



POLICE DEPARTMENT
Office of Deputy Commissioner,
Legal Matters
One Police Plaza, Room 1406A
New York, New York 10038
FOILAppeals@NYPD.org

May 3, 2024

Gunnar Larson
g@xny.io

RE: FREEDOM OF INFORMATION LAW
REQUEST: FOIL-2023-056-15960

Dear Mr. Larson:

This letter is in response to your email dated May 2, 2024, appealing the determination of the Records Access Officer (RAO) made on March 25, 2024 regarding records requested from the New York City Police Department. Your request, made pursuant to the Freedom of Information Law, was originally received by the FOIL unit on July 12, 2023 and subsequently denied by the RAO.

The appeal is denied because the records responsive to your request are specifically exempted by state or federal statute [§87(2)(a)] in that they have been SEALED pursuant to New York Criminal Procedure Law §160.50, which mandates that upon termination of a criminal action in favor of the accused, all official records and papers relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, of any court, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency (See, C.P.L. § 160.50 [1][c]). Please note that an attempt was made by the undersigned to obtain a notarized waiver of §160.50; however, you informed the undersigned that a waiver was not necessary and that it would not be provided.

The rationale behind C.P.L. § 160.50, that those who are vindicated through the criminal justice system are entitled to have the process through which they were found to be innocent be shielded from the curiosity of the general public, is fundamental to integrity of the process (See generally, *Matter of Joseph M*, 82 NY2d 128 [1993], in which the Court of Appeals states, "The purpose in adding... [this provision] to the Criminal Procedure Law was to ensure that the protections provided to exonerated accuseds be consistent with the presumption of innocence, which simply means that no individual should suffer adverse consequences merely on the basis of an accusation, unless the charges were ultimately sustained in a court of law" [internal quotation marks and citation omitted]).

In addition, as it pertains to records withheld because they are specifically exempted by state or federal statute [§87(2)(a)], the Court of Appeals has determined that "FOIL's statutory scheme separately makes clear that redacted disclosure cannot be compelled where, as here, an agency has met its burden of demonstrating that records are exempt from disclosure under Public

COURTESY • PROFESSIONALISM • RESPECT

Officers Law §87(2)(a).” Therefore, because the requested records are specifically exempted from disclosure pursuant to Criminal Procedure Law §160.50, this agency is, “not obligated to provide the records even though redaction might remove all details which ‘tend to identify the victim,’” *Karlin v. McMahon*, 96 N.Y.2d 842, 729 N.Y.S.2d 435 (2001), *citing Short v. Board of Managers of Nassau County Medical Center*, 57 N.Y.2d 399, 456 N.Y.S. 2d 724 (1982).

Accordingly, **all associated records** related to an arrest which has been sealed under Criminal Procedure Law Section 160.50 are exempted from disclosure; and, absent a notarized authorization from the accused/arrested person, or an unsealing order from the court, any records associated with this incident may not be disclosed.

Finally, certain portions of the records are exempt where disclosure would constitute an unwarranted invasion of personal privacy [§87(2)(b)].

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

Respectfully,



Jordan S. Mazur

Sergeant

Records Access Appeals Officer

c: Committee on Open Government