

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

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RECLAIM THE RECORDS,

For Judgment Pursuant to Article 78 of the CPLR  
Petitioner, Index No. 153996/2019  
I.A.S. Part 62  
(Sweeting, J.)

- against -

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, NEW YORK CITY BUREAU OF VITAL STATISTICS, NEW YORK CITY BOARD OF HEALTH, OXIRIS BARBOT, in her official capacity as New York City Commissioner of Health, GRETCHEN VAN WYE, in her official capacity as New York City Registrar, and STEVEN P. SCHWARTZ, in his official capacity as former New York City Registrar,

**VERIFIED ANSWER**

Respondents.  
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Respondents the New York City Department of Health and Mental Hygiene, New York City Bureau of Vital Statistics, New York City Board of Health, Oxiris Barbot,<sup>1</sup> Gretchen Van Wye, and Steven P. Schwartz (together, “Respondents”), as and for their Verified Answer to the Verified Petition dated April 16, 2019 (Dkt. No. 1), respectfully allege as follows:

1. Deny the allegations set forth in paragraph “1” of the Verified Petition, except deny knowledge or information sufficient to form a belief as to what “the rest of the country” does, and admit that the New York City Department of Health and Mental Hygiene (“DOHMH”) does not disclose public scans of death certificates.

2. Deny the allegations set forth in paragraph “2” of the Verified Petition, except admit that DOHMH had not transferred vital records to DORIS since the 1980s, and

<sup>1</sup> Dr. Barbot was replaced as the Commissioner of the NYC Department of Health and Mental Hygiene by Dr. David A. Chokshi on or about August 5, 2020.

admit that DOHMH proposed a transfer policy due in part to privacy concerns, and admit that a Board of Health (“Board”) meeting was held in September 2017 to discuss this proposed policy and admit that Steven P. Schwartz was present at this meeting.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “3” of the Verified Petition, except admit that a public hearing on was held in October 2017 and that the Board of Health held a meeting in March 2018 concerning the proposed addition of § 207.21 to the New York City Health Code (the “Health Code”).

4. Deny the allegations set forth in paragraph “4” of the Verified Petition, and respectfully refer the Court to that rule for a complete and accurate statement of its provisions.

5. Deny the allegations set forth in paragraph “5” of the Verified Petition, and respectfully refer the Court to the transcript of the “Third Board Meeting” (annexed to the Petition as Exhibit 11) and to the regulations cited therein for a complete and accurate statement of their respective content and provisions.

6. Deny the allegations set forth in paragraph “6” of the Verified Petition, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the expertise of everyone present at the Board of Health’s meetings.

7. Deny the allegations set forth in paragraph “7” of the Verified Petition, except admit that Petitioner submitted a request pursuant to the Freedom of Information Law (“FOIL”) on February 7, 2019, and respectfully refer the Court to that request for a complete and accurate statement of its contents.

8. Deny the allegations set forth in paragraph “8” of the Verified Petition, and respectfully refer the Court to DOHMH’s email dated February 11, 2019 denying the FOIL request, and to DOHMH’s letter denying Petitioner’s appeal, dated March 7, 2019, for a complete and accurate statement of their contents.

9. Deny the allegations set forth in paragraph “9” of the Verified Petition, except admit that Petitioner purports to proceed as stated therein.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the Verified Petition.

11. Admit the allegations set forth in paragraph “11” of the Verified Petition.

12. Admit the allegations set forth in paragraph “12” of the Verified Petition.

13. Admit the allegations set forth in paragraph “13” of the Verified Petition.

14. Deny the allegations set forth in paragraph “14” of the Verified Petition, except admit that at the time this proceeding was commenced, Oxiris Barbot was the Commissioner of DOHMH and a member of the Board of Health.

15. Admit the allegations set forth in paragraph “15” of the Verified Petition, except that Gretchen Van Wye was, and continues to be, Assistant Commissioner of the Bureau of Vital Statistics.

16. Admit the allegations set forth in paragraph “16” of the Verified Petition.

17. Deny the allegations set forth in paragraph “17” of the Verified Petition, except admit that Petitioner purports to invoke the Court’s jurisdiction as stated therein, and respectfully refer the Court to the statutes cited therein for a complete and accurate statement of their provisions.

18. Deny the allegations set forth in paragraph “18” of the Verified Petition, except admit that Petitioner purports to lay venue in this county as stated therein, and respectfully refer the Court to statutes cited therein for a complete and accurate statement of their provisions.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “19” of the Verified Petition.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “20” of the Verified Petition.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “21” of the Verified Petition.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “22” of the Verified Petition, except admit that death certificates may be used for many different purposes, and respectfully refer the Court to Petitioner’s Exhibit 1 for a complete and accurate statement of its contents.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “23” of the Verified Petition.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “24” of the Verified Petition.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “25” of the Verified Petition.

26. Deny the allegations set forth in paragraph “26” of the Verified Petition, except deny knowledge or information sufficient to form a belief as to the allegations in the first sentence, and admit that requests for New York City’s vital records that have not been

transferred to the City's Municipal Archives are considered by the DOHMH Bureau of Vital Statistics, and respectfully refer the Court to the section of the New York City Administrative Code cited therein for a complete and accurate statement of its provisions.

27. Deny the allegations set forth in paragraph "27" of the Verified Petition, and respectfully refer the Court to the transcript of the First Board Meeting (annexed to the Petition as Exhibit 4), and to the regulation cited for a complete and accurate statement of their respective content and provisions.

28. Deny the allegations set forth in paragraph "28" of the Verified Petition, and respectfully refer the Court to the transcript of the First Board Meeting (annexed to the Petition as Exhibit 4) for a complete and accurate statement of its contents.

29. Admit the allegations set forth in paragraph "29" of the Verified Petition and affirmatively state that one of the comments in favor of the proposal was from the New York State Department of Health and the other was from the National Association for Public Health Statistics and Information Systems, a nonprofit national association whose members represent state and local vital records, health statistics and information system agencies.

30. Deny the allegations set forth in paragraph "30" of the Verified Petition, except admit that DOHMH held a hearing on October 24, 2017, and respectfully refer the Court to the transcript of that meeting (annexed to the Petition as Exhibit 5) for a complete and accurate statement of its contents.

31. Deny the allegations set forth in paragraph "31" of the Verified Petition, except admit that the Board of Health met on March 13, 2018, and respectfully refer the Court to the transcript of that meeting (annexed to the Petition as Exhibit 6) for a complete and accurate statement of its contents.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “32” of the Verified Petition, and respectfully refer the Court to the transcript annexed to the Petition as Exhibit 6 for a complete and accurate statement of its contents.

33. Deny the allegations set forth in paragraph “33” of the Verified Petition and respectfully refer the Court to the transcript annexed to the Petition as Exhibit 6 for a complete and accurate statement of its contents.

34. Deny the allegations set forth in paragraph “34” of the Verified Petition and respectfully refer the Court to the transcript annexed to the Petition as Exhibit 6 for a complete and accurate statement of its contents.

35. Deny the allegations set forth in paragraph “35” of the Verified Petition and respectfully refer the Court to the Notice annexed to the Petition as Exhibit 7 for a complete and accurate statement of its contents.

36. Deny the allegations set forth in paragraph “36” of the Verified Petition, and respectfully refer the Court to N.Y.C. Health Code § 207.21 for a complete and accurate statement of its provisions.

37. Deny the allegations set forth in paragraph “37” of the Verified Petition, except admit that DOHMH published a Notice of Opportunity to Comment in March 2018, and respectfully refer the Court to the documents annexed to the Petition as Exhibits 6 and 8 for a complete and accurate statement of their contents.

38. Deny the allegations set forth in paragraph “38” of the Verified Petition, except admit that DOHMH received comments in response to its second proposal, and admit that DOHMH received the IAJGS letter, and respectfully refer the Court to the document annexed to

the Petition as Exhibit 9 for a complete and accurate statement of the content of those comments and that letter.

39. Deny the allegations set forth in paragraph “39” of the Verified Petition, and respectfully refer the Court to the transcript annexed to the Petition as Exhibit 6 and the IAJGS letter annexed to the Petition as part of Exhibit 9 for a complete and accurate statement of their contents.

40. Deny the allegations set forth in paragraph “40” of the Verified Petition and respectfully refer the Court to the transcript annexed to the Petition as Exhibit 6 and the IAJGS letter annexed to the Petition as part of Exhibit 9 for a complete and accurate statement of their contents.

41. Deny the allegations set forth in paragraph “41” of the Verified Petition and respectfully refer the Court to the transcript annexed to the Petition as Exhibit 6 and the IAJGS letter annexed to the Petition as part of Exhibit 9 for a complete and accurate statement of their contents.

42. Deny the allegations set forth in paragraph “42” of the Verified Petition and respectfully refer the Court to Petitioner’s Exhibit 9 for a complete and accurate statement of its contents.

43. Deny the allegations set forth in paragraph “43” of the Verified Petition except admit that DOHMH scheduled a second public hearing on April 23, 2018, and that it received 964 written comments in advance of that meeting.

44. Deny the allegations set forth in paragraph “44” of the Verified Petition, except admit that fifteen people spoke at the April 23, 2018 meeting, and respectfully refer the

Court to the transcript annexed to the Petition as Exhibit 10 for a complete and accurate statement of its contents.

45. Deny the allegations set forth in paragraph “45” of the Verified Petition and respectfully refer the Court to the transcript annexed to the Petition as Exhibit 10 for a complete and accurate statement of its contents.

46. Deny the allegations set forth in paragraph “46” of the Verified Petition, except admit that the Board adopted the proposal on June 5, 2018, affirmatively state that the N.Y.C. Health Code § 207.11 (as amended) became effective on August 12, 2018, but was not implemented until January 1, 2019, and respectfully refer the Court to that rule for a complete and accurate statement of its provisions.

47. Deny the allegations set forth in paragraph “47” of the Verified Petition and respectfully refer the Court to the transcript annexed to the Petition as Exhibit 11 for a complete and accurate statement of its contents.

48. Deny the allegations set forth in paragraph “48” of the Verified Petition, and respectfully refer the Court to the transcript annexed to the Petition as Exhibit 11 for a complete and accurate statement of its contents.

49. Deny the allegations set forth in paragraph “49” of the Verified Petition, and respectfully refer the Court to the transcript annexed to the Petition as Exhibit 11 for a complete and accurate statement of its contents.

50. Deny the allegations set forth in paragraph “50” of the Verified Petition, and respectfully refer the Court to the transcript annexed to the Petition as Exhibit 11 for a complete and accurate statement of its contents and to the Notice annexed to the Petition as Exhibit 12 and to the rules cited therein for a complete and accurate statement of their



provisions, except admit that DOHMH did not provide the public with any “studies” about identity theft.

51. Deny the allegations set forth in paragraph “51” of the Verified Petition, and affirmatively state that Health Code § 207.11 (as amended) became effective on August 12, 2018, but was not implemented until January 1, 2019, and respectfully refer the Court to that rule for a complete and accurate statement of its provisions.

52. Deny the allegations set forth in paragraph “52” of the Verified Petition, and respectfully refer the Court to Petitioner’s FOIL request dated February 7, 2019, annexed to the Petition as Exhibit 13, for a complete and accurate statement of its contents.

53. Deny the allegations set forth in paragraph “53” of the Verified Petition, and respectfully refer the Court to Petitioner’s FOIL request dated February 7, 2019, annexed to the Petition as Exhibit 13, for a complete and accurate statement of its contents.

54. Deny the allegations set forth in paragraph “54” of the Verified Petition, except admit that DOHMH denied Petitioner’s FOIL request, and respectfully refer the Court to an e-mail from DOHMH dated February 11, 2019, annexed to the Petition as Exhibit 13, for a complete and accurate statement of its contents.

55. Deny the allegations set forth in paragraph “55” of the Verified Petition, except admit that Petitioner appealed the FOIL denial, and admit that DOHMH denied Petitioner’s appeal, and respectfully refer the Court to the letter from Petitioner dated March 7, 2019 and the letter from DOHMH dated March 21, 2019, annexed to the Petition as Exhibits 15 and 16, respectively, for a complete and accurate statement of their contents.

56. Make no response to the allegations set forth in paragraphs “56” through “96 of the Verified Petition as they consist of conclusions of law or argument to which no

response is required. To the extent a response is necessary, Respondents deny the allegations set forth in paragraphs “56” through “96” and respectfully refer the Court to the caselaw, exhibits, laws, statutes, and rules cited therein for a complete and accurate statement of their respective contents and provisions.

57. In response to paragraph “97,” Respondents repeat and reallege their responses to paragraphs “1” through “96” as if fully set forth herein.

58. Deny the allegations set forth in paragraph “98” of the Verified Petition, and affirmatively state that DOHMH maintains digital copies of death certificates *recorded* in New York City between 1949 and 1968 rather than *issued* in such time period.

59. Deny the allegations set forth in paragraph “99” of the Verified Petition, except admit that that Petitioner submitted a FOIL request to DOHMH, and respectfully refer the Court to that FOIL request, annexed to the Petition as Exhibit 13, for a complete and accurate statement of its contents.

60. Deny the allegations set forth in paragraph “100” of the Verified Petition and respectfully refer the Court to the Freedom of Information Law (“FOIL”) for a complete and accurate statement of its provisions.

61. Deny the allegations set forth in paragraph “101” of the Verified Petition.

62. In response to paragraph “102,” Respondents repeat and reallege their responses to paragraphs “1” through “101” as if fully set forth herein.

63. Deny the allegations set forth in paragraph “103” of the Verified Petition, and respectfully refer the Court to the statute, law, and caselaw cited therein for a complete and accurate statement of their provisions and contents, respectively, except admit that disclosing the documents requested by Petitioner’s FOIL request would violate the statute and law cited.

64. Deny the allegations set forth in paragraph “104” of the Verified Petition, except admit that a rule should not be arbitrary and capricious.

65. Deny the allegations set forth in paragraph “105” of the Verified Petition.

66. Deny the allegations set forth in paragraph “106” of the Verified Petition.

67. In response to paragraph “107,” Respondents repeat and reallege their responses to paragraphs “1” through “106” as if fully set forth herein.

68. Make no response to the allegations set forth in paragraph “108” of the Verified Petition as it consists of conclusions of law or argument to which no response is required. To the extent a response is necessary, Respondents admit the allegations set forth therein.

69. Deny the allegations set forth in paragraph “109” of the Verified Petition.

70. Deny the allegations set forth in paragraph “110” of the Verified Petition.

71. Deny the allegations set forth in paragraph “111” of the Verified Petition.

72. In response to paragraph “112,” Respondents repeat and reallege their responses to paragraphs “1” through “111” as if fully set forth herein.

73. Make no response to the allegations set forth in paragraph “113” of the Verified Petition as it consists of conclusions of law or argument to which no response is required. To the extent a response is necessary, Respondents deny the allegations set forth therein.

74. Deny the allegations set forth in paragraph “114” of the Verified Petition.

75. Deny the allegations set forth in paragraph “115” of the Verified Petition.

76. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “116” of the Verified Petition.

**AS AND FOR A STATEMENT OF MATERIAL  
AND PERTINENT FACTS, RESPONDENTS  
RESPECTFULLY ALLEGE:**

**A. Background**

77. Pursuant to the New York City Charter, the New York City Department of Health and Mental Hygiene (“DOHMH”) has “jurisdiction to regulate all matters affecting health in the City of New York and to perform all those functions and operations performed by the city that relate to the health of the people of the city[.]” NYC Charter, Chapter 22, § 556. Among its duties include the supervision and control over “the registration of births, fetal deaths and deaths[.]” *Id.*, § 556(c)(1).

78. To that end, the Board of Health, which is within DOHMH, is required to include in the New York City Health Code (the “Health Code”) provisions related to maintaining a registry of births and deaths, as well as the “examination and issuance of transcripts” of birth and death certificates. The Health Code may also include all other “matters and subjects to which the power and authority of the department extends.” *Id.*, § 558(c). The Board of Health is specifically authorized to add to, alter, and amend any part of the Health Code. *Id.*, § 558(b), (g).

79. Section 17-169(b) of the New York City Administrative Code prevents the issuance of a death record where such issuance would not be “necessary or required for a proper purpose.” Section 17-112, in turn, provides that DOHMH may establish “reasonable regulations” regarding making any of its records public.

80. On March 13, 2018, in accordance with the City Administrative Procedure Act and after a hearing and a period of notice and comment, the Board of Health adopted a resolution to establish a fixed schedule for making birth and death records accessible to the public. A copy of this resolution is attached hereto as Exhibit A. This resolution was codified in

the Health Code as § 207.21, and made final in the City Record on March 19, 2018, with the effective date of April 18, 2018.

81. Health Code § 207.21 states, in relevant part, that “a birth record in the Department’s possession and control becomes public on January 31st of the year following 125 years after the date of birth and a death record . . . becomes a public record on January 31st of the year following 75 years after the date of death.” Health Code § 207.21.

82. Notably, the Board of Health received a comment from the New York State Department of Health, Bureau of Vital records, in support of its proposal to amend the Health Code to establish a schedule for making birth and death records public. A copy of the letter dated October 23, 2017 from the NYS Department of Health is attached hereto as Exhibit B. In supporting the amendment, the Department of Health stated that “[i]t is significant to note, that the proposal would align New York City’s proposal with the 2011 Model State Vital Statistics Act and Model State Vital Statistics Regulations,” as under the Model Act, vital records become public 125 years after the date of birth or 75 years after the date of death have lapsed. *Id.* at 1. Among the factors listed in support of the Board of Health’s amendment is the confidential nature of vital records. *Id.* The Department of Health detailed the methods by which identifiable information contained in such records could be used improperly by criminals to establish a fictitious identity:

A birth certificate contains an individual’s first and last name, date of birth, sex, home address, and mother’s maiden name. In addition, a death certificate contains an individual’s first and last name, sex, date of death and birth, gender, Social Security Number, marital status, full name of surviving spouse, residence, and full names of both parents. All this information can be used to identify an individual.

*Id.* at 1.

83. Further support for the promulgation of § 207.21 was provided by the National Association for Public Health Statistics and Information Systems (“NAPHSIS”), which

is the national nonprofit membership organization representing the 57 vital records and public health statistics offices (the 50 states, 5 territories, New York City, and the District of Columbia) in the United States. A copy of the NAPHSIS letter dated October 20, 2017 is attached hereto as Exhibit C. In supporting § 207.21, NAPHSIS noted that the proposed amendment to the Health Code would align the City's access rule with the relevant State law and that the "revision reflects an increased emphasis on electronic records, fraud prevention and security, and protection of the records both for individual privacy and for preservation purposes." *Id.* at 1.

84. Next, also after hearing and a period of notice and comment, the Board of Health adopted a resolution concerning Health Code § 207.11 designed to expand the group of family members who can access birth and death records prior to their public release. A copy of this resolution is attached hereto as Exhibit D. At the time this resolution was adopted, death records were only available to: (1) the spouse, domestic partner, parent, child, sibling, grandparent, grandchild, [or] great grandchild of the decedent." *See* Exhibit D at 4. Access was not available to Petitioner's members, who are purportedly comprised of genealogists, historians, researchers, teachers and journalists. *See* Verified Petition, ¶ 10. In enacting the amendment, the Board of Health expanded the list of relatives given in Health Code § 207.11(b)(1) who can request a death certificate to also include nieces, nephews, aunts, uncles, great-great grandchildren, grandnieces, and grandnephews. *See* Exhibit D at 2, 4. The Board of Health also provided access to the certification of birth of a deceased individual, listing spouses, domestic partners, parents of children over the age of 18, children, siblings, nieces, nephews, aunts, uncles, grandchildren, great grandchildren, grandnieces, and grandnephews among the groups of family members who may obtain access. *Id.* at 1-4. These modifications were included and made final

in the City Record on June 12, 2018. The amendment to Rule 207.11 became effective August 12, 2018, but was not implemented until January 1, 2019.

85. The Board of Health considered comments on the proposed amendment to Health Code § 207.11, some of which suggested that professional researchers should have broad access to birth and death records and that additional family and social relationships should be added to the list of individuals with such access. *Id.* Balancing the privacy and historical interests at stake, the Board of Health did not agree that any additional changes should be made to the amendment. *Id.*

86. Death records implicate multiple privacy interests that warrant confidentiality. Specifically, death certificates contain personally identifying information relating not only to decedents but to other parties as well, including the names of next of kin, whose privacy rights may be violated by release of death certificates. Death certificates issued by DOHMH, which are particular to the City, include sensitive information such as usual residence; marital status; age; occupation; Social Security number; country of origin; parents' names; including mother's maiden name; place of death; precise time of death; general statement as to cause of death affirming whether death is from natural causes on a regular death certificate; complete cause of death on an Office of the Chief Medical Examiner death certificate; and the name of the funeral director, if any.<sup>2</sup>

87. The certificates available to the individuals listed in Health Code § 207.11(b) appear at pp. 121 and 123 of the *Summary of Vital Statistics 2018*. For the Court's convenience, a copy of these certificates is attached hereto as Exhibit E. The certificate that

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<sup>2</sup> Copies of the different types of death certificates issued are included in *the Summary of Vital Statistics 2018, The City of New York*, p. 121 *et seq.*, available online at <https://www1.nyc.gov/assets/doh/downloads/pdf/vs/2018sum.pdf> (last visited Feb. 28, 2021).

appears at p. 1 of Exhibit E is the “regular” death certificate issued when a death is not within the jurisdiction of the Office of the Chief Medical Examiner (“OCME”); a Confidential Medical Report (“CMR”) must also be submitted when a healthcare provider reports a death. *See* Exhibit E at 1-2. The CMR is not automatically provided together with the death certificate and is available only to certain parties in accordance with Health Code § 205.07. The second type of certificate is submitted by OCME for deaths falling within their jurisdiction and it includes the Medical Examiner’s Supplementary Report. *Id.* at 3-4.

88. As discussed below, Petitioner’s request for all death certificates issued in New York City between 1949 and 1968 would put in the public sphere potentially more than half a million such records, and revealing sensitive details about the life and death of individuals whose children or grandchildren may be alive today.<sup>3</sup> *See id.*

#### **B. The FOIL Request and Administrative Appeal**

89. On February 7, 2019, DOHMH received a request from Petitioner pursuant to FOIL. *See* Verified Petition, Ex. 13 (Dkt. No. 15). The FOIL request sought “one complete set of the digital scans, in uncertified form, previously made by [DOHMH] of all New York City death certificates issued between and including 1949 and 1968.” *Id.*

90. By email dated February 11, 2019, DOHMH’s Records Access Officer (the “RAO”) timely responded to the FOIL request, denying the request in its entirety on the grounds that the responsive records are exempt under (i) Public Officers Law §§ 87(2)(a) as records that are exempt under applicable law, including Administrative Code § 17-169 and Health Code §§ 3.25 and 207.11 and (ii) Public Officers Law §§ 87(2)(b) and (89(2)(b) on the

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<sup>3</sup> The data released by DOHMH concerning death rates is available at <https://www1.nyc.gov/assets/doh/downloads/pdf/vs/2018sum.pdf> (last visited Feb. 28, 2021).



basis that disclosure would constitute an unwarranted invasion of personal privacy. *See* Verified Petition, Ex. 14.

91. Petitioner appealed the decision by letter dated March 7, 2019, arguing, in part, that DOHMH cannot rely on the Health Code provisions to deny disclosure under FOIL and that the requested records do not fit into FOIL's privacy exemption. *See* Verified Petition, Ex. 15.

92. By letter dated March 21, 2019, DOHMH's Appeals Officer timely denied the appeal, setting forth the legal basis on which the records were withheld and describing in detail the applicability of the asserted exemptions. *See* Verified Petition, Ex. 16. Specifically, the Appeals Officer detailed how disclosure of the requested records was not permitted pursuant to sections 17-169(b) and 17-112 of the Administrative Code and sections 207.11 and 207.21 of the Health Code, the governing law for such records in New York City, and explained that, outside of New York City, the records were entirely exempt from FOIL by State law. *Id.* The Appeals Officer also explained that disclosure would impact the privacy interests of multiple parties. *Id.*

93. Petitioner commenced this Article 78 proceeding by filing a Verified Petition on April 17, 2019. (Dkt. No. 1). In this proceeding, Petitioner (i) seeks an order directing DOHMH to produce the records responsive to its FOIL request (first cause of action), and (ii) challenges the amended § 207.11 of the Health Code and the newly-enacted § 207.21 of the Health Code as enacted *ultra vires* and arbitrary and capricious, and as and seeks to have both sections vacated and annulled (second, third and fourth causes of action). *See* Verified Petition, ¶¶ 102-115.

94. On July 8, 2019, Respondents moved for dismissal of the second, third, and fourth causes of action on the basis that they were barred by the applicable statute of

limitations, and that the fourth cause of action also failed to state a claim. *See generally*, Memo. of Law in Support of Cross-Motion (ECF No. 37).

95. On December 16, 2020, the Court issued a decision granting Respondents' motion in part and dismissed and severed Petitioner's challenge to Health Code § 207.21. *See* Decision (Dkt. No. 52) at 28.

**AS AND FOR A FIRST DEFENSE**

96. The Petition fails to state a claim on which relief may be granted.

**AS AND FOR A SECOND DEFENSE**

97. Respondents fully complied with their statutory obligations.

**AS AND FOR A THIRD DEFENSE**

98. Respondents are under no obligation by law to produce documents, data, or records that are exempt from disclosure under FOIL.

**AS AND FOR A FOURTH DEFENSE**

99. Respondents' actions were in all respects legal, proper, reasonable, and in conformity with all applicable laws and regulations, and were neither arbitrary nor capricious.

**WHEREFORE**, Respondents respectfully request that the Verified Petition be denied in its entirety, and that they be awarded such other and further relief as this Court deems just and proper.

Dated: New York, New York  
March 1, 2021

JAMES E. JOHNSON  
Corporation Counsel of the  
City of New York  
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By:   
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Assistant Corporation Counsel

TO: Michael D. Moritz  
Attorney for Petitioner  
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East Rockaway, New York 11518  
[michael.moritz@nyu.edu](mailto:michael.moritz@nyu.edu)

**VERIFICATION**

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

**CHARI ANHOUSE**, being duly sworn, deposes and says that I am an Associate General Counsel and was Records Access Officer at the New York City Department of Health and Mental Hygiene until October 1, 2019; that I have read the foregoing **VERIFIED ANSWER** and know or believe the contents thereof to be true based upon my personal knowledge and upon information and belief, and that the source of my information and the basis for my belief as to the matters not within my personal knowledge are the records of the New York City Department of Health and Mental Hygiene and information received from other officers and employees of the New York City Department of Health and Mental Hygiene.

**Chari Anhouse** Digitally signed by Chari Anhouse  
Date: 2021.03.01 18:33:57 -05'00'  
\_\_\_\_\_  
CHARI ANHOUSE

Sworn to before me this  
13<sup>th</sup> day of March, 2021

  
\_\_\_\_\_  
Notary Public

**BRIAN JOSEPH KRIST**  
**NOTARY PUBLIC, State of New York**  
No. 02KR6207920  
Qualified in New York County  
Commission Expires June 15, 2021

**State of New York**

ss:

**County of New York**

On March 1, 2021, in New York County, New York, before me, the undersigned notary public, appeared Chari Anhouse, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the annexed affidavit, via audio-video technology allowing direct interaction in compliance with Executive Order 202.7 as amended and extended by Executive Order 202.94, and who being duly sworn, represented that she was physically situated in New York County, New York and that the contents of the said affidavit were true to her knowledge, and I personally observed the said affiant execute the said affidavit by electronic signature authorized by State Technology Law § 304 and transmit a legible copy of the said affidavit to me by electronic means in compliance with Executive Order 202.7 as amended and extended by Executive Order 2020.94 through the said audio-video technology.



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Brian Joseph Krist  
Notary Public, State of New York  
No. 02KR6207920  
Qualified in New York County  
Commission Expires June 15, 2021