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EXECUTIVE DIRECTOR

SHOSHANAH BEWLAY

MEMORANDUM

TO: Whom it May Concern

FROM: Shoshanah Bewlay
Executive Director, Committee on Open Government

RE: *Alert: Court of Appeals Decisions Regarding Police Disciplinary Records*

DATE: February 28, 2025

As is well known, in June 2020, the legislature repealed Civil Rights Law (CRL) § 50-a and amended the Freedom of Information Law (FOIL) relating to the availability of law enforcement disciplinary records. These law changes removed a blanket, statutory grant of confidentiality that had been extended to law enforcement disciplinary records by CRL § 50-a and directed that those records now fall within the FOIL disclosure mandate, subject only to the exemptions in FOIL itself. Essentially, as we have discussed in our opinions and reports since the 2020 amendments, the content of law enforcement disciplinary records now must be analyzed pursuant to the exemptions in Public Officers Law (POL) § 87(2)(b)-(t) to determine whether an agency may withhold them from FOIL disclosure.

Immediately upon these amendments to the law in 2020, the Committee on Open Government identified two key open questions: (i) whether the repeal applies retroactively to records created before June 2020 and to former officers no longer employed by law enforcement agencies after June 2020; and (ii) whether an agency may withhold unsubstantiated or pending complaints of misconduct due to personal privacy concerns. Since 2020, we have issued multiple advisory opinions and issued five annual reports advising that in the absence of a Court of Appeals decision providing clarity, our belief is that the courts would hold that: (i) the repeal applies retroactively; and (ii) unsubstantiated reports are available subject to an individual analysis of each such record pursuant to the exemptions in FOIL.

On February 20, 2025, the New York State Court of Appeals issued two decisions consistent with our interpretations, answering these open questions in the affirmative and providing clarity and closure on these issues. The two decisions issued this month by the Court of Appeals are: [New York Civil Liberties Union v. City of Rochester](#), --- N.E.3d ---, 2025 WL 554452, 2025 N.Y.

Slip Op. 01010 (Feb. 20, 2025); and [*NYP Holdings, Inc. v. New York City Police Department*](#), --- N.E.3d ---, 2025 WL 554468, 2025 N.Y. Slip Op. 01009 (Feb. 20, 2025).

In those decisions, the Court of Appeals specifically held:

- FOIL imposes a broad duty on government to make its records available to public to promote open government and public accountability.
- All government records are presumptively open for public inspection and copying unless they fall within one of enumerated exemptions in FOIL.
- There is no categorial or blanket personal privacy exemption under POL § 87(2)(b) for records relating to complaints that were not deemed substantiated. However, FOIL does not deny law enforcement officers benefit of the personal privacy exemption under appropriate circumstances.
- Rather than withhold all such records, FOIL requires an agency to evaluate each record individually and determine whether “a particularized and specific justification” exists for denying access on the ground that disclosing all or part of the record would constitute an unwarranted invasion of personal privacy.
- Where redactions of records would prevent unwarranted invasion of personal privacy and can be made without unreasonable difficulty, the agency must disclose the record with those necessary redactions.
- Legislative repeal of CRL § 50-a applies retroactively, and thus police officer disciplinary records created prior to the repeal must be disclosed, consistent with statutory rights of access, in response to FOIL requests submitted after the statutory exemption was repealed.
- FOIL defines “records” without reference to the date the information was created, and there was no indication that the repeal was intended to affect the usual manner in which FOIL operated and the drafting history and remedial nature of the repeal legislation supported that it was intended to have retroactive application.