

EXHIBIT 22

From: Andrew Carboy <acarboy@carboylaw.com>
Sent: Sunday, March 8, 2026 12:15:21 AM
To: FOIL Appeal <foilappeal@cityhall.nyc.gov>
Cc: Matthew McCauley <mmccauley@thmljp.com>
Subject: FOIL Number 2023-002-00733 Administrative Appeal of February 27, 2026 Response

Re: Appeal of Response to Freedom of Information Request
dated February 27, 2026
FOIL Number: 2023-002-00733
Subject Matter: Preparation For/Response to
Collapse of World Trade Center, September 11, 2001

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From: ServiceECF (Law) <ServiceECF@law.nyc.gov>
Sent: Sunday, March 8, 2026 12:24:49 AM
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Subject: Proof of service receipt

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March 7, 2026

Records Appeals Officer

Jeffrey Lowell
Office of the Mayor/City of New York
FOILAppeal@cityhall.nyc.gov

Re: Appeal of Response to Freedom of Information Request
dated February 27, 2026

FOIL Number: 2023-002-00733

Subject Matter: Preparation For/Response to
Collapse of World Trade Center, September 11, 2001

Appeals Officer Lowell:

We represent Phil Alvarez on behalf of his brother, NYPD Detective Luis G. Alvarez, deceased; Benjamin Chevat, Director of 9/11 Health Watch; Karen Klingon, Executrix of the Estate of Robert Klingon (resident of lower Manhattan); Yvonne Baisley, Executrix of the Estate of FDNY Firefighter Robert Fitzgibbon; and Charlotte Berwind, Executrix of the Estate of volunteer firefighter Charles E. Flickinger, Jr.

The September 8, 2023 FOIL Request: Pursuant to the Freedom of Information Law (“FOIL”), on September 8, 2023, our clients requested public records from the Office of the Mayor (“Mayor’s Office”) concerning the response of the City of New York (“City”) to the September 11, 2001 collapse of the World Trade Center, along with historical documents and disaster preparation materials.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 and public schools in September 2001, and the City’s knowledge of airborne toxic hazards, existing at that time. We also requested documents explaining why the Mayor sought liability protection from toxic exposure claims while the City assured the public that the air was safe.

We appeal your letter dated February 27, 2026, styled as a “response” to our FOIL request, submitted thirty (30) months ago. **(Exhibit 15)** The Mayor’s Office responds on behalf of itself, the New York City Law Department (“Law Department”) and Department of Design and Construction (“DDC”) (collectively, “respondents”). Id.

Essentially, the “response” is a denial, providing nothing more than internet links to long available public information, half of which originated with federal agencies or Congress. Id. The Mayor and Law Department advise that they have no September 11th-related documents to disclose. Id.

The February 27, 2026 Response of the Mayor and Law Department: Respondents produce no responsive records, explaining “diligent searches” cannot locate them. (**Exhibit 15**)

City searchers:

“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.

The City’s Response is Devoid of Credibility

Contradicted by available information, these assertions lack credibility. We demonstrate that the records sought exist and are accessible.

Petitioners even found a critical document, the “Deputy Mayor Robert Harding memo,” an October 2001 summary of risk assessments circulated in the Mayor’s Office, that the respondents deny having. We obtained the Harding Memo, earlier this year, from a non-public source, as more fully detailed below. Why are Petitioners and their volunteer legal team able to find such documents, *outside* of City archives, while official records custodians cannot locate them *inside* City Hall or the Law Department?

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?

Half of the links do not even concern City records, but, instead, access federal documents, publicly available for decades. 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 27th “response” is eclipsed only by its uselessness.

We sought previously undisclosed City documents, not stale federal records. Was our request unclear? Is there a reading comprehension issue on the part of the searchers? Or, most likely, is there a continued effort to keep the City’s September 11th archive sealed from public view?

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.

The February 27th letter cites the City's inability to identify "*any records responsive to your request under FOIL.*" (**Exhibit 15**) The City Department of Environmental Protection ("DEP") made an identical and equally baseless assertion during *its* initial responses to our FOIL request. The outcome is instructive.

After fighting us and denying the existence of any September 11th-related records for two years, rejecting our FOIL administrative appeal and moving to dismiss our Article 78 proceeding, the DEP now admits it has at least 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 decision makers responsible for DEP's baseless obstruction, along with attorneys' fees and costs. *Id.* We will take the same course with respect to the February 27th response of the Mayor's Office and Law Department.

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) 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) With respect to FOIL 2023-003-00733, you provide no justification or objection, set forth in Public Officers Law Sec. 87, to withhold the requested documents.

There is considerable evidence that the documents we seek exist. As explained below, 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. We do not accept your contrary statement.

You add that there is no ability to search the records. "*The Law Department's records are not maintained in a manner that allows it to search for records responsive to the request.*" (**Exhibit 15**) This assertion is unsupported by any explanation or evidence, and appears to be untrue, for the reasons set forth below.

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

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 with reasonable effort.*" 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.

A. Law Department Collected, Scanned and Catalogued September 11th Records

The Mayor's Office, like all City agencies and departments, 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 or limitation, the World Trade Center Unit instructed the Mayor's Office to identify and preserve all documents concerning its response to the WTC collapse. In 2002, the World Trade Center Unit advised 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)*

To accept the February 27, 2026 response 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 given descriptive titles? 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? Tellingly, your letter answers none of these basic information technology questions. The "accessibility" excuse is a pretext for obstruction.

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, assembled and maintained in accessible and searchable formats, would be foundational to the World Trade Center Unit's mission. Your letter does not address this reality.

The Law Department also boasts of "Litigation Management" and "Electronic Discovery" teams. **(Exhibits 18 and 19)** These specialized sections 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 contention that its September 11th archive cannot be searched.

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

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 under FOIL. (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 members of Congress. These documents most certainly exist.

II. The FOIL Response of the Law Department and Mayor’s Office is Out of Step with Recent Movement Toward Opening the September 11th Archive

Although this latest obstruction is consistent with decades of resistance to opening the City’s September 11th archive, your response (**Exhibit 15**) conflicts with the following developments.

A. 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)

The February 27, 2026 response conflicts with this previous commitment of the Adams’ administration. Please reconsider your position, and start providing 9/11 victims and families the answers they have sought for twenty-five (25) years, as your former boss promised.

B. 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**)

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**)

You fail to explain your inability to locate this record and its supporting bases. Please provide the original and complete Harding memo, along with all information informing its content (studies, assessments, reports, communications)

C. 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**)

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. (**Exhibit 10**)

One would imagine that, with a pending law enforcement investigation into this institutional resistance, the Mayor’s Office and Law Department would be more forthcoming, today. Oddly, they are not. A reasonable FOIL appeals officer, attuned to these developments, might reconsider the position set forth in the February 27 response . (**Exhibit 15**) Please do so, now.

D. 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, quite understandably, 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](https://www.youtube.com/watch?v=C1My8IC6V6E) also, video of hearing, available at: <https://www.youtube.com/watch?v=C1My8IC6V6E>)

Your February 27th response (**Exhibit 15**) cannot be reconciled with Mr. Banks’ fresh commitment to transparency. Please address this contradiction, in detail.

III. After Years of Obstruction by the Mayor’s Office, the February 27, 2026 Response is a Denial, Most Appropriately Addressed in an Article 78 Hearing

Before the February 27, 2026 letter, the Mayor’s Office extended its own time to respond to the request on more than ten (10) 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**), in your capacity as Records Appeals Officer, you even denied our previous FOIL appeal. (**Exhibit 13**)

You indicated that our record requests required “detailed searches and thorough review.” (**Exhibit 14**) You then promised to “produce any responsive records...by February 27, 2026.” Id.

Today, after your February 27th response, we do not have a single document from the Mayor or Law Department.

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)

This serial delay, spanning 2.5 years, is unreasonable, violating the letter and spirit of New York’s public record access laws; that it culminated in the production of an internet search by the City’s Records Appeals Officer is farcical.

IV. The Subject FOIL Request

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 and reduced our FOIL request (**Exhibit 2**) due to the parallel actions of the New York City Council and the Department of Investigation (“DOI”).

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)

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)*

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)

As United States Representatives Jerrold Nadler and Dan Goldman explained, following the enactment of Resolution 560-A, 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*")

In an effort to streamline and expedite the response of the Mayor's Office, in view of the DOI investigation, we edited and reduced our FOIL request, as set forth at **Exhibit 2**. Petitioners identified the 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.

V. Without Justification, the Mayor’s Office Postponed Responding From 2023 until February 2026

Rather than respond by producing *any* documents for review (not one page, to date), 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, ten (10) 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])

Other than citing a volume of other, 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 ten (10) of them.

The two-plus year delay in responding was unreasonable and obstructive. This is especially so given that the final "response" of the Mayor's Office and Law Department is a hasty internet search. The Freedom of Information Law itself directs 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)

If the five-day window is too brief, the FOIL statute requires the Mayor's Office to provide a statement of the approximate date for production, one "*reasonable under the circumstances.*" Id.

By designating ten 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.

None of the adjourned dates was ever demonstrated to be reasonable, realistic or reliable. The Mayor's Office simply disregarded the next date that it selected, and hit "reset," generating an additional, future response point. With the last "reset" to a 2026 date, the outgoing Mayor punted the ultimate responsibility for release of the City's September 11th archive to Mayor Mamdani.

These years of delay are particularly difficult to understand when one considers the quality of the “response,” described above. Did it really take your team thirty (30) months to hop onto Google and search for “EPA,” “World Trade Center,” and “New York City”?

New York State Supreme Court condemns this precise type of conduct, even when the extensions span a far shorter period of time. 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)

Although FOIL does allow a government agency to extend response times, unilaterally, this privilege is limited to appropriate circumstances, absent here. The postponements are not to be indefinite, and the Mayor’s Office 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)

In McKenna v. The City of New York, the New York Supreme Court deemed unreasonable the City’s six (6) self-granted extensions. Unlike the Mayor’s Office, granting itself **2.5 years** to respond (through 10 extensions), the City in McKenna sought only **six months** of additional time. Yet, even that shorter period, one-fifth of the time at issue in this matter, 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.*”)

As *Reinvent Albany* reported earlier 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 by the non-profit government watchdog. ([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?

VI. 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

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, as more fully detailed, above.

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*”]

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 work generated documents responsive to our FOIL requests. (**Exhibits 1 and 2**)

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)

The Harding memo confirms that City agencies performed risk assessments in 2001, projecting thousands of toxic exposure claims. The Harding memo summarizes the conclusions of other City officials. Both Deputy Mayor Harding and the memo’s author appear to be recipients of information, performing no evaluation themselves. Risk assessments and liability analyses informed the memo’s contents, and we sought these materials in our FOIL request.

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 to release it 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**)

Petitioners 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)

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)

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.

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)

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.

As the City continued its campaign of air safety messaging, behind the scenes it lobbied the White House and Congress, seeking the protection outlined in the Harding memo for, among other things, its air quality proclamations. Ironically, the City fretted such advocacy, with potential explication of its 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)

Petitioners' 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 a first recognition of the City's liability for respiratory protection shortages for first responders. 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)

As the 2001 Harding memo anticipates, too, tens of thousands would be sickened by World Trade Center toxic exposure. This early internal prediction conflicts with public statements from City Hall, made years later, downplaying any connection between exposure and illness. Five years after September 11th, the Mayor 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)

In our Article 78 proceeding against DEP, the Law Department did not contest the authenticity of our copy of the Harding memo. (See, NYSCEF#63; Chevat v. DEP, link above) This tacit admission was, most likely, the result of a comparison with the original Harding memo. The existence of the Harding memo demonstrates, with near certainty, that the Law Department and Mayor's Office continue to retain documents responsive to our FOIL requests, including the bases for the risk assessments summarized within this explosive document.

For these reasons, our 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)

The Mayor's myriad pronouncements as to air quality and safety in lower Manhattan are well-known to anyone who heard or read them in September 2001. 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)

We demonstrate that the requested materials remain readily available.

The Mayor's Office, like all City agencies and departments received the special 2002 directive from the City Law Department's World Trade Center Unit. (Exhibit 6)

In accordance with the Law Department's directive, 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.

There is further and more contemporaneous indication that the documents exist, are organized, accessible and easily provided. The Mayor's Office cannot argue that it no longer has the documents or that the documents do not exist, the precise tactic employed by the City DEP to fight our FOIL request as to it.

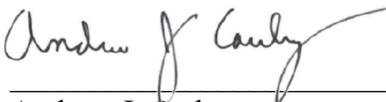
Communications with New York's Congressional delegation, dating from 2021, also confirm that the requested materials are catalogued and set aside. Annexed as **Exhibit 7** are a series of letters between Honorable Jerrold Nadler, Honorable Dan Goldman, and Honorable Caroline Maloney and the Office of the Mayor. Since 2021, the Representatives have sought previously unreleased documents, from City agencies, concerning the response to the September 11th attacks, writing and meeting with the Mayor's Office in this effort. To date, the City has not responded in any meaningful way to these requests from the elected officials. 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 Congressional delegation did City Hall cite a specific FOIL exemption enabling it to withhold the documents. Further, “litigation risks” are not recognized as a basis to deny Petitioners’ FOIL request or those of members of Congress.

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

In closing, we request that the February 27, 2026 FOIL response be revised, immediately, with full disclosure of the requested records. We demonstrate: that no diligent search was performed for the records; that the requested records exist; and the records are searchable. The respondents provide no basis under FOIL to withhold the requested information.

Very truly yours,



Andrew J. Carboy



Matthew McCauley