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BY FIRST CLASS MAIL

April 5, 2016

Roger Smith, Esq.
Records Access Appeals Officer
New York City Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

RE: Request for Records Pursuant to Freedom of Information Law
Destruction of Video Evidence [**PLEASE USE ON ALL CORRESPONDENCE**]

Dear Mr. Smith:

This is an appeal to the denial of my request for “all records (including attachments) related to any and all complaints, substantiated or otherwise, of the NYPD and/or any agent(s) of the NYPD, destroying video evidence of police misconduct” by Lindsey Flook, dated March 9, 2016 (enclosed).

In her denial, Ms. Flook argued that these records were exempt, citing *Civil Rights Law § 50-a*, exempting personnel records “used to evaluate performance toward continued employment or promotion,” of a police officer, citing *Telesford v. Paterson*. She also argued that “there is no way to redact the files in a way that will disassociate allegations against a particular officer given the nature of your request,” citing *Daily Gazette Co. v. City of Schenectady*.

However, simply redacting all information linking the records to individual officers (names, badge numbers, etc) make the records non-personnel records, and the exemption would not be triggered by my request based on the reasoning laid out in either case cited by Ms. Flook.

Telesford v. Paterson clearly states that personnel records are exempt under *Civil Rights Law § 50-a* “to prevent harassment, embarrassment, and fodder for cross examination of an officer.” If information identifying individual officers in the records I requested is redacted, the records would not trigger the purpose of the exemption as stated in *Telesford v. Paterson*, because without identifying information, the records would contain no information enabling

harassment, embarrassment, or fodder for cross examination of an individual officer.

In *Daily Gazette Co. v. City of Schenectady*, the Daily Gazette specifically sought “all records of the disciplinary action taken against the 18 police officers, *including their identities*,” (emphasis mine). The ruling states that “The statute was designed to prevent abusive exploitation of *personally* damaging information contained in an officers’ personnel records,” (emphasis mine). Again, if information identifying individual officers in the records I requested is redacted, the records would not trigger the purpose of the exemption as stated in *Daily Gazette Co. v. City of Schenectady*, because without identifying information, the records could not be personally damaging to any officer because no officer would be personally named.

My original request (also enclosed) stated that “some portions of records responsive to this request may be exempt from disclosure under FOIL. Such records must be produced with the exempt material redacted, and the redactions drawn as narrowly as possible to provide maximum disclosure. Any records redacted or withheld on grounds of exemption must be justified by reference to the specific exemptions relied upon by the Department.”

Based on the decisions cited by Ms. Floor, all information linking the records I requested to individual officers may be redacted as narrowly as possible, but with those redactions made, the *Civil Rights Law § 50-a* exemption is not triggered and the redacted records must be released.

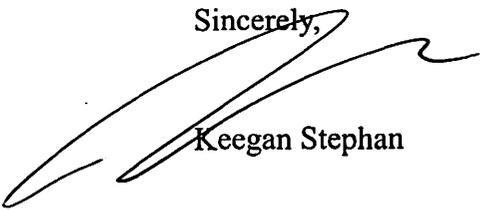
Therefore, I request that you reverse the rejection of Ms. Flook and produce the records I requested with information linking the records to individual officers redacted as narrowly as possible.

To the extent that these records are readily available in an electronic format, I request that they be provided in that format. Please disclose records as soon as they are identified, rather than waiting to gather all records.

To the extent any records are disclosed, please produce them with a certification of accuracy pursuant to 43 RCNY Section 1-03(e). To the extent any records responsive to this request have been destroyed or otherwise disposed of, please describe such records in writing with reasonable particularity pursuant to 43 RCNY Section 1-05(c) (4).

Thank you for your cooperation, and please do not hesitate to contact me if you have any questions or concerns.

Sincerely,



Keegan Stephan