

EXHIBIT 5

From: Andrew Carboy <acarboy@carboylaw.com>

Sent: Sunday, 12 April 2026 14:29:11

To: Dhinsa, Saarah (LAW) <sadhinsa@law.nyc.gov>

Subject: Chevat v. DEP Draft Joint Letter

Saarah, here is the joint letter. The two sides will have separate sections.

Please let me know when your section is ready, and I will take care of filing with NYSCEF and emailing.

Thanks.

Andy

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April 13, 2026

Hon. James G. Clynes, J.S.C.
Supreme Court of the State of New York
80 Centre Street, Room 136
New York, N.Y. 10013

By NYSCEF

Re: *Chevat v. NY City Department
of Environmental Protection*
Index No. 155678/2024

Honorable Sir:

Petitioner Benjamin Chevat (“Petitioner”) and Respondent New York City Department of Environmental Protection (“DEP”) write jointly in this Article 78 proceeding.

Petitioner’s Section***DEP Document Review Completed Subject to Agency
Confirmation and Provision of a Privilege Log***

Petitioner’s attorneys reviewed all documents DEP produced as responsive to his Freedom of Information Law (“FOIL”) request for September 11th-related documents. Petitioner ordered copies of certain records, and awaits delivery.

1. We request formal written confirmation that DEP has no other documents for review. This request is necessitated by the history of the proceeding, during which the DEP denied, for years, that it had *any* records responsive to the FOIL request.

2. Petitioner also awaits DEP’s privilege log of withheld documents. We do not have a date for production of the privilege log, but request that one be set, immediately. DEP attorneys/decisionmakers already know the reasons for withholding a subset of the records from Petitioner’s review. It is simply a matter of reducing these reasons to writing and sharing them.

3. Finally, we respectfully submit that Petitioner’s motion seeking depositions and written discovery from DEP (NYSCEF: Motion seq. 2 at #s 45–53; 58-70) is ready for determination. DEP denied our September 2023 FOIL request, rejected our appeal and, then, moved to dismiss this action, claiming no relevant documents existed, before producing sixty-eight (68) boxes of responsive records. (*Id.*) After two years, the DEP reversed course, doing so just after the Department of Investigation commenced an inquiry concerning the failure of City agencies to disclose September 11th-related records. On September 16, 2025, the Law Department advised that

DEP “located multiple boxes that are believed to contain at least some responsive records.”
(NYSCEF#52)

Through our application (NYSCEF: Motion seq. 2 at #s 45–53; 58-70), we seek answers from DEP staffers who, in the *past*, swore responsive documents did not exist and sought to dismiss this proceeding as baseless. We spent considerable time fighting the denials and dispositive motion before DEP’s reversal and concession. Accountability for this waste of judicial resources and attorney hours remains highly relevant, notwithstanding the document production/review, described above.

This Court wields the “*inherent power to address actions which. . .undermine the truth-seeking function of the judicial system and place in question the integrity of the courts and our system of justice.*” CDR Creances S.A.S. v. Cohen, 23 N.Y.3d 307, 318 (2014) This independent authority, confirmed by the Court of Appeals, extends to ordering sworn testimony of DEP officials responsible for: **A)** repeatedly denying Petitioner’s FOIL request; **B)** asserting DEP had no responsive documents; **C)** affirming a diligent search was undertaken; **D)** seeking dismissal of this proceeding on these bases; and **E)** “finding” 68 boxes of responsive records.

The production of responsive DEP records does not “moot” Petitioner’s motion or “cure” the stark contradictory representations Respondent made, over the years, before admitting it created and maintained responsive records.

Respondent’s Section

We thank the Court for its consideration of this joint letter

Respectfully submitted,

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