

Matter of LatinoJustice PRLDEF v Nassau County Police Dept.
2025 NY Slip Op 35611(U)
January 14, 2025
Supreme Court, Nassau County
Docket Number: Index No. 606962/2024
Judge: R. Bruce Cozzens
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: HON. R. BRUCE COZZENS - SUPREME COURT JUSTICE

TRIAL/JAS PART 1

In the Matter of the Application of

LATINOJUSTICE PRLDEF,

NASSAU COUNTY

Petitioner,

INDEX NO. 606962/2024

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

MOT. SEQ. #001

-against-

NASSAU COUNTY POLICE DEPARTMENT,
 PATRICK J. RYDER, in his official capacity as
 Police Commissioner of the Nassau County Police
 Department; JENNIFER FAULTLESS, in her
 official capacity as Detective for the Nassau County
 Police Department and CHRISTOPHER V. TODD,
 in his official capacity as Deputy Bureau Chief of the
 Nassau County Police Department.

Respondents.

The following papers read on this Article 78 Proceeding:

Notice of Petition/Petition/Affidavits/Affirmations/Exhibits.....X
 Memorandum of Law in Support.....X
 Answer in Special Proceeding.....X
 Memorandum of Law in Reply.....X

Upon the foregoing e-filed papers, Petitioner LATINOJUSTICE PRLDEF's ("Petitioner")
 Verified Petition seeking an order pursuant to CPLR 7806 directing Respondents Nassau County
 Police Department; Patrick J. Ryder, in his official capacity as Police Commissioner of the Nassau
 County Police Department; Jennifer Faultless, in her official capacity as Detective for the Nassau
 County Police Department; and, Christopher v. Todd, in his official capacity as Deputy Bureau Chief
 of the Nassau County Police Department ("Respondents") to produce to Petitioner documents

responsive to Request Nos. 1,2,3,4,5,6,11,14,15,16, and 17 in accordance with their duty under FOIL; directing Respondents to complete their search for documents responsive to Requests Nos. 7 and 8 and begin production of the same; and, awarding Petitioner reasonable attorney's fees and litigation costs as allowed under Public Officers Law 89(4)(c)(Motion Seq. 001), is determined as set forth hereinafter.

Background

This is a proceeding pursuant to CPLR Article 78 to compel the production of certain records pursuant to the Freedom of Information Law ("FOIL"), and for attorneys' fees and litigation costs. Petitioner, a non-profit civil rights organization, has sought from Respondents documents and information pertaining to a "predictive" or "intelligence-led" policing that refer to the collection and analysis of data to deter crime. Petitioner alleges that these practices have been criticized for exacerbating existing racial disparities in policing.

On November 10, 2021, Petitioner submitted a FOIL request to Respondents seeking documents concerning Respondents predictive policing practices and Respondent's collaboration with other police departments with regards to the implementation of such practices. Specifically, Petitioner sought the following 17 categories of documents:

Specifically, Petitioner sought the following:

(1) 1) A copy of the curriculums and training materials utilized, distributed, disseminated, or employed in the two-hour "community-oriented policing course" and three-hour "intelligence-led policing course."

I. Documents sufficient to identify the name and number of other police jurisdictions that have received access to these trainings.

(2) A copy of any curriculums, training materials, advisories, policy guidance, practices, procedures, reports, and any other documents pertaining to the following sub-units:

- I. Community Oriented Police Enforcement Unit (COPE);
- ii. Problem-Oriented Police Officers Unit (POP);
- iii. "Intelligence Analysts" Unit and/or "Intelligence Unit;"
- iv. Homeland Security Unit;
- v. Gang Unit;
- vi. Bureau of Special Operations;
- vii. The Criminal Intelligence Rapid Response Team (CIRRT).

(3) A copy of any curriculums, training materials, advisories, policy guidance, practices, procedures, reports, and any other documents pertaining to the following programs:

- I. Gang Resistance Education and Training Program (GREAT);

- ii. Crime Prevention Through Environmental Design (CPTED);
- iii. NYS DCJS Guns Involved Violence Initiatives (GIVE);
- iv. "Intelligence Workups" provided to the District Attorney's Office through the Intelligence Based Prosecution Initiative (IBPI).

(4) A copy of any curriculums, training materials, advisories, policy guidance, practices, procedures, reports, and any other documents pertaining to the department's use of predictive policing software, crime statistics, trend databases, and third-party databases including but not limited to Strat-Com (formerly Nass-Stat).

- I. Documents sufficient to identify all data sources input into Strat-Comm and other predictive policing software, including but not limited to debriefings, stops, arrests, and informants;
- ii. Documents sufficient to identify all data variables collected in Strat-comm and other predictive policing software, including but not limited to age, race, gender, domicile, affiliates, tattoos, high crime area, etc.

(5) A copy of any curriculums, training materials, advisories, policy guidance, practices, procedures, reports, and any other documents pertaining to the creation, outlining, generating, and use of crime maps, hotspot maps, link charts, and social network maps.

(6) Documents sufficient to identify the criteria for classifying a location as a "high crime area" or "hot spot."

(7) Documents sufficient to identify the criteria for classifying persons as:

- I. Person of interest
- ii. Persistent offender
- iii. High frequency offender
- iv. Enforcement target
- v. Troubled youth
- vi. At-risk or high-risk
- vii. Impact player
- viii. Gang member, associate, or affiliate.

(8) Documents sufficient to identify the number, races, ages, and neighborhoods/towns of residence of individuals currently classified as:

- I. Person of interest
- ii. Persistent offender
- iii. High frequency offender
- iv. Enforcement target
- v. Troubled youth
- vi. At-risk or high-risk

- vii. Impact player
- viii. Gang member, associate, or affiliate

(9) A copy of any curriculums, training materials, advisories, policy guidance, practices, procedures, reports, and any other documents pertaining to the department's use of the Scanning, Analysis, Response, Assessment ("SARA") Model.

(10) Documents sufficient to identify the sources of information relied upon to analyze and predict crime trends and patterns and develop focused crime responses by all department personnel, including but not limited to COPE officers, POP officers, and Intelligence Analysts.

(11) A copy of any curriculums, training materials, advisories, policy guidance, practices, procedures, reports, and any other documents pertaining to the department's review, monitoring, or use of the social media of persons of interests for crime prevention purposes.

(12) Documents sufficient to identify how the department determines, evaluates, and measures the success of its problem-oriented, intelligence-led, and hot-spot policing programs.

(13) A copy of the department's policies, procedures, processes, and standards for evaluating, identifying, and reviewing new technologies for potential biases.

(14) A copy of all current contracts, compacts, agreements, and memorandums of understanding (MOUs) between your agency and any other federal, state, or local law enforcement agencies pertaining to crime data information sharing.

(15) A copy of all current contracts, compacts, agreements, and memorandums of understanding (MOUs) between your agency and any other federal, state, or local law enforcement agencies pertaining to specialized joint task forces pertaining to firearm, narcotics, and gang policing.

(16) A copy of any records related to the department's collaboration or partnerships with school districts and school resource officers.

(17) A copy of any records related to the department's collaboration or partnerships with parole and probation officers.

On November 15, 2021, Respondents acknowledged Petitioner's FOIL request and advised that Petitioner's request will be reviewed. On December 13, 2021, Respondents informed Petitioner that, in reviewing the request, it has determined that the request will be completed in mid-January, 2022. On February 7, 2022, Respondents informed Petitioner that due to the expansive nature of its request, documents would become available on a rolling basis. Respondents also provided Petitioner a cost letter for the first available set of documents. Thereafter, on February 17, 2022, Respondents first set of documents responsive to Petitioner's request were produced.

Petitioner alleges that all communication with Respondents ceased and as a result Petitioner called and sent several emails to Respondent inquiring as to the status of the remainder of its request. However, Respondent failed to respond. As a result, Petitioner submitted an administrative appeal on October 31, 2022 ("first appeal") based upon Respondents constructive denial. On November 30, 2022, Respondents responded to Petitioner's first appeal and informed Petitioner that its request was not denied and that an active search for responsive documents was ongoing. Respondent further informed Petitioner that an additional 30 days would be required for a response and/or production.

On April 6, 2023, Respondents, in writing, responded to Petitioner's FOIL request, granting and denying the request in part. Respondents advised as to the exemptions that applied as a basis for any denial. Respondents further identified responsive documents and informed Petitioner such documents would be produced upon receipt of payment by Petitioner. Respondents also informed Petitioner that it is in the process of conducting a search regarding request #7 and #8. On May 5, 2023, Petitioner appealed Respondents determination ("second appeal"). Petitioner did not appeal Respondents determination as to request #9, 10, 12, or 13. On June 6, 2023, Respondents replied to Petitioner's second appeal and further granted and denied Petitioner's appeal in part. Respondents identified further responsive documents now granting some of Petitioner's request previously denied. Respondents further upheld its partial denial of request #1 and its denial of request #4, 5, and 11. Respondent did not provide an update as to its search regarding request #7 and #8. Respondent again stated that documents would be produced upon payment by Petitioner.

Petitioner alleges that Respondents failed to produce the documents deemed responsive in its April 6th and June 6th letter, despite submitting payment as instructed. Petitioner alleges that it then reached out to Respondents to inquire as to the statute of the documents several times but received no response. On September 30, 2023, Petitioner, by phone, reached Respondents and was informed that its FOIL request would be honored. However, to date Petitioner alleges that Respondents have failed to respond to its attempts as to a status update and has further failed to respond to Petitioner's FOIL request in its totality.

On April 19, 2024, Petitioner moved for an order directing Respondents to produce to Petitioner documents responsive to request # 1, 2, 3, 4, 5, 6, 11, 14, 15, 16, and 17 in accordance with their duty under FOIL; directing Respondents to complete their search for documents responsive to requests # 7 and 8 and begin production of the same; and, awarding Petitioner reasonable attorney's fees and litigation costs as allowed under Public Officers Law 89(4)c. On July 8, 2024, Respondents interposed a Verified Answer with Objections in Points of Law ("Verified Answer"). In its Verified Answer, Respondents asserted that they were actively in the process of producing documents responsive to Petitioner's request #1, 2, 3, 6, 7, 8, 14, 15, 16, and 17. Respondents further upheld its denial of Petitioner's request #1, 4, 5, and 11 on the ground that, among other things, the request violates Public Officer Law 87(2)(e)(i). Petitioner replied and remaining contentions are that Respondents denial of request #1, 4, 5, 11 is improper. Respondents have failed to produce a redaction log. Respondents have failed to submit responsive documents to request #8, and Respondents documents produced in relation to request #7 and 17 are deficient.

Analysis

"To promote open government and public accountability, the FOIL imposes a broad duty on government to make its records available to the public. Thus, when faced with a FOIL request, an agency must either disclose the record sought, deny the request and claim a specific exemption to disclosure, or certify that it does not possess the requested document and that it could not be located after a diligent search" (*Felici v Nassau Cnty. Off. of Consumer Affs.*, 217 AD3d 765, 766-67 [2d Dept 2023][internal citations and quotations omitted]). "The statutory time to respond to a FOIL request for records is within five business days of the receipt of a written request, and the agency should respond by making such record available to the person requesting it, denying such request in writing or furnishing a written acknowledgment of the receipt of such request and a statement of the approximate date...when such request will be granted or denied. 21 NYCRR 1401.7 (b) states, in relevant part, that denial of access shall be in writing stating the reason therefor and advising the person denied access of his or her right to appeal to the person or body designated to determine appeals, and that person or body shall be identified by name, title, business address, and business telephone number" (*L. Offs. of Cory H. Morris v Suffolk Cnty.*, 216 AD3d 638, 639-40 [2d Dept 2023][internal citations and quotations omitted]).

Moreover, "...FOIL imposes a broad duty on government to make its records available to the public. FOIL provides that, unless otherwise specifically exempted, all records of a public agency are presumptively open to public inspection and copying. The limited categories of records which may be withheld are enumerated in FOIL. Consistent with the policy of broad public access, the exemptions are to be narrowly construed, and the burden rests on the agency to demonstrate that the requested material qualifies for exemption. In keeping with these settled principles, blanket exemptions for particular types of documents are inimical to FOIL's policy of open government. When an agency invokes an exemption, denial of access shall not be based solely on the category or type of such record and shall be valid only when there is a particularized and specific justification for such denial. Only where the material requested falls squarely within the ambit of one of these statutory exemptions may disclosure be withheld. If the agency fails to prove that a statutory exemption applies, FOIL compels disclosure, not concealment" (*Newsday, LLC v Nassau Cnty. Police Dep't*, 222 AD3d 85 [2d Dept 2023][internal citations and quotations omitted]).

Respondents, in its Verified Answer, aver that it has justifiably denied Petitioner's FOIL request #1, 4, 5, and 11. As to the second prong of Petitioner's request #1, requesting curriculums and training materials regarding a intelligence-led policing course, Respondents aver that Public Officers Law 87(2)(e)(i) allows for the denial of access to records that could interfere with law enforcement investigations. Further, Public Officers Law 87(2)(e)(i) protects non-routine investigative techniques from disclosure. Respondents aver that revealing these techniques would compromise the effectiveness of law enforcement operations and potentially allow individuals to adapt their behaviors to avoid detection. As to Petitioner's request #4, requesting, among other things, curriculums and training materials pertaining to Respondents use of predictive policing software and databases, Respondents aver that a release of search records could interfere with law enforcement investigations. Respondents aver that Public Officers Law 87(2)(e)(iv) protects disclosure of non-routine techniques used in these predictive systems, which could be compromised,

if disclosed. Further, Respondents aver that revealing the systems may endanger the safety of individuals by exposing sensitive enforcement strategies.

As to Petitioner's request #5, requesting, among other things, curriculums and training materials pertaining to the creation of crime maps, hotspot maps, link charts, and social network maps, Respondents aver that the release of the records could interfere with law enforcement investigations. Respondents avers that crime maps and related documents are vital to ongoing investigations and strategic planning. Further, Respondents aver that Public Officers Law 87(2)(1) allows for withholding these records to prevent endangerment to the safety of law enforcement personnel and civilians. Further, as to Petitioner's request #11, requesting use of social media for crime prevention, Respondents aver that releasing the records would interfere with ongoing investigations and the techniques and methodologies used in social media monitoring could be compromised, if disclosed. Additionally, Respondents aver that disclosing how social media is used in policing could expose law enforcement personnel and informants to potential retaliation or harm. Finally, Respondents aver that Petitioner is not entitled to attorney's fees as it had a reasonable basis for not producing all records sought in its FOIL request.

In opposition, Petitioner avers that Respondents law enforcement and public safety exemptions with respect to request 1, 4, 5, and 11 are conclusory and lacks factual support. Petitioner avers that its request #1 only seeks generalized training materials and educational curricula and not individualized information. Petitioner aver that Respondents have failed to articulate how such disclosure would interfere with investigations and fail to claim that the documents relate to any ongoing law enforcement proceeding. Petitioner avers that Respondents contention regarding public safety exemption does not apply as Respondents have failed to establish that disclosure of its training curriculum would identify particular individuals or locations. Petitioners avers that it does not seek case-specific information but generalized information of Respondents policies and practices.

Furthermore, Petitioner avers that Respondents responded to its request #8 during this proceeding but has cited to a criminal intelligence exemption to withhold documents pertaining to request #8(viii). Petitioner avers that it is Respondents first time asserting such exemption and therefore Respondents exemption is time-barred and waived. Petitioner further avers that Respondents have failed to produce sufficient responses to request #7, 8, and 17. In sum and substance, Petitioner request that Respondent complete a production fo records responsive to request #1, 4, 5, 7, 8, 11, and 17. Petitioner further requests an evidentiary hearing to determine the validity of Respondents certification that it is not in possession of documents pertaining to 7(ii), 7(vii), 8(ii), 8(viii) and 17 as according to public statements and other publicly available records, Respondents are in fact in possession. Lastly, Petitioner avers that it is entitled to attorney's fees as it has substantially prevailed as Respondents failed to respond to its request or appeal within the statutory time as well as lacked a reasonable basis for denying access to requested records.

Here, the Court agrees with the Respondent as that they have provided ample reasons to withhold documents pertaining to Petitioner's request #1, 4, 5, and 11. Respondents met their burden that the requested documents are exempted from disclosure. Although Petitioner states they seek only generalized curriculums and training materials and not specific information to a particular

case the fact is this could endanger the safety of individuals or interfere with a police investigation (*see* Public Officers Law 89(2)(c)(i) and 89(2)(c)(iv)). Therefore, Petitioners are not required to produce responsive documents to Petitioner's requests #1, 4, 5, and 11. Regarding Petitioner's request #7, 8(ii), 8(viii), and 17, Respondents certification that it does not have possession of such record is sufficient (*see* Public Officers Law 89(3)). Furthermore, Petitioner contention that Respondents may possess additional documents based upon public statements and publicly available records is speculative and request for a hearing is denied. Respondents sought exemption to #8(viii) is granted in spite of Petitioner's objection that Respondent failed to assert such exemption within the statutory time (*see* Public Officers Law 89(3)(a)).

With respect to Petitioner's request for attorney's fees, "in order to create a clear deterrent to unreasonable delays and denials of access [and thereby] encourage every unit of government to make a good faith effort to comply with the requirements of FOIL, the Legislature has provided for the assessment of an attorney's fee and other litigation costs in FOIL proceedings. Thus, [t]he court ... may assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of" Public Officers Law § 89 in which such person has substantially prevailed, and when the agency failed to respond to a request or appeal within the statutory time. A petitioner has substantially prevailed within the meaning of Public Officers Law § 89(c) when the commencement of the CPLR article 78 proceeding ultimately succeeds in obtaining the records responsive to the FOIL request, whether by court order or by voluntary disclosure" (*Edmond v Suffolk Cnty.*, 197 AD3d 1297, 1299 [2d Dept 2021][internal citations and quotations omitted]).

Here, Respondents did not timely respond to Petitioner's FOIL request (*see McNerney v Carmel Cent. Sch. Dist.*, 204 AD3d 1012 [2d Dept 2022]). Respondents first submission of responsive documents occurred on February 17, 2022 and Respondents did produce additional responsive documents after commencement of this proceeding. Under the circumstances of this case, Petitioner argues that they were the "substantially prevailing" party (*see Edmond v Suffolk County*, 197 AD3d 1297 [2d Dept 2021]). This Court has determined that Respondent had a reasonable basis for withholding certain documents, and the Respondent has substantially prevailed on such points (*see Ateres Bais Yaakov Acad. of Rockland v Town of Clarkstown*, 218 AD3d 462 [2d Dept 2023]). The Court finds there was no bad faith or ill intent and the actions of the Respondents were reasonable under the circumstances. An award of Attorney's Fees is intended for egregious behavior on the part of the Respondents which is not the case here. Accordingly the request for Attorney's Fees is denied.

Accordingly, it is hereby

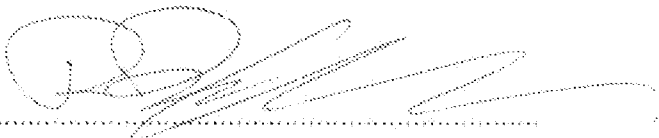
ORDERED, that the Petition is determined as set forth above and it is further

ORDERED, that Petitioner's request for reasonable attorneys' fees is hereby **DENIED**; and it is further

ORDERED, that all requests for relief not addressed herein are **DENIED**.

This shall constitute the Decision and Order of the Court.

Dated.....**JAN 14 2025**.....


.....
Honorable R. Bruce Cozzens
Supreme Court Justice

ENTERED

Jan 22 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE