



June 17, 2019

Via Electronic Mail and Hand Delivery

Re: Letter of Support for Repeal of CRL 50-a, Allowing Public Disclosure of Police Records Relating to Officer Misconduct, A2513-O'Donnell/S3695-Bailey¹

Dear New York State Legislators:

We, the undersigned civil rights organizations and leaders,² urge you to repeal Civil Rights Law 50-a (“CRL 50-a” or “50-a”). CRL 50-a is a controversial and widely criticized state law that erodes public trust in law enforcement and public safety by shrouding crucial information about an officer’s past misconduct and discipline from the public.³ Police officers hold extraordinary power and discretion over the lives and safety of New Yorkers. The state secrecy engendered by CRL 50-a is particularly troubling as New York hosts the largest police department in the country.⁴ As organizations and individuals committed to transparency, accountability, and community safety, we call on legislators to stand firmly on the side of the civil rights of all New Yorkers.

¹ NY Times Editorial Board, *Chokeholds and Police Abuse, Kept From the Public: There’s still time for New York legislators to repeal the law that keeps police records secret*, June 12, 2019, available: <https://www.nytimes.com/2019/06/12/opinion/police-brutality-discipline-eric-garner.html>.

² The NAACP Legal Defense and Educational Fund, Inc. is America’s premier legal organization fighting for racial justice. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF also defends the gains and protections won over the past 75 years of civil rights struggle and works to improve the quality and diversity of judicial and executive appointments. Learn more: www.naacpldf.org; The Center for Constitutional Rights is dedicated to supporting social justice movements in their fight for liberation and the defense of their civil and human rights. Through litigation, advocacy, and strategic communications, the CCR works to dismantle systems of oppression and build power in communities under threat. As part of this work, CCR successfully challenged the New York City Police Department’s discriminatory and abusive policing practices in *Floyd et al. v. City of New York*. In a groundbreaking decision, a federal judge found the NYPD liable for a pattern and practice of racial profiling and unconstitutional stops, and the NYPD is currently under a federal monitorship to oversee court-ordered reforms to address its biased policing. Learn more: www.ccrjustice.org.

³ 50-a also covers the disciplinary records of firefighters and corrections officers. N.Y. Civil Rights Law § 50-a.

⁴ Reaves, Brian A., *Local Police Departments, 2013: Personnel, Policies, and Practices*, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, available: <https://www.bjs.gov/content/pub/pdf/lpd13ppp.pdf>.

CRL 50-a shields an officer’s misconduct and/or abusive practices from the public – those the officer has sworn to protect and serve. This secrecy enables abusive practices by police officers to go unchecked, in some cases for years. CRL 50-a also creates the conditions where New York police departments that routinely under-discipline or fail to discipline officers for misconduct, protect, and even promote, problematic officers.⁵ It allows for potentially dangerous officers, including those with violent or sexually abusive tendencies,⁶ to remain armed with weapons and in positions of power and authority. Moreover, New York State court decisions have continually broadened the scope of CRL 50-a, most recently by blocking access to mere summaries of otherwise public disciplinary trials and outcomes.⁷ These interpretations have further deprived the public of meaningful oversight and understanding of police misconduct.

Despite national trends towards transparency around officer misconduct, New York’s application of CRL 50-a makes it one of the strictest anti-transparency laws in the country. In fact, information around officer misconduct and discipline is fully available in at least twelve states.⁸ Every day more light is shed on the nationwide prevalence of alarming police violence, unconstitutional practices, and general misconduct, including by New York’s own officers.⁹ Such a lack of oversight has serious negative implications for public safety. Last year, over 1,800 New York Police Department (“NYPD”) disciplinary records were leaked to the press, detailing officer misconduct that ranged from falsifying documents, sexual assault, stomping someone’s head,

⁵ NYC CIVILIAN COMPLAINT REVIEW BD., 2017 ANNUAL REPORT at 34 (2017), available: https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf [noting the NYPD pursued no disciplinary action in 28 percent of the civilian complaints brought before it in 2017] [hereinafter 2017 CCRB Annual Report]; Thomas Tracy, *Probe Finds Inconsistent Disciplinary Punishments Give Rogue NYPD Cops Wrist Slaps for Harming Everyday People*, New York Daily News, May 28, 2019, available: <https://www.nydailynews.com/new-york/nyc-crime/ny-no-method-to-maddening-discipline-results-nypd-20190528-jdmw5y6indkfmixc54mwp4lk4-story.html>; New York City Bar’s Civil Rights and Criminal Courts Committee, Committee Report: Allow for Public Disclosure of Police Records Relating to Misconduct: Repeal CRL 50-a, May 2, 2018, at 4-5, available: <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/allow-for-public-disclosure-of-police-records-relating-to-misconduct-repeal-crl-50-a> [hereinafter “NYC Bar Report”].

⁶ Kendall Taggart & Mike Hayes, *The NYPD’s Secret Files*, April 16, 2018, available: <https://www.buzzfeednews.com/article/kendalltaggart/nypd-police-misconduct-database-explainer>.

⁷ *Patrolmen’s Benevolent Assoc. of the City of New York, Inc. v. De Blasio*, No. 153231/2018 (N.Y. Sup. Ct. Mar. 12, 2019); See also Thomas Tracy, *Judge stops NYPD from putting police disciplinary summaries online*, New York Daily News, March 12, 2019, available: <https://www.nydailynews.com/new-york/nyc-crime/ny-metro-injunction-barring-pba-summaries-20190312-story.html>.

⁸ NYC Bar Report, *supra* note 5, at 4 [Referencing 12 states that will disclose discipline records of police officers]; see also, Cynthia H. Conti-Cook, *Open Data Policing*, 105 Geo L.J. Online (2017), <https://georgetownlawjournal.org/articles/243/open-data-policing>; Sukey Lewis, *California’s New Police Transparency Law Shows How Officers Are Disciplined*, NPR, March 27, 2019, available: <https://www.npr.org/2019/03/27/707358137/californias-new-police-transparency-law-shows-how-officers-are-disciplined> [Noting California’s new laws will allow for greater data and transparency around police disciplinary matters].

⁹ See generally Taggart & Hayes, *supra* note 6; John Kelly & Mark Nichols, *We found 85,000 cops who’ve been investigated for misconduct. Now you can read their records*, USA Today, May 23, 2019, available: <https://www.usatoday.com/in-depth/news/investigations/2019/04/24/usa-today-revealing-misconduct-records-police-cops/3223984002/>; Thomas Tracy, *Probe finds inconsistent disciplinary punishments give rogue NYPD cops wrist slaps for harming everyday people*, N.Y. Daily News, May 28, 2019, available: <https://www.nydailynews.com/new-york/nyc-crime/ny-no-method-to-maddening-discipline-results-nypd-20190528-jdmw5y6indkfmixc54mwp4lk4-story.html>.

conducting illegal searches, and much more.¹⁰ The leaked files revealed that despite frequent egregious, criminal, and unconstitutional conduct, the NYPD routinely failed to adequately discipline or hold officers accountable.¹¹ The files also confirmed minimal punishment for serious misconduct, a finding that has been supported by other recent reports.¹² It is crucial that the New York legislature commit to protecting its residents by ensuring transparency and accountability from its highest public servants.

Most importantly, New York’s communities—particularly communities of color who bear the brunt of abusive and unconstitutional police practices¹³—must be able to assess whether police departments are behaving in ways that are lawful, ethical, and consistent with their values and be able to hold officers accountable for misconduct. We represent and work with these communities and have challenged unjust and racially discriminatory practices through organizing, advocacy, litigation, engagement with international mechanisms, and by ushering in critical reforms. Nevertheless, laws like CRL 50-a stand in the way of necessary and urgent progress to protect the public and these communities.

Repealing CRL 50-a and ensuring that the public has information about police misconduct and disciplinary processes offers wide benefits not only to the public, but to officers themselves. When officer behavior – such as a history of violence, excessive force or misconduct – is made public, police departments will be better able to uphold their responsibility to review and correct the behavior. Public awareness is the antidote to impunity and ensures that police departments detect patterns of abuse and take steps to hold both the officer and departments accountable. Indeed, transparency around incidents of misconduct is the only way the public can make informed judgments about the adequacy of existing processes and infrastructures. More transparent and open processes can improve trust between communities and officers, increasing both public and officer safety. Therefore, it is imperative that the public have access to information on how law enforcement agencies discipline officers who abuse their power.

Nevertheless, because of CRL 50-a, even when an officer commits an egregious act of misconduct, New York police departments can and do intentionally hide the officer’s disciplinary files from the public with full impunity. This protection, coupled with police departments’

¹⁰ See Taggart & Hayes, *supra* note 6.

¹¹ See *id.*; Tracy, *supra* note 9.

¹² A number of recent reports confirm that for serious misconduct, officers were given oral reprimands known as ‘Instructions’ or sent to training as the predominate disciplinary penalty, if any disciplinary action was pursued at all. See, e.g., CCRB Annual Report *supra* note 5; Ninth Report of the Independent Monitor, *Floyd v. City of New York*, No. 1:08-cv-01034-AT, Dkt # 680-1 (Jan. 11, 2019), at 57–60 [Noting ‘Instructions’ and/or ‘Trainings’ represented approximately 39 percent of cases in 2014; 45 percent in 2015; 53 percent in 2016; and 56 percent in 2017].

¹³ In a historic ruling on August 12, 2013, following a nine-week trial, a federal judge found the New York City Police Department liable for a pattern and practice of racial profiling and unconstitutional stops. See *Floyd v. City of New York*, No. 08-cv-1034, Dkt. # 373, and # 372. Similarly, in *Davis v. City of New York*, No. 3:11-cv-00123 (S.D.N.Y. 2011), the NYPD unlawfully stopped and arrested people of color who lived in or visited NYCHA apartments, without reasonable suspicion or probable cause. See *Davis v. City of New York*, No. 3:11-cv-00123 (S.D.N.Y. 2011), Dkt. # 1. The NYPD justified its racially discriminatory arrests by alleging the residents and their visitors were “criminally trespassing” despite the lack of evidence to support officers’ suspicions of trespass.

dysfunctional disciplinary processes,¹⁴ sends a clear message to officers who violate their police department's policy, New York law, and/or the U.S. Constitution: *you are protected over the public you have sworn to protect and serve.*

Victims of police brutality and their families should not be left in the dark around the investigations and disciplines of involved officers. Yet, it is these individuals who suffer the most from state secrecy. In 2015, NYPD officer Daniel Pantaleo killed Eric Garner, an unarmed black man, while Garner stood outside of a convenience store. The killing, captured on video, showed that Pantaleo used an illegal chokehold on Garner—a technique explicitly prohibited by NYPD's policies.¹⁵ To date, Garner's mother, Gwen Carr, does not know the full disciplinary background of the officer who killed her son. In fact, the NYPD repeatedly denied Ms. Carr's request for access to information about the investigations or disciplinary proceedings concerning the officers involved in her son's death. It was only through a leak to the media that Officer Pantaleo's extensive history of misconduct was surfaced. After a long five-year delay, Officer Pantaleo finally completed a NYPD disciplinary trial.¹⁶ And though the trial and Garner's death have gathered national attention, CRL 50-a will shield the disciplinary outcome of these proceedings from Ms. Carr and her family, robbing them of even a modicum of justice.

The dangerous effects of CRL 50-a have been long understood and better oversight of the police departments who patrol our communities is long overdue. That is why in June 2019, the New York Times Editorial Board weighed in on the need to repeal the law.¹⁷ Additionally, in May 2018, the New York City Bar issued a report supporting and calling for the repeal of CRL 50-a.¹⁸ Over 30 local and national organizations, including the undersigned organizations, welcomed the report and signed onto the accompanying letter, urging repeal.¹⁹ Across the state, leaders have repeatedly called for the repeal of this law. Now, it is up to the legislature to step up and protect New Yorkers. The time to repeal 50-a is now. Together with numerous communities, organizations, experts, and other stakeholders, we urge you to act immediately and pass A2513-O'Donnell/S3695-Bailey, repealing 50-a.

If you have any questions, please contact Rashida Ogletree-George at (202) 682-1300 or Nadia Ben-Youssef at (212) 614-6464.

Sincerely,

¹⁴ See MARY JO WHITE ET AL., REPORT OF THE INDEPENDENT PANEL ON THE DISCIPLINARY SYSTEM OF THE NEW YORK CITY DEPARTMENT (2019), at 32, available: <https://www.independentpanelreportnypd.net/>.

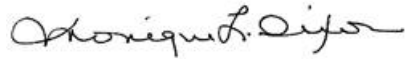
¹⁵ NYC CIVILIAN COMPLAINT REVIEW BD, *A MUTATED RULE: Lack of Enforcement in the Face of Persistent Chokehold Incidents in New York City*, October 2014, available: http://www.nyc.gov/html/ccrb/downloads/pdf/Chokehold%20Study_20141007.pdf

¹⁶ Ashley Southall, 'I Can't Breathe' Case: 7 Takeaways From Disciplinary Hearing on Eric Garner's Death, NY Times, June 9, 2019, available: <https://www.nytimes.com/2019/06/09/nyregion/eric-garner-case-pantaleo-trial.html>.

¹⁷ See NY Times Editorial Board, *supra* note 1.

¹⁸ NYC Bar Report, *supra* note 5.

¹⁹ New York City Bar Civil Rights and Criminal Courts Committee, List of Supporters to REPEAL CIVIL RIGHTS LAW 50-A TO ALLOW FOR THE PUBLIC DISCLOSURE OF POLICE RECORDS RELATING TO POLICE MISCONDUCT A.3333 (AM O'Donnell), available: http://documents.nycbar.org/files/2017285-50aPoliceRecordsTransparency_Supporters.pdf.



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