



Gideon Orion Oliver

—ATTORNEY AT LAW—

He/him/his

277 Broadway, Suite 1501
New York, NY 10007

1825 Foster Avenue, Suite 1K
Brooklyn, NY 11230

Gideon@GideonLaw.com*

GideonLaw.com

Office: (718) 783-3682

Signal: (646) 263-3495

Fax: (646) 349-2914*

**Not for service*

August 27, 2019

BY HAND AND CERTIFIED MAIL

Records Access Officer (“RAO”)
New York City Police Department (“NYPD”) FOIL Unit
1 Police Plaza, Room 110 C
New York, New York 10038

Records Access Officer (“RAO”)
Civilian Complaint Review Board (“CCRB”)
FOIL Unit
100 Church Street
New York, NY 10007

Re: First Amendment Records Access Demand and
Freedom of Information Law Request Related to Eric Garner

Dear NYPD and CCRB Records Access Officers:

This is a demand and Freedom of Information Law (“FOIL”) request for access to records related to the death of Eric Garner and related actual or potential investigation(s), disciplinary action(s), and prosecution(s). We submit this demand on behalf of the following individuals and entities (collectively, the “Requesters”):

- **Gwen Carr**, Mr. Garner’s mother, who has not had access to underlying records related to Mr. Garner’s death and related actual or potential investigation(s), disciplinary action(s), and prosecution(s); who was able to attend the May-June 2019 public administrative trial of former NYPD Officer Daniel Pantaleo every day, but who could not: view exhibits; learn about arguments and decisions that impacted what happened during the public trial; view Pantaleo’s Internal Affairs Bureau (“IAB”) transcript that was entered into evidence but not read into the record; view motions and arguments that impacted how the judge would determine findings, recommendations, and decisions on those motion arguments; or access copies of administrative records, including exhibits, relied on by the administrative judge, or transcripts of the proceedings;

- **James Flagg**, Eric Garner’s uncle, who wanted to but was unable to access the public trial due to his physical condition, which forces him to be mostly homebound;
- **Communities United for Police Reform (“CPR”)** (<http://changethenypd.org>), whose coalition members include individuals who wanted to but could not attend days of the trial due to limited space despite CPR requests for a spill-over room;
- **The Justice Committee (“JC”)** (<http://www.justicecommittee.org/>), whose members and staff wanted to but could not attend the trial every day due to limited space and lack of a spill-over room; and
- **Any member of the public** who wanted to attend the Pantaleo trial, but could not gain access to the trial room at One Police Plaza.

We make this demand pursuant to the First Amendment to the United States Constitution; Section 8 of the New York State Constitution’s Bill of Rights as well as pursuant to the FOIL, Article 6, §§ 84-90 of the New York State Public Officers Law, and its implementing regulations; Chapter 21 of the New York Code of Rules and Regulations (“NYCRR”) Part 1401; as well as the Uniform Rules and Regulations for All City Agencies Pertaining to the Administration of the Freedom of Information Law, Title 43, Rules of the City of New York (“RCNY”), Chapter 1 (the “Uniform Rules”).¹

As described more fully below, the Requesters seek disclosure of records surrounding the death of Eric Garner on July 17, 2014; the underlying circumstances; misconduct related to his killing; statements made to the NYPD, the media, and/or prosecutors related to the killing and related misconduct; investigation(s), disciplinary action(s), and/or prosecution(s) into and/or regarding the killing and related events (such as false statements provided during investigations and/or leaking confidential and/or false information to the media related to Mr. Garner and/or the killing and/or investigation(s) or related disciplinary action(s)); the outcome(s) of those investigation(s), disciplinary proceeding(s), or prosecution(s); and all of the transcripts, exhibits, motions, decisions, and other records related to the CCRB’s prosecution and resulting public NYPD administrative trial of Daniel Pantaleo that occurred between May 13, 2019 and June 6, 2019.

¹ The records sought are reasonably described below after the BACKGROUND section. If you disagree and find that the documents requested are not reasonably described, please contact us as soon as possible to begin the process of assisting us in identifying the requested records and, if necessary, in re-formulating the request “in a manner that will enable the agency to identify the records sought”, including by identifying to us “the manner in which the records” sought related to Mr. Garner’s killing, death, and related investigation(s), prosecution(s), and disciplinary action(s) “are filed, retrieved or generated.” *See, e.g.*, 21 NYCRR § 1401.2(b)(2); 43 RCNY § 1-03(b); and 43 RCNY § 1-05(c)(3).

For the purposes of analyzing and responding to this First Amendment demand and FOIL request, we request that the CCRB seek outside counsel rather than work with the New York City Law Department. The Law Department will no doubt represent the NYPD in responding to this demand and/or in potential future litigation related to this demand, represents the NYPD's interests and political agendas generally, represents thousands of police officers in civil rights lawsuits, and has an interest in protecting officers from potential past or future liability or other exposure. Those interests conflict with the CCRB's in this matter.

BACKGROUND

The July 17, 2014 Death of Eric Garner

Approximately 4:45 pm on July 17, 2014, NYPD Officers Daniel Pantaleo and Justin Damico approached Eric Garner in front of a store at 202 Bay Street, located within the confines of the 120th Precinct on Staten Island in New York City. Soon thereafter, then-Officer Pantaleo² placed his arm around Mr. Garner's neck for 15 to 20 seconds. Officers Craig Furlani and Mark Ramos arrived about the same time.³ Sergeant Kizzy Adonis and Police Officer William Meems arrived at the scene as police brought Mr. Garner down to the ground.⁴ In now-infamous video recorded by Ramsey Orta, and as also captured by multiple separate cell phones, Mr. Garner can be heard yelling "I can't breathe" eleven times, to no avail. Mr. Garner was pronounced dead at University of Richmond Medical Center shortly thereafter. The City's Office of the Chief Medical Examiner later found that the pressure Pantaleo had applied to Mr. Garner's anterior neck caused hemorrhaging across multiple muscle groups that triggered a lethal cascade and ultimately resulted in his death, ruling Mr. Garner's death a homicide.⁵

² As seen below, NYPD Commissioner James O'Neill fired Pantaleo from the NYPD on August 19, 2019, consistent with the purported written recommendation of NYPD Deputy Commissioner of Trial Rosemarie Maldonado contained in the Report and Recommendation *In the Matter of the Charges and Specifications against Police Officer Daniel Pantaleo*, Case No. 2018-19274, ("*Matter of Pantaleo*"). The *New York Times* published *Matter of Pantaleo* on August 18, 2019, and it is available online at <https://int.nyt.com/data/documenthelper/1645-read-the-judges-opinion/1ab51bece4671aa10d11/optimized/full.pdf#page=1>.

³ *Matter of Pantaleo*, *supra*, p. 8.

⁴ *Matter of Pantaleo*, *supra*, p. 9.

⁵ See Joseph Goldstein & Marc Santora, *Staten Island Man Died From Chokehold During Arrest, Autopsy Finds*, N.Y. Times (Aug. 1, 2014), <https://www.nytimes.com/2014/08/02/nyregion/staten-island-man-died-from-officers-chokehold-autopsy-finds.html> ("[T]he medical examiner's office was clear in the cause

After Mr. Garner was pronounced dead at the hospital, Officer Damico returned to the 120th Precinct to process arrest paperwork. He then documented fabricated felony charges against Mr. Garner that require possession of 10,000 or more cigarettes in official NYPD reports, when he knew in fact that Mr. Garner had only possessed five packs of cigarettes containing under 100 cigarettes in total. Officer Damico also falsely answered “no” under the “Force Used” section of official NYPD arrest paperwork.⁶

Soon after Mr. Garner’s death, press reports claimed that Officer Damico had first approached Mr. Garner with Officer Pantaleo beside him based on Officer Damico’s claim that he had seen Mr. Garner selling cigarettes.⁷ For example, a police source stated to the *New York Times* that both officers had been assigned to “address conditions” in the area of Tompkinsville Park by NYPD 120th Precinct Special Operations Lieutenant Christopher Bannon, who had been specifically instructed at a March 2014 quality-of-life conditions meeting at One Police Plaza to target cigarette sales in and around Tompkinsville Park.⁸ Former Chief of Department Philip Banks reportedly also attended that meeting, after which he sent a sergeant from his office in July to investigate, and personnel under Banks conducted surveillance of the area that included taking pictures.⁹ Police brass also reportedly sent a memo to Staten Island Borough Command in July of 2014 “stressing the need to address quality-of-life issues that was then forwarded to bosses in the 120th Precinct ‘for immediate attention.’”¹⁰

In contrast to the picture that the NYPD painted of Mr. Garner and his alleged cigarette-selling conduct on dates other than July 17, 2014 after his death, store owners in the area who knew Mr. Garner described him as a friend and a community member, not someone who bothered them; and said that they would never have asked for the police to arrest him.¹¹

of his death, finding he died from ‘compression of neck (choke hold), compression of chest and prone positioning during physical restraint by police.’”); *Matter of Pantaleo*, *supra*, p. 11.

⁶ *Matter of Pantaleo*, *supra*, p. 11.

⁷ *Id.* p. 3.

⁸ *Id.*

⁹ See John Marzulli, Rocco Parascandola and Thomas Tracy, *NYPD No. 3's order to crack down on selling loose cigarettes led to chokehold death of Eric Garner*, N.Y. Daily News (Aug. 7, 2014), <https://www.nydailynews.com/new-york/nyc-crime/wife-man-filmed-chokehold-arrested-article-1.1893790>.

¹⁰ *See id.*

¹¹ *See id.*

Also soon after Mr. Garner’s death, then-NYPD Commissioner William Bratton told the media that the 120th Precinct had received numerous 911 complaints of untaxed cigarette sales in the area surrounding Tompkinsville Park and that he “d[id] not expect [his] officers to walk away from that type of situation.”¹² Police also alleged that, two weeks prior to Mr. Garner’s death, Officer Damico allegedly warned him about the NYPD’s coming crackdown on those selling loose cigarettes in the area.¹³

According to multiple eyewitnesses, however, Mr. Garner had not been selling cigarettes on July 17, 2014, but rather, had just broken up a fight, when Officers Damico and Pantaleo approached him.¹⁴

On July 22, 2014, then-Commissioner Bratton called for a “sweeping review” of NYPD training and tactics.¹⁵ However, he then said only a few days later that he would not change the NYPD’s focus on low-level offenses, calling it a “key part of what we’re doing.”¹⁶ And, as far as we know, if such a review were conducted, neither the review nor the results were made public.

In the months and years following Mr. Garner’s death, Mr. Orta and other witnesses—including one who filed a CCRB complaint and others who also recorded the encounter—reported that they were being harassed by NYPD or other law enforcement officers.¹⁷

¹² City of New York, Office of the Mayor, *Transcript: Mayor de Blasio Holds Media Availability With Police Commissioner Bratton On The Death Of Eric Garner* (July 18, 2014), <https://www1.nyc.gov/office-of-the-mayor/news/360-14/transcript-mayor-de-blasio-holds-media-availability-police-commissioner-bratton-the-death>.

¹³ *Matter of Pantaleo*, *supra*, p. 6.

¹⁴ *Matter of Pantaleo*, *supra*, pp. 4-5.

¹⁵ See Joseph Goldstein, *New York City Police Study Use of Force; May Issue More Tasers*, N.Y. Times (July 22, 2014), <https://www.nytimes.com/2014/07/23/nyregion/police-study-use-of-force-may-issue-more-tasers.html>.

¹⁶ See Joseph Goldstein, *Safer Era Tests Wisdom of ‘Broken Windows’ Focus on Minor Crime*, N.Y. Times (July 24, 2014), <https://www.nytimes.com/2014/07/25/nyregion/safer-era-tests-wisdom-of-broken-windows-focus-on-minor-crime-in-new-york-city.html>.

¹⁷ See Edgar Sandoval, Caitlin Nolan, Rocco Parascandola and Corky Siemaszko, *Court date delayed for man who filmed Eric Garner being placed in chokehold*, N.Y. Daily News (Aug 05, 2014), <https://www.nydailynews.com/new-york/nyc-crime/court-date-delayed-chokehold-cameraman-article-1.1891220>; Barbara Ross, *Ramsey Orta, who filmed Eric Garner’s fatal 2014 arrest, is suing the city for \$10M*, N.Y. Daily News (July 26, 2016), <https://www.nydailynews.com/new-york/man-filmed-eric-garner-fatal-2014-arrest-sues-nyc-10m-article-1.2727181>; Stephen Rex Brown, *Ramsey Orta, who filmed*

NYPD Leak of Eric Garner’s Arrest Records, Including Sealed Records

Almost immediately after Mr. Garner’s death - even before the NYPD had identified Officer Pantaleo as the officer who had killed him - NYPD personnel leaked information regarding Mr. Garner’s arrest records, including sealed criminal history information, to the press. For example, a *New York Times* article from the *same date* as Mr. Garner’s death, July 17, 2014, when it was not even clear why police had approached Mr. Garner, states: “The police stated he had been arrested numerous times, most recently in May on charges of illegal cigarette sales.”¹⁸ NYPD also told the press that Mr. Garner “weighed well over 300 pounds.”¹⁹

The next day, on July 18, 2014, media outlets began picking up on the story that Mr. Garner’s interaction with Officer Pantaleo resulted from an accusation he had been selling loose cigarettes. For example, on July 18, 2014, the *New York Times* reported, “[Mr. Garner] had been arrested more than 30 times, often accused of selling loose cigarettes bought outside the state, a common hustle designed to avoid state and city tobacco taxes. In March and again in May, he was arrested on charges of illegally selling cigarettes on the sidewalk.”²⁰ Then came reported information about Mr. Garner’s alleged criminal history. On July 20, 2014, another *New York Times* article stated: “[Mr. Garner] and the police were far from strangers: In a city where the authorities are increasingly focused on stamping out petty offenses as a way of heading off larger ones, the local officers had tangled with Mr. Garner time and time again”²¹ On August 5, 2014, another *New York Times* article stated: “[Mr. Garner] had been arrested 30 times, including nine times on charges of selling loose, untaxed cigarettes, often after the complaint of merchants, according to Patrick J. Lynch, the president of the Patrolmen’s

Garner video, files suit against NYPD from prison, N.Y. Daily News (Sept. 20, 2017), <https://www.nydailynews.com/new-york/nyc-crime/ramsey-orta-filmed-garner-video-files-suit-nypd-article-1.3508801>.

¹⁸ See the *New York Times*, *Staten Island Man Dies After Police Try to Arrest Him*, N.Y. Times (July 17, 2014), <https://www.nytimes.com/2014/07/18/nyregion/staten-island-man-dies-after-police-try-to-arrest-him.html>.

¹⁹ *Id.*

²⁰ See Joseph Goldstein & Nate Schweber, *Man’s Death After Chokehold Raises Old Issue for the Police*, N.Y. Times (July 18, 2014), <https://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html>.

²¹ See David Goodman & Vivin Yee, *Death of a Man in Custody Adds Fuel to a Dispute Over a Policing Strategy*, N.Y. Times (July 20, 2014), <https://www.nytimes.com/2014/07/21/nyregion/death-of-a-man-in-custody-adds-fuel-to-a-dispute-over-a-policing-strategy.html>.

Benevolent Association” (or “PBA”).²² Not only did CBS News report that Mr. Garner had been arrested “31 times since 1988,” but also that “police said” he was arrested nine times since 2009 for cigarette sales specifically.²³ The Wall Street Journal reported in December 2014 that Mr. Garner “has a criminal record that includes more than 30 arrests dating back to 1980 on charges such as assault, resisting arrest and grand larceny. An official said the charges include several incidents in which he was arrested for selling unlicensed cigarettes.”²⁴ Some of this information was patently false; Mr. Garner was 10 years-old in 1980.

Public reporting of Mr. Garner’s alleged arrest record was so widespread, and became so engrained in the media narrative surrounding his death, that it continues to be highlighted in articles focusing on Pantaleo’s trial and subsequent firing.²⁵

Upon information and belief, Mr. Garner’s alleged history of contacts with law enforcement, provided to the press by the NYPD, contained information about cases that had been dismissed and sealed. NYPD personnel were legally prohibited from accessing or disclosing such sealed information by New York State Criminal Procedure Law (“NY CPL”) §§ 160.50 and/or 160.55 or other related provisions of New York’s sealing laws.

Upon information and belief, although NYPD officials knew or should have known about the NYPD leaks of Mr. Garner’s sealed criminal history information, the NYPD took no steps - or at least none that any member of Mr. Garner’s family, the press, or the public has ever been made aware of - to investigate or otherwise respond to the violations of Mr. Garner’s privacy and New York’s sealing laws.

²² See Jim Dwyer, *Two Fatal Police Encounters, but Just One Video*, N.Y. Times (Aug. 5, 2014), <https://www.nytimes.com/2014/08/06/nyregion/two-fatal-police-encounters-but-just-one-video.html>.

²³ See *Emotional Rally Held For NYC Man Who Died After Police Chokehold*, CBS NEWS (July 19, 2014), <https://www.cbsnews.com/news/eric-garner-death-rally-held-after-nyc-man-put-in-police-choke-hold-dies/>.

²⁴ See Rebecca Davis O’Brien, Michael Howard Saul and Pervaiz Shallwani, *New York City Police Officer Won’t Face Criminal Charges in Eric Garner Death*, The Wall Street Journal, (Dec. 4, 2014), <https://www.wsj.com/articles/new-york-city-police-officer-wont-face-criminal-charges-in-eric-garner-death-1417635275>.

²⁵ See, e.g., Trevor Boyer et al., *NYPD Commissioner Fires Daniel Pantaleo Over Chokehold Death of Eric Garner*, N.Y. DAILY NEWS (Aug. 19, 2019) (Mentioning in an article about Pantaleo’s firing that Mr. Garner’s “arrest record included arrests for selling loosies”) <https://www.nydailynews.com/new-york/nyc-crime/nym-pantaleo-chokehold-garner-oneill-decision-20190819-andrfsleevgu7jn4nybyzx2eim-story.html>.

NYPD's Internal Investigation Related to Eric Garner's Death

Just one day after Mr. Garner's death, on July 18, 2014, then-NYPD Commissioner William Bratton commented: "As defined in the department's patrol guide, this would appear to have been a chokehold."²⁶ While the identities of the involved officers were not initially disclosed, it was then revealed that they had been temporarily removed from patrol duty.²⁷

On July 19, 2014, Officer Pantaleo's name reached the media, and the NYPD formally placed him on modified duty.²⁸ It was also reported at that time that both the NYPD's IAB and the Richmond County District Attorney's office were investigating the incident. A July 20, 2014 article stated that Officer Damico had also been reassigned to desk duty and that the IAB had begun looking into the role of each officer at the scene. Officer Damico was not placed on modified duty and was allowed to keep his badge and gun.²⁹ As part of an investigation led by Sergeant Luke Gasquez and Deputy Inspector Charles Barton that reportedly began on July 19, 2014, IAB eventually interviewed 16 civilian witnesses and 21 uniformed witnesses.³⁰

On January 8, 2016, Sergeant Kizzy Adonis became the first NYPD officer to face internal misconduct charges resulting from Mr. Garner's death. She remains the only NYPD officer to have faced misconduct charges brought by the NYPD. Sergeant Adonis, who was one of two supervisors to initially respond to the scene of the encounter, was reportedly charged by the NYPD's Department Advocate's Office ("DAO") with failure to supervise.³¹ Sergeant Adonis was placed on modified status until

²⁶ See Joseph Goldstein & Nate Schweber, *Man's Death After Chokehold Raises Old Issue for the Police*, N.Y. Times (July 18, 2014), <https://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html>.

²⁷ See *id.*

²⁸ See Joseph Goldstein & Nate Schweber, *Complaints About Chokeholds Are Focus of Study*, N.Y. Times (July 19, 2014), <https://www.nytimes.com/2014/07/20/nyregion/thousands-police-chokehold-complaints-are-focus-of-new-york-study-after-man-dies-in-staten-island.html>.

²⁹ See David Goodman & Vivian Yee, *Death of a Man in Custody Adds Fuel to a Dispute Over a Policing Strategy*, N.Y. Times (July 20, 2014), <https://www.nytimes.com/2014/07/21/nyregion/death-of-a-man-in-custody-adds-fuel-to-a-dispute-over-a-policing-strategy.html>.

³⁰ *Matter of Pantaleo*, *supra*, p.12.

³¹ See Al Baker, *New York Police Sergeant to Face Internal Charges in Eric Garner Confrontation*, N.Y. Times (Jan. 8, 2018), <https://www.nytimes.com/2016/01/09/nyregion/new-york-police-sergeant-to-face-internal-charges-in-eric-garner-confrontation.html>.

May 2018, when she was returned to full duty.³² On August 21, 2019, two days after Commissioner O’Neill publicly announced Pantaleo’s firing, Sergeant Adonis reportedly lost 20 days of vacation in a deal to resolve the charges against her fully.³³

Despite early indications that NYPD would seek to discipline the officers involved in Mr. Garner’s death and the administrative charges filed against Sergeant Adonis in 2016, *the NYPD did not bring charges against any other officer involved in Mr. Garner’s death or the related events, ever*— not even Pantaleo — with the exception of serving CCRB’s charges against Pantaleo.

The NYPD’s refusal to begin the process of holding at least Pantaleo internally accountable contravened its own IAB’s internal recommendation: In January of 2015, the Commanding Officer of the IAB Group in charge of the NYPD’s internal investigation requested that charges be brought against Pantaleo.

Nevertheless, the NYPD and CCRB let pass the 18-month statute of limitations set forth in New York Civil Service Law § 75(4) within which administrative Charges and Specifications based on purported violations of NYPD rules must be brought, without bringing any such charges.³⁴ The CCRB was only eventually able to bring charges against Pantaleo in July of 2018 because the charges were based on alleged NYPD rules violations that allegedly also amounted to criminal conduct, and therefore fell into an exception to the statute of limitations contained in the Civil Service Law. Because the statute of limitations for bringing administrative charges has long since run, there can be no further NYPD administrative prosecutions related to Mr. Garner’s death.

Instead of bringing disciplinary charges against Pantaleo at all, the NYPD allowed Pantaleo to remain on desk duty collecting his NYPD salary and overtime pay for the almost five years after Mr. Garner’s death and otherwise stood aside (and in some cases actively resisted CCRB’s efforts to obtain documents and information and otherwise investigate) before the administrative trial that resulted from charges brought independently by the CCRB, not the NYPD, finally took place in May and June of 2019.

³² See Amanda Woods, *NYPD to immediately launch trial for Eric Garner cops*, (July 19, 2018) <https://nypost.com/2018/07/19/nypd-to-immediately-launch-internal-trial-for-eric-garner-cops/>.

³³ See Erin Durkin, *NYPD Sergeant charged in Garner case to keep job, lose vacation days*, Politico, Aug. 21, 2019, <https://www.politico.com/states/new-york/city-hall/story/2019/08/21/nypd-sergeant-charged-in-garner-case-to-keep-job-lose-vacation-days-1149587>.

³⁴ *Matter of Pantaleo*, *supra*, pp. 12-13.

Pantaleo's Pay and Overtime Between 2014 and 2019

During the almost five years between Mr. Garner's death and his recent departmental trial in May and June of 2019, Officer Pantaleo continued to collect his NYPD salary, earning hundreds of thousands of dollars, including at least tens of thousands in overtime pay. For example, in 2016, Officer Pantaleo received \$20,000 in overtime, bringing his total salary to just under \$120,000.³⁵ After the NYPD, embarrassed by media coverage, attempted to prevent Officer Pantaleo from receiving overtime, the PBA sued and won an order in arbitration barring the NYPD from doing so.³⁶ Meanwhile, as Officer Pantaleo's earnings increased, the NYPD and the City fought to keep his history of civilian complaints and departmental monitoring secret.³⁷

The Grand Jury Convened by the Richmond County District Attorney

On December 2, 2014, news reached the press that a Staten Island grand jury convened by the Richmond County District Attorney would soon vote on whether or not to indict Officer Pantaleo. The next day, December 3, 2014, that Staten Island grand jury voted not to indict Officer Pantaleo, sparking a wave of protests.

What happened before the grand jury remains secret. The Richmond County District Attorney released a general statement about the proceedings indicating that his office had interviewed emergency responders who provided medical treatment both at the scene and at the hospital, reviewed relevant NYPD policies and training materials, and consulted with expert forensic pathologists. But the District Attorney declined to produce any of the underlying records or to provide any detail about those investigative steps. The Legal Aid Society, the New York Civil Liberties Union, then-Public Advocate Letitia

³⁵ See Graham Rayman and Jennifer Fermino, *NYPD cop Daniel Pantaleo's pay rises to \$120G while working desk duty since killing Eric Garner*, N.Y. Daily News (Sept. 12, 2016), <https://www.nydailynews.com/new-york/chokehold-salary-rises-killing-eric-garner-article-1.2789313>.

³⁶ See John Annese and Graham Rayman, *EXCLUSIVE: NYPD can't bar officers on modified duty, like chokehold cop Daniel Pantaleo, from overtime*, N.Y. Daily News (Dec. 11, 2018), <https://www.nydailynews.com/new-york/ny-metro-nypd-cant-block-overtime-misconduct-20181210-story.html>.

³⁷ See, e.g., *Luongo v Records Access Officer, Civilian Complaint Review Bd.*, 150 AD3d 13, 27 (1st Dept 2017), *lv to appeal denied*, 30 NY3d 908 (2017). Notwithstanding those efforts, Pantaleo's CCRB history was leaked to ThinkProgress, and is available online embedded in a March 21, 2017 article. See Carimah Townes and Jack Jenkins, *EXCLUSIVE DOCUMENTS: The disturbing secret history of the NYPD officer who killed Eric Garner*, ThinkProgress (March 21, 2017), <https://thinkprogress.org/daniel-pantaleo-records-75833e6168f3/>.

James, the National Association for the Advancement of Colored People, and the CCRB litigated seeking grand jury transcripts and other materials, but were denied access. *See generally* NY CPL § 190.25(4) (requiring court order for access to grand jury materials, which are otherwise presumptively secret).

According to media reports, during the grand jury proceedings, three videos of the encounter were shown to jurors, and Officer Pantaleo testified for approximately two hours.³⁸ All other officers who testified before the grand jury were granted immunity by the Richmond County District Attorney.³⁹ Officer Pantaleo reportedly characterized his actions as a “maneuver taught at the Police Academy” and a “takedown move,” rather than a chokehold.⁴⁰ According to Stuart London, counsel for Officer Pantaleo, Officer Pantaleo testified that he got off of Mr. Garner as quickly as he could.⁴¹ (Mr. London did not explain how this purported testimony could be reconciled with video showing Officer Pantaleo and several officers piling on top of Mr. Garner after he had fallen to the ground.)

To this day, the records and testimony related to the Staten Island grand jury that considered charging Pantaleo remain shrouded in mystery, as several advocacy groups and even the CCRB have been thwarted in attempts to gain access to them. Most of the information reported to the public about these proceedings has been cherry-picked by Officer Pantaleo’s attorney.

Pantaleo’s CCRB Investigation and Administrative Prosecution

Seeking Staten Island grand jury records from proceedings against Officer Pantaleo in a suit before the New York State Supreme Court on June 12, 2015, a CCRB lawyer, Brian Krist, stated the Board had been unable to complete its investigation related to Mr. Garner’s death as a result of “hold” requests by the Richmond County District

³⁸ *See* J. David Goodman and Al Baker, *Wave of Protests After Grand Jury Doesn’t Indict Officer in Eric Garner Chokehold Case*, N.Y. Times (Dec. 3, 2014), <https://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html>.

³⁹ *See* J. David Goodman and Al Baker, *Wave of Protests After Grand Jury Doesn’t Indict Officer in Eric Garner Chokehold Case*, N.Y. Times (Dec. 3, 2014), <https://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html>.

⁴⁰ *See id.*

⁴¹ *See* J. David Goodman and Michael Wilson, *Officer Daniel Pantaleo Told Grand Jury He Meant No Harm to Eric Garner*, N.Y. Times (Dec. 3, 2014), <https://www.nytimes.com/2014/12/04/nyregion/officer-told-grand-jury-he-meant-no-harm-to-eric-garner.html>.

Attorney's and United States Attorney's Office ("USAO") for the Board to step aside temporarily.⁴² One day earlier, a spokesperson for the Board publicly stated that NYPD had refused to provide the Board with records of the police investigation into Mr. Garner's death.⁴³

On September 8, 2017, reports surfaced that the CCRB had determined that Officer Pantaleo had used a prohibited chokehold and restricted Mr. Garner's breathing and recommended NYPD charges and an administrative trial. The disciplinary process then stalled until July of 2018 because NYPD insisted it would not hold an administrative trial until the DOJ decided whether the officers involved had violated Mr. Garner's civil rights.⁴⁴

Then, on July 20, 2018, the NYPD formally served Officer Pantaleo with Charges and Specifications that CCRB had determined since 2017 and announced its intention to move forward with a NYPD administrative trial prosecuted by the CCRB's Administrative Prosecution Unit ("APU").⁴⁵

The Settlement of the Garner Family's Civil Suit

In July of 2015, Mr. Garner's family settled a wrongful death suit with the city for a sum of \$5.9 million. While this result avoided what would certainly have been years of protracted and painful litigation, "the resolution of the legal claim against the city did not provide any greater clarity on the actions of the officers that day or on the policing strategies that have come under criticism in the year that has followed."⁴⁶

⁴² See Colin Moynihan, *Police Review Board Seeks Grand Jury Records in Eric Garner Case*, N.Y. Times (June 12, 2015),

<https://www.nytimes.com/2015/06/13/nyregion/police-review-board-seeks-grand-jury-records-in-eric-garner-case.html>.

⁴³ See Colin Moynihan, *Police Review Board Seeks Grand Jury Records in Eric Garner Case*, N.Y. Times (June 12, 2015),

<https://www.nytimes.com/2015/06/13/nyregion/police-review-board-seeks-grand-jury-records-in-eric-garner-case.html>.

⁴⁴ See Benjamin Mueller, *Review Board Recommends Stiffest Punishment for Officer in Garner Case*, N.Y. Times (Sept. 8, 2017),

<https://www.nytimes.com/2017/09/08/nyregion/eric-garner-chokehold-review-board.html>.

⁴⁵ See *Matter of Pantaleo*, *supra*, p. 13.

⁴⁶ See J. David Goodman, *Eric Garner Case Is Settled by New York City for \$5.9 Million*, N.Y. Times (July 13, 2015), <https://www.nytimes.com/2015/07/14/nyregion/eric-garner-case-is-settled-by-new-york-city-for-5-9-million.html>.

In a prepared statement on the settlement, Mayor de Blasio stated that he hoped “the Garner family [could] find some peace and finality” from it. Yet, for another three years, Mayor de Blasio stayed silent while Mr. Garner’s family waited for some semblance of justice, and even defended waiting for the DOJ to decide whether it would bring charges as a justification for the City’s failure to bring charges against Officer Pantaleo, or otherwise hold him to account.

The Department of Justice Investigation

Over the last five years, Mr. Garner’s family and community have advocated consistently for the United States Department of Justice to bring federal charges against Officer Pantaleo. NYPD, City, and CCRB officials have repeatedly said that they could not pursue charges or take further action at the City level due to a pending DOJ investigation and related DOJ “hold” requests. About July 17, 2018, the DOJ issued a statement confirming that they had previously told the NYPD as recently as spring of 2018 that it had “no objection” to the NYPD and/or the CCRB’s moving forward with disciplinary proceedings for Pantaleo and Adonis.⁴⁷ As of December of 2018, Mrs. Carr had not herself heard from the DOJ in over a year and a half. Finally, on July 16, 2019 – after Pantaleo’s departmental trial - the DOJ announced it would not bring charges against him.⁴⁸

Pantaleo’s CCRB Administrative Charges and Trial

Prior to Officer Pantaleo’s departmental trial in May and June of 2019, his attorney Stuart London filed multiple motions to have the case and charges dismissed. A petition in Manhattan Supreme Court to have the case dismissed for lack of CCRB jurisdiction was dismissed by New York State Supreme Court Justice Hon. Joan Madden.⁴⁹ Mr. London also argued before NYPD Deputy Commissioner for Trials

⁴⁷ See ABC7 Eyewitness News, *NYPD tells DOJ it will proceed with disciplinary proceedings in Eric Garner death* (July 17, 2018) <http://abc7ny.com/nypd-to-proceed-with-discipline-hearings-in-garner-case/3772515/>

⁴⁸ See Katie Benner, *Eric Garner’s death will not lead to federal charges for NYPD Officer*, N.Y. Times, Jul. 16, 2019, <https://www.nytimes.com/2019/07/16/nyregion/eric-garner-case-death-daniel-pantaleo.html>.

⁴⁹ See Dean Meminger, *Departmental Trial For NYPD Officer in Garner Case Will Move Forward*, NY 1 (May 9, 2019), <https://www.ny1.com/nyc/all-boroughs/news/2019/05/09/departmental-trial-for-nypd-officer-in-garner-case-will-move-forward>. See also CCRB, *CCRB Statement on Pantaleo Trial* (May 9, 2019) (“As Deputy Commissioner of Trials Rosemarie Maldonado already decided and Justice Madden today confirmed, the Civilian Complaint Review Board is the appropriate body to prosecute Officer Pantaleo.”),

Rosemarie Maldonado that the CCRB's case was time-barred and sought to challenge the charges brought by CCRB and the parameters of what CCRB would need to prove in order to support a finding of guilt against Pantaleo. The motion to dismiss was denied.⁵⁰ Officer Pantaleo also requested to take vacation in the middle of his trial, and that request was initially denied.⁵¹ In order to successfully prosecute Pantaleo, the CCRB was ultimately tasked with demonstrating that his conduct related to killing Mr. Garner met all of the elements of the two crimes specified in the charges, which included Assault in the Third Degree in violation of New York Penal Law § 120.00(2).⁵²

Pantaleo's 2019 NYPD Administrative Trial

The departmental trial against Officer Pantaleo based on the Charges and Specifications served by the CCRB in 2018 began on May 13, 2019 - almost five years after Mr. Garner's death - and concluded on June 6, 2019. The trial was held on the fourth floor of One Police Plaza. Although technically "public", Mrs. Carr was allowed 12 guests, as was Pantaleo. The remaining spots were reserved for mostly press, leaving only a few spots for members of the general public. Mrs. Carr's and her guests' movements, as the movements of the general public, were decided by the NYPD, including their access to the press outside of One Police Plaza during lunchtime and after the trial concluded each day.

CPR repeatedly requested that the City provide a spill-over room in order to accommodate more members of the public, but those requests were not granted. Those CPR and JC staff and members who were able to attend part or all of the trial were not able to view full exhibits or learn about arguments and decisions that were not discussed in full during the trial, including arguments and decisions that may have implications for the communities served by CPR and JC related to administrative trials of NYPD officers

https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/news/press-releases/2019/PR_PantaleoStatement.pdf; see also, *Matter of Pantaleo, supra*, pp. 13-14.

⁵⁰ See CCRB, *CCRB Statement on Pantaleo Trial* (May 10, 2019) ("Deputy Commissioner of Trials Rosemarie Maldonado properly denied Police Officer Pantaleo's motion to dismiss the charges against him, as no statute of limitations applies in this case"), https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/news/press-releases/2019/PR_PantaleoStatement20190510.pdf; see also, *Matter of Pantaleo, supra*, pp. 14-15.

⁵¹ See Rocco Parascandola, *NYPD trials commissioner denies Daniel Pantaleo's request for a vacation day during upcoming departmental trial over chokehold death*, N.Y. Daily News (May 2, 2019), <https://www.nydailynews.com/new-york/nyc-crime/ny-pantaleo-trial-vacation-request-denied-20190502-dx4thontszgermhoouqik3f5ga-story.html>.

⁵² *Matter of Pantaleo, supra*, pp. 14-15.

who are charged with harming members of the public and/or how the NYPD reviews discipline findings and penalties in pending and future cases.

The trial was delayed for two weeks as all waited for one of Officer Pantaleo's witnesses, a medical examiner from St. Louis, to be available. That witness, Dr. Graham, testified that Pantaleo's uses of force did not cause Mr. Garner's death - contrary to the conclusion of the City's Office of the Chief Medical Examiner contained in Mr. Garner's autopsy report that Mr. Garner's death was a homicide caused by Pantaleo's application of pressure to Mr. Garner's neck. Notably, Officer Pantaleo's lawyer cited the transcript of Pantaleo's own, self-serving prior IAB interview ("GO-15") as evidence that he applied no pressure to Mr. Garner's neck.⁵³ Among other things, counsel for Officer Pantaleo attempted to argue that he had not used a chokehold on Mr. Garner, but rather a "seatbelt hold."⁵⁴

Citing the possibility of DOJ charges, Officer Pantaleo refused to testify at his NYPD administrative trial. Instead, over the CCRB's objection, Pantaleo's GO-15 was admitted into evidence as an exhibit, but never read completely into the record. Upon information and belief, both sides presented written motions on or before June 15, 2019 on the issue of whether the GO-15 was sufficiently reliable to substitute for Officer Pantaleo's testimony, but they have not been made public. In *Matter of Pantaleo*, Deputy Commissioner Maldonado explained the related evidentiary standards, and did consider Pantaleo's GO-15, but found that his "hearsay statement" - which was "uncorroborated" - "was...[of] questionable reliability and limited probative weight" and that Pantaleo had made "untruthful" and "disingenuous" and "self-serving" statements.⁵⁵ Upon information and belief, Deputy Commissioner Maldonado also decided, separately from the final decision to terminate Pantaleo, whether his refusal to testify should result in a negative inference against him, and the lawyers' arguments and the Deputy Commissioner's decision were never made public.

Facts gleaned for the first time during the trial revealed a great deal of troubling history beginning on the day that Mr. Garner was killed and continuing throughout the investigation and administrative prosecution. For example, Officer Damico admitted that

⁵³ See Rocco Parascandola, *NYPD Trial of Daniel Pantaleo, Cop Accused of Putting Eric Garner in Fatal Chokehold, Ends Without Officer Taking the Stand*, N.Y. Daily News (June 6, 2019), <https://www.nydailynews.com/new-york/nyc-crime/ny-20190606-3whmfpbzvbcda2e3y7phkybvy-story.html>; see also *Matter of Pantaleo*, *supra*, pp. 3-4.

⁵⁴ See Ashley Southall, *Police Investigators Determined Officer Choked Eric Garner*, N.Y. Times (May 19, 2019), <https://www.nytimes.com/2019/05/13/nyregion/eric-garner-death-daniel-pantaleo-trial-chokehold.html>.

⁵⁵ See *Matter of Pantaleo*, *supra*, pp. 20-22 and FN8.

he took it upon himself to write up Mr. Garner’s arrest report after returning from the scene to the 120th Precinct, and after he knew about Mr. Garner’s death. Furthermore, Officer Damico wrote up felony charges, which require possession of over 10,000 cigarettes, when he knew in fact that Mr. Garner had only possessed five packs of cigarettes containing under 100 cigarettes in total. Officer Damico may have also lied about the initial encounter, as he was the only person who claims to have seen Mr. Garner allegedly sell cigarettes – a claim disputed through the testimony of multiple witnesses who swore that Mr. Garner had just broken up a fight. For example, during the trial, the CCRB challenged the credibility of Officer Damico’s claim to have seen Mr. Garner selling cigarettes because the distance between Officer Damico and Mr. Garner at the time of the alleged sale was almost the size of a football field.

Another troubling revelation came through trial testimony from the commanding officer of the team involved in Mr. Garner’s death, Lieutenant Christopher Bannon, who testified he “made an observation” as he drove to a meeting in Staten Island at around 2:00pm on July 17, 2014 that a group of “approximately six males,” were involved in “suspicious activity.”⁵⁶ He did not see any exchange of cigarettes or currency or any other crimes being committed, and provided no further explanation of what activity he deemed “suspicious.” Despite the obvious lack of probable cause for an arrest based on those purported observations, Lieutenant Bannon testified that he in fact initiated the whole encounter that led to Pantaleo’s killing of Mr. Garner by instructing a Sergeant overseeing “quality of life issues” to “collar the cigarette guy” – possibly meaning Mr. Garner.⁵⁷

Officers Ramos and Furlani both testified that they had heard Mr. Garner say “I can’t breathe” and did nothing to provide aid or intervene. In particularly shocking testimony, Lieutenant Bannon recounted that, after receiving word that Mr. Garner was unresponsive, he texted Sergeant Dhanan Saminath: “Not a big deal, you were effecting a lawful arrest.”⁵⁸ Prior to Lieutenant Bannon’s statement at trial, the substance of this text message had not been disclosed to the public. Nor, to the public’s knowledge, has Lieutenant Bannon faced any consequences for his instructions to arrest Mr. Garner in spite of the fact that he had no probable cause to believe he was engaged in criminal

⁵⁶ *See id.*

⁵⁷ *See* Oliver Laughland, ‘*It All Takes a Toll*’: Eric Garner’s Family Suffers Indignities of Trial Process, The Guardian (June 5, 2019), <https://www.theguardian.com/us-news/2019/jun/05/eric-garner-trial-nypd-daniel-pantaleo>.

⁵⁸ *See* Ali Winston, *Eric Garner Death Was ‘Not a Big Deal,’ Police Commander Said*, N.Y. Times (May 16, 2019), <https://www.nytimes.com/2019/05/16/nyregion/eric-garner-pantaleo-trial.html>.

activity; or for his shockingly callous comment that Mr. Garner possibly being dead on arrival at the hospital was “[n]ot a big deal.”⁵⁹

The administrative trial also revealed critical information about the NYPD’s decisions not to bring charges against Pantaleo. For example, according to Deputy Inspector Charles Barton, IAB referred charges against Pantaleo to the DAO in January 2015, *over four years* before the CCRB - an *independent office* existing outside the NYPD – moved forward to seek discipline against Pantaleo. Based on the new information revealed at Pantaleo’s trial, as well as the totality of the information otherwise publicly available, it is clear DAO made a decision to do *nothing* with the charges recommended by IAB, even as the statute of limitations for filing them approached, then passed. Simply put, but for the actions of the CCRB, an independent agency, in determining to pursue charges against Pantaleo in July of 2018, Pantaleo would have faced *zero* disciplinary action or other consequences for killing Mr. Garner.

Final Outcomes of Both Disciplinary Proceedings Regarding Mr. Garner’s Killing

On August 19, 2019, Commissioner James O’Neill publicly announced his decision to terminate Officer Pantaleo, though the terms of his firing were not made clear.⁶⁰

And, as seen above, two days later, Sergeant Adonis reportedly lost 20 days of vacation in a deal to resolve the charges against her.⁶¹

THE RECORDS ACCESS DEMAND AND FOIL REQUEST

The Requesters hereby seek disclosure of records regarding the investigation and trial by the NYPD Deputy Commissioner of Trials surrounding the death of Eric Garner on July 17, 2014; the underlying circumstances; misconduct related to the killing; statements made to the NYPD, the media, and/or prosecutors related to the killing; investigation(s), disciplinary action(s), and/or prosecution(s) into and/or related to the killing and related events (such as leaking confidential information to the media related to

⁵⁹ *See id.*

⁶⁰ *See* Ashley Southall, [Daniel Pantaleo, Officer Who Held Eric Garner in Chokehold, Is Fired](https://www.nytimes.com/2019/08/19/nyregion/daniel-pantaleo-fired.html), N.Y. Times, Aug. 19, 2019, <https://www.nytimes.com/2019/08/19/nyregion/daniel-pantaleo-fired.html>.

⁶¹ *See* Erin Durkin, *NYPD Sergeant charged in Garner case to keep job, lose vacation days*, Politico, Aug. 21, 2019, <https://www.politico.com/states/new-york/city-hall/story/2019/08/21/nypd-sergeant-charged-in-garner-case-to-keep-job-lose-vacation-days-1149587>.

Mr. Garner and the killing); the outcome(s) of those investigation(s), disciplinary proceeding(s), or prosecution(s); and all of the transcripts, exhibits, motions, decisions, and other material related to the CCRB's prosecution and public administrative trial of Daniel Pantaleo, adjudicating whether his conduct that resulted in Eric Garner's death on July 17, 2014 met the elements of a crime, including, but not limited to, the following:

1. Attendance, agenda, minutes, memoranda, and other records documenting who was present at and what was communicated at the March 2014 Special Operations Lieutenants' meeting at One Police Plaza attended by Chief of Department Phillip Banks and Lieutenant Christopher Bannon.
2. Records documenting or reflecting investigations related to purported cigarette sales or other criminal conditions at or around 202 Bay Street and the area surrounding Tompkinsville Park between March 1, 2014 and August 1, 2014 that were conducted according to the directions of Chief Banks, including, but not limited to, surveillance photographs.
3. Records reflecting any "tips", complaints, 911 calls, 311 calls, observations, NYPD conditions reports, or other reports related to purported cigarette sales, or other criminal conditions, at or around 202 Bay Street and the area surrounding Tompkinsville Park between January 1, 2014 and August 1, 2014; and law enforcement action taken in response thereto (including, but not limited to, surveillance, performing street stops, issuing summonses, making arrests, or taking other law enforcement action).
4. Records, including memoranda and electronic records such as e-mails, reflecting communications from the Chief of Patrol, Chief of Detectives, Chief of Department, other Deputy Chiefs, Special Operations Lieutenants, or other supervisor(s) instructing the 120th Precinct to conduct conditions policing and operations between June 1, 2014 through August 1, 2014, related to 202 Bay Street and the area surrounding Tompkinsville Park, including communications from Phillip Banks, Special Operations Lieutenants, Conditions Sergeants, and/or other supervisors directing Daniel Pantaleo, Justin Damico, and/or other 120th Precinct personnel to address conditions near Tompkinsville Park.
5. Memo Book entries from NYPD officers at the 120th Precinct documenting conditions policing operations conducted from June 1, 2014 through August 1, 2014 related to 202 Bay Street and the area surrounding Tompkinsville Park.

6. Records, including memoranda and electronic records such as e-mails, reflecting communications to the Chief of Patrol, Chief of Detectives, Chief of Department, other Deputy Chiefs, Special Operations Lieutenants, or other supervisor(s), from Inspectors, Deputy Inspectors, Special Operation Lieutenants, Conditions Sergeants, or other NYPD supervisor(s) at the 120th Precinct reporting back about conditions policing and operations conducted from June 1, 2014 through August 1, 2014, related to 202 Bay Street and the area surrounding Tompkinsville Park.
7. 120th Precinct Roll Calls (PD 406-144) for all tours on July 17, 2014 and July 18, 2014.
8. Command Log(s) from the 120th Precinct from July 17-18, 2014.
9. Recordings of 311 or 911 call(s) regarding Mr. Garner, Pantaleo's uses of force against Mr. Garner, requests for medical assistance related to Mr. Garner, investigations into the same, or any related events on July 17, 2014.
10. SPRINT recordings including job runs related to Mr. Garner, his medical condition or death, or any related events on July 17, 2014, and any related SPRINT indices.
11. Unusual Occurrence Report(s) (PD 370-152/PD 370-151) created consistent with NYPD Patrol Guide ("PG") Section 212-09, UF-49(s)/Unusual Incident Report(s), DD-5(s), and other records, memorializing observations, statements, or other facts about:
 - a. Purported cigarette sales, or other criminal conditions at or around 202 Bay Street and the area surrounding Tompkinsville Park between March 1, 2014 and August 1, 2014, and any law enforcement responses thereto; or
 - b. Mr. Garner's death on July 17, 2014, or the conduct of Mr. Garner or any NYPD officer(s) leading up to or after the killing, related to his death.
12. Activity Log (PD 112-145)/Memo Book, Investigator's Daily Activity Report, Daily Activity Report (PD 439-156), or other, similar NYPD records documenting observations and/or events created pursuant to PG 212-08 ("Activity Logs") or otherwise covering July 17, 2014 by Daniel Pantaleo, Justin Damico, Mark Ramos, Craig Furlani, William Meems, Sergeant Kizzy Adonis, Sergeant Dhanan Saminath, Lieutenant Christopher Bannon, and any other NYPD agents who:

- a. Allegedly observed Mr. Garner prior to his death (including during Pantaleo's uses of force against him);
 - b. Responded to the scene of Mr. Garner's death within 2 hours of Pantaleo's use of force; or
 - c. Interacted with Mr. Garner, Garner family members, or witnesses between July 17, 2014 and September 1, 2014.
13. Records memorializing or reflecting Pantaleo's uses of force on Mr. Garner and any purported justification(s) for them.
14. Records, including memoranda and electronic records such as e-mails, reflecting communications, including phone records, text messages, and e-mails or other electronic communications, between and/or among Adonis, Bannon, Damico, Furlani, Meems, Pantaleo, Ramos, and/or Saminath on July 17, 2014 regarding Mr. Garner, police interactions with Mr. Garner, his death, or police responses thereto (including any related investigations).
15. Records, including memoranda and electronic records such as e-mails, reflecting communications on July 17, 2014 between/among NYPD personnel and the Mayor, the Office of the Mayor, the Mayor's Office of Criminal Justice, the Mayor's Community Assistance Office, or City Hall regarding Mr. Garner's death, the circumstances leading up to it, requests for medical assistance related to Mr. Garner, or investigations into those events, or any other, related events on July 17, 2014.
16. Any other records (including Memo Book entries) recording or reflecting NYPD observations made on July 17, 2014 in or around Tompkinsville Park regarding conditions in or around the Park, or related to Mr. Garner or his death or the police response thereto on July 17, 2014.
17. NYPD AIDED Report Worksheet(s) (PD 304-152b), and any other NYPD records related to or reflecting Mr. Garner's injuries, or medical treatment sought for or given to Mr. Garner, on July 17, 2014, prepared pursuant to PG 216-01 ("Aided Cases – General Procedure"), 216-02 ("Preparation Of Aided Report Worksheet") or otherwise.
18. Any other records related to the ambulance or other emergency medical response related to Mr. Garner's death, including records identifying the ambulance or other emergency medical responders on July 17, 2014, the time such ambulance

or other emergency medical responders were called, and the time such ambulance or other emergency medical responders left the area, including, but not limited to, any relevant Ambulance Call Report or other, similar records.

19. Records reflecting compliance with PG 212-04 (“Crime Scene”) related to integrity and treatment of crime scenes with respect to the scene of the encounter.
20. Records created consistent with PG Section 216-04 (“Dead Human Body General Procedure”), including, but not limited to, any Identification Tag (PD 317-091) form, related to handling Mr. Garner’s body.
21. All text messages exchanged between Lieutenant Bannon and Sergeant Saminath on July 17, 2014, including, but not limited to, those in which Bannon reportedly stated that Mr. Garner’s death was “not a big deal”; and any records referring to those text messages or their contents.
22. Records reflecting or memorializing police observations of or interactions with members of Mr. Garner’s family on July 17, 2014.
23. Records created consistent with PG 216-15 (“Notifications”) regarding procedures to be followed “[w]hen it is necessary to notify relatives/friends of a deceased ... person”.
24. Records created consistent with PG 218-28 (“Safeguarding Property of Deceased Persons”) regarding Mr. Garner’s property, or property related to Mr. Garner’s death, including, but not limited to, any of the following records:
 - a. Property Clerk Invoice Worksheet (PD 521-141A)
 - b. Property Clerk Invoice (PD 521-141)
 - c. Request for Laboratory Examination Report (PD 521-168)
25. Any report related to Pantaleo’s use of force towards Mr. Garner and any other reports or records related to or created as a result of Pantaleo’s conduct on July 17, 2014, including, but not limited to, all documents required to be created when an officer is involved with someone’s death by PG 205-08 (“Trauma Counseling Program”), 206-17 (“Removal and Restoration of Firearms”), 212-53 (“Command Responsibilities When A Person Dies Or Sustains A Serious Injury In Connection With Police Activity”) or other NYPD procedure.

26. Any arrest reports, complaints, and other arrest, arrest processing, or prosecution-related paperwork related to the July 17, 2014 interactions between Officers Pantaleo and Damico and Mr. Garner, including specifically the arrest and/or complaint report(s) that Officer Damico created according to *Matter of Pantaleo* at p. 11, and any other paperwork filled out by Officer Damico related to Mr. Garner.
27. Records created consistent with PG Section 218-04 (“Delivery Of Evidence To The Police Laboratory”) related to Mr. Garner or his death.
28. Records, including video or audio recordings, reflecting interviews/interrogations of or statements given by NYPD officers, including statements given pursuant to GO-15 or PG 206-13 (“Interrogation of Members of the Service”) and all other statements, related to Mr. Garner’s death or related events, and any related investigation(s) or prosecution(s), including, but not limited to, any such interviews of or statements given by Pantaleo, Damico, Ramos, Furlani, Meems, Adonis, Saminath, Bannon or any other NYPD officer(s) or supervisor(s), regarding Mr. Garner’s death.
29. Records, including video or audio recordings, reflecting civilian interviews or statements given by non-NYPD officers related to Mr. Garner’s death or any related events, including witness statements by Ramsey Orta and Michael Lewis, and any related investigation(s), including, but not limited to, any such interview(s) by the IAB or any other NYPD aspect.
30. Any other records, including video or audio recordings, including, but not limited to, any cellphone video, video from Video Interactive Patrol Enhancement Response (“VIPER”) cameras, or other sources, and/or photographs, documenting:
 - a. Observations of the store and surrounding area around 202 Bay Street on July 17, 2014;
 - b. Observations of Tompkinsville Park on July 17, 2014;
 - c. Mr. Garner on July 17, 2014;
 - d. Police observations of and interactions with Mr. Garner on July 17, 2014;
 - e. Circumstances leading up to Mr. Garner’s death, including, but not limited to, any statements made by Pantaleo or Damico to Mr. Garner, or him to them, before or during Pantaleo’s uses of force on Mr. Garner;
 - f. The scene of Mr. Garner’s death in July of 2014, including, but not limited to, any Crime Scene Unit photographs or video; and/or

Cigarettes allegedly recovered from the scene of Mr. Garner's death.

31. Records, including memoranda and electronic records such as e-mails, reflecting communications containing inquiries from the press and statements to the press made by NYPD personnel regarding Mr. Garner, Mr. Garner's death, or any related actual or potential investigation(s), disciplinary action(s), or prosecution(s) between July of 2014 and the present.
32. Records relied on, or reflecting information relied on, by William Bratton, James O'Neill, or any other City or police official in making public statements to the press about Mr. Garner, Pantaleo's killing of Mr. Garner, or any related investigation(s), disciplinary action(s), or prosecution(s), including, but not limited to, statements:
 - a. Describing Officer Pantaleo's use of force as appearing to be a chokehold, as defined in the Patrol Guide;⁶²
 - b. Referring to numerous 911 complaints about untaxed cigarette sales from the area surrounding Tompkinsville Park;⁶³
 - c. Regarding whether Mr. Garner was selling single cigarettes on July 17, 2014;⁶⁴
 - d. Regarding whether police personnel said anything to Mr. Garner on July 17, 2014 prior to Pantaleo's killing Mr. Garner, and, if so, what was said, when it was said, where it was said, and by whom;
 - e. Regarding whether police personnel heard Mr. Garner yell "I can't breathe," and, if so, how they interpreted it, what they did when they heard it, and any other comments or explanations they have surrounding Mr. Garner's pleas; and
 - f. Regarding the cause of Mr. Garner's death.⁶⁵

⁶² See, e.g., Goldstein & Schweber, *supra* note 31.

⁶³ See, e.g., Goodman & Yee, *supra* note 29 (stating that then-Commissioner Bratton "note[d] the local precinct had received numerous complaints about untaxed cigarettes among the hundreds of 911 calls from the area around the park").

⁶⁴ See, e.g., Goldstein & Schweber, *supra* note 31.

⁶⁵ See, e.g., Deborah Bloom & Jareed Imam, *New York Man Dies After Chokehold by Police*, CNN (updated Dec. 8, 2014), <https://www.cnn.com/2014/07/20/justice/ny-chokehold-death/index.html> ("Police said [Mr. Garner] suffered a heart attack and died en route to the hospital.").

33. Records reflecting any actual or potential investigation(s) into the release of Mr. Garner's sealed criminal history information.
34. Records reflecting any investigation(s) into the anonymous or confidential releases of other information to the media above related to Mr. Garner and/or his death and/or related investigation(s) or prosecution(s), some of which are described in the BACKGROUND section.
35. Records regarding investigation(s) or "Disciplinary Matters" related to Mr. Garner's death or other events related to Mr. Garner's death, including, but not limited to, any such investigation(s) by the NYPD's Internal Affairs Bureau, Detective Bureau, Homicide Bureau, Chief of Department – Investigation Review Section, Disciplinary Assessment Unit, Personnel Bureau, or Department Advocate's Office, including, but not limited to, any such records created pursuant to PG Sections 206-01 ("Reporting Violations Observed By Supervisors"), 206-02 ("Command Discipline"), 206-03 ("Violations Subject To Command Discipline"), 206-04 ("Authorized Penalties Under Command Discipline"), 206-05 ("Preparation Of Charges And Specifications"), 206-06 ("Service And Disposition Of Charges And Specifications"), 206-07 ("Cause For Suspension Or Modified Assignment"), 206-08 ("Suspension From Duty-Uniformed Member Of The Service"), 206-10 ("Modified Assignment"), 206-11 ("Member Of The Service Arrested"), 206-13 ("Interrogation Of Members Of The Service"), and 206-16 ("Review Of Arrest Cases Involving Member Of The Service As A Defendant"), including, but not limited to, any related Charges and Specifications (PD 468-121) records, and records related to any related disciplinary process(es) and their disposition(s).
36. Records relating to any actual or potential disciplinary action(s), prosecution(s) or trial(s) of any NYPD officers or officials related to Mr. Garner's death, including any such disciplinary action(s), prosecution(s), or trial(s) related to use of prohibited chokehold; excessive force; false arrest; failure to intervene as Mr. Garner said "I can't breathe" eleven times; failure to provide aid; falsifying arrest charges; making false statements in official capacity; failure to supervise; interference with legal observation and recording leaking protected records related to Mr. Garner's medical history and/or contact with the criminal legal system; and other, related possible misconduct surrounding the death of Mr. Garner.
37. Records related to any CCRB investigation(s) regarding Mr. Garner's death or any events related to Mr. Garner's death, including, but not limited to, any such records created pursuant to PG 211-114 ("Investigations By Civilian Complaint

Review Board”) and any related Request For Records And/Or Information Regarding CCRB Case (PD 149-164) form(s).

38. CCRB Histories and any underlying records related to any CCRB Complaints against Adonis, Meems, Saminath, Bannon, Damico, Furlani, Pantaleo, or Ramos between 2005 and 2015, including, but not limited to, any such records created pursuant to PG 211-114 (“Investigations By Civilian Complaint Review Board”) and any related Request For Records And/Or Information Regarding CCRB Case (PD 149-164) form(s).
39. Records reflecting or related to the questioning, surveillance, detention or arrest of Ramsey Orta or any other witness to Mr. Garner’s death, including any related Memo Book entries, Stop, Question, and Frisk Reports, Summonses, Desk Appearance Tickets, arrest processing paperwork, criminal court complaints, written or videotaped statements, DD-5’s, or any other records memorializing conversations between Mr. Orta or any other witness and NYPD personnel.
40. Records, including memoranda, communications, and electronic records such as e-mails, regarding actual or contemplated non-NYPD investigation(s) or prosecution(s) related to Mr. Garner’s killing or any events related to Mr. Garner’s killing, including, but not limited to, such investigations or prosecutions by:
 - a. The DOJ/USAO;
 - b. The United States Attorney’s Office for the Eastern District of New York (“USAO-EDNY”);
 - c. The CCRB; or
 - d. The Richmond County District Attorney.
41. Records, including memoranda and electronic records such as e-mails, reflecting communications s between NYPD or CCRB personnel and members of any outside law enforcement agency, including the DOJ/USAO or the Richmond County District Attorney, requesting that the NYPD and/or CCRB “hold” or delay moving forward with potential investigation(s), disciplinary action(s), or prosecution(s).
42. Records reflecting or related to the “sweeping review” of NYPD training and tactics that then-Commissioner Bratton ordered on July 22, 2014.

43. Records reflecting NYPD policies in 2014, including Patrol Guide Provisions, Interim Orders, NYPD Legal Bureau Bulletins, and other, similar documents regarding:
 - a. Police uses of force, including chokeholds, and any requirement to report uses of force;
 - b. Police uses of deadly force and any requirement to report uses of deadly force;
 - c. Investigations into police uses of deadly force, or police use of chokeholds, including those resulting in death;
 - d. Establishing and maintaining the integrity of the scene of a crime and/or at a scene containing evidence of a police use of force and/or killing; and
 - e. NYPD Disciplinary Matters (*See, e.g.*, PG Sections 206-01 through 206-08, 206-10 through 206-11, 206-13, 206-16).

44. Records reflecting NYPD training in 2014, including the Recruit Training Manual, Police Student's Guide, and other such documents created and utilized the NYPD's Police Academy or any other NYPD unit involved in training NYPD officers in 2014, regarding the topics identified in the previous request, as well as, to the extent not covered by the topics in the previous request:
 - a. Use of force;
 - b. Use of chokeholds;
 - c. Use of force reporting;
 - d. De-escalation and de-escalation techniques; and
 - e. Sensitivity and/or bias training.

45. Records, including memoranda and electronic records such as e-mails, reflecting communications within the NYPD regarding actual or potential investigation(s) or prosecution(s) related to Mr. Garner's death, including, but not limited to, any such investigation(s) or prosecution(s) by the NYPD, USAO-EDNY, Richmond County District Attorney, or CCRB, including, but not limited to, any such communications between the DAO and IAB.

46. Any written memorandum/a, communications, or other record(s), including any electronic records such as e-mails, reflecting communications by DAO personnel relating to deciding whether or not to move forward with charges against Adonis, Bannon, Damico, Furlani, Meems, Pantaleo, Ramos, Saminath, and/or any other NYPD personnel relating to the death of Mr. Garner.

47. Records, including memoranda and electronic records such as e-mails, reflecting communications between the NYPD and the Richmond County District Attorney regarding Mr. Garner's death or actual or potential investigation(s) or prosecution(s) related to Mr. Garner's death.

Records, including memoranda and electronic records such as e-mails, reflecting communications between the NYPD and the USAO and/or USAO-EDNY regarding Mr. Garner's death or actual or potential investigation(s) or prosecution(s) related to Mr. Garner's death.

48. Records, including memoranda and electronic records such as e-mails, reflecting communications between NYPD personnel and the Mayor, the Office of the Mayor, the Mayor's Office of Criminal Justice, the Mayor's Community Assistance Office, or City Hall between 2014 and the present, regarding Mr. Garner's death or actual or potential investigation(s) or prosecution(s) related to Mr. Garner's death.

49. Records, including memoranda and electronic records such as e-mails, reflecting communications between the NYPD and the New York City Council or any member of the New York City Council between 2014 and the present regarding Mr. Garner's death or actual or potential investigation(s) or prosecution(s) related to Mr. Garner's death.

50. Records, including memoranda and electronic records such as e-mails, reflecting communications between the NYPD and the New York City Law Department between 2014 and the present regarding Mr. Garner's death or actual or potential investigation(s) or prosecution(s) related to Mr. Garner's death.

51. Records, including memoranda and electronic records such as e-mails, reflecting communications between the NYPD and the Office of the Comptroller between 2014 and the present, not including attorney-client privileged materials, regarding Mr. Garner's death or actual or potential investigation(s) or prosecution(s) related to Mr. Garner's death.

52. Records, including memoranda and electronic records such as e-mails, reflecting communications between the NYPD and the Office of the Mayor or City Hall about venue, requests for overflow rooms, public access, press access, and/or protests outside of One Police Plaza for the duration of the Pantaleo administrative trial that was held May 13, 2019 through June 6, 2019.

53. Records, including memoranda and electronic records such as e-mails, reflecting communications within the NYPD about venue, requests for overflow rooms, public access, press access, and/or protests outside of One Police Plaza for the duration of the Pantaleo administrative trial that was held May 13, 2019 through June 6, 2019.
54. Records, including memoranda and electronic records such as e-mails, reflecting communications between the NYPD, any representative(s) of the PBA, and/or Stuart London about managing public access, press access, and/or protests outside of One Police Plaza for the duration of the Pantaleo administrative trial that was held between May 13, 2019 and June 6, 2019.
55. Records, including memoranda and electronic records such as e-mails, reflecting communications between the NYPD and the Inspector General of the NYPD regarding the Pantaleo NYPD administrative trial that took place on May-July 2019 and any related pre-trial or post-trial appearances, or actual or potential charges against other NYPD personnel related to Mr. Garner's death.
56. Records, including memoranda and electronic records such as e-mails, reflecting communications between the NYPD and the Mayor's Office regarding NYPD Commissioner James O'Neill's final decision regarding Officer Pantaleo's disciplinary penalty, which was announced publicly on August 19, 2019.
57. Written Charges and Specifications filed against Adonis, Pantaleo, and/or any other NYPD officer relating to the death of Mr. Garner.
58. The complete stenographic transcripts of the trial record of the Pantaleo NYPD administrative trial that took place on May-June 2019 and any related pre-trial or post-trial appearances or proceedings.
59. All exhibits that were introduced, or sought to be introduced, at the Pantaleo trial.
60. All written motions, arguments by the parties, and decisions related to the Pantaleo trial, and any supporting exhibits, including, but not limited to, all such motions, arguments, or decisions that were made pre-trial, during the trial, or after the trial.
61. All records relating to and/or clarifying the terms of Pantaleo's termination, including:

- a. Whether Pantaleo will receive any pension, whether mandatory or non-mandatory;
 - b. Whether NYPD drafted, or Pantaleo received, any letter indicating that Pantaleo retired in good standing;
 - c. Whether NYPD will prohibit issuance of a “good guy letter” in relation to Pantaleo; and
 - d. All documentation that Pantaleo received upon termination.
62. All records relating to discipline against Adonis, and the terms and/or disposition of Adonis’ discipline, including:
- a. The plea deal negotiated related to Adonis’ disciplinary charge(s);
 - b. The terms of the plea deal, including any charge(s) Adonis pled to and the substance of the plea, whether she pled guilty, *nolo contendere*, or anything else; and
 - c. Records memorializing negotiations between Adonis (whether herself or through counsel) and the NYPD regarding Adonis’s disciplinary charge(s).

We look forward to your first response to this request within five business days.

Please produce the records demanded in electronic format, by e-mail to Gideon@GideonLaw.com, CConti-Cook@legal-aid.org, and Alvin.Bragg@nyls.edu, if electronic file size permits, or if it is possible to transmit the documents securely through links to cloud storage or other, similar means.

Should you deny any portion of this demand based on a determination that you are legally exempt from the disclosure requirement with respect to any particular record(s) or category of record(s), please provide a written explanation specifically citing the Public Officers Law §87(2) category into which you allege that each document allegedly exempt from disclosure falls.

Please articulate particularized and specific justifications for withholding any record(s) demanded from disclosure, such that your agency’s actions can be subjected to meaningful judicial review, if necessary.

Additionally, please provide us with the name, **e-mail address**, mailing address, and facsimile number of the person or body to whom I should direct an administrative appeal in connection with this request.

Thank you for your anticipated prompt attention, and thorough response, to this demand.

Very truly yours,



Gideon Orion Oliver
1825 Foster Avenue, Suite 1K
Brooklyn, NY 11230
(718) 783-3682
Gideon@GideonLaw.com



Cynthia H. Conti-Cook
Special Litigation Unit
The Legal Aid Society
199 Water Street, Fl 6
New York, NY 10038
(212) 577-3265
CConti-Cook@legal-aid.org



Alvin Bragg
Co-Director
New York Law School Racial Justice
Project
185 West Broadway
New York, NY 10013
(212) 431-2114
Alvin.Bragg@nyls.edu

cc: NYS Committee on Open Government
Department of State
One Commerce Plaza
99 Washington Avenue, Suite 650
Albany, NY 12231

Office of Inspector General of the NYPD
80 Maiden Lane
New York, NY 10038

Corporation Counsel for the City of New York
100 Church Street
New York, NY 10007