PRESERVATION & LITIGATION HOLD NOTICE FILED ON BEHALF OF *MUCKROCK* TO PRESERVE RECORDS FORMERLY AND PRESENTLY MAINTAINED UNDER NEW YORK CIVIL RIGHTS LAW § 50-A

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To: Depew Village Police Department
ATTN: Chief of Police
ATTN: Freedom of Information Law/Records Access Officer

LITIGATION HOLD NOTICE

PLEASE TAKE NOTICE, that pursuant to federal and state law MuckRock demands and requires that each of you and all of you, and each attorney and law firm who represents you or any of you, and each attorney and law firm who has represented you in the past with respect to any matter involving agency records, as defined by the New York

Public Officers Law § 86(4): "Record" means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes," are required to preserve and protect all records which you previously claimed were protected from disclosure by New York Civil Rights Law § 50-a and each of you and all of you are directed to immediately implement a "litigation hold" such that any records, documents, data, or electronically stored information (ESI) is and shall be preserved and maintained in its native format, and in accordance with the following safeguards:

Electronic data to be preserved

1. The following types of electronic data and/or the electronic data of the subsidiaries, divisions, agents, employees and relevant third-parties or vendors of each named defendant should be preserved in native format, in accordance with the steps set forth below:

   1.1. All electronic mail and information about electronic mail (including message contents, header and logs of e-mail system usage) sent or received by any custodian relating to the subject matter of this litigation;

   1.2. All databases, including field and structural information as well as records, containing any information relating to the subject matter of this litigation;

   1.3. All logs of activity on any computer systems that have been used to process or store data containing information relating to the subject matter of this litigation;

      1.3.1. All other electronic data containing information about, or relating to the subject matter of this litigation, including but not limited to: All word processing files and file fragments;

      1.3.2. Electronic data created by applications which process financial, accounting and billing information;

1.3.3. All electronic calendar and scheduling program files and file fragments;

1.3.4. All electronic spreadsheet files and file fragments.

On-Line Data Storage

2. With regard to online storage and/or direct access storage devices including, but not limited to, any file server or data array (e.g. RAID) physically or remotely attached to the computers of any named Defendant through wired or wireless networking, MuckRock demands that you and each of you do not modify or delete any existing electronic data files that meet the criteria set forth above, unless an exact mirror image has been made and will be preserved and kept accessible for purposes of this litigation.

Off-Line Data Storage, Backups and Archives

3. With regard to all electronic media used for offline storage, such as magnetic tapes and cartridges, CDs, DVDs, USB devices (e.g. 'thumb drives') and the like, used with any computer, file server or data array (e.g. RAID), whether physically or remotely attached to the computers of any named Defendants through wired or wireless access that contain any electronic information relating to the subject matter of this litigation, MuckRock demands that you an each of you stop any activity that may result in the loss of such data. This demand is intended to cover all removable electronic media used for data storage in any device, including those containing backup and/or archive data sets.

Preservation of Replaced Data Storage Devices

4. You and each of you to whom this notice is directed shall preserve any electronic data storage devices and/or media that may contain data relating to the subject matter of this litigation and that it replaces for any reason.

Fixed Drives on Stand-Alone Personal Computers and Network Workstations

5. You and each of you to whom this notice is directed shall not alter, delete or over-write relevant electronic data that existed on fixed drives attached to stand-alone microcomputers, network workstations and/or data arrays (e.g. RAID) at the time of filing of

this action, or perform other procedures such as data compression and disk defragmentation or optimization routines that may impact such data, unless an exact mirror image has been made of such active files and directory listings (including hidden and/or deleted files) for all directories containing such files and that it completely restore any altered, deleted or over-written electronic files and file fragments and arrange to preserve all such data during the pendency of this litigation.

Applications and Utilities

6. You and each of you to whom this notice is directed shall preserve copies of all applications and utilities that may be used to process electronic data discussed in this letter.

7. You and each of you to whom this notice is directed shall preserve copies of all devices for which records are contained, inclusive of off-site data and personal electronic devices and records as further described below.

Log of System Modifications

8. You and each of you to whom this notice is directed shall maintain an activity log of document modifications made to any electronic data processing system that may affect the capability of any system to process any electronic data relating to the subject matter of this litigation.

Personal computers and all other devices used by employees, independent contractors and others under the control of you and each of you

9. You and each of you to whom this notice is directed shall immediately take the following steps with regard to all fixed drives attached internally, externally, physically and/or remotely by wired or wireless access to any personal computers used by any custodian under the control of you and each of you:

   9.1. An exact mirror image must be made of all electronic data relating to the subject matter of this litigation;

   9.2. Full directory listings (including hidden and deleted files) for all directories and subdirectories must be written;

10. You and each of you to whom this notice is directed shall immediately take the following steps with regard to all removable drives attached internally, externally, physically and/or remotely by wired or wireless access to any personal computers used by any custodian under the control of you and each of you:

    10.1. All removable electronic media, such as floppy diskettes, magnetic tapes and cartridges, CDs, DVDs, USB devices (e.g. 'thumb drives') and the like that existed before the delivery of this letter and that contain relevant data should collected, maintained intact and kept available during the pendency of this litigation.

11. You and each of you to whom this notice is directed shall immediately take the following steps with regard to all other relevant devices used by any custodian under the control of you and each of you, whether it is internally, externally, physically and/or remotely attached by wired or wireless access to any system used by you and each of you:

    11.1. All cellular phones, personal data assistants (e.g. Blackberry, iPhones, iPads), tablets, and/or any other device that stores electronic information (e.g. RAM on printing devices or FAX machines) and the like that existed before the delivery of this letter and that contain relevant data should collected, maintained intact and kept available during the pendency of this litigation, together with voicemail messages, text messages (SMS or otherwise), instant messages, and other communications and notes.

Evidence Created After Receipt of This Notice

12. Any relevant electronic data created after receipt of this Litigation Hold Notice should be preserved in a manner consistent with the directions in this Litigation Hold Notice.

Metadata

13. As it is relevant to all items cited hereinabove, you and each of you is instructed to preserve all metadata and not to alter, delete and/or over-rite any metadata.

Other materials concerning all Public Officers protected under New York Civil Rights Law § 50-a

14. You and each of you to whom this notice is directed shall immediately identify, protect, and preserve all other materials in any form, physical, electronic or otherwise, as records may exist which relate to the subject matter of this Litigation Hold Notice.

PLEASE TAKE FURTHER NOTICE, that all counsel must advise their clients, all Public Officers, law enforcement agents (of any kind), whether active duty or retired, police officers and peace officers, and law enforcement agents of any kind and persons for whom records are made available pursuant to the New York Public Officers Law or similar statutes of any of the United States of this litigation hold and the instructions contained therein and direct them to preserve and protect all electronically stored information (ESI) contained in, but not limited to, laptop computer(s), home desktop computer(s), cellular phone(s), personal digital assistant(s), home computer(s), business computer(s), emails, email accounts, home telephones, work telephones, text messages, IM accounts, voicemails, and other electronic storage devices, etc., including all Meta Data including, but not limited to, information embedded in computer files reflecting the file creation date, when it was last accessed or edited, by whom it was last accessed or edited, and previous versions or editorial changes; System Data including, but not limited to, the computer records of routine transactions, functions, password access requests, the creation or deletion of files and directories, maintenance functions, and access to and from other computers, printers, or communication devices, and Backup Data including, but not limited to, all off-line tapes or disks created and maintained for short term disaster recovery.

PLEASE TAKE FURTHER NOTICE, that this demand is a continuing demand and this demanding party will object at the time of trial to the introduction of any testimony or evidence which flows from the existence of such documents or information which has not been properly preserved and made available for production.

PLEASE TAKE FURTHER NOTICE, that all records which might be exempt or are claimed to be exempted under the Freedom of Information Law, Public Officers Law, or the Freedom of Information Act must be preserved in accordance with this Litigation Hold Notice.

PLEASE TAKE FURTHER NOTICE, These records are typically required to be retained under the New York State Records Retention and Disposition Schedule MU-1 (*http://www.archives.nysed.gov/records/retention_mu-1*), including, but not limited to, item no. 365, which includes: "Investigative records and disciplinary proceedings, including but not limited to statement of charge, transcript of hearing, notice of decision, letter of termination or resignation, letter of reinstatement, record of appeal procedure, and correspondence."

While materials under that schedule have a set retention of 3 years after the final decision rendered, this request and materials responsive to it include ***all*** records held in the position of any office or individual employed or formerly employed by this policing agency. Destruction of materials potentially responsive to this request would be a violation of the spirit and letter of the Freedom of Information Law, and may be considered unlawful if not subject you to certain sanctions should litigation pertaining to this subject matter ensue.

DATED AT Melville, New York
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