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

The Legal Aid Society, a non-profit corporation, Petitioner, For a Judgment Under Article 78, -against- New York County District Attorney's Office, Respondent.	Index No. VERIFIED ART. 78 PETITION Oral argument requested

Petitioner, by its undersigned attorneys, for its Verified Petition in this Article 78 proceeding, alleges as follows:

THE NATURE OF THE PROCEEDING

1. Petitioner brings this Article 78 proceeding to obtain records properly subject to New York's Freedom of Information Law ("FOIL"). Petitioner seeks to determine the extent to which the State of New York and New York City employ the services of Geofedia, Inc., Media Sonar Technologies Inc., and X1 Discover, Inc. ("Social Media Monitoring Companies"). These companies collect data from social media websites and applications and then sell that data to government law-enforcement agencies. In response to Petitioner's FOIL request, Respondent refused to divulge any information at all about the relationship between New York City and the Social Media Monitoring Companies. Respondent's determination was based on an error of law, was arbitrary and capricious, and was an abuse of Respondent's discretion.

SOURCE OF JURISDICTION

2. This Court may conduct "special proceedings" pursuant to Article 78 of New York's Civil Practice Law and Rules. *See* CPLR §§ 7801-7806. Petitioner seeks review of Respondent's determinations on its FOIL petition, pursuant to CPLR §7803(3).

3. Respondent is a "body" subject to judicial review pursuant to Article 78 of New York's Civil Practice Law and Rules. *See* CPLR § 7802(a).

VENUE

4. Venue is proper in New York County, which is Respondent's principal place of business, and the place where the adverse agency determination was made. CPLR §§ 7804(b) & 506(b).

INTRODUCTION

5. "While in the past there may have been difficulty in identifying the most important places … for the exchange of views, today the answer is clear. It is cyberspace—the vast democratic forums of the Internet in general, … and social media in particular." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (internal quotation marks omitted).

6. As people share more and more information about themselves online—knowingly or unknowingly—law enforcement agencies have increasingly looked to social media websites and smartphone applications as a source of potential evidence in their investigations.

7. For example, Chicago-based Geofeedia has allegedly assisted Baltimore law enforcement in monitoring the social media activities of citizens protesting the death of Freddie Gray, a Black man who died after falling into a coma while being transported in a police van. *See Police Use Surveillance Tool to Scan Social Media, A.C.L.U. Says*, N.Y. TIMES, October 11, 2016, available at https://www.nytimes.com/2016/10/12/technology/aclu-facebook-twitter-instagram-geofeedia.html. Geofeedia has, according to the ACLU, signed agreements with more

than 500 law enforcement agencies. *Id.* In response to invasion-of-privacy concerns, Facebook, Twitter, and Instagram have stated that they have cut off Geofeedia's access to their information. *Id.*

8. Media Sonar provides similar services to law enforcement and has run into similar controversies. Twitter and Instagram banned Media Sonar after learning of reports that law enforcement agencies had used Media Sonar to monitor citizens attending Black Lives Matter events and other public protests. *See Twitter and Instagram Ban London, Ont., Company for Helping Police Track Protesters*, CBC NEWS, January 19, 2017, available at http://www.cbc.ca/news/canada/toronto/twitter-bans-firm-police-protesters-1.3942093. The Canadian Broadcasting Company reports that Ontario-based Media Sonar marketed itself as "the only vendor that allows public safety agencies to view social accounts covertly." *Id.*

9. X1's "Social Discovery" product "aggregates comprehensive social media content and web-based data" and "enables powerful, proactive monitoring capabilities with automated email alerts for social media, geostreaming and website collections." http://www.x1.com/products/x1_social_discovery/. X1 claims to collect information from Facebook, Twitter, Instagram, YouTube, Tumblr, Gmail, YahooMail, Outlook.com, AOL Mail, and websites. *Id.* It boasts that its tool allows customers to "perform broad, unified searches across multiple accounts, social media streams and websites from a single interface." *Id.*

10. Advocates for civil liberties have been alarmed by law enforcement's apparently widespread adoption of social media monitoring tools. Civil libertarians are particularly concerned about the prospect of law enforcement's using these sorts of tools to monitor the activities of peaceful protestors. *See, e.g., Police Use of Social Media Surveillance Software is Escalating, and Activists are in the Digital Crosshairs*, ACLU BLOG, September 22, 2016,

available at https://www.aclu.org/blog/privacy-technology/surveillance-technologies/police-use-social-media-surveillance-software. There is a robust public debate about the extent to which law enforcement should be using these tools, and the extent to which social media companies should cooperate with companies who make such social media monitoring tools. *See, e.g.*, *Police Searches of Social Media Face Privacy Pushback*, NPR, October 15, 2016, available at http://www.npr.org/sections/alltechconsidered/2016/10/15/498005101/police-searches-of-social-media-face-privacy-pushback.

11. The Supreme Court has recognized that "social media users employ [social media] websites to engage in a wide array of protective First Amendment activity on topics 'as diverse as human thought.'" *Packingham*, 137 S. Ct. at 1735-36, quoting *Reno v. American Civil Liberties Union*, 521 U.S. 844, 852 (1997). "A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more." *Id.* at 1345. "Th[is] right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental." *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937). "It cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions . . . ." *Id.*

12. Whether law enforcement's use of tools from Social Media Monitoring Companies chills the exercise of fundamental rights on the Internet, such as the right to speak freely and to assemble peaceably, is a question of profound significance. Before that debate can even occur, however, the public needs to know—at a high level—how its government is using tools created by Social Media Monitoring Companies. FOIL was intended to ensure that the public has the information it needs to engage in precisely this sort of debate.

13. Respondent's denial in this case, however, reflects a recent trend that runs counter to the openness to which FOIL aspires. Respondent here refused to even confirm or deny the existence of responsive records, a species of denial known as a "Glomar Response." Until recently, Glomar Responses were completely unrecognized under New York law. And although they have long been recognized under federal FOIA law for matters relating to national security, experience has taught courts to view Glomar Responses with a jaundiced eye—and to approve them only upon a peculiarly persuasive showing that acknowledgment of the very existence of responsive records is likely to cause harm cognizable under one of FOIA's enumerated exemptions. But in the last year, state agencies have made enthusiastic use of this new tactic to justify sweeping, blanket rejections. Left unchecked, this secretive habit threatens to swallow FOIL whole.

14. Whatever the Glomar Response's proper place under FOIL, it is most certainly misplaced as a response to this request. Law enforcement's monitoring of social media is common knowledge. It is also publicly known that many law enforcement agencies have partnered with the Social Media Monitoring Companies to do so. Respondent has not made—and cannot make—a persuasive showing that the mere existence (or nonexistence) of such a partnership between it and the Social Media Monitoring Companies is information fitting within one of FOIL's exemptions. And if Respondent believes that any of the information contained in any of the records that do exist falls within one or more exemptions, it should undertake the ordinary FOIL process of producing documents redacted accordingly.

SUMMARY OF RESPONDENT'S ERRORS

15. Respondent erred when it issued a Glomar Response and a blanket refusal to produce documents pursuant to the non-routine procedures exemption, Public Officers Law

§ 87(2)(e)(iv). Respondent was obligated, at a minimum, to either confirm or deny the existence of records, and to make a document-by-document assessment of whether the non-routine procedures exemption applied.

16. Respondent erred when it issued a blanket refusal to produce documents pursuant to the deliberative process exemption, Public Officers Law § 87(2)(a). Respondent was obligated, at a minimum, to make a document-by-document assessment of whether the deliberative process exemption applied.

FACTUAL BACKGROUND

17. Petitioner made its initial FOIL request on October 18, 2016. *See* Affidavit of Jerome Greco, Exhibit 1. The request asked for "[a]ny and all contracts, memos, audits, reports, and communications," and "any and all instructions, guides, guidelines, directions, rules, information, manuals, operations orders, memoranda, etc." concerning the New York County District Attorney's Office's purchasing or use of products or services from the Social Media Monitoring Companies.

18. Respondent's reply came on February 17, 2017. *See* Greco Aff., Exhibit 2. Respondent refused to confirm or deny the existence of any documents in response to Petitioner's request under the justification that the request sought "access to law enforcement investigative procedures" under Public Officers Law § 87(2)(e)(iv). Respondent argued that "[r]ecords concerning whether DANY even monitors social media . . . directly relate to the methods by which DANY gathers information in a law enforcement context. Providing such information would . . . furnish road maps to violators on how to avoid being caught." *Id.* at 2.

19. It also refused to produce any documents under the justification that the request sought documents protected by the deliberative process exemption, Public Officers Law § 87(2)(a). Respondent contended that "[r]egardless of whether DANY engaged in any

communication with Geofeedia, Media Sonar, and/or X1 Discovery Inc., such contact would fall within the deliberative process exemption. Deliberating about whether to enter into a contract, weighing the strengths and weaknesses of each program, and considering what context to use any program is protected by the deliberative process privilege." *Id.* at 3.

20. Petitioner appealed the decision on March 13, 2017. *See* Greco Aff., Exhibit 3. The appeal noted the rule that Respondent had the burden to establish that it could withhold responsive documents. Petitioner argued that Respondent had failed to satisfy that burden. Petitioner additionally argued that "[e]ven if your office could meet its burden then the appropriate remedy is not a blanket denial of the documents but redaction of the part that fits the exemption." *Id.* at 2. For example, "[a]t minimum [*sic*], the copies of the contracts that your agency and these companies have entered into would not reveal non-routine law enforcement techniques and procedures." *Id.* And Petitioner explained that a response declining to confirm or deny the existence of responsive records was inappropriate because "[t]he very existence of the techniques are already known (as demonstrated by [the] request, the companies' websites, and various news articles) and the contracts would not enable any person to circumvent these procedures." *Id.*

21. As to the deliberative process exemption, Petitioner argued that "final policies or determinations clearly are not exempt by the plain language of the statute." *Id.* at 2. "For example, the decision to actually purchase one these programs or a final determination that one program is better than another is not exempt." *Id.* Petitioner additionally observed that "instructions to staff that affect the public" are not exempt from disclosure, and that an email to staff about how to use tools from Social Media Monitoring Companies would not fall under the deliberative process exemption. *Id.* The appeal concluded by contending that communications

with non-government entities, such as the Social Media Monitoring Companies, would not be inter-agency or intra-agency communications. *Id.* And to the extent that Respondent claims that the Social Media Monitoring Companies are "consultants" acting under the direction of a government agency, the "consultant" exemption would not apply to a company's efforts to sell its wares. *Id.* at 3.

22. On August 17, 2017, some five months after Petitioner submitted its appeal, Respondent's FOIL Appeals Officer decided the appeal in Respondent's favor. *See* Greco Aff., Exhibit 4. The appellate decision was very short, containing only one paragraph of analysis. The decision stated that it "adopt[ed] the legal reasoning set forth" in the initial denial, and it too refused to confirm or deny the existence of any of the records sought. *Id.* The proffered justification was that "[p]roviding you with the records you seek and conversely, denying access to those we do not possess would reveal which of the afore-mentioned programs are utilized by this office. . . . Effective law enforcement demands that violators of the law not be apprised of the nonroutine procedures by which an agency obtains its information." *Id.* The appeal decision did not mention the deliberative process exemption.

BACKGROUND LAW OF FOIL PETITIONS

23. The Freedom of Information Law, codified at Public Officers Law §§ 84-90, expresses New York's strong commitment to open government and public accountability and imposes a broad standard of disclosure upon the State and its agencies. *Capital Newspapers v. Burns*, 67 N.Y. 2d 562, 565 (1986). FOIL affords all citizens the means to obtain information concerning the day-to-day functioning of State and local government, thus providing the electorate with sufficient information to make intelligent, informed choices with respect to both the direction and scope of governmental activities. *Id.* at 565-66. FOIL is also an effective tool for exposing waste, negligence, and abuse on the part of government officers. *Id.* at 566.

24. FOIL provides that all records of a public agency are presumptively open to public inspection and copying unless otherwise specifically exempted. *Id.* at 566. Exemptions are to be narrowly construed to provide maximum access, and the agency seeking to prevent disclosure carries the burden of demonstrating that the requested material falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access. *Id.*

25. A response that declines even to confirm or deny the existence of records—known as a "Glomar Response" under federal law—requires particular scrutiny. The First Department only recently recognized, for the first time, the limited availability of a Glomar response. *Abdur-Rashid v. New York City Police Dep't,* 37 N.Y.S.3d 64 (1st Dept 2016). The Court of Appeals has granted leave to review that decision, 28 N.Y.3d 908 (Nov. 21, 2016), and has set oral argument for February 6, 2018. Meanwhile, New York courts have yet to articulate a comprehensive set of guidelines governing Glomar Responses. But "federal case law regarding FOIA … is instructive," *id.* at 65, and it establishes that Glomar Responses are available only in "unusual circumstances, and only by a particularly persuasive affidavit." *N.Y. Times Co. v. U.S. Dept of Justice,* 756 F.3d 100, 122 (2d Cir. 2014). An agency bears the heavy burden of establishing, in a "particularized and specific" way, why disclosure of the very existence or nonexistence of requested records would fall within the cited exemption, *Abdur-Rashid*, 37 N.Y.S.3d at 66—a showing undercut by, for example, official acknowledgement or other public exposure of the records' likely existence, *e.g.*, *Florez v. Central Intelligence Agency,* 829 F.3d 178, 183-87 (2d Cir. 2016).

26. Where a document contains a mixture of information that must be disclosed and information that may be withheld, the government should redact out the information it seeks to withhold. *See Gould v. New York City Police Dep't,* 89 N.Y.2d 267, 275 (1996) ("If the court is

unable to determine whether withheld documents fall entirely within the scope of the asserted exemption, it should conduct an in camera inspection of representative documents and order disclosure of all nonexempt, appropriately redacted material."); *McFadden v. Fonda*, 50 N.Y.S.3d 605, 610 (3d Dept 2017) (remanding for in camera review and suggesting that redactions be used); *Police Benevolent Ass'n of New York State, Inc. v. State*, 44 N.Y.S.3d 578, 581–82 (3d Dept 2016) (reversing and remanding so that redactions could be applied); *Applegate v. Fischer*, 936 N.Y.S.2d 329, 331 (3d Dept 2011) (ordering production of redacted documents); *Dobranski v. Houper*, 546 N.Y.S.2d 180, 182 (3d Dept 1989) (same); *Cook v. Nassau Cty. Police Dep't*, 972 N.Y.S.2d 638, 640 (2nd Dept 2013) (affirming use of redactions); *Whitfield v. Bailey*, 914 N.Y.S.2d 58, 60 (1st Dept 2011) (same); *Laporte v. Morgenthau*, 783 N.Y.S.2d 571, 571 (1st Dept 2004) (same).

RESPONDENT'S GLOMAR RESPONSE AND RELIANCE ON THE NON-ROUTINE PROCEDURES EXEMPTION IS IMPROPER

27. The government may refuse to disclose a document compiled for law enforcement purposes and which, if disclosed, would reveal criminal investigative techniques or procedures, excepting routine techniques and procedures. Public Officers Law § 87(2)(e)(iv). When deciding whether law enforcement procedures are "routine" or not, the Court should consider whether "disclosure of those procedures would give rise to a substantial likelihood that violators could evade detection by deliberately tailoring their conduct in anticipation of avenues of inquiry to be pursued by agency personnel." *Fink v. Lefkowitz*, 47 N.Y.2d 567, 572 (1979). The *Fink* court held that confidential methods used to investigate nursing home accounting fraud could be withheld under the "investigative techniques" exemption. *Id.* at 573. In contrast, the *Fink* court identified fingerprinting and ballistic tests as "routine" tools of law enforcement that, presumably, would be subject to disclosure. *See id.* Similarly, in *Fink*, the government could

not withhold the portions of the document at issue that discussed the "obvious" suggestion than auditors pay extra attention to requests for reimbursement based upon projected increases in cost. *Id.; see also New York State Defs. Ass'n v. New York State Police*, 927 N.Y.S.2d 423, 426 (3d Dept 2011) (no basis for withholding records of government's policy on electronic recording of police interviews).

28. Respondent's refusal to either confirm or deny the existence of responsive documents on the basis of the non-routine procedures exemption is flawed. To begin with, on the record as currently constituted, Respondent's denial is an improper Glomar Response.[1] Where an agency declines to confirm or deny the existence of responsive records, it must provide a "particularized and specific justification" in a public affidavit. *Abdur-Rashid*, 37 N.Y.S.3d at 66. Respondent's brief decisions denying the request come nowhere close to a particularized or specific showing of how disclosure of the existence (or not) of the requested records will lead to revelation of "non-routine procedures by which law enforcement officials gather information," Public Officers Law § 82(2)(e)(iv).

29. Respondent has little hope of carrying that burden in this case. First, as detailed above, it is already well-known that law enforcement agencies use the internet to monitor and investigate criminal activity. So too is it publicly known that hundreds of law enforcement agencies have partnered specifically with the Social Media Monitoring Companies to monitor social media and investigate crime. Respondent's theory, then, appears to be that there are

[1] As noted above, the Court of Appeals has granted leave to appeal in *Abdur-Rashid v. New York City Police Dept*, 37 N.Y.S.3d 64 (1st Dept 2016), the only New York case that has recognized the availability of a Glomar Response under New York law. *See* 28 N.Y.3d 908 (Nov. 21, 2016). The Court of Appeals may, in that case, announce a framework governing Glomar Responses or reverse the First Department and hold that such responses are altogether improper under FOIL.

social-media-using criminals who have broadcasted their criminal intentions or behavior on social media despite all of this publicly-available information, but who will—upon the release of official confirmation that Respondent does or does not do the same—tailor their social media behavior so as to evade social media monitoring tools whose existence is already acknowledged and widespread. Respondent has done nothing to substantiate this paranoia, and it is implausible on its face.[2]

30. Second, Respondent never articulated why the use of tools provided by Social Media Monitoring Companies would not be the sort of "routine" investigative technique not subject to the exemption. *Cf. McFadden*, 50 N.Y.S.3d at 609 (government's response was insufficient where it "merely paraphrased the statutory language of the exemptions without describing the records withheld or providing any factual basis for its conclusory assertions"). It is now well-established that social media activity can constitute useful evidence in legal proceedings. *See, e.g.*, Justin P. Murphy & Adrian Fontecilla, *Social Media Evidence in Government Investigations and Criminal Proceedings: A Frontier of New Legal Issues*, 19 RICH. J.L. & TECH 11, at 5 (2013), available at http://jolt.richmond.edu/v19i3/article11.pdf ("It is no secret that government agencies mine social networking websites for evidence."). "There are countless cases involving defendants who are arrested because of information, photos, or admissions posted to social media sites." *Id.* at 6. A survey of over 1,200 federal, state, and local law enforcement showed that law enforcement, as a whole, widely uses social media to assist in investigations. *Id.* at 10-11. For example, as far back as six years ago—eons in the

[2] If disclosure of just the name of the software program would allow a potential criminal to evade detection, that would reflect very poorly indeed on the quality of that software program. Surely the taxpayers of New York would deserve to know why their money was being spent on such an easily-evaded software tool.

world of social media—it was reported that NYPD had formed a specialized unit to monitor social media. *See NYPD Forms New Social Media Unit to Mine Facebook & Twitter for Mayhem*, NY DAILY NEWS, August 10, 2011, available at http://www.nydailynews.com/new-york/nypd-forms-new-social-media-unit-facebook-twitter-mayhem-article-1.945242.

31. Because it is now common knowledge that law enforcement monitors social media websites and applications, Respondent cannot seriously dispute that monitoring of social media is a "routine" law enforcement activity. Just as the government could not refuse to discuss its use of fingerprinting or ballistic testing, *Fink*, 47 N.Y.2d at 573, and presumably could not deny its use of Google, Respondent cannot hide basic, high-level information about how it monitors social media.

32. The bottom line is that, as a result of its Glomar Response and its improper invocation of the non-routine procedures exemption, Respondent has not made a good-faith effort to determine which responsive documents should have been produced, and which should have been withheld (or redacted). Respondent decided that it would not produce *any* information about the software tools it uses to monitor social media. While courts have yet to articulate the precise framework governing Glomar Responses under FOIL, the Court of Appeals' decision nearly four decades ago in *Fink* makes clear that Respondent's blanket use of it in the context of the law enforcement exemption cannot stand. At issue in *Fink* were procedures for investigating accounting fraud in nursing homes. 47 N.Y.2d at 569. The *Fink* court's opinion openly discussed the fact that law enforcement had auditing procedures for detecting nursing home accounting fraud. *Id.* at 569-73. It was the details of *how* to conduct an audit—contained in "certain portions of [a] manual," including a "graphic illustration of the confidential techniques used in a successful nursing home prosecution"—that were protected in *Fink*. *Id.* Similarly, in

this case, while it is plausible that some of the "graphic" details of how Respondent implements social monitoring tools could arguably fall under the law enforcement exemption, the mere fact that Respondent uses such tools at all cannot be exempted. Nor, in any event, has Respondent explained how even basic details about the Social Media Monitoring Company's products would reveal exempted information. What Respondent was required to do—and failed to do—was make a good-faith effort to determine which responsive documents discussed implementation details of social media monitoring software, and which documents merely discussed the software at a high level.

THE DELIBERATIVE PROCESS EXEMPTION IS INAPPLICABLE

33. An agency may withhold from disclosure inter-agency or intra-agency materials that are not: 1) statistical or factual tabulations of data, 2) instructions to staff that affect the public, 3) final agency policy or determinations, or 4) external audits. Public Officers Law § 87(2)(g). The purpose of this exemption is to protect the deliberative process of the government by ensuring that persons in an advisory role will be able to express their opinions freely to agency decision makers. *Gould*, 89 N.Y.2d at 276. "While the term 'inter-agency materials' is not defined under the FOIL statute, New York's courts have construed this term to mean 'deliberative material,' i.e., communications exchanged for discussion purposes not constituting final policy decisions." *Russo v. Nassau Cty. Cmty. Coll.*, 81 N.Y.2d 690, 699, (1993).

34. In its response to Petitioner's FOIL request, Respondent gave two reasons to support its claim that the deliberative process exemption applied.[3] First, respondent argued that communications with Social Media Monitoring Companies would fall within the deliberative

[3] On appeal, Respondent did not contend that the requested documents fell under the deliberative process exemption. *See* Exhibit 4.

process exemption. But in the context of the deliberative process exemption, a protected communication has to be internal to or between "agencies," meaning State and municipal entities. *See Town of Waterford v. New York State Dep't of Envtl. Conservation*, 18 N.Y.3d 652, 657 (2012) (holding that communications with federal EPA were not with an "agency"). Thus, communications with a vendor attempting to sell a product to Respondents would not be inter-agency or intra-agency records.

35. Second, Respondent argued that Petitioner's FOIL request called for documents that are pre-decisional deliberations. While it may be the case that *some* of the responsive documents could arguably fall within the deliberative process exemption, there is no reason to believe that *all* of the responsive documents would qualify for the exemption. And, in fact, there is every reason to believe that some of the responsive documents are "final agency decisions" memorializing the decision to use or not use the services of Social Media Monitoring Companies. *See, e.g., New York 1 News v. Office of President of Borough of Staten Island*, 647 N.Y.S.2d 270, 271 (2d Dept 1996) (memorandum summarizing internal investigation was a "final decision"). For example, a contract with one of the Social Media Monitoring Companies would be a record showing the "final agency decision" to hire that particular company. Similarly, any tabulations of data or "instructions to staff that affect the public" must be produced. *See* Public Officers Law § 87(2)(g).

36. Respondent's blanket decision to apply the deliberative process exemption to *all* requested documents was plainly incorrect. Respondent must analyze each responsive document to determine whether the exemption applies. *Russo v. Nassau County* explained that a document can be a "final agency policy or determination" even where the document is used in government deliberations. In *Russo*, the record at issue was a film that the government showed in certain

college classes. The court held that, even assuming that classroom discussions were "deliberations," the films themselves did not reflect any government deliberation. *Russo*, 81 N.Y.2d at 700. The key question was "the status of the items." *See id.* In this case, Respondent erred by making no attempt to analyze the specific documents at issue, as required by *Russo*.

37. No prior application has been made for the relief sought herein.

WHEREFORE, Petitioners request that this Court issue a judgment:

A. Compelling Respondent to search for documents responsive to Petitioner's FOIL request;

B. Compelling Respondent to perform a document-by-document analysis of those responsive documents;

C. Compelling Respondent to produce to Petitioner documents that are responsive and do not fall under any of the FOIL exemptions that allow the government to withhold responsive documents;

D. Compelling Respondent to provide Petitioner with a log explaining which documents it has withheld from Petitioner and why, to the extent that Respondent withholds documents on the basis of an exemption or statutory provision of FOIL law;

E. Granting costs to cover attorney expenses and fees incurred in this proceeding, *see* N.Y. CPLR §§ 7806, 8601; and

F. Granting Petitioner such other and further relief as the Court deems just and proper.

Date: New York, New York
December 8, 2017

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VERIFICATION

JEROME D. GRECO, an attorney duly admitted to practice before the courts of this state, and associated with the Legal Aid Society, hereby affirms under penalty of perjury that the following statements are true, except for those made upon information and belief, which I believe to be true: I have reviewed the foregoing Petition and swear it is true upon information and belief, the source of which is my personal knowledge and the appended documents provided by Petitioner.

Date: New York, New York
December 8, 2017

By: Jerome D. Greco

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