

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

SURVEILLANCE TECHNOLOGY  
OVERSIGHT PROJECT,

Petitioner,

-against-

NEW YORK CITY POLICE DEPARTMENT

Respondents,

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

Index No. \_\_\_\_\_

**VERIFIED PETITION**

Petitioner, the Surveillance Technology Oversight Project (“S.T.O.P.”), by and through their attorneys, Quinn, Emanuel, Urquhart & Sullivan, LLP, as and for their Verified Petition (the “Petition”), alleges as follows:

**INTRODUCTION**

1. For New Yorkers, public records are public in name only, at least when those records are held by the New York City Police Department (“NYPD”). In recent years, NYPD has systematically blocked public access to even the most routine documents, obstructing New Yorkers’ legal right to see how our tax dollars are spent and how our laws are enforced. Transparent and accountable government is the bedrock of our democratic society. New York’s Freedom of Information Law (“FOIL”) was enacted to enshrine these principles in law and give citizens a “right to know.”<sup>1</sup> But these rights are illusory if vindicating them requires years of waiting.

<sup>1</sup> *Fink v. Lefkowitz*, 47 N.Y.2d 567, 571 (1979).

2. FOIL expresses this State's strong commitment to open government and public accountability and imposes a broad standard of disclosure upon the State and its agencies. *Pub. Off. Law § 84*. Pursuant to FOIL, all government records are presumptively open for public inspection and copying. *Id.* Although this presumption is subject to certain statutory exceptions, those exceptions are to be narrowly construed and it is the burden of the public agency to prove that a requested record fits within the exception. *Pub. Off. Law § 89(4)(b)*.

3. The NYPD engages in a pattern and practice of unlawfully delaying its responses to FOIL requests. The FOIL statute permits state agencies responding to records requests to set an estimated date on which to they expect to respond to the request, as long as the date is reasonable under the circumstances. The NYPD has abused that privilege. In 2019, the NYPD claimed a total of more than 34 years' worth of extensions, but by 2021 the number grew to more than 50 years' worth of delays.<sup>2</sup> In addition, the NYPD regularly misses extension deadlines without justification, denies that responsive documents exist despite publicly available information indicating otherwise, denies entire requests through tenuous connections to FOIL exceptions without sufficient explanation and fails to produce redacted documents to protect information that would otherwise be covered by a FOIL exception. Through these tactics of delay the NYPD attempts to discourage petitioners until they give up or until the materials requested under FOIL become irrelevant due to the passage of time.

4. The NYPD's responses to S.T.O.P.'s recent FOIL requests reflect its predictable pattern of FOIL non-compliance. Between November 2, 2022, and January 31, 2023, S.T.O.P. submitted ten separate FOIL requests to NYPD (the "Requests"). The NYPD responded to each

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<sup>2</sup> Calculated from 8,798 ninety business day extensions in 2019; 8,733 in 2020; 11,836 in 2021; and 12,821 in 2022. "Open Records FOIL Requests", City of New York, available at <https://data.cityofnewyork.us/City-Government/OpenRecords-FOIL-Requests/kegn-anvq> (March 3, 2023) (containing the active status designation for all submitted FOIL requests).

request by notifying S.T.O.P. that it would require 90 additional business days (~130 days) to substantively respond, without providing any articulable justification for the delay. By reviewing public data, S.T.O.P. has now documented that the NYPD submitted the same 90 business day delay notification to 42,000 other requests between 2019 and 2022 without any regard for their duty to consider each request's unique circumstances.<sup>3</sup> This stands in contrast to the 20 business days by which the legislature intended that FOIL requests be satisfied.<sup>4</sup> S.T.O.P. appealed each unreasonable extension on the basis that it was a constructive denial. The NYPD then denied each appeal on the grounds that they were purportedly premature.

5. S.T.O.P.'s previous experiences submitting similar requests to the NYPD indicate that the agency is unlikely to produce any documents or provide a substantive response after the initial 90-day delay. Had S.T.O.P. not filed this petition under [Article 78](#), the NYPD would have at least run out the clock on its unilaterally imposed 90 day extension, if not blown that deadline entirely. On its appeal, S.T.O.P. would then have received another denial citing FOIL exceptions without any substantiation, and be forced to file an Article 78 petition. Petitioners including S.T.O.P. are made to go through all this trouble, after more than 6 months of unreasonable delay for simple and narrow document requests.<sup>5</sup> The intentional and widespread subversion of the public's right to receive NYPD records is staggering. These delay tactics harm the public interest by ensuring that records on critically important issues—such as the NYPD's extensive use of internet monitoring and facial recognition technology—remain hidden from public review for years.

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<sup>3</sup> *Id.*

<sup>4</sup> See Memorandum of Law in support of Verified Petition, Section C.

<sup>5</sup> S.T.O.P., like many petitioners, carefully crafts FOIL requests such that FOIL exceptions clearly do not apply.

6. The present case exemplifies the NYPD's playbook for FOIL non-compliance. In acknowledging each of the S.T.O.P.'s ten FOIL requests, the NYPD initially sought a 90 business day extension without any justification. In contrast to S.T.O.P.'s tailored FOIL requests for records clearly in the public interest, the NYPD made no attempt to address the individual requests and explain why it needed, in each case, the exact same delay in producing responsive records.

7. These extensions were "constructive denials" because they were unreasonably long and untethered to requests themselves.<sup>6</sup> Faced with the NYPD's constructive denials, S.T.O.P. proceeded to appeal each of its requests. In response, NYPD issued the exact same blanket denial stating that the extension was required due to "the volume of documents requested, the time involved in locating the material, and the complexity of the issues involved in determining whether the materials fall within one of the exceptions to disclosure." While NYPD initially adopted a 'copy and paste' approach to each letter sent denying S.T.O.P.'s appeals, it subsequently dispensed with this formality and simply denied the remainder of S.T.O.P.'s appeals in a single letter, with no substantive reference to the underlying petitions.

8. S.T.O.P. knows from experience that despite the extra time sought by the NYPD, there is no guarantee that any material documents will ever be produced.<sup>7</sup> In response to previous FOIL requests from S.T.O.P., NYPD responded after S.T.O.P.'s long wait by simply denying the requests.<sup>8</sup>

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<sup>6</sup> See *In re Empire Ctr. for Pub. Pol'y v. N.Y. State Dept. of Health*, 72 Misc.3d 759, 768 (N.Y. Sup. Ct. Feb. 03, 2021) (holding that under N.Y. Pub. Off. Law § 87, failure by an agency to conform to the timing and reasonableness requirements of FOIL constitutes a denial)

<sup>7</sup> See e.g. Exhibit KK; "FOIL Request FOIL-2022-056-08747", NYC Open Data (last visited March 18, 2023), <https://a860-openrecords.nyc.gov/request/view/FOIL-2022-056-08747>.

<sup>8</sup> *Id.*

9. One hundred and forty two calendar days have elapsed since S.T.O.P filed its November Requests. This petition seeks judicial review under [Article 78](#) to compel the NYPD to comply with its statutory mandate under FOIL and respectfully asks this Court to direct the NYPD to provide S.T.O.P. with records in response to its FOIL Requests.

### PARTIES

10. Petitioner S.T.O.P. is a public interest, advocacy, and legal services organization that combats state and local officials' growing use of surveillance technologies. S.T.O.P. is dedicated to ensuring that technological advancements do not come at the expense of age-old freedoms.<sup>9</sup> This mission is vital to this state's democratic health: the public must understand how rapidly developing automated image processing technologies affects their personal privacy.<sup>10</sup> S.T.O.P.'s staff has broad experience in anti-surveillance advocacy and public education. When discriminatory surveillance is discovered, S.T.O.P. responds by challenging agency misconduct and crafting privacy protection policies. S.T.O.P.'s office is located at 40 Rector Street 9th Floor, New York, New York 10006.

11. Respondent the NYPD is an agency administered under New York City Administrative Code, Title 14. The NYPD is responsible for law enforcement in the City of New York and is subject to the requirements outlined in FOIL. *See* [Pub. Off. Law § 84](#), et seq.

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<sup>9</sup> *See* S.T.O.P., "About Us," available at <https://www.stopspying.org/our-vision> (last visited March 19, 2023).

<sup>10</sup> Liu J, Zhao H, "Privacy Lost: Appropriating Surveillance Technology in China's Fight Against COVID-19". *Business Horizons* (July 23, 2021), available at the NIH National Library of Medicine, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8486272/>.

### VENUE AND JURISDICTION

12. Pursuant to [N.Y. Civ. Prac. L. & R. § 7804\(b\)](#) and [§ 506\(b\)](#), venue in this proceeding lies in New York County, the judicial district in which both Petitioners' and Respondents' principal offices are located.

13. Article 78 of the N.Y. Civ. Prac. L. & R. confers jurisdiction over this matter upon this Court. [N.Y. Civ. Prac. L. & R. 7804\(b\)](#).

14. This Court has jurisdiction over the matter because the NYPD's denial of S.T.O.P.'s appeal cannot be further "reviewed by appeal to a court or to some other body or officer." [N.Y. Civ. Prac. L. & R. 7801\(1\)](#).

### STATEMENT OF FACTS

15. Petitioner S.T.O.P. is a public interest, advocacy, and legal services organization whose mission is to ensure state and local officials' growing use of surveillance technologies do not come at the expense of age-old rights. Central to S.T.O.P.'s anti-surveillance advocacy and public education campaigns is public records research. In particular, public records research forms a crucial part of S.T.O.P.'s advocacy against government waste, fraud, and abuse of privacy rights.

16. Between November 2, 2022 and January 31, 2023, S.T.O.P. submitted ten separate FOIL requests via the New York City Open Record Portal seeking records related to the NYPD's use of surveillance technology. The first group of four requests made on November 2, 2022 (the "November Requests") concern the use of internet and social media monitoring technologies by the NYPD.

17. *First*, S.T.O.P. sought records pertaining to NYPD's use of Thomson Reuters' CLEAR and PeopleMap products (Exhibit A). This technology allow users to search for personal

information pertaining to an individual across public and commercial databases, information frequently obtained without consent.

18. *Second*, S.T.O.P. sought records pertaining to NYPD's use of Lexis Nexis Accruint (Exhibit B). Like the technology at issue in Exhibit A, Lexis Nexis Accruint allows users to search for personal information pertaining to an individual across public and commercial databases, information for which an individual may not have given their consent to disclose.

19. *Third*, S.T.O.P. sought records concerning the NYPD's acquisition and use of Internet Attribution Management Infrastructure ("IAMI"), as defined by the NYPD's 2021 IAMI Impact and Use Policy (Exhibit C). These technologies allow the NYPD to impersonate members of the public on popular social media platforms.

20. *Fourth*, the NYPD's acquisition of Social Network Analysis Tools ("SNAT"), as defined in NYPD's 2021 SNAT Impact and Use Policy (Exhibit D). These technologies allow the NYPD to use social media data to map and track New Yorkers' relationships.

21. It is critically important that New Yorkers learn how their police may be using these internet and social media monitoring technologies that exploit their data without consent, or that share their data to Federal agencies and immigration authorities.

22. Notwithstanding these narrow and targeted requests, on November 7, 2022 the NYPD constructively denied each of these separate requests by notifying S.T.O.P. that it estimated that it would require until March 24, 2023 to substantively respond. Exhibits E, F, G, H. The NYPD's notification did not contain any justification for the delay.

23. On November 18, 2022, S.T.O.P. appealed NYPD's constructive denial of each of the four November Requests. Exhibits I, J, K, L. On November 21, 2022, the NYPD issued four separate denials to the appeals (the "November 21 Denials"). Exhibits M, N, O, P. Each denial

contained the exact same response. The NYPD's denials contained no explanation of why it would take 90 additional business days, other than to allege that the decision took into account, "the volume of documents requested, the time involved in locating the material, and the complexity of the issues involved in determining whether the materials fall within one of the exceptions to disclosure." *Id.* Based on S.T.O.P.'s recent experience, NYPD would almost certainly not adhere to their 90 business day extension.<sup>11</sup>

24. S.T.O.P. also submitted an additional group of five requests on December 22, 2022 (the "December Requests"). The December Requests sought three categories of records related to Clearview AI, a facial recognition technology that collects people's pictures from their social media pages—such as Facebook—for subsequent sale to law enforcement agencies.<sup>12</sup>

25. *First*, S.T.O.P. requested for records on the NYPD's costs and expenditures on facial recognition, including on Clearview AI products. Petition, Ex. Q. The NYPD has notified the public that it uses this technology to search for faces in a database, as part of a routine investigative technique, since 2011.<sup>13</sup> This technology works by collecting personal information and tracking individuals' whereabouts and activities, without consent.

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<sup>11</sup> See e.g. Exhibit KK (S.T.O.P.'s separate Article 78 petition related to FOIL request seeking records related to automatic image processing software used with security cameras, "Linked Cameras FOIL"). NYPD initially denied S.T.O.P.'s request in this matter, then granted S.T.O.P.'s appeal of that denial. The NYPD estimated that that it would require 90 business days from the granted appeal to respond (~105 work days from the FOIL submission date). After all that delay, NYPD blew through its estimated extension date without communicating with S.T.O.P. until six weeks after the estimated date. *Id.* Such failures to meet estimated deadlines are considered constructive denials by the Court. *Rickner PLLC v. The City of New York*, 2021 N.Y. Slip Op. 32201(U), 2021 WL 5014496 (N.Y. Sup. Ct., Oct. 28, 2021).

<sup>12</sup> Clearview AI has been associated with far-right activists. See O'Brien, Luke, Huffington Post Australia, "The Far-Right Helped Create The World's Most Powerful Facial Recognition Technology," dated April 7, 2020, available at [https://www.huffpost.com/entry/clearview-ai-facial-recognition-alt-right\\_n\\_5e7d028bc5b6cb08a92a5c48](https://www.huffpost.com/entry/clearview-ai-facial-recognition-alt-right_n_5e7d028bc5b6cb08a92a5c48).

<sup>13</sup> *NYPD Questions and Answers Facial Recognition*, N.Y. City Police Dep't (last visited March 19, 2023), <https://www.nyc.gov/site/nypd/about/about-nypd/equipment-tech/facial-recognition.page>.



26. *Second*, S.T.O.P. specifically requested NYPD's emails with Clearview AI that include the term "hit rate." Exhibit S. Clearview AI trawls the internet for pictures of individuals to add to its extensive database, yet little is known on how it processes the data and any bias that may result therefrom. Given the NYPD's reliance on Clearview's products in their investigations, it is crucial that the public understands the impact this has on the NYPD's law enforcement efforts.

27. *Third*, S.T.O.P. made three requests concerning NYPD's broader use and procurement of surveillance technologies. Specifically, S.T.O.P. requested (i) the NYPD's emails mentioning the term "free trial" or "request for trial" and records that describe the type of information collected by IAMI (Exhibit R); (ii) the NYPD's emails related to its "official 90-day product review process" as mentioned in an NYPD email attached to the request (Exhibit T); and (iii) the NYPD's emails to or from a list of companies known to sell surveillance technologies to law enforcement which also contain the keywords "cost," "price," or "fees" (Exhibit U).

28. By providing a list of companies, S.T.O.P. hopes to minimize burden on the NYPD, and to understand which, if any, private companies have targeted the NYPD as a potential customer, and whether NYPD is actively partnering with any private company including, in particular, Clearview AI. S.T.O.P. already knew via news reports that NYPD officers had obtained a large volume of trial accounts for Clearview AI, conducting thousands of searches on the platform. Additionally, news reports showed that Clearview AI was a uniquely invasive form of facial recognition, collecting large numbers of images from New Yorkers' social media accounts and public websites.<sup>14</sup> S.T.O.P. hopes to learn more about each of those topics with these

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<sup>14</sup> Press Release, The Legal Aid Soc'y, FOIL Documents Reveal the Extent of NYPD's Use of Clearview AI – Controversial Facial Recognition Technology; Legal Aid Reaffirms the Need for Albany, NYC Lawmakers to Ban the Use of Facial Recognition Technologies (Apr. 6, 2021), <https://legalaidnyc.org/wp-content/uploads/2021/04/04-06-21-FOIL-Documents-Reveal-the-Extent-of-NYPDs-Use-of-Clearview-AI-Controversial-Facial-Recognition-Technology.pdf>.

follow-up requests to ensure that New Yorkers are not expending limited public funds on a potentially discriminatory and ineffective surveillance practice.

29. On December 27, 2022, the NYPD constructively denied each December Request by notifying S.T.O.P. that it estimated that it would require until May 10, 2023 to substantively respond. Exhibits V, W, X, Y, Z. The NYPD's notifications again did not contain any justification for the delay. *Id.*

30. S.T.O.P. submitted one additional FOIL request on January 25, 2023 (the "January Request"). The January Request sought emails related to related to the NYPD's non-consensual filming of concert-goers in Harlem on January 21, 2023, as well as emails relating to how those recordings were used.<sup>15</sup> Exhibit AA. On January 31, 2023, the NYPD constructively denied the January Request by notifying S.T.O.P. that it estimated that it would require until June 9, 2023 to substantively respond. Exhibit BB. The NYPD's notifications again did not contain any justification for the delay. *Id.*

31. On February 14, 2023, S.T.O.P. appealed the NYPD's constructive denials of the December Requests and the January Request. Exhibits CC, DD, EE, FF, GG, HH. On February 16, 2023, the NYPD denied all six appeals in a single letter. Exhibit II. NYPD's denial contained no explanation for why 90 additional business days (~130 days) was required to respond other than to repeat the same language from the November 21 Denials. *Id.*

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<sup>15</sup> See, e.g., Trone Dowd, Vice, "Why Did the NYPD Film People Leaving a Drake Concert?," dated January 24, 2021, available at <https://www.vice.com/en/article/z34avw/nypd-drake-apollo-concert-surveillance>.

32. Petitioner timely commences this Article 78 proceeding, within four months of the NYPD's Appeal Denial, *see* N.Y. Civ. Prac. L. & R. 217, to compel the NYPD to comply with its obligations under FOIL and provide Petitioner with documents responsive to the Request.

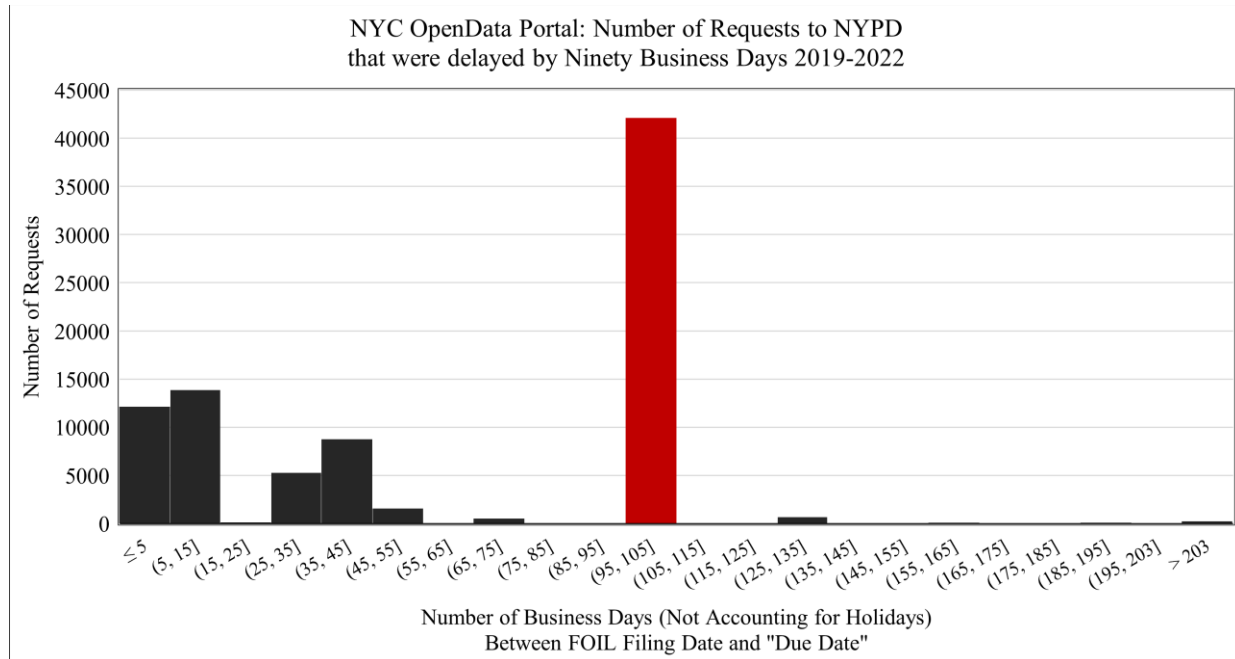
33. The timeline of S.T.O.P.'s FOIL Requests is representative of the NYPD's broader pattern and practice of FOIL obstruction. S.T.O.P. has analyzed several public data sources to confirm, including OpenData Portal<sup>16</sup> and MuckRock.<sup>17</sup> OpenData Portal is created and maintained by New York City. NYC Open Data includes a dataset called OpenRecords FOIL Requests, which includes the title, filing, and closing dates of all FOIL requests made to New York agencies since 2017. MuckRock is a non-profit, non-partisan news site, and provides a public service by independently tracking FOIL requests that are submitted using their site. These data reflect several NYPD patterns and practices that do not comply with either the letter or spirit of FOIL.

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<sup>16</sup> "NYC Open Data", City of New York, available at <https://opendata.cityofnewyork.us/> (last visited 3/12/2023); "Open Records FOIL Requests", *supra* note 2.

<sup>17</sup> "Requests", MuckRock, <https://www.muckrock.com/foi/> (last visited 3/12/2023).

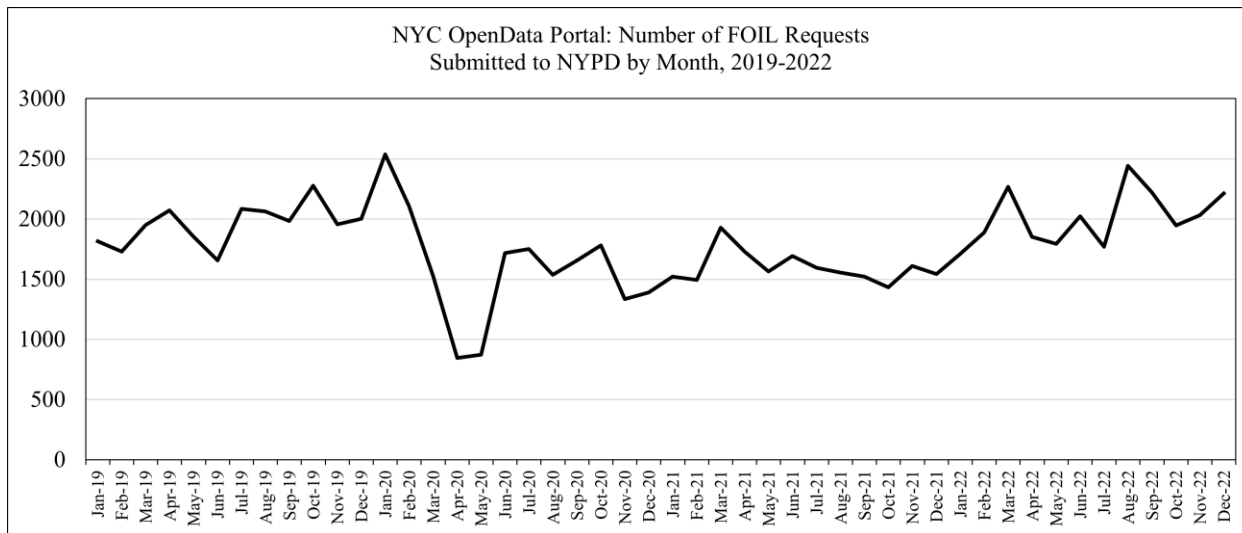
34. The OpenData Portal dataset lists a submission date and an agency reported “due date” for each FOIL request. S.T.O.P.’s analysis of NYC OpenData Portal data shows that NYPD reports a due date ~95 business days after the submission of the FOIL request.<sup>18</sup> That pattern is consistent with NYPD’s procedure of acknowledging a request within five business days through a notification of a 90 business day extension.



.Year	Total Requests	Number of Requests to NYPD that were delayed by 90 Business Days	%	Still Open as of 3/2023
2019	23,441	8,798	38%	686
2020	19,065	8,733	46%	1,799
2021	19,188	11,836	62%	3,080
2022	24,163	12,821	53%	6,501
<b>Total</b>	<b>85,857</b>	<b>42,188</b>	<b>49%</b>	<b>12,066</b>

<sup>18</sup> See “Open Records FOIL Requests”, *supra* note 2. The “Number of Requests to NYPD that were delayed by 90 Business Days” category was calculated by counting how many requests had a “Due Date” set between 90 and 105 business days after the requests’ listed submission date. This analysis excluded requests with the due date June 24, 2022. The FOIL Dataset included more than 5000 unrelated requests purportedly due on that date, which was presumed to indicate some error in the collection of FOIL data

35. NYPD’s practice of requesting 90 days started before COVID and was surprisingly unaffected by the tumult of the pandemic, despite an overall decrease in the amount of NYPD FOIL requests during the pandemic.



36. The overall quantity of requests that NYPD fields has remained the consistent over time. The NYPD has been on notice for years that it needs to devote resources to respond to requests. With the spending power of the NYPD—which is expected to be \$11 billion in 2023, not including non-city sources of funding—NYPD is both able to and required by statute to devote sufficient resources to be able to timely and adequately respond to the number of FOIL requests it typically receives each year.

37. These figures are consistent with S.T.O.P.'s individual experience. For each of S.T.O.P.'s requests over the past two years (including requests not at issue in this petition), NYPD acknowledges the request with an estimate that responding to the request will require 90 business days:

	<b>FOIL ID</b>	<b>Date NYPD Acknowledged Request</b>	<b>NYPD's Estimated Response Date</b>	<b>Business Days</b>
1	FOIL-2020-056-08163	6/12/2020	10/22/2020	<b>90</b>
2	FOIL-2021-056-02976	3/2/2021	7/13/2021	<b>90</b>
3	FOIL 2022-056-05213	4/8/2022	8/17/2022	<b>90</b>
4	FOIL-2022-056-08747	5/18/2022	9/30/2022	<b>93</b>
5	FOIL-2022-056-20074	11/7/2022	3/24/2023	<b>91</b>
6	FOIL-2022-056-20075	11/7/2022	3/24/2023	<b>91</b>
7	FOIL-2022-056-20072	11/7/2022	3/24/2023	<b>91</b>
8	FOIL-2022-056-20077	11/7/2022	3/24/2023	<b>91</b>
9	FOIL-2022-056-23655	12/27/2022	5/10/2023	<b>92</b>
10	FOIL-2022-056-23652	12/27/2022	5/10/2023	<b>92</b>
11	FOIL-2022-056-23654	12/27/2022	5/10/2023	<b>92</b>
12	FOIL-2022-056-23650	12/27/2022	5/10/2023	<b>92</b>
13	FOIL-2022-056-23653	12/27/2022	5/10/2023	<b>92</b>
14	FOIL 2023-056-01856	1/31/2023	6/9/2023	<b>90</b>

38. The delays do not end there. The NYPD engages in a pattern and practice of missing its own estimated deadlines without communicating with FOIL petitioners.<sup>19</sup> For instance, NYPD set an estimated deadline of August 17, 2022 to respond to FOIL 2022-056-05213 (not pending as part of this petition), but did not provide a substantive response until October 3, 2022. See Exhibit KK. NYPD did not acknowledge or justify this unreasonable delay, and has yet to produce any documents in response to that FOIL. *Id.* S.T.O.P.'s analysis of MuckRock data shows

<sup>19</sup> See *In re Gajadhar v. N.Y. Police Dept.*, 61 Misc.3d 1218(A) (Sup. Ct. N.Y. Cnty. Nov. 8, 2018) (NYPD misses its own 90-business day deadline); Exhibit KK (NYPD misses its own 90-business day deadline to respond to S.T.O.P.'s FOIL request for records related to automatic surveillance image processing)

that the average number of days before production of documents was 160 days, indicating that NYPD engages in the same practices of delay in responding to other petitions. The NYPD has structured its FOIL response to discourage the public from ever submitting FOIL requests, and to ensure that those requests that are submitted become lost in the manifolds of the NYPD's red tape.

39. Finally, NYPD further delays and frustrates FOIL compliance by providing insufficient responses to FOIL requests. Beyond simple delay, the NYPD's responses (if the NYPD ever provides one) are comically deficient. The NYPD, *inter alia*, (1) issues denials without applying reasoning specific to the underlying request, (2) opposes production of directly responsive emails, and (3) chooses to withhold documents rather than provide redacted documents, as required by statute.

40. *First*, the NYPD engages in a “kitchen sink” approach to systematically denying FOIL requests, in which NYPD cites multiple exceptions to FOIL without providing any specific details of how the exceptions apply. NYPD's standard blanket responses routinely assert that: (1) the request insufficiently describes a record; (2) responsive documents are exempt from FOIL because they contain information that would harm personal privacy interests; (3) responsive documents are exempt from FOIL because they contain information about ongoing investigations; (4) responsive documents are exempt from FOIL because they contain information about non-routine investigative techniques; and (5) responsive documents are exempt from FOIL because their disclosure would be a safety risk.<sup>20</sup> These responses—made without regard to the content of the request—would fail under [N.Y. Comp. Codes R. & Regs. tit. 22 § 130-1.1](#) because they deprive requestors of any individualized, articulated explanations.

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<sup>20</sup> See e.g. Ex. KK (Article 78 Petition by S.T.O.P. challenging NYPD FOIL Denial); Petition, Ex. LL (Article 78 petition by Amnesty International challenging NYPD FOIL Denial).

41. *Second*, although email communication is the way that public and private entities communicate, data from the NYC OpenData Portal and MuckRock indicate that NYPD systematically denies request to produce agency emails. Out of the 73 requests in the NYC OpenData portal with a title that references emails, NYPD only produced email records to one request. Out of the 120 requests available on MuckRock that request emails, NYPD produced responsive email documents in only three cases. In each case the documents were heavily redacted and produced after significant delay. The NYPD's apparent inability to identify and produce emails is especially surprising since NYPD has represented in previous FOIL responses that it has the capability to search keywords in an email records database.<sup>21</sup>

42. *Third*, and finally, the NYPD engages in a pattern and practice of failing to produce redacted documents in situations where a documents contains information that may not be produced under an exception to FOIL. For instance, NYPD denied FOIL 2022-056-05213 on the basis that production of responsive would violate individual privacy interests but failed to produce those documents in a redacted format. Exhibit KK.

43. The New York City Police Department provides critical services to the city. With an 11 billion dollar spending power, and the ability to detain and investigate individuals under the law, the NYPD wields extraordinary power to affect the lives of all New Yorkers. It is therefore extremely important for the public to have a transparent view of the NYPD's public records. Analysis of public data and S.T.O.P.'s own experience, however, confirm that the NYPD structures its FOIL responses to systematically delay even simple records requests for years. This

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<sup>21</sup> "FOIL-2020-056-15233", MuckRock, available at <https://www.muckrock.com/foi/new-york-city-17/foia-breonna-taylor-emails-new-york-city-police-department-103016/#file-939971> (last visited Mar.19, 2023).



Article 78 proceeding seeks to vindicate S.T.O.P. and the public's right under FOIL to access government records in a timely manner.

**FIRST CAUSE OF ACTION:  
ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL REQUEST  
FOIL-2022-056-20074**

44. Petitioner repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

45. Article 78 is the appropriate method of review of final agency determinations concerning FOIL requests.

46. Petitioner has a legal right under FOIL to the records requested in FOIL Request FOIL-2022-056-20074.

47. FOIL recognizes the public's right to access and review government documents; agency records are presumed to be public and subject to disclosure under FOIL.

48. Respondent has constructively denied the Requests failed notifying petitioner of a reasonable estimated date for determination of the Requests.

49. Respondent has not produced the records sought by Petitioner and has failed to properly invoke any exemptions under FOIL.

50. Respondent did not meet its burden to provide specific and particularized justification for withholding the requested records from disclosure under FOIL.

51. Petitioner has exhausted its administrative remedies and has no other remedy at law.

52. Because the Respondent had no reasonable basis for its categorical denial of Petitioner's Request and Appeal, Petitioner is entitled to attorney's fees under Pub. Off. Law § 89(4)(c).

**SECOND CAUSE OF ACTION:  
ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL REQUEST  
FOIL-2022-056-20075**

53. Petitioner repeats and realleges preceding paragraphs relating to S.T.O.P.'s First Cause of Action, *mutatis mutandis*, in relation to FOIL Request FOIL-2022-056-20075.

**THIRD CAUSE OF ACTION:  
ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL REQUEST  
FOIL-2022-056-20072**

54. Petitioner repeats and realleges preceding paragraphs relating to S.T.O.P.'s First Cause of Action, *mutatis mutandis*, relation to FOIL Request FOIL-2022-056-20072.

**FOURTH CAUSE OF ACTION:  
ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL REQUEST  
FOIL-2022-056-20077**

55. Petitioner repeats and realleges preceding paragraphs relating to S.T.O.P.'s First Cause of Action, *mutatis mutandis*, in relation to FOIL Request FOIL-2022-056-20077.

**FIFTH CAUSE OF ACTION:  
ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL REQUEST  
FOIL-2022-056-23655**

56. Petitioner repeats and realleges preceding paragraphs relating to S.T.O.P.'s First Cause of Action, *mutatis mutandis*, in relation to FOIL Request FOIL-2022-056-23655.

**SIXTH CAUSE OF ACTION:  
ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL REQUEST  
FOIL-2022-056-22654**

57. Petitioner repeats and realleges preceding paragraphs relating to S.T.O.P.'s First Cause of Action, *mutatis mutandis*, in relation to FOIL Request FOIL-2022-056-23654.

**SEVENTH CAUSE OF ACTION:  
ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL REQUEST  
FOIL-2022-056-23652**

58. Petitioner repeats and realleges preceding paragraphs relating to S.T.O.P.'s First Cause of Action, *mutatis mutandis*, in relation to FOIL Request FOIL-2022-056-23652.

**EIGHTH CAUSE OF ACTION:  
ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL REQUEST  
FOIL-2022-056-23653**

59. Petitioner repeats and realleges preceding paragraphs relating to S.T.O.P.'s First Cause of Action, *mutatis mutandis*, in relation to FOIL Request FOIL-2022-056-23653.

**NINTH CAUSE OF ACTION:  
ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL REQUEST  
FOIL-2022-056-23655**

60. Petitioner repeats and realleges preceding paragraphs relating to S.T.O.P.'s First Cause of Action, *mutatis mutandis*, in relation to FOIL Request FOIL-2022-056-23655.

**TENTH CAUSE OF ACTION:  
ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL REQUEST  
FOIL-2023-056-01856**

61. Petitioner repeats and realleges preceding paragraphs relating to S.T.O.P.'s First Cause of Action, *mutatis mutandis*, in relation to FOIL Request FOIL-2023-056-01856.

**ELEVENTH CAUSE OF ACTION:  
ARTICLE 78 REVIEW OF PATTERN AND PRACTICE OF FOIL OBSTRUCTION**

62. Petitioner repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

63. Article 78 is the appropriate method of review of final agency determinations concerning FOIL requests.

64. Respondent has a demonstrated pattern and practice of obstructing Petitioner's FOIL Requests.

65. Respondent has a demonstrated pattern and practice of obstructing FOIL requests in general.

66. FOIL recognizes the public's right to access and review government documents; agency records are presumed to be public and subject to disclosure under FOIL.

67. [N.Y. Pub. Off. Law § 89\(4\)](#) and [N.Y. Civ. Prac. L. & R. 7806](#) permit this court to grant permanent injunctive relief.

68. Petitioner is entitled to a permanent injunction requiring Respondent to change its practices in dealing with FOIL requests.

**PRIOR APPLICATION**

69. Petitioner has not made a prior application for the relief requested herein.

**RELIEF REQUESTED**

Petitioner respectfully requests that this Court enter judgment, pursuant to [N.Y. Civ. Prac. L. & R. 7806](#), on its behalf:

- a. directing Respondent the NYPD to comply with its duty under FOIL to provide Petitioner with documents responsive to Petitioner's Requests that are not subject to any exemption and to specifically identify and describe any documents allegedly exempt from disclosure; and
- b. ordering the NYPD to respond fully to any FOIL request within 20 days, or else fully state its need for an extension with clear, cogent reasons specific to that FOIL request, which in no case shall be longer than 60 days; or
- c. in the alternative, ordering a court-appointed monitor to engage in all FOIL reviews in place of NYPD; or

- d. in the alternative, crafting its own order designed to end NYPD's pattern and practice of failing to respond to FOIL requests within a reasonable amount of time; and
- e. awarding Petitioner its reasonable attorney's fees pursuant to [N.Y. Pub. Off. Law § 89\(4\)\(c\)](#).
- f. granting Petitioner such other and further relief as this Court deems necessary and equitable.

Respectfully Submitted,

Dated: March 21, 2023  
New York, NY

By: /s/ Sami Rashid

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**Certificate of Compliance Pursuant 22 NYCRR 202.b(c)**

I, Sami Rashid, hereby certify that this document complies with the word count limit of 22 NYCRR 202.8-b, because it contains 5083 words, exclusive of any caption, table of contents, table of authorities, and signature block.

*/s/ Sami H. Rashid*  
Sami H. Rashid

