

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

AMERICA FIRST POLICY INSTITUTE,

Index No.:

Petitioner,

VERIFIED PETITION

**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.

Petitioner AMERICA FIRST POLICY INSTITUTE ("AFPI"), for its petition against Respondent ALVIN BRAGG, in his official capacity as DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK, ("DA Bragg"), and Respondent NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE (the "DA's Office") (together, "Respondents"), allege as follows:

NATURE OF ACTION

1. This is a special proceeding commenced pursuant to CPLR Article 78 by which Petitioner seeks to compel compliance with the New York Freedom of Information Law ("FOIL"), Public Officers Law ("POL") §§ 84–90, and to compel production of certain documents Petitioner seeks in response to a records request submitted by Petitioner on September 18, 2024, almost ten months ago.

2. The request concerns a matter of extraordinary national significance: the prosecution of former and current President Donald J. Trump by the New York County District Attorney's Office ("DANY") during the 2024 presidential election.

3. That prosecution drew widespread public attention and raised questions regarding the processes, personnel, and decision-making involved in bringing charges against a former President who, at the time, was the likely nominee of a major political party.

4. In order to promote transparency and to inform the public, AFPI submitted a FOIL request seeking records that might clarify whether and to what extent any external coordination or influence played a role in the initiation or handling of the prosecution.

5. Despite the clear public interest, and the passage of nearly ten months, Respondents have failed to produce any of the requested records, although Respondents acknowledge that such documents exist. Their failure to render a proper decision on Petitioner's FOIL request and their continued failure to produce even a single document responsive thereto constitutes a constructive denial in violation of FOIL.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Article 78 of the CPLR and POL §89(4)(b).

7. Venue is proper in this Court pursuant to CPLR § 506(b) as the determination complained of occurred in the County of New York.

PARTIES

8. Petitioner AFPI is a non-profit, non-partisan research institution organized under the laws of Texas. AFPI is dedicated to the advancement of policies that put the American people first. Its guiding principles are political, religious, and economic liberty, the rule of law, government accountability, America-First foreign policies, and a belief that American workers, families, and communities are indispensable to the success of our country. AFPI accomplishes its

mission, in part, through litigation, regulatory comment, FOIA requests, research papers, blog posts, and notably, public outreach and education through its several social media accounts.

9. Respondent Alvin Bragg is the elected District Attorney of the County of New York, and is in possession of, or is otherwise the proper custodian, in his official capacity as District Attorney, of the records Petitioner seeks. He is named only in his official capacity in this special proceeding.

10. Respondent New York County District Attorney's Office ("DANY") is subject to the FOIL pursuant to POL §86 as 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[.]" DANY maintains its main office at One Hogan Place, County of New York.

AFPI'S FOIL REQUEST

11. On September 18, 2024, AFPI submitted a FOIL request via email to DANY (the "Request"). The Request sought the following records, in pertinent part:

Requested Records: Pursuant to the New York Freedom of Information Law, N.Y. Pub. Off. Law § 86 et seq., AFPI requests disclosure of the following records, created, generated, or otherwise made within the period of January 1, 2023, to the date of production, unless otherwise specified below

- a. All internal communications—via email (including CCs and BCCs), SMS text, Signal, WhatsApp, or other messaging platforms—and calendar records mentioning or regarding Authentic Campaigns or Loren Merchan.
- b. All emails or other similar messages sent to or received from (including CCs and BCCs) any of the following individuals regarding Authentic Campaigns or Loren Merchan:
 - i. Judge Juan Merchan;
 - ii. Letitia James;

- iii. Loren Merchan;
 - iv. Erin Wilson;
 - v. Megan Jones.
- c. All emails or other similar messages sent to or received from (including CCs and BCCs) any of the following email domains which pertain to matters that are not purely of personal concern:
- i. @mail.house.gov;
 - ii. @who.eop.gov;
 - iii. @usjod.gov;
 - iv. @authenticcampaigns.com.
- d. All SMS text, signal, WhatsApp, or similar communications to, from, or mentioning, or calendar records involving, any of the following persons:
- i. Judge Juan Merchan;
 - ii. Loren Merchan;
 - iii. Any person who is employed by Authentic Campaigns;
 - iv. Any person who is employed by the Office of the Vice President.
- e. All emails sent to, or received by (including CCs and BCCs), Alvin Bragg, Matthew Colangelo, or Susan Hoffinger without a subject line except those that are of purely personal concern.
- f. All records relating to the processing and fulfillment of this FOIL request.

Exclusions. The above made requests shall exclude any records of communication or exchange between the Manhattan District Attorney's Office and (1) the FBI; (2) the U.S. Department of Justice; or (3) the Attorney General of New York, which pertain to criminal or civil cases that do not involve Donald J. Trump.

See AFPI FOIL Request. September 18, 2024. Exhibit 1.

12. On September 24, 2024, Assistant District Attorney Victor Olds ("ADA Olds") acknowledged receipt of the Request, stating that due to its scope, DANY would require until March 18, 2025, to issue an initial determination. All email communications with ADA Olds are attached as Exhibit 2.

13. On March 17, 2025, ADA Olds informed AFPI that over 10,000 potentially responsive documents had been located and that additional time, until June 2025, was needed to process the request. See Exhibit 3.

14. To expedite review, AFPI submitted a narrowed request to ADA Olds via email on March 19, 2025, limiting its scope to:

- a. All internal communications—via email (including CCs and BCCs), SMS text, Signal, WhatsApp, or other messaging platforms—and calendar records mentioning or regarding Authentic Campaigns or Loren Merchan.
- b. All emails or other similar messages sent to or received from (including CCs and BCCs) any of the following individuals regarding Authentic Campaigns or Loren Merchan
 - i. Judge Juan Merchan;
 - ii. Letitia James;
 - iii. Loren Merchan;
 - iv. Erin Wilson;
 - v. Megan Jones.
- c. All emails or other similar messages sent to or received from (including CCs and BCCs) any of the following email domains which pertain to matters that are not purely of personal concern:
 - ii. @who.eop.gov;
 - iv. @authenticcampaigns.com.
- d. All SMS text, signal, WhatsApp, or similar communications to, from, or mentioning, or calendar records involving, any of the following persons:
 - ii. Loren Merchan;
 - iii. Any person who is employed by Authentic Campaigns;
 - iv. Any person who is employed by the Office of the Vice President.
- f. All records relating to the processing and fulfillment of this FOIL request.

See AFPI Revised FOIL Request. March 19, 2025. Exhibit 4.

15. On March 25, ADA Olds acknowledged receipt of the narrowed request and stated he would assess its impact on the production timeline. ADA Olds did not provide a future date for production. AFPI sent a follow-up email on April 14, requesting a date for production. *See Exhibit 2.*

16. On April 14, ADA Olds reported that the revised search yielded 720 documents and anticipated completing review by June 14. *Id.*

17. The next day, however, ADA Olds stated that the 720 responsive documents spanned approximately 30,000 pages. He anticipated that DANY would need a minimum of six months to review these documents prior to issuing a decision on production. *Id.*

18. AFPI offered to schedule a call with ADA Olds to discuss the Request, seeking information on what search items yielded so many responsive records so that they might be trimmed further. ADA Olds refused to schedule a call. *Id.*

19. AFPI informed ADA Olds that it expected to continue with the Request as previously specified. On April 24, ADA Olds confirmed that the search would resume but still did not provide any future response date. *Id.*

20. On May 5, 2025, nearly eight months after submitting the Request and having still not even received an initial determination thereon, and having received no future date on which DANY would issue a decision, pursuant to POL §89(4)(a), AFPI filed an administrative appeal, alleging a constructive denial of the Request. ("Administrative Appeal"). Exhibit 5. The Administrative Appeal stated:

This protracted delay is unreasonable under FOIL, which requires agencies to respond to requests "promptly" and to provide a "date certain" for a response that is reasonable under the circumstances. See Public Officers Law § 89(3)(a); *Save Monroe Ave., Inc. v. New York State Dept. of Transportation*, 151 N.Y.S.3d 560, 562 (N.Y. App. Div. 3d Dept. 2021).

See Exhibit 5.

21. The Administrative Appeal also requested a rolling production of responsive documents. *Id.*

22. On May 19, Respondents denied the appeal, asserting that the Records Access Officer's ("RAO's") timeline was "reasonable under the circumstances" and that the request was being actively processed by the Records Officer, ADA Olds. Exhibit 6. Nevertheless, a new

Records Officer was assigned to the Request, and a further date of June 18 was provided, with no acknowledgment of the request for rolling production. *See* Exhibit 6.

23. On June 18, 2025, the new Records Officer stated that DANY required yet more time to consider the Request and indicated that DANY might make a decision by July 25, 2025, thus extending the time for more than an additional month. *See* Exhibit 7.

24. Notably, the June 18, 2025, correspondence is equivocal. It does not promise a decision and production by July 25, 2025, but merely suggests that DANY might conclude the process by such date.

25. On June 23, AFPI sent Respondents a certified letter requesting clarity and compliance. Exhibit 8. Specifically, the letter requested that the Records Officer confirm whether responsive documents exist, provide document counts per request item, and commence rolling production by July 11, 2025. *Id.*

26. USPS tracking services confirmed the letter was received on June 27, 2025, at 2:34 pm.

27. As of the date of this Verified Petition, Respondents have not responded to the June 23, 2025, letter, have provided no initial determination, and have released no records.

28. Respondents' continued delay and refusal to provide basic clarity about responsive documents—let alone access to such records—clearly contradicts the New York Legislature's intent that government agencies promptly and completely disclose records upon request. Public Officers Law § 84 holds that "it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible. The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society."

COUNT I**New York Freedom of Information Law**

29. AFPI re-alleges paragraphs 1-28 as if fully set out herein.
30. AFPI properly requested records within the possession, custody, and control of the Respondents.
31. AFPI has been denied production of responsive records despite Respondents' acknowledgement of their existence.
32. Respondents have failed to provide a substantive response to the Request. Indeed, nearly one year after AFPI filed the Request, Respondents have failed to complete even an initial review of the requested records.
33. Respondents have failed and refused to issue a determination on the Request as mandated by POL §89(3)(a). Instead, Respondents have abused the FOIL process by issuing a continuous series of letters that unilaterally set, and then move, "deadlines" for the determination.
34. Pursuant to POL §89(4)(a), AFPI duly appealed against Respondents' failure to render a determination, and Respondents' FOIL appeals office denied such appeal.
35. Following the denial of Petitioner's appeal, Respondents have suggested that they will render a determination and commence production but have failed to do so and have resumed their self-serving practice of setting, ignoring and then re-setting deadlines.
36. Such practice has persisted for nearly a year.
37. Respondents have failed and refused to proffer any rational or legal basis for their failure to render a determination upon the Request within a reasonable time and/or their failure to produce a single document, despite that fact that Respondents acknowledge that they possess thousands of pages of documents that are responsive to the Request.

38. Therefore, pursuant to POL §89(4)(b) and CPLR Article 78, Petitioner is entitled to a judgment granting the Request and directing Respondents to commence the production of responsive documents forthwith.

WHEREFORE, Petitioner demands judgment as follows:

- (A) On the First Cause of Action, pursuant to POL §89(4)(b) and CPLR §7806, granting the Request and directing Respondents to commence the production of responsive documents forthwith;
- (B) Pursuant to POL §89(4)(c), awarding Petitioner its reasonable attorney's fees; and
- (C) Awarding Petitioner such other and further relief as the Court deems just and proper.

Dated: Garden City, New York
July 17, 2025

McLAUGHLIN & STERN, LLP

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AMERICA FIRST POLICY INSTITUTE

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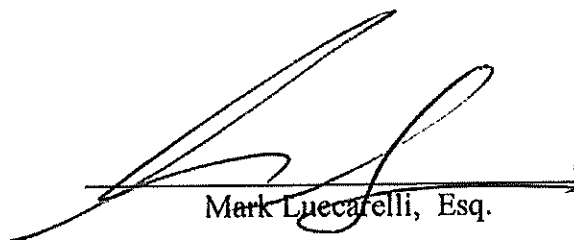
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ATTORNEY VERIFICATION

MARK LUCCARELLI, an attorney licensed to practice in the courts in the State of New York, affirms under the penalties of perjury, the following:

I have read the foregoing Petition, and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. This affirmation is based upon the file materials provided to me and the investigation I have conducted relative to this matter. The reason I make this verification instead of the petitioner named herein is that my office is located in a county other than where the petitioner is located.

Dated: Garden City, New York
July 17, 2025



Mark Luccarelli, Esq.