

**Matter of William Grey Law Off. PLLC v New York
City Law Dept.**

2025 NY Slip Op 31437(U)

April 16, 2025

Supreme Court, New York County

Docket Number: Index No. 157823/2024

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

INDEX NO. 157823/2024

IN RE APPLICATION OF WILLIAM GREY LAW OFFICE
PLLC MOTION DATE 08/23/2024

Petitioner, MOTION SEQ. NO. 001

- v -

NEW YORK CITY LAW DEPARTMENT, DECISION + ORDER ON MOTION

Respondent.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, this motion is decided as follows. This is a special proceeding pursuant to CPLR Article 78, petitioner William Grey Law Office PLLC ("William Grey") moves for an order: [1] declaring that respondent has acted unlawfully in withholding from Petitioner documents or portions of documents that are not properly exempt from disclosure under FOIL; [2] directing that respondent provide petitioner with immediate access to records; and [3] awarding petitioner costs and attorney's fees pursuant to POL § 89(4)(c). Respondent The New York City Law Department's ("Law Department") cross-motion to dismiss was denied and the Law Department was ordered to answer the petition. The Law Department now oppose the petition and argues that the petition is premature, that the Law Department complied with the FOIL requirements, and that William Grey is not entitled to attorney's fees and costs. For the reasons that follow, the petition is denied.

Facts

The relevant facts are as follows. On July 16, 2024, William Grey submitted a request for documents with the Law Department with request number FOIL-2024-025-00282. The requested disclosure included: (1) a copy of the retainer agreement or agreements for Mr. Alex Spiro, Esq. of the law firm Quinn, Emanuel, Urquhart, & Sullivan (“Quinn Emanuel”) to represent Eric Adams and the City of New York in the New York County Supreme Court action identified by Index No. 952335/2023 (“Request 1”); (2) copies of any non-privileged electronic communications and/or hardcopy communications between employees of the New York City Law Department and anyone in the Mayor's Office of the City of New York discussing the retainer or retainers (“Request 2”); and (3) copies of any non-privileged electronic communications and/or hardcopy communications between employees of the New York City Law Department and anyone in the Comptroller's Office of the City of New York discussing this retainer or retainers (“Request 3”).

On July 24, 2024, the Law Department provided two documents, an Interim Response and a Co-Counsel Agreement between the Eric Eichenholtz for the Law Department and Alex Spiro for Quinn Emanuel. The Co-Counsel Agreement was provided in response to Request 1 after being redacted for any portions were exempt from disclosure to pursuant to POL §87(2)(a) and CPLR 3101(c), (d). The Interim Response stated that no responsive records were found to Request 3, and that the Law Department was still searching for responsive records to Request 2 and required 180 business days to reach a determination.

On July 25, 2024, William Grey filed an appeal with the Law Department's appeals officer. In the appeal, William Grey objected to the failure to produce a retainer agreement, and that the language of the Co-Counsel Agreement supported the existence of such retainer agreement. William Grey further objected, *inter alia*, to the many of the redactions of the Co-

Counsel agreement, the vague language used in the Interim Response, the failure to find any responsive documents to Request 3, and argued that the 180 days required to respond to Request 2 was a constructive denial of the request.

On July 30, 2024, the appeals officer responded to the appeal, denying it on the basis that Request 2 was still pending and that “an administrative appeal is possible only when the agency’s response is complete.”

On August 23, 2024, William Grey filed the instant petition.

Discussion

The Law Department argues that the instant proceeding is premature, as William Grey has not yet exhausted all of their administrative remedies, so no appealable final determination has been made. William Grey argues that the 180-day time period in which the Law Department would conduct the search amounted to a contrastive denial of the request, and thereby a final determination had been made.

POL § 89(3)(a) provides, in relevant part, the following:

Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgment of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied. If an agency determines to grant a request and circumstances prevent disclosure of records to a requestor “within twenty business days form the date of the acknowledgement of the receipt of the

Additionally, “Public Officers Law § 89(3) mandates no specific time period for granting or denying a FOIL request” (*Matter of Cuomo v James*, 235 AD3d 578, 580 [1st Dept 2025] citing *Matter of New York Times Co. v City of N.Y. Police Dept.*, 103 AD3d 405, 407 [1st Dept 2013], *lv denied* 22 NY3d 854 [2013]).

Pursuant to POL § 89(4)(a), (b), a petitioner must exhaust his administrative remedies by filing an administrative appeal of the denial or constructive denial within 30 days of an agency's initial denial of the request prior to bringing an Article 78 proceeding (*see Matter of Empire Ctr. for Pub. Policy, Inc. v N.Y.C. Off. of Payroll Admin.*, 158 AD3d 529, 530 [1st Dept 2018] *lv denied* 31 NY3d 910 [2018]). Denial of the petition is proper when petitioner has not exhausted all of their administrative remedies (*see e.g. Matter of Carty v New York City Police Dept.*, 41 AD3d 150 [1st Dept 2007] [denying petition to seek additional documents where petitioner failed to exhaust all administrative remedies]; *Matter of Taylor v New York City Police Dept. FOIL Unit*, 25 AD3d 347 [1st Dept 2006] *lv denied* 7 NY3d 714 [confirming petition was properly dismissed for failing to exhaust administrative remedies]).

When a reasonable basis is given for the timeframe in which a FOIL request will be provided, a longer than anticipated timeframe does not amount to a constructive denial (*see Matter of Cuomo*, 235 AD3d at 580 [finding that a seven-month timeframe was not an unreasonable amount of time to respond to the FOIL request]). William Grey argues that the Law Department has provided no reasonable basis for why Request 3 was able to be completed so quickly with no responsive documents found while Request 2 would require 180 days to complete. The Law Department argues that 180 days is a reasonable timeframe given the complexity of the request, which requires going through each electronic document between the Law Department and Mayor's Office, determining which records are responsive, and determining which records or portions of records are exempted from FOIL. The Law Department further argues that many of these communications contain personal identifying information which require redaction and prolong the process.

William Grey has not provided any reason for why they require a response in less than six months. The Law Department responded to the FOIL request within the mandated five days and provided a reasonable timeline for the response to be provided. The Law Department did not constructively deny William Grey when they provided their response, and therefore there was no final determination made from which to appeal. William Grey may appeal the determination after the conclusion of the search by the Law Department, but because William Grey has not exhausted their administrative remedies, the petition must be denied.

Petitioners' request for attorney's fees and other litigation costs is denied. POL § 89 provides an award for such fees "where the petitioner has substantially prevailed in the FOIL proceeding and the agency . . . lacked a reasonable basis for denying access to the requested records" (*Matter of Madeiros v. New York State Educ. Dep't*, 30 NY3d 67, 78 [2017] [internal quotation marks omitted]). Here, petitioners did not substantially prevail in this FOIL proceeding, and therefore the statutory requirements for fees and costs have not been met.

Conclusion

Based on the foregoing, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

4/16/2025
DATE


LYNN R. KOTLER, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	