

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

SURVEILLANCE TECHNOLOGY
OVERSIGHT PROJECT,

Petitioner,

-against-

NEW YORK CITY POLICE DEPARTMENT

Respondent,

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

Index No. 152641 / 2023

PETITIONER'S REPLY TO RESPONDENT'S CROSS MOTION

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PRELIMINARY STATEMENT

Respondent New York City Police Department (“the NYPD”) cross-moves to dismiss the eleven causes of action in Petitioner Surveillance Technology Oversight Project’s (“S.T.O.P.’s”) Article 78 petition. Dkt. 54. The NYPD’s cross-motion is exceptional not for what it argues, but what it concedes. The NYPD does not contest, but rather essentially affirms, S.T.O.P.’s statistical analyses. It does not claim that it provides request-specific assessments when imposing extensions, assessing their burden, or assessing the applicability of FOIL exemptions. It does not even argue that the ten requests¹ at issue in S.T.O.P.’s petition are subject to exemptions. Instead, the NYPD gestures generically to the volume of requests that it receives on average as justification for its unspecific, blanket 90 business day extensions. But New York’s Freedom of Information Law (“FOIL”) requires more.

First, the NYPD argues that S.T.O.P.’s petition must be dismissed because S.T.O.P. failed to exhaust administrative remedies. But the NYPD ignores the bevy of legal support offered by S.T.O.P. showing that the NYPD’s blanket 90 business day extensions are constructive denials, depriving the public of access to information in time for that information to be useful. The NYPD incorrectly contends that only formal denials and partial grants of FOIL requests may be the basis of an administrative appeal. Such a system would permit the NYPD to avoid FOIL compliance by granting themselves never-ending extensions without ever formally responding to a request. S.T.O.P. met the requirement to exhaust administrative remedies by submitting an administrative appeal of the N.Y.P.D.’s unreasonable delay to the agency and waiting to receive the agency’s

¹ The reference at ¶60 of S.T.O.P.’s Verified Petition (Ninth Cause of Action) to “FOIL Request FOIL-2022-056-23655” should instead read “FOIL Request FOIL-2022-056-23650”. Dkt. 1, ¶60. See also Dkt. 54 at 6, fn. 2.

denial of that appeal. Unreasonable delay constitutes appealable constructive denial of the FOIL request in violation of [N.Y. Pub. Off. Law § 89\(4\)\(a\) and § 89\(3\)\(a\)](#).

Second, the NYPD claims that its practice of issuing 90 business day extensions, for nearly half of all FOIL requests, is reasonable. But S.T.O.P.'s unrebutted statistical analysis show that the NYPD has a pattern and practice of issuing those extensions, and S.T.O.P.'s own requests show that the NYPD fails to substantiate those extensions. This practice will not stop until the NYPD provides S.T.O.P. and requesters like it information in a timely manner, or at a bare minimum, legitimate explanations for any delay. Because the NYPD has made clear it has no intention to cease its practice, this Court should impose a monitor to ensure that the NYPD complies with the letter and spirit of FOIL.

ARGUMENT

I. THE NYPD CONSTRUCTIVELY DENIED S.T.O.P.'S REQUESTS

A. The NYPD Continues To Obstruct FOIL Requests Made By S.T.O.P In The Public Interest

When confronted with the allegations of FOIL obstruction, the NYPD's response is to continue its dilatory tactics. Rather than comply with its obligations under FOIL, the NYPD has unilaterally imposed *further* 90-day extensions for all of the requests in issue following the commencement of these proceedings. *See* Dkt. 51-53. As a result the records requested, concerning the NYPD's use of various surveillance technologies, remain cloaked in secrecy no less than nine months since S.T.O.P.'s request, notwithstanding the clear public interest in their disclosure. Nothing has changed, it seems, since this court previously noted that "the NYPD

apparently believes that it can continue to take more than 20 days to determine whether to grant or deny a FOIL request.”²

B. The NYPD’s Unilateral And Unjustified Ninety Business Day Extension Is Unreasonable

Consistent with this belief, the NYPD’s cross-motion to dismiss steadfastly refuses to engage with the ample legal support, cited by S.T.O.P. in its memorandum of law in support of its verified petition, *see* Dkt. 41, showing that the NYPD’s unilateral, unjustified 90 business day extensions amount to constructive denials of S.T.O.P.’s requests. Instead, the NYPD shadow-boxes with arguments S.T.O.P. did not make. Dkt. 54 at 8-9. Courts have routinely held that the failure to provide a response within a reasonable period of time amounts to a constructive denial. *See In re Empire Centr. For Public Policy v. New York State Dept. of Health*, 72 Misc. 3d 759, 768-770 (N.Y. Sup. Ct. Feb. 03, 2021) (holding that failure to give an estimated date, reasonable under the circumstances, constitutes a violation of N.Y. Pub. Off. Law § 89(3)(a)); *see also Binghamton Precast & Supply v. N.Y.S. Thruway Auth.*, 64 Misc. 3d 1237(A), *4 (N.Y. Sup. Ct. Aug. 16, 2019) (reiterating requirement under N.Y. Pub. Off. Law § 89(3)(a) for agency to give timely reasons for inability to grant a FOIL and that form replies do not fulfill this requirement).

The NYPD does not engage with S.T.O.P.’s legal authority, beyond a bare assertion that “the Appeals Officer informed Petitioner of the reasons for the delays”, and that “such reasons are legitimate and reasonable.” Dkt. 54 at 13. But the NYPD provided no *specific* reasons in its responses. It mechanically asserted in response to all ten FOIL requests, without *any* variation or support, that “the volume of documents requested, the time involved in locating the material, and

² *New York Times Co. v. City of New York Police Dept.*, 2011 N.Y. Slip Op. 32857, 2011 WL 5295044, *6 (N.Y. Sup. Ct. Oct. 03, 2011).

the complexity of the issues involved in determining whether materials fall within one of the exceptions to disclosure” justify a 90-day extension. Dkt. 54 at 5-7. These conclusory assertions merely track the legal standard for factors courts may permissibly consider in assessing whether an agency must grant or deny access to records. See *Empire Ctr. for Public Policy*, 72 Misc. 3d 759, 768-69. But courts require actual explanation of those factors, because any analysis turns on the factual contours of those factors. See *id.* at 769 (analyzing case-specific factors, such as whether the documents at issue had previously been collected and whether they had been disclosed in part to the public already).

Nor is it of any relevance that S.T.O.P. brought suit prior to the NYPD’s initial determination. Dkt. 54 at 9. The entire point of a constructive denial claim is that the NYPD has effectively denied S.T.O.P. (and the public) access to records by virtue of their unsubstantiated delay. S.T.O.P. dutifully engaged in the intra-agency appeal process after each constructive denial, see Dkt. 1 at ¶¶ 23, 31, and, upon receiving yet another constructive denial, filed its petition. Accordingly, this case is on all fours with *Empire Ctr. for Public Policy*. 72 Misc. 3d 759, 768 (finding constructive denial where Petitioner engaged in intra-agency appeal).

At best, the NYPD offers *post hoc* justifications for its delay. But those justifications are unavailing, *infra* § I.C, and in any case do not obviate the NYPD’s obligation to provide justifications *when they impose an extension*.

C. The NYPD’s Post Hoc Justifications For Its Delay Are Unavailing

Rather than stand on its original (lack of) justifications, the NYPD now primarily justifies its delay based on the volume of *other* requests it has received. Dkt. 54 at 9-11. But the volume of requests that the NYPD has received is not materially different today than four years ago, nor is it materially different from when the requests at issue were filed. See Dkt. 1 at ¶ 35. Moreover, the NYPD’s argument proves too much. If NYPD is as efficient at processing requests as it claims,

see Dkt. 54 at 14-15, then the mere number of requests received should not warrant a blanket 90 business day extension, with no regard to the underlying request.

The NYPD also argues that S.T.O.P.'s specific requests are large and varied. Dkt. 54 at 10. But S.T.O.P.'s requests are narrowly-tailored. Indeed, S.T.O.P. itself has proposed specific periods, *see* Petition, Ex. B (Request for records concerning NYPD's use of Lexis Nexis Accurint from January 1, 2018 to November 2, 2022), specific types of records, *see* Petition, Ex. R (Request for emails sent by NYPD to Clearview AI, Inc.), and even specific keyword searches, *see* Petition, Ex. U (Request for emails responsive to keywords "cost," "price," or "fees" between the NYPD and email accounts from specified domains). Likewise, FOIL Request No. 2023-056-01856 for documents related to the recording of attendees of a Drake concert at the Apollo Theater on January 21, 2023 concerns one specific recording, made of one specific event, presumably by one specific unit, for one specific purpose. *See* Petition, Ex. AA. Highly tailored requests such as these are *not* the type that warrant a 90 business day extension. *See* [Empire Ctr. for Public Policy](#), 72 Misc. 3d 759, 760.

The NYPD repeatedly states that FOIL does not mandate a specific time period in which the agency must grant access to the records. Dkt. 54 at 10-11. But this is a red herring. Whether the FOIL statute does or does not mandate a specific time to respond, the case law *does* mandate that courts evaluate whether NYPD provided S.T.O.P. with a reasonable basis for its estimated time to respond. [Binghamton Precast & Supply v. N.Y.S. Thruway Auth.](#), 64 Misc. 3d 1237(A), *4. In any case, the NYPD's cited support all deal with wildly different factual scenarios, involving substantially more cumbersome requests. *See* [Data Tree, LLC v. Romaine](#), 9 N.Y.3d 454, 460 (N.Y. 2007) (requesting more than ten years of land records); [Miller v. New York State Dep't of](#)

Transp., 58 A.D.3d 981, 981 (N.Y. App. Div. 3rd Dep't 2009) (requesting thirty categories of documents, totaling approximately 11,000 documents).³

D. S.T.O.P. Met the Requirement to Exhaust Administrative Remedies

Public Officers Law § 89(4)(a) expressly provides that “[f]ailure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial.” S.T.O.P. appealed to the agency based on the failure of NYPD to give a reasonable date for disclosing records under Public Officers Law § 89(3)(a). When the NYPD denied that appeal, S.T.O.P. was left with no further administrative remedy.

In any event, the NYPD’s legal authority on the failure to exhaust question fails to support its position. *See* Dkt. 54 at 11-13. Each case reflects factual circumstances that differ significantly from the present case. *See Carty v. New York City Police Dep’t*, 41 A.D.3d 150 (N.Y. App. Div. 1st Dep’t 2007) (petitioner sought leave to amend and add *new* requests to an existing petition); *Empire Ctr. for Public Policy, Inc. v. N.Y.C. Off. of Payroll Admin.*, 158 A.D.3d 529, 530 (N.Y. App. Div. 1st Dep’t 2018) (petitioner failed to take intra-agency appeal); *Gianella v. Port Auth. of New York & New Jersey*, 45 Misc. 3d 1204(A), 998 N.Y.S.2d 306, *1-2 (N.Y. Sup. Ct. Sept. 19, 2014) (same); *Advocs. for Child. of New York, Inc. v. New York City Dep’t of Educ.*, 101 A.D.3d 445, 445-446 (N.Y. App. Div. 1st Dep’t 2012) (no evidence of widespread practice of delay); *Huseman v New York City Dep’t of Educ.*, 2016 N.Y. Slip Op. 30959(U), 2016 WL 3029581 (N.Y. Sup. Ct. May 25, 2016) (delay specifically found reasonable where initial delay was only a month and requested information included voluminous quantities of documents and data that required

³ Indeed, the *Matter of Kirshstein* case supports S.T.O.P. *See Matter of Kirshstein v. David*, 2010 N.Y. Slip Op. 30977(U), 2010 WL 1733478 (N.Y. Sup. Ct. Apr. 19, 2010). While the Court ruled on mootness grounds and because the petitioner failed to take an intra-agency appeal—something S.T.O.P. has done—it nonetheless noted that a five month delay in producing lab reports, including ballistics and serology reports relating to a criminal case, was unwarranted. *See id.*

redacting); *Yonamine v. New York City Police Dept.*, 2011 N.Y. Slip. Op. 30464(U), 2011 WL 794839, *2 (N.Y. Sup. Ct. Mar. 01, 2011) (no constructive denial where the intra-agency appeal was granted).

The NYPD is also wrong to suggest that constructive denials exist *only* when a respondent fails to meet its own deadline. Dkt. 54 at 11 (citing *Kohler-Hausmann v. New York City Police Dep't*, 133 A.D.3d 437 (N.Y. App. Div. 1st Dep't 2017)). The court in *Kohler-Hausmann* did find a constructive denial where the NYPD failed to meet its own deadline. *Id.* at 437-38. But nothing in *Kohler-Hausmann* states that failure to meet a deadline is the *only* way to constructively deny a request. Indeed, courts have found constructive denials in other factual circumstances, such as when the Respondent's responses failed to provide an appropriate approximate deadline. *South Shore Press, Inc. v. Havemeyer*, 136 A.D.3d 929, 930 (N.Y. App. Div. 2nd Dep't 2016).⁴ Indiscriminately stonewalling thousands of FOIL petitioners by using the same 90 business day estimated response date for all but the simplest FOIL requests runs counter to the letter and spirit of the FOIL statute and the law of this court. To hold otherwise would allow agencies to perpetually grant themselves unlimited extensions for the most cursory of reasons—making a travesty of the FOIL regime.

⁴ Even the authority that the NYPD cites heavily shows that the FOIL statute affords no blank check to delay. In *Yonamine*, despite granting respondents cross-motion to dismiss, the court specifically ordered that the NYPD to respond within 45 days. See *Yonamine*, 2011 N.Y. Slip. Op. 30464(U), 2011 WL 794839, *3 (“The court notes, however, that Petitioner’s initial FOIL request was over a year and a half ago. Respondents have taken too long to give Petitioner a final determination. Moreover, Respondents unnecessarily delayed the determination by staying their search for Petitioner’s documents when he commenced this Article 78 proceeding. These delays are unacceptable. Therefore, to move the administrative process forward, the court finds that Respondents must supply Petitioner with an answer to his document request by April 15, 2011 or the request will be considered a final denial of Petitioner’s request as of that date.”) (internal citation omitted).

II. THE NYPD'S SERIAL NONCOMPLIANCE WITH FOIL WARRANTS A COURT APPOINTED MONITOR

A. The NYPD's FOIL Process Is Facially Improper

The NYPD argues that the number and complexity of FOIL requests warrants its current process. Dkt. 54 at 14-18. The NYPD ignores the thrust of S.T.O.P.'s allegations and effectively concedes the facts central to the dispute.

First, the NYPD argues that S.T.O.P.'s statistical evidence reflects that 86% of FOIL requests were received and closed in the four year period between 2019 and 2022. Dkt. 54 at 14-15 (citing Dkt. 1 at ¶ 34); *see also id.* at 16-17 (discussing tracking numbers). Accordingly, the NYPD claims it has no pattern or practice of obstructing access to records. *Id.* This argument is yet another red herring. S.T.O.P.'s pattern and practice claim is based on the NYPD's practice of improperly *delaying* FOIL compliance, contrary to the controlling statute—*not* outright failing to respond. *See e.g.* Dkt. 1 at ¶ 38 (“S.T.O.P.’s analysis of MuckRock data shows 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’s delay tactics result in thousands of constructive denials, because requests are lost in the NYPD’s bureaucracy, stale by the time the NYPD actually responds, or the length of the process makes it infeasible for requesters to follow-up. *See id.* (“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.”).

The NYPD’s average response time of 160 days significantly exceeds the 20 days contemplated as a benchmark by the FOIL statute. Dkt. 41 at 15-16. The NYPD’s delay is further exacerbated by its failure to provide reasons for that delay. *See e.g.*, Petition, Exs. E, F, G, H, M, N, O, P, V, W, X, Y, Z, BB, II (for all of S.T.O.P.’s requests, the NYPD provided the same

boilerplate explanation for the delay). The NYPD's failure to provide actual bases for its delay is a further aspect of its pattern and practice of delaying access to records. *See* [N.Y. Pub. Off. Law § 89\(3\)\(a\)](#) (requiring a basis for the delay and a date certain for compliance “depending on the circumstances” of the request at issue). That the NYPD closes 86% of requests *within a four year period* says nothing about its practice of delay and constructive denial.

Second, the NYPD claims that it faces staffing challenges due to the effects of COVID-19. Dkt. 54 at 15. This argument is legally infirm. The FOIL statute explicitly prohibits the NYPD from denying requests “because the agency lacks sufficient staffing.” [N.Y. Pub. Off. Law § 89\(3\)\(a\)](#).⁵ Moreover, S.T.O.P.'s unrebutted statistical evidence shows that the total volume of FOIL requests *decreased* in the wake of the COVID-19 pandemic, and otherwise remained steady between 2019 and 2022. Dkt. 1 at ¶ 35. The NYPD may not circumvent its obligation to timely respond to FOIL requests merely by understaffing its FOIL Unit. *See e.g., id.* at ¶ 36 (the NYPD's \$11 billion dollar budget amply allows it to comply in a timely fashion with FOIL).

Third, the NYPD claims that some FOIL requests are complicated and therefore the NYPD requires additional time to respond. Dkt. 54 at 15-16. This too is a red herring. Just like the NYPD has the ability to change its staffing level to work on its perpetual FOIL backlog, the NYPD has the ability to change the processes and protocols that it uses to investigate FOIL requests. For instance, the NYPD offered no reason why the requests for emails required coordination with the NYPD's E-Discovery Unit. Likewise, the NYPD failed to substantiate its claim that FOIL officers

⁵ The NYPD may not justify its constructive denials on staffing grounds either. Permitting the NYPD to circumvent statutory requirements by simply not responding to requests for months or years—as opposed to outright denying those requests—would fly in the face of [N.Y. Pub. Off. Law § 89\(3\)\(a\)](#). *See In re Empire Ctr. for Pub. Pol'y v N.Y. State Dept. of Health*, 72 Misc.3d 759 (N.Y. Sup. Ct. Feb. 03, 2021) (noting that the FOIL statute seeks to deter unreasonable delays and denials of access).

have no other investigative tools other than “reaching out” to other unit leaders to investigate requests related to that unit.

S.T.O.P. does not dispute that *some* requests might require 90 days to respond. That the NYPD responds in less than 90 days for some requests, *see e.g.*, Dkt. 1 at ¶ 34, is evidence that the NYPD is capable of making reasoned judgments about the complexity of requests and setting extensions according to that complexity. It is the NYPD’s practice of routinely issuing blanket 90-day extensions, *see e.g., id.* (roughly half of all requests were delayed by about 90 days), without regard to the underlying content of the request, that is at issue. S.T.O.P.’s own FOIL requests are illustrative. The NYPD issued at least a 90-day extension for all requests. *Id.* at ¶ 37. Yet, as noted above, the requests themselves are of varying complexity. For instance, FOIL Request 2023-056-01856 concerned records around the NYPD’s non-consensual filming of attendees at one specific event in Harlem. Petition, Ex. AA. By contrast, FOIL Request 2022-056-23653 sought NYPD email records with a list of known commercial providers of surveillance technologies that were responsive to the keywords “cost”, “price” or “fees”. Petition, Ex. U. That the NYPD issued identical extensions, with identical justifications, reflects that it is *not* complying with the requirements of [N.Y. Pub. Off. Law § 89\(3\)\(a\)](#).

Fourth, and finally, the NYPD argues that “Petitioner’s complaint that Respondent denies access to records on the basis of the FOIL exemptions is not a basis for a monitor ... Petitioner’s complaint is essentially that Respondent complies with the FOIL statute.” Dkt. 54 at 17-18. This is a gross mischaracterization of S.T.O.P.’s allegations. S.T.O.P. alleges that the NYPD systematically seeks to avoid compliance with the FOIL statute by, among other things, deploying a “kitchen sink” approach to FOIL exemptions. Dkt. 1 at ¶ 40. Instead of reviewing the underlying

request and assessing what exemptions *actually apply*, the NYPD instead recites virtually all the exemptions, for virtually all requests. *See* Dkt. 41 at 9.

The NYPD's mischaracterization is particularly obvious given that S.T.O.P. regularly argues that none of the asserted exemptions apply to its FOIL requests. *See* Exs. KK (Petition by S.T.O.P. challenging NYPD denial of FOIL 2022-056-05213), LL (Petition by Amnesty International challenging NYPD denial of FOIL 2020-056-13681). Tellingly, nowhere in its cross-motion to dismiss does the NYPD claim that any exemption applies to the requests specifically at issue in the Petition. *See generally* Dkt. 54 at 17-18. Instead, the NYPD merely recites cases in which exemptions have been upheld. *Id.* But the NYPD bears the burden to establish the existence of any exemption. *Hanig v. State Dept. of Motor Vehicles*, 79 N.Y.2d 106, 109 (N.Y. 1992). It must provide specific details, demonstrating that any particular request is actually subject to an exception from disclosure. *See id.* (“Those exemptions are to be narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption.”). The NYPD simply does not provide those details. *See* Exs. M, N, O, P, II (“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.”). Accordingly, its blunderbuss approach to exemptions is simply a further extension of its pattern and practice of FOIL noncompliance.

For all its sound and fury, the NYPD does not take issue with the actual facts alleged in the Petition. It takes no issue with S.T.O.P.'s statistical analyses, which show the NYPD usually fails to comply with FOIL. Each of the NYPD's counter arguments misses the forest for the trees, mischaracterizes S.T.O.P.'s position, or is contrary to law. Fundamentally, the NYPD's argument

boils down to the assertion that it complies with the law sometimes, and that is enough. It is not. And the fact that the NYPD thinks so all the more justifies the appointment of a monitor.

B. This Court Has Authority To Impose A Monitor

The NYPD argues that it does not engage in a pattern or practice of obstructing access to records, and accordingly S.T.O.P.'s request for a Court-appointed monitor must be denied. Dkt. 54 at 13-14. Notably, the NYPD does *not* argue that this Court is unable to provide such relief. *See generally id.* Nor can it do so, for the reasons explained in S.T.O.P.'s memorandum of law in support of its Petition. Dkt. 41 at 17-22. S.T.O.P. has brought its complaint via the appropriate vehicle—an Article 78 petition—and seeks appropriate relief within that vehicle. *Harvey v. Hynes*, 174 Misc. 2d 174, 177 (N.Y. Sup. Ct. May 06, 1997) (“Although Article 78 supersedes those common-law writs, it does so in procedure only. A party’s right to relief still depends upon the substantive law of the former writs.”) (citing *Newbrand v. City of Yonkers*, 285 N.Y. 164, 174-75 (N.Y. 1941)).

Recognizing that the FOIL statute does not set a specific day requirement for responding to FOIL petitions, S.T.O.P. offered analysis of the statute indicating that the legislature considered a 20-day response time to be typical. Dkt. 41 at 15-16. In response, the NYPD points to caselaw forbidding any bright line rule for responding to requests. *See New York Times Co. v. City of New York Police Dep't*, 103 A.D.3d 405 (N.Y. App. Div. 1st Dep’t 2013); *Legal Aid Soc. v. New York City Police Dep't*, 274 A.D.2d 207, 215 (N.Y. App. Div. 1st Dep’t 2000). Dkt. 54 at 13-14. Neither case upends the statutory requirement to provide an estimated date for response that is reasonable under the circumstances.

Fundamentally, the NYPD’s pattern and practice of constructively denying FOIL requests is *not* solely an issue of delay. Delay is a symptom of a wider problem, in which the NYPD applies blanket extensions with little regard to the underlying content of the request. Neither *New York*

Times nor *Legal Aid Soc.* challenged this practice. And it is this practice which a Court-appointed monitor would best remedy. By forcing the NYPD to evaluate the content of FOIL requests, a Court-appointed monitor will limit the number of extensions to those *actually necessary*. This, in turn, will reduce average delay in response time, and prevent the need for constant judicial intervention to correct the NYPD's FOIL non-compliance.⁶

CONCLUSION

For the foregoing reasons, Respondent's Cross-Motion to Dismiss should be denied. In the alternative, only Petitioner's eleventh cause of action, the pattern and practice claim, should be dismissed.

⁶ The NYPD briefly argues that S.T.O.P.'s request for a attorney's fees is premature. Dkt. 54 at 18-19. The NYPD's case law acknowledges that S.T.O.P. will substantially prevail in the proceeding when it receives the information requested and to which it is entitled in this proceeding. See *Matter of Competitive Enter. Inst. v. Att'y Gen. of N. Y.*, 161 A.D.3d 1283, 1286 (N.Y. App. Div. 3rd Dep't 2018). Accordingly, when S.T.O.P. prevails in this litigation or the NYPD satisfies the ten specific requests at issue by producing documents, it will be required to pay S.T.O.P.'s attorney's fees. See *id.* ("Having received a complete response and the actual document only after commencing the proceeding, we conclude that petitioner substantially prevailed[.]").

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New York, NY

Respectfully Submitted,

By: /s/ Sami H. Rashid

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/s/ Sami H. Rashid

Sami H. Rashid