

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

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In the Matter of the Application of

JAMES LOGUE,

Index No.

Petitioner,

VERIFIED PETITION

-against-

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

Respondents.

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Petitioner James Logue, by his attorneys Stecklow & Thompson, for his Petition under Article 78 of the Civil Practice Law and Rules respectfully alleges as follows:

1. This is an Article 78 proceeding to enforce the New York Freedom of Information Law (“FOIL”), Public Officers Law §§ 84 *et seq.*, seeking declaratory and other relief for Respondents’ unlawful refusal to grant Petitioner access to requested documents.

JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court by Judiciary Law § 140-b and Rule 7801 of the CPLR.

3. This Petition has been timely filed, pursuant to Rule 217(1) of the CPLR, after Petitioner’s receipt of the New York City Police Department’s (“NYPD”) final determination following exhaustion of the agency’s appeals process.

4. Upon information and belief, all determinations complained of occurred in New York County. Venue is proper in New York County pursuant to Rules 7804(a) and 506(b) of the CPLR.

PARTIES

5. Petitioner James Logue is an individual, who resides at 23-66 26th Street, Apartment No. BB, Astoria, New York 11105.

6. Respondent New York Police Department is an agency of New York City that is headquartered at One Police Plaza, New York, New York 10007.

7. Respondent William Bratton is Commissioner of the NYPD, whose office is located at One Police Plaza, New York, New York 10007.

BACKGROUND

A. “Black Lives Matter” Protests in Grand Central Terminal Surveilled by Governmental Agencies

8. In or around late November 2014, prompted by the non-indictment of the police officer who killed Michael Brown Jr. in Ferguson, Missouri, protests in New York City associated with the national Black Lives Matter movement against police brutality and systemic racism began taking place and/or congregating in Grand Central Terminal, located at 89 East 42nd Street, New York, New York 10017.

9. By December 2014, following the non-indictment of the police officer who killed Eric Garner on Staten Island in New York City, these protests began to occur and/or congregate nearly daily in Grand Central Terminal. These protests continued to take place and/or gather in Grand Central Terminal on a near-daily basis until at least February 2015.

10. Petitioner, who participated in these protests, observed police officers and, on information and belief, other governmental officers or agents photographing, videotaping, and otherwise recording the Black Lives Matter protests at Grand Central Terminal.

B. The FOIL Request

11. Believing the surveillance of these political protests to be adverse to the First Amendment of the U.S. Constitution and of substantial public interest, on January 25, 2015, Petitioner submitted an identical FOIL request by mail to the Metropolitan Transit Authority Police (“MTA”), Metro-North Railroad (“Metro North”), New York State Police, and to Respondent herein NYPD (the “FOIL Request”). (Copies of the FOIL Request sent to each of these agencies are annexed to the Affidavit of James Logue (“Logue Aff.”) as Exhibits A (to MTA), B (to Metro North), C (to New York State Police), and D (to Respondent NYPD).)

12. The FOIL Request asked for “all records pertaining to officers’ filming and photographing in Grand Central Station from November 2014 through January 2015,” further specifying the request as for the following enumerated items:

1. all pictures, videos, audio recordings, data, and metadata related to Grand Central Station protests that were collected or received by your agency;
2. records, describing the information collected, the dates of collection, and the official purpose of the collection;
3. copies of files documenting the use of property within Grand Central Station related to monitoring of the protests;
3. [*sic*] 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;
6. the names of all organizations public and private with whom the information was shared.

(Exs. A-D, Logue Aff.)¹

¹ The FOIL Request refers to “Grand Central Station” while this Petition uses the more accurate name for the location, Grand Central Terminal.

C. The Other Agencies Do Not Deny Access to the Requested Documents

13. In a letter dated February 12, 2015, the New York State Police Department responded to the FOIL Request indicating that it had searched for but did not locate any responsive documents. (Ex. E, Logue Aff.)

14. Both the MTA and Metro North, however, responded to the FOIL Request by providing Petitioner with access to a large number of documents, comprised of email communications and photographs. (Exs. F-I, Logue Aff.)

15. The MTA and Metro North disclosures contained only discrete redactions, namely of “location and contact information of MTA Police personnel” and “names of undercover police officers,” which these agencies justified pursuant to § 87(2)(f) of N.Y. Public Officers law in order to protect the life and safety of the police officers and personnel. (Exs. F-I, Logue Aff.)

16. The documents received from the MTA and Metro North contained several references to these agencies’ collaboration with the NYPD and exchange of information with the NYPD for the purpose of surveilling Black Lives Matter protests at Grand Central Terminal. (Exs. G, I and J, K, Logue Aff.)

17. Several media outlets, including MSNBC, *The Huffington Post* and *The Intercept*, reported on the documents Petitioner obtained from the MTA and Metro North, commenting as well on the NYPD’s apparent involvement in surveillance of Black Lives Matter protests at Grand Central Terminal.

D. NYPD Denies Access to the Requested Documents

18. In a letter dated February 6, 2015, NYPD Records Access Officer, Lt. Richard Mantellino, acknowledged receipt of the FOIL Request on January 30, 2015 and estimated that

the NYPD would provide a determination within twenty business days, i.e., by March 6, 2015. (Ex. N., Logue Aff.)

19. However, the NYPD failed to provide a response to the FOIL Request for over eight months.

20. When the NYPD finally responded, in a letter dated November 6, 2015, it denied Petitioner access to all records.

21. Specifically, Lt. Mantellino claimed that the NYPD could not locate records responsive to the FOIL Request's enumerated items listed as "1, 2, 3, 3, 5, and 6," stating, moreover, that "if such records existed, they would be subject to exemptions under section 87(2) of Public Officers Law." Lt. Mantellino, however, implied that the NYPD possessed documents responsive to item 4 (communications pertaining to protests at Grand Central Terminal), but denied access to these documents pursuant to Sections 87(2)(b), (f), (e)(i), (e)(iii), (e)(iv), and (g) of N.Y. Public Officers Law. (Ex. O, Logue Aff.)

22. In his letter, Lt. Mantellino provided Petitioner with no indication that the NYPD had undertaken a review of the responsive documents to determine specifically why each document was exempt from disclosure and/or whether portions of any of the documents could be disclosed without causing the purported harm to the NYPD or third parties that the cited exemptions under FOIL are intended to prevent.

E. NYPD Affirms Denial of Access to the Requested Documents on Petitioner's Appeal

23. In a letter dated December 4, 2016, prepared by counsel, Petitioner timely appealed the NYPD's decision denying the FOIL Request. The appeal was addressed to Jonathan David, in his capacity as Records Access Appeal Officer of the NYPD. (Ex. P, Logue Aff.)

24. Petitioner's appeal set forth arguments challenging each of the exemptions the NYPD cited as a basis to deny Petitioner access to every document responsive to the FOIL Request.

25. In a letter dated January 11, 2016, nearly one year after the NYPD first received the FOIL Request, Mr. David responded to Petitioner's appeal with a final determination upholding the complete denial of Petitioner's FOIL Request. (Ex. Q, Logue Aff.)

26. Mr. David's denial was a complete refusal of the FOIL Request, asserting that "the requested records, if in existence, would be exempt from disclosure" under each of N.Y. Public Officers Law §§ 87(2)(f), (e)(i), (e)(iii), (e)(iv), adding that "[o]ther exemptions under FOIL may also apply."

27. While Mr. David, like Lt. Mantellino before him, provided a short description of the risks the FOIL exemptions seek to prevent, his refusal represented a second blanket denial based on the type of records requested, as it was absent of analysis of why and how each of the exemptions apply to prevent the disclosure, as a whole, of the requested records concerning political protests in Grand Central Terminal from November 2015 through January 2015.

**RESPONDENTS' ACTS VIOLATE THE
NEW YORK STATE FREEDOM OF INFORMATION LAW**

28. Respondents' actions as set forth in paragraphs 1 through 27, inclusive, constitute violations of FOIL and the regulations promulgated thereunder, insofar as Respondents have arbitrarily withheld nonexempt records and portions of records from disclosure to Petitioner, have improperly and over-broadly claimed exemptions from disclosure, and have not made the responsive documents promptly available to Petitioner, despite Petitioner's reasonable and sufficient descriptions thereof and compliance with all applicable procedures.

29. Respondents cannot simply withhold records maintained on a blanket basis, by invoking statutory language. FOIL places the burden on the agency to set forth particular facts as

to why any of the records sought should not be disclosed. (FOIL, N.Y. Public Officers Law § 89(4)(b).) Upon information and belief, the NYPD has not engaged in an effort to identify whether any of the documents, or portions thereof, could be produced consistent with the objections raised herein.

30. Petitioner is aggrieved by the unlawful withholding of the requested records and has no adequate remedy at law.

31. The materials requested are “records” as that term is used in New York Public Officers Law § 89(4)(b).

32. Respondent NYPD is an “agency” as that term is used in New York Public Officers Law § 89(4)(b). And, on information and belief, Respondent Commissioner William Bratton is responsible for the NYPD’s actions and decisions.

33. As demonstrated, in part, by the responses Petitioner obtained from the MTA and Metro North to the same FOIL Request, the records requested from the NYPD, in whole or part, do not fall within any statutory exemption warranting withholding of access.

34. Respondents lacked a reasonable basis in law for withholding some or all of the requested records.

35. As demonstrated by the media’s reporting on the disclosures to the FOIL Request from the MTA and Metro North, the materials Petitioner sought from the NYPD are clearly of compelling public interest, particularly because the records could either confirm or dispel the NYPD’s surveillance of political protests and whether such surveillance was unlawful under applicable law and/or binding agreements.

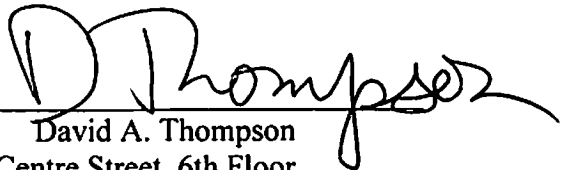
36. No prior application has been made for the relief sought herein.

WHEREFORE, Petitioner prays that this Court:

- (a) Order the disclosure of the records sought in Petitioner's FOIL Request, or, in the alternative, an *in camera* review of these records to determine which records are subject to disclosure under FOIL, and consistent with that determination, order Respondents to vacate the final determination dated January 11, 2016, denying the Petitioner access to the requested records and disclose the records pursuant to FOIL;
- (b) Issue a declaratory judgment that the Petitioner is entitled to access the requested records pursuant to FOIL;
- (c) Grant Petitioner judgment of attorney's fees and litigation costs incurred, pursuant to FOIL, N.Y. Public Officers Law § 89(4)(c); and
- (d) Grant Petitioner such other and further relief as this Court deems just and proper.

Dated: New York, New York
May 10, 2016

STECKLOW & THOMPSON

By: 
David A. Thompson
217 Centre Street, 6th Floor
New York, NY 10013
Tel.: 212-566-8000

Attorneys for Petitioner James Logue

VERIFICATION

COUNTY OF NEW YORK)
)
 ss:
STATE OF NEW YORK)

JAMES LOGUE, being duly sworn, deposes and says:

I am the Petitioner in this proceeding. I have read the foregoing Petition and know the contents thereof. The contents of the Petition are true to my own knowledge, except as to matters therein alleged on information and belief, and as to those matters, I believe them to be true.



JAMES LOGUE

Sworn to before me on this
10th day of May, 2016



Notary Public

