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NYPD

City Hall Was Ready to Release Records on NYPD Cops Cited for Misconduct — Before Its Lawyers Said No

BY GREG B. SMITH | GSMITH@THECITY.NYC | AUG 4, 2020, 9:57PM EDT



Mayor Bill de Blasio holds a press conference with NYPD Commissioner Dermot Shea, July 17, 2020. | Ed Reed/Mayoral Photography Office

Two months after state lawmakers repealed a law that kept police misconduct records secret for decades, City Hall’s top lawyer refuses to release documents that he admits could be made public.

Law enforcement unions secured a court order last month temporarily barring release of past police misconduct allegations not substantiated by a police

misconduct oversight board, after Mayor Bill de Blasio pledged to post every officer’s history online.

Yet Corporation Counsel James Johnson has decided that until the lawsuit is resolved, all misconduct records will be off limits to the public — even in complaints whose allegations the Civilian Complaint Review Board upheld.

In their suit, the union leaders have not objected to the release of this substantiated case information as allowed under the new law. But a spokesperson for Johnson said that the court blockade makes releasing the long-secret files too complicated.

“Diverting resources to extract cases with only substantiated charges and redacting unsubstantiated charges in cases when the results are mixed is not worthwhile,” the spokesperson, Nick Paolucci, told THE CITY.

A ‘Tone Deaf’ City

Supporters of full disclosure of cop misconduct said Tuesday the corporation counsel’s decision raises questions about de Blasio’s stated commitment to full transparency following the recent repeal of the law known as 50-a.

“It is outrageous for the city to even suggest that releasing substantiated records of police misconduct is not worth their while,” said Assemblymember Dan Quart (D-Manhattan), a co-sponsor of the repeal bill. “When considered in the context of the ongoing protests against police brutality in New York City and across the country, it’s all the more tone deaf.”

Quart charged the city was using the union’s lawsuit “as a pretext to keep police misconduct hidden from the public.”

“There is not a single legitimate reason to do so and there never was,” added Quart, who is running for Manhattan district attorney. “The police are entrusted with immense power and the public has a right to know which officers abuse that power.”

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Meanwhile, the New York Civil Liberties Union is awaiting an appeals court's ruling on whether it can post CCRB complaint histories of 81,000 cops shared with the group last month before the restraining order.

"We hope this does not mark a retreat from the city's earlier commitment to embrace the repeal of section 50-a," said Christopher Dunn, the NYCLU's legal director.

"While the city of course needs to abide by the temporary court order, that order leaves the city free to release some records, and it should embrace the opportunity to do so," Dunn added. "The public demand for police accountability and transparency requires this."

Unshielded Records

For the first time in decades, law enforcement agencies statewide had begun disclosing misconduct records in response to requests made by news and advocacy organizations and members of the public under New York's Freedom of Information Law, after Gov. Andrew Cuomo signed the 50-a repeal June 12.

That included a trove of [case histories](#) the Civilian Complaint Review Board provided to ProPublica, covering officers currently in uniform for the NYPD with at least one substantiated complaint against them.

In their lawsuit, unions for police, fire and corrections uniformed staff seek to keep secret what they call all "unsubstantiated and non-final allegations."

The CCRB fields complaints from civilians and other cops, then investigates all allegations, seeking corroborating evidence to sustain a charge. Once the board substantiates a complaint, it can then recommend penalties, which the NYPD can accept, modify or reject.

The unions' court complaint stresses: "This is not a challenge to disclosure of proven and final disciplinary matters — i.e., those that at least have been vetted

through an evidence-based investigative and adjudicatory process that includes basic due process protections."

The CCRB interpreted this to mean that complaint files deemed to be substantiated after a CCRB investigation were still eligible for release.

But Johnson instead decided to apply a blanket prohibition on releasing records, substantiated or not, until the court rules on the unions' demands — even though the unions haven't protested release of substantiated case information.

George Floyd's Legacy

Manhattan Federal Judge Katherine Polk Failla last week granted the New York Civil Liberties Union's request to post online CCRB complaint histories on 81,000 cops — but then stayed her ruling to give the unions a chance to file an appeal. The Second Circuit Court of Appeals has continued that stay while both sides prepare their arguments.

Failla, meanwhile, is considering the union's broader request to restrict what records can be released now that 50-a has been repealed. Arguments on both fronts are set for Aug. 18.

Paolucci said the administration still intends to release all the records as soon as possible if the court rules in the city's favor.

"The agencies have been preparing to post much more than substantiated cases and are continuing with their preparation with the expectation that the injunction will be lifted soon," he said.

The 50-a law was put on the books in the 1970s at the urging of police unions that claimed disclosure of disciplinary records would endanger their members.

The NYPD had allowed reporters to view some of these records. But two years ago then-Corporation Counsel Zachary Carter ordered police to stop releasing anything, citing 50-a.

Police reformers had tried in vain to get the law repealed — finally breaking through after the eruption of protests nationwide in response to the death of

George Floyd and other Black civilians at the hands of police.

State lawmakers voted to repeal 50-a June 9, and Cuomo signed it into law three days later, declaring, “This is an enormous step forward for police accountability in this state.”

In legal filings, the law enforcement unions sought to lay groundwork for far-reaching restrictions on what records could be released.

They argue that even “substantiated” charges from the CCRB are not a final determination of guilt that they say would justify making files public — contending that cases only reach completion once the police commissioner accepts the CCRB’s finding.

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Have you ever filed a complaint about an NYPD officer? *

- Yes
- No, but I wanted to
- No
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Is there anything else you think we should know about this issue?