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Essay: Release police disciplinary records in a timely manner

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When Gov. Andrew Cuomo signed a long-awaited reform bill declaring police disciplinary files open for public inspection, it appeared to herald a new day in accountability.

It hasn't quite worked out that way.

When police departments are asked to comply with their newfound disclosure obligations, few promptly turn over the records. As the *Democrat and Chronicle* reported Dec. 22, a team of researchers has been working for six months to assemble the records necessary to give a complete picture of how law enforcement agencies handle misconduct complaints. It's been frustrating work.

More: New York 50-a repeal: Six months later, police find ways to shield disciplinary records

More than 400 police, sheriff's and correctional departments were asked to produce the disciplinary files of their officers, as New York law now clearly requires. Only about 10 percent of those agencies have complied. Most have simply refused to acknowledge the request at all. Those that have responded have demanded prohibitively large fees for retrieving and copying the documents.

The fact that, half a year later, we know so little about the disciplinary history of police officers speaks to much deeper problems afflicting New York's Freedom of Information Law, and laws like it across the country.

Reacting to the Watergate scandal of the 1970s, New York and states throughout the country enacted public-records laws with the goal of renewing the public's damaged trust in government. The principle is simple: The public pays for government agencies to create documents and data, and (with sensible privacy exceptions) that information should be free to examine, copy and publish.

When public-records laws work the way they're supposed to, they really work. Behind most great investigative reporting is a freedom-of-information request that led journalists to their breakthrough.

But unfortunately, government agencies — from the Pentagon down to the tiniest local school district — have become adept at dodging their disclosure duties. The COVID-19 pandemic has made government's obsession with secrecy a literal matter of life-and-death, as families struggle to find out which schools, workplaces, hospitals and nursing homes are coronavirus hotspots.

When it comes to oversight of law enforcement agencies, faithful compliance with open-government laws is especially essential. Public-records laws are why we know that the lead officer charged with murdering George Floyd in Minneapolis, Derek Chauvin, had 18 misconduct complaints filed against him over his career, almost none of which resulted in any discipline.

But law enforcement agencies are notoriously stubborn about resisting disclosure of their records. Exemptions in state law that entitle police to withhold critical intelligence information about ongoing investigations are often abused to throw a secrecy blanket over anything-and-everything about crimes, even where disclosure would help the public take safety precautions.

Too many police agencies' response to any FOIL request — including the recent wave of requests for police disciplinary files — is a variation of “so, sue us.” After what we've learned about how bad-apple officers like Derek Chauvin get away with misusing their authority, that's no longer a tolerable response.

If local police and sheriffs' departments don't keep their disciplinary records in a well-organized way that allows for prompt and cost-free public inspection, then states should do it for them.

Policing authority — the power to take away people's freedom and use deadly force — ultimately belongs to the state. That power is “loaned” to local governments, on the understanding that they will use it responsibly. Failing to keep track of which officers have incurred misconduct complaints isn't responsible.

Too many law enforcement agencies, in New York and throughout the country, are stuck in the “Barney Fife” pencil-and-paper days when it comes to recordkeeping. The public shouldn't be forced to pay, in delays and outsized fees, for the consequences of police departments' refusal to join the 21st century.

The fact that most law enforcement agencies can't readily locate their own officers' complaint files is, frankly, terrifying. That means nobody in the typical police agency is regularly checking to see if there's a pattern of dangerous behavior by certain officers or in certain situations (for instance, in using stun-guns or restraining holds). You can't fix a problem you refuse to identify.

The systematic failure of New York police departments to respond to FOIL requests is a four-alarm wakeup call for Gov. Cuomo and the legislature. Their work is unfinished. Laws written in the 1970s to give the public access to government filing cabinets just aren't adequate for the digital age.

All essential records about the performance of public-safety functions — including complaints against police — should be publicly accessible. And “accessible” doesn't mean “after waiting a year and paying thousands of dollars.”

Technology has put boundless libraries of knowledge at our fingertips. Yes, it will require substantial up-front investment to make government records digitized and searchable. But ultimately, identifying government failings will save countless dollars and lives.

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