March 7, 2025

CasePrepPlus

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Summarizing recent significant New York appellate cases

The Court of Appeals recently addressed two FOIL cases involving the 2020 amendments to Civil Rights Law § 50-a, which repealed the prior statutory exclusion from disclosure for police personnel records, including disciplinary records. In one case, the Court held that police disciplinary records created before the protections were repealed were not exempt from disclosure under FOIL, merely because they were created before the amendment became effective. And in the other, the Court held that the personal privacy exemption from disclosure does not categorically protect records of complaints against police officers that are ultimately found unsubstantiated. Let's take a look at those opinions and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

FOIL, RETROACTIVITY OF 2020 AMENDMENTS TO CIVIL RIGHTS LAW § 50-A

***Matter of NYP Holdings, Inc. v New York City Police Dept.*, 2025 NY Slip Op 01009 (Ct App Feb. 20, 2025)**

Issue: Do the Legislature's 2020 amendments to Civil Rights Law § 50-a to remove confidentiality protection from police personnel records apply retroactively to require disclosure under FOIL of records created while the statutory protection was in effect?

Facts: The petitioner sought disclosure of substantiated and unsubstantiated disciplinary records of the certain police officers under FOIL. The NYPD denied the request, and the petitioner brought this FOIL proceeding to compel disclosure of the records and for an award of attorneys' fees. The NYPD defended that production would be too burdensome, and the "Police Benevolent Association of the City of New York, Inc., a union representing members of the NYPD, intervened to assert a separate defense: that records created prior to the repeal of section 50-a were not subject to disclosure under FOIL because the statutory repeal does not apply 'retroactively' to records created while the statutory exemption was in effect." Supreme Court granted the petition, rejecting the NYPD's argument, but refusing to consider the PBA's separate retroactivity argument because, it held, an intervening party could not present a different defense than the original party. The First Department held that the PBA's argument was properly presented, but nevertheless concluded that the 2020 amendments that repealed Civil Rights Law § 50-a's confidentiality protections for police personnel records "applies retroactively to records created prior to June 12, 2020," when the amendments became effective. The Court reasoned that "the repeal went into effect immediately and, by its plain reading and intent, applies to records then existing and not simply to records created at a time subsequent to the enactment of the legislation." Since the legislative history disclosed that the repeal's purpose was remedial, the Court held that the amendments should be given retroactive application to police personnel records existing before their adoption.

Holding: The Court of Appeals affirmed, seemingly agreeing with recent decisions of the Second and Fourth Departments, after leave had been granted in this case, "that requests submitted after the repeal seek a straightforward application of FOIL as it existed at the time of the requests, not a retroactive application of the statutory repeal, and that the Legislature did not otherwise intend to exempt law enforcement disciplinary records from disclosure." Even assuming that retroactive application of the 2020 amendment was required, the Court held, it is nonetheless clear that the Legislature meant to allow disclosure of the police personnel records created even before the amendments were adopted. The Court explained, "[f]or starters, there is no indication that the repeal was intended to affect the usual manner in which FOIL operates. FOIL requires agencies to make available for public inspection and copying all records, and it defines 'records' with reference to whether an agency possesses information, but without reference to the date the information was created. The amendments impose various redaction requirements and personal privacy protections for law enforcement disciplinary records specifically, yet they do not, for example, single out records created before a certain date for special treatment, or direct that disclosure of any record is tethered to the date it was created. Had the Legislature intended to deviate from FOIL's presumption that information kept or held by an agency is disclosable by exempting records created prior to the repeal, or to mandate that an agency responding to a FOIL request ascertain and apply the law that governed when each responsive record was created, then surely it would have said as much."

FOIL, PERSONAL PRIVACY EXEMPTION, 2020 AMENDMENTS TO CIVIL RIGHTS LAW § 50-A

***Matter of New York Civ. Liberties Union v City of Rochester*, 2025 NY Slip Op 01010 (Ct App Feb. 20, 2025)**

Issue: Does FOIL's personal privacy exemption, which was left intact by the 2020 amendments to Civil Rights Law § 50-a, provide a basis for agencies to categorically withhold all disciplinary records relating to complaints against law enforcement officers that were not deemed substantiated?

Facts: "Until 2020, disciplinary records of law enforcement officers were categorically exempted from the public disclosure requirements of the Freedom of Information Law by statute. In June of that year, in the wake of the national outcry over the killing of George Floyd in Minnesota, and rising public concern that law enforcement agencies were not appropriately handling allegations of officer misconduct, the legislature repealed Civil Rights Law § 50-a and amended FOIL to specifically address the disclosure of law enforcement disciplinary records." After the 2020 amendments went into effect, the "New York Civil Liberties Union submitted a series of FOIL requests to respondents, the City of Rochester and the Rochester Police Department. The requested documents included records of all civilian complaints against Rochester police officers dating back to January 2000, irrespective of whether those complaints were ultimately deemed substantiated or resulted in disciplinary action against the officers." When Rochester did not promptly produce those records, petitioner sued seeking their production. "Supreme Court ordered production of many of the records but determined that respondents were entitled to withhold all records relating to complaints that were not deemed substantiated, pursuant to the personal privacy exemption contained in Public Officers Law § 87 (2) (b). Petitioner appealed and the Appellate Division modified, holding that the personal privacy exemption did not authorize respondents to categorically withhold all such records. The Appellate Division instead directed respondents to review the requested records and determine whether there is a particularized and specific justification to redact or withhold each record on personal privacy grounds."

Holding: The Court of Appeals affirmed, holding that the "text and history of the 2020 amendments [showed] that their purpose was to bring greater transparency to the law enforcement disciplinary process, including how complaints of officer misconduct are handled" and the Legislature's definition of what records were intended to be subject to disclosure contained "no limitation based on the outcome or disposition of [a police officer disciplinary] proceeding." In addition, the Legislature authorized "agencies disclosing law enforcement disciplinary records to redact specific categories of sensitive personal information about officers and their families, including medical histories, home addresses, and cell phone numbers, but again makes no mention of allegations or complaints that are not deemed substantiated." Thus, the Court concluded that the Legislature did not intend to categorically exempt unsubstantiated complaints of police misconduct from disclosure under FOIL. Rather, when such a FOIL request is made, "Public Officers Law § 87 (2) requires an agency to evaluate each record individually and determine whether 'a particularized and specific justification' exists for denying access on the ground that disclosing all or part of the record would constitute an unwarranted invasion of privacy. Where redactions would prevent such an invasion and can be made without unreasonable difficulty, the agency must disclose the record with those necessary redactions."

CHILD VICTIMS ACT, STATUTE OF LIMITATIONS

***Jones v Cattaraugus-Little Val. Cent. Sch. Dist.*, 2025 NY Slip Op 01007 (Ct App Feb. 20, 2025)**

Issue: **May a Child Victims Act claim be barred, on statute of limitations grounds, if it was commenced in the six months between when the Act became effective and when the Act allowed the revived claims to be filed in court?**

Facts: "In 2019, the legislature passed the Child Victims Act, which provided that previously time-barred tort claims based on sex offenses against children could be brought within a specified time. As amended, the CVA provided that such a claim 'is hereby revived, and action thereon may be commenced not earlier than six months after, and not later than two years and six months after' February 14, 2019—i.e., 'the effective date of this section.' In other words, actions on these claims could be commenced 'not earlier than' August 14, 2019 and 'not later than' August 14, 2021." Plaintiff, however, commenced her CVA claim on April 26, 2019, a few months before the statute allowed the revived claims to be file. Defendant removed the action to federal court and asserted a statute of limitations defense in its answer. It then litigated the case for more than the next two years, before moving for summary judgment on the timeliness issue, arguing for the first time that "the complaint must be dismissed because plaintiff commenced her action before CPLR 214-g's period for filing claims began." Notably, defendant made this motion only a few months after the time period to file CVA claims expired, so plaintiff was otherwise barred from refiling her claim at the time. The District Court rejected the plaintiff's argument that defendant should have been equitably estopped from asserting the timeliness defense, and dismissed the complaint as prematurely filed. On appeal, the Second Circuit interpreted the CVA as "immediately" reviving the otherwise barred CVA claims, and determined that the resolution of the appeal turned on "whether section 214-g's waiting period is a statute of limitations, since . . . a defendant may litigate a statute-of-limitations defense even as late as trial so long as the defense was timely asserted under Federal Rule of Civil Procedure 8(c)." The Second Circuit, therefore, certified that open question to the New York Court of Appeals.

Holding: Noting that the Second Circuit had "decided an open question of New York law concerning the proper statutory interpretation of the CVA" by holding that "claims were revived 'immediately' on the CVA's effective date," the Court of Appeals decided that it would "accept, without endorsing, the Second Circuit's interpretation for purposes of our answer to the question certified." Based on the Second Circuit's interpretation—which notably still remains an open question of New York law since the Court of Appeals declined to adopt the Second Circuit's interpretation—the Court of Appeals held "that the [CVA's] six-month waiting period is neither a statute of limitations nor a condition precedent." The Court explained, "a statute of limitations generally bars claims asserted too late, whereas defendant's assertion here is that plaintiff's claim was brought too early. Unsurprisingly, defendant can point us to no precedent in which a statute of limitations barred premature claims." Nor would barring a claim filed too early further the policy that statutes of limitations serve, to prohibit litigation of stale claims. Indeed, "[t]he statute read as a whole thus establishes that the six-month waiting period was intended, at least in part, to give the courts ample time to prepare for the inevitable avalanche of cases and not to provide a benefit to defendants." Thus, the Court answered that the six-month waiting period did not create a statute of limitations. Nor is the six-month waiting period a

condition precedent to suit, the Court concluded. The CVA only revived otherwise stale claims; it did not create new causes of action or add new elements to the claims that could be filed under the CVA's auspices.

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