

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

<p>In the Matter of the Application of</p> <p>THE BRONX DEFENDERS,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">– against –</p> <p>The NEW YORK CITY POLICE DEPARTMENT, and WILLIAM BRATTON, in his official capacity as Commissioner of the New York City Police Department,</p> <p style="text-align: center;">Respondents.</p> <p>For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules.</p>
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Index No.:

**AFFIRMATION IN  
SUPPORT OF MOTION  
AND  
VERIFIED PETITION**

Adam Shoop, Esq., an attorney duly licensed to practice law in the Courts of the State of New York, hereby affirms pursuant to CPLR § 2106 that the following is true and correct:

1. I am a staff attorney at The Bronx Defenders, the Petitioner in this action, and as such, I am familiar with the facts and circumstances stated herein.
2. I make this affirmation on my own knowledge and upon information and belief, the basis of which is my review of files maintained in our office.
3. I make this affirmation in support of a motion for an Order pursuant to Article 78 of the C.P.L.R. directing Respondents to comply with their duty under the Freedom of Information Law (“FOIL”).

**July 29, 2014 FOIL Request**

4. Upon information and belief, my predecessor counsel at The Bronx Defenders, Vichal Kumar, submitted a FOIL request to the New York City Police Department (“NYPD”) on

DWT 29691872v2 0050033-000220

DWT 29691872v3 0050033-000220

or about July 29, 2014 (“July 2014 FOIL Request”). A true and accurate copy of the July 24 FOIL Request dated July 29, 2014 is annexed hereto as **Exhibit A**.

5. The request sought an enumerated list of records pertaining to NYPD policies and procedures regarding, and accounting for, money and property seized by the NYPD during arrests, including information about property held for safekeeping during the arrest and booking process, property held as potential evidence in a criminal proceeding, and property subject to civil or criminal forfeiture. *Id.*

6. Of the forty numbered paragraphs in the request, they can be broken down roughly as follows: seven numbered requests sought NYPD documents pertaining to policies and procedures (*id.* at ¶¶ 1-3, 9, 24, 33, 37), and thirty-three numbered requests sought documents pertaining to the value and accounting of money and property seized by the NYPD and whether it was returned to a claimant or kept by the Department, and for what purpose (*id.* at ¶¶ 4-8, 10-23, 25-32, 34-36, 38-40).

#### **November 10, 2014 NYPD Acknowledgment Letter**

7. On or about November 10, 2014—almost four months later—the NYPD sent a letter regarding Petitioner’s July 2014 FOIL Request. The form letter, signed by Lieutenant Richard Mantellino, Records Access Officer, indicated that the July 2014 FOIL Request had been assigned No. 2014-PL-6624 and assigned to Police Officer Halk for processing. A true and correct copy of the letter is attached hereto as **Exhibit B**.

8. This boilerplate document further “estimated that processing of [the] request w[ould] be completed by February 9, 2015.” The NYPD placed checkmarks in boxes indicating that the estimated time frame was based on the following factors:

- (1) “Numerous records must be reviewed [...]”
- (2) “Record(s) have not yet been received from other NYPD unit(s);” and
- (3) “Request is extremely voluminous and/or complex.”

9. The letter further indicated that it was not a denial of the request, and that The Bronx Defenders would be advised in writing of any such future denial.

10. The Bronx Defenders did not receive any of the requested records, nor did it receive a written denial of the request in whole or in part, by the promised date.

### **One Year Later: No Response from the NYPD**

11. Given the complex nature of the request, and in the interest of avoiding litigation, I wrote to Officer Halk, the NYPD officer assigned to the request, on July 31, 2015 (“July 2015 Letter”). In the July 2015 Letter, I reiterated the requirements under FOIL, stated that it was now over one year since the request was made, and noted that the NYPD’s self-imposed deadline had passed some six months earlier. A true and accurate copy of the July 2015 Letter is annexed hereto as **Exhibit C**.

12. My letter noted that:

numerous records were requested, we did request that when records were located (including from other NYPD units, as you suggested would be necessary) and determined to be subject to disclosure, that the records be provided on a “piecemeal basis.” This approach is consonant with the statutory mandate that an agency must grant access to records “wherever and whenever feasible.” Pub. Off. Law § 84. See also Linz. v. City of N.Y. Police Dep’t, N.Y.L.J., Dec. 17, 2001, p. 18 (col. 1) (Sup. Ct. N.Y. Co.); NYS Dep’t of State, Committee on Open Gov’t, Advisory Opinion FOIL-AO-14137 (July 14, 2003), available at: <http://docs.dos.ny.gov/coog/ftext/f14137.htm>.

(See Ex. C.)

**Second (Undated) NYPD Acknowledgment Letter, Received August 17, 2015**

13. In response to the July 2015 Letter requesting compliance with FOIL, the NYPD sent another boilerplate form letter signed by Lieutenant Mantellino, in all respects identical to the prior acknowledgment except that it now indicated the request would be completed by September 11, 2015 and except that this letter indicated only that “Numerous records must be reviewed [...],” and “Request is extremely voluminous and/or complex.” A true and accurate copy of the letter and the envelope stamped with the date it was received in my office is annexed hereto as **Exhibit D**.

14. On September 22, 2015, I contacted NYPD Officer Halk for an update on the status of this request. He indicated, in sum and substance, that he was aware of the request, but was still waiting for documents from some NYPD units. He further stated that none of the documents already received had been vetted for disclosure and that the NYPD had a preference to do it all at once. I asked that documents be reviewed as they are located and provided on a piecemeal basis—as requested in the July 2014 FOIL Request and subsequent letter to the NYPD—which Officer Halk agreed to do.

15. Subsequent to my letter and this phone call, the NYPD failed to provide any records or explanation as to whether the request was denied in whole or in part.

**December 2, 2015 Administrative Appeal**

16. On December 2, 2015, I filed an administrative appeal to the attention of the NYPD FOIL Appeals Officer via certified mail, return receipt requested. A true and accurate copy of the Administrative Appeal letter dated December 2, 2015 and USPS certified mail return receipt are annexed hereto as **Exhibit E**.

17. I also sent copies via first class mail to Officer Halk (the officer assigned to the original FOIL request) and to Jonathan David.

18. The NYPD denied the administrative appeal in a letter dated December 24, 2015. A true and accurate copy of the decision letter dated December 24, 2015 is annexed hereto as **Exhibit F**. In its decision, the NYPD Records Access Appeals Officer wrote that because the July 2014 FOIL Request was not expressly denied, “the appeal lacks the predicate denial of access and is, therefore, premature.” Further, the NYPD changed the estimated date by which it would issue a determination for the third time, to February 26, 2016—over one and a half years after The Bronx Defenders had filed the July 2014 FOIL Request.

19. It was not until March 18, 2016—one year and seven months after The Bronx Defenders filed its FOIL Request—that the NYPD issued a half-page written response (the “Denial”), enclosing only three documents: (1) 11 pages titled “NYPD Property Clerk Division 2013 Accounting Summary,” including each month of the 2013 fiscal year except February 2013; (2) a three-page spreadsheet titled NYPD Revenue Generated for July 1, 2012 to June 30, 2013; and (3) an electronic copy of the NYPD Patrol Guide. True and correct copies of the Denial and the hard copy documents are attached hereto as **Exhibits G-I**. The Denial did not identify the requests to which the NYPD believed the two documents it produced to be responsive.

20. With respect to the other records requested by Petitioner, the NYPD did not disclose the records sought, claim specific exemptions to disclosure, or certify that it does not possess the records after a diligent search, as required by Section 89(3) of the Public Officers Law. Instead, it claimed that the NYPD was unable to locate additional records “based on the information that [Petitioner] provided.”


21. At no time did the NYPD seek clarification or otherwise seek to assist The Bronx Defenders to identify the records sought with greater specificity.

22. On April 13, 2016, less than 30 days after the receipt of the NYPD's Denial, I sent a letter appealing the Determination to Jonathan David, the NYPD's Records Access Appeals Officer, attaching copies of the July 2014 FOIL Request and the Denial, as instructed by the NYPD (the "Appeal"). A true and correct copy of the Appeal is attached hereto as **Exhibit J**. As we explained in the Appeal, the very fact that the NYPD compiles "Accounting Summary and Revenue Report[s]" reveals that there are other documents and records responsive to Petitioner's Request. (*See id.*)

23. To date, The Bronx Defenders has received no written determination of its Appeal.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: August 3, 2016  
Bronx, New York



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Adam Shoop