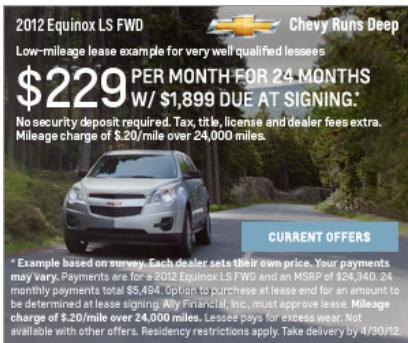


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## 411 on 911 City told to release data Comparison to Watergate

BARBARA ROSS, REUVEN BLAU, BILL HUTCHINSON

Monday, April 09, 2012

A judge ordered the Bloomberg administration on Monday to release a controversial report on the revamp of the city's 911 system — comparing its refusal to do so with Richard Nixon's actions during Watergate.

Manhattan Supreme Court Justice Arthur Engoron ruled that the mayor's office has until April 16 to disclose all drafts of the taxpayer-funded consultant's report on the 911 overhaul — a project that ran about \$800 million over budget.

Engoron said the administration's unwillingness to make the report public is akin to the "executive privilege" power that the then-President invoked to withhold potentially damning information on the Watergate scandal.

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Bloomberg's... at Justice Court. Engoron ruled Mayor

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He said the report "belongs to the City of New York, not because the city might have paid for it, but because that is part of the process of governing a city."

The report, which is more than 200 pages, was commissioned after the city's disastrous emergency response to the December 2010 blizzard.

Those who have seen it say it skewers the \$2 billion 911 system overhaul, which the firefighter unions contend has led to longer emergency response times that endanger the public and first-responders.

The new system has 911 operators handle most incoming emergency calls and dispatches them electronically into the police and fire response system — rather than have callers speak to multiple operators, as in the past.

City lawyers said they were weighing an appeal of Engoron's order, which applies to data used to compile the report. Mayor Bloomberg defended keeping the current version of the report under wraps, saying it is not complete.

"You can't do that if everything is up in the air in your mind," he said. "I don't know how any government would be able to function if you had to put out every single paper, even at the beginning of a study and all through the study."

Engoron said city lawyers agreed in late February to disclose the report only to file an 11th-hour appeal. "They could label this a draft in perpetuity. It's a coverup . . . plain and simple," said Joshua Zuckerberg, a lawyer for the Uniformed Fire Officers Association.

Steve Cassidy, president of the Uniformed Firefighters Association, applauded Engoron's ruling.

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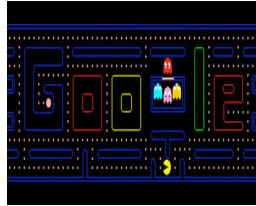
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## **Judge orders NYC to release review of 911 system, cites need for transparency, open government**

By SAMANTHA GROSS

9 April 2012

NEW YORK (AP) - New York City must release a consultant's review of the city's 911 system and emergency response times that Mayor Michael Bloomberg's administration has been fighting to keep private, a civil court judge decided Monday.

Saying his decision stemmed from a belief in open government and transparency, Supreme Court Justice Arthur F. Engoron said that the taxpayer-funded consultant's report and all its drafts belong to the people of New York City.

"The city's not the only interest group here. And the city's not infallible," Engoron said after comparing the city's claim that the report should be private to President Richard Nixon's claims of executive privilege during the Watergate scandal.

Lawyers for the city had argued that the review, commissioned after a massive blizzard in December 2010 that stranded ambulances and backed up the emergency call system, is still in draft form. They claimed that an order to release the documents could have a chilling effect on city employees, who might become reluctant to freely express their opinions.

"If policymakers felt they could not give or receive blunt or candid feedback without it being publicized, the entire public would be at a detriment," said city lawyer Gail Mulligan.

But the judge sided with lawyers for unions representing city firefighters, who argued that it was in the interest of their clients -- and of the public -- to learn about any problems with the 911 system that could be delaying response times and putting lives at risk.

"They could label this a draft in perpetuity," said Joshua Zuckerberg, a lawyer for the Uniformed Fire Officers Association. "It's a cover up ... plain and simple."

Kate O'Brien Ahlers, a spokeswoman for the city's Law Department, said the city was very disappointed with the ruling and would consider appealing. Last week, Bloomberg questioned whether the current version of the report was accurate. City officials had said they planned to make the final version of the report public.

soon.

The mayor argued Monday that the ruling set a dangerous precedent.

"I don't know how any government would be able to function if you had to put out every single paper, even at the beginning of a study and all through the study," he said. "If the courts say you have to publish this, you have to publish everything."

Under the judge's decision, the documents must be released within seven days to the unions, which may then decide whether to submit them into evidence during a public arbitration hearing scheduled for April 20. There is no mandate forcing the Uniformed Fire Officers Association and the Uniformed Firefighters Association to make the documents publicly available, and the unions' lawyers on Monday stopped short of promising to do so.

The unions contend that the city's recent overhaul of the 911 system has led to delays that have been concealed by a change in how the city calculates its fire response times. Administration officials say the overhaul has modernized an out-of-date system and eliminated inefficiencies, improving response times.

At the center of the dispute is the fire department's average response time to structural fires, which dropped 6 seconds in fiscal year 2010, shortly after the city changed its emergency dispatch procedures. Under the new system, 911 operators collect more information before starting the response-time clock. City officials testified they had never tracked how long callers are on the line before the clock begins, leading critics to question the validity of the city's numbers.

Bloomberg announced plans to overhaul the city's decades-old 911 system following a blackout in 2003 that largely immobilized the city.

Last month, the city's comptroller issued an audit criticizing the city for its handling of the project, saying it was \$1 billion over-budget and seven years behind schedule. Deputy Mayor for Operations Cas Holloway attacked the report as misleading, disputing the figures and arguing that most of the cost increase was due to a strategic decision to build a backup call center from the ground up.

*NOTE: This article was also picked up online by 186 other outlets, including, but not limited to:*

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- KCBD-TV (Lubbock, TX)
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## **Judge orders Mayor Bloomberg to release report on city's 911 system**

**Compares mayor's refusal to release report to Richard Nixon's actions during Watergate scandal**

**By Barbara Ross, Reuven Blau AND Bill Hutchinson / NEW YORK DAILY NEWS**

Monday, April 9, 2012, 10:08 PM

Read more: <http://www.nydailynews.com/new-york/judge-orders-mayor-bloomberg-release-report-city-911-system-article-1.1058918#ixzz1rfe5AUd7>

A judge ordered the Bloomberg administration on Monday to release a controversial report on the revamp of the city's 911 system — comparing its refusal to do so with Richard Nixon's actions during Watergate.

Manhattan Supreme Court Justice Arthur Engoron ruled that the mayor's office has until April 16 to disclose all drafts of the taxpayer-funded consultant's report on the 911 overhaul — a project that ran about \$800 million over budget.

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Those who have seen it say it skewers the \$2 billion 911 system overhaul, which the firefighter unions contend has led to longer emergency response times that endanger the public and first-responders.

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Engoron said city lawyers agreed in late February to disclose the report only to file an 11th-hour appeal.

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Steve Cassidy, president of the Uniformed Firefighters Association, applauded Engoron's ruling.

bross@nydailynews.com



## **Judge Orders New York City To Release Report on 911 System**

Read more: <http://firelawblog.com/2012/04/judge-orders-new-york-city-to-release-report-on-911-system/>

### **4.10.12**

A state court judge in New York has ordered the city of New York to release copies of a consultant's report on the city's 911 system and response times.

The Uniformed Fire Officers Association and the Uniformed Firefighters Association filed suit under the state open records law to obtain copies of the report under the state's public record law. The consultant was hired following concerns arising out of the December 2010 blizzard debacle where EMS responses were delayed between 1 to 5 hours, with some patients dying after lengthy delays in ambulances arriving. In numerous instances patients were transported to the hospital on FDNY fire trucks rather than waiting for ambulances.

The Bloomberg administration sought to block the release claiming that the report was still in draft form. The city also objected to the unions' request for not only the most current version of the report, but all the various drafts that had gone back and forth between the consultants and the city.

Attorney Joshua Zuckerberg, representing the Uniformed Fire Officers Association, accused the city of engaging in a "coverup . . . plain and simple", and argued that by labeling the report a "draft", the city was attempting to keep it from the public "in perpetuity".

Manhattan Supreme Court Justice Arthur Engoron overruled the city's objections and ordered the city to produce all the drafts. The city has until April 16, 2012 to release the reports.

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### ABOUT NEW YORK

## For City Hall, 2 Standards on the Public's Right to Know

By JIM DWYER

Published: April 11, 2012

As a champion of open government, leader in reform through transparency and all-around tribune of the people, the administration of Mayor Michael R. Bloomberg has given full support to a campaign to make public the evaluations of about 18,000 teachers.

The public's right to know, the Bloombergians say, outweighs the flaws in the evaluation system, which had wide margins of error and is being replaced.

Simultaneously, acting in what he calls the "public interest," Mr. Bloomberg has fought hard to keep secret a continuing evaluation of the 911 system, which is rumored to be critical of the operation after the city spent \$2.1 billion to overhaul it.

In this case, Mr. Bloomberg maintained that the public was better off not seeing a draft of a report that he commissioned after the December 2010 snowstorm, when the city couldn't keep streets cleared and ambulances got stuck in the snow while critically ill people waited for help.

The draft report is said to be nearly 300 pages, and two Fire Department unions have been trying to get it as part of a grievance they have brought against the city. Mr. Bloomberg said it wouldn't be right to release it without additional fact-checking.

"You can't take a working paper where no one's really checked the facts and just put it out," the mayor said on his radio show on Friday morning. "Because all of a sudden, everybody believes that's the truth. When we have a final report, we'll get it out there."

That the report existed in any form was a point of contention in hearings on the labor grievance, Joshua Zuckerberg, a lawyer representing the Uniformed Fire Officers Association, told a state judge on Monday.

The unions, Mr. Zuckerberg said, "have been requesting this report for months; first we were told that the city had no idea what we were talking about."

Later, as witnesses referred to the report during testimony, the unions again asked for it. Finally, a judge issued a subpoena, and the matter ended up in court when the city refused to turn it over on the grounds that, as Caswell F. Holloway, a deputy mayor, said in an affidavit, "candor in self-examination will be chilled and the ability of policy makers to carry out effective reform will be curtailed."

In front of the judge, Mr. Zuckerberg charged that the city lawyers were having a hard time keeping the story straight, and took note of the mayor's comments on the radio.

"So this has gone from a report that didn't exist to a report that they didn't have to a report that is in draft form to, now, a report that is wrong," Mr. Zuckerberg said. "It's a cover-up."

Not so, a lawyer from the city's law department, Eric Eichenholtz, told the judge. Yes, he conceded there had been some "confusion" over the existence, or nonexistence, of a 300-page document.

"There still isn't a final report or recommendation, and that is probably why they were hearing that for a long time," Mr. Eichenholtz said. "There was definitely some confusion."

Well, yes. The same might have been said for the teacher evaluation reports, which are as important to running a school system as they are in any line of work. For years, the evaluation system for teachers was openly dysfunctional, but reforms have been slow to come, even though the Bloomberg administration was negotiating new contracts over the last decade that included increases in the pay scale.

The personnel evaluations of some public workers, like police and fire employees, are protected by law from disclosure. Teachers are in a different category, and the mayor and others contend that parents are entitled to information about the performance of people to whom they entrust their children. Certainly, that ought to apply to the 911 system, too.

One of the most necessary projects undertaken by Mr. Bloomberg was its overhaul. From the outside, 911 looked like an emergency dispatch system, but that function was secondary to the protection of agency turf. Warlord bureaucrats fought with wires and buttons over who got the most exciting jobs.

Mr. Bloomberg set out to change that. Maybe if the mayors before him had published reports that told the truth about the system, it would not have become as ossified as it did.

Whatever its current state, it could not be as dilapidated as what he inherited. He should not worry about airing its current problems, even if the report hasn't been polished to a high gleam. It means only that there are still things that need to be fixed.

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## City Plans to Appeal Ruling on 911 System Report

Laura Haring

New York Law Journal

April 17, 2012

New York City will appeal a decision directing it to release a review of its 911 system and emergency response times, the city announced on April 13. "The city has been forthright and already provided reams of critical documents, but releasing an unfinished work product will chill the candid discussion necessary for genuine analysis," Gail Mulligan, assistant corporation counsel in the labor and employment division of the city's Law Department, said in a statement. An automatic stay is now in place in the case, *Uniformed Fire Officers v. City of New York*, 101799/12.

The review was commissioned after a 2010 Christmas blizzard left ambulances stranded and backed up the emergency call system. The city argues the review is still in draft form. In an April 9 decision, however, Acting Supreme Court Justice Arthur Engoron sided with lawyers for the firefighters, who argued the firefighters and the public had an interest in any problems with the 911 system that might be causing delays (NYLJ, April 10, 2012).

Joshua Zuckerberg, a partner at **Pryor Cashman** who represents the Uniformed Fire Officers Association in the Freedom of Information Act suit, said they are "disappointed that the city instead of doing the right thing and disclosing the report, which clearly the public has an interest in seeing, is instead spending tax payer money on an appeal that we ultimately believe is frivolous and will be not be successful." Also representing the firefighters is Paul Linzer, a partner at Certilman Balin Adler & Hyman.