

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

BRENNAN CENTER FOR JUSTICE AT
NEW YORK UNIVERSITY SCHOOL OF LAW,

Petitioner,

-against-

NEW YORK CITY POLICE DEPARTMENT, and
JAMES P. O'NEILL, in his official capacity as
Commissioner of the New York City Police Department

Respondents,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

Index No. _____

VERIFIED PETITION

PRELIMINARY STATEMENT

1. This Article 78 Proceeding asserts the right of Petitioner, Brennan Center for Justice at New York University School of Law (“Brennan Center”), and the public to access public records relating to the use by the New York Police Department (“NYPD”) of predictive policing technology. Specifically the NYPD has refused to release public records regarding, among other things, the cost of implementing predictive policing technologies, agreements with vendors related to those technologies, correspondence related to the technologies, and the NYPD’s policies and procedures governing the use of the technologies.

2. It is a matter of public record that the City of New York has purchased licenses from Palantir Technologies (“Palantir”) for “Palantir Gotham” and other unspecified software designed for law enforcement agencies, which allow law enforcement to pull in data from a wide range of sources to assist with managing cases. Palantir Gotham also includes a “predictive

policing” feature that suggests geographic areas where crimes are more likely to occur and can help guide the deployment of police resources. Despite widespread public interest in predictive policing, the public lacks information about the actual costs and parameters of the NYPD’s predictive policing initiative. The design and application of this initiative could materially affect the civil rights of New Yorkers.

3. New York’s Freedom of Information Law (“FOIL”) expresses this State’s strong commitment to open government and public accountability and imposes a broad standard of disclosure upon the State and its agencies. Pub. Off. Law § 84. FOIL proceeds under the premise that the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government. *Id.* Therefore, pursuant to FOIL, *all* government records are presumptively open for public inspection and copying. *Id.* Although this presumption is subject to certain statutory exceptions, those exceptions are to be narrowly construed and it is the burden of the public agency (here the NYPD) to prove that a requested record fits within the exception. Pub. Off. Law § 89(4)(b).

4. The Brennan Center filed a FOIL request in June 2016 with the NYPD FOIL Unit for nine discrete categories of public records regarding the department’s policies and contracts for the use of predictive policing technology.

5. The NYPD did not provide a single document in response to the FOIL request. Instead, the NYPD provided a cursory denial of the Brennan Center’s request, merely reciting a single subsection of FOIL as exempting disclosure, making no attempt to separately address the nine categories of documents requested, and failing to meet its burden of providing particularized and specific justification for nondisclosure of the records requested under FOIL. In July 2016, the Brennan Center appealed the NYPD’s denial, challenging the NYPD’s categorical refusal to

provide any records, a particularized justification for nondisclosure, or any substantive support for the single exemption cited by the NYPD.

6. On August 15, 2016, the NYPD issued a denial of the Brennan Center's appeal and reiterated its refusal to provide even a single public record in response to the Brennan Center's FOIL request. The NYPD invoked several additional FOIL exemptions, but once again failed to provide any particularized or specific justification for nondisclosure of the requested records. The NYPD made no effort to distinguish exempt and non-exempt documents. But, as discussed below, the NYPD's claimed exemptions do not support the NYPD's blanket denial of the request. Indeed, the Court of Appeals has held repeatedly that the mere assertion of such blanket exemptions are inimical to FOIL's policy of open government.

7. This Article 78 petition seeks to compel the NYPD to comply with its statutory mandate under FOIL and respectfully asks this Court to direct the NYPD to provide Petitioner with records in response to its FOIL request.

PARTIES

8. Petitioner Brennan Center for Justice is a non-profit, non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. The Brennan Center's work ranges from voting rights to campaign finance reform, from racial justice in criminal law to Constitutional protections in the fight against terrorism. In particular, through its Liberty and National Security Program, the Brennan Center seeks to ensure that law enforcement agencies execute their responsibilities in compliance with constitutional and statutory limits.

9. Respondent NYPD is an agency administered under New York City Administrative Code, Title 14. The NYPD is responsible for law enforcement in the City of New York and is subject to the requirements outlined in FOIL. *See* Pub. Off. Law § 84, *et seq.*

10. Mr. James P. O'Neill is a public officer who is named in his official capacity as Commissioner of the NYPD.

FACTS

11. On June 14, 2016, the Brennan Center sent a FOIL request (the "BCJ Request") to the NYPD's FOIL Unit via certified mail. *See* BCJ Request, annexed hereto as Exhibit A.

12. The BCJ Request asked the NYPD to disclose public records relating to the NYPD's use of predictive policing technology, knowledge of which is public record. In particular, purchase orders show that the City of New York has paid millions of dollars to Palantir for "Palantir Gotham" (and other unspecified software licenses). *See, e.g.*, SmartProcure 2.0 printouts of City of New York purchase orders paid to Palantir, collectively annexed hereto as Exhibit E.

13. "Palantir Gotham" is a flexible software tool that allows data from multiple sources to be integrated and analyzed. The Palantir Law Enforcement program, an implementation of the general Palantir Gotham platform designed for law enforcement agencies, allows police to pull in data from a wide range of sources to manage cases and investigate targets. It also has a "predictive policing" portion that suggests areas where crimes are likely to occur and can help guide the deployment of police resources.

14. The BCJ Request sought, among other things, purchase records and agreements relating to predictive policing technology; communications with Palantir concerning Palantir Gotham, including sales materials and emails; policies governing the use of predictive policing technology; communications with federal agencies and bureaus relating to the use of Palantir Gotham or other predictive policing technology; documents regarding what types and sources of data may be used with the Palantir Gotham platform; statistical data regarding the number of

investigations in which predictive policing products or services have been used and the number of those investigations that have resulted in prosecutions or crime prevention; audits or internal reviews of Palantir Gotham; and any nondisclosure agreements governing the use of predictive policing products or services. *See* Exhibit A.

15. On June 29, 2016, the NYPD conclusorily denied the BCJ Request in its entirety “on the basis of Public Officers Law Section 87(2)(e)(iv) as such information, if disclosed, would reveal non-routine techniques and procedures.” *See* Letter dated June 29, 2016, annexed hereto as Exhibit B. The NYPD provided no particularized or specific justification for nondisclosure of the records requested under FOIL.

16. On July 29, 2016, the Brennan Center sent an appeal (“BCJ Appeal”) with notification to Mr. Jonathan David, Records Access Appeals Officer of the NYPD, in accordance with Public Officer’s Law § 89(4)(a). *See* BCJ Appeal, annexed hereto as Exhibit C. The appeal letter explained that, in denying a request for records, FOIL required the NYPD to offer more than a bare recitation of the statutory exemptions. In addition, the appeal letter demonstrated that the NYPD’s blanket denial of the BCJ Request was not supported by either the facts as known or the governing law. The Brennan Center reminded the NYPD of its obligation to provide redacted records to the extent that any information in the requested records fell within a statutory exemption.

17. On August 15, 2016, the NYPD categorically denied the BCJ Appeal in its entirety (“Appeal Denial”), providing only conclusory assertions that the requested records were exempt from disclosure under Public Officers Law Sections 87(2)(i), 87(2)(d), 87(2)(e)(iii)-(iv), and 87(2)(g). *See* Appeal Denial, annexed hereto as Exhibit D. Again, the NYPD provided no particularized and specific justification for nondisclosure of the records requested under FOIL,

merely listing additional exemptions without making any additional showing why any exemptions applied. Moreover, the NYPD refused to produce redacted versions of the requested records.

18. Petitioner timely commenced this Article 78 proceeding, within four months of the NYPD's Appeal Denial, *see* CPLR § 217, to force the NYPD to comply with its obligations under FOIL and provide Petitioner with documents responsive to the BCJ Request.

VENUE AND JURISDICTION

1. Pursuant to CPLR § 7804(b) and 506(b), venue in this proceeding lies in New York County, the judicial district in which both Petitioners' and Respondents' principal offices are located.

2. Article 78 of the CPLR (CPLR § 7804(b)) confers jurisdiction over this matter upon this Court.

3. This Court has jurisdiction over the matter because the NYPD's denial of the Brennan Center's appeal cannot be further "reviewed by appeal to a court or to some other body or officer." CPLR § 7801[1].

CAUSE OF ACTION: ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL REQUEST

4. Petitioner repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

5. Article 78 is the appropriate method of review of final agency determinations concerning FOIL requests.

6. Petitioner has a legal right under FOIL to gain access to the public records requested in the BCJ Request.

7. FOIL recognizes the public's right to access and review government documents; agency records are presumed to be public and subject to disclosure under FOIL.

8. Respondents have not produced the records sought by Petitioner and have failed to properly invoke any exemptions under FOIL.

9. Respondents did not meet their burden to provide specific and particularized justification for withholding the requested records from disclosure under FOIL.

10. None of the exemptions from FOIL that were cited by Respondents in the Appeal Denial properly apply to the material Petitioner has requested.

11. Petitioner has exhausted its administrative remedies and has no other remedy at law.

12. Petitioner has not made a prior application for the relief requested herein.

13. Because the NYPD had no reasonable basis for its categorical denial of the BCJ Request and BCJ Appeal, Petitioner is entitled to attorney's fees under Public Officers Law § 89(4)(c).

CLAIM FOR RELIEF

Petitioner respectfully requests that this Court enter judgment, pursuant to CPLR 7806, on its behalf:

- a. directing the NYPD and Commissioner O'Neill to comply with their duty under FOIL to provide Petitioner access to the requested records and documents responsive to Petitioner's FOIL request that are not subject to any exemption and to specifically identify and describe any documents allegedly exempt from disclosure;

- b. ordering, in the alternative, an *in camera* review of the responsive records in the event this would better inform the Court as to the contents and form of the records requested by Petitioner, as well as the need for redactions;
- c. awarding Petitioner its reasonable attorney's fees pursuant to Public Officers Law § 89(4)(c); and
- d. granting Petitioner such other and further relief as this Court deems necessary and equitable.

Dated: December 15, 2016
New York, NY

Respectfully Submitted,

By: 

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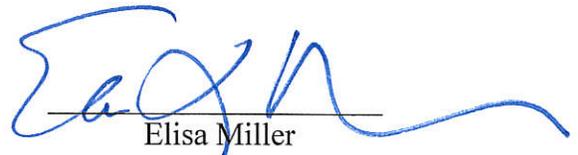
To: James P. O'Neill, Commissioner
Attention: Jonathan David
Records Access Appeals Officer
New York City Police Department
1 Police Plaza, Room 1406
New York, New York 10038

VERIFICATION

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

Elisa Miller, being duly sworn, deposes and says under penalty of perjury:

1. I am the General Counsel for the Petitioner in these proceedings.
2. I make this verification pursuant to CPLR § 3020(d)(3).
3. I have read the Verified Petition and hereby state that it is true to the best of my knowledge, information, and belief.



Elisa Miller

Sworn to and subscribed before me
this 14th day of December, 2016



Notary Public

Jonathan P Brater
Notary Public, State of New York
No. 02BR6281837
Qualified in Kings County
My commission expires May 13, 2017