

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

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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.

**AFFIRMATION  
PURSUANT TO CPLR  
2106 OF JEFFREY  
LOWELL IN SUPPORT  
OF THE CROSS-  
MOTION TO DISMISS  
THE VERIFIED  
PETITION**

Index No. 153916/2026

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I, JEFFREY LOWELL, an attorney admitted to practice in New York State, affirm this 30<sup>th</sup> day of June, 2026, under the penalties of perjury under the laws of the State of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law.

1. I am the Records Appeals Officer for Respondent the City of New York City s/h/a the City of New York Office of the Mayor (the “Mayor’s Office”). In my position as Records Appeals Officer, I am responsible for reviewing the Mayor’s Office’s responses to Freedom of Information Law (“FOIL”) requests in appeals brought by members of the public, to the extent required by the Freedom of Information Law.

2. The statements in this affirmation are based on my personal knowledge and upon information provided to me by other employees of the Mayor’s Office and contained in the records of the Mayor’s Office.

3. On September 8, 2023, the Petitioner submitted a 28-part FOIL request for records related to the September 11, 2001, attacks on the World Trade Center and the City's knowledge of toxins around the site. The request was acknowledged by the Mayor's Office the same day. Petitioner amended the request on September 7, 2025, via email, limiting the request to sections 1, 2, 5(a)(i-vi), and 5(c-e) of their original request. On December 12, 2025, the Petitioner filed an appeal, claiming that the Mayor's Office's lack of response constituted a constructive denial.

4. As the Records Appeals Officer, I responded to the appeal and denied that the request had been constructively denied, citing the age of the materials requested, the size of the request, and that courts have held that there are no absolute deadlines under FOIL. *See Matter of New York Times Co. v City of New York Police Dept.*, 103 A.D.3d 405, 407 (N.Y. App. Div. 2013) ("Public Officers Law § 89 (3) mandates no time period for denying or granting a FOIL request, and rules and regulations purporting to establish an absolute time period have been held invalid."). However, I remanded the request to the Records Access Officer (RAO) with instructions to respond by February 27, 2026, with any responsive records, subject to any applicable privileges or exemptions.

5. The Mayor's Office's conducted a search through its email database active from January 1, 2002 through August 2020, the Veritas Enterprise Vault ("EV database"), and it's only long-term physical storage facility, which is a warehouse located on White Street in Manhattan. The search was narrowed to these two locations as they are the only repositories that would contain records responsive to the timeframes identified in Petitioner's FOIL request.

6. The Mayor's Office does not retain individuals' emails in this EV database unless they still worked for the City after January 1, 2002.

7. 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's database's implementation.

8. The warehouse located on White Street maintains any of the Mayor's Office's archived hard-copy records that were not sent to the Department of Records and Information Services ("DORIS").

9. The following combinations of search terms were used against the EV database: "toxin\*", "World Trade Center", "9/11", "September 11<sup>th</sup>", "WTC", and "limit\* Near/10 liability," narrowed from September 11, 2001 to September 10, 2002. These searches did not return any responsive records.

10. 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.

11. 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.

12. A search for mailboxes of Robert Harding and Mayor Giuliani were conducted. No mailboxes were found.

13. 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 conducted on April 26, 2024 in response to Petitioner's initial FOIL request.

14. The broader searches for "World Trade Center and toxin\*," "September 11, 2001 and toxin\*," and just "toxin" were conducted 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).

15. Sallimatou Diaby, the Records Access Officer searched through Microsoft Purview – the database that stores all of the Mayor's Office's Microsoft 365 records dated after August 2020 – using the same search terms employed to conduct searches in the EV database on May 13, 2026. This search did not yield any results.

16. On May 28, 2026, I 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. None of these hits were related to the September 11<sup>th</sup> attacks.

17. The following is a chart illustrating the searches conducted in the EV database and Microsoft Purview, and results returned:

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 <sup>th</sup> , 2001"	September 11, 2001 to September 10, 2002	0	N/A
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	80	Non-responsive to FOIL

Terms searched	Dates searched	Results from search	Subject matter of records found
	October 31, 2002		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.

18. The EV database contains emails only from January 1, 2002, through August 2020, as the Mayor's Office did not utilize this system until January 2002. Robert M. Harding was appointed Deputy Mayor for Economic Development and Finance on March 2, 2000. His last day in Mayor Giuliani's administration and as Deputy Mayor was in December 2001.

19. I reviewed the storage log of the warehouse on White Street to identify which shelves would contain 9/11 related records, if still present. I identified several potentially relevant shelves. I inspected those shelves in person and confirmed that they did not hold any responsive records.

20. On February 20, 2026, I met with the RAO to discuss the adequacy of the searches, the fact that our database for records up to August of 2020, EV database, had very few records prior to 2002, and that there were no mailboxes for Mayor Giuliani or Deputy Mayor Harding, who would have been likely custodians of the records requested. The RAO reviewed the database for responsive materials and determined that the Mayor's Office was not in possession of the requested records.

21. On February 27, 2026, the RAO had to undergo a medical procedure and was unavailable to sign the response letter. Rather than delay the response, I prioritized sending the letter within the deadline and submitted the response letter signed with my name as Records Appeals Officer. The substance of the letter was based on the review by the RAO.

22. On March 8, 2026, the Petitioner filed a second appeal claiming that the response was insufficient. On March 20, 2026, I responded to the appeal as the Records Appeals Officer, denying the appeal as I confirmed that the Mayor's Office was not in possession of the requested records.

23. At no time was I acting as the RAO and the Appeals Officer. I used my correct title on all correspondence and only signed the February 27, 2026, letter as Records Appeals Officer because the RAO was out for medical reasons.



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JEFFREY LOWELL