

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

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SHAWN WILLIAMS, as administrator of the Estate  
of Antonio Williams,

**VERIFIED PETITION**

Petitioner,

CITY OF NEW YORK and NEW YORK CITY  
POLICE DEPARTMENT,

Index No. \_\_\_\_\_

Respondents.

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I, David B. Rankin, of Beldock Levine & Hoffman, LLP, attorney duly licensed to practice law in the Courts of the State of New York, hereby verify and affirm, under the penalties of perjury, the following is true and correct:

**PRELIMINARY STATEMENT**

1. I am counsel for the Petitioner, Shawn Williams, administrator of the Estate of Antonio Williams, and as such, I am familiar with the facts and procedural history of this proceeding.
2. Pursuant to the Freedom of Information Law (“FOIL”) and Article 78 of the New York Civil Practice Law and Rules, Petitioner seeks an order directing respondents, the City of New York (“Respondent City”) and the New York City Police Department (“Respondent NYPD”), to produce records from the NYPD relating to the police shooting that killed Antonio Williams, Shawn Williams’s son, on September 29, 2019.
3. As Petitioner has exhausted all administrative remedies, he respectfully requests that the Court order the respondents to produce the records in accordance with the FOIL and the guidance of the State of New York Department of State Committee on Open Government.

## JURISDICTION AND VENUE

4. This proceeding, pursuant to Article 78 of the Civil Practice Law and Rules, is the proper mechanism for seeking judicial review of a state agency's determination with respect to a FOIL request. Public Officers Law § 89(4)(b).

5. Respondent NYPD is an agency of Respondent City subject to FOIL.

6. Petitioner Shawn Williams has exhausted Respondent NYPD's internal appeals process, and the instant petition has been filed within the four-month period thereafter specified in C.P.L.R. § 217(1).

7. Respondents have their principal office in New York County and made the determination complained of, refusing to produce documents pursuant to Petitioner's FOIL request, in New York County. Venue therefore is proper in this Court. C.P.L.R. §§ 7804(a) and 506(b).

## STATEMENT OF FACTS

8. On December 9, 2019, the undersigned sent a FOIL request via electronic mail to the email address that the NYPD has designated to receive such requests on behalf of Petitioner. *See Exhibit 1.*

9. The request seeks records from Respondent NYPD related to the officer-involved shooting death of his son, Antonio Williams on September 29, 2019. The request sought documents and records including, *inter alia*, body-worn camera footage of the shooting, recordings of 311 or 911 calls regarding Mr. Williams, records reflecting which steps NYPD officers took to notify Mr. Williams's family about his death or the circumstances surrounding his death, and when, and communications, including but not limited to emails or text messages, with the press by the NYPD, and statements to the press made by the NYPD, including the

NYPD's Deputy Commissioner of Public Information ("DCPI") or DCPI officers, regarding Mr. Williams, Mr. Williams's shooting, and any related events.

10. On December 11, 2019, the undersigned received an automated response acknowledging receipt of the FOIL request and assigning Police Officer Conwell to the request. *See Exhibit 2.* Respondent NYPD set a production date of April 24, 2020. *See Exhibit 3.*

11. Respondent NYPD then failed to produce any records.

12. Our office internally appealed the denial of the FOIL request on December 9, 2020, by submitting an appeal by electronic mail to Sgt. Jordan Mazur, the Records Appeal Officer for the NYPD designated to receive such appeals. *See December 9, 2020 FOIL Internal Appeal, Exhibit 4.*

13. Sgt. Mazur responded that the appeal that same day, stating that the request had been reassigned and the Petitioner should expect a determination "within the next several weeks." NYPD Appeal Determination Letter, **Exhibit 5.**

14. Nearly five months passed. On March 4, 2021, Sgt. Mazur denied access to the requested records on the basis of Public Officers Law Section 87(2)(e)(i), "as such records/information, if disclosed would interfere with law enforcement investigations or judicial proceedings." *See FOIL Closing Notice, Exhibit 6.*

15. On March 5, 2021, our office internally appealed the most recent denial of the FOIL request via electronic mail to Sgt. Mazur. *See March 5, 2021 FOIL Internal Appeal, Exhibit 7.*

16. Sgt. Mazur responded just thirty minutes later, attaching a letter from the NYPD, **Exhibit 8**, denying the internal appeal. The denial letter repeated that the requested record would not be disclosed because their disclosure "would interfere with an ongoing criminal

investigation.” The letter noted, *inter alia*, that disclosure “could result in witness tampering or the tainting of a jury pool and/or the perpetrator(s) evading detection of prosecution,” “*in the event that* criminal charges are filed.” (emphasis added). The determination letter also stated that disclosure “could reveal confidential information that is fundamental to the prosecution of the defendant.”

17. On April 9, 2021, the Bronx District Attorney’s Office declined to bring criminal charges against the NYPD officers involved in the shooting death of Antonio Williams. *See* Bronx DA Press Release, **Exhibit 9**.

### ARGUMENT

18. FOIL provides that all records kept by a public agency are presumptively open to public inspection and copying unless specifically exempted. *Matter of New York Civ. Liberties Union v. City of Schenectady*, 2 N.Y.3d 657, 661 (2004).

19. These exemptions “are to be narrowly interpreted so that the public is granted maximum access to the records of government.” *Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462 (2007) (internal citations omitted).

20. The agency resisting disclosure must prove entitlement to one of the exceptions, meaning the agency bears the burden to resist production. *Matter of Laureano v. Grimes*, 179 A.D.2d 602, 604 (1st Dept. 1992); *see also Data Tree, LLC*, 9 N.Y.3d at 463.

21. The Court of Appeals has reiterated its view of the intent of the FOIL as a vehicle to “ensure maximum access to government documents,” and the Court of Appeals instructs that “exemptions are to be narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption.” *Matter of Gould v. New York City Police Dep’t.*, 89 N.Y.2d 267, 275 (1996) (citing *Matter of Hanig v. State of New York Dep’t. of*

*Motor Vehicles*, 79 NY2d 106, 109 (1992); Public Officers Law § 89 [4] [b]). The Court restricts withholding of disclosure in all circumstances, except when “the material requested falls squarely within the ambit of one of these statutory exemptions.” *Gould*, 89 N.Y.2d at 275 (citing *Matter of Fink v. Lefkowitz*, 47 NY2d 567, 571 (1979)).

### **Respondents Failed to Meet Their Buren to Justify Withholding Requested Materials**

22. The only exemption relied upon by Respondents in their denial, pursuant to Public Officers Law § 87(2)(e)(i), applies solely to “records or portions thereof that are compiled for law enforcement purposes.” *Mater of Madeiros v. New York State Educ. Dep’t.*, 30 N.Y.3d 67, 73 (2017). There is “no statutory blanket exemption for investigative records . . . and the ability to withhold records under FOIL can only be based on the effects of disclosure in conjunction with attendant facts.” *Thomas v. New York City Dep’t of Educ.*, 103 A.D. 3d 495, 498 (1st Dep’t 2013).

23. A significant portion of the records request in Petitioner’s FOIL request were neither created for “law enforcement purposes” nor relevant to any law enforcement investigation or judicial proceedings. *See* Public Officers Law § 87(2)(e)(i). For example, records relating to, *inter alia*, NYPD’s communication with Antonio Williams’ family after his death, communications between NYPD and the press, communications between NYPD and City Council, and a copy of the “Firearms Discharge Manual” are in no way related to law enforcement investigations.

24. Respondents’ blanket refusal to produce *any* of the materials requested by Petitioner, without exception, is improper. Respondents have not “articulate[d] particularized and specific justification for not disclosing requested documents.” *Gould*, 89 N.Y.2d at 267.

25. Moreover, given that the Bronx DA's Office has completed its investigation and decided not to bring charges against any officers involved in the shooting death of Antonio Williams, the Public Officers Law § 87(2)(e)(i) is inapplicable to any of the records that Petitioner seeks. As such, Respondents must produce all materials sought in Petitioner's FOIL request. *See Leshner v. Hynes*, 19 N.Y.3d 57, 67 (2012) ("Of course, Public Officers Law § 87(2)(e)(i) ceases to apply after enforcement investigations and any ensuing judicial proceedings have run their course."); *Jewish Press, Inc. v. Kingsborough Community Coll.*, 2020 N.Y. Slip Op. 31948(U) \*18 (N.Y. Cnty. Jun. 22, 2020) ("As the [investigation] is now completed, there can no longer be any interference with the investigation and Respondents are directed to produce the requested records[.]"). As such, Respondents must produce all records sought by Petitioner's FOIL request.

26. Though they provided just one basis for withholding the requested records in their initial denial of Petitioner's FOIL—Public Officers Law § 87(2)(e)(i)—Respondents claimed for the first time in their appeal denial letter that "certain portions of the records are also exempt from disclosure where the release of these records would constitute an unwarranted invasion of personal privacy," "would reveal non-routine criminal investigative techniques or procedures," or "where the records contain information which is specifically exempted by state or federal statute." **Exhibit 8** (citing Public Officers Law §§ 87(2)(a), (b), (f), and (g); 89(2)). It is unclear whether Respondents are attempting to assert this kitchen sink of potential exemptions or, as suggested by the wording of the letter, merely noting that such exemptions "would" apply "where" conditions not applicable here are met.

27. But even if Respondents were asserting this litany of exemptions, they fail to satisfy their burden to justify their refusal to disclose the requested records. Indeed, the appeal

denial letter does not even make clear which exemptions Respondents are asserting, much less “articulate a particularized and specific justification” for each potential exemption. *See Data Tree*, 9 N.Y.3d at 462-63.

**Petitioner is Entitled to Attorney’s Fees**

28. Within ten days of receipt of an appeal, an agency must either produce records or, if the agency denies the appeal, fully explain the reasons for denial. Public Officers Law § 89(4)(a). Almost a year-and-a-half passed between the time that Petitioner’s FOIL request was made and its denial.

29. A court may award reasonable attorney’s fees and other litigation costs when a petitioner (1) “substantially prevails” in a proceeding to review the denial of a FOIL request; (2) the agency had no reasonable basis for denial of access; and (3) the agency failed to respond to a request or appeal within the statutory time. Public Officers Law § 89(4)(c).

30. Awarding attorney’s fees serves the purposes of deterring unreasonable delays and denials of access and encouraging all units of government to make a “good faith effort” to comply with the FOIL requirements. *Matter of New York Civ. Liberties Union v. City of Saratoga Springs*, 87 A.D.3d 336, 338 (3d Dept. 2011) (*quoting* Senate Introducer’s Mem. in Support, Bill Jacket, L. 2006, ch. 492, at 5).

31. Respondent NYPD (1) had no reasonable basis for constructively denying the Petitioner’s FOIL, and (2) failed to respond to Petitioner’s request within the requisite statutory timeframe, which justifies the awarding of attorney’s fees.

**REQUEST FOR RELIEF**

WHEREFORE, the Petitioner, Shawn Williams, respectfully requests this Court enter an Order directing Respondent NYPD to produce the requested records; awarding the undersigned

legal fees and expenses incurred in making the instant petition for relief; and awarding such other and further relief as the Court may deem just and proper.

Dated: July 1, 2021  
New York, New York

Respectfully submitted,

BELDOCK LEVINE & HOFFMAN LLP



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**ATTORNEY'S VERIFICATION**

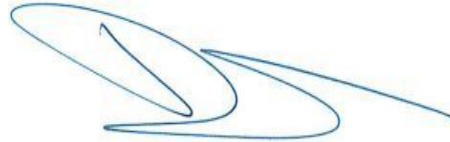
I, David B. Rankin, an attorney duly admitted to practice before the Courts of the State of New York, affirm the following to be true under the penalties of perjury:

I am the attorney of record for the Petitioner.

I have read the annexed Petition and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My beliefs, as to those matters therein not stated upon knowledge, are based upon facts, records, and other pertinent information contained in my files.

This verification is made by me because Petitioner does not reside in the county where I maintain my offices.

Dated:           New York, New York  
                  July 1, 2021



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David B. Rankin