

R.C. v City of New York

2023 NY Slip Op 34008(U)

March 29, 2023

Supreme Court, New York County

Docket Number: 153739/2018

Judge: Lyle E. Frank

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

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R.C., J.J., and A.G., suing under pseudonyms, on
behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

THE CITY OF NEW YORK and JAMES P.
O'NEILL,¹ New York City Police Department
Commissioner, in his official capacity,

Defendants.
-----x

Index No. 153739/2018
IAS Part 11
(Frank, J.)

ORDER

¹ By Stipulation and Proposed Order dated June 14, 2022 (NYSCEF No. 220), the parties stipulated to substitute New York City Police Department Commissioner Keechant L. Sewell for former Commissioner O'Neill, but the Court has not yet endorsed the proposed Order.

WHEREAS, New York law provides that when a criminal proceeding results in a favorable termination or a non-criminal conviction, all official records related to the arrest “on file with . . . any . . . police agency . . . shall be sealed and not made available to any person or public or private agency,” New York Criminal Procedure Law (“CPL”) §§ 160.50 and 160.55 (the “Sealing Statutes”), and that “[u]pon the termination of a criminal action or proceeding against a person in favor of such person . . . the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in the contemplation of law, to the status he occupied before arrest and prosecution,” CPL 160.60 (McKinney 2003);

WHEREAS, by Decision and Order dated September 27, 2021 (NYSCEF No. 200) (hereinafter the “Preliminary Injunction” or “PI”), the Court granted Plaintiffs’ motion for a preliminary injunction based on evidence that the NYPD is in violation of the Sealing Statutes and a finding that this presents irreparable harm to the Plaintiff class, and the Court further directed the creation of a plan to cease the violations (the “Implementation Plan”); and

WHEREAS, Defendants deny any and all liability or wrongdoing arising from the allegations set forth in the Complaint; Defendants do not intend to waive any prior arguments made in the instant matter, including on their motion to dismiss or in opposition to Plaintiffs’ motions for class certification or for a preliminary injunction; and Defendants reserve the right to appeal any final judgment issued in the instant matter.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Implementation Plan is as follows:

DEFINITIONS

Aggregate Data: information collected from multiple sources or individuals and compiled into data summaries that cannot be used to identify, nor used in connection with, any individual or group of individuals.

De-Identified: the name, address, phone number, date of birth, NYSID, and other personal-identifying information of the person who is the subject of the Sealed Record is redacted or removed within NYPD systems. For purposes of this Order, personal-identifying information does not include race, gender, religion, housing status, disability, or other protected characteristics.

Law Enforcement: policing, enforcing the law, reducing crime, and preserving the peace; prevention, detection, or investigation of crime; special operations related to citywide mobilizations, civil disorders, and major events; transit security; quality of life protection or enforcement; responding to or preventing terrorist attacks; developing or implementing strategies to reduce crime; detecting and disrupting terrorist or criminal activity through intelligence. Law Enforcement does not include instances in which records or information that are De-Identified are used for the purposes of assessing the lawfulness of officer conduct or investigating officer misconduct.

Predictive Technologies: any technology that uses data to make predictions, inferences, or forecasts, including but not limited to Patternizr or any machine learning or statistical models or algorithms.

Sealed Information: information extracted from documents that are or later become Sealed Records, including but not limited to arrest number, top charge, name, date of birth, address, or phone number. Sealed Information includes the number of sealed arrests an individual has. Sealed Information does not include Aggregate Data.

Sealed Record(s): all official records and papers, including judgments and orders of a court but not including published court decisions or opinions or records and briefs on appeal, relating to the arrest or prosecution, including all duplicates and copies thereof, that have sealed pursuant to CPL 160.50 or 160.55 (McKinney 2003).

Sealing Statutes: CPL 160.50 and 160.55 (McKinney 2003).

GUIDING PRINCIPLES

This Order is designed to cease (1) the NYPD's alleged improper use of and access to Sealed Records and Information for Law Enforcement and (2) the NYPD's alleged improper disclosure of Sealed Records and Information outside the Department. In issuing this Order, the Court is mindful that the plan to implement the PI and cease these alleged violations of the Sealing Statutes must carefully navigate laws, statutes, regulations, and ordinances that permit or require the NYPD to use, access, or disclose Sealed Records and Information under narrow circumstances—such as exceptions within the Sealing Statutes or other laws or regulations that require the NYPD to produce information, for example to other government agencies. *See, e.g.*, CPL 160.50(1)(d)(vi) (McKinney 2003) (allowing disclosure of sealed records to probation departments when an individual is arrested—and the arrest is sealed—during the probation period); N.Y. City Charter, Chapter 18-A § 440(d)(1) (requiring NYPD to submit records, on request, to the CCRB); N.Y.C. Admin. Code, tit. 14, § 14-150 (“Police department reporting requirements”). *See Maloney v. Stone*, 195 A.D.2d 1065, 1067 (4th Dep’t 1993) (“Statutes should be given such construction that enables them to be reconciled, and if the court, without violating the established canons of interpretation, can construe two statutes so that they will be in harmony, such construction should be adopted.”) (quoting McKinney’s Cons. Laws of N.Y., Book 1, Statutes § 391, Comment).²

PROHIBITION ON USE AND ACCESS TO SEALED RECORDS AND SEALED INFORMATION

1. Except as otherwise provided by law, the NYPD is prohibited from using,

² Where a time frame as been given for the implementation of an aspect of this plan, where the NYPD anticipates the time frame not being met, the NYPD shall report a status of such implementation along with an anticipated completion time frame.

accessing, or disclosing Sealed Records and Information for Law Enforcement unless they have first obtained a court order.

2. The NYPD is prohibited from disclosing Sealed Records and Information to any third party, including but not limited to media or prosecutors, except as otherwise provided herein or by law.

3. The NYPD shall design and implement protocols, policies, and systems sufficient to implement these prohibitions.

4. The NYPD shall create a list of those NYPD personnel who are permitted access to Sealed Records by law, statute, regulation, or ordinance (the "Permission List"). The personnel on the Permission List shall have access to Sealed Records for the permitted purposes described in Paragraph 5 below. The NYPD shall submit to the Court its draft Permission List, indicating the legal basis for permission for the personnel included therein, within 60 days of the entry of this Order. Following approval, by the Court, any proposed changes to the Permission List shall be submitted to the Court for approval, except where such changes are personnel being substituted into the same roles of individuals on the Permission List.

5. The personnel in the Permission List shall only access Sealed Records or Information in connection with:

- a) providing a sealed record to a prosecutor in a proceeding in which the accused has moved for an order pursuant to CPL 170.56 or 210.46 (McKinney 2003), *see* CPL 160.50(d)(i) (McKinney 2003);
- b) issuing licenses to possess guns, when the accused has made application for such a license, *see* CPL 160.50(d)(iii); reviewing an individual's application for employment as a police officer or peace officer; provided, however, that the applicant is given a copy of the sealed record and afforded an opportunity to make an explanation thereto, *see* CPL 160.50(d)(v);
- c) providing a sealed record to the New York state department of corrections and community supervision when the accused is on parole supervision and the arrest which is the subject of the inquiry is one which occurred while

the accused was under such supervision, *see* CPL 160.50(d)(iv);;

- d) providing a sealed record to the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, *see* CPL 160.50(d)(vi);;
- e) for law enforcement purposes, upon arrest in instances in which the individual stands convicted of harassment in the second degree, as defined in N.Y. Crim. Proc. Law § 240.26, committed against a member of the same family or household as the defendant, as defined in subdivision one of CPL 530.11 (McKinney 2003), and determined pursuant to subdivision eight-a of N.Y. C.P.L. 170.10, *see* CPL 160.55(d)(vi) (McKinney 2003); and
- f) after obtaining an unsealing order from the relevant court, by demonstrating to the satisfaction of the court that justice requires that such records be made available, *see* CPL 160.55(d)(ii); and
- g) through leave of a Court of competent jurisdiction.

6. Until such time as the Permission List is implemented, the NYPD will continue to be bound by existing law and by the preliminary injunction previously issued by this Court.

7. The NYPD is prohibited from relying on Sealed Records and Information to inform decisions on labeling someone a recidivist or otherwise to discuss an individual's arrest record that includes Sealed arrests toward a numeric arrest count, whether such individual is identified or not. This, however, does not prohibit the NYPD from publicizing Aggregate Data on numbers of arrests or from relying on such data when making decisions including but not limited to deployment of resources.

POLICE OVERSIGHT AND REPORTING

8. Nothing in this order is intended to prevent access to, or use or disclosure of, De-Identified Sealed Records when it is not for Law Enforcement, and it is to assess officer conduct.

9. Nothing in this order is intended to prevent access to, or use or disclosure

of, Sealed Records when such access or disclosure is ordered by a court.

10. Nothing in this order is intended to prevent use of or reporting on Aggregate Data, including compliance with statutorily mandated data reporting requirements that current exist or may be implemented in the future, such as the:

- a) "Vallone Report" including, in relevant part: Overtime Statistics by Precinct, Police Service Area, Transit District and Specialty Units; Hazardous Violations and Arrests by Traffic Control District; Felony and Misdemeanor Arrests Statistics by Precinct, Police Service Area, Transit District, and Narcotics; Sex Crime Statistics by Offense Type and Precinct; Stop, Question, and Frisk Statistics by Precinct, Police Service Area, Transit District and Specialty Units; Firearm Arrests by most Serious Charge in Arrest by Precinct (Adm. Code § 140-150);
- b) Annual Use of Force Report (Adm. Code § 14-150(b)(1-8));
- c) MTA Crime Report, (Adm. Code § 14-150(D));
- d) School Safety Report (Adm. Code § 14-152);
- e) Desk Appearance Ticket Report (Adm. Code § 14-156);
- f) Criminal and Civil Summons Report (Adm. Code § 14-157);
- g) Use of Force Incidents Report (Adm. Code § 14-158(B));
- h) Excessive Use of Force Incidents Report (Adm. Code § 14-158(c));
- i) Use of Force Basis for Encounter Report (Adm. Code § 14-159(B));
- j) Domestic Violence Report (Adm. Code § 14-161);
- k) Hate Crime Report (Adm. Code § 14-161);
- l) New York Division of Criminal Justice Services (DCJS) Report (UCR Program);
- m) Top 35 Priority Area Social Service Planning Report (Adm. Code 14-162);
- n) Nuisance Abatement Report (Adm. Code 14-166);
- o) Bail and Criminal Justice System Report (Adm. Code 3-117);
- p) Preliminary Mayor's Management Report and Mayor's Management Report (City Charter – Chapter 1 § 12);
- q) Parking, Moving, Criminal and Civil Summonses Report (Adm. Code § 14-150);
- r) Subway Fare Evasion Report (Adm. Code § 14-172);
- s) Index Crime Clearing Rate Report (Adm. Code § 14-171); and Traffic Report (Adm. Code § 14-153(A));

- t) Making the documents available as articulated within N.Y. Crim. Proc. Law § 160.50 (1)(d).

DATABASES AND PREDICTIVE TECHNOLOGIES

11. Predictive Technologies may not use Sealed Records or Information either as inputs to train the model, or as potential outputs. The NYPD shall adjust their existing Predictive Technologies to remove Sealed Records and Information that have previously been used.

CRIME DATA WAREHOUSE

12. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in the Crime Data Warehouse, unless an unsealing order has been obtained. NYPD, through collaboration with its vendors, shall develop and implement a sealing flag for the Crime Data Warehouse in its systems. Best efforts shall be made to have the Crime Data Warehouse sealing flag operational within two (2) years of the date of this Order. The NYPD shall inform the Court and provide an update should this 2 year time period not be met prior to the expiration of the 2 year period. Included within this update shall be an estimate of the time frame to complete this task.

13. Defendants shall collaborate with the Office of Court Administration to develop a feed of information for non-criminal offenses sealed pursuant to CPL 160.55. Defendants shall then integrate such feed through the NYPD's enterprise architecture review program and process.

SPECIFIC RECORDS

14. Below are specific records that commonly seal, along with directives for sealing them going forward. The following list is not intended to be a complete list of documents governed by this Order; there are other documents encompassed by the categories of Sealed Records and Sealed Information, and the NYPD will need to make determinations about whether those documents seal, consistent with the Guiding Principles and prohibitions set forth in this

Order.

FINGERPRINTS/PALM PRINTS ASSOCIATED WITH SEALED ARRESTS

15. The Automated Fingerprint Identification System (“AFIS”) is the system of record for NYPD storage of arrest fingerprints and palmprints. Upon receipt of a sealing notification, NYPD presently deletes fingerprints and palmprints from AFIS. Accordingly, NYPD shall continue this practice, effective immediately.

ARREST PHOTOGRAPHS ASSOCIATED WITH SEALED ARRESTS

16. NYPD, through collaboration with its vendors, shall develop and implement a permanent delete function for arrest photographs associated with sealed arrests across NYPD and NYPD vendor systems. With the development and implementation of the permanent delete function, sealed arrest photographs will be irretrievable, and thus, unavailable to anyone, including members of the service, and NYPD vendors. However, photographs that have been used in photo arrays shall be maintained by the NYPD until such time as any prosecutions in which such photographs were used have been completed, at which point such photographs shall be permanently deleted. Best efforts shall be made to have the permanent delete function operational within six (6) months of the entry of this Order. The NYPD shall report as to the status of these efforts prior to the end of such 6 month period should it be anticipated that the 6 month period will not be met. Included in this update shall be an estimated time period for completion.

OMNIFORM ARREST PORTAL FOLDER

17. NYPD, through collaboration with its vendors, shall develop and implement a sealing flag for the Omniform Arrest Portal Folder in NYPD computer systems.

Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in the arrest portal folder, unless an unsealing order has been obtained. Best efforts shall be made to have the Omniform sealing flag operational within four (4) years of the entry of this Order. Should such period not be met, the NYPD shall inform the Court of the status of such efforts prior to the end of such 4 year period, including an estimate of the time period anticipated for completion.

ON LINE BOOKING ARREST SYSTEM REPORT

18. Once an arrest has been sealed, NYPD members of the service that do not have sealed records access are presently prohibited from accessing the On Line Booking Arrest System Report (“arrest report”), unless an unsealing order has been obtained. Accordingly, NYPD shall continue this practice following the review of personnel with sealed records access described in paragraph 4, *supra*, effective immediately.

ON LINE BOOKING ARREST SYSTEM WORKSHEET

19. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in the On Line Booking System Arrest Worksheet, unless an unsealing order has been obtained. Because the On Line Booking System Arrest Worksheet is maintained in hard copy paper form, and is not maintained in a digital form, NYPD shall ensure recordkeeping practices are put in place to prohibit the accessing of the sealed hard copy form. Best efforts shall be made to have such recordkeeping practices in place within nine (9) months of the date of this Order. Such practices shall be submitted to the Court for approval upon completion. Should it be anticipated that such draft practices take longer than 9 months, the NYPD shall submit a status update to the Court with an estimate of the time frame that such submission will take.

C-SUMMONS & TRAFFIC INFRACTIONS

20. Once the NYPD is notified that C-summonses and Vehicle and Traffic Law (“VTL”) summonses for traffic infractions (excluding summonses issued for driving while ability impaired pursuant to VTL § 1192(1)) has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with C-summonses and VTL summonses, unless an unsealing order has been obtained. Best efforts shall be made to have such sealing practices operational within two (2) years of the entry of this Order.

FIELD TEST REPORT (FOR ARRESTS INVOLVING CANNABIS/NARCOTICS)

21. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with the Field Test Report, unless an unsealing order has been obtained. Because the Field Test Report is maintained in hard copy paper form and is not maintained in a digital form, NYPD shall ensure recordkeeping practices are put in place to prohibit the accessing of the sealed hard copy form. Best efforts shall be made to have such recordkeeping practices in place within nine (9) months of the entry of this Order.

ARRESTING OFFICER’S REPORT – INTOXICATED DRIVER ARREST

22. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with an Arresting Officer’s Report – Intoxicated Driver Arrest, unless an unsealing order has been obtained. Because the Arresting Officer’s Report is maintained in hard copy paper form and is not maintained in a digital form, NYPD shall ensure recordkeeping practices are put in place to prohibit the accessing of the sealed hard copy form. Best efforts shall be made to have such recordkeeping practices in place within nine (9) months of the entry of this Order.

HIGHWAY DISTRICT INTOXICATED DRIVER EXAMINATION

23. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed

Records and Sealed Information in connection with a Highway District Intoxicated Driver Examination, unless an unsealing order has been obtained. Because the Highway District Intoxicated Driver Examination Form is maintained in hard copy paper form and is not maintained in a digital form, NYPD shall ensure recordkeeping practices are put in place to prohibit the accessing of the sealed hard copy form. Best efforts shall be made to have such recordkeeping practices in place within nine (9) months of the entry of this Order.

STANDARDIZED FIELD SOBRIETY TEST NOTES

24. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with a Standardized Field Sobriety Test Notes, unless an unsealing order has been obtained. Because the Standardized Field Sobriety Test Notes are maintained in hard copy paper form and are not maintained in a digital form, NYPD shall ensure recordkeeping practices are put in place to prohibit the accessing of the sealed hard copy form. Best efforts shall be made to have such recordkeeping practices in place within nine (9) months of the entry of this Order.

INTERROGATION WARNINGS TO PERSONS IN POLICE CUSTODY

25. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with Interrogation Warnings to Persons in Police Custody for driving under the influence (“DUI”) or driving while impaired (“DWI”), unless an unsealing order has been obtained. Because the Interrogation Warnings to Persons in Police Custody Form is maintained in hard-copy paper form and is not maintained in a digital form, NYPD shall ensure recordkeeping practices are put in place to prohibit the accessing of the sealed hard copy form. Best efforts shall be made to have such recordkeeping practices in place within nine (9) months of the entry of this Order.

DUI/DWI VIDEO

26. NYPD, through collaboration with its vendors, shall develop and implement a sealing flag for DUI/DWI video in NYPD computer systems. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with DUI/DWI video recording(s), unless an unsealing order has been obtained. Best efforts shall be made to have such sealing flag operational within two (2) years of the entry of this Order.

DESK APPEARANCE TICKET (DAT)

27. NYPD, through collaboration with its vendors, shall develop and implement a sealing flag for Desk Appearance Tickets (“DATs”) in NYPD computer systems. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with DAT(s), unless an unsealing order has been obtained. Best efforts shall be made to have such sealing flag operational within two (2) years of the entry of this Order.

PRISONER MOVEMENT SLIP

28. NYPD, through collaboration with its vendors, shall develop and implement a sealing flag for Prisoner Movement Slips in NYPD computer systems. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with Prisoner Movement Slip(s), unless an unsealing order has been obtained. Best efforts shall be made to have such sealing flag operational within two (2) years of the entry of this Order.

PRISONER PEDIGREE CARD

29. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with a Prisoner Pedigree Card, unless an

unsealing order has been obtained. Because the Prisoner Pedigree Card is maintained in hard copy paper form and is not maintained in a digital form, NYPD shall ensure recordkeeping practices are put in place to prohibit the accessing of the sealed hard copy form. Best efforts shall be made to have such recordkeeping practices in place within nine (9) months of the entry of this Order.

MEDICAL TREATMENT OF PRISONER FORM

30. NYPD, through collaboration with its vendors, shall develop and implement a sealing flag for Medical Treatment of Prisoner Forms in NYPD computer systems. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with Medical Treatment of Prisoner Form(s), unless an unsealing order has been obtained. Best efforts shall be made to have such sealing flag operational within two (2) years of the entry of this Order.

COMPLAINT REPORT WORKSHEET

31. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with a Complaint Report Worksheet, unless an unsealing order has been obtained. Because the Complaint Report Worksheet is maintained in hard copy paper form and is not maintained in a digital form, NYPD shall ensure recordkeeping practices are put in place to prohibit the accessing of the sealed hard copy form. Best efforts shall be made to have such recordkeeping practices in place within nine (9) months of the entry of this Order.

REQUEST FOR LABORATORY EXAMINATION REPORT

32. NYPD, through collaboration with its vendors, shall develop and implement a sealing flag for Request for Laboratory Examination Reports in NYPD computer systems. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and

Sealed Information in connection with Request for Laboratory Examination Report(s), unless an unsealing order has been obtained. Best efforts shall be made to have such sealing flag operational within two (2) years of the entry of this Order.

REPORT OF REFUSAL TO SUBMIT TO CHEMICAL TEST

33. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with a Report of Refusal to Submit to Chemical Test, unless an unsealing order has been obtained. Because the Report of Refusal to Submit to Chemical Test is maintained in hard copy paper form and is not maintained in a digital form, NYPD shall ensure recordkeeping practices are put in place to prohibit the accessing of the sealed hard copy form. Best efforts shall be made to have such recordkeeping practices in place within nine (9) months of the entry of this Order.

NOTICE OF CHEMICAL TEST REFUSAL HEARING

34. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with Notices of Chemical Test Refusal Hearing, unless an unsealing order has been obtained. Because this is not a digital form, NYPD shall ensure recordkeeping practices are put in place to prohibit the accessing of the sealed hard copy form. Best efforts shall be made to have such recordkeeping practices in place within nine (9) months of the entry of this Order.

NOTICE OF HEARING (OPERATING A MOTOR VEHICLE AFTER CONSUMING ALCOHOL)

35. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with a Notice of Hearing (Operating a Motor Vehicle After Consuming Alcohol), unless an unsealing order has been obtained. Because the Notice of Hearing (Operating a Motor Vehicle After Consuming Alcohol) is not a digital form,

NYPD shall ensure recordkeeping practices are put in place to prohibit the accessing of the sealed hard copy form. Best efforts shall be made to have such recordkeeping practices in place within nine (9) months of the entry of this Order.

NOTICE OF CHEMICAL TEST HEARING (PERSON UNDER AGE 21)

36. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in connection with a Notice of Chemical Test Hearing (Person under Age 21), unless an unsealing order has been obtained. Because the Notice of Chemical Test Hearing (Person Under Age 21) is maintained in hard copy paper form and is not maintained in a digital form, NYPD shall ensure recordkeeping practices are put in place to prohibit the accessing of the sealed hard copy form. Best efforts shall be made to have such recordkeeping practices in place within nine (9) months of the entry of this Order.

ENTERPRISE CASE MANAGEMENT SYSTEM (“ECMS”) FILES

37. NYPD, through collaboration with its vendors, shall develop and implement a sealing flag for any of the above-referenced documents contained within an Enterprise Case Management System (“ECMS”) file. Once an arrest has been sealed, the NYPD shall prohibit access to Sealed Records and Sealed Information in an ECMS file unless an unsealing order has been obtained. Best efforts shall be made to have these changes operational within two (2) years of the entry of this Order.

COMPLAINT REPORT

38. NYPD, through collaboration with its vendors, shall develop and implement modifications to NYPD computer systems to flag when a complaint report has become a Sealed Record and the NYPD shall prohibit its use or access, unless an unsealing order has been obtained. No Predictive Technologies shall be permitted to conduct a search of complaint reports that are Sealed Records, regardless of whether redaction is made of the

identifying information of any person noted in such complaint report. Best efforts shall be made to have these changes operational within two (2) years of the entry of this Order.

DOMESTIC INCIDENT REPORTS

39. NYPD, through collaboration with its vendors, shall develop and implement modifications to NYPD computer systems to flag a Domestic Incident Report that has become a Sealed Record and the NYPD shall prohibit its use or access, unless an unsealing order has been obtained. Best efforts shall be made to have these changes operational within two (2) years of the entry of this Order.

PROPERTY CLERK INVOICES

40. NYPD, through collaboration with its vendors, shall develop and implement modifications to NYPD computer systems to flag when the arrest associated with a Property Clerk Invoice has become sealed and shall redact the arrest number and charge information from the Invoice. Best efforts shall be made to have these changes operational within two (2) years of the entry of this Order.

ADDITION OF "POP-UP" BOX TO ACCESS SEALED RECORDS

41. The NYPD, through collaboration with its vendors, shall develop and implement a process by which only NYPD personnel in the Permission List shall be able to access a sealed record, and only after confirming the user is accessing the record under the authority of an unsealing order, or for a permitted purpose. This confirmation will be in the form of a "pop-up" box in Department systems. The pop-up box shall contain a dropdown list with the permitted uses enumerated in Paragraph 5 above. Individuals seeking to access a Sealed Record shall indicate, by clicking on the appropriate item on the dropdown menu, the purpose for which

they are seeking access.

42. Best efforts shall be made to have these changes operational as soon as possible, and no later than six (6) months following the entry of this Order.

AUDITING

43. NYPD currently has automated audit trails in effect for all of its databases containing Sealed Records under this Order. As such, when a person accesses a Sealed Record in these databases, the date, time, terminal, and user account used to access the sealed record as well as the record accessed are automatically logged. Accordingly, NYPD shall continue this practice of having automated audit trails in effect for such databases, effective immediately, and shall retain these logs for a minimum of five (5) years.

44. The NYPD's Quality Assurance Division (QAD) shall conduct semi-annual audits to assess (1) whether the Permission List includes only personnel that execute functions falling within an exemption to the Sealing Statutes (enumerated under Paragraph 5(a)-(e) above); (2) the identity of the employees accessing Sealed Records; (3) the accuracy of the purposes indicated by employees for Sealed Record access; and (4) whether Sealed Records are disclosed or disseminated beyond authorized users, including to prosecutors and members of the press. This shall not preclude more frequent audits as conditions require.

SUMMARY OF SEALED ARREST INFORMATION

45. The NYPD, through collaboration with its vendors, will develop and implement a process to change the Domain Awareness System ("DAS") Snapshot so that it will not display arrest numbers or top-charge information to members of the service that do not have sealed records access. Best efforts shall be made to have these changes operational within three (3) years of the entry of this order.

TRAINING

46. Defendants shall submit new proposed personnel trainings regarding Sealed Record access for Court approval within 180 days of the Court's order, and Plaintiffs shall have an opportunity to review and comment on any proposed trainings.

47. Defendants shall administer any approved trainings to all current and future NYPD members.

REPORTING

48. Defendants shall provide annual reports ("Compliance Reports") for the next five years commencing on or before April 30, 2024, and every April thereafter to the Court and Plaintiffs on their progress in implementing this order.

49. Compliance Reports shall include:

- a) The status of Defendants' compliance with and implementation of each provision of this Order;
- b) The status of trainings;
- c) The results of the QAD audits required in Paragraph 44 from the most recent year, and any steps Defendants have taken to address problems identified in those reports; and
- d) The steps the Department expects to take in the following year to comply with or implement the provisions of this Order.

AMENDMENT OF THE PLAN'S TIMELINES FOR GOOD CAUSE

50. Upon Defendants' showing of good cause, the Court may modify any of the proposed timelines set forth in this Order.

FINEST MESSAGE

51. The FINEST message discussing this Plan, annexed hereto as Exhibit "1", will be read at ten (10) consecutive roll calls beginning not more than ten (10) days following the Court's endorsement of this Order.


52. The requirements in this order shall apply with equal force to alleged Juvenile

Offenders, Adolescent Offenders, and other youth under the age of eighteen whose records seal under the Sealing Statutes.

53. Any modifications to NYPD policies and procedures made pursuant to this order must comply with all applicable laws, including but not limited to Family Court Act § 375.1.

Dated: March 29, 2023
New York, New York

SO ORDERED:



HON. LYLE E. FRANK, J.S.C.

EXHIBIT 1

TO: All Commands

RE: Preliminary Injunction Restricting Access to Sealed Records

As a result of ongoing litigation related to the Department's sealed records practices and a recent court order in the case, all members of the service are prohibited from accessing sealed records absent authorization.

Specifically, the court directed that the Department is prohibited by the Sealing Statutes, New York Criminal Procedure Law §§ 160.50, 160.55, from using, accessing, or disclosing sealed records and information unless authorized by law.

To comply with this order, the Department will design and implement protocols, policies, and systems sufficient to accomplish this prohibition.

Over the next 180 days, the Department will be modifying its technologies, such as Crime Data Warehouse, Omniform, and Domain Awareness System to comply with the court's order. Additionally, over the next two years, the Department will take steps to ensure sealed records and information are inaccessible to personnel that do not have sealed records access by either a lawful exemption or a properly obtained unsealing order.

While that work takes place, all members of the service are reminded that sealed records and information from sealed records may not be used for law enforcement without a properly obtained unsealing order unless an exception applies.

This directive revokes current Detective Guide procedure 512-05.

Commanding Officers will ensure that members of their command are apprised of the contents of this message, which is to be read at ten (10) consecutive role calls.

Questions concerning the content of this message should be directed to the Legal Bureau at (646) 610-5400.

Authority: Deputy Commissioner, Legal Matters