

Index No. 153916/2026

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

In the Matter of the Application of BENJAMIN
CHEVAT,

Petitioner,

-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.

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

**RESPONDENTS' MEMORANDUM OF LAW IN
SUPPORT OF THEIR CROSS-MOTION TO
DISMISS THE VERIFIED PETITION**

STEVEN BANKS

*Corporation Counsel of the City of New York
Attorney for Respondents
100 Church Street
New York, N.Y. 10007*

*Of Counsel: Saarah S. Dhinsa
Tel: (212) 356-0872
Matter #: 2026-026566*

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	II
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	2
A. The Timeline of Petitioner's FOIL Requests.....	2
B. The Law Department's databases.....	4
ARGUMENT.....	5
POINT I	5
ANY CLAIMS AGAINST THE MAYOR'S OFFICE AND DDC SHOULD BE DISMISSED AS NO RESPONSIVE RECORDS WERE LOCATED AFTER THEY CONDUCTED DILIGENT SEARCHES.....	5
A. The Mayor's Office Search for Records Responsive to Petitioner's Request.	7
B. DDC's Search for Records Responsive to Petitioner's Request.	11
C. Petitioner Fails to Provide a Factual Basis Demonstrating that the Mayor's Office and DDC Possess Any Records Responsive to Petitioner's Request.	12
POINT II	14
THE PROCEEDING AGAINST THE LAW DEPARTMENT IS PREMATURE AS THE APPEAL WAS REMANDED BACK TO THE AGENCY, AND NO FINAL AGENCY DETERMINATION HAS BEEN MADE.	14
CONCLUSION.....	16

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
<i>Alicea v. N.Y. City Police Dep't</i> , 287 A.D.2d 286 (1st Dep't 2001)	5
<i>Am. First Pol'y Inst. v. Bragg</i> , 2026 N.Y. Misc. LEXIS 2682 (Sup. Ct. New York Cnty. 2026)	13
<i>Matter of Binghamton Precast & Supply Corp. v. New York State Thruway Auth.</i> , 196 A.D.3d 944 (3d Dep't 2021)	5
<i>Borrero v. Banks</i> , 212 A.D.3d 496 (1st Dep't 2023)	13
<i>Cross v. Russo</i> , 132 A.D.3d 454 (1st Dep't 2015)	13
<i>Matter of Cuomo v. James</i> , 235 A.D.3d 578 (1st Dep't 2025)	6, 13
<i>Data Tree, LLC v. Romaine</i> , 9 N.Y.3d 454 (2007)	6, 13
<i>Matter of Empire Ctr. For Pub. Policy v. New York State Energy & Research Dev. Auth.</i> , 188 A.D.3d 1556 (3d Dep't 2020)	11
<i>Matter of Gannett Satellite Information Network, LLC v. New York State Thruway Authority</i> , 181 A.D.3d 1072 (3d Dep't 2020)	6, 13
<i>Gould v. N.Y.C. Police Dep't</i> , 89 N.Y.2d 267 (1996)	12
<i>Grabell v. New York City Police Dep't</i> , 139 A.D.3d 477 (1st Dep't 2016)	5
<i>Matter of Jackson v. Albany Cnty. Dist. Attorney's Off.</i> , 176 A.D.3d 1420 (3d Dep't 2019)	11, 12
<i>Matter of Jewish Press, Inc. v. New York State Police</i> , 207 A.D.3d 971 (3d Dep't 2022)	11
<i>Matter of Konigsberg v. Coughlin</i> , 68 N.Y.2d 245 (1986)	4

Cases**Pages**

<i>New York Civ. Liberties Union v. N.Y.C. Police Dep't</i> , 2022 N.Y. Misc. LEXIS 1051 (Sup. Ct. New York Cnty. 2022)	14
<i>Norde v. Morgenthau</i> , 262 A.D.2d 129 (1st Dep't 1999)	5
<i>Matter of Porter v. David</i> , 2014 N.Y. Misc. LEXIS 1723 (Sup. Ct. New York Cnty. Apr. 10, 2014)	5
<i>Matter of Rattley v. N.Y.C. Police Dep't</i> , 96 N.Y.2d 873 (2001)	5
<i>Matter of Save Monroe Ave., Inc. v. New York State Dep't of Transportation</i> , 197 A.D.3d 808 (3d Dep't 2021)	6, 13

Statutes

C.P.L.R. § 3211(a)(7)	2
Pub. Off. Law §§ 84, <i>et seq.</i>	1
Pub. Off. Law § 86(4)	11
Pub. Off. Law § 87(2)	11
Pub. Off. Law § 89	5
Pub. Off. Law § 89(3)	14
Pub. Off. Law § 89(3)(a)	5
Pub. Off. Law § 89(4)(a)	13
Pub. Off. Law § 89(4)(b)	13

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

-----X
In the Matter of the Application of

BENJAMIN CHEVAT,

Petitioner,

Index No. 153916/2026

IAS Part 18

(Tisch, J.)

-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.

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

-----X
**RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR CROSS-
MOTION TO DISMISS THE VERIFIED PETITION**

PRELIMINARY STATEMENT

Petitioner brought this Article 78 proceeding concerning Petitioner's request to the City of New York: Office of the Mayor ("Mayor's Office"), New York City Law Department ("Law Department"), and the Department of Design and Construction ("DDC") pursuant to the Freedom of Information Law ("FOIL"), New York Public Officers Law §§ 84, *et seq.* Petitioner argues that the agencies' decision were arbitrary and capricious. However, as demonstrated below, the petition should be dismissed as against the Mayor's Office and DDC because both agencies conducted reasonable and diligent searches, certified to Petitioner that no responsive records were located following those searches, and thereby satisfied their obligations under FOIL. Petitioner fails to offer any non-speculative basis for allowing this proceeding to continue as to the Mayor's Office

and DDC, relying instead on decades-old documents and circumstantial assertions that do not establish that these two agencies possess records dating back more than twenty years.

The proceeding against the Law Department should be dismissed as well, as it was commenced while the administrative process remains ongoing. Petitioner's FOIL appeal in relation to the Law Department had been remanded for further agency review, and no final post-remand determination had yet been issued. Accordingly, Petitioner's challenge against the Law Department is premature, as it seeks judicial review before the agency has completed its administrative review and rendered a final determination.

Accordingly, Respondents submit this memorandum of law in support of their cross-motion to dismiss the instant proceeding pursuant to 3211(a)(7) of the Civil Practice Law and Rules on the grounds that the Petition fails to state a cause of action against the Mayor's Office, DDC, and the Law Department.

STATEMENT OF FACTS

A. The Timeline of Petitioner's FOIL Requests.

On September 8, 2023, Petitioner requested records from the Mayor's Office (FOIL #2023-002-00733), DDC (FOIL #2023-850-00138), and the Law Department (FOIL #2023-025-00368) pursuant to the Freedom of Information Law ("FOIL"). *See* Attorney's Affirmation in Support of Petitioner dated March 29, 2026 ("Pet.'s Aff."), ECF No. 2 at ¶ 6. The Mayor's Office's Record Access Officer (RAO) acknowledged Petitioner's request on September 8, 2023, and subsequently extended the projected response date. Exhibit 14, NYSCEF No. 16. On March 11, 2024, the Law Department notified Petitioner that the Mayor's Office would be responding to Petitioner's FOIL request on the Law Department's behalf. *Id.* at ¶14; *see also* Exhibit 17, NYSCEF No. 17.

On September 7, 2025, Petitioner amended their request. The revised request sought, *inter alia*, the following records:

- 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”)
- 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.
- 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...

Pet.’s Aff. at ¶ 76; *see also* Exhibit 2, NYSCEF No. 4.

On December 12, 2025, Petitioner purported to appeal on the basis that the three agencies’ actions – lack of a response to the FOIL request – constituted a constructive denial. Pet.’s Aff. at ¶ 17. The Mayor’s Office responded to the purported appeal, stating that there had not been a constructive denial as Petitioner’s “request has multiple parts and requests records from over 20 years ago,” which “require detailed searches and thorough review.” *See* Exhibit 14, NYSCEF No. 16. The Mayor’s Office then remanded Petitioner’s request to its Records Access Officer. *Id.* On February 27, 2026, the Mayor’s Office’s Records Appeals Officer, Jeffrey Lowell responded on behalf of the agencies stating that after a diligent search by the Mayor’s Office and DDC, no responsive records were found, and that the Law Department’s records were not kept in a manner that allowed them to search for responsive records. *See* Exhibit 15, NYSCEF No. 17.

Petitioner filed an appeal on March 8, 2026. *See* Exhibit 22, NYSCEF No. 24. The Mayor’s Office responded certifying that their office and DDC had conducted a diligent search, but no

responsive records were found, and remanded Petitioner's appeal as it pertains to the Law Department, stating that "[t]he Law Department is currently in the process of creating a public portal that will house records related to 9/11 air quality and health risks." See Exhibit 23, NYSCEF No. 25.

B. The Law Department's databases.

When the Law Department initially conducted its search for records responsive to Petitioner's FOIL request, it identified nearly twenty Relativity workspaces containing records related to the September 11, 2001 attacks. See Affirmation of Stefan Mooklal, dated June 30, 2026 ("Mooklal Aff.") at ¶ 3. These Relativity workspaces contain voluminous amounts of records from many different City agencies and employees on a wide range of topics and issues. *Id.* at ¶ 4. The identified Relativity workspaces are not organized in a way such that records that are potentially responsive to Petitioner's requests would necessarily be within any particular workspace or location. *Id.* at 5. This prompted the Law Department to deny Petitioner's request. *Id.* at ¶ 6. However, following the denial, the City explored its ability to publish any records related to the September 11, 2001 attacks to a public portal. See N.Y.C. City Council, *City Council Secures Commitment from Corporation Counsel to Release 9/11 Documents* (Mar. 16, 2026) <https://council.nyc.gov/press/2026/03/16/3088/>. *Id.* at ¶ 7. As it is likely that any records responsive to Petitioner's request would be included in this effort, the Law Department remanded Petitioner's appeal to the FOIL Access Officer. See Exhibit 23, NYSCEF No. 25; *Id.* at ¶ 8.

In addition, Petitioner's FOIL request, as written, seeks a memorandum authored by Deputy Mayor Harding (the "Harding Memo"). See Exhibit 2, NYSCEF No. 4. It has since been determined that this memorandum was not authored by Deputy Mayor Harding but was instead sent to him. On February 2, 2026, Petitioner uploaded what they identify in their FOIL request as the Harding memo to the New York State Court's electronic filing system. See *Benjamin Chevat*

v. New York City Department of Environmental Protection, Index No. 155678/2024, NYSCEF Doc No. 63 [Sup. Ct. N.Y. County (February 3, 2026)] (Petitioner’s Exhibit 1 October 2001 Memo to Deputy Mayor Harding). This was not immediately communicated to the individuals responsible for searching for responsive records at the Law Department; however, it has since helped clarify what Petitioner is actually seeking and allowed for a narrower search.

The Law Department’s review remains ongoing. A term search has been conducted, which returned over 100,000 records. Additionally, a subset of records previously retrieved from the database are currently being reviewed for responsiveness and for any applicable FOIL exemptions.

See Affirmation in Support to City’s Cross-Motion and in Opposition to Petitioner’s Motion, dated June 30, 2026 (“City’s Aff.”) at ¶ 6. On June 10, 2026, Respondent’s counsel contacted Petitioner to discuss narrowing the request, including the identification of specific custodians and search terms. *Id.* at ¶ 7.

ARGUMENT

POINT I

ANY CLAIMS AGAINST THE MAYOR’S OFFICE AND DDC SHOULD BE DISMISSED AS NO RESPONSIVE RECORDS WERE LOCATED AFTER THEY CONDUCTED DILIGENT SEARCHES.

Under FOIL, a request must “reasonably describe” the records sought so that the agency can locate and identify responsive records. *See Matter of Konigsberg v. Coughlin*, 68 N.Y.2d 245 (1986). Whether a request reasonably describes the records sought depends upon the manner in which the agency’s records are maintained and whether the agency can locate responsive records through a reasonable search. *Id.*

An agency’s obligation under FOIL is limited to conducting a diligent search for responsive records and producing those non-exempt records that are located. Public Officers Law § 89.

Where, as here, the Mayor's Office and DDC have certified that they have conducted a reasonable search and that no responsive records exist, they have fully complied with FOIL. Public Officers Law § 89(3)(a) (an agency shall "certify that it does not have possession of such record or that such record cannot be found after a diligent search"); *see Matter of Rattley v. N.Y.C. Police Dep't.*, 96 NY2d 873, 875 (2001) (dismissing a proceeding to compel disclosure under FOIL as moot because the agency "satisfied the certification requirement by averring that all responsive documents had been disclosed and that it had conducted a diligent search for the documents it could not locate"); *Alicea v. N.Y. City Police Dep't.*, 287 A.D.2d 286, 287 (1st Dep't 2001); *Norde v. Morgenthau*, 262 A.D.2d 129, 129 (1st Dep't 1999); *see also Matter of Binghamton Precast & Supply Corp. v. New York State Thruway Auth.*, 196 A.D.3d 944, 945 (3d Dep't 2021); *Matter of Porter v. David*, 2014 N.Y. Misc. LEXIS 1723, at *17 (Sup. Ct. N.Y. Cnty. Apr. 10, 2014) ("A party cannot be compelled to [produce] documents that it does not possess.").

Moreover, FOIL "does not specify the manner in which an agency must certify that documents cannot be located," and "neither a detailed description of the search nor a personal statement from the person who actually conducted the search is required." *Rattley*, 96 N.Y.2d at 875; *see also Grabell v New York City Police Dep't.*, 139 A.D.3d 477, 479 (1st Dep't 2016). However, given the importance of the records and the City's commitment to transparency, the Mayor's Office described the search for the requested records conducted by it and DDC. *See* Exhibit 23, NYSCEF No. 25.

These searches took several months as Petitioner's request contained multiple subparts and sought records dating back more than twenty years, making the search process both time- and labor-intensive. The New York Court of Appeals has expressly held that "there is no specific time period in which the agency must grant access to the records," and multiple Appellate Division

decisions have upheld extended agency response timelines of months or more when circumstances justified the delay. *Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 465 (2007); *see also Matter of Cuomo v. James*, 235 A.D.3d 578 (1st Dep’t 2025); *Matter of Save Monroe Ave., Inc. v. New York State Department of Transportation*, 197 A.D.3d 808 (3d Dep’t 2021); *Matter of Gannett Satellite Information Network, LLC v. New York State Thruway Authority*, 181 A.D.3d 1072 (3d Dep’t 2020). Locating decades-old records also required determining where such documents may have been stored and identifying whether any current employees retained institutional knowledge regarding the location of those records.

Additionally, the Mayor’s Office responded to Petitioner’s FOIL requests on behalf of DDC and the Law Department not to create a distraction or conceal any documents; rather, it has attempted to coordinate efforts across the different agencies to which these requests were sent.

A. The Mayor’s Office’s Search for Records Responsive to Petitioner’s Request.

The Mayor’s Office has conducted a comprehensive search of its email database active from January 1, 2002 through August 2020 (the Veritas Enterprise Vault database [“EV database”]), and its only long-term physical storage facility, a warehouse located on White Street in Manhattan. *See* Affirmation of Jeffrey Lowell, dated June 30, 2026 (“Lowell Aff.”) at ¶ 5. The Mayor’s Office does not retain individuals’ emails in this EV database unless they still worked for the City after January 1, 2002. *Id.* at ¶ 6. The Mayor’s Office reasonably narrowed its search to these two locations because they are the only repositories that would contain records responsive to the timeframe identified in Petitioner’s FOIL request – “October 2001 memorandum from Deputy Mayor Robert M. Harding,” “Written communications, dating from September, October and November 2001,” and “Documents setting forth: the number of meetings (taking place in September, October and November 2001).” *See* Exhibit 2, NYSCEF No. 4. *Id.* at ¶ 5. The EV database is the sole repository for archived emails from January 1, 2002, through August 2020,

and there is no separate repository for archived emails predating the EV database's implementation. Lowell Aff. at ¶ 7. The long-term physical storage facility maintains the Mayor's Office's archived hard-copy records that had not been sent to the Department of Records and Information Services ("DORIS"), which is the agency responsible for preserving and providing public access to historical and contemporary records. *Id.* at ¶ 8.

The Mayor's Office's used various combinations of the following search terms against their EV database: "toxin*", "World Trade Center", "9/11", "September 11th", "WTC", and "limit* Near/10 liability." *Id.* at ¶ 9. The searches for these terms were narrowed to the time period outlined in Petitioner's request – September 11, 2001 to September 10, 2002. *See* Exhibit 2, NYSCEF No. 4; Lowell Aff. at ¶ 9. These searches did not reveal any responsive records. Lowell Aff. at ¶ 9.

A search "To/From: "Harding" containing the phrase "including toxic tort cases" from September 11, 2001 to October 31, 2001 was searched, but did not yield any results. *Id.* at ¶ 10. A search "To: Giuliani" containing the term "briefing" from September 11, 2001 to November 30, 2001 was also searched but did not yield any results. *Id.* at ¶ 11.

The Mayor's Office ran a search for mailboxes of Robert Harding and Mayor Giuliani, none were found. *Id.* at ¶ 12. Although Petitioner expresses surprise that Robert M. Harding's email account was not located, the explanation is quite simple: Robert M. Harding was appointed Deputy Mayor for Economic Development and Finance on March 2, 2000. *Id.* at ¶ 18. His last day in Mayor Giuliani's administration and as Deputy Mayor was in December 2001. *Id.* The EV database, however, contains emails only from January 1, 2002, through August 2020, as the Mayor's Office did not utilize this system until January 2002. *Id.* Since, the Deputy Mayor and

Mayor were no longer at the Mayor's Office on January 1, 2002, their electronic mailboxes were not transferred to the EV database for storage. *Id.* at ¶ 6.

The searches in the Mayor's Office's EV database, including searches to find mailboxes for Robert Harding and Mayor Giuliani, the phrase "including toxic tort cases," "limit* NEAR/10 liability" and the phrase "briefing" sent to Giuliani were done on April 26, 2024 in response to Petitioner's initial FOIL request. *Id.* at ¶ 13. The broader searches for "World Trade Center and toxin*," "September 11, 2001 and toxin*," and just "toxin" were run on February 17, 2026 in response to the New York City's Department of Investigation's investigation pursuant to Resolution 560. Res. 560, 2024 N.Y. City Council, Reg. Sess. (N.Y. 2024). *Id.* at ¶ 14. The Mayor's Office's legal assistant Sallimatou Diaby searched through Microsoft Purview – the database that stores all of the Mayor's Office's Microsoft 365 records dated after August 2020 – with these same search terms on May 13, 2026 which resulted in 0 hits. *Id.* at ¶ 15.

Additionally, on May 28, 2026, Jeffrey Lowell searched through the EV database for the term "Harding" across all mailboxes from September 11, 2001 to October 31, 2002 which resulted in 80 hits. *Id.* at ¶ 16. However, none of these were related to the September 11th attacks. *Id.* at ¶ 16.

The Mayor's Office Searches Conducted in their EV Database:

Terms searched	Dates searched	Results from search	Subject matter of records found
Toxin*	September 11, 2001 to September 10, 2002	0	N/A
"Toxin", "World Trade Center"	September 11, 2001 to September 10, 2002	0	N/A
"Toxin", "9/11"	September 11, 2001 to September 10, 2002	0	N/A
"Toxin", "September 11 th , 2001"	September 11, 2001 to September 10, 2002	0	N/A

Terms searched	Dates searched	Results from search	Subject matter of records found
limit* Near/10 liability	September 11, 2001 to September 10, 2002	0	N/A
To/From: "Harding" containing the phrase "including toxic tort cases"	September 11, 2001 to October 31, 2001	0	N/A
To: "Giuliani" containing the term "briefing"	September 11, 2001 to November 30, 2001	0	N/A
"Harding"	September 11, 2001 to October 31, 2002	80	Non-responsive to FOIL request. Ranged from who had unlimited calling on their phone to mentions of Harding Park.
Phrase "including toxic tort cases" To/From anyone named Harding across all mailboxes	September 11, 2001 to September 11, 2010	0	N/A
"limit* NEAR/10 liability" across all mailboxes	September 11, 2001 to October 31, 2002	3	Non-responsive to FOIL request. Related to a service agreement for a printer and brownfield site legislation.
Phrase "briefing" To anyone named Giuliani across all mailboxes	September 11, 2001 to September 11, 2010	7	Non-responsive to FOIL request. Related to federal housing hearing where some of the attachments mentioned Giuliani.
("World Trade Center" AND "toxin*") OR ("9/11" AND "toxin*") OR ("September 11, 2001" AND "toxin*")	September 11, 2001 to October 31, 2002	8	News clips that have been shared with Petitioner.

Id. at ¶ 17.

The only long-term storage facility that could potentially contain physical documents from 2001 is a warehouse located on White Street in Manhattan. *Id.* at ¶ 5. The Mayor's Office does not maintain any other facilities for storage of their physical records. *Id.* at ¶ 5. The Mayor's Office

reviewed its warehouse storage log to identify which shelves would contain 9/11 related records, if any were retained there, and identified several potentially relevant shelves. *Id.* at ¶ 19. Jeffrey Lowell personally visited the warehouse on February 5, 2026, inspected those shelves, and confirmed that there were no responsive records. *Id.* at ¶ 19.

After the Mayor's Office conducted a diligent search of electronic and physical records, it denied Petitioner's appeal and advised Petitioner that records pre-dating 2002 may be in the possession of the City Archives which are maintained by DORIS. *See* Exhibit 23, NYSCEF No. 25. The Mayor's Office also advised Petitioner that "[t]he Law Department is...creating a public portal that will house records related to 9/11 air quality and health risks." *Id.*

Although Petitioner accuses the Mayor's Office of acting improperly – by arguing that Jeffrey Lowell was improperly serving as both the Records Access Officer and Records Appeal Officer – that assertion is entirely baseless as the initial review of searches and the search following Petitioner's appeal were handled by two separate individuals at the Mayor's Office, Megha Jain and Jeffrey Lowell. Lowell Aff. at ¶¶ 20-23. Mr. Lowell simply handled the correspondence on behalf of the agencies. *Id.*

B. DDC's Search for Records Responsive to Petitioner's Request.

DDC searched the email accounts of current employees who were employed by the agency during the relevant time period, as well as the unit responsible for maintaining the agency's archived records. *See* Affirmation of Amina Wilson, dated June 30, 2026 ("Wilson Aff.") at ¶ 4. As with the Mayor's Office, DDC limited its search to these locations because those individuals were the only employees likely to possess potentially responsive records, and the unit is the sole repository for the agency's archived hard-copy records. *Id.* The searches were conducted using terms related to the World Trade Center, September 11, 2001, and an October 2001 memorandum from Deputy Mayor Robert M. Harding/Harding memo in 2001. *Id.* at ¶ 5. No responsive records

were identified. *Id.* Instead, the searches returned only administrative records, including payroll and payment-related documents, which were not responsive to Petitioner's request. *Id.*

Of note, DDC was tasked with managing the demolition of the seven buildings that made up the World Trade Center site following September 11, 2001. *Id.* at ¶ 6. DDC also managed the trucking operation that hauled away the debris to specified sites. *Id.* DDC managed four construction management firms, each assigned a quadrant within the 16-acre site, to deconstruct, remove, and clean up the site. *Id.* Although DDC's safety manager worked closely with the other agencies to review any findings and assist with safety plans for the site, he was not responsible for managing the air quality testing at the site. *Id.*

After completion of the above-described searched and inquiries, Petitioner was notified by the Mayor's Office that DDC did not find any responsive records. *See* Exhibit 23.

C. Petitioner Fails to Provide a Factual Basis Demonstrating that the Mayor's Office and DDC Possess Any Records Responsive to Petitioner's Request.

Although "a petitioner may be entitled to a hearing on the issue if it can articulate a demonstrable factual basis to support the contention that the requested document existed and is within the agency's control," "unsupported speculation that records have been withheld is an insufficient basis upon which to grant a petition." *Matter of Empire Ctr. For Pub. Policy v. New York State Energy & Research Dev. Auth.*, 188 A.D.3d 1556, 1558 (3d Dep't 2020); *see Matter of Jewish Press, Inc. v. New York State Police*, 207 A.D.3d 971, 973 (3d Dep't 2022). Under FOIL, "[R]espondent, is only required to provide copies of 'any information kept, held, filed, produced or reproduced by, with or for [respondent].'" *Matter of Jackson v. Albany Cnty. Dist. Attorney's Off.*, 176 A.D.3d 1420, 1422 (3d Dep't 2019) (citing Public Officers Law § 86(4), 87(2)).

Petitioner argues that the agencies possess the requested records by referencing documents from years ago which discuss events that occurred in 2001. For example, Petitioner's Exhibit 20

lists quotes from a September 12, 2001 article “NY Digging for Dead Survivors”, a September 16, 2001 article “Department of Health Provides Health and Safety Precautions and Conducts Essential Public Health Activities,” and more articles published from 2001, 2002, and 2009. Petitioner’s argument fails, as these articles depict the aftermath of 9/11, rather than stating that any of the Respondents have records responsive to Petitioner’s request in 2026.

Citations to the DORIS Collection Guides do not support Petitioner’s assertion that the Mayor’s Office and DDC possess responsive records. While the guides note that “[t]he accession consists of correspondence, memoranda ... used by the Deputy Mayor,” this general description does not establish that the specific records sought by Petitioner—namely, documents relating to 9/11—are contained within that collection. *See* Exhibit 25, NYSCEF No. 27. Accordingly, Petitioner’s argument that these agencies should have responsive records should be rejected as unsupported speculation. *See Gould v. N.Y.C. Police Dep’t*, 89 N.Y.2d 267 (1996) (“[Respondent’s] conjecture that the documents existed some 10 years ago was insufficient to warrant a hearing on the issue.”); *Matter of Jackson*, 176 A.D.3d (finding that although Petitioner submitted a police department property report that listed a roll of film, nothing in the record indicated that the roll of film or any photographs that may have been developed therefrom were ever in respondent’s possession).

Here, the Mayor’s Office and DDC satisfied their statutory obligations by performing a diligent search, which included investigating where any 9/11 related records would be maintained, and searching those electronic and physical locations; reaching out to the various bureaus and staff responsible for being the custodian of records at the agency and certifying that they conducted a diligent search for the records requested. Petitioner fails to demonstrate any factual basis

supporting their contention that the Mayor's Office and DDC are presently in possession of responsive records.

Accordingly, Petitioner fails to state a claim against the Mayor's Office and DDC.

POINT II

**THE PROCEEDING AGAINST THE LAW
DEPARTMENT IS PREMATURE AS THE
APPEAL WAS REMANDED BACK TO THE
AGENCY, AND NO FINAL AGENCY
DETERMINATION HAS BEEN MADE.**

The claims against the Law Department are premature and should be dismissed, or alternatively remanded for further administrative review as there is no final administrative agency determination. "Under POL § 89(4)(b) and established New York law, a petitioner must exhaust all available administrative remedies prior to commencing an Article 78 proceeding." *See Am. First Pol'y Inst. v. Bragg*, 2026 N.Y. Misc. LEXIS 2682, *4 (N.Y. Sup. Ct. 2026) citing *Borrero v. Banks*, 212 A.D.3d 496 (1st Dep't 2023); *Cross v. Russo*, 132 A.D.3d 454 (1st Dep't 2015).

On March 20, 2026, the Mayor's Office remanded Petitioner's appeal in relation to the Law Department. Exhibit 23 at p. 3, NYSCEF No. 25. At the time this proceeding was commenced, the Law Department was still actively evaluating Petitioner's request and reviewing documents that may be responsive. FOIL does not set a specific statutory deadline governing an agency's post-remand review of an appeal, and the absence of such a deadline further underscores that the administrative process had not reached finality. *See generally* Public Officers Law § 89(4)(a).

As previously stated, the New York Court of Appeals has expressly held that "there is no specific time period in which the agency must grant access to the records," and multiple Appellate Division decisions have upheld extended agency response timelines of months or more when circumstances justified the delay. *Data Tree, LLC*, 9 N.Y.3d at 465 (2007); *see also Matter of Cuomo*, 235 A.D.3d (2025); *Matter of Save Monroe Ave., Inc.*, 197 A.D.3d (2021); *Matter of*

Gannett Satellite Information Network, LLC, 181 A.D.3d (2020). Petitioner is seeking decades-old records that are stored in repositories that are not uniformly indexed by topic or date. The time required for the Law Department to complete its initial review and post-remand review is reasonable and warranted given the breadth of Petitioner's request, lack of custodial specificity, and reliance on inaccurate factual assumptions.

Petitioner's FOIL request was not reasonably described within the meaning of Public Officers Law § 89(3), as it failed to provide sufficient or accurate information to enable the Law Department to identify the memorandum that Petitioner sought. Additionally, the request broadly sought "underlying documents, studies, reports...that informed the Harding memo's estimate," while incorrectly suggesting that Deputy Mayor Harding authored the memorandum, a factual premise that is now known to be inaccurate.

Because Petitioner's request did not accurately identify the document at issue, any obligation to search for "underlying" or "relied upon" materials was necessarily contingent upon first correctly identifying the memorandum itself. Now that the memorandum referenced in the FOIL request has been identified, it allowed the Law Department to conduct a narrower search. *See Benjamin Chevat v. New York City Department of Environmental Protection*, Index No. 155678/2024, NYSCEF Doc No. 63 [Sup. Ct. N.Y. County (February 3, 2026)] (Petitioner's Exhibit 1 October 2001 Memo to Deputy Mayor Harding). Even with this, the request remains broad, and identifying potentially responsive records continues to be time-consuming process.

The Law Department has conducted a keyword search in the various Relativity workspaces that returned over 100,000 records. *See Affirmation of Ijeoma Nduka*, dated June 30, 2026 ("Nduka Aff.") at ¶ 4. A subset of records found in the databases is currently being reviewed for responsiveness and for any applicable FOIL exemptions. *See City's Aff.* at ¶ 6. Additionally,

Respondent is attempting to confer with Petitioner's counsel to determine whether the request can be narrowed or otherwise clarified to facilitate a more efficient and streamlined search. *Id.* at ¶ 7.

The appropriate course is not judicial intervention, but rather further administrative review that was ongoing when this proceeding was commenced and that is now also informed by the now-correct information. As previously stated, the Law Department is willing to work with Petitioner to identify and locate responsive documents; however, as the request currently stands, additional time is required to review the approximately 100,000 potentially responsive documents.

Because the administrative review remains ongoing and no final post-remand determination has been issued, the proceeding against the agency is premature and should be dismissed or, alternatively, remanded to the agency to complete its review, conduct any additional searches warranted by the clarified factual record, and issue a final determination.

CONCLUSION

For the reasons set forth herein, Respondents respectfully request that the Court grant their cross-motion and dismiss the Verified Petition in its entirety, and award Respondents such other and further relief as this Court deems just and proper.

Dated: New York, New York
June 30, 2026

STEVEN BANKS
Corporation Counsel of the City of New York
Attorney for Respondents
100 Church Street
New York, New York 10007
(212) 356-0872

By: /s/
Saarah S. Dhinsa
Assistant Corporation Counsel