

<b>Rickner PLLC v City of New York</b>
2022 NY Slip Op 31694(U)
May 25, 2022
Supreme Court, New York County
Docket Number: Index No. 157876/2021
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. WILLIAM PERRY PART 23**

*Justice*

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RICKNER PLLC,	INDEX NO. <u>157876/2021</u>
Petitioner,	MOTION DATE <u>12/01/2021</u>
	MOTION SEQ. NO. <u>001</u>

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT

**DECISION + ORDER ON MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

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

In this Article 78 proceeding, Petitioner Rickner PLLC seeks an order directing the City of New York and the New York City Police Department (“NYPD”) to produce Internal Affairs Bureau (“IAB”) records pertaining to the arrest of David A. Campbell on January 20, 2018. Respondents oppose the petition and cross-move to dismiss.

**Background**

On December 16, 2020, pursuant to the Freedom of Information Law (“FOIL”), Petitioner requested from the NYPD:

any records relating in any way to the arrest of David A. Campbell on January 20, 2018 at approximately 10:20 p.m., the investigation that led to that arrest, and the subsequent prosecution in the case *The People of the State of New York v. David Campbell*, including but not limited to all audio and video, all body worn camera video, all arrest reports, all documents relating to the investigation of the underlying crime, all witness statements, and investigation reports, all forensic records, all documents relating to any injuries sustained by the arrestee, all documents related to any force used, and all documents relating to any injuries to any officers related to the arrest.

(NYSCEF Doc No. 1, Petition, at ¶ 13.)

On April 20, 2021, NYPD closed the request and stated that it was “unable to locate records responsive to your request based on the information you provided.” (NYSCEF Doc No. 4.) Petitioner appealed the denial and provided further information via email on the same date. (NYSCEF Doc No. 5.)

NYPD responded the next day, on April 21, 2021, providing “two (2) Complaint Reports, two (2) Aided Reports, one (1) SPRINT Report, one (1) Threat, Resistance or Injury Worksheet with Supervisor Assessment, and two (2) Arrest Reports.” (NYSCEF Doc No. 6.) However, pursuant to Public Officers Law (“POL”) § 87, NYPD noted that it was withholding an IAB record because disclosure:

- (1.) would constitute an unwarranted invasion of personal privacy [§87(2)(b)];
- (2.) could endanger the life or safety of the officer and other named parties [§87(2)(f)]; and,
- (3.) would reveal non-routine criminal investigative techniques or procedures [§87(2)(e)(iv)].

(NYSCEF Doc No. 6 at 2.)

Petitioner commenced this Article 78 proceeding on August 23, 2021 challenging the denial, on the basis that the June 12, 2020 repeal of Civil Rights Law (“CRL”) § 50-a (“Personnel records of police officers, firefighters and correction officers”) signaled the Legislature’s intent of making law enforcement disciplinary records fully available. (Petition at ¶¶ 24-31.) Petitioner argues that NYPD has failed to establish specific entitlement to a FOIL exemption and that any personal privacy concerns could be resolved through redaction. (*Id.*)

In opposition, Respondents argue that the IAB record at issue in this case “discuss[es] an internal investigation about allegations against an NYPD officer that have never been substantiated.” (NYSCEF Doc No. 13, Opposition, at ¶ 22.) In support, Respondents cite to

caselaw holding that, even after the repeal of CRL § 50-a, “the public interest in the release of unsubstantiated claims do not outweigh the privacy concerns of individual officers.’ See *New York Civil Liberties Union v City of Syracuse*, 72 Misc 3d 458, 467 [Sup Ct, Onondaga County, May 5, 2021].” (*Id.* at ¶ 19.)

### **Discussion**

The policy underlying FOIL “is to promote open government and public accountability by imposing upon governmental agencies a broad duty to make their records available to the public.” (*Matter of Johnson v New York City Police Dept.*, 257 AD2d 343, 346 [1st Dept 1999]; see also *Matter of Abdur-Rashid v New York City Police Dept.*, 31 NY3d 217, 224-25 [2018] [“The statute is based on the policy that the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government”].)

It is well settled that all records of a public agency, including police records, are presumptively open for public inspection and copying, and that the burden rests at all times on the government agency to justify any denial of access to records requested under FOIL. (See *New York State Rifle and Pistol Assoc. v Kelly*, 55 AD3d 222, 224 [1st Dept 2008]; *New York Civil Liberties Union v New York City Police Dept.*, 20 Misc3d 1108[A] [Sup Ct, NY County 2008] see also *Gould v New York City Police Dept.*, 89 NY2d 267, 274 [1996] [FOIL was enacted “[t]o promote open government and public accountability”].)

As set forth in the statute, FOIL involves a three-step process. After an agency initially receives a FOIL request, it must release the records or deny the request in writing. (POL § 89 [3] [a].) There is no requirement to specify the reasons for the denial. In the second step, upon receiving an appeal of an initial denial, the designated person in the agency must “fully explain in writing to the person requesting the record the reasons for further denial or provide access to the

record sought.” (POL § 89 [4] [a].) If the appeal is denied, the last step is the article 78 proceeding. “In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.” (POL § 89 [4] [b].)

In furtherance of FOIL's legislative policy favoring disclosure, “[e]xemptions are to be narrowly construed to provide maximum access, and the agency seeking to prevent disclosure carries the burden of demonstrating that the requested material falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access.” (*Matter of Capital Newspapers Div. of Hearst Corp. v Burns*, 67 NY2d 562, 566 [1986].)

Here, NYPD has not met its burden to demonstrate that the requested material falls squarely within the exemptions relied on to justify withholding the records sought. As such, the court finds the IAB records at issue are subject to disclosure in furtherance of FOIL's underlying policy aims of promoting public inspection and governmental transparency.<sup>1</sup> “[I]f the legislature's intent was to shield unsubstantiated [disciplinary] records it could have specified as such.” (*New York Civil Liberties Union v New York City Dept. of Correction*, 2022 WL 1156208, at \*2 [Sup Ct, NY County, Apr. 19, 2022].) The court notes that Public Officers Law §§ 87[4-a] and [4-b] specifically direct law enforcement agencies to redact certain personal information in responding to requests for law enforcement disciplinary records. Moreover, Petitioner does not object to the redaction of personal information from the records as the statute explicitly requires that such personal information not be disclosed to the public.

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<sup>1</sup> This court notes that following the repeal of CRL § 50-a, other trial courts reviewing this issue have concluded that such records are not subject to disclosure. (*Compare Gannett Co. v Herkimer Police Dept.*, 2022 WL 1281365, at \*3 [Sup Ct, Oneida County, Apr. 28, 2022]; *New York Civil Liberties Union v City of Syracuse*, 72 Misc 3d at 467; with *Puig v City of Middletown*, 71 Misc 3d 1098, 1108 [Sup Ct, Orange County, Apr. 7, 2021]; *Schenectady Police Benevolent Assn. v City of Schenectady*, 2020 WL 7978093, at \*6 [Sup Ct, Schenectady County, Dec. 29, 2020].)

NYPD’s alternative grounds for withholding the IAB records (that disclosure could endanger the life or safety of an officer and would reveal investigative techniques) are entirely conclusory and do not establish entitlement to a FOIL exemption. (See *Loevy & Loevy v NYPD*; 38 Misc 3d 950, 954-55 [Sup Ct, NY County 2013].)

However, “[a]s the 2020 amendment is new to the law and the [Respondents have] shown a good faith basis in their belief that the disclosure sought by petitioner is not warranted, the Court declines to award attorney's fees in this matter.” (*New York Civil Liberties Union*, 2022 WL 1156208 at \*2.) Thus, it is hereby

ORDERED and ADJUDGED that the Petition is granted, and Respondents shall produce the relevant Internal Affairs Bureau records to Petitioner within 30 days of service of a copy of this order with notice of entry; and it is further

ORDERED that Respondents shall redact the relevant portions of the Internal Affairs Bureau records in compliance with the above cited statutory provisions; and it is further

ORDERED that Petitioner’s request for attorneys’ fees is denied; and it is further

ORDERED that the cross-motion to dismiss is denied; and it is further

ORDERED that Petitioner shall serve a copy of this order with notice of entry upon all parties.

5/25/2022  
DATE

  
WILLIAM PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE