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

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In the Matter of,

MILLIONS MARCH NYC, an unincorporated association; and VIENNA RYE, ARMINTA JEFFRYES, and NABIL HASSEIN, in their individual capacities and as representatives of Millions March NYC,

Petitioners,

-against-

NEW YORK CITY POLICE DEPARTMENT,

Respondent,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules.

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Index No. 100690/17

MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION

Respectfully submitted,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Miscellaneous

PRELIMINARY STATEMENT

In this case, Millions March NYC and its representatives Vienna Rye, Arminta Jeffryes, and Nabil Hassein, in their individual and representative capacities (together, "petitioners"), challenge the NYPD's decision to respond to a routine FOIL request with a statement that the agency can neither confirm nor deny the *mere existence* of any of the requested records, a response reserved for extremely sensitive matters of national security at the federal level and virtually unheard of in New York State FOIL jurisprudence. This type of response is clearly unwarranted and unlawful in the petitioners' case.

Millions March NYC is a multiracial grassroots collective of activists committed to building and strengthening the movement for Black lives in New York City. As a result of the troubling reports of unwarranted government surveillance of and interference with Black Lives Matter protests across the nation and a series of strange problems that activists in New York City were experiencing with their cell phones, the petitioners filed a FOIL request with the NYPD in October 2016. The request sought records relating to the NYPD's use of technology to interfere with the use of cell phones by protestors, the NYPD's monitoring of social media accounts of protestors, the NYPD's access to or acquisition of contents of the petitioners' cell phones without a court order, and records maintained by the NYPD relating to protest and organizing activities of Millions March NYC.

Troublingly, the NYPD responded to this request with a "Glomar" response—an extreme response of secrecy that has been recognized under federal Freedom of Information Act but not under FOIL until *Abdur-Rashid v N.Y. City Police Dept.* (140 AD3d 419 [1st Dept 2016], *lv granted*, 28 NY3d 908 [2016]). In a typical FOIL response, the agency either produces responsive records, withholds them under the statutory exemptions that protect against

disclosure, or certifies that the records do not exist. In a Glomar response, the agency seeks to keep secret the mere fact of the existence or non-existence of responsive records.

Glomar is a federal judicially crafted doctrine that is inconsistent with the structure and purpose of New York's FOIL, and the Court of Appeals is currently considering whether it is *ever* permitted under FOIL in the appeal from *Abdur-Rashid*. But even if the Court were to decide that it is, this Court should reject the NYPD's broad invocation of Glomar here, as well as its alternative invocation of three FOIL exemptions. The petitioners are entitled to access requested records that will shed light on how their First Amendment rights are being protected or violated in this era when protest and activism continue to play an important role in our democracy.

FACTUAL BACKGROUND

Rye, Jeffryes, and Hassein are all representatives of Millions March NYC and activists who frequently lead and take part in protests against police abuse of Black communities (verified petition ¶ 12). In the past few years, some of them have experienced problems when using cell phones to organize and publicize protest activities.

The first time that Rye encountered these problems was on December 13, 2014 (*id.* ¶ 13). On that day, Rye, on behalf of Millions March NYC, organized a large march in New York City to protest the grand juries' failure to indict the police officers who killed Eric Garner and Michael Brown (*id.* ¶ 13). Rye's cell phone shut down during the march while she was trying to film what was happening (*id.* ¶ 13). The phone indicated that it was out of battery power even though it was fully charged (*id.* ¶ 13).

The petitioners have experienced other problems with using their phones during protests. During an April 29, 2015, protest that began at Union Square in solidarity with the protests in

Baltimore over the killing of Freddie Gray, and during an April 14, 2016, protest against Donald Trump, which took place at the New York State Republican Committee's annual gala at the Grand Hyatt Hotel near Grand Central, Rye and Jeffryes lost reception on their phones (*id.* ¶ 14). Additionally, at certain protests from around the summer through the fall of 2015, Rye's cell phone would not allow her to post to Millions March NYC's social media account (*id.* ¶ 15). The petitioners have heard other activists describe similar problems with using their phones during protests, including loss of cell phone service, battery failures, and inability to film the surroundings or post on social media (*id.* ¶ 17).

Rye and Jeffryes, as well as other advocates, have also received messages indicating the possibility of interference with their messages sent and received on Signal, a secure communication tool available on smart phones, to plan for their protests (*id.* ¶ 16). These problems began around August of 2015 (*id.* ¶ 16).

Petitioners' concerns about these strange cell phone problems have been heightened by reporting of police surveillance of Black Lives Matter protests across the country and use of powerful emerging technologies to spy on protestors (*id.* ¶ 19). Elsewhere in the country, it has been reported that police departments have purchased social media monitoring software like Digital Stakeout, Geofeedia, and Dataminr to facilitate analysis of social media data and to target surveillance of Black Lives Matter activities (*id.* ¶ 21). It has also been reported that police departments, including the NYPD, own powerful cell phone surveillance tools called stingrays (Hirose aff exhibits B, C, and F). In some configurations, stingrays can be used to intercept contents of communications or to engage in targeted or blanketed interference with service (*id.* Hirose aff ¶ 5).

In addition, Rye and Jeffryes have heard comments from NYPD police officers about the monitoring of Millions March NYC's organizing and protest activities (verified petition ¶ 18). On one occasion, while they were being arrested, they saw officers make duplicates of arrest records and heard them saying to each other that a copy would be placed in "movement files" (*id.* ¶ 18). On other occasions, they have heard officers make comments indicating that they are monitoring the social media accounts of activists (*id.* ¶ 18).

PROCEDURAL HISTORY

By letter dated October 24, 2016, the petitioners filed a FOIL request with the NYPD seeking records relating to interference with and surveillance of protestors' communications (petition exhibit A). The request sought the following categories of records:

1. Records relating to the NYPD's use of technology to engage in targeted or blanketed interference with the use of cell phones or cell phone applications by protestors (excluding intercept of contents of communications, but including interference with battery life and cell phone reception), specifically:
    a. Records identifying and describing the software or technology that the NYPD uses to engage in such interference;
    b. Policies or guidelines relating to the NYPD's engagement in such interference; and
    c. Records describing the occasions in which the NYPD has engaged in such interference.

2. Records relating to the NYPD's access to or acquisition of contents of Requestors' cell phones, including emails or text messages or Signal messages or video, without a court order, specifically:
    a. Records identifying and describing any software or technology that the NYPD uses to engage in such access or acquisition;
    b. Policies or guidelines relating to the NYPD's engagement in such access or acquisition; and
    c. Records describing the occasions in which the NYPD has engaged in such access or acquisition.

3. Records relating to the NYPD's monitoring of social media accounts of protestors and protest groups, regardless of privacy settings, specifically:
    a. Records identifying and describing any software or technology (including for example Geofeedia, MediaSonar, X1 Social Discovery, or similar products) that the NYPD uses to engage in such monitoring;

b. Policies or guidelines relating to the NYPD's engagement in such monitoring; and
c. Records reflecting the NYPD's monitoring of the following social media accounts of the Requestors:
    i. Facebook accounts of:
        1. Millions March NYC
        2. Vienna Rye
        3. Cleo Jeffryes
    ii. Twitter accounts of:
        1. @millionsmarch
        2. @nabilhassein
        3. @armintasade
    iii. Instagram accounts of:
        1. @millionsmarchnyc
        2. @vrye
        3. @armie_sade

4. Records maintained by the NYPD relating to protest and organizing activities of Millions March, including copies of any "movement files." With regard to this request, on July 17, 2015, while Rye and Jeffryes were being processed at 1 Police Plaza for disorderly conduct arrests arising from their protest activities, they saw officers make duplicates of arrest records and heard them saying to each other that a copy would be placed in "movement files."

After acknowledging receipt of the FOIL request, and after an appeal concerning the delay in responding to the request, the NYPD issued a response to the FOIL request on January 10, 2017 (petition exhibits B-E.) The NYPD denied Request 1-3 on the basis that the records, "if in existence, are exempt from disclosure pursuant to Public Officers Law Section 87(2) and/or other statutes," and disclosed records responsive to Request 4 relating to records of Millions March NYC's protest and organizing activities (petition exhibit E).

The petitioners filed a timely administrative appeal on January 23, 2017 (petition exhibit F), which the NYPD denied on February 3, 2017 (petition exhibit G). With respect to Requests 1-3, the NYPD claimed a "Glomar" response, stating that it can "neither confirm nor deny the existence of records responsive to [the] FOIL request, as knowledge of the existence or non-existence of such records would interfere with a law enforcement investigation, could impair the

life and safety of others and would reveal confidential information," pursuant to Public Officers Law §§ 87 (2) (e) (i), 87 (2) (f) and 87 (2) (e) (iii) (*id.*). The NYPD further claimed, without any explanation, that to the extent that the records responsive to Request 1-3 exist they are exempt from disclosure under Public Officers Law §§ 87 (2) (b), 87 (2) (e) (i), 87 (2) (e) (iii), 87 (2) (e) (iv), and 87 (2) (f) (*id.*). With respect to Request 4, the NYPD certified that a diligent search was conducted and that the records disclosed were the sole records responsive to the request (*id.*).

Having exhausted administrative remedies, the petitioners are filing this Article 78 proceeding within the statute of limitations.

ARGUMENT

I. THE COURT SHOULD REJECT THE NYPD'S INVOCATION OF GLOMAR.

In invoking the Glomar doctrine in response to Million March's FOIL request, the NYPD has refused to confirm or deny that it has records relating to the interference with cell phone communications of protestors, social media surveillance on protestors, or access to content of cell phones of these protestors without a court order—including whether or not it has policies and procedures regulating any of these activities. This Glomar response is unwarranted and a troubling sign of how the NYPD will abuse the Glomar doctrine if the Court of Appeals imports the doctrine from the federal FOIA jurisprudence into FOIL. This Court should reject the claim and ensure that Glomar does not eviscerate FOIL's purpose to promote transparency and accountability.

As an initial matter, there are a number of reasons that the Court of Appeals may, in the case pending before it, reverse the First Department's decision in *Abdur-Rashid v New York City Police Department* that affirmed a Glomar response for the first time under New York law (*Abdur-Rashid v N.Y. City Police Dept.*, 140 AD3d 419 [1st Dept 2016], *lv granted*, 28 NY3d

908 [2016]). First, as a textual matter, the carefully calibrated legislative scheme of FOIL does not explicitly permit a Glomar response (Public Officers Law § 87 [2] [permitting agencies to withhold "records or portions thereof," not the mere information about whether records exist]). Second, as a doctrinal matter, even under FOIA where Glomar has been recognized for decades, courts have rarely permitted Glomar invocations that are not tied to national security exemptions that are available under FOIA but not under FOIL. As the Supreme Court recognized in one of the trial court decisions underlying *Abdur-Rashid*:[1]

> In the vast majority of Glomar cases, the invocation of the doctrine is tethered to FOIA exemptions 1 and 3. FOIA exemption 1 protects 'classified documents' designated by 'Executive Order.' Municipal governance does not include an analogous category of documents. FOIA exemption 3 relates to documents 'specifically exempted from disclosure by statute.' FOIA exemption 3 is most often used in Glomar responses in conjunction with legislation that created the federal government's national security apparatus. For example, two statutes frequently invoked in conjunction with exemption 3 in Glomar responses are the National Security Act of 1947, which exempts from disclosure 'intelligence sources and methods,' (50 USC § 3024-1[i][1]) and the Central Intelligence Agency Act of 1949, which requires the CIA director to protect intelligence sources or methods. These types of documents have no analogs in the NYPD's own records.

(*Hashmi v New York City Police Dept.*, 46 Misc3d 712, 723-24 [Sup Ct, NY County 2014], *revd*, *Abdur-Rashid*, 140 AD3d 419.) Finally, as a matter of legislative intent and purpose, Glomar is fundamentally inconsistent with FOIL's purpose to "promote open government and public accountability" (*Gould v New York City Police Dept.*, 89 NY2d 267, 274 [1996]; *see also Schulze v Fed. Bureau of Investigation*, No. 05 Civ. 0180, 2010 WL 2902518, at *20 [ED Cal July 22, 2010] [holding that Glomar is "the functional equivalent of a non-response and represents the most extreme departure from the policy purpose . . . to inform and promote transparency in governmental affairs"]).

[1] The First Department consolidated and decided two cases on appeal in *Abdur-Rashid*. In one of them, *Hashmi*, the trial court had rejected the existence of Glomar under FOIL. In the other, *Abdur-Rashid*, the trial court had accepted it (45 Misc 3d888 [Sup Ct, NY County 2014]).

But even if the Court of Appeals were to recognize the availability of Glomar under FOIL in *Abdur-Rashid*, this Court should not allow the NYPD's blanket and conclusory assertion that confirming or denying the existence of responsive records to any part of Requests 1, 2, and 3 would "interfere with a law enforcement investigation, could impair the life and safety of others and would reveal confidential information" (petition exhibit G ¶ 2). In order to establish entitlement to Glomar, the agency has the burden of justifying its response through one of the statutory exemptions—it "cannot rely on a bare assertion" (*Jefferson v Dept. of Justice*, 284 F3d 172, 179 [DC Cir 2002] [rejecting Glomar response on the record before the court and remanding]). It also cannot, under the general principles of FOIL, rely on blanket claims for exemptions or conclusory listing of statutory exemptions (*see Gould*, 89 NY2d at 275 [stating that "blanket exemptions for particular types of documents are inimical to FOIL's policy of open government"]; *Church of Scientology of New York v State*, 46 NY2d 906, 908 [1979] [rejecting invocation of exemptions where the government "tendered only references to sections, subdivisions, and subparagraphs of the applicable statute and conclusory characterizations of the records sought to be withheld"]; *see also Wolf v Cent. Intelligence Agency*, 473 F3d 370, 374 [DC Cir 2007] [noting that in evaluating Glomar responses "courts apply the general exemption review standards established in non-Glomar cases"]).

Moreover, even if the NYPD were to provide more support for its position, it is improbable that it can justify a Glomar response to this routine request for NYPD policies and practices. This is not an "unusual" circumstance in which a Glomar response is warranted (*New York Times Co. v U.S. Dept. of Justice*, 756 F3d 100, 122 [2d Cir 2014] [holding that Glomar should "only be justified in unusual circumstances, and only by a particularly persuasive affidavit," and rejecting Glomar invocation for a memorandum setting forth lawfulness of

American targeted killing operations]). As explained above, the NYPD's Glomar invocation is not tethered to a national security exemption that has usually supported a Glomar response under FOIA because the NYPD is not a part of the federal national security apparatus (*Hashmi*, 46 Misc3d at 723-24). But even federal agencies have responded to similar FOIA requests about domestic surveillance practices and policies without invoking Glomar (*see e.g. Soghoian v Dept. of Justice*, 885 F Supp 2d 62 [DDC 2012] [request for records relating to electronic surveillance practices]; *Elec. Privacy Info. Ctr. v Dept. of Justice*, 511 F Supp 2d 56 [DDC 2007] [request for records relating to surveillance of domestic communications]; *Voinche v FBI*, 940 FSupp 323 [DDC 1996] [request for records related to the alleged wiretapping of the Supreme Court]; *Sennett v DOJ*, 962 F Supp 2d 270 [DDC 2013] [request for records concerning the requestor]; *Servicemembers Legal Defense Network v Dept. of Defense*, 471 F Supp 2d 78 [DDC 2007] [request for surveillance records of individuals and groups opposed to government's policy on gays and lesbians in the military]; *Am. Civil Liberties Union v FBI*, 429 F Supp 2d 179 [DDC 2006] [request for records related to the FBI's surveillance of certain domestic political and religious organizations]).[2]

As further evidence that Glomar is inappropriate here, prior to *Abdur-Rashid* the NYPD itself responded to similar requests regarding its use of surveillance technologies without invoking the Glomar doctrine and instead using the statutory exemptions as contemplated by FOIL (*see e.g.* Hirose aff exhibits F-I [requesting records relating to the use of a cell phone surveillance equipment and automatic license plate readers]; *Logue v New York City Police Dept.* [Sup Ct, NY County, Feb 10, 2017, No 153965/2016, Hirose aff exhibit P [requesting records

[2] Courts have permitted the invocation of the Glomar doctrine where the request sought information on whether the petitioner is in a sensitive government database or a government watchlist (*see e.g. Vazquez v US Dept. of Justice*, 8887 F Supp 2d 114, 118 [DDC 2012]). The requests at issue here are not analogous to such requests, however, and the NYPD has already responded to the one request relating to NYPD files on Millions March NYC (Request 4) that could be perceived as most analogous to those requests (petition exhibit G).

relating to surveillance of Black Lives Matters protestors at Grand Central Terminal]; *Grabell v New York City Police Dept.*, 139 AD3d 477 [1st Dept 2016] [requesting records relating to the use of x-ray vans]; *NYCLU v New York City Police Dept.*, 2009 NY Misc LEXIS 2542 [Sup Ct, NY County, June 26, 2009, No 112145/08] [requesting records relating to the Lower Manhattan Security Initiative]). In fact, it appears that the NYPD responded to a FOIL request on social media surveillance previously and disclosed an Operation Order titled "Use of Social Networks for Investigative Purposes" (Hirose aff exhibit K);[3] this policy is responsive to the petitioners' Request 3(b) because it regulates the NYPD's surveillance of social media, including surveillance of political activities. Similarly, the NYPD routinely discloses its Patrol Guide, which includes its policies and procedures, such as Patrol Guide 218-50 reminding officers that "they must obtain a search warrant, prisoner's consent, or some exigent circumstances must exist in order to lawfully search for information stored in a cellular telephone" (Hirose aff exhibit L); this policy is responsive to petitioners' Request 2(b) because it regulates the NYPD's acquisition of contents of a cell phone without a court order. The NYPD's Glomar invocation as to these requests cannot stand given that it has already officially acknowledged the existence of responsive records (*see Am. Civil Liberties Union v Cent. Intelligence Agency*, 710 F3d 422, 427-30 [DC Cir 2013] [rejecting Glomar response and explaining that Glomar is undermined where "the agency has already disclosed the fact of the existence (or nonexistence) of responsive records"]).

As these past responses to FOIA and FOIL requests and voluntary disclosures confirm, the petitioners' request does not implicate a topic that merits the extreme secrecy of Glomar. Social media monitoring by law enforcement, for example, is a topic that many agencies have

[3] *See* Shawn Musgrave, *NYPD Social Media Policy Allows Officers to Create Fake Accounts to Monitor Online Activity*, Muckrock, Feb. 6, 2015, https://www.muckrock.com/news/archives/2015/feb/06/nypd-social-media-policy-allows-catfishing-proper-/.

found fit to discuss publicly (*see Florez v Cent. Intelligence Agency*, 829 F3d 178, 186-87 [2d Cir 2016] [holding that decision of another agency to disclose information about the topic requested is relevant evidence for evaluating the Glomar claim]). The U.S. Department of Justice has issued a report on this topic, which specifically discusses how the NYPD monitors "mass demonstrations and protests" through social media and discloses the NYPD's interest in acquiring software to assist with the monitoring (Hirose aff exhibit M).[4] Organizations that track police practices have reported on the use of social media monitoring software by police departments across the country, including the Florida Department of Law Enforcement, County of Los Angeles, and the New York State Police (*id.* exhibits N-O).[5]

If the NYPD's Glomar invocation were accepted in this case, there would be no limit to the NYPD's ability to cloak its conduct in secrecy, in contravention of FOIL's promise of transparency and government accountability. The Court should reject the NYPD's Glomar invocation.

II. THE COURT SHOULD REJECT THE NYPD'S CONCLUSORY RECITATION OF STATUTORY EXEMPTIONS AS ALTERNATIVE GROUNDS FOR WITHHOLDING RESPONSIVE RECORDS WHOLESALE.

The Court should also reject the NYPD's alternative argument that the responsive records are exempt under three exemptions—Public Officers Law §§ 87 (2) (b), which protects privacy,

[4] *See* U.S. Dept. of Justice et al., *Social Media and Tactical Considerations for Law Enforcement* at 13 (2013), http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/social%20media%20and%20tactical%20considerations%20for%20law%20enforcement%202013.pdf

[5] Nicole Ozer, *Police Use of Social Media Surveillance Software Is Escalating, and Activists Are in the Digital Crosshairs*, ACLU, Sept. 22, 2016, https://www.aclu.org/blog/free-future/police-use-social-media-surveillance-software-escalating-and-activists-are-digital; Brennan Center, *Map: Social Media Monitoring by Police Departments, Cities, and Counties*, Nov. 16, 2016, https://www.brennancenter.org/analysis/map-social-media-monitoring-police-departments-cities-and-counties; Brennan Center, *Purchase Order Records for Purchases of Social Media Monitoring Software by State and Local Governments*, Nov. 14, 2016, https://www.brennancenter.org/sites/default/files/analysis/Purchase_Order_Records_for_Purchases_Social_Media_Monitoring_Software_State_Local_Govts.pdf.

87 (2) (e) (i), (iii), and (iv), which protects law enforcement interests, and 87 (2) (f), which protects public safety. The NYPD's conclusory recitation of these exemptions is insufficient to justify withholding the records wholesale (*see* petition exhibit G). As with the Glomar invocation, the NYPD's citation to these three FOIL exemptions, without any explanation, falls short of its burden as the responding agency to articulate a "particularized and specific justification for not disclosing requested documents" (*Gould*, 89 NY2d at 275 [internal quotation marks omitted]; *see also Church of Scientology of New York*, 46 NY2d at 908). Conclusory averments, without more, are insufficient to meet the agency's burden (*see e.g. Capital Newspapers v City of Albany*, 15 NY3d 759, 761 [2010] [finding a "conclusory affidavit" from agency insufficient to establish exemptions]; *Washington Post Co. v New York State Ins. Dept.*, 61 NY2d 557, 567 [1984] [rejecting claim for exemption that relied on "conclusory pleading allegations and affidavits"].)

Moreover, under FOIL, even if an agency is able to establish that some material in a requested record is exempt, that does not mean the document is entirely exempt from disclosure. Rather, FOIL expressly provides that an agency may deny access to records "or portions thereof" (Public Officers Law § 87 [2]). Ample authority from the Court of Appeals favors disclosure of redacted recordsif only some portion of the information in the records is exempt (*see e.g. Gould*, 89 NY2d at 275 [holding, in a case seeking disclosure of NYPD complaint follow-up reports, that all nonexempt material should be released with appropriate redactions]; *Data Tree, LLC v Romaine*, 9 NY3d 454, 464 [2007] [remitting to Supreme Court to determine whether exempt information can be redacted from the records]). Here, even if the NYPD were able to meet its

burden of establishing that some of the responsive material is exempt, the Court should order the disclosure of the responsive records with redactions for the exempt materials.[6]

III. THE PETITIONERS ARE ENTITLED TO ATTORNEYS' FEES.

The petitioners respectfully request an award of attorneys' fees and litigation costs pursuant to FOIL. FOIL permits a court, in its discretion, to award reasonable attorneys' fees and other litigation costs when the moving party has "substantially prevailed" in its Article 78 petition and the government entity had "no reasonable basis for denying access" to the records in dispute (Public Officers Law § 89 [4] [c]).

The attorneys' fees provision of FOIL was amended in 2006 to make it easier for petitioners to obtain fees (*see e.g. Legal Aid Socy. v New York State Dept. of Corr. & Community Supervision*, 105 AD3d 1120, 1122 [3d Dept 2013] [amendment was "in order to create a clear deterrent to unreasonable delays and denials of access"] [internal quotations omitted]; *see also New York State Defenders Assn. v New York State Police*, 87 AD3d 193, 195 n 2 [3d Dept 2011] [noting that the fee law was amended in order to combat the "'sue us' attitude" adopted by some agencies]). Under FOIL's fee provision, the petitioners need only establish that they have substantially prevailed in this Article 78 proceeding and that the respondent had no "reasonable basis for denying access" to the records sought (Public Officers Law § 89 [4] [c]).

For all of the reasons discussed above, it appears that the NYPD lacks any reasonable basis for claiming a blanket Glomar response and withholding all responsive records to the extent that they exist. The petitioners recognize, of course, that this issue cannot be definitively resolved

[6] With respect to Public Officers Law § 87 (2) (b), petitioners agree to redactions of identifying details of protestors other than petitioners in records describing the occasions that the NYPD has engaged in targeted or blanketed interference with the use of cell phones or cell phone applications by protestors (Request 1[a]). The NYPD cannot claim a privacy exemption with respect to information that pertains to the petitioners, however, as they provided reasonable proof of their identity with their initial request (petition ¶ 21). The NYPD has not contested the proof of identity and presumably relied on it to release sealed arrest records that were responsive to the request (*id*. ¶ 21).

until the NYPD files its opposition, at which point the petitioners will be able to address the fee issue more completely.

CONCLUSION

For the foregoing reasons, the petitioners respectfully request that the Court order the NYPD to respond to Requests 1-3 of the FOIL Request dated October 24, 2016, order disclosure of any responsive records, and award the petitioners attorneys' fees and litigation costs.

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