

*Patrolmen's
Benevolent
Association*

Of The City Of New York, Incorporated



OFFICE OF THE PRESIDENT

March 24, 2017

VIA HAND & E-MAIL

Cyrus R. Vance, Jr.
District Attorney
County of New York
One Hogan Place
New York, NY 10013

VIA HAND & E-MAIL

Mark G. Peters, Commissioner
City of New York
Department of Investigation Complaint Bureau
80 Maiden Lane
New York, NY 10038

Re: Investigation regarding potential violation of Section 50-a of NYS Civil Rights Law, Section 2604(b)(4) of NYC Charter, and other laws

Dear District Attorney Vance and Commissioner Peters:

The Patrolmen's Benevolent Association of the City of New York, Inc. (the "PBA"), on behalf of over 23,000 Police Officers in the New York City Police Department (the "NYPD") requests that your offices conduct an investigation into the illegal disclosure of our member's confidential information, a violation of Sections 50-a of NYS Civil Rights Law ("Section 50-a"), 2604(b)(4) of NYC Charter ("Section 2604(b)(4)"), and potentially other laws.

As you may know, Police Officer Daniel Pantaleo ("Officer Pantaleo")'s personnel records were illegally leaked by anonymous sources at the Civilian Complaint Review Board ("CCRB"). On March 21, 2017, the website "ThinkProgress" published an article entitled EXCLUSIVE DOCUMENTS: *The disturbing secret history of the NYPD officer who killed Eric Garner*. The article represented that "Pantaleo's apparent disciplinary history was sent to ThinkProgress from an anonymous source who said they worked at the New York City Civilian Complaint Review Board

(CCRB)”¹ This leak of police personnel records is a violation of Section 50-a, Section 2604(b)(4), and potentially other laws.

Simply, the release of police personnel records in such a manner by the CCRB is prohibited and illegal.

Section 50-a mandates that:

All personnel records used to evaluate performance toward continued employment or promotion, under the control of any police agency or department of the state or any political subdivision thereof including authorities or agencies maintaining police forces of individuals defined as police officers . . . shall be considered confidential and not subject to inspection or review without the express written consent of such police officer, firefighter, firefighter/paramedic, correction officer or peace officer within the department of corrections and community supervision or probation department except as may be mandated by lawful court order.

Furthermore, Section 2604(b)(4) prohibits disclosure by any public servant of confidential information: “[n]o public servant shall disclose any confidential information concerning the property, affairs or government of the city which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public”

Moreover, the Memorandum of Understanding (“MOU”) between the CCRB and the NYPD clearly establishes that “[d]ocuments provided to the CCRB by NYPD or created by CCRB pursuant to this MOU that are by law police personnel records are therefore confidential pursuant to NYS Civil Rights Law §50-a. Such documents are also confidential information pursuant to NYC Charter § 2604(b)(4).”²

Officer Pantaleo’s personnel records are confidential, and were “obtained as a result of the official duties” of the CCRB. In addition, these records were not publicly available. As such, the CCRB was prohibited from disseminating the personnel records to ThinkProgress, a violation of Section 50-a, Section 2604(b)(4), and potentially other laws. Pursuant to Section 2606(c) of NYC Charter, “[a]ny person who violates section twenty-six hundred four or twenty-six hundred five of this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall forfeit his or her public office or employment.”

Police Commissioner James O’Neill is reported to have said, “The leak was inappropriate.”³ Larry Byrne, NYPD’s Deputy Commissioner, Legal Matter, has been quoted as saying regarding the alleged CCRB leak of Pantaleo records: “The leak was totally improper. It was illegal. It needs to

¹ <https://thinkprogress.org/daniel-pantaleo-records-75833e6168f3#.637z09t2j>

² Memorandum of Understanding https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf at 4

³ www.nydailynews.com/new-york/nypd-hunt-ccrb-worker-leaked-info-eric-garner-article-1.3006203

be investigated.”⁴ The seriousness of this matter was further established when, on March 23, 2017, it was revealed that the CCRB had identified the employee responsible for the leak and “forced [the] employee to resign” as a result of their actions.⁵ Furthermore, a CCRB representative previously conceded that leaking confidential record, as here, would subject the leaker to criminal prosecution.

The District Attorney and the DOI are empowered to investigate violations of Section 50-a, Section 2604(b)(4), and potentially other laws.

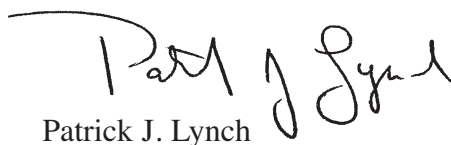
As such, we request that your offices investigate this illegal action by the anonymous source from the CCRB, and bring forth promptly criminal prosecution, disciplinary action(s), and any other appropriate actions for violations of these statutes.

Furthermore, we request that the DOI conduct an investigation into the security methods and processes at the CCRB. According to press accounts, the leaked employee who had been employed as “junior staff person” for less than a year it appears was given full access to CCRB’s investigation files, even though this investigator was not involved in any pending investigation of Officer Pantaleo.⁶

It has been reported that the CCRB employee who illegally leaked the information has resigned. However, this is merely a first step. The release of a police officer's confidential personnel records is a crime that should be thoroughly investigated and, if necessary, prosecuted to the fullest extent of the law. This was an illegal effort to short-circuit laws that protect police officers’ safety, privacy and due process rights, and a thorough examination of this individual’s actions and the entire organization is the only way to make certain there is a strong deterrent to such actions in the future.

We appreciate your consideration of our request and look forward to your offices bringing the responsible party to account for their illegal actions.

Very truly yours,

A handwritten signature in black ink that reads "Patrick J. Lynch". The signature is written in a cursive style with a large, sweeping initial "P".

Patrick J. Lynch

cc: Via Hand
Commissioner James P. O'Neill
New York City Police Department
One Police Plaza
New York, NY 10038

⁴ <https://www.dnainfo.com/new-york/20170322/civic-center/nypd-daniel-pantaleo-eric-garner-police>

⁵ <https://www.nytimes.com/2017/03/23/nyregion/ccrb-nypd-daniel-pantaleo-eric-garner.html>

⁶ https://www.nytimes.com/2017/03/23/nyregion/ccrb-nypd-daniel-pantaleo-eric-garner.html?_r=0