

May 31, 2018

VIA UPS AND E-MAIL: FOILAppeals@nypd.org

Sergeant Jordan S. Mazur
Records Access Appeals Officer
New York City Police Department
One Police Plaza, Room 1406
New York, NY 10038

FOIL Req. # 2017-PL-17643

Re: Appeal of Denial of FOIL Request

Dear Sergeant Mazur:

We write to appeal the New York City Police Department's ("NYPD") denial of the December 20, 2017 Freedom of Information Law ("FOIL") request ("Request") filed by the NAACP Legal Defense & Educational Fund, Inc. ("LDF") and the Center for Constitutional Rights ("CCR") pursuant to New York Public Officers Law § 89(4)(a).

The Request sought records for five specifically enumerated categories of information: (1) objective criteria about the designation of individuals as gang/crew members, etc.; (2) objective criteria about the designation of groups of people as gangs/crews; (3) de-identified demographic information for individuals labeled as gang/crew members; (4) a copy of the NYPD's Gang/Group Incident Report (PD377-158); and (5) the use of the Domain Awareness System ("DAS") to monitor and identify individuals as gang/crew members. Attached please find a copy of the Request and the NYPD's Acknowledgment Letter as Exhibits A and B, respectively.

In a letter dated May 1, 2018, attached as Exhibit C, the NYPD responded to the Request and provided eight NYPD Patrol Guide Procedures and two PowerPoint presentations, asserting that portions of the disclosed documents had been redacted and/or withheld pursuant to statutory exemptions to FOIL.¹ The NYPD withheld the remainder of the requested records, citing six distinct exemptions in New York Public Officers Law.²

Rather than provide a particularized and specific justification for citing these exemptions, as required by law, the NYPD merely parroted statutory FOIL exemptions in response to the Request. Further, the NYPD neglected to indicate which exemptions purportedly pertain to which of the five enumerated requests, making it difficult to discern the applicability of the exemptions cited.

¹ The NYPD cited the following sections of N.Y. Pub. Off. Law: § 87(2)(e)(iv), 87(2)(e)(iii), 87(2)(b), and 87(2)(f). *See* Exhibit C.

² In addition to these statutory exemptions, the NYPD denied an unspecified portion of the Request because the "records are not maintained in the manner you described." *See* Exhibit C.



We therefore appeal the NYPD's determination on two grounds. First, the Department's recitation of FOIL subsections is inadequate to meet its burden of providing a "particularized and specific" justification for both the redacted/partially withheld documents provided, and the nondisclosure of the remaining records requested under FOIL. Second, the NYPD improperly invoked and/or incorrectly applied six FOIL exemptions to deny records for the five enumerated categories in the Request.

We begin by addressing the inadequacy of the NYPD's response to the Request, followed by a discussion of the inapplicability of the FOIL exemptions cited in the NYPD's response.

I. The NYPD's response to the Request does not comport with FOIL requirements.

The Freedom of Information Law imposes a duty on the NYPD to provide information or an explanation as to why it asserted an exemption to withhold requested records.³ Specifically, as an agency, the NYPD must articulate a "particularized and specific justification" for invoking a FOIL exemption to withhold requested records.⁴ Such an explanation is necessary to ensure individuals seeking information pursuant to FOIL can properly ascertain and evaluate the applicability of exemptions to the records requested.

The NYPD's letter in response to the Request failed to comport with these FOIL requirements. Although the NYPD arguably provided *some* minimally responsive information, it refused to disclose the vast majority of the requested information without articulating a particularized or specific justification. Rather, the NYPD's response letter merely recited statutory language as a purported justification for its refusal to disclose the requested information.⁵ Parroting statutory language, without more, constitutes a failure by an agency to fully explain the reasons for its denial. As such, the NYPD's response to the Request concerning undisclosed records was inadequate.

The NYPD also neglected to provide sufficient justification for redacting and partially withholding the documents it did disclose. The NYPD provided eight NYPD Patrol Guide Procedures and two PowerPoints with the caveat that it had redacted and withheld unspecified portions of the disclosed documents pursuant to FOIL exemptions. In so doing, the NYPD not only failed to indicate which of the enumerated requests the documents were purportedly responsive to, but also neglected to denote the specific portions of the disclosed documents that were subject to redactions/withholding. Relatedly, the NYPD did not explain the purported applicability of the exemptions to the redacted or withheld documents. Without this information, we are unable to determine what portions of the disclosed materials were redacted by the NYPD or the justifications for each cited exemption. Moreover, the NYPD did not articulate any

³ *Gould v. NYPD*, 89 N.Y.2d 267, 275 (1996).

⁴ *Fink v. Lefkowitz*, 47 N.Y.2d 567, 571 (1979).

⁵ On February 22, 2018, LDF and CCR submitted a separate FOIL Request to obtain records concerning six different enumerated requests related to the due process implications of inclusion in a gang database. Despite the clear differences between the first and second Requests, the NYPD's response to the February 22, 2018 Request was substantively the same response, verbatim, as the response at hand, attached as Exhibit D.



particularized or specific justification for invoking each exemption. Instead, the response letter merely lists four exemptions with parroted statutory language from each exemption.

As with denial responses, FOIL imposes a duty on the NYPD to articulate a particularized and specific justification for relying on exemptions to redact or withhold portions of disclosed information or records.⁶ Conclusory statements, combined with merely reciting statutory language, cannot substitute for particularized and specific justifications to invoke any of the cited exemptions. For these reasons, we appeal the sufficiency of the NYPD's response.

II. The FOIL exemptions cited by the NYPD do not apply to the records sought in the Request.

The NYPD cited six different FOIL exemptions to deny the Request; however, the Department did not specify which of the six statutory exemptions—§ 87(2)(b), 87(2)(g), 87(2)(i), 87(2)(e)(iii), 87(2)(e)(iv), 87(2)(f), and 87(2)(g)(iii)⁷—purportedly apply to each of the five separately enumerated requests. Although the NYPD did not provide sufficient justification for each exemption cited, caselaw and the Committee on Open Government's advisory opinions make clear that the cited exemptions are facially inapplicable to the five enumerated categories. As discussed in detail below, the NYPD cannot rely on any of these six exemptions to withhold records responsive to the five enumerated requests. For this reason, we appeal the NYPD's response to the Request on the merits.

A. New York Public Officers Law § 87(2)(b)

New York Public Officers Law § 87(2)(b) permits an agency to withhold records if disclosing such records would constitute “an unwarranted invasion of personal privacy under the provisions of subdivision two of section eight-nine of this article.” The types of documents FOIL intended to protect from disclosure under this exemption include “information of a personal nature,” such as: an individual's employment, medical, or credit history; information that would result in economic or personal hardship to an individual if disclosed; items involving the medical/personal records of a client/patient in a medical facility; lists of names intended to be used for solicitation or fundraising; information reported to an agency in confidence that is not relevant to the ordinary work of the agency; and individuals' worker's compensation records.⁸

None of the information sought in the Request would constitute “an unwarranted invasion of personal privacy” as contemplated by FOIL. The first two enumerated requests seek objective information concerning the criteria the NYPD utilizes to identify individuals and groups of individuals as gang/crew members and gang/crews, respectively. The third enumerated request seeks only de-identified demographic information, the type of which the NYPD has already

⁶ *Gould*, 89 N.Y.2d at 275; see also *Yonamine v. NYPD*, No. 108310/2011, 2012 WL 255022 (N.Y. Sup. Ct. Jan. 20, 2012).

⁷ For purposes of this appeal, we have analyzed § 87(2)(g) and 87(2)(g)(iii) together as a single exemption.

⁸ N.Y. Pub. Off. Law § 89(2)(b).



publicly disclosed.⁹ Similarly, the fourth enumerated category requests a copy of the NYPD's Gang/Group Incident Report (PD377-158), which does not purport to include any individual's personal information.¹⁰ The fifth enumerated request seeks information about NYPD policies and procedures, not personally identifiable information.

The Request makes clear that we are not seeking any personal information about NYPD personnel, witnesses, sources, or complainants. For these reasons, New York Public Officers Law § 87(2)(b) does not apply to the Request.

B. New York Public Officers Law § 87(2)(e)(iii)

Under Public Officers Law § 87(2)(e)(iii), law enforcement agencies may withhold records that are “compiled for law enforcement purposes and which, if disclosed, would [either] identify a confidential source or disclose confidential information relating to a criminal investigation.” This statutory exemption does not apply to the records sought in the Request.

The first two enumerated requests seek objective criteria about the designation of individuals and groups as gang/crew members, associates, etc. and gangs/crews, respectively. While the NYPD may rely on confidential informants to determine whether certain individuals should be designated as members, etc. of a gang/crew, the objective criteria themselves do not identify a confidential source. Indeed, the NYPD has in the past disclosed similar, if not identical, information.¹¹

The third enumerated request seeks de-identified demographic data, which simply cannot be said to disclose confidential information relating to a criminal investigation. Similarly, the fourth enumerated request merely seeks a copy of an NYPD form; the NYPD cannot reasonably argue that a form with no information filled out risks revealing confidential information. The final enumerated request focuses on policies and procedures about how the DAS is used to monitor and

⁹ See K. Babe Howell, *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing*, 5 UNIV. DENVER. CRIM. L. REV. 1, 16 (May 30, 2015) (citing data provided by the NYPD in response to a request for records under FOIL indicating that the NYPD designated as gang members more than 20,000 individuals in a gang database as of August 30, 2013); see also *NYCLU v. NYPD*, 866 N.Y.S.2d 93 (Table) (Sup. Ct. 2008) (requiring the disclosure of a copy of the requested database where “the NYPD has, in fact, provided copies of the database to at least two other outside organizations” and “[t]he NYPD has not offered any other reason why the petitioner should be denied access to the same database which it has already shared with other outside organizations”).

¹⁰ This specific record is referenced in a publicly-available section of the NYPD's Patrol Guide, issued June 23, 2017, Procedure No. 202-30, ¶ 19.

¹¹ In response to Professor Howell's FOIL request filed on September 2, 2011, the NYPD provided its Intelligence Division (“I.D.S”) Gang Entry Sheet, which lists three different ways the NYPD may certify an individual as a gang member. According to this form, the NYPD can certify an individual as a gang member if the person meets two of six criteria, which include (1) known gang location, (2) scars/tattoos associated with a gang, (3) gang related documents, (4) colors associated with gangs, (5) association with known gang members, and (6) hand signs associated with gangs. Howell, *supra* note 9 at 15-16. See also *NYCLU*, 866 N.Y.S. 2d 93.



identify individuals as gang/crew members. The request does not seek any of the actual information contained within or captured using DAS.

For these reasons, the NYPD cannot rely this exemption to deny the requested information.

C. New York Public Officers Law § 87(2)(e)(iv)

Public Officers Law § 87(2)(e)(iv) exempts agencies from revealing records compiled for law enforcement purposes if disclosure would reveal non-routine criminal investigative techniques and procedures. Put differently, agencies must disclose routine criminal investigative techniques and procedures.¹² The Request exclusively seeks information about routine investigative techniques and procedures; therefore, Public Officers Law §87(2)(e)(iv) does not apply.

A technique or procedure may be deemed non-routine if “disclosure of [] procedures would give rise to a substantial likelihood that violators could evade detection by deliberately tailoring their conduct in anticipation of avenues of inquiry to be pursued by [an] agency.”¹³ The NYPD, in response to this Request, has disclosed at least some of the types of records sought in requests one, two, and five; revealing the entirety of the requested records therefore could not allow individuals to evade criminal detection.¹⁴ In addition, the NYPD has in the past disclosed records of the type sought in requests one, two, and three.¹⁵

Public Officers Law § 87(2)(e)(iv) plainly does not apply to the third and fourth enumerated requests. The third request seeks de-identified statistical data, the type of which has been disclosed in the past does not risk identifying any criminal investigative technique or procedure—non-routine or otherwise.¹⁶ The fourth request, a copy of the Gang/Group Incident Report directly referenced in Section 202-30 of the publicly available Patrol Guide, similarly would not reveal any non-routine techniques or procedures.

None of the requested information, if disclosed, would “provide a step-by-step guide” to evade criminal detection.¹⁷ As such, the NYPD’s reliance on Public Officers Law § 87(2)(e)(iv) to deny the Request fails.

¹² *Fink*, 47 N.Y.2d at 567.

¹³ *Id.* at 572 (internal citations omitted).

¹⁴ One of the two PowerPoint presentations disclosed in response to the Request, “NYPD Gang,” attributed to Commissioner James P. O’Neill, includes the Department’s definitions for gang and criminal groups, crime trends, terminology and translation attributed to gangs, categories that indicate gang recognition, and colors allegedly associated with gangs. NYPD Gang (on file with authors). As indicated in the letter, the NYPD provided this PowerPoint in response to the FOIL Request.

¹⁵ Howell, *supra* note 9 at 15-16; *NYCLU*, 866 N.Y.S. 2d 93.

¹⁶ Howell, *supra* note 9.

¹⁷ *In re Gallogly v. City of New York*, 21 N.Y.S.3d 867, 870-71 (Sup. Ct. 2016).



D. New York Public Officers Law § 87(2)(f)

Public Officers Law § 87(2)(f)—commonly known as the public safety exemption—allows an agency to withhold records if disclosure “could endanger the life or safety of any person.” This exemption does not apply to the Request.

For the reasons stated above, the Request does not seek any information or records which, if disclosed, would endanger or impair the lives and safety of any law enforcement personnel or members of the public. The first three enumerated requests seek the type of information that has already been disclosed to the public.¹⁸ The first two requests seek objective criteria used to identify individuals and groups of individuals as gang/crew members and gangs/crews, respectively, while the third request seeks de-identified demographic information.¹⁹ The fourth enumerated category requests a copy of the Gang/Group Incident Report; the release of a publicly-referenced form cannot be said to trigger any public-safety concerns. Concerning the fifth enumerated request, disclosing information about DAS would not reveal any information about undercover officers, confidential sources, or members of the public who are cooperating with the NYPD’s gang investigations. Instead, this request seeks NYPD policies and procedures about how DAS is used to identify individuals as gang/crew members/affiliates. Thus, the NYPD cannot rely on this exemption to deny the Request.

E. New York Public Officers Law § 87(2)(g)

New York Public Officers Law § 87(2)(g) allows an agency to withhold records that are “inter-agency or intra-agency materials.” This exemption does not apply to the Request.

“[U]nder a plain reading of section 87(2)(g), the exemption for intra-agency material does not apply as long as the material falls within any one of the provision’s four enumerated exceptions.”²⁰ This includes exceptions for (1) statistical or factual tabulation or data, and (2) final agency policy or determinations.²¹

The first four enumerated requests clearly qualify as factual information that must be disclosed under New York Public Officers Law § 87(2)(g)(i). In *Gould*, the Court of Appeals held that police complaint follow-up reports were not exempt from disclosure as non-final intra-agency materials.²² In so holding, the Court deemed the names and addresses of crime victims and witnesses contained within the complaint follow-up reports as “factual data” subject to release

¹⁸ Howell, *supra* note 9 at 15-16; *NYCLU*, 866 N.Y.S. 2d 93.

¹⁹ Howell, *supra* note 9.

²⁰ *Gould*, 89 N.Y.2d at 276 (citing *In re Farbman & Sons v N.Y.C. Health & Hosps. Corp.*, 62 N.Y.2d 75, 83 (1984); *In re MacRae v. Dolce*, 515 N.Y.S.2d 295 (App. Div. 1987)).

²¹ Letter from Robert J. Freeman, Exec. Director, N.Y.S. Comm. on Open Gov’t, Opinion No. 16671 (July 18, 2007), <https://docs.dos.ny.gov/coog/ftext/fl6671.htm> (“It is noted that the [§ 87(2)(g)] language quoted above contains what in effect is a double negative. While inter-agency or intra-agency materials may be withheld, portions of such materials consisting of statistical or factual information, instructions to staff that affect the public, final agency policy or determinations or external audits must be made available, unless a different ground for denial could appropriately be asserted.”).

²² *Gould*, 89 N.Y.2d at 277.



under FOIL.²³ Here, the first two enumerated requests seek objective criteria about the designation of individuals and groups as gang/crew members, associates, etc. and gangs/crews, respectively. The third enumerated request only seeks de-identified demographic information. The fourth enumerated category requests a copy of the Gang/Group Incident Report. If “a witness statement constitutes factual data insofar as it embodies a factual account of the witness’s observations,” the records described above represent “purely factual data” subject to disclosure under *Gould*.²⁴ Therefore, the NYPD may not rely on this exemption to withhold the records sought in these enumerated categories.

Finally, the NYPD must disclose the records sought in the fifth request. Training materials, policies, procedures, regulations, protocols, and other guidelines are factual data that contain objective information. This information would not contain any opinions, advice, or recommendations. Instead, the requested documents contain objective information about DAS. Moreover, these materials reflect final agency policies or determinations, subject to disclosure under FOIL, concerning how DAS is used to monitor and identify people.

We recognize that the exemption allows an agency to deny a request that would release opinions, ideas, or advice exchanged as part of the consultative or deliberative decision-making process.²⁵ To the extent the requested information or records includes these types of exempted examples, the NYPD can redact those portions and provide the requested items.

For all these reasons, Public Officers Law § 87(2)(g) compels disclosing the information and records sought in the Request as either statistics and factual data and/or final agency policies and determinations.

F. New York Public Officers Law § 87(2)(i)

Public Officers Law § 87(2)(i), commonly known as the “information technology exemption,” permits an agency to withhold records or portions of records which, if disclosed, “would jeopardize an agency’s capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures.” This exemption does not apply to any records requested.

The information technology exemption to FOIL “is concerned with ensuring the security of information technology” and “has been construed to avoid the risk of electronic or cyber attack. . . . This security consideration is not merely focused on the method of attack, but on the preservation of both the electronic data and the physical system or infrastructure that carries the data.”²⁶ Agencies have relied on this exemption to prevent the disclosure of IP addresses.²⁷ By

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 278.

²⁶ *In re Crawford v. N.Y.C. Dep’t of Info. Tech. & Telecomms.*, 982 N.Y.S.2d 725, 729 (Sup. Ct. 2014) (citing *In re TJS of N.Y., Inc. v. N.Y.S. Dep’t of Taxation and Fin.*, 932 N.Y.S.2d 243 (App. Div. 2011)).

²⁷ Letter from Camille S. Jobin-Davis, Ass’t Director, N.Y.S. Comm. on Open Gov’t, Opinion No. 17236 (July 3, 2008), <https://docs.dos.ny.gov/coog/ftext/f17236.html> (“Unlike security codes or passwords



way of example, in *In re Miller v. New York State Division of Human Rights*, the petitioner filed a FOIL request seeking an agency's "Case Management System Legal Resources Notebook," "a software application providing the means of accessing the information in its electronic file system," as well as the user's manual for the application.²⁸ The Court cited the information technology exemption to deny the request for the application's user's manual.²⁹

In contrast, disclosure of the records sought in the Request in no way jeopardizes the NYPD's capacity to guarantee the security of any of its electronic information systems. The first two requests seek the criteria the NYPD uses to identify individuals and groups as gang/crew members and gangs/crews, respectively; it in no way implicates the security of the NYPD's technology assets. The third request is for demographic information contained within a database of any kind. This is not a request for information about the technical innerworkings of any electronic database or system, but rather a request for records housed within and which may be extrapolated directly from an electronic system.³⁰

If interpreted in the manner the NYPD suggests, Public Officers Law § 87(2)(i) would exempt the NYPD from providing any information housed within any electronic system or database. This is not the law. To the contrary, "if a government agency has the ability, with reasonable effort, to extract and disclose information maintained electronically, it must do so to comply with FOIL."³¹ Indeed, Public Officers Law § 89(3)(a) states, "[w]hen an agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, it shall be required to do so." Therefore, to the extent that the records requested are housed in an electronic system or database, the NYPD cannot rely on the information technology exemption to withhold the requested records.

The fourth and fifth requests likewise are not subject to the information technology exemption. The fourth request for a single form simply cannot be said to jeopardize the Department's information technology. Unlike the Case Management System Legal Resources Notebook at issue in *Miller*, the fifth request is not a request for the actual DAS software application/hardware itself, nor is it a request for a user manual for the DAS technology. Rather, the fifth request seeks policies and procedures concerning the NYPD's use of DAS to identify gang/crew members.

For these reasons, and because the NYPD failed to explain how or why disclosure of the requested information would jeopardize the security of information technology assets,³² the NYPD cannot rely on the information technology exemption to deny the Request.

utilized to gain access to a particular database, it is our understanding that disclosure of IP addresses would permit a person to implement an attack on agency's computers with precision and accuracy.").

²⁸ 996 N.Y.S.2d 30, 32 (App. Div. 2014).

²⁹ *Id.*

³⁰ Howell, *supra* note 9.

³¹ Letter from Robert J. Freeman, Exec. Director, N.Y.S. Comm. on Open Gov't, Opinion No. 19150 (June 26, 2014), <https://docs.dos.ny.gov/coog/ftext/f19150.html>.

³² *See Gallogly*, 21 N.Y.S. 3d at 869 n.2.



G. Records Not Maintained in a Manner Described

In addition to listing a series of statutory exemptions to FOIL, the NYPD withheld the requested records at least in part because “the records are not maintained in the manner you described.”³³ We interpret this to mean the NYPD does not possess or maintain at least some of the records requested. If the NYPD does not possess certain requested records or if the requested records could not be located after diligent search upon review, we request that the NYPD (1) identify the specific enumerated request(s) for which this purported justification for denial applies, and (2) certify that it does not possess these records and/or that these records could not be located after a diligent search.³⁴

If, on the other hand, the NYPD intended the phrase “the records are not maintained in the manner you described” to mean the records requested were not “reasonably described” pursuant to Public Officers Law § 89(3)(a), the NYPD should have sought clarification or asked for more information as necessary to enable a complete response to the requested categories.³⁵ In this case, we request the NYPD to identify the specific enumerated request(s) that did not “reasonably describe” the record(s) requested and explain why “the descriptions were insufficient for purposes of locating and identifying the documents sought.”³⁶

* * *

For the reasons cited above, we appeal (1) the sufficiency of the NYPD’s determination to redact and partially withhold documents that it disclosed in response to the Request, and (2) the sufficiency and the merits of the NYPD’s determination that the remaining requested records are exempt from disclosure.

Please respond within ten business days of receiving this appeal, stating whether the Request is granted or denied in full or in part.³⁷ If the appeal is granted, please state a specific date by which the requested records will be produced. As requested in our initial letter, please produce electronic records in their unlocked native format with all original metadata and original file names. Paper documents should be scanned and produced as Adobe PDF files or TIF files. Emails produced should be grouped together with any attachments. Please send the documents to: Marne

³³ Exhibit B at 1.

³⁴ N.Y. Pub. Off. Law § 89(3); Letter from Camille S. Jobin-Davis, Ass’t Director, N.Y.S. Comm. on Open Gov’t, Opinion No. 19074 (Sept. 20, 2013), <https://docs.dos.ny.gov/coog/ftext/f19074.html> (noting that N.Y. Pub. Off. Law § 89(3) provides in part that on request, an agency “shall certify that it does not have possession of such record or that such record cannot be found after diligent search”).

³⁵ 21 N.Y.C.R.R. § 1401.2(b)(2); *see also* Letter from Robert J. Freeman, Exec. Director, N.Y.S. Comm. on Open Gov’t, Opinion No. 16340 (Dec. 14, 2006), <https://docs.dos.ny.gov/coog/ftext/f16340.htm> (noting that a response to a FOIL request should “indicate in any way which among the records could not be located based on the terms of [the] request” and the agency should make an effort to assist the requester with “reasonably describing” the records requested).

³⁶ *Farbman & Sons*, 62 N.Y.2d at 83.

³⁷ *See* N.Y. Pub. Off. Law § 89(4)(a).



Lenox, NAACP Legal Defense and Educational Fund, Inc., 40 Rector Street, 5th Floor, New York, NY 10006 or mlenox@naacpldf.org.

If the appeal is denied in whole or in part, please name the records being withheld and state with particularity the reasons each record has been withheld. In addition, please note that the FOIL directs that all appeals and the determinations that follow be sent to the Committee on Open Government, Department of State, 41 State Street, Albany, New York 12231.

In anticipation of litigation, please preserve and be prepared to produce any and all records regarding the Records Access Officer's efforts to identify and produce records responsive to the Request, and any and all records regarding the Request, including, but not limited to, electronic and other communications, and other records referring to the Request or containing or referring to information about or relating to the Request.

Thank you for your attention to this matter.

Yours truly,

/s/ Marne Lenox
Marne Lenox, Assistant Counsel
John S. Cusick, Equal Justice Works Fellow

NAACP Legal Defense and Educational
Fund, Inc.

/s/ Darius Charney
Darius Charney, Senior Staff Attorney

Center for Constitutional Rights

EXHIBIT A



December 20, 2017

VIA EMAIL AND FEDEX

New York City Police Department
Records Access Officer
FOIL Unit, Legal Bureau
One Police Plaza, Room 110-C
New York, New York 10038

Re: Freedom of Information Request

Dear Freedom of Information Officer:

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) and Center for Constitutional Rights (“CCR”) make this request for records, regardless of format, medium, or physical characteristics, and including electronic records and information, pursuant to New York Public Officers Law §§ 84-90. We respectfully request that you provide us with the following information within five business days of your receipt of this letter:

- (1) All documents, including without limitation, training materials, policies, procedures, regulations, protocols, and guidelines, drafted and/or utilized by the NYPD from January 1, 2010 to the present, regarding the criteria for identifying an individual as a suspected or confirmed member, associate, and/or affiliate of any gang and/or crew in any database, log, list, and/or electronic system.
- (2) All documents, including without limitation, training materials, policies, procedures, regulations, protocols, and guidelines drafted and/or utilized by the Detectives Bureau, the Organized Crime Control Bureau (OCCB), and by and each of the nine (9) Police Service Areas, the eight (8) Borough Investigative Chiefs, the Precinct Detective Squads in each of the eight (8) Boroughs, and the Borough and Precinct Gang Squads from January 1, 2010 to the present, regarding the criteria for identifying youth gangs and/or crews.
- (3) All documents reflecting the demographic information—including but not limited to race, sex, and age—of every individual currently included in any database, log, list, and/or



electronic system for suspected or confirmed membership, association, and/or affiliation with any gang and/or crew.

- (4) A copy of the Gang/Group Incident Report (PD377-158).
- (5) All documents, including without limitation, training materials, policies, procedures, regulations, protocols and guidelines regarding how the NYPD's Domain Awareness System is used to monitor and/or identify a suspected or confirmed member, associate, and/or affiliate of any gang and/or crew.

Format

Electronic records should be produced in their unlocked native format with all original metadata and original filenames. Paper documents should be scanned and produced as Adobe PDF files or TIF files. Emails produced should be grouped together with any attachments. When searching emails, please search all folders, including inbox, subject matter folders, sent items, archived items, and deleted items. Please produce all metadata fields for emails, including BCC and all others.

Fee Waiver and Expedited Processing

The above requests are a matter of public interest. Accordingly, we request a fee waiver and expedited processing. The disclosure of the information sought is not for commercial purposes; instead, it will contribute to the public's understanding of government operations.¹

LDF and CCR are non-profit organizations dedicated to civil and human rights, with a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including policing. We have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this Request is to obtain information to further the public's understanding of important policing policies. Access to this information is crucial for LDF, CCR, and the communities we serve to evaluate such policies and their effects.

¹ Letter of Robert Freeman, Executive Director, NYS Committee on Open Government, Opinion No. 11745, available at <http://docs.dos.ny.gov/coog/ftext/f11745.htm> (last visited Sept. 6, 2017) (“[T]here is nothing in the Freedom of Information Law that prohibits an agency from waiving the fee for copies.”).



Conclusion

As indicated above, the Freedom of Information Law (“FOIL”) requires that an agency respond within five business days of receipt of a FOIL request. If you are unable to comply with our records request within five business days, please provide us with a copy of the internal report explaining the delay in accordance with 211-17 of the New York Police Department Guide, Section 9, and let us know when we may expect the requested records.

If this request is denied in whole or in part, please identify the appropriate specific appellate authority and justify all specific deletions by reference to exemptions in the statute. Please do not redact any non-responsive information from any records; we request the complete copies of any records with any responsive information. Additionally, please inform us of the reason(s) for such denial in writing, and provide the name, mailing address, and email address of the person or body to whom an appeal should be directed.

Please direct correspondence related to this request to the undersigned to the following addressee(s):

Marne Lenox
c/o NAACP Legal Defense and Educational Fund, Inc.
40 Rector Street, 5th Floor,
New York, NY 10006
Tel.: (212) 965-2256
Email: mlexox@naacpldf.org

Thank you for considering our request.

Sincerely,

\s\ Marne Lenox
Marne Lenox
Assistant Counsel
NAACP Legal Defense and Educational
Fund, Inc.

\s\ Darius Charney
Darius Charney
Senior Staff Attorney
Center for Constitutional Rights

EXHIBIT B



POLICE DEPARTMENT
LEGAL BUREAU
F.O.I.L Unit, Room 110C
One Police Plaza
New York, NY 10038

12/28/17

Marne Lenox
NAACP Legal Defense and Educational Fund, Inc.
mlenox@naacpldf.org

FOIL Req #: 2017-PL-17643
Your File #:
Re: gang

Dear Sir or Madam:

This is in response to your letter dated 12/20/17, which was received by this office on 12/20/17, in which you requested access to certain records under the New York State Freedom of Information Law (FOIL).

Your request has been assigned to Detective Halk (646-610-6430) of this office. Before a determination can be rendered, further review is necessary to assess the potential applicability of exemptions set forth in FOIL, and whether the records can be located. I estimate that this review will be completed, and a determination issued, within ninety business days of this letter.

This is not a denial of the records you requested. Should your request be denied in whole or in part, you will then be advised in writing of the reason for any denial, and the name and address of the Records Access Appeals Officer.

Very truly yours,


Richard Mantellino
Lieutenant
Records Access Officer

EXHIBIT C



**POLICE DEPARTMENT
LEGAL BUREAU**
F.O.I.L. UNIT, ROOM 110C
ONE POLICE PLAZA
NEW YORK, NY 10038

May 1, 2018

Marne Lenox
NAACP Legal Defense and Educational Fund, Inc.
mlenox@naacpldf.org

File # 2017-PL-17643

Dear Madam:

This is in further response to your letter dated, 12/20/2017 in which you request access to certain records under the New York State Freedom of Information Law ("FOIL").

Responsive to your request, the following documents have been accessed and copied: two power point presentations and eight NYPD Patrol Guide Procedures.

Redaction and withholdings have been made to the documents on the basis of Public Officers Law Section 87(2)(e)(iv) as such information, if disclosed, would reveal non-routine techniques and procedures; Public Officers Law Section 87.2(e)(iii), in that the release of such information would identify a confidential source or disclose confidential information; Public Officers Law Section 87(2)(b) as such information, if disclosed, would constitute an unwarranted invasion of personal privacy; and Public Officers Law Section 87(2)(f) as such records/information would endanger the life or safety of any person.

I must deny the remainder of your request on the basis of the following: Public Officers Law Section 87(2)(b) as such information, if disclosed, would constitute an unwarranted invasion of personal privacy; Public Officers Law Section 87(2)(g) as such records are inter-agency and/or intra-agency materials; Public Officers Law Section 87(2)(i) as such records, if disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; Public Officers Law Section 87.2(e)(iii), in that the release of such information would identify a confidential source or disclose confidential information; Public Officers Law Section 87(2)(e)(iv) as such information, if disclosed, would reveal non-routine techniques and procedures; Public Officers Law Section 87(2)(f) as such records/information would endanger the life or safety of any person; Public Officers Law Section 87(2)(g)(iii) as such, these records do not represent a final agency determination; and/or the records are not maintained in the manner you described.

COURTESY • PROFESSIONALISM • RESPECT

You may appeal this decision or any portion thereof. Such an appeal must be made in writing, within 30 days of the date of this letter, and must be forwarded to: Sergeant Jordan S. Mazur, Records Access Appeals Officer, New York City Police Department, One Police Plaza, Room 1406, New York, N.Y. 10038. Your appeal may also be submitted via email to FOILAppeals@NYPD.org. Please include copies of the FOIL request and this letter with your appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Mantellino'.

Richard Mantellino
Lieutenant
Records Access Officer

EXHIBIT D



**POLICE DEPARTMENT
LEGAL BUREAU**
F.O.I.L. UNIT, ROOM 110C
ONE POLICE PLAZA
NEW YORK, NY 10038

May 1, 2018

Matt Bailey
NAACP Legal Defense and Educational Fund, Inc.
mbailey@naacpldf.org

File # 2018-PL-3418

Dear Sir:

This is in further response to your letter dated, 02/22/2018 in which you request access to certain records under the New York State Freedom of Information Law ("FOIL").

Responsive to your request, the following documents have been accessed and copied: two power point presentations and eight NYPD Patrol Guide Procedures.

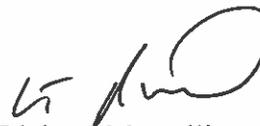
Redaction and withholdings have been made to the documents on the basis of Public Officers Law Section 87(2)(e)(iv) as such information, if disclosed, would reveal non-routine techniques and procedures; Public Officers Law Section 87.2(e)(iii), in that the release of such information would identify a confidential source or disclose confidential information; Public Officers Law Section 87(2)(b) as such information, if disclosed, would constitute an unwarranted invasion of personal privacy; and Public Officers Law Section 87(2)(f) as such records/information would endanger the life or safety of any person.

I must deny the remainder of your request on the basis of the following: Public Officers Law Section 87(2)(b) as such information, if disclosed, would constitute an unwarranted invasion of personal privacy; Public Officers Law Section 87(2)(g) as such records are inter-agency and/or intra-agency materials; Public Officers Law Section 87(2)(i) as such records, if disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; Public Officers Law Section 87.2(e)(iii), in that the release of such information would identify a confidential source or disclose confidential information; Public Officers Law Section 87(2)(e)(iv) as such information, if disclosed, would reveal non-routine techniques and procedures; Public Officers Law Section 87(2)(f) as such records/information would endanger the life or safety of any person; Public Officers Law Section 87(2)(g)(iii) as such, these records do not represent a final agency determination; and/or the records are not maintained in the manner you described.

COURTESY • PROFESSIONALISM • RESPECT

You may appeal this decision or any portion thereof. Such an appeal must be made in writing, within 30 days of the date of this letter, and must be forwarded to: Sergeant Jordan S. Mazur, Records Access Appeals Officer, New York City Police Department, One Police Plaza, Room 1406, New York, N.Y. 10038. Your appeal may also be submitted via email to FOILAppeals@NYPD.org. Please include copies of the FOIL request and this letter with your appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Mantellino', written in a cursive style.

Richard Mantellino
Lieutenant
Records Access Officer