

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

-----X
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.
-----X

**September 14, 2025 SUPPLEMENTAL AFFIRMATION OF PETITIONER'S
ATTORNEY IN FURTHER SUPPORT OF ARTICLE 78 PROCEEDING
and REQUEST FOR LIVE HEARING WITH TESTIMONY FROM CITY
OFFICIALS**

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 Benjamin Chevat, Director of 9/11 Health Watch, the Petitioner in this Article 78 proceeding. 9/11 Health Watch is a leading non-profit organization, advocating for patients afflicted by toxic exposures resulting from the September 11th attacks.
3. Petitioner, along with Karen Klingon, Executrix of the Estate of Robert Klingon, a lower Manhattan resident; Yvonne Baisley, Executrix of the Estate of FDNY Firefighter Robert Fitzgibbon; Phil Alvarez on behalf of his brother, NYPD Detective Luis G. Alvarez, deceased; and Charlotte Berwind, Executrix of the Estate of volunteer firefighter Charles E. Flickinger, Jr.,

sought documents from the City of New York (“City”) that should be freely available to all New Yorkers.

4. Pursuant to the Freedom of Information Law (“FOIL”), on September 8, 2023, they requested public records from the New York City Department of Environmental Protection (“DEP”) and the Office of Emergency Management (“OEM”) concerning the response of the City to the September 11, 2001 collapse of the World Trade Center, along with historical documents and disaster preparation materials. (NYSCEF #3) At base, the public records pertained to risk assessments made by City agencies when reopening lower Manhattan and public schools in September 2001. Why did the City assure first responders, recovery workers, returning residents, students and office personnel of safe air quality while simultaneously lobbying for federal “liability protection” against thousands of toxic exposure claims it anticipated? What did the City know and when did it know it?

5. OEM denied these FOIL requests (NYSCEF #10), as did DEP (NYSCEF #4), which also rejected a subsequent administrative appeal. (NYSCEF #7) The Director of 9/11 Health Watch then commenced this Article 78 proceeding, seeking, among other relief, a hearing as to the sufficiency of the City’s “search” for responsive public records.

6. 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.” (NYSCEF #31: Resolution 560-A; **NYSCEF #32**: Record of Passage; see also, **NYSCEF #30**: Affirmation of Counsel Describing Resolution 560-

A) As bases for Resolution 560-A, the City Council cited the City's denial of the public records to both 9/11 Health Watch and to the New York Congressional delegation. (NYSCEF #31)

7. 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.

These records could provide long overdue accountability for potentially devastating decisions that cost thousands of lives. New Yorkers deserve the truth. (NYSCEF #35)

The City, Which Previously Denied the Existence of the September 11th-Related Documents to 9/11 Health Watch and Withheld Them from New York's Congressional Delegation, is Now Releasing Waves of Such Records to the Department of Investigation

8. We direct the Court's attention to an astounding "about face" by the City with respect to its September 11th archive, one that raises troubling concerns about compliance with the Freedom of Information Law.

9. This development warrants a hearing, with testimony taken from City witnesses, as to the sufficiency and diligence of the search conducted when responding to the subject FOIL requests.

10. Although it denied the existence of documents responsive to 9/11 Health Watch's 2023 FOIL requests, and would not provide the materials to New York's Congressional delegation, more than four-years ago, the City is now flooding DOI with responsive September 11th records, less than two months after the passage of Resolution 560.

11. A September 10, 2025 news report, annexed as **Exhibit 1**, describes the torrent of

information from the September 11th archives as “*overwhelming*” and consisting of “*voluminous...relevant records.*” As requested, originally (NYSCEF #1 through 15), and, again on July 18, 2025 (NYSCEF #30 through 35), Petitioner reiterates the need for this Court to conduct a hearing, with live testimony from City record searchers, as to the diligence of the search conducted in response to 9/11 Health Watch’s request for these same public records.

12. Today, with breaking news about the flood of disclosures to DOI, the hearing issues present themselves in sharp relief:

- A. From where did these responsive records, materializing now and being disclosed to DOI, originate?
- B. How was the City able to withhold these public records from the United States Congress?
- C. Why did the City deny the existence of these records when rejecting 9/11 Health Watch’s FOIL request?
- D. What type of search did the City conduct to address Petitioner’s request?
- E. Which officials provided input as to the scope, duration and quality of the search?
- F. Were any witnesses or authors of documents contacted during the search?
- G. Was the City’s ‘inability’ to locate responsive public records predetermined?
- H. Most significantly, why is it that the City is now able to locate reams of responsive data?
- I. How is the City able to evade its obligations under public records law by simply denying the existence of responsive records in the first instance?

A. The City Defied the Requests of the New York Congressional Delegation

13. Filed as **NYSCEF #11** is a series of letters between Honorable Jerrold Nadler, Honorable Dan Goldman, and Honorable Caroline Maloney, United States House of Representatives, and the Office of the Mayor. Since 2021, the Representatives have sought

previously unreleased documents, from City agencies, concerning the response to the September 11th attacks, writing and meeting with the Mayor's Office in this effort. To date, the City has not responded in any meaningful way to these requests from the elected officials. On March 22, 2023, Mayor Adams wrote to the members of Congress, acknowledging that such previously unreleased documents existed, but advising that they would not be disclosed. The Mayor cited "litigation risks" as a barrier. The Mayor requested both federal funding and additional federal protections for the City before the documents would be released. *Id.* At no point in the correspondence to the Congressional delegation did City Hall cite a specific FOIL exemption enabling it to withhold the documents.

B. OEM and DEP Deny the Existence of Responsive Records to the FOIL Request of 9/11 Health Watch

14. DEP and OEM both denied maintaining records responsive to 9/11 Health Watch's 2023 FOIL requests (NYSCEF #3).

15. On January 16, 2024, OEM denied having responsive public records:

The NYC Office of Emergency Management (OEM) has closed your FOIL request FOIL 2023-017-00064 for the following reasons: • A diligent search for records responsive to your request did not locate any such records. Accordingly, your request is denied. (NYSCEF #10)

16. As DEP set forth in its response, dated January 31, 2024, it, too, denied having responsive public records:

The Department of Environmental Protection (DEP) has closed your FOIL request FOIL 2023-826-03980 for the following reasons: • Your request under the Freedom of Information Law (FOIL) is being closed because this agency does not have the records requested. (NYSCEF #4)

17. Without providing any supporting description or detail, on February 29, 2024, DEP certified that "a diligent search was performed and no responsive records were found." (NYSCEF #7)

18. Given DEP's "lead role" in assessing air quality after the collapse of the World Trade Center, DEP's FOIL denial is fantastic. As the City admits, "by the evening of September 11th, 11th, the City's Department of...Environmental Protection began to assess environmental conditions and what protections would be necessary." This narrative description is also available in an official City publication (NYSCEF #12: Assessing the Health Impacts of 9/11, Report and Recommendation to Mayor Bloomberg; and <https://www.nyc.gov/site/911health/about/historical-context.page>)

C. DOI's Investigation is Securing Documents the City Denied Having

19. As reported in the Daily News on September 11, 2025 (Exhibit 1):

A 20-year battle to unearth [what NYC knew about the dangers of the 9/11 toxins](#) swirling around Ground Zero in the weeks after the terror attacks is reaching a major turning point.

Eight weeks after being ordered to [launch a detailed review](#), the city's Department of Investigation is now preparing to receive "volumes of data" on the subject from city agencies, the Daily News has learned. Once the [City Council](#) mandated the DOI to hunt for documents on 9/11 toxins in mid-July, the agency sent out letters to every agency, asking them to identify and turn over any relevant documents they had. The response they received has been so overwhelming that the DOI may need to contract with an outside investigations agency to parse through all the data.

20. According to DOI Commissioner Jocelyn Strauber: "We're in the preliminary stages of determining the complement of relevant records, which we know will be voluminous." Id.

21. The government cannot disregard New York's Freedom of Information Law out of convenience. It is far too easy for the City to assert that it undertook a "diligent search" for records and could not find them when responding to the subject FOIL requests. The gulf between the prompt, overwhelming response to DOI and the denial to sitting Congressional representatives, 9/11 Health Watch and surviving family members warrants judicial intervention. Clearly, within the parameters of this Article 78 proceeding, the Court would be well within its authority to order

a hearing. In the absence of judicial scrutiny, the City's "about face" could relegate the Freedom of Information Law to a punchline.

22. The Court is not divested of jurisdiction as a result of the DOI investigation.

23. We also advise the Court that 9/11 Health Watch has revised its remaining open FOIL requests to other City agencies, including Department of Health and the Mayor's Office.

(Exhibit 2) We do this to streamline the process of obtaining additional information, now that the DOI investigation is underway.

As modified/amended, we withdraw requests 3, 4, 5b. and 6 through 28. We seek responses to the following requests, only (original items at request numbers 1, 2 and 5a, c, d, and e):

1. 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")

2. Underlying documents, studies, reports, assessments, memoranda, factual bases and other written information that informed the Harding memo's estimate or projection of anticipated future claims from WTC toxic exposure.

*5. With respect to the following provision of the Air Transportation Safety and System Stabilization Act of 2001, Pub. L. No. 107-42, 115 Stat. 230 (2001): (3) **Limitations on liability for New York City.**--Liability for all claims, whether for compensatory or punitive damages or for contribution or indemnity arising from the terrorist-related aircraft crashes of September 11, 2001, against the City of New York shall not exceed the greater of the city's insurance coverage or \$350,000,000. 49 U.S.C.A. § 40101*

a. Written communications, dating from September, October and November 2001, such as correspondence, email, and memoranda, with all attachments, concerning limitations on liability for the City of New York ("City"), to the following individuals and offices:

i. The White House and the Office of the Executive;

ii. Any United States Senator and their office;

iii. Any Committee of the United States Senate and/or its staff;

iv. Any member of the U.S. House of Representatives or their staff;

v. The United States Justice Department; and

vi. United States Environmental Protection Agency.

c. Documents setting forth the names of consultants and consulting firms, lobbyists and lobbying firms, that worked with the City in the effort to secure the limitations on liability, referenced above.

d. Documents setting forth the amount of compensation issued/paid by the City to the consultants and consulting firms, lobbyists and lobbying firms identified in response to request c., above.

e. Documents setting forth: the number of meetings (taking place in September, October and November 2001), dates of meetings, location of meetings, identity of those in attendance, concerning the efforts to secure the limitations on liability, set forth above, along with summaries of meetings and copies of the written materials reviewed at each meeting.

Requests numbered 3, 4, 5b. and 6 through 28 are hereby withdrawn. (Exhibit 2)

23. We respectfully request that this Article 78 proceeding and any hearing be directed to move forward simultaneously with the DOI investigation. There needs to be a public explanation as to why the City no longer denies the existence of the records Petitioner requested. We thank the Court for its attention and consideration.

Conclusion

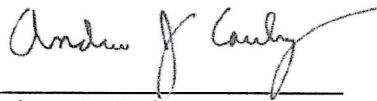
For the reasons set forth above and in all of Petitioner's previous submissions and exhibits, Petitioner demonstrates entitlement to the following relief:

- 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 City personnel.

Dated: September 14, 2025

Respectfully submitted,



Andrew J. Carboy
Law Offices of Andrew J. Carboy LLC
Attorneys for Petitioner
One Liberty Plaza, Floor 23
New York, New York 10006

To:
Saarah Singh Dhinsa
New York City Law Department
Attorneys for Respondent
100 Church Street
New York, New York 10007

EXHIBIT 1

NEWS > POLITICS

What did NYC know about the 9/11 toxins at ground zero. After 20 years, the truth may soon come out



Firefighters search through rubble of the World Trade Center towers, known as Ground Zero or The Pile, after the terror attack on September 11, 2001. (Todd Maisel/New York Daily News)



By **THOMAS TRACY** | ttracy@nydailynews.com | New York Daily News

UPDATED: September 11, 2025 at 9:31 AM EDT

A 20-year battle to unearth [what NYC knew about the dangers of the 9/11 toxins](#) swirling around Ground Zero in the weeks after the terror attacks is reaching a major turning point.

Eight weeks after being ordered to [launch a detailed review](#), the city's Department of Investigation is now preparing to receive "volumes of data" on the subject from city agencies, the Daily News has learned. Once the [City Council](#) mandated the DOI to hunt for documents on 9/11 toxins in mid-July, the agency sent out letters to every agency, asking them to identify and turn over any relevant documents they had.

The response they received has been so overwhelming that the DOI may need to contract with an outside investigations agency to parse through all the data.

Nearly all of the agencies contacted have responded to the DOI's request to identify any documents they have concerning 9/11 toxins, DOI officials said. Some agencies will be providing information that will be specific to the request. Others will be providing "more general" information about the aftermath of the 9/11 terror attacks, the DOI said.

It was not immediately disclosed exactly which agencies have responded.



Workers work to save any survivors from the rubble of the WTC on Sept. 13, 2001.
(Craig Warga for New York Daily News)

Once they come in, the real challenge begins, [DOI Commissioner Jocelyn Strauber](#) said.

"We're in the preliminary stages of determining the complement of relevant records, which we know will be voluminous and require rigorous assessment of what the City knew and when it knew it as well as interviewing witnesses and consulting with environmental experts," Strauber said.

"Once we have a better understanding of the scope of records, DOI can provide a more exact map of the necessary resources needed."

Strauber admitted that this "complex investigation will exceed DOI's existing resources, requiring that we engage an outside investigative firm to assist."

"I am confident that with appropriate resources DOI will find the facts and lay them out in a public report," she said.

The council has tasked the DOI with providing a report in two years.



DOI Commissioner Jocelyn E. Strauber. (Barry Williams for New Daily News)

The quick and positive response marks a sea change in the [two-decade long quest to get this information from the city.](#)

The Adams administration as well as its predecessors, have fought the release of those documents, claiming they couldn't find them and that the documents could lead to a barrage of lawsuits from survivors and first responders suffering from 9/11 illnesses.

Multiple FOIL requests from attorneys representing survivors suffering a 9/11 illness turned up nothing. When attorneys went to court demanding the information, they were repeatedly told that the agencies like the city's Department of Environmental Protection had nothing to give.

Just last year, the city tried to squash a lawsuit demanding these documents, claiming it didn't have them and that the search for the long-sought records is nothing more than a "fishing expedition."

"After a diligent search was performed of DEP's records, no responsive records were found," city attorneys claimed in court papers.

The fact that the DOI investigation is turning up so many documents was "just remarkable," said Andrew Carboy an attorney who represented 911



Massive amount of rubble still remains at Ground Zero more than a month after the destruction of the World Trade Center in a view from the Woolworth Building. (Mike Albans/New York Daily News)

"It should not take unprecedented Department of Investigation action for the City to comply with the FOIL requests our clients made, two years ago," Carboy told the News, adding that City Hall also defied earlier requests of New York's Congressional delegation.

"But for the City Council's resolution and the DOI investigation, the city would either continue to deny the existence of the secret 9/11 archive or, equally outrageously, claim that the records of its response to the attacks were destroyed in the collapse of the World Trade Center," he said.

City Councilwoman Gale Brewer wrote the resolution that the full council unanimously passed on July 14, ordering the DOI to probe what information the city had on [Ground Zero toxins](#) after the 9/11 attacks and when they had it. It marks the first time a provision of the City Charter allows the Council to order the DOI to undertake an investigation with a bill.



A lone American flag waves in the smoke on Liberty St., overlooking the debris of the World Trade Center on September 11th, 2001. (Michael Schwartz for New York Daily News)

More than 140,000 first responders and survivors are enrolled in the U.S. Center for Disease Control's [WTC Health Program](#), which provides health care benefits for medical conditions related to exposure to the toxins that hung over Ground Zero. Out of that number, about 81,000 have a certified condition linked to the toxins that hung above Ground Zero.

Originally Published: September 10, 2025 at 5:00 PM EDT

2025 > September > 10

EXHIBIT 2

Law Offices of Andrew J. Carboy LLC

One Liberty Plaza, Floor 23
New York, New York 10006
(212) 520-7565

Turken Heath & McCauley LLP

84 Business Park Drive, Suite 307
Armonk, New York 10504
(914) 363-6355

September 7, 2025

By FOIL Portal:

Office of the Mayor

Re: Freedom of Information Request

2023-002-00733

Title: Records Concerning Preparedness for &
Response to WTC Collapse

Modification to this Request

Dear Sirs and Madams:

On September 8, 2023, Benjamin Chevat, Director of 9/11 Health Watch; 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; and Charlotte Berwind, Executrix of the Estate of volunteer firefighter Charles E. Flickinger, Jr. filed a Freedom of Information Law ("FOIL") request with the Office of the Mayor.

The Office of the Mayor assigned the FOIL request identification number 2023-002-00733.

On August 19, 2025, we received the following email advisory concerning FOIL request # 023-002-00733, entitled Records Concerning Preparedness for & Response to WTC Collapse, the latest in a series of extensions:

From: donotreply@records.nyc.gov <donotreply@records.nyc.gov>

Sent: Tuesday, August 19, 2025 5:14:33 PM

To: Andrew Carboy <acarboy@carboylaw.com>

Subject: [OpenRecords] Request FOIL-2023-002-00733 Extended

The Mayor's Office (OOM) has **extended** the time to respond to your FOIL request [FOIL-2023-002-00733](#) for the following reasons:

You can expect a response on or about Friday, November 28, 2025.

Additional Information:

Due to the volume of requests that we have received, we are extending the due date on this request.

Please visit [FOIL-2023-002-00733](https://www.foia.gov/2023-002-00733) to view additional information and take any necessary action.

Now, the requesting parties hereby modify/amend FOIL request # 2023-002-00733.

As modified/amended, we withdraw requests 3, 4, 5b. and 6 through 28. We seek responses to the following requests, only (original items at request numbers 1, 2 and 5a, c, d, and e):

1. 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")

2. Underlying documents, studies, reports, assessments, memoranda, factual bases and other written information that informed the Harding memo's estimate or projection of anticipated future claims from WTC toxic exposure.

5. With respect to the following provision of the *Air Transportation Safety and System Stabilization Act of 2001*, Pub. L. No. 107-42, 115 Stat. 230 (2001): **(3) Limitations on liability for New York City.**--*Liability for all claims, whether for compensatory or punitive damages or for contribution or indemnity arising from the terrorist-related aircraft crashes of September 11, 2001, against the City of New York shall not exceed the greater of the city's insurance coverage or \$350,000,000. 49 U.S.C.A. § 40101*

a. Written communications, dating from September, October and November 2001, such as correspondence, email, and memoranda, with all attachments, concerning limitations on liability for the City of New York ("City"), to the following individuals and offices:

- i. The White House and the Office of the Executive;
- ii. Any United States Senator and their office;
- iii. Any Committee of the United States Senate and/or its staff;
- iv. Any member of the U.S. House of Representatives or their staff;
- v. The United States Justice Department; and
- vi. United States Environmental Protection Agency.

c. Documents setting forth the names of consultants and consulting firms, lobbyists and lobbying firms, that worked with the City in the effort to secure the limitations on liability, referenced above.

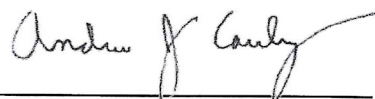
d. Documents setting forth the amount of compensation issued/paid by the City to the consultants and consulting firms, lobbyists and lobbying firms identified in response to request c., above.

e. Documents setting forth: the number of meetings (taking place in September, October and November 2001), dates of meetings, location of meetings, identity of those in attendance, concerning the efforts to secure the limitations on liability, set forth above,

along with summaries of meetings and copies of the written materials reviewed at each meeting.

Requests numbered 3, 4, 5b. and 6 through 28 are hereby withdrawn.

Very truly yours,



Andrew J. Carboy

Matthew McCauley

Matthew McCauley



(/)

FOIL-2023-002-00733 ⓘ

Title:

Records Concerning Preparedness for & Response to WTC Collapse

Open

Mayor's Office (OOM)

Due Date:

11/28/2025

Contact the Agency

Responses ⓘ

1

EXTENSION

Due to the volume of requests that we have received, we are extending the due date ...
Monday, 05/12/2025 at 2:34 PM

2

EXTENSION

Due to the volume of requests that we have received, we are extending the due date...
Tuesday, 02/18/2025 at 10:04 AM

3

EXTENSION

Due to the volume of requests that we have received, we are extending the due date ...
Monday, 11/18/2024 at 2:45 PM

4

EXTENSION

Due to the volume of requests that we have received, we are extending the due date ...
Tuesday, 08/20/2024 at 2:54 PM

5

EXTENSION

Due to the volume of requests that we have received, we are extending the due date ...
Monday, 06/24/2024 at 10:18 AM



Directory of City Agencies (<http://www1.nyc.gov/nyc-resources/agencies.page>)

Contact NYC Government (<http://www1.nyc.gov/home/contact-us.page>)

City Employees (<https://a127-ess.nyc.gov>)

Notify NYC (<http://www.nyc.gov/notifynyc>)

CityStore (<http://a856-citystore.nyc.gov/>)

Stay Connected (<http://www1.nyc.gov/connect/social-media.page>)

NYC Mobile Apps (<http://www1.nyc.gov/connect/applications.page>)

Maps (<http://www1.nyc.gov/nyc-resources/nyc-maps.page>)

Resident Toolkit (<http://www1.nyc.gov/nyc-resources/resident-toolkit.page>)

Search

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(/)

Your request has been submitted!



You can expect an acknowledgment from the City of New York within 5 business days. The agency will use the contact information you provided.

All messages from the City of New York and/or the information and documents you requested will be posted to this page.

FOIL-2025-002-00839 ⓘ

Title:

Under Review

Open

Mayor's Office (OOM)

Acknowledgment

Due Date:

09/12/2025

Contact the Agency

Responses ⓘ

The agency is working on a response.

Directory of City Agencies (<http://www1.nyc.gov/nyc-resources/agencies.page>)

Contact NYC Government (<http://www1.nyc.gov/home/contact-us.page>)

City Employees (<https://a127-ess.nyc.gov>)

Notify NYC (<http://www.nyc.gov/notifynyc>)

CityStore (<http://a856-citystore.nyc.gov/>)

Stay Connected (<http://www1.nyc.gov/connect/social-media.page>)

NYC Mobile Apps (<http://www1.nyc.gov/connect/applications.page>)

Maps (<http://www1.nyc.gov/nyc-resources/nyc-maps.page>)

Resident Toolkit (<http://www1.nyc.gov/nyc-resources/resident-toolkit.page>)

Search

FILED: NEW YORK COUNTY CLERK 09/14/2025 04:13 PM

NYSCEF DOC. NO. 38
of-use.page).

INDEX NO. 155678/2024

RECEIVED NYSCEF: 09/14/2025

From: Andrew Carboy <acarboy@carboylaw.com>
Sent: Friday, September 12, 2025 9:50:54 PM
To: Bernadette O'Donnell <bodonnell1@health.nyc.gov>
Cc: Keith Lin <klin4@health.nyc.gov>
Subject: Re: FOIL Control #: 2023FR01616

The requesting parties hereby modify/amend FOIL request # 2023 FR 01616

As modified/amended, we withdraw requests 3, 4, 5b. and 6 through 28. We seek responses to the following requests, only (original items at request numbers 1, 2 and 5a, c, d, and e):

1. 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")

2. Underlying documents, studies, reports, assessments, memoranda, factual bases and other written information that informed the Harding memo's estimate or projection of anticipated future claims from WTC toxic exposure.

5. With respect to the following provision of the Air Transportation Safety and System Stabilization Act of 2001, Pub. L. No. 107-42, 115 Stat. 230 (2001): (3) Limitations on liability for New York City.--Liability for all claims, whether for compensatory or punitive damages or for contribution or indemnity arising from the terrorist-related aircraft crashes of September 11, 2001, against the City of New York shall not exceed the greater of the city's insurance coverage or \$350,000,000. 49 U.S.C.A. § 40101

- a. Written communications, dating from September, October and November 2001, such as correspondence, email, and memoranda, with all attachments, concerning limitations on liability for the City of New York ("City"), to the following individuals and offices:
 - i. The White House and the Office of the Executive;
 - ii. Any United States Senator and their office;
 - iii. Any Committee of the United States Senate and/or its staff;
 - iv. Any member of the U.S. House of Representatives or their staff;
 - v. The United States Justice Department; and
 - vi. United States Environmental Protection Agency.
- c. Documents setting forth the names of consultants and consulting firms, lobbyists and lobbying firms, that worked with the City in the effort to secure the limitations on liability, referenced above.
- d. Documents setting forth the amount of compensation issued/paid by the City to the consultants and consulting firms, lobbyists and lobbying firms identified in response to request c., above.
- e. Documents setting forth: the number of meetings (taking place in September, October and November 2001), dates of meetings, location of meetings, identity of those in attendance, concerning the efforts to secure the limitations on liability, set forth above, along with summaries of meetings and copies of the written materials reviewed at each meeting.

Requests numbered 3, 4, 5b. and 6 through 28 are hereby withdrawn.

Law Offices of Andrew J. Carboy LLC
One Liberty Plaza, Floor 23
New York, NY 10006
212 520 7565

From: Bernadette O'Donnell <bodonnell1@health.nyc.gov>
Sent: Friday, October 6, 2023 4:15:51 PM
To: Andrew Carboy <acarboy@carboylaw.com>
Cc: Keith Lin <klin4@health.nyc.gov>
Subject: RE: FOIL Control #: 2023FR01616

Dear Mr. Carboy:

Based on both a backlog of Freedom of Information Law requests this agency is working through and the scope of your request, additional time will be needed to respond to your request. I anticipate that you will receive a response to this request by January 5, 2024.

I apologize for the delay.

Sincerely,
Bernadette O'Donnell
Records Access Officer

From: recordsaccess <recordsaccess@health.nyc.gov>
Sent: Friday, September 8, 2023 8:59 AM
To: acarboy@carboylaw.com
Cc: Bernadette O'Donnell <bodonnell1@health.nyc.gov>
Subject: FOIL Control #: 2023FR01616

FOIL Control #: 2023FR01616

Mr. Carboy,

The NYC Department of Health and Mental Hygiene (DOHMH) acknowledges receipt of your Freedom of Information Law request. It has been assigned the above-noted control number and has been processing. You should receive a response within twenty(20) business days. Please note that as of January 1, 2019, the Department charges the statutorily allowable fee of 25¢ per page for FOIL responses of records maintained in hard copy format only. All inquiries about the status of your request should be made with the control number noted above.

Thank you,

FOIL Administration

Office of the General Counsel
NYC Department of Health and Mental Hygiene - City of New York
42-09 28th St.,CN30, Long Island City, NY 11101
Telephone:347-396-6116 **Fax:**347-396-6087
Email: recordsaccess@health.nyc.gov | nyc.gov/health
sb

From: donotreply@records.nyc.gov <donotreply@records.nyc.gov>
Sent: Friday, September 8, 2023 7:03 AM
To: acarboy@carboylaw.com <acarboy@carboylaw.com>
Subject: [OpenRecords] FOIL Request Submitted to Department of Health and Mental Hygiene (DOHMH)

Your request has been emailed to the Department of Health and Mental Hygiene (DOHMH) because that agency is not yet using the portal to respond to FOIL requests. The details of your request are shown below. No further information will be available on the OpenRecords portal regarding this request.

Request Title: Records Concerning Preparedness for & Response to WTC Collapse

Request Description: The FOIL Request is set forth fully in the attached PDF letter

Attached File: FOIL_Request_9_8_2023_Signed.pdf: [FOIL_Request_9_8_2023_Signed.pdf](#)
Requester's Contact Information

Name:

Andrew Carboy (On Behalf Of Individuals Identified In Letter)

Title:

Attorney

Organization:

Carboy LLC

Email:

acarboy@carboylaw.com

Phone Number:

(212) 520-7565

Fax Number:

Not provided

Street Address (line 1):

One Liberty Plaza

Street Address (line 2):

Floor 23

City:

Not provided

State:

NY

Zip Code:

10006

Please contact the Department of Health and Mental Hygiene (DOHMH) via email at foil@health.nyc.gov for any further information.

Sent from the New York City Department of Health & Mental Hygiene. This email and any files transmitted with it may contain confidential information and are intended solely for the use of the individual or entity to whom they are addressed. This footnote also confirms that this email message has been swept for the presence of computer viruses.