

# **EXHIBIT A**

Records Access Officer  
NYC Police Department  
FOIL Unit – Legal Bureau  
One Police Plaza, Room 110-C  
New York, NY 10038

Re: Body Camera Footage of New York Police Department Shooting of Miguel Richards on September 6, 2017

Dear Records Access Officer:

Pursuant to New York's Freedom of Information Law (FOIL), Article 6 of the Public Officers Law, New York Lawyers for the Public Interest seeks the following records:

Unedited video files from all body cameras worn by the uniformed officers who were involved in the fatal encounter with Miguel Richards in the Bronx on September 6, 2017, which are related to that fatal encounter, from the time each officer first arrived at the site of the fatal encounter until the time they departed the site.

Please provide the requested records in electronic format.

Please furnish all applicable records to:

Ruth Lowenkron, Esq.  
New York Lawyers for the Public Interest  
151 West 30th Street, 11th Floor,  
New York, NY 10001-4017

Thank you for your cooperation.

Sincerely,

Ruth Lowenkron, Director  
Disability Justice Program

# **EXHIBIT B**



POLICE DEPARTMENT  
LEGAL BUREAU  
F.O.I.L Unit, Room 110C  
One Police Plaza  
New York, NY 10038

10/04/17

Ruth Lowenkron  
New York Lawyers for the Public Interest  
rlowenkron@nylpi.org

FOIL Req #: 2017-PL-12230  
Your File #:  
Re: Miguel Richards

Dear Sir or Madam:

This is in response to your letter dated 09/15/17, which was received by this office on 09/15/17, in which you requested access to certain records under the New York State Freedom of Information Law (FOIL).

In regard to the documents(s) which you requested, I must deny access to these records on the basis of Public Officers Law Section 87(2)(e)(i) as such records/information, if disclosed would interfere with law enforcement investigations or judicial proceedings.

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: Sergeant Jordan S. Mazur, Records Access Appeals Officer, New York City Police Department, One Police Plaza, Room 1406, New York, NY 10038. Your appeal may also be submitted via email to FOILAppeals@NYPD.org. Please include copies of the FOIL request and this letter with your appeal.

Very truly yours,

Richard Mantellino  
Lieutenant  
Records Access Officer

# EXHIBIT C

Sergeant Jordan S. Mazur  
Records Access Appeals Officer  
NYC Police Department  
One Police Plaza, Room 1406  
New York, NY 10038

Via Electronic Mail: FOILAppeals@NYPD.org

Re: FOIL Request No. 2017-PL-12230 re Miguel Richards

Dear Sergeant Mazur:

New York Lawyers for the Public Interest (NYLPI) herewith appeals the October 4, 2017 denial of its September 15, 2017 New York State Freedom of Information Law (FOIL) record request, above referenced. Both the FOIL request and the FOIL denial are attached hereto.

NYLPI requested the following records:

Unedited video files from all body cameras worn by the uniformed officers who were involved in the fatal encounter with Miguel Richards in the Bronx on September 6, 2017, which are related to that fatal encounter, from the time each officer first arrived at the site of the fatal encounter until the time they departed the site.

The New York City Police Department (NYPD) Records Access Officer issued a *blanket denial* of NYLPI's request, stating merely that the request was denied "on the basis of Public Officers Law Section 87(2)(e)(i) as such records/information, if disclosed would interfere with law enforcement investigations or judicial proceedings." The denial must be overturned.

Courts have long held that "FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government." *Matter of Capital Newspapers, Div. of Hearst Corp. v. Whalen*, 69 N.Y.2d 246, 252 (1987). Moreover, "blanket exemptions for particular types of documents are inimical to FOIL's policy of open government...." *Matter of Police Benevolent Assn. of N.Y. State, Inc. v. State of New York*, 145 A.D.3d 1391, 1392 (3d Dept. 2016). Where a government agency seeks to invoke a FOIL exemption such as that afforded by Section 87(2)(e)(i), it bears the burden of showing its denial was justified. *See, e.g., New York Times Co. v. New York State Executive Chamber*, 56 N.Y.S.3d

821, 829 (Sup Ct Albany County 2017). To bear its burden, the agency must specifically identify the records for which the exemption is claimed, along with the risks presented by providing the requested records. *Id.* at 826. Critically, “[v]ague allegations and/or attorney affirmations alone, will not suffice.” *Id.* at 823. The NYPD has not even offered vague allegations to support its invocation of the Section 87(2)(e)(i) exemption.

In addition, where, as here, an agency has already made public a portion of the requested records, it cannot invoke a categorical Section 87(2)(e)(i) exemption. The NYPD recently released to the public a selective, abridged compilation of the videos requested by NYLPI, and thus cannot substantiate even a “generic risk[]” posed by disclosure of the “category[y]” of requested records. *Id.* at 826.

The NYPD has failed to bear its burden to show that the requested records are exempt from FOIL, and NYLPI’s appeal must therefore be granted.

Please respond within 10 business days of receiving this appeal, stating whether the request is granted or denied (in full or in part). See Pub. Off. L. § 89(4)(a). If the appeal is granted, please state a date certain by which the requested records will be produced. If the appeal is denied, please name the records being withheld and state with particularity the reasons for each record being withheld.

Please do not hesitate to contact me if you have any questions about this request, and thank you for your prompt attention to this matter.

Sincerely,

*Ruth Lowenkron*

Ruth Lowenkron, Esq.  
Director, Disability Justice Program

Encls.

# **EXHIBIT D**



**POLICE DEPARTMENT  
LEGAL BUREAU**  
F.O.I.L. UNIT, ROOM 110C  
ONE POLICE PLAZA  
NEW YORK, NY 10038

November 17, 2017

Ruth Lowenkron  
New York Lawyers for the Public Interest  
151 West 30<sup>th</sup> Street, 11<sup>th</sup> Floor  
New York, New York 10001-4017  
[rlowenkron@nylpi.org](mailto:rlowenkron@nylpi.org)

File # 2017-PL-12230

Dear Madam:

This is in further response to your letter dated, 09/15/2017 in which you request access to certain records under the New York State Freedom of Information Law ("FOIL").

Responsive to your request, enclosed please find a copy of the body worn camera footage which you requested.

Redactions and withholdings have been made to the records on the basis of the following:

Public Officers Law Section 87(2)(b) as such records, if disclosed, would constitute an unwarranted invasion of personal privacy.

Public Officers Law Section 87(2)(f) as such records would endanger the life or safety of any person.

Public Officers Law Section 87(2)(e) and Public Officers Law 87(2)(a), as 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.

Public Officers Law Section 87(2)(g)(iii) as such records do not represent a final agency determination.

Public Officers Law Section 87(2)(g) as such records are inter/intra-agency material.

Public Officers Law Section 87(2)(e)(i) as such records, if disclosed would interfere with law enforcement investigations or judicial proceedings.

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You may appeal this decision or any portion thereof. Such an appeal must be made in writing, within 30 days of the date of this letter, and must be forwarded to: Sergeant Jordan S. Mazur, Records Access Appeals Officer, New York City Police Department, One Police Plaza, Room 1406, New York, N.Y. 10038. Your appeal may also be submitted via email to [FOILAppeals@NYPD.org](mailto:FOILAppeals@NYPD.org). Please include copies of the FOIL request and this letter with your appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'LT Mantellino', with a large, stylized flourish at the end.

Richard Mantellino  
Lieutenant  
Records Access Officer

**EXHIBIT E**  
**(CD Provided to Court)**

# **EXHIBIT F**

December 15, 2017

Sergeant Jordan S. Mazur  
Records Access Appeals Officer  
NYC Police Department  
One Police Plaza, Room 1406  
New York, NY 10038

[Via Electronic Mail: FOILAppeals@NYPD.org](mailto:FOILAppeals@NYPD.org)

Re: FOIL Request No. 2017-PL-12230 re Miguel Richards

Dear Sergeant Mazur:

Thank you for the copy of the body-worn camera footage which the New York Police Department (NYPD) provided, along with the letter dated November 17, 2017 from Records Access Officer Richard Mantellino, a copy of which is attached. Please note that New York Lawyers for the Public Interest (NYLPI) herewith appeals the redactions and withholdings made to the camera footage. Specifically, NYLPI again requests the footage which was redacted/withheld, as well as any other footage regarding the incident, *from the time each officer first arrived at the site of the fatal encounter until the time they departed the site.*

Notwithstanding the redactions and withholdings, the information provided is incomplete. For each of the videos provided, there is no footage of the officers “first arriv[ing] at the site of the fatal encounter,” nor is there any footage of the officers “depart[ing] the site,” all of which was requested in NYLPI’s September 6, 2017 Freedom of Information Law (FOIL) request, a copy of which is attached. We again ask for the full footage, including both the arrival and the departure of the relevant officers.

With respect to the redactions and withholdings, we note that the November 17, 2017 statement of the “basis” is grossly inadequate. The NYPD records officer merely quoted the language of Section 87(2) of the Public Officers Law. The Appellate Division specifically stated that a FOIL response must “articulate a basis for the denial, rather than merely repeat[] the statutory language of the claimed exemptions.” *Bass Pro, Inc. v. Megna*, 69 A.D.3d 1040, 1041 (3d Dept 2010). In fact, if the NYPD wishes to redact or withhold footage pursuant to one of the exemptions provided

in the Public Officers Law, it must “articulate a *particularized* and *specific* justification for denying access to the requested documents.” *Matter of Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 275 (1996) (emphasis added). Moreover, “[c]onclusory assertions are insufficient to deny access, as are categorical assertions,” such as that “all law enforcement investigations will be harmed if witnesses’ names are available through a FOIL request.” *Matter of Carnevale v. City of Albany*, 68 A.D.3d 1290, 1292 (3d Dept 2009). The records officer in the November 17th FOIL response made similarly inappropriate, conclusory and categorical assertions. For example, the records officer stated that the records would “constitute an unwarranted invasion of personal privacy,” without stating how the personal privacy would be invaded, let alone whose personal privacy would be invaded. The records officer also stated that the records would “endanger the life or safety of any person.” Whose life or safety is at issue and how? Similarly, the Records Officer stated that the records would “interfere with law enforcement investigations or judicial proceedings.” How?

In addition, the NYPD must “provide a sufficient description” of the withheld information. *Bass Pro, Inc.*, 69 A.D.3d at 1041. See also *Matter of Leshner v. Hynes*, 19 N.Y.3d 57 (2012); *Matter of Law Offs. of Adam D. Perlmutter, P.C. v. New York City Police Dept.*, 123 A.D.3d 500 (1st Dept 2014); *New York Times Co. v. New York State Executive Chamber*, 57 Misc.3d 405 (Sup Ct, Albany County 2017). The NYPD may not simply redact/withhold several minutes of footage and leave the recipient guessing what was withheld.

With specific reference to the claimed exemption that records, if disclosed, would “constitute an unwarranted invasion of personal privacy” pursuant to Public Officers Law 87(2)(b), the Court of Appeals has held that, “[i]n the absence of any proof establishing the applicability of any enumerated categories, the determination of whether disclosure of the information sought constitutes an unwarranted privacy invasion requires a ‘balancing [of] the privacy interests at stake against the public interest in disclosure of the information.’” *Matter of Harbatkin v. New York City Dept. of Records & Info. Servs.*, 19 N.Y.3d 373, 380 (2012). The NYPD, of course, has not conducted such a balancing of interests, and the balance would likely lie with providing information to the public.

For records that would “endanger the life or safety of any person,” Public Officers Law 87(2)(f), courts have held that the exemption is “limited” and that it “may not be applied simply because there is speculation that harm may result,” see, e.g., *Grabell v. New York City Police Dept.*, 47 Misc.3d 203, 210 (Sup Ct New York County 2014), *affirmed as modified*, 139 A.D.3d 477 (1st Dept. 2016), or “where no threat can be shown,” see, e.g., *Castorina v. De Blasio*, 56 Misc.3d 413, 428 (Sup Ct, Richmond County 2017). Where it has provided no support for its allegation, the NYPD cannot sustain its burden of showing that the life or safety of anyone would be endangered if the requested records were disclosed.

With respect to the claimed exemption for records that consist of personnel records, Public Officers Law 87(2)(a) and 87(2)(e) and Civil Rights Law 50-a, the NYPD may not claim this exemption for the redacted footage, having not claimed it for the footage that it did disclose – footage which is merely moments earlier and moments later than the footage it refused to disclose. In addition, it is hard to understand how camera footage even remotely constitutes personnel records. Moreover, the exemption for personnel records is narrowly construed and is implicated only to the extent that

the record contains “personal, employment-related information’ about an officer (*Matter of Prisoners' Legal Servs. of New York v. New York State Dept. of Correctional Servs.*, 73 N.Y.2d 26, 31 [1998]), that could be ‘used to evaluate [his/her] performance’ (Civil Rights Law 50-a).” *New York Civil Liberties Union v. New York City Police Dept.*, 2011 WL 675562 at \*8 (Sup Ct New York County 2011). The redacted footage cannot possible meet this narrow definition of personnel records.

The NYPD claims that the records are “inter/intra-agency material” and that the records “do not represent a final agency determination, and therefore are exempt under Public Officers Law 87(2)(g). This claim fails as well. Here too, the NYPD may not claim an exemption related to final agency determinations for the redacted footage, having not claimed it for the footage that it did disclose – footage which is merely moments earlier and moments later than the footage it refused to disclose. In addition, the Court of Appeals held that the exemption for intra-agency material does not apply if the materials contain “statistical or factual tabulations or data.” *Matter of Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 276 (1996). The Court of Appeals defined factual data as “objective information, in contrast to opinions, ideas, or advice exchanged as part of the consultative or deliberative process of government decision making.” *Id.* at 277. The footage NYLPI requests is precisely such factual, objective data, and thus is not exempt from disclosure.

With respect to the NYPD’s reliance on Public Officers Law 87(2)(e)(i) (records, if disclosed, would interfere with law enforcement investigation or judicial proceedings), court have held that the exemption is “based on the risk that such disclosure would have a chilling effect on a pending prosecution, would create a substantial likelihood of delay in a pending criminal proceeding, or would interfere with criminal discovery rules.” *Matter of Pittari v. Pirro*, 258 A.D.2d 202, 206–07 (2d Dept 1999), *lv. denied* 94 N.Y.2d 755 (1999). The NYPD does not, and likely cannot, point to any such risks.

For all of the foregoing reasons, the NYPD has failed to bear its burden to show that the redacted/withheld records are exempt from FOIL, and NYLPI’s appeal must therefore be granted.

Please respond within 10 business days of receiving this appeal, stating whether the request is granted or denied, in full or in part, pursuant to Public Officers Law § 89(4)(a). If the appeal is granted, please state a date certain by which the requested records will be produced. If the appeal is denied, please name the records being withheld and state with particularity the reasons for each record being withheld.

Thank you for your attention to this matter.

Sincerely,

Ruth Lowenkron, Esq.  
Director, Disability Justice Program

Encls.

# EXHIBIT G



**POLICE DEPARTMENT**  
**Office of Deputy Commissioner,**  
**Legal Matters**  
**One Police Plaza, Room 1406A**  
**New York, New York 10038**

December 20, 2017

Ruth Lowenkron  
NYLPI  
[RLowenkron@NYLPI.org](mailto:RLowenkron@NYLPI.org)

**RE: FREEDOM OF INFORMATION LAW**  
**REQUEST: LBF #17PL12230**  
**Re: Miguel Richards BWC**

Dear Ms. Lowenkron:

This letter is in response to your letter dated December 15, 2017 appealing the determination of the Records Access Officer made on November 17, 2017 regarding records requested from the New York City Police Department. Your request, pursuant to the Freedom of Information Law, was originally received by the FOIL unit on September 15, 2017 and subsequently denied granted to the extent that a series of Body Worn Camera videos were disclosed with redactions made in accordance with various subsections of Public Officers Law Section 87(2).

Your appeal is essentially two-fold: first, you assert that the disclosure is “incomplete” and ask for the complete footage to the extent that it includes footage of the officers “first arriv[ing] at the site of the fatal encounter” and “depart[ing] the site.” Next, you request a reconsideration of the redactions made to the footage that was provided.

As to the portion of your request that seeks footage that you believe to be withheld, please be advised that the footage provided is, in fact, a complete accounting of all video generated for this incident. Unfortunately, some of the video does not actually contain footage of officers arriving or departing the scene. The cameras begin recording at the time at which the officer turns it on by sliding the cover up. Once the camera is activated, the footage will also automatically include a muted clip of the 30 seconds immediately prior to the activation. The cameras are not constantly recording for the entire tour; so the records provided to you will only include footage that begins and ends when the officers deemed it necessary or tactically safe to activate the camera. Once again, absolutely no footage was withheld from the disclosure and you have the entire collection of video depicting this event.

Next, as it pertains to your appeal for the redacted information; I would like to request some additional time to review the applicability of the exemptions cited by the Records Access Officer. As you are aware, Body Worn Camera video, within the context of FOIL, is a novel subject and this agency wants to be sure that the Public Officers Law is applied properly. As this

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may take more than 10 business days, I respectfully ask that you provide us with a reasonably short amount of time to provide the appeal determination.

This is not a final appeal determination. Should you oppose this agency's request for additional time, please inform me as soon as possible and a determination shall be provided within the 10 business days mandated by Public Officers Law Section 89(4)(a). Thank you for your patience and your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jordan S. Mazur". The signature is fluid and cursive, with the first name "Jordan" being the most prominent part.

Jordan S. Mazur  
Sergeant  
Records Access Appeals Officer

c: Committee on Open Government

# EXHIBIT H



**POLICE DEPARTMENT**  
**Office of Deputy Commissioner,**  
**Legal Matters**  
**One Police Plaza, Room 1406A**  
**New York, New York 10038**  
[FOILAppeals@NYPD.org](mailto:FOILAppeals@NYPD.org)

January 9, 2018

Ruth Lowenkron  
NYLPI  
[RLowenkron@NYLPI.org](mailto:RLowenkron@NYLPI.org)

**RE: FREEDOM OF INFORMATION LAW**  
**REQUEST: LBF #17PL12230**  
**Re: Miguel Richards BWC**

Dear Ms. Lowenkron:

This letter is in response to your letter dated December 15, 2017, appealing the determination of the RAO made on November 17, 2017 regarding records requested from the NYPD. Your request, pursuant to the Freedom of Information Law, was originally received by the FOIL unit on September 15, 2017 and subsequently granted to the extent that the RAO disclosed body-worn camera footage with redactions made pursuant to various subsections of POL §87(2).

Your appeal of the RAO determination is two-fold: first, you seek any footage withheld by the RAO, including any and all footage produced from the time each officer first arrived at the site of the encounter involving Mr. Richards on September 6, 2017 until the time they departed the site; second, regarding the footage that was disclosed, you contest the redactions made to this footage and seek the unedited video from all body worn cameras worn by officers involved in the incident.

In my letter to you, dated December 20, 2017, I informed you that you received all footage pertaining to this incident on November 17, 2017. Therefore, the first part of your appeal is moot.

Regarding the second part of your appeal, on September 14, 2017, The Police Commissioner, in the interest of transparency, released to the public a compilation of the NYPD's encounter with Mr. Richards on Sept. 6, 2017. This new record, separate from the raw BWC footage, has been created for the sole purpose of providing to the public a depiction of the relevant events leading up to and including the critical incident. The exemptions applied to your September 15, 2017 FOIL request for the "unedited video files from all body cameras worn by the uniformed officers," are unaffected by the release of this new record to the public. Therefore, certain information contained within the requested footage that is subject to exemption has been redacted in accordance with the various subsections of POL §87(2) to be discussed below. In furtherance of the Police Commissioner's mission towards transparency in this particular case, minimal redactions have been made including to faces, statements, tactics, observations and conduct.

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Disclosure of the requested record – the full unredacted footage – would constitute an unwarranted invasion of personal privacy [POL §87(2)(b); §89(2)]. In particular, as it pertains to medical records, the persons for whom you seek this information are protected under the federal Health Insurance Portability and Accountability Act (HIPAA) in that HIPAA prohibits the release of these types of confidential records. Specifically, a responding officer who was receiving medical attention was redacted pursuant to HIPAA. Additionally, footage of Mr. Richards receiving medical treatment has also been redacted. The HIPAA Privacy Rule protects the individually identifiable health information about a decedent for 50 years following the date of death of the individual. This period of protection for decedent health information takes into consideration the privacy interests of surviving relatives and other individuals with a relationship to the decedent.

In considering the privacy interests of those individuals present in the video footage versus the public interest in disclosure of the information, the Department takes the stance that persons who are bystanders, witnesses or complainants, will be redacted from videos to protect their privacy interests. This interest far outweighs the public interest for disclosure. Under the circumstances present here, where there is a police-involved shooting resulting in the death of an individual; the subsequent, several-months-long internal investigation, the public notoriety and nature of the incident, and the type of information contained within the footage is sufficient to demonstrate the necessity of protecting the safety and privacy rights of the witnesses/bystanders. Based upon this reasoning, individuals assisting and communicating with the police, as well as neighbors, witnesses and bystanders, were redacted.

Next, the requested footage – including faces, statements, conversations of individuals assisting and communicating with the police – could endanger the life or safety of the individuals captured in the BWC footage [§87(2)(f)]. “POL §87(2)(f) permits an agency to deny access to records, that, if disclosed, would endanger the life or safety of any person. The agency in question need only demonstrate a possibility of endanger[ment] in order to invoke this exemption.” *Matter of Bellamy v. New York City Police Dept.*, 87 A.D.3d 874, 875 (1st Dept 2011), quoting *Matter of Connolly v. New York Guard*, 175 A.D.2d 372, 373 (3d Dept 1991) *aff’d* 20 N.Y.3d 1028 (2013); see *Matter of Ruberti v. New York Div. of State Police*, 218 A.D.2d 494, 499 (3d Dept 1996). Furthermore, there is no requirement that this agency demonstrate the existence of a specific threat or intimidation; rather a showing must be made of a “possibility of endanger[ment]” to invoke this exemption. *Matter of Exoneration Initiative v. New York City Police Dept.*, 114 A.D.3d 436, 438 (1st Dept 2014); see *Matter of Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 277-278 (1996).

The disclosure of video footage containing the faces, statements, etc. of witnesses and bystanders, especially in a highly notorious incident such as a police-related shooting, creates a very real – not a speculative – threat of harassment, harm or reprisal to those present on the footage. This issue was recently deliberated in a high-profile case pertaining to Civil Rights Law §50-a. In that case, the Appellate Division held, in determining that certain personnel records should not be released, that, “[w]e find that the gravity of the threats to Officer Pantaleo’s safety nonetheless demonstrate that disclosure carries a substantial and realistic potential for harm, particularly in the form of harassment and reprisals, non disclosure of the requested records under Civil Rights Law

50-a is warranted.” *Matter of Luongo v. Records Access Officer, Civilian Complaint Review Bd.*, 2017 NY Slip Op 02523, citing, *Daily Gazette*, 93 N.Y.2d at 157, 159 (1999). As such, individuals assisting and communicating with the police, as well as neighbors, witnesses and bystanders, were redacted.

Pursuant to POL §87(2)(a), the records are specifically exempted from disclosure by state or federal statute [Civil Rights Law §50-a]. Section 50-a(1) exempts, “[a]ll personnel records used to evaluate performance toward continued employment or promotion” and the raw unredacted footage gathered from all officers present at the incident consists of exactly that. The courts have gradually taken a very broad view of what constitutes a “personnel record,” systematically expanding the coverage of the provision to cover almost any record that could be used to rate an officer’s job performance. In defining what constitutes a personnel record, the Court of Appeals has stated that, “whether a document qualifies as a personnel record under Civil Rights Law §50-a depends upon its nature and its use in evaluating an officer’s performance.” *Prisoners’ Legal Services v. NYS Department of Correctional Services*, 73 N.Y.2d 26, 32 (1988). There is no doubt that in the case of police-involved shooting incidents, where the BWC footage is mandated to be gathered by various intra-agency units for review and analysis, the raw footage itself can be classified as a “personnel record” subject to the exemption provided in §50-a(1). Notwithstanding the release by the Police Commissioner of a separate record memorializing the incident, the Department reserves the right to argue §50-a protections apply to the raw footage at issue, and, subsequently, minimal redactions have been made.

Next, the BWC footage contains intra-agency materials which represent a non-final agency determination [§87(2)(g)]. In particular, the footage contains information such as statements, tactics, observations and conduct that remains subject to agency review and evaluation for future training, advisement and policy. In *Elentuck v. Green*, 202 A.D.2d 425, 608 NYS2d 701 (2nd Dept) appeal denied 84 N.Y.2d 809, 621 NYS2d 519 (1994), reargument denied 85 N.Y.2d 858, 624 N.Y.S.2d 326 (1995), the Appellate Division held that intra-agency reports were deniable under 87(2)(g) as predecisional, advisory and evaluative. Moreover, it is this agency’s opinion that the information contained within BWC footage is not “factual data” or “objective information” as defined in *Matter of Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 276 (1996); rather, it contains opinions or recommendations subject to the “intra-agency” exemption set forth in §87(2)(g).

Finally, disclosure of the full unredacted footage would interfere with a pending criminal investigation [§87(2)(e)(i)]. This statute specifically provides that an agency, “may deny access to records or portions thereof that are compiled for law enforcement purposes and which, if disclosed, would interfere with law enforcement investigations or judicial proceedings.” Certain conversations between responding officers currently under investigation were redacted. As of this writing, the criminal investigation into the incident remains active and ongoing with the Force Investigation Division. Where the NYPD is engaged in an ongoing internal investigation related to a police-involved shooting, the public disclosure of the records that you seek could have a potentially critical effect on the Department’s ability to properly complete the investigation and possibly adjudicate any potential disciplinary cases that may arise from the investigation. Accordingly, disclosure of the full, unredacted footage must be denied as the release of the requested footage would interfere with this pending criminal investigation.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jordan S. Mazur". The signature is fluid and cursive, with the first name "Jordan" being the most prominent.

Jordan S. Mazur  
Sergeant  
Records Access Appeals Officer

c: Committee on Open Government

# **EXHIBIT I**

Sergeant Jordan S. Mazur  
Records Access Appeals Officer  
Office of Deputy Commissioner, Legal Matters  
New York City Police Department  
One Police Plaza, Room 1406A  
New York, New York 10038  
[FOILAPPEALS@NYPD.org](mailto:FOILAPPEALS@NYPD.org)

Re: "FREEDOM OF INFORMATION LAW REQUEST: LBF # 17PL12230  
Re: Miguel Richards BWC"

Dear Sergeant Mazur:

I am writing in regard to your January 9, 2018 letter denying the December 15, 2017 appeal of the Freedom of Information Law ("FOIL") determination in the above-referenced matter. You advised that the New York Police Department ("NYPD") would continue to withhold material redacted from the video footage concerning the NYPD's September 6, 2017 encounter with Miguel Richards that was produced to New York Lawyers for the Public Interest ("NYPLI") on November 17, 2017.

According to your letter, the NYPD's determination was based in part on Section 50-a of the New York Civil Rights Law. However, as NYLPI recently learned, the NYPD in *Patrolmen's Benevolent Association v. DeBlasio*, Docket No. 150181/18 asserted, and Justice Hagler agreed, that footage captured on a police officer's body-worn camera ("BWC") is not a personnel record shielded from FOIL disclosure by Section 50-a. In light of the NYPD's position and the Court's determination, NYLPI is respectfully requesting that the footage redacted from the video produced to NYLPI, in reliance on Section 50-a, now be produced.

Please advise by March 9 whether, and if so, when you will produce additional footage to NYLPI. This will assist NYLPI in making its decision of whether or not to commence an Article 78 proceeding to review the NYPD's FOIL determination.

Sincerely,

*Ruth Lowenkron*

Ruth Lowenkron, Esq.  
Director, Disability Justice Program

cc: Maxwell D. Leighton, ACC

# **EXHIBIT J**

---

**From:** FOIL APPEALS [<mailto:FOILAppeals@nypd.org>]  
**Sent:** Wednesday, February 28, 2018 5:56 AM  
**To:** Ruth Lowenkron <[rlowenkron@nylpi.org](mailto:rlowenkron@nylpi.org)>  
**Subject:** Re: LBF# 17PL12230

Ms. Lowenkron,

The case that you refer to in your letter remains ongoing and the court has yet to make a final determination. Until instructed otherwise, the NYPD maintains its position held in the appeal determination issued on January 9, 2018.

**Best,**

**Jordan S. Mazur**  
**Sergeant**  
**Records Access Appeals Officer**  
**Deputy Commissioner Legal Matters**  
**1 Police Plaza, Room 1406 New York, NY 10038**

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**From:** Ruth Lowenkron <[rlowenkron@nylpi.org](mailto:rlowenkron@nylpi.org)>  
**Sent:** Tuesday, February 27, 2018 3:50:30 PM  
**To:** FOIL APPEALS  
**Subject:** LBF# 17PL12230

Sergeant Mazur:

Please see attached appeal.

Thanks,

**RUTH LOWENKRON, ESQ.**  
Director, Disability Justice Program  
**NYLPI**  
New York Lawyers for the Public Interest  
151 West 30th Street, 11<sup>th</sup> Floor, New York, NY 10001-4017  
Tel: (212) 244-4664 Fax: (212) 244-4570 TTY: (212) 244-3692  
[RLowenkron@NYLPI.org](mailto:RLowenkron@NYLPI.org)  
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# **EXHIBIT K**



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

March 20, 2018

New York Lawyers for the Public Interest, Inc.  
Ruth Lowenkron  
151 West 30<sup>th</sup> Street, 11<sup>th</sup> Floor  
New York, New York 10001-4017

**RE: FREEDOM OF INFORMATION LAW**  
**REQUEST: LBF #17PL12230**  
**Re: Miguel Richards BWC**

Dear Ms. Lowenkron:

This is in response to your latest correspondence requesting that the footage redacted from body-worn camera video previously provided pursuant to your FOIL request now be produced.

We have decided to grant your request. Therefore, enclosed herein please find a copy of the body-worn camera footage with the initial redactions made pursuant to the provisions of Civil Rights Law Section 50-a now removed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jordan S. Mazur'.

Jordan S. Mazur  
Sergeant  
Records Access Appeals Officer

COURTESY • PROFESSIONALISM • RESPECT

**EXHIBIT L**  
**(CD Provided to Court)**