

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. 155678/2024

Petitioner,

Motion Seq. #3

Return date: August 4, 2026

Hon. James G. Clynes, J.S.C.

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

-against-

NEW YORK CITY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondent.

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**PETITIONER’S NOTICE OF CROSS-MOTION FOR RELIEF
CONCERNING OUTSTANDING DISCOVERY, OPEN DEPOSITIONS and
UNFINISHED FREEDOM OF INFORMATION LAW DISCLOSURE**

PLEASE TAKE NOTICE that, upon the annexed affirmation of Andrew J. Carboy, counsel for Petitioner, Benjamin Chevat, dated July 9, 2026, (in support of cross-motion and in opposition to respondent’s motion), the Affirmation of good faith, dated July 9, 2026, all exhibits submitted in support, and all of the documents contained online in the NYSCEF file of this proceeding, a cross-motion will be made on behalf of the Petitioner, Benjamin Chevat, at Room 331, located at 60 Centre Street, New York, New York on the 4th day of August 2026, at 9:30 a.m. for: an Order compelling Respondent, New York City Department of Environmental Protection (“DEP”), to comply fully with the Court’s Order and Decision dated May 28, 2026 (NYSCEF#76), which found the DEP acted arbitrarily and capriciously in denying Petitioner’s Freedom of Information Law (“FOIL”) request and appeal, and granted discovery to Petitioner, by directing:

1. Resumption of the deposition of longtime DEP Freedom of Information Appeals Officer Russell Pecunies, which the New York City Law Department terminated, abruptly, on July 1, 2026 after he admitted he did not actually determine the FOIL appeal denial he certified and that the appeal denial was ghostwritten by a senior DEP attorney, Musa Ali, who is neither a FOIL searcher nor a FOIL appeals officer;
2. Production of Diana Dellafiora for deposition, a DEP FOIL staffer, the Law Department having canceled her July 8, 2026 examination;
3. Pursuant to CPLR Sec. 3103, Exclusion of attorney Musa Ali from observing future depositions as he is a witness to and participant in the subject events, the arbitrary and capricious denial of Petitioner's public record requests and appeal;
4. Restriction of witness defense to a single attorney from Steve Banks' office. As detailed herein, the dueling objections from the Law Department staffers caused chaos, interrupted and confused the witness, and resulted in the unusual spectacle of the two City lawyers arguing, not just with Petitioner's counsel, but with each other. The court reporter admonished them to stop this bickering so he could create a clear record;
5. Production of Musa Ali for deposition as he directed that Petitioner's FOIL appeal be denied, although he is not the DEP's designated FOIL Appeals Officer, and, via email, ordered Russell Pecunies to issue the denial, without Pecunies undertaking any investigation or factfinding, in advance (a stark departure from Pecunies' 18 years of practice as DEP's only Appeals Officer) ;
6. Appointment of a Judicial Hearing Officer to monitor and/or supervise all depositions going forward, as the DEP is invoking attorney client privilege to obstruct inquiry into the basic facts of the FOIL denial, and the respondent's conduct in defending examination is otherwise obstructive and improper with multiple attorneys interposing objections, some of which conflict with each other. The Judicial Hearing Officer would, if needed, rule on all objections, including those concerning attorney client privilege, interposed to thwart Petitioner's discovery of the FOIL response and appeals process;
7. Pursuant to CPLR Sec. 3122, DEP's immediate response to Court-ordered discovery, Petitioner's Notice of Discovery and Inspection dated June 9, 2026 (NYSCEF #77), which DEP has neither responded nor objected to, constituting a waiver of any objection to producing documents concerning the underlying FOIL search and the bases for the denial of Petitioner's appeal;
8. Production of a privilege log by DEP for any documents withheld from the FOIL responses as the Law Department now concedes, for the first time, it turned over only "non-exempt" documents (NYSCEF #81 at par. 5: referencing production of only "*non-exempt materials*" to Petitioner). Previously, the Law Department denied it withheld any documents, failing to advise Petitioner and the Court it was doing so (See, e.g., NYSCEF #39: Law Dept. Letter of September 16, 2025 in which it advises withdrawal of its motion to dismiss and admits location of records: "*Respondent previously filed a cross-motion to*

dismiss on the grounds that the agency had conducted a diligent search for responsive records and reported that none were located Recently, however, Respondent has located multiple boxes that ...contain... responsive records.”; NYSCEF#61: Law Dept. Letter of February 2, 2026: “Respondent is producing the requested records on a rolling basis, and to date, two boxes have been produced. Petitioner will conduct a third and **final in-office review to examine the remaining boxes.**”

9. Submission of any documents, be they FOIL responses or discovery responses, claimed to be privileged by the DEP to the Court for *in camera* inspection. This remedy is requested as the DEP and Law Department demonstrates they cannot be trusted to police themselves, having previously denied any responsive records existed, rejecting Petitioner’s administrative appeal on those grounds, and, then, moving to dismiss this proceeding as a “baseless fishing expedition” before reversing course and “finding” at least sixty-eight (68) boxes worth;
10. Immediate production of the FOIL documents Petitioner ordered photocopies of, more than three months ago, during the review of March 27, 2026; and
11. Submission of an official status report to the Court by the Law Department and DEP, advising as to projected completion of the DEP FOIL production and document review as Petitioner has no written reliable information that document production/review is nearing an end point.

This cross-motion is directed against the original moving party, and seeks relief related to the issues before the Court and raised by respondent in its Order to show cause.

Answering papers, if any, are to be served upon the undersigned in accordance with CPLR Sec. 2214 and Sec. 2215, within two (2) days of the return date.

Dated: July 9, 2026

Respectfully submitted,



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