

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,

Index No.

Petitioner,

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

-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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ATTORNEY’S AFFIRMATION IN SUPPORT OF THE VERIFIED PETITION

ANDREW J. CARBOY, duly licensed to practice law in the State of New York, 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. We challenge respondents’ denial of his 2023 Freedom of Information Law (“FOIL”) request. (**Exhibits 1 and 2:** FOIL request and modification; **Exhibits 13 and 22:** December 12, 2025 and March 8, 2026 administrative appeals; **Exhibits 14, 15 and 23:** Denials and appeal denial)
3. After 2.5-years, a dozen postponements, multiple FOIL denials and rejection of

Petitioner's administrative appeals, the City of New York ("City") provided *zero records* of its response to the most significant events in City history: the September 11th attacks and resulting collapse of the World Trade Center. City officials "commemorate" this tragedy's twenty-fifth anniversary by *refusing to open* the September 11th archive of the Mayor's Office and Law Department. Worse, these same officials *deny the existence* of relevant records or claim inability to find them, even as Petitioner identifies the documents with precision. Most disturbingly, Petitioner demonstrates the City *previously located* these same documents, attempting to *barter them* in 2023 to members of Congress for financial benefits and legal protections.

4. 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").

5. 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 that should be freely available to the public.

6. Pursuant to the Freedom of Information Law ("FOIL"), on September 8, 2023, our clients requested records from the Mayor's Office (FOIL #2023-003-00733), Law Department (FOIL #2023-025-00368) and DDC (FOIL #2023-850-00138) regarding the response of the City to the collapse of the World Trade Center, along with historical documents and disaster preparation materials. (**Exhibits 1 and 2**) These public records concern risk assessments made by the City for

the reopening of lower Manhattan in September 2001, and the City's knowledge of airborne toxic hazards, existing at that time.

7. We seek to understand why the Mayor requested liability protection from toxic exposure claims while the City repeatedly reassured air quality remained “*safe and acceptable*” after the World Trade Center collapse. (**Exhibit 20:** compilation of City air quality assurances, September 2001 through February 2002) Millions relied upon this public messaging, returning to live, work and study in lower Manhattan.

8. As the Mayor's Office understood, by October 2001, if not well before: “***Potential lawsuits against the City include health advisories causing individuals to return to the area too soon (causing toxic exposure).***” (**Exhibit 16:** October 2001 memorandum to Deputy Mayor Robert Harding, privately obtained by Petitioner in 2026) As the City continued to pronounce the air “safe,” it lobbied the White House and legislators, behind the scenes, for liability protection covering its proclamations. The City even fretted such advocacy, with explication of its concerns, would worsen matters. “*By advocating...we may be inviting litigation.*” (**Exhibit 16**)

9. In response to the Mayor's quiet campaign, the federal government conferred limitations of liability to the City on November 19, 2001. (**Exhibit 21:** Amendment to the Air Transportation Safety Systems and Stabilization Act of 2001) Simultaneously, the City's air quality declarations continued unchanged. (**Exhibit 20:** for example, September 28, 2001: “*air quality is safe and acceptable*”; October 5, 2001: conditions “*do not pose long-term health risks to the general public*”; and February 11, 2002: “*The data from air quality tests thus far have been, in general, reassuring. None ...indicate long-term health impacts.*”) Lower Manhattan “returned to normal” with such encouragement.

10. As hundreds of thousands of workers, residents, and students developed illnesses from

resulting toxic exposures, the public should learn full details of this twenty-five (25) year-old arrangement protecting the City's air safety messengers. *What did the City know about airborne toxic hazards, and when did it obtain this information? Why did the City's air quality messaging remain constant, even after the Harding memo's expressed concerns? Where are the risk assessments and studies informing the Harding memo and the City's 2001 lobbying efforts to protect itself from negligence claims arising from air quality pronouncements?*

11. The Law Department and Mayor's Office continue to fight disclosure of these September 11th records, notwithstanding the recent pledge of new Corporation Counsel, Steve Banks, to release them. (**Exhibit 17** and video of hearing: <https://www.youtube.com/watch?v=C1My8lC6V6E>) This "disconnect" between career bureaucrats and a new administration is antithetical to government transparency and New York's public records laws.

12. Petitioner requested the Harding memo, discussed above, and its bases. (**Exhibits 1 and 2**) The Harding memo attracted widespread attention after the City refused its release to the New York Congressional delegation. (**Exhibit 7**: 2021-2024 requests of Reps. Maloney, Nadler and Goldman to Mayors de Blasio and Adams) Petitioners obtained this Mayor's Office record, privately, in late January 2026 (**Exhibit 16**) The reports, studies, assessments and data informing the Harding memo remain locked away. (**Exhibits 1 and 2**)

13. New York's congressional delegation has sought September 11th-related records from the Mayor's Office since 2021. Although the Mayor's Office identified responsive documents, it declined to release them to Representatives Nadler, Maloney, and Goldman absent valuable *quid pro quos*—conditions neither contemplated by nor permissible under FOIL. The City's secret

September 11th archive may be of tremendous public health and historical value, but should not be “sold” by its keepers. These records must be released without profit or gain.

14. On March 11, 2024, the Law Department closed Petitioner’s FOIL request, transferring all responsibility for answering to the Mayor’s Office.

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. **(Exhibit 24)**

15. Over a 2.5-year (30 month) period, the Mayor’s Office granted itself twelve (12) extensions of time to respond. **(Exhibit 3: Mayor’s Office self-granted FOIL extensions)**

16. The FOIL request to the Mayor’s Office is now marked “closed” by the Mayor’s Appeals Officer **(Exhibit 26)**, with no production of records. **(Exhibits 15 and 23)** We now demonstrate the existence of responsive records, challenging the refusal of the Mayor’s Office, Law Department and DDC to conduct diligent searches and produce them.

17. On December 12, 2025, Petitioner filed a first administrative appeal, asserting that protracted delays, spanning more than two (2) years, functioned as a constructive denial. **(Exhibit 13)**

18. On December 24, 2025, Jeffrey Lowell, the Mayor’s FOIL Appeals Officer denied the first appeal. **(Exhibit 14)** *“However, I am remanding the request to the RAO to produce any responsive records...by February 27, 2026.”* “RAO” is a reference to “Records Access Officer,” ostensibly a different individual. In remanding the records request, Officer Lowell advised that Petitioner *“may seek judicial review of the latter determination pursuant to CPLR Article 78.”* Id.

This proceeding seeks such judicial review of the February 27th “response” (**Exhibit 15**), made by Officer Lowell, along with the City’s denial of our second appeal, another Officer Lowell decision. (**Exhibit 22**: March 8, 2026 2nd Appeal; **Exhibit 23**: March 20, 2026 Denial of 2nd Appeal). Foreshadowing the bureaucratic “sleight of hand” to come, Lowell, the Appeals Officer, remanded the request to *himself*, in his capacity as the so-called “Access Officer,” providing the “response” of February 27, 2026. (**Exhibit 15**)

19. References made in Lowell’s three letters, all signed by him: **Exhibit 14** (“*I am remanding the request to the RAO to produce any responsive records, subject to any applicable privileges or exemptions, by February 27*”) **Exhibit 15** (February 27th: “*This is a response to your request*”) and **Exhibit 23** (“*The RAO responded on behalf of the Mayor’s Office,...DDC and....Law Department*” on “*February 27, 2026*”) demonstrate that Officer Lowell functions as both “Records Access Officer” (“RAO”) and “Appeals Officer.”

20. New York law prohibits the Mayor’s Records Access Officer from acting in the dual capacity of Appeals Officer. 21 NYCRR Part 1401.2 requires respondent to designate a records access officer. Part 1401.7(a) governs the appointment of a records appeal officer, a second individual, with part (b) mandating “the records access officer shall not be the appeals officer.” **Exhibits 14, 15** and **23** demonstrate the Mayor’s officer served both roles. Appeals Officer Lowell, sitting in judgment of himself, reviewed the propriety of his actions as a searcher or “RAO,” ruling favorably for respondents. (**Exhibit 23**) Such procedural derangement violates New York law and due process, but is “*business as usual*” to obstruct September 11th disclosures.

21. On February 27, 2026, the Mayor’s Office, responding for itself and the Law Department (“*Mayor’s Office is also responding on behalf of the New York City Law Department*”), notified Petitioner it had no responsive records. (**Exhibit 15**)

Officer Lowell wrote that searches:

“have not identified any records responsive to your request under FOIL.”

Id.

“the Law Department records are not maintained in a manner that allows it to search for records responsive to the request.” Id. (Exhibit 15)

The Mayor’s Office and Law Department Provide Links to Stale Federal Records, Decades Old and Long in the Public Domain

22. The February 27, 2026 “response” functioned as a denial, providing nothing more than internet links to public information, half of which originated with federal agencies or Congress, widely available for decades. Id. Officer Lowell “helpfully” offered “links” to “publicly available data and research regarding the toxins...” Id. These linked records include a 2003 report from the Inspector General of the U.S. Environmental Protection Agency, 2004 Congressional testimony by Janet Heinrich (U.S. Govt Accountability Office), and proposed regulations from the U.S. Department of Health & Human Services, circa 2012. Id. The absurdity of the February 27 “response” from the Mayor and Law Department was eclipsed only by its uselessness. Did it really take the Mayor’s Office and Law Department thirty (30) months to search Google for “EPA,” “World Trade Center,” and “New York City?”

23. And yet, on February 4, 2026, three weeks, earlier, incoming Corporation Counsel, Steve Banks, testified before New York City Council Committee on Rules, Privileges, Standards, Ethics and Elections. In response to questioning by Speaker Menin and Member Brewer, the City’s chief attorney pledged disclosure of the City’s September 11th archive. *“We are going to review what we have, what others have and release or make available what can be made available.”* There was a single caveat: Mr. Banks voiced objection to releasing confidential medical information. In addition, as to the Council resolution directing investigation of the City’s refusal to disclose its September 11th archive, Mr. Banks testified, *“I am supportive of your law.”*

(**Exhibit 17**) (See also, video of hearing, available at: <https://www.youtube.com/watch?v=C1My8lC6V6E>)

24. However, career staff at the Mayor’s Office and Law Department, operate with a different commitment to transparency, as demonstrated by the FOIL denials and rejections of Petitioner’s appeals.

25. Petitioner’s March 8, 2026 administrative appeal (**Exhibit 22**) addressed the “links” provided on February 27th:

The official February 27th “response” results from a cursory online search, reminiscent of one done in a junior high school civics class.

After what you describe as a “diligent search” for records concerning the most significant event in City history, killing 2,753 immediately and sickening hundreds of thousands, many fatally, you provide nothing more than internet links to a handful of ancient documents. (**Exhibit 15**) How are the Mayor’s Office and Law Department able to treat this request so casually?

We sought previously undisclosed City documents, not stale federal records.

We did not submit our FOIL request and prepare an earlier appeal (**Exhibit 13**), spending hours of attorney time, for this pitiful result. Providing this internet “search list” mocks the Freedom of Information Law, the City’s legal obligations, and all affected by the September 11th disaster. (See **Exhibit 22**: March 8, 2026 Appeal)

26. The March 8, 2026 appeal demonstrated: that no diligent search was performed for the records; that the requested records exist; and the records are searchable. The respondents provided no basis under FOIL to withhold the requested information. Id.

27. On March 20, 2026, Record Appeal Officer Lowell denied the second appeal. (**Exhibit 23**)

28. Even as a new Corporation Counsel pledges “transparency” and the release of the September 11th archive, in the corridors of the Law Department and the dimmer corners of City Hall, career officials continue their grinding resistance.

29. Accordingly, Petitioner seeks the following relief:
- A) A declaration that the March 20, 2026 FOIL appeal denial (**Exhibit 23**) 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) As Petitioner demonstrates, below, that the requested materials do, in fact, exist, a declaration that the March 20, 2026 FOIL appeal denial (**Exhibit 23**) 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 the requested materials do, in fact, exist, a hearing to ascertain the scope and duration of any search previously undertaken 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 (**Exhibit 13**: December 12, 2025 appeal; **Exhibit 22**: March 8, 2025 appeal); and
 - F) Attorneys’ fees and costs incurred in bringing this Article 78 proceeding and for all future motions, appearances, conferences, arguments, depositions, discovery, appeals, hearings and related work.

Introduction

Rather than Respond, the Mayor’s Office Distracts, Redirects and Deceives, Playing “Three-Card Monte” with 9/11 Records to Make Them “Vanish”

30. City officials continue to hide these public records, employing distraction, redirection and deception to do so, like old-school hustlers running a three-card monte game. Their shameful achievement is to make records of the most significant event in New York City history “disappear.”

31. **Distraction**

Rather than respond by providing actual City documents, Appeals Officer Lowell, acting in a dual-role of records searcher, distracts by providing stale internet links to decades-old, widely available federal documents, described above. (**Exhibit 15:** February 27, 2026 Lowell “response”)

32. Appeals Officer Lowell distracts, yet again, by celebrating “*public statements made by the Corporation Counsel...that the Law Department is reviewing which documents can be posted to a public portal.*” (**Exhibit 23:** March 20, 2026 Lowell appeal denial at closing paragraph) He instructs Petitioner to wait, indefinitely longer, for such “posting” to begin. *Id.* This is not an appropriate, timely or lawful FOIL response.

33. Corporation Counsel Banks’ testimony has no direct bearing on the disposition of this FOIL request. Neither Mr. Banks nor Law Department attorneys have negotiated with or even contacted Petitioner to resolve this dispute. Mr. Banks did not reference this particular FOIL request in his testimony (See also, **Exhibit 17**) Essentially, the City’s new chief lawyer pledged to follow the law. His fealty to the rule of law is not a FOIL response from the Mayor’s Office or Law Department. In the meantime, after 2.5 years of delay, culminating in the release of no records, the respondents officially *closed* Petitioner’s FOIL request, their counter-tribute to transparency. (**Exhibits 26 and 24**)

34. The Freedom of Information Law “imposes a broad duty on government to make its records available to the public. (Public Officers Law Sec. 84 [legislative declaration]) New York Courts have long held that “all government records are presumptively open for public inspection unless specifically exempted from disclosure as provided in the Public Officers Law Sec. 87(2).” Fappiano v. New York City Police Department, 95 N.Y.2d 738, 746 (Ct. App., 2001). Under FOIL, City “records are presumptively open to public inspection, without regard to need or purpose of the applicant.” Beechwood Restorative Care Ctr. v. Signor, 5 N.Y.3d 435, 440-41 (Ct. App. 2005) If Mr. Banks supports releasing public records, he is simply endorsing longstanding New York law, the same law respondents do not abide by.

35. If Mr. Banks envisions September 11th-related FOIL disclosures posted to a public portal, at some future date, we remind the Mayor’s Office and Law Department that a City public records portal has existed for years. (Local Law 11 of 2012 mandates public data be made freely available on a single web portal;¹ Local Law 251 of 2017 requires all public datasets be published on the City’s Open Data Portal, with all City agencies appointing an Open Data Coordinator)

36. That Mr. Banks’ commitment to obey the law is newsworthy at all underscores the the City’s quarter century of obstruction to releasing its September 11th archive. Even today, the Mayor’s Appeals Officer invokes Mr. Banks’ 2026 aspirations for future release of public records to deny Petitioner’s FOIL 2023 request. The Court should neither condone such a cynical tactic nor be “distracted” by it. Mr. Banks is making a promise that City bureaucracy does not honor. No one should be dazzled by references to this pledge or to dated internet “links.”

¹ *“The council hereby finds and declares that it is in the best interest of New York city that its agencies and departments make their data available online using open standards. Making city data available online using open standards will make the operation of city government more transparent, effective and accountable to the public.”* Id.

37. **Misdirection**

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. (**Exhibit 24**)
- 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. (**Exhibit 15**) 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 (**Exhibit 22**) of the February 27, 2026 response (**Exhibit 15**), "*remanded the appeal in relation to the Law Department based upon public statements made by the Corporation Counsel.*" (**Exhibit 23**) 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 (**Exhibit 24**), is now, again, involved.

38. This head-snapping "back and forth" between City leaders and City lawyers, an effort to prevent any substantive disclosure, is highly improper.

39. As noted, the Law Department closed Petitioner's FOIL request, two years ago, with obligations for its response transferred to the Mayor's Office. (**Exhibit 24**). 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 (2nd 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 such trickery, two years later, in 2026?

40. City Hall treats the Freedom of Information Law like a rigged card game, staged atop a cardboard box on a sidewalk. Here, September 11th first responders and survivors, seeking the facts of toxic exposure, are the “marks,” left without answers after their tireless work to obtain them. The FOIL appeal denial from their government might as well read, “*Thanks for playing.*”

Additional Misdirection

41. In another redirection from the Law Department and Mayor’s Office files, Appeals Officer Lowell suggests “*[r]ecords predating 2002 may possibly be in the possession of the City Archives which are maintained by the Department of Records and Information Systems (DORIS).*”

(Exhibit 23)

42. With respect to DORIS, touted as a source of records for Petitioner to now search through (Exhibit 23 at p. 2), the Mayor’s Office omits key details. According to its website, DORIS *may* store certain 2001 files of Deputy Mayor Harding and Mayor Giuliani’s Chief of Staff, Anthony Carbonetti; however these files are “**unprocessed,**” remaining *unavailable to the public* until completion of review by City personnel, such as the ones responsible for obstructing Petitioner’s FOIL request. (Exhibit 25: DORIS website screenshots; and see, links, below for DORIS webpages:

<https://a860-collectionguides.nyc.gov/repositories/2/accessions/2107>;
<https://a860-collectionguides.nyc.gov/repositories/2/accessions/1894>; and
<https://a860-collectionguides.nyc.gov/repositories/2/accessions/1983>.)

43. DORIS advises that “**unprocessed collections** may include protected information

related to personal privacy, health information, and minors, as well as attorney-client privilege. In accordance with laws and regulations, this material will be reviewed prior to providing public access and certain records may be subject to redaction or other measures that restrict access.”

Id. Such files await review by respondents before any disclosure. To satisfy a FOIL request through DORIS, the government must “*make high resolution copies of the records publicly available through a link on DORIS’s website, which fully satisfies their obligations.*” Reclaim the Recs. v. City of New York, 214 A.D.3d 489, 489–90 (1st Dept. 2023) citing In the Matter of Sell v. New York City Dept. of Educ., 2014 WL 2451130 (Sup. Ct., N.Y. County 2014), mod on other grounds 135 A.D.3d 594 (1st Dept. 2016); and Comm on Open Govt FOIL–Advisory Opinion –16470 [2007].

44. Respondents fail to satisfy these FOIL criteria, and their misdirection to “DORIS” is meaningless.

45. **Deception**

The March 20, 2026 response (**Exhibit 23**), like the February 27, 2026 response (**Exhibit 15**) makes a number of claims devoid of credibility. Among the incredible assertions:

- A. First, City Hall cannot locate any “Harding memo” or even confirm details of Deputy Mayor Robert Harding’s tenure. There is not even any record of an “*email account for former Deputy Mayor Harding.*” (**Exhibit 23**)
- B. Second, the Mayor’s Office only searched a single database, the so-called “EV database.” Id.
- C. Third, the Mayor’s Office advises it maintains 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.*” Id.
- D. Fourth, while acknowledging the existence of responsive Law Department records, the Mayor’s Office claims an inability to search them, citing unspecified “formatting” reasons. (**Exhibit 15**) For this “assertion” to be credible, one must assume the Law Department completed its collection and scanning campaign of all relevant City agency documents, detailed below, subjecting the records to an

indefinite hold, but without devising any means to search and access them. (See, pars. 48-49 and 55-61, below)

46. Is the Mayor's Office really suggesting there are no records of Deputy Mayor Robert Harding within its control? What would Robert Harding, now working in the private sector, do if he needed employment verification from City Hall, next week? And where are the records from September through December 2001, obviously most critical to investigation of the City's response to the World Trade Center collapse? Setting aside these points, there are indicia that the documents sought do, indeed, exist and encompass the fall of 2001.

47. In 2002, the Law Department directed the Mayor's Office to preserve all September 11th-related documents:

*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. (Exhibit 6 at 2002 Preservation Letter)(Original emphasis)*

48. In its February 27, 2026 response (**Exhibit 15**), the Mayor's Office acknowledges the existence of potentially responsive records at the Law Department, but claims inability to search them for unspecified reasons. For this "assertion" to be credible, one must assume the Law Department completed collection and scanning (**Exhibit 6**), subjecting the documents to an indefinite hold, but without devising any means to search and access them.

49. 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 scan and hold directive of the Law Department (**Exhibit 6**), this Charter mandate makes it even *more* likely that the requested records exist, remaining in respondents' custody.

50. In response 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 11th public records. (See, **Exhibit 7**: 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.*") Petitioners seek the information the City identified but denied to Congress. These public documents exist; in 2023, the City planned to barter them. The Court should direct their immediate disclosure of these materials.

51. Additional details concerning the records' existence are provided, below.

52. The February 27, 2026 letter cites the City's inability to identify "*any records responsive to your request under FOIL.*" (**Exhibit 15**) The Mayor's Office further advises that its search "yielded no responsive results," finding no "records predating 2002." (**Exhibit 23**) The City Department of Environmental Protection ("DEP") made an equally baseless assertion during *its* initial responses to our FOIL request. The outcome is instructive.

53. After fighting Petitioner and denying the existence of any September 11th-related records for two years, rejecting his FOIL administrative appeal and moving to dismiss his Article 78 proceeding, the DEP now admits possession of 68 boxes worth, some 340,000 pages. (See,

Chevat v. NYC DEP, 155678/2024 Supreme Court of New York County, incorporated by reference in its entirety: Document List) We now seek sworn testimony from DEP decision makers responsible for the obstruction, along with attorneys' fees and costs. Id.

54. The Freedom of Information Law “imposes a broad duty on government to make its records available to the public. (Public Officers Law Sec. 84 [legislative declaration]) Moreover, access to government records does not depend on the purpose for which the records are sought.” Gould v. New York City Police Dep't, 89 N.Y.2d 267, 274 (Ct App. 1996) Respondents provide no justification or objection, under Public Officers Law Sec. 87, to withhold the requested documents. Liability concerns, such as those expressed to Congress, and “embarrassment” are not lawful FOIL objections.

55. There is considerable evidence that the documents Petitioner seeks exist. Due to its collection, scanning and preservation of September 11th-related records, the Law Department maintains them. The Law Department also instructed original document creators/custodians to retain the records, indefinitely.

56. Respondents professed inability to locate or search potentially responsive records. “*The Law Department’s records are not maintained in a manner that allows it to search for records responsive to the request.*” (**Exhibits 15 and 23**) This assertion is untrue, for the reasons set forth below.

A. The City Maintains Ready Access to September 11th Records

57. Respondents fail to demonstrate that the records are not accessible. “*At a CPLR article 78 proceeding to challenge an agency's denial of access to the documents on this ground, the agency has the burden to demonstrate that it cannot retrieve the requested documents ...*” Wagner v. New York City Dep't of Educ., 2025 N.Y. Slip Op. 05783, 2025 WL 2955704, at *3 (Ct. App.

2025) Respondents cannot meet this burden. The City September 11th archives are accessible and searchable, as demonstrated below.

Law Department Collected, Scanned and Catalogued September 11th Records

58. The Mayor's Office received a special 2002 directive from the Law Department's "World Trade Center Unit," a task force addressing September 11th-related legal issues. (**Exhibit 6**) Without qualification, the World Trade Center Unit ordered preservation of all documents concerning the City response to the WTC collapse. The World Trade Center Unit directed the Mayor's Office, as follows:

*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. (**Exhibit 6** at 2002 Preservation Letter)(Original emphasis)*

59. To accept the February 27, 2026 and March 20, 2026 (**Exhibits 15** and **23**) responses as credible, one must assume the Law Department completed this collection and scanning campaign, subjecting the documents to an indefinite hold, but without devising any means to search and access them. Why would a specialized legal defense team, created with great fanfare and a formal press release (**Exhibit 6**), do something so useless or incompetent? Were the scanned files not labeled or titled? Are the PDF documents simply numbered, sitting unsorted and unidentified on hard drives or in cloud storage? Is there no index of them? Aren't the documents searchable? The Mayor's Office answers none of these basic information technology questions. The "accessibility" excuse is pretext for obstruction.

60. At inception, the Law Department's World Trade Center Unit employed twenty-five attorneys, seventeen support members, including private investigators, and a large complement of legal assistants and data entry clerks. It stood ready to defend against an anticipated "*litigation*

explosion” of September 11th-related claims. (**Exhibit 6** at press release) A September 11th archive of City records, compiled, maintained and preserved in accessible and searchable formats, would be foundational to the World Trade Center Unit’s mission. The FOIL denials fail to address this reality.

61. The Law Department also boasts of “Litigation Management” and “Electronic Discovery” teams. (**Exhibits 18 and 19**) These specialized groups manage “*tens of millions of documents,*” “*implement legal holds, collect and process electronic data, set up document reviews,*” and operate “*the Law Department's document management system.*” Such sophisticated information management further undercuts the City’s contentions.

The City Identified Responsive Documents as a Result of a Congressional Inquiry

62. In response to the efforts of 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 asked for immunity, other legal protections, and “economic” support for the release of September 11th public records, records that should be freely available. (See, **Exhibit 7**: 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.*”) The information the City identified for bargaining has never been disclosed, though it almost certainly exists.

B. FOIL Responses of the Law Department and Mayor's Office Conflict with Recent Movement Toward Opening the September 11th Archive

63. Although this latest obstruction is consistent with longstanding resistance to opening the September 11th archive, the FOIL denial conflicts with the following developments.

- i) On November 25, 2025, Mayor Adams promised disclosures from the City's September 11th archive. He spoke concerning the Article 78 proceeding addressing DEP's failure to comply with our FOIL request. (See, Chevat v. NYC DEP, 155678/2024 Supreme Court of New York County, incorporated by reference in its entirety: Document List)

*"As one of the many first responders at Ground Zero on 9/11 and in the weeks that followed, Mayor Adams has been unwavering in his commitment to ensuring victims, their families, first responders, and survivors receive the care and services they deserve," the spokesperson said. "While we cannot comment on the specifics of pending litigation, the city has begun turning over documents to plaintiff's counsel, and both parties are working out a schedule to continue this process. **We remain dedicated to getting 9/11 victims and their families the answers they need**, and thank the brave men and women who risk their lives every day to keep our city safe."*

(Source: <https://abc7ny.com/post/fdny-union-leaders-demand-answers-discovery-documents-911-toxins-ground-zero/18202801/>)(emphasis added)

64. The subject FOIL/appeal denials (**Exhibits 15** and **23**) conflict with this previous commitment of the Adams' administration.

- ii) The Mayor's Office denies being able to find the "Deputy Mayor Robert Harding Memo," an October 2001 assessment of City liabilities for miscommunications concerning air safety in lower Manhattan and the failure to provide respiratory protection to first responders. Our FOIL request sought the Harding memo and its underlying bases. (**Exhibits 1** and **2**)

65. The City withheld the Harding memo from the New York Congressional delegation (since 2021; **Exhibit 7**) and Petitioners (since 2023). Petitioners obtained it, independently, from an archive in Austin, Texas in February 2026. (**Exhibit 16**) Respondents fail to explain their failure to locate this "smoking gun" document.

- iii) On July 14, 2025, the New York City Council enacted Resolution 560-A (“Resolution 560-A”), directing the 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.” (**Exhibit 10**: Resolution 560-A and Record of Passage)

66. The Mayor’s unwillingness to respond to Petitioner’s FOIL request is among the examples in the supporting legislative record for the DOI investigation. (**Exhibit 10**) With a pending law enforcement investigation into their institutional resistance, the respondents should be more forthcoming, today. Oddly, they are not.

- iv) On February 4, 2026, incoming Corporation Counsel, Steve Banks, testified before the New York City Council Committee on Rules, Privileges, Standards, Ethics and Elections. In response to questioning by Speaker Menin and Member Brewer, the City’s chief attorney pledged to conduct a full review of the City’s September 11th archive in order to make public disclosure. “*We are going to review what we have, what others have and release or make available what can be made available.*” There was a single caveat to this anticipated disclosure: Mr. Banks voiced objection to releasing confidential personal and medical information. In addition, as to the City Council resolution directing the DOI investigation, Mr. Banks testified, “I am supportive of your law.” (**Exhibit 17**) ([See also, video of hearing, available at: https://www.youtube.com/watch?v=C1My8lC6V6E](https://www.youtube.com/watch?v=C1My8lC6V6E))

67. Even as his March 20, 2026 denial celebrates Mr. Banks’ fresh commitment to transparency, the Mayor’s FOIL Officer decided not to disclose any records.

C. The Mayor’s Office Obstructed and Continues to Obstruct a Meaningful FOIL Response

68. Before the February 27, 2026 and March 20, 2026 letter determinations, the Mayor’s

Office extended its own time to respond to the FOIL request on more than twelve (12) occasions. **(Exhibit 3)** By granting itself these FOIL postponements, the Mayor’s Office delayed responding over a span encompassing three September 11th anniversaries. By letter dated December 24, 2025 **(Exhibit 14)**, the Mayor’s Office denied our first FOIL appeal. **(Exhibit 13)** The respondents indicated that our record requests required “detailed searches and thorough review.” **(Exhibit 14)** The Mayor’s Office promised to “produce any responsive records...by February 27, 2026.” *Id.*

69. Today, after the February 27, 2026 response and March 20, 2026 denial of the appeal, Petitioner does not have a single document from the Mayor or Law Department. We do have a handful of stale internet links. The following chart summarizes the series of delays of the Mayor’s Office, concluding with the failure to produce any responsive documents on February 27, 2026 **(Exhibit 15)**

EVENT	DATE
Original 911/Health Watch FOIL Request to Mayor's Office	September 8, 2023
Mayor's Office promises response on or about October 30, 2023	September 8, 2023
Mayor's Office grants itself extension to December 29, 2023	November 1, 2023
Mayor's Office grants itself extension to March 27, 2024	January 2, 2024
Mayor's Office grants itself extension to June 21, 2024	March 28, 2024
Mayor's Office grants itself extension to August 18, 2024	June 26, 2024
Mayor's Office grants itself extension to November 15, 2024	August 20, 2024
Mayor's Office grants itself extension to February 13, 2025	November 28, 2024
Mayor's Office grants itself extension to May 9, 2025	February 18, 2025
Mayor's Office grants itself extension to August 14, 2025	May 12, 2025
Mayor's Office grants itself extension to November 28, 2025	August 19, 2025
Mayor's Office grants itself extension to February 27, 2026	December 24, 2025
Mayor's Office Responds on February 27, 2026 with No Requested Records	February 27, 2026

(See **Exhibit 3** for earlier communications from Mayor’s Office concerning the FOIL request)

70. The sequence, above, culminated in a thirteenth event, the appeal denial of March 20,

2026. (**Exhibit 23**) This serial delay, spanning 2.5 years, is unreasonable, violating the letter and spirit of New York’s public record access laws; that it resulted in the production of a Google search by the City’s Records Appeals Officer, in his dual-capacity as Access Officer (**Exhibit 15**), is farcical.

D. The Subject FOIL Request

71. Pursuant to the Freedom of Information Law, on September 8, 2023, we requested various records from the Mayor’s Office concerning the response of the City to the September 11th attacks, along with historical records and disaster preparation materials. (**Exhibit 1**) In a good faith effort to expedite responses, we edited our FOIL request (**Exhibit 2**) due to the parallel actions of the New York City Council and the Department of Investigation (“DOI”).

72. On July 14, 2025, the New York City Council enacted Resolution 560-A (“Resolution 560-A”), directing the 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.*” (**Exhibit 10**: Resolution 560-A and Record of Passage)

73. The unwillingness of the Mayor’s Office to respond to our FOIL request is among the examples in the supporting legislative record of the City’s resistance to disclosing September 11th information. As Resolution 560-A sets forth, reciting the work of 9/11 Health Watch to access the City’s public records:

Whereas, On September 8, 2023, 911 Health Watch Inc. filed a Freedom of Information Law (FOIL) request seeking documents from several New York City agencies relating to the knowledge possessed by the City on the environmental toxins produced by the attacks and the potential harm posed by these toxins, including documents relating to the testing and cleaning of schools in lower Manhattan and the potential evacuation of neighborhoods in Manhattan and Brooklyn in the aftermath of the attacks; and

Whereas, 911 Health Watch Inc. received denials in response to the FOIL request; and

Whereas, To date, there has not been a comprehensive investigation by New York City of the knowledge possessed by mayoral administrations on the dangers of the environmental toxins produced by the September 11, 2001 terrorist attacks on the World Trade Center and when this knowledge accrued; now, therefore, be it:

*Resolved, That the Council of the City of New York, pursuant to section 803 of the New York City Charter, directs the **Department of Investigation to conduct an investigation to ascertain the knowledge possessed by mayoral administrations on environmental toxins produced by the September 11, 2001 terrorist attacks at the World Trade Center and to submit a report to the Council thereon. (Exhibit 10)** (emphasis added)*

74. As sponsoring Council member Gale Brewer described, “*the legislation is a direct response to the Adams administration’s refusal to release the documents despite requests from members of Congress, advocates, and the media.*” (Exhibit 11)(emphasis added)

75. As United States Representatives Jerrold Nadler and Dan Goldman explained, multiple mayoral administrations resisted release of the City’s September 11th archive, beginning with Mayor de Blasio (Exhibit 7 at p. 2: 2021 request to **de Blasio Administration**):

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. Their lack of a meaningful response denied justice to the thousands of New Yorkers and first responders who continue to deal with or have died from health complications due to the air quality following 9/11.

With the passage of Resolution 560, New York City’s Department of Investigation has the power to discover exactly what Mayor Giuliani knew about the toxins in the air after 9/11 while claiming it was safe for New Yorkers to return.

These records could provide long overdue accountability for potentially devastating decisions that cost thousands of lives. New Yorkers deserve the truth. We're finally about to get some answers. (**Exhibit 12:** July 15, 2025 Statement of Representatives Nadler and Goldman on passage of Resolution 560-A: "*Representatives Nadler and Goldman Applaud NYC Council for Forcing City to Finally Release the Truth About 9/11 Air Toxins*")

76. In an effort to expedite the response of the Mayor's Office, in view of the DOI investigation, we revised our FOIL request, as set forth at **Exhibit 2**. Petitioners identified documents with specificity, satisfying New York's "*requirement that requested records be reasonably described exists to ensure that the responding agency has the ability to locate the records sought.*" Wagner v. New York City Dep't of Educ., 2025 WL 2955704, at *2 (Ct. App., 2025)(internal citations omitted) Respondents do not contest this specificity in the February 27, 2026 letter. (**Exhibit 15**) As modified/amended, we withdrew requests 3, 4, 5b. and 6 through 28. We sought 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 (**Exhibit 1**) were withdrawn.

E. Without Justification, the Mayor's Office Postponed Responding From 2023 until February 2026

77. Rather than respond by producing *any* documents for review, the Mayor's Office granted itself a series of postponements (known as "extensions" in FOIL parlance) spanning more than *two years* and three September 11th anniversaries. (**Exhibit 3**) The Mayor's Office announced the postponements, twelve (12) in total, via the City's FOIL portal, using the following template language:

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 Thursday, March 19, 2026.

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

(**Exhibit 3:** Mayor’s Office December 1, 2025 FOIL extension, its tenth [10th])

78. Other than citing a volume of unrelated FOIL requests, the Mayor’s Office provided zero justification for the delay. This cursory explanation, devoid of detail, was never an appropriate basis for a single FOIL response extension, let alone a dozen of them.

79. The 2.5-year delay was unreasonable and obstructive. This is especially so given that the final “response”, before the appeal denial, consisted of a hasty internet search. FOIL mandates the response of the Mayor’s Office within five (5) business days of the request, not thirty (30) months later (September 2023 to March 2026) or even longer:

3. (a) Each entity subject to the provisions of this article, within **five business days** of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with subdivision five of this section. **N.Y. Pub. Off. Law § 89** (McKinney)(emphasis added)

80. If the five-day window is too brief, FOIL requires the Mayor’s Office to provide a statement of the approximate production date, one “*reasonable under the circumstances.*” Id.

81. By designating twelve different future dates for a response, and then failing to meet any of these self-extended deadlines over the course of more than two years, the Mayor’s Office never provided any semblance of an actual timeframe or date for document production, a violation of FOIL.

82. None of the adjourned dates was reasonable, realistic or reliable. The Mayor’s Office simply disregarded the next date selected, and hit “reset,” generating an additional, future response point. With the last “reset” to a 2026 date, outgoing Mayor Adams punted the responsibility for

release of the September 11th archive to Mayor Mamdani. Now, we see that career City personnel continue to thwart meaningful disclosures, even with a new administration outwardly committed to transparency.

83. New York State Supreme Court condemns far shorter self-granted FOIL extensions. This is particularly so when the subject matter, as here, is of great public importance, the request is specific, and the data is known to be stored and organized. See, e.g., Empire Ctr. for Pub. Policy v. New York State Dep't of Health, 150 N.Y.S.3d 497, 499 (N.Y. Sup. Ct. 2021)(*Two-month* delay caused by New York State's self-extension deemed unreasonable as petitioner's request for Covid-19 nursing home death records was narrowly tailored and data was organized/compiled, previously)

If records are clearly available to the public under the Freedom of Information Law, or if they are readily retrievable, there may be no basis for a lengthy delay in disclosure. (**Exhibit 4:** N.Y. State Commission on Open Government, 1998 Advisory Opinion 10833)

84. Although FOIL does allow unilateral extensions of response times, this privilege is limited to appropriate circumstances, absent here. The postponements are not to be indefinite, and the Mayor's Office and Law Department grossly abused the extensions in this instance.

Accordingly, it has long been advised that when an agency is unable to deny or provide access to records within five business days, it must provide a written response indicating either that it will respond within the next twenty business days, or that it is unable to respond until a certain date, providing both the date and the reasons for requiring additional time. Although we recognize that there are occasions when an agency will require an extension of time beyond that which it initially predicted, **there is no provision in the statute for repeated extensions.** (**Exhibit 5:** N.Y. State Commission on Open Government, 2016 Advisory Opinion 19372)(emphasis added)

85. In McKenna v. The City of New York, the New York Supreme Court deemed

the City's six (6) self-granted extensions to be unreasonable. Unlike the Mayor's Office, granting itself **2.5 years** to respond (through 10 extensions), the City in McKenna sought only **six additional months**. Yet, even that shorter period, one-fifth of the respondents' total, violated FOIL. (**Exhibit 8:** 2024 NY Slip Op 33137(U), August 26, 2024) "*From March 2, 2022, through September 21, 2022, Respondent extended the expected response date six times.*") More recently, in Wagner v. New York City Dep't of Health & Mental Hygiene, 2026 N.Y. Slip Op. 00516, 2026 WL 290916, at *2 (N.Y. App. Div. Feb. 4, 2026), the Appellate Division deemed an **eight month delay** unreasonable.

86. As *Reinvent Albany* reported in 2025, New York City responds to 84% of FOIL requests, annually. That 16% are not responded to within one year is deemed a failure. (Report: New York City Government Flouting Freedom of Information Law - Reinvent Albany) What would *Reinvent Albany* make of a government records request, concerning a matter of paramount public interest, taking 2.5 years to address with internet search results?

F. Indicia that the Mayor's Office Played a Leading Role in the September 11th Response and Organized the Requested Information more than Two Decades Ago

87. The September 11th attack and collapse of the World Trade Center remain the most significant events in New York City history. We do not accept that the Mayor's Office and Law Department cannot find responsive records.

88. As is widely known, 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”]

89. The Mayor, too, worked to secure liability protections for the City in the aftermath. As a United States District Court observed, “a November 1, 2001 letter sent by then-Mayor Giuliani to members of the New York congressional delegation urg[ed] adoption of amendments that would limit the City's liability. .. the proposed amendment would alleviate only “ ‘part’ ” of “‘the City’s potential liability exposure.’ ” In re WTC Disaster Site, 414 F.3d 352, 379, 2005 WL 1649041 (2d Cir. 2005) Such efforts undoubtedly generated documents responsive to our FOIL requests. **(Exhibits 1 and 2)**

90. Deputy Mayor Robert Harding received a memo entitled Legislative Alternatives to Limit the City’s Liability relating to 9/11/01. According to the memo, as of Fall 2001, “the Law Department was estimating 35,000 potential 9/11 plaintiffs against the City...the memo urged the city to push Congress to create a fund to cover the City’s liability similar to the 9/11 Victim Compensation Fund it had just created for the airline industry.” **(Exhibit 9: Grand Illusion, Barret and Collins, 2006, at p. 259, chapter 8, footnote 13)**

91. The Harding memo confirms the City completed risk assessments in 2001, projecting thousands of toxic exposure claims. The Harding memo summarizes the conclusions of other City officials. Risk assessments and liability analyses informed the memo’s contents, and Petitioner sought these materials through FOIL.

92. Although referenced by the New York Times in May 2007, and in a 2007 book **(Exhibit 9)**, the Harding memo remained undisclosed for a quarter of a century. The Harding memo attracted widespread attention after the City refused its release to the New York

Congressional delegation. (**Exhibit 7:** 2021-2024 requests of Reps. Maloney, Nadler and Goldman to Mayors de Blasio and Adams for Harding memo and other information)

93. Petitioner obtained this Mayor’s Office record, privately, in late January 2026 from the Dolph Briscoe Center for American History, an archive at the University of Texas. Locating the Harding memo involved searching three hundred (300) boxes of records from the Estate of Wayne Barrett, the noted investigative journalist. Written in October 2001, the Harding memo confirms the Mayor’s Office anticipated tens of thousands of lawsuits for toxic exposures from the World Trade Center site. (**Exhibit 16**)

94. In those early days, the City “flagged” its air quality advisories as a liability concern.

“Potential lawsuits against the City include health advisories causing individuals to return to the area too soon (causing toxic exposure)” (Exhibit 16)

95. City Hall sought to limit liability for its air safety messaging. City officials pursued “*Legislative alternatives to limit the City’s liability relating to 9/11/01,*” the title of the Harding memo. (**Exhibit 16**) Securing this protection involved lobbying Washington, D.C.

96. And yet, after identifying this 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.***” (**Exhibit 20:** compilation of City assurances, September 2001 through February 2002)

For example:

September 12, 2001:

Mayor’s Office Conference

“The air is safe as far as we can tell of chemical and biological agents.”

“Air quality as far as we can tell ... is not dangerous”

"Asbestos is in the air as long as you are not in the epicenter, it is not at dangerous levels."

"We're monitoring air pollutants. . ." "So far it is safe"

September 16, 2001:

New York City Department of Health

"Based on the asbestos test results received thus far, the general public's risk for any short- or long-term adverse health effects are very low."

September 28, 2001:

Mayor's Office

"Although they occasionally will have an isolated reading with an unacceptable level of asbestos ... it's very occasional and very isolated.

The air quality is safe and acceptable."

October 5, 2001:

New York City Department of Health

"As work continues at the disaster site, the presence of dust and smoke odor in the downtown area has been of understandable concern to residents. However... levels of particulate matter being detected are below the level of public health concern and do not pose long-term health risks to the general public."

February 11, 2002:

New York City Department of Health

The Health Department reviews the numerous air quality, debris sample results and personal air monitoring tests being conducted by various agencies. The data from air quality tests thus far have been, in general, reassuring. None of the test results done to date would indicate long-term health impacts." (Exhibit 20)

97. The Harding memo (**Exhibit 16**) reveals other liabilities identified inside City Hall.

Excerpts are reprinted, below:

**Legislative Alternatives to Limit the
City's Liability Relating to 9/11/01**

According to the Law Department, there are approximately 35,000 potential plaintiffs as a result of the events of September 11 and it is estimate (sic) that 10,000 would file a claim.

A major concern is that if these cases make it to court, the judges and juries will be biased in favor of plaintiffs (even though the City seems to have a strong defense) and therefore

award substantial damages to compensate individuals for their loss.

The following is a list of some of the types of potential lawsuits against the City.

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)**
- **Unsafe workplace (OSHA, FEMA, Labor Law)**
- **Inadequate clean up**

Creation of a Congressional Fund for the Victims

One way to limit the City's liability is for Congress to create a congressional fund that mirrors the fund created for the airline industry. Congress, in the Airline bailout, created the September 11th Victim Compensation Fund of 2001 "that will provide compensation to any individual (or relatives of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001.

Federal Indemnification

... the City could request indemnification by the Federal government for all liability claims arising from the events of 9/11/01. This form of relief could also assist the City in the long-term as well by including toxic tort cases that might arise in the next few decades.

98. As the City continued air safety messaging, behind the scenes it lobbied the White House and Congress, seeking protection for, among other things, these same air quality proclamations. Ironically, the City fretted such advocacy, with explication of liability concerns, would worsen matters. "*By advocating...we may be inviting litigation.*" (**Exhibit 16**) In response to quiet lobbying, the federal government conferred limitations of liability to the City on November

19, 2001. (**Exhibit 21**: Amendment to the Air Transportation Safety Systems and Stabilization Act of 2001)

99. Petitioner's copy of the Harding memo (**Exhibit 16**) bears multiple indicia of reliability and authenticity. First, its contents track the references made by Wayne Barrett in his 2007 book, Grand Illusion (**Exhibit 9**: excerpts) and in The New York Times article. ("*Ground Zero Illnesses Clouding Giuliani's Legacy*," May 14, 2007) Second, the Harding memo marks early recognition of liability for respiratory protection shortages. Publicly, however, the City would contest this issue *for years*. 2010 legal filings demonstrated that the Fire Department of New York had only 600 air purifying respirators for its 11,000 members on the morning of September 11.th (Case 1:21-mc-00100-AKH, United States District Court for the Southern District of New York, Document #1766-Filed 02/16/2010)

100. The 2001 Harding memo anticipates tens of thousands sickened from toxic exposures. This early internal prediction conflicts with public statements from City Hall, made years later, downplaying any connection between lower Manhattan air quality and illness. Five years after September 11th, Mayor Bloomberg dismissed a "*health study of the thousands of workers at Ground Zero*" showing "*many with chronic respiratory ailment*," explaining:

the health study does not prove a direct link to conditions at the site:

"There is no way to tell for sure ... and you have to be very careful. If I say I've got something because of this, it's just not the way science works." (**Exhibit 20** at pp. 32-33)

101. In Petitioner's Article 78 proceeding against DEP, respondent did not contest the authenticity of the Harding memo. (See, NYSCEF#63; Chevat v. DEP, link above) This tacit admission most likely resulted from the Law Department's comparison of Petitioner's copy with the original Harding memo, still in City possession.

102. Petitioner's FOIL request sought information concerning the City's lobbying and legislative efforts to eliminate/reduce its potential liabilities for toxic exposure claims, including the "Harding memo" and its bases, along with City communications with federal agencies, Congress, and the White House. (**Exhibits 1 and 2**)

103. The City made myriad pronouncements as to the air quality of lower Manhattan in 2001 and early 2002. We sought the bases for these proclamations and the decision to reopen public schools and businesses, undertaken simultaneously with the City's aggressive lobbying for protection from lawsuits arising from exposure to the toxic air, downtown. (**Exhibits 1 and 2**)

104. Petitioner demonstrates that the requested materials remain readily available. The Mayor's Office, like all City agencies and departments received the special 2002 preservation directive from the World Trade Center Unit. (**Exhibit 6**)

105. In accordance with the Law Department's order, the Mayor's Office would have compiled and organized World Trade Center documents. Thereafter, upon scanning by the Law Department, the documents were returned with the admonition for the Mayor's Office to preserve them, indefinitely.

106. There is additional contemporaneous indication that the documents exist, are organized, accessible and easily provided.

107. Communications with New York's Congressional delegation also confirm that the requested materials are catalogued. Annexed as **Exhibit 7** are a series of letters between Honorable Jerrold Nadler, Honorable Dan Goldman, and Honorable Caroline Maloney and the Office of the Mayor. Since 2021, the Representatives have sought previously unreleased September 11th-related documents, from City agencies, writing and meeting with the Mayor's Office in their effort. To date, the City has not responded in any meaningful way. 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 United States Representatives did City Hall cite a specific FOIL exemption enabling it to withhold the documents. Further, the “litigation risks” cited by the Adams Administration do not justify withholding the records from Congress and Petitioner. There is no FOIL provision to block the release of damaging or embarrassing public records.

108. Accordingly, it is clear that the Law Department and Mayor’s Office are not only aware of specific and responsive records, they set them aside, siloed them, and continue to resist their disclosure.

G. The Rattley Decision is Inapplicable

109. Respondents invoke Rattley v. N.Y. City Police Dept., 96 N.Y.2d 873 (Ct. App. 2001) to justify their denials. (**Exhibit 23**) This decision, governing FOIL responses, holds that unsubstantiated assertions of a diligent search by a municipal entity warrant dismissal of challenge to the quality or duration of the search, but only in circumstances absent in Chevat. Under Rattley, a respondent satisfies “*the certification requirement by averring ...that it had conducted a diligent search for the documents it could not locate.*” Id. at p. 875 “*Neither a detailed description of the search nor a personal statement from the person who actually conducted the search is required for the certification to be valid.*” Madrid v. Mazur, 2025 N.Y. Slip Op. 06284, 2025 WL 3209973, at *1 (1st Dept., Nov. 18, 2025)(citing Rattley)² Problematically for respondents, Rattley does not

² Rattley is criticized as impeding government transparency. (See, for example, “Shining a Light on Rattley: The Troublesome Diligent Search Standard Undercutting New York’s Freedom of Information Law,” Fordham Law Review, November 1, 2022, Krier, Isaac) As Krier wrote, “*despite FOIL’s promise of transparency and disclosure,*

function as a “*Get Out of FOIL, Free*” card as the requested records exist and remain under their custody and control, as set forth above, making the decision inapplicable.

110. Courts do not apply Rattley in such circumstances. “[E]ven where an entity properly certifies that it was unable to locate requested documents after performing a diligent search, the person requesting the documents may nevertheless be entitled to a hearing on the issue where he or she can ‘articulate a demonstrable factual basis to support [the] contention that the requested documents existed and were within the [entity’s] control’ (Matter of Oddone v. Suffolk County Police Dept., 96 A.D.3d 758, 761, 946 N.Y.S.2d 580, quoting Matter of Gould v. New York City Police Dept., 89 N.Y.2d 267, 279, 653 N.Y.S.2d 54, 675 N.E.2d 808).” Lane v. Cnty. of Suffolk, 236 A.D.3d 791, 793 (2nd Dept. 2025) Petitioner does exactly this, here.

111. As the Appellate Division held in Oddone, it is improper to dismiss an Article 78 FOIL proceeding where “*allegations in petition, if proven, would provide a factual basis to support the petitioner’s contention that additional documents relating to the ...investigation...exist and are within the ... control*” of the respondent. 96 A.D.3d 758, 760–62 .

112. The correct approach is to hold an evidentiary hearing as to the scope, sufficiency and duration of respondents’ “search.” “In the face of an agency’s contrary certification, (Corbin v. Ward, 160 AD2d 596 [1st Dept 1990]), a hearing may be ordered where, as here, the party requesting the records can ‘articulate’ - and here, it has done so quite eloquently and fulsomely — “ ‘a demonstrable factual basis to support [the] contention that the requested documents existed and were within the [agency’s] control’ ” New York C.L. Union v. Suffolk Cnty. Police Dep’t, 67

an agency’s ability to deny a records request under Rattley without explaining its search efforts leaves requesters without their requested records and without meaningful recourse to challenge the agency’s alleged search in court.”

Misc. 3d 1222(A), (N.Y. Sup. Ct. 2020) citing Gould and Oddone. Petitioner respectfully requests such a hearing.

Conclusion

For the reasons set forth above, Petitioner demonstrates entitlement to the following relief:

- A) A declaration that the March 20, 2026 FOIL appeal denial (**Exhibit 23**) 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 (**Exhibit 23**) 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 (**Exhibit 13**: December 12, 2025 appeal; **Exhibit 22**: March 8, 2025 appeal); and

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

March 29, 2026

Very truly yours,



Andrew J. Carboy



Matthew McCauley