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

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Jimmy Wagner

Petitioner,

Index No.: 151346/2023

v

New York City Department of Education,

:

Respondent. :

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DECISION & ORDER WITH NOTICE OF ENTRY

COUNSEL:

PLEASE TAKE NOTICE that the within is a true copy of a DECISION AND ORDER duly entered in the Office of the Clerk of the Supreme Court, New York County, on November 23, 2026.

Dated: Brooklyn, New York
November 24, 2026

Respectfully submitted,

ARON LAW PLLC

by: /s/ Joseph H. Aron
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TO:
Attorney for Respondent
Via NYSCEF

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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JIMMY WAGNER,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF EDUCATION,

Respondent.

----------X

INDEX NO. 151346/2023

MOTION DATE N/A

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129 were read on this motion to/for CONTEMPT.

Petitioner's motion to hold respondent in contempt is granted as described below.

Background

In this long-running Freedom of Information Law ("FOIL") proceeding based on a 2022 request, petitioner seeks to hold respondent in contempt for failure to comply with Court orders. Petitioner did not move for sanctions or any other specific punitive relief.

At first, long ago, this Court denied the petition because respondent initially claimed that its e-Discovery tool could not process the voluminous FOIL request; respondent insisted that the search it attempted to perform to find the records requested by petitioner "timed out" during each effort. Following extensive appellate practice, the Court of Appeals eventually found that the proceeding should be remanded back to the First Department with instructions to send the proceeding to respondent after it determined that two separate inquiries were required in this dispute (*Wagner v New York City Dept. of Educ.*, 45 NY3d 93, 99 [2025]).

After the decision of the Court of Appeals (which was dated October 21, 2025), petitioner contends that it tried to get the First Department to send the dispute back to respondent but was told that remands were to be completed by this Court and not the appellate court (NYSCEF Doc. No. 48). Eventually, the Appellate Division, First Department remanded this proceeding to respondent in February 2026 (NYSCEF Doc. No. 51).

A month later, petitioner filed a motion in this proceeding in which it insisted that respondent admitted it could now complete the search it had long insisted it was unable to run. Indeed, respondent admitted that it could complete the search when it included only current DOE employees.

In an interim decision from May 2026, this Court directed respondent to review the 10,417 records identified by respondent and turn over responsive documents by September 29, 2026 (NYSCEF Doc. No. 67). The Court pointed out that because respondent acknowledged that it could run the search with current employees, it should split up the search. In order to fulfill petitioner's demand for past and current employees, respondent should run the search that it admitted it could, of current employees, and then it should it should run an additional search that included *only* past employees as a way to avoid another "timed out" search.

The Court permitted additional briefing and, in a decision from July 6, 2026, this Court observed that respondent now admitted it could actually run a global search and it yielded 26,000 records and over 42,000 pages of records (NYSCEF Doc No. 72). The Court directed respondent to search through these records and turn over responsive records by the previously set deadline of September 29, 2026. Recognizing that this was a substantial obligation required by FOIL, the Court reiterated, as it did in the May 5, 2026 order, that respondent could request additional time

to complete this review via a motion before the deadline. Respondent never made any such motion and never appealed that decision and order.

Petitioner claims that the September 29, 2026 deadline passed without respondent turning over the responsive records or seeking an extension of time and so it now seeks to hold respondent in contempt.

Respondent contends that it has made rolling productions since the Court's May 2026 interim order and so it cannot be held in contempt. It claims that it reviewed about 10,000 records and turned over hundreds of records to petitioner. Respondent points to its "final determination" dated September 30, 2026 in which it declined to do any more document review and claims that petitioner can file an entirely new special proceeding if it disagrees with that determination.

A few hours after this Court held oral argument, counsel for respondent (in her capacity as the records access appeals officer) issued a "decision" upholding the final determination from September 30, 2026 (NYSCEF Doc. No. 131 [decision from Ann Macadangdang, Records Access Appeals Officer Designee and Deputy Counsel]). This decision played no role in the Court's determination.

Discussion

Before the Court delves into the elements of contempt, a few key observations must be discussed. The record here clearly shows that respondent did not do much to process the instant request following the extensive appellate practice until petitioner asked this Court to intervene in March 2026. In other words, respondent's assertion that petitioner has to wait for another administrative determination is belied by respondent's lethargic efforts to respond in a timely manner to a request that was filed in September 2022.

Moreover, this Court explicitly declined to make petitioner file another special proceeding in this relatively straightforward FOIL proceeding where the initial request was filed more than four years ago (NYSCEF Doc. No. 72 at 2). As this Court previously observed, it made little sense to make petitioner bring a new proceeding about the same exact search (*id*.). Respondent did not appeal the decision declining to make petitioner commence another Article 78 proceeding.

The elements for civil contempt are "[f]irst, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect. Second, it must appear, with reasonable certainty, that the order has been disobeyed. Third, the party to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party. Fourth, prejudice to the right of a party to the litigation must be demonstrated" (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015] [internal quotations and citations omitted]).

The relevant Court orders clearly directed respondent to turn over all responsive records by September 29, 2026 (NYSCEF Doc. Nos. 67 and 72). That unequivocal mandate was obviously disobeyed. On September 30, 2026 (the day after the deadline, which is not the issue), respondent sent a "final determination" in which it admitted it could actually run the search it had long claimed was impossible to do, that it had turned over some records, but that it simply was not going review any more records despite the fact that it clearly knew there were more responsive records to evaluate (NYSCEF Doc. No. 107).

Specifically, respondent claimed that "Responding to the remainder of your request, which would necessitate the additional review of approximately ten thousand records, for which

a line by line review of about twenty thousand pages of records represents an undue burden and cannot be accomplished with reasonable effort" (*id*. at 2).

The issue of whether completing the review is overly burdensome, which will be discussed in greater detail below, is beside the point. The fact is that respondent had direct knowledge of a September 29, 2026 deadline to complete the review and it evidently made a conscious decision to flat out ignore that deadline. Despite the fact that the Court provided respondent a way to seek more time (the filing of a simple motion for an extension), respondent chose not to do so. As noted above, respondent did not appeal this Court's direction to complete the review of the documents it admittedly possesses nor did it seek a stay. Respondent purposely chose not to follow this Court's order and now petitioner is prejudiced because it did not receive the documents to which it is entitled. To put it in lay terms, even though respondent admitted it could do the search, FOIL requires it to turn over responsive records, and there were court orders directing it to take action, respondent decided, on its own, that it had enough and unilaterally terminated its obligation. That requires this Court to find it in contempt.

An Overly Burdensome Claim

At times throughout this proceeding, respondent has claimed that completing the search constituted an undue burden and so this exemption alleviates respondent from its obligation to complete the search. Setting aside, for a moment, this Court's order to turn over the records, that claim is wholly without merit. It strains credulity to review and disclose records for months only to then cease doing that search at an arbitrary point (which seems to be about halfway through the universe of records) and claim an undue burden exists. Respondent did not first seek permission to terminate its review, which eliminates any Court oversight regarding which

documents were reviewed and which were withheld. This creates the obvious possibility that respondent could select which documents to withhold by simply ending its production—that absolutely contravenes the entire point of the FOIL statutory scheme. An agency cannot admit there are responsive documents, begin disclosing some subset of records and then, on its own, just decide it need not comply with its statutory obligations.

Respondent only offered a vague excuse to petitioner that finishing the Court-ordered review "would significantly impact the agency's capacity to address other requests from the public, including many of your own pending requests" (NYSCEF Doc. No. 107 n1). Assuming that were true, then obviously the proper method would have been to ask the Court for more time as this Court explicitly suggested in prior orders. This Court recognizes that searching thousands of records, many of which include sensitive information that may need to be redacted, is an arduous task. That is why the Court gave respondent almost 5 months in its initial order and raised, *sua sponte*, the possibility of an extension. But it is unfathomable to this Court that respondent would use this Court's deadline as date to suddenly insist it was finished with its review – when there was obviously and objectively much more to left to do.

And on the merits, this undue burden argument is not supported in FOIL case law (*Legal Aid Socy. v Records Access Officer*, 238 AD3d 17, 23, 227 NYS3d 71 [1st Dept 2025] [finding that reviewing 165,000 records of was not overly burdensome; *New York Civ. Liberties Union v New York State Police*, 228 AD3d 1162 [3d Dept 2024], *lv to appeal denied*, 43 NY3d 904 [2025] [holding that a review of 12,000 employee files, each of which contained an estimated average of 50 pages, did not constitute an undue burden]).

In other words, respondent's claim that the remaining 10,000 records to review constitute an undue burden is not supported given the instances cited above in which agencies were instructed to review significantly larger universes of records.

Penalty

As to the appropriate penalty, because this proceeding concerns a FOIL request, petitioner cannot show that it suffered actual damages and so the Court imposes the statutory fine of $250 plus reasonable legal fees incurred in both the preparation of this motion as well as the oral argument (and the preparation for that appearance) that took place on November 10, 2026 (*E. End Hangars, Inc. v Town of E. Hampton*, 225 AD3d 865, 869 [2d Dept 2024]). Petitioner shall make a motion for such reasonable fees on or before December 29, 2026. This amount is over and above the separate pending determination of legal fees incurred in connection with this proceeding- an award to be issued to petitioner after the previously-ordered special referee's hearing (NYSCEF Doc. No. 99).

Respondent is directed to review the remaining records and shall turn over responsive records, with any necessary redactions, on or before March 19, 2027. If respondent once again fails to comply, the Court will entertain additional applications based on any future noncompliance. The Court declines to order respondent to submit an affirmation concerning the search as requested by petitioner—the issue here is that respondent has refused to continue the search. The quality of the response is not yet a live issue.

Summary

It is critical to emphasize respondent's confounding and conflicting assertions raised in this proceeding. This Court initially denied the petition based on respondent's contention that it

was unable to run the search requested in petitioner's FOIL request. That position has changed dramatically over the years this proceeding has dragged along. Respondent next admitted that it could run a partial search and then, eventually, respondent admitted it could actually perform the entire search but it didn't want to. Rather, it first offered to turn over only a small sample of records that it selected. Understandably, petitioner was not interested in compromising as respondent's position continued to change.

And after this Court clearly directed respondent to finally turn over records that it admitted it could obtain, respondent did some of that Court-ordered work before deciding, on its own accord, to simply stop. Respondent was provided many, many opportunities to comply with this Court's orders. Not only did this Court suggest a motion to extend the time but, at oral argument for this motion, the Court tried to give respondent an opportunity to purge its clear and obvious contempt of the Court's deadline. The Court asked counsel for respondent how much time it would take to finish the review. Astonishingly, instead of substantively answering this question, respondent's counsel (who is also the FOIL appeals officer) informed the Court that respondent was done and would not continue the review. That response made clear that respondent has no intention of ever complying with this Court's order or its obligations under FOIL

The unilateral decision to abruptly end disclosure of responsive records just does not make logical sense; whether it is due to an effort to shield certain documents from petitioner, frustration with petitioner's requests, a fundamental misapprehension about the purpose of FOIL or something else entirely, the Court is perplexed at respondents' decision to "double down" on ending its review. FOIL does not include an evaluation of the worthiness of a request before an agency has to respond. Respondent has a clear obligation to turn over responsive records and the

Court attempted to ensure that respondent had a reasonable amount of time to complete what is undoubtedly a lengthy review. Instead of complying with the Court order, or appealing the order, or seeking the Court's permission for an extension of time, respondent deliberately disobeyed a Court order. That requires a finding of contempt.

Accordingly, it is hereby

ORDERED that petitioner's motion to hold respondent in contempt is granted as it is clear that respondent willfully ignored two Court orders to complete a FOIL review by September 29, 2026 and respondent is hereby fined in the statutory amount of $250 plus reasonable legal fees incurred by petitioner's counsel for the filing of this application and the oral argument held on November 10, 2026 and petitioner shall make a motion for such fees on or before December 29, 2026.



11/20/2026
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED			☐	NON-FINAL DISPOSITION		
	X	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐	REFERENCE