## NYPD Using Cold War Excuse To Block Information On Muslim Spying

BY AVIVA STAHL IN NEWS ON MAR 9, 2016 3:53 PM



public debate. Yet the NYPD is still refusing to acknowledge the existence of basic information related to its controversial and well-documented surveillance program.

records poses an alleged risk.

written into New York State's FOIL law.

so, it must be so?"

"Absolutely not," Slack replied.

Yesterday in an ornate courtroom next to Madison Square Park, the First Appellate Division of the New York Supreme Court considered two cases in which the NYPD had responded to public records requests by stating it could not "confirm or deny the existence of such documents."

In both cases, one brought by a Rutgers University student and the other by a well-known

Harlem imam, the Muslim appellants had reason to believe they had been subject to NYPD

For years the NYPD's record of spying on law-abiding Muslims has been the subject of fierce

spying or surveillance. Both men requested records on themselves as well as organizations in which they have been involved, including the Rutgers University Muslim Student Association and the Mosque of the Islamic Brotherhood. Arguing for the appellants, attorney Omar Mohameddi told the panel of judges that the NYPD

had overstepped its authority by invoking the Glomar response, a Cold War era exemption

employed by federal agencies when even acknowledging the existence or non-existence of

"[Glomar] is a blanket exemption that does not exist under FOIL," Mohammedi said, referring to the state's Freedom of Information Law. "We just need the NYPD to say, 'we have the documents; we cannot produce them." Although Glomar is increasingly invoked under the federal public information law, there is no

precedent for its permissibility on the state or local level, and there is no Glomar exception

Two lower courts had previously issued conflicting rulings in the lawsuits, brought by Samir

Hashmi and Talib Abdur-Rashid. The two men filed FOIL requests in 2012, shortly after the Associated Press began releasing its Pulitzer-Prize winning series about the NYPD spying on Muslim communities.

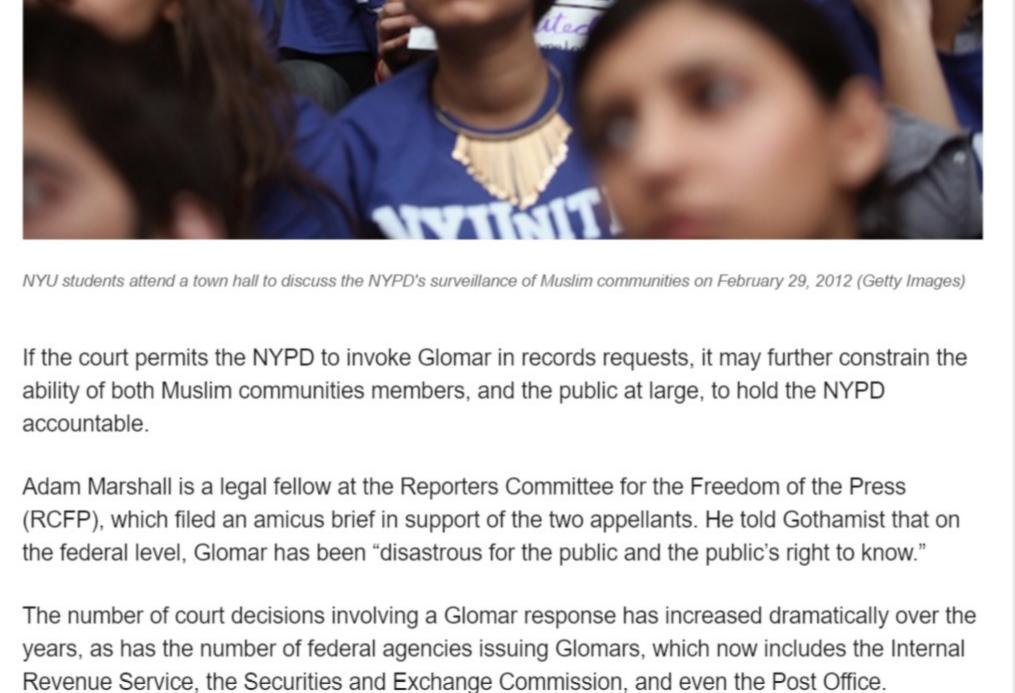
Arguing for the NYPD, Devin Slack told the court that even disclosing the mere existence of

records could threaten counter-terrorism investigations. If the NYPD confirms a paperwork trail

and therefore discloses that someone is subject to surveillance, potential terrorists would simply

avoid them, Slack said. Every seat in the court's gallery was filled, with many Muslim community members present. At times, the judges voiced concern about granting the city broad-reaching authority to publicly deny whether records exist or even if suspected surveillance occurred.

One justice, Rosalyn Richter, asked Slack, "Are you asking us to just say, because the city says



In court, the NYPD contended that a ruling in its favor would not foreclose the public's right to know. Slack stated that there are other avenues available to the public and affected individuals. For example, he said, people facing terrorism charges receive disclosure of their records, and in

the recently-settled *Handschu v. Special Services*, with regards to NYPD spying, plaintiff

But there is a catch-22 to Slack's logic. Since surveillance and undercover spying are by

definition secret, obtaining information to hold the NYPD to account is very difficult.

attorneys were able to review surveillance documents.

surveillance.

According to Marshall, challenging a Glomar response is extremely burdensome, because it

that the government has elsewhere publicly acknowledged that the requested records exist.

generally requires the member of the public to first "pierce" the Glomar shield—namely, to prove

at Brooklyn College. Plaintiff attorneys in the Handschu case were ultimately able to question the NYPD about this investigation—but only because they learned about it in the stories that were published.

Last fall, Gothamist reported that an undercover cop had spent years spying on Muslim students

peacefully, that they have to be afraid of people watching what they do, and recording every word that they say," he said.

"It is not fair for Muslims students that are law abiding citizens, that are going about their lives

At a press conference just outside the court, Samir Hashmi spoke about the impact of

records exist. The NYPD has an abysmal record of fulfilling FOIL requests. In 2013, then-Public Advocate Bill de Blasio gave the NYPD an F in a "Transparency Report Card." But the issue also goes beyond Muslim spying. "Everyone in NYC should be concerned about this, because the NYPD would be acting without oversight," Mohammedi said outside the

If the City loses, the NYPD would still be able to claim law enforcement exemptions under FOIL

and refuse to release records, although they would have to acknowledge whether or not such

courthouse. For Adam Marshall of the RCFP, the issue at the core of this judicial decision is the public's right to know.

"When you have real questions circulating in society today about the relationship between law enforcement agencies and the public, whether its use of force, surveillance or any of those types of issues, people need information to make informed, rational decisions about what they want their government to be doing—and not doing."

Aviva Stahl is a Brooklyn-based journalist who primarily writes about prisons, especially the experiences of terrorism suspects and LGBTQ people behind bars. Follow her @stahlidarity.