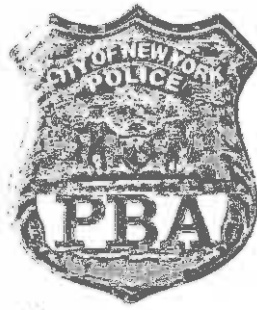


*Patrolmen's
Benevolent
Association*

Of The City Of New York. Incorporated



OFFICE OF THE PRESIDENT

March 22, 2018

VIA HAND

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

Re: NYPD Trial Decision Compendium

Dear Commissioner O'Neill:

I have been advised that the New York City Police Department (the "Department") intends to release the enclosed "NYPD Trial Decision Compendium" (the "Compendium"), which purports to provide so-called "de-identified" summaries of police personnel records.¹ I am writing on behalf of all active and retired New York City police officers to demand that the Department comply with the law and immediately cease all plans to release the Compendium. As discussed below, and as the Department itself recently confirmed in a filing submitted to New York's highest court, any release of the Compendium would be plainly illegal. Moreover, and as evidenced by the recent BuzzFeed News "exposé"—in which "de-identified" documents were used to identify and harass police officers—disclosure of the Compendium poses a grave risk to the safety of our members.

Background

There is no dispute that, pursuant to Civil Rights Law § 50-a ("CRL § 50-a"), the Department is precluded from disclosing the disciplinary records of New York City police officers. Nevertheless, I have been informed that during a March 15, 2018 labor-management meeting, the Department indicated that it intends to release the Compendium in the coming months. Put simply, the Compendium appears to be the Department's latest attempt at an end-run around CRL § 50-a. It provides summaries of specific Departmental trials—including the relevant individual's rank, prior disciplinary record, the particular factual circumstances at issue, the complainant's evidence, the arguments raised by the police officer during trial, the Trial Commissioner's findings, and the punishment meted out—that have purportedly been "de-

¹ The Compendium is enclosed as Exhibit A.

identified.” However, as previously confirmed by both the New York Court of Appeals *and* the Department, the legal requirements of CRL § 50-a simply cannot be evaded by purportedly “de-identifying” personnel records.

The Department Concedes That Releasing The Compendium Is Illegal

For more than 35 years, the law in New York has been clear—where, as here, a statute precludes the disclosure of an individual’s records, a government entity cannot avoid the statute by deleting, redacting, or otherwise “de-identifying” those records. *Short v. Bd. of Mgrs. of Nassau Cty. Med. Ctr.*, 57 N.Y.2d 399, 405-06 (1982). In *Short*, the Court of Appeals found that where a statute precluded the release of “medical records,” such documents could not be disclosed even if de-identified because they were still “medical records” regardless of whether some information was deleted. *Id.* The exact reasoning is applicable under CRL § 50-a. Importantly, the Court noted the possibility that “an underlying purpose [of the statute]—that of preservation of individual confidentiality—may be served by deletion of identifying details.” *Id.* But the Court found that this was nothing more than “a predicate on which to ground an argument to the Legislature that the statute should be amended”; it “provides no basis, however, for judicial revision of the statute” (much less for the Department to unilaterally ignore the law). *Id.*

Confirming our reading of *Short*, just last month the Department *admitted* that under existing New York law it would be illegal to release de-identified personnel records such as the Compendium. In a brief submitted to the Court of Appeals, the Department stated that *Short* and its progeny currently preclude the release of “redacted versions of any documents that are specifically exempt from disclosure under [CRL § 50-a].”² The Department therefore asked *the Court* to create an entirely new “exception to *Short*’s holding . . . [to] authorize disclosure of certain redacted disciplinary summaries.” Moreover, the Department specifically stated that you personally “recognize that [a belief that CRL § 50-a should be amended] *is not a license to ignore the statute or fail to follow it.*” But, that is exactly what the Department has stated it will be doing through its plan to release the Compendium. New York law is clear that de-identified personnel records cannot be released. We therefore ask that the Department comply with the law and refrain from releasing the Compendium.

Release of the Compendium Endangers New York City Police Officers

In addition to being plainly illegal, the release of the Compendium will undoubtedly place police officers in danger. Unfortunately, this has recently been confirmed by the inexplicable leak of protected personnel records to BuzzFeed News, which provided the basis for an article entitled “Busted: The NYPD’s Secret Files.”³ With respect to one specific police officer, the article notes that BuzzFeed News relied on a disciplinary report issued by the Commission to Combat Police Corruption that was “anonymized so it did not name [the officer]

² Ex. B at 1 (February 6, 2018 Brief for Respondents in *NYCLU v. NYPD et al.*).

³ Ex. C. The article is largely premised on “secret” and “confidential” probation files from the 2011-2015 time-period.

explicitly.” Nevertheless, “BuzzFeed News was able to identify him by matching details of a January 2009 arrest with . . . court documents from [a] civil lawsuit,” among other things. BuzzFeed News was then able to find the police officer’s home address in the Bronx and took pictures of him standing outside of his house, which it then proceeded to publish for the world to see.

This is just one instance of how a so-called “de-identified” document can easily be used to identify a police officer. And once armed with the police officer’s identity, the article illustrates that in this day-and-age it is eminently possible to then obtain all sorts of personal and confidential data—addresses, telephone numbers etc.—that can be exploited with potentially fatal consequences. For example, and as you know, a civilian in Brooklyn was recently killed by a package bomb that was intended for a police officer. According to the Department of Justice, the alleged murderer “built the explosive device . . . as part of his broader effort to retaliate violently against several police officers who were part of an NYPD unit that had arrested him . . . [he] methodically sought revenge against the officers [and] conducted internet searches and made telephone calls to determine the locations of the officers’ residences.”⁴ The release of the Compendium would provide another tool to be used by those who would do harm to New York City police officers. In the interest of ensuring our members’ safety, a goal I assume the Department shares, the Compendium and any other “de-identified” personnel records should not be disclosed publicly.

* * *

We look forward to hearing from you at your earliest convenience. In the meantime, in the event that the Department ultimately decides to release the Compendium notwithstanding New York law, we ask that you provide at least seven (7) days advance notice of such release so that the PBA may consider its options including, but not limited to, seeking assistance from the courts. Providing that limited notice period would allow the PBA to pursue options necessary to keep our members safe.

⁴ See Ex. D (Department of Justice Press Release, *Brooklyn Man Arrested for Using a Weapon of Mass Destruction* (February 28, 2018)).

Finally, on a related and equally serious matter, we ask that you provide the status of the Department's investigation into the recent leaks to both BuzzFeed News and the Daily News (which ran a 4-part "exposé" last week based on leaked "internal documents" from "55 disciplinary cases"), including the steps that the Department has taken to: (i) determine who leaked the documents; and (ii) prevent such leaks from happening again.

Sincerely,



Patrick J. Lynch

Enclosures

cc:

Lawrence Byrne, Deputy Commissioner for Legal Matters (*by hand*)

John Beirne, Deputy Commissioner for Labor Relations (*by hand*)