



Re: [EXTERNAL] Fw: CCRB Case #202004976 -- FOIL request1 message

On Friday, July 12, 2024 at 05:02:48 PM EDT, Jamieson, Kerry (she/her) (CCRB) <kjamieson@ccrb.nyc.gov> wrote:

Good afternoon Gregory Scott,

I am the Records Access Appeals Officer at the Civilian Complaint Review Board (CCRB) and write in response to your below Freedom of Information Law (FOIL) appeal. For the reasons stated below, your appeal is respectfully denied.

Pursuant to Public Officers Law § 89 (4)(a), FOIL appeals must be submitted within thirty (30) days of a denial. Your FOIL request was denied on May 30, 2024, but your appeal was not submitted until July 1, 2024. As your appeal was submitted more than 30 days after the denial of your request, your appeal is untimely and is therefore denied in its entirety.

Even if your appeal was timely, it would still be denied because the Records Access Officer properly asserted the exemptions under the Public Officers Law.

As explained by the Records Access Officer, the administrative prosecution proceedings are ongoing in the complaint number for which you requested records and premature disclosure would interfere with the pending proceedings and compromise the impartial adjudication of the charges. Public Officers Law §§ 87(e)(i) and (ii) permit the denial of access to records that were compiled for law enforcement purposes and "if disclosed, would interfere with law enforcement investigations or

judicial proceedings,” or would “deprive a person of a right to . . . impartial adjudication.” In *Robinson v. City of New York*, 2022 N.Y. Misc. LEXIS 9116, *5 (Sup Ct, New York County 2022), the court determined that an agency properly asserted the law enforcement investigation exemption where the premature disclosure of documents would interfere with or potentially hinder “internal administrative and any external criminal investigations, and any/or subsequent disciplinary proceedings.” The same potential for interference exists here. Disclosure of records would interfere with the ongoing administrative proceedings because the materials could be used to “refresh recollections, clarify factual ambiguities, and question potentially deficient, negligent or criminal actions by public servants,” and premature release of the record would be tipping the prosecutor's hand and allow “the subjects to construct excuses or defenses.” *Matter of Disability Rights N.Y. v. New York State Comm'n of Corr.*, 194 A.D.3d 1230, 1234 (3d Dept. 2021). Premature disclosure of materials “can affect how decisions are made about the progress of the investigation or affect a final determination about disciplinary charges...” *Robinson*, 2022 N.Y. Misc. LEXIS 9116 at *5. The bona fide potential for these harms provides “an adequate factual basis for applicability of the exemption” under the Public Officers Law. *Id.*

Likewise, Public Officers Law § 87(2)(g)(iii) permits the denial of inter-agency or intra-agency records that are not final agency policy or determinations. As such, non-final responsive records and records that constitute work product or reflect the deliberative process were properly denied pursuant to FOIL. As properly noted by the Records Access Officer, certain records, or portions thereof, are not subject to disclosure under Public Officers Law §§ 87(2)(b), 87(2)(e)(iii) and (iv), and 87(2)(f).

Please note that this denial does not mean that you will not have access to any disclosable records in the future; you may resubmit a FOIL request once the administrative proceedings are complete.

If you disagree with this determination, you must commence an Article 78 proceeding within four months.

Sincerely,
Records Access Appeals Officer

Kerry S. Jamieson, Esq.

(pronouns: she/her)

Assistant General Counsel

New York City Civilian Complaint Review Board

100 Church Street, 10th Floor

New York, New York 10007

kjamieson@ccrb.nyc.gov

www.nyc.gov/ccrb

From: Gregory Scott <drgscott@yahoo.com>
Sent: Monday, July 1, 2024 11:03 PM
To: FOIL Requests, CCRB (CCRB) <FOIL@ccrb.nyc.gov>
Cc: Robert J. Basil <robertjbasil@rjbasil.com>
Subject: Re: [EXTERNAL] Fw: CCRB Case #202004976 -- FOIL request

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I wish to appeal the decision per the instructions below. Last year CCRB invited me to the internal trial, but I was halfway around the world and could not fly back to attend it. Will you not even let me know the outcome? Or answer whether the second officer was put on trial?

Gregory L Scott, PhD (Greg)
(him/Dr./Professor/Dude/Guy)

"We can easily forgive a child who is afraid of the dark; the real tragedy of life is when men are afraid of the light" (Plato).

Recent publication: <https://www.epspress.com/books.html#DanceTheoryOfPlato>

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----- Forwarded Message -----

From: FOIL Requests, CCRB (CCRB) <foil@ccrb.nyc.gov>

To: Gregory Scott <drgscott@yahoo.com>; FOIL Requests, CCRB (CCRB) <foil@ccrb.nyc.gov>

Sent: Thursday, May 30, 2024 at 01:02:40 PM EDT

Subject: RE: [EXTERNAL] Fw: CCRB Case #202004976 -- FOIL request

Gregory Scott,

I am the Records Access Officer for the New York City Civilian Complaint Review Board (CCRB). I have reviewed your request for records pursuant to the Freedom of Information Law (FOIL).

Although the CCRB investigation in the requested matter is completed, the complaint is still being handled by the CCRB's Administrative Prosecution Unit (APU). Public Officers Law § 87(2)(e)(i) permits the CCRB to deny access to records that "if disclosed, would interfere with law enforcement investigations or judicial proceedings," and Public Officers Law § 87(2)(e)(ii) permits the CCRB to withhold records that could "deprive a person of a right to a fair trial or impartial adjudication." Public Officers Law § 87(2)(g)(iii) permits the CCRB, as an independent City agency, to deny access to records that are "inter-agency or intra-agency materials which are not . . . final agency policy or determinations." Our agency's work on the complaint is ongoing. So that there is no interference or adverse effect on our administrative prosecution of this case, we will not be providing any records until the APU has completed its prosecution of this matter. Additionally, many of these records contain information covered by Public Officers Law §§ 87(2)(b) (privacy), 87(2)(e)(iii) and (iv) (law enforcement and investigative records), and 87(2)(f) (life and safety) and are being withheld on those grounds.

As such, I am respectfully denying your request in full at this time.

Once the APU case is completed, please feel free to resubmit your FOIL request. You can check on the status of the complaint using the complaint status lookup: <https://www1.nyc.gov/site/ccrb/complaints/check-complaint-status.page>.

Future FOIL requests should be submitted via the OpenRecords portal at nyc.gov/openrecords. If you wish to appeal my decision, you must do so in writing within thirty (30) days to the CCRB Records Access Appeals Officer at: New York City Civilian Complaint Review Board, [100 Church Street, 10th Floor, New York, New York 10007](#) or via email to FOIL@ccrb.nyc.gov.

Sincerely,

Jacqueline Levy, Esq.

(she/her)

Records Access Officer

NYC Civilian Complaint Review Board

[100 Church Street](#), 10th Floor

New York, NY 10007

FOIL@ccrb.nyc.gov

www.nyc.gov/ccrb

From: Gregory Scott <drgscott@yahoo.com>

Sent: Wednesday, May 22, 2024 4:43 PM

To: FOIL Requests, CCRB (CCRB) <FOIL@ccrb.nyc.gov>

Subject: [EXTERNAL] Fw: CCRB Case #202004976 -- FOIL request

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Would you kindly send me as much information as you're allowed, for the case #202004976, which as I understand it led to a trial at CCRB for an officer who apparently lied during an investigation of an episode I was involved with. The result of the trial is especially helpful.

There was a second officer who lied during the investigation, according to your letter of Apr 2022. Any update/result of actions taken against him would be appreciated, also.

Thank you,

Gregory L. Scott

83 Park Terrace West, Apt 3A

NY, NY 10034