



Cornell Law School

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November 7, 2025

FOIL Appeals Officer
New York City Mayor's Office
City Hall
New York, NY 10007



VIA E-MAIL and FEDEX

Re: Freedom of Information Law Appeal - FOIL-2025-002-00855

Dear FOIL Appeals Officer:

We write on behalf of Scrutinize and Janon Fisher regarding the Freedom of Information Law (FOIL) request that they submitted to the Office of the Mayor on November 14, 2024. On October 23, 2025, the Office of the Mayor responded by producing limited documents with respect to three requests, referring Scrutinize and Mr. Fisher to a public Frequently Asked Questions page in supposed response to their obligation to produce documents with respect to three other requests, and claimed no documents exist with respect to part 5 of the request. Because the response with respect to parts 1 to 4, 6 and 7 provided no adequate justification for the withholdings, we appeal the decision, which fails to meet the Office of the Mayor's obligations under FOIL to either fully respond to the request or to cite a proper basis for any withholdings.

Scrutinize and Janon Fisher filed their request on November 14, 2024. The request seeks records sufficient to identify the following information related to the Mayor's Advisory Committee on the Judiciary:

1. All members who have served on the Mayor's Advisory Committee on the Judiciary from January 1, 2000 to the present date.
2. For each committee member identified in Request No. 1, please provide:
 - a. The member's full name
 - b. Their professional or organizational affiliation at the time of their committee service, if available
 - c. The start and end dates of their committee membership
 - d. Whether the member served as a chairperson of the committee, and if so, the start and end dates of their service as chairperson
 - e. Who nominated the member to the Committee (Mayor, law school deans, etc.)
3. Any and all documents, including but not limited to memos, guidelines, handbooks, or other written materials, that provide guidance on:



- a. How the committee is to evaluate candidates for judicial appointments or designations
 - b. What information the committee is to collect about candidates
 - c. Which individuals or organizations the committee is to contact for information about candidates
 - d. The committee's process for recruiting and encouraging highly qualified persons to apply for appointment
4. Any internal communications, reports, or documents discussing the establishment, operation, or modification of the Mayor's Advisory Committee and its processes from January 1, 2010 to the present.
5. Any publicly available statistics or reports on the number of candidates evaluated, recommended, or appointed through this process.
6. Copies of all Executive Orders since January 1, 2000 enacting or changing the working or makeup of the Mayor's Advisory Committee on the Judiciary.
7. Information about the Committee's process for considering judges seeking reappointment, including any criteria used to determine whether an incumbent is qualified for reappointment.

Attached as **Exhibit A** is a copy of the request. The Office never acknowledged receipt of the request or issued a date certain by which it would respond. After successfully appealing the constructive denial of the request on September 8, 2025, the Office committed to producing records by October 22, 2025. A copy of the relevant correspondence concerning the constructive denial appeal is attached as **Exhibit B**.

On October 23, 2025, the Office produced a set of limited records for parts 1, 2 and 6 of the request and no records at all with respect to parts 3, 4, and 7 of the request. Instead, the Office (1) referred the requestors to a public Frequently Asked Questions page; (2) attempted to argue that the Mayor's Advisory Committee on the Judiciary is not an agency subject to FOIL despite the fact that a recent Committee on Open Government advisory opinion obtained by Mr. Fisher determined the opposite; and (3) argued, contrary to law, that any information that falls under parts 3, 4 and 7 of the request can properly be withheld under the intra-agency exemption. Attached as **Exhibit C** is a copy of the Office's October 23, 2025 letter and attached as **Exhibit D** is a copy of the COOG advisory opinion explaining why MACJ is indeed an agency subject to FOIL.

FOIL requires the Office to provide "a particularized and specific justification" for each item it refuses to produce. N.Y. Pub. Off. Law § 87(2) ("A denial of access . . . shall be valid only when there is a particularized and specific justification for such denial."). Obviously, merely listing a FOIL exemption with nothing more is neither "particularized" nor "specific." New York courts are clear that such "[c]onclusory assertions that certain records fall within a statutory exemption are not sufficient" for an agency to meet the statute's demand. *See, e.g., New York C.L. Union v. Suffolk Cnty.*, 232 N.Y.S.3d 190, 193 (2d Dep't 2025) (rejecting police department's claim that privacy exemption permitted it to withhold "unsubstantiated, unfounded, or exonerated allegations of police officer misconduct" because the department "did not articulate any particularized and specific justification for withholding any of those records").

The Office makes a conclusory and wholly unsupported claim that none of the material it attempts to withhold falls into any of the carve-outs of the intra-agency exemption. In reality, much of the withheld material appears to, and it cannot be withheld.

The intra-agency exemption includes several carve-outs for material that must be released. They require that agencies disclose any intra-agency records that contain “statistical or factual tabulations or data,” “instructions to staff that affect the public,” or “final agency policy or determinations.” N.Y. Pub. Off. Law § 87(2)(g)(i). In other words, as the Court of Appeals has explained, documents that contain material falling into of these categories “are subject to FOIL disclosure, whether or not embodied in” a document that would otherwise have to be disclosed. *Gould v. New York City Police Dep’t*, 89 N.Y.2d 267, 276 (1996).

Multiple of those categories apply here. “[F]actual tabulations or data” is defined as any “objective information, in contrast to opinions, ideas, or advice exchanged as part of the consultative or deliberative process of government decision making.” *Id.* at 277. Therefore, even if some portion of the responsive records is properly withheld under the intra-agency exemption, the Office must still produce any portions that contain factual material — observations, chronologies, descriptions, and the like. *Id.*; see also *New York 1 News v. Off. Of Pres. Of Borough of Staten Island*, 231 A.D.2d 524, 525 (2d Dep’t 1996) (“Factual observations are not exempt from disclosure.”).

The statute additionally requires disclosure of intra-agency records that include “final agency policy or determinations.” N.Y. Pub. Off. Law § 87(2)(g)(iii). Thus, as in the carve-out for factual material, any part of a record that constitutes a final determination must also be disclosed, notwithstanding other parts of the record that the agency may be able to withhold. To the extent that the agency “relied on” these records in reaching its final decision or “adopted [them] as the basis for [its] decision,” the records must be disclosed. *New York 1 News*, 231 A.D.2d at 525.

The Office cannot credibly claim that no factual information or final policy exists relating to how candidates for appointment or reappointment are evaluated or with respect to the facts of the MACJ’s “establishment, operation or modification” “and its processes.” Thus, any records or parts of records that contain factual information must be disclosed, and any records or parts of records that reflect an agency instruction, policy, or determination must also be disclosed.

With respect to parts 1, 2 and 6 of the request regarding a list of all members of MACJ since January 1, 2000, certain information regarding each member, and copies of Executive Orders concerning MACJ, only 50 pages in total was produced consisting largely of individual appointment and nomination letters for certain members of MACJ. Given that MACJ is made up of 19 members that serve for two-year terms, much more than 50 pages of documents should have been produced to respond fully to the requests. It strains credulity for the Office to claim, for example, that no list exists of all members of MACJ from 2000 to the present. The Office also produced a copy of two Executive Orders, dated March 4, 2002 and April 12, 2022. But that production, too, on its face is deficient. For example, several of the documents produced reference a third Executive Order, dated May 29, 2014.

Because the Office has provided no justification for its withholdings, the remaining records Scrutinize and Mr. Fisher requested under parts 1 to 4, 6 and 7 must be released. We ask that this appeal be promptly granted within 10 business days, as required under FOIL, by producing all responsive documents. Please contact me if you have any questions or if it would be otherwise helpful to discuss this matter.

Sincerely,

**CORNELL LAW SCHOOL
FIRST AMENDMENT CLINIC**

By: /s/ Heather E. Murray

Heather E. Murray



Counsel for Scrutinize and Janon Fisher