

COMMUNITIES UNITED FOR POLICE REFORM

Testimony of Communities United for Police Reform (CPR)

**Submitted to the New York State Senate
By Carolyn Martinez-Class**

For October 24th Senate Codes Hearing on Repealing 50-a (S3695-Bailey)

Communities United for Police Reform ('CPR') respectfully submits these comments to the New York State Senate Codes Committee concerning S3695 – the bill to repeal 50-a. We believe this hearing provides a key opportunity to uplift the need to repeal 50-a early in the 2020 session. Passing S3695 and fully repealing 50-a will help make New York's police departments more transparent and accountable to the communities they serve.

I. About Communities United for Police Reform (CPR)

CPR is an unprecedented campaign working to end discriminatory policing practices in New York State. As part of our work, we have organized coalitions of over 200 local and national organizations to win police accountability legislation and policy change in New York City and in Albany; our members have trained thousands of New Yorkers on their rights in interactions with police; and we engage in community education, civic engagement, community organizing, litigation and other activities to promote greater transparency and accountability from government – particularly police departments – to build a safer New York that is respectful of the rights of all New Yorkers.

CPR is a multi-sector campaign working to end discriminatory and abusive policing practices in New York. Through community organizing, policy advocacy, public education, litigation, civic engagement and other strategies, CPR seeks to build a broad-based movement to promote community safety and respect for the rights and dignity of all New Yorkers. Our members and partners include over 200 local and national organizations, many of whom are based in and led by those most directly impacted by abusive policing. Our member organizations include grassroots community organizing groups, policy and legal advocacy organizations, research projects and more.

Through this campaign, we have helped to change the local conversation on public safety, increased the knowledge and practice of New Yorkers in observing and documenting police misconduct, and have won key policy victories including passage of the Community Safety Act (which established the first Inspector General of the NYPD and an enforceable ban on bias-based policing) and Right To Know Act in the New York City Council; and organized the campaign to secure an executive order establishing a special prosecutor for police killings from Governor Cuomo.

II. Comments regarding Support for the Full Repeal of 50-a (Passage of S3695-Bailey)

Communities United for Police Reform respectfully urges the New York State Legislature to pass S3695/A2513 and repeal 50-a early in the 2020 session. Repealing 50-a is a critical first step toward securing police transparency and accountability throughout New York State. CPR supports the passage of S3695/A2513 for the following reason:

- **50-a is an outdated and misguided police secrecy law that makes New York an outlier in the country.** New York should be a national leader on police accountability and transparency, but NY is arguably the worst in the country when it comes to police transparency. NY is one of only two states with a law that specifically restricts public access to information on police officer misconduct and discipline.
- **50-a is unnecessary** - New York's Freedom of Information Law (FOIL) already protects personal information of public employees. In spite of propaganda by police departments and police unions in NYS, repealing 50-a will not hurt the personal privacy or security of officers. NYS's FOIL framework protects personal information of public employees such as home addresses and social security numbers, for example.
- **50-a harms and re-traumatizes those most impacted by police violence**, including people throughout the state who have had direct experiences of brutality, sexual harm, and abuse by police officers & those who have lost loved ones due to police violence. 50-a allows the withholding of critical information related to cases of police misconduct and discipline, including officer misconduct histories and outcomes of disciplinary processes (if there are any) – and more recently has been used as an excuse to not release the names of officers who kill civilians.
- **Police secrecy and 50-a hurts trust in government by the public**, especially as related to police departments. Because of 50-a, the public is deprived information necessary to play a critical oversight role in terms of the accountability processes of police departments throughout NYS. This is dangerous for public safety.

For these reasons, Communities United for Police Reform and over a hundred organizations in the **Safer NY Act Coalition** are calling on the New York State Legislature to pass Senator Bailey and Assemblyman O'Donnell's bill to repeal 50-a (S3695/A2513) in the 2020 legislative session.

1. 50-a is an outdated, unnecessary statute -- and provides New York police officers with dangerous and unnecessary special privacy rights compared to police in other jurisdictions throughout the country and compared to other professionals in New York State.

New York State is arguably the least transparent state in the country when it comes to police misconduct in large part because of the police secrecy law, 50-a – and the expansion of 50-a in recent years, particularly with negative court rulings. New York is one of only two states in the country that specifically restricts public access to information on police officer misconduct and discipline. The other state is Delaware. Throughout the country, there are examples of significantly more transparent practices surrounding police disciplinary records – states like Utah, Florida, Georgia and Connecticut make records generally accessible to the public.¹ In Chicago, over thirty (30) years of police disciplinary information has been published under the banner of the Citizens Police Data Project. This searchable database includes the names of officers involved, the status of pending complaints, and the outcome of the complaint (including whether it was substantiated and whether a penalty was imposed).² Despite having the largest

¹See Robert Lewis, Noah Veltman & Xander Landen, Is Police Misconduct a Secret in Your State?, WNYC (Oct. 15, 2015), <http://www.wnyc.org/story/police-misconduct-records/>

² See Citizens Police Data Project <https://cpdp.co/>

police department in the country,³ New York is a backwards outlier compared to other states and jurisdictions when it comes to police transparency.

Even within New York, police are the exception to the rule when it comes to accessing information concerning professional misconduct. Unlike any other profession, police officers are empowered to issue summonses, make arrests and use force, including lethal force. Police officers are afforded an immense amount of power and yet, police departments are permitted to hide misconduct and disciplinary information from the public view due to 50-a. In New York State, one can search online databases to find misconduct records pertaining to teachers, lawyers, nurses, architects and even massage therapists.⁴ Doctors, like police officers, are entrusted to make life-altering decisions for those under their purview – unlike police officers, the misconduct records of doctors - including information concerning pending investigations – are on a searchable database online.⁵ These are just a handful of examples of easily accessible information pertaining to other professions throughout the state of New York – it is alarming that police officers, who are afforded such broad powers and discretion, are protected by a broad shroud of secrecy because of 50-a.

Due to overly broad applications of 50-a by police departments over the years, what was once a fairly narrow statute has been warped to operate as a far-reaching blanket secrecy protection for police and police departments. 50-a has gone far beyond its proposed purpose and therefore should be repealed.

While police departments may claim that 50-a is necessary toward the protection of officer's personal records – that is simply untrue. New York State's Freedom of Information Law (FOIL) has robust built in protections concerning the private information of public servants. FOIL

Second, while police departments and unions may falsely insist that 50-a is necessary to protect officer's personal information like home addresses or financial documents, that is simply not true. New York's Freedom of Information Law (FOIL) has protections in place that bar the disclosure of any items that may constitute an 'invasion of privacy' and FOIL explicitly allows the redaction of information where the release would endanger the life or safety of any person. These protections already exist in FOIL – and these protections are currently used for records requests for other public servants whose records are available under FOIL in the state of New York.⁶ 50-a therefore has no legitimate policy purpose beyond shielding misconduct records of abusive officers and the failed disciplinary processes of police departments.

3. 50-a harms those most impacted – victims of police misconduct and families who have lost loved ones due to police violence.

50-a must be repealed because it harms the most vulnerable New Yorkers. It is no secret that there is a crisis in meaningful, timely and transparent police accountability. There are people

³ New York City Police Department, About NYPD <https://www1.nyc.gov/site/nypd/about/about-nypd/about-nypd-landing.page>

⁴ See NYSED, *Enforcement Actions* <http://www.op.nysed.gov/opd/rasearch.htm>

⁵ See NYS Department of Health - Office of Professional Medical Conduct database – searchable here: <https://apps.health.ny.gov/pubdoh/professionals/doctors/conduct/factions/Home.action>

⁶ Section 89.7 of NYS FOIL explicitly permits the home addresses of present or former public employees to be withheld. FOIL's existing provisions already allow for the withholding or redaction of personal information in documents (i.e. information where the release of such information would credibly endanger the life or safety of any person, or be an "unwarranted invasion of personal privacy").