



CITY OF ITHACA
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September 30, 2020

Via email: Beryl@muckrock.com

Beryl Lipton
MuckRock
Dept MR 96124 411A Highland Avenue
Somerville, MA 02214

Re: FOIL Requests 20200503

Dear Beryl Lipton:

I am writing to update you on the timeline for processing of your pending FOIL request. City staff have spent hundreds of hours to date retrieving, reviewing, and preparing responsive files for release, and work continues to that end. The City intends to provide a great deal of transparency, as clearly intended by the repeal of New York Civil Rights Law §50-a (“§50-a”).

Please be advised that, as part of this process, the City has identified numerous IPD internal affairs investigation records that are potentially responsive to your request because they involve a factual inquiry into or analysis of events involving a police officer of a nature reasonably likely, if determined against the officer, to result in disciplinary action over more than technical infractions as defined in Public Officers Law §89(2-c) (the “IA Records”). The IA records include matters that were: (1) substantiated or founded and resulted in final disciplinary action; (2) substantiated or founded and resulted in proposed disciplinary action that is pending a hearing; (3) substantiated or founded and addressed by means other than disciplinary action, such as counseling or further training; and (4) unsubstantiated or unfounded.

While City staff are continuing work in preparation for release, the City is temporarily unable to release the requested police officer records, including the IA records, due to a stay of disclosure entered by the United States Court of Appeals for the Second Circuit (the “Second Circuit”) in the case captioned *Uniformed Fire Officers Association, et al. v. Bill di Blasio, et al.*, Case No. 20-2789 (2nd Cir., filed July 29, 2020) (the “NYC Litigation”). In the *NYC Litigation*, a group of uniformed service unions led by the New York City Police Benevolent Association seek an injunction prohibiting the City of New York from releasing police disciplinary records other than final adjudications notwithstanding the repeal of §50-a. The unions make federal and state constitutional and statutory claims they contend prohibit the disclosures notwithstanding the repeal.

On July 22, 2020, in the initial phase of the *NYC Litigation*, Judge Katherine Failla of the United States District Court for the Southern District of New York entered a temporary restraining order (“TRO”) against New York City’s planned disclosure of police officer disciplinary records. The TRO prohibited disclosure of any information about investigations or disciplinary proceedings against officers that are non-final, unfounded, unsubstantiated, or in which the officer was exonerated. The TRO also prohibited the disclosure of settlement agreements entered in lieu of disciplinary action prior to the repeal of §50-a.

Later, on August 21, 2020, after a lengthy hearing, Judge Failla decided to dissolve the TRO. She cited legal weaknesses in the unions’ claims and a lack of evidence of irreparable harm to officers from the disclosures. However, Judge Failla stayed her decision to allow the unions to take an expedited appeal to the Second Circuit. The unions filed the appeal and asked the Second Circuit to continue the stay until the appeals court formally decides the unions’ claims. By orders dated August 26, 2020 and September 17, 2020, the Second Circuit continued the stay until the appeal is decided. The court has set an expedited schedule for the appeal and a decision appears likely in the next few months. In the meantime, the disclosures prohibited by the TRO remain prohibited.

The Second Circuit’s action substantially impacts Ithaca’s response to your request. Although Ithaca is not a party to the *NYC Litigation*, it interprets the §50-a repeal legislation in much the same way as the City of New York. Likewise, Ithaca intended similarly broad and fulsome disclosures. In addition, the Second Circuit is the federal appellate court that would decide federal challenges to Ithaca’s planned disclosures. The court’s decision in the *NYC Litigation* is therefore expected to provide Ithaca with important parameters for its disclosure efforts, and guidance as to whether any intended disclosures must be curtailed. We also do not consider it fair or appropriate to release records on a piecemeal basis, carving out a small number that can be released even under the injunction, while holding back the much larger remainder. The City therefore intends to withhold its disclosures of police officer records to allow a reasonable period for the Second Circuit’s decision in the *NYC Litigation*, particularly since the Court’s schedule suggests the wait may be in the range of a few months.

In light of the pending Second Circuit appeal, on or before January 15, 2021, the City will provide a response granting responsive records, and identifying reasons for withholding if the City denies access to any records. If the Second Circuit’s decision has not been released by this date, the City will update you as to its expected response timeline.

Sincerely,



Aaron O. Lavine

cc: Svante Myrick, Mayor