

# **EXHIBIT 6**



@ the Urban Justice Center:  
40 Rector Street, 9<sup>th</sup> Floor  
New York, New York 10006  
[www.StopSpying.org](http://www.StopSpying.org) | (646) 602-5600

February 3, 2020

New York City Police Department  
Records Access Appeals  
Officer Sgt. Jordan Mazur  
Legal Bureau-Civil Section  
One Police Plaza, Room 1406  
New York, NY 10038  
FOILAPPEALS@nypd.org  
*via Email*

**Re: Administrative Appel of Denial of FOIL Request 2019-056-21252**

Dear Officer Mazur:

This is an appeal from the New York City Police Department's ("NYPD's" or "the Department's") January 13, 2020 denial of the Surveillance Technology Oversight Project, Inc.'s ("S.T.O.P.'s") Freedom of Information Law ("FOIL") request (the "Request"), which was submitted on November 26, 2019 (the "Denial").

The Request sought copies of:

(1) Any and all contracts, memos, audits, reports, and communications (including emails) from 1/9/16 through 11/26/19 between the New York City Police Department and Elucd, Inc.; and (2) Any and all instructions, guides, guidelines, directions, rules, information, manuals, operations orders, memoranda, etc. from 1/9/16 through 11/26/19 in regards to the use of any product provided by Elucd, Inc.

Attached please find a copy of the Request as Exhibit A and a copy of an email acknowledging receipt of the Request by the NYPD on December 10, 2019 as Exhibit B.

In an email dated January 13, 2020, attached as Exhibit C, the NYPD informed S.T.O.P. Executive Director, Albert Fox Cahn, "to the extent that the requested documents may exist, I must deny access because the production of the records would require extraordinary efforts not required under FOIL."

S.T.O.P. hereby appeals the Denial. New York public agencies must provide records requested through FOIL, unless certain limited exemptions apply. These exemptions are carefully circumscribed, and "[are] narrowly interpreted so that the public is granted maximum access to the records of government."<sup>1</sup> The Court of Appeals has made clear that "[a]ll government records are

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<sup>1</sup> *Grabell*, 47 Misc. 3d at 208 (citation omitted).

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thus presumptively open for public inspection and copying,”<sup>2</sup> and police records are no exception.<sup>3</sup> Thus, S.T.O.P. has a presumptive right under FOIL to the NYPD records sought in the Request.

Because S.T.O.P. is presumptively entitled to review the requested records, the burden rests with the NYPD “to demonstrate that the requested material indeed qualifies for exemption.”<sup>4</sup> Here, the NYPD’s proffered justification is manifestly insufficient, as the NYPD cannot deny FOIL requests simply by reciting FOIL exemptions without elaboration. Instead, an agency must “convincingly demonstrate” why the access to information should be denied.<sup>5</sup> Additionally, a state agency must identify with particularity and specificity the basis upon which it relies on a FOIL exemption.<sup>6</sup> The NYPD does not meet this burden and fails to provide justification as to why the requested records, many of which are likely stored electronically, would require extraordinary effort. Neither the volume of requested documents nor their retrieval method would render the Request to require extraordinary efforts.<sup>7</sup>

The NYPD failed to explain why the sort of routine correspondence and contracts encompassed in the Request would require extraordinary effort to retrieve. The claim is particularly suspect for electronically stored records. New York law holds that “when an agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, it shall be required to do so.” Additionally, the need to alter or redact requested records cannot substantiate a claim of “extraordinary effort.”<sup>8</sup>

We have reason to believe that many, if not all the documents that the Department has been requested to retrieve are readily available in electronic forms. In the unlikely event that such records were maintained solely in non-electronic formats, that, in itself, would not provide a basis to claim production required an “extraordinary effort.”

Moreover, the Request cannot pose an extraordinary effort, since S.T.O.P. only requested types of documents routinely produced in response to FOIL requests. The NYPD frequently produces contracts, memos, audits, reports, communications (including emails), instructions, guides, guidelines, directions, rules, information, manuals, operations orders, and memoranda.

In recent years, the Department produced contracts with Securus Technology (a voice monitoring vendor),<sup>9</sup> Vigilant Solutions (an automatic license plate reader vendor),<sup>10</sup> and Predpol, Inc., (a predictive police software vendor).<sup>11</sup> The Department also produce emails regarding

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<sup>2</sup> *Gould v. N.Y. City Police Dep’t*, 89 N.Y.2d 267, 274 (1996)

<sup>3</sup> *See N.Y. Civil Liberties Union v. N.Y. City Police Dep’t*, Index No. 115928/09, 2011 WL 675562, slip op. at 11 (N.Y. Sup. Ct. N.Y. Cty. Feb. 14, 2011) (“All government documents, including police records, are presumptively available for ‘public inspection and copying’ . . .”).

<sup>4</sup> *Gould*, 89 N.Y.2d at 275

<sup>5</sup> *Fink v Lefskowitz*, 47 NY2d 567, 571 (1979)

<sup>6</sup> *See Gould*, 89 N.Y.2d at 275 (“[B]lanket exemptions for particular types of documents are inimical to FOIL’s policy of open government.”); *see also Fink*, 47 N.Y.2d at 571; *Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462 (2007)

<sup>7</sup> *Data Tree, LLC*, 9 N.Y.3d at 465

<sup>8</sup> *See Matter of Hearst Corp. v. State*, 24 Misc. 3d 611 (Sup. Ct. 2009).

<sup>9</sup> Comm on Open Govt FOIL 19-09-082 (2019)

<sup>10</sup> Comm on Open Govt FOIL 15-PL-3861 (2015)

<sup>11</sup> *See Brennan Center, NYPD Predictive Policing Documents*, BRENNAN CENTER FOR JUSTICE, July 12, 2019, <https://www.brennancenter.org/our-work/research-reports/nypd-predictive-policing-documents>

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confidential informants' monitoring of protests<sup>12</sup> and the Department's testing of predictive policing software.<sup>13</sup> The Department has also produced memos<sup>14</sup> and reports<sup>15</sup> in response to FOIL requests.

The Department's conclusory denial fails to explain how it could require extraordinary effort to produce each and every type of record required. Even if it would require extraordinary effort to locate a subset of the Request, a fact the NYPD has not established, it would still be obligated to produce those materials that did not require such an extraordinary effort.

Furthermore, the Denial is undermined by the numerous news articles detailing the NYPD's relationship with Elucd, Inc. According to this reporting, the NYPD requested Elucd, Inc., Founder Michael Simon to research public perceptions of the NYPD.<sup>16</sup> The NYPD reportedly worked with Elucd to design the company's so-called "sentiment meter."<sup>17</sup> Such a relationship would have inevitably produced many of the types of documents detailed in the Request.

For the reasons set out above, S.T.O.P. respectfully appeals the Denial. As required by §89(4)(a) of FOIL, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within ten business days of the receipt of an appeal. If the Request is denied on appeal, please explain the reasons for the denial fully in writing as required by law. If this appeal is granted, please provide a specific date when we can expect records to be produced.

S.T.O.P. also requests that the NYPD provide it with documents as they become available rather than waiting to provide the complete set only when all documents have been gathered. We also request that you provide S.T.O.P. with the documents in electronic format where possible. Should you have questions, please contact me by telephone at 646-602-5652, or via e-mail at Albert@stopspying.org.

Sincerely,

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Albert Fox Cahn, Esq.

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<sup>12</sup> See MJW Law, FOIL Release, January 17, 2019, <https://www.mjw-law.com/foil-release-nypd-nov-2018>

<sup>13</sup> See Brennan Center, *NYPD Predictive Policing Documents*

<sup>14</sup> *Matter of Urban Justice Ctr. v NY Police Dep't.*, Index No. 400988/10, 2010 WL 3526045, slip op. 32400, at 4 (N.Y. Sup. Ct. N.Y. Cty. Sep. 1, 2010)

<sup>15</sup> *N.Y. Civil Liberties Union v. N.Y. City Police Dep't.*, Index No. 115928/09, 2011 WL 675562, slip op. at 11 (N.Y. Sup. Ct. N.Y. Cty. Feb. 14, 2011)

<sup>16</sup> Johnathan Shieber, *Elucd's Polling Pushes for Greater Community Accountability for Police*, TECHCRUNCH, Aug 21, 2017, <https://techcrunch.com/2017/08/21/elucds-polling-pushes-for-greater-community-accountability-for-police/>

<sup>17</sup> Simone Weichselbaum, *How a 'Sentiment Meter' Helps Cops Understand Their Precincts*, WIRED, July 16, 2018, <https://www.wired.com/story/elucd-sentiment-meter-helps-cops-understand-precincts/>

# Exhibit A



40 Rector Street, 9<sup>th</sup> Floor  
New York, New York 10006  
[www.StopSpying.org](http://www.StopSpying.org) | (646) 602-5600

November 26, 2019

Lt. Richard Mantellino  
New York City Police Department  
Legal Bureau – FOIL Unit  
One Police Plaza, Room 110-C  
New York, NY 10038  
(646) 610-5296

***Re: Open Records Request***

Dear Records Access Officer:

Pursuant to the state open records law, N.Y. Pub. Off. Law §§ 84 to 99, I write to request access to and a copy of:

1. Any and all contracts, memos, audits, reports, and communications (including emails) from 1/9/16 through 11/26/19 between the New York City Police Department and Elucd, Inc.
2. Any and all instructions, guides, guidelines, directions, rules, information, manuals, operations orders, memoranda, etc. from 1/9/16 through 11/26/19 in regards to the use of any product provided by Elucd, Inc.

Elucd, Inc. is a New York-based company that provides municipal agencies with near real-time tracking of public sentiment.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I would prefer the request be filled electronically in PDF format, by e-mail attachment (to [albert@stopspying.org](mailto:albert@stopspying.org)) if available or disc if not. See §87(5)(a), §89(3)(a), and §89(3)(b). I agree to pay any reasonable fees of not more than twenty-five US dollar (\$25.00). If the request cannot be filled electronically and the cost to copy and mail the requested material will be greater than twenty-five US dollar (\$25.00), please notify me. Please provide a receipt indicating the charges for each document.

As provided by the open records law, I will expect your response within five (5) business days. See N.Y. Pub. Off. Law § 89(3). If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

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Thank you in advance for your assistance. If you have any questions, please do not hesitate to contact me at (646) 602-5600 or [albert@stopspying.org](mailto:albert@stopspying.org)

Sincerely,

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Albert Fox Cahn, Esq.  
Executive Director

# Exhibit B



**Albert Fox Cahn**

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**From:** donotreply@records.nyc.gov  
**Sent:** Monday, December 2, 2019 11:44 AM  
**To:** Albert Fox Cahn  
**Subject:** [OpenRecords] Request FOIL-2019-056-21252 Acknowledged

The New York City Police Department (NYPD) has **acknowledged** your FOIL request [FOIL-2019-056-21252](#).

You can expect a response on or about Tuesday, April 14, 2020.

**Additional Information:**  
Your request has been assigned to Detective Halk (646-610-6430)

Please visit [FOIL-2019-056-21252](#) to view additional information and take any necessary action.

**Request Information:**  
Request Title: request records between NYPD and Elucd, Inc.

Request Description: Other Request

Other Request  
Type of Request:  
Report #:  
Date:  
Time:  
Precinct:  
Location:  
Description:

# Exhibit C

**Albert Fox Cahn**

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**From:** donotreply@records.nyc.gov  
**Sent:** Monday, January 13, 2020 1:19 PM  
**To:** Albert Fox Cahn  
**Subject:** [OpenRecords] Request FOIL-2019-056-21252 Closed

The New York City Police Department (NYPD) has **closed** your FOIL request [FOIL-2019-056-21252](#) for the following reasons:

- To the extent that the requested documents may exist, I must deny access because the production of the records would require extraordinary efforts not required under FOIL.

You may appeal the decision to deny access to material that was redacted in part or withheld in entirety by contacting the agency's FOIL Appeals Officer: [foilappeals@nypd.org](mailto:foilappeals@nypd.org) within 30 days.

**Request Information:**

Request Title: request records between NYPD and Elucd, Inc.

Request Description: Other Request

Other Request

Type of Request:

Report #:

Date:

Time:

Precinct:

Location:

Description: