



MEMORANDUM OF SUPPORT S.8496/A.10611

**IN SENATE, BILL NUMBER 8496. INTRODUCED BY SENATOR BAILEY
IN ASSEMBLY, BILL NUMBER 10611. INTRODUCED BY COMMITTEE ON RULES** (At the request of Member of Assembly O'Donnell)

AN ACT to amend the civil rights law and the public officers law, in relation to the disclosure of law enforcement disciplinary records; and to repeal section 50-a of the civil rights law relating thereto

SUMMARY OF PROVISIONS:

This legislation would repeal Civil Rights Law section 50-a and provide for public disclosure of the disciplinary records of police, probation and corrections officers. Public Officers Law Article 6 (the Freedom of Information Law, or “FOIL”) would amend section 87 and add subdivisions 6-9 to section 86 to make certain “law enforcement records” that were “created in furtherance of a law enforcement disciplinary proceeding” subject to public disclosure. Additional privacy protections would require redaction of personal information in records.

STATEMENT OF SUPPORT:

The state’s Freedom of Information Law (“FOIL”) is among New York’s most important transparency and government accountability tools. FOIL presumes that the public should have access to government records unless excepted under specified categories, such as an unwarranted invasion of personal privacy, endangering someone’s life or safety, or disclosure of trade secrets.¹ FOIL allows New Yorkers to understand how the government they authorize and fund operates and provides the facts necessary for accountability, oversight and reform.

In 1976, the Legislature approved Civil Rights Law section 50-a, adopted to protect law enforcement personnel from having *unsubstantiated complaints* in their “personnel records” used to discredit them in cross examination during criminal proceedings.² Through a series of court cases Civil Rights Law section 50-a has been transformed from a limited exception to the state policy favoring disclosure to a nearly impenetrable shield. In the absence of the Legislature having defined the term “personnel records” in statute, the courts have given it an expansive reading resulting in the denial of virtually all records access requests pertaining to law enforcement personnel.

For example, in *Luongo v. Records Access Officer, Civilian Complaint Review Board*, the Appellate Division, First Department covering Manhattan reversed a Supreme Court decision and denied access to information in the file of Daniel Pantaleo, the New York Police Department officer whose choke hold killed Eric Garner on Staten Island in July 2014.³ The appellate court found that the records of substantiated complaints against officer Pantaleo were exempt personnel records under Civil Rights Law section 50-a. The panel of judges in *Luongo* said it was constrained “to apply the law as it exists, and as interpreted by controlling Court of Appeals precedents.”

¹ New York’s Personal Privacy Protection Law protects public employees from disclosure of their private personal information contained in their personnel files, such as home addresses, social security numbers and family member details. See Public Officers Law section 89 *et seq.*

² *Report on Legislation by the Civil Rights Committee and the Criminal Courts Committee*, The Association of the Bar of the City of New York, April 30, 2018. Accessed at <https://www.nycbar.org/media-listing/media/detail/city-bar-urges-repeal-of-civil-rights-law-50-a-to-allow-public-disclosure-of-police-records-relating-to-police-misconduct>.

³ 2017 NY Slip Op 02523, decided March 30, 2017. Accessed at <https://law.justia.com/cases/new-york/appellate-division-first-department/2017/100250-15-2979.html>.

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This reasoning is now being used to shield records far beyond personnel files: Some municipalities are claiming that Civil Rights Law section 50-a is a basis for police departments to withhold body cam video from public release.^{4,5} That the Legislature intended a limited effect for section 50-a was confirmed by the bill's lead Senate Sponsor Frank Padavan in an interview with the *Times Union* in 2016:

Frank V. Padavan, a former state senator from Queens who was the chief sponsor of the legislation 40 years ago, confirmed that the sole intention of the statute, which is part of the state Civil Rights Law, was to stop private attorneys from using subpoenas to gain unfettered access to the personnel records of police officers.⁶

As of 2020, New York and Delaware are *the only two states* that provide law enforcement with special carve outs from records disclosure.⁷

With respect to the concerns that law enforcement should be shielded from release of their personnel records, this legislation would provide additional protections, including requiring the redaction of personal information such a medical history; home address, phone and cell numbers and email addresses of the individual and family.

Police officers play a critically important role in society, entrusted to keep the peace and if necessary use deadly force to protect the public. It is among the greatest delegations of responsibility that is bestowed in a democracy. Accordingly, law enforcement funding makes up a substantial part of state and local budgets borne by taxpayers. Providing public access under FOIL to law enforcement personnel records would promote trust in the individuals performing these essential functions as well as in the oversight mechanisms established to hold them accountable.

At a time of unprecedented mistrust in these public servants, rebuilding the relationship between law enforcement and the communities it serves is a paramount concern. As former Albany Police Department Chief Brendan Cox recently told the *Times Union*:

“People expect law enforcement to be transparent, and the more transparent we can be the better the relationships we can build,” he said. “We live in a world where people don’t want to take you at your word, they want to see the proof of it, and I think that’s reasonable.”⁸

Our organizations urge your support of this important legislation.

⁴ *Albany Denying Access to Body Camera Emphasizes Need to Change, Advocates Say*, Amanda Fries, *Times Union*, February 17, 2020. Accessed at <https://www.timesunion.com/news/article/Albany-denying-access-to-body-camera-emphasizes-15035448.php>.

⁵ A state appellate court covering Manhattan has upheld a police union’s challenge to release of body camera video. There does not appear to be controlling court opinion for other areas of the state. See *Patrolmen’s Benevolent Association of the City of New York v. Bill de Blasio, et al.*, (App. Div 1st Dep’t, 2019 NY Slip Op 03265, April 30, 2019). Accessed at <https://law.justia.com/cases/new-york/appellate-division-first-department/2019/150181-18-7913a-7913-0.html>.

⁶ *Court Rulings Shroud Records; Law Intended to Protect Police Broadened to Hide Misconduct from Public*, Brendan J. Lyons, *Times Union*, December 15, 2016. Accessed at <https://www.timesunion.com/tuplus-local/article/Court-rulings-shroud-records-10788517.php>.

⁷ The New York City Bar Association 2018 report included California along with New York and Delaware as states that restrict the scope of information available to the public. See footnote no. 9. In 2018, California amended its public records law to provide broad public access to information about a police officer’s relevant professional and personal conduct. See *New California Laws Open Police Officer Records, End 40 Years of Secrecy*, Tony Saavedra, *The Orange County Register* October 1, 2018. Accessed at <https://www.ocregister.com/2018/10/01/new-california-laws-open-police-officer-records-end-40-years-of-secrecy/>.

⁸ *Albany Denying Access to Body Camera Emphasizes Need to Change, Advocates Say*, Amanda Fries, *Times Union*, February 17, 2020. Accessed at <https://www.timesunion.com/news/article/Albany-denying-access-to-body-camera-emphasizes-15035448.php>.