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

In the Matter of the Application of THE BRONX DEFENDERS Petitioner, – against – The NEW YORK CITY POLICE DEPARTMENT, and WILLIAM BRATTON, in his official capacity as Commissioner of the New York City Police Department, Respondents. For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules.	Index No.: 156520/2016 (Bluth, J.)

REPLY TO RESPONDENT'S ANSWER AND IN FURTHER SUPPORT OF PETITIONER'S APPLICATION FOR A JUDGMENT PURSUANT TO ARTICLE 78 OF THE CIVIL PRACTICE LAW AND RULES

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Respondents concede that records responsive to Petitioner's July 14, 2014 FOIL request ("the Request") exist in the New York City Police Department (hereinafter "Respondents" or "the NYPD" or "the Department") property database and yet they seek to moot this petition by asserting it is not possible to retrieve those records due to technical limitations and an overly narrow reading of Petitioner's FOIL request. Because Petitioner is entitled to these records as well as other responsive records, the Court should order the NYPD to produce the outstanding data and documents or, in the alternative, order the NYPD to appear at a hearing to determine whether data from its property database can be produced. The Court should also award Petitioner's attorneys' fees and litigation costs.

PRELIMINARY STATEMENT

The NYPD primarily argues in its Answer that the Property and Evidence Tracking System ("PETS") database is technologically incapable of producing the records or data sought in the Request. The Department does not dispute that PETS contains the information requested, but instead argues that the database cannot generate the data sought due to limitations of the end user software interface of the PETS system described by NYPD personnel.

However, as described by Mr. Robert Pesner, an expert in the field of information technology ("IT"), the limitations described by the NYPD pertain only to one front-end aspect of the software comprising PETS. The data can be accessed outside of the PETS front end user interface by running a query on the underlying back-end "data repository" where data inputted into PETS is organized and stored. Mr. Pesner's opinion is based on 35 years of IT expertise and publicly available information regarding the sophisticated database management system underlying PETS. During his five year tenure as Chief Enterprise Architect for the New York City Department of Housing Preservation & Development ("HPD"), Mr. Pesner "frequently

arranged" for similar queries to be run against HPD's equivalent database in order to satisfy FOIL requests.

Despite Respondents' representation that they shared "extensive information" about PETS' capabilities, they have never addressed the possibility of querying the PETS data repository directly despite Petitioner's inquiry into this avenue during settlement discussions. As such, the NYPD has both failed to honor its obligation to confer with the FOIL applicant *and* has never addressed why it cannot produce the data sought using the solution Mr. Pesner suggests.

In addition to the responsive records in PETS, the NYPD has failed to produce any records related to the millions of dollars it has received through equitable sharing agreements in federal forfeiture actions ("Equitable Sharing"). Respondents' Answer and supporting affidavits are entirely silent as to this portion of the Request.

The NYPD's narrow certification does not address its failure to produce this data and the available evidence indicates this data can be produced. Based on the Petition and all documents submitted herewith, we respectfully request that this Court order production of the remaining data from PETS and Equitable Sharing records. These documents will shed light on the millions of dollars in revenue that the NYPD has generated from seized cash and property from New York City residents each year. If the Court declines to order the NYPD to produce data from PETS, Petitioner requests a hearing pursuant to C.P.L.R. § 7804(h) to determine why the Department is unable to produce data from PETS.

Finally, the Court should award Petitioner attorneys' fees and costs as the prevailing party.

ARGUMENT

I. THE NYPD SHOULD BE ORDERED TO PRODUCE ADDITIONAL RESPONSIVE RECORDS

Throughout this proceeding—in briefing the motion to dismiss, in response to this Court's questions at oral argument, and in settlement negotiations—the NYPD failed to offer any explanation as to why responsive data cannot be queried from the Property and Evidence Tracking System ("PETS") database. As set forth in the supporting affidavit of IT expert Robert Pesner, Respondents have omitted the most practicable way to query the responsive data and should be ordered to do so in the manner he describes. Similarly, Respondents' Answer is silent as to the portions of the Request pertaining to money obtained through disbursements from Equitable Sharing programs and they should be ordered to produce these records forthwith.

A. The NYPD Should Be Ordered to Produce Responsive Records from PETS by Directly Querying the Data Repository Underlying PETS Using Structured Query Language

In Respondents' motion to dismiss this Petition they argued with vague and unsupported assertions about PETS that they had no additional responsive records beyond what was produced, but as this Court noted: "There is a clear distinction between the capabilities of PETS to generate certain types of reports and whether PETS contains that information at all." *The Bronx Defenders v. New York City Police Dep't*, 156520/2016 (Sup. Ct., N.Y. Cty. May 19, 2017) (Bluth, J.) (Interim Order, NYSCEF Doc. No. 60, p. 4) (hereinafter "Interim Order"). The NYPD now argues that PETS is incapable and that it would be "unreasonable" and "excessively burdensome" to produce the responsive data. Resp't Verified Answer ¶ 85-100. In order to assess the validity of these claims, The Bronx Defenders engaged Mr. Robert Pesner, a computer systems architect and IT expert, to evaluate whether it might be possible to query PETS despite the limitations NYPD described. As concluded by Robert Pesner, "the NYPD could provide the

information sought from PETS about the property they confiscated" by using a different type of search than the method discussed by the NYPD in its answering affidavits. Pesner Aff. ¶ 26.

Referring to PETS as a single entity is actually shorthand for three different components of a system that work together to make PETS function. Pesner Aff. ¶ 12-13. PETS consists of (1) the user interface that NYPD personnel interact with from a computer to input or retrieve information about particular seized property items; (2) a software application that facilitates interaction between the user interface and an underlying data repository; and (3) a data repository where all the raw data is stored. *Id.* ¶ 13. This distinction between the PETS database's components is important because it sheds light on how it is possible to extract the data sought despite the technical limitations of PETS described in Respondents' Answer. The limitations asserted by NYPD are limited to the first component described above, the end user interface, which is designed to facilitate the daily operations of PETS.[1] But publicly available information about PETS' underlying data repository (the third component), published by the vendor that built it, indicates that it is an IBM DB2 database. *Id.* ¶ 16, Ex. C. Notwithstanding any limitations to the types of searches that the user interface may be capable of performing, Mr. Pesner concluded that the data managed by the PETS IBM DB2 can be queried directly by using Structured Query Language ("SQL"), which is a computer language capable of retrieving information stored in the database. *See* Pesner Aff. ¶ 13-15, 19-21.

Mr. Pesner's conclusions are based on over 35 years of expertise in the field of information technology, including as the Chief Enterprise Architect at the New York City Department of Housing, Preservation & Development. Pesner Aff. ¶ 7, Ex. A (Mr. Pesner's resume). As Chief Enterprise Architect, he "frequently arranged for SQL queries to be run

[1] Mr. Pesner stated that he "do[es] not offer an opinion on whether the existing end-user interface of PETS includes the type of functionality necessary to run queries or generate the reports requested." Pesner Aff. ¶ 22. Petitioner is not suggesting that the NYPD run a query or report from the end user interface.

against HPD's relational database in order to satisfy FOIL requests" in the same way he has suggested PETS can be queried. Pesner Aff. ¶ 20-21.

Based on what is known about the information stored within the PETS database and based on Mr. Pesner's opinion that the PETS database can be searched, Respondent is capable of producing additional information that is responsive to the Request. Specifically, because PETS contains data fields showing the value of currency and the type of property in the NYPD's possession and how it is disposed of, the PETS database contains that information and can be searched for that information. *See* Pesner Aff. ¶ 18; Ex. D (containing sample property invoices). Petitioner is therefore entitled to an order requiring the NYPD to produce, at a minimum, data from the following PETS fields: date of seizure, the invoicing command precinct, remarks indicating whether the property was invoiced pursuant to an arrest or investigation, the property hold category, the date the property was disposed of, remarks indicating whether the property was retained by the Department or returned to a claimant, for currency, the total cash value and for vehicles, the make, model, and year.[2]

Importantly, the search Petitioner seeks would not require the NYPD to create new records. As discussed more fully in Petitioner's memorandum of law in opposition to Respondent's 2016 motion to dismiss, NYSCEF Doc. No. 47, p. 6, New York State courts have long recognized that retrieving electronic data does not constitute the creation of new records. The Court of Appeals has articulated a distinction between running an electronic search, on the one hand, and creating a new document, on the other. *Data Tree, LLC v. Romaine,* 9 N.Y.3d 454,

[2] As noted by Petitioner's counsel at oral argument on Respondent's motion to dismiss, and again during the parties' settlement negotiations, The Bronx Defenders now has more information about what is contained in the PETS database and what is not than it did in 2014 at the time the FOIL request was made. The Bronx Defenders concedes that there are no responsive records for some requests related to the value of vehicles seized (*e.g.* the Kelly Bluebook value of seized vehicles). However, the NYPD does track the make, model and year of seized vehicles which would generally be responsive to a vehicle's value.

849 N.Y.S.2d 48 (2007). If it is possible to conduct an electronic search for the information sought in a FOIL request, the fact that the information is not maintained in the specific form that was originally requested is not a basis to deny the request. *See Pflaum v. Gratten*, 116 A.D.3d 1103, 1104, 983 N.Y.S.2d 351, 352-53 (3d Dep't 2014); Interim Order, NYSCEF Doc. No. 47, p. 4.

To date, the NYPD has never proffered any explanation as to why an SQL query of the data repository underlying PETS could not reasonably be constructed to extract responsive records. As Mr. Pesner makes clear, when the affidavits of Sgt. Morales (NYSCEF Doc. No. 67) and Mr. Schnedler (NYSCEF Doc. No. 69) refer to PETS, "they are primarily referring to [the] user interface, not the software application or data repository." Pesner Aff. ¶ 13(c). Mr. Pesner concludes: "these statements and observations appear limited to the user interface level of PETS" and are "not relevant to whether The Bronx Defenders' FOIL request can be met using SQL queries against the PETS DB2 database." Pesner Aff. ¶ 22, 24. Thus, at best, the NYPD has only offered an incomplete explanation to the questions raised by this Court at oral argument and in its interim order, including whether "there may be a way for respondents to give petitioner the raw data sufficient to allow petitioner to tabulate the totals it seeks." Interim Order, NYSCEF Doc. No. 60, p. 4.

It should be noted that the risk of security breaches caused by web scraping or disruption to police and prosecutorial operations presented in Respondents' papers are inapplicable to the solution proposed by Mr. Pesner because they too apply only to the user interface level of PETS. *Compare* Schnedler Aff., NYSCEF Doc. No. 69, ¶ 5-8 *with* Pesner Aff. ¶ 21 (describing ability to run SQL queries "without disrupting regular operations") and ¶ 25 ("the risks [Mr. Schnedler]

describes of security breaches or database disruption are not applicable to the technical solutions I discuss here.)"

Respondents allege in their Answer, NYSCEF Doc. No. 65, ¶ 66-68, that during settlement negotiations they provided "extensive information" about the PETS database, its capabilities to produce responsive records, and that "[d]espite learning of the limitations […] Petitioner's counsel has continued to request information that NYPD has explained to Petitioner that NYPD cannot produce using any database." While it is true that Respondent—only after this Court denied its motion to dismiss—did provide more information about PETS, the NYPD refused to discuss capabilities of the PETS data repository or any other search capability other than those provided in the PETS user interface (NYSCEF Doc. Nos. 56, 66, 67, 69). Shoop. Aff. ¶ 3-6. These offers of information were therefore necessarily incomplete and irrelevant to the technical solution proposed here.

Thus, the Court should reject the NYPD's assertion that it is not possible to retrieve responsive from PETS and order the Department to search for responsive data in the manner suggested by Mr. Pesner.

B. As Already Decided by This Court, Respondents Cannot Avoid Disclosure by Narrowly Construing Petitioner's Request and by Evading Their Duty to Assist a Requestor in Reasonably Describing Records and the Manner in Which Records are Kept

As was the case in Respondents' motion to dismiss, NYPD again inaccurately characterizes the Request as narrowly seeking aggregate or raw data from PETS. *See, e.g.*, Resp't Verified Answer ¶ 85. Indeed, the NYPD sought to mischaracterize The Bronx Defenders' FOIL in this way during the administrative appeal process, without first conferring with the applicant about the manner in which the Department's records are kept. As this Court observed in its interim order, this is an unreasonable reading of Petitioner's forty detailed

demands that does not take in account that data in PETS "might exist in forms responsive to petitioner's FOIL request" and that The Bronx Defenders made its request "without any knowledge of the capabilities of the database." Interim Order, NYSCEF Doc. No. 60, pp. 4, 5. The Request must be read as principally seeking "records, regardless of format, medium, or physical characteristics" that show the value or amounts of property seized and the disposition of that property by the Department. *See, e.g*. Verified Pet. Ex. 4 (the Request), ¶ 13, 14, 15 (seeking records that "indicate total value of monies distributed" by the NYPD); 38, 39 (seeking records that "indicate to where unclaimed properties are distributed . . . [and] reflect the value of unclaimed properties that were distributed […]."). *See also* Verified Pet. Ex. 4, paragraphs 4, 5, 6, 7, 8, 10, 11 (seeking records that show the value of money seized and retained by the NYPD in numerous specified ways); 12, 28 (seeking records that show the value of money and vehicles retained by the NYPD as arrest, safekeeping or investigatory evidence for which no demand was made within specified time periods); 17, 18, 19, 20, 21, 22, 23 (seeking records that show the value of vehicles seized and retained by the NYPD in numerous specified ways).

Respondents' Answer then goes on to assert that they have no obligation under FOIL to assist Petitioner in identifying the records sought. However, as this Court has already observed, agencies have a duty to assist the requestor in reasonably describing the records sought "especially where, as here, the records are kept on a specialized database" "under the complete control of the agency" and "not available for public use." Interim Order, NYSCEF Doc. No. 60, at 5. The cases cited by Respondents are unavailing of their failure to assist Petitioner.[3] First, the case *Schenectady County Soc. For Prevention of Cruelty To Animals, Inc. v. Mills*, 74 A.D.3d 1417, 904 N.Y.S.2d 512 (3d Dep't 2010), *aff'd* 18 N.Y.3d 42, 935 N.Y.S.2d 279 (2011) does not

[3] In their sur-reply to the petition and motion to dismiss, Respondents relied upon the same two cases without extensive discussion. Giovanatti Reply Aff., NYSCEF Doc. No. 55, ¶ 9 n.2. As such, this is the first opportunity that Petitioner has had to rebut Respondents' argument on this point.

stand for the proposition that Respondents use it for. In *Schenectady*, the licensing agency at issue asserted a privacy exemption as to all veterinary licensee name and address information on the basis that it would be required to solicit additional information from individual licensees in order to determine whether the agency's records contained a business address (subject to disclosure under FOIL) or only a home address (exempt for privacy reasons). *Id.*, 74 A.D.3d at 1418-19. Whether or not an agency has a duty to solicit additional information from third parties is not analogous to the requirement under FOIL that an agency must assist a requestor in reasonably describing the records it seeks. Interim Order, NYSCEF Doc. No. 60, at 5 (*citing* 21 N.Y.C.R.R. § 1401.2(b)(2)). Moreover, the Court of Appeals decision in that case stated that even on the question at issue, the agency ought to solicit the additional information from the licensees because it "should not be a burdensome task." *Schenectady*, 18 N.Y.3d at 45-46.

Mitchell v. Slade, 173 A.D.2d 226, 569 N.Y.S.2d 437 (1st Dep't 1991) is distinguishable from the instant case because the NYPD agrees that responsive data and records exist in the PETS database;, it is only a question as to whether the data can be produced. The petitioner in *Mitchell* could not "show by more than speculation that all responsive documents were not produced." 173 A.D.2d at 227. Moreover, at the time the First Department decided *Mitchell* in 1991, the rules outlining the duties of a records access officer ("RAO") only contained a provision that the RAO "[a]ssist the requester in identifying requested records, if necessary." *See* 27 N.Y. Register 24 (Sept. 28, 2005). This regulation was amended in 2005 by the Committee on Open Government to more expansively require that an RAO "assist persons seeking records to identify the records sought, if necessary, and when appropriate, indicate the manner in which the records are filed, retrieved or generated to assist persons in reasonably describing records." *Id.*; 21 N.Y.C.R.R. § 1401.2(b)(2).

Notwithstanding Respondents' position that they had no obligation to confer with Petitioner, they highlight their efforts "to educate Petitioner about what data NYPD is capable of producing from these databases using search results." Resp't Verified Answer ¶ 88 n1. In fact, these efforts came only after this Court noted NYPD's prior failure and were limited to information about the PETS end user interface; Respondents never explained to Petitioner how information is stored in PETS' data repository. In order to meaningfully assist Petitioner in understanding the manner in which PETS records are stored and generated, the NYPD should provide an individual with technical expertise to explain its data repository and how it can be queried.

C. If The Court Declines to Order the NYPD to Produce the Records Sought from PETS, It Should Order a Hearing to Determine Whether PETS' Data Repository Can Be Queried Using Structured Query Language

The NYPD has not met its burden of establishing that responsive data cannot be queried from PETS in the manner set forth by Mr. Pesner and the Court should therefore order the NYPD to produce those documents and data. If the Court declines to do so, however, Petitioner respectfully requests that it require a hearing to determine whether the NYPD can query the data from the PETS data repository. To the extent that the Court has questions as to whether this type of query could reasonably be conducted by the NYPD, the Department should be ordered to proffer a witness with technological expertise to explain why PETS cannot be queried using the SQL searches that Mr. Pesner used to respond to similar FOIL requests while at a similarly-situated City agency.

Although Article 78 proceedings may be resolved on the papers, C.P.L.R. § 7804(h) recognizes that issues of fact may require a hearing and provides that "if a triable issue of fact is raised […] it shall be tried forthwith." *See, e.g.*, *Time Warner Cable News NY1 v. New York City Police Dep't*,) 53 Misc. 3d 657, 36 N.Y.S.3d 579 (Sup. Ct., N.Y. Cty. 2016) (ordering a hearing

on the fact issue of whether the NYPD's technology was capable of producing redacted body worn camera footage sought through FOIL), *reargued* 2017 WL 1354833 (Apr. 7, 2017). *See generally* Siegel, N.Y. Prac. § 569 (5th ed.) (trial of issue of fact in Article 78 proceeding).

In *New York Comm. for Occupational Safety & Health v. Bloomberg*, 72 A.D.3d 153, 892 N.Y.S.2d 377 (1st Dep't 2010), the Appellate Division held that a hearing was necessary to determine whether computer data could be retrieved from the database at issue. The court could not conclude on the record before it whether retrieving and producing the data would constitute a "simple manipulation" or a "creation of a new document." *Id.* at 161 (*quoting Data Tree*, 9 N.Y.3d at 465). As is true in the instant case with respect to affidavits of Sgt. Morales and Mr. Schnedler, the affiant explaining the limitations of the database at issue in *Occupational Safety & Health* did not purport to have any background in computer programming and [did] not explain the basis of his knowledge of how the computer system operates […]." *Id.* at 161-62. Although the City argued that it would entail creating new "commands" and "formulas," the Court stated that it was "unclear whether those things fall within the realm of running programs within the existing software, or creating new software which would not otherwise exist but for the FOIL request." *Id.* at 162. The Court held that under the former, if the documents can be retrieved with "reasonable efforts" as contemplated by *Data Tree*, the City was required to do so. *Id.* at 161-62. The Court then ordered a hearing to "determine precisely what would be entailed were the City to attempt to retrieve the requested documents from electronic databases." *Id.* at 162.

D. Outside of PETS, the NYPD Should Be Ordered to Produce Responsive Records Pertaining to Disbursements from the DOJ Through "Equitable Sharing" of Federal Forfeiture Actions

In its Answer, Respondent has not addressed the portions of the Request that seek records pertaining to disbursement of forfeiture proceeds by federal agencies (Verified Pet. ¶ Ex. 4, ¶ 2 (policy documents), ¶ 13 (money retained through forfeiture))—records which publicly available

information further suggests are created on an annual basis. Law enforcement agencies external to the NYPD, such as district attorneys' offices and the Department of Justice ("DOJ"), have agreements and contracts with the NYPD pursuant to which the non-NYPD agency disburses to the NYPD the proceeds of forfeiture actions for money or property that the NYPD initially seized.

For example, according to an April 2014 report from the DOJ Office of the Inspector General, the NYPD received over $14 million through its participation in the DOJ Equitable Sharing Program from July 1, 2008 through June 30, 2011. Shoop Aff., Ex. 2 (U.S. Dep't of Justice, Office of the Inspector General, Audit Division, *Audit of the New York City Police Department's Equitable Sharing Program Activities*, GR-70-14-003, 5-6 (Apr. 2014)). According to the DOJ, in order to participate in the equitable sharing program, law enforcement agencies such as the NYPD must submit annual accountings and audit reports concerning these disbursements. Shoop Aff., Ex. 3 (U.S. Dep't of Justice, *Guide to Equitable Sharing for State and Local Law Enforcement Agencies* 27 (Apr. 2009)).

Despite this clear federal mandate, in prior briefing the NYPD stated that it "does not create or maintain records related to forfeiture disbursements pursued by federal agencies." Scalzo Aff., NYSCEF Doc. No. 57, ¶ 7. However, the specific annual accounting and audit reports identified above were not discussed in the affidavit. *Id.* The NYPD should be ordered to search for and produce these records forthwith.

II. PETITIONER IS ENTITLED TO ITS COSTS AND ATTORNEYS' FEES

As argued *supra*, the NYPD has not yet produced all documents and information within its possession that are responsive to Petitioner's request. To the extent this Court orders the NYPD to appear at a hearing, Petitioner reserves the right to seek reasonable fees at such time as this proceeding is fully resolved.

If the Court renders an order on the papers that concludes the instant proceeding, however, Petitioner is entitled to attorney's fees now, even if it does not order the NYPD to produce additional material. The NYPD acknowledges that it failed to timely respond to the Request and to the administrative appeal, *see* Resp't Verified Answer ¶ 55, and therefore the only question is whether the Petitioner is a prevailing party.

When an agency fails to respond to a request or appeal within the statutory timeframe, and subsequently provides documents in response to an Article 78 proceeding, the petitioner is considered a prevailing party under the fee shifting statute. *Kohler-Hausmann v. New York City Police Dep't*, 133 A.D.3d 437, 133 A.D.3d 437 (1st Dep't 2015) (holding that petitioner was a prevailing party where the agency produced documents responsive to the underlying FOIL less than two months after initiation of the Article 78 proceeding); *New York State Defenders Ass'n v. New York State Police*, 87 A.D.3d 193, 927 N.Y.S.2d 423 (3d Dep't 2011). Here, the NYPD acknowledges that it responded to Petitioner's administrative appeal and conducted its search for additional responsive records only after Petitioner initiated this Article 78 proceeding, *more than two years* after Petitioner's FOIL request. This timing, as the Court has already observed, "gives the appearance that respondents had no intention of timely responding to petitioner's request" and demonstrates that the instant Article 78 proceeding was the catalyst for the Department's additional responses. Interim Order, NYSCEF Doc. No. 60, at 3.

The unpublished *Madrassa* decision relied upon by Respondent does not support a contrary conclusion. In that case, there was evidence that the agency was concertedly searching for and timely producing responsive documents and that the only delay—a delay far shorter than in the present proceeding—was a result of the massive size of the production: the agency produced almost 2,000 pages of email correspondence. *Madrassa Community Coalition v. New*

York City Dept. of Educ., 20 Misc.3d 1116(A), 2008 WL 2686151, at *5 (Sup Ct., N.Y. Cty. June 30, 2008). In contrast here, the NYPD's post-Article 78 production included sections of the agency's guide on handling property and a few short charts—all documents readily available to the agency that could easily have been produced two years prior.

The facts in the instant case are far more analogous to *Kohler-Hausmann v. New York City Police Dep't,* 42 Misc.3d 1214(A), 2014 WL 223371 (Sup. Ct., N.Y. Cty. Jan. 13, 2014), *rev'd* 133 A.D.3d 437 (1st Dep't 2015). In that case, the petitioner sought statistics concerning complaints, arrests, and summons data from the NYPD. *Id.*, 2014 WL 223371, at *1. The NYPD acknowledged the request and estimated it would be completed within 20 business days. *Id.* However, the NYPD failed to respond within that time and then extended its deadline to respond on three occasions, totaling approximately 6 months, and it still failed to provide the data. *Id.* After the petitioner filed her Article 78 appeal, the NYPD provided the responsive records and the Supreme Court denied the petition, and its request for attorneys' fees, as moot. *Id.* at *2-3. The Appellate Division reversed and held that although "the merits of her petition are moot as a result of NYPD's voluntary disclosure, petitioner's claim for attorney's fees and other litigation costs is not moot." 133 A.D.3d at 437-38. The petitioner met the definition of a prevailing party because the NYPD failed to respond to her request within the statutory time—*i.e.* by unreasonably extending its own deadlines and failing to respond. *Id.*

So too here, the NYPD failed to respond to or issue a determination on the Request or administrative appeal until after the deadlines elapsed and after this Petition was filed. The Petitioner here, like the petitioner in *Kohler-Hausmann*, is entitled to its costs and fees.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court order the New York City Police Department to disclose all responsive records sought in Petitioner's July 14, 2014 FOIL request and to award the Petitioner its attorneys' fees and litigation costs.

Respectfully Submitted,

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