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Pauline Toole
Records Appeals Officer
Department of Records and Information Services
31 Chambers St., Ste. 305
New York, New York 10007

**Re: Appeal of the constructive denial of the FOIL Request of Brooke Schreier Ganz –
FOIL-2020-860-00296**

Dear Ms. Toole:

My office is counsel to Reclaim the Records and Brooke Schreier Ganz, whose request for records from the Department of Records and Information Services was acknowledged on November 5, 2020. The expected date of completion was December 23, 2020. But the deadline to respond to the request was extended several times: on December 21, 2020, on February 9, 2021, and on June 9, 2021. The most recent extension—on June 9, 2021—stated that the request would be completed by October 20, 2021 at 5:00 p.m. To date, Ms. Ganz has received no documents in response to his request. As of this date, though the OpenRecords portal does not reflect an extension after June 9, the due date is listed as November 30, 2022 – more than two years after the request was made.

The Public Officers Law § 89(3)(a), states in relevant part that:

Each entity subject to the provisions of this article, within **five business days** of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgment of the receipt of such request . . .

Under Public Officers Law § 89(4)(a), a failure to “conform to the provisions of subdivision three of this section shall constitute a denial.” *Matter of Siani v. Clark*, 886, N.Y.S.2d 69 (Sup.

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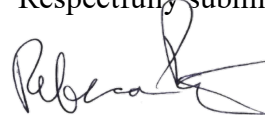
Ct. Albany Co. 2009) (“[i]t is undisputed that the lack of response constituted a constructive denial.”); *see also, the Matter of Molloy v. NYPD.*, 2008 NY Slip Op 01090 (1st Dept. 2008); and *Comm on Open Govt FOIL-AO 3037. v. City of NY Police Dept.*, 300 A.D.2d 17, 18 (1st Dept. 2002).

More than five business days have passed since the Request was sent to the Freedom of Information Act Officer. By failing to respond to Ms. Ganz’s Request within the statutorily mandated five days, the City of New York has constructively denied the request. Please respond to this internal appeal within the statutorily proscribed ten business days from receiving this appeal. *See* N.Y. Pub. Off. L. Art. 6, § 89(4)(a).

As 351 days have passed since the Request was acknowledged, the delay is now unreasonable. *Kohler-Hausmann v. New York City Police Dep’t*, 133 A.D.3d 437, 437 (N.Y. Sup. Ct. App. Div. 2015); *Gajadhar v. New York Police Dep’t*, 111 N.Y.S.3d 518 (N.Y. Sup. Ct. 2018). *See also 1) Empire Ctr. for Pub. Pol’y v. New York State Dep’t of Health*, No. 906023-20, 2021 WL 2213803 (N.Y. Sup. Ct. Feb. 3, 2021) (163-day delay was unreasonable and entitled petitioner to attorney’s fees). Failure to respond to an appeal within the statutorily designated time period for this internal appeal is a constructive denial from which an article 78 is the proper remedy. *Council of Regulated Adult Liq. Licensees v. City of NY Police Dept.*, 300 A.D.2d 17, 18 (1st Dept. 2002). Moreover, any additional extension to November 30, 2022—well beyond the statutory time—would also be unreasonable

Should your response not come within the statutorily proscribed period, the City could be responsible for counsel fees in association with litigation necessary to enforce Ms. Ganz’s rights under FOIL. *Legal Aid Society v. NYS Department of Corrections*, 105 A.D.3d 1120 (3d Dept. 2013) (denial of counsel fees reversed where respondent had not complied with FOIL 89 § 3(a)

Respectfully submitted,



Rebecca L. Pattiz