

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

In the Matter of

AMERICA FIRST LEGAL FOUNDATION,

*Petitioner,*

For a judgment pursuant to Article 78 of the  
Civil Practice Law and Rules,

v.

ALVIN BRAGG, in his official capacity as  
DISTRICT ATTORNEY OF THE COUNTY  
OF NEW YORK, and NEW YORK  
COUNTY DISTRICT ATTORNEY'S  
OFFICE,

*Respondents.*

Index Number: \_\_\_\_\_

**VERIFIED PETITION**

**PRELIMINARY STATEMENT**

1. Petitioner AMERICA FIRST LEGAL FOUNDATION (“AFL” or “Petitioner”) brings this action against Respondent ALVIN BRAGG, in his official capacity as DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK (“Bragg”), and Respondent NEW YORK COUNTY DISTRICT ATTORNEY’S OFFICE (the “DA’s Office,”) (each a “Respondent” and together, “Respondents”), and alleges as follows to compel compliance with the New York Freedom of Information Law (“FOIL”), codified at Public Officers Law (“POL”) §§ 84–90, and 21 NYCRR 1401.5.

2. This petition arises from the Respondents’ repeated refusal to provide documents responsive to multiple FOIL requests seeking information and records related to, *inter alia*,

communications between the Respondents and the DNC or the Biden-Harris Campaign,<sup>1</sup> communications related to President Donald J. Trump's campaign, Bragg's calendar, and communications related to Judge Juan M. Merchan,<sup>2</sup> who recently presided over the matter captioned *People of the State of New York v. Donald J. Trump*, a case of immense national and political significance.

3. Of the four FOIL requests at issue in this proceeding, the Respondents have constructively denied all of them by failing to either produce the requested documents or to issue, within a reasonable amount of time, a written determination as to whether the request will be honored. The one partial production offered, offered well over a year after the request was made and offering no documents related to President Trump, was too little, too late, to be considered reasonable, particularly where it failed to address the entire FOIL request.

4. As demonstrated herein and in the annexed memorandum of law, the Respondents' constructive denial of AFL's FOIL requests is arbitrary, capricious, and unlawful, and the Respondents must be compelled to discharge their legal obligations under the FOIL.

### JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Article 78 of the New York Civil Law and Practice Rules ("CPLR"). *See* CPLR §§ 306-b, 7801, 7804.

6. The Petitioner, in attempting to exhaust all administrative remedies before seeking judicial review of the administrative decisions of Respondents at issue in this and other

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<sup>1</sup> *See* Letter from Jim Jordan, Chairman, H. Comm. on the Judiciary, to Merrick Garland, Att'y Gen., Dep't of Just. (Apr. 30, 2024), <https://perma.cc/G5VW-Q6HX>.

<sup>2</sup> *See* Letter from Jim Jordan, Chairman, H. Comm. on the Judiciary, to Loren Merchan, President, Authentic Campaigns Inc. (Aug. 1, 2024), <https://perma.cc/NKF2-W6KQ>; STAFF OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., LAWFARE: HOW THE MANHATTAN DISTRICT ATTORNEY'S OFFICE AND A NEW YORK STATE JUDGE VIOLATED THE CONSTITUTIONAL AND LEGAL RIGHTS OF PRESIDENT DONALD J. TRUMP (July 9, 2024), <https://perma.cc/YFH7-RXPT>.

proceedings, has been made aware that the DA's Office is of the position that its delays in responding to AFL's FOIL requests are reasonable. This Court now has jurisdiction over the matter because the DA's Office has made clear that any further appeal would be futile.

7. Venue is proper in this Court pursuant to CPLR § 506(b).

### PARTIES

8. The Petitioner, AFL, is a nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and encourage public knowledge and understanding of the law and individual rights guaranteed under the United States Constitution and the laws of the United States. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public.

9. Respondent Alvin Bragg is the District Attorney of the County of New York and is in possession of, or otherwise the proper owner, in his official capacity as District Attorney, of the records that the Petitioner seeks. He is sued in his official capacity only.

10. Respondent New York County District Attorney's Office is subject to the FOIL by being a "state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof[.]" with its main office located at One Hogan Place, New York, NY 10013 and additional offices at 163 West 125<sup>th</sup> Street New York, NY 10027 and 530 West 166<sup>th</sup> Street, Suite 600A, New York, NY 10032.

11. The Respondents have possession, custody, and control of the requested records.

## BACKGROUND

12. In the FOIL, the New York Legislature has declared that “[t]he 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. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.” POL § 84.

13. The New York Legislature also declared “that government is the public’s business and 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 this article.” *Id.*

14. In a historic and unprecedented criminal trial presided over by Justice Juan M. Merchan, the New York Supreme Court found President Donald J. Trump guilty on 34 counts of falsifying business records in the first degree. *People of New York State v. Donald J. Trump*, 2024 WL 2783752 (Sup. Ct. N.Y. Cty. May 30, 2024) (the “Business Records Case”).

15. Because President Trump was a defendant in the Business Records Case, the details of this proceeding garnered significant national and international attention.<sup>3</sup>

16. Unsurprisingly, individuals and members of the press, including AFL, sought information related to the public servants who were involved in the prosecution of President Trump in the Business Records Case.

17. As a result of DA’s Office’s prosecution of the Business Records Case, AFL submitted several FOIL requests seeking, *inter alia*, documents, records, communications, and

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<sup>3</sup> See, e.g., Brooke Singman, *Trump Guilty on All Counts in New York Criminal Trial*, FOX NEWS (May 30, 2024), <https://perma.cc/N9FA-5D9N>; Madeline Halpert & Kayla Epstein, *Sentencing Set for 11 July as Trump Says Verdict ‘A Disgrace,’* BBC (May 30, 2024), <https://perma.cc/9PL3-CUJU>; Jesse McKinley, *‘Guilty,’ and History Is Made*, N.Y. TIMES (May 30, 2024), <https://perma.cc/CEL8-RF47>.

information potentially related to District Attorney Bragg's prosecution of the Business Records Case.

18. Since the Business Records Case was being prosecuted in the shadow of the upcoming 2024 Presidential Election, AFL's FOIL requests also sought records and communications exchanged between District Attorney Bragg's Office and outside groups or individuals which have high profile connections to Vice President Harris's campaign or the election in general.

19. As set forth in more detail below, the Respondents have consistently obstructed AFL's attempts to review records, documents, and communications related to President Trump, including records related to the Business Records Case.

20. As set forth in more detail below, in response to AFL's FOIL requests, the Respondents have repeatedly issued bad-faith "updates" to AFL with purported anticipated response dates, only to extend that same deadline again for months on end, in one instance refusing to turn over responsive records for well over a year.

21. The "substance" of the Respondents' communications further exhibits that the Respondents' updates, repeatedly pushing out self-imposed deadlines for them to respond to AFL, have been boilerplate responses utilized as cover for the Respondents' unwillingness to meaningfully assess AFL's FOIL requests and for the Respondents to turn over responsive records in line with their FOIL obligations.

22. These conclusions are buttressed by the Respondents' treatment of other of AFL's FOIL requests which are not the subject of this Petition. As alleged by AFL in a proceeding commenced against the Respondents and pending in this Court under Index Number 157415/2024 (the "First FOIL Action"), the Respondents have almost entirely denied access to responsive

records sought by AFL pursuant to FOIL based on their boilerplate, blanket invocations of statutory exemptions to FOIL production, notwithstanding that it does not appear that any review of the responsive records was performed by the Respondents.

23. Indeed, the Respondents have claimed that all documents related to the Business Records Case necessarily are shielded from disclosure under FOIL, rendering futile any potential appeal from a determination related to a FOIL request seeking such documents.

24. The Respondents' treatment of AFL's FOIL requests, both those which are the subject of this Petition and otherwise, appears to be furthering a strategy aimed at thwarting AFL's policy aims of ensuring transparency in government.

25. It is beyond cavil that the prosecuting attorneys of a historic case that commanded national and international attention are in possession of records or documents relating to the parties, officials, and other government entities involved in the Business Records Case.

26. This Court should dispense with the Respondents' transparent attempts to obstruct AFL's efforts to obtain the documents requested, which could bear on the partiality of one of the most historic prosecutions in our Nation's history. The Respondents' constantly shifting goalposts, extending their dates to issue substantive responses, are egregious. Justice delayed is justice denied.

### **AFL'S FOIL REQUESTS**

#### *FOIL Request 27F0274<sup>4</sup>*

27. On April 20, 2023, AFL submitted a FOIL request ("Request 27F0274") to the Respondents requesting records of communications by custodians in the New York County

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<sup>4</sup> This Petition adopts the DA's Office's assignment of identification numbers to AFL's FOIL Requests.

District Attorney's Office relating to fund raising for various political campaigns, including President Trump's. *Exhibit 1*.

28. Request 27F0274 sought a waiver of all search and duplication fees. *Id.*

29. On April 25, 2023, AFL received a letter from the Respondents acknowledging it had received Request 27F0274 on April 20, 2023, stating that the Respondents would update AFL on the process on or before May 23, 2023. *Exhibit 2*.

30. On May 23, 2023, AFL received a letter from the Respondents stating that the Respondents estimated requiring an additional 90 days to process Request 27F0274 and that it would provide an update on or before August 22, 2023. *Exhibit 3*.

31. On August 22, 2023, AFL received a letter from the Respondents stating that the Respondents estimated requiring an additional 60 days to process Request 27F0274 and that it would provide an update on or before October 23, 2023. *Exhibit 4*.

32. On October 23, 2023, AFL received a letter from the Respondents stating certain records requested were available on the DA's Office's website, that the Respondents estimated requiring an additional 60 days to process the balance of Request 27F0274, and that it would provide an update on or before December 20, 2023. *Exhibit 5*.

33. On December 20, 2023, AFL received a letter from the Respondents stating that the Respondents estimated requiring an additional 60 days to process Request 27F0274 and that it would provide an update on or before February 19, 2024. *Exhibit 6*.

34. On February 16, 2024, AFL received a letter from the Respondents stating that the Respondents estimated requiring an additional 30 days to process Request 27F0274 and that it would provide an update on or before March 18, 2024. *Exhibit 7*.

35. On March 18, 2024, AFL received a letter from the Respondents stating that the Respondents estimated requiring an additional 30 days to process Request 27F0274 and that it would provide an update on or before April 18, 2024. *Exhibit 8.*

36. On April 18, 2024, AFL received a letter from the Respondents stating that the Respondents estimated requiring an additional 30 days to process Request 27F0274 and that it would provide an update on or before May 16, 2024. *Exhibit 9.*

37. On May 16, 2024, AFL received a letter from the Respondents stating that the Respondents estimated requiring an additional 30 days to process Request 27F0274 and that it would provide an update on or before June 17, 2024. *Exhibit 10.*

38. On July 17, 2024, AFL received a letter from the Respondents stating that the Respondents estimated requiring an additional 30 days to process Request 27F0274 and that it would provide an update on or before August 17, 2024. *Exhibit 11.*

39. On August 8, 2024, AFL filed an appeal of Request 27F0274 (the “Appeal”) with the DA’s Office’s FOIL Appeals Officer Robin McCabe, appealing the DA’s Offices constructive denial of Request 27F0274 by failing to either provide records responsive to the request or to issue a denial of the request in the 15 months that Request 27F0274 had been pending. *Exhibit 12.*

40. On August 16, 2024, AFL received a letter from the Respondents stating that the Respondents believed they would be able to provide some documents responsive to Request 27F0274 and estimated a further update or determination would be provided by August 23, 2024. *Exhibit 13.*

41. On August 22, 2024, AFL received a letter (the “Final Extension Letter”) from the Respondents stating that the Respondents would provide disclosure and a determination regarding Request 27F0274 on or before September 6, 2024. *Exhibit 14.*



42. On August 22, 2024, AFL received a letter from the Respondents (the “Denial”) denying the Appeal. *Exhibit 15*.

43. The Denial attempted to distinguish its treatment of Request 27F0274 where “an agency has failed to respond to a FOIL request,” suggesting that the DA’s Office’s referring AFL to publicly available records was a “partial determination” which “grant[ed] access” to such records and which otherwise provided updates “in a timely fashion, “in accordance with Public Officers Law (POL) §89(3)(a).” *Id.* at 1.

44. The Denial noted that the officer assigned to Request 27F0274 had noted in the Final Extension Letter that he was at “the final stage of review” and that he “ha[d] provided a date by which a determination be provided, September 6, 2024.” *Id.* at 3.

45. On the basis of “the volume, complexity, and difficulty in locating, retrieving, and identifying records for” Request 27F0274, *id.* at 4, the Denial asserted that the “[A]ppel on constructive denial grounds is dismissed at this time,” *id.* at 5.

46. On September 6, 2024, AFL received a letter from the Respondents (the “Partial Determination Letter”) informing AFL that it was being provided access to 1,138 pages responsive to prong “B” of Request 27F0274, regarding “[a]ll emails, SMS text, Signal, WhatsApp, or other communications on similar messaging platforms mentioning or regarding ‘Alvin Bragg Campaign’ or ‘fund raising’ or ‘Eliot’ or ‘Spitzer’ or ‘PAC’ for 16 named custodians.” *Exhibit 16*.

47. Despite providing a date certain by which Request 27F0274 would be determined in the Final Extension Letter, the Partial Determination Letter noted that review was still ongoing regarding records responsive to prong C of Request 27F0274, which sought records from the DA’s Office referencing President Trump’s campaign, and that a determination or update would be provided on or before October 27, 2024. *Id.*

48. Despite the date certain it had previously provided for a determination of Request 27F0274, the Respondents failed to issue such a final determination and has now purported to delay a determination (or update) until a date whereby any appeal therefrom would necessarily not be concluded prior to the 2024 Presidential Election.

49. The foregoing establishes the Respondents' failure to adequately respond to Request 27F0274 in providing a date certain, within a reasonable period of time, that responsive documents would be provided.

*Request 24F0359*<sup>5</sup>

50. On June 3, 2024, AFL submitted a FOIL request ("Request 24F0359") to the Respondents requesting communications between the DA's Office and, *inter alia*, various political analysts, election-affiliated organizations, and what was at the time the Biden-Harris Campaign.

*Exhibit 17.*

51. Request 24F0359 sought a waiver of all search and duplication fees. *Id.*

52. On June 6, 2024, AFL received a letter from the Respondents acknowledging it had received Request 24F0359 on June 3, 2024, and stating, given the "complexity and size" of the request, that the Respondents would need an additional 60 days to identify and located responsive records, promising to update AFL on the process on or before August 6, 2024. *Exhibit 18.*

53. Bafflingly, a month and a half later, on July 23, 2024, AFL received a letter from the Respondents stating that the Respondents could not process Request 24F0359 as drafted because it lacked a date range for the requested communications, and without narrowing that range the request would be necessarily denied. *Exhibit 19.*

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<sup>5</sup> This Petition adopts the DA's Office's assignment of identification numbers to AFL's FOIL Requests.

54. Apparently, the Respondents had not actually reviewed Request 24F0359 in the month and a half since it had been received, and the Respondents' prior suggestion that it had determined that the "size and complexity" of the request required 60 days to locate responsive records—which the Respondents subsequently stated they would not attempt to do—was mere boilerplate intended to delay the Respondents being required to provide a substantive response to Request 24F0359.

55. The DA's Office's July 23, 2024 letter stated that if a date range for Request 24F0359 was provided prior to the August 6, 2024 update deadline, it would be able to utilize such a date range in its search. *Ex. 19.*

56. On July 23, 2024, the same day that such correspondence was received by AFL, it responded that it would limit Request 24F0359 to records created on or before January 1, 2022. *Exhibit 20.*

57. On August 6, 2024, AFL received a letter from the Respondents stating that the Respondents estimated requiring an additional 60 days merely to collect records responsive to Request 24F0359, exclusive of subsequent review, and stated that Respondents would provide an update (but not a determination or responsive records) on or before October 7, 2024. *Exhibit 21.*

58. The Respondents did not provide a date certain, reasonable or otherwise, by which Request 24F0359 would be granted or denied in whole or in part.

*Request 24F0360<sup>6</sup>*

59. On June 3, 2024, AFL submitted a FOIL request (“Request 24F0360”) to the Respondents requesting all calendar items, including attachments, for Bragg’s calendar since January 1, 2022. *Exhibit 22.*

60. Request 24F0360 sought a waiver of all search and duplication fees. *Id.*

61. On June 10, 2024, AFL received a letter from the Respondents acknowledging it had received Request 24F0360 on June 3, 2024, stating that the Respondents would update AFL on the process on or before July 5, 2024. *Exhibit 23.*

62. On July 5, 2024, AFL received a letter from the Respondents stating that the Respondents had “placed an order” for potentially responsive records and estimated requiring an additional 30 days to process Request 24F0360 and that it would provide an update on or before August 5, 2024. *Exhibit 24.*

63. On August 5, 2024, AFL received a letter from the Respondents stating that the order for potentially responsive records was still being processed and the Respondents estimated requiring an additional 30 days to process Request 24F0360 and that it would provide an update on or before September 5, 2024. *Exhibit 25.*

64. On September 4, 2024, AFL received a letter from the Respondents stating that the order for potentially responsive records was still being processed and the Respondents estimated requiring an additional 30 days to process Request 24F0360 and that it would provide an update on or before October 1, 2024. *Exhibit 26.*

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<sup>6</sup> This Petition adopts the DA’s Office’s assignment of identification numbers to AFL’s FOIL Requests.

65. Despite the extremely targeted nature of Request 24F0360, the Respondents are still only “processing” the request for records, without even having reviewed them yet; as Respondents noted, if potentially responsive records were located, “they must then be reviewed for responsiveness to [the] request; any responsive records will then be reviewed for a determination as to whether they fall under any exception to disclosure pursuant to FOIL.” *Exs. 23–25.*

66. The Respondents did not provide a date certain, reasonable or otherwise, by which Request 24F0360 would be granted or denied in whole or in part.

*Request 24F0387*<sup>7</sup>

67. On June 18, 2024, AFL submitted a FOIL request (“Request 24F0387”) to the Respondents requesting records belonging to enumerated custodians of all communications containing the term “Merchan.” *Exhibit 27.* Thus, Request 24F0387 required no complicated search queries; it merely requested one simple search.

68. Request 24F0387 sought a waiver of all search and duplication fees. *Id.*

69. On July 18, 2024, AFL received a letter from the Respondents stating that the Respondents estimated requiring an additional 30 days to process Request 24F0387 and that it would provide an update on or before August 18, 2024. *Exhibit 28.*

70. On August 19, 2024, AFL received a letter from the Respondents stating that the Respondents estimated requiring an additional 30 days to process Request 24F0387 and that it would provide an update on or before September 19, 2024. *Exhibit 29.*

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<sup>7</sup> This Petition adopts the DA’s Office’s assignment of identification numbers to AFL’s FOIL Requests.

71. The Respondents did not provide a date certain, reasonable or otherwise, by which Request 24F0387 would be granted or denied in whole or in part.

72. Accordingly, the Respondents must be required to permit citizen access to the requested records so that they may gain an understanding of recent governmental actions.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Judgment Pursuant to CPLR § 7801 et seq., POL § 84 et seq)**

73. AFL repeats each and every allegation of the preceding paragraphs.

74. AFL explicitly adopts and asserts all of the arguments in the annexed Memorandum of Law in Support of Verified Petition.

75. AFL properly requested records within the possession, custody, and control of the Respondents.

76. The Respondents failed to conduct searches for responsive records.

77. Moreover, because the Respondents failed to conduct searches, it has failed to disclose any segregable, non-exempt portions of responsive records. POL § 87(2).

78. To the extent the Respondents have conducted searches for responsive records, they have improperly refused to disclose those records to AFL.

79. The Respondents have failed to grant AFL's requests within a reasonable time period. *See* POL § 89(3)(a); 21 NYCRR § 1401.5(e).

80. The Respondents have violated the FOIL by failing to reasonably search for records responsive to AFL's FOIL request and release nonexempt records within a reasonable time period.

81. The Respondents' Denial of the Appeal is improper and/or demonstrably arbitrary, capricious, and unlawful.

82. The Respondents' decisions delaying its responses to each of AFL's FOIL requests is arbitrary, capricious, and unlawful.

83. Since the “government is the public’s business and that the public, individually and collectively and represented by a free press, should have access to the records of government,” the Respondents’ denial of AFL’s FOIL requests violates POL § 84 *et seq.*

### PRAYER FOR RELIEF

WHEREFORE, AFL respectfully requests that this Court:

- i. Declare that the records sought by AFL’s requests must be disclosed pursuant to POL § 87(2);
- ii. Order the Respondents to search for the requested records and demonstrate to AFL that the Respondents used search methods reasonably likely to lead to the discovery of responsive records;
- iii. Order the Respondents to produce by a date certain all records, or segregable portions of records, responsive to AFL’s FOIL requests that are subject to release under the New York Freedom of Information Law, accompanied by a list enumerating or describing the documents withheld under legitimate exemptions together with a description of the basis for those exemptions;
- iv. Declare the Respondents are estopped from seeking costs and fees for the requests due to the balance of the equities and the incorporation of common law principles by POL § 89(6);
- v. Award AFL attorneys’ fees and costs incurred in this action pursuant to POL § 89(4)(c); and
- vi. Grant AFL such other and further relief as this Court deems proper.

Dated: September 16, 2024  
New York, New York

Respectfully submitted,

By: /s/ Edward A. Paltzik  
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Michael Ding (admission *pro hac vice*  
forthcoming)  
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*Counsel for the Petitioner*  
*America First Legal Foundation*



**VERIFICATION**

EDWARD ANDREW PALTZIK, Esq., duly affirms and deposes as follows:

I am Of Counsel to the Law Firm of Bochner PLLC, attorneys for Petitioner AMERICA FIRST LEGAL FOUNDATION (hereinafter "Petitioner") in this special proceeding. I have read the annexed Verified Petition and know the contents thereof to be true to the best of my knowledge and based upon my own personal knowledge, except as to matter therein stated on information and belief, and as to those matters I believe them to be true. The grounds of my belief as to all matters not stated upon my personal knowledge are correspondence and other documentation furnished to me by Petitioner and by other members of this Law Firm. The reason why the verification is not made by the Petitioner is that, pursuant to CPLR § 3023(d)(3), the Petitioner is located in a county other than that in which my practice is located.

Dated: September 16, 2024  
New York, New York

/s Edward Andrew Paltzik  
EDWARD ANDREW PALTZIK

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

In the Matter of

AMERICA FIRST LEGAL FOUNDATION,

*Petitioner,*

For a judgment pursuant to Article 78 of the  
Civil Practice Law and Rules,

v.

ALVIN BRAGG, in his official capacity as  
DISTRICT ATTORNEY OF THE COUNTY  
OF NEW YORK, and NEW YORK  
COUNTY DISTRICT ATTORNEY'S  
OFFICE,

*Respondents.*

Index Number: \_\_\_\_\_

**NOTICE OF PETITION**

**PLEASE TAKE NOTICE**, that upon the annexed Verified Petition, dated the September 13, 2024, the exhibits attached thereto, the Memorandum of Law in Support of the Verified Petition dated August 13, 2024, and upon all of the pleadings and proceedings heretofore had herein, an application will be made at a Civil Term of the Supreme Court of the State of New York, County of New York, at an I.A.S. part thereof, to be held at the Courthouse thereof, located at 60 Centre Street New York, NY 10007 on the 9th day of October, 2024, at 9:30 in the forenoon of that day, or as soon thereafter as counsel can be heard, for a judgment pursuant to C.P.L.R. § 7801 *et seq.* and Public Officers Law (“POL”) § 84 *et seq* for relief as follows:

- i. A declaration that the records sought by Petitioner’s requests must be disclosed pursuant to New York Freedom of Information Law (“FOIL”), codified at “POL” §§ 84–90;

- ii. An order requiring the Respondents to search for the requested records, and demonstrate to Petitioner that Respondents used search methods reasonably likely to lead to the discovery of responsive records;
- iii. An order that the Respondents to produce by a date certain all records, or segregable portions of records, responsive to Petitioner's FOIL requests that are subject to release under the POL, accompanied by a list enumerating or describing the documents withheld under legitimate exemptions together with a description of the basis for those exemptions;
- iv. A declaration that the Respondents are estopped from seeking costs and fees for the requests, due to the balance of the equities and the incorporation of common law principles by POL § 89(6);
- v. An award to Petitioner of attorneys' fees and costs incurred in this action pursuant to POL § 89(4)(c); and
- vi. Such other and further relief as this Court deems proper.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to C.P.L.R. § 7804(c), an Answer and supporting Affidavits, if any, are to be served no later than five days prior to the return date hereof.

Dated: September 16, 2024  
New York, New York

Respectfully submitted,

By: /s/ Edward A. Paltzik  
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*Counsel for the Petitioner*  
*America First Legal Foundation*



April 20, 2023

Via Electronic Mail: [FOIL@dany.nyc.gov](mailto:FOIL@dany.nyc.gov)

Office of the General Counsel, Civil Litigation Unit  
New York County District Attorney's Office  
One Hogan Place, New York, NY 10013

Attn: Records Access Officer

### **Freedom of Information Law Request: Financial Disclosures and Campaign Information**

Dear Sir/Madam:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 63,000 unique addresses, our Twitter page has 68,700 followers, the Twitter page of our Founder and President has over 429,000 followers, our Facebook page has 122,000 followers, and we have another 31,800 followers on GETTR.

#### **I. Requested Records**

Pursuant to the New York Freedom of Information Law, N.Y. Pub. Off. Law § 86 et seq., AFL requests disclosure of the following records:

##### **A. Custodians:**

1. Alvin Bragg
2. Cyrus Vance
3. Meg Reiss
4. Brian Crow
5. Lisa DelPizzo

611 Pennsylvania Ave SE #231

320 South Madison Avenue

Washington, DC 20003

Monroe, Georgia 30655

6. Leslie Dubeck
7. Gloria Garcia
8. Susan Hoffinger
9. Peter Pope
10. Jordan Stockdale
11. Chanterelle Sung
12. Matthew Colangelo
13. Mark Pomerantz
14. Elyssa Abuhoff
15. Caroline Williamson
16. Gary T. Fishman

- B. All emails, SMS text, Signal, WhatsApp, or other communications on similar messaging platforms mentioning or regarding “Alvin Bragg Campaign” or “fund raising” or “Eliot” or “Spitzer” or “PAC” for the custodians listed above.
- C. All internal communications—via email, SMS text, Signal, WhatsApp, or other messaging platforms—mentioning “Campaign” or “fund-raising” and “Trump” between any of the custodians listed above, and the following individuals:
1. DA Alvin Bragg
  2. Governor Kathy Hochul, or “Gov.” or “Hochul”
  3. Mayor Eric Adams, or “Mayor” or “Adams”
  4. Police Commissioner Keechant L. Sewell, Or “Commissioner” or “Sewell.”
- D. Resume or Curriculum Vitae of New York District Attorney Alvin Bragg.
- E. Copies of all financial disclosures made by New York DA Alvin Bragg as a public official.
- F. All records regarding the processing of these items.

## II. Processing and Production

AFL, as a news media requestor, seeks a waiver of all search and duplication fees. The requested documents will be posted in their entirety on our website and made freely available to the public, and this request is not being made for commercial purposes.

Processing should occur in strict compliance with applicable state laws and regulations. Among other things, you must search the custodians’ personal emails

and devices. Encrypted messaging does not shield disclosable records from public view.

If you have any questions about our request or believe further discussions regarding search and processing would facilitate more efficient production, then please contact me at FOIA@aflegal.org. Also, if AFL's fee waiver request is not granted in full, please contact us immediately upon making that determination.

To accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. Please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely,

/s/ Julia Haller

America First Legal Foundation

DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

April 25, 2023

Julia Haller  
America First Legal Foundation  
[foia@aflegal.org](mailto:foia@aflegal.org)

RE: FOIL Request – America First – DA Bragg, et al.

Dear Julia Haller:

I am assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (FOIL). The request was received by this office via email on April 20, 2023.

I first must inquire into whether this agency possesses or maintains records that are responsive to your request. Should responsive records be located, they must then be reviewed in order to rule upon your request. You can expect a determination or an update of this process on or before May 23, 2023.

Sincerely,



Todd Fitch  
Records Access Officer



DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

May 23, 2023

Julia Haller  
America First Legal Foundation  
[foia@aflegal.org](mailto:foia@aflegal.org)

RE: FOIL Request – America First – DA Bragg, et al.

Dear Julia Haller:

As the assigned Records Access Officer for your request under the Freedom of Information Law ("FOIL"), I write to inform you that the New York County District Attorney's Office ("DANY") is in the process of searching for potentially responsive records.

Given the complexity of your request, however, DANY will require significantly more time to gather and review those materials before we can reach a determination. I estimate this process will take a minimum of ninety (90) days. Accordingly, I will provide you with either my determination, or a further update, on or before August 22, 2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Fitch", written over a horizontal line.

Todd Fitch  
Records Access Officer

DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

August 22, 2023

Julia Haller  
America First Legal Foundation  
[foia@aflegal.org](mailto:foia@aflegal.org)

RE: FOIL Request 23F0274 – America First Legal #4 – DA Bragg, et al.

Dear Julia Haller:

Per my letter dated May 23, 2023, I am writing to update you on the status of the above-referenced Freedom of Information Law (FOIL) request. Your requests for (1) “[a]ll emails” from 16 distinct custodians “mentioning or regarding,” “‘Alvin Bragg Campaign’ or ‘fund raising’ or ‘Eliot’ or ‘Spitzer’ or ‘PAC,’” (2) “[a]ll internal communications” between the same 16 custodians and DA Bragg, Governor Hochul, Mayor Adams, or Commissioner Sewell which “mention[] ‘Campaign’ or ‘fund-raising’ and ‘Trump,’” (3) DA Bragg’s resume or curriculum vitae, (4) copies of all financial disclosures made by DA Bragg “as a public official,” and (5) “[a]ll records regarding the processing of these items,” are still being processed.

A search request has been submitted and is currently in the queue of FOIL, discovery, compliance, and other requests that must be handled by our IT department. FOIL requests requiring IT processing are prepared by that department in the order they were received by this office. Please note that we have a large number of FOIL requests. Once the records to be searched are collected and gathered into a searchable system, we will then inspect them for potentially responsive records.

Based on the information provided by our IT unit and the number of records searches pending, I estimate that the process of collecting records and conducting searches for potentially responsive records will take at least an additional 60 days. Please be advised that once potentially responsive records are identified, they must then be reviewed by me before a determination is made. You can expect an update of this ongoing process, or a determination, on or before October 23, 2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Fitch", written over a horizontal line.

Todd Fitch  
Records Access Officer

DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

October 23, 2023

Julia Haller  
America First Legal Foundation  
[foia@aflegal.org](mailto:foia@aflegal.org)

RE: FOIL Request 23F0274 – America First Legal #4 – DA Bragg, et al.

Dear Julia Haller:

Per my letter dated August 22, 2023, I am writing to update you on the status of the above-referenced Freedom of Information Law (FOIL) request. As an initial matter, as to your requests for copies of District Attorney Bragg's "[r]esume or [c]urriculum [v]itae" and "financial disclosures...as a public official," such records are already publicly available. You may find DA Bragg's work history under the "Meet Alvin Bragg" tab on the Manhattan District Attorney's Office website at the link.<sup>1</sup> Further, the public has access to elected official's financial disclosures at the New York City Conflict of Interest Board's website at the link.<sup>2</sup>

As to your remaining requests for (1) "[a]ll emails" from 16 distinct custodians "mentioning or regarding 'Alvin Bragg Campaign' or 'fund raising' or 'Eliot' or 'Spitzer' or 'PAC,'" and (2) "[a]ll internal communications" between the same 16 custodians and DA Bragg, Governor Hochul, Mayor Adams, or Commissioner Sewell which "mention[] 'Campaign' or 'fund-raising' and 'Trump,'" those requests are currently in the queue of other FOIL and discovery requests that are handled by our IT department in the order in which they are received. Please note, this Office receives a large number of FOIL requests. Additionally, to the extent that your request overlaps with this Office's criminal discovery obligations, those obligations must receive priority.

Furthermore, once I have received the results, they must be reviewed to determine whether the records are responsive and for any applicable exemptions. I estimate that this process will take at least another 60 days. I will therefore provide you with an additional update, or a determination, on or before December 20, 2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Fitch", written over a horizontal line.

Todd Fitch  
Records Access Officer

<sup>1</sup> <https://manhattanda.org/meet-alvin-bragg/>

<sup>2</sup> <https://www.nyc.gov/site/coib/annual-disclosure/elected-officials-annual-disclosure-reports.page>

DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

December 20, 2023

Julia Haller  
America First Legal Foundation  
[foia@aflegal.org](mailto:foia@aflegal.org)

RE: FOIL Request 23F0274 – America First Legal #4 – DA Bragg, et al.

Dear Julia Haller:

I am writing to update you on the status of the pending portions of the above-mentioned Freedom of Information Law (FOIL) request.

As to your remaining requests for (1) “[a]ll emails” from 16 distinct custodians “mentioning or regarding ‘Alvin Bragg Campaign’ or ‘fund raising’ or ‘Eliot’ or ‘Spitzer’ or ‘PAC,’” and (2) “[a]ll internal communications” between the same 16 custodians and DA Bragg, Governor Hochul, Mayor Adams, or Commissioner Sewell which “mention[] ‘Campaign’ or ‘fund-raising’ and ‘Trump,’” the search request that was submitted to our IT department resulted in numerous potentially responsive records.

As I noted in my October 23<sup>rd</sup> letter, those records must now be reviewed, first for responsiveness to your request, and then for a determination as to whether responsive records fall under any exceptions to disclosure under FOIL. Given the large number of records to be reviewed, and because I must first complete reviews of records for other FOIL requests that were received prior to yours, I estimate that this process will take at least another 60 days. I will therefore provide you with an additional update, or a determination, on or before February 19, 2024.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd Fitch", written over a blue horizontal line.

Todd Fitch  
Records Access Officer

**DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000**



**ALVIN L. BRAGG, JR.**  
DISTRICT ATTORNEY

February 16, 2024

[VIA EMAIL: [foia@aflegal.org](mailto:foia@aflegal.org)]  
Julia Haller  
America First Legal Foundation

Re: 23F0274 - FOIL Request #4 – DA Bragg, et al.

To Julia Haller:

I am writing on behalf of Records Access Officer (“RAO”) Todd Fitch, who is out of the office this week. As Mr. Fitch stated in his last update letter, dated December 20, 2023, a search request for the terms you provided was submitted to our IT department, which yielded numerous records. Those records must be reviewed, first for responsiveness to your request, and then for a determination as to whether responsive records fall under any exceptions to disclosure under FOIL.

I am informed by Mr. Fitch that, given the volume of records, and the amount of time it is taking to review them, he will need another 30 days to complete his review. You can therefore expect an update of the review process, or a determination, on or before March 18, 2024.

Sincerely,

Madeleine Guilmain  
Assistant District Attorney  
On behalf of Todd Fitch  
Records Access Officer

DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

March 18, 2023

Julia Haller  
America First Legal Foundation  
[foia@aflegal.org](mailto:foia@aflegal.org)

RE: FOIL Request 23F0274 – America First Legal #4 – DA Bragg, et al.

Dear Julia Haller:

I am writing to update you on the status of the pending portions of the above-mentioned Freedom of Information Law (FOIL) request (B, C and F).

As I noted in my previous update, the search request I submitted to our IT department resulted in a large number of potentially responsive records. Those records are now under review for responsiveness to your request and for a determination as to whether responsive records fall under any exceptions to disclosure under FOIL. I estimate that this process will take at least another 30 days. I will therefore provide you with an additional update, or a determination, on or before April 18, 2024.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd Fitch", written over a light blue horizontal line.

Todd Fitch  
Records Access Officer



DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

April 18, 2023

Julia Haller  
America First Legal Foundation  
[foia@aflegal.org](mailto:foia@aflegal.org)

RE: FOIL Request 23F0274 – America First Legal #4 – DA Bragg, et al.

Dear Julia Haller:

I am writing to update you on the status of the pending portions of the above-mentioned Freedom of Information Law (FOIL) request (B, C and F).

As I noted in my previous update, the search request I submitted to our IT department resulted in a large number of potentially responsive records. I have completed an initial review and am currently conducting the secondary review of those records for responsiveness to your request. If I identify records as responsive, I will then review them for a determination as to whether responsive records fall under any exceptions to disclosure under FOIL. I estimate that this process will take at least another 30 days. I will therefore you with an additional update, or a determination, on or before May 16, 2024.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd Fitch", with a long horizontal flourish extending to the right.

Todd Fitch  
Records Access Officer

DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

May 16, 2024

Julia Haller  
America First Legal Foundation  
[foia@aflegal.org](mailto:foia@aflegal.org)

RE: FOIL Request 23F0274 – America First Legal #4 – DA Bragg, et al.

Dear Julia Haller:

I am writing to update you on the status of the pending portions of the above-mentioned Freedom of Information Law (FOIL) request (B, C and F).

My secondary review of the potentially responsive records noted in my letter of April 18 is ongoing. If I identify records as responsive, I will then review them for a determination as to whether responsive records fall under any exceptions to disclosure under FOIL. I estimate that this process will take at least another 30 days. I will therefore you with an additional update, or a determination, on or before June 17, 2024.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd Fitch", written over a light blue horizontal line.

Todd Fitch  
Records Access Officer



**DISTRICT ATTORNEY**  
**COUNTY OF NEW YORK**  
**ONE HOGAN PLACE**  
**New York, N. Y. 10013**  
**(212) 335-9000**



**ALVIN L. BRAGG, JR.**  
DISTRICT ATTORNEY

July 17, 2024

Julia Haller  
America First Legal Foundation  
foia@aflegal.org

RE: FOIL Request 23F0274 – America First Legal #4 – DA Bragg, et al.

Dear Julia Haller:

I am writing to update you on the status of the pending portions of the above-mentioned Freedom of Information Law (FOIL) request (B, C and F).

As I previously noted, my secondary review of the potentially responsive records is ongoing. If I identify records as responsive, I will then review them for a determination as to whether responsive records fall under any exceptions to disclosure under FOIL. I estimate that this process will take at least another 30 days. I will therefore update you with an additional update, or a determination, on or before August 17, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Fitch".

Todd Fitch  
Records Access Officer



Edward Andrew Paltzik, Esq.  
BOCHNER PLLC

1040 Avenue of the Americas, 15<sup>TH</sup> Floor, New York, NY 10018  
o 516.526.0341 e [edward@bochner.law](mailto:edward@bochner.law) w [bochner.law](http://bochner.law)

August 8, 2024

**Via Email and USPS**

District Attorney  
County of New York  
Civil Litigation Unit  
ATTN: Robin McCabe, Chief  
One Hogan Place  
New York, New York 10013

Re: Appeal Related to the Following FOIL Request:  
23F0274 - FOIL Request #4 - dated April 20, 2023

Dear Ms. McCabe:

This firm represents America First Legal Foundation (“AFL”), which filed the above-referenced Freedom of Information Law (“FOIL”) (Public Officers Law (“POL”) §§ 84–90) request (the “Request”) to the District Attorney of the County of New York (the “DA’s Office”). See the Request, annexed hereto as **Exhibit A**. This letter is written to appeal the DA’s Office’s constructive denial of the Request.

The Request was filed with the DA’s Office on April 20, 2023. In its April 25, 2023 letter to AFL, the DA’s Office confirmed receipt of the Request and stated that AFL could expect a determination or update on the Request on or before May 26, 2023. That letter turned out to be the first of no less than *ten* extension letters received by AFL regarding the Request. The most recent extension letter, dated July 17, 2024, said that the DA Office’s processing of the Request would take at *least* thirty days more and stated a determination **or** further update would be forthcoming on August 17, 2024.

Pursuant to POL § 89(3)(a), if the Request was not immediately granted or denied the DA’s Office was required “within five business days” to “furnish a written acknowledgement of the receipt of such request and a statement of the approximate date, **which shall be reasonable under the circumstances of the request**, when such request will be granted or denied.” (Emphasis added). It has now been well over a year since the Request was filed, and nothing about these dilatory repeated extension letters can be considered “reasonable under the circumstances.” Pursuant to 21 NYCRR § 1401.5(e), an agency fails to comply with the timelines for responding to a FOIL request where it “furnishes an acknowledgment of the receipt of a request within five business days with an approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request.” The DA’s Office’s current date for a *potential* determination of the Request—but maybe just an update—is sixteen months after the Request was made. That is not a reasonable time under the circumstances.

In light of the foregoing, AFL appeals from the DA’s Office’s constructive denial of the Request based on its failure to provide a determination on the Request within a reasonable timeframe under the circumstances.



**Edward Andrew Paltzik, Esq.**  
**BOCHNER PLLC**

1040 Avenue of the Americas, 15<sup>TH</sup> Floor, New York, NY 10018

o 516.526.0341 e [edward@bochner.law](mailto:edward@bochner.law) w [bochner.law](http://bochner.law)

I thank you for your prompt attention to this matter. Please do not hesitate to contact me should you have any questions or concerns.

Respectfully submitted,

/s/ Edward Andrew Paltzik  
Edward Andrew Paltzik, Esq.  
Bochner PLLC  
1040 Avenue of the Americas,  
15th Floor  
New York, New York 10018  
(516) 526-0341

# EXHIBIT A



April 20, 2023

Via Electronic Mail: [FOIL@dany.nyc.gov](mailto:FOIL@dany.nyc.gov)

Office of the General Counsel, Civil Litigation Unit  
New York County District Attorney's Office  
One Hogan Place, New York, NY 10013

Attn: Records Access Officer

### **Freedom of Information Law Request: Financial Disclosures and Campaign Information**

Dear Sir/Madam:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 63,000 unique addresses, our Twitter page has 68,700 followers, the Twitter page of our Founder and President has over 429,000 followers, our Facebook page has 122,000 followers, and we have another 31,800 followers on GETTR.

#### **I. Requested Records**

Pursuant to the New York Freedom of Information Law, N.Y. Pub. Off. Law § 86 et seq., AFL requests disclosure of the following records:

##### **A. Custodians:**

1. Alvin Bragg
2. Cyrus Vance
3. Meg Reiss
4. Brian Crow
5. Lisa DelPizzo

611 Pennsylvania Ave SE #231

320 South Madison Avenue

Washington, DC 20003

Monroe, Georgia 30655

6. Leslie Dubeck
  7. Gloria Garcia
  8. Susan Hoffinger
  9. Peter Pope
  10. Jordan Stockdale
  11. Chanterelle Sung
  12. Matthew Colangelo
  13. Mark Pomerantz
  14. Elyssa Abuhoff
  15. Caroline Williamson
  16. Gary T. Fishman
- B. All emails, SMS text, Signal, WhatsApp, or other communications on similar messaging platforms mentioning or regarding “Alvin Bragg Campaign” or “fund raising” or “Eliot” or “Spitzer” or “PAC” for the custodians listed above.
- C. All internal communications—via email, SMS text, Signal, WhatsApp, or other messaging platforms—mentioning “Campaign” or “fund-raising” and “Trump” between any of the custodians listed above, and the following individuals:
1. DA Alvin Bragg
  2. Governor Kathy Hochul, or “Gov.” or “Hochul”
  3. Mayor Eric Adams, or “Mayor” or “Adams”
  4. Police Commissioner Keechant L. Sewell, Or “Commissioner” or “Sewell.”
- D. Resume or Curriculum Vitae of New York District Attorney Alvin Bragg.
- E. Copies of all financial disclosures made by New York DA Alvin Bragg as a public official.
- F. All records regarding the processing of these items.

## II. Processing and Production

AFL, as a news media requestor, seeks a waiver of all search and duplication fees. The requested documents will be posted in their entirety on our website and made freely available to the public, and this request is not being made for commercial purposes.

Processing should occur in strict compliance with applicable state laws and regulations. Among other things, you must search the custodians’ personal emails

and devices. Encrypted messaging does not shield disclosable records from public view.

If you have any questions about our request or believe further discussions regarding search and processing would facilitate more efficient production, then please contact me at FOIA@aflegal.org. Also, if AFL's fee waiver request is not granted in full, please contact us immediately upon making that determination.

To accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. Please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely,

/s/ Julia Haller

America First Legal Foundation

DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

August 16, 2024

Julia Haller  
America First Legal Foundation  
[foia@aflegal.org](mailto:foia@aflegal.org)

RE: FOIL Request 23F0274 – America First Legal #4 – DA Bragg, et al.

Dear Julia Haller:

I am writing to update you on the status of the pending portions of the above-mentioned Freedom of Information Law (FOIL) request (B, C and F).

Prior to my taking vacation, and in preparing records responsive to your request for further processing and disclosure, I placed a request with our IT Department to transfer those records to another platform which enables their conversion into a disclosable format. That process has experienced technical difficulties which has caused a delay in completing this transfer. I am informed that the delay, however, should be resolved by early next week. Accordingly, I believe that next week I will be able to provide you with some of the documents which are responsive to your requests and will provide you with an update, or a determination, on or before August 23, 2024.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd Fitch", is written over a horizontal line.

Todd Fitch  
Records Access Officer



DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

August 22, 2024

Julia Haller  
America First Legal Foundation  
[foia@aflegal.org](mailto:foia@aflegal.org)

RE: FOIL Request 23F0274 – America First Legal #4 – DA Bragg, et al.

Dear Julia Haller:

As you know, I am an Assistant District Attorney in New York County assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (FOIL) received by this Office on April 20, 2023.

As I noted in my update of August 16, our IT Department experienced technical difficulties in transferring responsive records to a platform which enables their conversion into a disclosable format. I am informed that those technical difficulties have been resolved, but, that the system requires an update before further processing can be done. I was, however, able to review responsive records prior to the beginning of the update process, and am confident I will be able to continue with disclosure on your request as soon as that process is complete. Accordingly, I will provide you with a determination on or before September 6, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Fitch".

Todd Fitch  
Records Access Officer

**DISTRICT ATTORNEY  
COUNTY OF NEW YORK**  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



**ALVIN L. BRAGG, JR.**  
DISTRICT ATTORNEY

August 22, 2024

[VIA E-MAIL: [edward@bochner.law](mailto:edward@bochner.law); [avery@bochner.law](mailto:avery@bochner.law)]

Edward A. Paltzik, Esq.  
Bochner PLLC  
140 Ave. of the Americas, 15<sup>th</sup> Floor  
New York, NY 10018

Re: FOIL (#4) 23F0274 APPEAL: *Email, Texts, Communications*

The New York County District Attorney's Office has received your Freedom of Information Law (FOIL) appeal on behalf of the America First Legal Foundation (AFL), the organization which submitted the above captioned request. As the FOIL Appeals Officer, having reviewed the FOIL file, procedural history, and consulted with the Records Access Officer (RAO), I am prepared to rule on this matter.

By letter dated August 8, 2024, you appeal, on the ground of constructive denial, the April 20, 2023 FOIL request by AFL (for all emails, texts, and internal communications), in that, after receiving an acknowledgement within five days and multiple regular updates by the Records Access Officer (RAO), AFL has not yet received a determination. As an initial matter, I note that this is not a case where an agency has failed to respond to a FOIL request; nor has the RAO defaulted in processing the request. Quite the contrary. As outlined below, to date, the RAO, Todd Fitch, has provided a partial determination, granting access to publicly posted records for two requests (items D and E)<sup>1</sup> and as to the other requests calling for electronic communications, has continued to keep you apprised of his efforts in a timely fashion, in accordance with Public Officers Law (POL) §89(3)(a).

As you acknowledge, AFL has received at least "ten extension letters," each stating that additional time is required to process the request." I also note that during the pendency of this appeal, the RAO emailed another update, on August 16, 2024, detailing recent technical difficulties in processing the results of the searches, and a follow-up

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<sup>1</sup> I refer you to the RAO's letter dated October 23, 2023, in which the RAO provided the link to access the curriculum vitae of District Attorney Alvin L. Bragg, Jr. and a link to another agency which maintains the financial disclosures of elected officials.

notification dated August 22<sup>nd</sup> indicating the date that the technical issues were resolved, see below.

To review, an acknowledgement letter was emailed to Julia Haller at AFL on April 25, 2023, indicating that the RAO must first “inquire into whether this agency possesses or maintains” the records requested, and that once located those records would have to be reviewed in order to rule on the request. The RAO further indicated that “you can expect a determination or an update of this process on or before May 23, 2023.”

- On May 23<sup>rd</sup>, the RAO provided a status update indicating that “the process of searching for potentially responsive records” was underway and that “given the complexity” of the FOIL request, “significantly more time” would be needed to “gather and review those materials.” The RAO estimated that this process would take “at least 90 days” and stated that either a “determination, or a further update” would be provided “on or before August 22, 2023.”
- On August 22<sup>nd</sup>, the RAO provided a detailed update explaining that the request was “in the queue of FOIL, discovery, compliance, and other requests that must be handled by our IT department” and that once the results of potentially responsive communications were “collected and gathered into a searchable system,” the RAO would need at least another 60 days, and also indicating that you could “expect an update of this ongoing process, or a determination, on or before October 23, 2023.”
- On October 23<sup>rd</sup>, the RAO provided a partial determination as to request items D and E, and an update as to the remaining items calling for various communications. The RAO stated that the request was still “in the queue of other FOIL and discovery requests that are handled by our IT department in the order in which they are received” and that the Office’s discovery requests would necessarily be given priority. The RAO reiterated that once the results were received, he would need another 60 days to review those results and indicating that he would make a determination (or provide an update) on or before December 20, 2023.
- On December 20<sup>th</sup>, the RAO provided another timely update indicating that the preliminary search conducted by the IT department was completed, that it had produced “numerous potentially responsive records” which now had to be reviewed, and that given the volume of records, the number of other, similar FOIL requests that were received prior to this one, he estimated it would take “at least another 60 days” to complete the review.<sup>2</sup> The RAO concluded by indicating that he would provide “an additional update, or a determination, on or before February 19, 2024.”
- On February 16, 2024, an update letter was sent on behalf of the RAO, indicating that he would need another 30 days to complete his review and that

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<sup>2</sup> I am informed by the RAO that this initial pool of email communications totaled over 30,000.

- you could “expect an update of the review process, or a determination, on or before March 18, 2024.”
- On March 18<sup>th</sup>, the RAO provided a similar update on the review process, explaining that it would take “at least another 30 days” to complete his review and that he would provide “an additional update, or determination, on or before April 18, 2024.”
  - On April 18<sup>th</sup>, the RAO provided another timely update indicating that he had completed his *initial* review of the voluminous material and was in the process of conducting a secondary review.<sup>3</sup> He also indicated that as he identified responsive records, he would review them for a determination as to whether they fall under any FOIL exceptions, and estimated he would need an additional 30 days to provide an update or determination, “on or before May 16, 2024.
  - Subsequently on May 16<sup>th</sup>, June 17<sup>th</sup> and July 17<sup>th</sup>, the RAO indicated that his secondary review was still ongoing and therefore he would need an additional 30 days to provide “an additional update, or a determination.” The next update or determination is due, on or before August 17, 2024.
  - On August 16<sup>th</sup>, the RAO provided an update on the pending portions of the FOIL request (B, C, and F) detailing the technical difficulties encountered in transferring the search results to a different platform for final review, redaction, and formatting emails for disclosure. The RAO indicated he would provide “an update, or a determination, on or before August 23, 2024.”
  - On August 22<sup>nd</sup>, the RAO informed you that while the technical difficulties had been resolved that day, he needed an additional two weeks to complete the final steps for review, redaction, and processing the records in a disclosable format. As indicated by the RAO, a determination will be provided “on or before September 6, 2024.”

I am informed by the RAO that the current technical issue arose after successfully tagging responsive records during the initial review. The delay in completing the secondary review resulted when IT attempted to transport the tagged search results to a different platform so that they could be readily reviewed for FOIL exemptions, and/or redacted, and then processed for production in a disclosable format. Now that the tagged material has been successfully moved, the RAO will be able to complete the final stage of review of the search term results and has provided a date by which a determination will be provided, September 6, 2024. At this time, the AFL FOIL request is pending, in that the several thousand potentially responsive email communications are currently under review and being processed by the RAO in a workable format.

As you aptly note, POL §89(3) allows an agency to provide an approximate date “which is reasonable under the circumstances of the request” when a determination can be expected. *Matter of New York Times Co. v City of New York Police Dep’t.*, 103 AD3d 405,

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<sup>3</sup> I am informed by the RAO that this secondary review involved review of potentially responsive emails that had been tagged, totaling over 1,500.

406-7 (1st Dept 2013); *Matter of Data Tree, LLC v Romaine*, 9 NY3d 454, 465 (2007) (no specific time period in which an agency must grant access to records). Taking into account the factors set out in POL §89(3), which may be considered in determining reasonable adjournments, I find that each of these factors are applicable here: the volume, complexity, and difficulty in locating, retrieving, and identifying records for this FOIL request, as well as the number of other communication-related requests received by this Office each provide sufficient justification for the necessary and reasonable delay attending this FOIL request.

The Public Officers Law requires the requestor in the first instance to describe records sufficiently so that a search can be made by the agency to identify responsive records with reasonable effort. POL §89(3); *Matter of Brown v DiFiore*, 139 AD3d 1048 (2d Dept 2016); *Roque v Kings Co DA's Office*, 12 AD3d 374 (2d Dept 2004); *M. Farbman & Sons, Inc. v NYC HHC*, 62 NY2d 75, 83 (1984). The law is also clear that an agency is only required to disclose electronically maintained records that are “retrievable with reasonable effort” and acknowledges that complying with a “request for an enormous number of records may require substantial time.” *Matter of Data Tree, supra*. By its very nature, this request for any and all electronic communications using generic search terms (for e.g. campaign, fundraising, PAC) and common names (for e.g. Trump, Eliot, Spitzer) without reference to a case name or docket number has constrained this Office’s ability to reasonably conduct a search of electronic communications in the first instance, and required an initial search so general that it increased exponentially the volume of potentially responsive material produced, that in turn needs to be reviewed—providing further justification for delay.<sup>4</sup>

Under the circumstances of the instant FOIL request—which not only encompasses the pending Trump criminal prosecution, but broadly seeks “all emails, SMS text...or other communications” of 16 DANY personnel, the District Attorney, the Governor of New York, the Mayor of New York City, and a Police Commissioner concerning campaign or fundraising matters over a one-year period—and, taking into consideration the large volume of preliminary results, as well as other FOIL requests being handled by the RAO, I find that the time periods allotted to process this FOIL request has been reasonable and that each successive extension was similarly justified as reasonable. *Matter of Save Monroe Ave. v NYS Dep’t of Transp.*, 197 AD3d 808, 809 (3d Dept 2021) (noting that “there is no specific time period in which the agency must grant access to the records”) citing *Matter of Data Tree, LLC v Romaine*, 9 NY3d at 465.

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<sup>4</sup> It is important to note that this is not a static process. Generally, records of electronic communications (of others) are not stored or maintained by this agency in a manner that would make them readily available to a RAO, who must first make a request to the IT department to devise a search of any and all emails or texts. It wouldn’t be known in advance if such a search was reasonably possible or what the scope of results might be and what technical issues may arise.



In accordance with the above discussion, your appeal on constructive denial grounds is dismissed at this time. As indicated in the RAO's most recent correspondence, you can expect a determination by September 6, 2024.

Sincerely,



Robin McCabe  
Assistant District Attorney  
Chief, Civil Litigation Unit

cc: Committee on Open Government  
Department of State  
41 State Street, Albany, NY 12231

DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

September 6, 2024

Julia Haller  
America First Legal Foundation  
[foia@aflegal.org](mailto:foia@aflegal.org)

RE: FOIL Request 23F0274 – America First Legal #4 – DA Bragg, et al.

Dear Julia Haller:

As you know, I am an Assistant District Attorney in New York County assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (FOIL) received by this Office on April 20, 2023. I write today to update you on your request.

As the Records Access Officer assigned to the above-referenced FOIL request, I am prepared to make a partial determination as to those records related to your request “B,” for which my review has been completed. In letter “B” of your request, you seek access to “[a]ll emails, SMS text, Signal, WhatsApp, or other communications on similar messaging platforms mentioning or regarding ‘Alvin Bragg Campaign’ or ‘fund raising’ or ‘Eliot’ or ‘Spitzer’ or ‘PAC,’” for 16 named custodians. Please note, as this request did not include a date range, I incorporated the January 1, 2022, to the date of the FOIL request, date range utilized in the request from your organization received by this Office on April 7, 2023.<sup>1</sup>

After review, access is granted to 1138 pages of records responsive to request “B.” Copies of these records will be Bates-stamped “DANY 000001–001138,” and delivered to you via a drop box upon receipt of a check or money order in the amount of \$20.00 (reproduction fee), payable to the New York County District Attorney’s Office and mailed to my attention at the above address. Records to which access is granted will also be redacted on privacy and other grounds.

I have not yet completed my review of the materials potentially responsive to your request letter “C.” My review, however, is ongoing. I will provide you with a determination, or an update, on or before October 27, 2024.

Sincerely,



Todd Fitch  
Records Access Officer

<sup>1</sup> See FOIL request 23F0236.



June 3, 2024

**Via Electronic Mail:** FOIL@dany.nyc.gov  
Office of the General Counsel, Civil Litigation Unit  
New York County District Attorney's Office  
One Hogan Place, New York, NY 10013  
Attn: Records Access Officer

### **Freedom of Information Law Request: Communications with Outside Groups**

Dear Sir/Madam:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL has over 222,000 followers on Facebook, 230,000 followers on X, and our Founder and President has over 635,000 followers.

#### **I. Custodians**

- A. Alvin Bragg
- B. Matthew Colangelo
- C. Joshua Steinglass
- D. Meg Reiss
- E. Joyce Smith
- F. Leslie Dubeck
- G. Sherene Crawford

611 Pennsylvania Ave SE #231  
Washington, DC 20003

320 South Madison Avenue  
Monroe, Georgia 30655



## II. Requested Records

Pursuant to the New York Freedom of Information Law, N.Y. Pub. Off. Law § 86 et seq., AFL requests disclosure of the following records:

### A. Records of all communications with the following:

1. The Democratic National Committee (including but not limited to any email address ending in “democrats.org”)
2. Color of Change (including but not limited to any email address ending in “colorofchange.org”)
3. Open Society Foundations (including but not limited to any email address ending in “opensocietyfoundations.org”)
4. Julie Chavez Rodriguez
5. Quentin Fulks
6. Kevin Munoz
7. The Biden-Harris Campaign
8. Loren Merchan
9. Authentic Campaign(s)
10. The New York Office of the Attorney General (including but not limited to any email address ending in “ag.ny.gov”)
11. The United States Department of Justice (including but not limited to any email address ending in “usdoj.gov” or “doj.gov”)
12. Citizens for Responsibility and Ethics in Washington (including but not limited to any email address ending in @citizensforethics.org)

## III. Processing and Production

AFL, as a news media requestor, seeks a waiver of all search and duplication fees. The requested documents will be posted in their entirety on our website and made freely available to the public, and this request is not being made for commercial purposes.

Processing should occur in strict compliance with applicable state laws and regulations. Among other requirements, you must search the custodians’ personal emails and devices. Encrypted messaging does not shield disclosable records from public view.

If you have any questions about our request or believe further discussions regarding search and processing would facilitate more efficient production, then please contact me at FOIA@aflegal.org. Also, if AFL's fee waiver request is not granted in full, please contact us immediately upon making that determination.

To accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. Please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely,

/s/ Jacob Meckler

America First Legal Foundation

**DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000**



**ALVIN L. BRAGG, JR.**  
DISTRICT ATTORNEY

June 6, 2024


[VIA EMAIL: [foia@aflegal.org](mailto:foia@aflegal.org)]  
Jacob Meckler  
America First Legal Foundation  
611 Pennsylvania Ave. SE #231  
Washington, DC 20003

Re: 24F0359 – FOIL #8 dated June 3, 2024  
Communications with Outside Groups

To Jacob Meckler:

I am an Assistant District Attorney in New York County assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (FOIL). The request was received by this office via email on June 3, 2024.

Given the complexity and size of your request we will need an additional 60 days to locate and identify potentially responsive records, which in turn must be reviewed in order to rule upon your request. You can expect a determination or an update of the process on or before August 6, 2024.

Sincerely,  
  
Madeleine Guilmain  
Assistant District Attorney  
Records Access Officer

**DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000**



**ALVIN L. BRAGG, JR.**  
DISTRICT ATTORNEY

July 23, 2024

[VIA EMAIL: [foia@aflegal.org](mailto:foia@aflegal.org)]  
Jacob Meckler  
America First Legal Foundation  
611 Pennsylvania Ave. SE #231  
Washington, DC 20003

Re: 24F0359 – FOIL #8 dated June 3, 2024  
Communications with Outside Groups

To Jacob Meckler:

I am an Assistant District Attorney in New York County assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (FOIL). The request was received by this office via email on June 3, 2024. Your request provides a list of seven custodians and seeks communications between those custodians and a list of 12 persons or entities. You do not, however, provide a date range for these communications.

I am unable to process your FOIL request as written, however, if you submit a date range for this FOIL request prior to the next update deadline of August 6, 2024, I will proceed with the June 3, 2024 request using that date range. If you do not submit a date range by August 6, 2024, this FOIL request will necessarily be denied as overbroad. Please use our FOIL email address—[FOIL@dany.nyc.gov](mailto:FOIL@dany.nyc.gov)—for your submission. Thank you.

Sincerely,

Madeleine Guilmain  
Assistant District Attorney  
Records Access Officer



AFL FOIA <foia@aflegal.org>

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## FOIL # 24F0359 - Communications with outside groups

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AFL FOIA <foia@aflegal.org>  
To: FOIL@dany.nyc.gov

Tue, Jul 23, 2024 at 3:11 PM

Ms. Guilmain,

Thank you for reaching out, we are willing to limit this request to records created on or after January 1, 2022.

Thank you for your assistance with this matter,  
America First Legal Foundation

[Quoted text hidden]

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 **24F0359 - AFLF FOIL #8 letter 7.23.24.pdf**  
23K

**DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000**



**ALVIN L. BRAGG, JR.**  
DISTRICT ATTORNEY

August 6, 2024

[VIA EMAIL: [foia@aflegal.org](mailto:foia@aflegal.org)]

Jacob Meckler  
America First Legal Foundation  
611 Pennsylvania Ave. SE #231  
Washington, DC 20003

Re: 24F0359 – FOIL #8 dated June 3, 2024  
Communications with Outside Groups

To Jacob Meckler:

I am an Assistant District Attorney in New York County assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (FOIL). The request was received by this office via email on June 3, 2024. Your request provides a list of seven custodians and seeks communications between those custodians and a list of 12 persons or entities. On July 23, 2024, we received your email agreeing to narrow your request to a date range beginning on January 1, 2022. The end date of the search range must necessarily be no later than the date of the FOIL request. I am now writing to update you on the process of our search for potentially responsive records.

A request to search e-mails to and from those custodians listed in your request has been submitted and is currently in the queue of other FOIL and discovery requests that must be handled by our IT department, in the order in which they are received. Once the records to be searched are collected and gathered into a searchable system, they must then be reviewed by me before a determination is made. Based on the information provided by our IT unit and the number of similar searches pending, I estimate that the process of collecting records will take at least an additional 60 days. You can therefore expect an update of this process on or before October 7, 2024.

Sincerely,

Madeleine Guilmain  
Assistant District Attorney  
Records Access Officer



June 3, 2024

**Via Electronic Mail:** FOIL@dany.nyc.gov  
Office of the General Counsel, Civil Litigation Unit  
New York County District Attorney's Office  
One Hogan Place, New York, NY 10013  
Attn: Records Access Officer

### **Freedom of Information Law Request: Calendars of Alvin Bragg**

Dear Sir/Madam:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL has over 222,000 followers on Facebook, 230,000 followers on X, and our Founder and President has over 635,000 followers.

#### **I. Custodians**

- A. Alvin Bragg
- B. Matthew Colangelo
- C. Joshua Steinglass

#### **II. Requested Records**

Pursuant to the New York Freedom of Information Law, N.Y. Pub. Off. Law § 86 et seq., AFL requests disclosure of the following records:

- A. All calendar items, including attachments, for DA Alvin Bragg from January 1, 2022, until the date this request is fully processed.

611 Pennsylvania Ave SE #231  
Washington, DC 20003

320 South Madison Avenue  
Monroe, Georgia 30655

### III. Processing and Production

AFL, as a news media requestor, seeks a waiver of all search and duplication fees. The requested documents will be posted in their entirety on our website and made freely available to the public, and this request is not being made for commercial purposes.

Processing should occur in strict compliance with applicable state laws and regulations. Among other requirements, you must search the custodians' personal emails and devices. Encrypted messaging does not shield disclosable records from public view.

If you have any questions about our request or believe further discussions regarding search and processing would facilitate more efficient production, then please contact me at FOIA@aflegal.org. Also, if AFL's fee waiver request is not granted in full, please contact us immediately upon making that determination.

To accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. Please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely,

/s/ Jacob Meckler

America First Legal Foundation



DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

June 10, 2024

Jacob Meckler  
America First Legal Foundation  
[foia@aflegal.org](mailto:foia@aflegal.org)

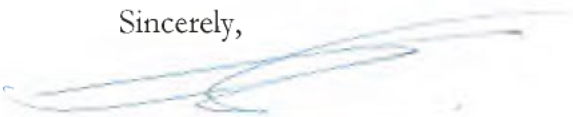
Re: FOIL Request 24F0360

Dear Mr. Meckler:

I am an Assistant District Attorney in New York County assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (FOIL). The request was received by this office via email on June 3, 2024.

The relevant records/case files that must be reviewed in order to rule upon your request have been ordered. Once this information is received, I will review it to determine your request. You can expect a determination or an update of that process on or before July 5, 2024.

Sincerely,



Todd Fitch  
Assistant District Attorney  
Records Access Officer

**DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000**



**ALVIN L. BRAGG, JR.**  
DISTRICT ATTORNEY

July 5, 2024

Jacob Meckler  
America First Legal Foundation  
foia@aflegal.org

Re: FOIL Request 24F0360

Dear Jacob Meckler:

I am an Assistant District Attorney in New York County assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (FOIL). The request was received by this office via email on June 3, 2024. I write today to update you on your request.

I have placed an order for records potentially responsive to your request. I am informed that it will take some time to process that order. Please note, if I locate potentially responsive records, they must then be reviewed for responsiveness to your request; any responsive records will then be reviewed for a determination as to whether they fall under any exception to disclosure pursuant to FOIL. Given the number of other requests we receive, and the amount of time it is taking to review them, I estimate I will need a least another 30 days for yours. You can expect a determination or an update of that process on or before August 5, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Fitch", written over a horizontal line.

Todd Fitch  
Assistant District Attorney  
Records Access Officer

**DISTRICT ATTORNEY**  
**COUNTY OF NEW YORK**  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



**ALVIN L. BRAGG, JR.**  
DISTRICT ATTORNEY

August 5, 2024

Jacob Meckler  
America First Legal Foundation  
foia@aflegal.org


Re: FOIL Request 24F0360

Dear Jacob Meckler:

I am an Assistant District Attorney in New York County assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (FOIL). The request was received by this office via email on June 3, 2024. I write today to update you on your request.

The order which I placed for records potentially responsive to your request is still being processed. As I noted previously, I am informed that it will take some time to process that order. Please note, if I locate potentially responsive records, they must then be reviewed for responsiveness to your request; any responsive records will then be reviewed for a determination as to whether they fall under any exception to disclosure pursuant to FOIL. Given the number of other requests we receive, and the amount of time it is taking to review them, I estimate I will need a least another 30 days for yours. You can expect a determination or an update of that process on or before September 5, 2024.

Sincerely,



Todd Fitch  
Assistant District Attorney  
Records Access Officer

DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

September 4, 2024

Jacob Meckler  
America First Legal Foundation  
foia@aflegal.org

Re: FOIL Request 24F0360

Dear Jacob Meckler:

I am an Assistant District Attorney in New York County assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (FOIL). The request was received by this office via email on June 3, 2024. I write today to update you on your request.

The order which I placed for records potentially responsive to your request is still being processed. As I noted previously, I am informed that it will take some time to process that order. Please note, if I locate potentially responsive records, they must then be reviewed for responsiveness to your request; any responsive records will then be reviewed for a determination as to whether they fall under any exception to disclosure pursuant to FOIL. Given the number of other requests we receive, and the amount of time it is taking to review them, I estimate I will need a least another 30 days for yours. You can expect a determination or an update of that process on or before October 1, 2024.

Sincerely,



Todd Fitch  
Assistant District Attorney  
Records Access Officer



June 18, 2024

**Via Electronic Mail:** FOIL@dany.nyc.gov  
Office of the General Counsel, Civil Litigation Unit  
New York County District Attorney's Office  
One Hogan Place, New York, NY 10013  
Attn: Records Access Officer

**Freedom of Information Law Request: Communications Referencing  
Judge Merchan**

Dear Sir/Madam:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL has over 222,000 followers on Facebook, 230,000 followers on X, and our Founder and President has over 635,000 followers.

**I. Custodians**

- A. Alvin Bragg
- B. Matthew Colangelo
- C. Joshua Steinglass
- D. Meg Reiss
- E. Joyce Smith
- F. Leslie Dubeck
- G. Sherene Crawford

611 Pennsylvania Ave SE #231  
Washington, DC 20003

320 South Madison Avenue  
Monroe, Georgia 30655

## II. Requested Records

Pursuant to the New York Freedom of Information Law, N.Y. Pub. Off. Law § 86 et seq., AFL requests disclosure of the following records:

A. Records of all communications containing the term “Merchan.”

The date range for this request is March 30, 2023 through April 14, 2024.

## III. Processing and Production

AFL, as a news media requestor, seeks a waiver of all search and duplication fees. The requested documents will be posted in their entirety on our website and made freely available to the public, and this request is not being made for commercial purposes.

Processing should occur in strict compliance with applicable state laws and regulations. Among other requirements, you must search the custodians’ personal emails and devices. Encrypted messaging does not shield disclosable records from public view.

If you have any questions about our request or believe further discussions regarding search and processing would facilitate more efficient production, then please contact me at FOIA@aflegal.org. Also, if AFL’s fee waiver request is not granted in full, please contact us immediately upon making that determination.

To accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. Please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely,

/s/ Jacob Meckler

America First Legal Foundation

DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

July 18, 2024

Jacob Meckler  
AFL  
[foia@aflegal.org](mailto:foia@aflegal.org)

Re: FOIL Request No. 24F0387

Dear Mr. Meckler:

I am an Assistant District Attorney in New York County assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (FOIL). The request was received by this office via email on June 18, 2024.

I am writing to update you on the process of searching for records responsive to your request. I have submitted a request to our IT Unit for keyword searches pursuant to your request and am awaiting the results. That request is currently in the queue of FOIL, discovery, compliance, and other requests that must be handled by our IT department. FOIL requests requiring IT processing are prepared by that department in the order they were received by this Office. Please note that we have a large number of FOIL requests. Additionally, should potentially responsive records be located, they first must be reviewed for responsiveness to your request and then for a determination as to whether responsive records fall under any exceptions to disclosure under FOIL. Given the volume of FOIL requests that were received prior to this one, and the amount of time it is taking to review those records, I estimate that I will need at least another 30 days for this request. You can therefore expect an update of the review process, or a determination, on or before August 18, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Fitch", with a long horizontal flourish extending to the right.

Todd Fitch  
Assistant District Attorney  
Records Access Officer



DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

August 19, 2024

Jacob Meckler  
AFL  
[foia@aflegal.org](mailto:foia@aflegal.org)


Re: FOIL Request No. 24F0387

Dear Mr. Meckler:

I am an Assistant District Attorney in New York County assigned to be the Records Access Officer in connection with your request under the Freedom of Information Law (FOIL). The request was received by this office via email on June 18, 2024.

I am writing to update you on the process of searching for records responsive to your request. As I noted previously, I submitted a request to our IT Unit for keyword searches pursuant to your request. Our IT Unit has provided a response to that request, which I will now first review for responsiveness and then for a determination as to whether responsive records fall under any exceptions to disclosure under FOIL. Please note, as I stated previously, this Office receives a high volume of FOIL requests. I must review and process those that were received prior before I can review this one. I will need at least another 30 days for this request. You can therefore expect an update of the review process, or a determination, on or before September 19, 2024.

Sincerely,



Todd Fitch  
Assistant District Attorney  
Records Access Officer



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

In the Matter of

AMERICA FIRST LEGAL FOUNDATION,

*Petitioner,*

For a judgment pursuant to Article 78 of the  
Civil Practice Law and Rules,

v.

ALVIN BRAGG, in his official capacity as  
DISTRICT ATTORNEY OF THE COUNTY  
OF NEW YORK, and NEW YORK  
COUNTY DISTRICT ATTORNEY'S  
OFFICE

*Respondents.*

Index Number: \_\_\_\_\_

**MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION**

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## I. INTRODUCTION

Petitioner America First Legal Foundation (“AFL”) respectfully submits this memorandum of law in support of its Petition which seeks, pursuant to Article 78 of the New York State Civil Practice Law and Rules (“CPLR”) and Public Officer Law (“POL”) § 89(4)(b), a judgment directing Respondents ALVIN BRAGG, in his official capacity as DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK (“Bragg”), and NEW YORK COUNTY DISTRICT ATTORNEY’S OFFICE (the “DA’s Office”) (each a “Respondent” and together, “Respondents”) to provide AFL with document responsive to its several Freedom of Information Law (“FOIL”) requests.

As relevant to the instant proceeding, AFL filed four FOIL requests (each a “Request,” and collectively the “Requests”) between April 20, 2023, and June 18, 2024, seeking access to the DA’s Office’s records regarding specified classes of documents. Despite frequent “update” letters providing a new deadline by which a subsequent update would be given, the DA’s Office has constructively denied all of the Requests, particularly those relating to President Donald J. Trump. The DA’s Office has only offered one partial production after the relevant Request was pending for almost a year-and-a-half, but pointedly none of the documents offered to be produced related to President Trump.

The DA’s Office’s stated position is that merely providing updates within their own arbitrary timelines for when such updates will be given constitutes compliance with FOIL’s mandates of an agency issued a request for records. But this position fails to reckon with the fact that any attempt to delay compliance requires that such extended timelines for a response must be reasonable, and the DA’s Office’s acts have been anything but, and that an agency, at a certain point, is required to provide a date certain for a substantive determination by the agency. These

actions continue the DA's Office's pattern of delay and non-responsiveness to AFL's FOIL requests which were exhibited in AFL's First FOIL Action.<sup>1</sup> The DA's Office's refusal to turn over records subject to disclosure under FOIL is a "fail[ure] to perform a duty enjoined upon it by law." CPLR § 7803(1). The DA's Office's attempt to defend this failure is based on its determination, which "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." *Id.* § 7803(3). As such, and as argued at greater length *infra*, this Court should grant a Judgment to AFL compelling the Respondents to disclose all documents responsive to the Requests.

## II. BACKGROUND

For a more thorough recitation of the facts relevant to this proceeding, the Court is respectfully directed to AFL's Verified Petition filed herewith, which is incorporated herein by reference.

## III. STANDARD OF REVIEW

The FOIL's legislative declaration is an important interpretive tool in construing the FOIL. That declaration recognizes the importance of the People's access to government records as a primary tool for the "understanding and participation of the public in government" and keeping the government accountable to the People. POL § 84. The legislature was unequivocal that:

Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality. The legislature therefore declare[d] that government is the public's business and 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 this article.

*Id.* (emphasis added). As such, the FOIL requires that "[e]ach agency **shall . . . make available for public inspection and copying all records**, except those records or portions thereof that may

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<sup>1</sup> Capitalized terms not defined herein have the meaning ascribed to them in the Verified Petition.

be withheld pursuant to the exceptions of rights of access appearing in this subdivision.” POL § 87(2) (emphasis added); *see also Cap. Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566 (1986) (“FOIL provides that **all records of a public agency are presumptively open to public inspection** and copying unless otherwise specifically exempted.”) (emphasis added); *Newsday, LLC v. Nassau Cnty. Police Dep’t*, 222 A.D.3d 85, 89 (2d Dep’t 2023) (same).

When an agency invokes an exemption to disclosure enumerated in POL § 87(2), it is the agency’s burden to prove that the sought record is covered by the statutory exemption. POL § 89(4)(b) (“In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.”). An agency must “meet this burden in more than just a ‘plausible fashion.’ In order to deny disclosure, the [agency] must show that the requested information falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access.” *Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462–63 (2007) (internal quotation marks omitted).

As argued at length *infra*, the FOIL’s presumption that records are subject to disclosure, coupled with the heavy burden imposed on an agency seeking to oppose disclosure, requires the DA’s Office’s disclosure of records responsive to the Requests.

#### IV. **ARGUMENT**

##### A. **The DA’s Office’s Responses to AFL’s FOIL Requests Failed to Comply with Statutory and Regulatory Requirements**

New York law provides a detailed structure regarding an agency’s responses to FOIL requests, including when such responses must be made and the limited forms an agency’s response can take. Upon analysis of these structures and a comparison to the DA’s Office’s responses to

AFL, it is clear that the DA's Office has failed to comply with its legal obligations to AFL under the FOIL.

1. The Statutory and Regulatory Framework of the FOIL

POL § 89(3)(a) provides the baseline statutory framework for how an agency must respond to a request made of it pursuant to the FOIL. It provides:

Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with subdivision five of this section.

*See also Legal Aid Soc. v. New York State Dep't of Corr. & Cmty. Supervision*, 105 A.D.3d 1120, 1122 (3d Dep't 2013) ("The statute provides certain permitted responses from an agency to a proper FOIL request"). Regulatory authority provides more explicit instructions regarding a responding agency's available options when responding to a FOIL request, recognizing only three acceptable responses in the first instance: (i) advising the petitioner that the request is insufficiently detailed; (ii) granting or denying the request in whole or in part; or (iii) providing an approximate date when the request will be granted or denied in part. 21 NYCRR § 1401.5(c)(1)–(3).

In the first instance, pursuant to both the relevant statutory and regulatory authority, the date an agency provides for a subsequent determination whether to grant or deny a FOIL request must be within 20 business days of the acknowledgement of the receipt of the request. POL § 89(3)(a); 21 NYCRR § 1401.5(c)(3). However, those authorities provide a limited exception to that rule:

If an agency determines to **grant** a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request,



the agency shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.

POL § 89(3)(a) (emphasis added); 21 NYCRR § 1401.5(c)(3) (same). Notably, as distinct from the first half of POL § 89(3)(a) and 21 NYCRR § 1401.5(c)(3) which permit an agency to provide “an approximate date when the request will be granted **or denied** in whole or in part” within 20 business days of the acknowledgement of receipt of the request, the relevant law only permits an agency to provide a date more than 20 business days after the acknowledgement date where it “determines **to grant** a request in whole or in part.” *Id.* (emphasis added). The option to further push out the agency’s date for a response or production is not available if an agency is to deny a request.

Additionally, an agency is not entitled to indefinitely push out its response date merely by providing periodic “updates” on a request. If an agency purports to require additional time beyond the 20 business days to which it is entitled in the first instance, it is required to provide “both the reason for the inability to grant the request within twenty business days and **a date certain** within a reasonable period, depending on the circumstances, **when the request will be granted in whole or in part.**” POL § 89(3)(a) (emphasis added). The date certain provided is not a placeholder; it is the date upon which a substantive response is due. This law is supplemented by regulation which also makes clear that if an agency will miss an initial approximate deadline by when the response is due, it is entitled to one extension, until a date certain, when the request will be granted:

[I]f the receipt of request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part within 20 business days of such acknowledgment, but circumstances prevent disclosure within that time, providing a statement in writing with 20 business days of such acknowledgment stating the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.

21 NYCRR § 1401.5(c)(4). There is no authority permitting an agency to respond to a FOIL request by providing a date by which an amorphous “update” will be provided.

21 NYCRR § 1401.5(e) provides a list of the various scenarios where, notwithstanding the absence of an explicit denial of a FOIL request, a petitioner is entitled to pursue further remedies based on a constructive denial of the request. Among those scenarios are where an agency

(2) acknowledges the receipt of a request within five business days but fails to furnish an approximate date when it will grant or deny a request in whole or in part; . . . (6) does not grant a request in whole or in part within 20 business days of its acknowledgment of the receipt of a request and fails to provide the reason in writing explaining its inability to do so **and a date certain by which the request will be granted in whole or in part**; or (7) responds to a request, stating that more than 20 business days is needed to grant or deny the request in whole or in part and provides a date certain within which it will do so, **but such date is unreasonable under the circumstances of the request**.

21 NYCRR § 1401.5(e)(2), (e)(6), (e)(7) (emphasis added).

## 2. The DA’s Office’s Impermissible Responses to the Requests

In light of the foregoing statutory and regulatory framework, it is clear that the DA’s Office’s responses to AFL’s Requests were insufficient. There was no attempt by the DA’s Office to determine an “approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied.” POL § 89(3)(a); *see also S. Shore Press, Inc. v. Havemeyer*, 136 A.D.3d 929, 930 (2d Dep’t 2016) (“The acknowledgment did not provide the approximate date when the FOIL request would be granted in whole or part, as required by Public Officers Law § 89(3)(a).”). Without exception, all of AFL’s Requests were answered with a boilerplate<sup>2</sup> letter acknowledging the Request was received and noting that AFL could “expect

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<sup>2</sup> As described at further length in the Verified Petition, the boilerplate nature of these responses is further evidenced by the fact that the DA’s Office initially responded to Request 24F0359 on June 6, 2024, promising a response in two months, *Ex. 18*, only to identify, after a month and a half, that it believed the Request was overly broad and could not be completed as drafted, *Ex. 19*. This scenario is explicitly contemplated in the regulations which require that such an issue is to be

a determination or an update” by a certain date. *Exs. 2, 18, 23, 28*. Unsurprisingly, in each instance, a determination was *not* made on the given date. With respect to Request 27F0274, Request 24F0360, and Request 24F0387, the response proffered on the given date again suggested that the next letter would provide either a determination or an update, *Exs. 3, 24, 29*, notwithstanding that, pursuant to 21 NYCRR § 1401.5(c)(4), a date certain for a response was required to be given. Meanwhile, with respect to Request 24F0359, there was not even a pretense that communication to be sent on the date provided could be a final determination of the Request, only noting that AFL could “expect an update” on its request after two more months of waiting. *Ex. 21*.

The First Department has recognized that constructive denial of a FOIL request occurs where an agency’s response (or lack thereof) fits into one of the categories enumerated in 21 NYCRR § 1401.5(e). *See Kohler-Hausmann v. New York City Police Dep’t*, 133 A.D.3d 437, 437 (1st Dep’t 2015) (holding, with citation to 21 NYCRR § 1401.5(e), that “NYPD constructively denied the FOIL request”); *Lucas v. Bd. of Educ. of E. Ramapo Cent. Sch. Dist.*, 57 Misc. 3d 1207(A) (Sup. Ct. Rockland Cty. 2017) (finding constructive denial of FOIL request where “[a]lthough Respondent may have eventually responded to Petitioners’ FOIL requests, Respondent did not do so in the manner prescribed by the Freedom of Information Law”). Request 27F0359, Request 24F0360, and Request 24F0387 were *never* given an approximate date by which the Request would be determined, only boilerplate regarding receiving an indeterminate response or update, and, once the initial “update” deadline was reached, the DA’s Office failed to provide a date certain by which the Request would be granted in whole or in part. Request 27F0274,

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raised in the agency’s initial communication to the petitioner, sent within five days of the receipt of such a request. 21 NYCRR § 1401.5(c)(1).

meanwhile, suffered from the same infirmity in that it went over a year without the required deadline being given, but magnified by the extreme length of time it has been pending, for more than a year and a half. *See NYP Holdings, Inc. v. New York City Police Dep't*, 220 A.D.3d 487, 489 (1st Dep't 2023) (finding “respondents had no reasonable basis for denying access to most of the records sought for more than one year”) (internal citation and quotation marks omitted). Furthermore, when the DA’s Office finally did provide a date certain for the determination of that Request, *Ex. 14*, it subsequently failed to meet that deadline by only providing a partial determination, *Ex. 16*.

In the Appeal, AFL brought to the DA’s Office’s attention its failure to comply with the mandates of POL § 89(3)(a) and 21 NYCRR § 1401.5. *Ex. 12*. The DA’s Office refused to countenance that its acts were improper under the FOIL, arguing in the Denial that the boilerplate extension letters provided “continued to keep [AFL] apprised of [the officer’s] efforts in a timely fashion, in accordance with Public Officers Law (POL) § 89(3)(a).” *Ex. 15*. Thus, the DA’s Office has established its position that such communications constitute compliance with the statutory and regulatory mandates of the FOIL, rendering futile any further attempt at appealing to the DA’s Office regarding its treatment of the Requests. *Friedman v. Rice*, 30 N.Y.3d 461, 473 (2017) (“The general rule requiring a party to exhaust administrative remedies before seeking judicial review of an agency’s determination need not be followed when resort to an administrative remedy would be futile.”) (internal ellipsis and quotation marks omitted); *New York Times Co. v. City of New York Police Dep't*, 103 A.D.3d 405, 409 (1st Dep't 2013) (“Accordingly, in the context of FOIL, a futility exception exists to the judicially-created rule that administrative remedies must be exhausted.”) (internal quotation marks omitted).

The DA's Office's boilerplate responses to the Requests, refusing to substantively assess those Requests in a timely fashion and appropriately respond in the manner called for, wholly undermines the policy goals of the FOIL. This Court should not permit the Respondents to create further unreasonable delay in responding to the Requests and, as a deterrent to such bad faith behavior, should grant AFL an award of its reasonable attorneys' fees under POL § 89(4)(c). *See Edmond v. Suffolk Cnty.*, 197 A.D.3d 1297, 1299 (2d Dep't 2021) ("In order to create a clear deterrent to unreasonable delays and denials of access [and thereby] encourage every unit of government to make a good faith effort to comply with the requirements of FOIL, the Legislature has provided for the assessment of an attorney's fee and other litigation costs in FOIL proceedings.") (alteration in original).

#### V. CONCLUSION

For the reasons stated above, AFL respectfully requests that the Court grant its Petition and award all relief sought therein.

Dated: September 16, 2024  
New York, New York

Respectfully submitted,

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*Counsel for the Petitioner  
America First Legal Foundation*

**CERTIFICATION OF COUNSEL**

Edward Andrew Paltzik, Esq., an attorney duly admitted to the practice of law in the Courts of the State of New York, does hereby affirm, pursuant to the Uniform Civil Rules for the Supreme Court & the County Court, 22 N.Y.C.R.R. 202.8-b(c), that the word count of the processing system used to prepare the aforesaid document indicates that the document contains no more than 2,914 words, exclusive of the caption and signature block.

/s/ Edward Andrew Paltzik

Edward Andrew Paltzik, Esq.



# REQUEST FOR JUDICIAL INTERVENTION

Supreme COURT, COUNTY OF New York

Index No: \_\_\_\_\_ Date Index Issued: \_\_\_\_\_

**For Court Use Only:**

**CAPTION** Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

IAS Entry Date

America First Legal Foundation

Judge Assigned

Plaintiff(s)/Petitioner(s)

-against-

Alvin Bragg in his official capacity as District Attorney of the County of New York, New York County District Attorney's Office

RJI Filed Date

Defendant(s)/Respondent(s)

**NATURE OF ACTION OR PROCEEDING:** Check only one box and specify where indicated.

**COMMERCIAL**

- Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)
- Contract
- Insurance (where insurance company is a party, except arbitration)
- UCC (includes sales and negotiable instruments)
- Other Commercial (specify): \_\_\_\_\_

**NOTE:** For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the **COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C)**.

**MATRIMONIAL**

- Contested  
**NOTE:** If there are children under the age of 18, complete and attach the **MATRIMONIAL RJI Addendum (UCS-840M)**.  
For Uncontested Matrimonial actions, use the Uncontested Divorce RJI (**UD-13**).

**REAL PROPERTY** Specify how many properties the application includes: \_\_\_\_\_

- Condemnation
- Mortgage Foreclosure (specify):  Residential  Commercial  
Property Address: \_\_\_\_\_

**NOTE:** For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the **FORECLOSURE RJI ADDENDUM (UCS-840F)**.

Partition  
**NOTE:** Complete and attach the **PARTITION RJI ADDENDUM (UCS-840P)**.

- Tax Certiorari (specify): Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_
- Tax Foreclosure
- Other Real Property (specify): \_\_\_\_\_

**OTHER MATTERS**

- Certificate of Incorporation/Dissolution [see **NOTE** in **COMMERCIAL** section]
- Emergency Medical Treatment
- Habeas Corpus
- Local Court Appeal
- Mechanic's Lien
- Name Change/Sex Designation Change
- Pistol Permit Revocation Hearing
- Sale or Finance of Religious/Not-for-Profit Property
- Other (specify): \_\_\_\_\_

**SPECIAL PROCEEDINGS**

- Child-Parent Security Act (specify):  Assisted Reproduction  Surrogacy Agreement
- CPLR Article 75 - Arbitration [see **NOTE** in **COMMERCIAL** section]
- CPLR Article 78 - Proceeding against a Body or Officer
- Election Law
- Extreme Risk Protection Order
- MHL Article 9.60 - Kendra's Law
- MHL Article 10 - Sex Offender Confinement (specify):  Initial  Review
- MHL Article 81 (Guardianship)
- Other Mental Hygiene (specify): \_\_\_\_\_
- Other Special Proceeding (specify): \_\_\_\_\_

**STATUS OF ACTION OR PROCEEDING** Answer YES or NO for every question and enter additional information where indicated.

YES NO

- Has a summons and complaint or summons with notice been filed?  YES  NO If yes, date filed: \_\_\_\_\_
- Has a summons and complaint or summons with notice been served?  YES  NO If yes, date served: \_\_\_\_\_
- Is this action/proceeding being filed post-judgment?  YES  NO If yes, judgment date: \_\_\_\_\_

**NATURE OF JUDICIAL INTERVENTION** Check one box only and enter additional information where indicated.

- Infant's Compromise
- Extreme Risk Protection Order Application
- Note of Issue/Certificate of Readiness
- Notice of Medical, Dental or Podiatric Malpractice Date Issue Joined: \_\_\_\_\_
- Notice of Motion Relief Requested: \_\_\_\_\_ Return Date: \_\_\_\_\_
- Notice of Petition Relief Requested: Article 78 (Body or Officer) Return Date: 10/09/2024
- Order to Show Cause Relief Requested: \_\_\_\_\_ Return Date: \_\_\_\_\_
- Other Ex Parte Application Relief Requested: \_\_\_\_\_
- Partition Settlement Conference
- Poor Person Application
- Request for Preliminary Conference
- Residential Mortgage Foreclosure Settlement Conference
- Writ of Habeas Corpus
- Other (specify): \_\_\_\_\_

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.



<b>RELATED CASES</b> List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the <b>RJI Addendum (UCS-840A)</b> .				
Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case
America First Legal Foundation v. Alvin Bragg e...	157415/2024	New York Supreme Court	Lynn R. Kotler	related procedural history

<b>PARTIES</b> For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the <b>RJI Addendum (UCS-840A)</b> .				
Un-Rep	Parties	Attorneys and Unrepresented Litigants	Issue Joined	Insurance Carriers
	List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 <sup>rd</sup> party plaintiff, etc.)	For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	For each defendant, indicate if issue has been joined.	For each defendant, indicate insurance carrier, if applicable.
<input type="checkbox"/>	Name: America First Legal Foundation Role(s): Plaintiff/Petitioner	EDWARD PALTZIK, BOCHNER PLLC, 1040 AVENUE OF THE AMERICAS FL 15 , NEW YORK, NY 10018, edward@bochner.law	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input checked="" type="checkbox"/>	Name: Bragg, Alvin Role(s): Defendant/Respondent	One Hogan Place, New York, NY 10013	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input checked="" type="checkbox"/>	Name: New York County District Attorney's Office Role(s): Defendant/Respondent	One Hogan Place, New York, NY 10013	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
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**I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.**

Dated: 09/16/2024

EDWARD ANDREW PALTZIK

Signature

4454252

EDWARD ANDREW PALTZIK

Print Name

Attorney Registration Number

# Request for Judicial Intervention Addendum

Supreme COURT, COUNTY OF New York

**Index No:**

**For use when additional space is needed to provide party or related case information.**

**PARTIES:** For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in "Attorneys" space.

**RELATED CASES:** List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases.

Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case
America First Legal Foundation v. Alvin Bragg et al	157415/2024	New York Supreme Court	Lynn R. Kotler	related procedural history