

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 52M

Justice

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R. C., A. G., J. J.

Plaintiff,

- v -

THE CITY OF NEW YORK, JAMES O'NEILL,

Defendant.

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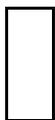
INDEX NO. 153739/2018

MOTION DATE 08/19/2021

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196



were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

Plaintiffs bring the instant motion for preliminary injunction to restrain and enjoin defendants from instructing New York City Police Department ("NYPD") personnel that they may access and use sealed arrest information without a court order; to require defendants to issue a FINEST1 training message stating that NYPD personnel may not access and use sealed arrest information without a court order; to prohibit defendants from providing NYPD personnel with access to sealed arrest information for law enforcement purposes without a court order; and to de-designate certain training materials as confidential. Defendants oppose the motion contending that the issues raised are moot, that the relief of a preliminary injunction is not proper at this stage of the litigation, and that publication of the training materials would lead to a chilling effect on future trainings within the NYPD. Based on the reasons set forth below, the motion for a preliminary injunction is granted in all respects.

1 It is undisputed that FINEST is a messaging system that allows the transmission of legal directives within the NYPD.

### Applicable Law

“A movant's burden of proof on a motion for a preliminary injunction is particularly high” *Council of the City of NY v Giuliani*, 248 AD2d 1, 4 [1st Dept 1998]. A party seeking a preliminary injunction must clearly demonstrate (1) the likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the injunction is not issued; and (3) a balance of the equities in the movant's favor. (*Doe v Axelrod*, 73 NY2d 748 [NY 1988]; *Housing Works, Inc. v City of New York*, 255 AD2d 209 [1st Dept 1998]).

The Court previously provided a lengthy recitation of the statutes in question along with the history of these statutes, and a finding that the sealing statutes do not allow for the use of sealed records for investigatory purposes with certain narrow exceptions without an unsealing order, through the decision and order of Justice Tisch dated April 29, 2019. The Court will therefore not reiterate the reason for these findings.

In short, sections 160.50 and 160.55 of the Criminal Procedure Law are meant to protect those who have had cases dismissed, for whatever reason, to limit the disclosure of such records in order to protect those individuals who are the subject of such records. However, it does not require expungement of such records. The records are meant to be able to be accessed in some form, as all such sealed records need to be made available if an unsealing order is obtained from a Court of competent jurisdiction. In addition, and as discussed in oral argument, often the data of such arrests without personal identifying information can be used without running afoul of the sealing statutes.

### Discussion

With the caveats described above, the Court will now address the relief sought by the plaintiffs in turn.

First, the defendants freely admit that their prior training regarding the sealing of records was contrary to law. As the NYPD did not properly train as to the sealing statutes before, the best way to ensure this conduct is not repeated is for this Court to issue an order enjoining such future conduct.

The Court finds that the injunctive relief sought by the plaintiffs sets the right balance between the conflicting factors described above. The records need to exist, but as stated above, they may not be used for investigatory purposes without a properly obtained unsealing order, except as provided in enumerated exceptions to the relevant statutes and their interpretation by courts. It is concerning to this Court that according to the respondents, there are over 800 people who have access to these sealed records. That number by its very nature, runs afoul of the sealing statutes.

The Court disagrees with the defendants that a preliminary injunction is not the appropriate remedy in this case. Plaintiffs contend, and the Court agrees, that the fact that the legal issues have been addressed and resolved by the previous motion to dismiss in this case, shows that the plaintiffs have a very strong likelihood of success on the merits. The Court also finds that even if the injunction sought were to be characterized as a mandatory injunction, the plaintiffs have met their burden to obtain this relief.

Plaintiffs argue that failing to issue this preliminary injunction requiring compliance with the sealing statutes requested herein will lead to irreparable harm to all those whose records are sealed but readily accessible. The Court agrees with this argument as once a sealed document is seen it cannot be unseen.

Plaintiffs contend that the balance of the equities favor plaintiffs. The Court agrees. The defendants argue that it will be very expensive to change the NYPD's systems currently in use.

However, while that may be a reason to give the NYPD a bit more time to comply with an order of this Court, it does not outweigh the rights of those who have had their records sealed to in fact not receive the privacy that such sealing intends.

The Court, however, agrees with the defendants, as noted above and as noted by Justice Tisch in his prior order, that there has been some case law that has provided some exceptions and some further interpretations of the sealing statutes. That is why the order from this Court will require the defendants to abide by the sealing statutes as such statutes have been interpreted through relevant case law.

The Court also agrees with the plaintiff that the use of a FINEST message to ensure to the extent possible that members of the NYPD are aware of the proper applicability of the sealing statutes goes part and parcel with enjoining the use of the training materials discussed above. As such, this message is appropriate and will be ordered. However, due to the complex nature of these issues, the Court will give the defendants time to craft this message.

Finally, the Court sees no reason to prohibit the publication of the training materials in question, if desired by plaintiffs or anyone else who wishes to view the record of this case as with virtually any other case. The Court is unpersuaded that such disclosure will lead to a chilling effect on future trainings. Courts have a long history of having their proceedings open to the public, with specifically enumerated exceptions. The Court declines to extend that exception to these documents.

It should be noted that if there was any concern that public safety could be at all compromised with the disclosure of these training documents, the Court would not permit such disclosure. However, there has never been any indication that keeping the subject training

material confidential would have any deleterious impact on public safety in any way. Based on the foregoing, it is hereby

ADJUDGED that the preliminary injunction is granted in all respects; and it is further

ORDERED that the defendants are enjoined from instructing NYPD personnel in a manner that violates the sealing statutes; and it is further

ORDERED that a, stating that NYPD personnel may not access sealed arrest information without a court order; and it is further

ADJUDGED and ORDERED that the confidentiality designations on all relevant trainings is hereby removed, and that the defendants serve and file de-designated versions within 30 days of the date of service of this order with notice of entry; and it is further

ORDERED that the City is directed to submit to the Court and the plaintiffs not more than 120 days following service of this order with notice of entry, a plan to comply with this order as it relates to the cessation of use of sealed records for investigatory purposes unless an unsealing order has been obtained from a Court of competent jurisdiction or an exception to the sealing statutes applies as well as proposed text of a FINEST message that discussed such plan and policy, with such FINEST message be read at ten consecutive roll calls to begin not more than 10 days following the Court's sign off on the plan and message as indicated below; and it is further

ORDERED that plaintiff shall have 30 days to submit any comments on this plan and message to the Court, with the Court subsequently either ruling that such plan meets the requirements of existing law or sending the matter back to the defendants until such time as a version complies with applicable law.

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9/27/2021

DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE