

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

ROBERT COX,

Petitioner,

-against-

CITY OF NEW ROCHELLE, WILFREDO MELENDEZ,

in his official capacity as City Manager and

Records Appeals Officer, and CITY CLERK

KIM JONES, in her official capacity as

Records Access Officer,

Respondents.

MEMORANDUM OF LAW
IN SUPPORT OF VERIFIED PETITION
CPLR ARTICLE 78

I. PRELIMINARY STATEMENT

This is a special proceeding pursuant to Article 78 of the Civil Practice Law and Rules seeking judicial review of twenty-four final administrative determinations issued by Respondents on May 20, 2026, under the Freedom of Information Law, Public Officers Law Article 6.

This case does not require the Court to resolve twenty-four different factual controversies. It requires the Court to decide one recurring legal question that Respondents answered the same way twenty-four times: whether an agency may refuse to decide a FOIL request on the merits solely because a similar request was previously submitted, and whether the Article 78 statute of limitations may be used as an administrative defense that relieves the agency of its statutory obligations under the Freedom of Information Law.

Critically, many of the May 2026 requests were not materially identical to the earlier requests. As demonstrated in Exhibit C to the Verified Petition, a substantial number expressly expanded the requested time period, sought categories of records that necessarily accumulated after the original requests were filed, or differed in subject matter or scope. Even those requests that were substantially similar to earlier ones had never received complete, final administrative

determinations suitable for judicial review. They remained trapped in prolonged delay, partial productions, unresolved appeals, or constructive denials created by Respondents' own inaction.

The Verified Petition illustrates that pattern through five representative examples (¶¶33–39). Those examples—spanning constructive denial and shifting burden estimates, incomplete production followed by administrative abandonment, prolonged silence converted into a limitations defense, unaddressed conflict-of-interest objections, and the refusal to act even after another agency identified the City as the custodian—demonstrate that Respondents repeatedly substituted procedural default for the individualized FOIL determinations the statute requires. The administrative records for the twenty-four requests are annexed as Exhibits D and E to the Petition. Exhibit D contains the longer illustrative histories for five representative requests (including the pre-2026 email correspondence). Exhibit E contains the core 2026 administrative records for the remaining nineteen requests.

Respondents accepted the May 2026 submissions as new FOIL requests, assigned them new request numbers, and processed them through the City's NextRequest system. Having done so, they were required to identify responsive records, apply any applicable exemptions, and disclose non-exempt material. Instead, they applied a blanket rule that the mere existence of earlier similar requests relieved them of that obligation. That categorical refusal constitutes an error of law and was arbitrary and capricious under CPLR 7803(3).

Petitioner respectfully requests that the Court annul the twenty-four determinations, direct Respondents to disclose all non-exempt records responsive to the requests, and award reasonable attorney's fees and costs pursuant to Public Officers Law § 89(4)(c).

II. STATEMENT OF FACTS

The facts are set forth in detail in the Verified Petition and are summarized here only to the extent necessary for the legal arguments that follow. In particular, the Court is respectfully referred to paragraphs 33–39 of the Verified Petition, which set forth five representative examples illustrating the recurring administrative defects at issue: constructive denial and shifting burden estimates, incomplete production followed by administrative abandonment, prolonged silence converted into a limitations defense, unaddressed conflict-of-interest objections, and the refusal to act even after another public agency identified the City as the custodian of responsive records.

Petitioner is the Publisher and Managing Editor of Talk of the Sound and Words in Edgewise. In connection with investigative reporting concerning municipal projects, public procurements, contracts, vendors, and related matters, Petitioner submitted numerous FOIL requests to the City of New Rochelle during 2024 and 2025.

Many of those original requests never received complete, final administrative determinations suitable for judicial review. They became mired in prolonged administrative exchanges, repeated extensions, demands that Petitioner narrow otherwise proper requests, claims that extraordinarily large numbers of records required review, partial responses, or complete administrative silence.

In May 2026, Petitioner resubmitted twenty-four requests through the City's NextRequest system. Those resubmissions were derived from the earlier requests, but many were not materially identical. A substantial number expressly expanded the requested time period, sought

categories of records that necessarily accumulated after the original requests were filed, or differed in subject matter or scope. Each resubmission was accompanied by a summary of the procedural history of the corresponding original request.

On May 5, 2026, Respondents issued separate determinations denying each of the twenty-four requests. The same day, Petitioner submitted twenty-four administrative appeals directed to Respondent Melendez as Records Appeals Officer.

On May 20, 2026, Respondent Melendez issued twenty-four final determinations. Those determinations were transmitted to Petitioner the following day in a single PDF. In each determination, Respondents refused to decide the request on the merits and instead treated the May 2026 submissions as improper attempts to revive earlier claims whose time for judicial review had expired.

This proceeding followed.

III. STANDARD OF REVIEW

Under CPLR 7803(3), an administrative determination must be annulled if it is affected by an error of law or is arbitrary and capricious. Questions concerning the proper interpretation of the Freedom of Information Law are reviewed as questions of law. See *Matter of Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 275 (1996); *Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462 (2007).

FOIL establishes a presumption that all government records are available for public inspection and copying. Exemptions are narrowly construed, and the agency bears the burden of establishing any claimed exemption by articulating a particularized and specific justification. *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566 (1986); *Matter of Data Tree*, 9 N.Y.3d at 462.

IV. ARGUMENT

POINT I

THE COURT MAY PROPERLY REVIEW ALL TWENTY-FOUR DETERMINATIONS IN A SINGLE ARTICLE 78 PROCEEDING

Although the underlying subject matter of the twenty-four FOIL requests varied, the legal basis for the final determinations was substantially identical. In each instance, Respondents refused to decide the request on the merits and instead invoked the existence of earlier similar requests and the Article 78 statute of limitations as grounds for denial.

Respondents themselves treated the twenty-four appeals as presenting a common issue. They issued the final determinations on the same day and transmitted them to Petitioner in a single PDF. That collective disposition is powerful evidence that Respondents viewed the batch as raising a recurring legal question rather than twenty-four unrelated factual disputes.

Where multiple administrative determinations rest on the same legal error, an Article 78 proceeding may challenge them together. Judicial economy strongly favors resolving one recurring legal question in one proceeding rather than requiring twenty-four nearly identical

proceedings. The Court should therefore decide all twenty-four determinations in this single proceeding.

POINT II

RESPONDENTS COMMITTED LEGAL ERROR BY REFUSING TO DECIDE THE MAY 2026 FOIL REQUESTS ON THE MERITS

The Freedom of Information Law is built on a presumption of access. All government records are “presumptively open for public inspection and copying” unless they fall within one of the narrow exemptions set forth in Public Officers Law § 87(2). *Matter of Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 274–75 (1996). Those exemptions “are to be narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption.” *Id.* at 275.

The Court of Appeals has repeatedly emphasized that this burden is real. An agency must meet it “in more than just a plausible fashion.” *Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462 (2007). Conclusory assertions are insufficient. The agency must articulate a “particularized and specific justification” for denying access. *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566 (1986).

FOIL therefore requires an agency that receives a written request for records reasonably described to do three things: (1) identify responsive records, (2) determine whether any statutory exemption applies, and (3) disclose all non-exempt records. Public Officers Law § 89(3)(a); *Gould*, 89 N.Y.2d at 274–75. That is the agency’s core statutory duty.

FOIL therefore imposes three sequential duties on an agency that receives a proper request. First, the agency must identify the records that are responsive to the request. Second, it must determine whether any of those records, or any portion of them, fall within a specific exemption set forth in Public Officers Law § 87(2). Third, it must disclose all non-exempt records or portions of records. See Public Officers Law § 89(3)(a); *Matter of Gould*, 89 N.Y.2d at 274–75. Each step is mandatory. An agency may not skip the first two steps and proceed directly to a procedural refusal, nor may it treat a categorical rule about prior requests as a substitute for the individualized analysis the statute requires.

The May 20, 2026 determinations skipped all three duties. In none of the twenty-four final determinations did Respondents identify a single responsive record. In none did they assert a specific exemption under § 87(2) with the particularized justification that *Burns* and *Data Tree* require. In none did they determine whether any non-exempt material existed and should be disclosed. Instead, Respondents applied a single procedural conclusion—that the requests were improper attempts to revive earlier claims—and ended the analysis there. That is not a FOIL determination. It is a refusal to perform the statutory duties that FOIL imposes once a request has been accepted and processed.

Respondents accepted the May 2026 submissions as new FOIL requests. They assigned each request a new number and processed it through the City’s NextRequest electronic FOIL management system. Having accepted and processed the requests, Respondents were required to decide them under Article 6 of the Public Officers Law.

Instead, Respondents applied a categorical rule that the mere existence of earlier similar requests relieved them of the obligation to identify records, apply exemptions, or produce non-exempt material. In none of the twenty-four final determinations did Respondents identify a single responsive record. In none did they assert a specific exemption under § 87(2). In none did they conduct the individualized review that Gould, Data Tree, and Burns require.

A FOIL determination that never reaches the merits—never identifies responsive records, never asserts a particularized exemption, and never explains why non-exempt material may be withheld—fails to discharge the agency’s statutory duty. The May 20, 2026 determinations fall squarely into that category. They constitute an error of law and were arbitrary and capricious under CPLR 7803(3).

FOIL Request No. 26-725 illustrates this failure concretely. Rather than identifying responsive records or asserting any exemption under Public Officers Law § 87(2), Respondents first claimed that approximately 10,000 responsive records required review, then asserted days later that the number had grown to nearly 11,000, and ultimately abandoned any substantive FOIL analysis in favor of a pure procedural bar. That sequence is the opposite of the individualized determination that Gould, Data Tree, and Burns require.

POINT III

THE STATUTE OF LIMITATIONS GOVERNING ARTICLE 78 PROCEEDINGS DOES NOT AUTHORIZE AN AGENCY TO REFUSE TO DECIDE A NEW FOIL REQUEST

The four-month limitation period in CPLR 217(1) governs the time within which a petitioner may commence a judicial proceeding to review a final administrative determination. It is a limitation on the court’s jurisdiction, not an administrative defense that relieves an agency of its obligations under the Freedom of Information Law once a new request has been accepted and processed.

Nothing in FOIL or Article 78 permits an agency to decline consideration of an otherwise proper FOIL request solely because a similar request was previously made. The statute of limitations in CPLR 217 does not appear among the grounds on which an agency may deny access under Public Officers Law § 87(2), nor does it appear in the procedural provisions of § 89.

Respondents conflated two distinct questions: (1) whether a prior administrative determination had become final and unreviewable, and (2) whether the agency still had a statutory duty to process a new request for records. By treating the judicial statute of limitations as a basis for denying the May 2026 requests—after having accepted those submissions, assigned them new request numbers, and processed them through NextRequest—Respondents applied an erroneous legal standard.

It is true that an agency’s failure to decide an administrative appeal within the time prescribed by regulation may be treated as a constructive denial that permits the requester to seek judicial review. See 9 NYCRR § 10025.11; Public Officers Law § 89(4). But that principle does not authorize the agency, months or years later, to accept a new FOIL request, process it as a new request, and then refuse to decide it on the merits by invoking the earlier constructive denial as a categorical bar. Once Respondents accepted the May 2026 submissions as new requests, they were required to decide those requests under Article 6 of the Public Officers Law.

Where an agency's own inconsistent conduct undermines any claim that an earlier silence was the operative final determination, courts have declined to let the agency use that ambiguity to trap the requester. See *Matter of Portfolio Media, Inc. v. New York State Off. of Ct. Admin.*, 225 A.D.3d 505 (1st Dept 2024). Several of the requests at issue involve precisely that pattern: shifting burden estimates, partial productions followed by abandonment, and mixed signals about whether the administrative process remained open. In those circumstances, Respondents cannot retroactively treat their earlier incomplete handling as a clean, clock-starting final determination that permanently bars any new request covering related records.

FOIL Request No. 26-727 illustrates the broader problem. Respondents acknowledged the original request, obtained an agreed extension, then produced no records and never decided the administrative appeal. Only after the May 2026 resubmission did they claim that their own failure to act had rendered the matter time-barred. An agency that accepts a new request cannot convert its earlier unfinished process into a free-standing defense that relieves it of the duty to decide the new request on the merits.

For these reasons, Respondents' reliance on CPLR 217 as a basis for refusing to decide the May 2026 FOIL requests was affected by an error of law.

POINT IV

RESPONDENTS' RELIANCE ON AUTHORITY CONCERNING "DUPLICATIVE" REQUESTS IS MISPLACED

Respondents are expected to argue that the May 2026 FOIL requests were improper because they were duplicative of earlier requests, and that an agency is not required to process a successive request for the same records once a prior request has been finally determined and the time to seek judicial review has expired. In support of that position, Respondents will likely rely on Committee on Open Government advisory opinions and the cases those opinions cite, principally *Matter of Corbin v. Ward*, 160 A.D.2d 596 (1st Dept 1990), *Matter of Mendez v. New York City Police Dept.*, 260 A.D.2d 262 (1st Dept 1999), and similar decisions.

Those authorities are readily distinguishable.

First, the cases on which the Committee on Open Government has relied all presuppose that the earlier FOIL request received a complete, final administrative determination suitable for judicial review. In *Matter of Corbin v. Ward*, 160 A.D.2d 596 (1st Dept 1990), the petitioner's original request had been fully processed, a final determination had been issued, and the administrative appeal had been exhausted. The second request was treated as nothing more than an effort to obtain reconsideration of a determination that had already become final and unreviewable. *Matter of Mendez v. New York City Police Dept.*, 260 A.D.2d 262 (1st Dept 1999), rests on the same premise: the prior request had been fully processed, and the later filing was dismissed as a belated attempt to seek judicial review of that completed determination.

That premise is absent here. Many of the original 2024 and 2025 requests never received complete, final administrative determinations. FOIL Request No. 26-727 is illustrative. Respondents acknowledged the original request, obtained an agreed extension after claiming more than 2,000 responsive emails, then produced no records, issued no further extensions, and never decided Petitioner's administrative appeal despite repeated requests that the head of the

agency act. Only after the May 2026 resubmission did Respondents claim that their own failure to decide the appeal had rendered the matter time-barred. That sequence is the opposite of the completed administrative process that existed in Corbin and Mendez. The May 2026 resubmissions were therefore not attempts to revive already-final determinations; they were the practical means of obtaining the definitive agency action that both the Freedom of Information Law and Article 78 presuppose.

Second, many of the May 2026 requests were not materially identical to the earlier requests. As demonstrated in Exhibit C to the Verified Petition, a substantial number expressly expanded the requested time period through May 2026 or another continuing period, sought categories of records that necessarily accumulated after the original requests were submitted, or differed materially in subject matter or scope. Even the Committee on Open Government has recognized that a subsequent request is proper when circumstances have changed or when new records falling within the scope of the request have come into existence.

Third, Respondents themselves treated the May 2026 submissions as new FOIL requests. They accepted them, assigned them new request numbers, and processed them through the City's NextRequest system. Having done so, Respondents were required to decide them under Article 6 of the Public Officers Law. Their subsequent refusal to undertake that analysis, and their reliance instead on the Article 78 statute of limitations as an administrative defense, cannot be justified by case law that addresses only successive requests filed after a complete and final prior determination.

For these reasons, the authorities concerning purely duplicative requests do not control. The May 2026 requests were either materially different from the earlier requests or were necessary because the earlier administrative processes had never been completed. In either event, Respondents were obligated to decide them on the merits.

POINT V

RESPONDENTS FAILED TO CARRY THEIR BURDEN UNDER THE FREEDOM OF INFORMATION LAW

FOIL places the burden of proof on the agency. Once a proper request is made, "the burden rests on the agency to demonstrate that the requested material indeed qualifies for exemption." *Matter of Gould v. New York City Police Dept.*, 89 N.Y.2d 267, 275 (1996). That burden must be met "in more than just a plausible fashion." *Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462 (2007). The agency must provide a "particularized and specific justification" for withholding. *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566 (1986).

Respondents never attempted to carry that burden. They identified no responsive records. They asserted no specific exemption under Public Officers Law § 87(2). They conducted no individualized review of any of the twenty-four requests. Their entire defense rested on a procedural assertion that the requests were improper because similar requests had previously been made.

A blanket procedural refusal is not a FOIL determination. Because Respondents never reached the merits, they necessarily failed to carry the burden that Gould, Data Tree, and Burns place upon them. The determinations must therefore be annulled.

POINT VI

PETITIONER IS ENTITLED TO ATTORNEY'S FEES AND COSTS UNDER PUBLIC OFFICERS LAW § 89(4)(c)

Public Officers Law § 89(4)(c) authorizes an award of reasonable attorney's fees and other litigation costs when the petitioner substantially prevails in a FOIL proceeding. A petitioner substantially prevails when the proceeding results in the disclosure of records or in a judicial determination that the agency's denial was unlawful.

If the Court annuls the May 20, 2026 determinations and directs Respondents to disclose non-exempt records (or to conduct proper individualized determinations), Petitioner will have substantially prevailed. Respondents were given repeated opportunities during the administrative appeals to correct their legal position and declined to do so. An award of fees is therefore appropriate.

V. CONCLUSION

This case does not require the Court to resolve twenty-four different factual controversies. It requires the Court to decide one recurring legal question that Respondents answered the same way twenty-four times.

For the foregoing reasons, Petitioner respectfully requests that the Court:

(1) Annul the twenty-four final administrative determinations issued by Respondent Melendez on May 20, 2026;

(2) Declare that Respondents' determinations were affected by errors of law, were arbitrary and capricious, and were made in violation of the Freedom of Information Law;

(3) Direct Respondents to disclose all records that the Court determines are subject to disclosure under the Freedom of Information Law and are not exempt from disclosure under Article 6 of the Public Officers Law;

(4) Only to the extent the Court determines that further administrative proceedings are legally required, remit any remaining matters to Respondents with directions to conduct lawful, individualized determinations consistent with the Court's Decision and Order and the requirements of the Freedom of Information Law; and

(5) Award Petitioner reasonable attorney's fees and costs pursuant to Public Officers Law § 89(4)(c).

Dated: Dublin, Ireland

August 10, 2026

Respectfully submitted,

/s/ Robert Cox

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