

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, Director of 9/11  
Health Watch,

Index No.

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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**NOTICE OF PETITION**

PLEASE TAKE NOTICE that, upon the annexed Verified Petition, dated June 18, 2024, the Attorney’s Affirmation, dated June 20, 2024, and all exhibits submitted in support of the Verified Petition, Petitioner Benjamin Chevat, Director of 9/11 Health Watch, will, by the undersigned attorneys make an application at the Supreme Court of the State of New York in the County of New York, located at 60 Centre Street, in Room 130, Motion Submission Part Courtroom, on September 9, 2024, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an order and judgment pursuant to C.P.L.R. § 7806 providing the following relief:

- A) A declaration that the February 29, 2024 appeal denial (**Exhibit 5**) 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 October 2001 memorandum from Deputy Mayor Robert M. Harding referenced in May 14, 2017 New York Times article entitled, “Ground Zero Illnesses Clouding Giuliani’s

- Legacy.” (“Harding memo”), and related materials (as more fully set forth in **Exhibit 1**), and report, in detail, as to the steps it undertook during the search and provide all materials responsive to this particular component of the FOIL request.
- C) As Petitioners demonstrate, below, that the requested materials do, in fact, exist, a declaration that the February 29, 2024 appeal denial (**Exhibit 5**) was arbitrary and capricious as the DEP failed to establish, with any precision or evidence, that the requested materials do not exist.
- D) As Petitioners demonstrate that the requested materials do, in fact, exist, 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; and
- E) An Order directing DEP to provide Petitioners with the anticipated cost of compliance with the FOIL request (**Exhibit 1**) to the extent of locating and producing the Harding memo, *in advance* of DEP incurring such expenses. At this juncture, the City has not provided the Petitioners with any sense or detail of the expected cost of compliance with the request. Petitioners do not commit to pay an uncertain and open-ended bill for this endeavor.

Answering/opposition papers, if any, shall be served within seven (7) days of the return date.

Dated: June 20, 2024

Respectfully submitted,

Attorneys for Petitioners

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