

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

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THE CITY REPORT, INC.

Plaintiff,

- v -

NEW YORK CITY POLICE DEPARTMENT,

Defendant.

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INDEX NO. 150141/2026

MOTION DATE 01/02/2026

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 18, 19, 20, 48, 49, 50

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the petition is granted in part.¹

Background

Petitioner The City Report, Inc. (“City Report”) brings this proceeding pursuant to Article 78 of the Civil Practice Law and Rules and New York’s Freedom of Information Law (“FOIL”), Public Officers Law §§ 84-90, seeking to compel Respondent New York City Police Department (“NYPD”) to produce records related to the arrest of Samuel Williams on May 28, 2023. On that date, an NYPD officer driving an unmarked vehicle crossed into oncoming traffic and struck Williams, who was riding on a dirt bike. Officers placed Williams in handcuffs before providing medical assistance, and he died at a hospital the following day. No criminal charges were ever formally filed against him.

¹ The Court would like to thank Gracie Brownstein, Needhi Bajaj, Thatcher Cord, Zachary Goldberg, Jesse Green, and Laurissa Stevens for their assistance in this matter.

Petitioner filed three FOIL requests seeking: the Force Investigation Division's ("FID") closing memo related to Williams' death; all video footage obtained by the FID's investigation; and all video footage — including body-worn camera ("BWC"), dashcam, and street camera footage — obtained by the NYPD in its investigation. NYPD denied all three requests, claiming the records were sealed pursuant to Criminal Procedure Law ("CPL") § 160.50. Petitioner filed an administrative appeal on July 9, 2025. NYPD denied the appeal on the same grounds and vaguely invoked the personal privacy exemption under Public Officers Law § 87(2)(b) and the non-routine investigative techniques under Public Officers Law § 87(2)(e)(iv). This Article 78 proceeding followed.

Discussion

The New York State Public Officers Law §§ 84-90, also known as the New York Freedom of Information Law ("FOIL"), provides a mechanism for the public to access government records. In enacting FOIL, the New York State Legislature emphasized the importance of transparency in government processes. Pub. Off. Law § 84 states, "the people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it in the cloak of secrecy or confidentiality." Public Officers Law § 84.

However, the public's right to access these records is not absolute. All records are presumptively available for public access unless the agency satisfies its burden of demonstrating that the records fall squarely within a FOIL exemption. *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566 (1986). Exemptions are to be narrowly construed,

and an agency may not rely on conclusory assertions to avoid its disclosure obligations. *Legal Aid Soc'y v. Recs. Access Officer*, 238 A.D.3d 17 (1st Dep't 2025).

Further, CPL § 160.50 acts to seal official records upon termination of criminal proceedings in favor of the person accused or charged. CPL § 160.50. Specifically, CPL § 160.50(3)(i) states that proceedings are resolved favorably and official records sealed when, prior to filing an accusatory instrument, the prosecutor elects not to prosecute such a person.

This case presents the application of CPL § 160.50 to a deceased arrestee and the official records status of BWC and other video footage.

Criminal Procedure Law § 160.50 does not apply to the present situation for two reasons. First, the body-worn camera footage and dashcam footage are not “official records” within the meaning of CPL § 160.50. Beyond specifying that judgments and orders of a court constitute official records and papers, the statute does not otherwise define the nature of such “official” material, and the Court interpreting this statute have found that there is no bright line rule as to what constitute official records.

Case law, however, is instructive in determining what “official records” are. In *Leah W. v. Keith W.*, the First Department held that 911 calls are not official records within the meaning of CPL § 160.50 because the 911 system serves a broader purpose than solely relating to criminal arrests or prosecutions. *Leah W. v. Keith W.*, 246 A.D.3d 68 (1st Dep’t 2025). Like the 911 system, body-worn camera and dash cam footage serve a documentary and information-gathering purpose not inherently tied to any arrest or prosecution that may follow. *Id.* In fact, the First Department has stated that body-worn camera footage is for use in key objectives such as

“transparency, accountability, and public trust-building.” *Matter of Patrolmen's Benevolent Ass'n of the City of N.Y. v. de Blasio*, 171 A.D.3d 636, 637 (1st Dep't 2019).

Second, even if the body-worn camera footage and dashcam footage are deemed to be “official records,” it is not proper to seal them under CPL § 160.50 (3)(i) which states that official records will be sealed when “prior to filing an accusatory instrument . . . the prosecutor elects not to prosecute the person.” On the basis that electing to do something requires making a choice between two options, and the prosecutor could not have realistically prosecuted a deceased person, there was no election that occurred in this instance, as it is undisputed that Mr. Williams was not prosecuted because he was deceased. As such, CPL § 160.50(3)(i) does not apply. Similarly, because CPL § 160.50(3)(i) does not apply, the closing memo issued by the FID also cannot be sealed under the statute. NYPD’s additional claimed exemptions under Public Officers Law §§ 87(2)(b) and 87(2)(e)(iv) also fail. Courts reviewing FOIL denials are limited to justifications provided at the administrative level, and arguments raised for the first time during litigation are not preserved. *Madeiros v. New York State Educ. Dep't*, 30 N.Y.3d 67, 74 (2017). The invocation of both exemptions — without identifying specific records or explaining why they apply — falls short of the specific justification FOIL requires. *Capital Newspapers*, 67 N.Y.2d at 566.

The Public Officers Law authorizes an award of counsel fees where the petitioner has “substantially prevailed” in the FOIL proceeding and the agency either lacked a reasonable basis for denying access to the requested records or failed to respond to a request within the statutory time period. *Madeiros*, 30 N.Y.3d at 74. In this instance, even though petitioner substantially prevailed, it cannot be said that the respondent had no reasonable basis for denying access to the records at issue because this is a novel and unique situation. *Matter of N.Y. Civil Liberties Union*

v. N.Y.C. Dep't of Corr., 213 A.D.3d 530 (App. Div. 1st Dept. 2023). Further there is no question that the NYPD responded to these requests within the statutory period. Therefore, because respondent did not lack a reasonable basis for the denial and timely responded to the requests, Public Officers Law § 89(4)(c)(i) and (ii) does not provide a mechanism for awarding attorneys fees here. Accordingly, it is hereby

ORDERED that Respondent NYPD shall produce to petitioner documents responsive to the subject FOIL requests titled FOIL-2024-056-29429, FOIL-2024-056-29430, and FOIL-2024-056-34780 including but not limited to BWC, vehicle dash cam footage, street camera footage, and the Force Investigation Division's closing memo in its investigation of the death of Samuel Williams on May 28, 2023 not more than 90 days following service of this Order with notice of entry.

ADJUDGED that Petitioner's request for attorney's fees is denied.

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6/3/2026

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE