

## New York Court of Appeals Issues Decision Addressing Public Access to Police Personnel and Disciplinary Records

On December 11, 2018, the New York Court of Appeals issued a [decision](#) (over two dissenting opinions) addressing public access to police personnel and disciplinary records. The Court held that certain personnel records sought by the New York City Civil Liberties Union (“NYCLU”) pursuant to the Freedom of Information Law (“FOIL”) are exempt from disclosure under New York Civil Rights Law § 50-a and New York Public Officers Law § 87(2)(a). In doing so, the Court affirmed the decision of the Appellate Division, First Department, and the broad applicability of Civil Rights Law § 50-a to requests for police personnel/disciplinary records.

The case involved the NYCLU’s attempt to obtain New York City Police Department (“NYPD”) police disciplinary records that stemmed from civilian complaints that were deemed substantiated after investigation by New York City’s Civilian Complaint Review Board. These cases were then referred to the NYPD to institute formal discipline against the offending officers. Following a disciplinary process that derives from the New York City Charter, the NYPD’s Police Commissioner has the final word on any discipline and penalty.

Beginning in 2011, the NYCLU made a FOIL request for all final opinions from the NYPD’s trial room dating back to 2001, as well as all documents identifying the final/formal discipline imposed. The NYPD rejected the request, citing to a FOIL exemption (Public Officers Law § 87(2)(a)) for records exempt from disclosure by state law – specifically, in this case, Civil Rights Law § 50-a.

Civil Rights Law § 50-a protects against the disclosure of police personnel records and considers “confidential and not subject to inspection or review” the following documents: “[a]ll personnel records used to evaluate performance toward continued employment or promotion . . . .” Moreover, a party seeking disclosure must follow a specific procedure involving a court order.

The Court found the records sought by the NYCLU to be “quintessential ‘personnel records’” falling within the ambit of Civil Rights Law § 50-a. “Documents pertaining to misconduct or rules violations’ by an officer are ‘the very sort of record which, the legislative history reveals, was intended to be kept confidential.’” The Court rejected the NYCLU’s claim that the protections are limited to situations involving actual or potential litigation, and emphasized the “potential use” of the information sought as the “decisive factor” in determining whether the personnel record is exempt from FOIL disclosure.

In protecting the documents from disclosure, the Court added: “The NYCLU’s FOIL request seeks internal police department disciplinary records, spanning a 10-year period, that arise from civilian complaints against NYPD officers. These records are replete with factual details regarding misconduct allegations, hearing judges’ impressions and findings, and any punishment imposed on officers – material ripe for ‘degrad[ing], embarrass[ing], harass[ing] or impeach[ing] the integrity of [an] officer.’” Additionally, court-ordered disclosure under Civil Rights Law § 50-a occurs only when there is ongoing litigation, not, as in the NYCLU’s case, where the records sought are not “relevant and material” to pending litigation; and there is no statutory authorization for redaction under FOIL.

The Court rejected policy arguments by the NYCLU and its amicus surrounding public confidence in the integrity of the NYPD, finding that the N.Y.S. Legislature was well aware of those policy arguments at the time it adopted Civil Rights Law § 50-a. The Court even found that mandatory confidentiality is required despite the fact that NYPD disciplinary hearings are open to the public (although this was a critical fact in a dissenting opinion).

Finally, and in a seemingly blunt rebuke of the dissenting judges, the majority stated: “This case presents a straightforward application of Civil Rights Law § 50-a and Public Officers Law § 87(2)(a), which mandate confidentiality and supply no authority to compel redacted disclosure. To the extent the dissent would prefer to revoke civil rights protections afforded to police officers (Civil Rights Law § 50-a), victims of sex crimes (Civil Rights Law § 50-b), medical patients (Public Health Law § 2803-c(3)(f)), or others, those arguments are properly directed to the Legislature.”

If you have any questions about this Information Memo, please contact [Christopher T. Kurtz](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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