

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

AMNESTY INTERNATIONAL USA,

Petitioner,

-against-

NEW YORK CITY POLICE DEPARTMENT

Respondent,

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

Index No. _____

VERIFIED PETITION

Petitioner Amnesty International USA, by and through their attorneys, Surveillance Technology Oversight Project and Quinn, Emanuel, Urquhart & Sullivan, LLP, as and for their Verified Petition (the “Petition”), alleges as follows:

INTRODUCTION

1. Following the death of George Floyd in Minneapolis, Minnesota on 25 May 2020, protests took place in cities throughout the country (the “BLM Protests”), including New York City. This Article 78 proceeding seeks to vindicate Amnesty International USA (“AI USA” or the “Petitioner”) and the public’s rights under the Freedom of Information Law (“FOIL”), N.Y. Pub. Off. Law § 87, to access New York City Police Department’s (the “NYPD”) records about certain surveillance technologies available to the NYPD for deployment during last year’s historic BLM Protests against police violence. Amnesty International (“AI”) is a non-profit international human rights and advocacy organization based in London, England. AI USA is AI’s sole United States subsidiary, employing lawyers, researchers, and country experts to promote human rights,

including many world-leading experts on policing. AI USA's reports enable intensive advocacy and publicity campaigns, utilizing AI USA's extensive membership and media contacts.

2. Media and civil society groups have documented NYPD's use of drones, video analytics, and Automated License Plate Readers, including to track and monitor protestors during the BLM Protests.¹ Alarming, given the NYPD's reluctance to reveal its deployment of the Surveillance Technologies, it is impossible to know what and how surveillance technologies were deployed at the BLM Protests or for other speech-chilling purpose.²

3. In order to investigate the use of surveillance technologies by the NYPD for suppressive purpose, AI USA filed a FOIL request on September 15, 2020 (the "Request") seeking disclosure of seven categories of records related to certain surveillance technologies available to the NYPD. The time period set for the Requests (March 1, 2020 through September 1, 2020) was designed to focus in on the period immediately before and during the BLM protests. The Request asks the NYPD to produce records concerning the procurement, functionality, and general use of Facial Recognition Technology ("FRT"), drones, gait recognition, cell-site simulators, and ambient sound recording devices (the "Surveillance Technologies"). These tools give the NYPD previously-unimagined potential to track and chill free assembly, freedom of worship, and nearly every other aspect of civil life. The Request also asks for information about related support to the

¹ See, e.g., Zolan Kanno-Youngs, *U.S. Watched George Floyd Protests in 15 Cities Using Aerial Surveillance*, N.Y. Times (Jun. 19, 2020), <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>; Ángel Díaz, *New York City Police Department Surveillance Technology*, Brennan Center (Oct. 4, 2019), <https://www.brennancenter.org/our-work/research-reports/new-york-city-police-department-surveillance-technology>.

² Sisitzky & Schaefer, *The NYPD Published Its Arsenal of Surveillance Tech. Here's What We Learned*, NYCLU (Feb. 24, 2021), <https://www.nyclu.org/en/news/nypd-published-its-arsenal-surveillance-tech-heres-what-we-learned>.

NYPD from the New York Police Foundation, Inc. (“Foundation”), such as donated funds that had been used to procure the specified surveillance technologies.

4. The NYPD’s use of the Surveillance Technologies to potentially suppress social and political expression raises human rights and civil rights questions that are not only central to AI USA’s globally recognized mission to protect people’s human rights wherever justice, freedom, truth, and dignity are denied, but to the statutory purpose of the Freedom of Information Law (“FOIL”), N.Y. Pub. Off. Law § 87. Indeed, New York’s 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).

5. The NYPD, however, has yet to produce a single document in response to the Request and, instead, twice rejected the Request by merely reciting subsections of the Public Officers Law as exempting disclosure, without providing any particularized and specific justification for why and how the exemptions apply. Other than parroting the statutory exemptions, the NYPD also made conclusory assertions that AI USA’s request is overbroad and does not reasonably describe a record that the NYPD can identify, claiming, for instance, that it cannot run keyword searches for the identified names of the companies known to sell the

Surveillance Technologies. But the *NYPD appears to have done just that in response to prior FOIL requests* and there is no apparent reason it cannot do so here.

6. This Article 78 petition seeks to vindicate AI USA and the public's rights under FOIL. Specifically, AI USA requests that the Court order the NYPD to produce records responsive to AI USA's Request and to pay AI USA its reasonable attorneys' fees incurred in preparing this Petition.

PARTIES

7. AI USA is the U.S. subsidiary of AI, a non-profit international human rights and advocacy organization based in London, England. AI USA is headquartered at 311 43rd Street, 7th Floor, New York, NY 10036.

8. 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.

STATEMENT OF FACTS

9. On September 15, 2020, AI USA submitted the FOIL Request to the NYPD seeking information concerning certain surveillance technologies available to the NYPD during last year's BLM Protests via the New York City Open Record Portal. *See* Exhibit A. Specifically, the Request asks for records concerning the Facial Recognition Technology ("FRT"), drones, gait recognition, cell-site simulators, and ambient sound recording devices from March 1, 2020 through September 1, 2020.³ The time period of the Requests (March 1, 2020 through September 1, 2020) is designed to focus in on the period immediately before and during the historic BLM Protests.

³ FRT is computer vision software that purports to identify a person from a photograph or a video still by comparing their facial geometry to a database of known individuals; drones include

10. On January 29, 2021, the NYPD denied AI USA’s Request in its entirety (“the Denial”), citing the exception to FOIL in Public Officers Law sections 87(2)(e)(iv), 87(2)(e)(i), 87(2)(g)(iii), 87(2)(e)(iii), and stating summarily that release of the information sought would “reveal non-routine techniques and procedures,” “interfere with law enforcement investigations or judicial proceedings,” “identify confidential source or disclose confidential information relating to a criminal investigation,” and reveal “inter-agency or intra-agency materials not final agency policy or determinations.” These blanket assertions drew no distinction between any of the seven categories of documents sought by AI USA’s Request. *See* Exhibit B (the “NYPD Denial”).

11. On March 1, 2021, AI USA sent an appeal (“the Appeal”) with notification to the NYPD, in accordance with Public Officers Law section 89(4)(a). *See* Exhibit C (the “AI USA Appeal”). The appeal letter explained that FOIL required the NYPD to offer more than a bare recitation of the statutory exemptions in denying a request for records and explained how the cited exemptions were in any event inapplicable.

12. On March 15, 2021, the NYPD denied the appeal without making any effort to explain how the four exceptions it invoked were applicable. Exhibit D (the “Denial of Appeal”). Instead, NYPD focused its efforts on the assertion that compliance with the Requests was far too burdensome, claiming that, among other things, it could not simply run a search for a “keyword such as ‘Clearview AI,’ [a company that sells FRT],” to locate documents pertaining to the “negotiation, contracting, procurement, oversight, management, etc., of a specific technology.” *Id.*

both unmanned aerial vehicles (“UAVs”) and ground-based robotics; gait recognition is computer vision software that purports to identify a person from a video clip by comparing their walking stride to a database of known individuals; cell-site simulators—also known as “ISMI Catchers” or “sting-rays”—are government operated cellular transceivers that can track the location and communications of nearby electronic devices; ambient sound recording devices include, but not limited to, audio recordings extracted from ShotSpotter, a purported gunshot detection system that uses hundreds, possibly thousands, of microphones across New York City.

at 2. This was not true. As AI USA later learned after the denial of its appeal, the NYPD had apparently searched for and produced certain “Clearview AI” documents in response to a FOIL request from another entity just two weeks before it issued the Denial of Appeal. Exhibit E (Mar. 2, 2021 email from NYPD attaching production of correspondence with Clearview AI).

13. The NYPD also claimed that it conducted a search for only “contracts with companies identified” in the Request but still denied NYPD’s appeal by invoking, for the first time, Public Officers Law sections 87(2)(c) and 87(2)(d), which protect from disclosure “present and imminent contract award,” “trade secrets,” or otherwise competitively sensitive information of third-party vendors. Exhibit D at 2. Once again, the NYPD made no attempt to particularize how each of the category of document sought could impair the protected interests of any subject enterprise beyond simply recitation of the statutes. *Id.*

14. AI USA has exhausted all available remedies as required by CPLR 7801(a). It 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 Request.

JURISDICTION AND VENUE

15. This Court has jurisdiction to review final administrative decisions made by the NYPD. CPLR 7801(1).

16. Pursuant to CPLR 7804(b) and 506(b), venue in this proceeding lies in New York County, the judicial district in which both Petitioner’s and Respondent’s principal offices are located.

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

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

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

3. Petitioner has a legal right under FOIL to the records requested in the Request.

4. 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.

5. Respondent has not produced the records sought by Petitioner and have failed to properly invoke any exemptions under FOIL.

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

7. None of the exemptions from FOIL cited by Respondent in the Denial of Appeal properly applies to the material Petitioner has requested.

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

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

10. Because the NYPD had no reasonable basis for its categorical denial of AI USA's Request and Appeal, Petitioner is entitled to attorney's fees under Public Officers Law section 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 to comply with its duty under FOIL to provide Petitioner with documents responsive to Petitioner's 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 their reasonable attorney's fees pursuant to Public Officers Law section 89(4)(c); and
- d. granting Petitioner such other and further relief as this Court deems necessary and equitable.

Respectfully Submitted,

Dated: July 14, 2021
New York, NY

By: /s/ Sami H. Rashid

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Attorneys for Petitioner

VERIFICATION

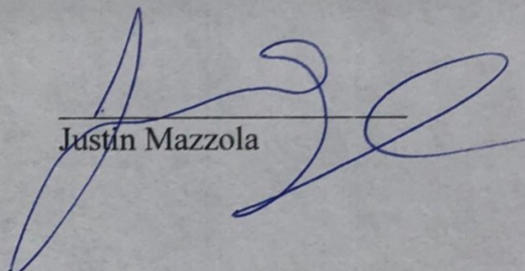
STATE OF NEW YORK)
) SS:
COUNTY OF KINGS)

Justin Mazzola, being duly sworn, deposes and says:

I am a Deputy Director of Research of Amnesty International USA, the Petitioner in this action. I have reviewed the Petition and know the facts set forth therein to be true based on my own knowledge.

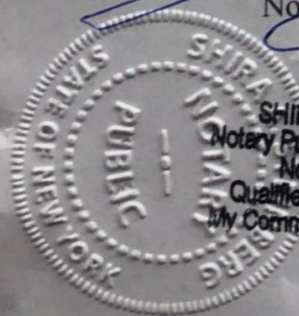
Dated: July 14, 2021

Justin Mazzola



Sworn to and subscribed before me
this 14 day of July, 2021

Notary Public



SHIRA A. STEINBERG
Notary Public - State of New York
No. 02ST6302863
Qualified in New York County
My Commission Expires 6/3/2023