

**Matter of New York Civ. Liberties Union v City of  
Rochester**

2021 NY Slip Op 34252(U)

August 10, 2021

Supreme Court, Monroe County

Docket Number: Index No. E2020009879

Judge: Ann Marie Taddeo

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF MONROE

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In the Matter of the Application of

NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

v.

Index No. E2020009879  
DECISION AND ORDER

CITY OF ROCHESTER,  
ROCHESTER POLICE DEPARTMENT,

Respondents.

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Hon. Ann Marie Taddeo, J.S.C.,

Upon a Verified Petition brought pursuant to CPLR §7806, an Affirmation in Support by Joshua Ebersole, Esq., and a Memorandum of Law in Support, a Memorandum of Law in Reply and a Supplemental Memorandum of Law by Mr. Ebersole; and upon an Affirmation in Opposition by John M. Campolieto, Esq., an Affidavit in Opposition by Justin Roj, and a Memorandum of Law in Opposition by Mr. Campolieto; and upon consideration of all exhibits attached to Counsels' papers, the Court renders the following Decision:

Following the repeal of Civil Rights Law (CRL) § 50-a, Petitioner made a Freedom of Information Law (FOIL) request seeking disciplinary records from the Rochester Police Department (RPD). Respondents offered to post disciplinary records on-line once redactions allowed by Public Officers Law (POL) § 87 were made first. After several months elapsed without any meaningful response to their FOIL request, Petitioners brought the instant Article 78 action. Respondents have since provided the redacted records, but Petitioners now raise two objections to the redacted records offered:

1. Petitioner claims that the repeal of § 50-a should be applied retroactively

Specifically, Petitioner argues that Respondents should be compelled to produce RPD disciplinary records dated before June 12, 2020, the effective date of the repeal of Section 50-a. In *Brighton Patrolman Ass'n v Town of Brighton et al.*, Monroe County

Index No. I2020002814, this Court, citing *People v Roper*, 259 NY 635 (1932), held that General Construction Law §93 applies to the repeal of CRL § 50-a. “In the absence of evidence of contrary intent, such legislation is not to be given retroactive effect” and to rule otherwise “would deprive persons of substantial rights.”

Accordingly, the Court denies Petitioner’s request to rule that Respondents must provide disciplinary records dated before June 12, 2020.

2. Petitioner claims that they should be entitled to records of unfounded allegations and complaints

Petitioner argues that the repeal of § 50-a *commands* disclosure of all law enforcement disciplinary records. Respondent argues the release of unsubstantiated claims had been previously found to be prohibited by POL § 87(2) as an unwarranted invasion of privacy and that the repeal of § 50-a does not require the release of documents of legally unsubstantiated claims.

The Court, in making this Decision, must weigh the public’s right to discovery of police disciplinary records against the privacy rights of the officers involved. This Court agrees with Petitioner that the public has a right to know when charges or complaints against public servants are sustained, but the Court does not agree that *unsubstantiated* claims are discoverable. Absent compelling circumstances affecting the public interest, it would be a violation of the officers’ privacy interest to disclose such records, and this Court cannot find that the repeal of § 50-a requires disclosure of records of unsubstantiated claims against police officers.

“Certainly there is no greater public interest in fairness and justice than our own courts and legal system which should also be weighted similarly among police officers' and other public employees' right to privacy including those other exemptions to disclosure under the Public Officers Law.” *New York Civil Liberties Union v. City of Syracuse*, 72 Misc. 3d 458, 467 (Onondaga Sup. Ct. 2021). Notwithstanding the view that “FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government” [*Matter of Capital Newspapers v Whalen*, 69 NY2d 246, 252 (1987)], the Legislature has expressly exempted from mandatory disclosure are records that “if disclosed would constitute an unwarranted invasion of ... privacy.” Public Officers Law § 87 (2)(b). *See also, LaRocca v. Board of Education of Jericho Union Free School District*, 220 AD2d 424, 426 (2<sup>nd</sup> Dept 1995). “[T]he law does not require a law enforcement agency to disclose “unsubstantiated and unfounded complaints against an officer” where such agency determines that disclosure of the complaint would constitute an unwarranted invasion of personal privacy, but also does not require an agency to withhold such a record.” Committee on Open Government, FOIL Advisory opinion 19775 (2020).

Weighing the various cases in this area against the specific language of POL § 87,

the Court declines to rule that the repeal of CRL § 50-a requires records of unsubstantiated claims against police officers to be released to the public. In making this ruling, the Court determines that the public's interest in the release of the documents related to unsubstantiated documents does not outweigh the privacy concerns of individual officers.

The Court therefore orders Respondents to comply with Petitioner's FOIL request, consistent with the language of this Decision and Order. Respondents' compliance may be achieved by posting of said redacted records on a publicly available website or other electronic media.

Accordingly, it is

ORDERED, that, consistent with this Decision, the Petition is granted; it is further

ORDERED, that, within thirty (30) days of the entry of this Order, Respondents shall provide to Petitioner, all properly redacted records of police disciplinary proceedings conducted after June 12, 2020; it is further

ORDERED, that Respondents shall not provide police disciplinary records containing unsubstantiated claims or complaints; it is further

ORDERED, that Petitioner's request for attorneys' fees and costs is denied.

Dated: August 10, 2021  
Rochester, New York

  
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Hon. Ann Marie Taddeo, J.S.C.