



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

April 12, 2022

Chris Gelardi
126670-36035693@request.muckrock.com

RE: FREEDOM OF INFORMATION LAW
REQUEST: FOIL-2022-056-05123
Re: Neighborhood Safety Team Rosters

Dear Mr. Gelardi:

This letter is in response to your email dated April 12, 2022, appealing the determination of the Records Access Officer (RAO) made on March 25, 2022 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 March 22, 2022 and subsequently denied by the RAO pursuant to Public Officers Law §87(2)(e)(iv).

The appeal is denied because the disclosure of the requested information could endanger the life or safety of any person [§87(2)(f)]. "Public Officers Law § 87(2)(f) permits an agency to deny access to records, that, if disclosed, could 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) affd 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).

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). It is this agency's position that the disclosure of the information requested could create the possibility of endangerment to assigned officers.

Moreover, courts have identified situations where the withholding of certain documents was proper where disclosure would reveal confidential strategic information regarding an agency's tactical responses and deployments of personnel. For example, in *Ruberti, Girvin & Ferlazzo P.C. v. New York State Division of State Police*, 218 A.D.2d 494 (3d Dep't 1996), the court found that documents disclosing troop, zone, and station assignments of police officers could endanger their safety.

The information requested here falls squarely within FOIL's statutory exemption designed to protect public safety. The life and safety exemption excludes these records from disclosure to ensure public safety, and so as not to assist malefactors in committing crimes. As the Court of Appeals

warned, FOIL “was not enacted to furnish the safecracker with the combination to the safe.” See Fink, 47 N.Y.2d at 573.

The appeal is also denied to the extent that disclosure of the requested records would reveal non-routine criminal investigative techniques or procedures [§87(2)(e)(iv)]. "Indicative, but not necessarily dispositive, of whether investigative techniques are nonroutine is whether disclosure of these procedures would give rise to a substantial likelihood that violators could evade detection by deliberately tailoring their conduct in anticipation of avenues of inquiry to be pursued by agency personnel" (see, *Matter of Moore v. Santucci*, 151 A.D.2d 677 (2d Dep't 1989), citing, *Matter of Fink v Lefkowitz*, [47 N.Y.2d 567](#), 572, *supra*).

By revealing the exact personnel assigned to the Neighborhood Safety Teams – effectively revealing the specific Precincts within which the Teams were operating – would allow for an individual or group to modify their conduct to evade or undermine the NYPD’s capabilities and would aid individuals or groups who might wish to take advantage of resources – or the lack thereof – assigned to each of the Precincts or commands throughout the city. Essentially, an individual or group could tailor their conduct to target a particular precinct based on the information provided in this request. Furthermore, additional information, such as dates and times during which the Teams operated, could be revealed through a series of FOIL requests targeting other information about the assigned officers.

Finally, to the extent that you seek the “last roster of the NYPD’s Anti-Crime Units,” please note that the disclosure of information responsive to your request would require extraordinary efforts not required under FOIL because of the manner in which the agency maintains its roll call records. The records are maintained electronically and are a snapshot in time on any given date. Furthermore, the assignment of personnel to Anti-Crime Units is maintained at the command level, meaning there is no “master list” or roster of all personnel assigned to Anti-Crime on any particular date. Accordingly, the request would require the agency to first determine the last date that the teams operated in each individual precinct, and then to search for the roll call records of each individual precinct for that particular date – a date which might vary by Precinct – to locate which officers were assigned to Anti-Crime on that date. This task would then require the creation of a new record in order to compile the information from each precinct and then to create a list responsive to your request.

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