

3. Petitioner had previously submitted a similar request which did not identify which employees would hold responsive records on January 15, 2017, which the office had denied on the grounds that the request covered too many responsive records, by letter dated March 8, 2017. Thus, the March 8, 2017 request at issue in this petition represented a substantial narrowing of a FOIL request which dated back to January.
4. Nevertheless, and despite petitioner's efforts to identify only three employees who held responsive records and to otherwise substantially narrow their January request in their subsequent March 8, 2017 FOIL request, the Comptroller denied the March 8, 2017 request on the same grounds that it had denied the January request, ostensibly because the office had identified too many responsive records. The Comptroller communicated its denial of the March 8 request by letter dated April 27, 2017. **Exhibit 2.**
5. The Comptroller's denial was purportedly on the basis that the petitioner had not "reasonably described" the requested records, even though the agency had identified 12,000 potentially responsive records held by the three employees identified in the petitioner's FOIL request.
6. The Comptroller notified petitioner of the right to administratively appeal the denial to the Comptroller's General Counsel in the April 27, 2017 denial letter.
7. Later that same day, on April 27, 2017, petitioner appealed the denial of the FOIL request, as required by §89 (4) (a) of the New York Freedom of Information Law, also requesting the Office provide a proper response under the statute. **Exhibit 3.**

8. Petitioner pointed out in its administrative appeal the the FOIL expressly denies an agency the right to deny a request on the grounds that the records requested are voluminous or that responding to the request would be a burden.
9. On May 12, 2017, the Comptroller responded to the administrative appeal in this matter, denying it in full and re-iterating the reasons for the initial denial. **Exhibit 4.**
10. In that administrative ruling, the Comptroller suggested that it may be more efficient for petitioner to re-submit a narrowed request for records than to seek judicial review. However, petitioner's March 8, 2017 request was itself a narrowing of a January 2017 request which the Comptroller also denied in full and suggested the requesters re-submit in narrower form, only to result in another denial of access to records. This pattern on the part of the Comptroller has already led to delays of almost five months as petitioners seek access to public records to which they are entitled. Thus, petitioners respectfully suggest that judicial intervention is necessary to force the Comptroller to comply with the law.
11. Moreover, petitioner continues to assert that the New York legislature has expressly rejected the arguments that the Comptroller continues to make in support of its denial of access to records. Essentially, the Comptroller argues that a voluminous request creates an undue burden on a public agency. Specifically, the legislature has made clear that "an agency shall not deny a request on the basis that the request is voluminous or that locating or reviewing the requested records or providing the requested copies is burdensome." Public Officers Law §89 (3) (a). The Comptroller's attempt to state that even though it has identified thousands of records responsive to petitioner's request, petitioners have somehow not identified the records they seek, is unavailing. The fact that the Comptroller

has successfully identified thousands of responsive records proves that the petitioner reasonably identified the records that were sought.

12. Moreover, in a similar request currently pending before the New York State Comptroller, that office located approximately 22,000 responsive records and pledged to produce those records within 90 days, citing the volume of the records as the reason for the delay.

Exhibit 5. While the State Comptroller attempts to comply with the FOIL in a delayed manner, however, the New York City Comptroller continues to completely deny access to a much smaller set of records, rather than process the request at all or even on a delayed schedule

13. Accordingly, petitioner files this lawsuit to compel the Comptroller to comply with the law and produce properly described public records and/or otherwise satisfy its statutory obligations under FOIL.

Parties

14. Petitioner Energy & Environment Legal Institute (“E&E Legal”) is a nonprofit research, public policy and public interest litigation center incorporated in Virginia, with offices in Washington, DC. E&E Legal is dedicated to advancing responsible regulation and, in particular, economically sustainable environmental and energy policy. E&E Legal’s programs include analysis, publication, and a transparency initiative seeking public records relating to environmental and energy policy and how policymakers use public resources.

15. Respondent the New York City Comptroller is a governmental officer of New York City, and is in possession of, or otherwise the proper owner, in his official capacity as Comptroller, of the records petitioner seeks. He is sued in his official capacity only.

Jurisdiction and Venue

16. This matter is brought pursuant to CPLR Article 78.

17. Venue is proper in this Court pursuant to NY CPLR 506 (b) because the Comptroller is an officer of New York City and maintains an office in New York County at 1 Centre Street. Further, on information and belief, the FOIL request at issue was denied by an employee working in New York County and the administrative appeal was addressed to an officer in New York County.

FIRST CLAIM FOR RELIEF
Seeking Declaratory Judgment

18. Petitioner re-alleges paragraphs 1-17 as if fully set out herein.

19. 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 request 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.

20. Petitioner asks this Court to enter a judgment declaring that:

- a. The records as specifically described in petitioner's FOIL request, 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 request 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

- 21. Petitioner re-alleges paragraphs 1-20 as if fully set out herein.
- 22. 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 request, without fees, subject to legitimate withholdings.
- 23. 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 request, and any attachments thereto, subject to legitimate withholdings.
- 24. 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 receives 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

25. Petitioner re-alleges paragraphs 1-24 as if fully set out herein.
26. 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.
27. Petitioner is statutorily entitled to recover fees and costs incurred as a result of respondent's refusal to fulfill the open records request at issue in this case.
28. Petitioner asks the Court to order the respondent to pay reasonable attorney fees and other litigation costs reasonably incurred in this case.

WHEREFORE, Petitioner requests the declaratory and injunctive relief herein sought, and an award for its attorney fees and costs and such other and further relief as the Court shall deem proper.

Respectfully submitted this the ____ day of _____, 2017.

Law Office of Francis Menton

By: _____

Francis Menton
85 Broad Street, 18th floor
New York, New York 10004
(212) 627-1796
fmenton@manhattancontrarian.com

Attorney for Petitioner
Energy & Environment Legal Institute

VERIFICATION

State of New York)
County of New York)

Francis Menton, an attorney admitted to practice in the State of New York, affirms pursuant to CPLR 2106 under the penalties of perjury:

1. I am an attorney for the Petitioner in the within proceeding. I make this Verification pursuant to CPLR 2016 and CPLR 3020(d)(3).
2. I have read the attached Verified Petition and know its contents.
3. I have read the allegations of the Petition, and all of them are true to my personal knowledge, except for those alleged upon information and belief, and as to those I believe them to be true.

Francis Menton
Dated: _____