



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, NY 10007

December 24, 2025

Re: FOIL-2023-002-00733 Appeal Decision

Dear Andrew Carboy:

This letter is in response to your December 12, 2025, e-mail appealing the Mayor's Office response to your request received on September 8, 2023, under the Freedom of Information Law, Public Officers Law § 84 *et seq.* ("FOIL"). Your original request is attached.

The Records Access Officer (RAO) acknowledged your request on September 8, 2023, and subsequently extended the projected response date. On September 7, 2025, you amended your request to only include sections 1, 2, 5(a)(i-vi), and 5(c-e). On December 12, 2025, you appealed on the basis that the RAO's actions to date constitute a constructive denial.

The Office of the Mayor takes seriously the importance of disclosing information to the public consistent with the law. Postponements are certainly to be avoided whenever possible; at times, however, they are necessary particularly when dealing with requests that require the careful review of a large number of documents. Reviewing records to determine if they are responsive and if they may be disclosed pursuant to the Public Officers Law § 87 is a time and labor-intensive process and every effort is made to respond to each request in as timely a manner as is possible.

I find that your request has not been constructively denied. Courts have repeatedly held that there are no absolute deadlines under FOIL. *See Matter of New York Times Co. v City of New York Police Dept.*, 103 A.D.3d 405, 407 (N.Y. App. Div. 2013) ("Public Officers Law § 89 (3) mandates no time period for denying or granting a FOIL request, and rules and regulations purporting to establish an absolute time period have been held invalid."); *Legal Aid Soc'y v. N.Y.C. Police Dep't*, 274 A.D.2d 207, 215 (N.Y. App. Div. 2000) ("section 89 (3) mandates no time period for disclosing records under FOIL"); *Matter of Gajadhar v. N.Y. Police Dep't*, 61 Misc. 3d 1218(A) (N.Y. Sup. Ct. 2018); FOIL-AO-14913 (Sept. 24, 2004) ("[T]here is no precise time period within which an agency must grant or deny access to records.").

Here, your request has multiple parts and requests records from over 20 years ago. These records require detailed searches and thorough review.

Accordingly, your appeal is denied. However, I am remanding the request to the RAO to produce any responsive records, subject to any applicable privileges or exemptions, by February 27, 2026.

You may seek judicial review of the latter determination pursuant to CPLR Article 78.

Sincerely,

Jeffrey Lowell  
Records Appeals Officer

**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 8, 2023

**FREEDOM OF INFORMATION LAW REQUEST TO CITY OF NEW YORK**

**By FOIL Portal:**

New York City Department of Design and Construction;  
New York City Department of Environmental Protection;  
New York City Department of Health;  
Office of the Mayor;  
New York City Law Department;  
New York City Office of Emergency Management; and  
New York City Council

**By U.S. Mail and Fax/Email:**

New York City Federal Affairs Office  
Attn: Crystal Price, Director  
601 New Jersey Avenue, Suite 410  
Washington D.C. 20001  
Fax: 202-624-5926

Mayor's Office of Intergovernmental Affairs  
Attn: Roberto Perez, Director  
City Hall, 2nd Floor  
New York, New York 10007  
Fax: 212-788-9711

City Council  
Danielle Barbato, FOIL Officer  
Office of the General Counsel  
250 Broadway, 15th Floor  
New York, New York 10007  
[dbarbato@council.nyc.gov](mailto:dbarbato@council.nyc.gov)

**We, 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. .**

through our attorneys, Law Offices of Andrew J. Carboy LLC and Turken Heath & McCauley LLP, seek immediate release of the following public information through the New York Freedom of Information Law:

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.
3. All documents setting forth the names and titles of recipients of the Harding memo in 2001 and 2002.
4. All documents setting forth the manner in which the Harding memo was communicated and the reasons for its communication in 2001 and 2002 (e.g., litigation; lobbying; inter-government communication; intra-government communication; Freedom of Information request).
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.
- b. All background and briefing materials, including assessments, surveys, studies, projections, risk projections, environmental testing data, and toxicological data, including from City agencies provided to Mayor Rudolph W. Giuliani in September, October and November 2001, and Mayor-elect Michael R. Bloomberg, in November 2001, with respect to proposed limitations on liability for the City in connection with efforts to secure such limitations.
  - 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.
6. With respect to daily public briefings held by Mayor Rudolph W. Giuliani (“Mayor”) in September, October and November 2001:
- a. Written materials for the substance of all of the briefings, provided in advance to the Mayor, such as texts, talking points, slide decks, graphs, and charts;
  - b. All draft briefings; and
  - c. All commentary provided to the Mayor about proposed briefings, and identifying the sender and/or commentator.
7. With respect to discussions, deliberations and/or debate concerning recent (2018-2023) requests for release of all City September 11<sup>th</sup>/World Trade Center disaster records to the public (e.g., February 16, 2023 letter request of Reps. Nadler and Goldman):
- a. All writings setting forth reasons as to why the records should not be released;

- b. All writings setting forth reasons as to why the records should be released; and
  - c. All assessments as to the “litigation risks” posed by release of some or all of the records.
- 8. Any memos, communications with respect to the reporting of New York Daily News columnist Juan Gonzalez from September, October, November or December of 2001.
- 9. Inventories, pre-dating September 11, 2001, of hazardous substances contained in WTC buildings, including but not limited to materials found in x-ray equipment, materials found in radiation oncology equipment, diesel fuel stored under WTC 7, polychlorinated biphenyls, asbestos, other radioactive materials, carcinogens, and materials known to have neurotoxic effects if released and/or subject to burning.
- 10. All exercises, projections, estimates, simulations, analyses, studies and reports, whether obtained by, created by or created at the direction of your agency/department from February 26, 1993 through September 10, 2001 concerning: a terrorist attack or potential terrorist attack on the World Trade Center Complex, disaster and/or rescue responses to such an attack; hazards resulting from such an attack, including release of contaminants/toxins from such an attack, including those resulting from structure collapses; mitigation measures considered to reduce hazards posed by release of contaminants/toxins from such an attack, including those resulting from structure collapses; evacuation protocol for surrounding neighborhoods and other geographic locations potentially or actually affected by the release of contaminants; and air quality issues and potential problems resulting from such an attack, including those resulting from structure collapses.
- 11. From February 26, 1993 through September 10, 2001: all exercises, simulations, directives, memoranda, reports and analyses concerning the aftermath of a potential terrorist attack on the World Trade Center, whether obtained by, created by or created at the direction of your agency/department.
- 12. All communications to and from the Port Authority of New York and New Jersey, such as letters, memoranda, reports, status updates and other writings (be they paper or electronic) dating from February 26, 1993 through September 10, 2001, concerning: A) the removal of asbestos containing materials (“ACM”) from the World Trade Center; B) recommendations for removal of ACM from the World Trade Center; C) hazards posed by the presence of ACM in the World Trade Center in the event of a disaster, such as a terrorist attack; and D) the significance of the February 26, 1993 World Trade Center bombing with respect to efforts to remove ACM.
- 13. All notes, memoranda and other writings created by the City Department of Design and Construction concerning information conveyed by the Port Authority of New York and New Jersey that subsequent to the 1993 World Trade Center bombing, a program to remove ACM

was initiated.

14. All notes, memoranda and other writings created by your agency/department concerning information conveyed by the Port Authority of New York and New Jersey that subsequent to the 1993 World Trade Center bombing, a program to remove ACM was initiated.
15. Documents setting forth the progress of efforts to remove ACM from the World Trade Center for the time period beginning February 26, 1993 and concluding on September 10, 2001.
16. Results of dust and air testing conducted outdoors and indoors at the World Trade Center between February 26, 1993 and August 1, 1993 whether conducted at the direction of your agency/department or obtained by your agency/department.
17. All communications, draft plans, draft directives, evaluations and assessments concerning the potential evacuation and duration of evacuation of neighborhoods in Brooklyn, New York following the collapse of the World Trade Center on September 11, 2001.
18. All communications, draft plans, draft directives, evaluations and assessments concerning the potential evacuation and duration of evacuation of neighborhoods in New York, New York following the collapse of the World Trade Center on September 11, 2001.
19. All communications between the City of New York, including the Law Department, the Mayor's Office, and other offices, and the World Trade Center Captive Insurance Company from 2017 to date, concerning:
  - a. Winding down and/or dissolution of the World Trade Center Captive Insurance Company;
  - b. The transfer of the funds held/invested by the World Trade Center Captive Insurance Company to the World Trade Center Health Program; and
  - c. Recommendations concerning possible dissolution of the World Trade Center Captive Insurance Company, whether supportive of dissolution or opposed to dissolution.
20. All communications to and from the Mayor's Office concerning future plans for the use of funds held/invested by the World Trade Center Captive Insurance Company in the event of a winding down or dissolution of the World Trade Center Captive Insurance Company.
21. All communications to and from the Law Department of the City of New York concerning future plans for the use of funds held/invested by the World Trade Center Captive Insurance

Company.

22. Draft legislation for additional federal protection of the City of New York from September 11<sup>th</sup> and World Trade Center-exposure related lawsuits, as referenced in the September 10, 2022 New York Post article entitled, “*NYC Refusing to Release 9/11 Records without Lawsuit Immunity.*”
23. From September 12, 2001 through April 2002, all communications to and from the City Department of Education from: A. The Mayor’s Office; and B. The Law Department of the City of New York concerning the reopening of public schools below Houston Street.
24. From September 12, 2001 through April 2002, all communications from the City of New York to the United States Department of Education concerning the reopening of public schools below Houston Street.
25. All records of protocols for testing and cleaning as well as clearance for occupation of each school below Houston Street from September 12, 2001 through April 2002.
26. As shared with, sent or delivered to the Mayor’s Office from September 11, 2001 through April 2002: all projections, estimates, and assessments as to the number of expected injuries resulting from exposure to toxins and products of combustion released from the World Trade Center Site.
27. As shared with, sent or delivered to the Law Department of the City of New York from September 11, 2001 through April 2002: all projections, estimates, and assessments as to the number of expected injuries resulting from exposure to toxins and products of combustion released from the World Trade Center Site.
28. As referenced in the letter of Mayor Eric Adams of March 22 , 2023 to the Hon. Jerrold Nadler and the Hon. Daniel Goldman, United States House of Representatives, documents, ***not publicly disclosed to date*** by the City of New York, concerning the collapse of the World Trade Center on September 11, 2001, including the release of toxins, and air or dust testing and reopening of schools. By letter to Mayor Adams, dated February 16, 2023, Representatives Nadler and Goldman sought

*information in the City’s records pertaining to the earliest analyses of the toxins, dust, and fumes blanketing lower Manhattan and Brooklyn;*

*the Harding memo and “any correspondence that led to his writing and drafting of this memo”*

*internal notes or memos regarding the Department of Education’s decision to move kids and teachers back into schools in the frozen zone below Houston. We know that there were parents who expressed strong concerns and even protested this move. What were the deliberations in the DOE? What testing was done to determine the safety of the schools?*

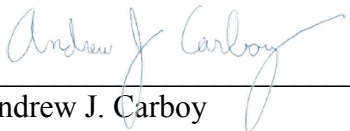
*Any records, communications, or memos from the New York City Departments of Health and the Environmental Protection that address the scope and toxicity of the WTC plume and the dust, and the exposures New Yorkers experienced*

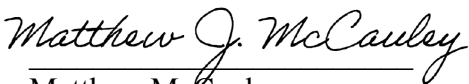
Mayor Adams responded, in his letter of March 22, 2003, that the City would not release this information absent *“necessary federal legislation to make production of documents...legally feasible.”*

Apparently, notwithstanding its obligations under the Freedom of Information Law, the City will not produce these materials absent desired and undefined “protection” from future liability claims it apparently fears the documents will substantiate.

All of the materials requested in this letter are subject to production under the Freedom of Information Law regardless of whether the City obtains such additional federal protection. Fear of wrongdoing being exposed does not shield public documents from disclosure under New York State law. After more than two decades shrouded in secrecy, this public information must be released, now.

Very truly yours,

  
\_\_\_\_\_  
Andrew J. Carboy

  
\_\_\_\_\_  
Matthew McCauley