

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,

Petitioner,

For Judgment Pursuant to Article 78 of the CPLR

- against -

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

Respondents.

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VERIFIED ANSWER

Index No.: 153965/2016
IAS Part 13
(Mendez, J.)

Respondents, New York City Police Department (“NYPD”) and William Bratton, by their attorney, Zachary W. Carter, Corporation Counsel of the City of New York, as and for their Verified Answer to the Verified Petition, respectfully allege as follows:

1. Deny the allegations set forth in paragraph “1” of the Verified Petition, except admit that Petitioner purports to proceed as set forth therein, and respectfully refer the Court to the statutes cited therein for a complete and accurate statement of their provisions.

2. Deny the allegations set forth in paragraph “2” of the Verified Petition, except admit that Petitioner purports to invoke jurisdiction as set forth therein, and respectfully refer the Court to the statute and rule cited therein for a complete and accurate statement of their provisions.

3. Deny the allegations set forth in paragraph “3” of the Verified Petition, and respectfully refer the Court to the rule cited therein for a complete and accurate statement of its provisions.

4. Deny the allegations set forth in paragraph “4” of the Verified Petition, except admit the allegations in the first sentence thereof, and admit that Petitioner purports to lay venue as set forth therein, and respectfully refer the Court to the rules cited therein for a complete and accurate statement of their provisions.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “5” of the Verified Petition.

6. Deny the allegations set forth in paragraph “6” of the Verified Petition, except admit that NYPD is an agency of the City of New York.

7. Deny the allegations set forth in paragraph “7” of the Verified Petition, except admit that William Bratton is Commissioner of the NYPD and that his office is located at One Police Plaza, New York, New York.

8. Deny the allegations set forth in paragraph “8” of the Verified Petition, except admit that protesters congregated on various dates in Grand Central Terminal from late November 2014 until February 2015, and admit that some of those protesters claimed to be affiliated with the “Black Lives Matter” movement, and deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning what “prompted” the protesters to congregate.

9. Deny the allegations set forth in paragraph “9” of the Verified Petition, except admit that protests took place at Grand Central Terminal between December 2014 and February 2015.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the Verified Petition.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “11” of the Verified Petition, except admit that Petitioner submitted a FOIL request to NYPD by letter dated January 25, 2015, which was received by NYPD on January 30, 2015.

12. Deny the allegations set forth in paragraph “12” of the Verified Petition, and respectfully refer the Court to Petitioner’s Exhibit D, cited therein, for a complete statement of Petitioner’s FOIL request.

13. Deny the allegations set forth in paragraph “13” of the Verified Petition, and respectfully refer the Court to Petitioner’s Exhibit E, cited therein, for a complete and accurate statement of its content.

14. Deny the allegations set forth in paragraph “14” of the Verified Petition, except admit, upon information and belief, that MTA and Metro North provided Petitioner with access to certain documents, and respectfully refer the Court to Petitioner’s Exhibits F-I, cited therein, for their complete and accurate content.

15. Deny knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph “15” of the Verified Petition, and respectfully refer the Court to Petitioner’s Exhibits F-I, cited therein, for their complete and accurate content.

16. Deny the allegations set forth in paragraph “16” of the Verified Petition, and respectfully refer the Court to Petitioner’s Exhibits G, I, J, and K, cited therein, for their complete and accurate content.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “17” of the Verified Petition.

18. Deny the allegations set forth in paragraph “18” of the Verified Petition, and respectfully refer the Court to Petitioner’s Exhibit N for a complete and accurate statement of its content.

19. Deny the allegations set forth in paragraph “19” of the Verified Petition, and affirmatively state that NYPD wrote to Petitioner by letters dated February 6, 2015, May 23, 2015 and September 2, 2015.

20. Deny the allegations set forth in paragraph “20” of the Verified Petition, except admit that by letter dated November 6, 2015, NYPD denied Petitioner’s FOIL request.

21. Deny the allegations set forth in paragraph “21” of the Verified Petition, and respectfully refer the Court to Petitioner’s Exhibit O, cited therein, for a complete and accurate statement of its content.

22. Deny the allegations set forth in paragraph “22” of the Verified Petition, and respectfully refer the Court to Petitioner’s Exhibit O, cited therein, for a complete and accurate statement of its content.

23. Deny the allegations set forth in paragraph “23” of the Verified Petition, except admit that Petitioner purported to appeal NYPD’s denial by letter dated December 4, 2015 and received by the Appeals Officer on December 28, 2015, and respectfully refer the Court to Petitioner’s Exhibit P, cited therein, for a complete and accurate statement of its content.

24. Deny the allegations set forth in paragraph “24” of the Verified Petition, and respectfully refer the court to Petitioner’s Exhibit P, referred to therein, for a complete and accurate statement of its content.

25. Deny the allegations set forth in paragraph “25” of the Verified Petition, except admit that NYPD, through its Records Access Appeals Officer, upheld the denial of

Petitioner's FOIL request by letter dated January 11, 2016, and respectfully refer the Court to Petitioner's Exhibit Q, cited therein, for a complete and accurate statement of its content.

26. Deny the allegations set forth in paragraph "26" of the Verified Petition, and respectfully refer the Court to Petitioner's Exhibit Q, referred to therein, for a complete and accurate statement of its content.

27. Deny the allegations set forth in paragraph "27" of the Verified Petition, and respectfully refer the Court to Petitioner's Exhibits N and Q for a complete and accurate statement of their content.

28. Deny the allegations set forth in paragraph "28" of the Verified Petition.

29. Deny the allegations set forth in paragraph "29" of the Verified Petition, and respectfully refer the Court to the statute cited therein for a complete and accurate statement of its provisions, except deny the allegations set forth in the second sentence thereof to the extent they concern NYPD's response to FOIL requests.

30. Deny the allegations set forth in paragraph "30" of the Verified Petition.

31. Admit the allegations set forth in paragraph "31" of the Verified Petition.

32. Admit the allegations set forth in paragraph "32" of the Verified Petition.

33. Deny the allegations set forth in paragraph "33" of the Verified Petition.

34. Deny the allegations set forth in paragraph "34" of the Verified Petition.

35. Deny the allegations set forth in paragraph "35" of the Verified Petition.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "36" of the Verified Petition.

**AS AND FOR A STATEMENT OF
PERTINENT AND MATERIAL FACTS,
RESPONDENTS RESPECTFULLY ALLEGE:**

A. Background and Procedural History

37. By letter dated January 25 2015, and received by NYPD on January 30, 2015, Petitioner submitted a FOIL request to Respondent NYPD in which he sought “all records pertaining to officers’ filming and photographing in Grand Central Station from November 2014 through January 2015, including, but not limited to:

- 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;
- 3a) Records describing the surveillance equipment used by officers within Grand Central Station;¹
- 4) Copies of all communications sent or received by your agency between November 2013 and January 2015 pertaining to protests in Grand Central Station;
- 5) The names of governmental organizations and private security companies who collaborated in the collections of the information;
- 6) The names of all organizations public and private with whom the information was shared.”

(hereinafter, “Petitioner’s FOIL request”). A copy of Petitioner’s FOIL request is annexed hereto as Exhibit 1.

38. By letter dated February 6, 2015, NYPD acknowledged receipt of Petitioner’s FOIL request. A copy of NYPD’s acknowledgment letter is annexed hereto as Exhibit 2.

39. Some ancillary correspondence ensued, and by letter dated November 6, 2015, NYPD denied Petitioner’s FOIL request. Specifically, NYPD stated that it could not locate records responsive to Petitioner’s request and, moreover, to the extent such records did exist,

¹ Petitioner’s FOIL request includes two items marked “3.” For ease of reference these will be referred to as “3” and “3a.”

they would nonetheless be subject to several exemptions under FOIL. A copy of NYPD's determination letter is annexed hereto as Exhibit 3.

40. Petitioner appealed NYPD's denial of his FOIL request by letter from his attorney dated December 4, 2015 and received by the Appeals Officer on December 28, 2015. A copy of Petitioner's appeal letter is annexed here as Exhibit 4. In his appeal letter, however, Petitioner recharacterized his FOIL request as having "requested documents relating to surveillance of 'Black Lives Matter' protests and demonstrations, and interagency communication in support thereof."

41. In response, NYPD, through its Records Access Appeals Officer, denied Petitioner's appeal by letter dated January 11, 2016. A copy of NYPD's denial letter is annexed hereto as Exhibit 5. NYPD explained that to the extent the appeal letter encompassed records not requested by Petitioner, such as all records related to surveillance of Black Lives Matter protests and demonstrations, it was outside of the Records Access Appeals Officer's authority to address those additional records. NYPD additionally denied the appeal because the requested records, if in existence, would be exempt from disclosure under Public Officers Law §§87(2)(e)(iv), 87(2)(e)(i), 87(2)(f), and 87(2)(e)(iii).

42. Petitioner then commenced the proceeding at bar by filing a Verified Petition on May 11, 2016, pursuant to which he appeals NYPD's denial of his FOIL request.

B. Responsive Documents

43. NYPD does not have primary jurisdiction for policing in Grand Central Terminal. Rather, that responsibility falls to the Metropolitan Transit Authority ("MTA") police. Given its lack of jurisdiction there, NYPD did not generally undertake to photograph or film individuals protesting at Grand Central Station between November 2014 and January 2015. Accordingly, NYPD has a limited set of documents responsive to Petitioner's FOIL request.

44. In response to Petitioner's FOIL request, NYPD conducted a thorough search of the following divisions, which are the only places responsive documents could reasonably be located: the Counterterrorism Bureau, the Technical Assistance and Response Unit ("TARU"), and the Intelligence Bureau. See Accompanying Affidavit of Michael Fitzpatrick in Support of Respondents' Verified Answer, sworn to August 22, 2016, at ¶4.

45. After its thorough and diligent search, NYPD now certifies that it did not locate any records that would have been responsive to the request items numbered 2, 3, 3a, 5, or 6. Id. at ¶5.

46. However, in response to subcategory "1," which sought "all pictures, videos, audio recordings, data, and metadata related to Grand Central Station protests that were collected or received by your agency," NYPD located multimedia records. Id. at ¶6.

47. Additionally, in response to subcategory "4," which sought "copies of all communications sent or received by your agency between November 2013 and January 2015 pertaining to protests in Grand Central Station," NYPD located three sets of records. Id. at ¶7.

48. One set of these records are the communications from Metropolitan Transit Authority ("MTA") personnel to NYPD personnel. Id. at ¶10. All of these records have now been disclosed to Petitioner, whether by NYPD or by the MTA. Id.

49. There are two remaining sets of records responsive to subcategory "4." Id. at ¶¶8-9. The first set consists entirely of communications between and among NYPD undercover officers and their handlers. Id. at ¶8. The second set consists of a single record, which is a communication from an NYPD officer working in an undercover capacity and his base. Id. at ¶9. Both of these sets of records have been withheld. Id. at ¶¶8-9.

50. Accordingly, the only responsive records NYPD has withheld are (i) the multimedia records, which are responsive to subcategory “1;” (ii) the communications between and among NYPD undercover officers and their handlers, which are responsive to subcategory “4;” and (iii) the single communication from the NYPD officer working in an undercover capacity, which is responsive to subcategory “4.” Id. at ¶11. Together, these records will be referred to herein as the “Withheld Records.”²

C. NYPD Properly Refused to Disclose the Withheld Records

51. As explained by Assistant Chief John Donohue, who is the Executive Officer of the Intelligence Bureau at NYPD and the second highest ranking uniformed officer in the Intelligence Bureau, disclosure of the Withheld Records could endanger the lives and safety of members of the public, and especially of undercover officers. See Accompanying Affidavit of John Donohue in Support of Respondents’ Verified Answer, sworn to August 15, 2016 (“Donohue Aff.”). Additionally, disclosure of the Withheld Records would greatly hamper NYPD’s ability to conduct undercover operations and to engage in non-routine investigative techniques and would interfere with pending investigations. Moreover, the communications are non-final intra-agency communications, and disclosure of the multimedia records would jeopardize NYPD’s ability to guarantee the security of its information technology assets.

52. Following the assassination of NYPD officers Wenjin Lu and Raphael Ramos in Brooklyn in December of 2014 and of the eight police officers and sheriffs in Dallas and Baton Rouge in July of 2016, it is clear that law enforcement officers around the country are

² For ease of reference, because the single communication from the plainclothes NYPD officer was made while he was working in an undercover capacity, any references to “undercover officers and their handlers,” or similar language concerning undercover officers, should also be read herein to encompass that single communication.

at risk of being targeted, attacked and killed simply because of their status as law enforcement officers. Id. at ¶5. Indeed, NYPD maintains a Threat Assessment and Protection Unit whose purview includes investigating threats against police officers. Id. Between July 7 and August 5, 2016, the Threat Assessment and Protection Unit has investigated over ninety separate threats to police in New York City. Id.

53. There are persistent calls from foreign terrorist organizations to kill security, intelligence, and military personnel.³ Id. at ¶6. These calls to violence have been followed by attacks against police, with recent attacks in France and Belgium and prior incidents in Australia, Canada, and the US.⁴ Id. See also, e.g., <http://www.nbcnewyork.com/news/local/Eric-Garner-Manhattan-Dead-Cops-Video-Millions->

³ In late September 2014, the spokesman for the Islamic State of Iraq and the Levant (ISIL) issued a public call for the group's supporters in Western countries to attack "soldiers, patrons, and troops ... their police, security and intelligence members." Around the same time, an ISIL supporter posted a list of potential US military, law enforcement, and government targets. In January 2015, ISIL specifically named the US, France, Australia, and Canada as targets. More recently, following the deadly shooting of police in Dallas in July 2016, members of a top tier ISIL web forum discussed ways to exploit the incident to "incite Blacks to kill the biggest number of police." Additionally, ISIL-linked hacking groups have regularly posted the personal information of law enforcement and military personnel online and encouraged followers to target the named individuals.

⁴ Since June 2016, jihadi sympathizers have targeted police in Paris and Belgium and encouraged others to follow suit. On June 13, 2016, two French law enforcement personnel were murdered in Magnanville, France. Boasting that he had "just killed a policeman and I just killed his wife," the attacker exhorted his fellow ISIL supporters to prioritize murdering "police, prison guards, journalists;" the wife also worked in law enforcement. According to the prosecutor, police found a target list at the scene of the murder that included names of police. On August 6, 2016, an Algerian man with a machete injured two policewomen in front of police headquarters in Charleroi, Belgium before being shot by responding police. In 2014, Zale Thompson attacked four NYPD police officers with an axe. Thompson consumed jihadist propaganda leading up to the attack and was also motivated by anger at police-involved deaths of minorities. Thompson's attack came one month after ISIL's solicitation to "slaughter [the disbeliever] with a knife." One month after Thompson's assault and death, ISIL lionized him in *Dabiq*, its English-language propaganda magazine.

March-Protest-285805731.html (two police officers injured following protesters' chants for "dead cops")(last visited August 22, 2016).

54. For the reasons described below, undercover police officers' lives and safety are at even greater risk than other police officers.

Undercover Officers at NYPD

55. Undercover officers are deployed in various investigative contexts to gather evidence and intelligence, to further investigations, and to prevent crime or acts of terrorism. Id. at ¶7. Undercover officers often operate with persons who are known criminals including narcotics traffickers, illegal firearm dealers, and with persons who seek to do physical harm to others, yet most do not carry weapons or police identification. Id. Sometimes such officers will be under surveillance by other officers, but often surveillance is not possible, and they will have no choice but to operate independently without any immediate police back-up. Id. As a result, undercover officers in the field are often in grave danger and are extremely vulnerable should they be discovered. Id.

56. It is self-evident that discovery or knowledge that an undercover officer is collecting intelligence or conducting surveillance a subject of an investigation can have serious consequences. Id. at ¶8. There have been numerous instances of undercover officers being assaulted, threatened at gunpoint during operations, or questioned as to whether they are police officers. Id.

57. In addition, following the conclusion of an investigation, the threat of discovery and retaliation against an undercover officer remains a serious concern. Id. at ¶9. In one example, an undercover officer was taking the subway to a Grand Jury appearance when he was approached on the train by two individuals who stated words to the effect, "We know you're

a cop. You tried to set us up. We should kill you right now.” Id. The undercover pretended he did not know what the individuals were talking about and tried to walk past them. Id. Nonetheless, the individuals assaulted the undercover in front of a crowd, striking the undercover about the head and body causing physical injuries. Id. In 2003, undercover Detectives James Nemorin and Rodney Andrews were murdered by the subjects of investigation during an undercover firearm trafficking investigation. Id.

58. Undercover officers are subject to a far greater level of danger than the typical uniformed officer and other plainclothes officers, especially when they work alone. Id. at ¶10. Undercovers are given special training and are provided with false identifications. Id. In recruiting and training officers to perform undercover police duties, we assure them that their identities will be kept secret, and that the Department will take all necessary steps to ensure their continuing confidentiality. Id. In fact, undercover identities are even concealed from other members of the NYPD and are only revealed on a ‘need to know’ basis. Id. Undercover officers’ names are removed from NYPD databases containing other employees personally identifying information. Id. In addition, they work in undisclosed, confidential locations, and not from publically listed NYPD facilities. Id.

59. Added precautions are taken when an undercover officer must testify in court to secure convictions. Id. at ¶11. A Hinton hearing is generally conducted prior to testimony of undercover officers. Id. The purpose of the hearing is to demonstrate to the Judge that the undercover continues to perform undercover work and that, in order to protect his or her safety, the undercover must not be made to testify in open court, but instead be allowed to testify in a sealed courtroom. Id.

60. All of these precautions not only protect the identities and safety of the undercover officers, but also convey a message to the undercover officers themselves: namely, that their work and lives are valuable and that NYPD will protect their safety. Id. at ¶12.

The Communications Between and Among Undercover Officers and Their Handlers

61. The content of the communications in the Withheld Records between undercover officers and their handlers, including the single communication between the officer acting in an undercover capacity and his base, would, in many instances, tend to identify the undercover officer who is communicating, thus putting such an officer in danger. Id. at ¶14.

62. As explained by Chief Donohue, public disclosure of these records, even if redacted, would reveal NYPD's confidential methods of surveillance and investigation, which are often employed by undercover officers. Id. at ¶15. Disclosure of these confidential investigative techniques would undermine the effectiveness of these methods. Id.

63. First, if these methods were made public, criminals would be apprised of likely times, places, and circumstances when they would be under observation. Id. at ¶16. Such criminals could take precautions so as to conduct their criminal activities outside of any such observation, so as to evade detection, and thus greatly impede NYPD's ability to conduct investigations. Id.

64. Second, if these methods were made public, criminals engaged in an enterprise who were under surveillance by an undercover officer would be more likely to discover the identity of the undercover officer in their midst based on the undercover officer's behavior. Id. at ¶17. Not only would this greatly impede NYPD's ability to conduct an investigation, it would put undercover officers' lives and safety at risk. Id.

65. Additionally, members of the public reviewing the communications might be able to discern the extent, scope, potential targets, and emphasis of NYPD's undercover operations during the protests at Grand Central Terminal between November 2014 and January 2015. Id. at ¶18. Such a review would permit would-be criminals to learn the inverse: namely, the circumstances in which NYPD does not, or cannot, deploy undercover officers. Id.

66. It is critical that the targets of investigations not be aware of the extent of NYPD's present resources or future resources. Id. at ¶19. However, release of the records would show precisely that information, which would endanger future law enforcement investigations and undermine the effectiveness of surveillance operations. Id.

67. Notably, all of the communications records are intra-agency communications between undercover officers and their handlers. Id. at ¶20. None of these records contain verifiable factual data or instructions that affect the public; rather, the communications are pre-decisional and consist primarily of immediate impressions. Id. If this Court were to order disclosure of such communications, Chief Donohue expressed concern that NYPD officers would feel their speech was chilled by the fact that any written communications with managing personnel could be released to the public at large. Id. Such a chilling effect would greatly impede NYPD officers' abilities to communicate candidly about ongoing events, to make split-second decisions, and could further endanger the lives and safety of the general public and of NYPD officers. Id.

68. Additionally, should the content of the undercover officers' communications be made public, NYPD would have great difficulty recruiting other officers to serve as undercover officers, since the undercover officers would feel less secure and protected

by NYPD. Id. at ¶21. Imagine the cost to the public if the NYPD were unable to recruit officers to work in an undercover capacity for fear that their identities would not be protected. Id.

Multimedia Records

69. As discussed above, NYPD has withheld records responsive to subcategory “1,” which sought “all pictures, videos, audio recordings, data, and metadata related to Grand Central Station protests that were collected or received by your agency.”

70. As explained by Chief Donohue, if disclosed, these records could reveal the kinds of optical technology NYPD uses, both in its undercover and general surveillance operations. Id. at ¶23.

71. Additionally, these records would show not only which areas were under surveillance, but also the inverse: specifically, any areas NYPD does not have under surveillance, thereby exposing gaps in coverage. Id. at ¶24.

72. Further, the disclosure of some of the multimedia records would permit enterprising persons or would-be criminals to discern the identities of undercover officers by matching NYPD’s multimedia records with their own recordings of the events at Grand Central Terminal. Id. at ¶25.

73. Moreover, disclosure of the multimedia records would reveal NYPD’s methods of conducting undercover surveillance using technology. Id. at ¶26. If such information were made public, it would greatly undermine NYPD’s ability to conduct undercover surveillance in the future. Id.

74. Finally, as noted above, disclosure of these records could permit an enterprising person or criminal to learn the kinds of optical technology NYPD uses to conduct

surveillance. Id. at ¶27. Some of the data on NYPD's network is transmitted wirelessly, while other data is transmitted on NYPD's fiber-optic network. Id.

75. If the specific kinds of optical technology and transmission equipment were made public, would-be hackers would have a much easier time understanding and exploiting and attacking NYPD's wireless communications and transmission network. Id. at ¶28.

76. Such an attack would jeopardize NYPD's ability to secure its network and surveillance cameras, which are essential information technology assets. Id. at ¶29. Additionally, such an attack could wreak havoc on NYPD personnel's ability to communicate in an emergency, thus endangering the lives and safety of New York's residents and visitors. Id.

77. Accordingly, disclosure of the Withheld Records would reveal non-routine law enforcement techniques; could endanger the lives and safety of undercover officers and New York's residents and visitors; could expose gaps in surveillance coverage, thus undermining any deterrent effect of having surveillance cameras; would hamper NYPD's undercover operations and decrease their effectiveness; would result in difficulty in recruiting and retaining undercover officers in the future; and could jeopardize NYPD's ability to keep its information technology assets secure, thus resulting in impaired communication during an emergency situation. Id. at ¶30.

78. For all these reasons, the Verified Petition should be denied.

**AS FOR A FIRST AFFIRMATIVE DEFENSE,
RESPONDENTS ALLEGE:**

79. Respondent's actions were at all times lawful, proper, reasonable, and in conformity with applicable law.

**AS FOR A SECOND AFFIRMATIVE
DEFENSE, RESPONDENTS ALLEGE:**

80. Respondent has fully complied with its statutory obligations.

**AS FOR A THIRD AFFIRMATIVE DEFENSE,
RESPONDENTS ALLEGE:**

81. The Petition should be dismissed in part because Petitioner has failed to exhaust his administrative remedies.

**AS FOR A FOURTH AFFIRMATIVE
DEFENSE, RESPONDENTS ALLEGE:**

82. The Petition should be dismissed as moot, in part, as certain documents responsive to Petitioner's request have not been located after a through and diligent search, and because certain documents responsive to Petitioner's request have been disclosed by other agencies.

**AS FOR A FIFTH AFFIRMATIVE DEFENSE,
RESPONDENTS ALLEGE:**

54. Petitioner has not satisfied the statutory requirements for an award of attorneys' fees and, therefore, is not entitled to such an award.

WHEREFORE, Respondents respectfully request that the Verified Petition be denied in its entirety, and that Respondents be awarded such other and further relief this Court deems just and proper.

Dated: New York, New York
August 22, 2016

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Respondents
100 Church Street
New York, New York 10007
(212) 356-0883

By: s/Elizabeth Edmonds
ELIZABETH EDMONDS
Assistant Corporation Counsel

TO: David A. Thompson
Attorney for Petitioner
Stecklow & Thompson
217 Centre Street, 6th Floor
New York, NY 10013

VERIFICATION

STATE OF NEW YORK)
 :SS
COUNTY OF NEW YORK)

LORI HERNANDEZ, being duly sworn, states that she is a Deputy Managing Attorney employed by the New York City Police Department; that she has been duly designated by the Police Commissioner of the Police Department of the City of New York, pursuant to Section 1101, subdivision (a) of the New York City Charter, to act on behalf of the Respondents for the purposes of verifying the pleading herein; that she has read the foregoing VERIFIED ANSWER filed in the Supreme Court of the State of New York, County of New York, and knows the contents thereof to be true, except as to the matters therein alleged upon information and belief and as to those matters, she believes them to be true, that the source of this information and the basis for her belief are the records of the New York City Police Department and from statements made to her by certain officers or agents of the New York City Police Department.

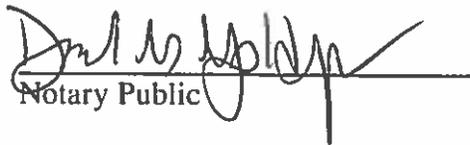


LORI HERNANDEZ

Sworn to before me this
22 day of August, 2016

DAVID G. GOLDFARB, Notary Public
State of New York, No. 02GO6124398

Qualified in New York County
Commission Expires 3/26/2017


Notary Public

Logue v. NYCPD, et al.
Supreme Court of the State of New York
County of New York
Index No. 153965/2016

James Logue
23-66 26th St, Apt. BB
Astoria, New York 11105

January 25, 2015

Records Access Officer
New York City Police Department
F.O.I.L. Unit – Legal Bureau
One Police Plaza, Room 110-C
New York, New York 10038

To whom it may concern:

On multiple occasions while protesting in Grand Central Station over the last two months, I have witnessed law enforcement officials not only watching protesters with binoculars but also filming and/or photographing us from the second floor balcony. To corroborate this, I have attached a photograph showing multiple law enforcement officials with a camera trained on protesters on January 19, 2015.

I hereby request under the Freedom of Information Law (FOIL) all records pertaining to officers' filming and photographing in Grand Central Station from November 2014 through January 2015, including, but not limited to:

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. 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 in Grand Central Station.
5. the names of governmental organizations and private security companies who collaborated in the collection of the information;
6. the names of all organizations public and private with whom the information was shared.

As the surveillance of protests is a matter of public interest, I request the waiver of all fees associated with producing this information. In the event that fees cannot be waived, I would be grateful if you would inform me of the total charges in advance of fulfilling my request.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your prompt response.

Sincerely,



James Logue



POLICE DEPARTMENT
Office of Deputy Commissioner,
Legal Matters
One Police Plaza, Room 1406A
New York, New York 10038

January 11, 2016

Samuel Cohen, Esq.
Stecklow Cohen & Thompson
217 Centre Street, Floor 6
New York, New York 10013

**RE: FREEDOM OF INFORMATION LAW
REQUEST: LBF #15PL1004**

Dear Mr. Cohen:

This is in response to your letter, dated December 4, 2015, appealing the determination of the Records Access Officer (RAO), dated November 6, 2015, regarding what you describe as documents and inter-agency communications "relating to surveillance of Black Lives Matters protests and demonstrations," that were requested by James Logue from the New York City Police Department pursuant to the Freedom of Information Law ("FOIL").

However, the request made by James Logue, that was assigned file number 15PL1004, did not expressly reference "Black Lives Matters" protests. Rather, the request was for "records pertaining to officers' filming and photographing in Grand Central Station from November, 2014 through January, 2015, including the photographing of protesters on January 19, 2015.

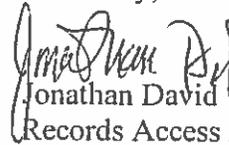
Thus, to the extent that your appeal letter may encompass records that were not requested by Mr. Logue, it is outside my authority to address this aspect of your appeal because my authority is limited to the review of determinations by the Records Access Officer concerning records that were requested from him.

In addition, to the extent that your appeal may encompass records that were requested by Mr. Logue, the appeal is denied because the requested records, if in existence, would be exempt from disclosure pursuant to Public Officers Law (POL) Section 87(2)(e)(iv) since disclosure of any such records would reveal non-routine investigative techniques. In addition, such records are exempt from disclosure pursuant to POL Section 87(2)(e)(i) since the disclosure of any such records would hinder law enforcement investigations and potentially compromise the identity of undercover officers. Also, such records are exempt from disclosure pursuant to POL Section 87(2)(f) because disclosure thereof could endanger both civilians and undercover officers who are in some way connected to any investigation. Also, to the extent that any such records include confidential information, the requested records are further denied pursuant to POL Section 87(2)(e)(iii). Finally, the success of any such investigations could be compromised by disclosure of such records, thereby potentially endangering the people of the City of New York.

Other exemptions under FOIL may also apply.

You may seek judicial review of this determination by commencing an Article 78 proceeding within four months of the date of this decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan David". The signature is written in a cursive style with a large initial "J".

Jonathan David
Records Access Appeals Officer

c: Committee on Open Government