

**Acosta v City of New York**

2025 NY Slip Op 33584(U)

September 30, 2025

Supreme Court, New York County

Docket Number: Index No. 157225/2022

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. HASA A. KINGO PART 05M**

*Justice*

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JOHN X ACOSTA,

Plaintiff,

- v -

THE CITY OF NEW YORK, NYPD SERGEANT SEAN AMAN, WILLIAM PERRITT, COREY BEHAN, BRIAN BRANDEFINE, STEPHEN MALVAGNA, DOMINICK COGLIANO, THERESA FLETCHER, DAN FITZPATRICK

Defendant.

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**INDEX NO.** 157225/2022  
**MOTION DATE** N/A  
**MOTION SEQ. NO.** 003

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75

were read on this motion for DISCOVERY.

Plaintiff seeks an order compelling Defendants to supplement their discovery responses and produce numerous categories of documents and information identified in Plaintiff’s combined demands — including, among other things, the identities of NYPD witnesses, personnel and disciplinary records for identified officers, medical and line-of-duty records for alleged officer injuries, command logs, DA material, identification photographs, strip-search documentation, incident reports and other materials used to investigate or memorialize the events at issue. Plaintiff also seeks sanctions under CPLR § 3126. Defendants oppose broad production of third-party arrest/prosecution materials and contend they have substantially complied via their Case Scheduling Order (“CSO”) response; they in turn assert that some categories are privileged, protected, overbroad, or otherwise not proportional. The parties’ dispute and the contested demand numbers are reflected in the parties’ filings.

**BACKGROUND AND PROCEDRAL HISTORY**

Plaintiff served discovery demands on September 16, 2024. The court directed Defendants to respond within specified time frames — including by order of December 19, 2024 directing the City to respond to Plaintiff’s September 16, 2024 demands — but Plaintiff contends Defendants failed to produce responsive documents and instead served boilerplate objections and limited or no documents; Defendants contend they substantially complied via their CSO response and other productions (including an asserted CSO production on November 29, 2024 and a subsequent response to Plaintiff’s D&I on July 7, 2025). The parties exchanged correspondence and attempted, unsuccessfully, to resolve disputes before the instant motion. The factual record and chronology are set out in the moving and opposing affirmations and exhibits.

## ARGUMENTS

Plaintiff argues that (1) Defendants failed to provide meaningful, non-boilerplate responses and produced no documents responsive to numerous discrete requests; (2) the requested categories are material and necessary under CPLR § 3101(a) bearing on probable cause, credibility, use of force, and *Monell*-type proof; and (3) the court should impose sanctions for repeated non-compliance.

Defendants argue that (1) they have substantially complied through the CSO and by serving responses/objections; (2) certain requests are overbroad, unduly burdensome, seek privileged or sealed material, or invade non-party privacy; and (3) Plaintiff's affirmation of good-faith conferral is insufficient and sanctions are not appropriate because the heavy CPLR § 3126 standard is unmet. Defendants further cite the limitations imposed by FOIL/POA context and other statutory and common-law protections.

By agreement of the parties, no further production is required as to Requests Nos. 14, 17, 18, 20, 21, 22, 23, 24, 25, 27, 29, 30, 31, and 32.

The parties further agreed that additional production will be made as to Requests Nos. 9, 10, 11, and 16 (relating to alleged officer injuries and command logs).

These stipulations narrow the scope of this motion.

## DISCUSSION

Discovery under CPLR § 3101(a) is broad. The statute requires disclosure of all matter “material and necessary” to the prosecution or defense of an action, and the test is one of “usefulness and reason,” not indispensability (*Forman v. Henkin*, 30 NY3d 656, 661 [2018]; *DiMichel v. S. Buffalo Ry. Co.*, 80 NY2d 184, 196 [1992], *rearg. denied*, 81 NY2d 835 [1993]). At the same time, courts must balance relevance against privacy, safety, privilege, and proportionality. Disclosure may be limited, redacted, or produced under protective terms when competing interests weigh against unfettered disclosure.

Sanctions under CPLR § 3126 are available for failure to obey an order for disclosure or willful failure to disclose. The remedy of striking pleadings or imposing severe sanctions, however, is an extraordinary measure, to be used sparingly and only upon a showing of willful, contumacious, or bad-faith conduct (*Kutner v. Feiden, Dweck & Sladkus*, 223 AD2d 488, 489 [1st Dept 1996]).

Finally, where discovery implicates law enforcement records and disciplinary material, courts must apply applicable statutory law, including legislative changes affecting access to police disciplinary records, official-information and investigatory privileges, and Criminal Procedure Law provisions protecting sealed materials (*see, e.g.*, CPL § 160.50). Courts must also account for the repeal of N.Y. Gen. Mun. Law § 50-a and the availability of redactions and protective orders under the Public Officers Law and Freedom of Information Law (FOIL).

Applying CPLR § 3101(a)'s usefulness/reason test, balancing privacy and statutory interests, and considering the parties' submissions and arguments set forth at oral argument on September 30, 2025, the substance of which is incorporated by reference, the court orders as follows concerning *Plaintiff's Notice for Discovery and Inspection and Combined Demands*:

***Rulings on Contested Requests***

**Request No. 1** (Names of other arrestees). ***Denied***. Disclosure of third-party arrest records raises significant privacy concerns and is not proportional to the needs of this case. Plaintiff may pursue *Monell* proof through less intrusive means, including deposition testimony, disciplinary histories of named officers, and his own observations (*see* Public Officers Law §§ 87, 89).

**Request No. 2** (50-H transcripts / Notices of Claim for other arrestees). ***Denied***. For the same reasons as Req. 1, wholesale production is unduly intrusive and not justified.

**Request No. 3** (Names/identities of certain officers). ***Granted in part***. Defendants' prior response referring generally to the CSO and body-worn camera videos is insufficient. Defendants must provide a supplemental response expressly identifying the individuals responsive to this request or affirmatively state that no such persons are known.

**Request No. 4** (Personnel files). ***Granted***. Defendants must supplement their response by producing personnel files of the officers identified in Demand No. 4 subject to lawful redactions of non-relevant personal data. If any other portion is withheld, Defendants must provide a compelling justification supported by statutory authority, with a privilege or redaction log.

**Request No. 5** (Civilian witnesses). ***Granted in part***. To the extent Defendants are aware of civilian witnesses whom they intend to rely upon at trial, those names shall be produced. If no such civilians are known, Defendants must expressly so state.

**Request No. 6** (NYPD members who witnessed alleged criminal conduct). ***Granted***. Defendants shall provide a supplemental response identifying the names of any such NYPD members. If none are known, Defendants must so state unequivocally.

**Request No. 7** (Personnel files). ***Granted***. Same ruling as Req. 4.

**Request No. 8** (CCRB complaints / disciplinary records). ***Granted in part***. Defendants shall produce CCRB and disciplinary records for the identified officers, subject to lawful redactions of non-relevant personal data and production under protective order if necessary.

**Request No. 12** (Investigations / misconduct allegations). ***Granted***. Defendants must produce records concerning investigations or misconduct allegations involving the named officers, to the extent in their possession, subject to redaction/privilege rules.

**Request No. 13** (NYPD identification photographs). ***Granted***. Identification photographs of the named officers are relevant for identification and impeachment.

**Request No. 15** (All incident-related documents). *Granted*. Defendants must provide all documents and electronically stored information concerning the incidents described in the complaint, including accusatory instruments, DD5s, complaint forms, command log entries, memo books, daily activity reports, booking sheets, tactical plans, and drafts. Even if no further documents exist, Defendants must expressly so state.

**Request No. 19** (Communications with DA's office). *Granted*. Defendants must provide any responsive communications, or if none exist, expressly so state.

**Request No. 26** (Photographs, videos to be used at trial). *Granted*. Defendants must produce all photographs, videos, or similar media they intend to introduce at trial.

**Request No. 28** (Documents concerning alleged resistance/obstruction by Plaintiff). *Granted*. Defendants must provide any responsive documents, or expressly confirm that none exist.

**Request No. 33** (District Attorney's file). *Granted in part*. To the extent the DA's file is in Defendants' possession or control, it shall be produced, subject to statutory restrictions. If no further materials are in their possession, Defendants must expressly so state.

### *Sanctions*

Plaintiff's application for sanctions under CPLR § 3126 is denied. While the City's responses have been deficient in part, the record does not demonstrate willful or contumacious noncompliance warranting the drastic remedies contemplated by CPLR § 3126. Instead, the court prefers to secure compliance by directing the specific supplementation ordered herein, with the warning that failure to comply may warrant sanctions upon renewed application.

Accordingly, it is hereby

ORDERED that Plaintiff's motion is granted to the extent that Defendants shall serve supplemental responses and produce responsive documents consistent with the rulings above within sixty (60) days of entry of this decision and order; and it is further

ORDERED that any withheld or redacted documents must be logged with specificity. Boilerplate objections are unacceptable; and it is further

ORDERED that, if necessary, the parties shall meet and confer within 14 days to propose a protective order covering personnel, medical, and disciplinary files. If no agreement is reached, competing proposed orders shall be submitted within 20 days; and it is further

ORDERED that the parties shall appear in the DCM Part (Room 103, 80 Centre Street, New York, NY) on Tuesday December 2, 2025 at 2:00 PM for a compliance/status conference. A joint two-page status letter shall be filed five business days beforehand; and it is further

ORDERED that the agreements regarding Requests Nos. 9–11, 14, 16–25, 27, and 29–32 are incorporated herein by reference and shall be honored; and it is further

ORDERED that Plaintiff’s application for sanctions under CPLR § 3126 is denied, with warning to Defendants that failure to comply with the abovementioned directives may warrant sanctions upon renewed application.

This constitutes the decision and order of the court.

9/30/2025

DATE

HASA A. KINGO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: