



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

March 20, 2026

Re: FOIL-2023-002-00733 Appeal Decision

Dear Andrew Carboy:

This letter is in response to your March 8, 2026, 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 Mayor's Office responded to your appeal and remanded your request to the RAO with instructions to respond with any responsive records by February 27, 2026. The RAO responded on behalf of the Mayor's office, the Department of Design and Construction (DDC), and the New York City Law Department stating that the Mayor's Office and DDC conducted diligent searches and found no responsive records, and that the Law Department's records were not kept in a manner that allowed them to search for responsive records. You filed an appeal via email on March 8, 2026, claiming the response was insufficient.

The Office of the Mayor takes seriously the importance of disclosing information to the public consistent with the law. Public Officers Law § 89(3) does require the responding agency to certify that they conducted a diligent search. However, it does not require the agency to list who conducted the search, where and when it was conducted, and whether all likely repositories were reviewed. In *Rattley v N.Y. Police Dep't*, 96 N.Y.2d 873, the New York State Court of Appeals held that:

When an agency is unable to locate documents properly requested under FOIL, *Public Officers Law § 89 (3)* requires the agency to "certify that it does not have possession of [a requested] record or that such record cannot be found after diligent search." The statute does not specify the manner in which an agency must certify that documents cannot be located. Neither a detailed description of the search nor a personal statement from the person who actually conducted the search is required. Here, the Department satisfied the certification requirement by averring that all responsive documents had been disclosed and that it had conducted a diligent search for the documents it could not locate (*Matter of Gould v New York City Police Dept.*, 89 NY2d 267, 279). [***5] To the extent that some courts have held to the contrary, those decisions are not to be followed (*see, e.g., Matter of Key v Hynes*, 205 AD2d 779; *Matter of Bellamy v New York City Police Dept.*, 272 AD2d 120; *Matter of Sanders v Bratton*, 278 AD2d 10).

Rattley v N.Y. Police Dep't, 96 N.Y.2d 875.

However, given the historical importance of the requested records, and this administration's commitment to transparency, we provide the following:

The Mayor's Office searched all available records in the Enterprise Vault (EV) database (over 7200 email accounts) and searched for physical records in possession of the Mayor's Office at a storage facility on White Street. The EV database holds records dating back to 2002 with occasional records from prior years if the email account was active prior to 2002 and stayed active in 2002. Indeed, EV contains no email account for former Deputy Mayor Harding. The Mayor's Office searched for records relating to the Harding memo, and various combinations of the following search terms: 9/11, September 11th, toxins, World Trade Center, and WTC for the time period outlined in your request. The search yielded no responsive results. Records predating 2002 may possibly be in the possession of the City Archives which are maintained by the Department of Records and Information Systems (DORIS).

The NYC Department of Design and Construction conducted a comprehensive search by reviewing archived file inventories to identify potentially responsive materials, consulted with the remaining current DDC employees who had knowledge of the agency's work at the site to determine whether any relevant files could be recalled, and examined various paper and electronic files of World Trade Center related records. These efforts did not locate any files related to Deputy Mayor Harding's memorandum or air quality monitoring.

The Law Department is currently in the process of creating a public portal that will house records related to 9/11 air quality and health risks.

Accordingly, your appeal in relation to the Mayor's office and DDC is denied. However, I am remanding the appeal in relation to the Law Department based on public statements made by the Corporation Counsel, who stated that the Law Department is reviewing which documents can be posted to a public portal, what the cost of maintaining the portal would be, which documents cannot be released, and the cost of figuring out what can and cannot be released.

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

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey Lowell".

Jeffrey Lowell
Records Appeals Officer