SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

-----------------------------------------------------------------X

Application of

PETITION

ALEX MORGAN BELL,

Petitioner, Index Number:

For a Judgment Pursuant to CPLR Article 78 Name of Assigned Judge:

Part:

-against-

Oral Argument is Requested

CITY OF NEW YORK, NEW YORK CITY

POLICE DEPARTMENT, WILLIAM BRATTON,

Commissioner NYPD, in his

Official Capacity,

Respondents.

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ALEX MORGAN BELL, petitioner, respectfully states as follows:

In this this Article 78 proceeding, petitioner seeks a writ of mandamus to compel the New York City Police Department and William Bratton, Commissioner in his official capacity to follow the New York State Public Officer Law Section 84 et seq. and cases decided thereunder and to produce electronic aggregate, non-individually identifiable residential zip code data by precinct assignment for all New York City Police Department employees.

I. THE PARTIES

1. Petitioner ALEX MORGAN BELL is over the age of eighteen years and is a resident of the City and State of New York. Petitioner resides at

2. Respondent CITY OF NEW YORK is, at all material times, a municipal corporation duly incorporated and existing pursuant to the laws of the State of New York.

3. Respondent NEW YORK CITY POLICE DEPARTMENT (hereafter “NYPD) is an agency of respondent CITY OF NEW YORK, and a municipal police force with 52,571 employees. Respondent NYPD maintains an administrative office at One Police Plaza, New York, New York 10007

4. Respondent WILLIAM BRATTON, is the Commissioner of the New York City Police Department, having been appointed on January 2, 2014.

II. FACTS

5. By letter dated October 15, 2015, pursuant to the New York State Freedom of Information Law, I sent a request to the Records Officer of the New York City Police Department for access to aggregate, non-individually identifiable information on the residence of NYPD employees by precinct assignment. The specific request was as follows:

A document containing a list of all the current billing zip codes for all NYPD employees as well as their current precinct or office location. Example

|  |  |
| --- | --- |
| Billing Zip Code | Precinct |
| 10016 | 32nd |
| 10025 | 32nd |

(A true and accurate copy of the FOIL letter of October 15, 2015 is attached hereto as Exhibit A.)

6. I seek this data for non-commercial purposes.

7. Respondents denied this FOIL request by letter dated October 22, 2015 on the grounds that the information sought was exempt from disclosure under Public Officers Law Section 87(2)(e) and Public Officers Law 87 (2)(a) “on the grounds that such records consist of Police Officer’s personnel records and are therefore exempt from disclosure under the provisions of Civil Rights Law Section 50-a.” (A true and accurate copy of the letter denying FOIL request, dated October 22, 2015 is annexed as Exhibit B.)

8. By letter dated November 9, 2015, I appealed respondents’ denial of my request for aggregate data explaining that the data sought did not include any personal identifiers and accordingly would not disclose individual officer’s personnel information. I also explained that respondents’ other claim that the information sought would affect a law enforcement activity was more irrelevant as my request had nothing to do with any law enforcement activity. (A true and accurate copy of petitioner’s letter of November 9, 2015 is annexed hereto as Exhibit C.)

9. My appeal was rejected by respondent NYPD by email notification of December 4, 2015, simply stating again that

The appeal is denied pursuant to Public Officers Law (POL) Section 87(2)(b) and 89(2), because disclosure of the requested records would constitute an unwarranted invasion of privacy, and pursuant to POL Section 87(2)(f), because disclosure thereof could endanger the life or safety of any person.

(A true and accurate copy of respondent’s email of December 4, 2015 is annexed hereto as Exhibit D.)

10. I have exhausted all administrative remedies and bring this article 78 proceeding for a writ of mandamus to compel the production of aggregate, non-identifiable residential data on New York City Police Department employees that should have been produced as a matter of course.

11. Respondents improperly denied my request for data on the grounds of Public Officer Law Section 87 (2)(a) referencing Civil Rights Law Section 50-a and Public Officer Law Section 87 (2)(e). Neither claimed exemption from the Department’s duty of broad public disclosure has merit. The sought after disclosure is for aggregate information that can neither identify any specific employee, nor disclose any law enforcement activity, investigation, confidential sources, or judicial proceedings.

WHEREFORE, it is respectfully requested that an order be issued pursuant to CPLR 7806:

* 1. mandating respondents to produce the aggregate non-individually identifiable residency data by precinct requested within 10 days of the date of the order, and
  2. for payment of attorneys fees in an amount to be determined by the court pursuant to Public Officer Law Section 89 (e), and
  3. for such other and further relief as this court may deem just and proper..

Dated: January 2016

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ALEX MORGAN BELL

VERIFICATION:

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

ALEX MORGAN BELL, being duly sworn, says that he is the petitioner in the above-named proceedings, and that the foregoing petition is true to his knowledge, except as to matters therein stated to be alleged to be true on information and belief, and as to those matters, he believes them to be true.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Alex Morgan Bell

Sworn to before me

this st day of January 2016

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

Exhibit A

RECORDS ACCESS OFFICER

NYC POLICE DEPARTMENT

F.O.I.L. UNIT – LEGAL BUREAU

ONE POLICE PLAZA, ROOM 110-C

NEW YORK, NEW YORK 10038

Dear Records Access Officer:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me:

* A document containing a list of all the current billing zip codes for all NYPD employees as well as their current precinct or office location. Example

|  |  |
| --- | --- |
| Billing Zip Code | Precinct |
| 10016 | 32nd |
| 10025 | 32nd |

As you can see, there is no personally identifiable or other information included or required in this request.

* If the above request is too laborious to collate, perhaps in its stead simply provide the same data but for only officers of the 32nd Precinct.

In order to help to determine my status to assess fees, you should know that I am an individual seeking information for personal use and not for a commercial use.

I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

I do, however, understand that your department is not required to create a record if one does not exist. Therefore, if you are unable to provide the requested data in that format, please provide whatever records you do have that would allow me to compile my own database of distances between police employees residential zip codes and their work precincts.

I ask that the data be provided in an Excel spreadsheet, csv or other delimited text file or other database format. If you have this information in an existing report, that may suffice.

As a concerned citizen it is my belief that the New York City Police Department is largely made of up non-NYC residents and more specifically that efforts to foster so called “community policing” will fail because the officers representing the police force are far removed from the communities they are policing. It is my intention to simply discover and present publicly any conclusions as to the approximate distance between officers current communities and the communities they are policing. It is my hope that by illustrating this simple discrepancy, change can be enacted to make “community policing” truly from and by members of the community.

Thank you for your consideration of this request.

Sincerely,

Alex Bell

Exhibit B

POLICE DEPARTMENT

LEGAL BUREAU

F.O.I.L. Unit, Room 110C

One Police Plaza

New York, NY 10038

Alex Bell 10/22/15

FOIL Req #: 2015-PL-10466

Your File #:

Dear Sir or Madam:

This is in response to your letter dated 10/09/15, which was received by this office on 10/15/15, in which you requested access to certain records under the New York State Freedom of Information Law ( FOIL).

In regard to the document(s) which you requested, I must deny access to these records on the basis of Public Officers Law Section 87(2)(e) and Public Officers Law 87(2)(a), in that such records consist of Police Officers’s personal records and are therefore exempt from disclosure under the provisions of Civil Rights Law Section 50-a.

You may appeal this decision or any portion thereof. Such an appeal must be made in writing within thirty (30) days of the date of this letter and must be forwarded to: Jonathan David, Records Access Appeals Officer, New York City Police Department, One Police Plaza, Room 1406, New York, NY 10038. Please include copies of the FOIL request and this letter with your appeal.

Very truly yours,

Richard Mantellino

Lieutenant

Records Access Officer

Exhibit C

November 11, 2015

Mr. Jonathan David

Records Access Appeals Officer

New York City Police Department

One Police Plaza-Room 1406

New York, NY 10038-1497

RE: Appeal of Rejection of FOIL Request 2015-PL-10466

Dear Mr. David:

I write to appeal the rejection of my FOIL request for certain demographic data

kept and maintained by the New York City Police Department. My FOIL request was

assigned number 2015-PL-10466. The letter of rejection from which I appeal is dated

October 22, 2015, a copy of which is annexed, along with my original request.

My request is for information on the current residential zip codes for all NYPD

employees, as well as their precinct assignment. As an example, I provided the

following table:

|  |  |
| --- | --- |
| Billing Zip Code | Precinct |
| 10016 | 32nd |
| 10025 | 32nd |

My request is for aggregate data. It was denied on the grounds of Public Officer

Law Section 87 (2)(a) referencing Civil Rights Law Section 50-a and Public Officer Law

Section 87 (2)(e). Neither claimed exemption from the Department’s duty of broad

public disclosure has merit.

1. Public Officer Law 87 (2)(a) and Civil Rights Law Section 50-a

First, I have not requested any personal information for specific employees, and

thus my request cannot be for disclosure of any private information. Second, I have not

requested any “personnel records”. Civil Rights Law Section 50-a exempts from public

disclosure “all personnel records used to evaluate performance toward continued

employment or promotion”. Nothing in my request can affect the performance

evaluation for continued employment for any employee as I have not asked for specific,

individual information. A plain language reading of the statute does not support the

NYPD position; neither does the legislative history offer any justification for the instant

rejection. See Prisoner’s Legal Services v. New York State Dep’t of Corrections, 73

N.Y.2d 26, 31-32 (1988) (“the legislative purpose underlying section 50-a …was the

same: to protect the officers from the use of records –including unsubstantiated and

irrelevant complaints of misconduct—as a means for harassment and reprisals and for

purposes of cross-examination by plaintiff’s counsel during litigation” citations omitted)

As the Court of Appeals has repeatedly held: there must be a showing that the

requested information "falls squarely within a FOIL exemption by articulating a

particularized and specific justification for denying access" Capital Newspapers Div. of

Hearst Corp. v. Burns, 67 N.Y.2d 576 (1986)

2) Public Officers Law Section 87 (2)(e).

Section 87 (2) (e) provides in pertinent part:

Each agency shall, in accordance with its published rules, make available for

public inspection and copying all records, except that such agency may deny

access to records or portions thereof that:

(e) are compiled for law enforcement purposes and which, if disclosed, would:

i. interfere with law enforcement investigations or judicial proceedings;

ii. deprive a person of a right to a fair trial or impartial adjudication;

iii. identify a confidential source or disclose confidential information relating

to a criminal investigation; or

iv. reveal criminal investigative techniques or procedures, except routine

techniques and procedures;

Public Officers Law Section 87 (2)(e) (McKinney’s 2015)

The law enforcement exemption fails for the same reason as the claimed

personnel records privacy exemption. My request is for aggregate demographic

employee information and not disclosure of individual law enforcement proceedings,

trials, confidential sources or information or investigatory techniques and procedures.

The NYPD’s rejection based on plainly inapposite exemptions must be reversed

and the information requested produced immediately. As the Court of Appeals has held:

“blanket exemptions for certain types of documents are inimical to FOIL’s policy of open

government.” Gould v. New York City Police Department, 89 N.Y.2d 267, 275 (1996)

Thank you.

Respectfully,

Alex Bell

Exhibit D

POLICE DEPARTMENT

Office of Deputy Commissioner

Legal Matters

One Police Plaza, Room 1406A

New York, New York 10038

December 4, 2015

Alex Bell

RE: FREEDOM OF INFORMATION LAW

REQUEST: LBF #15PL10466

Dear Mr. Bell:

This is in response to your letter, dated November 11, 2015, appealing the determination of the Records Access Officer (RAO), dated October 22, 2015, regarding records requested from the New York City Police Department pursuant to the Freedom of Information Law (“FOIL”) by letter dated October 9, 2015.

The appeal is denied pursuant to Public Officers Law (POL) Section 87(2)(b) and 89(2), because disclosure of the requested records would constitute an unwarranted invasion of privacy, and pursuant to POL Section 87(2)(f), because disclosure thereof could endanger the life or safety of any person.

Other exemptions under FOIL may also apply.

You may seek judicial review of the determination by commencing an Article 78 proceeding with four months of the date of this decision.

Sincerely,

Jonathan David

Records Access Appeals Officer

c: Committee on Open Government