

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

In the Matter of the Application of)
 JUDICIAL WATCH, INC.,)
)
 Petitioner,)
)
 For a Judgment under Article 78 of)
 the Civil Practice Law and Rules)
 Compelling Production of Records)
 Pursuant to the New York Freedom of)
 Information Law)
)
 -against-)
)
 Sean Mahar, Interim Commissioner,)
 NEW YORK STATE DEPARTMENT OF)
 ENVIRONMENTAL CONSERVATION,)
 625 Broadway)
 Albany, New York 12233-1500)
)
 Respondent.)
 _____)

Index No:

**VERIFIED PETITION TO COMPEL
PRODUCTION OF DOCUMENTS
PURSUANT TO NEW YORK STATE'S
FREEDOM OF INFORMATION LAW**

Judicial Watch, Inc., (“Judicial Watch”), by its attorneys, The Law Office of Neal Brickman, P.C., located at 420 Lexington Avenue - Suite 2811, New York, New York 10170, as and for its Petition seeking an Order pursuant to Article 78 of the Civil Practice Law and Rules (“CLPR”) and New York’s Freedom of Information Law (“FOIL”), (1) declaring that Respondent’s, the New York State Department of Environmental Conservation (“NYSDEC” or “Respondent”), refusal to disclose the records requested by Petitioner is unlawful; (2) ordering Respondent to make the requested records available to Petitioner; (3) awarding Petitioner its costs and reasonable attorneys’ fees in this action; and (4) granting such other and further relief as the Court may deem just and proper, hereby states and avers as follows:

Preliminary Statement

1. The relief sought in this Petition is based on the need for reasonable compliance with FOIL by the Respondent; for that entities to be held accountable for the decisions and determinations of their own FOIL Appeals Officer; for the strictures of FOIL to be adhered to for the good of all citizens of the State and Country; and to vindicate the rights of Judicial Watch in seeking the requested documentation identified in the legitimate FOIL requests that are outstanding.

2. Petitioner has made valid requests for the limited documents identified in the FOIL requests at issue (discussed at further length below), but, to date, despite the fact that the documents and records sought cover a discrete time frame, are limited in scope, and are narrowly defined, Respondent has yet to provide a single responsive document or any legal justification for its failure to do so or for its denial of Petitioner's Appeal and Requests.

Jurisdiction and Venue

3. This Court has jurisdiction over like Article 78 proceedings based on FOIL request denials by State, City or other municipal entities or agencies, a category in which Respondent clearly falls. Venue is proper as the complained of acts and denial occurred in this County and Respondent's principal offices are in this County.

Parties

4. Judicial Watch is a 501(c)(3) nonprofit organization with principal offices in Washington, D.C.

5. The NYSDEC is a State entity that is subject to the requirements of FOIL.

Background Facts

Petitioner's First FOIL Request.

6. On November 6, 2024, Petitioner sent a Freedom of Information Law ("FOIL") request to the offices of Respondent, via email, seeking access to and copies of the following:

All New York State Department of Environmental Conservation ("NYSDEC") records related to the seizure, testing, and euthanasia of animals, including a squirrel named "Peanut" and a raccoon named "Fred," belonging to a Pine City, New York resident named Mark Longo on or about Oct. 30-Nov. 1, 2024. Such records shall include, but not be limited to, complaints filed with NYSDEC, internal NYSDEC communications, including emails and text messages, communications between NYSDEC and the Chemung County Department of Health, investigative reports, incident reports and laboratory reports.

Time Frame: October 1, 2024 – Present.

7. Respondent acknowledged receipt of the request via e-mail on November 6, 2024, and advised Petitioner that the request had been assigned request reference number W138835-110624. The acknowledgement e-mail stated that Petitioner could expect to receive a response to its request by no later than December 6, 2024. (*See Exhibit 1.*)

8. On December 5, 2024, Respondent sent a second e-mail to Petitioner stating that Respondent required additional time to process Petitioner's request, and that Petitioner could now expect a response by January 6, 2025, a Monday. (*See Exhibit 2.*)

9. No further response was made by Respondent on or before January 6, 2025.

10. Thereafter, on Tuesday, January 7, 2025, Respondent sent a third e-mail to Petitioner stating that Respondent required additional time to process Petitioner's request, and that Petitioner could now expect a response by February 6, 2025. (*See Exhibit 3.*)

11. On January 27, 2025, Respondent sent a fourth e-mail to Petitioner stating that Respondent required additional time to process Petitioner's request, and that Petitioner could now

expect a response by March 28, 2025, over four and one-half months after Respondent first acknowledged receipt of this FOIL request. (*See Exhibit 4.*)

12. On January 27, 2025, pursuant to FOIL Section 89(4)(a), Petitioner properly filed with Respondent via e-mail an appeal objecting to Respondent's multiple and unilateral extensions of time to substantively respond to Petitioner's request and stating that Respondent had constructively denied the request by failing to produce the requested records within a reasonable period of time, especially given the narrow scope of the request and the easily searchable topic covering only a relatively brief time period. (*See Exhibit 5.*)

13. On February 11, 2025, Respondent sent an e-mail to Petitioner denying Petitioner's FOIL appeal. In that response, Respondent failed to acknowledge its multiple delays, its failure to make timely notification of at least one such delay, any basis for the delays, or any basis for its final agency action denying Petitioner's Foil request and FOIL Appeal. Respondent further advised Petitioner that "[t]o the extent that you believe you have been denied access to records, you may obtain judicial review of this determination" denying your FOIL request and appeal. (*See Exhibit 6.*)

14. Respondent has not provided a single document or record or even any basis whatsoever for its abject failure to provide any responsive documents to Petitioner's valid FOIL request.

Petitioner's Second FOIL Request.

15. Also on November 6, 2024, Petitioner sent a second FOIL request to the offices of Respondent, via email, seeking access to and copies of the following:

All body-worn camera audio and video footage, and dashcam audio-video footage, captured by the New York State Department of

Environmental Conservation (NYSDEC) and its partner agencies related to the seizure, testing and euthanasia of animals, including a squirrel named "Peanut" and a racoon named "Fred," belonging to a Pine City, NY resident named Mark Longo on or about Oct.30-Nov. 1, 2024.

Time Frame: October 1, 2024 – Present.

16. Respondent acknowledged receipt of the request via email on November 6, 2024, and advised Petitioner that the request had been assigned reference number W138840-110624. The acknowledgement e-mail stated that Petitioner could expect to receive a response to its request by no later than December 6, 2024. (*See Exhibit 7.*)

17. On December 5, 2024, Respondent sent a second e-mail to Petitioner stating that Respondent required additional time to process Petitioner's request, and that Petitioner could now expect a response by January 6, 2025, a Monday. (*See Exhibit 8.*)

18. No further response was made by Respondent on or before January 6, 2025.

19. On January 7, 2025, a Tuesday, Respondent sent a third e-mail to Petitioner stating that Respondent required additional time to process Petitioner's request, and that Petitioner could now expect a response by February 6, 2025. (*See Exhibit 9.*)

20. On January 27, 2025, Respondent sent a fourth e-mail to Petitioner stating that Respondent required additional time to process Petitioner's request, and that Petitioner could now expect a response by March 28, 2025, over four and one-half months after Respondent first acknowledged this FOIL request. (*See Exhibit 10.*)

21. On January 27, 2025, pursuant to FOIL Section 89(4)(a), Petitioner properly filed with Respondent via e-mail an appeal objecting to Respondent's multiple and unilateral extensions of time to substantively respond to Petitioner's request and stating that Respondent had

constructively denied the request by failing to produce the requested records within a reasonable period of time, especially given the narrow scope of the request and the easily searchable topic covering only a relatively brief time period. (See Exhibit 5.)

22. On February 11, 2025, Respondent sent an e-mail to Petitioner denying Petitioner's FOIL appeal. In that response, Respondent failed to acknowledge its multiple delays, its failure to make timely notification of at least one such delay, any basis for the delays, or any basis for its final agency action denying Petitioner's Foil request and FOIL Appeal. Respondent further advised Petitioner that "[t]o the extent that you believe you have been denied access to records, you may obtain judicial review of this determination" denying your FOIL request and appeal. (See Exhibit 11.)

23. Respondent has not provided a single document or record or even any basis whatsoever for its abject failure to provide any responsive documents to Petitioner's second valid FOIL request.

24. Pursuant to FOIL Section 89(3)(a), the Respondent was required to either to respond to Petitioner's requests or acknowledge receipt of the requests and state the approximate date that the requests would be either granted or denied, within 5 business days.

25. Pursuant to FOIL, Article 6, Section 84, *et seq.*, of the Public Officers Law, Petitioner has a right of access to the records requested in its November 6, 2024 FOIL requests, and Respondent has no legal basis for refusing to disclose these records to Petitioner.

26. Judicial Watch's instant FOIL requests have been denied unlawfully.

27. An Article 78 proceeding is the appropriate method for denial of, or undue delay regarding, FOIL requests like the ones at issue herein.

28. The refusal to respond to Petitioner's FOIL requests is arbitrary and capricious, constitutes an abuse of discretion and an unreasonable denial of Petitioner's FOIL request.

29. Petitioner has a right to the documents sought.

30. Petitioner has exhausted its administrative remedies and has no other remedy at law as the Respondents have improperly denied Petitioner's lawful requests. Further administrative proceedings would clearly be pointless as the Respondents refuse to adhere to the applicable legal standards.

WHEREFORE, Petitioner prays that this Court: (1) declare that Respondent's refusal to disclose the records requested by Petitioner is unlawful; (2) order Respondent to make the requested records available to Petitioner; (3) award Petitioner its costs and reasonable attorneys' fees in this action; and (4) grant such other and further relief as the Court may deem just and proper.

Dated: March 13, 2025

Respectfully submitted,

Neal Brickman

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New York, New York 10170
(212) 986-6840

To: New York State Department of Environmental Protection
Attn: Rebecca Denu, Esq.
FOIL Appeals Officer
(625 Broadway)
Albany, New York 12233-1500

VERIFICATION

Washington, DC:

Jason B. Aldrich, being duly sworn, deposes and says that he has personal knowledge of the facts, and the underlying circumstances thereof, set forth in this Petition, that he represents Petitioner in the action, that he has read the within Petition, and that the contents thereof are true to his personal knowledge.

Jason B. Aldrich
Jason B. Aldrich

Sworn to before me this
13th day of March 2025.

Stephen F. Wilson
Notary Public

STEPHEN F. WILSON
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires January 31, 2026

