

# Exhibit C

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

\_\_\_\_\_  
In the Matter of the Application of  
  
PATROLMEN’S BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.,

Petitioner

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

- 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. 150181/2018

Hon. Shlomo S. Hagler

**[PROPOSED] MEMORANDUM OF LAW IN OPPOSITION TO THE PETITION AND  
TO PETITIONER’S MOTION FOR A TEMPORARY RESTRAINING ORDER**

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Intervenors-Respondents Reporters Committee for Freedom of the Press, Hearst Corporation, The Associated Press, BuzzFeed, Cable News Network, Inc., The Center for Investigative Reporting, Daily News, LP, Dow Jones & Company, Inc., Gannett Co., Inc., Gizmodo Media Group, LLC, New York Public Radio, The New York Times Company, NYP Holdings, Inc., and Spectrum News NY1 (collectively, “News Media Intervenors”), respectfully submit this memorandum in opposition to the Verified Petition by the Patrolmen’s Benevolent Association of the City of New York (the “PBA” or “Petitioner”) herein and Petitioner’s Order to Show Cause seeking a temporary restraining order.<sup>1</sup>

In this Article 78 proceeding, the PBA asks the Court (1) to annul the determination of Respondents Bill de Blasio, the City of New York, James P. O’Neill and the New York City Police Department (collectively, the “City” or “Respondents”) to publicly release body-worn camera (“BWC”) footage of three police-involved shootings and prohibit the release of any other BWC footage of those shootings, (2) to make a determination that all BWC footage constitutes a personnel record under Civil Rights Law § 50-a (hereinafter, “Section 50-a”), and that release of such footage requires either the permission of the officer(s) involved or a court order, and (3) to enter an order enjoining Respondents from publicly releasing any BWC footage in the future without a court order or the relevant officer(s)’ consent. Because BWC footage is not covered by Section 50-a and because Respondents’ decision to release the BWC footage of the shootings specifically cited by the PBA in its Petition was within Respondents’ discretion, this Court should deny the relief sought by the PBA and dismiss the Petition with prejudice.

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<sup>1</sup> Though the Court has already denied the PBA’s request for a temporary restraining order, in light of the PBA’s desire to seek an appeal of that ruling, the News Media Intervenors address herein the merits of the PBA’s request for a temporary restraining order.

## PRELIMINARY STATEMENT

Amidst a nationwide discussion about the relationship between race and the use of force by police officers, videos depicting police shootings and other use-of-force incidents have served an important, informative role for the public, and prompted many communities and law enforcement entities to adopt BWC programs. While the use of BWC technology can increase law enforcement transparency and accountability, it can only do so when paired with a strong recognition of the public's right of access to the resulting footage. Respondents' decision to release some BWC footage from three recent incidents where individuals were shot by police officers, and Respondents' stated intention to release additional BWC footage from similar incidents in the future, recognizes that increased transparency and public accountability are the purpose of the City's BWC program.

The PBA's Petition, which is based on a wholly invented statutory right, seeks to nip this important transparency effort in the bud. The PBA's request for a temporary restraining order was properly denied by this Court, and its Petition should be dismissed because (1) the BWC footage in question is not a police "personnel record" subject to Section 50-a and (2) the PBA has no legal right to require Respondents to keep BWC footage that they have decided should be disclosed secret.

## BACKGROUND

Over the past several years, videos of use-of-force incidents—including use of lethal force by police officers in New York City—have received substantial news media coverage and prompted a nationwide discussion about the relationship between police and the communities they are sworn to serve. *See, e.g.,* Mercy Benzaquen, Damien Cave & Rochelle Oliver, *The Raw Videos That Have Sparked Outrage Over Police Treatment of Blacks*, N.Y. Times (Dec. 14,

2017) (collecting videos of police use of force against, among others, Eric Garner, Laquan McDonald, and Philando Castile), <http://nyti.ms/1IMtFWL>. Those discussions, in turn, have prompted the adoption of body-worn camera programs by law enforcement agencies in New York and across the country—programs that are billed as mechanisms to increase transparency and accountability to the public. See Yale Law School Media Freedom & Information Access Clinic, Police Body Cam Footage: Just Another Public Record 3 (Dec. 2015) (“Yale Body Cam Report”), <https://perma.cc/LNW5-BWRL>. Indeed, while touting the NYPD’s BWC program earlier this year, Mayor de Blasio stated that police body-worn cameras “ensure community members feel the power of transparency. They build trust through transparency.” *Transcript: Mayor de Blasio, Commissioner O’Neill Announce all Officers on Patrol to Wear Body Cameras by End of 2018*, Office of the Mayor (Jan. 31, 2018), <https://perma.cc/RYG4-LTBB>.

Transparency, and the resulting contribution to building the public’s trust, are possible only if BWC footage is made available to the public. As the former Executive Director of the Police Executive Research Fund has stated:

A police department that deploys body-worn cameras is making a statement that it believes the actions of its officers are a matter of public record. . . . [W]ith certain limited exceptions . . . body-worn camera video footage should be made available to the public upon request—not only because the videos are public records but also because doing so enables police departments to demonstrate transparency and openness in their interactions with members of the community.

Ltr. from the PERF Executive Director in Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned, United States Dep’t of Justice (2014), <http://1.usa.gov/1s7UIxl>. Access to BWC videos by members of the news media is critical to ensuring that the public knows and understands actions taken by law enforcement officers, particularly in the context of use-of-force incidents. For example, following the 2016 fatal shooting of Gerald Hall by D.C. Metro Police in Washington, D.C., there were conflicting

reports about whether Mr. Hall had a weapon at the time of the shooting. *See* Tom Roussey, *Family Says Man Killed in Police-Involved Christmas Day Shooting in D.C. was ‘not armed’*, ABC7: WJLA (Dec. 27, 2016), <http://bit.ly/2oEvQmc>. The public release of BWC video of the incident enabled the news media to walk the public through it moment by moment, pausing at crucial points to show that Mr. Hall did, in fact, have a knife. *See* Garrett Haake, *Body Camera Video Shows D.C. Man Armed with Knife When Shot by Police*, WUSA9 (Jan. 5, 2017), <http://on.wusa9.com/2BN51W7>. In some instances, public release of bodycam video has contradicted officers’ accounts of use-of-force incidents. In Denver, for example, a local TV station obtained—through a public records request—BWC video that showed an officer placing his knee on a suspect’s neck during an arrest. *See* Brian Maass, *New DPD Body Cam Video Shows Excessive Force*, CBS4 Denver (Mar. 12, 2015), <http://cbsloc.al/2CecSy1>. While the officer had stated he “initially held [the suspect] down by placing [his] knee on the back of [the suspect’s] upper shoulders . . . ,” the BWC video “seem[ed] to show that for several minutes, [the officer] actually had his knee on the man’s neck. At one point on the video the suspect shouts ‘I’m trying to breathe . . . trying to live . . . trying to breathe.’” *Id.*

Moreover, the routine (or standardized) release of BWC footage by law enforcement entities allows the public and the press to evaluate the official conduct not only of individual officers on specific occasions, but of department-wide practices. *See, e.g.,* Vivian Ho, *Body Cam Study Finds Oakland Police Speak Less Respectfully to Black People*, *Governing Mag.* (June 6, 2017) (“An analysis of 981 traffic stops made by 245 Oakland officers in April 2014 found that officers were more apt to use terms of respect such as ‘sir,’ ‘ma’am,’ ‘please’ and ‘thank you’ when dealing with white motorists when compared to black ones . . . . After stopping black people, officers more often used terms deemed to be disrespectful, calling them by their first

names, ‘bro’ or ‘my man,’ and instructing them to keep their hands on the wheel, the study found.”), <https://perma.cc/KY98-BGLT>.

Here in New York, News Media Intervenors have used the BWC footage of the shootings of Miguel Antonio Richards, Paris Cummings, Cornell Lockhart, and Michael Hansford released by Respondents to report on those incidents, which are unquestionably matters of public interest and concern. *See, e.g.*, Colleen Long, *Video Is Released of 1st Fatal NYPD Shooting Since Bodycams*, Associated Press (Sept. 14, 2017), <https://perma.cc/ABC2-K2C8>; Mary Ann Georgantopoulos, *New York Police Released Their First Bodycam Video Of An Officer Fatally Shooting Someone*, BuzzFeed News (Sept. 14, 2017), <http://bzfd.it/2x3q7fy>; Tina Moore & Max Jaeger, *NYPD Releases First Bodycam Footage of Fatal Police Shooting*, N.Y. Post (Sept. 14, 2017), <http://nyp.st/2f9Qufw>; Rocco Parascandola & Graham Rayman, *SEE It: Bodycam Footage Shows Bronx Cops Fatally Shooting Suspect at Center for Mentally Ill*, N.Y. Daily News (Nov. 29, 2017), <http://nydn.us/2j3Lgka>; Ashley Southall & Joseph Goldstein, *Police Release Body Camera Footage of Shooting Death in Bronx*, N.Y. Times (Sept. 14, 2017), <https://nyti.ms/2eYIxWG>; Rocco Parascandola, Kerry Burke, Laura Dimon, & Leonard Greene, *SEE IT: Bodycam video shows cops shoot knife-wielding man after responding to suicide call*, N.Y. Daily News (Nov. 28, 2017), <http://nydn.us/2k7XZp6>; Amanda Woods, *NYPD bodycam footage shows fatal shooting of knife-wielding man*, N.Y. Post (Feb. 22, 2018), <http://nyp.st/2on83ZY>.

Continued access to BWC video in New York for News Media Intervenors and members of the public pursuant to New York’s Freedom of Information Law, Pub. Off. Law §§ 84-90 (“FOIL”), is vital if the public is to have the information it needs to evaluate the actions of law enforcement officers in the context of both future use-of-force incidents and past incidents for

which footage has not been released. Such disclosure is particularly important given that the Inspector General recently reported that NYPD “officers are still not properly documenting all reportable use-of-force incidents, including an under-reporting of force incidents in arrest reports.” Press Release, City of N.Y. Dep’t of Investigation, DOI Investigation Finds Non-Compliance by NYPD with New Use-of-Force Reporting Requirements, at 1(Feb. 6, 2018), <https://perma.cc/8GYA-FSH6>.

### **THE CURRENT LAWSUIT**

On January 9, 2018, the PBA filed its Petition pursuant to Article 78 seeking to prevent Respondents from releasing BWC footage to the public, including the News Media Intervenors. The Petition seeks to compel Respondents to withhold BWC footage under Section 50-a, a provision of the Civil Rights Law that Respondents argue does not apply, and that, even if it did apply, they would be free to waive. The PBA subsequently filed an Order to Show Cause seeking a temporary restraining order preventing Respondents from releasing such footage to the public during the pendency of this proceeding. In rejecting the PBA’s application for a temporary restraining order, this Court concluded that the PBA could not demonstrate a likelihood of success on the merits because BWC footage is not a “personnel record” under Section 50-a. The News Media Intervenors agree.

The News Media Intervenors have now moved to intervene, in advance of a possible appeal of this Court’s order denying the PBA’s application for a temporary restraining order, in order to assert their and the public’s right to obtain access to BWC footage. They submit this memorandum of law in opposition to the Petition and the PBA’s request for injunctive relief.

## ARGUMENT

In this time of increased public attention to law enforcement operations, the PBA's Petition seeks to deny members of the public the right to know what their government is doing. Relying on an unsupportable interpretation of Section 50-a and FOIL, the police union is attempting to force Respondents to withhold *all* BWC footage that the City has determined should be disclosed. This Court should reject this attempt and dismiss this Petition with prejudice for two reasons: (1) Respondents correctly determined that BWC footage is not a "personnel record" under Section 50-a, *see, e.g.*, Dkt. 42 ¶ 6, and (2) even if Section 50-a could apply, which it does not, Respondents had discretion to voluntarily release the footage at issue. *See, e.g., id.* ¶¶ 9-10.

### **I. BODY-WORN CAMERA FOOTAGE IS NOT EXEMPT FROM DISCLOSURE UNDER SECTION 50-A**

#### **A. FOIL Reflects the State's Strong Public Policy Favoring Disclosure**

New York's Freedom of Information Law, N.Y. Pub. Off. Law §§ 84-90, reflects the State's "strong commitment to open government and public accountability," *Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 565 (1986), and imposes a broad standard of disclosure upon governmental entities. *M. Farbman & Sons, Inc. v. NYC Health & Hosps. Corp.*, 62 N.Y.2d 75, 79-80 (1984). "The law's 'premise [is] that the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government.'" *Friedman v. Rice*, 30 N.Y.3d 461, 475 (2017) (quoting *Fink v. Lefkowitz*, 47 N.Y.2d 567, 571 (1979)). Indeed, one of the law's "salient features is its capacity to expose 'abuses on the part of government; in short, 'to hold the governors accountable to the governed.'" *Id.* (quoting *Fink*, 47 N.Y.2d at 571). Under FOIL, all records of a public agency are declared to be open for public

inspection unless they are specifically exempted from disclosure by statute. *Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462 (2007).

The statutory exemptions to disclosure must be narrowly construed, and the burden is on an “agency to demonstrate that ‘the material requested falls squarely within the ambit of one of the[] statutory exemptions.’” *Newsday, Inc. v. Empire State Dev. Corp.*, 98 N.Y.2d 359, 362 (2002) (quoting *Fink*, 47 N.Y.2d at 571). An agency denying access to government documents or other materials must articulate a “particularized and specific justification” for not disclosing requested documents. *Fink*, 47 N.Y.2d at 571. “[C]onclusory assertions, unsupported by facts, will not suffice.” *Laveck v. Vill. Bd. of Trustees*, 145 A.D.3d 1168, 1169-70 (3d Dep’t 2016); accord *Dilworth v. Westchester Cnty. Dep’t of Corr.*, 93 A.D.3d 722, 724 (2d Dep’t 2012) (“Conclusory assertions that certain records fall within a statutory exemption are not sufficient; evidentiary support is needed.”).

In order to meet its burden of demonstrating that BWC footage is subject to Section 50-a, Petitioner must show that:

(1) such footage is a “personnel record,” which requires a showing that its purpose is *primarily* for use in evaluating the performance of the officer(s), by supervisors, in periodic personnel reviews;

(2) that the nature of the material is subjective, unsubstantiated, and in the nature of “unconfirmed allegations”; **and**

(3) that if disclosed to a litigant, or the public, the records have a high probability of being used for the purpose of degrading, embarrassing, harassing or impeaching the integrity of (i.e. abusing) the officer(s) in question.

As demonstrated below, Petitioner has not met—and cannot meet—its burden with respect to any one of the above required elements, much less all three.

**B. Police Officers' Body-Worn Camera Footage Is Not A "Personnel Record" under Section 50-a**

The statutory provision upon which the PBA relies is not applicable to BWC recordings. Section 50-a provides an exemption from disclosure under FOIL for “personnel records used to evaluate performance toward continued employment or promotion.” Civ. Rights Law § 50-a(1). It does not exempt from disclosure every record that could be said to concern the conduct of police officers. *See Daily Gazette Co. v. City of Schenectady*, 93 N.Y.2d 145, 157 (1999) (explaining that “it is not sufficient merely to demonstrate that the recorded data may be ‘used to evaluate performance toward continued employment or promotion’ of the officers”). Indeed, Section 50-a, like any other exception to FOIL’s broad mandate of disclosure, must be “narrowly construed to provide maximum access.” *Burns*, 67 N.Y.2d at 566.

The question of “whether a document qualifies as a personnel record . . . depends upon its nature and its use in evaluating an officer’s performance.” *Prisoners’ Legal Servs. v. N.Y.S. Dep’t of Corr. Servs.*, 73 N.Y.2d 26, 32 (1988). The exemption is construed to apply only to “personnel records used to evaluate performance toward continued employment or promotion” and only “to the extent reasonably necessary to effectuate the purposes of Civil Rights Law § 50-a—to prevent the potential use of information in the records in litigation to degrade, embarrass, harass or impeach the integrity of the officer.” *Daily Gazette*, 93 N.Y.2d at 157-58; *see id.* at 159 (stating that exemption only applies to extent the agency “demonstrate[s] a substantial and realistic potential of the requested material for the abusive use against the officer”).

These authorities make clear that Petitioner cannot meet its burden of establishing that contemporaneous recordings of police officers discharging their official duties by interacting with members of the public (oftentimes in public places) fits within the narrow statutory definition of “personnel record.” Indeed, in the most analogous decision we are aware of, *Green v. Annucci*, No. 2156-17, slip op. (Sup. Ct. Albany Cnty. Sept. 11, 2017),<sup>2</sup> the court found that Section 50-a did not apply to video footage from an incident at a correctional facility involving an inmate and correctional officers, finding that

while the subject video recording was a medium used to evaluate the performance of the officer(s), this is coincidentally the video’s use and not exclusively its nature and use. The Court finds this video recording to be a mixed use material, meaning it could be used for several purposes including that of an officer(s) evaluation. The video footage is not confidential and personal, but a video record of an event and incident that occurred at a correctional facility . . . . Officer evaluation was not the nature and use of the video subject to the FOIL request.

*Id.* at 3. The court explained that “[t]o hold otherwise would allow every video recording to be held under such exemption, whether that be in a correctional facility such as an incident like this or on a police officer’s body cam[era] recording . . . .” *Id.* The court went on to further hold that because “the video footage that is sought just depicts the actual acts and conduct of individuals, not unsubstantiated allegations or complaints,” to the extent “these acts or conduct depicted subsequently degrade, embarrass, or impeach the integrity of an officer, such would be due to the subjective fault of the actor(s).” *Id.* at 4.

The same reasoning applies with equal force to police BWC recordings. Like the video recording in *Green*, BWC footage is not “generated for the purpose of assessing an employee’s alleged misconduct,” *contra Hearst Corp. v. N.Y.S. Police*, 132 A.D.3d 1128, 1129-30 (3d Dep’t 2015). Instead, body-worn cameras are designed to be turned on whenever an officer engages in

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<sup>2</sup> A copy of this decision is included in Exhibit 1 to the Affirmation of Thomas B. Sullivan which accompanies this memorandum.

any number of everyday, unremarkable “police actions,” such as arrests, uses of force, or vehicle stops, *see* Dkt. 7 at 2, the vast majority of which involve no police misconduct whatsoever.

Respondents have been clear that body-worn cameras are, first and foremost, tools to promote transparency and accountability. *See* Dkt. 42 ¶ 42.<sup>3</sup> Listing the benefits of the program, the NYPD states that the cameras “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.” *See* Dkt. 7 at 1. Although Petitioner narrows its focus to only one of those listed uses—“review by supervisors”—in context, it is clear that is not the primary “nature and use” of BWC footage.

Where a document or other material is potentially relevant to an employee’s performance, but was not created primarily for that purpose, courts appropriately have been reluctant to find that Section 50-a applies. This is because Section 50-a does not apply to “neutral” or objective information. *See Daily Gazette*, 93 N.Y.2d at 158; *cf. Prisoners’ Legal Servs.*, 73 N.Y.2d at 31 (noting that the goal of the statute is to protect officers against “*unsubstantiated and irrelevant* complaints of misconduct” (emphasis added)).<sup>4</sup> Thus, for

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<sup>3</sup> This is consistent with the approach taken by other jurisdictions. *See* Yale Body Cam Report at 3-5 (noting that legislatures and police departments have created bodycam programs to increase transparency). As former United States Attorney General Loretta Lynch has stated, “[b]ody-worn cameras hold tremendous promise for *enhancing transparency*, promoting accountability, and advancing public safety for law enforcement officers and the communities they serve.” Press Release, United States Dep’t of Justice, Justice Department Announces \$20 Million in Funding to Support Body-Worn Camera Pilot Program (May 1, 2015) (emphasis added), [perma.cc/9QM8-QGDZ](http://perma.cc/9QM8-QGDZ).

<sup>4</sup> The PBA itself made this distinction clear in its letter in support of the enactment of Section 50-a. Then-President John Maye stated that the law was needed because “police officers are bearing the brunt of fishing expeditions by some attorneys who are subpoenaing personnel records in an attempt to attack officers’ credibility, a tactic that has le[d] to abuse and in some cases to the disclosure of unverified and unsubstantiated information that the records contain.” *See* Ltr. from John Maye to Gov. Hugh L. Carey, June 18, 1976, at 2, attached as Exhibit 2 to the accompanying Sullivan Affirmation.

example, the Court of Appeals found that Section 50-a did not apply to “records containing statistical or factual tabulations of sick time” for a particular officer over the course of one month. *See Burns*, 67 N.Y.2d at 565; *see also Beyah v. Goord*, 309 A.D.2d 1049, 1051 (3d Dep’t 2003) (finding that employee interviews are not personnel records). There is no doubt that these types of records can be (and routinely are) considered in annual and other periodic evaluations of officer performance; nevertheless, that fact, alone, does not render them “personnel records” under Section 50-a.

Similarly, the Court of Appeals has found that “gun tags”—records concerning the purchase of assault rifles for personal, nonofficial use by police officers—are not personnel records. *See Capital Newspapers Div. of Hearst Corp. v. City of Albany*, 15 N.Y.3d 759, 761 (2010). In reaching that conclusion, the Court reversed the decision of the Third Department, which had held that the gun tags were personnel records because “when coupled with other information they may be used to implicate officers in misconduct.” *See Capital Newspapers Div. of Hearst Corp. v. City of Albany*, 63 A.D.3d 1336, 1338 (3d Dep’t 2009). BWC footage similarly falls outside the narrow scope of what constitutes a personnel record. Like the video at issue in *Green*, BWC footage “creat[es] an irrefutable record of what occurred,” *Floyd v. City of N.Y.*, 959 F. Supp. 2d 668, 685 n.65 (S.D.N.Y. 2013); *see Green*, slip op. at 4. It is neither unverified nor unsubstantiated; it presents “just the facts” of the recorded encounter. The mere fact that such objective, contemporaneous recordings of events can be used as part of the process of evaluating police officer performance does not transform such a “neutral” record into a “personnel record.” To rule otherwise would effectively exempt any document showing any potential misconduct by a police officer from disclosure, because that information could in some hypothetical way impact his or her employment. That would be directly contrary to the purpose

of FOIL. *See Burns*, 67 N.Y.2d at 565-66 (stating that FOIL is designed to “provid[e] the electorate with sufficient information to ‘make intelligent, informed choices with respect to both the direction and scope of governmental activities’ and with an effective tool for exposing waste, negligence and abuse on the part of government officers” (quoting *Fink*, 47 N.Y.2d at 571)).

Even in cases involving far more subjective materials, courts have declined to find that Section 50-a applies. For example, in a case involving an accident between a stolen vehicle being pursued by police officers and another vehicle, the trial court found that two witness statements, a post-pursuit form filled out by the officers involved, and a narrative of the incident prepared by a police lieutenant were not protected by Section 50-a as they were merely “descriptions of the incidents.” *McBride v. City of Rochester*, No. 1988-02, 2004 WL 5489809 (Sup. Ct. Monroe Cnty. Sept. 22, 2004), *rev’d on other grounds*, 17 A.D.3d 1065, 1066 (4th Dep’t 2005); *accord Johnson v. Gillespie*, 214 A.D.2d 537, 537-38 (2d Dep’t 1995) (“certain records, reports, and statements related to an accident between a police vehicle and a bicycle” were not personnel records used to evaluate the officer’s performance).

Similarly, in *Gannett Co., Inc. v. James*, the court found that “use of force forms” filed by police officers over a number of years were not personnel records under Section 50-a, as they were not used to evaluate performance. 86 A.D.2d 744, 745 (4th Dep’t 1982). The court distinguished such records from complaints made to internal affairs divisions of the two agencies from which records were sought. *Id.* Relying on the *Gannett* case, the First Department later reached the same conclusion. *See Newsday, Inc. v. N.Y.C. Police Dep’t*, 133 A.D.2d 4, 5-6 (1st Dep’t 1987).<sup>5</sup>

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<sup>5</sup> In both cases, the court found that the use-of-force forms were exempt from disclosure under a separate exemption as inter-agency materials. That exemption would have no application to BWC footage, which is purely objective.

**C. Section 50-a Only Applies to a Specific *Subset* of “Personnel Records” – Those Likely to Be Used “Abusive[ly]” Against an Officer**

In addition, even when material can be considered a personnel record, it is still subject to disclosure unless the agency can “demonstrate a substantial and realistic potential of the requested material for the abusive use against the officer.” *See Daily Gazette*, 93 N.Y.2d at 159; *accord Prisoners Legal Servs.*, 73 N.Y.2d at 33 (“records having remote or no such potential [abusive] use, like those sought in *Capital Newspapers*, fall outside the scope of the statute”). Just like the footage in *Green*, any embarrassment or questions raised about an officer’s integrity following the release of BWC footage will be caused by the officer’s own actions. Legitimate criticism of governmental conduct based on objective facts, by definition, cannot be “abusive.” To the contrary, it furthers the very purpose of the FOIL. As Winston Churchill put it, “[c]riticism may not be agreeable, but it is necessary. It fulfills the same function as pain in the human body; it calls attention to an unhealthy state of things. If it is heeded in time, danger may be averted; if it is suppressed, a fatal distemper may develop.” *See Kingsley Martin, Winston Churchill Interviewed in 1939: ‘The British People Would Rather Go Down Fighting,’ New Statesman* (Jan. 6, 2014) (reprinting interview from January 7, 1939), <https://www.newstatesman.com/archive/2013/12/british-people-would-rather-go-down-fighting>.

Further, in many cases, the release of BWC footage may demonstrate to the public that the use of deadly force was justified. *See Floyd*, 959 F. Supp. 2d at 685 (“Video recordings will be equally helpful to members of the NYPD who are wrongly accused of inappropriate behavior.”); *see also* Yale Body Cam Report at 7 (“Body cams also have the potential to speed up the process of exonerating police officers who have not committed misconduct and to reduce the frequency of frivolous complaints because those complainants will know that officers have good information with which to exonerate themselves.” (footnote omitted)). After Respondents’

release of BWC footage of the shooting of Miguel Richards, the news site DNAinfo watched the video with a retired NYPD detective sergeant who concluded that the officers involved “showed great restraint and followed departmental procedures to a T—despite the highly charged nature of the encounter.” Trevor Kapp, *Fatal Police Shooting of Mentally Ill Man Done by the Book, Expert Says*, DNAinfo (Oct. 18, 2017), <https://www.dnainfo.com/new-york/20171018/concourse/miguel-richards-deborah-danner-police-shooting-body-cameras>. Similarly, the release of footage from the Cornell Lockhart shooting was said to “dramatically contradict[] a claim” from a witness that police had commanded Mr. Lockhart to drop his knife only three times. *See Body Cam Footage Contradicts Witness Claims About Deadly NYPD Shooting*, CBS New York (Nov. 29, 2017), <http://newyork.cbslocal.com/2017/11/29/bronx-shelter-nypd-shooting-body-cam/>. To the extent BWC footage shows that officers acted properly, it cannot reasonably be said to degrade or harass them.

Here, the PBA contends that *all* BWC footage is a personnel record—precisely the extreme position rejected by the court in *Green*. *See Gould v. N.Y.C. Police Dep’t*, 89 N.Y.2d 267, 275 (1996) (“blanket exemptions for particular types of documents are inimical to FOIL’s policy of open government”). The overbreadth of Petitioner’s request is perhaps best demonstrated by incidents involving no use of force at all. For example,

BWC footage of two Brockport officers trying to corral a squirrel which had broken into an apartment and eaten some holiday cookies went viral at the end of last year. *See Cookie-stealing Squirrel Lunges at Police Officer*, NBC 5 (Dec. 30, 2017), <http://www.mynbc5.com/article/cookie-stealing-squirrel-lunges-at-police-officer/14522422>. In another incident, the body-worn camera of a police officer in Macedon captured that officer saving a woman pulled underwater while kayaking in the Erie Canal. *See Ali Touhey, Only on*

8: *Police Body Camera Shows Water Rescue*, Rochester First (last visited Feb. 28, 2018), <http://www.rochesterfirst.com/news/local-news/only-on-8-police-body-camera-shows-water-rescue/231511127>. In neither case could the release of such BWC footage subject the officers involved to embarrassment or abuse and, at least with respect to the squirrel video, it is difficult to see how it could play any role in an evaluation of the officers' job performance. But the relief sought here—a blanket ban on the release of *all* BWC footage—would bar disclosure of *all* similar recordings in the future.

In sum, as Respondents correctly argue, BWC footage is not a personnel record subject to Section 50-1. Accordingly, the PBA's Petition should be dismissed.

## **II. RESPONDENTS HAVE THE DISCRETION TO DISCLOSE BWC FOOTAGE EVEN IF A FOIL EXEMPTION POTENTIALLY APPLIES**

### **A. FOIL Does Not Prohibit the Release of Information an Agency Chooses to Disclose**

For the reasons set forth above, Respondents correctly determined that Section 50-a does not apply to the BWC footage that was released in connection with the three police shootings cited in the PBA's Petition. Yet even assuming, *arguendo*, that the released BWC footage was potentially exempt from disclosure under FOIL, Respondents still had discretion to release the videos to the public. And, indeed, given that one of the primary goals of instituting a BWC program is to promote public confidence in the integrity of its police department, withholding the recordings from the public would have been profoundly counterproductive. *Cf.*, *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 787 N.E.2d 602, 608 (Mass. App. Ct. 2003) (“It would be odd, indeed, to shield from the light of public scrutiny . . . the workings and determinations of a process whose quintessential purpose is to inspire public confidence.”); *see also* Steven D. Zansberg, *Why We Shouldn't Hide What Police Body Cameras Show*, *Governing Mag.* (Aug. 29, 2016), (arguing that a regime of secrecy defeats the purpose of building public

trust: “withholding the [BWC] recordings feeds the public’s suspicion that there is something to hide.”), <http://www.governing.com/gov-institute/voices/col-police-body-camera-recordings-transparency.html>; *Cf. Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 587 (1976) (Brennan, J., concurring) (with respect to the conduct of the judicial branch of government, noting that “[s]ecrecy . . . can only breed . . . distrust of courts and suspicion concerning the competence and impartiality of judges”); *United States v. Cianfrani*, 573 F.2d 835, 851 (3d Cir. 1978) (“Public confidence cannot long be maintained where important . . . decisions are made behind closed doors and then announced in conclusive terms to the public, *with the record supporting the [government’s] decision sealed from view.*” (emphasis added))).

In keeping with this State’s public policy favoring disclosure, “while an agency is permitted to restrict access to those records falling within [FOIL’s] statutory exemptions, the language of the exemption provision contains permissive rather than mandatory language, and it is within the agency’s discretion to disclose such records, with or without identifying details, if it so chooses.” *Burns*, 67 N.Y.2d at 567; *accord Hanig v. State of N.Y. Dep’t of Motor Vehicles*, 79 N.Y.2d 106, 109 (1992) (“Even where records fall within an exemption, an agency in its discretion may disclose them in whole or in part.”); *see* Pub. Off. Law § 87(2) (when an exemption applies, an “agency *may* deny access to records or portions thereof” (emphasis added)); *see also* N.Y.S. Comm. on Open Gov’t, Opinion No. FOIL-AO-15701 (Dec. 20, 2005), <https://docs.dos.ny.gov/coog/ftext/fl5701.htm> (“Even when agencies may have the ability to deny access to records, they are not required to do so and may assert their discretionary authority to disclose.”).<sup>6</sup> Like the federal Freedom of Information Act (“FOIA”), upon which FOIL is based, the exemptions to disclosure under the statute “demarcate[] the agency’s obligation to

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<sup>6</sup> The First Department has held that “courts should defer” to opinions of the Committee in interpreting FOIL. *See Kwasnik v. City of N.Y.*, 262 A.D.2d 171, 172 (1st Dep’t 1999).

disclose; [they do] not foreclose disclosure.”<sup>7</sup> *Chrysler Corp. v. Brown*, 441 U.S. 281, 291-92 (1979).

**B. The City May Choose to Release Information Potentially Exempt from Disclosure under Section 50-a**

Like any other exception to FOIL’s mandate of disclosure, a government agency may choose not to invoke Section 50-a. Indeed, the First Department reaffirmed this just last year. *See Luongo v. Records Access Officer*, 150 A.D.3d 13, 24 (1st Dep’t 2017). In an earlier case, *Reale v. Kiepper*, 204 A.D.2d 72 (1st Dep’t 1994), the court reversed a trial court order enjoining posting of disciplinary dispositions of transit authority police officers in a departmental bulletin. The court found that the proposed postings would not violate Section 50-a because, among other reasons, “respondents, themselves, have chosen voluntarily to make such disclosure.” *Id.* at 73-74; *see Poughkeepsie Police Benev. Ass’n, Inc. v. City of Poughkeepsie*, 184 A.D.2d 501, 501 (2d Dep’t 1992) (“the use of such information by a governmental entity, in furtherance of its official functions, is unrelated to the purpose of Civil Rights Law § 50-a”); *see also Smith v. Town of Stony Point*, No. 13 CV 5000 VB, 2014 WL 2217900, at \*3 (S.D.N.Y. May 22, 2014) (“New York courts have repeatedly upheld disclosures of the contents of police personnel files outside of the context of litigation, and in furtherance of the police departments’ official functions.”).<sup>8</sup>

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<sup>7</sup> New York courts may look to the federal FOIA for guidance in interpreting FOIL. *See Fink*, 47 N.Y.2d at 572 n\* (because FOIL was patterned after FOIA, federal case law and legislative history on FOIA is relevant to interpretation of FOIL).

<sup>8</sup> The cases cited by the PBA in its Feb. 9 letter brief are not to the contrary. Indeed, in *Verizon N.Y. v. Mills*, where Petitioner cites only the trial court’s opinion, *see* Dkt. 45 at 5, the Appellate Division later held that the state agency in question “retained discretionary authority under FOIL to disclose . . . despite the applicability of the exemption” and remitted the matter to it “to allow it to exercise its discretion as to whether, despite the exemption, the . . . reports should be disclosed.” 60 A.D.3d 958, 960 (2d Dep’t 2009). The other cases involve attempts by a

Courts in this State have repeatedly rejected attempts by officers and their representatives to force police departments to assert Section 50-a, or to impose liability for a department's decision to release documents that *could have been withheld* under that provision. See *Balduzzi v. City of Syracuse*, No. 96-CV-824, 1997 WL 52434, at \*16 (N.D.N.Y. Feb. 4, 1997) (“New York courts that have addressed similar arguments have unanimously concluded that there is no private right of action on the part of police officers for violations of § 50-a.”). For example, *Simpson v. N.Y.C Transit Auth.*, 112 A.D.2d 89 (1st Dep’t 1985) involved the NYCTA’s voluntary release, over a former transit officer’s objection and without the issuance of a court order, of a former transit officer’s personnel records to a plaintiff who brought suit after the officer shot him. *Id.* at 89-90. The officer attempted to bring claims against the NYCTA, alleging a violation of Section 50-a. *Id.* The First Department found that summary judgment should have been awarded to the NYCTA, as the officer had no private right of action under the statute. *Id.* at 90-91; see *35 N.Y.C. Police Officers v. City of N.Y.*, 34 A.D.3d 392, 394 (1st Dep’t 2006) (“the statute does not create a private right of action for police officers for a claimed violation of Civil Rights Law § 50-a”); accord *Doe v. City of Schenectady*, 84 A.D.3d 1455, 1457 (3d Dep’t 2011); *Poughkeepsie Police Benev. Ass’n*, 184 A.D.2d at 501; *Carpenter v. City of Plattsburgh*, 105 A.D.2d 295, 298-99 (3d Dep’t 1985), *aff’d*, 66 N.Y.2d 791 (1985); *Maggi v. Mahoney*, No. 2000-28343, 2001 WL 36384915 (Sup. Ct. Suffolk Cnty. May 3, 2001); *Horne v. Buffalo Police Benevolent Ass’n*, No. 07-CV-781C, 2008 WL 11363387, at \*2 (W.D.N.Y. Dec. 10, 2008).

In short, even if Section 50-a could apply to BWC footage—which it does not—Respondents have the discretionary authority not to assert Section 50-a.

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government agency to assert Section 50-a; none involve a situation, like here, where Respondents have explicitly concluded that Section 50-a does not apply.

### III. THE PBA CANNOT SEPARATELY BLOCK THE RELEASE OF THE FOOTAGE UNDER SECTION 87(2)(F) OF THE PUBLIC RECORDS LAW

The PBA also contends that the release of BWC footage violates New York Public Officers Law § 87(2)(f) (“Section 87(2)(f)”), though Petitioner does not develop this point. Any attempt to block Respondents’ release of BWC footage under this FOIL provision also fails, for at least the following two reasons.

First, Section 87(2)(f) cannot be applied categorically and, even if it could, it would not apply as a general matter to BWC footage. Section 87(2)(f) provides a limited exemption for specific material which “if disclosed could endanger the life or safety of any person.” Moreover, the PBA’s bald argument that Respondents’ release of BWC footage from the four police shootings it has cited to the Court “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,” falls far short of demonstrating that Section 87(2)(f) could apply. *See* Dkt. 1 (“PBA Pet.”) ¶ 181.

“[C]onclusory allegations, unsupported either by a visual demonstration from the tapes or by other evidentiary facts, are insufficient to establish total exemption on safety grounds.” *Buffalo Broad. Co., Inc. v. N.Y.S. Dep’t of Corr. Servs.*, 155 A.D.2d 106, 112 (3d Dep’t 1990). For example, in *Laveck v. Village Board of Trustees*, the Appellate Division rejected an attempt by the village board to withhold information about proponents of a deer culling operation based on affidavit testimony that deer management programs were contentious and that officials in a neighboring town had received threats. 145 A.D.3d at 1171. The court found that the board had failed to “demonstrate a possibility of endangerment.” *Id.* (internal marks and citation omitted). In particular, the court noted, “there was no indication that participants in the program, who were known to each other and whose participation could be discovered through observation, had

received any threats.” *Id.* The PBA, while arguing that Respondents’ public release of the BWC footage of the four specific police shootings at issue is dangerous, submits no factual evidence to support such a claim, relying instead on nothing more than rank speculation. Indeed, though the first batch of BWC footage was released more than five months ago, *see* PBA Pet. ¶ 108-09, the PBA points to no actual incidents where anyone has reacted violently to police officers as a result, or any specific threats of violence. As discussed above, in many cases the public reaction has instead been positive, with the disclosed video showing that police acted appropriately.

The PBA also fails to account for the fact that the names of police officers involved in shooting incidents can be disclosed even when BWC footage is not released publicly. For example, the identities of the four officers involved in the shooting of Amadou Diallo in 1999—well before the existence of the NYPD’s BWC program—were available to the public the next day. *See* Michael Cooper, *Officers in Bronx Fire 41 Shots, and an Unarmed Man is Killed*, N.Y. Times (Feb. 5, 1999), <http://www.nytimes.com/1999/02/05/nyregion/officers-in-bronx-fire-41-shots-and-an-unarmed-man-is-killed.html>. Even if the City were barred from releasing BWC footage, the names of officers involved in use-of-force incidents would still be subject to public disclosure.

Second, as discussed above with respect to Section 50-a, the City has the discretion to release the footage in question even if Section 87(2)(f) could potentially apply. The PBA points to no cases suggesting that it, or any individual police officer, has the ability to force Respondents to assert that discretionary exemption.

In sum, Respondents’ release of BWC footage in the past, and its plans to release additional BWC footage in the future, cannot violate Section 87(2)(f).

#### IV. THE PBA CANNOT “ANNUL” RESPONDENTS’ DECISION TO RELEASE BWC FOOTAGE

The PBA’s Petition purports to seek an order “[a]nnulling the determination of Respondents” to publicly release “BWC footage of the Richards, Cummings, and Lockhart shootings” and “[p]rohibiting Respondents’ further release of BWC footage of the Richards, Cummings, and Lockhart shootings,” *see* PBA Pet. at 29. Even if this Court were to find that Respondents’ prior public disclosure of BWC footage from those incidents somehow violated Section 50-a—which it did not—there is no way to make hidden what was once public, as Petitioner acknowledges. *See* Dkt. 39 ¶ 35. Indeed, by making the footage available publicly, the City has arguably waived any confidentiality accorded to it. *Cf. Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 (2d Cir. 2004) (“We simply do not have the power, even were we of the mind to use it if we had, to make what has thus become public private again. . . . The genie is out of the bottle . . . . We have not the means to put the genie back.”). Therefore, there is no live case or controversy with respect to the disclosure of any BWC footage that has already been released to the public for the purpose of any injunctive relief, and no money damages are being sought.<sup>9</sup>

Notably, even if the Court were to prohibit the “further release” of BWC footage that Respondents have already made public, News Media Intervenors would be free to continue to display the already publicly available footage on television or their websites and to discuss it in their reporting. *See Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 103 (1979) (“[I]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order.”); *accord Bartnicki v. Vopper*, 532 U.S. 514, 533-34 (2001); *Cox*

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<sup>9</sup> Nor would such damages be available. *See Carpenter*, 105 A.D.2d at 299.

*Broad. Corp. v. Cohn*, 420 U.S. 469, 496 (1975); *Hays v. Marano*, 114 A.D.2d 387, 389 (2d Dep't 1985).<sup>10</sup>

#### V. THE PBA FAILS TO MEET ITS BURDEN TO JUSTIFY EXTRAORDINARY INJUNCTIVE RELIEF

The PBA also fails to establish irreparable injury that is a prerequisite for *any* injunctive relief—either the injunction sought in the Petition or the temporary restraining order sought in their subsequent filing. “Preliminary injunctive relief is a drastic remedy and will only be granted if the movant establishes a clear right to it under the law and the undisputed facts found in the moving papers.” *Koultukis v. Phillips*, 285 A.D.2d 433, 435 (1st Dep't 2001); *Faberge Int'l Inc. v. Di Pino*, 109 A.D.2d 235, 240 (1st Dep't 1985). A party seeking a preliminary injunction must establish (1) the likelihood of success on the merits, (2) an irreparable injury absent the granting of preliminary injunctive relief, and (3) a balancing of the equities. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860, 862 (1990); *Faberge Int'l Inc.*, 109 A.D.2d at 240. “Proof establishing these elements must be by affidavit and other competent proof, with evidentiary detail” and “[i]f key facts are in dispute, the relief will be denied.” *Faberge Int'l Inc.*, 109 A.D.2d at 240; *Scotto v. Mei*, 219 A.D.2d 181, 182 (1st Dep't 1996).

For the reasons discussed above, the PBA cannot establish a likelihood of success on the merits. It has also failed to adequately allege irreparable harm, and it cannot meet its burden to prove such harm will befall its members if the injunction does not issue. “Irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction. To prevail, the movant must establish not a mere possibility that it will be irreparably harmed, but that it is *likely*

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<sup>10</sup> Even if this Court found that Respondents acted unlawfully in disclosing the footage, it would not change the outcome. The government may not punish a “publisher of information [that] has obtained the information in question in a manner lawful in itself but from a source who has obtained it unlawfully.” See *Bartnicki*, 532 U.S. at 528, 535 (citation omitted).

to suffer irreparable harm if equitable relief is denied.” *Bank of Am., N.A. v. PSW NYC LLC*, 29 Misc. 3d 1216(A), 2010 WL 4243437, at \*10 (Sup. Ct. N.Y. Cnty. 2010) (citation omitted). It is well settled that the alleged irreparable harm must be “imminent, not remote or speculative.” *Golden v. Steam Heat, Inc.*, 216 A.D.2d 440, 442 (2d Dep’t 1995) (finding “concern” about potential adverse effect insufficient); *see also Lezell v. Forde*, 26 Misc. 3d 435, 440 (Sup. Ct. Kings Cnty. 2009) (“Apprehensions will not qualify as irreparable injury or justify the issuance of a preliminary injunction.” (citation omitted)); *Tech. For Measurement, Inc. v. Briggs*, 291 A.D.2d 902, 903 (4th Dep’t 2002) (“[C]onclusory allegations fail to establish that irreparable harm will result if the preliminary injunction is not granted”). Thus, a plaintiff’s failure “to submit the requisite ‘factual evidentiary detail’ to support [its] contention[s]” warrants the denial of injunctive relief. *Glazer v. Brown*, 55 A.D.3d 1385, 1385 (4th Dep’t 2008).

As discussed above, the PBA has presented only speculation that anyone will be harmed by Respondents’ release of BWC footage. The PBA’s prayer for injunctive relief is properly denied on this basis alone. *Faberge Int’l Inc.*, 109 A.D.2d at 240; *Glazer*, 55 A.D.3d at 1385; *accord Koultukis*, 285 A.D.2d at 435 (preliminary injunction is a “drastic remedy” that is granted only when the movant has established clear legal right based on undisputed fact).

Nor can the officers whose official conduct is memorialized on the BWC recordings claim they have any cognizable “reasonable expectation of privacy” in such records. It is well established that police officers “do not enjoy a reasonable expectation of privacy with respect to records concerning only how they discharge their official duties.” *City of Baton Rouge v. Capital City Press, L.L.C.*, 4 So. 3d 807, 821 n.19 (La. Ct. App. 2008), *modified on reh’g*, 7 So. 3d 21 (La. Ct. App. 2009); *see also, e.g., Denver Policemen’s Protective Ass’n v. Lichtenstein*, 660 F. 2d 432, 435 (10th Cir. 1981) (police officers have no legitimate privacy interest in

“documents related simply to the officers’ work as police officers.”); *Kallstrom v. City of Columbus*, 165 F. Supp. 2d 688, 695 (S.D. Ohio 2001) (no constitutional privacy interest in disciplinary records, incident complaints from citizens, and other documents detailing how each officer is performing his or her job); *Charleston Gazette v. Smithers*, 752 S.E.2d 603, 619 (W. Va. 2013) (“conduct by a state police officer while the officer is on the job in his or her official capacity as a law enforcement officer and performing such duties, including but not limited to, patrolling, conducting arrests and searches, and investigating crimes” is not private information).<sup>11</sup>

Finally, the balancing of equities here favors disclosure. “It is vital to the operation of democratic government that the citizens have facts and ideas on important issues before them. A delay of even a day or two may be of crucial importance in some instances.” *Carroll v. President & Comm’rs of Princess Anne*, 393 U.S. 175, 182 (1968) (quoting *A Quantity of Copies of Books v. State of Kansas*, 378 U.S. 204, 224 (1964) (Harlan, J., dissenting)). This is particularly important in the case of BWC footage, where the video recording can provide immediate, objective information about a shooting incident where the public is otherwise faced with divergent accounts about what has occurred. *See NYCLU v. N.Y.C. Police Dep’t*, 148 A.D.3d 642, 644 (1st Dep’t 2017) (recognizing that “the public has a compelling interest in

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<sup>11</sup> New York courts have so held with respect to records concerning the official conduct of a variety of public servants. *See Mulgrew v. Bd. of Educ. of City Sch. Dist. of City of N.Y.*, 31 Misc. 3d 296, 302-03 (Sup. Ct. N.Y. Cnty. 2011) (holding that “Teacher Data Reports” are not subject to a reasonable expectation of individual privacy; noting that “[c]ourts have repeatedly held that release of job-performance related information, even negative information such as that involving misconduct, does not constitute an unwarranted invasion of privacy”), *aff’d*, 87 A.D.3d 506 (1st Dep’t 2011); *Burns*, 67 N.Y.2d at 565 (sick days taken by individual police officer); *Rainey v. Levitt*, 138 Misc. 2d 962, 965 (Sup. Ct. N.Y. Cnty. 1988) (individuals’ scores on civil service exam); *Faulkner v. Del Giacco*, 139 Misc. 2d 790, 794 (Sup. Ct. Albany Cnty. 1988) (names of prison guards accused of impropriety); *Farrell v. Vill. Bd. of Trs.*, 83 Misc. 2d 125, 128 (Sup. Ct. Broome Cnty. 1975) (written reprimands of police officers, including names).

ensuring that [the NYPD] take[s] effective steps to monitor and discipline police officers”). As Baltimore County Executive Kevin B. Kamenetz has explained, “[t]he quicker we can get it out to the public to clarify what we perceive to be the facts, the better it is.” Peter Hermann & Aaron C. Davis, *As Police Body Cameras Catch on, a Debate Surfaces: Who Gets to Watch?* Wash. Post. (Apr. 17, 2015), <http://wapo.st/2Fwi5QR>.

For these reasons, the PBA’s prayer for injunctive relief should be denied.

### CONCLUSION

For all the foregoing reasons, this Court correctly denied the application by Petitioner for a temporary restraining order, and should dismiss the Petition with prejudice.

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Respectfully submitted,

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