

NOV 13 2007

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

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 In the Matter of :
 :
 NEW YORK CIVIL LIBERTIES UNION, :
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 Petitioner, :
 :
 :
 -against- :
 :
 NEW YORK CITY POLICE DEPARTMENT, :
 and RAYMOND KELLY, 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 :
 ----- X

Index No.

07/15154

NOT COMPARED
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**VERIFIED
PETITION**

NOV 15 2007

PRELIMINARY STATEMENT

1. This Article 78 proceeding seeks to vindicate the right of the petitioner New York Civil Liberties Union and the right of the public to have access to a New York City Police Department database that now contains information about over 850,000 police stops of civilians made since January 1, 2006. The NYCLU filed a Freedom of Information Law request seeking the database -- with individually identifiable information removed -- but the NYPD has denied that request entirely and rejected a timely administrative appeal, leading to this Article 78 petition.

2. The NYPD's stop-and-frisk activity has been the subject of enormous public interest since February 1999, when four white members of the NYPD's Street Crime Unit fired 41 shots at and killed Amadou Diallo, an unarmed twenty-three-year-old black resident of the Bronx. At the

heart of this public interest has been the concern that race plays an inappropriate role in NYPD stops and frisks and a separate concern that many people are being stopped and frisked without adequate legal justification. These concerns took on added urgency in February of this year when the NYPD released reports revealing that, in 2006 alone, its officers stopped over 500,000 New Yorkers, a disproportionate number of whom were African-American.

3. In response to the public outcry created by the written reports released earlier this year, the NYPD retained the RAND Corporation, a private research organization, to examine its stop-and-frisk practices. The NYPD provided RAND with an electronic copy of the stop-and-frisk database, which was essential because access to the written reports alone precludes anything more than a very limited analysis of the NYPD's stop-and-frisk practices. While the NYPD released an electronic copy of the database to RAND, it refused to release the database to the public or even to the New York City Council. Therefore, the NYCLU filed a FOIL request for a copy of the electronic database. The NYPD denied that request, the NYCLU appealed that denial, and the NYPD denied that appeal on October 15, 2007.

4. The NYPD's refusal to produce an electronic copy of the stop-and-frisk database sought by the NYCLU violates the Freedom of Information Law. Having exhausted its administrative appeals, the petitioner NYCLU now seeks an order from this Court, pursuant to Article 78 of the New York Civil Practice Law and Rules, directing the NYPD to produce a copy of the database as requested by the NYCLU. The petitioner also seeks attorneys' fees and any other relief the Court deems appropriate.

VENUE

5. Pursuant to C.P.L.R. §§ 7804(b) and 506(b), venue in this proceeding lies in New York County, in the judicial district in which Respondents took the action challenged here and where the offices of Respondents are located.

PARTIES

6. Petitioner NEW YORK CIVIL LIBERTIES UNION is a not-for-profit corporation that defends civil rights and civil liberties in New York.

7. Respondent NEW YORK CITY POLICE DEPARTMENT is a law-enforcement agency administered under New York City Administrative Code, Title 14. The NYPD is a public agency subject to the requirements of the Freedom of Information Law, New York Public Officers Law § 84 et seq.

8. Respondent RAYMOND KELLY is a public officer who is named in his official capacity as the Commissioner of the NYPD.

FACTS

9. The NYCLU's mission is to defend civil rights and civil liberties in New York and to preserve and extend constitutionally guaranteed rights to people whose rights have historically been denied. For over fifty years, the NYCLU has been involved in litigation and other advocacy in support of individual rights and government accountability. The issue of police misconduct,

including racial profiling and unlawful stopping and frisking, is an ongoing concern of the NYCLU and has long been an issue about which the NYCLU has been engaged in advocacy.

10. Upon information and belief, on February 1999, four white members of the NYPD's Street Crime Unit fired 41 shots at and killed Amadou Diallo, an unarmed twenty-three-year-old black resident of the Bronx. That incident prompted a substantial public controversy about NYPD stop-and-frisk practices, which in turn led then-Attorney General Eliot Spitzer to conduct a study of those practices. That study, which was released in December 1999, was based on an examination of a large number of individual NYPD forms completed by police officers who conduct stops and/or frisks. The study concluded that race was playing an inappropriate role in police stops.

11. Police officers conducting stops and frisks record information about those police-civilian encounters on a form, formally titled the "Stop, Question and Frisk Report Worksheet." The form has spaces for the following information: the time, date, and location of the stop; the precinct of the officer; the precinct and precinct serial number; the type of location (housing, transit, inside, outside, other); the suspected misdemeanor or felony; the duration of the stop; a checklist of circumstances leading to the stop; the name, address, date of birth, and type of identification of the person stopped; gender, race, age, height, weight and other descriptive features of the person stopped; whether the officer explained the reason for the stop; whether other people were stopped, questioned and frisked at the same time; whether physical force was used and a checklist indicating what kind of force was used; whether suspect was arrested or

given a summons and on what offense; whether the officer was in uniform, and if not how he or she identified him or herself; whether the person was frisked and a checklist of reasons why; whether the person was searched and a checklist of reasons why; whether a weapon was found and what kind; whether any contraband was found and what kind; the demeanor of the person after being stopped and remarks made by the person stopped; a checklist of additional circumstances for the stop; whether any additional reports were prepared; and the name, signature, command and tax ID number of the reporting and reviewing officers.

12. In March, 2006, the NYPD issued an Operations Order directing that all information from Stop, Question and Frisk Report Worksheets be entered into a centralized database.

13. In November 2006, the NYCLU learned from representatives of the New York City Council that the NYPD had failed to provide to the Council various reports about its stop-and-frisk practices as required under the Police Reporting Law (codified at NYC Admin. Code § 14-150), which the Council enacted in 2001 in the aftermath of the Diallo shooting.

14. Upon information and belief, on November 25, 2006, NYPD officers fired fifty shots at three unarmed black men, killing one of them, Sean Bell. Shortly after Mr. Bell's death, the NYCLU wrote to NYPD Commissioner Raymond Kelly requesting that the Department immediately produce to the City Council the overdue stop-and-frisk reports.

15. When the Department continued to withhold the reports it was required to produce under

the Police Reporting Law, the NYCLU embarked on an effort to force disclosure of those reports. Late on Friday, February 2, 2007, with *The New York Times* poised to run a major story the next day about the Department's failure to produce the reports, the NYPD produced four printed reports to the City Council containing stop-and-frisk information for each of the four quarters of 2006.

16. The printed stop-and-frisk reports produced to the City Council show that in 2006 NYPD officers stopped 508,540 people, as compared to 97,296 people who were stopped in 2002, the most recent prior year for which figures are available. Of those stopped in 2006, approximately 53% were black, though blacks make up only about 25% of New York City's population. Only about 4% of those stopped in 2006 were arrested.

17. The February 2007 release of the 2006 stop-and-frisk reports generated substantial public controversy surrounding whether race was playing an inappropriate role in police stops and whether large numbers of people were being stopped without adequate legal justification. In the midst of this controversy, the NYPD announced that it had hired the RAND Corporation to analyze NYPD stop-and-frisk data. It then gave RAND the stop-and-frisk database for its use in the study.

18. After reviewing the printed stop-and-frisk reports and discussing them with representatives of the City Council, the NYCLU concluded that only limited analysis of NYPD stop-and-frisk practices could be made using the printed reports and that sophisticated analysis of the data

would require direct access to the stop-and-frisk database. Between March and July, 2007, the NYCLU consulted regularly with City Council representatives as the Council attempted to obtain the stop-and frisk database from the NYPD. In early July 2006 the NYCLU was informed that the NYPD would not furnish the Council with the database.

19. On July 25, 2007, the NYCLU submitted a FOIL request to the NYPD, requesting, "in electronic form, the complete NYPD database of information entered from stop-and-frisk worksheets for 2006, for the first [] two quarters of 2007; and for any calendar year prior to 2006 for which data exists in electronic form." The FOIL request expressly excluded "individually identifiable information or other private individual information that may be in the database: the name of the person stopped, the street address of the person stopped, and the tax ID number of the officer who completed the form."

20. On August 31, 2007 the NYPD denied the NYCLU's request for the release of the database. The denial states only: "You[r] request for data is denied on the basis of N.Y. Public Officers Law sections 87(2)(a); 87(2)(b); 87(2)(e); 87(2)(f); 87(2)(i); and 89(2)." The NYPD gave no further explanation for its denial.

21. On September 25, 2007, the NYCLU appealed the denial of its FOIL request. The appeal was denied by a letter dated October 15, 2007. The appeal denial adds two statutory citations as reasons for refusing to release the stop-and- frisk database, but, again, provides no further explanation. It states:

The appeal is denied on several grounds, including: Public Officers Law §87(2)(a), which exempts from disclosure records whose disclosure is otherwise barred by statute (in this case, Administrative Code §14-150, which specifically exempts digital records of police stops from disclosure, as well as Criminal Procedure Law Section §160.50); Public Officers Law §§87(2)(b) and 89(2), which exempt from disclosure records whose disclosure would create an unwarranted invasion of personal privacy; Public Officers Law §87(2)(e), which exempts from disclosure records which are compiled for law enforcement purposes and which, if disclosed, would: (i) interfere with law enforcement investigations or judicial proceedings, (ii) deprive a person of a right to a fair trial or impartial adjudication; (iii) identify a confidential source or disclose confidential information relating to a criminal investigation; or (iv) reveal criminal investigative techniques or procedures, except routine techniques and procedures; Public Officers Law §87(2)(f), which exempts from disclosure records whose disclosure could endanger could endanger [sic] the life or safety of a person; and Public Officers Law §87(2)(i), which exempts from disclosure records which, if disclosed, would jeopardize an agency's capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures.

22. NYPD printed reports released for the first three quarters of 2007 report that police officers made 134,029 stops in the first quarter, 113,945 stops in the second quarter, and 111,103 stops in the third quarter (ending September 30, 2007). Given these figures and the reported figures for 2006, the NYPD stop-and-frisk database now includes information about 867,617 stops.

23. No previous application has been made for any of the relief sought herein.

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

24. Article 78 is the appropriate method for review of agency determinations concerning FOIL requests.

25. Petitioner has a clear right to the records it seeks; under FOIL, Respondents are required to produce the Stop-and-Frisk Database the Petitioner seeks.

26. Respondent has not produced the records sought by Petitioner. Respondents' obligation to disclose the Stop-and-Frisk Database to the public under FOIL is mandatory, not discretionary.

27. Respondent has failed to identify any lawful justification for denying the petitioner's FOIL request.

28. Petitioner exhausted its administrative remedies with the NYPD when it requested and appealed its denied request for the Stop-and-Frisk Database and received a denial of appeal. Petitioner has no other remedy at law.

REQUESTED RELIEF

WHEREFORE, Petitioner seeks judgment:

(1) Pursuant to C.P.L.R. § 7806, directing Respondents to comply with their duty under FOIL and provide the Stop-and-Frisk Database sought by Petitioner in its July 25, 2007 request;

(2) Awarding attorneys' fees and reasonable litigation costs as allowed under New York Public Officer's Law §89(4)(c); and

(3) Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

~~NEW YORK CIVIL LIBERTIES~~
FOUNDATION, by



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Dated: New York, N.Y.
November 13, 2007

*Appearing as co-counsel pursuant to Student Practice Order.

VERIFICATION

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

Donna Lieberman, the Executive Director of the New York Civil Liberties Union and an attorney admitted to practice in the State of New York, affirms pursuant to C.P.L.R. § 2106 under the penalties of perjury:

1. I have read the attached Petition and know its contents.
2. The statements in the Petition are true to my own knowledge, or upon information and belief, based upon my office's conversations with the Petitioner. As to those statements that are based upon information and belief, I believe those statements to be true.



DONNA LIEBERMAN

Dated: New York, NY
November 9, 2007

Sworn and subscribed to me this
9th day of November 2007.



NOTARY PUBLIC

CHRISTOPHER T. DUNN
NOTARY PUBLIC, State of New York
No. 31-4934948
Qualified in New York County *2010*
Commission Expires June 20, ~~2006~~