

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, Director of 9/11
Health Watch,

Index No.

Petitioner,

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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VERIFIED PETITION

PETITION OF BENJAMIN CHEVAT

Benjamin Chevat, being duly sworn, deposes and says under penalties of perjury:

1. I am over the age of eighteen years.
2. I am a resident of Bethesda, Maryland.
3. I am the Director of 911 Healthwatch Inc., which is an independent, 501(c)3 “Watch Group”, established by the New York State AFL-CIO and other unions and advocates to monitor the programs created by the James Zadroga 9/11 Health and Compensation Act, including the World Trade Center Health Program to make sure that injured and ill responders and survivors get the health care that they need and deserve.
4. Obtaining public records concerning New York City’s response to the September 11th attacks is important to me for the following reasons having worked for over 22 years to make sure that there was a proper response to the health impact of the toxins that covered Ground Zero, lower Manhattan and western Brooklyn on the thousands of 9/11 responders and survivors, many of whom now have 9/11 conditions including cancer, I would like to know what then Mayor Giuliani and the City of New York knew about the threat to the health of those exposed and when did they know it. Had there been an public acknowledgement of the threat to public safety, the struggle to get a proper response from the government would not have taken nearly a decade and would not still be an issue.
5. Along with others, Pursuant to the Freedom of Information Law, on September 8, 2023, I requested various records from the New York City Department of Environmental Protection (“DEP”) concerning the response of the City of New York (“City”) to the

September 11, 2001 collapse of the World Trade Center, along with historical records and disaster preparation materials. (**Exhibit 1**: September 8, 2023 Freedom of Information Request) (“FOIL request”) The exhibits I reference are complete and accurate copies of the FOIL request, denial, appeal and administrative denial.

6. On January 31, 2024, the DEP denied the FOIL request. (**Exhibit 2**: DEP January 31, 2024, denial of FOIL request #2023-826-03980)
7. Thereafter, on February 13, 2024 (**Exhibit 3**) and February 28, 2024 (**Exhibit 4**), we appealed the denial of the FOIL request. On February 29, 2024, the DEP denied our appeal. (**Exhibit 5**). I understand that the DEP denial of appeal is a “final and binding” determination.
8. For the purposes of this Petition, I incorporate by reference the arguments and facts set forth in the supporting Attorney’s Affirmation. To streamline matters, Petitioners now seek only the so-called “Harding memo,” described below, from the DEP.
9. I seek the following relief:
 - A) A declaration that the February 29, 2024, appeal denial (**Exhibit 5**) was arbitrary and capricious as the DEP failed to establish, with any precision or evidence, that a diligent search for the requested materials was actually performed.
 - B) An Order directing the DEP to search its archives, again, with diligence for the 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”), and related materials (as more fully set forth in Exhibit 1), and report, in detail, as to the steps it undertook during the search and provide all materials responsive to this particular component of the FOIL request.

- C) As Petitioners demonstrate, below, that the requested materials do, in fact, exist, a declaration that the February 29, 2024 appeal denial (**Exhibit 5**) was arbitrary and capricious as the DEP failed to establish, with any precision or evidence, that the requested materials do not exist.
- D) As Petitioners demonstrate that the requested materials do, in fact, exist, a hearing to ascertain the scope and duration of any search previously undertaken by DEP in response to the FOIL request, with live testimony taken from DEP personnel.
- E) An Order directing DEP to provide Petitioners with the anticipated cost of compliance with the FOIL request (**Exhibit 1**) to the extent of locating and producing the Harding memo, in advance of DEP incurring such expenses. At this juncture, the City has not provided the Petitioners with any sense or detail of the expected cost of compliance with the request. Petitioners do not commit to pay an uncertain and open-ended bill for this endeavor.

Conclusion

For the reasons set forth above, and as set forth in the supporting Attorney's affirmation, Petitioners demonstrate their entitlement to the following relief:

- A) A declaration that the February 29, 2024, appeal denial (**Exhibit 5**) was arbitrary and capricious as the DEP failed to establish, with any precision or evidence, that a diligent search for the requested materials was actually performed.
- B) An Order directing the DEP to search its archives, again, with diligence for the 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"), and related materials (as more fully set forth in Exhibit

- 1), and report, in detail, as to the steps it undertook during the search and provide all materials responsive to this particular component of the FOIL request.
- C) As Petitioners demonstrate that the requested materials do, in fact, exist, a declaration that the February 29, 2024 appeal denial (**Exhibit 5**) was arbitrary and capricious as the DEP failed to establish, with any precision or evidence, that the requested materials do not exist.
- D) As Petitioners demonstrate that the requested materials do, in fact, exist, a hearing to ascertain the scope and duration of any search previously undertaken by DEP in response to the FOIL request, with live testimony taken from DEP personnel.
- E) An Order directing DEP to provide Petitioners with the anticipated cost of compliance with the FOIL request (**Exhibit 1**) to the extent of locating and producing the Harding memo, in advance of DEP incurring such expenses. At this juncture, the City has not provided the Petitioners with any sense or detail of the expected cost of compliance with the request. Petitioners do not commit to pay an uncertain and open-ended bill for this endeavor.

I respectfully request that my Petition be granted in its entirety

Dated: June 18 2024



Benjamin Chevat

Sworn to before me this 18th day of June 2024



Notary Public

Richard Elliott
NOTARY PUBLIC
MONTGOMERY COUNTY, BETHESDA COUNTY
MARYLAND
MY COMMISSION EXPIRES MARCH 06, 2027

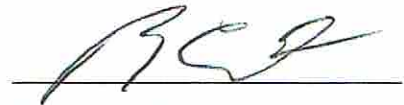
VERIFICATION

STATE OF MARYLAND

COUNTY OF MONTGOMERY

BENJAMIN CHEVAT, being duly sworn deposes and says:

That s/he is the Petitioner in this proceeding; that they have read the foregoing petition and knows the contents thereof; and that the same is true to their own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters they believe them to be true.



Benjamin Chevat

Sworn to before me this 18 day of June 2024



Notary Public

Richard Elliott
NOTARY PUBLIC
MONTGOMERY COUNTY, BETHESDA COUNTY
MARYLAND
MY COMMISSION EXPIRES MARCH 06, 2027

CERTIFICATE OF CONFORMITY

I, Richard Elliott a notary public licensed in the State of Maryland, affirm under penalty of perjury that I witnessed the signature of Benjamin Chervat as applied to the authorization, attached hereto, which was signed and dated on June 18th, 2024. The manner in which same was signed was, and is, in accordance with, and conforms to, the laws for taking oaths and acknowledgments, in the State of Maryland

Dated: June 18th, 2024



Notary Public

Richard Elliott
NOTARY PUBLIC
MONTGOMERY COUNTY, BETHESDA COUNTY
MARYLAND
MY COMMISSION EXPIRES MARCH 06, 2027