

Liakas Law, P.C. v Bragg
2026 NY Slip Op 31690(U)
April 17, 2026
Supreme Court, New York County
Docket Number: Index No. 162309/2025
Judge: Gerald Lebovits
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

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INDEX NO. 162309/2025

LIAKAS LAW, P.C.,

MOTION SEQ. NO. 001

Petitioner,

- v -

**DECISION + ORDER ON
MOTION**

ALVIN L. BRAGG and NEW YORK COUNTY DISTRICT
ATTORNEY'S OFFICE,

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22

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

Liakas Law, P.C., New York, NY (Cassandra Rohme of counsel), petitioner pro se.
Alvin L. Bragg, Jr., District Attorney of New York County, New York, NY (Robert Butlien of counsel), for respondents.

Gerald Lebovits, J.:

In this CPLR article 78 proceeding, petitioner, Liakas Law, P.C., seeks an order compelling respondents, New York County District Attorney Alvin L. Bragg Jr. and New York County District Attorney's Office (DANY), to provide a complete and final copy of records responsive to Freedom of Information Law (FOIL) Request No. 25F0087, or reasonable reasons to deny the request. Petitioner also seeks an award of statutory attorney fees and costs. The petition is denied, and the proceeding is dismissed.

BACKGROUND

On February 12, 2025, petitioner emailed DANY FOIL Request No. 25F0087. The request contained a four-page list of records separated into 19 bullet points with multiple sub-categories, for records dating back as far as 1980, connected to DANY's Homicide Investigation Unit (HIU). DANY acknowledged receipt on February 20, 2025, and indicated they would provide an update by March 20, 2025.

On April 4, 2025, the Records Access Officer (RAO) issued a status update, explaining that she needed more time in searching for responsive materials, and extending the anticipated response date to May 5, 2025. The RAO did not provide a response or further extension on or before May 5, 2025.

On May 7, 2025, petitioner filed an administrative appeal, asserting that DANY had constructively denied the FOIL request by failing to respond or timely extending its deadline. Less than 10 minutes later, the RAO sent a new update letter, extending the date to June 5, 2025. On May 21, 2025, the Appeals Officer (AO) rejected petitioner's constructive-denial claim, directed the RAO to continue processing, and stated that future updates would be provided at 90-day intervals.

The RAO provided further updates on June 6, 2025, and September 8, 2025. On September 16, 2025, petitioner brought this proceeding.

DISCUSSION

I. Whether Respondents Constructively Denied Petitioner's FOIL Request

Petitioner argues that the RAO's failure to extend respondents' time to respond on or before the anticipated response date May 5, 2025, was a constructive denial of petitioner's FOIL request. (*See* NYSCEF No. 22, ¶ 7.) Respondents argue that no constructive denial occurred, because (i) DANY consistently responded to petitioner throughout the process; and (ii) the two-day gap between the May 5 deadline and the RAO's May 7 update letter was a negligible, excusable delay given the extraordinary volume and complexity of the request. (*See* NYSCEF No. 15, ¶ 18-29.) This court agrees with respondents.

Public Officers Law (POL) § 89 (3) (a) requires an agency to respond to a FOIL request within in five business days, but mandates no absolute time period for denying or granting a FOIL request. (*Matter of N.Y. Times Co. v City of N.Y. Police Dept.*, 103 AD3d 405, 407 [1st Dept 2013].) A constructive denial of a FOIL request occurs when an agency fails within five business days to respond by producing records, denying the request, or issuing a written acknowledgement with a reasonable approximate determination date. And failure to respond to a request within a reasonable time after the approximate date given constitutes a denial of a request that may be appealed. (*See* 21 NYCRR 1401.5 [e].)

Here, DANY consistently complied with the statutory framework throughout the process of addressing petitioner's FOIL request. DANY acknowledged the request within five business days as required. Thereafter, the RAO issued multiple written update letters on February 20, April 4, May 7, June 6, and September 8, 2025—each identifying a new approximate response date. The two-day delay in issuing the May 7 letter does not change this analysis. An assessment of reasonableness requires consideration of “the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the agency, and similar factors.” (*Matter of Save Monroe Ave. v New York State Dept. of Transp.*, 197 AD3d 808, 810 [3d Dept 2021].) As the AO correctly explained, the FOIL request is extremely broad and complex, spanning four pages with 19 categories of records dating back to 1980. Most requests are described by general subject matter, including policies, operations, personnel files, and all HIU-related records. (*See* NYSCEF No. 15 at ¶ 24.) A two-day delay in providing a new approximate response date is reasonable under these circumstances.

Constructive denial does not occur when the agency has been providing periodic updates and has not yet made a final determination. (*Matter of Cuomo v James*, 235 AD3d 578, 580 [1st Dept 2025].) The administrative history underlying this proceeding demonstrates an ongoing and good-faith compliance by respondents, not the stonewalling that FOIL's constructive-denial provision was designed to address.

II. Whether Respondents' Appeals Officer Improperly Remanded Petitioner's Request to the Records Access Officer

Petitioner contends that the AO's decision to send the request back to the RAO was an unlawful remand under POL § 89 (4) (a), and therefore that any subsequent extension issued by the RAO is void ab initio. (*See* NYSCEF No. 22, at ¶¶ 15-20.) Respondents argue that the AO's May 21, 2025, determination was lawful, contending that the AO substantively evaluated and rejected petitioner's constructive-denial claim on its merits, and properly directed the RAO to provide updates at 90-day intervals thereafter. (*See* NYSCEF No. 15, at ¶¶ 9, 31.)

POL § 89 (4) (a) provides that an agency official resolving an administrative appeal must either grant access to the requested records or explain the reasons for further denial within ten business days. But this rule presupposes a valid and timely administrative appeal. Here, because DANY had not constructively denied the FOIL request, petitioner's May 7 administrative appeal was premature. (*See Matter of Advocates for Children of N.Y., Inc. v New York City Dept. of Educ.*, 101 AD3d 445, 446 [1st Dept 2012] [holding that a FOIL administrative appeal is premature when the agency's efforts to respond within the applicable time limitations are still ongoing].) And given that the administrative appeal was premature, petitioners have not (yet) exhausted their administrative remedies. (*See id.*)

The petition is therefore denied for failure to exhaust. Because petitioner has not substantially prevailed, petitioner's request for attorney fees and costs under POL § 89 (4) (c) is denied. (*See Matter of Wagner v New York City Dept. of Health & Mental Hygiene*, 246 AD3d 748, 751 [2d Dept 2026] [discussing the meaning of "substantially prevailed"].)

Accordingly, it is

ORDERED that the petition is denied in its entirety and the proceeding is dismissed, no costs; and it is further

ORDERED that respondent serve a copy of this order with notice of its entry on the office of the County Clerk (using the NYSCEF document type "Notice to the County Clerk - CPLR § 8019 (c)"), which shall enter judgment accordingly.


HON. GERALD LEBOVITZ
J.S.C.

4/17/2026
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE