

**Legal Aid Socy. v Records Access Officer
N.Y. City Police Dept.**

2023 NY Slip Op 31283(U)

April 19, 2023

Supreme Court, New York County

Docket Number: Index No. 153748/2022

Judge: Laurence L. Love

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LAURENCE L. LOVE **PART** **63M**

Justice

-----X

THE LEGAL AID SOCIETY

Petitioner,

- v -

RECORDS ACCESS OFFICER, NEW YORK CITY POLICE
DEPARTMENT,

Respondent

-----X

INDEX NO. 153748/2022

MOTION DATE 03/01/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the decision on Petitioner, The Legal Aid Society’s (“Legal Aid”) Amended Petition seeking a judgment pursuant to CPLR Article 78 directing the New York City Police Department (“NYPD”) to comply with its duty under the Freedom of Information Law (“FOIL”) to provide Petitioner with documents responsive to Petitioner’s requests that are not subject to any exemption and to specifically identify and describe any documents allegedly except from disclosure and for related relief, and to cover reasonable attorney’s fees pursuant to N.Y. CPLR §§ 7806 & 8601, and Respondent’s cross-motion seeking an order, pursuant to CPLR §§ 7804(f), 3211(a)(2), and 3211(a)(7), directing the Clerk to enter a judgment denying the petition and dismissing the proceeding on the grounds of objections in point of law that: (1) this Court lacks subject matter jurisdiction, in part, in that the instant proceeding is moot and academic; (2) that the remainder of the petition fails to state a cause of action as Petitioner’s Freedom of Information Law request is unreasonably burdensome, is as follows:

In a FOIL request dated June 9, 2021, identified as FOIL request #2021-056-08772, directed to the NYPD FOIL Office, Legal Aid requested the following:

- 1) Names, Shield/Badge Numbers, Tax Registry Numbers of all members of service with substantiated allegations by the Internal Affairs Bureau, including a description of such substantiated allegations from January 1, 2000 to the date of this request.
- 2) Internal Affairs Bureau Investigation Case Logs and Case Closing Worksheets for all substantiated allegations of use of force, sexual misconduct, and false statements for the time period of January 1, 2015 to the date of this request.
- 3) All memoranda from the Internal Affairs Bureau regarding such determinations, as specified in ¶2, of substantiated allegations of use of force, sexual misconduct, and false statements including recommended discipline and police commissioner case analysis reports and or memoranda.
- 4) All settlement agreements entered into regarding substantiated allegations, as specified in ¶2, of use of force, sexual misconduct, and false statements for the specified time period.
- 5) All memoranda, notices, and communications to NYPD regarding such substantiated allegations of use of force, sexual misconduct, and false statements, as specified in ¶2, from any other state or City agency including but not limited the Civilian Complaint Review Board, District Attorney's Offices, Department of Investigations, and Office of the Inspector General.
- 6) Any and all charges and specifications of use of force including but not limited to Deputy Commissioner of Trials documents, decisions and or memoranda, NYPD Trial outcomes and transcripts of proceedings for the specified time period.

On June 11, 2021, the NYPD acknowledged the request via email and assigned it to Police Officer Tanchajja, with an expected response on or about October 25, 2021. After receiving no response, Legal Aid appealed to the NYPD on December 16, 2021, and the request was ultimately denied on December 31, 2021. In denying Petitioner's request, Respondent stated that said request was burdensome, voluminous, and would "require extraordinary efforts that are not required under FOIL." Respondent further asserted numerous non-specific exemptions, claiming disclosure would reveal non-routine criminal investigative techniques or procedures under §87(2)(e); could endanger the life and safety of certain persons under §87(2)(f); would be exempted by state or federal statute under §87(2)(a); and would constitute an unwarranted invasion of personal privacy under §87(2)(b) and under Public Officers Law §87(2)(g).

On February 7, 2022, Petitioner submitted six FOIL requests, identified as FOIL request #2022-056-02085/2087/2090/2092/2094/2097, to the NYPD, essentially dividing their original request into reduced parts based on date ranges. In response, the NYPD denied each of these requests via six emails dated February 11, 2022. Petitioner appealed the six rejections on March 9, 2022, which Respondent denied the following day. In denying the appeal, Respondent pointed to the duplicative nature of the requests and reiterated their original arguments.

On May 2, 2022, Petitioner commenced the instant proceeding pursuant to CPLR Article 78 by filing a Request for Judicial Intervention, Notice of Petition, Verified Petition, and various supporting papers.

Subsequently, the parties continued a dialogue in an attempt to further narrow the material being sought and as a result Petitioner amended their petition on September 26, 2022, and modified their requests to the following:

- 1) Names, Shield/Badge numbers, Tax Registry Numbers of all members of service with substantiated allegations by the Internal Affairs Bureau, including a description of such substantiated allegations from January 1, 2015 to present.
- 2) IAB case logs and case closing worksheets for substantiated allegations of use of force, sexual misconduct, and false or misleading statements from January 1, 2015 to present.
- 3) Any related records of negotiated plea agreements, final disciplinary recommendations, police commissioner deviation letters, and trial room decisions for the above requested records in (2).
- 4) IAB case logs and case closing worksheets for unsubstantiated allegations of use of force, sexual misconduct, and false or misleading statements from January 1, 2018 to present.

Oral argument on the instant Petition was held on March 1, 2023, wherein Petitioner further reduced their requests and are now seeking:

- 1) IAB case logs and case closing worksheets for substantiated allegations of use of force, sexual misconduct, and false or misleading statements from January 1, 2015 to present.
- 2) Any related records of negotiated plea agreements, final disciplinary recommendations, police commissioner deviation letters, and trial room decisions for the above requested records in paragraph 1.

- 3) IAB case logs and case closing worksheets for unsubstantiated allegations of use of force, sexual misconduct, and false or misleading statements from January 1, 2018 to present.

Pursuant to Pub. Off. Law § 89(4)(b), “a person denied access to a record in an appeal determination under the provisions” governing appeals “may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules.” Pursuant to CPLR 7803(3), review is appropriate where “a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion.”

The Court notes that Respondents moving papers focus on Public Officers Law § 87(2)(b) while seeming to ignore the reality of the repeal of Civil Rights Law 50-a, the statute that previously protected law enforcement personnel records used for employee evaluations, discipline, and promotion from FOIL disclosure, which amended to allow FOIL to govern the disclosure of said personnel records.

Public Officers Law §86(6)(a), now provides law enforcement disciplinary records that must presumptively be disclosed, include "any record created in furtherance of a law enforcement disciplinary proceeding [including] complaints, allegations, and charges against an employee" *See, Buffalo Police Benevolent Assn., Inc. v Brown*, 69 Misc 3d 998, 1001 (Sup Ct, Erie County 2020). While Respondent has an interest in preserving confidentiality over some of the unsubstantiated complaints that may ultimately be produced, these interests “are counterbalanced by other important policies.” *Uniformed Fire Officers Assoc. v. De Blasio*, No. 20-2789-cv(L), 2020 WL 5640063 at 33 (2d Cir. Feb 16, 2021).

This necessitates providing public access to much more information throughout the city and state, and by extension this Court has a duty in this instance to help facilitate this.

As discussed in *Gould v. New York City Police Dep't*, 89 N.Y.2d 267 (1996) “All government records are thus presumptively open for public inspection and copying unless they fall within one of the enumerated exemptions of Public Officers Law § 87(2). To ensure maximum access to government documents, the “exemptions are to be narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption” (*Matter of Hanig v. State of New York Dept. of Motor Vehicles*, 79 N.Y.2d 106, 109, 580 N.Y.S.2d 715, 588 N.E.2d 750; *see*, Public Officers Law § 89[4][b]). As this Court has stated, “[o]nly where the material requested falls squarely within the ambit of one of these statutory exemptions may disclosure be withheld” (*Matter of Fink v. Lefkowitz*, 47 N.Y.2d 567, 571, 419 N.Y.S.2d 467, 393 N.E.2d 463).

Based upon same, Respondent cross-moves seeking an Order dismissing this action pursuant to CPLR §§ 7804(f), 3211(a)(2), and 3211(a)(7) on the grounds that the instant proceeding is moot and that the remainder of Petitioner’s request is unduly burdensome.

In arguing mootness, Respondent argues that the Court lacks subject matter jurisdiction since a final administrative decision has not been made on their part, as a portion of the documents requested by Petitioner in the instant proceedings were not explicitly requested in Petitioner’s previous FOIL requests.

One who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law. This doctrine furthers the salutary goals of relieving the courts of the burden of deciding questions entrusted to an agency, preventing premature judicial interference...and affording the agency the opportunity...to prepare a record reflective of its ‘expertise and judgment.’ *Watergate II Apts. v. Buffalo Sewer Authority*, 46 N.Y.2d 52, 57 (1978) (internal citations omitted).

The court finds the mootness argument by Respondent unavailing. Here, Petitioner did in fact exhaust administrative remedies available to them and Respondent gave a final determination

by denying Petitioner's original FOIL request via the letter dated December 31, 2021. Additionally, beyond the December 31, 2021 final determination, petitioner sought to reduce the burden on Respondent by filing six more FOIL requests on February 7, 2022, sub dividing many of the records and time periods covered. This was again subject to a final denial by Respondent on March 9, 2022. The Court cannot overlook the fact that, prior to the commencement of the instant litigation, Respondent had declined *seven* of Petitioner's requests and their respective appeals without providing Petitioner a single document. Clearly, in substance if not specific form, Petitioner has exhausted all available administrative remedies seven separate times. Petitioner also attempted to avoid judicial intervention by reducing their requested documentation and wrote to Respondents in an effort to compromise, which Respondent failed to acknowledge. It has been approximately sixteen months since Petitioner's original FOIL request appeal was dismissed by Respondent, who have maintained their position of denying all requests regardless of Petitioner's attempt to reduce such requests to cleaner and simpler subsets of materials. To reward Respondent by finding a final determination was not reached would only serve to delay the process further – it is abundantly clear that Respondents position on this matter is final. As further attempts seeking administrative remedy is futile there is no need to further waste resources of the parties or of this Court to engage further delay.

Respondent further contends that pursuant to POL Section 89(3)(a), which provides that:

[a]n agency shall not deny a request on the basis that the request is voluminous or that locating or reviewing the requested records or providing the requested copies is burdensome because the agency lacks sufficient staffing or on any other basis if the agency may engage an outside professional service to provide copying, programming or other services required to provide the copy, the costs of which the agency may recover pursuant to paragraph (c) of subdivision one of section eighty-seven of this article . . . When an agency has the ability to retrieve or extract a record or data

maintained in a computer storage system with reasonable effort, it shall be required to do so.

That providing the requested documents would be unreasonably burdensome and hiring an outside contractor is not a viable solution given the privacy concerns involved, *See Huseman v. New York City Dep't of Educ.*, 2016 N.Y. Slip. Op. 30959(U) at *14-15 (Sup. Ct. N.Y. Cnty. May 25, 2016) (citing *New York Comm. for Occupational Safety and Health v. Bloomberg*, 72 A.D.3d 153, 892 (1st Dep't 2010)). Respondent further describes Petitioner's request as 'Herculean,' in part, because their case management systems do not have the capacity to process the requisite documents, would require NYPD employees to spend a gross amount of time reviewing and redacting documents, and would ultimately produce a small forests worth of pages. It is worth noting that Respondent argues that they are unable to utilize a third-party vendor to aid in the production of documents, partially because a vendor would lack necessary familiarity with the relevant documents and database software, and partially because New York State Penal Law § 160.50 *et seq.* and New York Civil Rights Law § 50-b would prohibit them from disclosing a portion of the requested documents due to their sealed or otherwise sensitive nature. This Court will not interfere in Respondent's internal findings that the task at hand can only be performed in house, but notes that their own data bases and software programs being slow, outdated, and overly complicated is not a valid excuse for claiming over burden.

There is no doubt that it will take Respondent significant time to respond to Petitioner's request. Further, Petitioner has indicated on numerous occasions that rolling production would be a viable method of mitigating the strain on Respondent.

This Court cannot overstate the importance of Respondent recognizing the new reality created by the legislature determination to eliminate Civil rights Law 50-a. There is a clear and vital public interest in such information being made available within the confines of necessary

redactions per related legal requirements. Although sympathetic to the reality that providing such information places a tremendous burden on a Respondent, who already has numerous responsibilities, at the same time such a burden does not rise to the level wherein providing the records may be ignored. It is not overly burdensome.

As such, it is hereby Ordered that the Petition is GRANTED to the following extent.

ORDERED that Respondent shall provide the demanded documents in response to the three categories that Petitioners requested in the March 2023 oral arguments, specifically, 1) IAB case logs and case closing worksheets for substantiated allegations of use of force, sexual misconduct, and false or misleading statements from January 1, 2015 to present; 2) Any related records of negotiated plea agreements, final disciplinary recommendations, police commissioner deviation letters, and trial room decisions for the above requested records in paragraph 1; and 3) IAB case logs and case closing worksheets for unsubstantiated allegations of use of force, sexual misconduct, and false or misleading statements from January 1, 2018 to present. subject to any necessary redaction, and/or allege with specificity that each document falls within one of the enumerated exemptions of Public Officers Law § 87(2); and it is further

ORDERED that Respondent shall comply with this Order within 180 days, and may do so on a rolling basis; and it is further

ORDERED that Petitioner’s request for attorney’s fees is DENIED with leave to renew upon completion of the required production under the subject FOIL request.

4/19/2023
DATE


LAURENCE L. LOVE, J.S.C.

| | | |
|-----------------------|--|--|
| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
| | <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER |
| APPLICATION: | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE |