

# REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1020  
Washington, D.C. 20005  
(202) 795-9300  
www.rcfp.org

Bruce D. Brown  
Executive Director  
bbrown@rcfp.org  
(202) 795-9301

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for purposes of identification.*

By email

June 7, 2020

The Honorable Andrew M. Cuomo  
Governor, State of New York  
NYS State Capitol Building  
Albany, NY 12224

The Honorable Andrea Stewart-Cousins  
Majority Leader, New York Senate  
Legislative Office Building, Room 907  
Albany, NY 12247

The Honorable Carl Heastie  
Speaker, New York Assembly  
Legislative Office Building, Room 932  
Albany, NY 12247

The Honorable Jamaal T. Bailey  
Legislative Office Building, Room 609  
Albany, NY 12247

The Honorable Daniel J. O'Donnell  
Legislative Office Building, Room 712  
Albany, NY 12247

Dear Governor Cuomo, Majority Leader Stewart-Cousins, Speaker Heastie,  
Senator Bailey, and Assemblyman O'Donnell,

The Reporters Committee for Freedom of the Press (the "Reporters Committee" or "RCFP") writes to strongly urge immediate repeal of Section 50-a of the Civil Rights Law ("Section 50-a"), which has become an insurmountable barrier to press and public access to law enforcement records of police misconduct in New York.

The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

As an organization committed to the principle that transparency is necessary for a free press to ensure that public agencies and officials, including law enforcement, are accountable to the citizens they serve, the Reporters Committee has long urged the Legislature to repeal or substantially

reform Section 50-a.<sup>1</sup> The Reporters Committee writes today to urge you to take decisive action. The Reporters Committee supports currently pending legislation to repeal Section 50-a, Assembly Bill 2513 (AM O'Donnell) and Senate Bill 3695 (Sen. Bailey). Another bill introduced by Senator Bailey on June 6, 2020, Senate Bill 8496/Assembly Bill 10611, would significantly improve the law.

New York is one of only two states that specifically makes records of police misconduct confidential, shielding them from disclosure under the state's public records law.<sup>2</sup> And, indeed, the provision has been interpreted so broadly that New York State's Committee on Open Government in 2014 called police misconduct in New York State more secretive than in any other state in the nation.<sup>3</sup>

Not only does Section 50-a make New York an outlier, lagging behind other states in law enforcement transparency, it is unnecessary. Legitimate concerns regarding the privacy of police officers are adequately addressed by other, existing exceptions to the Freedom of Information Law (FOIL), including, for example New York Public Officers Law section 87(2)(b). That law exempts from disclosure records that, if released, would, among other things, constitute an unwarranted invasion of personal privacy or endanger the life or safety of any person.

On June 4, 2020, the New York City Bar issued a thorough report by ten of its committees, including its Communications & Media Law Committee, in support of pending legislation to repeal Section 50-a.<sup>4</sup> The report details the manner in which overbroad judicial interpretations of Section 50-a have stymied news reporting on police misconduct and, accordingly, public oversight of law enforcement. The Reporters Committee is all too aware of the barrier that Section 50-a poses for journalists and news organizations seeking to report on police misconduct, and it agrees with the New York City Bar's recommendation that Section 50-a be repealed.

<sup>1</sup> In October 2019, the Reporters Committee submitted written testimony to the Senate Standing Committee on Codes in support of "Policing (S3695)" to "repeal provisions relating to personnel records of police officers, firefighters, and correctional officers," highlighting the ways in which Section 50-a has stymied the news media's ability to report on incidents of police misconduct. *See also*, Katie Townsend, *Penetrate the secrecy shield: New York State law must stop hiding disciplinary records from public view* (Opinion), New York Daily News (May 8, 2019), *available at*, <https://www.nydailynews.com/opinion/ny-oped-penetrate-the-secrecy-shield-20190508-ooufkfleijppkdnrvslks3wby-story.html>.

<sup>2</sup> Robert Lewis, et al., *Is Police Misconduct a Secret in Your State?*, WNYC News (Oct. 15, 2015), *available at*, <https://project.wnyc.org/disciplinary-records/>. In 2019, California reformed its law to increase public access to police disciplinary records. *See* Cal. Penal Code § 832.7.

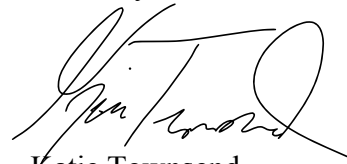
<sup>3</sup> Comm. On Open Gov't, State of N.Y. Dep't of State, Annual Report to the Governor and State Legislature (Dec. 2014), at 3, <https://www.dos.ny.gov/coog/pdfs/2014AnnualReport.pdf>

<sup>4</sup> New York City Bar, *Promote Police Transparency With the Repeal of CRL 50-a* (June 4, 2020), [https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/promote-police-transparency-repeal-crl-50-a#\\_ftn39](https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/promote-police-transparency-repeal-crl-50-a#_ftn39)

Now is not the time for half measures. It was nearly six years ago that a white New York City police officer ended the life of 27-year-old Eric Garner with a fatal chokehold, as Mr. Garner pleaded for breath on a Staten Island sidewalk. A coalition of media organizations led by the Reporters Committee were among those who argued—unsuccessfully, in light of Section 50-a—for the public release of records regarding that officer’s prior disciplinary history. In recent days, thousands of New Yorkers and tens of thousands of Americans have taken to the streets, in exercise of their First Amendment rights, to demand justice for George Floyd, a 46-year old father who, on May 25, 2020 was killed by a white Minneapolis police officer. At the time, that officer reportedly had been the subject of at least 17 prior complaints filed with the Minneapolis Police Department.<sup>5</sup>

Repealing 50-a is a necessary step not only to ensuring police accountability, but also to restoring trust between law enforcement and the communities they serve. The Reporters Committee thanks you in advance for your attention to this urgent issue of paramount public importance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katie Townsend', with a large, stylized flourish at the end.

Katie Townsend  
Legal Director,  
REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS

<sup>5</sup> Shaila Dewan and Serge F. Kovalski, *Thousands of Complaints Do Little to Change Police Ways*, The New York Times (May 30, 2020), available at, <https://www.nytimes.com/2020/05/30/us/derek-chauvin-george-floyd.html>