

June 8, 2020

Writer's Direct Contact
+1 (212) 468.8080
LNashelsky@mofocom

The Honorable Andrew M. Cuomo
Governor of New York State
Executive Chamber
The Capitol
Albany, New York 12224

The Honorable Carl E. Heastie, Speaker
New York State Assembly
Legislative Office Building, Room 932
Albany, New York 12248

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

Re: In Support of Repealing Civil Rights Law Section 50-a

Dear Governor Cuomo, Speaker Heastie, and Majority Leader Stewart-Cousins:

We, the undersigned leaders of major law firms in the State of New York, write to wholeheartedly endorse the repeal of Section 50-a of the New York State Civil Rights Law in order to allow public disclosure of police records relating to police officer misconduct.

Along with millions of Americans across the State and the nation, we have witnessed the outpouring of grief, anger, and urgent demands for reform of police procedures and laws in order to prevent police misconduct. The death of George Floyd while in police custody and other killings of unarmed black people have particular resonance in our State with its diverse population and our own history of police misconduct, including Eric Garner's death in Staten Island nearly six years ago. Repeal of Section 50-a is an immediate and concrete step that must be taken now to increase police accountability and help identify problematic officers in order to hopefully prevent further atrocities.

Section 50-a provides that "[a]ll personnel records used to evaluate performance toward continued employment or promotion" of police officers, firefighters, and correction officers shall be considered "confidential" and subject to disclosure only with the subject officer's

June 8, 2020
Page Two

consent or by court order. As the New York City Bar Association's report supporting the repeal of this law describes, Section 50-a is a major barrier to police accountability.¹ For example, Section 50-a prevented the family of Eric Garner from obtaining the disciplinary records of Officer Daniel Pantaleo, whose chokehold caused Mr. Garner's death, and it was only after an unauthorized leak of those records that Officer Pantaleo's history of complaints substantiated by the Civilian Complaint Review Board was brought to light. The deleterious impact of Section 50-a has only grown over time. In one ruling after the next, New York's courts have expanded the meaning of "personnel records" protected by Section 50-a so that today, virtually no information is available to the public about a police officer's record of substantiated misconduct or disciplinary penalties imposed internally, even when those records are maintained by an independent review board.²

Continuing to shield records of police misconduct from public disclosure is unacceptable. While the need to protect sensitive law enforcement information, prevent unwarranted invasions of privacy, and protect the safety of officers are all legitimate reasons to withhold certain records, police officers, like other public employees, already are provided protection under the State's Freedom of Information Law and Public Officers Law, as the City Bar's report makes clear. Thus, repeal of Section 50-a will not prevent police records from being withheld when there are legitimate reasons to do so.

Briefly, it is worth addressing the main arguments raised against repealing Section 50-a. Defenders of 50-a claim that the law is necessary to protect the privacy and safety of officers. These are obviously legitimate interests and ones we respect. Section 50-a, however, is wholly unnecessary to protect the privacy and safety of officers. Repealing it will remove the special layer of secrecy applied to the personnel records of police officers, correction officers, and firefighters, but it will not remove the many adequate protections that exist elsewhere in New York law. Existing protections, such as FOIL, already allow agencies to withhold records or portions of records where disclosure would constitute "unwarranted invasion of personal privacy" or where disclosure "could endanger the life or safety of any person." These are the same standards that apply to the disclosure of other public employees' records, allowing in appropriate circumstances public access to disciplinary records while shielding more sensitive information from public view.

Repeal of Civil Rights Law Section 50-a will provide the public with much needed transparency about police misconduct and will, we hope, help prevent future acts of brutality

¹ New York City Bar, Report on Legislation A.2513/S.3695 (June 2020), *available at* <https://s3.amazonaws.com/documents.nycbar.org/files/2017285-50aPoliceRecordsTransparency.pdf>.

² For an account of how courts have broadened Section 50-a's protection for "personnel records" over time, *see* Testimony of Michael Sisitzky On Behalf of the New York Civil Liberties Union Before the New York State Senate Committee on Codes 3-5 (Oct. 17, 2019), *available at* https://www.nyclu.org/sites/default/files/field_documents/final_testimony_for_senate_codes_50a_hearing_-_2019.10.17.pdf.

June 8, 2020
Page Three

by bringing sunlight to potentially problematic law enforcement officers. As the City Bar's report concludes:

New York should join other states and prioritize public transparency of police misconduct to ensure accountability and racial equity. Repealing CRL 50-a will be one step in the direction toward combating the searing legacy of systemic racism that continues to mar our country and our state.

As leaders of the Bar, we need to build the public's trust in law enforcement and help eradicate racism in our institutions. We urge the swift repeal of Civil Rights Law 50-a.

Respectfully,



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June 8, 2020
Page Four

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