

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

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In the matter of	:	
DOCUMENTED LTD,	:	Index No.
	:	
Petitioner,	:	<b>VERIFIED PETITION</b>
	:	
For a Judgment Pursuant to Article 78	:	
of the Civil Practice Law and Rules	:	
	:	
-v-	:	
	:	
NEW YORK STATE	:	
DEPARTMENT OF LABOR	:	
and	:	
JEROME TRACY in his official capacity as	:	
Foil Appeal Officer	:	
	:	
Respondents.	:	
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Petitioner Documented Ltd (“Documented”), by and through its undersigned counsel, respectfully alleges as follows:

**PRELIMINARY STATEMENT**

1. This Article 78 proceeding challenges the constructive denial of a December 10, 2019 request under the Freedom of Information Law, N.Y. Pub. Off. Law §§ 84, *et seq.* (“FOIL”), submitted by petitioner Documented, a nonprofit news site, to respondent the New York State Department of Labor (“DOL”).
2. This is a dispute about access to records that shed light on an important public issue: how the State is holding companies accountable for exploiting vulnerable workers by breaking the wage and hour laws the State put in place.

3. Wage theft, the practice of employers failing to pay workers the full wages to which they are legally entitled, is a pervasive issue in New York.<sup>1</sup> In recent years, unscrupulous employers stole an estimated \$965 million annually from New York employees.<sup>2</sup>

4. According to DOL Commissioner Roberta Reardon, “eradicating wage theft” is “a goal all of us share.”<sup>3</sup>

5. To that end, the DOL’s federal counterpart already publicly posts its wage and hour compliance data, including information regarding whether any wage theft violations were found, the back wage amount, the number of employees due back wages, and civil monetary penalties assessed.<sup>4</sup>

6. But when Documented, a New York immigration-focused nonprofit news site, requested wage and hour records from the DOL last year to create an interactive database of companies in New York that have stolen wages from employees, the DOL declined in the ensuing months to either grant or deny the request.

7. Documented plans to make this wage theft database accessible both to low-wage workers at particular risk of experiencing wage theft and to those who support a living wage to determine which companies to avoid working for or patronizing.

8. This substantial delay in the release of DOL enforcement data has hampered Documented’s ability to provide this database to its readership to assist in further protecting and empowering vulnerable workers.

9. Documented has requested that the DOL provide, among other things, the search results of a query of the Wage and Hour Audit and Monetary System for wage and hour case records from 2016

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<sup>1</sup> David Cooper & Teresa Kroeger, *Employers steal billions from workers’ paychecks each year*, ECONOMIC POLICY INSTITUTE, May 10, 2017, <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>.

<sup>2</sup> *Id.*

<sup>3</sup> NYS DOL Comm. Roberta Reardon, Budget Testimony, Joint Hearing of the Legislative Fiscal Committee (Feb. 4, 2019), available at <https://nyassembly.gov/write/upload/publichearing/000960/001802.pdf>.

<sup>4</sup> Wage and Hour Compliance Action Data, U.S. DOL, available at [https://enforcedata.dol.gov/views/data\\_summary.php](https://enforcedata.dol.gov/views/data_summary.php) (last accessed Jun. 29, 2020).

to the present. Documented attached excerpts to a previous record release demonstrating that the DOL has produced this type of record before and thus has no basis for denying this request.

10. Documented has been actively covering wage theft issues since its launch two years ago, including a \$3.1 million settlement on behalf of 88 car wash workers and efforts by workers to demand an end to wage theft and a living wage.<sup>5</sup>

11. It wishes to continue doing so by using the requested information to contribute to the public understanding of the extent to which New York companies engage in wage theft.

12. The DOL's continued delay in producing these documents violates the letter and the spirit of FOIL.

13. As demonstrated below, the DOL failed to comply with the statutory time limitations required in responding to a FOIL request and with its own rules and regulations that it promulgated as required under FOIL. Moreover, this delay was not reasonable under the circumstances because the records are readily retrievable and clearly public. Should Documented substantially prevail in its Article 78 petition, it is entitled to an award of attorney's fees and litigation costs pursuant to FOIL.

### PARTIES

14. Petitioner Documented is a Brooklyn-based nonprofit news site devoted to covering New York City's immigrants and policies that affect their lives. Co-founding editor and senior reporter Max Siegelbaum founded Documented in the summer of 2018.

15. Respondent the New York State Department of Labor is an "agency" within the meaning of N.Y. Pub. Off. Law § 86(3). Its principal office is located at Building 12, W.A. Harriman Campus, Albany, NY, 12240. DOL is responsible for "protect[ing] all workers, even if they are paid off the

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<sup>5</sup> See, e.g., Oscar Montenegro, *After Eight Years, Car Wash Workers Can Cash Their Final Paychecks*, DOCUMENTED, Sept. 24, 2019, <https://documentedny.com/2019/09/24/after-eight-years-car-wash-workers-can-cash-their-final-paychecks/>; Mazin Sidahmed, *Laundry Workers Demand their Rights*, DOCUMENTED, Aug. 26, 2019, <https://documentedny.com/2019/08/26/early-arrival-attorneys-general-support-drivers-licenses-in-new-york/>.

books or are not documented” and enforces State labor laws concerning, among other things, minimum wage, hours of work, and the payment of wages and wage supplements.<sup>6</sup>

16. Respondent Jerome Tracy is the FOIL Appeal Officer for the Department of Labor. His office is located in Building 12, Room 266C, W.A. Harriman Campus, Albany, NY, 12240.

### JURISDICTION AND VENUE

17. Documented has exhausted its administrative remedies. This court therefore has jurisdiction over this matter pursuant to FOIL § 89(4)(b) and CPLR Article 78.

18. Pursuant to CPLR § 506(b) and § 7804(b), this proceeding is commenced in Albany County, where the DOL’s principal offices are located, where its agent made the determinations petitioned against and complained of, and where it failed to perform the duties required of it by law.

### FACTS

#### **Respondents Failed to Respond to Documented’s FOIL Request**

19. On September 9, 2019, Documented filed a FOIL request with the DOL seeking the following documents created between September 9, 2016, and the fulfillment of its request: 1) a full export of the Audit and Monetary System case table in a csv file; 2) any manual or workbook that explain terms used in the case table; and 3) every “Recapitulation Sheet” created in that timeframe. A true and correct copy of this request is attached as **Exhibit 1**.

20. The DOL ultimately responded in November 2019 that it was unable to identify the records based on the information provided, citing N.Y. Pub. Off. Law § 89(3)(a), which states that records must be “reasonably described” by the requestor. A true and correct copy of the response letter is attached as **Exhibit 2**.

21. On December 10, 2019, Documented sent the DOL a revised FOIL request. In that request, Documented asked the DOL to provide the search results of a query of the Wage and Hour Audit

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<sup>6</sup> Our Services, NYS DOL, available at <https://labor.ny.gov/about/services.shtm> (last accessed July 1, 2020).

and Monetary System, which it noted is accessible by DOL investigator Michael Burkard according to previous records releases for this type of request. He asked specifically for “records of all cases with the ‘Type’ being ‘Wage Statement/Records/Payment’ or other similar wage and hour disputes” from January 1, 2016 until the completion of the FOIL request. Documented specified that these records be provided in a .csv or .xlsx electronic file. Documented additionally asked for definitions for the terms used in the Type and Status columns of the Audit and Monetary System database and for case reports filed with case nos. LS062008012931, LS062008012887, LS062008012919. To demonstrate that the requested information was readily retrievable and clearly public, Documented attached to its request as Exhibit A an excerpt from documents released in File No. FL-13-053409158. A true and correct copy of this request and Exhibit A is attached as **Exhibit 3**.

22. On December 16, 2019, the DOL sent Documented a letter acknowledging receipt of its request and assigned the request a file number of FL-19-0937. The letter stated that the DOL “will provide a response or status update within 20 business days.” A true and correct copy of this letter is attached as **Exhibit 4**.

23. Documented sent two emails to the DOL in early January 2020 requesting an update as to the status of the request. True and correct copies of these emails are attached as **Exhibit 5**.

24. The DOL failed to respond to either of those emails. More than 20 business days after its Dec. 16, 2020 acknowledgment of receipt of the request, the DOL sent a letter on January 27, 2020 to Documented stating that it “could not complete a response to your FOIL request within 20 business days due to the volume of requests currently pending with the Department and our obligation to treat each request equally.” The DOL “estimate[d] that [it] w[ould] receive a response to [its] request prior to April 27, 2020.” A true and correct copy of this letter is attached as **Exhibit 6**.

### Administrative Appeal

25. On February 21, 2020, Documented submitted an administrative appeal of the denial of the Dec. 10, 2019 request. Documented argued that the DOL had failed to respond to the requests as required by FOIL and that he was entitled to treat that failure as a constructive denial and ask that the DOL be ordered to produce the requested records. A true and correct copy of the appeal letter is attached as **Exhibit 7**.

26. On February 27, 2020, Respondent FOIL Appeal Officer Jerome Tracy issued the DOL's final response to the administrative appeal. He denied the administrative appeal on the ground that "the Department has met its obligation to inform you of the reason it cannot grant or deny your request within the initial time period set forth in the law, and the time it will take to respond to your request." He cited to the January 27, 2020 response in which the DOL stated that it could not complete its response within 20 business days "due to the volume of requests currently pending with the Department and our obligation to treat each request equally" and that it estimated Documented would receive a response "prior to April 27, 2020." The DOL's final response quoted at length from 21 NYCRR § 1401.5 in support of its position that the agency "is not, pursuant to 21 NYCRR 1405.5.e above, guilty of a 'failure to comply with the time limitations...' such that your request may be considered denied." A true and correct copy of this letter is attached as **Exhibit 8**.

27. Petitioner has exhausted its administrative remedies.

28. Documented has received no further communications from the DOL since the denial of its appeal, including in the months following the purported April 27, 2020 response date.

29. Accordingly, Documented has commenced this Article 78 proceeding to challenge the DOL's improper delay and constructive denial of its request.

**CLAIM FOR RELIEF**  
**(Article 78 Review of Wrongful Denial of FOIL Request)**

30. Documented hereby reasserts and realleges paragraphs 1 through 29 as if fully set forth herein.

31. Documented commences this proceeding, which is in the nature of a writ of prohibition and a writ of mandamus, pursuant to CPLR Article 78 and N.Y. Pub. Off. Law § 89(4)(b).

32. Under FOIL, all documents held by government entities like the New York State Department of Labor are presumed open for public inspection and copying. Documents may be withheld from public inspection only if expressly permitted by a specific statutory exemption and such exemptions are interpreted narrowly in order to effect the purpose of the statutory scheme.

33. Respondents have improperly withheld all documents in response to the Petitioner's FOIL request.

34. Respondents have constructively denied the request by failing to respond within the time limitations set forth in FOIL and in the regulations governing FOIL.

35. Respondents have constructively denied the request by failing to respond within the time limitations set forth in the DOL's own rules and regulations.

36. Respondents have constructively denied the request by engaging in delay that was unreasonable under the circumstances, given that the requested documents are clearly public and readily retrievable.

37. Respondents have failed to meet their burden to provide specific and particularized justifications for withholding the requested documents.

38. Respondents had no reasonable basis for denying access to the requested documents.

39. Respondents' actions have caused and continue to cause irreparable harm to the rights guaranteed to Petitioner and to the public at large under FOIL.

40. The information requested by Documented is of significant interest and concern to the general public.

- 41. Documented has exhausted its administrative remedies and has obtained none of the requested records.
- 42. As a result of the foregoing, Respondents have violated FOIL.
- 43. Documented has no other adequate remedy at law.
- 44. No prior application for the relief requested herein has been made to the Court.

WHEREFORE, Petitioner respectfully requests this Court to grant judgment:

- (a) Directing Respondents to comply with their duty under FOIL and to produce the requested records within twenty (20) days;
- (b) Awarding Respondents its reasonable attorney's fees and litigation costs fees pursuant to N.Y. Pub. Off. Law § 89(4)(c); and
- (c) Awarding Petitioner such further relief as the Court deems just and proper.

Dated: July 6, 2020  
Ithaca, NY

Respectfully submitted,  
**CORNELL LAW SCHOOL  
FIRST AMENDMENT CLINIC**

By:     /s/ Heather E. Murray    

Heather E. Murray  
Cortelyou C. Kenney  
Mark H. Jackson  
Myron Taylor Hall  
Ithaca, New York 14853  
Tel.: (607) 255-8518  
hem58@cornell.edu

*Counsel for Petitioner Documented Ltd*

VERIFICATION

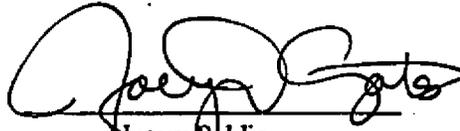
STATE OF NEW YORK )  
 ) SS.:  
Kings COUNTY OF NEW YORK )

MAX SIEGELBAUM, being duly sworn, deposes and says under penalty of perjury:

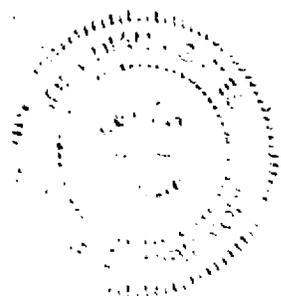
- 1. I am Co-Founding Editor and Senior Reporter at Documented Ltd.
- 2. In order to gather information relevant to my reporting on immigration issues and to assist with Documented's creation of an interactive wage theft database, I filed the FOIL request at issue in this proceeding.
- 2. I have read the annexed Verified Petition. Based on my personal knowledge, and on information obtained in the ordinary course of business from records and from individuals with knowledge, the information contained herein is true to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
MAX SIEGELBAUM  
Kings County, NY

Sworn to before me this  
6th day of July, 2020

  
\_\_\_\_\_  
Notary Public  
Schoharie County, NY

My Commission Expires  
9/25/21



# **EXHIBIT 1**

NYSCEF DOC NO. 1  
Max Siegelbaum  
Documented  
1307 Pacific Street, 6F  
Brooklyn, NY 11216  
9174535758

RECEIVED NYSCEF: 07/06/2020

Records Officer  
New York State Department of Labor  
State Office Campus, Building 12, Room 509  
Albany, NY 12240  
nysdol@labor.state.ny.us

September 9, 2019

**RE: RECORDS REQUEST**

Dear Records Officer:

This is a request under the New York Freedom of Information Law. Pursuant to that law, I request the following documents issued from **September 9, 2016 to the date when the FOIL request is filled**. Please send everything to me in an electronic format.

1. A full export of the Audit and Monetary System case table in a csv file.
2. Any manual or workbook that explain terms used in the case table.
3. Every "Recapitulation Sheet" created in that timeframe.

If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested. In any event, please provide a notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed. If the fee will cost over \$25 please notify me.

If my request is denied in whole or part, please justify all withholdings by reference to specific exemptions.

If you have questions regarding this request, please feel free to contact me. I look forward to your response within five business days of receipt of this request or sooner where reasonable.

Thank you in advance for your assistance.

Sincerely,

Max Siegelbaum

## **EXHIBIT 2**

**MARLENE MCNEAL**  
Legal Assistant I

**New York State Department of Labor**  
Harriman State Office Campus  
Building 12, Room 509, Albany, NY 12240  
P: (518) 485-2191 | Fax: (518) 485-1819  
www.labor.ny.gov | foil@labor.ny.gov

November 12, 2019

Max Siegelbaum  
Documented NY  
1307 Pacific Street, 6F  
Brooklyn, NY 11216

Re: Freedom of Information Law (FOIL) Request / Our File No.: FL-19-0705

Dear Max Siegelbaum:

This letter is in response to your request for New York State Department of Labor records dated September 9, 2019, in which you requested:

documents issued from September 9, 2016 to the date when the FOIL request is filled. Please send everything to me in an electronic format.

1. A full export of the Audit and Monetary System case table in a csv file.
2. Any manual or workbook that explain terms used in the case table.
3. Every 'Recapitulation Sheet' created in that timeframe.

Please be advised that the Department could not identify or locate records based on the information provided. The records sought in a FOIL request must be "reasonably described." Whether records are "reasonably described" may be dependent upon an agency's filing or record keeping system. Also, agency employees are not required to engage in unreasonable efforts or analyze several conditions to locate records. See Public Officers Law § 89(3)(a) and the Committee on Open Government's FOIL Advisory Opinions 18863, 18949, and 19157.

If you wish to resubmit your request, please include information that may assist our staff in identifying records such as the relevant unit/division of this Department, specific timeframes, or any relevant names, addresses, case numbers, etc. For a listing of records maintained by the Department, please see our Subject Matter List available at: <https://www.labor.ny.gov/secure/foilrequest.shtm>.

You may submit a written appeal of this decision within 30 days by mail to: Commissioner of Labor, New York State Department of Labor, Harriman State Office Campus, Building 12, Room 500, Albany, NY 12240. You must state a basis for appeal, attach a copy of this letter, and mark the letter and envelope as "FOIL Appeal."

Very truly yours,

Pico Ben-Amotz  
Records Access Officer

By:   
Marlene McNeal  
Legal Assistant I

# EXHIBIT 3

**DOCUMENTED**

540 President St  
Brooklyn, NY, 11215  
[DocumentedNY.com](http://DocumentedNY.com)

Dear FOIL officer,

Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, I hereby request that the Department of Labor provide the search results of a query of the Wage and Hour Audit and Monetary System, which according to previous records releases is accessible by DOL investigator Michael Burkard.

I am seeking records of all cases with the "Type" being "Wage Statement/Records/Payment" or other similar wage and hour disputes, with the case date starting at 1/1/2016 until the date the FOIL request is completed. Please provide those records is an electronic .csv or .xlsx file.

I am also requesting you provide definitions for every term used in the "Type" and "Status" columns of the Audit and Monetary systems database.

Please also provide case reports filed with LS062008012931, LS062008012887, LS062008012919.

The attachment (Attachment A) to this request is an excerpt from documents released in a FOIL request, number FL-13-0534. It shows these records were previously released in other records requests.

I request a waiver of all fees for this request. I understand that there may be a fee; however, this request is a matter of public concern and is not being made for commercial usage. Documented is a nonprofit news organization and information will be used for journalistic purposes, not for profit.

If, however, such a waiver is denied, I am willing to pay fees for this request up to a maximum of \$50. If you estimate that the fees will exceed this limit, please inform me first as I may wish to arrange for personal inspection.

If you need to contact me for any reason, I'm available at [max.siegelbaum@documentedny.com](mailto:max.siegelbaum@documentedny.com) or 917 453 5758.

Thanks for your time,

Max Siegelbaum



**DOCUMENTED**

540 President St  
Brooklyn, NY, 11215  
[DocumentedNY.com](http://DocumentedNY.com)

# ATTACHMENT A

NYS Dept of Labor Audit/Monetary System

Albany Latham Sweep

Audit and Monetary System

Welcome Michael Burkard (Build: R20081112A)

Audit/Monetary Wage Home Log Off

Home &gt; Search Cases &gt; Case Search Results

64 Cases match your search criteria.

[Search Again](#)

Case #	Type	Employer	Contractor	Case Date	Investigator	Status
<a href="#">LS06 2008012939</a>	Wage Statement/ Records/ Payment	Hot Yoga & Pilates at E-Studio		09/02/2008	Low, Jeffrey	Closed-Invalid
<a href="#">LS06 2008012937</a>	Wage Statement/ Records/ Payment	ALC Holding Corp DBA Thoughts & Best Wishes		09/02/2008	Smith, Robert	Investigation Active
<a href="#">LS06 2008012936</a>	Wage Statement/ Records/ Payment	Kevjeff Inc		09/02/2008	Matice, David	Closed-Invalid
<a href="#">LS06 2008012935</a>	Wage Statement/ Records/ Payment	Wet Willys Carwash of Latham LLC		09/02/2008	Smith, Robert	Closed-Invalid
<a href="#">LS06 2008012934</a>	Wage Statement/ Records/ Payment	Nexgen Wireless & Communications LLC		09/02/2008	Nelson, Lynn	Closed-Invalid
<a href="#">LS06 2008012933</a>	Wage Statement/ Records/ Payment	Latham Petroleum Inc		09/02/2008	Nelson, Lynn	Closed-Invalid
<a href="#">LS06 2008012932</a>	Wage Statement/ Records/ Payment	Ambulance Salon & Day Spa LLC		09/02/2008	Low, Jeffrey	Closed-Invalid
<a href="#">LS06 2008012931</a>	Wage Statement/ Records/ Payment	Noorjahan LLC DBA Uncle Sm's Good & Natural Products		09/02/2008	Oechler, Janelle	Closed
<a href="#">LS06 2008012930</a>	Hours and Meal Period Minimum Wage Wage Statement/ Records/ Payment	Amazing Wok Plaza Chinese Restaurant		09/02/2008	Higgins-Beer, Constance	Pending Payment
<a href="#">LS06 2008012929</a>	Wage Statement/ Records/ Payment	The Hertz Corporation Hertz Local Edition		09/02/2008	Higgins-Beer, Constance	Closed-Invalid

NYS Dept of Labor Audit/Monetary System

<u>LS06</u> <u>2008012928</u>	Wage Statement/ Records/ Payment	Allusions Hair & Nails	09/02/2008	Higgins-Beer, Constance	Closed-Invalid
<u>LS06</u> <u>2008012927</u>	Wage Statement/ Records/ Payment	Latham 76 Diner Inc	09/02/2008	Higgins-Beer, Constance	Investigation Active
<u>LS06</u> <u>2008012926</u>	Wage Statement/ Records/ Payment	Market's Hess	09/02/2008	Smith, Robert	Closed-Invalid
<u>LS06</u> <u>2008012925</u>	Wage Statement/ Records/ Payment	Lee in Latham Buffet Inc/Grand Buffet/ Kobe Buffet	09/02/2008	Hohenstein, Jenita	Investigation Active
<u>LS06</u> <u>2008012922</u>	Wage Statement/ Records/ Payment	Travel-Rite Inn Inc	09/02/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012921</u>	Wage Statement/ Records/ Payment	Travel-Rite Inn Inc	09/02/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012919</u>	Wage Statement/ Records/ Payment	Kemp's Sporting Goods Inc	09/02/2008	Mattice, David	Closed
<u>LS06</u> <u>2008012918</u>	Wage Statement/ Records/ Payment	Advance Auto Parts Inc	09/02/2008	Mattice, David	Closed-Invalid
<u>LS06</u> <u>2008012916</u>	Wage Statement/ Records/ Payment	Hatal Super	09/02/2008	Mattice, David	Closed-Invalid
<u>LS06</u> <u>2008012915</u>	Wage Statement/ Records/ Payment	Fudoshin Karate School Latham	09/02/2008	Mattice, David	Closed-Invalid
<u>LS06</u> <u>2008012914</u>	Wage Statement/ Records/ Payment	A Perfect Pet Salon	09/02/2008	Mattice, David	Closed
<u>LS06</u> <u>2008012913</u>	Wage Statement/ Records/ Payment	BDS Copy Inks/Copy Inks	09/02/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012912</u>	Wage Statement/ Records/ Payment	Futon Galleria	09/02/2008	Nelson, Lynn	Closed-Invalid

NYS Dept of Labor Audit/Monetary System

<u>LS06</u> <u>2008012910</u>	Wage Statement/ Records/ Payment	Monro Muffler Brake Inc	09/02/2008	Smith, Robert	Closed-Invalid
<u>LS06</u> <u>2008012909</u>	Wage Statement/ Records/ Payment	Peter Kounoupis Latham Meat Market	09/02/2008	Smith, Robert	Closed-Invalid
<u>LS06</u> <u>2008012908</u>	Wage Statement/ Records/ Payment	Sign Pro Inc	09/02/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012907</u>	Wage Statement/ Records/ Payment	Route 9 Donuts Inc	09/02/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012905</u>	Wage Statement/ Records/ Payment	Absolute Fitness Equipment	09/02/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012904</u>	Wage Statement/ Records/ Payment	Piano Man's DJ Production	09/02/2008	Smith, Robert	Closed-Invalid
<u>LS06</u> <u>2008012903</u>	Wage Statement/ Records/ Payment	Latham Paint Center Inc	09/02/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012902</u>	Wage Statement/ Records/ Payment	677 New Loudon Corporation Nite Moves	09/02/2008	Smith, Robert	Investigation Active
<u>LS06</u> <u>2008012000</u>	Wage Statement/ Records/ Payment	Game Crazy	09/02/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012899</u>	Wage Statement/ Records/ Payment	Total Tan	09/02/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012898</u>	Wage Statement/ Records/ Payment	Central New York Weight Loss LLC	09/02/2008	Smith, Robert	Closed-Invalid
<u>LS06</u> <u>2008012895</u>	Wage Statement/ Records/ Payment	Hollywood Entertainment Corporation	09/02/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012894</u>	Wage Statement/ Records/ Payment	Hoaring Solutions LLC	09/02/2008	Oechler, Janelle	Closed-Invalid

NYS Dept of Labor Audit/Monetary System

<u>LS06</u> <u>2008012893</u>	Wage Statement/ Records/ Payment	Tri City Millwork Inc	09/02/2008	Oechler, Janelle	Closed-Invalid
<u>LS06</u> <u>2008012892</u>	Wage Statement/ Records/ Payment	Siena Hair Styling Inc	09/02/2008	Oechler, Janelle	Investigation Active
<u>LS06</u> <u>2008012891</u>	Wage Statement/ Records/ Payment	Image Makers	09/02/2008	Oechler, Janelle	Closed-Invalid
<u>LS06</u> <u>2008012890</u>	Wage Statement/ Records/ Payment	Van Patton Enterprises Inc	09/02/2008	Oechler, Janelle	Closed-Invalid
<u>LS06</u> <u>2008012889</u>	Wage Statement/ Records/ Payment	Fletcher Flowers	09/02/2008	Oechler, Janelle	Closed-Invalid
<u>LS06</u> <u>2008012888</u>	Wage Statement/ Records/ Payment	Honey Gardens	09/02/2008	Oechler, Janelle	Closed-Invalid
<u>LS06</u> <u>2008012887</u>	Wage Statement/ Records/ Payment	Yoshi Sushi Inc	09/02/2008	Ares, Elizabeth	Pending Payment
<u>LS06</u> <u>2008012886</u>	Wage Statement/ Records/ Payment	Skin Deep	09/02/2008	Ares, Elizabeth	Closed-Invalid
<u>LS06</u> <u>2008012885</u>	Wage Statement/ Records/ Payment	Hodligan Tattoo	09/02/2008	Ares, Elizabeth	Closed-Invalid
<u>LS06</u> <u>2008012884</u>	Wage Statement/ Records/ Payment	Luxury Nails	09/02/2008	Ares, Elizabeth	Investigation Active
<u>LS06</u> <u>2008012883</u>	Wage Statement/ Records/ Payment	Latham Biryani Restaurant	09/02/2008	Ares, Elizabeth	Investigation Active
<u>LS06</u> <u>2008012882</u>	Wage Statement/ Records/ Payment	Remax Park Place	09/02/2008	Low, Jeffrey	Closed-Invalid
<u>LS06</u> <u>2008012881</u>	Wage Statement/ Records/ Payment	TJ Burns Veterinary Services P/Bayberry Vet Care	09/02/2008	Low, Jeffrey	Closed-Invalid

NYS Dept of Labor Audit/Monetary System

<u>LS06</u> <u>2008012880</u>	Wage Statement/ Records/ Payment	New Loudon Chiropractic & Rehab	09/02/2008	Low, Jeffrey	Closed-Invalid
<u>LS06</u> <u>2008012879</u>	Wage Statement/ Records/ Payment	Pet Spas of America Inc	09/02/2008	Low, Jeffrey	Investigation Active
<u>LS06</u> <u>2008012876</u>	Wage Statement/ Records/ Payment	St Peters Addiction Recovery Center SPARC	09/02/2008	Ares, Elizabeth	Closed-Invalid
<u>LS06</u> <u>2008012875</u>	Wage Statement/ Records/ Payment	Teds Fish Fry Inc	09/02/2008	Ares, Elizabeth	Investigation Active
<u>LS06</u> <u>2008012874</u>	Wage Statement/ Records/ Payment	Mr Klean	09/02/2008	Ares, Elizabeth	Closed-Invalid
<u>LS06</u> <u>2008012786</u>	Wage Statement/ Records/ Payment	Taco Bell	08/28/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012784</u>	Wage Statement/ Records/ Payment	North, Pacala	08/28/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012783</u>	Wage Statement/ Records/ Payment	Bella-Napoli Italian Baker of Troy Inc	08/28/2008	Hohenstein, Jenita	Investigation Active
<u>LS06</u> <u>2008012782</u>	Wage Statement/ Records/ Payment	Motopholo	08/28/2008	Bond, Joshua E.	Closed-Invalid
<u>LS06</u> <u>2008012781</u>	Wage Statement/ Records/ Payment	Smokers Paradise Stores	08/28/2008	Bond, Joshua E.	Closed-Invalid
<u>LS06</u> <u>2008012780</u>	Wage Statement/ Records/ Payment	BFS Retail & Commercial Operations LLC	08/28/2008	Bond, Joshua E.	Investigation Active
<u>LS06</u> <u>2008012779</u>	Wage Statement/ Records/ Payment	Firestone Tire & Service Centers	08/28/2008	Nelson, Lynn	Closed-Invalid
<u>LS06</u> <u>2008012778</u>	Wage Statement/ Records/ Payment	DUNKIN DONUTS	08/28/2008	Bond, Joshua E.	Closed-Invalid

NYS Dept of Labor Audit/Monetary System

<u>LS06</u>	Wage	T J Maxx	08/28/2008 Nelson, Lynn	Closed-Invalid
<u>2008012777</u>	Statement/ Records/ Payment			

<u>LS06</u>	Wage	Raymour & Flanigan	08/28/2008 Gorow, James	Closed-Invalid
<u>2008012776</u>	Statement/ Records/ Payment	Furniture Inc.		

# EXHIBIT 4

**MARLENE MCNEAL**

Legal Assistant I

**New York State Department of Labor**  
Harriman State Office Campus  
Building 12, Room 509, Albany, NY 12240  
P: (518) 485-2191 | Fax: (518) 485-1819  
www.labor.ny.gov | foil@labor.ny.gov

December 16, 2019

Max Siegelbaum  
Documented NY  
540 President Street  
Brooklyn, NY 11215

Re: Freedom of Information Law (FOIL) Request / Our File No.: FL-19-0937

Dear Max Siegelbaum:

The New York State Department of Labor acknowledges receipt of your FOIL request dated December 10, 2019 which was received in this office on December 10, 2019.

We are now processing your request and will provide a response or status update within 20 business days.

Please save the above file number and include it on any correspondence with the Department regarding this request.

Very truly yours,

Pico Ben-Amotz  
Records Access Officer



By:  
Marlene McNeal  
Legal Assistant I

# EXHIBIT 5

## **FL-19-0937**

Sent: Thursday, January 2, 2020 9:39 AM

From: Max Siegelbaum max.siegelbaum@documentedny.com

To: foil@labor.ny.gov foil@labor.ny.gov

Hello,

It has been over 20 days since I filed my request. Do you have any updates or an estimated deadline?

Thanks,

Max Siegelbaum

---

Cell: [917-453-5758](tel:917-453-5758)

[www.documentedny.com](http://www.documentedny.com)

## **FL-19-0937**

**Sent: Friday, January 10, 2020 11:17 AM**

**From: Max Siegelbaum [max.siegelbaum@documentedny.com](mailto:max.siegelbaum@documentedny.com)**

**To: [foil@labor.ny.gov](mailto:foil@labor.ny.gov) [foil@labor.ny.gov](mailto:foil@labor.ny.gov)**

Hello,

It has been over 20 days since I filed my request. Do you have any updates or an estimated deadline?

Thanks,

Max Siegelbaum

---

Cell: [917-453-5758](tel:917-453-5758)

[www.documentedny.com](http://www.documentedny.com)

# EXHIBIT 6

**MARLENE MCNEAL**

Legal Assistant I

**New York State Department of Labor**

Harriman State Office Campus

Building 12, Room 509, Albany, NY 12240

P: (518) 485-2191 | Fax: (518) 485-1819

www.labor.ny.gov | foil@labor.ny.gov

January 27, 2020

Max Siegelbaum  
Documented NY  
540 President Street  
Brooklyn, NY 11215

Re: Freedom of Information Law (FOIL) Request / Our File No.: FL-19-0937

Dear Max Siegelbaum:

This letter is in response to your request for New York State Department of Labor records dated December 10, 2019 and received in this office on December 10, 2019.

Please be advised that we could not complete a response to your FOIL request within 20 business days due to the volume of requests currently pending with the Department and our obligation to treat each request equally.

We estimate that you will receive a response to your request prior to April 27, 2020.

Very truly yours,

Pico Ben-Amotz  
Records Access Officer



By: Marlene McNeal  
Legal Assistant I

# **EXHIBIT 7**

**DOCUMENTED**

Documented, Inc  
P.O. Box 250250,  
New York, NY  
10025  
DocumentedNY.com

New York State Department of Labor  
Harriman State Office Campus  
Building 12, Room 509, Albany, NY 12240  
P: (518) 485-2191 | Fax: (518) 485-1819  
www.labor.ny.gov | foil@labor.ny.gov

February 21, 2020

**Sent by E-mail and UPS**

**Re: Freedom of Information Law (FOIL) Request / File No.: FL-19-0937**

Dear Mr. Ben-Amotz:

This letter is in response to a letter from the New York State Department of Labor records dated January 27, 2020 in response to my December 10, 2019 FOIL request. In your letter, you estimated that you would provide **a response** to my FOIL request prior to April 27, 2020, not that you would actually provide documents I am entitled to. This letter constitutes my appeal of your constructive denial of my request.

It is blackletter law that failure to respond to a request “within a reasonable time after the approximate date given” constitutes “denial of a request.” 21 NYCRR 1401.5. Specifically, agencies must provide “a statement in writing stating the reason for inability to grant the request within that time 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.*” *Id.* “A failure to comply with the time limitations . . . shall constitute a denial of a request that may be appealed” . . . if the “approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request.” *Id.* Courts have found that a constructive denial of a FOIL request after an agency’s failure to respond “months” after the given deadline. See *e.g.*, *Kohler-Hausmann v. New York City Police Dep’t*, 133 A.D.3d 437, 437 (N.Y. App. Div. 2015).

The Department of Labor’s failure to timely respond to the request may result in an award of attorneys’ fees should the matter proceed to litigation. In *S. Shore Press, Inc. v. Havemeyer*, 136 A.D.3d 929, 930 (N.Y. App. Div. 2016), the Second Department found that a FOIL requestor was entitled to attorneys’ fees after the agency failed to respond to a request or appeal by the statutorily mandated time. *Id.* (citing N.Y. Pub. Off. Law § 89(4)(c)). The Department of Labor’s failure to respond to my request entitles me to such relief, especially where courts have interpreted such relief as essential to ensuring that agencies such as the NYSP comply with their statutory time limits. See *O’Donnell v. New York City Police Dep’t*, 56 Misc. 3d 1213(A), 65 N.Y.S.3d 492 (N.Y. Sup. Ct. 2017) (noting “[t]he award of attorney’s fees is intended 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,’” and granting an award following an agency’s failure to respond to petitioner’s appeal for two months) (internal citation omitted). Indeed, the interest in preserving

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Documented, Inc  
P.O. Box 250250,  
New York, NY  
10025  
DocumentedNY.com

FOIL's deterrent effect on agency delay is often dispositive of an award of attorneys' fees once litigation commences, regardless of whether an agency eventually grants disclosure. See *id.* (finding "the 'voluntariness' of such disclosure . . . irrelevant" as to "allow a respondent to automatically forestall an award of counsel fees simply by releasing the requested documents before asserting a defense would contravene the very purposes of FOIL's fee-shifting provision"); see also *New York Civil Liberties Union v. City of Saratoga Springs*, 87 A.D.3d 336, 339 (2011) (finding an award of attorneys' fee and costs for an agency's failure to timely respond to a request appropriate despite an agency's eventual disclosure of documents "in view of the fact that it was only through the use of the judicial process that petitioner was able to obtain the required disclosure and respondents evinced a clear disregard of the public's right to open government").

As such, I respectfully ask you to grant my FOIL request immediately and provide a date certain by which you will release the documents.

Sincerely,

2/21/2020

Co-Founding Editor and Chief Financial Officer

# EXHIBIT 8

**JEROME TRACY**  
**FOIL Appeal Officer**

**Department of Labor**

W. Averell Harriman State Office Campus  
Building 12, Room 266C, Albany, NY 12240  
[www.labor.ny.gov](http://www.labor.ny.gov)

February 27, 2020

Max Siegelbaum  
Documented NY  
540 President Street  
Brooklyn, NY 11215

Re: Freedom of Information Law (FOIL) Request Appeal / Our File No.: FL-19-0937

Dear Mr. Siegelbaum:

I am the Freedom of Information Law (“FOIL”) Appeal Officer for the New York State Department of Labor (“Department”). I am in receipt of your Appeal concerning the above-referenced FOIL request.

In an electronic submission dated December 10, 2019, you requested extensive records from the Division of Labor Standards.

On December 16, 2019, the Records Access Officer (“FOIL Officer”) acknowledged your request; on January 27, 2020, the FOIL Officer responded to your request, stating: “Please be advised that we could not complete a response to your FOIL request within 20 business days due to the volume of requests currently pending with the Department and our obligation to treat each request equally.

We estimate that you will receive a response to your request prior to April 27, 2020”

In your Appeal you State: “In your letter [dated January 27, 2020], you estimated that you would provide a response to my FOIL request prior to April 27, 2020, not that you would actually provide documents I am entitled to. This letter constitutes my appeal of your constructive denial of my request.”

You go on to cite 21 NYCRR 1401.5 in support of your Appeal.

FOIL requires that governmental agencies make available to the public records maintained by the agency unless those records fall within certain exceptions enumerated in the statute. FOIL also acknowledges that agencies often cannot to comply with the 20 day period in the statute by setting forth language in 21 NYCRR Part 1401 which states at 1401.5.c:

“An agency shall respond to a request within five business days of the receipt of a request by...



(3) acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than 20 business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within 20 business days from the date of such acknowledgment, providing a statement in writing stating the reason for inability to grant the request within that time 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..."

§1405.5.d then states:

"(d) In determining a reasonable time for granting or denying a request under the circumstances of a request, agency personnel shall consider the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the agency, and similar factors that bear on an agency's ability to grant access to records promptly and within a reasonable time."

Finally, §1405.e. states in relevant part:

"A failure to comply with the time limitations described herein shall constitute a denial of a request that may be appealed. Such failure shall include situations in which an agency...

(3) 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...

(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."

Under the scheme set forth by FOIL and the regulations promulgated thereunder, the Department has met its obligation to inform you of the reason it cannot grant or deny your request within the initial time period set forth in the law, and the time it will take to respond to your request. While you argue that the term "respond" somehow is not the equivalent of granting or denying your request, that is, in fact what the term means. Given the totality of the circumstances there can be no other reasonable meaning attached to this term.

Furthermore, your argument that by failing to respond to your request the Department has "constructively denied" it is also flawed. The Department has done everything required of it by statute. It has responded within five days and given to you in writing a rational and reasonable explanation for its inability to grant or deny your request within 20 days. It therefore is not, pursuant to 21 NYCRR 1405.5.e above, guilty of a "failure to comply with the time limitations..." such that your request may be considered denied.

Accordingly, for the reasons set forth above, your Appeal of the decision of the FOIL Officer is dismissed.

This letter constitutes the final determination of this Agency. You have the right to seek judicial review of this determination pursuant to Article 78 of the New York State Civil Practice Law and Rules.

Very truly yours,



Jerome Tracy  
FOIL Appeal Officer

cc: Committee on Open Government  
Robert Axisa  
Lauren Holupko