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New York Supreme Court

Appellate Division—First Department

In the Matter of the Application of

ISSA KOHLER-HAUSMANN,

Petitioner-Appellant,

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

– against –

NEW YORK CITY POLICE DEPARTMENT and WILLIAM BRATTON, in his official capacity as Commissioner of New York City Police Department,

Respondents-Respondents.

BRIEF FOR *AMICI CURIAE* THE ASSOCIATED PRESS, DAILY NEWS, L.P., THE NEW YORK TIMES COMPANY AND PROPUBLICA

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PRELIMINARY STATEMENT

In this case, Respondent-Appellee New York City Police Department (NYPD) engaged in unreasonable delay that violated both the letter and the spirit of the Freedom of Information Law (FOIL), Public Officers Law § 84, *et seq*. Yet the trial court endorsed arguments that would allow NYPD to evade any sanctions for failing to comply with FOIL, even in cases of willful non-compliance. This case thus has significance far beyond the parties to the dispute. If upheld by this Court, the trial court's holding would allow agencies to avoid any threat of statutory fee awards when they ignore their obligation to respond timely to FOIL requests, a result that would seriously undermine the system of open government that the Legislature mandated with FOIL.

The trial court in this case accepted two agency tactics that this Court should decisively reject. First, for almost a year NYPD avoided its legal obligation to respond to a simple request for data submitted by Petitioner-Appellant (Petitioner), a PhD candidate working on her thesis. NYPD repeatedly said it needed more time to respond to the request, but quickly agreed to provide data *after* Petitioner was forced to file an Article 78 petition to compel compliance. Second, after determining that the data was not exempt from disclosure and could readily be produced, NYPD refused to promptly disclose the data unless Petitioner withdrew her lawsuit—holding hostage documents it was required to disclose unless

Petitioner agreed to relinquish her statutory right to recover attorney's fees and the costs she had to incur to initiate litigation.

The trial court endorsed this strategy. The court accepted NYPD's argument that the Article 78 petition was not "ripe" because NYPD had never specifically refused to disclose the data before the petition was filed, even though Petitioner had diligently pursued her request for more than a year and had exhausted all administrative remedies. Then, once the data was belatedly disclosed, the trial court declared the petition moot and refused to consider Petitioner's request for an award of fees instead of recognizing that Petitioner had substantially prevailed in obtaining the data sought by her Article 78 petition and taking up her fee request.

If these twin rulings on ripeness and mootness are allowed to stand, NYPD and other agencies will have a judicially approved roadmap to avoid their FOIL disclosure obligations, and requesters will be discouraged from seeking records in the first place. Agencies could ignore FOIL requests for months or years and disclose information only to those rare requesters with the patience and resources to sue. The public's ability to meaningfully monitor the activities of government through FOIL would be threatened.

This is not a hypothetical concern: NYPD regularly fails to provide timely FOIL responses. Last year, while serving as Public Advocate, New York Mayor Bill de Blasio issued a report grading eighteen city agencies on their FOIL

compliance. Of the agencies that received more than 1,000 annual requests, NYPD ranked dead last and was one of only two agencies to receive a failing grade of F. The de Blasio report concluded gloomily that there are "few mechanisms aside from appeals and judicial remedy to force compliance when an agency violates" its obligations under FOIL.[1] But the combination of delay and disclosure present here would kick away even this basic judicial backstop.

Amici news organizations submit this brief to underscore the importance of attorney's fees—and judicial review—to FOIL. FOIL expressly authorizes attorney's fees to create an economic incentive that the Legislature considered essential to promote compliance, including compliance with FOIL's statutory and regulatory deadlines. *See* 21 NYCRR § 1401.5. This Court should not endorse the machinations of NYPD, whose legal theories in this case would effectively remove the primary incentive for agency compliance with FOIL.

INTERESTS OF AMICI

Amici are four New York-based news organizations that regularly rely upon FOIL's statutory access rights in their newsgathering and reporting. The *amici* are:

> The Associated Press (AP), a not-for-profit mutual news cooperative. The members of AP are more than 1,500 newspapers and more than 5,000 television and radio stations throughout the United States. AP has its

[1] Bill de Blasio, BREAKING THROUGH BUREAUCRACY: EVALUATING GOVERNMENT RESPONSIVENESS TO INFORMATION REQUESTS IN NEW YORK CITY at 18 (2013), available at http://www.streetsblog.org/wp-content/pdf/deBlasioFOILReport.pdf

headquarters and main news operations in New York City and has staff in 321 locations worldwide.

Daily News, L.P., which publishes the *New York Daily News*, one of the largest newspapers in the United States with a weekday circulation of more than 715,000 and a Sunday circulation of more than 775,000, primarily in the New York City metropolitan area.

The New York Times Company, owner of the *New York Times* and the *International New York Times*.

ProPublica, an independent, non-profit newsroom with its headquarters in Manhattan that produces investigative journalism in the public interest.

These news organizations have a vital interest in maintaining the mechanism crafted by the Legislature to promote timely agency compliance with FOIL's disclosure obligations—the potential for judicial review and fee awards when they must resort to litigation.

STATEMENT OF FACTS

Petitioner filed her FOIL request in July 2012, seeking data needed to complete a PhD dissertation that explored the operations of two government entities: NYPD and the New York criminal courts. *See* R. 108.[2] After ten months of waiting, four identical delay letters, an unanswered administrative appeal, and more than a dozen fruitless phone calls, Petitioner commenced the present Article 78 proceeding in May 2013, seeking both access to the records and attorney's fees. *See* R. 105-29.

[2] All citations in this form are to the record on appeal, which is attached to Petitioner's brief.

Just days before its return-date deadline, NYPD requested a one-month adjournment and a meeting with Petitioner to discuss disclosing the requested data. *See* R. 135. NYPD quickly offered to provide data, but its offer came with a catch: The department would not provide any data unless Petitioner withdrew her lawsuit and, in particular, her request for attorney's fees. *See* R. 136. NYPD offered Petitioner a Hobson's choice: take the records and ignore the unreasonable delay, or challenge the delay in court and risk losing access to the data she needed.

Petitioner chose to move forward with the lawsuit. NYPD responded by issuing a letter it labeled an "initial response" to Petitioner's request, and then convinced the trial court that this much delayed post-litigation response meant petitioner's case was not ripe when filed. In other words, Petitioner's case, filed to demand a substantive response, was not ripe because NYPD had yet to issue a substantive response. *See In re Kohler-Hausmann v. N.Y.C. Police Dep't*, 42 Misc. 3d 1214(A), 2014 WL 223371, at *2 (Sup. Ct. N.Y. Cnty. Jan. 13, 2014). NYPD next succeeded in urging the trial court to find Petitioner's claim "moot to the extent that respondents provided petitioner with records responsive to her FOIL request during the pendency of the proceeding." *Id*. at *3.

The trial court accepted NYPD's arguments and dismissed the petition even though (a) it was NYPD's months of unresponsiveness that made the litigation necessary; (b) Petitioner had prevailed in compelling disclosure of the data only by

filing the lawsuit; and (c) she had asserted a claim for attorney's fees based on NYPD's unreasonable delay, which the statute expressly allows. NYPD's success with these heads-we-win-tails-you-lose strategies threatens the basic structure of FOIL.

ARGUMENT

I.
THE AVAILABILITY OF ATTORNEY'S FEES IS CRUCIAL TO THE PROPER FUNCTIONING OF THE FREEDOM OF INFORMATION LAW

FOIL contains fee-shifting provisions that are extraordinary in American law. The statute contains these provisions to create incentives for the press and public to request records and for agencies to comply with the law. Under the statute, a court is authorized to award "reasonable attorney's fees and other litigation costs" to any requestor who "substantially prevail[s]" in obtaining disclosure through litigation, where an agency either "had no reasonable basis for denying access" or, as here, "fail[ed] to respond to a request or appeal within the statutory time." Public Officers Law § 89(4)(c)(i). It makes no difference whether the records are disclosed "voluntarily" before the litigation concludes. A petitioner is still entitled to fees when resort to litigation is necessary due to unreasonable agency delay. *See, e.g., In re New York State Defenders Ass'n v. New York State Police*, 87 A.D.3d 193 (3d Dep't 2011) (the "'voluntariness' of [a] disclosure is irrelevant to the issue of whether petitioner substantially prevailed in [a FOIL]

proceeding"); *In re N.Y. Civil Liberties Union v. City of Saratoga Springs*, 87 A.D.3d 336, 338 (3d Dep't 2011) (because "petitioner ultimately obtained all of the documents it sought, it is evident that petitioner substantially prevailed").

Petitioner demonstrates in her brief that she substantially prevailed in obtaining disclosure when NYPD failed to respond "within the statutory time." *Amici* do not address this point, but submit this brief to underscore the significant harm to the public interest that will result if the potential to recover attorney's fees in the face of agency delay is simply written out of the statute. The trial court's decision, if permitted to stand, makes this risk very real.

A. Attorney's Fees Create an Essential Incentive for Private Litigants to Pursue Disclosure of Information in the Public Interest

FOIL's fee-shifting provision is intended to encourage the release of public information. New York modeled its enforcement mechanism on the federal Freedom of Information Act (FOIA), which contains an almost identical fees provision. *See* 5 U.S.C. § 552(a)(4)(E)(i). Both statutes are legislative exceptions to the "American Rule" that litigants pay their own costs. *See generally* Thomas D. Rowe, Jr., *The Legal Theory of Attorney Fee Shifting: A Critical Overview*, 1982 DUKE L.J. 651, 652-53.

Fee shifting encourages and enables litigants to pursue records with a broad social benefit—information that would not otherwise be disclosed because the costs of litigation are often prohibitive. In a democracy, information about the

government is a public good. Society benefits from its disclosure, but if the benefits are widely shared and the costs are borne by a few, not enough information will be made available. By offering the possibility of compensation, FOIL's fee-shifting provision enables and incentivizes all requestors—not just those with the resources or personal interests to sue—to pursue information on which our democracy depends.

FOIL refuses to discriminate between petitioners based on their ability to pay for litigation. Instead, "[t]he legislature . . . declares 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." Public Officers Law § 84 (emphasis added). But litigation without the potential to recover fees and costs is not a viable course of action or a desirable state of affairs. Because most people do not have the resources to sue the government, fee shifting is necessary to ensure that not only those with special interests or surplus resources sue for information under FOIL.

Federal courts have recognized the important role played by fee-shifting provisions in empowering the public to pursue needed disclosure. In discussing the largely identical provision in the federal FOIA, the D.C. Circuit explained,

> [C]ourts should always keep in mind the basic policy of the FOIA to encourage the maximum feasible public access to government information and the fundamental purpose of [the fee-shifting provision] to facilitate citizen access to the courts to vindicate their

> statutory rights . . . A grudging application of this provision, which would dissuade those who have been denied information from invoking their right to judicial review, would be clearly contrary to congressional intent.

Nationwide Bldg. Maint., Inc. v. Sampson, 559 F.2d 704, 715 (D.C. Cir. 1977); *see also Tax Analysts v. DOJ*, 965 F.2d 1092, 1095 (D.C. Cir. 1992) (noting that FOIA's attorney's fees provision was designed to lower "insurmountable barriers presented by court costs and attorney fees to the average person requesting information") (internal citations omitted).

Fee shifting also encourages agencies to comply with the law by making litigation more expensive when they act improperly. Without a fee-shifting provision, agencies would be more likely to drag their feet, knowing that most parties will not litigate. Or, as NYPD did here, agencies will simply wait until a lawsuit is filed before providing a substantive response—a strategy that defeats FOIL's goals of facilitating broad, timely public access to information.

B. The Legislature Included the FOIL Fee Provision Expressly To Combat the Agency Practices at Issue Here, Including Unreasonable Delay and a "Sue Us to Get Documents" Attitude

The New York Legislature made attorney's fees recoverable under FOIL specifically to avoid the type of delay by NYPD in this case. Indeed, the Legislature amended FOIL *twice* to cement the availability of fees when an agency ignores its obligation to timely comply with FOIL. The legislature made this firm commitment in recognition of the fact that, if an agency could unreasonably delay

a FOIL response, "the accountability the law seeks to ensure [would be] lost." Senate Introducer's Mem. in Support, Bill Jacket, L. 2006, ch. 492; *see also City of Saratoga Springs*, 87 A.D.3d at 339 (holding that a failure to award fees when agencies settle out of court would "subvert the purposes of the [FOIL] statute").

The Legislature first added the fee-shifting provision in 1982 because "'[c]ertain agencies ha[d] adopted a 'sue us' attitude in relation to providing access to public records,' thereby violating the Legislature's intent in enacting FOIL to foster open government." *City of Saratoga Springs*, 87 A.D.3d at 338 (quoting Assembly Mem. in Support at 1, Bill Jacket, L. 1982, ch. 73). Without the threat of attorney's fees, agencies could "shield their non-exempt records from disclosure until . . . they are hauled into court." Letter from the N.Y. St. Bar Ass'n Comm. on Media Law, June 30, 2006, Bill Jacket, L. 2006, ch. 492. Absent fee awards, the statutory duty to give FOIL requests reasonable and timely attention was all bark and no bite—little more than "empty rhetoric." *Id.*

But the 1982 provision did not sufficiently deter some agencies' bad practices. By 2006, the Legislature had become fed up not only with the persistent "sue us" attitude, but also with agencies' unreasonable delay. To remedy this, the Legislature in 2006 made it easier for litigants to recover fees by making the failure to respond within the statutorily prescribed time an "additional, alternative basis for an award of counsel fees." *City of Saratoga Springs*, 87 A.D.3d at 338.

This addition was intended to address the very type of behavior exhibited here by NYPD. The addition sought "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." *Id*. (quoting Senate Introducer Mem. in Support, Bill Jacket, L. 2006, ch. 492 at 5).

C. FOIL's Fee-Shifting Provision Can Accomplish Its Open Government Goal Only If Enforced by the Courts

This core deterrence goal of FOIL's fee-shifting provision depends on court enforcement. In this regard, other mechanisms have struggled. In states that have enacted "provisions calling for stiff penalties, such as fines or criminal prosecution, courts rarely, if ever, impose them." Mem. of the N.Y. Dep't of St. Comm. on Open Gov't, Bill Jacket, L. 2006, ch. 492. Fee-shifting provisions, on the other hand, generally improve compliance with open-government laws without inflicting harsh penalties—but that compliance still depends on the willingness of the judiciary to observe them.

The Legislature's 2006 amendment highlighted the importance of court enforcement to the statutory scheme. After the original 1982 standard for awarding fees failed to produce sufficient compliance, the 2006 amendment was proposed specifically because the public still had "no assurance of a fee recovery in even egregious cases of agency nondisclosure," and without such assurance "FOIL's efficacy as an open government mechanism will be seriously diminished

by under enforcement." Letter from the N.Y. St. Bar Ass'n Comm. on Media Law, June 30, 2006, Bill Jacket, L. 2006, ch. 492. Since 2006, many New York courts have recognized their role in enforcing fee shifting as the Legislature intended: to incentivize agency compliance. *See, e.g., In re Legal Aid Soc'y v. New York State Dep't of Corr. & Cmty. Supervision*, 105 A.D.3d 1120, 1122 (3d Dep't 2013); *City of Saratoga Springs*, 87 A.D.3d at 338; *In re New York State Defenders Ass'n*, 87 A.D.3d at 196; *Hearst Corp. v. City of Albany*, 88 A.D.3d 1130, 1133 (3d Dep't 2011).

D. The Trial Court's Rulings on Ripeness and Mootness Eliminate Any Potential for the Very Fee Awards the Legislature Intended

Rather than enforce the fee-shifting provision as the Legislature intended, the trial court dismissed this case on both ripeness and mootness grounds, thereby rewarding rather than discouraging NYPD's unreasonable delay. By deeming the case "premature," the court allowed NYPD to use its own unreasonable delay as a *defense* to any fee recovery. Even though NYPD had never affirmatively granted or denied Petitioner's request for more than a year, the court accepted NYPD's argument that the challenge to the agency's constructive denial was "premature." By dismissing the case as "moot" once NYPD finally disclosed the data, the trial court endorsed NYPD's strategy of delay and provided a roadmap to agencies seeking to avoid FOIL's fee-shifting provisions. The decision transforms a

statutory basis for an award of fees—delaying disclosure of records until *after* litigation is commenced—into a jurisdictional defect. Simply by disclosing the records, an agency was allowed to moot an Article 78 petitioner's request for fees. This ruling eliminates the potential for judicial consideration of fee requests in virtually any case of undue delay, despite the express statutory authorization of fee awards when such delay occurs.

The 2006 amendment recognized that court awards of attorney's fees and costs are essential to give the public:

> a remedy against recalcitrant agencies which, secure in the knowledge that few parties can afford the expense and burdens of litigation, withhold non-exempt records and *then avoid an attorneys' fees award by claiming that their post-litigation disclosure has mooted the proceeding*.

Letter from the N.Y. St. Bar Ass'n Comm. on Media Law, June 30, 2006, Bill Jacket, L. 2006, ch. 492 (emphasis added). Plainly, the Legislature intended to prevent *exactly* the kind of arguments that NYPD offered and the trial court accepted in this case. On the facts here, Petitioner was entitled to a hearing on her request for fees.

Not only does the decision of the trial court contravene the purpose of the fee-shifting provision, but it also contradicts existing case law. New York courts and their federal counterparts have routinely refused to dismiss petitions for fees simply because an agency released the requested documents before the court issued

its decision. A petitioner can recoup attorney's fees when she "substantially prevails" against an agency, which can include instances where the agency "ultimately provide[s] the records sought on a voluntary basis in the absence of a consent decree or judgment of the Supreme Court." *In re New York State Defenders Ass'n.*, 87 A.D.3d at 195; *see also Hearst Corp.*, 88 A.D.3d at 1133; *In re Powhida v. City of Albany*, 147 A.D.2d 236, 239 (3d Dep't 1989); *Nationwide Bldg. Maint., Inc. v. Sampson*, 559 F.2d 704, 710 (D.C. Cir. 1977).

In refusing to dismiss such cases for mootness, courts recognize that doing so would defeat the purpose of FOI fee-shifting provisions. As the D.C. District Court has emphasized in the federal FOIA context, if such a case were dismissed for mootness, "[t]he government would remain free to assert boilerplate defenses, and private parties who served the public interest by enforcing the Act's mandates would be deprived of compensation for the undertaking." *Goldstein v. Levi*, 415 F. Supp. 303, 305 (D.D.C. 1976). In other words, "to allow a respondent to automatically forestall an award of counsel fees simply by releasing the requested documents . . . would contravene the very purposes of FOIL's fee-shifting provision." *In re New York State Defenders Ass'n*, 87 A.D.3d at 195.

Similarly, dismissing on ripeness or mootness grounds when an agency fails to respond for almost a year, only to disclose information when sued, would reward delay and defeat the very purpose of FOIL's fee-shifting provision. If this

Court permits the type of administrative evasion pursued here by NYPD, many illegal FOIL practices would escape judicial review all together.

II.
RECOGNIZING THE POTENTIAL FOR A FEE AWARD IS PARTICULARLY IMPORTANT HERE BECAUSE NYPD IS A REPEAT FOIL OFFENDER

It is particularly disturbing that the trial court dismissed Petitioner's fee request without consideration because NYPD has been identified as one of the worst violators of the Freedom of Information Law. In Public Advocate Bill de Blasio's assessment of the transparency of New York agencies, NYPD was one of only two City agencies to receive an unqualified failing grade of F. *See* BREAKING THROUGH BUREAUCRACY at 6.

In de Blasio's report, NYPD had by far the largest number of unanswered FOIL requests of any city agency. At the time of the study, well over half of the city's 1,000 unanswered FOIL requests were filed with NYPD. In fact, the de Blasio report found that NYPD failed to issue *any* response to nearly one-third of the FOIL requests it received. *Id.* at 6. It left another 28 percent unprocessed for more than the mandated 60-day period, as occurred in this case. *Id.* at 6. Tellingly, NYPD did not provide even the Public Advocate with full data about its FOIL requests. *Id*. at 7.

New York courts have repeatedly found that NYPD denies FOIL requests without proper basis. In *In re New York Times Co. v. City of New York Police Department*, for example, this Court found that NYPD had refused without basis to provide statistics on bias crime incidents. 103 A.D.3d 405 (1st Dep't 2013). Similarly, in *New York Civil Liberties Union v. New York City Police Department*, the Supreme Court for New York County held that data on stop-and-frisk searches that NYPD refused to disclose were "clearly subject to FOIL disclosure" and rebuked NYPD for "not offer[ing] any reason" for its denial of the FOIL request. 2011 WL 675562 at *21 (Sup. Ct. N.Y. Cnty. 2009). Indeed, NYPD has a long history of misapplying narrow FOIL exemptions to reject disclosure on a blanket basis.[3] Courts have refused to allow any pattern-and-practice-type claims to address this behavior, so fee awards in individual cases provide the only incentive for compliance. *See N.Y. Times Co*, 103 A.D.3d at 406 (rejecting pattern and practice claim).

[3] *See, e.g., Loevy & Loevy v. N.Y.C. Police Dep't*, 957 N.Y.S.2d 628, 632 (Sup. Ct. N.Y. Cnty. 2013) (holding that NYPD wrongly invoked blanket exemption under FOIL without offering any information "on the generic types of documents, or categories of documents, which are allegedly exempt"); *Exoneration Initiative v. N.Y.C. Police Dep't*, 966 N.Y.S.2d 825, 831 (Sup. Ct. N.Y. Cnty. 2013) (holding that NYPD wrongly invoked blanket exemption under FOIL for arrest records); *In re Castle House Dev., Inc. v. City of N.Y. Police Dep't*, 24 Misc. 3d 1222(A), 897 N.Y.S.2d 668, at *6 (Sup. Ct. N.Y. Cnty. 2009) (holding that NYPD wrongly claimed "an invalid, inapt exemption"); *In re N.Y. Civil Liberties Union v. N.Y.C. Police Dep't*, 20 Misc. 3d 1108(A), 866 N.Y.S.2d 93, at *3 (Sup. Ct. N.Y. Cnty. 2008) (holding that NYPD wrongly claimed blanket FOIL exemption for database of police stops of civilians); *In re Brown v. N.Y.C. Police Dep't*, 264 A.D. 2d 558, 561 (1st Dep't 1999) (holding that NYPD wrongly claimed FOIL's enforcement exemption for records that were not protected from disclosure); *In re Johnson v. N.Y.C. Police Dep't*, 257 A.D.2d. 343, 348 (1st Dep't 1999) (holding that NYPD wrongly claimed a blanket privacy exemption for all police complaint follow-up reports).

NYPD's demonstrated pattern of FOIL evasion is particularly troubling because the need for public oversight of local police forces is acute. NYPD is the nation's largest police department. It employs over 34,000 police officers, controls an annual budget of over $4.4 billion, and exercises jurisdiction over eight million city residents. *See* Mayor's Office of Operations, Preliminary Mayor's Management Report, *New York City Police Department*, 1-6 (Feb. 2013), available at http://www.nyc.gov/html/ops/downloads/pdf/pmmr2013/2013_pmmr.pdf (accessed Nov. 17, 2014). NYPD interacts with the public in a manner that is more visceral and tangible than perhaps any other agency in the city. In 2011, for example, NYPD officers stopped and questioned New Yorkers almost 700,000 times. *See* NYCLU, *Stop-and-Frisk Data*, http://www.nyclu.org/content/stop-and-frisk-data (accessed Nov. 17, 2014). The disclosure provisions of FOIL are crucial to citizen oversight of NYPD.

NYPD often interacts with marginalized communities in New York. The fee-shifting provision that the holding in this case implicates is particularly important to members of these communities and institutional organizations that seek information relevant to their dealings with NYPD.[4] Reporters, academics,

[4] *See, e.g.*, Joint FOIL request by Brennan Center for Justice and Muslim Advocates Seeking Documents Related to NYPD Surveillance of New York City Muslim Communities (Sept. 21, 2011), available at: https://www.muslimadvocates.org/wp-content/uploads/2014/04/Original-FOIL1.pdf (accessed Nov. 17, 2014); Dean Meminger, *Muslim Groups Petition*

grassroots activists, and other watchdogs vary in their institutional resources, but all rely on FOIL's fee-shifting provisions.[5] Oversight by each of these groups is valuable to promote the proper functioning of NYPD, but such oversight is unlikely without meaningful judicial enforcement of FOIL's fee-shifting provisions.

Without judicial oversight and the potential for attorney's fees, many requestors will be effectively barred from using FOIL. The potential to recover fees and costs enables FOIL enforcement, but that potential can only be realized if courts reject strategic agency maneuvers such as those employed by NYPD in this case. Administrative foot-dragging should not get the better of judicial review.

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for NYPD Surveillance Records, NY1 (Nov. 26, 2013) (detailing attempts by Muslim activists to obtain records on NYPD surveillance practices), available at: http://www.ny1.com/content/news/criminal_justice/199365/muslim-groups-petition-for-nypd-record (accessed Nov. 17, 2014).

[5] *See, e.g.*, Shawn Musgrave, *NYPD Has a Freedom of Information Handbook, After All*, MUCK ROCK NEWS (Jul. 2, 2014) available at: https://www.muckrock.com/news/archives/2014/jul/02/nypd-has-freedom-information-handbook-after-all/ (detailing NYPD's refusal to disclose its FOIL practices to news website) (accessed Nov. 17, 2014).

CONCLUSION

For the foregoing reasons, the order appealed from should be reversed, and Petitioner's request for fees reinstated and remanded for consideration by the trial court.

Dated: November 21, 2014

Respectfully submitted,

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[6] This brief has been prepared by the Media Freedom and Information Access Clinic, a program of the Abrams Institute for Freedom of Expression at Yale Law School. Nothing in this brief should be construed to represent the official views of the law school.

APPELLATE DIVISION – FIRST DEPARTMENT
PRINTING SPECIFICATIONS STATEMENT

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