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

NEW YORK CIVIL LIBERTIES UNION,

Petitioner,

-against-

NEW YORK CITY POLICE DEPARTMENT, and KEECHANT L. SEWELL, in her official capacity as Commissioner of the New York City Police Department,

Respondents,

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

Index No. _____

MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

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Dated: March 17, 2023
New York, New York

*Ms. Chikezie, a Legal Fellow at the NYCLU, is a law graduate awaiting admission and practicing under supervision pursuant to 22 NYCRR § 524.3.

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PRELIMINARY STATEMENT

This Article 78 action seeks to vindicate the public's right to have essential information about the New York City Police Department's implementation of a City initiative under which police officers are to forcibly remove people from the street and transport them to facilities for involuntary confinement. Under a directive released by Mayor Eric Adams in November 2022, NYPD officers are to carry out mental-hygiene arrests when they deem an individual unable to meet their "basic needs," even when no dangerous act has been observed and even if there is no indication of a likelihood of harm to the individual or others.

Any program of arresting people living with mental illness for involuntary confinement implicates a variety of concerns related to constitutional norms concerning due process, individual autonomy, and dignity. The new directive also likely runs afoul of a highly complex web of federal and New York State constitutional provisions, various federal and New York State statutes, and agency guidance issued by the New York State Office of Mental Health, which sets strict parameters and limits to guard individual rights when the government exercises its police power to effect the involuntarily detention and involuntary and forcible treatment of an individual on the basis of their mental health.

Fundamental details on the directive, and how it will be implemented and overseen, are scarce. Information on the directive has largely been offered only by Mayor Adams at press conferences, in press releases from his Administration, in Twitter tweets and other social-media posts offered by members of the Adams Administration, and in selective release of certain information to New York City traditional media outlets. At a City Council oversight hearing held on February 6, 2023, the Administration refused to produce information about the directive's implementation. At the Council oversight hearing, the Public Advocate indicated that the Administration had also refused to respond to his requests for information about the directive's

implementation.

The mayoral directive mandated that the NYPD, amongst other City agencies, revise and update its policies and protocols and to conduct training to implement the directive. The New York Civil Liberties Union, which has a long history of advocating on mental-health and policing issues, filed a Freedom of Information Law request with the NYPD in December 2022 seeking records about the policies, protocols, and training the directive mandated. The NYPD responded by stating it would not even respond to the request for five months -- on May 1, 2023.

Five months is an unreasonable period of time to respond to the NYCLU's narrow request given that responsive records should be readily available. Mayor Adams indicated in November 2022 that NYPD implementation of the directive already was underway and NYPD testimony at the February 2023 City Council hearing revealed that extensive training had been completed. The NYCLU had anticipated that the Council hearing would result in public disclosure of the requested documents, but the NYPD refused the Council's request for the information. Given that and having exhausted administrative remedies, the NYCLU now seeks judicial relief to require the NYPD to produce responsive records.

FACTAL BACKGROUND AND PROCEDURAL HISTORY

A. The Involuntary Removals Directive

On November 29, 2022, Mayor Eric Adams announced at a press conference that he had issued a Mayoral directive to the NYPD and other City agencies. The directive is titled "Mental Health Involuntary Removals as of 11/28/2022" (the "Involuntary Removals Directive" or the "Directive"). Verified Petition ("VP") ¶ 9. That Directive authorizes the involuntary removal of individuals living with mental illness, pursuant to sections 9.41 and 9.58 of the Mental Hygiene Law, when a person "appears to be mentally ill and displays an inability to meet basic living needs, even when no recent dangerous act has been observed." VP ¶ 10. The Involuntary Removals

Directive mandates that a number of City agencies, including the NYPD, "update their policies and protocols" and train their staff according to the agency roles and responsibilities outlined in the Directive. VP ¶ 11. For the NYPD, these responsibilities include detaining and involuntarily transporting individuals to hospitals for psychiatric assessment if the NYPD deems them unable to meet their basic needs. VP ¶¶ 9, 12.

The Involuntary Removals Directive provides vague, broad, and undefined standards that would establish when an individual's "inability to meet essential needs" rises to the level of "likely to result in serious harm" sufficient to permit the NYPD to effectuate a so-called mental hygiene arrest pursuant to Mental Hygiene Law § 9.41. VP ¶ 13.

Mayor Adams and members of his Administration have publicly stated that the NYPD began training its officers on the Involuntary Removals Directive almost immediately after it was issued. VP ¶ 14. For example, on December 6, 2022, the NYPD issued a "FINEST Message" as part of its training activities regarding the Involuntary Removals Directive that offered guidance on when an individual would appear "incapable of meeting basic human needs." VP ¶ 15.

Unable to obtain any information about the scope and implementation of the Involuntary Removals Directive from the NYPD and the other City agencies identified in the Involuntary Removals Directive, the New York City Council convened an oversight hearing on February 6, 2023. VP ¶ 16. The New York City Public Advocate, a non-voting member of the New York City Council, participated at that hearing as well because, he testified, the City had refused to provide his office with any information about the Involuntary Removals initiative. VP ¶ 16.

At that hearing, representatives of the NYPD as well as the Mayor's Office of Community Mental Health, the New York City Health and Hospitals Corporation, the New York City Fire Department Emergency Services Department and the New York City Department of Health and

Mental Health produced no documents and shared very little information about the Involuntary Removals initiative, offering vague assurances they were working on some information to provide at some point in the future to the City Council and the Public Advocate. VP ¶ 17.

Juanita Holmes, then-Chief of Training for the NYPD, however, did testify about the training on the Directive that the NYPD had rolled out in the weeks and months following the issuance of the Involuntary Removals Directive. Chief Holmes testified that since the issuance of the Involuntary Removals Directive, thousands of NYPD officers have received trainings on its implementation. As reported by members of the Adams' Administration on February 6, 2023, the NYPD has already trained approximately 88% of agency staff on the Involuntary Removals Directive by way of a 25-minute-long roll-call training, and 60% of agency staff through a training video, all of which Chief Holmes considered to be supplemental to a four-day crisis intervention training that approximately 13,400 NYPD officers have received. VP ¶¶ 18-19.

These trainings focus on the Directive's basic-needs standard, which is a departure from past NYPD trainings. The NYPD's Chief of Training Juanita Holmes stated that "the training that was put in place as a result of the Mayor's directive encompasses 'not capable of self care'" which is "something different" and "something that we weren't really, really focused on when it came to 9.41." VP ¶ 20. While it is clear that the NYPD has developed and rolled out new training materials pursuant to the Directive, to date, these materials have been shielded from public disclosure. VP ¶¶ 21-22.

Given the importance of the Directive, the high amount of public and media attention it has garnered, and the central role the NYPD plays in implementing the Mayor's new involuntary removal standard, it is unacceptable for the NYPD to conceal information regarding its role in the implementation of the Involuntary Removals Directive from the public.

B. Petitioner's FOIL Request and Respondents' Denials

On December 13, 2022, the NYCLU submitted a FOIL request to the NYPD FOIL Unit requesting information related to the Directive. VP ¶ 24. In its FOIL Request, the NYCLU sought three discrete and identifiable sets of records encompassing:

1. all policies and protocols developed pursuant to the Involuntary Removals Directive, including any pre-existing policies or protocols that have been modified pursuant to the directive;
2. to the extent not otherwise produced, records concerning any training provided pursuant to Involuntary Removals Directive, including but not limited to training materials or curricula and attendance rosters; and
3. to the extent not otherwise produced, any other records created pursuant to the Involuntary Removals Directive.

VP ¶ 25.

On December 15, 2022, the NYPD responded to the request informing the NYCLU that it could "expect a response on or about Monday, May 1, 2023." VP ¶ 26. The NYPD did not indicate that responsive documents would be produced on that date, nor did the NYPD proffer any reason for the need for the lengthy extension to the legal deadline pursuant to 21 NY Comp. Codes R. & Regs. § 1401.5[c] [3].[1] VP ¶ 26.

On December 16, 2022, the NYCLU administratively appealed the NYPD's constructive denial of the request to the NYPD's Records Access Appeals Officer. The NYLCU noted that the "expected" May 1, 2023 response date set by NYPD was not reasonable under the circumstances of the request because the specific and targeted requests relate to the recent Involuntary Removals

[1] 21 N.Y. Comp. Codes R. & Regs. § 1401.5 provide specifically as follows:

> (c)(3) acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than 20 business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within 20 business days from the date of such acknowledgment, providing a statement in writing stating the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part […].

Directive, which was, according to the Mayor's representations already being implemented on the streets and in the subways and on which the NYPD had already been trained. VP ¶ 27.

On December 19, 2022, the NYPD Records Appeals Officer summarily rejected the NYCLU's constructive denial administrative appeal, claiming the NYCLU's "appeal is premature because, as of the date of your appeal, the Records Access Officer (RAO) had not yet issued a determination on your request, and therefore your appeal lacked the predicate denial of access." VP ¶ 28.

Petitioner timely commenced this Article 78 proceeding, within four months of the NYPD's final determination of Petitioner's appeal, see CPLR § 217, to force the NYPD to comply with its obligations under FOIL and provide Petitioner with records responsive to its December 13, 2022 FOIL Request. VP ¶ 29.

ARGUMENT

I. THE NYPD VIOLATED FOIL BY FAILING TO PRODUCE RECORDS WITHIN A REASONABLE TIMEFRAME.

Under FOIL, an agency may not ignore a request or unreasonably delay its response (*see* Public Officers Law § 89 [3][a]). Here, the NYPD's proposed response deadline—nearly five months after the NYCLU's FOIL request—constitutes an unwarranted denial of the NYCLU's request. The NYPD's refusal to release any record of this highly controversial initiative directed by the Adams Administration keeps valuable records shrouded by a cloak of secrecy that undermines the purposes that FOIL serves: namely, fostering transparency and accountability between the government and the public. This Court should order the NYPD to provide responsive records promptly.

A. The NYPD's Proposed Nearly Five-Month Timeframe to Respond to the NYCLU's Request Is Unreasonable Under the Circumstances and Therefore Violates FOIL.

The NYPD failed to meet its obligations under FOIL by failing to respond to the NYCLU's

request within a reasonable amount of time and by instead unilaterally granting itself an unreasonable response deadline to advise the NYCLU whether or not it had responsive records and whether or not it would produce records that should be readily available, immediately, for production. In response to a written request for records, "an agency must either disclose the record sought, deny the request and claim a specific exemption to disclosure, or certify that it does not possess the requested document and that it could not be located after a diligent search" (*Matter of Beechwood Restorative Care Ctr. v Signor*, 5 NY3d 435, 440–441 [2005]; *see also* Public Officers Law § 89 [3] [a]).

An agency is required to provide a statement of the approximate date, which should be reasonable under the circumstances, when the request will be granted or denied (Public Officers Law § 89 [3] [a]).[2] "The determination of whether a period is reasonable must be made on a case by case basis taking 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" (*Matter of Linz v NYPD*, NYLJ [Sup Ct, NY County 2001] (rejecting as "unreasonable" the NYPD's proposed delay of four months to respond to an extremely voluminous request for records involving every 911 call made in the City of New York over a period of several years—plus related code books and dispatch information);[3] *see also Matter of Data Tree, LLC v Romaine*, 9 NY3d 454, 465 [2007]; *Miller v New York State Dep't of Transp.*, 58 AD3d 981, 983 [3d Dept 2009] (finding that respondent could reasonably take three months to

[2] *See also* Public Officers Law § 89[4][a] ("Failure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial); *see also* New York Department of State, Committee on Open Government, Explanation of Time Limits for Response (June 2005), https://opengovernment.ny.gov/explanation-time-limits-response ("if the specific date given [by an agency for granting access to requested records] is unreasonable, a request may be considered to have been constructively denied").

[3] A copy of the decision in *Matter of Linz v NYPD*, which was not officially reported, is attached as Addendum A. The *Linz* decision is also available on the website of the New York State Commission on Open Government at https://opengovernment.ny.gov/system/files/documents/2021/01/linz.pdf.

provide access to all documents responsive to FOIL request seeking 30 categories of documents and over 11,000 responsive documents)). Here, by contrast, the NYPD merely has proposed to respond – not produce responsive documents – by May 1, 2023, nearly five months after the NYCLU's FOIL request. The NYPD's response is plainly unreasonable under the circumstances.

1. *NYPD Policies and Protocols Developed Pursuant to the Involuntary Removals Directive*

The NYCLU requested the NYPD "policies and protocols developed pursuant to the Involuntary Removals Directive, including any pre-existing policies or protocols that have been modified pursuant to the directive." The NYPD almost certainly has responsive records available that would be readily producible. The Administration has repeatedly insisted the Involuntary Removals Initiative was already underway as of the time of Mayor Adams' November 29, 2022 press conference. NYPD Chief Holmes has testified under oath at the New York City Council February 6, 2023 oversight hearing that almost the entire NYPD force has been trained on the Involuntary Removals Initiative. For this initiative to have been implemented and the NYPD force to have been trained on the NYPD's policies and procedures relating to the initiative, the NYPD would have necessarily had to update its policies and procedures to align with the provisions of the Involuntary Removals initiative.[4]

2. *NYPD Training Materials Developed Pursuant to the Involuntary Removals Directive*

The NYCLU also sought "records concerning any training provided pursuant to Mental

[4] On March 2, 2023, the Adams Administration announced yet another mental health agenda titled *Care, Community, Action: A Mental Health Plan for New York City,* available at https://www.nyc.gov/assets/doh/care-community-action-mental-health-plan/index.html. This Mental Health Plan characterizes the Involuntary Removals Directive as merely "clarify[ying] the use of involuntary transportation to a hospital for people showing signs of mental illness who are presenting a danger to themselves or others and/or who are unable to meet their basic needs." To the extent the NYPD has not created anything new and is relying on pre-existing policies, the NYPD could simply say that.

Health Involuntary Removals directive." Mayor Adams indicated at the November 29, 2022 press conference that training was already underway. The NYPD "FINEST Message" offers guidance to NYPD officers regarding the "basic human needs" standard.[5] And, as noted above, the NYPD Chief of Training who appeared on behalf of the NYPD at the February 6, 2023 New York City Council oversight hearing on the Involuntary Removals Directive, has already testified, under oath, that the NYPD has trained thousands of NYPD officers on the Involuntary Removals Directive in the past weeks. Given these facts, the NYPD's training materials should be readily identifiable and available for FOIL production. These training materials are also unlikely to be voluminous because, as Chief Holmes testified, the NYPD's trainings consist of a 25-minute-long roll-call training and a self-guided training video to be viewed by NYPD officers.

Overall, these reasons underscore the unreasonableness of the NYPD's proposed nearly five-month timeframe to respond to the NYCLU's FOIL request (*see Matter of Linz v NYPD*, NYLJ [Sup Ct, NY County 2001]). Therefore, this Court should order the NYPD to produce promptly all records responsive to the request.

II. THE NYCLU IS ENTITLED TO ATTORNEYS' FEES.

The NYCLU also respectfully requests an award of reasonable attorneys' fees and litigation. Courts are required to assess reasonable attorneys' fees and costs when a party has "substantially prevailed" and the agency had "no reasonable basis for denying access" to the records in dispute. (Public Officers Law § 89 [4] [c] [ii]). If this Court orders the NYPD to disclose

[5] This document has already been publicly disclosed. The FINEST message was first shared with the New York Post. *See* Craig McCarthy, New York Post, *NYPD moves ahead with Eric Adams' new mental illness policy, despite lack of training*, available at https://nypost.com/2022/12/08/nypd-moves-ahead-with-eric-adams-new-mental-illness-policy-despite-lack-of-training/ [Dec. 8, 2022, 2:59 p.m.] and subsequently produced by the City in the *Baerga* federal court litigation. *Baerga, et al. v City of New York, et al.,* 21 Civ. 5762 (PAC), ECF Dkt. 123.

Yet, this FINEST message, which is clearly responsive to the NYCLU's FOIL Request, has not been produced to the NYCLU by the NYPD.

requested documents in response to this petition, or if the NYPD voluntarily provides documents after the filing of the petition, the NYCLU will have "substantially prevailed" for the purposes of this provision (*see Madeiros v New York State Educ. Dept.*, 30 NY3d 67, 79–80 [2017] [finding that the petitioner "substantially prevailed" when the respondent had made "no disclosures, redacted or otherwise, prior to petitioner's commencement of [a] CPLR article 78 proceeding"]; *Powhida v City of Albany*, 147 AD2d 236, 239 [3d Dept 1989] [finding that the petitioner substantially prevailed when it was "the initiation of this proceeding which brought about the release of the documents"]). And on the second prong, the NYPD submits that, given the record before the Court, the NYPD can have "no reasonable basis" for delaying for five months its response to the NYCLU's request.

CONCLUSION

For the foregoing reasons, the petitioner NYCLU respectfully requests that the Court order the New York City Police Department and the City of New York to abide by Article 6 of the New York Public Officers Law and disclose the records the petitioner requested in its December 13,

2022 FOIL request and award reasonable attorneys' fees.

Dated: March 17, 2023
New York, New York

Respectfully Submitted,

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

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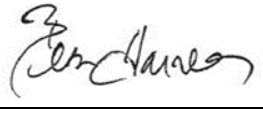
CERTIFICATE OF COMPLIANCE WITH 22 NYCRR §202.8-b

I hereby certify that:

This brief complies with the word count limitation of 22 NYCRR §202.8-b because the total word count, according to the word count function of Microsoft Word, the word processing program used to prepare this document, of all printed text in the body of the brief, exclusive of the caption, table of contents, table of authorities and signature block is 3221.



Dated: March 17, 2023
New York, New York

Beth Haroules

Counsel for Petitioner

Addendum A

Matter of Linz v. NYPD, Supreme Court, New York County

NYLJ, December 17, 2001

SUPREME COURT, NEW YORK COUNTY

NYLJ, December 17, 2001

MATTER OF LINZ v. THE POLICE DEPARTMENT OF THE CITY OF NEW YORK — Petitioners bring this Article 78 proceeding seeking to compel respondents to provide records and documents pursuant to Public Officers Law §89, et. seq., which is the NY Freedom of Information Law (FOIL). Petitioners are professors at three different colleges and are engaged in research on sociological/criminal law issues. The data sought by petitioners is fully described in the petition. Basically, petitioners seek a "data disk/CD-ROM" containing information for the period from July 1, 1998 to June 30, 2001 of logged 911 calls leading to dispatch and reported by geographic section (also referred to as CFS-911 calls). Petitioners also seek a copy of the codebook used to interpret the 911 calls and physical sector maps for the five boroughs of New York City.

During June and July of this year, petitioners were in communication with and met with staff in the NY Police Department Management, Analysis & Planning Division regarding this data request. Petitioners claim that based on these conversations and meetings, they believed that the NYPD was going to provide the data, that the preparation of a data disk/CD-ROM containing the requested information was either done or almost done by mid-July, and that the materials would be available for pickup on July 12, 2001. Petitioners further contend that this pickup did not happen because on July 20, 2001, petitioner Larry Heuer was informed that the release of the data was not being approved by senior or supervisory personnel employed by respondents. In his affidavit submitted to this Court, petitioner Heuer contends that Lt. Costello of the NYPD told him that there were "political forces" that were preventing the release of the data.

Respondents have submitted affidavits, including one from Lt. Costello, disputing that petitioners ever were told that a CD-ROM had been compiled or that all the materials were available for pickup. Rather, Lt. Costello contends that any statement he made about the data being on someone's desk referred to the underlying documents and not to any CD-ROM. Furthermore, Lt. Costello contends that he specifically asked petitioner Heuer if he had received approval from a Deputy Commissioner and informed petitioner that the information could not be released without approval from a supervisor.

On July 26, 2001, petitioner Linz made a written FOIL request concerning the materials that are the subject of this litigation. On July 30, 2001, Lt. Daniel Gonzalez of the NYPD Legal Bureau wrote to petitioner Linz stating that a preliminary determination had been made that, if the requested materials were contained in the files of the NYPD, they were at least partly disclosable under FOIL. However, Lt. Gonzalez indicated that the disclosure request could not be granted until the records were located and a review was conducted to determine whether any part of the data was exempt from disclosure under FOIL. Lt. Gonzalez indicated that this process would be completed within 120 days of the letter, which would be November 30, 2001.

On August 8, petitioner Linz wrote to the Records Access Appeal Officer of the NYPD indicating that he believed that his FOIL request had been constructively denied and he was appealing that decision. In that letter, petitioner contends that the 120 day period outlined in Lt. Gonzalez' letter violates FOIL and that the Police Department could not have legitimately needed 120 days since the data had been available for pickup in mid-July.

In September, petitioners filed the instant action seeking an order directing respondents to provide immediate access to the records listed in the FOIL request and also seeking attorneys' fees and other reasonable litigation costs. Respondents filed a cross motion to dismiss contending that this Court lacks jurisdiction since respondents have not yet denied petitioners' request, but merely indicated that they would take 120 days to review the documents. Furthermore, respondents contend that the instant action should be dismissed because petitioners failed to exhaust administrative remedies.

Public Officers Law §89(3) does not set forth the time period for delivery by an agency of documents requested under FOIL. Rather, the statute merely requires that the agency, within five business days of the receipt of a written request, make the record available, deny the request in writing, or furnish a written acknowledgment containing an approximate date when the request will be granted or denied. Respondents contend that this litigation is premature since no challenge was appropriate until the 120 day period requested by the NYPD had passed and a final determination had been made by the agency. This argument, if accepted, would completely insulate from judicial review an agency's decision about the amount of time it needed to respond to FOIL requests. It would also undermine the very purpose of FOIL, which is to promote the public's right to know about the workings of government by allowing access to information kept by government agencies. See generally, Russo v. Nassau County Comm. College, 81 N.Y.2d 690 (1993); Matter of Fink v. Lefkowitz, 47 N.Y.2d 567, 571 (1979).

In the absence of a specific statutory period, this Court concludes that respondents should be given a "reasonable" period to comply with a FOIL request. The determination of whether a period is reasonable must be made on a case by case basis taking 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. Such a standard is consistent with some of the language in the opinions, submitted by petitioners in this case, of the Committee on Open Government, the agency charged with issuing advisory opinions on FOIL.[1]

The Court concludes that petitioners had a right to file this Article 78 action seeking to compel respondents to provide these documents. Indeed, it is undisputed that an Article 78 proceeding would be the appropriate vehicle to challenge respondents' actions if they ultimately informed petitioners that they were not going to provide some or all of the requested materials. See In re Alicea v. NYPD, __ A.D.2d __, 731 N.Y.S.2d 19 (1st Dept. 2001); In re New York Public Interest Research Group v. Cohen, 188 Misc.2d 658 (Sup. Ct. N.Y. Cty. 2001). This Court sees no reason to conclude that such a proceeding is inappropriate now simply because respondents, in essence, contend that they are entitled to a "waiting" period of 120 days before petitioners have a right to bring such an action.

In denying respondents' motion to dismiss, this Court recognizes that there may be cases in which a lawsuit, such as the one filed here, might indeed be premature. Certainly, an individual requesting documents under FOIL should give the agency some time to respond to the request before commencing litigation. This Court, however, need not decide what such a period should be since at this point the 120 days originally requested by respondents to answer the FOIL request have now passed.[2] Furthermore, although the factual affidavits submitted to this Court raise some question about whether the data had been fully compiled prior to this litigation, the affidavits also unquestionably establish that petitioners had been working with respondents to identify the specific data for several months prior to the actual commencement of this litigation. Thus, petitioners did not act precipitously, under all the circumstances, in bringing the instant case.

Finally, this Court rejects respondents' claim that the instant action should be dismissed because petitioners failed to exhaust administrative remedies by appealing respondents' FOIL actions. First, petitioners did file an administrative appeal on August 8 by writing to the Record Access Appeals Officer. Furthermore, respondents' argument that petitioners' letter of appeal to the Records Access Officer was premature is simply a reiteration of their position, which this Court finds unpersuasive, that petitioners were not entitled to take any action until the entire 120 day period had passed.

Respondents have requested additional time to answer on the merits in the event this Court denies their motion to dismiss. Although it is difficult to determine what purpose could be served by adjourning the matter for more legal papers, this Court must allow respondents time to file an answer. See Garlick v. Sielaff, 202 A.D.2d 192 (1st Dept. 1994); 230 Tenants Corp. v. Board of Standards and Appeals, 101 A.D.2d 53 (1st Dept. 1984). This Court will permit respondents ten days from the issuance of this decision to file an answer.[3] Furthermore, petitioners' request for attorneys' fees and other litigation costs is held in abeyance pending receipt of respondents' answer, which should also address this issue.

Accordingly, respondents' cross-motion to dismiss is denied. If respondents wish to file an answer, they must do so no later than December 13.

This constitutes the decision and order of the Court.

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(1) The Appellate Division in Lecker v. NYC Board of Education, 157 A.D.2d 486 (1st Dept. 1990), declared invalid a regulation issued by the Committee on Open Government requiring that record access be granted or denied within ten days of the request. The Lecker opinion did not provide any further guidance on what standard should be used in evaluating the timeliness of an agency's document production.

(2) This case has taken some time to resolve because the Court was attempting to settle the matter and the respondents needed additional time to obtain certain factual affidavits. In particular, respondents had some difficulty contacting certain police officers who had been redeployed to various security details and the family assistance center in the weeks following the September 11 disaster.

(3) Although the Court is not ruling on the merits at this time, the Court reminds respondents that the four months they originally requested has passed and any responding papers should, at this point in the case, inform the Court and petitioners whether and when respondents intend to comply with the FOIL request.