

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of
BENJAMIN CHEVAT,

Index No. 155678/2024

Petitioner,

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

-against-

NEW YORK CITY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondent.

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**July 18, 2025 SUPPLEMENTAL AFFIRMATION OF PETITIONER'S
ATTORNEY IN FURTHER SUPPORT OF ARTICLE 78 PROCEEDING**

ANDREW J. CARBOY, an attorney duly licensed to practice law before the Courts of the
State of New York, affirms the following under penalties of perjury:

1. I am a member of the Law Offices of Andrew J. Carboy LLC.
2. My firm and Turken Heath & McCauley LLP represent the interests of the following individuals: Karen Klingon, Executrix of the Estate of Robert Klingon (resident of lower Manhattan); Yvonne Baisley, Executrix of the Estate of FDNY Firefighter Robert Fitzgibbon; Phil Alvarez on behalf of his brother, NYPD Detective Luis G. Alvarez, deceased; Charlotte Berwind, Executrix of the Estate of volunteer firefighter Charles E. Flickinger, Jr. ; and Benjamin Chevat, Director of 9/11 Health Watch, the Petitioner in this Article 78 proceeding.
3. These World Trade Center disaster responders, residents of lower Manhattan and their families, along with a non-profit organization advocating for patients afflicted by toxic exposures in the aftermath of September 11th, sought documents that should be freely available to all New

Yorkers. Pursuant to the Freedom of Information Law (“FOIL”), on September 8, 2023, they requested various records from the New York City Department of Environmental Protection (“DEP”) concerning the response of the City of New York (“City”) to the September 11, 2001 collapse of the World Trade Center, along with historical records and disaster preparation materials. DEP denied these requests and denied the subsequent administrative appeal. Petitioner then commenced this Article 78 proceeding.

4. We submit this supplemental affirmation to alert the Court to a critical development, one unprecedented in City history.

5. On July 14, 2025, the New York City Council enacted Resolution 560-A (“Resolution 560-A”). Taking effect immediately, Resolution 560-A directs the New York City Department of Investigation (“DOI”), one of the country’s premier investigative agencies, to “*conduct an investigation to ascertain the knowledge possessed by mayoral administrations on environmental toxins produced by the September 11, 2001 terrorist attacks on the World Trade Center and to submit a report to the Council thereon.*” (**Exhibit 1:** Resolution 560-A; **Exhibit 2:** Record of Passage) Section 803 of the amended City Charter empowers the City Council to order DOI investigations. Resolution 560-A makes history as the first ever exercise of that power.

6. The passage of Resolution 560-A substantiates the merit of this Article 78 proceeding and further justifies Petitioner’s request for a live hearing. Knowledgeable witnesses from the Department of Environmental Protection should be made to appear in Court and testify as to their efforts to respond to the subject Freedom of Information requests.

7. The Freedom of Information Requests submitted by Petitioner Benjamin Chevat, Director of 9/11 Health Watch, their subsequent denials and appeals, and this current proceeding are among the examples in the legislative record of the City’s intransigence in responding to

requests for public information. Petitioner's efforts are bases for the enactment of this unprecedented resolution.

8. As Resolution 560-A sets forth, reciting the labors of 9/11 Health Watch to access the City's public records:

Whereas, On September 8, 2023, 911 Health Watch Inc. filed a Freedom of Information Law (FOIL) request seeking documents from several New York City agencies relating to the knowledge possessed by the City on the environmental toxins produced by the attacks and the potential harm posed by these toxins, including documents relating to the testing and cleaning of schools in lower Manhattan and the potential evacuation of neighborhoods in Manhattan and Brooklyn in the aftermath of the attacks; and

Whereas, 911 Health Watch Inc. received denials in response to the FOIL request; and

Whereas, In June of 2024, 911 Health Watch Inc. commenced an Article 78 proceeding in New York State Supreme Court to challenge the New York City Department of Environmental Protection's denial of the FOIL request and its subsequent affirmation that it has no relevant documents; and

Whereas, To date, there has not been a comprehensive investigation by New York City of the knowledge possessed by mayoral administrations on the dangers of the environmental toxins produced by the September 11, 2001 terrorist attacks on the World Trade Center and when this knowledge accrued; now, therefore, be it

Resolved, That the Council of the City of New York, pursuant to section 803 of the New York City Charter, directs the Department of Investigation to conduct an investigation to ascertain the knowledge possessed by mayoral administrations on environmental toxins produced by the September 11, 2001 terrorist attacks at the World Trade Center and to submit a report to the Council thereon. (Exhibit 1. Emphasis added)

9. On January 29, 2025, your affirmant testified as *pro bono* counsel before the City Council Committee on Oversight and Investigations. I addressed the obstruction 9/11 Health Watch faced when seeking these public records, adding that “ *Our clients seek no compensation. As their attorneys, we seek no legal fees. Our shared goal is strictly to find out what the City knew about the dangers of toxic substances released as a result of the terrorist attacks and when the City knew it. We are here because September 11th continues to make people sick.*” (Exhibit 4 at pages 8 through 11)

10. As sponsoring Council member Gale Brewer explained at the January 29th hearing, this legislation marks “*the first time the City Council has invoked the authority granted by section 803 of the New York City Charter to direct DOI to conduct an investigation through a binding resolution. The legislation is a direct response to the Adams administration’s refusal to release the documents despite requests from members of Congress, advocates, and the media. DOI would be required to complete a comprehensive public report on the findings no later than two years after the adoption of the resolution.*” (**Exhibit 3**)

11. Petitioner is not the first member of the public to meet the City’s grinding resistance to opening its September 11th archive. As United States Representatives Jerrold Nadler and Dan Goldman explained, following the enactment of Resolution 560-A:

For years, we have demanded transparency from the Adams Administration about what the Giuliani and Bloomberg Administrations knew about toxins in the air following 9/11 and when they knew it. We sent multiple letters to the Adams Administration requesting the release of critical records, yet each time, they denied our requests. Their lack of a meaningful response denied justice to the thousands of New Yorkers and first responders who continue to deal with or have died from health complications due to the air quality following 9/11.

With the passage of Resolution 560, New York City’s Department of Investigation has the power to discover exactly what Mayor Giuliani knew about the toxins in the air after 9/11 while claiming it was safe for New Yorkers to return.

These records could provide long overdue accountability for potentially devastating decisions that cost thousands of lives. New Yorkers deserve the truth. We’re finally about to get some answers. (**Exhibit 5**: July 15, 2025 Statement of Representatives Nadler and Goldman on passage of Resolution 560-A: “*Representatives Nadler and Goldman Applaud NYC Council for Forcing City to Finally Release the Truth About 9/11 Air Toxins*”)

12. As a direct result of Resolution 560-A, DOI will investigate what the City knew about the toxic emissions from the World Trade Center site and when the City learned this information. The DOI will likely obtain the documents the City has long refused to release concerning its response to the September 11th attacks.

13. However, we respectfully request that this Article 78 proceeding be directed to move forward at the same time with the DOI investigation. These simultaneous efforts may make clear that these documents are a matter of public record and never should have been withheld. We thank the Court for its attention to this highly unusual development.

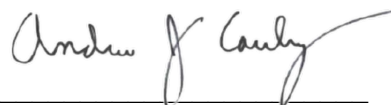
Conclusion

For the reasons set forth above and in all of Petitioner's previous submissions and exhibits, Petitioner demonstrates entitlement to the following relief:

- A) A declaration that the February 29, 2024 appeal denial by DEP was arbitrary and capricious as the DEP failed to establish, with any precision or evidence, that a diligent search for the requested materials was actually performed.
- B) An Order directing the DEP to search its archives, again, with diligence for the requested materials, and report, in detail, as to the steps it undertook during the search and provide all materials responsive to the FOIL request.
- C) A declaration that the February 29, 2024 appeal denial was arbitrary and capricious as the DEP failed to establish, with any precision or evidence, that the requested materials do not exist.
- D) A hearing to ascertain the scope and duration of any search previously undertaken by DEP in response to the FOIL request, with live testimony taken from DEP personnel.

Dated: July 18, 2025

Respectfully submitted,



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