New York Law Journal

As Law to Open Police Records Is Debated, Tribunal Denies Bid to Shield Info

An administrative law judge said a controversial law allowing law enforcement agencies to keep disciplinary records secret, a law whose repeal is a current front-burner topic in the New York Legislature, can't be used to shroud any mention of the disciplinary matter.

By Andrew Denney | June 08, 2018

The union representing New York City's corrections officers is challenging a Manhattan judge's refusal to keep under seal information about an officer's write-up for excessive force.

The administrative law judge said a controversial law allowing law enforcement agencies to keep disciplinary records secret, a law whose repeal is a current front-burner topic in the New York Legislature, can't be used to shroud any mention of the disciplinary matter.

Administrative Law Judge Faye Lewis denied a request by Aubrey Victor, a corrections officer on Rikers Island who was fired for using excessive force on an inmate, to redact his name from court documents on his case.

Lewis' administrative tribunal ruling came as criminal-justice reform organizations fight a multifront battle in the courts to challenge what they consider a broad interpretation of Civil Rights Law 50-a, which keeps those records secret.

It also comes as legislation to repeal the 40-year-old statute, which was relatively obscure until Eric Garner died in 2014 on Staten Island while New York City Police Officer Daniel Pantaleo

New York Law Journal

had him in a choke hold, languishes in the State Assembly in the face of stiff opposition from police unions as this year's legislative session enters its final days.

Cynthia Conti-Cook of the Legal Aid Society at a rally Friday June 8, 2018 to call for the repeal of Civil Rights Law 50-a. Legal Aid is one of the legal service providers challenging what they consider to be a broad interpretation of the law by courts in the state. /Photo: Andrew Denney/

According to the 2015 decision by the Office of Administrative Trials and Hearings to affirm Victor's 2011 termination, Victor punched a 16-year-old inmate in the face without provocation and stomped on his head three times while he lay on the ground.

For his part, Victor testified that he believed the inmate had a weapon, but Lewis said in a signed decision she found Victor's version of the facts "incredible."

In the course of his proceedings before the OATH tribunal, the court denied Victor's motion to redact his name and other identifying information from any OATH report or recommendation regarding his case, citing 50-a.

But Faye wrote that the administrative court was established by the City Charter as an independent tribunal and its decisions are not under the control of the Department of Correction. Thus, the judge said, it is not bound by 50-a.

New York Law Journal

On May 29, Manhattan Supreme Court Justice Shlomo Hagler dismissed Victor's Article 78 petition to challenge OATH's ruling, and also denied his request to make confidential all OATH decisions regarding corrections officers dating back to 1992, saying the "unfettered, unlimited" request to shroud 35 years of OATH jurisprudence would likely be time-barred.

The New York Times and the New York Civil Liberties Union filed amicus briefs in the case arguing that corrections officers' disciplinary records should be public.

"The effort here to use section 50-a not only to bar release of current disciplinary decisions but also to scrub decades of past decisions from the public realm reveals just how far law enforcement will go in trying to use section 50-a to block transparency and accountability," said Christopher Dunn, the NYCLU's associate legal director. "While confident that Justice Hagler's ruling will be upheld, we remain deeply concerned about the breadth of the statute."

The Correction Officers Benevolent Association is appealing the ruling to the Appellate Division, First Department and will "pursue it as high as it will go," a spokesman for the union said.

Much of the controversy surrounding 50-a has concerned its application to the disciplinary records of New York City police officers; the city declined to release Pantaleo's disciplinary records following the death of Garner, whose final words, "I can't breathe," became a rallying cry for protests around the country denouncing police brutality.

But last year an employee for the city's Civilian Complaint Review Board leaked Pantaleo's disciplinary records. Pantaleo is still with the department, but the review board has called for Pantaleo's ouster and the officer is the target of an ongoing investigation by the Department of Justice, said Pantaleo's lawyer, Stuart London of Worth, Longworth & London.

In December, the state Court of Appeals declined to take up a ruling by the First Department that the CCRB was not required to release Pantaleo's records, in which the intermediate

appellate court found that the records fell “squarely” in the exemptions from the state Freedom of Information Law provided under 50-a.

While it declined to take up the case involving Pantaleo’s records, the high court has taken up another case involving 50-a in which the NYCLU is set to square off with the NYPD and arguing that redaction could balance the transparency goals of the state’s FOIL law with law enforcement agencies’ privacy concerns.

At the forefront of legal and legislative fights to keep 50-a on the books has been the Patrolmen’s Benevolent Association, long opposed to attempts to change the statute, which argues that changing the law could put officers’ lives at risk.

“Unlimited public disclosure of police officers’ confidential personnel records would put them and their families at greater risk for harassment, or worse,” said PBA president Patrick Lynch in a statement. “It would also allow criminals to escape justice by turning their trials into circuses that have little to do with their own guilt or innocence. The state legislature foresaw all of these dangers when it placed common-sense limits on the release of these records. Nothing has changed to negate the need for these laws.”

Among the union’s legal battles is a suit to block the city from releasing summaries of officers’ disciplinary records; on June 5, Manhattan Supreme Court Justice Arthur Engoran sided with the police union and denied the city’s motion to dismiss, allowing the union’s suit to proceed.

But a growing list of groups have banded together to call for the repeal of 50-a, which was passed with the intention of preventing the release of unsubstantiated civilian complaints and limiting lawyers’ access to police personnel files, but has since been broadly interpreted by the courts.

New York’s law is the most secretive in the country, according to the state’s ethics watchdog, the New York State Committee on Open Government.

New York Law Journal

The New York City Bar Association recently joined a coalition of 30 groups that have called for the rescission of the law, issuing a report supporting legislation to repeal the statute.

The report created a dustup between the City Bar and the police union, which called the report "tainted" because its signatories, Philip Desgranges of the NYCLU and Cynthia Conti-Cook of the Legal Aid Society, work for organizations representing parties challenging the courts' interpretations 50-a.

State Assemblyman Daniel O'Donnell, a Manhattan Democrat, has proposed a bill that would repeal 50-a, but the bill hasn't moved since it was sent to a committee in January.

Assemblyman Dan Quart, also a Manhattan Democrat and a co-sponsor of the bill who spoke on Friday at a rally on the steps of City Hall to call for the repeal of the law, said he has "zero" confidence that the legislation will pass when the session ends this month.

"It's frustrating because no issue is as clear-cut as this one is," Quart said.