

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

PRISONERS' LEGAL SERVICES OF NEW YORK,

Petitioner,

**DECISION AND
ORDER/JUDGMENT**

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

Index No.:909066-19
RJ No.: 01-20-ST0798

-against-

NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,

Respondent.

(Supreme Court, Albany County, Special Term)

(Justice Kimberly A. O'Connor, Presiding)

APPEARANCES: DEBEVOISE & PLIMPTON LLP
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O'CONNOR, J.:

Petitioner Prisoners' Legal Services ("PLS" or "petitioner") commenced this CPLR Article 78 proceeding challenging a denial of its request under New York's Freedom of Information Law ("FOIL") for certain records relating to prison yard incidents at Auburn Correctional Facility ("Auburn CF") and Clinton Correctional Facility ("Clinton CF"). Respondent New York State

Department of Corrections and Community Supervision (“DOCCS” or “respondent”) answered the petition, opposes the requested relief, and asserts, among other objections in point of law, that petitioner fails to state a claim that any action taken by respondent was arbitrary and capricious, in violation of lawful procedure, affected by an error of law, contrary to law, or ultra vires; that all actions taken by DOCCS have been consistent with its lawful duties; and that some of petitioner’s claims should be dismissed as moot. PLS has replied to the opposition.

Background

PLS is a nonprofit legal services organization that provides civil legal services to indigent, incarcerated individuals in New York State correction facilities (*see* Verified Pet., ¶ 9, ¶ 18). PLS investigates alleged legal rights violations, including incorrect or unfounded disciplinary determinations, mistreatment, assault by staff, and failure to protect from assault by other prisoners (*id.* at ¶ 18). PLS routinely uses FOIL requests to acquire information from DOCCS on its clients’ behalf, including surveillance videos and unusual incident (“UI”) reports (*id.* at ¶ 19).

In May and June 2019, a number of yard incidents occurred at the Auburn and Clinton correctional facilities (*id.* at ¶ 23). DOCCS conducted Tier III disciplinary hearings with respect to four PLS clients – Charles Blanchard (“Blanchard”), Phillip Bradley (“Bradley”), Antonion Christian (“Christian”), and Shaun Martin (“Martin”), in connection with those incidents (*id.*). PLS forwarded separate FOIL requests to DOCCS on behalf of Blanchard, Bradley, Christian, and Martin following each of their Tier III hearings (*id.*).

Christian FOIL Request

On June 6, 2019, PLS sent a FOIL request to the Auburn CF Superintendent, seeking “the Superintendent’s Hearing packet and copies of all evidence introduced or viewed at [Christian’s May 24, 2019] hearing,” including, among other things, “[a]ny videotapes/photographs which

were viewed at the hearing” and “[a]ny [u]nusual [i]ncident reports” (Affirmation of Joshua J. Smith, Esq., Ex. B). On June 28, 2019, PLS emailed DOCCS regarding the responsive records it received the day before, noting that the records “[did] not include the video viewed at the hearing” and asking that the video be provided as soon as possible (*id.*, Ex. E).

After first being advised, by June 28, 2019 email on behalf of Auburn CF’s Inmate Records Coordinator (“IRC”), that “there was no video” and that the Liaison Officer “would look into it again,” PLS was later notified, in an email dated July 29, 2019, “that the incident in which [Christian] was involved in is still an active investigation,” and that the Deputy Superintendent “[would] not release the video to anyone at [that] time” (*id.*, Exs. E & F). DOCCS’ Office of Counsel agreed, and denied the requested video “pursuant to [Public Officers Law] § 87(2)(e) where release of records would interfere with law enforcement investigations” (*id.*, Ex. F). On August 13, 2019, PLS administratively “appeal[ed] the denial of [its] request for copies of video footage viewed at Mr. Christian’s Superintendent’s Hearing [on] May 24, 2019,” arguing, among other things, that Counsel’s Office “did not articulate any factual basis for [the] reasoning that disclosing the video footage would interfere with an active investigation,” and that disclosing the video would not interfere with a law enforcement investigation because “the video footage was presented as evidence and viewed at Mr. Christian’s hearing” (*id.*, Ex. D).

By letter dated August 28, 2019, DOCCS’ FOIL Appeals Officer “affirm[ed] the facility’s decision to withhold the responsive video” and denied PLS’s appeal (*id.*, Ex. G). Citing Public Officers Law § 87(2)(e) and *Matter of Leshner v. Hynes* (19 N.Y.3d 57 [2012]), the FOIL Appeals Officer stated:

The incident in question is still under investigation internally, as well as externally by multiple law enforcement agencies. Based upon our further inquiry, release of the video at this time would threaten to prematurely reveal law enforcement and the District Attorney’s plans for the case, prematurely reveal the identity of witnesses

and sources, and result in the premature release of evidence in a pending criminal investigation (*id.*).

Further, the FOIL Appeals Officer noted that while Christian was able to view the video at his hearing, “the review of evidentiary records during a disciplinary hearing does not negate the applicability of FOIL exemptions in response to a subsequent FOIL request for [those] records” (*id.*). In that regard, the FOIL Appeals Officer explained that “[a] hearing officer is in a unique position where the review of evidence can be accomplished in a secure setting outside the view of the general inmate population” (*id.*).

Bradley FOIL Request

PLS made a virtually identical request to the Auburn CF Superintendent on July 22, 2019 for Bradley’s Superintendent’s Hearing packet and the evidence introduced or viewed at his June 25, 2019 hearing, including, among other things, “[a]ny videotapes and/or photographs which were viewed at the hearing” and “[a]ll [u]nusual [i]ncident reports” (Smith Affirmation, Ex. C). By email on behalf of the Auburn IRC, dated July 31, 2019, PLS was notified that several of its recent FOIL requests “stem from an incident date of 5/11/19,” that “[the] incident involved a large number of individuals, both staff and inmates,” that “the incident is still an open criminal investigation,” and that “[m]any of the requested FOIL items are unavailable.” PLS was advised that “[o]nce the investigation is complete, . . . [it] may renew [its] request for records at that time” (Smith Affirmation, Ex. I).

PLS emailed DOCCS’ Office of Counsel on August 1, 2019, asking for review of the denial and indicating, among other things, that the denial wasn’t detailed as to which of its clients it pertained to (*id.*, Ex. H). PLS emailed DOCCS’ Counsel’s Office again on August 29, 2019, noting that it appeared the July 31, 2019 denial “also included records pertaining to Phillip Bradley” and that “[b]oth the Arch Gate video and [u]nusual [i]ncident Report were viewed at his

hearing[,] but not produced by Auburn CF” (*id.*). PLS asked that DOCCS provide the statutory exemption being relied on, “[i]f the video and UI [report] are being denied with regards to Mr. Bradley’s Tier III hearing” (*id.*). The following day, DOCCS’ Counsel’s Office instructed PLS to “submit an appeal” (*id.*).

PLS administratively appealed the denial in an email, dated September 3, 2019 (*id.*). In its appeal, PLS asserted that Auburn CF’s denial did not indicate the prisoners to which the appeal referred, and did not cite the statutory exemption relied upon for the denial (*id.*). By letter, dated September 18, 2019, DOCCS’ FOIL Appeals Officer denied PLS’s appeal (*see* Smith Affirmation, Ex. J). The FOIL Appeals Officer “affirm[ed] the [facility’s] decision to withhold the responsive video,” based on the same reasoning and exemption set forth in the denial of Christian’s appeal (*id.*). Moreover, relying on Public Officers Law § 87(2)(g) and (e), the FOIL Appeals Officer further indicated that “as of the date of [the] response[,] the UI report ha[d] not been finalized and is still a preliminary report,” and that “the release of a preliminary investigative report[] could interfere with ongoing law enforcement investigations,” and, as such, the UI report was exempt from disclosure (*id.*).

Martin FOIL Request

On July 23, 2019, PLS sent a FOIL request to the Inmate Records Coordinator (“IRC”) at Clinton CF for information related to a use of force/usual incident on June 14, 2019 involving Martin, including “[a]ll videotapes; yard escort, etc.,” and “a copy of the administrative record of [Martin’s] Tier III hearing which was held at [Clinton] Correctional Facility,” including [v]ideotapes . . . viewed at the hearing” (Smith Affirmation, Ex. K [brackets in original]). By letter, dated August 6, 2019, PLS’s “request for the video of the incident [was] denied for safety and security reasons due to the ongoing investigation” (*id.*, Ex. M). Thereafter, PLS emailed

DOCCS' Office of Counsel, appealing the denial and seeking "intervention and assistance with respect to a FOIL denial for video camera footage involving Mr. [Martin]" (*id.*, Ex. N). Among other things, PLS indicated that it "was surprised to see this denial of video footage at all" as "PLS has long requested and routinely been provided such video footage of incidents, including incidents such as this involving large-scale incidents in the yard" (*id.*). PLS "object[ed] to the denial of [the] video footage due to any alleged safety and security concerns relating to any ongoing investigation," arguing that "the mere fact of and existence of any such investigation cannot serve to insulate and exempt the video from disclosure," and that the video "is merely a visual factual account of events" (*id.*). Moreover, PLS asserted that because the video was part of the tier hearing process, i.e., viewed at the hearing by Martin himself, and considered and relied upon as part of Martin's defense to the disciplinary charges and as evidence by the hearing officer in reaching and rendering a disposition, "there can be no dispute that [PLS] may not be denied this video" (*id.*).

DOCCS FOIL Appeals Officer denied the appeal in a letter, dated September 11, 2019 (*see* Smith Affirmation, Ex. L). Based on a review of the matter, the FOIL Appeals Officer found that "the responsive video footage was properly withheld, as it is exempt from release pursuant to Public Officers Law § 87(2)(e) and (f)" (*id.*). Noting that "[t]he incident in question [was] the subject of both internal and external law enforcement investigations," the FOIL Appeals Officer "determined that release of the video at [that] time could prematurely reveal law enforcement plans for the case, prematurely reveal the identity of witnesses, and would constitute a premature release of evidence in a pending criminal investigation," as well as "reveal the protocols and response time for the Department's security staff in Clinton's North Yard" (*id.*). The FOIL Appeals Officer also concluded that release of the video "could endanger the life or safety of any person if

used to identify other participants in the incident for the purpose of retaliatory action” (*id.*). Moreover, the FOIL Appeals Officer noted that “even if the hearing officer allowed [PLS’s] client to view certain evidentiary materials during the hearing, that disclosure does not preclude the Department from properly asserting an exemption under FOIL” (*id.*).

Blanchard FOIL Request

On August 7, 2019, PLS sent a FOIL request to the IRC at Clinton CF for “a copy of the administrative record of [Blanchard’s] Tier III hearing which was held at [Clinton] Correctional Facility and ended on [7/12/19],” including “[v]ideotapes . . . viewed at the hearing” (Smith Affirmation, Ex. O [brackets in original]). Like the response to the Martin FOIL request, PLS was notified, by letter dated August 20, 2019, that its “request for the video of the incident is denied for safety and security reasons due to the ongoing investigation” (*id.*, Ex. P). PLS subsequently emailed DOCCS’ Office of Counsel, appealing the denial and seeking “intervention and assistance with respect to another recent FOIL denial for video camera footage, this time involving Mr. Blanchard” for the same reasons set forth in its appeal of the denial of the Martin FOIL request (*id.*, Ex. Q).

By letter, dated September 4, 2019, DOCCS FOIL Appeals officer “affirm[ed] the facility’s decision to withhold the responsive video,” and denied the appeal (Smith Affirmation, Ex. R).

Based on a review of the matter, the FOIL Appeals Officer found that

the responsive video footage was properly withheld, as it is exempt from release pursuant to Public Officers Law § 87(2)(e) and (f), where disclosure would interfere with ongoing law enforcement investigations and could endanger the life and safety of any person if used by an inmate to identify other participants in the incident for the purpose of retaliatory action (*id.*).

Further, as “[t]he incident in question [was] the subject of both internal and external law enforcement investigations,” the FOIL Appeals Officer, citing *Matter of Leshner v. Hynes*,

“determined that release of the video at [that] time could prematurely reveal law enforcement plans for the case, prematurely reveal the identity of witnesses, and would constitute a premature release of evidence in a pending criminal investigation” (*id.*). Moreover, the FOIL Appeals Officer noted that “even if the hearing officer allowed [PLS’s] client to view certain evidentiary materials during the hearing, that disclosure does not preclude the Department from properly asserting an exemption under FOIL” (*id.*). This proceeding followed.

Arguments

PLS argues that while DOCCS has disclosed some of the requested records, it has unjustifiably withheld the video footage of the incidents at both the Auburn and Clinton correctional facilities, and the UI report made in connection with the Bradley FOIL request. PLS contends that DOCCS improperly relied upon various law enforcement exemptions to withhold the video footage, providing nothing beyond boilerplate statements that there are ongoing investigations and that the requested videos could disclose confidential sources and non-routine criminal investigative techniques or procedures. PLS also asserts that the Bradley UI report cannot be withheld under the inter-agency/intra-agency exemption because it contains a factual account and not an opinion or an exchange of advice. Moreover, citing *Matter of Buffalo Broadcasting Co. v. New York State Dep’t of Correctional Servs.* (174 A.D.2d 212, 215-216 [1992]), PLS submits that DOCC has provided only conclusory and unsupported assertions that there is a safety risk in releasing the requested video footage, and has not provided any evidence suggesting that the videos include anything beyond what the incarcerated population and the prisoners who viewed the videos at their Tier III hearings would have seen.

By this proceeding, PLS seeks an order of the Court: (1) determining that DOCCS has improperly withheld the requested materials pursuant to FOIL; (2) declaring that UI reports are

not inter-agency or intra-agency materials; (3) declaring that UI reports are not compiled for law enforcement purposes, or, in the alternative, declaring that the release of the requested UI report would not interfere with an ongoing law enforcement investigation; (4) declaring that prison surveillance videos are not compiled for law enforcement purposes, or, alternatively, declaring that the release of the requested videos would not (a) interfere with a law enforcement investigation, (b) identify a confidential source or disclose confidential information relating to a criminal investigation, or (c) reveal criminal investigative techniques or procedures, except routine techniques or procedures; (5) declaring that the release of the requested videos would not endanger the life or safety of any person; (6) directing DOCCS to provide PLS with the requested materials immediately, or, in the alternative, providing for an *in camera* review of the requested materials for the propriety of DOCCS' asserted exemptions; and (7) awarding attorney's fees.

DOCCS, in opposition, submits that the Christian and Bradley FOIL requests are no longer at issue in this proceeding. More particularly, DOCCS contends that the Bradley UI report has been finalized, and was provided to PLS's counsel in this proceeding. DOCCS further asserts, upon information belief, that the May 11, 2019 Auburn CF video has been disclosed to defense counsel in a pending criminal proceeding related to the May 11, 2019 incident and that petitioner's counsel now has that video. To the extent that PLS does not possess the May 11, 2019 Auburn CF video, DOCCS submits that it has no objection to the video's disclosure.

As to the Martin and Blanchard FOIL requests for video footage from the Clinton CF yard incidents, DOCCS withdraws its claimed exemption, pursuant to Public Officers Law § 87(2)(e), as any internal and external law enforcement investigations have now concluded. DOCCS, however, argues, that the requested videos, dated June 10, June 11, and June 14, 2019, were properly withheld, pursuant to Public Officers Law § 87(2)(f), because the videos, if disclosed,

could endanger the life or safety of a person. Specifically, DOCCS asserts that if the involved inmates represented by PLS are permitted to access the videos, they could be used to identify other inmates involved in the incidents, which an investigation revealed were violent, race-based incidents involving rival inmate groups, for purposes of retaliatory action. Furthermore, DOCCS contends that review of the videos by involved inmates could also reveal the identity of involved correctional staff, potentially subjecting those individuals to retaliatory violence.

Moreover, DOCCS submits that the risks of disclosing the videos outweighs the benefit. In that regard, DOCCS explains that at a disciplinary hearing, the hearing officer is in a position to allow the viewing of a video in a controlled setting outside the sight of the general population and, while there is some risk of the charged individual identifying others for retribution purposes, the controlled setting minimizes those risks, whereas public disclosure under FOIL leaves open the risk of any individual using the footage for retribution. Further, DOCCS maintains that the withholding of the video footage does not hinder PLS's ability to advocate for their clients because the audio recording of any statements about the footage made at the hearing by their clients is subject to disclosure, and PLS may correspond with their clients directly about what the footage showed and review records. And citing *Matter of Bernier v. Mann* (166 A.D.2d 798, 799 [3d Dep't 1990]) and *Matter of Vidal v. Bruen* (Sup. Ct., Albany County, March 16, 2017, Hartman, J., index No. 5659-16 at 3), DOCCS contends that the safety exemption has been upheld where the possibility of a breach of institutional safety, including the safety of inmates, has been adequately shown.

In reply, PLS argues that DOCCS relies on an affidavit from a former deputy superintendent that generally describes the dangers of retaliatory gang violence in a prison setting, and has not provided any real or specific evidence to support its claim that disclosure of the

requested videos would create a tangible and increased risk of harm that can override the right to and need for disclosure. Additionally, PLS submits that DOCCS' claim is undermined by its decision to show the Clinton CF videos to the alleged participants in the incidents, as they would arguably have the greatest incentive to retaliate. Further, according to PLS, DOCCS' assertion that a disciplinary hearing is a controlled setting outside the sight of the general population is of no consequence because if DOCCS was genuinely concerned about the risk of retaliatory action, it would not have allowed prisoners to view the videos.

Furthermore, citing *Matter of Mack v. Howard* (91 A.D.3d 1315, 1316 [4th Dep't 2012]), *Matter of Windham v. City of New York Police Dep't* (2013 N.Y. Slip Op. 32418[U] [Sup. Ct., New York County 2013], 2013 WL 5636306, *1)), and *Matter of Lavek v. Village Bd. of Trustees of Village of Lansing* (145 A.D.3d 1168, 1171 [3d Dep't 2016]), PLS maintains that the invocation of the safety exemption has been rejected in cases with comparable facts and with even more particularized justifications than provided here. Moreover, PLS contends that there would be adverse public policy implications to accepting DOCCS' expansive interpretation of the safety exemption, which would effectively allow for DOCCS to deny disclosure of any surveillance video showing not only violence by other prisoners or officers, but any misconduct by staff within a correctional facility because someone might use it for possible retaliation. In that regard, PLS asserts that prison violence, whether perpetrated by other prisoners or staff, is a matter of grave public interest and concern, and denying access to video surveillance of incidents would help shield DOCCS from accountability for its own actions or inactions, and significantly hamper the public's ability to inquire into such matters.

Lastly, PLS argues that even if DOCCS' contention that it fully produced the requested Auburn CF materials, the Christian and Bradley FOIL requests are still at issue in this proceeding

as the exception to the mootness doctrine applies. PLS asserts there is a likelihood that DOCCS will continue to rely upon the intra-agency materials and law enforcement exemptions and refuse to disclose UI reports and surveillance materials in response to future FOIL requests. Further, because the release of the FOIL materials is entirely within DOCCS' control in the first instance, PLS claims that the production of the demanded materials places it in a position to almost invariably render a proceeding moot, as it did here. Moreover, PLS submits that its requests for declaratory judgment are novel questions of important public policy issues. As such, PLS asks that the Court consider and decide its claims despite disclosure of the requested materials.

Discussion

Initially, PLS's receipt of the Bradley UI report, its receipt of a copy of the video from the South Yard at Auburn CF, and DOCCS' consent to provide PLS with the video from Arch Gate at Auburn CF, to the extent that it exists, renders petitioner's claims regarding the Christian and Bradley FOIL requests moot (*see Matter of Gannett Satellite Info. Network, LLC v. New York State Thruway Auth.*, 181 A.D.3d 1072, 1073-1074 [3d Dep't 2020]; *Matter of Associated Gen. Contrs. of New York State, LLC v. New York State Thruway Auth.*, 173 A.D.3d 1526, 1527 [3d Dep't 2019]; *Matter of Cobado v. Benziger*, 163 A.D.3d 1103, 1105 [3d Dep't 2018]). Further, "[a]lthough the issues raised are likely to recur," the Court "do[es] not find them to be substantial, novel or likely to evade review" (*Matter of Associated Gen. Contrs. of New York State, LLC v. New York State Thruway Auth.*, 173 A.D.3d at 1527). As such and "contrary to petitioner's contention, the exception to the mootness doctrine does not apply" (*id.*).

Moreover, because PLS seeks hybrid FOIL and declaratory relief in this proceeding, it "[was] required to serve a summons[,] in addition to the notice of petition, and a combined petition/complaint" (*Matter of New York Times Co. v. City of New York Police Dep't*, 103 A.D.3d

405, 407 [1st Dep't 2013]). PLS's failure to do so leaves its claims for declaratory relief not properly before the Court.

Turning to the remainder of the petition, "FOIL implements the legislative declaration that 'government is the public's business' (Public Officers Law § 84), and imposes a broad standard of open disclosure upon agencies of government" (*Matter of M. Farbman & Sons v. New York City Health & Hosps. Corp.*, 62 N.Y.2d 75, 79 [1984]; see *Matter of Gould v. New York City Police Dep't*, 89 N.Y.2d 267, 274 [1996]; *Matter of Russo v. Nassau County Community Coll.*, 81 N.Y.2d 690, 697 [1993]; *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 565 [1986]). Indeed, "[t]he statute proceeds under the premise that the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government" (*Matter of M. Farbman & Sons v. New York City Health & Hosps. Corp.*, 62 N.Y.2d at 79 [internal quotation marks and citation omitted]; accord *Matter of Town of Waterford v. New York State Dep't of Env't'l Conservation*, 18 N.Y.3d 652, 656-657 [2012]). In furtherance of the legislative objective, "[a]ll government records are thus presumptively open for public inspection and copying" under FOIL, "unless they fall within one of the enumerated exemptions of Public Officers Law § 87(2)" (*Matter of Gould v. New York City Police Dep't*, 89 N.Y.2d at 274-275; see *Matter of Fappiano v. New York City Police Dep't*, 95 N.Y.2d 738, 746 [2001]; *Matter of Hearst Corp. v. New York State Police*, 109 A.D.3d 32, 34 [3d Dep't 2014]).

To ensure that the public has maximum access to government records, the exemptions set forth in Public Officers Law § 87(2) are to be narrowly construed, and the burden rests on the government agency to show that the requested information is exempt from disclosure (see *Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462-463 [2007]; *Matter of Gould v. New York City Police Dep't*, *supra* at 275; *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, *supra* at

566; *Matter of M. Farbman & Sons v. New York City Health & Hosps. Corp.*, *supra* at 80; *Matter of Aurigemma v. New York State Dep't of Tax & Finance*, 128 A.D.3d 1235, 1237 [3d Dep't 2015]). To invoke one of the statutory exemptions, "the agency must articulate 'particularized and specific justification' for not disclosing [the] requested documents" (*Matter of Gould v. New York City Police Dep't*, *supra* at 275, quoting *Matter of Fink v. Lefkowitz*, 47 N.Y. 2d at 571; see *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d at 566; *Matter of Police Benevolent Ass'n of New York State, Inc. v. State of New York*, 145 A.D.3d 1391, 1392 [3d Dep't 2016]). "Only where the material requested falls squarely within the ambit of one of [the] statutory exemptions may disclosure be withheld" (*Matter of Fink v. Lefkowitz*, *supra* at 571; see *Matter of Town of Waterford v. New York State Dep't of Env't'l Conservation*, 18 N.Y.3d 652, 657 [2012]; *Matter of MacKenzie v. Seiden*, 106 A.D.3d 1140, 1141 [3d Dep't 2013]).

Although DOCCS, through the affidavit of former Deputy Superintendent for Security at Clinton CF, sets forth specific reasons for not disclosing the video footage from the Clinton CF incidents on June 10, June 11, and June 14, 2020 to PLS, the Court is unable to conclude, on the affidavit alone, if the withheld videos "fall entirely within the scope of the asserted exemption" (*Matter of Gould v. New York City Police Dep't*, *supra* at 275). Therefore, the Court will conduct an *in camera* review of the requested video footage before making a determination (see *id.*; *Matter of Whitehead v. Warren County Bd. of Supervisors*, 165 A.D.3d 1452, 1454 [3d Dep't 2018]; *Matter of Hearst Corp. v. New York State Police*, 132 A.D.3d 1128, 1130 [3d Dep't 2015]).

Accordingly, it is hereby

ORDERED AND ADJUDGED, that those parts of the petition challenging the denial of PLS's June 6, 2019 FOIL request pertaining to Christian and July 22, 2019 FOIL request pertaining to Bradley are denied as moot for the reasons stated herein; and it is further

ORDERED AND ADJUDGED, that those parts of the petition seeking declaratory relief are denied as not properly before the Court; and it is further

ORDERED, that DOCCS shall forward to the Court, within thirty (30) days of the date of this Decision and Order/Judgment, an unredacted copy of all requested video footage from the Clinton CF incidents responsive to PLS's July 23, 2019 FOIL request pertaining to Martin and August 7, 2019 FOIL request pertaining to Blanchard for an *in camera* inspection; and it is further

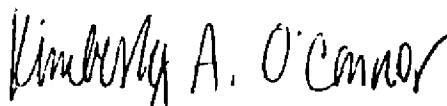
ORDERED, that the determination of the remainder of the petition will be held in abeyance pending such review.

This memorandum constitutes the Decision and Order/Judgment of the Court. The original Decision and Order/Judgment is being uploaded to the NYSCEF system for filing and entry by the Albany County Clerk. The signing of this Decision and Order/Judgment and uploading to the NYSCEF system shall not constitute filing, entry, service, or notice of entry under CPLR 2220 and § 202.5-b(h)(2) of the Uniform Rules for the New York State Trial Courts. Counsel is not relieved from the applicable provisions of those rules with respect to filing, entry, service, and notice of entry of the original Decision and Order/Judgment.

SO ORDERED AND ADJUDGED.

ENTER.

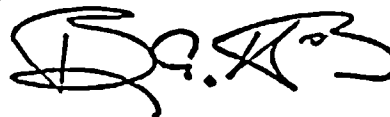
Dated: February 11, 2021
Albany, New York



HON. KIMBERLY A. O'CONNOR
Acting Supreme Court Justice

Papers Considered:

02/11/2021



1. Notice of Petition, dated December 23, 2019; Verified Petition, dated December 23, 2019; Affirmation of Joshua J. Smith, Esq., dated December 23, 2019, with Exhibits A-R annexed; Memorandum of Law Supporting Article 78 Petition by Prisoners' Legal Services of New York, dated December 23, 2019;

2. Verified Answer, dated July 3, 2020; Affidavit of Michelle Liberty, Esq., sworn to July 3, 2020, with Exhibit 1 annexed; Affidavit of Theodore Zerniak, sworn to June 30, 2020, with Exhibit A annexed; Memorandum of Law in Opposition to Verified Petition, dated July 3, 2020, with Exhibit A annexed; *and*
3. Reply Declaration of Alissa Hull, Esq., dated July 24, 2020, with Exhibit A annexed; Reply Memorandum of Law in Further Support of Article 78 Petition by Prisoners' Legal Services of New York, dated July 24, 2020.