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VIA EMAIL

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Re: *Logue v. New York City Police Department*,  
Index No. 153965/2016

Dear Ms. Mbaye:

As you know, we are counsel to the Petitioner in the above-captioned Freedom of Information Law (“FOIL”) action, and on March 13, 2017 we received the records produced by NYPD in response to the judgment of Justice Mendez entered on February 10, 2017 (the “Judgment”).

Upon a thorough review of these records – communications, Bates stamped 000001-000045, and a single video recording – we discovered significant gaps in the production that violate the Judgment. The production raises other grave concerns regarding the manner in which NYPD responded to the FOIL request and to Mr. Logue’s Petition. On the Petitioner’s behalf, we write to demand that NYPD promptly cure these deficiencies. NYPD must respond by producing the following information and records absent from NYPD’s production no later than March 27, 2017, ten calendar days from delivery of this letter.

**I. Data is improperly redacted from the communications.**

The communications are over-redacted and must be produced to Petitioner without redaction of the dates, timestamp data, file name data, and all other data that does not identify NYPD personnel.

Justice Mendez ordered NYPD produce these communications “redacted to omit **identifying information** including the names and e-mail addresses of the NYPD undercover officers, their handlers and the base.” (emphasis added) Pursuant to the Judgment, NYPD is **not** entitled to withhold any information beyond what would identify

NYPD personnel, such as an individual's name. The dates and file names redacted from NYPD's disclosure are not "identifying information." For further guidance, we refer you to the minimal redactions in the documents Petitioner received from Metropolitan Transit Authority ("MTA") and Metro North, see Exs. G and I, Affidavit of Petitioner James Logue ("Logue Aff.") (Dkt. Nos. 12 and 14), redactions which the Court recognized were sufficient to protect these agencies' undercover officers, as well as those employed by NYPD.

**II. The set of communications appears to be incomplete.**

NYPD's production appears to be improperly limited to communications that include the keyword terms "grand central," "grand," "GC," "G.C.," "GCS," or "GST."

According to the Judgment, Petitioner is entitled to **all** NYPD communications pertaining to Black Lives Matter protests at Grand Central, not only those communications that contain keyword terms, noted above, referring to Grand Central Terminal. *See* item no. 4, Ex. D, Logue Aff. (Dkt No. 9) (emphasis added).

A search of records based only on these keywords is under-inclusive. A proper search would look for responsive records where they might reasonably be found. At a minimum, NYPD should collect and review for responsiveness all communications of all personnel assigned to police Black Lives Matter protests at Grand Central Terminal from November 2014 through January 2015. It is apparent from the production we received on March 13th that NYPD did not conduct such a search, and that Petitioner did not receive all the responsive communications to which he is entitled.

Secondly, we ask that you confirm that NYPD's search, whether conducted during the litigation or in response to this letter, did not identify as existing any documents responsive to the FOIL request that were created in compliance with NYPD's interim order of April 13, 2007 revising its Patrol Guide procedure 212-71 ("guidelines for the use of photographic/video equipment to record police operations and public activities"). Specifically, if *Handschu* requirements were followed, responsive documents would include reports to the Deputy Commissioner, Legal Matters, identifying the date and time of demonstrations at Grand Central Terminal to be surveilled using photographic/video equipment and the approved requests for that surveillance. The Patrol Guide details the locations where such documents should be found.

Alternatively, if NYPD's broader search for responsive documents leads to the discovery of documents prepared pursuant to the aforementioned interim order, we ask that NYPD produce them to Petitioner.

**III. No stationary surveillance camera images or video were produced.**

The affidavit of Assistant Chief John Donahue ("Donohue Aff.") asserted that it was made on the basis of a review of the material, which was being withheld, inclusive of the communications and multimedia records. Donahue Aff. , ¶ 4 (Dkt. No. 38). On the basis of this review, Donohue represented to the court that viewing the material would

permit a viewer to deduce the blind spots in Grand Central Terminal's video surveillance system. Such an argument could not possibly be made in good faith unless the material contained multiple videos shot from the multiple surveillance system cameras. NYPD has, in fact, produced no video filmed from any surveillance system camera. We are forced to conclude that either the NYPD is continuing to withhold multimedia records, or Assistant Chief Donohue committed perjury.

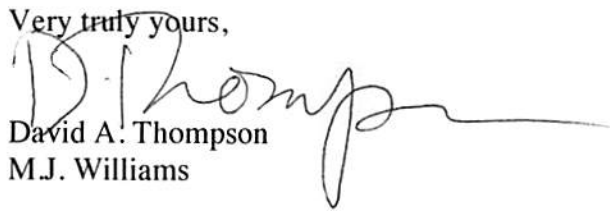
Similarly, Assistant Chief Donohue swore in his affidavit that identities of multiple undercover officers could be discerned by review of NYPD multimedia records (in the plural), and that the "optical technology" used by the undercover officers would reveal "proprietary methods of conducting undercover surveillance using technology." Donahue Aff., ¶¶ 25-26. The single blurry video and handful of photographs produced to Petitioner cannot possibly form a good faith basis for such testimony. Again, the two possible alternatives are perjury or continued withholding of records.

While perjury cannot be cured, withholding records in violation of a court order can be. Petitioner demands NYPD fully comply with its obligations under the Court's Judgment by producing all the above-cited materials missing from NYPD's production. (Please note that the NYPD's time to appeal or seek modification of the Judgment has passed). By doing so, the NYPD can ameliorate its potential liability for sanctions.

We are ready to discuss this matter and to discuss settlement of the petitioner's motion for attorney's fees (already filed) and his anticipated motion for sanctions against the NYPD and Assistant Chief John Donohue personally.

We look forward to hearing from you at your earliest opportunity.

Very truly yours,

  
David A. Thompson  
M.J. Williams