.

Dated: New York, New York
October 5, 2023



Margaret Babad