

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the matter of:)

**GOVERNMENT ACCOUNTABILITY)
AND OVERSIGHT)**

Petitioners,)

v.)

**OFFICE OF THE ATTORNEY GENERAL OF)
THE STATE OF NEW YORK)**

Respondent,)

**For a judgment pursuant to Article 78)
of the Civil Practice Law and Rules.)**

Index No.: _____

NOTICE OF PETITION

**ORAL ARGUMENT
REQUESTED**

INTRODUCTION

Petitioner GOVERNMENT ACCOUNTABILITY & OVERSIGHT (“GAO”) for its petition against Respondent OFFICE OF THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK (“the AG’s Office” or “OAG”), alleges as follows:

Nature of Action

1. This is an action under Article 78 of the Civil Law and Practice Rules to compel compliance with the New York Freedom of Information Law, Public Officers Law §§ 84-90, and to compel production under two records requests made by the petitioner.

Parties

2. Petitioner Government Accountability & Oversight (“GAO”) is a nonprofit research, public policy and public interest litigation center incorporated in Wyoming, dedicated to proper administration of governmental authority and examining how public institutions come to be used in the ways they are, with whom. GAO does this by obtaining, analyzing, and publication of public records relating to how policymakers and other public employees use public resources.
3. Respondent the Office of the Attorney General of the State of New York is a statutory office of the State of New York, and is in possession of, or otherwise the proper owner, of the records petitioner seeks.

The May 15, 2023, Request

4. The petitioner’s first FOIL request at issue in this case was submitted via respondent’s FOIL portal on May 14, 2023 (which was a Sunday, and therefore the request was dated May 15, 2023), seeking copies of all electronic correspondence sent to or from Alvin Bragg that b) includes, anywhere, whether in an email address, in the sent, to, from, cc, bcc fields, or the Subject fields or body of an email or email “thread”, including also in any attachments, i) @FahrLLC.com, b) @climateintegrity.org, iii) @rff.org, and/or iv) lwasserman@me.com, and c) is dated from January 1, 2015 through December 31, 2021.
5. Mr. Bragg was at the time an employee of the Office of Attorney General. The Mr. Wasserman of the cited email address was at the time (and on information and belief still is) Director of the Rockefeller Family Fund in which capacity, public records show, he recruited the Office to use the Martin Act to seek discovery against a political target of

Mr. Wasserman and his employer, and its efforts with other outside activists to personally discredit “individual scientists” particularly a private scientific researcher then working out of the Harvard-Smithsonian Center for Astrophysics in Cambridge, Massachusetts, Wei-Hock “Willie” Soon.

6. The Office lost that aforementioned Martin Act lawsuit, which is now long concluded. *People of the State of New York v. ExxonMobil Corporation*, Index No. 452044/2018 (Sup. Ct. N.Y. Cnty.), filed June 19, 2019, decided December 10, 2019.
7. The AG’s Office assigned the FOIL request at issue in this Petition the tracking number #G000316-051423.
8. On June 23, 2023, Records Officer disclosed 108 pages of responsive records, stating that the disclosure was the first of what would be a rolling production.
9. Then the Office’s August 23, 2023, final notice in response to G000316-051423 stated, in pertinent part (citations omitted):

The Office of the Attorney General has conducted a diligent search and has located no additional records that respond to your request.

Please be advised that some of the records that respond to your request have been withheld in their entirety, or portions have been redacted and appear as blacked out in the documents produced to you.

These records are exempt from disclosure pursuant to:

- Public Officers Law § 87(2)(a), which provides that records that are exempted from disclosure by state or federal statute are exempt from disclosure under FOIL. The records constitute confidential communications which are subject to the common legal interest doctrine. ...
- Public Officers Law § 87(2)(b), because their disclosure would constitute an unwarranted invasion of personal privacy; and
- Public Officers Law § 87(2)(g), because the records are inter-agency or intra-

agency materials.

Administrative Appeal and Response

10. On August 25, 2023, Petitioner administratively appealed the response(s) challenging both the search, for reasons stated in the appeal, and the production/withholdings.¹
11. On September 11, 2023, the Office wrote to Petitioner stating that the Office conducted a new search and that, in pertinent part, “The searches retrieved 153 pages of records that I believe were not previously disclosed to you. I am herewith disclosing them, with redactions marked to prevent an unwarranted invasion of personal privacy, as permitted by Public Officers Law §§ 87(2)(b), 89(2)(b)(iv), and to remove intra-agency materials that are not statistical or factual tabulations or data, instructions to staff that affect the public, final agency policy or determination, or external audits, as permitted by Public Officers Law § 87(2)(g).... This is a final agency determination. Please be advised that judicial review of this determination can be obtained under Article 78 of the Civil Practice Law & Rules.”

The September 14, 2023. Request

12. The petitioner’s second FOIL request at issue in this case was submitted via respondent’s

¹ At that time, Petitioner appealed both G000316-051423 and a July 20, 2023, request, both of which sought correspondence of one named employee of the Office of the Attorney General (Alvin Bragg and Lem Srolovic, respectively). As noted in Petitioner noted in this appeal, “those requests sought very similarly described records but for two different officials, and overlapping but not identical time periods. The production in G000316-051423 showed overlap between the officials’ relevant correspondence and, for that and other reasons grounded in the Office’s denial letters, we appeal them together.” On August 1, 2023 and September 11, 2023 the Records Access Officer affirmed this overlap in writing, stating that records responsive to that second request would be included in the records to be disclosed in response to the first request. As such, all records produced were responsive to the May 15, 2023 request G000316-051423, and Petitioner need only proceed on this count on that request.

FOIL portal on September 14, 2023, and sought:

All electronic mail a) sent to or from i) Micah Lasher and/or ii) Steven Glassman, which b) was also sent to or from or copies (whether as cc: or bcc:) David Brown (daviddbrowniv@gmail.com), at any time from March 18, 2015 through December 31, 2015, inclusive; also

All electronic mail a) sent to or from i) Micah Lasher and/or ii) Steven Glassman, which b) was also sent to or from or copies (whether as cc: or bcc:) **Lee Wasserman** (lwasserman@rffund.org), **at any time from** January 1, 2015 through December 31, 2015, inclusive.

13. The Respondent assigned this aforementioned (second) request the tracking number G000617-091423.
14. On October 20, 2023, the Office responded to G000617-091423, producing 261 pages of records, withholding in full some unstated number of emails and/or redacting numerous others, citing to Public Officers Law §§ 87(2)(a), 87(2)(b), and 87(2)(g).
15. Among the redactions were an email which ultimately succeeded in persuading the OAG to use the Martin Act against political opponents for purposes of obtaining discovery, toward advancing a stalled political agenda. Respondent released that email, unredacted, to a different requester who filed suit over the matter. *Menton v. Office of the Attorney General*, New York County Supreme Court, Index No. 161338/2023 (challenging the response in re FOIL #G000658-100923).

Administrative Appeal and Response

16. On October 23, 2023, Petitioner appealed the Records Access Officer's determination, providing copies of the redactions it challenged and asserting it also challenged any of the unspecified number of records withheld in full.
17. Specifically, Petitioner provided copies of the redactions it challenged and wrote, in

pertinent part:

Redactions include content on pages 47, 125, 132, 135, 153, 158, 204, 207, and 258 of the 261-page PDF. We specifically challenge all withholdings in full and the specified redactions, and attach the latter in a separate PDF.

One of these redactions, on page 47 of 261 withholds one or two sentences drafted by an outside, private party and begins “In our opinion, [REDACTED].” This opinion is not in any conceivable way privileged.

18. The latter reference is to the email with the Rockefeller Family Foundation cited, *supra*, that Respondent release in unredacted form in *Menton v. Office of the Attorney General*.
19. On November 7, 2023, the appeals officer unredacted none of the challenged withholdings, but wrote, *inter alia*, “I am herewith disclosing ten additional pages responsive to your request”, redacting only a call-in number on one page (which petitioner does not challenge in this litigation). The Office did not state in this response to Petitioner’s appeal how many (if any) other records it was withholding in full, which Petitioner also challenges in this petition.
20. Respondent concluded, with, “This is a final agency determination. Please be advised that judicial review of this determination can be obtained under Article 78 of the Civil Practice Law & Rules.”
21. Accordingly, Petitioner files this lawsuit to compel Respondent to comply with the law and release redacted information, produce withheld public records and/or otherwise satisfy its statutory obligations under FOIL with respect to these two requests by justifying all information it continues to withhold.

Jurisdiction and Venue

22. This matter is brought pursuant to CPLR Article 78.
23. Venue is proper in this Court pursuant to NY CPLR 506 (b) because the respondent

Office maintains its principal place of business in Albany County.

FIRST CLAIM FOR RELIEF
Seeking Declaratory Judgment

24. Petitioner re-alleges the preceding paragraphs as if fully set out herein.
25. Petitioner has sought and been denied production of responsive records reflecting the conduct of official business, because respondent has failed to provide a substantive response to the FOIL requests at issue in this case, or to provide any reasonable basis to conclude that it properly searched for such records, or to produce records or portions therefor that are not properly exempt under the law.
26. Petitioner asks this Court to enter a judgment declaring that:
 - a. The records as specifically described in petitioner's FOIL requests, and any attachments thereto, are public records, and as such, are subject to release under the New York Freedom of Information Law;
 - b. The respondent must release those requested records or segregable portions thereof subject to legitimate exemptions;
 - c. The respondent is estopped from seeking seek costs and fees for the requests at issue in this case, due to the balance of the equities and the incorporation of common law principles by §89 (6) of the New York Freedom of Information Law.

SECOND CLAIM FOR RELIEF
Seeking Injunctive Relief

27. Petitioner re-alleges the preceding paragraphs as if fully set out herein.
28. Petitioner is entitled to injunctive relief compelling respondent to produce all records in its possession responsive to petitioner's New York Freedom of Information Law requests,

without fees, subject to legitimate withholdings.

29. Petitioner asks the Court to order the respondent to produce to petitioner, within 5 business days of the date of the order, the requested records described in petitioner's requests, and any attachments thereto, subject to legitimate withholdings.
30. Petitioner asks the Court to order the Parties to consult regarding withheld documents and to file a status report to the Court within 10 days after petitioner receive the last of the produced documents, addressing respondent's preparation of a withholdings log and a briefing schedule for resolution of remaining issues associated with petitioner's challenges to respondent's withholdings and any other remaining issues.

THIRD CLAIM FOR RELIEF

Seeking Costs and Fees

31. Petitioner re-alleges the preceding paragraphs as if fully set out herein.
32. Pursuant to §89 (4) (c), in most cases, the Court shall award reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
33. Petitioner is statutorily entitled to recover fees and costs incurred as a result of respondent's refusal to fulfill the open records requests at issue in this case. Petitioner is statutorily entitled to recover fees and costs incurred as a result of respondent's refusal to fulfill the open records requests at issue in this case.
34. Petitioner asks the Court to order the respondent to pay reasonable attorney fees and other litigation costs reasonably incurred in this case.

WHEREFORE, Petitioner request the declaratory and injunctive relief herein sought, and an award for their attorney fees and costs and such other and further relief as the Court

shall deem proper.

Respectfully submitted this the 10th day of January 2024,

Law Office of Matthew D. Hardin



By: _____

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