

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

BILL DE BLASIO, The Public Advocate for the  
City of New York,

Petitioner,

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

-against-

MICHAEL BLOOMBERG, Mayor of the City of  
New York; THOMAS FARLEY, Commissioner  
of the City of New York Department of Health  
and Mental Hygiene; JONATHAN MINTZ,  
Commissioner of the City of New York  
Department of Consumer Affairs; JANETTE  
SADIK-KHAN, Commissioner of the City of  
New York Department of Transportation; JOHN  
J. DOHERTY, Commissioner of the City of New  
York Department of Sanitation; ROBERT  
LIMANDRI, Commissioner of the City of New  
York Department of Buildings; and DAVID M.  
FRANKEL, Commissioner of the City of New  
York Department of Finance,

Respondents.

Index No. \_\_\_\_\_

Assigned to Justice  
\_\_\_\_\_

**VERIFIED ARTICLE 78 PETITION**

Petitioner, Bill de Blasio, the Public Advocate for the City of New York

(“Petitioner” or the “Public Advocate”), for his verified petition, alleges as follows:

**PRELIMINARY STATEMENT**

1. Petitioner Bill de Blasio, the Public Advocate for the City of New York (“City”), in his official capacity, brings this proceeding pursuant to CPLR 7803 for a judgment directing and compelling respondents Michael Bloomberg, Mayor of the City of New York; Thomas Farley, Commissioner of the City of New York Department of Health and Mental

Hygiene; Jonathan Mintz, Commissioner of the City of New York Department of Consumer Affairs; Janette Sadik-Khan, Commissioner of the City of New York Department of Transportation; John J. Doherty, Commissioner of the City of New York Department of Sanitation; Robert LiMandri, Commissioner of the City of New York Department of Buildings; and David M. Frankel, Commissioner of the City of New York Department of Finance (collectively, “Respondents”), to provide Petitioner with information pursuant to section 24(f)(2)-(3), (h), and (j) of the New York City Charter (the “Charter”).

2. Since he took office in January 2010, the Public Advocate has received complaints from small business owner constituents across the five boroughs regarding a City-wide policy of overzealous enforcement of regulations and imposition of fines and violations for low-risk, first time offenses. These complaints reflect a pattern of increased enforcement of regulations by the Bloomberg administration in an attempt to boost City revenues during difficult economic times, without regard for the impact this policy is having on the City’s small business owners. When the Public Advocate requested information from Respondents to better understand the increase in City agencies’ fine-generated revenues as a result of this policy (the “Records”), Respondents failed to provide such information—in plain violation of the Charter and other applicable law. Such data is necessary for the Public Advocate to carry out his duties and responsibilities under the Charter and effectively advocate for the interests of the City’s small business owners.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over Respondents pursuant to CPLR 7803.

4. Pursuant to CPLR 7804(b) and 506(b), venue in this proceeding lies in New York County, in the judicial district where Respondents refused to perform the duty enjoined upon them by law and where the offices of Respondents are located.

### PARTIES

5. Petitioner Bill de Blasio is the Public Advocate, a duly elected official of the City of New York. The Public Advocate's principal place of business is 1 Centre Street, New York, New York. The Public Advocate brings this proceeding in his official capacity and, at all relevant times hereto, has acted in such official capacity.

6. Respondent Michael Bloomberg is the Mayor of the City of New York. The Mayor is sued in his official capacity and, at all relevant times hereto, has acted in such official capacity to deny the Public Advocate access to the Records sought by him pursuant to the Charter.

7. Respondent Thomas Farley is the Commissioner of the City of New York Department of Health and Mental Hygiene, an agency of the City. Commissioner Farley is a political appointee of the Mayor. Commissioner Farley's principal place of business is 125 Worth Street, New York, New York. Commissioner Farley is sued in his official capacity and, at all relevant times hereto, has acted in such official capacity to deny the Public Advocate access to the Records sought by him pursuant to the Charter.

8. Respondent Jonathan Mintz is the Commissioner of the City of New York Department of Consumer Affairs, an agency of the City. Commissioner Mintz is a political appointee of the Mayor. Commissioner Mintz's principal place of business is 42 Broadway, New York, New York. Commissioner Mintz is sued in his official capacity and, at all relevant

times hereto, has acted in such official capacity to deny the Public Advocate access to the Records sought by him pursuant to the Charter.

9. Janette Sadik-Khan is the Commissioner of the City of New York Department of Transportation, an agency of the City. Commissioner Sadik-Khan is a political appointee of the Mayor. Commissioner Sadik-Khan's principal place of business is 55 Water Street, 9th floor, New York, New York. Commissioner Sadik-Khan is sued in her official capacity and, at all relevant times hereto, has acted in such official capacity to deny the Public Advocate access to the Records sought by him pursuant to the Charter.

10. John J. Doherty is the Commissioner of the City of New York Department of Sanitation, an agency of the City. Commissioner Doherty is a political appointee of the Mayor. Commissioner Doherty's principal place of business is 125 Worth Street, New York, New York. Commissioner Doherty is sued in his official capacity and, at all relevant times hereto, has acted in such official capacity to deny the Public Advocate access to the Records sought by him pursuant to the Charter.

11. Robert LiMandri is the Commissioner of the City of New York Department of Buildings, an agency of the City. Commissioner LiMandri is a political appointee of the Mayor. Commissioner LiMandri's principal place of business is 60 Hudson Street, New York, New York. Commissioner LiMandri is sued in his official capacity and, at all relevant times hereto, has acted in such official capacity to deny the Public Advocate access to the Records sought by him pursuant to the Charter.

12. David M. Frankel is the Commissioner of the City of New York Department of Finance, an agency of the City. Commissioner Frankel is a political appointee of the Mayor. Commissioner Frankel's principal place of business is 1 Centre Street, New York,

New York. Commissioner Frankel is sued in his official capacity and, at all relevant times hereto, has acted in such official capacity to deny the Public Advocate access to the Records sought by him pursuant to the Charter.

### FACTS

#### *The Public Advocate's Duties and Responsibilities under the Charter*

13. As set forth in the Charter, the Public Advocate is the second-highest ranking official in City government, elected by the electorate of all five boroughs of the City of New York. Charter §§ 10(a) and 24(a).

14. The role of the Public Advocate is to act as an ombudsman between the public and City agencies, to ensure the efficient operation of City agencies, to advocate for the people, to ensure that their concerns are addressed by City agencies, and to act as a counterweight to the power of the Mayoralty.

15. Under the Charter, the Public Advocate is required to “review complaints of a recurring and multiborough or city-wide nature relating to services and programs and make proposals to improve the city’s response to such complaints.” Charter § 24(f)(2). Under the Charter, the Public Advocate is also required to “receive individual complaints concerning city services and other administrative actions of city agencies” and to act as an ombudsman for citizens. Charter § 24(f)(3). Under the Charter, the Public Advocate may also “review the programs of city agencies,” including the “responsiveness of city agencies to individual and group requests for data or information regarding the agencies’ structure, activities and operations.” Charter § 24(h).

16. In furtherance of these responsibilities, the Charter provides that the Public Advocate “shall have timely access to those records and documents of city agencies

which the [P]ublic [A]dvocate deems necessary to complete [his] investigations, inquiries, and reviews.” Charter § 24(j).

***The Public Advocate Receives Complaints from Small Business Owners***

17. On information and belief, the City’s small businesses are important job creators, but, because of their size, small businesses are often disproportionately affected by regulatory enforcement because they have more difficulty absorbing the costs associated with regulatory compliance (e.g. paying fines) and because they do not have the same resources as larger businesses to contest arbitrary or erroneous fines.

18. In the view of the Petitioner, small business owners in the City therefore need an effective advocate to ensure that their interests are properly understood, articulated, and protected.

19. The Public Advocate has made it a priority of his office to collect and respond to complaints and concerns expressed by small business owners, including conducting a survey of 625 immigrant-owned small businesses and publishing a report proposing a series of pilot projects to educate these entrepreneurs about available services and programs.

20. Since he took office, the Public Advocate has received complaints from constituents who are small business owners through calls to his Constituent Service hotline, emails, and encounters during his regular visits to the five boroughs. There were so many calls that the Public Advocate had to set up a separate hotline dedicated to small business owners. These constituents complained that City agencies were citing and fining them for violations never before called to their attention and imposing fines for low-risk, first-time offenses without allowing business owners an opportunity to cure or correct the violation.

21. The Public Advocate decided to investigate whether these complaints were reflective of a recurring, City-wide pattern of overzealous enforcement focused on maximizing revenue during difficult economic times, without consideration for the costs imposed on small business owners.

22. To that end, the Public Advocate convened a series of round-tables with the Bronx Chamber of Commerce in Throggs Neck, the Brooklyn Business Improvement District on Church Avenue, the Brighton Beach Business Improvement District, the Washington Heights Chamber of Commerce, and the Inwood Chamber of Commerce. During these meetings, the Public Advocate met with more than a hundred small business owners.

23. Through these meetings, emails, calls, and encounters, the Public Advocate learned firsthand about the damage done to small business owners by excessive and unreasonably imposed fines. Business owners expressed a common desire to follow the law, but each had experienced the mounting costs of the City's push for more revenue. Business owners were forced to pay thousands of dollars in fines for nuisance violations that, in Petitioner's view, could, and should, have been easily addressed through education and other non-punitive actions.

24. Based on the complaints and information gathered, the Public Advocate published a Red Tape Report in November 2011, entitled "Reducing Red Tape So Our Small Businesses can Grow and Create Jobs." *See* Exhibit A to the Affirmation of Zoe Salzman, dated July 17, 2012 (hereinafter "Salzman Aff."). The report highlighted a City-wide pattern of overzealous enforcement by City agencies that was particularly burdensome on small businesses.

25. For example, the owners of a family-run grocery store business in Flatbush, Brooklyn were fined \$250 for each of their three cash registers during an August 2011 inspection by the Department of Consumer Affairs because they had failed to post the store's

return policy on signs next to each cash register—even though their return policy was printed on every receipt. This was the first time the owners had been cited for such a violation.

26. A small business owner on Irving Avenue in Brooklyn told the Public Advocate how his store was robbed and he had to purchase replacement cash registers. The owner was unaware that the new, replacement registers were not programmed to print his business's name and information on the receipts, as his old registers had done. As soon as the issue was brought to his attention, the owner immediately fixed the problem, but he was still stuck with a heavy fine by the Department of Consumer Affairs.

27. Small business owners in the Bronx provided the Public Advocate with a letter from the Department of Health and Mental Hygiene regarding fines, warning them that contesting the fine may result in the business having to pay more and may require the business owner to wait for hours before a hearing is granted, effectively instructing small business owners to simply pay the fines instead of seeking to resolve legitimate misunderstandings.

28. The Public Advocate also collected stories reported in the news media documenting concerns of small business owners similar to the complaints he had received directly.

***The Public Advocate Attempts to Gather Information About Fine-Generated Revenue for City Agencies***

29. The Public Advocate also learned from a review of the 2002 and 2011 Comprehensive Annual Financial Reports of the City Comptroller that City-wide revenue from fines had almost doubled, from approximately \$400 million in 2002 to approximately \$800 million in 2011.

30. For example, the Department of Consumer Affairs saw an increase in revenue from fines from \$4.3 million in 2002 to \$10.6 million in 2011, while the Department of



Health and Mental Hygiene reported an increase in revenue from \$10 million in 2002 to \$45.6 million in 2011.

31. The Public Advocate published a second, more detailed report in April 2012, “Standing Up for New York’s Small Businesses: Eliminating Needless Regulations and Fines and Improving Transparency to Strengthen Our City’s Small Businesses.” *See* Salzman Aff., Ex. B. The report documented the results of the Public Advocate’s investigation into the concerns of small business owners and the information that the Public Advocate had managed to gather about the increase in City agencies’ revenues.

32. The Public Advocate’s attempts to gather more detailed information about the increase in City revenues from this pattern of overzealous enforcement were hampered, however, because many City agencies hide their fine-based revenue in broad, generic categories in the budget, making it impossible to measure the growth over time of fine-based revenue.

33. Moreover, those agencies that do delineate “fines and forfeitures” in their budgets provide no information on the categories of violations cited, how enforcement varies from neighborhood to neighborhood, and which types of businesses are most affected.

34. In addition, statistics studying the effect of fines on compliance with the law are absent from City agency websites and reports.

35. Without this disaggregated data, the Public Advocate found it impossible to conduct a comprehensive analysis of the situation and recommend appropriate solutions that are in the public’s and the City’s interest.

***The Public Advocate Requests that Respondents Provide Disaggregated Data***

36. On or about May 7, 2012, the Public Advocate therefore wrote to Respondents, invoking his powers under the Charter to request that they provide information on

or before June 1, 2012 regarding the fines collected by their agencies. *See* Salzman Aff., Exs. C-H.

37. The letters sought the following Records:

- a. the total number of violations given out by each of the Respondents' agencies from FY 2002 to FY 2011 (broken down by type of violation, year, dollar amount of fine, and geography (e.g. borough, zip code));
- b. a projection of the total number of fines and total revenues from fines for FY 2012 (broken down by type of violation, year, dollar amount of fine, and geography);
- c. information concerning "any quotas, goals, guides, or other numerical markers on the number of violations issued, or revenue generated, on [Respondent's] inspectors"; and
- d. annual enforcement costs from FY 2002 to FY 2011 including how Respondent "factor[s] adjudication costs, and how much your agency has spent in each fiscal year from 2002-2011 for inspections and enforcement of violations."

*See id.*

38. But, by June 1, 2012, none of the Respondents had provided any of the Records to the Public Advocate.

39. The Public Advocate then wrote again, reminding Respondents of his request and extending the response deadline until June 8, 2012. *See* Salzman Aff., Exs. I-N.

40. To date, more than a month later, none of the Respondents have provided the Public Advocate with any Records responsive to his request.

41. Yet, on information and belief, such Records exist within the possession, custody, and control of Respondents. Moreover, Respondents are continuing their pattern of overzealous regulatory enforcement, without regard to the devastating impact it is having on the City's small businesses.

42. Depriving the Public Advocate of the Records materially inhibits him in carrying out his Charter-based legal duty to "review complaints of a recurring and multiborough or city-wide nature relating to services and programs and make proposals to improve the city's response to such complaints," Charter § 24(f)(2), "receive individual complaints concerning city services and other administrative actions of city agencies" and to act as an ombudsman for citizens, Charter § 24(f)(3), and "review the programs of city agencies," including the "responsiveness of city agencies to individual and group requests for data or information regarding the agencies' structure, activities and operations." Charter § 24(h).

43. Denying the Records to the Public Advocate is a clear violation of the Charter's explicit direction that the Public Advocate "shall have timely access to those records and documents of city agencies which the [P]ublic [A]dvocate deems necessary to complete [his] investigations, inquiries, and reviews." Charter § 24(j).

**FIRST CAUSE OF ACTION**

(Article 78 Review of Wrongful Denial of Records)

44. Petitioner repeats and realleges the preceding paragraphs as though fully set forth herein.

45. By refusing to grant the Public Advocate access to the Records he requested, Respondents failed to perform a duty enjoined on them by law, in that their failure to provide the Records was directly contrary to Charter §§ 24(f)(2)-(3), (h), and (j).

46. Unless the Respondents are specifically directed and compelled to provide the Public Advocate with the information he has requested, the Public Advocate's powers and responsibilities under the Charter will be irreparably abrogated.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court grant a judgment as follows:

- (a) directing and compelling Respondents to provide Petitioner Public Advocate the Records he has requested;
- (b) awarding Petitioner Public Advocate reasonable costs and attorneys' fees incurred through his necessary retention of outside counsel; and
- (c) granting such other and further relief as the Court deems just and proper.

Dated: July 25, 2012  
New York, New York

EMERY CELLI BRINCKERHOFF  
& ABADY LLP

By:



Andrew G. Celli, Jr.  
Zoe Salzman  
75 Rockefeller Plaza, 20<sup>th</sup> Floor  
New York, New York 10019  
(212) 763-5000

*Attorneys for Petitioner*

**VERIFICATION**

STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF NEW YORK )

BILL DE BLASIO, Public Advocate for the City of New York, being duly sworn, deposes and says: I am the petitioner in the within proceeding; I make this verification pursuant to CPLR 3020(d); I have read the foregoing petition and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

Date: July 23, 2012

New York, New York



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BILL DE BLASIO

Sworn to before me this  
23<sup>rd</sup> day of July, 2012.



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Notary Public

**STEVEN NEWMARK**  
Notary Public, State of New York  
No. 02NE6129312  
Qualified in New York County  
Commission Expires: 10/26/2013