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Divided New York Court of Appeals Restricts Freedom of Information Law Disclosures

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A divided New York Court of Appeals recently held that Civil Rights Law § 50-a bars disclosure of police officer personnel records except under very limited circumstances, eliminating access to such records by the press or advocacy groups under the Freedom of Information Law ("FOIL") even if the police department itself is willing to release them and even if they are redacted. The decision, *In the Matter of New York Civil Liberties Union v. New York City Police Department*, came with two dissents arguing that it is a significant break with earlier case law in which the Court construed FOIL exemptions more narrowly and at least suggested that agencies and the lower courts had more flexibility to effectuate FOIL's goal of transparency.In 2011, the New York Civil Liberties Union ("NYCLU") issued a FOIL request to the New York City Police Department ("NYPD") seeking copies of its internal adjudications, over ten years, of disciplinary proceedings. The NYPD largely denied the request based on Civil Rights Law § 50-a and the NYCLU sued for further disclosure. The trial court ordered further disclosure of the records, redacted to remove information that might be used to identify officers, but the Appellate Division reversed, holding that the agency could not be required to redact and produce the records.

The Court of Appeals affirmed. Noting that the relevant FOIL provision, Public Officers Law § 87(2)(a), permits agencies to deny access to records exempted from disclosure pursuant to another statute, the majority held that such an exemption was provided by Civil Rights Law § 50-a, under which "personnel records used to evaluate performance" of police and corrections officers and firefighters are "confidential and not subject to inspection or review." Considering that the disciplinary decisions were personnel records, the majority held that § 50-a applied. The majority rejected the NYCLU's contention that § 50-a should be limited to the context of actual or potential litigation, since the statute was intended to protect officers from embarrassment or harassment in other contexts. While the text of § 50-a permits court-ordered disclosure after notice to the affected persons, limited to "relevant and material" parts of the record, the majority found this exception applicable only in the context of ongoing litigation. It also rejected the argument that § 50-a permits the police department or other agency to make voluntary disclosures of such material without a court order (and hence, *a fortiori*, rejected any argument that a court could require such disclosures beyond the limited exception § 50-a provides for material required in ongoing litigation). Finally, although another FOIL subsection, Public Officers Law § 89(2), provides that documents exempt from disclosure to prevent "unwarranted invasion of personal privacy" may be produced with redactions to protect privacy, the majority held that this provision did not apply to the relevant Public Officers Law § 87(2)(a) exception for records exempted by another statute. In a concurrence, Judge Stein contended that the court should not have reached this final point, although she joined the statutory analysis that preceded it.

Judge Rivera, joined by Judge Wilson, dissented, arguing that FOIL, as construed in earlier Court of Appeals decisions, expresses a strong policy in favor of disclosure and affords agencies discretion to produce redacted records, which is incompatible with the strict limitations the majority found in Civil Rights Law § 50-a. Judge Rivera further argued that § 50-a was enacted to prevent harassment of police officers and other covered personnel, a purpose that could be accommodated by permitting production of records redacted to conceal the identities of such personnel. In a separate dissent, Judge Wilson added that the records at issue in this case were the product of public disciplinary hearings, eliminating any confidentiality interest the records might otherwise have raised and hence further supporting disclosure.

The majority's opinion is not surprising given the strict textual approach the Court has often espoused. But, as Judge Rivera's dissent makes clear, it sweeps aside a number of passages in the Court's FOIL decisions from the 1980s and 1990s that suggested the Court would be more receptive to cabining Civil Rights Law § 50-a in order to give effect to FOIL. If the only exception to the restriction in § 50-a is when records are sought by parties in ongoing litigation, the press and advocacy groups will have a sadly diminished role in ensuring that disciplinary processes applicable to police and corrections officers, among others, are adequately ventilated. But the issue will now be addressed, if at all, only by legislation.

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- **Matthew J. Morris**
  Special Litigation Counsel