SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the matter of JULIA ROCK, and NEW YORK FOCUS, INC., Petitioners, - against - NEW YORK STATE DEPARTMENT OF LABOR, Respondent, For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules.	Index No.

MEMORANDUM OF LAW IN SUPPORT OF HYBRID COMPLAINT AND VERIFIED PETITION

Respectfully submitted,

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PRELIMINARY STATEMENT

New York's Freedom of Information Law ("FOIL") provides the public and the press the right to access public records. *See* Public Officers Law § 84. The law exists to protect democracy, forcing open the government and enabling anyone to oversee the work of agencies. *Id.* But effective oversight is thwarted when an agency impedes requesters' access to records, either by improperly applying exemptions to public access or by throwing additional hurdles in the path of requesters. Here, the New York State Department of Labor ("DOL") has done both.

After a journalist requested records that could reveal problems in DOL's operations, the Department claimed that all the records were confidential under a state privacy law, ignoring that the law allows for disclosure of exactly these types of records.

Then, when the journalist filed an administrative appeal of DOL's decision, the Department rejected it twice. First, because she filed it electronically and DOL imposes a policy requiring appeals to be filed by mail in paper copy. Then, when she filed it by mail, DOL claimed that even though she mailed it within the 30-day-deadline set out by FOIL, it was untimely because the Department received it after the 30 days expired. Neither of these bases for rejecting an appeal are found in FOIL, and DOL may not add additional limitations on requesters' appeal rights.

Petitioners file this hybrid proceeding under Article 78 to seek redress of DOL's violations. First, this Court should order that DOL immediately produce the records sought in Petitioners' FOIL request. Second, this Court should enjoin DOL's policy or practice of unlawfully imposing extra limitations on requesters' rights to appeal. Absent a court order, DOL will continue this policy, which improperly burdens the right to appeal enshrined in FOIL. This Court has the inherent equitable power to issue such an injunction, or to declare that DOL's policy is unlawful, and it should exercise that power to protect the public's right to an open, transparent government.

STATEMENT OF FACTS

Petitioner Julia Rock is a journalist for the news outlet *New York Focus*, which is published by Petitioner New York Focus, Inc. As part of her reporting for *New York Focus*, Ms. Rock has repeatedly filed FOIL requests with DOL, and she expects her reporting will necessitate filing more in the future. Hybrid Complaint and Verified Petition ("Pet.") ¶ 19.

Ms. Rock submitted FOIL request number R000033-010825 to DOL on January 7, 2025. Pet. ¶ 20. She submitted it electronically. *Id.* The request seeks "[t]he 2024 call logs" for two sets of agency numbers: (1) the phone number (888) 209-8124, which is the contact number for DOL's Telephone Claims Center; and (2) "All claims center employee phones that receive forwarded calls from (888) 209-8124." *Id.* ¶ 21; Ex. A. DOL has a history of failing to answer a significant percentage of calls to its claims center,[1] and these call logs would help determine whether those departmental failures are continuing.

DOL denied the request on January 17, 2025, stating that the request was "denied pursuant to NY Labor Law § 537." Pet. ¶ 22; Ex. B. DOL transmitted this denial electronically to Ms. Rock. Pet. ¶ 22. The statute that DOL cited pertains to protection of "[u]nemployment insurance information," stating that, in general, "information obtained by the department from employers and employees" may not be disclosed. Labor Law § 537(1)(a). However, it states that this protected information does *not* include "information about the department" or its personnel. *Id.*

[1] *See, e.g.*, Maxwell Parrott, *Unemployed New Yorkers Can't Reach Human Agents at the Labor Department*, *N.Y. Focus* (Dec. 5, 2023), https://nysfocus.com/2023/12/05/unemployment-benefits-labor-department-new-york; Anne McCloy, *Newly obtained records show NYSDOL missed millions of unemployment phone calls in 2021*, *WRGB* (May 31, 2022), https://cbs6albany.com/news/local/newly-obtained-records-show-nysdol-missed-millions-of-unemployment-phone-calls-in-2021.

Following the denial, Ms. Rock filed an administrative appeal. FOIL provides 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." N.Y. Pub. Off. Law § 89(4)(a). Pursuant to this provision, Ms. Rock timely filed an administrative appeal on January 21, 2025. Pet. ¶ 24; Ex. C. She submitted it electronically, as she had the original FOIL request. Pet. ¶ 25.

DOL received the appeal, and it replied on February 4, 2025, but it refused to decide the appeal. *Id*. ¶ 26; Ex. D. Instead, DOL stated that Ms. Rock "failed to follow the process mandated by the Department to file your appeal," and the appeal therefore "will not be entertained" because she had to physically mail it. Ex. D.

A hard-copy version of the appeal was mailed to DOL on February 5, 2025. Pet. ¶ 28. This was 19 days after DOL denied the underlying request, still well within the 30-day deadline for filing an appeal. However, DOL claimed that it did not receive the hard-copy appeal until February 19, 2025. Pet. ¶ 30; Ex. E. DOL claimed that this made her appeal untimely, and on March 6, 2025, it denied the appeal on that basis. Ex. E. DOL further stated that "[e]ven if your appeal had been timely," DOL would have denied it because the requested records all "fall within the range of information the Department deems confidential under Labor Law § 537 and would not have been released." *Id*.

After thus exhausting their administrative remedies, Petitioners filed this hybrid proceeding under Article 78 to challenge DOL's denial of Ms. Rock's request and its policy of requiring administrative appeals to be filed by mail in hard copy.

ARGUMENT

DOL is violating FOIL in two ways, through both its unlawful use of Labor Law § 537 to deny Ms. Rock's request and the additional limitations it has imposed on requesters' appeal rights. Both violations must be corrected.

FOIL "imposes a broad duty on government to make its records available to the public" in order "[t]o promote open government and public accountability." *Gould v. N.Y. City Police Dep't*, 89 N.Y.2d 267, 274 (1996) (citing N.Y. Pub. Off. Law § 84). The statute's purpose is to "extend public accountability wherever and whenever feasible" because "government is the public's business." N.Y. Pub. Off. Law § 84.

To achieve the legislature's aim of open access and public accountability, FOIL establishes that all public agency records are "presumptively open to public inspection and copying unless otherwise specifically exempted." *Cap. Newspapers, Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566 (1986); N.Y. Pub. Off. Law § 87(2). It provides limited exemptions to this broad rule of access, allowing the government to withhold records from the public only in specific circumstances. These "[e]xemptions are to be narrowly construed" to ensure the public retains "maximum access" to government records. *Cap. Newspapers*, 67 N.Y.2d at 566. When the government claims that one of FOIL's exemptions applies to prevent the public from accessing a record, it "carries the burden of demonstrating that the requested material falls squarely within a FOIL exemption." *Id*.

If a requester is dissatisfied with an agency's decision, FOIL provides a right to administratively appeal. A requester who wishes to appeal must do so "within thirty days," the appeal must be "in writing," and it must be sent "to the head, chief executive or governing body

of the entity." N.Y. Pub. Off. Law § 89(4)(a). The statute includes no other restrictions on this appeal right.

The statute also provides for attorney's fees in certain circumstances when a requester prevails in court — another way that the law seeks to discourage secrecy and help citizens learn about their government. N.Y. Pub. Off. Law § 89(4)(c).

Here, DOL fails to meet the command of both statute and case law that it interpret FOIL's exemptions narrowly and make public records maximally available to the public. Instead, it attempts to interpret Labor Law § 537 — a statute providing for the confidentiality of certain records but not records pertaining to the Department itself — much more expansively than FOIL allows or than is justified under the plain language of the Labor Law statute. And it attempts to impose extra restrictions on the right of respondents to appeal adverse decisions, going beyond the restrictions imposed by FOIL.

This Court should order DOL to produce the records sought in Ms. Rock's request, as there is no valid basis to withhold them. The Court should additionally exercise its equitable power to enjoin DOL from continuing its unlawful policy of imposing extra-legal restrictions on requesters' appeal rights through its appeal-by-mail policy. At a minimum, the Court should declare the Department's policy unlawful.

I. DOL Must Produce the Requested Records, as the Statute It Cited Cannot Prevent Their Release.

The statute DOL cited for denying Ms. Rock's FOIL request does not, in fact, prevent disclosure of the records she seeks. The Department stated that it was denying the request "pursuant to NY Labor Law § 537,"[2] Ex. B, which protects the privacy of certain information

[2] The Department's denial did not explain this, but it is apparently relying on FOIL's exemption that allows withholding records that "are specifically exempted from disclosure by state or federal statute." N.Y. Pub. Off. Law § 87(2)(a).

about the unemployment insurance program, particularly some "information obtained by the department from employers and employees," Labor Law § 537(1)(a)(i). Yet Ms. Rock's request seeks records containing information that is generated by DOL — not "obtained . . . from employers and employees" — and specifically excluded from the statute's protection. DOL therefore should be ordered to produce the records.

The statute forbids public disclosure of "unemployment insurance information." Labor Law § 537(1)(b). It defines the term "unemployment insurance information" to include such records as "wage reporting information obtained by the department from the state department of taxation and finance" and "information in the state directory of new hires that has been disclosed to the department for use in the unemployment insurance program." Labor Law § 537(1)(a)(i).

However, the definition also includes carve-outs, identifying records that are *not* protected from disclosure. It states that "unemployment insurance information" "does *not* include the personnel or general fiscal information of the department or information in the public domain." *Id*. (emphasis added).[3] And it defines "public domain" to include "information about the department." Labor Law § 537(1)(a)(ii).

Thus, the law does not permit withholding of "personnel" information or "information about the department" or its organization. Since FOIL requires any exceptions to its general rule of public access to be "narrowly construed," *Cap. Newspapers*, 67 N.Y.2d at 566, DOL must carefully ensure that all information falling into one of these carve-outs is properly disclosed. And those carve-outs are precisely the type of information that Ms. Rock seeks. She requested records

[3] In its denial of Ms. Rock's request, DOL also referenced a federal regulation regarding unemployment insurance information, 20 C.F.R. 603. Ex. B. That regulation contains the same carve-outs as the New York law, stating that the protected information "does not include the personnel or fiscal information" of an agency or other "[p]ublic domain information" about the agency. 20 C.F.R. 603(c) & (j).

about the "claims center employee phones" that receive forwarded calls from the Department's Telephone Claims Center hotline and the call logs from that hotline, which would provide such information as the volume of calls received, the number of employees who answer the calls, and how many calls are answered. Ex. A. Given DOL's history of failing to answer a significant percentage of calls, these call logs would help determine whether those departmental failures are continuing. They concern "information about the department" that must be disclosed, not information "obtained . . . from employers and employees" that may be withheld.

Applying Section 537 of the Labor Law, a court previously explained that where, as here, a requester seeks records that contain information "generated by Labor Department employees," those records cannot be withheld under Section 537. *Banigan v. Roberts*, 515 N.Y.S.2d 944, 945 (Sup. Ct., Kings Cnty. 1986) (holding that DOL records containing information "either generated by Labor Department employees or available elsewhere on [non-confidential] records" must be disclosed). For good reason: those records are not the type of "unemployment insurance information . . . obtained by the department from employers and employees" that the statute protects. Labor Law § 537(1)(a). To the extent the records contain additional information that can be withheld, such information must be redacted and the remainder of the record must be produced, consistent with FOIL's requirements that its "[e]xemptions are to be narrowly construed" and the public be given "maximum access" to government records. *Cap. Newspapers*, 67 N.Y.2d at 566.

Ms. Rock's request seeks logs that are generated by the Department itself, and that reflect the actions of the Department and its personnel. The records go to the core of FOIL's oversight function and may not be withheld under Labor Law § 537, which only exempts from disclosure

certain unemployment insurance information provided by employers or employees. The records must be disclosed.

II. This Court Should Enjoin DOL's Unlawful Policy Restricting Requesters' Appeal Rights.

In addition to ordering disclosure of the records that DOL has improperly withheld, the Court should enjoin DOL's policy requiring appeals to be physically mailed to the Department for consideration, as it unlawfully adds additional and unnecessary limitations on requesters' right to appeal under FOIL.

The Court possesses inherent equity power to enjoin an agency's ongoing violation of FOIL. Just as federal courts do in analogous Freedom of Information Act ("FOIA") cases, the Court should exercise this power to prevent DOL from continuing to violate the FOIL rights of Ms. Rock and all other requesters — the Court should enjoin DOL's unlawful appeal-by-mail requirement, or, at a minimum, should employ its power under CPLR § 3001 to declare DOL's policy unlawful.

A. DOL's appeal-by-mail policy is unlawful.

FOIL does not permit agencies to add their own limitations on requesters' rights beyond those limitations provided in the statute itself. Yet that is exactly what DOL is doing through its appeal-by-mail policy: adding extra restrictions on appeals, and even limiting the time that FOIL provides for a requester to submit an appeal.

This policy violates the text and purpose of FOIL. The statute exists to "extend public accountability wherever and whenever feasible" because "government is the public's business." N.Y. Pub. Off. Law § 84. To the extent the statute restricts access to records, those restrictions must "be narrowly construed" to ensure the public retains "maximum access" to government records. *Gould v. New York City Police Dep't*, 89 N.Y.2d 267, 275 (1996).

The statute imposes several restrictions at the appeal stage. It requires a requester to file an appeal within 30 days of the agency's decision; the appeal must be "in writing" and be provided to "the head, chief executive or governing body of the entity." N.Y. Pub. Off. Law § 89(4)(a). Ms. Rock's electronic appeal met all those requirements. And FOIL imposes no other restrictions on requesters' right to appeal, including any requirement concerning submitting appeals by physical mail. *See id*. DOL's communications with Ms. Rock offer only one citation in support of its appeal-by-mail policy — Public Officer's Law § 89(4)(a), *see* Ex. B — but, as discussed above, that offers no support at all.

An agency is not permitted to "impose additional restrictions on the rights created" under state law, *Cnty. of Niagara v. Shaffer*, 201 A.D.2d 786, 787-88 (3d Dep't 1994), including on FOIL's right to appeal adverse decisions. For example, where a county government attempted to require a second tier of administrative appeal in addition to the one tier set out by FOIL, a court concluded that the law was invalid for imposing "additional restrictions" not found in the state law. *Reese v. Mahoney*, at *4 (Sup. Ct., Erie Cnty. June 28, 1984), https://opengovernment.ny.gov/system/files/documents/2021/01/reese-v.-mahoney.pdf. The same holds here: DOL attempts to set out "additional restrictions" on requesters' right to appeal that are not found in the statute.

Indeed, FOIL has long required that agencies accept and respond to FOIL requests by email if they are capable of doing so, unless a requestor asks for a response in another form. N.Y. Pub. Off. Law § 89(3)(b) (requiring agencies with "reasonable means available" to "accept requests for records submitted in the form of electronic mail and shall respond to such requests by electronic mail"). DOL obviously has the means to accept electronic appeals — it already accepts electronic requests, and it both received and responded to Ms. Rock's electronic appeal, but it refused to

decide it. Ex. D. To accept requests electronically but still require appeals to be sent via hard copy — in the twenty-first century — violates both the spirit and intent of the law. *See* N.Y. Pub. Off. Law § 89(3)(b); Comm. on Open Gov't, Advisory Op. 17754 (Aug. 12, 2009), https://docsopengovernment.dos.ny.gov/coog/ftext/f17754.html.

DOL's policy also unlawfully limits the time that requesters have to file an appeal. This limitation resulted in the DOL improperly providing Ms. Rock fewer than 30 days to appeal. Even after DOL waited 10 business days before telling her it would not accept her electronic appeal, she still successfully mailed the appeal within the 30 days provided by FOIL. Pet. ¶ 28. Yet DOL claimed that her appeal was untimely because it allegedly *received* the appeal after the 30-day period. Ex. E. This means that, under DOL's policy, a requester does not have 30 days to appeal, as FOIL requires. Instead, the requester has some shorter period — its exact length unknown and dependent on the speed and efficiency of the Postal Service. This is yet another impermissible "additional restriction[]" on the right to appeal under FOIL. As a result, in multiple ways, DOL's appeal-by-mail policy violates FOIL.

B. This Court should exercise its authority and enjoin DOL's policy of refusing to accept electronic appeals.

DOL's policy of requiring appeals to be submitted by physical mail not only violated Ms. Rock's appeal rights in this case, but it will continue to violate her rights and the rights of all other requesters. This Court has the authority to enjoin such continuing violations of law, and it should exercise that authority here to enjoin DOL's unlawful policy.

1. The Court has authority to enjoin agency policies that violate FOIL.

This Court possesses the necessary authority, derived from its inherent equity power, to enjoin an agency's ongoing violation of FOIL — just as federal courts do in analogous FOIA cases.

The Court's authority to issue injunctions derives from its "general original jurisdiction in law and equity." N.Y. Const. Art. VI § 7(a). Employing that equity power, New York courts regularly enjoin unlawful government action or declare it unlawful, including in Article 78 cases like this one. *See, e.g.*, *New York Statewide Coal. of Hisp. Chambers of Com. v. New York City Dep't of Health & Mental Hygiene*, 23 N.Y.3d 681, 701 (2014) (affirming, in hybrid Article 78 proceeding, injunction and declaration of invalidity of a Board of Health rule because the rule was not within the Board's authority); *Clark v. Cuomo*, 66 N.Y.2d 185, 193 (1985) (enjoining Governor from providing agencies with receptacles for voter-registration forms); *Matter of Hebel v. West*, 25 A.D.3d 172, 175, 180 (3d Dep't 2005) (affirming injunction against designated marriage officers prohibiting them from performing unlicensed marriages); *see also* 42 Am. Jur. 2d Injunctions § 157 ("Injunctive relief is available against agency actions when they will result in irreparable injury").[4]

The availability of injunctive relief is no different in FOIL cases. The statute does nothing to limit a court's equitable authority, and in fact anticipates that courts may use their full equitable powers, as the statute instructs litigants to sue an agency "pursuant to article seventy-eight," N.Y. Pub. Off. Law § 89(4)(b) — which, as discussed above, has long allowed for injunctive relief. Although the First Department has held that *mandamus* relief is not available under FOIL, *New York Times Co. v. City of New York Police Dep't*, 103 A.D.3d 405, 406 (1st Dep't 2013), that case has no bearing on injunctive relief. New York law draws a clear distinction between mandamus

[4] This Court's equitable authority to enjoin unlawful government action has deep historical roots in England's chancery courts. *See Niagara Falls Power Co. v Halpin*, 267 A.D. 236, 241 (3d Dep't 1943), *aff'd sub nom. Niagara Falls Power Co. v. White*, 292 N.Y. 705 (1944); *Belknap v. Belknap*, 2 Johns. Ch. 463, 473 (N.Y. Ch. 1817) (Kent, Ch.) (noting it is "well settled" that English chancery courts enjoined unlawful government action).

and injunctive relief.[5] While mandamus relief is traditionally a remedy at law, injunctive relief is a remedy in equity. *See, e.g.*, *Hamptons Hospital & Medical Ctr., Inc. v. Moore*, 52 N.Y.2d 88, 96-97 (1981) (holding hospital was not entitled to mandamus in Article 78 proceeding and converting action into one for injunction instead). And the nature of a remedy in equity is that it will issue when there is "no adequate remedy at law." *Grogan v. St. Bonaventure Univ.*, 91 A.D.2d 855, 855 (4th Dep't 1982) (citing *Kane v. Walsh*, 295 N.Y. 198, 205-206 (1946)). Accordingly, the unavailability of mandamus relief in the FOIL context has no effect on the availability of injunctive relief here except to make it even clearer why such relief is necessary because Petitioners have no adequate remedy at law.

Additionally, it is crucial that New York courts have the authority to enjoin an unlawful agency practice to fulfill the purpose of FOIL. Requesters' rights to public information would mean little if they had to fight against unlawful policies every time they pursued a request. Such a system would also drive up costs for the government and courts, as they would face countless cases that could have been prevented by a single case that successfully obtained injunctive relief.

Indeed, in the parallel federal FOIA context, federal courts have repeatedly exercised their equitable authority — the same inherent authority that this Court possesses — to enjoin agency policies or practices that violate FOIA.[6] Those courts acknowledge that their authority to enjoin

[5] In any event, the *New York Times* decision's holding that mandamus relief is never available in Article 78 review of FOIL determinations was incorrect. The statute and the Court of Appeals have each made clear that Article 78 leaves intact every right to relief that was previously available via the common-law writs, including mandamus. *Newbrand v. Yonkers*, 285 N.Y. 164, 174-75 (1941); *see also* CPLR § 7801 ("Relief previously obtained by writs of certiorari to review, mandamus or prohibition shall be obtained in a proceeding under this article").

[6] The Court of Appeals has expressly blessed the use of FOIA case law to interpret FOIL provisions patterned after FOIA. *Lesher v. Hynes*, 19 N.Y.3d 57, 64 (2012). And FOIL shares the textual and structural features that the U.S. Supreme Court has said make equitable relief an appropriate vehicle for enforcing FOIA compliance. Specifically, the U.S. Supreme Court has pointed to FOIA's "broad language," "obvious emphasis on disclosure," "carefully delineated" list of

unlawful FOIA practices derives from their "equitable powers." *Long v. I.R.S.*, 693 F.2d 907, 909 (9th Cir. 1982). For example, the D.C. Circuit reversed the dismissal of a requester's policy-or-practice claim where the complaint alleged regular noncompliance with FOIA's time requirements and sought an injunction. *See Jud. Watch, Inc. v. Dep't of Homeland Sec.*, 895 F.3d 770, 779-80, 782 (D.C. Cir. 2018). Courts across the country have exercised their equitable authority to recognize FOIA policy-or-practice claims. *See, e.g.*, *id.* at 774 (explaining that "the court's precedent recognizes that a policy or practice claim may be predicated upon an agency's abuse of FOIA's statutory scheme"); *Hajro v. Citizenship Immigr. Servs.*, 811 F.3d 1086, 1103 (9th Cir. 2016) ("[W]e have recognized a pattern or practice claim for unreasonable delay in responding to FOIA requests."); *Am. Soc'y for Prevention of Cruelty to Animals v. Animal & Plant Health Inspection Serv.*, 2021 WL 1163627, at *14 (S.D.N.Y. Mar. 25, 2021) ("This Court agrees with the D.C. Circuit's analysis and joins the other district courts in this Circuit in recognizing that FOIA policy and practice claims are justiciable."). As then-Judge Ketanji Brown Jackson explained, "courts have a duty to prevent an agency from abusing the FOIA by adopting a policy" that violates requesters' rights. *Muckrock, LLC v. Cent. Intel. Agency*, 300 F. Supp. 3d 108, 135 (D.D.C. 2018) (cleaned up).

2. The Court should enjoin DOL's unlawful policy.

The Court should exercise its authority to protect requesters' rights here. As discussed above, DOL's appeal-by-mail policy violates FOIL and infringes on the rights of Ms. Rock and others to appeal adverse decisions. An injunction against enforcement of this policy is warranted.

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exemptions, and use of district courts as its "enforcement arm." *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 19-20 (1974). FOIL relies on similarly "broad language," *see* N.Y. Pub. Off. Law § 84, employs an "obvious emphasis on disclosure," *see id.*, includes a "carefully delineated" list of exemptions, N.Y. Pub. Off. Law § 87(2), and uses the New York Supreme Court as its "enforcement arm," N.Y. Pub. Off. Law § 89(4)(b).

Under New York law, a party is entitled to an injunction by showing "[1] that there was a violation of a right or threatened violation, [2] that there is no adequate remedy at law, [3] that serious and irreparable harm will result absent the injunction, and [4] that the equities are balanced in his or her favor." *Islamic Mission of Am., Inc. v. Mukbil Omar Ali*, 152 A.D.3d 573, 575 (2d Dep't 2017); 67A N.Y. Jur. 2d Injunctions § 155 (same). In FOIA cases, courts apply essentially the same test, tailored to the information-access context: a plaintiff states a policy-or-practice claim by alleging "a persistent failure to adhere to FOIA's requirements" (which matches step one of New York's injunction test) and alleging that the failure "will interfere with [the requester's] right under FOIA to promptly obtain non-exempt records from the agency in the future" (steps two and three of New York's test). *Jud. Watch, Inc.*, 895 F.3d at 780. Importantly, the agency's conduct need not be "egregious" to warrant injunctive relief, nor does it need to be a "formal" policy, rather than an "informal" practice. *Id*. at 779, 781; *see also Brusco v. State Div. of Hous. & Cmty. Renewal*, 239 A.D.2d 210, 211-12 (1st Dep't 1997) (recognizing New York courts may exercise review of informal agency practices).

Here, DOL's policy meets each element. First, DOL has admitted to its appeal-by-mail policy, Exs. D & E — unlike in many policy-or-practice cases, there is no dispute here about what the agency policy is. This policy violates FOIL by "impos[ing] additional restrictions on the rights created" under FOIL. *Shaffer*, 201 A.D.2d at 787-88; *supra* § II.A. Second, DOL's policy will continue to violate Petitioners' rights absent an injunction, and Petitioners have no adequate remedy at law. Ms. Rock's appeal was improperly denied based on DOL's unlawful policy, and because she plans to file more requests with DOL in the future, her appeal rights are likely to be infringed again. Such infringements cannot be remedied through individual, seriatim lawsuits, which would add needless delay and cost. Finally, the equities are in Petitioners' favor — they

seek to obtain public records pursuant to their FOIL rights, while DOL refuses to accept the electronic appeals despite demonstrating that it is capable of doing so.

The Court should enjoin DOL's policy of adding "additional restrictions" on requesters' appeal rights in violation of FOIL. At a minimum, the Court should declare DOL's policy unlawful. *See* CPLR § 3001.

III. This Court Should Award Petitioners Costs and Attorney's Fees.

Should Petitioners substantially prevail in this proceeding, this Court should also grant attorney's fees and other litigation costs. A petitioner "substantially prevails" in a FOIL proceeding when, in response to litigation, the petitioner receives the requested records. *See Cobado v. Benziger*, 163 A.D.3d 1103, 1106 (3d Dep't 2018). Once Petitioners prevail, they are entitled to mandatory fees because, for all the reasons described above, DOL has no "reasonable basis" for denying access to the records Petitioners requested. N.Y. Pub. Off. Law § 89(4)(c)(ii).

CONCLUSION

For the foregoing reasons, this Court should order DOL to immediately produce records responsive to Petitioners' request, and this Court should enjoin, or at least declare unlawful, DOL's policy of requiring appeals to be submitted by physical mail rather than electronically.

Dated: July 7, 2025

Respectfully submitted,

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[7] The Local Journalism Project and the Clinic are housed within Cornell Law School and Cornell University. Nothing in this brief should be construed to represent the views of these institutions, if any.

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SECTION 202.8-b CERTIFICATION

I, Michael Linhorst, do hereby certify that this document complies with the word count limit set forth in Section 202.8-b of the Uniform Civil Rules. The word count of this Memorandum of Law is 4,687 words. The word count excludes any caption, table of contents, table of authorities, and signature block, and it is compliant with the word count limit. This document was prepared using Microsoft Word. The font of this document is Times New Roman, size 12.

/s/ *Michael Linhorst*
Michael Linhorst