

August 9, 2018

Via NYC Open Records Portal

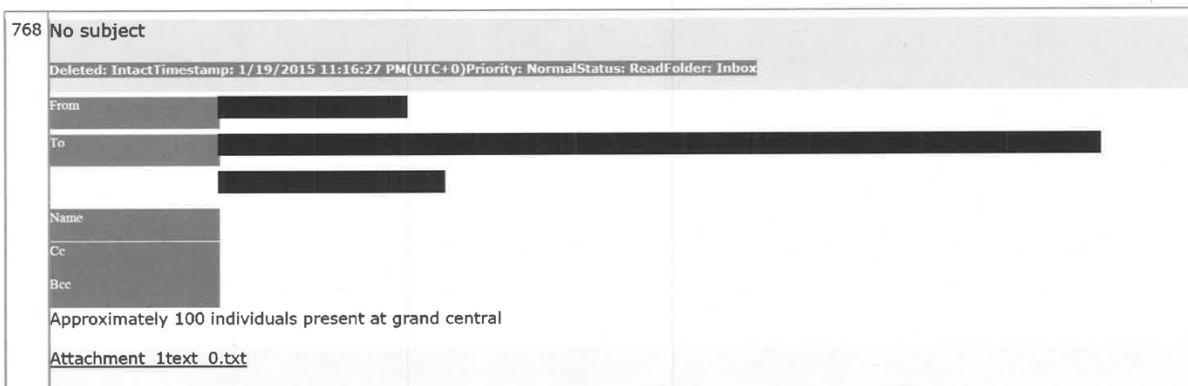
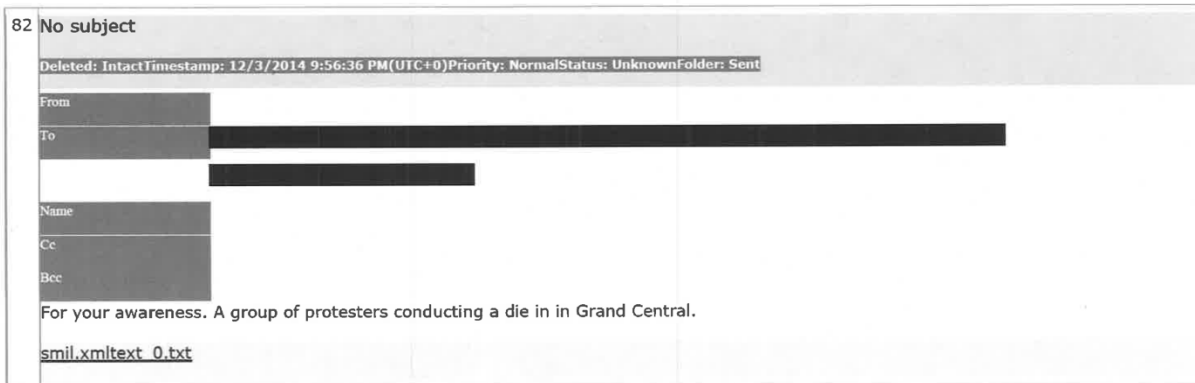
Lieutenant Richard Mantellino
Records Access Officer
One Police Plaza, Room 110-C
FOIL Unit - Legal Bureau
New York, NY 10038

Dear Lt. Mantellino:

Pursuant to New York Freedom of Information Law (“FOIL”), I am making a request that follows up on my FOIL request to the NYPD dated January 25, 2015 and NYPD’s response to it. NYPD denied this previous request but was ultimately ordered to produce the requested documents it possessed by the New York Supreme Court in the litigation Logue v. NYPD, Index No. 153965/2016. NYPD provided me with a complete response to my request on July 2, 2018.

Background

Among the documents NYPD produced on July 2, 2018 in compliance with the Court’s orders were the following:



The full set of these communications produced by NYPD are attached to this request for your reference as Attachment A.

All of these communications, beginning on page 3 of Attachment A, bear a “record number” on their upper left corner. For illustration, the images of the communications copied directly above bear record numbers **82** and **768**, to the left of the terms “No subject”. In correspondence to the Court from counsel for NYPD dated July 10, 2017 during the Logue v. NYPD litigation, NYPD’s attorneys described these record numbers as the “numerical value assigned to the records (“Record Number”) as they were extracted from the device containing the records.” A copy of this letter is attached for your reference, as Attachment B; please see its page 3 for the cited description.

On July 2, 2018, NYPD provided me with copies of 75 communications, and their attachments, contained in and extracted from the device NYPD’s attorneys referenced in Attachment B. The communications I received (see Attachment A) bear the following Record Numbers: 82, 84, 85, 109, 115, 122, 123, 126, 400, 401, 403, 458, 463, 471, 479, 485, 488, 491, 498, 502, 508, 509, 520, 523, 530, 544, 546, 547, 551, 553, 555, 556, 557, 564, 565, 567, 568, 569, 578, 580, 582, 594, 595, 611, 619, 623, 630, 633, 642, 644, 645, 659, 660, 661, 663, 664, 665, 667, 671, 672, 674, 680, 685, 687, 689, 690, 728, 730, 751, 759, 760, 761, 766, 767, and 768.

Request

In this request, I am asking for copies of communications, and all records attached to those communications, contained in same device that contains the communications in Attachment A but which bear the following Record Numbers when extracted from that device: 1-81, 83, 86-108, 110-114, 116-121, 124, 125, 127-399, 402, 404-457, 459-462, 464-470, 472-478, 480-484, 486, 487, 489-490, 492-497, 499-501, 503-507, 510-519, 521, 522, 524-529, 531-543, 545, 548-550, 552, 554, 558-563, 566, 570-577, 579, 581, 583-593, 596-610, 612-618, 620-622, 624-629, 631, 632, 634-641, 643, 646-658, 662, 666, 668-670, 673, 675-679, 681-684, 686, 688, 691-727, 729, 731-750, 752-758, 762-765, 769, and all additional communications contained in this device that, when extracted, bear a Record Number higher than 769. (If it is easier and more efficient to provide me with all communications in the device, including those I already received, I would not object to that response.)

Timing and Other Procedures

I additionally request that NYPD comply with FOIL by releasing the records requested herein within 20 business days after it acknowledges the request. While it is NYPD’s practice to acknowledge FOIL requests and claim that 90 business days are required to review whether the records can be located and assess applicability of FOIL exemptions, such a delay is not warranted here. A four-and-a-half month review and assessment period would be unreasonable with respect to this request, in that (a) the requested records have a single location that is known to the NYPD (given its recent production of documents to me from that single location); and (b) no exemptions may be lawfully asserted to withhold the requested records in light of the judgment and post-judgment orders in Logue v. NYPD and FOIL, generally. I realize that NYPD may elect to redact its undercover officers’ names and email addresses from the requested records, consistent with the recent judgment and post-judgment orders in Logue v. NYPD. Given NYPD’s resources, redacting the response should be easily managed within 20 business days from your acknowledgment of this request (i.e., a total of 25 business days, or five weeks from receipt of this request).

Finally, pursuant to NYCRR Section 1401.5(c)(1), if this request does not, in your opinion, reasonably describe the documents sought – notwithstanding the detailed information and attachments I’ve provided – then kindly provide me with direction, so that I may modify the request so as to reasonably describe the documents and thereby assist your office in locating and identifying those documents.

Please feel free to contact me concerning this request at jflogue@gmail.com.

Regards,

/s/

James Logue

Encls.

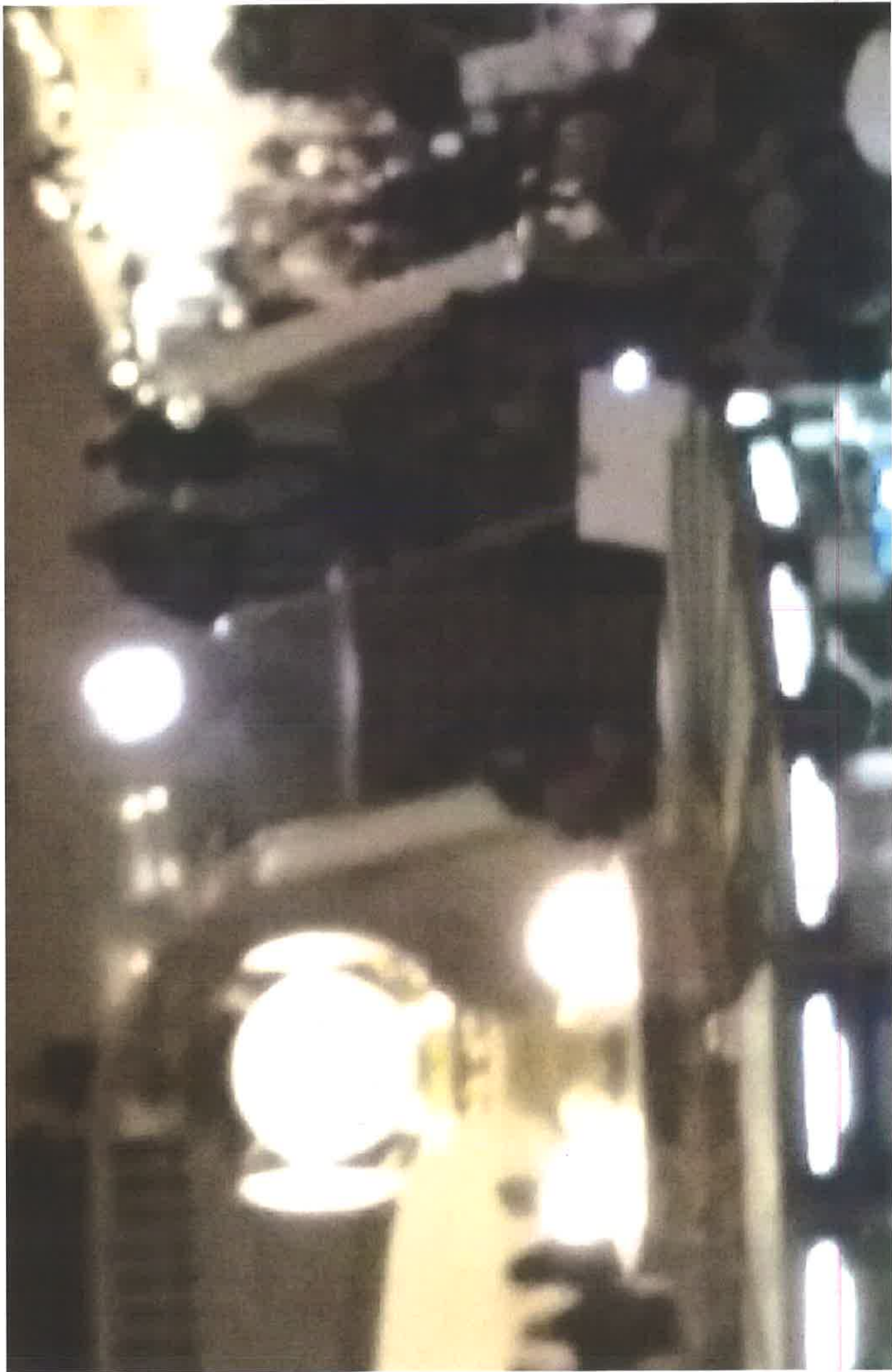
Attachment A

From: [REDACTED]
To: [Fitzpatrick, Michael](mailto:Fitzpatrick.Michael)
Subject: photo
Date: Wednesday, September 09, 2015 11:23:26 AM

-----Original Message-----

From: [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]
Sent: Tuesday, December 09, 2014 7:42 PM
To: [REDACTED]
Subject:

Grand Central right now.



85 No subject

Deleted: IntactTimestamp: 12/3/2014 10:39:40 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

at grand central state more people are joining the protest.

Attachment 1text950.txt .jpg



122 Fwd:

Deleted: IntactTimestamp: 12/4/2014 3:20:29 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

Inside grand central

[text_0.txt](#) [.jpgsmil](#)



123 Fwd:

Deleted: IntactTimestamp: 12/4/2014 3:20:53 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

[.ipgsmil](#)



126 No subject

Deleted: IntactTimestamp: 12/4/2014 3:49:57 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

Walking south at time square going up grand central

[text 0.txtAttachment 1](#)

400 No subject

Deleted: IntactTimestamp: 12/6/2014 1:30:58 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

reports 200 protesters entering grand central terminal

[text 0.txtAttachment 1](#)

401 No subject

Deleted: IntactTimestamp: 12/6/2014 1:36:08 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

.jpgsmil



403 No subject

Deleted: IntactTimestamp: 12/6/2014 1:36:50 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From [REDACTED]

To [REDACTED]

Name [REDACTED]

Cc [REDACTED]

Bcc [REDACTED]

[REDACTED].3gpsmil

458 No subject

Deleted: IntactTimestamp: 12/8/2014 9:28:17 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From [REDACTED]

To [REDACTED]

Name [REDACTED]

Cc [REDACTED]

[REDACTED]

Bcc [REDACTED]

[REDACTED], [REDACTED] at GC---all quiet

body.txtmmm.smil

463 No subject

Deleted: IntactTimestamp: 12/8/2014 11:02:28 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

reports all quiet at GC---lower level and main level.

[body.txtmmm.smil](#)

471 No subject

Deleted: IntactTimestamp: 12/8/2014 11:52:35 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

reporting all quiet on the Grand Central front.

[body.txtmmm.smil](#)

479 No subject

Deleted: IntactTimestamp: 12/9/2014 12:29:08 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

reports 10 people lying down on the floor by the clock in GC.

[body.txtmmm.smil](#)

488 No subject

Deleted: IntactTimestamp: 12/9/2014 1:10:59 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

confirms small # of protesters on the floor in GC---no increase in size of group.

[body.txtmmm.smil](#)

491 No subject

Deleted: IntactTimestamp: 12/9/2014 1:16:34 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

App 15-20 protesters at sit in/die in GC.

[body.txtmmm.smil](#)

498 No subject

Deleted: IntactTimestamp: 12/9/2014 1:46:10 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

reports 20-25 near the clock in GC chanting "I can't breathe".

[mmm.smilbody.txt](#)

502 No subject

Deleted: IntactTimestamp: 12/9/2014 2:34:18 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

reports 10 protesters in GC just standing about w a large uniform presence also in GC.

[mmm.smilbody.txt](#)

508 No subject

Deleted: IntactTimestamp: 12/9/2014 3:30:19 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

reports GC crowd down to 5 people---still just standing about.

[body.txtmmm.smil](#)

509 No subject

Deleted: IntactTimestamp: 12/9/2014 3:52:43 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

6 people standing by the clock in GC.

[body.txtmmm.smil](#)

520 No subject

Deleted: IntactTimestamp: 12/9/2014 4:54:10 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

[REDACTED], 4 protesters (not 3, not 5) are left in GC and look like they may be leaving soon.

[mmm.smilbody.txt](#)

523 No subject

Deleted: IntactTimestamp: 12/9/2014 6:19:34 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

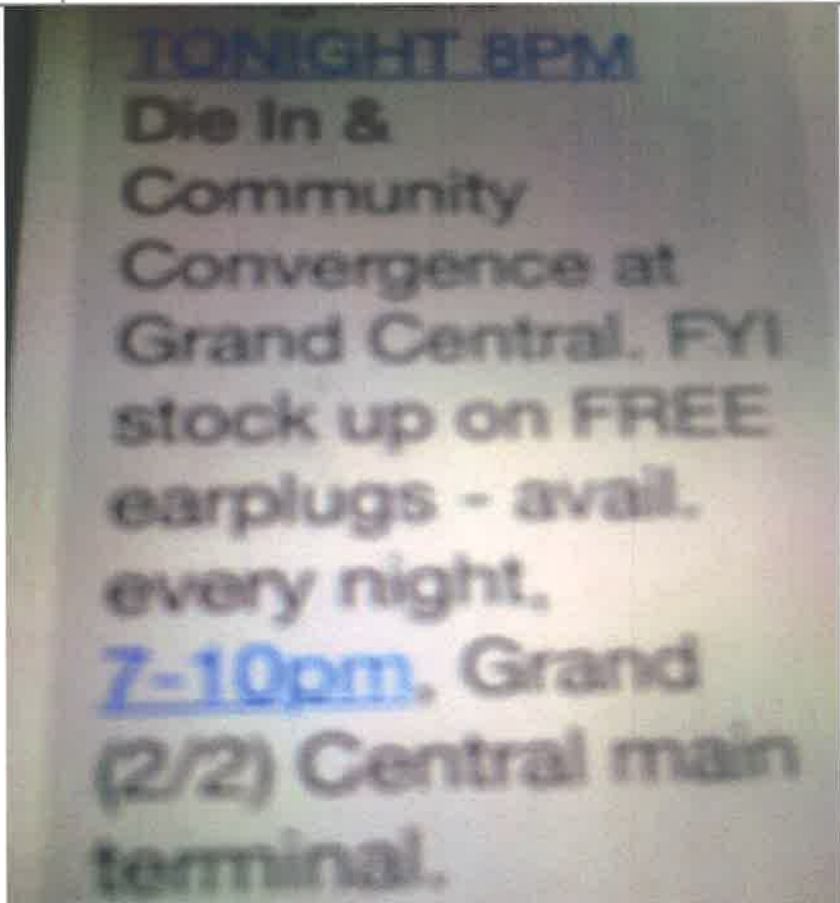
To

Name

Cc

Bcc

Attachment 1 [REDACTED].jpg



530 No subject

Deleted: IntactTimestamp: 12/9/2014 9:56:09 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

.jpgAttachment 1

Convergence at
Union Square
begins in 15 Mins
#ShutItDown.
[March 6 PM. Die
In Grand Central 8
PM.](#)



Text Message

Send

544 No subject

Deleted: IntactTimestamp: 12/10/2014 1:03:57 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

100 performing die in. In GCS

smil.xmltext 0.txt

551 No subject

Deleted: IntactTimestamp: 12/10/2014 8:51:30 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

has nothing at there location in the area of Macy and grand central

text 0.txtAttachment 1

553 No subject

Deleted: IntactTimestamp: 12/10/2014 9:57:02 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

check w ur people there 60 protesting outside grand central. Can u confirm please

text 0.txtAttachment 1

555 No subject

Deleted: IntactTimestamp: 12/10/2014 10:08:52 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

We are now walking westbound on 42 of Vanderbilt do u want to stay at gcs or follow the group

text 0.txtAttachment 1

556 No subject

Deleted: IntactTimestamp: 12/10/2014 10:17:23 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

Btw [REDACTED] grand is expecting a new group of protesters at 1900 hrs

text 0.txtAttachment 1

557 No subject

Deleted: IntactTimestamp: 12/10/2014 10:17:37 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

Grand central

text 0.txtAttachment 1

564 No subject

Deleted: IntactTimestamp: 12/10/2014 11:53:28 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

is going to gcs now

text 0.txtAttachment 1

565 No subject

Deleted: IntactTimestamp: 12/11/2014 12:19:56 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

About 15 of them sitting around peaceful at gcs

text 0.txtAttachment 1

567 No subject

Deleted: IntactTimestamp: 12/11/2014 12:48:23 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

is heading to grand central

[text 0.txtsmil.xml](#)

568 No subject

Deleted: IntactTimestamp: 12/11/2014 1:04:21 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

states 20 protesters at Grand Central

[text 0.txtsmil.xml](#)

578 No subject

Deleted: IntactTimestamp: 12/12/2014 11:12:11 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

[REDACTED], nothing in GC.

[body.txtmmm.smil](#)

580 No subject

Deleted: IntactTimestamp: 12/12/2014 11:15:29 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

[REDACTED], 1 person lying down in GC.

[body.txtmmm.smil](#)

582 No subject

Deleted: IntactTimestamp: 12/12/2014 11:23:25 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

█ states individual said the group in TS w move east on 47 to 5th Ave to the tree and then meet up w additional people at GC

[body.txtmmm.smil](#)

595 No subject

Deleted: IntactTimestamp: 12/13/2014 12:18:36 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

█ just went to GC

[body.txtmmm.smil](#)

611 No subject

Deleted: IntactTimestamp: 12/13/2014 1:44:22 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

reports the same @ GC (15-20) orderly protesters.

mmm.smilbody.txt

619 No subject

Deleted: IntactTimestamp: 12/15/2014 9:12:29 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

grand central quiet also

text 0.txtAttachment 1

623 No subject

Deleted: IntactTimestamp: 12/15/2014 9:57:16 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

quiet times sq and GC

text 0.txtAttachment 1

630 No subject

Deleted: IntactTimestamp: 12/16/2014 12:20:35 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

Approx 15 in GC. Brown jacket is main protester

text951.txt .jpgAttachment_1



642 No subject

Deleted: IntactTimestamp: 12/16/2014 1:29:44 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

No change at GC. Peaceful

Attachment 1text 0.txt

644 No subject

Deleted: IntactTimestamp: 12/16/2014 1:36:35 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

states about 40 left GC going west on 42

Attachment 1text 0.txt

660 No subject

Deleted: IntactTimestamp: 12/16/2014 3:01:29 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

Back in grand central. Chanting

Attachment 1text 0.txt

661 No subject

Deleted: IntactTimestamp: 12/16/2014 3:02:29 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

Attachment 1 [redacted].jpg



663 No subject

Deleted: IntactTimestamp: 12/16/2014 9:01:01 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

v.o. gst and tsq. NTR

smil.xmltext 0.txt

664 No subject

Deleted: IntactTimestamp: 12/16/2014 9:08:11 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

v/o Grand central Nothing to report.

Attachment 1text 0.txt

665 No subject

Deleted: IntactTimestamp: 12/16/2014 9:20:50 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

ntn gcs and tsq

smil.xmltext 0.txt

667 No subject

Deleted: IntactTimestamp: 12/16/2014 10:15:51 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

v/o Grand central Nothing to report

Attachment 1text 0.txt

671 No subject

Deleted: IntactTimestamp: 12/16/2014 10:58:57 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

v/o Grand central Nothing to report

Attachment 1text 0.txt

672 No subject

Deleted: IntactTimestamp: 12/16/2014 11:06:43 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

, 2 protestors sitting down main concourse @gct

smil.xmltext 0.txt

674 No subject

Deleted: IntactTimestamp: 12/16/2014 11:31:22 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

report 3 protesters at grand central

text 0.txtAttachment 1

680 No subject

Deleted: IntactTimestamp: 12/17/2014 12:43:51 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

approx 10 orderly protestors @gct

smil.xmltext 0.txt

685 No subject

Deleted: IntactTimestamp: 12/17/2014 1:15:22 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

reporting Same all around... About 15-20 with signs standing around grand central.

Attachment 1text 0.txt

687 No subject

Deleted: IntactTimestamp: 12/17/2014 2:01:41 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

crowd down to 10 @gst. Very quiet

smil.xmltext 0.txt

689 No subject

Deleted: IntactTimestamp: 12/17/2014 2:09:23 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

█ @gst less then 10 seem to be dispersing

smil.xmltext 0.txt

690 No subject

Deleted: IntactTimestamp: 12/17/2014 2:14:24 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

█ reporting about 10 protester at grand central.

Attachment 1text 0.txt

728 No subject

Deleted: IntactTimestamp: 12/19/2014 1:40:10 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

Small group gathering in grand central,10-15 people making signs

Attachment 1text 0.txt

730 No subject

Deleted: IntactTimestamp: 12/19/2014 2:04:48 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

Group now doing die in at GC

Attachment 1text 0.txt

759 No subject

Deleted: IntactTimestamp: 1/15/2015 10:48:14 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

an a group of 7 is heading to grand central station

Attachment 1text 0.txt

760 No subject

Deleted: IntactTimestamp: 1/15/2015 10:54:01 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

states that a group of individuals will stay at city hall park then head to Staten Island and another group will ne heading to grand central station

Attachment 1text 0.txt

761 No subject

Deleted: IntactTimestamp: 1/16/2015 1:25:46 AM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

witnessed 1 arrest at grand central station

Attachment 1text 0.txt

768 No subject

Deleted: IntactTimestamp: 1/19/2015 11:16:27 PM(UTC+0)Priority: NormalStatus: ReadFolder: Inbox

From

To

Name

Cc

Bcc

Approximately 100 individuals present at grand central

Attachment 1text 0.txt

82 No subject

Deleted: IntactTimestamp: 12/3/2014 9:56:36 PM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

For your awareness. A group of protesters conducting a die in in Grand Central.

[smil.xmltext_0.txt](#)

84 No subject

Deleted: IntactTimestamp: 12/3/2014 10:13:16 PM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

Somewhere in Grand Central. Prob over by now...

[smil.xmltext_0.txt](#)

109 No subject

Deleted: IntactTimestamp: 12/4/2014 2:54:42 AM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

Need everyone's latest locations. Need a [REDACTED] to go to grand central...

[text_0.txtsmil.xml](#)

115 No subject

Deleted: IntactTimestamp: 12/4/2014 2:59:14 AM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

If nothing going on in times sq, ur closest, go to grand central asap

[text_0.txtsmil.xml](#)

485 No subject

Deleted: IntactTimestamp: 12/9/2014 12:52:02 AM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

██████████ at Grand Central, be advised, chatter about having an action at G.C. after action at Barclay....

[text_0.txtsmil.xml](#)

546 No subject

Deleted: IntactTimestamp: 12/10/2014 1:34:42 AM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

██████████ covering Grand Central, allegedly all protesters are remaining till approx 2200, then will exit. Ask ur ██████████ to try to listen up and find out how they are planning to leave, whether on foot, train, etc.....

Thanks

[smil.xmltext_0.txt](#)

547 Fwd:

Deleted: IntactTimestamp: 12/10/2014 1:35:38 AM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

covering Grand Central, allegedly all protesters are remaining till approx 2200, then will exit. Ask ur to try to listen up and find out how they are planning to leave, whether on foot, train, etc.....

Thanks

(For your awareness)

smil.xmltext_0.txt

569 No subject

Deleted: IntactTimestamp: 12/11/2014 1:18:44 AM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

██████ in Grand Central, advise your people to try n listen up to any plans they have to march out of there. The weather is clearing up so they may just do that. See if u can find out the plan if they're talking about one. Thanks.

[text_0.txtsmil.xml](#)

594 No subject

Deleted: IntactTimestamp: 12/13/2014 12:18:00 AM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

██████ that was monitoring times sq n grand central r on the move. Nearest ██████ w a dead spot, want to check out grand central? Think there's some people there..

[text_0.txtsmil.xml](#)

633 No subject

Deleted: IntactTimestamp: 12/16/2014 12:33:42 AM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

I'm hearing 60 in Grand Central....

[text_0.txtsmil.xml](#)

645 No subject

Deleted: IntactTimestamp: 12/16/2014 1:42:56 AM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

Group from G.C. walking west on 42 in street. Just passed 5 ave..

[smil.xmltext_0.txt](#)

659 No subject

Deleted: IntactTimestamp: 12/16/2014 2:54:14 AM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

Group went back to grand central

smil.xmltext 0.txt

751 No subject

Deleted: IntactTimestamp: 1/7/2015 9:38:03 PM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

█ v/o Union sq. █ v/o grand central. █ quiet. █ believe nothing going, quiet...

█, reconfirm, advise of any changes.

Thanks

smil.xmltext 0.txt

766 No subject

Deleted: IntactTimestamp: 1/19/2015 9:54:56 PM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

Cc

Bcc

Group at Foley mention that they are going to march over to Grand Central.

[smil.xmltext 0.txt](#)

767 No subject

Deleted: IntactTimestamp: 1/19/2015 9:55:43 PM(UTC+0)Priority: NormalStatus: UnknownFolder: Sent

From

To

Name

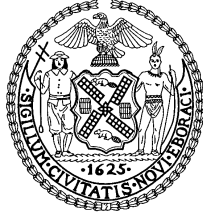
Cc

Bcc

Group at Foley mention that they are going to march over to Grand Central.

[smil.xmltext 0.txt](#)

Attachment B



THE CITY OF NEW YORK
LAW DEPARTMENT

100 CHURCH STREET
NEW YORK, NY 10007

ZACHARY W. CARTER
Corporation Counsel

LESLEY BERSON MBAYE
phone: (212) 356-0897
fax: (212) 356-2089
email: lmbaye@law.nyc.gov
(not for service)

July 10, 2017

By NYSCEF

Hon. Manuel J. Mendez

Justice of the New York State Supreme Court, County of New York

71 Thomas Street, Rm. 210, IAS Part 13

New York, NY 10013

Re: Logue v. New York City Police Dep't, et al.
Index No. 153965/2016

Dear Justice Mendez:

I am the Assistant Corporation Counsel assigned to represent the Respondents New York City Police Department and former Commissioner William Bratton (collectively, "Respondent" or "NYPD") in the above-referenced Article 78 FOIL proceeding. I write to bring to the Court's attention a dispute between the parties concerning Respondents' compliance with Your Honor's Order of February 6, 2017 (dkt. no. 61) that Respondents believe can be resolved in a conference with Your Honor, and without the need for motion practice. However, due to the exceptional circumstances and sensitive nature of the NYPD's position on this issue, and the risk that public discussion could lead to the identification of undercover officers and also jeopardize the safety of others, Respondents respectfully request that they be permitted to explain their position to the Court in an *ex parte, in camera* conference.

Procedural Background

Petitioner brought this Article 78 special proceeding to challenge the NYPD's response to their Freedom of Information Law ("FOIL") request for records concerning the NYPD's surveillance of protests at Grand Central Station from November 2014 until January

2015. As set forth in Respondents' Verified Answer and supporting memorandum of law, NYPD searched for and did not locate any records responsive to five of the seven enumerated FOIL requests. NYPD did locate records responsive to the other two requests, but withheld them as exempt under various FOIL exemptions.

The Court's decision, dated February 6, 2017 (the "Order") granted the Petition in part and denied it in part. A copy of the Order is annexed as Exhibit "A." As relevant to the parties' current dispute, the Court ordered NYPD to produce to Petitioner, within thirty days, records responsive to Petitioner's FOIL Requests Nos. 1 and 4, which are:

Request No. 1: All pictures, videos, audio recordings, data, and metadata related to Grand Central Station protests that were collected or received by your agency.

Request No. 4: Copies of all communications sent or received by your agency between November 2013 and January 2015 pertaining to protests in Grand Central Station.

Specifically, the Court ordered Respondents to produce "multimedia records" responsive to Request No. 1, and previously withheld documents responsive to Request No. 4 "redacted to omit identifying information including the names and e-mail addresses of the NYPD undercover officers, their handlers and the base."

In accordance with this Order, under cover letter dated March 13, 2017, Respondents produced to Petitioner's counsel: (1) a CD with video recording in response to FOIL Request No. 1, and (2) 45 pages of records, comprising copies of communications between undercover officers, their handlers, and their base, redacted in accordance with the Order, in response to FOIL Request No. 4. A copy of the cover letter that was sent with these documents is annexed as Exhibit "B."

Petitioner's Response to NYPD's Production

By letter to the undersigned dated March 17, 2017, Petitioner's counsel raised several objections to Respondents' production, claiming that the production "violate[d]" Your Honor's Order. Specifically, Petitioner (1) objected to the redactions of date, time, filename, and other data in the records responsive to Request No. 4; (2) claimed the communications production was under-inclusive; and (3) objected to the lack of production of any still or video surveillance camera footage. Petitioner also alleged that the NYPD affiant, Assistant Chief Donohue, committed perjury, and threatened to seek sanctions. Petitioner's letter is annexed as Exhibit "C."

NYPD Responds to Petitioner's Objections

By letter dated March 27, 2017, the undersigned responded to Petitioner's objections. NYPD stood by its redactions, noting that its search terms for communications were over-inclusive rather than under-inclusive, and refuting Petitioner's assertion that the absence of any video or still photo surveillance records was evidence that Assistant Chief Donohue had perjured himself. A copy of that letter is annexed as Exhibit "D."

Petitioner Writes Again

Three months later, by letter dated June 15, 2017, Petitioner renewed his objections to Respondents' production of responsive records. This letter began by informing the undersigned that Petitioner was prepared to move to hold NYPD in contempt, and to seek sanctions against both NYPD and the New York City Law Department because, in Petitioner's opinion, Respondents' litigation papers "unequivocally assert that stationary surveillance camera imagery were among the records NYPD withheld from Petitioner." See Letter of David Thompson, Esq., dated June 15, 2017 (annexed as Exhibit "E"). Petitioner demanded the production of the purportedly existent responsive video and still photographic surveillance records. In the alternative, Petitioner asserted that Respondents' "apparent present position" that no such records exist contradicted representations made in Respondents' legal papers such that those statements constitute "lie[s] under oath to the court" (lower case in original), and warrant sanctions.

Petitioner also renewed his objections to Respondents' redactions in the produced communications records.

NYPD Responds and Requests an *Ex Parte In Camera* Conference to Present its Position on these Disputes to the Court

In response to Petitioner's continued objection to the redactions, NYPD re-analyzed the redacted information to determine whether any information could be unredacted without risking the identification of undercover officers. As a result of this analysis, it was determined that one data point could be unredacted without incurring such risk. That data point represents the numerical value assigned to the records ("Record Number") as they were extracted from the device containing the records for the purpose of the original March 17 document production. Copies of those documents with the Record Number unredacted were provided to Petitioner's counsel by email on July 10, 2017. A copy of this letter is annexed as Exhibit "F."

In providing these documents, however, NYPD did not unredact the remaining information sought by Petitioner (*i.e.*, date, time, and filename information), because doing so would reveal non-routine investigative techniques, and also could result in the identification of undercover police officers, thereby endangering their lives and safety. Petitioner's June 15 letter also asked NYPD to "provide us with further information about why this data in particular [*i.e.* portions of file names, date, and time information] would identify NYPD personnel." Providing such an explanation, however, would require NYPD to reveal or explain non-routine law enforcement techniques, and also would implicate issues of public safety and security.

Similarly, an explanation of NYPD's position regarding the alleged video and/or still photographic surveillance records also would require NYPD to reveal or explain non-routine law enforcement techniques, and also would implicate issues of safety and security.

Respondents understand the issues raised by Petitioner in his letters. Although NYPD is confident it can explain why Petitioner's objections and concerns regarding NYPD's production are without merit, the nature of NYPD's response constrains it from explaining its position except privately to Your Honor.

Your Honor's Part Clerk has indicated that the Court does not generally accept requests for conferences to resolve disputes. However, given the exceptional circumstances and sensitive nature of NYPD's rationale, which the Department is fully prepared to provide to the Court, NYPD respectfully requests that the Court schedule an *ex parte in camera* conference so that NYPD may confidentially explain its position to Your Honor concerning these record production disputes.

Thank you for your attention to this request.

Respectfully,

/s/

Lesley Berson Mbaye
Assistant Corporation Counsel

cc: By NYSCEF
David A. Thompson, Esq.
Stecklow & Thompson
Attorneys for Petitioner
217 Centre Street, 6th Fl.
New York, NY 10013

Subject: Fwd: [OpenRecords] Request FOIL-2018-056-06510 Closed
Date: Monday, August 13, 2018 at 7:14:04 PM Eastern Daylight Time
From: James Logue
To: M.J. Williams

----- Forwarded message -----

From: <openrecords@records.nyc.gov>
Date: Mon, Aug 13, 2018 at 8:22 AM
Subject: [OpenRecords] Request FOIL-2018-056-06510 Closed
To: <jflogue@gmail.com>

The New York City Police Department (NYPD) has **denied** your FOIL request [FOIL-2018-056-06510](#) for the following reasons:

- The Freedom of Information Law allows access to existing documents and does not necessitate the creation of a document. I am unable to provide access to these documents on the basis that your request does not reasonably describe a record in a manner that would enable a search to be conducted by the New York City Police Department.

Please visit [FOIL-2018-056-06510](#) to view additional information and take any necessary action. You may appeal the decision to deny access to material that was redacted in part or withheld in entirety by contacting the agency's FOIL Appeals Officer: foilappeals@nypd.org within 30 days.

Request Information:

Request Title: Follow-up request from the Logue v. NYPD case for communications from 2014 to the present

Request Description: Please see the attached document, which sets forth the request in full, its relevant background, and referenced materials.

DO NOT RESPOND TO THIS EMAIL. For information or questions about this request please use the Contact the Agency link on the request page in OpenRecords.



M.J. Williams Law 11 Broadway, Suite 615 New York, NY 10004 mjwilliams@mjw-law.com mjw-law.com 347.471.1447

September 11, 2018

By Email: FOILAPPEALS@nypd.org

Sergeant Jordan Mazur
Legal Bureau-Civil Section
One Police Plaza, Room 1406
New York, NY 10038

Re: Appeal of NYPD's response to
FOIL-2018-056-06510

Dear Sgt. Mazur:

This is an appeal of the response to the above-referenced request my client James Logue made pursuant to New York's Freedom of Information Law (N.Y. Public Officer's Law §§ 84 et seq.; see also 21 N.Y.C.R.R. Part 1401) ("FOIL").

Mr. Logue submitted the request to the NYPD through the New York City Open Records system on August 9, 2018. Less than two business days later, on August 13, 2018, NYPD denied the request on two grounds. First, NYPD asserted that the request "does not reasonably describe a record in a manner that would enable a search to be conducted by the New York City Police Department." Additionally, NYPD claimed that the request does not seek "existing document[s]" and would "necessitate the creation of a document," which FOIL does not require.

Mr. Logue's request, however, seeks existing documents that he specifically and individually identified using NYPD's own internal record numbering system. (Having assigned its documents with record numbers, it is axiomatic that NYPD uses those record numbers to search for and identify documents that exist.) The request, moreover, provides sufficient information for NYPD to locate the records my client seeks. Given this, Mr. Logue asks NYPD to revisit the request, which appears to have been too hastily denied,¹ and use the abundant information the request provides to retrieve and produce the requested records.

FOIL requires only that the request provides NYPD with sufficient information so that it can locate the sought-after records. That is the minimal bar a "reasonably described" request must meet. See Konigsburg v. Coughlin, 68 N.Y.2d 245 (1986). When, as here, the records

¹ Instead of denying the request, 21 N.Y.C.R.R. 1401.5(c)(1) requires NYPD to have provided Mr. Logue with directions how to describe the records in a manner that would enable NYPD to conduct its search for them.

are stored electronically, NYPD must make reasonable efforts, employing the technology available to it, to locate the records. See N.Y. Public Officer's Law § 89(3)(a) ("When 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."); see also Pflaum v. Grattan, 116 A.D.3d 1103, 1104 (3d Dep't 2014) (agency must make a reasonable technology effort to use the information provided in a request to extract or retrieve requested documents from virtual files). In general, NYPD must make a good faith effort to comply with FOIL and avoid unreasonable denials of access. See, e.g., New York Civ. Liberties Union v. City of Saratoga Springs, 87 A.D.3d 336, 338 (3d Dep't 2011). After all, its records are presumptively accessible, and FOIL imposes a "broad standard of disclosure" upon NYPD. Capital Newspapers v. Burns, 67 N.Y.2d 562, 565-66 (1986).

To summarize the request, its context, and the information it provides, Mr. Logue previously received copies of 75 communications from NYPD on March 17, 2017, July 10, 2017, and July 2, 2018 and attached them to his request, as Attachment A. Those 75 communications were messages dated December 3, 2014 to January 19, 2015 sent by NYPD personnel and consisted of short, factual reports on protests in New York City. NYPD itself assigned record numbers to those communications, according to chronology, the lowest being Record No. 82 (sent on December 3, 2014) and the highest being Record No. 768 (sent on January 19, 2015).² NYPD's record numbering protocol makes it plain that NYPD has at least 694 more such communications. This current request, which identifies the records sought using NYPD's own record numbers, is for copies of the communications Mr. Logue did not previously receive and that most certainly exist.

Mr. Logue's request, therefore, provides NYPD with information to locate the records, namely, by reference to its Attachment A.³ The location of the records in Attachment A is the same location of the records he now requests. This request easily meets the reasonably described standard because NYPD can locate and identify the requested records "by retracing a path already trodden." Natl. Cable Tel. Assn. v. Fed. Communications Commn., 479 F.2d 183, 192 (D.C. Cir. 1973), cited in Konigsburg, 68 N.Y.2d at 230.

This request also provides NYPD with information to identify specifically which records Mr. Logue seeks, namely, by reference to NYPD's own record numbers.

² NYPD's record numbers are for NYPD's internal use. A different number, printed at the bottom of each page from 1 to 45, was assigned for the FOIL release to Mr. Logue.

³ Supplementary materials, like the Attachments A and B that Mr. Logue annexed to his request and referenced within it, serve as part of the description of the records sought. See Urban Justice Ctr. v. New York City Police Dept., 2010 N.Y. Slip Op. 32400(U) at **8, 15-16, Index No. 40088/2010 (Sup. Ct., New York County, Sept. 1, 2010).

As to other objections, as mentioned in the request, it has already been determined, by the judgment and post-judgment orders in Logue v. NYPD, that the communications and their attachments must be disclosed with redactions limited to information, such as names and email addresses, that would directly identify NYPD personnel.

Mr. Logue is prepared, if needed, to return to the courts to obtain the requested documents. Please contact me to discuss the request and NYPD's compliance with it, particularly if that could help avoid burdening the courts with a matter they very recently reviewed.

Very truly yours,

A handwritten signature in black ink, appearing to be 'M.J. Williams', written over a circular stamp or seal.

M.J. Williams

cc: James Logue
Robert J. Freeman, Committee on Open Government



POLICE DEPARTMENT
Office of Deputy Commissioner,
Legal Matters
One Police Plaza, Room 1406A
New York, New York 10038
FOILAppeals@NYPD.org

October 8, 2018

M.J. Williams
mjwilliams@mjlw-law.com

RE: FREEDOM OF INFORMATION LAW
REQUEST: FOIL-2018-056-06510
Re: James Logue

Dear Ms. Williams:

This letter is in response to your email dated September 11, 2018 appealing the determination of the Records Access Officer made on August 13, 2018 regarding records requested from the New York City Police Department. Your request, made pursuant to the Freedom of Information Law, was originally received by the FOIL unit on August 9, 2018 and subsequently denied by the Records Access Officer. As per our email correspondence dated September 24, 2018, parties consented to an extension of the statutory 10-day response time mandated by POL §89(4), having mutually agreed upon Monday, October 8, 2018 as the date of disclosure. The NYPD agrees to leave open the option to appeal this response, but does not concede that the records should have been disclosed by the RAO in response to the original FOIL request dated August 9, 2018.

Your appeal has been granted and enclosed herein are the requested records – the 694 communications (along with any attachments) not originally provided on July 2, 2018 in connection with the Logue v. NYPD litigation in which 75 similar communications were disclosed. Please note that the records do, in fact, end at #769, and include all of the numbers identified in your August 9, 2018 request.

The records have been redacted in accordance with the judgment and post-judgment orders in Logue v. NYPD, where the redactions are limited to personally identifying information such as names and email addresses, as well as dates and times that would either directly or indirectly identify NYPD personnel.

You may seek judicial review of this determination by commencing an Article 78 proceeding within four months of the date of this decision.

Sincerely,

Jordan S. Mazur

COURTESY • PROFESSIONALISM • RESPECT

Sergeant
Records Access Appeals Officer

Enclosure
c: Committee on Open Government



M.J. Williams Law 11 Broadway, Suite 615 New York, NY 10004 mjwilliams@mjw-law.com mjw-law.com 347.471.1447

October 29, 2018

By Email: FOILAPPEALS@nypd.org

Sergeant Jordan Mazur
Legal Bureau-Civil Section
One Police Plaza, Room 1406
New York, NY 10038

Re: Second appeal, on consent
FOIL-2018-056-06510

Dear Sgt. Mazur:

This is a second, limited appeal of NYPD's response to the above-referenced request my client James Logue made pursuant to New York's Freedom of Information Law (N.Y. Public Officer's Law §§ 84 et seq.; see also 21 N.Y.C.R.R. Part 1401) ("FOIL").

As stated in your letter dated October 8, granting the appeal in part and enclosing a portion of the requested records, the NYPD agreed to provide Mr. Logue an option to appeal the October 8th response directly to your office. The records NYPD released to Mr. Logue on October 8th in response to his pending FOIL request consist of 694 written messages and images attached to those messages (the "Oct 8 Release"). The messages in the Oct 8 Release were exchanged between NYPD personnel in connection with their monitoring protests in New York City from early December 2014 to January 19, 2015.

Mr. Logue submits this second appeal to NYPD foremost to avoid the need to re-litigate matters resolved in Logue v. NYPD (Index No. 153965/2016). As set forth in more detail below, this appeal seeks the release pursuant to FOIL (i) of all redacted data that does not reveal the identity of NYPD personnel and (ii) of records not yet disclosed in response to Mr. Logue's request.

Redactions Exceed the Orders Issued in the Logue v. NYPD Proceeding

Consistent with the Logue v. NYPD proceeding, Mr. Logue stated in his FOIL request that "NYPD may elect to redact its undercover officers' names and email addresses from the requested records." In its October 8th response to his appeal, NYPD likewise recognized the authority of the Logue v. NYPD proceeding and stated that it redacted the Oct 8 Release "in accordance with the judgment and post-judgment orders in Logue v. NYPD." Contrary to its

representations, however, NYPD exceeded and violated the rulings and orders in Logue v. NYPD by redacting data that does not identify NYPD personnel.

Logue v. NYPD Authorized Redactions of Only NYPD Personnel Names and Email Addresses and File Names, to the Extent They Identified NYPD Officers.

In Logue v. NYPD, the Court held that NYPD “failed to show that redacting [] relevant information . . . would not provide sufficient protection for NYPD undercover officers” and accordingly ordered NYPD to redact the messages only “to omit identifying information including the names and e-mail addresses of the NYPD undercover officers, their handlers and the base.” See Judgment and Order, dated Feb. 6, 2017, pp. 4 and 5, annexed hereto.

When it produced the records to Mr. Logue on March 13, 2017, NYPD exceeded that Judgment by redacting date and time data from the messages. As a result, the Court held NYPD in civil contempt for failing “to include the date and time information on the communication records,” clarifying that NYPD deliberately disobeyed the Court’s prior Judgment by omitting that information. See Order, dated Nov. 27, 2017, pp. 3 and 4, annexed hereto.

The following year NYPD then sought leave to reargue the contempt finding. That motion gave the Court the opportunity to find specifically that the “the possibility of identifying undercover officers [with the communications’ date and time information] is improbable.” See Order on Motion to Reargue, dated, April 12, 2018, p. 3, annexed hereto. The Court denied NYPD’s motion and provided NYPD with thirty days to purge its contempt by producing the messages with the date and time data.

NYPD then unsuccessfully sought leave from the Appellate Division to appeal the Supreme Court’s Orders directing NYPD to produce the date and time data. See Decision dated June 14, 2018, annexed hereto. On July 2, 2018, NYPD complied with the Supreme Court Orders and produced the 75 messages showing the date and time each message was delivered. See Attachment A to Mr. Logue’s FOIL request.

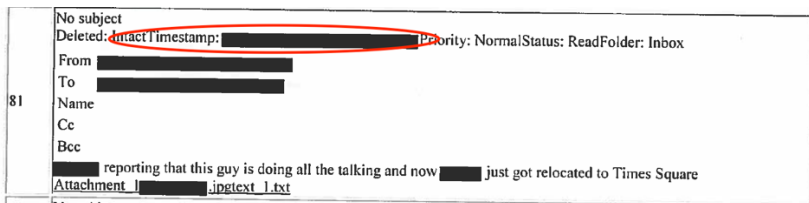
NYPD May Not Redact the Messages’ Date and Time Data.

In light of the Logue v. NYPD proceeding, NYPD may not now withhold the date and time data from the 694 messages it produced in the Oct 8 Release.

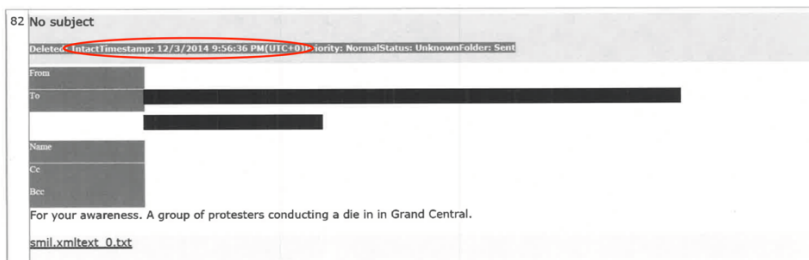
Instead, NYPD should respond to this second appeal by releasing the messages showing the date and time each message was delivered. Indeed, just four months ago, NYPD released 75 similar messages with that data. To redact that information now from the Oct 8

Release would be inconsistent with the holdings of the Supreme Court and require judicial review.

For illustration, please see below copies of messages that NYPD numbered as 81 and 82, annotated to show the date and time data NYPD should un-redact. Message no. 81 was part of the Oct 8 Release. Message no. 82 was produced by NYPD on July 2, 2018.



date and time data redacted



date and time data released

Consistent with Logue v. NYPD, and NYPD's prior production on July 2, 2018, NYPD should amend the Oct 8 Release to show the date and time each of the messages were sent.

NYPD May Not Redact Other Data that Does Not Identify NYPD Personnel.

As shown above, Logue v. NYPD authorized limited redactions only to omit data from the messages that identifies NYPD personnel, such as their names, email addresses containing their names, and file names that contain NYPD personnel's names. The Logue proceeding and other FOIL case law, moreover, counsel against an expansive interpretation of the Logue holdings and orders. FOIL exemptions, which are the basis for NYPD's redactions in the Oct 8 Release, must as a rule be narrowly construed. See Gould v. New York City Police Dept., 89 N.Y.2d 267, 275 (1996).

The Oct 8 Release, however, withholds data that exceeds the Logue v. NYPD Judgment and Orders, in that the data does not appear to be the name of an NYPD officer or

capable of directly identifying a particular member of NYPD.¹ For instance, please see message nos. 16, 51, 105, 107, 152, 185, 366, and 447, for the reasons described below.

Message no. 16: "There seems to be some confusion. U guys r REDACTED. The general messages you are receiving from REDACTED r Intel REDACTED that r reporting" The redacted data identified here in red does not refer to the name a NYPD officer. The data omitted from this phrase, "U guys r _____," instead appears to be an adjective, such as "undercover" or "in the field," but cannot be the name of a NYPD officer or otherwise identify any particular NYPD personnel.

Message no. 51: "REDACTED reported that REDACTED protesters heading west on 44 to Times Square" The redacted data identified here in red appears to describe the protesters, such as their number or type. This data is not the name of a NYPD officer and cannot otherwise directly identify a member of NYPD.

Message no. 105: "REDACTED has an eye on REDACTED;" and message no. 107: "Chief wants eyes on REDACTED. I believe REDACTED is on it." The redacted data identified here in red refers to people, or a situation, or a location that NYPD officers, at the Chief's directive, were observing. It is highly unlikely that a NYPD Chief assigned NYPD personnel to have eyes on a particular NYPD officer during a protest.

Message no. 152: "Spoke to REDACTED at REDACTED. There is approx. 600 heading towards city hall and then 1PP. They will shut the streets down. Unknown where they will shut down at this time." The redacted data identified here in red does not appear to refer to specific NYPD personnel by name. Instead, in the phrase "Spoke to REDACTED at REDACTED," the withheld data at issue appears to be the command, unit, or location of a particular member of NYPD.

Message nos. 184-186: "Not sure about serious. But what do u consider a ninja? Could they be REDACTED? No nimjas." The redacted data in message no. 185 appears to refer to a group of people and to information that would not identify a particular NYPD officer.

Message no. 366: "REDACTED waiting for the arrival on REDACTED protesters" The redacted data identified here in red describes protesters, such as their number or type. This data is not the name of a NYPD officer and cannot otherwise directly identify a member of NYPD.

¹ The response to Mr. Logue's appeal improperly construes the Logue v. NYPD proceeding, and FOIL case law, to authorize redaction of data that "would . . . indirectly identify NYPD personnel." The post-judgment Orders in that case militate against such an expansion of its holdings and orders.

Message no. 447: "REDACTED broke off to avoid arrests at REDACTED" The redacted data identified here in red likely refers to a location and not to the name of a NYPD officer, a description of a NYPD officer, or information that reveals the identify of a member of NYPD.

The instances described above where NYPD appears to have improperly withheld information from the Oct 8 Release do not necessarily encompass all such lapses. Based on the foregoing examples, please review the Oct 8 Release and amend it to strictly adhere to the Logue v. NYPD Judgment and Order by only redacting data that reveals the identity of a member of NYPD.

Additional Records Were Not Disclosed

Finally, the Oct 8 Release is incomplete. In addition to the records NYPD produced, the FOIL request sought "all additional communications ... that ... bear a Record Number higher than 769."

The response to the appeal provides that "the records do, in fact, end at #769." This, however, is not credible. Moreover, this statement does not certify that NYPD does not possess additional records or that no additional records were found after a diligent search. See FOIL § 89(3)(a).

It is not credible that NYPD officers monitoring protests on Martin Luther King Jr. Day in 2015 would suddenly cease sending communications about ongoing protests. Message no. 769 was sent in the early evening on January 19, 2015 from Grand Central Terminal, reporting that "Mta has announced on the pa system that laying and sitting on the floor is prohibited." See also page 99 of the third part of the Oct 8 Release, referring to this change in MTA practice with regard to protests at Grand Central Terminal. The previous message, no. 768, sent at 6:16 pm on January 19, 2015, reported that "Approximately 100 individuals present at grand central." Protesters were present at Grand Central Terminal until approximately 10 pm on January 19, 2015.

Given the diligence of the NYPD officers assigned to monitor protests that day, and generally since December 3, 2014, and the absence of a message disbanding the assignment, it is likely that NYPD personnel continued to report to their handlers and to their base about the protesters for several more hours. Moreover, protests of the same nature continued to be held in Grand Central Terminal and other locations throughout 2015.

If NYPD continued to monitor these protests by assigning NYPD personnel to report on them via text message after 6:30 pm on January 19, 2015, it is logical that NYPD stored

and numbered those messages in the same manner as the messages disclosed in the Oct 8 Release. (Certainly, at a minimum, the undisclosed messages from January 19, 2015 must be held and numbered like the message nos. 768 and 769.)

The lack of certification that NYPD did not locate these additional records, perhaps several hundred more than produced in the Oct 8 Release, is a further indication that additional records exist but have not yet been disclosed.

Accordingly, in addition to the other requests arising from this second appeal, Mr. Logue asks that you amend the Oct 8 Release by producing all records responsive to his FOIL request and certify that after NYPD's diligent search that no additional records were found.

Thank you for agreeing to this second appeal. Mr. Logue hopes its purpose, to avoid burdening the courts, will be fulfilled and looks forward to more complete response. Feel free to contact me by email or telephone to discuss this appeal and NYPD's response.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'M.J. Williams', enclosed within a circular scribble.

M.J. Williams

Enclosures

cc: James Logue
Robert J. Freeman, Committee on Open Government

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

PRESENT: MANUEL J. MENDEZ Justice PART 13

In the Matter of the Application of

JAMES LOGUE, Petitioner, -against-

INDEX NO. 153965/16 MOTION DATE 12-07-2017 MOTION SEQ. NO. 001 MOTION CAL. NO.

NEW YORK CITY POLICE DEPARTMENT, and WILLIAM BRATTON, in his official capacity as Commissioner of the New York City Police Department, Respondents.

The following papers, numbered 1 to 14 were read on this petition to/for Art. 78 relief :

Table with 2 columns: Description of papers and PAPERS NUMBERED. Rows include Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is Ordered and Adjudged that the petition for Article 78 relief to enforce the New York Freedom of Information Law (FOIL) and Public Officers Law §§84 et seq., seeking declaratory and other relief, is granted as stated herein. The remainder of the petition is denied.

In late November of 2014, Petitioner participated in Black Lives Matter protests conducted at Grand Central Terminal, Manhattan, New York. Petitioner alleges that while participating in the protests he observed both uniformed and plainclothes police officers regularly and openly recording events as they were taking place.

Petitioner's January 25, 2015 FOIL requests sought: (1) "all pictures, videos, audio recordings, data, and metadata related to Grand Central Station protests collected or received by your agency," (2) records describing the information collected and the purpose for collecting it, (3) "copies of files documenting the use of property within Grand Central Station related to monitoring of the protests" and (3a) "records describing the surveillance equipment used by officers within Grand Central Station," (4) "copies of all communications sent or received by your agency between November 2014 and January 2015 pertaining to protests at Grand Central Station," (5) the names of governmental organizations and private security companies who collaborated in the collection of information, and (6) "the names of all organizations public and private with whom the information was shared."

MTA and Metro North both responded to the FOIL requests and provided substantial production of responsive records with partial redactions (Pet. Exhs. G, H, I, J and K). Petitioner shared the FOIL responses received with the media, resulting in news reports of potentially unlawful surveillance (Pet. Exhs. L and M). The New York State Police denied the FOIL request in its entirety, and Petitioner failed to seek an appeal.

In a letter dated November 6, 2015, NYPD Records Access Officer, Lt. Richard Mantellino, rejected the FOIL request stating there were no documents responsive to demands 1, 2, 3, 3a, 5, and 6 and denied access to items sought in request #4 (Pet. Exh.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

O). The items sought in FOIL request 4 were denied: pursuant to Public Officers Law (POL) §87[2][b],[e][i],[iii][iv], [f] and [g], no additional details or explanations of the denials were provided (Pet. Exh. O).

Petitioner through his attorney appealed the November 6, 2015 denial of his FOIL request. Jonathan David, NYPD's Records Access Appeals Officer in a letter dated January 11, 2016 issued a final denial of the FOIL request served on NYPD. The denial letter states that Petitioner's January 25, 2015 FOIL request did not specifically identify Black Lives Matter protests and those records not specifically sought could not be addressed (Pet. Exh. Q). The denial letter reiterated the POL §87[2], [e][i][iii][iv], and [f] exemptions without details and stated, "Other exemptions under FOIL may apply" (Pet. Exh. Q).

Petitioner seeks a judgment pursuant to Article 78, annulling and vacating Respondents' final determination and ordering the disclosure of records; alternatively, an order directing an in camera review of the records to determine which records are subject to disclosure under FOIL, and the disclosure of those records subject to FOIL. Petitioner also seeks a declaratory judgment that he is entitled to access requested records under FOIL, together with a judgment for attorney fees and litigation costs incurred pursuant to POL§89 [4][c].

FOIL imposes a broad duty on agencies to promote public accountability and open government by making records available (Gould v. New York City Police Dept., 89 N.Y. 2d 267, 675 N.E.2d 808, 653 N.Y.S. 2d 54 [1996]). FOIL requests are subject to statutory exemptions under Public Officers Law §87[2], which are to be narrowly construed. The burden is on the agency to demonstrate that requested material falls within one of the statutory exemptions (Hanig v. State Dept. of Motor Vehicles, 79 N.Y. 2d 106, 588 N.E. 2d 750, 580 N.Y.S. 2d 715 [1992]). Agencies relying on exemption, "must articulate, particularized and specific justification" for the failure to disclose the documents sought (Gould v. New York City Police Dept., 89 N.Y. 2d 267, supra at 275, citing to, Matter of Fink v. Lefkowitz, 47 N.Y. 2d 567, 393 N.E. 2d 463, 419 N.Y.S. 2d 467 [1979]). Blanket exemptions are adverse to FOIL's open government policy (Matter of Thomas v. New York City Dept. Of Educ., 103 A.D. 3d 495, 962 N.Y.S. 2d 29 [1st Dept., 2013]).

Respondents in opposition to the petition argue that the initial FOIL request refers only to "protests" and does not mention Black Lives Matter, which was named for the first time in the administrative appeal. The limitation sought by Respondents that the scope of this petition be limited to materials and records sought relating to surveillance of "Black Lives Matter protests" conducted at Grand Central Terminal for the period of November of 2014 through January of 2015, has merit and is granted.

The Respondents argue that there were and remain, no documents responsive to items 2, 3, 3a, 5, or 6 sought by Petitioner in their records, and that any arguments that they exist, are unsupported speculation. Petitioner has not identified or established a factual basis for the claim that documents responsive to items 2, 3, 3a, 5 or 6 exist (See Tarantino v. New York City Police Department, 136 A.D. 3d 598, 27 N.Y.S. 3d 601[1st Dept., 2016]). The relief sought in the petition as to items 2, 3, 3a, 5 and 6, is denied.

Respondents claim that they have located "multimedia records" responsive to item 1, in addition they possess two sets of records responsive to item 4 which have been withheld (hereinafter referred to collectively as "withheld documents"). The first set of item 4 records withheld is alleged to consist entirely of communications between and among undercover officers and their handlers, and the second set consists of a single communication between an NYPD undercover officer and his base. Respondents allege that a large amount of a third set of documents responsive to item 4 were already provided to Petitioner through the MTA FOIL responses and after a comparison, on August 22, 2016 about two months after this special proceeding was commenced, an additional two records were disclosed by e-mail to Petitioner's attorney. Respondents argue that all of the withheld documents are subject to statutory exemptions as stated in POL §§ 7[2],[e][i][iii][iv], [f], [g] and [l].

Respondents have stated a basis to exempt almost all of the third set of documents responsive to item 4 of Petitioner's FOIL request. Respondents provided two documents claiming the remaining responsive documents in the third set were provided by MTA and Metro North. Receipt of documents responsive to a FOIL request, regardless of the source, renders the relief sought moot as to those documents, absent an allegation in evidentiary form to compel a second production of the same materials (See *Matter of Fappiano v. New York City Police Dept.*, 95 N.Y. 2d 738, 747 N.E. 2d 1286, 724 N.Y.S. 2d 685 [2001] and *Matter of Moore v. Santucci*, 151 A.D. 2d 677, 543 N.Y.S. 2d 103 [2nd Dept., 1989]). Petitioner concedes receipt of responsive documents from MTA and Metro North and the two documents provided from the third set are responsive. He fails to provide proof in evidentiary form that require the Respondents to produce all of the documents in the third set responsive to item 4 of the FOIL request.

Respondents argue that the first set and second set of item 4 records withheld, are exempt pursuant to POL § 87[2],[e][I],[iii],[iv], [f] and [g]. Respondents have not met their burden for exemption under POL §87[2],[e][I],[iii],[iv], [f] and [g].

POL § 87[2],[e][I] is applied to records which if provided would interfere with law enforcement investigations or judicial proceedings which can be satisfied by generic risks posed by disclosure (*Loevy & Loevy v. New York City Police Dept.*, 139 A.D. 3d 598, 33 N.Y.S. 3d 185 [1st Dept., 2016]). Conclusive assertions of potential pending cases, fail to, "meet the burden of identifying..the generic risks posed by disclosure of these categories of documents" (*Law Offices of Adam D. Perlmutter, P.C. v. New York City Police Dept.*, 123 A.D. 3d 500, 999 N.Y.S. 2d 26 [1st Dept., 2014] citing to *Matter of Leshner v. Hynes*, 19 N.Y. 3d 57, 968 N.E. 2d 451, 945 N.Y.S. 2d 214 [2012]).

Respondents fail to meet their burden for exemption under POL § 87[2],[e][I], by not stating a causal connection and making only conclusive assertions related to the materials sought. The affidavit of Assistant Chief John Donohue of the NYPD Intelligence Bureau fails to meet Respondent's burden for exemption pursuant to POL § 87[2],[e][I]. His speculative and conclusive claims of potential related ongoing investigations of incidents against police officers, both in New York and outside of the state and generalized references to use of the materials by the ISIS and ISIL terrorists, fail to provide a causal connection to the protesters and are insufficient to state a generic risk.

POL § 87[2],[e][iii],[iv] are commonly known as the "law enforcement privilege" and applied to disclosure that would identify confidential sources and information relating to, "criminal investigations and non-routine investigative techniques or procedures" (*Asian American Legal Defense and Educ. Fund v. New York City Police Dept.*, 125 A.D. 3d 531, 5 N.Y.S. 3d 13 [1st Dept., 2015]). A factor used in determining investigative procedures are non-routine is whether disclosure would create, "a substantial likelihood that violators could evade detection by deliberately tailoring their conduct in anticipation of avenues of inquiry to be pursued by personnel." (*Matter of Fink v. Lefkowitz*, 47 N.Y. 2d 567 supra at pages 572-573).

POL § 87[2],[f] applies an exemption to disclosure that, "could endanger the life or safety of any person." It requires a determination of whether the information sought, by its intrinsic nature gives rise to the implication that the life and safety of witnesses is endangered (*Bellamy v. New York City Police Dept.*, 59 A.D. 3d 535, 874 N.Y.S., 2d 60 [1st Dept. 2009]). The blanket exemption on public safety grounds is not necessarily warranted and the competing FOIL interests must be balanced (*Johnson v. New York City Police Dept.*, 257 A.D. 2d 343, 694 N.Y.S. 2d 14 [1st Dept., 1999]).

Respondents fail to meet their burden under POL § 87[2],[e][iii],[iv], in this proceeding. Petitioner was already provided with records from MTA and Metro North that include the descriptions, impressions and routines for both MTA and Metro North Railroad officers and at least one undercover NYPD detective (Pet. Exhs. G, H, I, J and K). Respondents fail to meet their burden under POL § 87[2],[f] by not stating the manner in which the materials sought would place NYPD undercover police officers at greater risk than the MTA and Metro North officers. Conclusory and speculative statements

that protection is needed, even with redactions, to avoid exposure and potential identification of officers, “ does not rise to the level of ‘a particularized and specific justification for denying access’ to the [entirety of] the records requested” (Police Benevolent Ass’n of New York State, Inc. v. State, 145 A.D. 3d 1391 [3rd Dept., 2016]). Respondents make blanket assertions and fail to particularize or distinguish their surveillance or undercover techniques and records. They fail to show that redacting the relevant information, as was done with the MTA and Metro North records, would not provide sufficient protection for NYPD undercover officers, their techniques and records.

POL § 87[2],[g] exemption applies to inter-agency or intra-agency materials that are not, “ statistical or factual tabulations or data or instructions to staff that affect the public.” The exception is used to permit the exchange of opinion and advice, which can be redacted in documents to eliminate non-factual material (The New York Times Co. v. City of New York Fire Dept., 4 N.Y. 3d 477, 829 N.E. 2d 266, 796 N.Y.S. 2d 302 [2005]).

Respondents seek to exempt all of the documents sought based on opinion and advice and to allow undercover officers to speak freely with their handlers. They have not shown that this cannot be accomplished by redacting statements that are opinion or advice as was done with the MTA and Metro North records.

Two months after the commencement of this proceeding Respondents determined, for the first time after administrative review, that they were in possession of “multimedia records” responsive to item 1. Respondents claim that Petitioner is not entitled to the “multimedia records” because pursuant to POL §87[2][i] “they would reveal the placement or use of cameras,” and potentially expose gaps in the surveillance system diminishing successful prosecution.

A generalized argument that software might be used for illegal or fraudulent purposes is an overly broad interpretation of the POL § 87[2][i] exemption and fails to establish the exemption (TJS of New York, Inc. v. New York State Dept. of Taxation and Finance, 89 A.D. 3d 239, 932 N.Y.S. 2d 243 [3rd Dept., 2011]).

Petitioner was provided with numerous photographs and “multimedia” records from MTA and Metro North (Pet. Exhs. G, H, I, J and K). Respondents have failed to distinguish the “multimedia records” in their possession that are alleged to warrant protection, from those already provided. Petitioner provides proof that he was aware of the location of some of the cameras during the protests, which openly remain in place at Grand Central Station (Pet. Reply Exh. B).

Petitioner has not objected to the use of redacted or altered materials. He provides the expert affidavit of Christopher Soghoian, a principal technologist with the American Civil Liberties Union’s Speech, Privacy and Technology Project, explaining that the relevant information Respondents claim is potentially harmful, could be scrubbed using free tools, or easily converted into standard formats and scrubbed, without any potential harm or risk of exposure to Respondents. There was no showing by Respondents that scrubbing the files would result in substantial time and expense or the creation of a new record warranting the exemption (See New York Civil Liberties Union v. New York City Police Dept., 74 A.D. 3d 632, 902 N.Y.S. 2d 356 [1st Dept., 2010] and Data Tree, LLC v. Romaine, 9 N.Y. 3d 454, 880 N.E. 2d 10, 849 N.Y.S. 2d 489 [2007]).

Respondents have not met their burden, the failure to raise the § 87[2][i] exemption until after the administrative review and the overly broad stated application and interpretation, warrants providing Petitioner with the “multimedia records” in response to item 1 in his FOIL request.

Pursuant to POL §89[4][c], attorney’s fees may be assessed against an agency and awarded where the Petitioner has “substantially prevailed” and it is established that there was no reasonable basis for the denial. A denial may be reasonable even after a finding that the records were not exempt. The award of fees is within the discretion of the Court. (New York State Defenders Ass’n v. New York State Police, 87 A.D. 3d 193, 927

N.Y.S. 2dd 423 [3rd Dept., 2011] and Grabell v. New York City Police Dept., 139 A.D. 3d 477, 32 N.Y.S. 3d 81 [1st Dept., 2016]].

Petitioner has not established entitlement to all the documents sought and Respondents have stated a rational basis for some of the denials. Petitioner is not entitled to an award of attorney fees and litigation costs.

Accordingly, it is ORDERED AND ADJUDGED that the petition seeking a judgment pursuant to Article 78, annulling and vacating Respondents' final determination and ordering the disclosure of records, alternatively, an order directing an in camera review of the records to determine which records are subject to disclosure under FOIL, and the disclosure of those records subject to FOIL, together with a declaratory judgment that Petitioner is entitled to access requested records under FOIL, and for attorney fees and litigation costs incurred pursuant to Public Officers Law §89 [4][c], is granted as stated herein, and it is further,

ORDERED and ADJUDGED that Petitioner's FOIL request is deemed limited to materials and records sought relating to surveillance of "Black Lives Matter protests" conducted at Grand Central Terminal for the period of November of 2014 through January of 2015, and it is further,

ORDERED and ADJUDGED that Respondents final determination is vacated and annulled as to "multimedia records" responsive to item 1 in Petitioner's FOIL request, and it is further,

ORDERED and ADJUDGED that within thirty (30) days of receipt of a copy of this Order with Notice of Entry, Respondents are directed to provide Petitioner with the "multimedia records" that may be "scrubbed" in response to item 1 in his FOIL request, and it is further,

ORDERED and ADJUDGED that Respondents final determination is vacated and annulled as to, the first set and second set of documents responsive to item 4 of Petitioner's FOIL request, and it is further,

ORDERED and ADJUDGED that the first set and second set of documents responsive to item 4 of Petitioner's FOIL request, redacted to omit identifying information including the names and e-mail addresses of the NYPD undercover officers, their handlers and the base, shall be produced by Respondents within thirty (30) days of receipt of a copy of this Order with Notice of Entry, and it is further,

ORDERED and ADJUDGED that the remainder of the relief sought in the petition as to items 2, 3, 3a, 5 and 6 and the third set of documents responsive to item 4 of Petitioner's FOIL request, and pursuant to Public Officers Law §89 [4][c], for attorneys fees and litigation costs, is denied, and it is further,

ORDERED that the Petitioner serve a copy of this Order with Notice of Entry on the Respondents, on the trial support clerk located in the General Clerk's Office and the County Clerk's Office pursuant to e-filing protocol, and it is further

ORDERED that the County Clerk is directed to enter judgment accordingly.

ENTER:

Dated: February 6, 2017

MANUEL J. MENDEZ, J.S.C.

MANUEL J. MENDEZ J.S.C.

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FILED FEB 10 2017 COUNTY CLERK'S OFFICE NEW YORK

Handwritten signature and initials over the stamp.

**THIS IS AN E-FILED CASE.
ALL DOCUMENTS MUST
BE FILED ELECTRONICALLY.**

153965/16

JUDGMENT

FILED

FEB 10 2017

AT 3:46 P M
N.Y. CO. CLK'S OFFICE

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

PRESENT: MANUEL J. MENDEZ Justice

PART 13

In the Matter of the Application of

JAMES LOGUE, Petitioner, -against-

INDEX NO. 153965/16 MOTION DATE 11-15-2017 MOTION SEQ. NO. 003 MOTION CAL. NO.

NEW YORK CITY POLICE DEPARTMENT, and WILLIAM BRATTON, in his official capacity as Commissioner of the New York City Police Department, Respondents.

The following papers, numbered 1 to 8 were read on this motion pursuant to CPLR §5104 and Judiciary Law §753 to hold Respondents in Contempt, pursuant to 22 N.Y.C.R.R. 130.1-1, for sanctions and for equitable relief:

Table with 2 columns: Description of papers and PAPERS NUMBERED. Rows include Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is Ordered that Petitioner’s motion pursuant to CPLR § 5104 and Judiciary Law § 753 to hold Respondents in contempt, for sanctions pursuant to 22 N.Y.C.R.R. 130-1.1 for frivolous conduct by making false statements and statements that are meritless in the law, for equitable relief, fees and costs, is granted as stated herein. The remainder of the relief sought is denied.

In late November of 2014 Petitioner participated in a Black Lives Matter protest conducted at Grand Central Terminal, Manhattan, New York. Petitioner alleges that while participating in the protest he observed both uniformed and plainclothes police officers regularly and openly recording events as they were taking place. Petitioner claims that out of concern about the effect of the surveillance and potential violations of the First Amendment of the United States Constitution, on January 25, 2015 he delivered written FOIL requests with approximately seven demands to four (4) agencies: Metropolitan Transit Authority Police (“MTA”), Metro North Railroad (herein after referred to as “Metro North”), New York State Police and the New York City Police Department (hereinafter referred to as “NYPD”).

Petitioner’s January 25, 2015 FOIL requests sought: (1) “all pictures, videos, audio recordings, data, and metadata related to Grand Central Station protests collected or received by your agency,” (2) records describing the information collected and the purpose for collecting it, (3) “copies of files documenting the use of property within Grand Central Station related to monitoring of the protests” and (3a) “records describing the surveillance equipment used by officers within Grand Central Station,”(4) “copies of all communications sent or received by your agency between November 2014 and January 2015 pertaining to protests at Grand Central Station,” (5) the names of governmental organizations and private security companies who collaborated in the collection of information,” and (6) “the names of all organizations public and private with whom the information was shared.” The FOIL requests sought identical materials for the period of November of 2014 through January of 2015.

MTA and Metro North both responded to the FOIL requests and made substantial production of responsive records, with partial redactions. Petitioner shared the FOIL responses received with the media, resulting in news reports of potentially unlawful surveillance. The New York State Police denied the FOIL request in its entirety, and Petitioner failed to appeal. In a letter dated November 6, 2015 NYPD Records Access Officer, Lt. Richard Mantellino rejected the FOIL request stating there were no documents

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

responsive to six of the demands, and denied access to items sought in request #4. Petitioner through his attorney appealed the November 6, 2015 denial of his FOIL request. Jonathan David, NYPD's Records Access Appeals Officer, in a letter dated January 11, 2016 issued a final denial of the FOIL request served on the NYPD.

The petition sought a judgment pursuant to Article 78 annulling and vacating Respondents' final determination, and ordering the disclosure of records; alternatively, an order directing an in camera review of the records to determine which records are subject to disclosure under FOIL, and the disclosure of those records subject to FOIL. Petitioner also sought a declaratory judgment that he is entitled to obtain requested records under FOIL, with a judgment for attorney fees and litigation costs incurred pursuant to POL §89 [4][c].

The February 6, 2017 Decision, Order and Judgment of this Court filed under Motion Sequence 001, partially granted the relief sought in the petition under the FOIL requested items (1) and (4) (Mot. Exh. A). The February 6, 2017 Decision, Order and Judgment identified relevant documents stating:

"Respondents claim that they have located "multimedia records" responsive to item 1, in addition they possess two sets of records responsive to item 4 which have been withheld... The first set of item 4 records withheld is alleged to consist entirely of communications between and among undercover officers and their handlers, and the second set consists of a single communication between an NYPD undercover officer and his base..." (Mot. Exh. A).

Respondents in opposing the petition sought to exempt these items, and made conclusory, speculative and overly broad arguments that protection was needed in light of the FOIL responses provided by MTA and Metro North, and Petitioner's ability to identify at least some of the stationary cameras. At oral argument counsel for the Petitioner identified the manufacturer and model number of some of the cameras and Petitioner also possesses pictures of about half of the cameras with information on the make and model number (Mot. Exh. I, pg. 9 lines 1-10). Petitioner's counsel stated at oral argument that at least one of the identified cameras had an "NYPD security camera" label identifying it (Mot. Exh. I. Pg. 10, lines 1-10).

The February 6, 2017 Decision, Order and Judgment directed Respondents to provide Petitioner with:

"...the "multimedia records" that may be "scrubbed" in response to item 1 in his FOIL request and...the first set and second set of documents responsive to item 4 of Petitioner's FOIL request, redacted to omit identifying information including the names and e-mail addresses of the NYPD undercover officers, their handlers and the base..." (Mot. Exh. A)

Petitioner under Motion Sequence 002 sought to reargue that portion of the February 6, 2017 Decision, Order and Judgment of this Court that denied attorney's fees and litigation costs in the Judgment. This Court's August 8, 2017 Decision and Order denied the motion to reargue finding that there was "a rational basis for some of the denials and a reason to limit the scope of the petition." (NYSCEF Docket No. 125). Respondents did not seek reargument or file any other motion to modify the February 6, 2017 Decision, Order and Judgment.

On March 13, 2017 Respondents provided to Petitioner's counsel a CD with a seventeen second video recording, and 45 pages of records comprised of communications between undercover officers, their handlers, and their base which included photographs taken on "wireless cellular devices" sent as either an e-mail attachment or text attachments (Mot. Exh. M).

On July 10, 2017, prior to Oral Argument on Motion Sequence 002, Respondents sent letters to Petitioner's Counsel and the Court responding to Petitioner's objections to redactions and the video or multi-media production, seeking an exparte in camera conference to explain their position (Mot. Exhs. R and S). Respondent's letter request was not properly before the Court and no conference was held.

Petitioner's motion seeks an Order pursuant to CPLR § 5104 and Judiciary Law § 753 to hold Respondents in contempt, for sanctions pursuant to 22 N.Y.C.R.R. 130-1.1 for frivolous conduct by making false statements and statements that are meritless in the law; and for equitable relief, fees and costs.

Petitioner claims that the Respondents did not comply with the February 6, 2017 Decision, Order and Judgment by disclosing only a single video and potentially withholding multiple videos from stationary networked cameras in Grand Central Terminal that would be responsive to item 1. Petitioner argues that item 4 was not fully responded to because non-identifying information such as the dates and times of communications and the filenames of attachments were redacted from the communications that were provided.

A finding of contempt for failure to comply with a Court Order, requires the movant to establish with reasonable certainty, on clear and convincing evidence that: (1) the Court Order "expressing an unequivocal mandate was in effect and disobeyed;" (2) "the party to be held in contempt had knowledge of the order;" and (3) "prejudice to the rights of a party to the litigation" (McCain v. Dinkins, 84 N.Y. 2d 216, 639 N.E. 2d 1132, 616 N.Y.S. 2d 335 [1994]). "If the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity" (Kihl v. Pfeffer, 94 N.Y.2d 118, 123, 700 N.Y.S. 2d 87, 90, 722 N.E.2d 55, 58 [1999]).

Respondents have not provided an explanation for the failure to include the date and time on the communications records under item 4. Their argument that the information will identify plainclothes and undercover officers, and that "NYPD cannot publicly explain how the redacted information could lead to the identification" fails, given that no proper effort was made to seek in camera inspection of any records, or to seek reargument or modification of the February 6, 2017 Decision, Order and Judgment, and is sufficient for a finding of contempt. The Court concedes that the "file name" might include the name or other identifying information of the officer involved and can remain redacted.

Respondents state that this Court in directing them to disclose responsive "multimedia records" apparently adopted the phrase as used by them in their answering papers. Obviously Respondents knew what they had withheld and what they considered to constitute "multimedia records" (Memo. of Law in Opp., pg. 11). Respondents argue that all of the "multimedia records" compliant with this Court's February 6, 2017 Decision, Order and Judgment have been produced is disingenuous, and relies on their determination of what constitutes "multimedia records." This Court's use of the phrase "multimedia records" meant all photographs and video or media including those taken from cellular telephones, mobile and stationary cameras.

Respondents previously argued that disclosure would reveal surveillance capabilities. Their argument was addressed and rejected in the February 6, 2017 Decision, Order and Judgment and Respondents did not seek reargument or modification. Respondents in choosing to use their interpretation over what this Court actually stated prior to and in the directives under item 1, have failed to substantially comply with this Court's Order.

Petitioner seeks sanctions due to Respondents' request for an ex parte in camera conference and Assistant Chief Donohue's (Executive Officer of the Intelligence Bureau at NYPD) affidavit in opposition to the petition (Mot. Ex. F). Petitioner claims that the Respondents' request for an ex parte in camera conference was inappropriate and unethical. Petitioner states that Assistant Chief Donohue either committed perjury by stating there were multiple multi-media records, or that the arguments made in opposition to the petition about the risks of disclosing records were frivolous.

Pursuant to 22 N.Y.C.R.R. 130-1.1, sanctions are applied to conduct which is continued when its lack of legal or factual basis should have been apparent to counsel or the party (Emery v. Parker, 107 A.D. 3d 635, 968 N.Y.S. 2d 480 [N.Y.A.D. 1st Dept. 2013]). The making of a somewhat colorable argument is sufficient to avoid sanctions (Kremen v. Benedict P. Morelli & Associates, P.C., 80 A.D. 3d 521, 916

N.Y.S. 2d 44 [1st Dept., 2011]). The imposition of sanctions requires a pattern of frivolous behavior (Sarkar v. Pathak, 67 A.D. 3d 606, 889 N.Y.S. 2d 184 [1st Dept. 2009]).

Respondents have made a colorable argument to avoid sanctions on the request for an “ex parte in camera conference.” Their conduct is not sufficient to warrant sanctions for frivolous conduct. Petitioner has not shown that Assistant Chief Donohue committed perjury by stating there were “multi-media records.” The plural use of “records” is potentially satisfied by Respondents production.

Petitioner fails to state a basis for the equitable relief sought in this motion and it is denied.

Accordingly, it is ORDERED that Petitioner’s motion pursuant to CPLR § 5104 and Judiciary Law § 753 to hold Respondents in contempt, for sanctions pursuant to 22 N.Y.C.R.R. 130-1.1 for frivolous conduct by making false statements and statements that are meritless in the law; and for equitable relief, fees and costs, is granted only to the extent of finding the Respondents in Civil Contempt, and it is further,

ORDERED that Respondents are in Civil Contempt of Court, and it is further,

ORDERED that Respondents may purge their contempt by providing Petitioner within thirty (30) days of service of a copy of this Order with Notice of Entry, with the date and time information sought on the documents produced as responsive to item 4 of Petitioner’s FOIL request, and respond to item 1 of the FOIL request by providing copies of any videotape or photographic records obtained from stationary, cellphone or mobile cameras or an affidavit specifically stating that there are no other videotape or photographic records in existence for the relevant time frame of November of 2014 through January of 2015 and the efforts made to confirm the non-existence of such records, and it is further,

ORDERED that upon failure of Respondents to purge their contempt, they will be liable to Petitioner for all reasonable attorney fees and costs incurred in connection with these proceedings, which shall be determined at a hearing before a judicial referee, and it is further,

ORDERED that the remainder of the relief sought in this motion, is denied.

ENTER:

Dated: November 27, 2017



MANUEL J. MENDEZ,
J.S.C. MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

PRESENT: MANUEL J. MENDEZ PART 13
Justice

In the Matter of the Application of

JAMES LOGUE,
Petitioner,
-against -

INDEX NO. 153965/16
MOTION DATE 04-11-2018
MOTION SEQ. NO. 004
MOTION CAL. NO. _____

NEW YORK CITY POLICE DEPARTMENT,
and WILLIAM BRATTON, in his official
capacity as Commissioner of the New York
City Police Department,
Respondents.

The following papers, numbered 1 to 6 were read on this motion pursuant to CPLR 2221 to reargue and or renew:

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 3</u>
Answering Affidavits — Exhibits _____ cross motion _____	<u>4</u>
Replying Affidavits _____	<u>5 - 6</u>

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is Ordered that Respondent’s motion: (i) pursuant to CPLR § 2221[d] for leave to reargue and/or renew the November 27, 2017 Decision and Order of this Court, that found them in Civil Contempt of a prior Decision and Order issued on February 6, 2017; (ii) for permission to submit to the Court for in camera review an ex parte affirmation from the New York City Police Department in support of Respondents’ motion for leave to reargue/renew; and (iii) alternatively should the Court deny Respondents’ motion for leave to reargue/renew or otherwise adhere to its Contempt Order, pursuant to CPLR §5701[c], granting Respondents leave to appeal to the Appellate Division, First Department that part of the Decision and Order concerning Respondents production of the Communication Records, and to extend the time to purge their contempt, is granted only as to extending the time to purge their contempt. The remainder of the relief sought is denied.

In late November of 2014, Petitioner participated in Black Lives Matter protests conducted at Grand Central Terminal, Manhattan, New York. Petitioner alleges that while participating in the protests he observed both uniformed and plainclothes police officers regularly and openly recording events as they were taking place. Petitioner claims that out of concern about the effect of the surveillance and potential violations of the First Amendment of the United States Constitution, on January 25, 2015 he delivered written FOIL requests with approximately seven demands to four (4) agencies: Metropolitan Transit Authority Police (“MTA”), Metro North Railroad (herein after referred to as “Metro North”), New York State Police, and the New York City Police Department (hereinafter referred to as “NYPD”).

MTA and Metro North both responded to the FOIL requests and provided substantial production of responsive records with partial redactions. In a letter dated November 6, 2015, NYPD Records Access Officer, Lt. Richard Mantellino, rejected the FOIL request stating there were no documents responsive to six of the demands and denied access to items sought in request #4. Petitioner through his attorney appealed the November 6, 2015 denial of his FOIL request. Jonathan David, NYPD’s Records Access Appeals Officer in a letter dated January 11, 2016 issued a final denial of the FOIL request served on NYPD.

The petition sought a judgment pursuant to Article 78, annulling and vacating Respondents’ final determination and ordering the disclosure of records; alternatively, an order directing an in camera review of the records to determine which records are subject

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

to disclosure under FOIL, and the disclosure of those records subject to FOIL. Petitioner also sought a declaratory judgment that he is entitled to access requested records under FOIL, with a judgment for attorney fees and litigation costs incurred pursuant to POL§89 [4][c].

The February 6, 2017 Decision, Order and Judgment of this Court filed under Motion Sequence 001, partially granted the relief sought in the petition. Petitioner was granted limited relief as to FOIL requested items (1) and (4). The Order and Judgment identified relevant documents directing Respondents to provide Petitioner with the “multimedia records” that may be “scrubbed” in response to item 1 in his FOIL request, and that the first set and second set of documents responsive to item 4 of Petitioner’s FOIL request be submitted to this Court for in camera review and a final determination of whether they are exempt from disclosure or could be redacted while protecting privacy of the undercover officers (Mot. Exh. C).

On March 13, 2017 Respondents provided to Petitioner’s counsel a CD with a seventeen second video recording, and 45 pages of records comprised of communications between undercover officers, their handlers, and their base which included photographs taken on “wireless cellular devices” sent as either an e-mail attachment or text attachments, these items were redacted.

Petitioner under Motion Sequence 003 sought an Order pursuant to CPLR § 5104 and Judiciary Law § 753 holding Respondents in contempt. This Court’s November 27, 2017 Decision and Order filed under Motion Sequence 003, found the Respondents in civil contempt for failure to provide an explanation for the failure to include the date and time on the communications records under item 4. This Court conceded that the “file name” might include the name or other identifying information of the officer involved and could remain redacted. In finding the Respondents in contempt, it was determined that Respondents arguments that disclosure would reveal surveillance capabilities was addressed and rejected in the February 6, 2017 Decision, Order and Judgment filed under Motion Sequence 001. It was also determined that Respondents, in choosing to use their interpretation over what this Court actually stated prior to and in the directives under item 1, had failed to substantially comply with this Court’s Order (Mot. Exh. A).

Respondents’ motion: (i) pursuant to CPLR §2221[d] and [e] seeks leave to reargue and/or renew the November 27, 2017 Decision and Order of this Court, that found them in Civil Contempt; (ii) for permission to submit to the Court for in camera review an ex parte affirmation from the New York City Police Department in support of Respondents’ motion for leave to reargue/renew; and (iii) alternatively should the Court deny Respondents’ motion for leave to reargue/renew or otherwise adhere to its Contempt Order, pursuant to CPLR §5701[c], granting Respondents leave to appeal to the Appellate Division, First Department that part of the Decision and Order concerning Respondents production of the Communication Records.

A motion to reargue pursuant to CPLR §2221[d] requires a showing that the Court “has overlooked significant facts or misapplied the law in its original decision” (Town of Poestenkin v. New York State Dept. of Environmental Conservation, 229 A.D. 2d 650, 644 N.Y.S. 2d 602 [3rd Dept., 1996] citing to Foley v. Roche, 68 A.D. 2d 558, 418 N.Y.S. 2d 588 [1st Dept., 1979]). The movant cannot use a motion to reargue as a successive opportunity to merely restate previously unsuccessful arguments, reargue previously decided issues, or present new and different arguments (Setters v. AI Properties and Developments (USA) Corp., 139 A.D. 3d 492, 32 N.Y.S. 3d 87 [1st Dept., 2016]).

Respondents are not entitled to reargument, they have not shown that this Court misapplied controlling law and overlooked relevant facts. They rely on information allegedly contained in the ex parte in camera affidavit that is outside of the record. Their arguments that there would potentially be identification of undercover officers, their handlers and their base, that were previously made in the petition and under Motion Sequence 003, were properly addressed. Respondents are restating prior arguments in this motion, further warranting denial of the CPLR §2221[d] relief.

Respondents seek leave to file an ex parte in camera affidavit. They provided this Court with the affidavit of a Lieutenant from the NYPD Intelligence Bureau, Information and Technology Unit, for ex parte in camera review. This Court, upon review of the affidavit, finds the arguments made therein to be unpersuasive. As stated in the affidavit, even with this information, the possibility of identifying undercover officers is improbable.

Renewal applies to the submission of new evidence not available at the time the original motion was submitted (*Pettus v. Board of Directors*, 155 A.D. 3d 485, 65 N.Y.S. 3d 21 [1st Dept. 2017]). Renewal is not available to parties that seek a "second chance" because of failure to exercise due diligence (*Chelsea Piers Management v. Forrest Electric Corporation*, 281 A.D. 2d 252, 722 N.Y.S. 2d 29 [1st Dept., 2001]).

Respondents have failed to state a basis pursuant to CPLR §2221[e] for of the November 27, 2017 Decision and Order filed under Motion Sequence 003. Respondents have not provided new evidence that was unavailable at the time of the original motion. They did not properly seek an ex parte in camera conference to provide an explanation for withholding information directed in this Court's February 6, 2017 Decision, Order and Judgment. There was no statement in their opposition papers or a cross-motion filed under Motion Sequence 003 seeking that relief, only opposition to contempt. On July 10, 2017, Respondents sent a letter to Petitioner's Counsel and the Court seeking an ex parte in camera conference to explain their position (Mot. Exh. D). Respondent's letter request was not properly before the Court, and no conference was held. Respondents reference to an ex parte in camera explanation as part of their oral argument on November 15, 2017 under Motion Sequence 003, was also not a proper application for that relief. Respondents have not shown that they were unable to properly seek an in camera inspection. They chose not to exercise proper or diligent efforts to obtain that relief, further warranting denial of renewal.

Respondents' alternate relief pursuant to CPLR §5701[c] for leave to appeal the November 27, 2017 Decision and Order filed under Motion Sequence 003, is denied. They have not demonstrated that this Court should grant such leave or shown that there are grounds to appeal.

Respondents have provided a reasonable explanation for extending the time to purge their contempt as a result of this motion and that relief will be granted.

Accordingly, it is ORDERED that is Ordered that Respondent's motion: (i) pursuant to CPLR § 2221[d] for leave to reargue and/or renew the November 27, 2017 Decision and Order of this Court, that found them in Civil Contempt of a prior Decision and Order issued on February 6, 2017; (ii) for permission to submit to the Court for in camera review an ex parte affirmation from the New York City Police Department in support of Respondents' motion for leave to reargue/renew; and (iii) alternatively should the Court deny Respondents' motion for leave to reargue/renew or otherwise adhere to its Contempt Order, pursuant to CPLR §5701[c], granting Respondents leave to appeal to the Appellate Division, First Department that part of the Decision and Order concerning Respondents production of the Communication Records, and to extend the time to purge their contempt, is granted only as to extending the time to purge their contempt, and it is further,


ORDERED that Respondents time to purge their contempt as stated in the November 27, 2017 Decision and Order of this Court filed under Motion Sequence 003, is amended and extended to thirty (30) days from the date of this Order, and it is further,

ORDERED that the remainder of the relief sought in this motion, is denied.

ENTER:

MANUEL J. MENDEZ
J.S.C.

Dated: April 12, 2018


MANUEL J. MENDEZ,
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

BEFORE: Hon. Marcy L. Kahn
Associate Justice of the Appellate Division

-----X
In the Matter of the Application of

James Logue,
Petitioner-Respondent,

M-2449
Ind. No. 153965/16

For Judgment Pursuant to Article 78 of
the CPLR

-against-

New York City Police Department, and
William Bratton, in his official
capacity as Commissioner of the
New York City Police Department,

Respondents-Appellants.
-----X


Respondents-Appellants New York City Police Department, and
William Bratton, in his official capacity as Commissioner of the
New York City Police Department, having moved, pursuant to CPLR
5701(c), for leave to appeal to the Appellate Division, First
Department, from the orders of the Supreme Court, New York County
(Mendez J.), entered on or about November 29, 2017, and on or about
April 20, 2018, and for related relief,

Now, upon reading and filing the papers with respect to the
motion, and due deliberation having been had thereon, it is

Ordered that the application for leave to appeal is denied. The
motion is otherwise denied, as moot.

Dated: June 12, 2018
New York, New York

EBIEREB



Hon. Marcy L. Kahn
Associate Justice

JUN 14 2018



POLICE DEPARTMENT
Office of Deputy Commissioner,
Legal Matters
One Police Plaza, Room 1406A
New York, New York 10038
FOILAppeals@NYPD.org

November 13, 2018

M.J. Williams
mjwilliams@mjlw-law.com

RE: FREEDOM OF INFORMATION LAW
REQUEST: FOIL-2018-056-06510
Re: James Logue

Dear Ms. Williams:

This letter is in response to your email dated October 29, 2018 appealing the determination of the undersigned made on October 8, 2018 regarding records requested from the New York City Police Department. Your original request, made pursuant to the Freedom of Information Law, was received by the FOIL unit on August 9, 2018 and subsequently denied by the Records Access Officer. As per our email correspondence dated September 24, 2018, parties consented to an extension of the statutory 10-day response time mandated by POL §89(4), having mutually agreed upon Monday, October 8, 2018 as the date of disclosure. The NYPD agreed in its October 8, 2018 appeal determination to leave open the option to submit a second appeal of that response. That second appeal was then received on October 29, 2018.

Your appeal has again been granted and enclosed herein are the requested records – the 694 communications (along with any attachments) originally disclosed on October 8, 2018. Please note that numerous redactions made with the October 8, 2018 disclosure have been removed but that the records remain redacted in accordance with the judgment and post-judgment orders in Logue v. NYPD, where the redactions are limited to personally identifying information of NYPD personnel such as names and email addresses. Also redacted are any references that may identify any sources as well as any references to non-routine law-enforcement sensitive procedures relating to the Intelligence Bureau [§87(2)(e)(iv)].

In addition, another diligent search was conducted for any additional records and it was confirmed that the records do, in fact, end at #769, and include all of the numbers identified in your August 9, 2018 request.

You may seek judicial review of this determination by commencing an Article 78 proceeding within four months of the date of this decision.

Sincerely,

COURTESY • PROFESSIONALISM • RESPECT

A handwritten signature in black ink, appearing to read "Sgt Mazur". The signature is fluid and cursive, with the "S" being particularly large and stylized.

Jordan S. Mazur
Sergeant
Records Access Appeals Officer

Enclosure
c: Committee on Open Government