

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

COALITION FOR THE HOMELESS, INC.,
by DEBORAH B. DIAMANT,

NOTICE OF PETITION

Petitioner,

THE CITY OF NEW YORK and the NEW YORK
CITY POLICE DEPARTMENT,

Index No. _____

Respondents.

PLEASE TAKE NOTICE that upon the affirmation of David B. Rankin of Beldock Levine & Hoffman LLP, and Deborah B. Diamant, sworn to on August 10, 2020, and the attached exhibits, the undersigned petitioner will request that this Court, at 9:30 in the forenoon on the 8th day of September 2020, or as soon thereafter as counsel can be heard, at the Courthouse located at 60 Centre Street, New York, New York, or by Telephone or Video Conference, issue an Order:


1. Compelling the respondents to release the requested documents pursuant to Public Officers Law §§ 84-90, the New York State Freedom of Information Law;
2. Awarding reasonable attorney's fees and other litigation costs to the petitioner pursuant to Public Officers Law § 89(4)(c); and
3. Granting such other and further relief as this Court finds just and proper.

PLEASE TAKE FURTHER NOTICE, pursuant to C.P.L.R. § 2214(b), answering papers, if any, are to be served upon the undersigned at least seven (7) days prior to the return date herein.

Dated: August 10, 2020
New York, New York

Respectfully submitted,


BELDOCK LEVINE & HOFFMAN LLP

By: 

David B. Rankin

99 Park Avenue, PH/26th Floor
New York, New York 10016
t: (212) 277-5825
e: drankin@blhny.com
Attorneys for Petitioner

COALITION FOR THE HOMELESS, INC.

By: 

Deborah B. Diamant, Esq.
Director of Government Relations and
Legal Affairs
129 Fulton Street
New York, New York 10038
t: (212) 776-2123
e: ddiamant@cfthomeless.org
Petitioner

To: The City of New York
100 Church Street
New York, New York 10007

The New York Police Department
One Police Plaza
New York, New York 10007

Supreme Court, State of New York
County of New York
Motion Submission Term, Room 130
60 Centre Street
New York, New York 10007

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

COALITION FOR THE HOMELESS, INC.,
by DEBORAH B. DIAMANT,

VERIFIED PETITION

Petitioner,

THE CITY OF NEW YORK and the NEW YORK
CITY POLICE DEPARTMENT,

Index No. _____

Respondents.

We, David B. Rankin, of Beldock Levine & Hoffman, LLP, and Deborah B. Diamant, attorneys duly licensed to practice law in the Courts of the State of New York, hereby verify and affirm, under the penalties of perjury, the following is true and correct:

PRELIMINARY STATEMENT

1. We are counsel for the petitioner, COALITION FOR THE HOMELESS, INC., by DEBORAH B. DIAMANT (hereinafter “Coalition for the Homeless”), and as such, we are familiar with the facts and procedural history of this proceeding.

2. Pursuant to the Freedom of Information Law (“FOIL”) and Article 78 of the New York Civil Practice Law and Rules, Coalition for the Homeless seeks an order directing respondents, the City of New York (“Respondent City”) and the New York City Police Department (“Respondent NYPD”), to produce records from the NYPD related to the Subway Diversion Program announced on June 13, 2019, by City Hall, or any other City initiative focused on addressing homelessness in the subways that may have a name other than “Subway Diversion Project” or “Subway Diversion Program” that was announced on or after June 13, 2019.

3. As Coalition for the Homeless has exhausted all administrative remedies, it respectfully requests the Court to order the respondents to produce the records in accordance with the FOIL and the guidance of the State of New York Department of State Committee on Open Government.

JURISDICTION AND VENUE

4. This proceeding, pursuant to Article 78 of the Civil Practice Law and Rules, is the proper mechanism for seeking judicial review of a state agency's determination with respect to a FOIL request. N.Y. Pub. Off. § 89(4)(b).

5. Respondent NYPD is an agency of Respondent City subject to FOIL.

6. Petitioner Coalition for the Homeless has exhausted Respondent NYPD's internal appeals process, and the instant petition has been filed within the four-month period thereafter specified in C.P.L.R. § 217(1).

7. Respondents NYPD and City both have their central offices in the County of New York. Venue therefore is proper in this Court. C.P.L.R. §§ 7804(a) and 506(b).

STATEMENT OF FACTS

8. On November 13, 2019, Coalition for the Homeless sent a FOIL request using the NYC OpenData Portal. *See* Exhibit 1.

9. The request seeks records from Respondent NYPD related to the Subway Diversion Program announced on June 13, 2019, by City Hall, or any other City initiative focused on addressing homelessness in the subways that may have a name other than "Subway Diversion Project" or "Subway Diversion Program" that was announced on or after June 13, 2019.

10. The request was “opened” and acknowledged by Respondent NYPD’s Records Access Officer (“RAO”) on November 15, 2019. Respondent NYPD set a production date for documents responsive to the request of April 1, 2020. *See* Exhibit 2. However, Respondent NYPD produced no records in response to the request by the set production date.

11. On April 5, 2020, Coalition for the Homeless internally appealed the constructive denial of the FOIL request by Respondent NYPD. *See* FOIL Internal Appeal, which is attached as Exhibit 3.

12. On April 6, 2020, Respondent NYPD’s Records Access Appeals Officer, Sergeant Jordan S. Mazur (“Mazur”), replied to the Coalition for the Homeless’ appeal, stating it was “premature” because it “lacked the predicate denial of access,” and the RAO “had not yet issued a determination” on the request, and they “[would] issue a determination as quickly as possible.” *See* Respondent NYPD’s denial of FOIL Internal Appeal, which is attached as Exhibit 4.

13. On June 3, 2020, Coalition for the Homeless replied to Mazur’s April 6, 2020, correspondence and inquired as to “a date by which [their] office will produce the requested records.” *See* Coalition for the Homeless email dated April 6, 2020, which is attached as Exhibit 5.

14. As of the present date, the records have not yet been produced, nor has there been any subsequent correspondence from Respondent NYPD.

ARGUMENT

15. FOIL provides that all records kept by a public agency are presumptively open to public inspection and copying unless specifically exempted. *Matter of New York Civ. Liberties Union v. City of Schenectady*, 2 N.Y.3d 657, 661 (2004).

16. These exemptions “are to be narrowly interpreted so that the public is granted maximum access to the records of government...” *Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462 (2007) (internal citations omitted).

17. The agency resisting disclosure must prove entitlement to one of the exceptions, meaning the agency bears the burden to resist production. *Matter of Laureano v. Grimes*, 179 A.D.2d 602, 604 (1st Dept. 1992); *see also Data Tree, LLC*, 9 N.Y.3d at 463.

18. It is a useful reminder to look at the Court of Appeals’ general view of the intent of the FOIL in *Matter of Gould v. New York City Police Dept.*, stating that:

To ensure maximum access to government documents, the “exemptions are to be narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption” (*Matter of Hanig v State of New York Dept. of Motor Vehicles*, 79 NY2d 106, 109; *see*, Public Officers Law § 89 [4] [b]). As this Court has stated, “[o]nly where the material requested falls squarely within the ambit of one of these statutory exemptions may disclosure be withheld” (*Matter of Fink v Lefkowitz*, 47 NY2d 567, 571).

Matter of Gould v New York City Police Dept., 89 N.Y.2d 267, 275 (1996).

19. Failure of an agency to respond to a request for records under the FOIL constitutes a constructive denial of access. An agency’s failure to respond to a request within five business days or by a date certain that the agency sets itself in a response to a request is a constructive denial under the FOIL. N.Y. Pub. Off. § 89(4)(a).

20. After a respondent failed to respond by the date it set for production and then failed to set another date, Judge Henry F. Zwak declared “[i]t is undisputed that the lack of a response constituted a constructive denial.” *Matter of Siani v. Clark*, 886 N.Y.S.2d 69 (Sup. Ct., Albany County 2009); *see also Matter of Molloy v. New York City Police Dept.*, 50 A.D.3d 98, 851 N.Y.S.2d 480 (1st Dept. 2008); Comm. on Open Govt. FOIL-AO 3037.

21. Respondent NYPD constructively denied Coalition for the Homeless' FOIL request because it failed to respond by April 1, 2020, the date they set for themselves on the OpenData Portal.

22. In constructively denying the instant records request, Respondent NYPD failed to provide any "particularized" and "specific justification for denying access" as required to establish an exemption. *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 567 (1986); *Matter of DJL Restaurant Corp. v. Department of Bldgs. of City of N.Y.*, 273 A.D.2d 167, 710 N.Y.S.2d 564 (1st Dept. 2000).

23. An Article 78 proceeding challenging the denial of a FOIL request must be commenced within four months after a petitioner receives notice of a final and binding denial of its appeal. C.P.L.R. § 217(1); *see also Church of Scientology of N.Y. v. State of New York*, 46 N.Y.2d 906, 908 (1979).

24. A court may award reasonable attorney's fees and other litigation costs when a petitioner (1) "substantially prevails" in a proceeding to review the denial of a FOIL request; (2) the agency had no reasonable basis for denial of access; or (3) the agency failed to respond to a request or appeal within the statutory time. N.Y. Pub. Off. § 89(4)(c).

25. Awarding attorney's fees is meant to deter unreasonable delays and denials of access and encourages all units of government to make a "good faith effort" to comply with the FOIL requirements. *Matter of New York Civ. Liberties Union v. City of Saratoga Springs*, 87 A.D.3d 336, 338, 926 N.Y.S.2d 732, 734 (3d Dept. 2011) (*quoting* Senate Introducer's Mem. in Support, Bill Jacket, L. 2006, ch. 492, at 5).

26. Respondent NYPD (1) had no reasonable basis for constructively denying the petitioner's FOIL, and (2) failed to respond to petitioner's request within the statutory time,

amounting to a constructive denial that justifies the award of attorney's fees.

REQUEST FOR RELIEF

WHEREFORE, the petitioner, Coalition for the Homeless, respectfully requests this Court enter an Order directing Respondent NYPD to produce the requested records; awarding the undersigned legal fees and expenses incurred in making the instant petition for relief; and awarding such other and further relief as the Court may deem just and proper.

Dated: August 10, 2020
New York, New York

Respectfully submitted,

BELDOCK LEVINE & HOFFMAN LLP

By: _____



David B. Rankin
99 Park Avenue, PH/26th Floor
New York, New York 10016
t: (212) 277-5825
e: drankin@blhny.com
Attorneys for Petitioner

COALITION FOR THE HOMELESS, INC.

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Deborah B. Diamant, Esq.
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To: The City of New York
100 Church Street
New York, New York 10007

The New York Police Department
One Police Plaza
New York, New York 10007

Supreme Court, State of New York
County of New York
Motion Submission Term, Room 130
60 Centre Street
New York, New York 10007

ATTORNEY VERIFICATION

I, David B. Rankin, an attorney duly admitted to practice before the Courts of the State of New York, affirm the following to be true under the penalties of perjury:

I am the attorney of record for the Plaintiff, COALITION FOR THE HOMELESS, INC., by DEBORAH B. DIAMANT, who does not reside in the county where we maintain our office.

I have read the annexed Petition and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters, I believe them to be true. My beliefs, as to those matters therein not stated upon knowledge, are based upon facts, records, and other pertinent information contained in my files.

Dated: August 10, 2020
 New York, New York

Respectfully submitted,

By: _____



David B. Rankin
BELDOCK LEVINE & HOFFMAN LLP
99 Park Avenue, PH/26th Floor
New York, New York 10016
t: (212) 277-5825
e: drankin@blhny.com
Attorneys for Petitioner

Exhibit 1

Subject: [OpenRecords] Request FOIL-2019-056-20311 Submitted to New York City Police Department (NYPD)

Date: Wednesday, November 13, 2019 at 4:28:38 PM Eastern Standard Time

From: donotreply@records.nyc.gov

To: Deborah Diamant

Your request FOIL-2019-056-20311 has been successfully submitted to the New York City Police Department (NYPD). The details of your request are shown below.

Request Title: Subway Diversion Project

Request Description: Other Request

Other Request

Type of Request: Freedom of Information Law Request for Subway Diversion Project records and data

Report #:

Date:

Time:

Precinct:

Location:

Description: I request records pertaining to the Subway Diversion Project. This request is made pursuant to New York State's Freedom of Information Law (N.Y. Pub. Off. Law § 84-90).

Accordingly, I anticipate a response from your office within five business days. Please produce the following records requested in electronic format: 1. Any and all written policies, directives, guides, memos, pamphlets, daily briefing notes, training materials, eligibility assessment tools, etc., about the Subway Diversion Project announced on June 13, 2019, by City Hall (see attached press release); 2. Any and all written policies, directives, guides, memos, pamphlets, daily briefing notes, training materials, eligibility assessment tools, etc., about the Subway Diversion Program or any other City initiative focused on addressing homelessness in the subways that may have a name other than "Subway Diversion Project" or "Subway Diversion Program" that was announced on or after June 13, 2019 (collectively known hereinafter as "Subway Diversion Project" for purposes of this FOIL request); 3. Any and all documents that describe the types of services an individual deemed eligible for the Subway Diversion Project may receive as a participant in the Project; 4. Any and all documents about the Subway Diversion Project that are provided to people deemed eligible for the Subway Diversion Project; 5. The number of officers trained on the Subway Diversion Project; 6. For the period from July 1, 2019, through November 13, 2019: a. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were deemed eligible for the Subway Diversion Project; b. The number of people deemed eligible for the Subway Diversion Project who were issued a summons; c. The number of people deemed eligible for the Subway Diversion Project who were not issued a summons; d. The number of people deemed eligible for the Subway Diversion Project who accepted services from the Project and were issued a summons; e. The number of people deemed eligible for the Subway Diversion Project who accepted services from the Project and were not issued a summons; f. The number of people deemed eligible for the Subway Diversion Project who were handcuffed before, during, or after the eligibility assessment for the Project; g. The number of people deemed eligible for the Subway Diversion Project who were "put over the radio" or "radioed in" as an arrest; h. The number of summonses issued to people deemed eligible for the Subway Diversion Project; i. The number of summonses issued to people deemed eligible for the Subway Diversion Project disaggregated by the rule violation charged; j. The number of summonses issued to people deemed eligible for the Subway Diversion Project disaggregated by the station/location of the alleged rule violation; k. The number of summonses issued to people eligible for the Subway

Diversion Project that were later cleared through the Project; l. The number of people deemed eligible for the Subway Diversion Project who were ejected from the transit system; m. The number of people deemed eligible for the Subway Diversion Project who were ejected from the transit system after they were issued a summons; and n. The number of people deemed eligible for the Subway Diversion Project who were ejected from the transit system without being issued a summons; 7. For the period of July 1, 2018, through November 13, 2018: a. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were issued a summons; b. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were not issued a summons; c. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were arrested; d. The number of summonses issued to people alleged to have violated NYC Transit Code of Conduct rules; and e. The number of summonses issued to people alleged to have violated NYC Transit Code of Conduct rules disaggregated by the rule violation charged. 8. For the period of July 1, 2017, through November 13, 2017: a. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were issued a summons; b. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were not issued a summons; c. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were arrested; d. The number of summonses issued to people alleged to have violated NYC Transit Code of Conduct rules; and e. The number of summonses issued to people alleged to have violated NYC Transit Code of Conduct rules disaggregated by the rule violation charged.

Attached File: Press_Release_-_June_13_2019_-_Supports_Not_Summonses_de_Blasio_Administration_Announces_Pilot_Initiative_to_Divert_Homeless_Individuals.pdf: [Press_Release_-_June_13_2019_-_Supports_Not_Summonses_de_Blasio_Administration_Announces_Pilot_Initiative_to_Divert_Homeless_Individuals.pdf](#)

Requester's Contact Information

Name:

Deborah Diamant

Title:

Director of Government Relations and Legal Affairs

Organization:

Coalition for the Homeless

Email:

ddiamant@cfthomeless.org

Phone Number:

(212) 776-2123

Fax Number:

Not provided

Street Address (line 1):

Coalition for the Homeless

Street Address (line 2):

129 Fulton Street

City:

New York

State:

NY

Zip Code:

10038

You can view the request and take any necessary action at the following webpage: <https://a860-openrecords.nyc.gov/request/view/FOIL-2019-056-20311>.

Exhibit 2

Subject: [OpenRecords] Request FOIL-2019-056-20311 Acknowledged
Date: Friday, November 15, 2019 at 2:18:15 PM Eastern Standard Time
From: donotreply@records.nyc.gov
To: Deborah Diamant

The New York City Police Department (NYPD) has **acknowledged** your FOIL request [FOIL-2019-056-20311](#).

You can expect a response on or about Wednesday, April 1, 2020.

Additional Information:

Your request has been assigned to Detective Halk (646-610-6430)

Please visit [FOIL-2019-056-20311](#) to view additional information and take any necessary action.

Request Information:

Request Title: Subway Diversion Project

Request Description: Other Request

Other Request

Type of Request: Freedom of Information Law Request for Subway Diversion Project records and data

Report #:

Date:

Time:

Precinct:

Location:

Description: I request records pertaining to the Subway Diversion Project. This request is made pursuant to New York State's Freedom of Information Law (N.Y. Pub. Off. Law § 84-90). Accordingly, I anticipate a response from your office within five business days. Please produce the following records requested in electronic format: 1. Any and all written policies, directives, guides, memos, pamphlets, daily briefing notes, training materials, eligibility assessment tools, etc., about the Subway Diversion Project announced on June 13, 2019, by City Hall (see attached press release); 2. Any and all written policies, directives, guides, memos, pamphlets, daily briefing notes, training materials, eligibility assessment tools, etc., about the Subway Diversion Program or any other City initiative focused on addressing homelessness in the subways that may have a name other than "Subway Diversion Project" or "Subway Diversion Program" that was announced on or after June 13, 2019 (collectively known hereinafter as "Subway Diversion Project" for purposes of this FOIL request); 3. Any and all documents that describe the types of services an individual deemed eligible for the Subway Diversion Project may receive as a participant in the Project; 4. Any and all documents about the Subway Diversion Project that are provided to people deemed eligible for the Subway Diversion Project; 5. The number of officers trained on the Subway Diversion Project; 6. For the period from July 1, 2019, through November 13, 2019: a. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were deemed eligible for the Subway Diversion Project; b. The number of people deemed eligible for the Subway Diversion Project who were issued a summons; c. The number of people deemed eligible for the Subway Diversion Project who were not issued a summons; d. The number of people deemed eligible for the Subway Diversion Project who accepted services from the Project and were issued a summons; e. The number of people deemed eligible for the Subway Diversion Project who accepted services from the Project and were not issued a summons; f. The number of people deemed eligible for the Subway Diversion Project who were handcuffed before, during, or after the eligibility assessment for the Project; g. The number of people deemed eligible for the Subway Diversion Project who were "put over the radio" or "radioed in" as an arrest; h. The number of summonses issued to people deemed eligible for the Subway Diversion Project; i. The number of summonses issued to people deemed eligible for the Subway Diversion Project disaggregated by the rule violation charged; j. The number of summonses issued to people deemed eligible for the Subway Diversion Project disaggregated by the station/location of the alleged rule violation; k. The number of summonses issued to people eligible for the Subway Diversion Project that were later cleared through the Project; l. The number of people deemed eligible for the Subway Diversion Project

who were ejected from the transit system; m. The number of people deemed eligible for the Subway Diversion Project who were ejected from the transit system after they were issued a summons; and n. The number of people deemed eligible for the Subway Diversion Project who were ejected from the transit system without being issued a summons; 7. For the period of July 1, 2018, through November 13, 2018: a. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were issued a summons; b. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were not issued a summons; c. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were arrested; d. The number of summonses issued to people alleged to have violated NYC Transit Code of Conduct rules; and e. The number of summonses issued to people alleged to have violated NYC Transit Code of Conduct rules disaggregated by the rule violation charged. 8. For the period of July 1, 2017, through November 13, 2017: a. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were issued a summons; b. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were not issued a summons; c. The number of people alleged to have violated NYC Transit Code of Conduct rules and who were arrested; d. The number of summonses issued to people alleged to have violated NYC Transit Code of Conduct rules; and e. The number of summonses issued to people alleged to have violated NYC Transit Code of Conduct rules disaggregated by the rule violation charged.

Exhibit 3

Subject: Appeal – FOIL-2019-056-20311 (Subway Diversion Project)
Date: Sunday, April 5, 2020 at 8:19:24 PM Eastern Daylight Time
From: Deborah Diamant
To: FOILAPPEALS@nypd.org

VIA EMAIL ONLY
FOILAPPEALS@nypd.org

April 5, 2020

Sgt. Jordan Mazur
Records Access Appeals Officer
Legal Bureau-Civil Section
One Police Plaza, Room 1406
New York, New York 10038

Re: Appeal – FOIL-2019-056-20311 (Subway Diversion Project)

Dear Sgt. Mazur:

I write to appeal the NYPD's effective denial of the Coalition for the Homeless' November 13, 2019, Freedom of Information Law request no. FOIL-2019-056-20311, submitted to obtain records concerning the NYPD's Subway Diversion Project.

The NYPD acknowledged the Coalition's FOIL request on November 15, 2019, and set a production date of April 1, 2020.

As of April 5, 2020, the NYPD has not produced any records in response to the Coalition's FOIL request, which was submitted nearly five months ago. The NYPD's failure to respond by April 1, 2020, constitutes an unreasonable denial of this request.

As you know, FOIL states "[f]ailure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial." N.Y. Pub. Off. § 89(4)(a). FOIL directs that "any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought." N.Y. Pub. Off. § 89(4)(a).

Please immediately release all responsive records to the Coalition's November 13, 2019, FOIL request and contact me at 212-776-2123 or ddiamant@cftohomeless.org with any questions.

Best regards,
Deborah Diamant

Deborah B. Diamant, Esq.
Director of Government Relations and Legal Affairs
Coalition for the Homeless
129 Fulton Street
New York, New York 10038

T: 212-776-2123
ddiamant@cfthomeless.org
www.coalitionforthehomeless.org
Pronouns: she/her

Exhibit 4



POLICE DEPARTMENT
Office of Deputy Commissioner,
Legal Matters
One Police Plaza, Room 1406A
New York, New York 10038
FOILAppeals@NYPD.org

April 6, 2020

Deborah Diamant
Coalition for the Homeless
ddiamant@cfthomeless.org

RE: FREEDOM OF INFORMATION LAW
REQUEST: FOIL-2020-056-20311
Re: Subway Diversion Project

Dear Ms. Diamant:

This is in response to your email dated April 5, 2020, regarding records that were requested pursuant to the Freedom of Information Law (FOIL). Your 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.

The authority of the undersigned is limited to the review of determinations made by the Records Access Officer concerning the disclosure of records requested pursuant to the Freedom of Information Law. In your appeal letter, you acknowledge receipt of the Records Access Officer's response to your original request in which he issued an estimate of 90 business days for completion of your request. Because the RAO has yet to make a final determination, the undersigned is unable to issue a substantive appeal determination.

The RAO complied with the provisions of New York Public Officers Law Section 89(3), which requires that, "[e]ach 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 . . . furnish a written acknowledgement 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".

On November 15, 2020, the RAO acknowledged receipt of your request in a timely manner, provided you with an approximate date when a determination would be made (90 business days or April 1, 2020), and commenced a search for the records you requested. This estimate was made by 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.

Additionally, NYPD resources have been, and remain, fully focused on COVID-19 response and ensuring the safety of our members and constituents. As such, we are experiencing

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longer than normal delays in processing outstanding FOIL requests. We are working diligently to manage administration with limited resources, and appreciate your patience during these unprecedented times. Nonetheless, the search for the records responsive to your request remains ongoing and it is estimated that the RAO will issue a determination as quickly as possible.

Respectfully,

A handwritten signature in black ink, appearing to read "Jordan S. Mazur". The signature is fluid and cursive, with the first name "Jordan" being the most prominent part.

Jordan S. Mazur
Sergeant
Records Access Appeals Officer

c: Committee on Open Government

Exhibit 5

Subject: Re: Appeal – FOIL-2019-056-20311 (Subway Diversion Project)
Date: Wednesday, June 3, 2020 at 5:47:10 PM Eastern Daylight Time
From: Deborah Diamant
To: FOIL APPEALS

Sgt. Mazur:

As nearly two months have passed since my last communication, please provide a date by which your office will produce the requested records.

Very best regards,
Deborah B. Diamant, Esq.
Director of Government Relations and Legal Affairs
Coalition for the Homeless
129 Fulton Street
New York, New York 10038
T: 212-776-2123
ddiamant@cfthomeless.org
www.coalitionforthehomeless.org
Pronouns: she/her

From: FOIL APPEALS <FOILAppeals@nypd.org>
Date: Monday, April 6, 2020 at 5:12 PM
To: Deborah Diamant <DDiamant@cfthomeless.org>
Subject: RE: Appeal – FOIL-2019-056-20311 (Subway Diversion Project)

Ms. Diamant,

Please see attached appeal determination. Thank you.

Respectfully,

Jordan S. Mazur, Esq.

*Sergeant
Records Access Appeals Officer
NYPD Legal Bureau
1 Police Plaza, Room 1406
New York, NY 10038
FOILAppeals@NYPD.org*

CONFIDENTIALITY NOTICE: *This email and any attachments may contain confidential and privileged information for the use of the designated recipient(s) named above. If you are not the intended recipient, you are hereby notified that you have received this communication in error and that any review, use or disclosure of it or its contents is prohibited and may violate laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of this communication. Please treat this and all other communications from the New York City Police Department as LAW ENFORCEMENT SENSITIVE / FOR OFFICIAL USE ONLY.*

From: Deborah Diamant [<mailto:DDiamant@cfthomeless.org>]

Sent: Sunday, April 05, 2020 8:19 PM
To: FOIL APPEALS
Subject: Appeal – FOIL-2019-056-20311 (Subway Diversion Project)

VIA EMAIL ONLY
FOILAPPEALS@nypd.org

April 5, 2020

Sgt. Jordan Mazur
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I write to appeal the NYPD's effective denial of the Coalition for the Homeless' November 13, 2019, Freedom of Information Law request no. FOIL-2019-056-20311, submitted to obtain records concerning the NYPD's Subway Diversion Project.

The NYPD acknowledged the Coalition's FOIL request on November 15, 2019, and set a production date of April 1, 2020.

As of April 5, 2020, the NYPD has not produced any records in response to the Coalition's FOIL request, which was submitted nearly five months ago. The NYPD's failure to respond by April 1, 2020, constitutes an unreasonable denial of this request.

As you know, FOIL states "[f]ailure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial." N.Y. Pub. Off. § 89(4)(a). FOIL directs that "any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought." N.Y. Pub. Off. § 89(4)(a).

Please immediately release all responsive records to the Coalition's November 13, 2019, FOIL request and contact me at 212-776-2123 or ddiamant@cfthomeless.org with any questions.

Best regards,
Deborah Diamant

Deborah B. Diamant, Esq.
Director of Government Relations and Legal Affairs
Coalition for the Homeless
129 Fulton Street
New York, New York 10038
T: 212-776-2123
ddiamant@cfthomeless.org