

Exhibit A

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

Patrolmen’s Benevolent Association of the City of New
York, Inc.,

Petitioner,

-against-

Bill de Blasio in his official capacity as Mayor of the City
of New York, City of New York, James P. O’Neill in his
official capacity as Commissioner of the New York City
Police Department, and New York City Police
Department,

Respondents.

Index No.:

**VERIFIED
PETITION/COMPLAINT
ORAL ARGUMENT
REQUESTED**

Petitioner Patrolmen’s Benevolent Association of the City of New York, Inc. (“PBA” or
“Petitioner”), by and through their attorneys Kasowitz Benson Torres LLP, as and for their
Verified Petition and Complaint, allege as follows:¹

PRELIMINARY STATEMENT

1. This case arises out of the intentional and continuing violation of New York Civil
Rights Law § 50-a by Mayor Bill de Blasio (the “Mayor”) and his police commissioner, James P.
O’Neill (the “Commissioner”), who have repeatedly released (and promise to continue releasing)
police body-worn camera video footage that Civil Rights Law (“CRL”) § 50-a precludes from
disclosure absent a court order. (Exs. T, U, V.) This conduct disregards not only the clear
prohibitions of CRL § 50-a, but also the very serious safety, privacy, due process, and other
interests of police officers, the subjects of recorded videos and their families, those investigating
the conduct at issue, and regular people innocently captured on released footage. Neither the

¹ All exhibit references in the form (Ex. _) are to the exhibits to the Affirmation of Alexander B.
Simkin in Support of Verified Petition submitted contemporaneously herewith.

Mayor nor Commissioner are, or should be, the sole and final arbiters of these individual rights and interests. The statute provides a process for the judicial considerations of all these interests, and it must be followed.

2. Civil Rights Law § 50-a prohibits Respondents from releasing “records used to evaluate [a police officer’s] performance toward continued employment or promotion” that are “under the control of any police agency,” unless they have secured a Court ordered permitting them to do so. That statutorily mandated judicial process requires, among other things, that the court give all “interested parties the opportunity to be heard” concerning any release of such records, and address what restrictions, if any, should be imposed on such release to protect the interests of all those involved. In addition, this process ensures that Respondents cannot selectively release footage to serve their own political or other objectives irrespective of the harm it might cause others, including potential prejudice to those accused of wrongdoing or to the investigation or prosecution of such potential wrongdoing, the traumatizing impact on family members and others exposed to potentially graphic or disturbing footage, and the substantial risk to the privacy of others who might be captured on such footage.

3. The statute, caselaw, and stated objectives of the BWC program leave no doubt that the footage is protected from disclosure under CRL § 50-a, and Respondents have repeatedly acknowledged this fact in judicial proceedings and other public statements. Nevertheless, since September 2017, Respondents have unilaterally been releasing body-worn camera (“BWC”) footage without even seeking, let alone securing, the required judicial approval, or providing any of the interested parties the opportunity to be heard. Indeed, they have done so over the express objection of Bronx District Attorney Darcel Clark, who explained publicly that “[r]eleasing

[BWC] videos to the public during the early stages of an investigation may resolve some questions about the incident, but it may compromise the integrity of the investigation.”

4. Specifically, on September 14, 2017, the City of New York (the “City”) and the New York City Police Department (the “NYPD”) posted 34 minutes of footage from four police officers’ body-worn cameras on the internet and distributed the footage to journalists at a hastily called press conference that same day. The footage showed a tense and protracted standoff from eight days earlier between the police and a person holding a real knife and what turned out to be a fake gun. (Ex. T.) The police officers fatally shot the subject of the video after he aimed the gun with what appeared to be a laser sight at one of the police officers. (*Id.*)

5. Respondents released this footage over the objection of Bronx District Attorney Clark and over the objection of the Petitioner. Other interested parties, particularly the family of the fatally shot video subject, likewise were denied their statutory right to be heard before a judge. Neither the Mayor nor the Commissioner offered any explanation for why they believed they could suddenly release BWC footage unilaterally and without the input of the police officers or any other interested parties. Nor did anyone from the City or the NYPD explain how the particular footage to be released had been selected. Instead, the Commissioner released a statement explaining that his decision to release the BWC footage was “precedent-setting” and referring to the “future release of body-worn camera video.” (Ex. F.) The Commissioner explained that future decisions to release BWC video would be done on a “case-by-case basis” but he did not explain, and Respondents have never explained, the standards and procedures they purportedly follow in deciding whether to release BWC footage and, if so, what the nature of the release should be. (*Id.*)

6. Since that time, Respondents have continued to publically release BWC footage without following the required process. On November 27, 2017, Respondents released 33 seconds of BWC footage that captured a non-fatal shooting by a police officer of a man who charged at the police officers with two knives on October 22 in Hamilton Heights. (Ex. U.) On November 29, 2017, Respondents released 89 seconds of BWC footage captured from two police officers' body-worn cameras of a fatal shooting by the police of a man who had stabbed two female security guards and stepped towards the police officers with a 4-inch steak knife on November 13 in a Bronx home for the mentally ill. (Ex. V.)

7. In neither instance did Respondents obtain a court order authorizing the public release of the video (or follow any other authorized process). Instead, the Commissioner, acting at the Mayor's direction, made a decision that may have been politically expedient but was unlawful. The NYPD has attempted to justify this improper and illegal conduct by claiming that it "utilize[d] the raw BWC footage in order to create a *new record* that contains redactions . . . [that] will be separate from the raw BWC footage and will be created for the sole purpose of disclosing to the public a depiction of the relevant events leading up to and including the critical incident." The NYPD argues that while "[t]he original record . . . remains exempt under §50-a(1); . . . the new record is not a personnel record and therefore, not subject to §50-a(1)." (Exs. I, J.)

8. This tortured logic is patently absurd. If Civil Rights Law § 50-a only applies to the original and complete personnel file, then Respondents could simply circumvent all intended protections by releasing a selective but incomplete collection of an officer's personnel records, repackaging copies of those records, or summarizing the contents of those records. To so

construe Civil Rights Law § 50-a as Respondents argue would be to effectively erase it from the state statutes.

9. Eliminating CRL § 50-a's restrictions would risk far broader and plainly unconsidered risks. For example, rendering CRL § 50-a so easily circumvented would open the door to the wholesale filing of FOIL demands for all BWC footage, comprising thousands of interactions with citizens, often in very personal settings. This dramatic danger to the privacy of every New York resident was obviously not intended when the BWC program was adopted and certainly this was because of the widespread understanding (which the City and NYPD advocated in prior court cases) that any such releases were prohibited by Civil Rights Law § 50-a. That understanding was and is correct and settled, and the Mayor and Commissioner must follow that statutory prohibition that they themselves have acknowledged exists.

PARTIES

10. Petitioner Patrolmen's Benevolent Association of the City of New York, Inc. is the duly certified collective bargaining representative of all members of the New York City Police Department in the rank of Police Officer.

11. Respondent Bill de Blasio is the Mayor of the City of New York, and is named as a Respondent in his official capacity. The Mayor's principal office is located at City Hall, New York, New York 10007.

12. Respondent City of New York is a municipal corporation organized and existing pursuant to New York State law. The City's principal place of business is City Hall, New York, New York 10007.

13. Respondent James P. O'Neill is the Commissioner of the NYPD, and is named as a Respondent in his official capacity. The Commissioner's principal office is located at One

Police Plaza, New York, New York 10038.

14. Respondent New York City Police Department is a law enforcement agency administered under New York Administrative Code, Title 14 of the City of New York. The NYPD's principal place of business is One Police Plaza, New York, New York 10038.

JURISDICTION AND VENUE

15. This action is brought against the NYPD and the Commissioner in his official capacity pursuant to Article 78 of the CPLR to challenge the NYPD's release of BWC footage in violation of applicable law and in an arbitrary and capricious manner.

16. This action is brought against the City and the Mayor in his official capacity pursuant to Article 78 of the CPLR to challenge their role in directing the NYPD to release BWC footage in violation of applicable law and in an arbitrary and capricious manner.

17. This action is also brought against the City, the NYPD, the Mayor and the Commissioner pursuant to the general original jurisdiction of this Court under Article VI, Section 7 of the New York Constitution.

18. This action is timely under CPLR § 217 because it was brought within four months of September 14, 2017, the date on which the NYPD first released any BWC footage.

19. This Court has personal jurisdiction over all Respondents pursuant to CPLR § 301 because Respondents work in and/or conduct substantial business within New York.

20. The Court also has jurisdiction pursuant to CPLR § 3001.

21. Venue is proper in this Court under CPLR §§ 506(b) and 7804(b) because the City and the NYPD have their principal offices located in New York County.

FACTUAL BACKGROUND

A. The Applicable Regulatory Scheme

22. New York Civil Rights Law § 50-a governs the treatment of, among other things, “personnel records of police officers.”

23. Personnel records are defined in the statute as any “records used to evaluate performance toward continued employment or promotion, under the control of any police agency”

24. Civil Rights Law § 50-a provides that such files “shall be considered confidential and not subject to inspection or review” without either a court order or the consent of the relevant police officer(s).

25. The statute explains that, in evaluating whether to grant an order authorizing the release of a police officer personnel file, the judge must “give interested parties the opportunity to be heard.”

26. The statute provides that, if the judge concludes there is a sufficient basis, he can authorize the release of the records.

27. Civil Rights Law § 50-a was first enacted into law in 1976, approximately two years after the original Freedom of Information Law (“FOIL”) and the statute was designed to prevent abusive exploitation of information contained in officers’ personnel records.

28. The First Department recently explained the history of Civil Rights Law § 50-a in a decision captioned *Luongo v Records Access Officer, Civilian Complaint Review Board*, 150 AD3d 13, 20 (1st Dept 2017), explaining that it “was sponsored and passed as a safeguard against potential harassment of officers through unlimited access to information contained in personnel files.”

29. Along the same lines, New York Public Officers Law § 87(2)(f) states that the NYPD or any other agency should “deny access to records or portions thereof that . . . if disclosed could endanger the life or safety of any person.”

30. In addition to Civil Rights Law § 50-a and New York Public Officers Law § 87(2)(f), the City Administrative Procedure Act (“CAPA”) requires agencies such as the NYPD follow certain procedures in connection with the implementation of rules of general applicability that implement or apply law or policy.

31. One of the central tenets of CAPA is that the public must be given notice and an opportunity to comment about agency rules.

B. The Background of the Body-Worn Camera Program

32. In January 2008, the Center of Constitutional Rights filed a federal class action lawsuit against the City of New York to challenge the NYPD’s purported practices of racial profiling and unconstitutional stop and frisks of New York City residents.

33. On August 12, 2013, Judge Shira Scheindlin issued a 198-page decision finding, by a preponderance of evidence, that the City of New York engaged in a years-long policy and practice of unconstitutional and racially discriminatory stop and frisks in violation of the Fourth and Fourteenth Amendments (the “Liability Opinion”).

34. On the same day it issued the Liability Opinion, Judge Scheindlin issued a separate opinion appointing an independent monitor and directing the development and implementation of a series of reforms (the “Remedy Opinion”). (Ex. A.)

35. Under the Mayor’s administration, the City agreed to drop its appeal and begin the remedial process ordered by the court.

36. One of the remedies ordered by Judge Scheindlin was the use of body-worn cameras on a pilot program basis. (*Id.*)

37. The purpose for the body-worn cameras, as articulated by Judge Scheindlin, was to provide a contemporaneous, objective record of stops and frisks conducted by NYPD officers, thereby making it easier to evaluate whether a stop was constitutional.

38. Judge Scheindlin explained that “[t]he use of body-worn cameras by NYPD officers would address a number of the issues raised in the Liability Opinion” and that a requirement that police officers wear body-worn cameras would alleviate some of the difficulty of “judging in hindsight what happened during an encounter between a civilian and the police.” (*Id.*)

39. Judge Scheindlin also explained that “the NYPD’s duty to monitor stop and frisk activity is similarly hamstrung by supervisors’ inability to review an objective representation of what occurred” and that the use of body-worn cameras could alleviate that concern.

40. Judge Scheindlin specifically tasked the independent monitor with “establish[ing] procedures for the review of stop [and frisk] recordings by supervisors and, as appropriate, more senior managers.” (*Id.*)

41. Thereafter, the City and the NYPD desired to expand the scope of the body-worn camera program to cover the department’s entire patrol force. In or around April 2017, the City and the NYPD implemented “Operations Order 21” explaining a police officer’s obligations with respect to body-worn cameras. (Ex. C.)

42. Operations Order 21 explains that the BWC program “will serve to provide a contemporaneous, objective record of encounters, facilitate review by supervisors, foster

accountability, and encourage lawful and respectful interactions between the public and the police.” (*Id.*)

43. Operations Order 21 states that “[t]he BWC and related hardware/software, as well as video, audio and data captured by the BWC, irrespective of the content, are at all times the property of the [New York City Police] Department.” (*Id.*)

44. It further provides that “[t]he default preservation period for BWC video is one year.” (*Id.*)

45. Under Operations Order 21, “[r]equests by a witness or victim to view a BWC recording must be declined and referred to the appropriate prosecutor handling the case.” In addition, it states that BWC video cannot be used for “confirmatory identifications” (aka “show-ups”), which still “must be done in person and not by the witness viewing a BWC video of the suspect.” (*Id.*)

46. Operations Order 21 explains that, in the event of a firearms discharge, level 3 use of force and death/serious injury in custody incidents, a police officer is required to provide his body-worn camera to the “Force Investigation Division, Internal Affairs Bureau, or other supervisor in charge of the investigation.” (*Id.*)

47. The Operations Order also requires supervisors to review body-worn camera video “in conformance with the self-inspection program” and to “[p]eriodically review video in addition to the self-inspection program, as appropriate, to provide positive feedback and address any performance deficiencies observed.” (*Id.*)

48. Under the self-inspection program, police sergeants are required to “view a total five (5) vides recorded by their assigned Police Officers in their entirety” on a monthly basis. (Ex. L.)

49. For each video, the police sergeant is required to answer a series of questions concerning the police officer's performance. For example, the questions include whether "the officer appropriately appl[ied] the law and Department procedures, including but not limited to the law and Department procedures for arrests, summonses, stops, frisks and searches" and whether the officer made a "prohibited" recording. (*Id.*)

50. The police sergeant's reports are then further reviewed by the Platoon Commander or Special Operations Lieutenant, as appropriate.

51. In short, the primary reason a police officer has to wear a body-worn camera is so that other people, including his direct supervisor(s) and other superiors, can evaluate his conduct.

52. This, of course, is the quintessential definition of a personnel file.

C. The NYPD, the City, the State, and the State Legislature All Understand that Body-Worn Camera Footage Is Subject to Civil Rights Law § 50-a

53. Although body-worn camera technology was not available at the time that New York Civil Rights Law § 50-a was enacted in 1976, there appeared to be a consensus that Civil Rights Law § 50-a applies to BWC videos since they were first introduced.

54. For example, in April 2015, a reporter for Time Warner Cable News NY1 filed a FOIL request seeking access to BWC videos taken during five week-long periods. The NYPD objected to producing the requested footage on several grounds, including Civil Rights Law § 50-a.

55. After Time Warner Cable News NY1 sued, the NYPD, represented by the City, argued in court for the applicability of Civil Rights Law § 50-a to the BWC videos. (Ex. B.)

56. The NYPD argued that the requested footage "may capture incidents that are the subject of a Civilian Complaint Review Board ("CCRB") complaint, or some other disciplinary

proceeding” and that “N.Y. Civil Rights Law § 50-a governs the right of privacy as it relates to the personnel records of police officers.” (*Id.*)

57. The NYPD explained that “Courts have interpreted the phrase personnel records in Civil Rights Law § 50-a broadly to include various categories of police records, including documents relating to the investigation of charges of harassment or use of force by police officers.” (*Id.*)

58. Thus, the NYPD concluded that, “where the requested footage will be used or is being used in a CCRB or other disciplinary proceeding against a police officer, Civil Rights Law § 50-a(1) explicitly establishes the confidentiality of such records, and prohibits disclosure without the written consent of the police officer or when mandated by lawful court order.” (*Id.*)

59. The views of those responsible for writing legislation is in accord.

60. For example, on August 7, 2015, a bill was introduced into the State Senate by State Senators Squadron and Perkins (Senate Bill 6030-A) that would amend Civil Rights Law § 50-a to exclude “recordings made by body cameras worn by an officer.” (Ex. M.)

61. The Sponsor Memo associated with that bill explains that the purpose of the bill is to “[e]xclude[] video camera recordings and raw data generated from such recordings generated from cameras worn or used by police from being included as personnel records.” (*Id.*)

62. A substantially identical bill (Assembly Bill 8368) was also introduced into the State Assembly by Assemblymember Quart on August 24, 2015. (Ex. N.)

63. A press release issued by State Senator Squadron and Assemblymember Quart accompanying the bills quotes Franklin Stone, the Chair of the New York State Committee on Open Government, as saying that “[u]nder the current interpretation of Section 50-a, records concerning the conduct of law enforcement officers have been shielded from public scrutiny.”

64. Senate Bill 6030-A and Assembly Bill 8368 failed to advance. (Exs. M, N.)
65. On January 29, 2017, State Senator Squadron reintroduced his bill as Senate Bill 3140. (Ex. O.) On February 2, 2017, Assemblymember Quart reintroduced his bill as Assembly Bill 4268. (Ex. P.) Neither of these bills passed.
66. In addition, on January 17, 2017, State Senator Parker introduced Senate Bill 2850, which proposes to amend Civil Rights Law § 50-a so that it applies only to personnel records “created and used *solely* to evaluate performance.” (Ex. Q.)
67. The Sponsor Memo accompanying Senate Bill 2850 explains that the purpose of the bill is to “narrow the exception preventing access to police . . . officer records to allow public scrutiny of all public employees.” (*Id.*)
68. The Memo explains that “[u]nder the current law all footage captured by ‘bodycams’ could be used for evaluating the performance of [police officers]. (*Id.*) Therefore the 50-a exemption could be used to prevent any footage from being released to the public.” (*Id.*)
69. Senate Bill 2850 also has not passed.
70. On January 27, 2017, Assemblymember O’Donnell introduced Assembly Bill 0333 seeking to repeal Civil Rights Law § 50-a in its entirety. (Ex. R.)
71. The bill’s accompanying memorandum states that Civil Rights Law § 50-a “has been expanded in the courts to allow police departments to withhold from the public virtually any record that contains any information that could conceivably be used to evaluate the performance of a police officer.” (*Id.*)
72. Prior to Assembly Bill 0333, Assemblymember O’Donnell had introduced many prior bills to amend or repeal Civil Rights Law § 50-a in its entirety.

73. For example, on May 20, 2015, Assemblymember O'Donnell proposed Assembly Bill 07611 to amend Civil Rights Law § 50-a. (Ex. S.) The bill's accompanying memorandum explains states that the justification for the bill is that "50-a's expansive application may well undermine the effectiveness of new efforts to increase police accountability. (*Id.*) For example, there has been recent discussion of having police officers use 'body-cams,' video cameras that capture events involving law enforcement officers. Under the current law, an agency could argue that all footage captured by 'bodycams' could be used for evaluating the performance of these individuals. Therefore the 50-a exemption could be used to prevent any footage from being released to the public, thus defeating the purpose of using the bodycams." (*Id.*)

74. According to press reports, the Mayor sent staff members to work directly with Assemblymember O'Donnell on his bills to either repeal or modify New York Civil Rights Law § 50-a.

75. But there was no support for the bills in the State Senate, a body in which, according to Assemblymember O'Donnell, the Mayor has "no juice."

76. Other legislation has also been introduced over the past few years seeking to amend New York Civil Rights Law § 50-a to modify its strong confidentiality requirements and, like the bills discussed above, none have passed.

77. The City has likewise echoed the view of the NYPD and the legislature that, absent an amendment to Civil Rights Law § 50-a, the City and the NYPD would need to follow its protocols with respect to the release of BWC footage.

78. Indeed, in October 2016, the City acknowledged on its official website that "[s]everal appellate court decisions have held that personnel records, including summaries of

disciplinary actions taken against law enforcement and other uniformed personnel, cannot be disclosed because of the confidentiality protections under Civil Rights Law Section 50-a.”

79. Mayor de Blasio himself was quoted as saying that he believed amendments to Civil Rights Law § 50-a were necessary to allow the City to disclose disciplinary records of police officers, stating that “[w]ithout significant changes to this statute, the City remains barred from providing New Yorkers with the transparency we deserve.”

80. Commissioner O’Neill was quoted in the same press release as stating “[i]t is my hope we can work with the State legislature and the Governor on the proposed 50-a amendment.”

81. Likewise, the State’s Committee on Open Government confirmed as far back as May 2015 that CRL § 50-a “would likely serve as the basis to deny access to police body camera video in its entirety.” (Ex. K.)

82. The State’s Committee on Open Government “has repeatedly advised” that CRL § 50-a would have to be “rescinded or at the very least, amended” in order to allow the release of BWC footage. (*Id.*)

D. Respondents’ Arbitrary and Capricious Decision to Release Body-Worn Camera Footage in Violation of Applicable Law

83. On September 6, 2017, a man named Miguel Antonio Richards (“Richards”) was shot and killed by police officers in the Bronx.

84. Officers from the 47th Precinct were sent to Richards’ home when his landlord told police Richards was acting erratically.

85. Upon arriving, Richards threatened the police officers with a real knife and what turned out to be a fake gun.

86. After a tense and protracted standoff, Richards was fatally shot after he aimed the gun with what appeared to be a laser sight at one of the police officers.

87. This was the first death caught by a NYPD body-worn camera.
88. The Mayor, the City and the NYPD were under intense political pressure to release the footage of the shooting.
89. The Mayor was questioned about the incident at a press conference the very next day and he stated that he had already spoken with the Commissioner several times since it happened.
90. At the press conference, the Mayor acknowledged that that Bronx District Attorney needed to be consulted before the City could determine how to handle the BWC footage of the incident.
91. Shortly after the shooting, the Commissioner consulted with Bronx District Attorney Darcel D. Clark concerning a possible release of the BWC footage of the shooting.
92. District Attorney Clark objected to the release of the BWC footage prior to the completion of her investigation. She explained that “[r]eleasing videos to the public during the early stages of an investigation may resolve some questions about the incident, but it may compromise the integrity of the investigation.”
93. Ignoring the wishes of District Attorney Clark, the fact that no amendment of Civil Rights Law § 50-a had passed, and the risk of danger to police officers, Commissioner O’Neill nevertheless, at the direction of the Mayor and others at the City, decided to immediately release the BWC footage of the Richards shooting.
94. Commissioner O’Neill explained that his goal was to release the footage as quickly as possible.
95. In an effort to release the footage as quickly as possible, the Commissioner ignored the required process set forth in Civil Rights Law § 50-a.

96. The Commissioner did not get a court order authorizing the release of the BWC footage as required by Civil Rights Law § 50-a. He also did not obtain the permission of the police officers whose body-worn cameras captured the shooting.

97. The NYPD and the City offered no explanation for their about-face and no rationale for why BWC footage of an officer engaged in a shooting was suddenly not protected by Civil Rights Law § 50-a.

98. By ignoring his requirement to go to court, Commissioner O'Neill denied all interested parties an opportunity to be heard concerning the possible release of the BWC footage.

99. Upon information and belief, Commissioner O'Neill was directed to release the BWC footage as quickly as possible by the Mayor or others working for the Mayor based on the belief that doing so would benefit the Mayor politically.

100. The PBA was given almost no notice of Respondents' politically-motivated decision to prematurely release the BWC footage.

101. Almost immediately, the PBA wrote to Commissioner O'Neill to object to the release and explain that Respondents' decision clearly violates Civil Rights Law § 50-a. (Ex. E.)

102. The PBA also explained that the release of BWC footage risked harm to police officers, both those involved in the shooting and others more generally. (*Id.*)

103. The PBA called Respondents' attention to tragic murders of several police officers in New York City by perpetrators inspired by sensationalized media characterizations of police officers, which are often fostered by groups with anti-law enforcement agendas. The PBA explained that Respondents' "release of BWC footage relating to a shooting or other use of force in the manner contemplated, irrespective of whether the officer's actions were in fact justified

under the law, creates very real risks to the safety of all police officers, and particularly those involved in the shooting.” (*Id.*)

104. Respondents disregarded the objections of the PBA and the NYPD did not contemporaneously respond to the PBA’s September 14, 2017 letter.

105. On September 14, 2017, lawyers for the police officers involved in the Richards shooting also wrote a letter to the Commissioner. The letter specifically stated that “the officers involved in the incident do not consent to the release of the body cam footage.” (Ex. D.)

106. It noted that Civil Rights Law § 50-a protects personnel records from public disclosure and explained that “there is no reasonable argument against the fact that the body camera footage can and will be used by the NYPD to evaluate the on-the-job performance of the officers at issue, which certainly impacts their future employment and promotion prospects.” (*Id.*)

107. The NYPD did not directly respond to the police officers’ letter and certainly did not dispute that the NYPD can and will use the body-worn camera footage to evaluate the performance of the police officers involved with the shooting, including with respect to potential future employment or promotion prospects.

108. Instead, on or around September 14, 2017, Commissioner O’Neill wrote a letter addressed “[t]o the men and women of the New York City Police Department” (that was published in the press) purporting to explain his illegal decision to release the BWC footage. (Ex. F.)

109. Commissioner O’Neill explained the footage would be posted on the website NYPDnews.com and would also be distributed to unidentified “media” at a press conference “scheduled for 1400 hours today.” (*Id.*)

110. Commissioner O'Neill recognized and explained that his decision to publically release the BWC footage without any public process "is clearly precedent-setting." (*Id.*)

111. Commissioner O'Neill stated that "[r]eleasing footage from critical incidents like this will help firmly establish your restraint in the use of force, and will plainly exhibit to the public your reasonable and judicious use of force when that force becomes necessary." (*Id.*)

112. In other words, Commissioner O'Neill confirmed that his decision to release BWC footage is designed to, at least in part, allow the public to evaluate and monitor an individual police officer's performance of his or her duties.

113. Respondents released a total of 34 minutes of footage from four officers' body-worn cameras (16 minutes and 24 seconds from one officer, 15 minutes and 26 seconds from a second officer, 1 minute and 49 seconds from a third officer, and 1 minute and 1 second from a fourth officer).

114. The release of the BWC footage involving Miguel Richards is illustrative of the haphazard way in which Respondents decide to release BWC footage. For instance, in addition to the footage mentioned above, Respondents also released a "compilation" video and "slow motion" videos of the third and fourth officers' BWC footage. (Ex. T.)

115. Those four officers were members of the PBA during all relevant times.

116. Respondents did not explain how they selected which footage to release and what footage to withhold.

117. Respondents did not explain why slow motion footage was released of the third and fourth officers' BWC footage, but not of officers one and two in this incident, and not in connection with other incidents.

118. Respondents did not explain who was involved in the decision as to what footage to release (other than the Commissioner).

119. Respondents did not explain what factors they considered in evaluating what footage to release and what footage to withhold.

120. Respondents' decision appears to have been wholly arbitrary and capricious.

121. To the extent Respondents employed a non-arbitrary rule, they did not disclose such rule or give the public an opportunity to comment on such rule as required by, among other things, the City Administrative Procedure Act.

E. Respondents Reaffirm Their Practice of Illegally Releasing Body-Worn Camera Footage a Second Time

122. Following Respondents' September 14 "precedent-setting" release of BWC footage, Respondents have continued to ignore applicable law and release BWC footage on an arbitrary basis when it suits the Mayor and/or Commissioner to do so.

123. On October 22, 2017 a man named Paris Cummings ("Cummings") was shot and wounded by a police officer in Hamilton Heights.

124. Two police officers responded to a call for a man who was attempting suicide.

125. After knocking on Cummings's door, Cummings charged at the police officers with two knives.

126. The officers backed into the hallway and told Cummings several times to drop the knife. When Cummings failed to heed their warnings, one of the officers fired a single shot that struck Cummings in the leg.

127. Cummings had already stabbed himself once before he was shot.

128. Afterward, the police officers performed first aid and called for an ambulance. Cummings sustained a non-life threatening injury.

129. By the very next day, the Commissioner had already decided to release the BWC footage, stating to the press that “[w]e’ll definitely release it.”

130. On November 27, 2017, lawyers for the police officer involved in the incident wrote to the Commissioner to state that the police officer “does not consent to the release of the body camera footage” and to explain that it is protected by Civil Rights Law § 50-a. (Ex. G.)

131. The NYPD did not directly respond to this letter. Instead, the NYPD responded by releasing 33 seconds of BWC footage of the Cummings shooting on that same day. (Ex. U.)

132. The 33 seconds of footage came from the body-worn camera of a member of the PBA.

133. The decision to release the BWC footage was made by Commissioner O’Neill, who was acting at the direction of the Mayor or others who report to the Mayor at the City.

134. Respondents did not receive a court order authorizing the release of the BWC footage of the Cummings shooting.

135. Respondents also did not receive the consent of the police officer whose body-worn camera captured the footage.

136. At the time Respondents released the Cummings BWC footage, the NYPD’s Force Investigation Division still had the matter under review and had yet to decide if the shooting was justified.

137. Respondents did not explain how they selected which footage to release and what footage to withhold.

138. Respondents did not explain who was involved in the decision as to what footage to release (other than the Commissioner).

139. Respondents did not explain what factors they considered in evaluating what footage to release and what footage to withhold.

140. Respondents' decision appears to have been wholly arbitrary and capricious.

141. To the extent Respondents employed a non-arbitrary rule, they did not disclose such rule or give the public an opportunity to comment on such rule as required by, among other things, the City Administrative Procedure Act.

F. Respondents Illegally Release Body-Worn Camera Footage a Third Time

142. On November 13, 2017, a man named Cornell Lockhart was fatally shot by the police in a Bronx home for the mentally ill.

143. Two police officers were responding to a report of two women stabbed at the Hughes House in Tremont.

144. The police officers arrived to find Lockhart in the lobby and soon realized he had stabbed the two female security guards.

145. The police officers ordered Lockhart to drop a 4-inch steak knife.

146. The police officers repeated these commands more than 20 times.

147. Lockhart refused to drop the knife and stepped towards the police officers with the knife displayed in his right hand.

148. Both officers opened fire, hitting Lockhart.

149. On November 28, 2017, lawyers for the police officers involved in the Lockhart shooting wrote to the Commissioner to make clear that they "do not consent to release of the body camera footage." They also explained that the footage at issue is protected by Civil Rights Law § 50-a. (Ex. H.)

150. The NYPD did not directly respond to this letter.

151. Instead, on November 29, 2017, Respondents released two BWC videos, one totaling 46 seconds and the other 43 seconds long, of the Lockhart shooting. (Ex. V.)

152. The 89 seconds of BWC footage that was released came from the body-worn cameras of two members of the PBA.

153. The decision to release the BWC footage was made by Commissioner O'Neill, who was acting at the direction of the Mayor or others who report to the Mayor at the City.

154. Respondents did not receive a court order authorizing the release of the BWC footage of the Lockhart shooting.

155. Respondents also did not receive the consent of the police officers whose body-worn cameras captured the footage.

156. At the time Respondents released the Lockhart BWC footage, the NYPD's Force Investigation Division still had the matter under review and had yet to decide if the shooting was justified.

157. The shooting was also being investigated by the Bronx District Attorney.

158. Respondents did not explain how they selected which footage to release and what footage to withhold.

159. Respondents did not explain who was involved in the decision as to what footage to release (other than the Commissioner).

160. Respondents did not explain what factors they considered in evaluating what footage to release and what footage to withhold.

161. Respondents' decision appears to have been wholly arbitrary and capricious.

162. To the extent Respondents employed a non-arbitrary rule, they did not disclose such rule or give the public an opportunity to comment on such rule as required by, among other things, the City Administrative Procedure Act

G. The NYPD's Post-Release Attempt to Justify Its Illegal Conduct

163. In a letter dated December 5, 2017, the NYPD finally responded to letters written to the NYPD by counsel for the police officers involved in the Richards, Cummings, and Lockhart shootings, each of whom objected to the release of his or her body-worn camera footage. (Ex. I.)

164. The NYPD's December 5 letter acknowledged that "[c]ourts have taken a very broad view on what constitutes a 'personal record.'" (*Id.*)

165. The NYPD articulated its position that it is using "raw BWC footage in order to create a *new record* that . . . will be separate from the raw BWC footage and will be created for the sole purpose of disclosing to the public a depiction of the relevant events leading up to and including the critical incident." (*Id.*)

166. The NYPD conceded that "[t]he original record, in relevant circumstances, remains exempt under § 50-a(1); however the new record is not a personnel record and, therefore, not subject to §50-a(1)." (*Id.*)

167. In other words, the NYPD's position appears to be that it can take a copy of a confidential record and make some unspecified alterations to it in order to transform it into a "new" non-confidential record.

168. The NYPD's December 5 letter also offered the alternative argument that Civil Rights Law § 50-a does not apply to the BWC footage at issue because it consists of information

that is “neutral and [does] not contain any invidious implications capable facially of harassment or degradation of the officer.” (*Id.*)

169. This argument also has no support in law or fact.

170. In a letter dated December 19, 2017 (and received December 27, 2017), the NYPD’s Deputy Commissioner of Legal Matters, Lawrence Byrne, responded to Petitioner’s September 14, 2017 letter objecting to Respondents’ release of BWC footage without following the procedures set forth in Civil Rights Law § 50-a. (Ex. J.)

171. Mr. Byrne reiterated both of the Commissioner’s baseless after-the-fact arguments for why the NYPD’s conduct was legal.

172. Not surprisingly, Respondents have never publically articulated these questionable justifications for their conduct.

H. Respondents Intend to Continue their Illegal and Arbitrary Release of BWC Footage

173. Following Respondents’ release of footage from police officers’ body-worn cameras in connection with the Richards, Cummings, and Lockhart shootings and in light of the NYPD’s December 5 letter, it is now clear that Respondents intend to continue to illegally and prematurely release BWC footage in clear violation of Civil Rights Law § 50-a and other applicable law.

174. Respondents are making arbitrary and capricious decisions about what BWC footage to release pursuant to either a secret rule in violation of CAPA or no rule at all.

175. Respondents are denying interested parties an opportunity to be heard by acting as judge and jury, rather than involving the courts as required by Civil Rights Law § 50-a.

176. Judicial relief is necessary and appropriate in order to protect the rights of the PBA's members and the general public, all of whom are harmed by Respondents' arbitrary and illegal conduct.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Violation of CPLR § 7803 – Determination Made in Violation of Lawful Procedure)

177. Petitioner repeats and realleges paragraphs 1 through 176 as if fully stated herein.

178. Respondents' decision to release BWC footage of the Richards, Cummings, and Lockhart shootings violated the law.

179. The BWC footage taken from the body-worn cameras of the police officers present at the Richards, Cummings, and Lockhart shootings was and will be used to evaluate their performance toward continued employment or promotion.

180. Respondents' decision to release BWC footage of the Richards, Cummings, and Lockhart shootings violated New York Civil Rights Law § 50-a.

181. The public release of the BWC footage taken from the body-worn cameras of the police officers present at the Richards, Cummings, and Lockhart shootings endangers the life or safety of various persons, including the police officers present at the shootings, police officers generally, and others captured in the BWC footage.

182. Respondents' decision to release BWC footage of the Richards, Cummings, and Lockhart shootings violated New York Public Officers Law § 87(2)(f).

183. Respondents admit that their decision to release BWC footage of the Richard shootings is "precedent-setting" and Respondents have followed that precedent in connection with the Cummings and Lockhart shootings.

184. Respondents' secret and non-public deliberations about their "precedent-setting" decision to release BWC footage violated CAPA.

185. Respondents' decision to release BWC footage of the Richards, Cummings, and Lockhart shootings violated other applicable laws and procedures.

186. Therefore, the Court should annul the determination of Respondents and prohibit the further release of BWC footage of the Richards, Cummings, and Lockhart shootings, as well as other footage of potential incidents in the future captured by a police officer's body-worn camera under CPLR §§ 7803 and 7806.

SECOND CAUSE OF ACTION

(Violation of CPLR § 7803 – Determination Made was Arbitrary and Capricious)

187. Petitioner repeats and realleges paragraphs 1 through 186 as if fully stated herein.

188. Respondents' decision to release BWC footage of the Richards, Cummings, and Lockhart shootings was arbitrary and capricious, and an abuse of discretion.

189. Respondents' decision to release 34 selected minutes of footage from four officers' body-worn cameras in connection with the Richards shooting was arbitrary and capricious.

190. Respondents' decision to release 33 selected seconds of footage from one officers' body-worn cameras in connection with the Cummings shooting was arbitrary and capricious.

191. Respondents' decision to release 89 selected seconds of footage from two officers' body-worn cameras in connection with the Lockhart shooting was arbitrary and capricious.

192. Therefore, the Court should annul the determination of Respondents and prohibit the further arbitrary and capricious release of BWC footage of the Richards, Cummings, and

Lockhart shootings, as well as other footage of potential incidents in the future captured by a police officer's body-worn camera under CPLR §§ 7803 and 7806.

THIRD CAUSE OF ACTION
(Declaratory Relief)

193. Petitioner repeats and realleges paragraphs 1 through 192 as if fully stated herein.

194. An actual case or controversy exists between Petitioner and Respondents as to whether BWC footage constitutes a "personnel record" as that term is used in New York Civil Rights Law § 50-a.

195. An actual case or controversy exists between Petitioner and Respondents as to whether applicable laws, rules, and regulations permit Respondents to release BWC footage publically without any formal process or procedure.

196. Police officers are required to wear and operate body-worn cameras as a condition of their employment so that their supervisors and other superiors can monitor their performance toward continued employment or promotion.

197. Footage taken from a police officer's body-worn camera is, in fact, used to evaluate his or her performance toward continued employment or promotion.

198. Absent clarification from the Court, the dispute between Petitioner and Respondents is capable of, and likely to be, recurring.

199. Accordingly, Petitioner is entitled to a declaration that BWC footage constitutes as "personnel record" as that term is used in New York Civil Rights Law § 50-a and that the release of BWC footage requires either a court order or the relevant officer's permission, as set forth more fully in Civil Rights Law § 50-a.

200. Petitioner is also entitled to a declaration as to the rights and obligations of Respondents with respect to the public release of BWC footage captured from cameras worn by its members as a condition of their employment.

FOURTH CAUSE OF ACTION
(Injunctive Relief)

201. Petitioner repeats and realleges paragraphs 1 through 200 as if fully stated herein.

202. Petitioner has no adequate remedy at law and it and its members will suffer irreparable harm if denied injunctive relief.

203. Petitioner is entitled to an order enjoining Respondents from publically releasing BWC footage without a court order or the relevant officers' consent.

PRAYER FOR RELIEF

WHEREFORE, Petitioner demands judgment against Respondents as follows:

A. Annulling the determination of Respondents to publically release BWC footage of the Richards, Cummings, and Lockhart shootings;

B. Prohibiting Respondents' further release of BWC footage of the Richards, Cummings, and Lockhart shootings;

C. Prohibiting Respondents' further release of BWC footage absent a court order or the relevant officer's permission;

D. Determining and declaring that BWC footage constitutes a "personnel record" as that term is used in New York Civil Rights Law § 50-a and that the release of BWC footage requires either a court order or the relevant officer's permission, as set forth more fully in Civil Rights Law § 50-a;

E. Determining and declaring Respondents' rights and obligations with respect to the public release of BWC footage captured from cameras worn by its members as a condition of their employment;

F. Enjoining Respondents from publically releasing BWC footage without a court order or the relevant officers' consent; and

G. Awarding Petitioner such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 8, 2018

MICHAEL T. MURRAY
Office of the General Counsel of
the Patrolmen's Benevolent
Association of the City of New
York, Inc.
125 Broad Street
New York, New York 10004

Of Counsel:
David W. Morris
Andrew J. Dempster

KASOWITZ BENSON TORRES LLP

By: /s/ Michael J. Bowe
Michael J. Bowe
Alexander B. Simkin

1633 Broadway
New York, New York 10019
(212) 506-1700

*Attorneys for Petitioner Patrolmen's
Benevolent Association of the City of New
York, Inc.*

