

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: September 24, 2026

CV-24-1694

In the Matter of DANIEL A.
BARLETTA,

Appellant,

v

MEMORANDUM AND ORDER

DANIEL F. MARTUSCELLO III, as
Commissioner of Corrections
and Community Supervision,
Respondent.

Calendar Date: September 11, 2026

Before: Garry, P.J., Reynolds Fitzgerald, Ceresia, McShan and Ryba, JJ.

Daniel A. Barletta, Dannemora, appellant pro se.

Letitia James, Attorney General, Albany (*Kevin C. Hu* of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Anthony McGinty, J.), entered September 25, 2024 in Albany County, which, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition.

In November 2023, petitioner, an incarcerated individual, submitted a request to the Department of Corrections and Community Supervision (hereinafter DOCCS) pursuant to the Freedom of Information Law (*see* Public Officers Law art 6 [hereinafter FOIL]) for a copy of two letters, written by him, and a misbehavior report dated January 28, 2022. DOCCS granted the request as to the copy of the misbehavior report on the condition that petitioner pay a \$3 copying fee, but denied the request for the two letters. After an unsuccessful administrative appeal, petitioner commenced a CPLR article 78

proceeding seeking disclosure of the two letters, and Supreme Court (Farrell, J.) denied the request and dismissed the petition.

In January 2024, petitioner submitted a second FOIL request to DOCCS, seeking copies of the two letters and the 2022 misbehavior report that were the subject of his previous FOIL request, as well as a copy of a different misbehavior report dated August 9, 2021.¹ DOCCS did not respond and, in March 2024, petitioner administratively appealed, asserting that he was now seeking only the two misbehavior reports. DOCCS again did not respond. In April 2024, petitioner commenced this CPLR article 78 proceeding seeking copies of the two misbehavior reports and statutory litigation costs under FOIL. Respondent moved to dismiss the petition on the grounds that petitioner's requests were barred by res judicata and collateral estoppel, because petitioner was raising the same claims as he had in the first CPLR article 78 proceeding. Petitioner subsequently informed Supreme Court that he had received a copy of the 2022 misbehavior report in July 2024, rendering his request for that report moot, and that the only remaining issues were the denial of his requests for a copy of the 2021 misbehavior report and statutory litigation costs.

Supreme Court (A. McGinty, J.) dismissed the petition, holding that petitioner's FOIL requests were barred by collateral estoppel and res judicata, and petitioner appealed. While this appeal was pending, DOCCS provided petitioner with a copy of the 2021 misbehavior report. Petitioner now agrees that his FOIL request for that report is moot, but nevertheless maintains that he is entitled to statutory litigation costs.

We agree with both parties that petitioner's FOIL request for a copy of the 2021 misbehavior report has been rendered moot because he has now been provided with that document (*see Matter of Nunez v New York State Dept. of Motor Vehs.*, 248 AD3d 1626, 1627 [3d Dept 2026]; *Matter of Gannett Satellite Info. Network, LLC v New York State Thruway Auth.*, 181 AD3d 1072, 1074 [3d Dept 2020]; *see also Matter of Maidenbaum & Sternberg, LLP v New York State Dept. of Taxation & Fin.*, 243 AD3d 1054, 1055 [3d Dept 2025]). However, as petitioner recognizes, his request for statutory costs and fees still presents a live controversy (*see e.g. Matter of Nunez v New York State Dept. of Motor Vehs.*, 248 AD3d at 1627).

¹ Petitioner acknowledged that DOCCS already had granted his request for the January 2022 misbehavior report, but alleged that DOCCS had failed to provide it despite him paying the copying fee.

In a FOIL proceeding, the court, as relevant here, "may assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed, and when," as here, "the agency failed to respond to a request or appeal within the statutory time" (Public Officers Law § 89 [4] [c] [i]). Respondent now concedes that res judicata and collateral estoppel did not preclude petitioner from commencing this CPLR article 78 proceeding to challenge the denial of his request for the 2021 misbehavior report because that report was not subject to the first CPLR article 78 proceeding. Moreover, petitioner has substantially prevailed because he obtained both the 2022 and the 2021 misbehavior reports after commencing this proceeding (*see Matter of Madeiros v New York State Educ. Dept.*, 30 NY3d 67, 79 [2017]; *Matter of Nunez v New York State Dept. of Motor Vehs.*, 248 AD3d at 1627). Thus, the statutory prerequisites for an award of litigation costs have been satisfied, and we remit the matter to Supreme Court to determine, in its discretion, whether to award such costs and the amount of any such award (*see Matter of Madeiros v New York State Educ. Dept.*, 30 NY3d at 78-79; *Matter of Lewis v James*, 206 AD3d 1393, 1394 [3d Dept 2022]; *Matter of Cobado v Benziger*, 163 AD3d 1103, 1107 [3d Dept 2018]).

Garry, P.J., Reynolds Fitzgerald, Ceresia, McShan and Ryba, JJ., concur.

ORDERED that the judgment is modified, on the law, with costs, by reversing so much thereof as dismissed petitioner's request for fees; matter remitted to the Supreme Court for further proceedings not inconsistent with this Court's decision; and, as so modified, affirmed.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial "R".

Robert D. Mayberger
Clerk of the Court