

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

In the matter of  
GERSH KUNTZMAN, JESSE COBURN,  
KEVIN DUGGAN, and  
OPEN PLANS, INC.,

Petitioners,

- against -

NEW YORK CITY DEPARTMENT OF  
TRANSPORTATION,

Respondent,

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

Index No.

HYBRID COMPLAINT AND  
VERIFIED PETITION

Petitioner-Plaintiffs Gersh Kuntzman, Jesse Coburn, Kevin Duggan, and Open Plans, Inc. (collectively “Petitioners” or “*Streetsblog*”), for their hybrid verified petition for judgment pursuant to Article 78 of New York Civil Practice Law and Rules and complaint seeking a declaratory judgment pursuant to CPLR § 3001, by and through their undersigned counsel, respectfully allege as follows:

**PRELIMINARY STATEMENT**

1. The Freedom of Information Law (FOIL), N.Y. Pub. Officers Law § 84 et seq., is one of the most important ways that the public can keep tabs on government agencies in New York. In passing the law, the Legislature declared that the “people’s right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society.” N.Y. Pub. Officers Law § 84.

2. To promote democratic oversight and a flourishing self-government, the Legislature explained that “the public, individually and collectively and represented by a free

press, should have access to the records of government in accordance with the provisions” of FOIL.

*Id.*

3. That “free press” includes Petitioners, who report for *Streetsblog*, a news outlet that covers transportation in the New York City area. As part of their reporting, they regularly file FOIL requests to seek documents from the Respondent, the New York City Department of Transportation (“DOT”).

4. But nearly all of the FOIL requests that Petitioners file are delayed for many months — typically, for half a year. Public data shows that the vast majority of all requests DOT receives are delayed for the same period. Five of Petitioner’s requests are currently outstanding at DOT, despite in some cases having been filed months ago.

5. As in any information access law, “information is often useful only if it is timely,” and therefore “excessive delay by the agency in its response is often tantamount to denial.” *Open Soc’y Just. Initiative v. Cent. Intel. Agency*, 399 F. Supp. 3d 161, 164 (S.D.N.Y. 2019) (quoting House report on the Freedom of Information Act, H.R. Rep. No. 93-876, at 6271 (1974)).

6. As a result, FOIL imposes a timeline for an agency to respond to a request. The law assumes that most requests will be completed within 20 business days, but for requests that cannot be, it requires delays to be “reasonable under the circumstances of the request,” and the agency must explain in writing why it is unable to meet the 20-day cut-off for the particular request under consideration. N.Y. Pub. Off. Law § 89(3)(a).

7. DOT fails to meet either requirement. Its across-the-board, six-month-long delays violate both the spirit of FOIL and its text, as the boilerplate delays are not “reasonable under the circumstances of the request.” N.Y. Pub. Off. Law § 89(3)(a). And DOT fails to provide the required individualized explanations for its delays.

8. This Article 78 proceeding seeks two things: the prompt production of responsive documents for *Streetsblog's* five outstanding requests, and an end to DOT's long-running practice of violating FOIL by imposing boilerplate, six-month delays for nearly every request it receives, without tailoring the response time to the particular request or providing request-specific explanations for the delays.

9. *Streetsblog* respectfully requests this Court to order DOT to promptly produce the documents sought in *Streetsblog's* outstanding FOIL requests and to enjoin DOT from continuing its unlawful FOIL practice. At minimum, this Court should declare that the practice is unlawful. *Streetsblog* also asks that this Court award it costs and fees.

**VENUE AND JURISDICTION**

10. Pursuant to CPLR §§ 7804(b) and 506(b), venue in this proceeding lies in New York County, the judicial district in which DOT's principal offices are located, where its agent made the determinations petitioned against and complained of, and where it failed to perform the duties required of it by law.

11. Petitioners have exhausted their administrative appeals under FOIL. This Court therefore has jurisdiction over this matter pursuant to FOIL § 89(4)(b) and CPLR Article 78.

**PARTIES**

12. Petitioner Gersh Kuntzman is a journalist and the editor-in-chief of *Streetsblog*, an online publication that connects people to information about how to reduce dependence on automobiles and improve conditions for walking, biking, and transit. Kuntzman has worked as a journalist in New York since 1989, including as a columnist for the *New York Post* and an editor for the *New York Daily News*. Since 2006, Kuntzman and other *Streetsblog* reporters have broken important stories about efforts to prevent pedestrian injuries and deaths, build out bicycle networks, and make transit more useful. Their writing raises the profile of these issues with

policymakers and turns arcane topics like parking requirements and induced traffic into accessible stories for a broad audience. It also centers the importance of transit in creating true equality of mobility.

13. Petitioner Jesse Coburn is *Streetsblog's* investigative reporter. Among many other journalism awards he has received, he won the prestigious George Polk Award in 2024 for his investigative series on the black market for temporary license plates. He has also written for *The New York Times*, *Harper's*, and the *Baltimore Sun*, among other publications.

14. Petitioner Kevin Duggan is a reporter for *Streetsblog*. He has been covering New York and transportation for six years after getting a master's degree in journalism.

15. Petitioner Open Plans, Inc. is a 501(c)(3) not-for-profit organization headquartered in New York City. Open Plans is the publisher of *Streetsblog*.

16. Respondent DOT is a public agency subject to the requirements of the Freedom of Information Law, New York Public Officers Law § 84 et seq. DOT maintains its office at 55 Water Street, 9th Floor, New York, NY 10041.

### **STATEMENT OF FACTS**

17. *Streetsblog* regularly reports on issues that involve DOT, including pedestrian deaths and injury, the expansion of bicycle networks, harmful emissions from public and private modes of transportation, license plate fraud, and related topics. To do so, *Streetsblog* often submits FOIL requests to DOT.

18. Since June 2021, *Streetsblog* has submitted at least 33 FOIL requests to DOT to which the Department has responded in the same way: "Due to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received, we expect to provide you with a response on or about the date indicated above."

19. In each case, the date that DOT provided for its expected response was approximately six months from the date that *Streetsblog* made the request.

20. Publicly available information on FOIL requests made to DOT shows that the vast majority of other requesters face the same six-month delays. Out of 21,298 requests submitted to DOT between June 2021 and August 2024, the average time frame between the initial request and DOT's predicted date of response was more than 182 days. Fully 98 percent of the requests suffered a delay of longer than 170 days.

21. DOT thus has a practice of issuing a boilerplate response and six-month delay to nearly all FOIL requests it receives, regardless of the nature of the request.

#### **I. *Streetsblog's* Outstanding Requests**

22. Five FOIL requests from *Streetsblog* are currently outstanding with DOT.

23. Each request has received an identical response from the agency and a six-month estimated response date.

24. The outstanding requests, identified by their FOIL request numbers, are described below.

a. FOIL-2024-841-00447

25. On January 19, 2024, *Streetsblog* submitted a FOIL request seeking the results of an online questionnaire that DOT conducted. The request explained: "In October, 2023, Mayor Adams ordered more outreach to residents of Underhill Avenue regarding the unfinished bike boulevard project. The residents were surveyed via an online questionnaire. We are requesting the results of that survey and the raw responses on which it is based." A true and correct copy of the request is attached as **Exhibit 1**.

26. On January 24, 2024, DOT acknowledged the request with an email stating that, "[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process

such requests in the order in which they are received,” it expected to respond “on or about” July 18, 2024. A true and correct copy of the email is attached as **Exhibit 2**.

27. DOT’s chosen response date was 181 days after the initial request.

28. On May 21, 2024, *Streetsblog* appealed this response as a constructive denial of the request. A true and correct copy of the appeal is attached as **Exhibit 3**.

29. DOT denied the appeal on May 31, 2024. A true and correct copy of the denial is attached as **Exhibit 4**.

30. The request remains outstanding.

b. FOIL-2024-841-01249

31. On February 26, 2024, *Streetsblog* requested a “list of new pedestrian space DOT created in 2022 and 2023 under the Streets Plan.” A true and correct copy of the request is attached as **Exhibit 5**.

32. DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” August 22, 2024. A true and correct copy of the email is attached as **Exhibit 6**.

33. DOT’s chosen response date was 178 days after the initial request.

34. On March 4, 2024, *Streetsblog* appealed this response as a constructive denial of the request. A true and correct copy of the appeal is included in the email chain in Exhibit 6.

35. DOT denied the appeal on March 18, 2024. A true and correct copy of the denial is attached as **Exhibit 7**.

36. The request remains outstanding.

c. FOIL-2024-841-04120

37. On July 22, 2024, *Streetsblog* requested annual figures from the previous five years showing the number of pedestrians killed while jaywalking in New York City and the total number of pedestrian traffic fatalities in the city. A true and correct copy of the request is attached as **Exhibit 8**.

38. DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” January 23, 2025. A true and correct copy of the email is attached as **Exhibit 9**.

39. DOT’s chosen response date was 185 days after the initial request.

40. On July 29, 2024, *Streetsblog* appealed this response as a constructive denial of the request. A true and correct copy of the appeal is included in the email chain in Exhibit 9.

41. DOT denied the appeal on August 12, 2024. A true and correct copy of the denial is attached as **Exhibit 10**.

42. The request remains outstanding.

d. FOIL-2024-841-04200

43. On July 24, 2024, *Streetsblog* requested “Commissioner Ydanis Rodriguez’s official calendar” from a single day: July 1, 2024. A true and correct copy of the request is attached as **Exhibit 11**.

44. DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” January 27, 2025. A true and correct copy of the email is attached as **Exhibit 12**.

45. DOT’s chosen response date was 187 days after the initial request.

46. On August 2, 2024, *Streetsblog* appealed this response as a constructive denial of the request. A true and correct copy of the appeal is attached as **Exhibit 13**.

47. DOT denied the appeal on August 15, 2024. A true and correct copy of the denial is attached as **Exhibit 14**.

48. The request remains outstanding.

e. FOIL-2024-841-04201

49. On July 24, 2024, *Streetsblog* requested “all emails and text messages sent or received on June 5 or June 6, 2024, by Ydanis Rodriguez in his official capacity as DOT commissioner containing the words ‘congestion’ or ‘tolling.’” A true and correct copy of the request is attached as **Exhibit 15**.

50. DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” January 27, 2025. A true and correct copy of the email is attached as **Exhibit 16**.

51. DOT’s chosen response date was 187 days after the initial request.

52. On August 2, 2024, *Streetsblog* appealed this response as a constructive denial of the request. A true and correct copy of the appeal is attached as **Exhibit 17**.

53. DOT denied the appeal on August 15, 2024. A true and correct copy of the denial is attached as **Exhibit 18**.

54. The request remains outstanding.

## **II. Additional *Streetsblog* Requests Subjected to the Same DOT Delays**

55. Since June 2021, *Streetsblog* has filed at least 33 requests with DOT that have been met with the same response from DOT: identical language and a response date of approximately six months.



56. Examples of those requests and responses include the following.

a. FOIL-2021-841-02949

57. On June 23, 2021, *Streetsblog* requested “[a]ny calendars that list the appointments, meetings, trips, events or other activities attended by Henry Gutman in his professional capacity as New York City Department of Transportation commissioner” from February 3, 2021, to June 23, 2021. A true and correct copy of the request is attached as **Exhibit 19**.

58. On June 30, 2021, DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” December 23, 2021. A true and correct copy of the email is attached as **Exhibit 20**.

59. DOT’s chosen response date was 183 days after the initial request.

60. Weeks after its self-determined deadline, DOT provided a final response on January 11, 2022.

b. FOIL-2021-841-03298

61. On July 16, 2021, *Streetsblog* requested DOT’s phone or email directory. A true and correct copy of the request is attached as **Exhibit 21**.

62. On July 23, 2021, DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” January 19, 2022. A true and correct copy of the email is attached as **Exhibit 22**.

63. DOT’s chosen response date was 187 days after the initial request.

64. Nearly a month after its own deadline, DOT provided a final response on February 14, 2022.

c. FOIL-2023-841-06682

65. On December 1, 2023, *Streetsblog* requested all records related to three specific DOT projects, which it identified by their project ID numbers. A true and correct copy of the request is attached as **Exhibit 23**.

66. On December 4, 2023, DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” May 31, 2024. A true and correct copy of the email is attached as **Exhibit 24**.

67. DOT’s chosen response date was 182 days after the initial request.

68. DOT finally provided a substantive response to the request on May 30, 2024, by producing a single record pertaining to one of the three projects identified in the request.

d. FOIL-2023-841-06683

69. On December 1, 2023, *Streetsblog* submitted a FOIL request to DOT requesting the locations and years in which intersections have been “daylighted” by DOT between January 1, 2022, and the date the request was fulfilled. A true and correct copy of the request is attached as **Exhibit 25**.

70. On December 4, 2023, DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” May 31, 2024. A true and correct copy of the email is attached as **Exhibit 26**.

71. DOT’s chosen response date was 182 days after the initial request.

72. DOT finally provided a substantive response on May 31, 2024, denying the request because it claimed that the intra-agency exemption prevented disclosure. *Streetsblog* appealed this denial, but that appeal is not at issue in this lawsuit.

e. FOIL-2023-841-06684

73. On December 1, 2023, *Streetsblog* submitted a FOIL request for records “related to real estate that DOT newly purchased or rented between 1/1/2022 and the date on which you fulfill this request.” A true and correct copy of the request is attached as **Exhibit 27**.

74. On December 4, 2023, DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” May 31, 2024. A true and correct copy of the email is attached as **Exhibit 28**.

75. DOT’s chosen response date was 182 days after the initial request.

76. DOT finally provided a substantive response on May 17, 2024, denying the request because it claimed that it found no responsive records. *Streetsblog* appealed this denial, but that appeal is not at issue in this lawsuit.

f. FOIL-2023-841-06686

77. On December 1, 2023, *Streetsblog* submitted a FOIL request seeking “[a]ll records possessed by DOT related to DOT’s use of any property or space located at 2420 Amsterdam Avenue, New York NY 10033, since 1/1/2022.” A true and correct copy of the request is attached as **Exhibit 29**.

78. On December 4, 2023, DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” May 31, 2024. A true and correct copy of the email is attached as **Exhibit 30**.

79. DOT’s chosen response date was 182 days after the initial request.

g. FOIL-2023-841-06687

80. On December 1, 2023, *Streetsblog* submitted a FOIL request for “records of any communication between DOT Commissioner Ydanis Rodriguez” and employees of a lobbying firm regarding DOT’s “Open Streets” program. A true and correct copy of the request is attached as **Exhibit 31**.

81. On December 4, 2023, DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” May 31, 2024. A true and correct copy of the email is attached as **Exhibit 32**.

82. DOT’s chosen response date was 182 days after the initial request.

83. DOT finally provided a substantive response on May 24, 2024, denying the request because it claimed that it found no responsive records. *Streetsblog* appealed this denial, but that appeal is not at issue in this lawsuit.

h. FOIL-2024-841-00290

84. On January 12, 2024, *Streetsblog* submitted a request for a copy of a single DOT contract, which it identified by contract number (CT184120131426281), vendor (U.S. Army Corps of Engineers Research & Development Center), and purpose (hazard mitigation of East River bridges). A true and correct copy of the request is attached as **Exhibit 33**.

85. On January 22, 2024, DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” July 12, 2024. A true and correct copy of the email is attached as **Exhibit 34**.

86. DOT’s chosen response date was 182 days after the initial request.

87. DOT finally provided a substantive response on June 20, 2024, denying the request because it claimed the records were exempt from disclosure. This denial is not at issue in this lawsuit.

i. FOIL-2024-841-00291

88. On January 12, 2024, *Streetsblog* sought the DOT Commissioner's official calendar for a single day: January 2, 2024. A true and correct copy of the request is attached as **Exhibit 35**.

89. On January 22, 2024, DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” July 12, 2024. A true and correct copy of the email is attached as **Exhibit 36**.

90. DOT's chosen response date was 182 days after the initial request.

91. DOT finally fulfilled the request on June 28, 2024.

j. FOIL-2024-841-00292

92. On January 12, 2024, *Streetsblog* requested “any DOT employee handbook or manual that exists,” and added that if more than one existed, it sought only “the one that applies to employees of the Transportation Planning & Management division.” A true and correct copy of the request is attached as **Exhibit 37**.

93. On January 22, 2024, DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” July 12, 2024. A true and correct copy of the email is attached as **Exhibit 38**.

94. DOT's chosen response date was 182 days after the initial request.

95. DOT finally provided a substantive response to the request on June 21, 2024.

k. FOIL-2024-841-01251

96. On February 26, 2024, *Streetsblog* requested “each response by New York City Councilmembers DOT has received so far regarding the agency’s request for ideas for locations for bus, bike lane, and public realm projects.” A true and correct copy of the request is attached as **Exhibit 39**.

97. DOT acknowledged the request with an email stating that, “[d]ue to the volume of FOIL requests which DOT receives per year and that we generally process such requests in the order in which they are received,” it expected to respond “on or about” August 22, 2024. A true and correct copy of the email is attached as **Exhibit 40**.

98. DOT’s chosen response date was 178 days after the initial request.

### **III. Nearly All Requests Suffer the Same Six-Month Delays**

99. In addition to *Streetsblog*’s requests, public data shows that DOT imposes the same six-month response times on nearly all requests it receives.

100. The public data show that since June 1, 2021, DOT has received 21,298 requests. *See* Lloyd Aff.<sup>1</sup>; OpenRecords, City of New York, [https://a860-openrecords.nyc.gov/request/view\\_all](https://a860-openrecords.nyc.gov/request/view_all).

101. Across those requests, DOT’s average delay was more than six months: 182 days. *See id.*

102. Of all the requests DOT received since June 1, 2021, more than 98 percent of the requests were delayed by longer than 170 days. *See id.*

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<sup>1</sup> On behalf of Petitioners, Travis Lloyd collected data from OpenRecords into a spreadsheet that allowed the data to be analyzed. *See generally* Lloyd Aff. The spreadsheet is available upon request.

**FIRST CAUSE OF ACTION****(Article 78 Review of Wrongful Denials of FOIL Requests)**

103. Petitioners hereby reassert and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

104. Petitioners commence this proceeding, which is in the nature of a writ of prohibition and a writ of mandamus, pursuant to CPLR Article 78 and N.Y. Pub. Off. Law § 89(4)(b).

105. Under FOIL, all documents held by agencies like DOT are presumed open for public inspection and copying. Documents may be withheld from public inspection only if expressly permitted by a specific statutory exemption.

106. FOIL requires an agency to grant or deny a FOIL request within 20 business days of acknowledging it, or else explain why it cannot and give a reasonable “date certain” when it will grant or deny the request. N.Y. Pub. Off. Law § 89(3)(a); 21 N.Y.C.R.R. § 1401.5(c)(3).

107. The date that the agency selects for responding to the request, and the explanation the agency gives for its inability to respond within 20 business days, must be reasonable and tailored to “the circumstances of the request.” N.Y. Pub. Off. Law § 89(3)(a); 21 N.Y.C.R.R. § 1401.5(d).

108. An agency’s failure to respond to a request within a time period that is reasonable under the circumstances of the particular request, or a failure to provide a written explanation for its inability to respond within 20 days, constitutes a denial of the request. N.Y. Pub. Off. Law § 89(4)(a); 21 N.Y.C.R.R. § 1401.5(e).

109. For each of *Streetsblog*’s five outstanding requests — request numbers FOIL-2024-841-00447, FOIL-2024-841-01249, FOIL-2024-841-04120, FOIL-2024-841-04200, and FOIL-2024-841-04201 — DOT has failed to provide a response time that is reasonable under the

circumstances of the particular requests, and it has failed to provide a written explanation for why the circumstances of each request prevent it from responding within 20 days.

110. DOT has therefore denied each of the five outstanding requests.

111. DOT's actions have caused and continue to cause irreparable harm to the rights guaranteed to *Streetsblog* and to the public at large under FOIL.

112. The information requested by *Streetsblog* is of significant interest and concern to the general public.

113. *Streetsblog* has exhausted its administrative remedies and has obtained none of the withheld information.

114. As a result of the foregoing, DOT has violated FOIL.

115. *Streetsblog* has no other adequate remedy at law.

116. No prior application for the relief requested herein has been made to the Court.

### **SECOND CAUSE OF ACTION**

#### **(Injunctive relief barring DOT from continuing its unlawful practice and declaration that such practice is unlawful)**

117. Petitioners hereby reassert and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

118. DOT has a practice of violating FOIL and FOIL's implementing regulations, which require the Department to respond to a request within a time period that is reasonable under the circumstances of the particular request, and if it is unable to respond within 20 days of acknowledging the request, to provide a written explanation for why, under the circumstances of the individual request, it is unable to do so. N.Y. Pub. Off. Law § 89(3)(a); 21 N.Y.C.R.R. § 1401.5(c) & (d).



119. DOT's unlawful practice is demonstrated by its boilerplate, six-month delays imposed on dozens of requests *Streetsblog* has submitted since June 2021.

120. DOT's unlawful practice is further demonstrated through the publicly available data that shows the same delays imposed on nearly all requesters.

121. DOT's unlawful practice violates the FOIL rights of *Streetsblog* and the public to obtain public records within a reasonable timeframe, causing serious and irreparable harm to *Streetsblog* and other requesters.

122. If DOT is permitted to continue its practice, the FOIL rights of *Streetsblog* and the public will continue to be violated, and they will continue to suffer serious and irreparable harm.

123. DOT's unlawful practice also violates the purpose of FOIL, which the Legislature declared was intended to enable accountability and democratic participation in government. N.Y. Pub. Off. Law § 84.

124. *Streetsblog* has no adequate remedy at law to address the ongoing and future violations of its rights under FOIL.

125. Accordingly, *Streetsblog* is entitled to an injunction barring DOT from continuing its unlawful practice of issuing boilerplate, six-month delays for nearly every request it receives, without tailoring the response time to the particular request or providing request-specific explanations for why it needs the time that it claims.

126. At a minimum, *Streetsblog* is entitled to a declaration pursuant to CPLR § 3001 that DOT's practice violates FOIL.

**CLAIM FOR RELIEF**

For the foregoing reasons, Petitioners respectfully request that this Court:

- a. Grant Petitioners' Article 78 Petition, finding that DOT has constructively denied Petitioners' five outstanding requests and directing DOT to immediately produce all records responsive to the requests;
- b. Enjoin DOT from continuing its unlawful practice of issuing boilerplate, six-month delays for nearly every request it receives, without tailoring the response time to the particular request or providing request-specific explanations for why it needs the time that it claims;
- c. Declare that DOT's practice of issuing boilerplate, six-month delays for nearly every request it receives, without tailoring the response time to the particular request or providing request-specific explanations for why it needs the time that it claims, violates FOIL;
- d. Award Petitioners their costs and attorneys' fees pursuant to Public Officers Law § 89(4)(c); and
- e. Award Petitioners such other and further relief as the Court deems just and proper.

Dated: September 11, 2024

Respectfully submitted,

By: /s/ Michael Linhorst

Michael Linhorst  
Heather E. Murray  
Cornell Law School First Amendment Clinic<sup>2</sup>  
Myron Taylor Hall  
Ithaca, New York 14853

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<sup>2</sup> Clinic students Andrew Brockmeyer, Evan Deakin, Sophia Gilbert, and Cameron Misner and alumna Fernanda Pires Merouco worked on this Petition and Complaint and the accompanying brief. 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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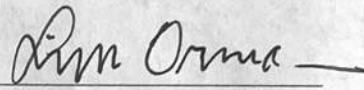
*Counsel for Petitioner-Plaintiffs*

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) SS.:  
COUNTY OF NEW YORK )

LISA ORMAN, being duly sworn, deposes and says under penalty of perjury:

1. I am co-Executive Director of Open Plans.
2. I have read the annexed Verified Petition. Based on my personal knowledge, and on information obtained in the regular course of business from records and from individuals with knowledge, the information contained herein is true to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Lisa Orman

Sworn before me this

11<sup>th</sup> day of September, 2024

  
\_\_\_\_\_  
Notary Public

**MICHELLE ZHAO**  
Notary Public - State of New York  
No. 01ZH6441089  
Qualified in Kings County  
My Commission Expires Sept. 19, 2026