

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,

Petitioner,

Index No.153916/2026

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

Motion Sequence #2  
Return date: July 6, 2026

-against-

THE CITY OF NEW YORK: OFFICE OF THE MAYOR,  
NEW YORK CITY LAW DEPARTMENT and  
NEW YORK CITY DEPARTMENT OF DESIGN and  
CONSTRUCTION,

Respondents.

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**OPPOSITION TO RESPONDENTS’ MOTION FOR A THIRD  
EXTENSION OF TIME TO ANSWER THE PETITION**

ANDREW J. CARBOY, duly licensed to practice law in New York State, and understanding this document will be submitted to the Supreme Court of New York County, affirms the following under penalties of perjury, including fines and jail:

1. I am a member of the Law Offices of Andrew J. Carboy LLC.
2. My firm and Turken Heath & McCauley LLP represent Petitioner Benjamin Chevat, Director of 911 Health Watch, Inc. (“911 Health Watch”), in this Article 78 proceeding. 911 Health Watch is a non-profit organization, advocating for first responders and survivors afflicted by toxic exposures from the World Trade Center collapse. Respondents are the Mayor’s Office of the City of New York (“Mayor’s Office”), the New York City Law Department (“Law Department”) and the Department of Design and Construction (“DDC”).
3. Petitioner challenges the respondents’ denial of his 2023 Freedom of Information Law

(“FOIL”) request for September 11<sup>th</sup> related public records. (See, NYSCEF #1 through #30: Petition, supporting affirmation and exhibits; NYSCEF #3 and #4: FOIL request and modification; NYSCEF #15 and #24: December 12, 2025 and March 8, 2026 administrative appeals; NYSCEF #16, #17 and #25: Denials and appeal denial)

4. We now oppose respondents’ request for a third extension of time to answer the Petition, served *three months ago*, in March 2026. (NYSCEF #1) Before stalling this proceeding, the Mayor’s Office granted itself twelve (12) extensions of time to delay responding to Petitioner’s underlying FOIL request for 2.5-years (30 months). (NYSCEF #5: Mayor’s Office self-granted FOIL extensions) The Mayor’s Office then denied the FOIL request. Article 78 proceedings are expedited reviews of government actions. Granting the motion ages this dispute to nearly three (3) years, and will only protract respondents’ resistance to disclosing the City’s September 11<sup>th</sup> archive. The issues Petitioner presents are ready for judicial determination, and no further time should be afforded to the Mayor’s Office and co-respondents to delay these proceedings, yet again.

**Respondents Now Concede they Have Records  
Responsive to Petitioner’s FOIL Request**

5. The Court should deny the requested extension and direct respondents to answer immediately. Respondents explain they are “*in the process of reviewing and producing responsive documents to Petitioner.*” (NYSCEF #36 at par. 15) This sequence defines prevailing. See, e.g., **Exhibit 1**: May 28, 2026 Decision and Order of Hon. James G. Clynnes in Chevat v. DEP, (Index No. 155678/2024): “*Here, Petitioner substantially prevailed because it was only after the commencement of this proceeding that Respondents produced documents responsive to Petitioner’s FOIL request*” for September 11<sup>th</sup> records. (citing Matter of Madeiros v NY State Educ. Dept., 30 NY3d 67 [2017]). This concession highlights that respondents had no reasonable,

lawful basis to deny access to the requested documents, and supports Petitioner's entitlement to a favorable determination.

6. The admission that responsive records are now being reviewed for production confirms that the Petition is ripe for judicial review. The Mayor's Office does not anticipate presenting information giving rise to triable factual issues. To the contrary, the new admission undercuts the previous assertion that no responsive September 11<sup>th</sup> related records could be located. Had the Mayor's Office simply produced these exact records, years ago, instead of fighting their release, Petitioner would not have initiated this proceeding.

7. The Mayor's Office fails to demonstrate reasonable basis for further extension, as required by CPLR Sec. 3012(d). The Mayor's Office does not need additional time for "*detailed investigation into the particular circumstances...and search efforts,*" as its counsel claims. (NYSCEF #36 at par. 13) The respondents are supposed to know their reasons for denying the underlying FOIL requests. They do not require multiple and generous extensions to "investigate" their refusals anew, now that an Article 78 proceeding is pending. Moreover, their counsel admits that responsive documents are forthcoming. The Court may appropriately rule as to whether the respondents acted arbitrarily and capriciously in adjourning and denying the FOIL requests and appeals in 2023, 2024, 2025 and 2026.

8. The application is conclusory, failing for lack of substantiation. At no point does counsel truly describe what she and the Law Department intend to do with additional time for answering. What information is missing and now sought in the purported "investigation" to answer? Who controls this information, now? When was the information requested? Why was it requested only *after* the filing of the Article 78 proceeding if respondents exercised due diligence in addressing the underlying FOIL requests? What efforts have respondents made, to date since

service of the Petition, to obtain this missing information? Without addressing these points, and in the absence of any reasonably defined actions to be undertaken going forward, the respondents do not meet their burden.

9. CPLR Sec. 7804(e) mandates respondents file an answer or serve a dispositive motion. There is no provision for indefinite, serial extensions. *“Should the body or officer fail either to file and serve an answer or to move to dismiss, the court may either issue a judgment in favor of the petitioner or order that an answer be submitted.”* Id.

10. After three (3) years, the Mayor’s Office, which, under Rudolph Giuliani, led the response to the September 11<sup>th</sup> attacks, has produced zero records of the most significant event in New York City history. The Mayor’s Office claims to maintain no records of the relevant time period, the fall of 2001. *“The search yielded no responsive results...for the time period outlined in your request...records pre-dating 2002.”* (NYSCEF #25) Petitioner seeks Court review of this entirely incredible assertion. Delaying review prejudices the public’s right to access records documenting City management of toxic contaminants generated by the World Trade Center collapse and the City’s awareness of resulting health hazards.

**The New Promise by the Mayor to Provide Responsive Documents Does Not Erase Years of Baseless Denials**

11. Counsel asserts respondents are now *“reviewing and producing responsive documents.”* (NYSCEF # 36 at par. 15) Petitioner welcomes this “about face,” but the Mayor’s Office should have produced these September 11<sup>th</sup> records over the past three (3) years, instead of denying they existed or could not be found.

12. The promise of forthcoming disclosure does not abrogate examination of the denials and appeal denials of the FOIL request. The records Petitioner requested exist and have remained in the custody of respondents for decades. The Mayor’s Office and respondents made a deliberate

decision to deny the request, defying the factual record and history. Judicial scrutiny of this stonewalling is now warranted.

13. It is particularly troubling for the Mayor's Office to engage in this obstruction. As is widely known, then Mayor Giuliani and the Mayor's Office played a lead role in the response. [See, e.g., In re World Trade Ctr. Disaster Site Litig., 456 F. Supp. 2d 520, 527, 2006 WL 2948819 (S.D.N.Y. 2006), *aff'd in part*, appeal dismissed in part, 521 F.3d 169, 2008 WL 783386 (2d Cir. 2008): "*the Mayor of the City of New York... issued a Mayoral Order on September 11, 2001, proclaiming a local state of emergency based on the danger to public safety posed by the attacks*" and directing local agencies "*to take whatever steps are necessary to preserve the public safety and...to protect the security, well-being and health of the residents of the City*"]

14. Although the City has long denied its existence, Petitioner obtained a copy of an early risk assessment circulated within the Mayor's Office, the so-called "Deputy Mayor Harding Memo." (NYSCEF #18) The City withheld the Harding memo from the New York Congressional delegation (since 2021; NYSCEF #9) and Petitioners (since 2023). Petitioners obtained it, independently, from an archive in Austin, Texas in February 2026. (NYSCEF #2 at pars. 65 and 93; NYSCEF #18) Respondents fail to explain their failure to locate this "smoking gun" document created by the Mayor's Office. The memo is an October 2001 assessment by the Giuliani Administration of City liabilities for miscommunications concerning air safety in lower Manhattan and the failure to provide respiratory protection to first responders. The Mayor's Office knew, at that early point, "*of potential lawsuits against the City*" for:

**Aftermath**

***Health advisories caused individuals either to return to the area too soon (causing toxic exposure or emotional harm) or too late (causing economic hardship)***

***Rescue workers were provided with faulty equipment or no equipment  
(i.e., respirators)***

15. And yet, after identifying these liability concern, the City's public proclamations of air safety continued. From September 12, 2001 to February 2002, the City assured New Yorkers with a single message: the air in lower Manhattan was "***safe and acceptable.***" (NYSCEF #22: compilation of air quality messaging by the City)

**Other Indicia that Respondents Maintain Responsive Records**

16. As detailed in the Petition and supporting exhibits, respondents maintain responsive records. They elected to withhold them from the City Council, New York's Congressional delegation and Petitioner over a period of years. No additional time should be granted them to further delay matters. Petitioner seek Court intervention for the release of the documents, and this proceeding should not function as a springboard for even more obstruction.

A. First, Petitioner demonstrates the Mayor's Office *previously located* these same documents, attempting to *barter them* in 2023 to members of Congress for financial benefit and legal protections. The Law Department and Mayor's Office are not only aware of specific and responsive records, they set them aside and siloed them, while resisting their disclosure. Reacting to efforts by the New York Congressional delegation to obtain these same records, starting in 2021, the Mayor's Office sought a *quid pro quo*. Having identified relevant materials, the City proposed to receive immunity, other legal protections, and "economic" support in exchange for the release of September 11<sup>th</sup> public records. (NYSCEF #9: Letter of Rep. Nadler and Rep. Goldman, dated February 16, 2023: "*Corporation Counsel attorneys clearly stated they have a strong incentive to keep any 9/11 aftermath documents privileged because otherwise, the city would be liable for those claims.*" Responding letter of Mayor Adams, dated March 22, 2023: "*We are happy to work with your offices to **determine potential federal funding sources and any***

*necessary federal legislation to make production of documents economically and legally feasible for the City of New York.”)*

B. Second, in 2002, twenty-four (24) years ago, the Law Department directed the Mayor’s Office to preserve all September 11<sup>th</sup>-related documents, indefinitely:

*These original World Trade Center documents have been collected and scanned by the New York City Law Department. **DO NOT DISPOSE OF THESE DOCUMENTS**: they must be preserved to serve as evidence in the event future WTC-related legal actions are brought against the City. (NYSCEF #8 at 2002 Preservation Letter)(Original emphasis)*

C. Third, on February 27, 2026 (NYSCEF #17), the Mayor’s Office acknowledged the existence of potentially responsive records at the Law Department, but claimed inability to search them for unspecified reasons, denying the FOIL request. For this “assertion” to be credible, one must assume the Law Department completed collection and scanning (NYSCEF #8), subjecting the documents to an indefinite hold, but without devising any means to search and access them.

D. Fourth, City Charter Section 1133(b) provides: “*No records shall be destroyed or otherwise disposed of by an agency, officer or employee of the city unless approval has been obtained from the commissioner of records and information services, the corporation counsel and the head of the agency which created or has jurisdiction over the records.*” Taken in conjunction with the Law Department’s scan and hold directive, this Charter mandate makes it even *more* likely that the requested records exist, remaining in respondents’ custody at the time of the subject FOIL denials.

E. In May of 2026, this Court determined that the City violated public records law, acting arbitrarily and capriciously in denying an identical FOIL request by Petitioner to the Department of Environmental Protection (“DEP”) for its September 11th archive. (**Exhibit 1**: May 28, 2026 Decision and Order of Hon. James G. Clynes in Chevat v. DEP, Index No. 155678/2024)

The DEP is even represented by the same Law Department attorney, Ms. Dhinsa. In the DEP proceeding, that agency, like the Mayor's Office, here, began producing records only after initiation of the Article 78 proceeding.

F. The "transfer" of the FOIL request back to the Law Department *from* the Mayor's Office (Respondent Atty Affirmation at par. 15) makes a mockery of New York's public records access laws. In fact, as demonstrated in the Petition, on March 11, 2024, the Law Department closed Petitioner's FOIL request, transferring all responsibility for answering *to* the Mayor's Office. The Law Department file remains closed, today, notwithstanding counsel's representation.

**(Exhibit 2)**

**From:** donotreply@records.nyc.gov <donotreply@records.nyc.gov> **Sent:** Monday, March 11, 2024 12:39 PM **To:** Andrew Carboy <acarboy@carboylaw.com> **Subject:** [OpenRecords] Request FOIL-2023-025-00368 Closed

The Law Department (LAW) has **closed** your FOIL request FOIL-2023-025-00368 for the following reasons:

The Mayor's Office will be responding to this request on behalf of the New York City Law Department. (NYSCEF #26)

17. Over a 2.5-year (30 month) period, the Mayor's Office granted itself twelve (12) extensions of time to respond to Petitioner's FOIL request. (NYSCEF #5: Mayor's Office self-granted FOIL extensions) The request to the Mayor's Office is now marked "closed" by the Mayor's Appeals Officer (NYSCEF #28), with no production of records. (NYSCEF # 17 and 25) At this time, the FOIL request to the Law Department remains closed, as it has been since 2024. **(Exhibit 2: Online portal records demonstrating Law Department and Mayor's Office FOIL files remain closed through June 26, 2026)**

18. The City's Freedom of Information Officers engage in misdirection to thwart this FOIL request, as demonstrated by the following sequence:

- a. On March 11, 2024, the Law Department **closed** Petitioner's FOIL request, directing all responsibility for answering to the Mayor's Office. (NYSCEF #26)
- b. On February 27, 2026, nearly two years later, the Mayor's Office, responding for itself **and** the Law Department, explained that there were no responsive records, as "diligent searches" could not locate them. (NYSCEF #17) Appeal Officer Lowell wrote that searches: "*have not identified any records responsive to your request under FOIL.*" Id. "*[T]he Law Department records are not maintained in a manner that allows it to search for records responsive to the request.*" Id.
- c. On March 20, 2026, the Mayor's Office, responding to Petitioner's appeal (NYSCEF #24) of the February 27, 2026 response (NYSCEF #17), "*remanded the appeal in relation to the Law Department based upon public statements made by the Corporation Counsel.*" (NYSCEF #25) The Mayor's Office **redirected** the FOIL response **back** to the Law Department, advising Petitioner to "stand by" and wait for the Law Department to post undescribed public records on an online "portal" at some indeterminate future point. Id. There is no way to read this determination without concluding the Law Department, which closed the FOIL request in 2024 (NYSCEF #26), is now, again, involved.

19. This head-snapping "back and forth" between City leaders and City lawyers, an effort to prevent any substantive disclosure, is highly improper. As noted, the Law Department closed Petitioner's FOIL request, two years ago, with obligations for its response transferred to the Mayor's Office. (NYSCEF #26). Petitioner had thirty (30) days to contest this "closure", but elected not to do so because the Mayor's Office assured it would respond for the Law Department. Redirecting the obligations back to the Law Department, in March 2026, is precluded by the doctrine of laches. "*The doctrine of laches is an equitable doctrine which bars the enforcement of a right where there has been an unreasonable and inexcusable delay that results in prejudice to a party.*" Bank of Am., N.A. v. Latif, 243 A.D.3d 753, 755 (2<sup>nd</sup> Dept. 2025) With foreknowledge of such gamesmanship and misdirection, Petitioner would have pursued a timely administrative appeal and an Article 78 proceeding against the Law Department in 2024. At that point, who could have imagined the maneuvering we see, two years later, in 2026?

20. The original return date of this proceeding was May 1, 2026 (NYSCEF #29), with the

Mayor's answer due April 25, 2026, pursuant to CPLR Sec. 7804(c). Petitioner afforded respondents the courtesy of two initial adjournments. (NYSCEF #36 at par. 6)

21. When it became clear that respondents squandered the extra time conferred to them, by email dated June 15, 2026 (**Exhibit 3**), we advised that:

*We do not consent to further extensions for the Mayor's Office to respond to this Article 78 proceeding concerning its failure to disclose September 11th related public documents.*

*As a courtesy, Petitioner previously agreed to more than forty-five (45) days of adjournments, signing two stipulations you prepared as the Mayor's counsel. (NYSCEF #32; NYSCEF #33)*

*We see no evidence that affording extra time results in anything but the Mayor requesting even more extensions.*

*The Mayor's Office repeatedly followed this exact pattern in responding to our initial request for the City's September 11 archives, long before Law Department involvement.*

*As you may recall, the Mayor's Office postponed responding to Petitioner's underlying September 2023 FOIL request twelve (12) times, unilaterally, before ultimately denying the request (February 27, 2026) and appeal (March 20, 2026). Our Article 78, detailing this troubling history (NYSCEF #1 through #29), must move forward.*

22. Prejudicing Petitioner, over a 2.5-year (30 month) period, the Mayor's Office granted itself twelve (12) extensions of time to respond (NYSCEF #5). Respondents assert they undertook a diligent search and could find no records, as set forth in the FOIL rejections and denials of appeal. (NYSCEF #16, #17, #25 and #28) We fail to understand, and respondents provide no explanation, as to why this "stock" position will not be repeated, yet again, in their future answer to the Petition. Reassertion of diligence requires little attorney time. This latest bid for an extension will not result in anything more than a future request for yet another delay. The Mayor's Office does not prove otherwise.

### Conclusion

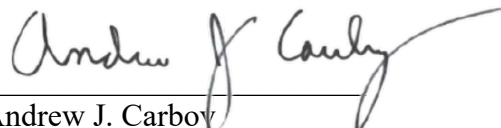
For the reasons set forth above and in his original submission (NYSCEF #1 through #29), respondents' motion should be denied, and Petitioner demonstrates entitlement to the following relief:

- A) A declaration that the March 20, 2026 FOIL appeal denial (NYSCEF #25) was arbitrary and capricious as the respondents failed to establish, with any precision or evidence, that a diligent search for the requested materials was actually performed;
- B) An Order directing the Mayor's Office, answering on behalf of itself, the Law Department and DDC, to search 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 March 20, 2026 FOIL appeal denial (NYSCEF #25) was arbitrary and capricious as the respondents failed to establish, with any precision or evidence, that the requested materials do not exist and, in fact, support the contention that responsive documents exist and remain within their custody and control;
- D) As Petitioner demonstrates that the requested materials do, in fact, exist, a hearing to ascertain the scope and duration of any search previously undertaken by the Mayor's Office in response to the FOIL request, with live testimony taken from the Records Appeal Officer and any participating record "searchers;"
- E) Attorneys' fees and costs incurred in taking the first administrative appeal and second administrative appeal (NYSCEF #15: December 12, 2025 appeal; NYSCEF #24: March 8, 2025 appeal); and

F) Attorneys' fees and costs incurred in bringing this Article 78 proceeding and for all motions, future motions, appearances, conferences, arguments, depositions, discovery, appeals, hearings and related work.

June 26, 2026

Very truly yours,

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

*Matthew McCauley*

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Matthew McCauley