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April 11, 2018

BY EMAIL AND HAND DELIVERY

BuzzFeed, Inc.
111 E. 18th Street
New York, New York 10003
Attn: Allison Lucas (General Counsel)

Re: BuzzFeed's Contemplated Publication of Stolen Confidential Police Officer
Personnel Records

Dear Ms. Lucas:

We write on behalf of the Patrolmen's Benevolent Association of the City of New York, Inc. (the "PBA"), which represents more than 24,000 New York City police officers, in response to the email sent to the PBA by BuzzFeed reporter Mike Hayes yesterday at approximately 11:00 a.m. Mr. Hayes's email discloses that BuzzFeed, Inc. ("BuzzFeed") intends to publish a "searchable database" containing confidential police officer personnel records for "approximately 1,800 NYPD employees" that "will include the employees' name, tax ID number, case number, charges and specifications, penalty and the command where the officer worked" for cases "resolved between 2011 to 2015" (the "Personnel Records"). The PBA objects to BuzzFeed's contemplated publication and requests that BuzzFeed refrain from publishing this so-called "cache of documents," which contains information the New York State legislature (the "Legislature") has deemed confidential and that appears to have been illegally stolen from the New York City Police Department or another City agency.

BuzzFeed's contemplated publication of police officer Personnel Records is against the law for several reasons. First, as you are aware, New York Civil Rights Law ("CRL") § 50-a prohibits the publication of these Personnel Records. CRL § 50-a protects the civil rights of police officers, firefighters, and correction officers. More specifically, it balances their personal privacy rights with the occasional need for public disclosure of personnel records by establishing a process for the limited disclosure of personnel records in certain circumstances based on a "lawful court order." That process requires, among other things, that a judge review the specific record(s) at issue prior to disclosure, and that all "interested parties" are given an opportunity to be heard. BuzzFeed has not obtained a "lawful court order" authorizing release of the Personnel Records. Were BuzzFeed to nevertheless unilaterally publish this "cache" of stolen and confidential documents without obtaining a "lawful court order," it would upend this process, supplanting its own judgment for that of the duly-elected Legislature. Of course, to the extent

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that the source of these Personnel Records obtained them without the permission of the police officers involved and without a court order, they did so illegally.

Second, BuzzFeed's contemplated publication is defamatory to the extent it describes the Personnel Records or other disciplinary-related information of any police officer in a false, inaccurate, incomplete, and/or misleading fashion. BuzzFeed cannot possibly have verified the accuracy of whatever purported Personnel Records it has received (let alone *all* of the Personnel Records for approximately 1,800 police officers it claims to have received) since they are, by definition, confidential records. As such, any decision to publish Personnel Records without such verification is, at a minimum, reckless. *See, e.g.*, 43A N.Y. Jur. 2d Defamation and Privacy § 1 ("The law relating to defamation is a limitation on the constitutional guaranty of freedom of speech and of the press.").

Third, BuzzFeed's contemplated publication also violates CRL § 50, which makes it illegal for a person, firm, or corporation to use "the name, portrait or picture of any living person without having first obtained the written consent of such person" for "the purposes of trade." Putting aside whatever article BuzzFeed intends to publish, there can be no dispute that the publication of a searchable database of the names and images of police officers is not a report of a newsworthy event, but an attempt to generate website traffic to raise advertising revenue. It thus violates CRL § 50, and as a result, CRL § 51 allows each of the "approximately 1,800 NYPD employees" whose identities BuzzFeed seeks to exploit for profit to bring an action for damages and recover (i) "damages for any injuries sustained by reason of such use" and (ii) "exemplary damages."¹

BuzzFeed's contemplated publication will have real-life consequences for the more than 24,000 New York City police officers the PBA represents, as well as people living in our communities. For example, a civilian in Brooklyn was recently killed by a package bomb that was intended for a police officer. According to the Department of Justice, the alleged murderer "built the explosive device . . . as part of his broader effort to retaliate violently against several police officers who were part of an NYPD unit that had arrested him." *See* Press Release, Department of Justice, Brooklyn Man Arrested for Using a Weapon of Mass Destruction (February 28, 2018).² The perpetrator "methodically sought revenge against the officers [and] conducted internet searches and made telephone calls to determine the locations of the officers' residences." BuzzFeed's contemplated "searchable database" is not only contrary to law, but would also provide another tool to be exploited by those who seek to do harm to New York City

¹ Of course, to the extent BuzzFeed played a role in the illegal theft of the Personnel Records, it would be liable for that conduct as well. *E.g. Peavy v. WFAA-TV, Inc.*, 221 F.3d 158 (5th Cir. 2000), *cert. denied*, 532 U.S. 1051 (2001) (defendant television station could be liable for "procuring" source to intercept telephone calls in violation of state and federal statutes).

² Available at <https://www.justice.gov/usao-edny/pr/brooklyn-man-arrested-using-weapon-mass-destruction>.

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police officers and their families.³ Moreover, it is a matter of public record that police officers have recently been intentionally targeted for violence, including murder, for nothing more than being police officers. This phenomenon has tragically resulted in the murders of several police officers in New York City by perpetrators inspired by sensationalized media characterizations. BuzzFeed's illegal publication of the disciplinary histories of specific individuals will put all 24,000 New York City police officers in danger.

Finally, regardless of whether BuzzFeed's contemplated publication is illegal and will expose it to significant damages, we do not believe its stated intention to publish confidential and stolen personal details about New York City police officers is consistent with its own editorial standards, particularly given the high risk that such publication could be exploited by those who seek to harm police officers. With respect to "hacked material," BuzzFeed's Editorial Standards say that it should be careful to "treat the intention of the hacker as a major part of the story, and to maintain a high bar for news value and context of potentially embarrassing personal information that is being weaponized."⁴ There is simply nothing newsworthy about, for example, a police officer's "tax ID number," or what his home looks like, or where he works, or any number of other stolen details that BuzzFeed is apparently contemplating publishing. BuzzFeed's considered attention to this issue is particularly important given that, if BuzzFeed publishes the Disciplinary Records at issue, its decision will be irreparable; there will be no way to make such confidential information private again.

This letter, of course, does not address all of the facts and issues concerning BuzzFeed's contemplated publication of confidential Personnel Records, given the short timeframe BuzzFeed provided the PBA to respond, and the PBA and its members reserve all of their rights and remedies should BuzzFeed publish stolen and confidential police officer Personnel Records.

We would welcome the opportunity to discuss these important issues with you in person.

Respectfully,



Michael J. Bowe

cc: Mike Hayes
Kendall Taggart

³ BuzzFeed has already improperly published photographs of a police officer standing outside of his home for no newsworthy purpose. *See* Kendall Taggart & Mike Hayes, *Busted: The NYPD's Secret Files*, BuzzFeed News (March 5, 2018).

⁴ Available at <https://www.buzzfeed.com/shani/the-buzzfeed-editorial-standards-and-ethics-guide>.