

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, February 7, 2023 4:23 PM
To: 'm@michaelcardozo.com'
Subject: **FOIL APPEAL -- CJA's July 26, 2022 FOIL request -- PLUS Dec. 27, 2022 new FOIL request**

In response to the below, I received an auto-generated e-mail stating: "Michael Cardozo has retired from the Firm and can be reached at m@michaelcardozo.com." I trust it will reach you now.

Elena Sassower

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, February 7, 2023 11:25 AM
To: 'ethics.sm.records' <records@ethics.ny.gov>

Cc: 'Fdavie@uts.columbia.edu' <Fdavie@uts.columbia.edu>; 'mcardozo@proskauer.com' <mcardozo@proskauer.com>; 'ngroenwegen@gmail.com' <ngroenwegen@gmail.com>; 'sjames@barketepstein.com' <sjames@barketepstein.com>; 'ecarni@hancocklaw.com' <ecarni@hancocklaw.com>; 'claudialedwards2@gmail.com' <claudialedwards2@gmail.com>; 'Help@whittinghamlaw.com' <Help@whittinghamlaw.com>; 'dolly@caramanlaw.com' <dolly@caramanlaw.com>; 'Investigations' <Investigations@ethics.ny.gov>; 'Peter.Smith@ethics.ny.gov' <Peter.Smith@ethics.ny.gov>; 'Sanford.Berland@ethics.ny.gov' <Sanford.Berland@ethics.ny.gov>; 'Lori.Donadio@ethics.ny.gov' <Lori.Donadio@ethics.ny.gov>

Subject: **FOIL APPEAL -- CJA's July 26, 2022 FOIL request -- PLUS Dec. 27, 2022 new FOIL request**

TO: COELIG Acting Co-General Counsel Keith C. St. John

I hereby appeal from the below January 10, 2023 e-mail, purportedly from COELIG's "Records Access Officer". Presumably, the "Records Access Officer" has a name and I request his/her name. If a FOIL request is necessary for such information, please deem this a FOIL request for records reflecting the name of COELIG's "Records Access Officer" on that date.

According to the e-mail's first sentence:

"a search recovered no records responsive to [my] request for production of 'written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints' in effect on July 8, 2022."

The "Records Access Officer" has not identified the date of my referred-to records "request", which was [July 26, 2022](#). No "search" should have been necessary – as the "ethics commission reform act of 2022" that created COELIG expressly states as part of its new [Executive Law §94\(1\)\(e\)](#):

"This section shall not be deemed to have revoked or rescinded any regulations or advisory opinions in effect on the effective date of this section that were issued by predecessor ethics and lobbying bodies."

Indeed, as is clear from [Executive Law §94\(1\)\(d\)](#), any changes from JCOPE's practices could only be made by the COELIG members – and their first meeting was not until September 12, 2022.

Consequently, I am entitled to JCOPE's "written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints" that were in effect on July 7, 2022 – and that remained in effect on July 8, 2022.

To assist you in furnishing what JCOPE's aforesaid "written procedures" would look like, here are:

(1) [the New York State Inspector General's "Policy O101" from its "Policy and Procedure Manual" for its "Case Management Unit"](#); and

(2) [the New York City Department of Investigation's "Complaint Intake: Opening and Tracking Procedures" \(200.00\)](#).

As for the e-mail's second sentence:

"It is noted that from [July 8, 2022] to the present, the Commission has looked to Executive Law §94(10) and the regulations on Adjudicatory Proceedings and Appeals Procedures (Title 19 NYCRR Part 941) to guide general steps of an investigation."

neither of these pertain to the requested "written procedures for receipt, docketing, acknowledgment", other than that [Executive Law §94\(10\)\(e\)](#), requires notification to the complainant that the complaint has been received. As for "written procedures for...preliminary review and investigation of complaints", Executive Law §94(10) furnishes no standard guiding its exercise, other than that COELIG members are required to disclose their conflicts of interest – salutary provisions not appearing in COELIG's changes to "Title 19 NYCRR Part 941" on the agenda of the COELIG members' meetings of [October 25, 2022](#), [December 16, 2022](#), and [January 31, 2023](#).

As for the e-mail's third sentence that:

"[My] requests dated November 17, 2022 are denied because they do not seek or identify a record that is subject to disclosure pursuant to FOIL",

this is a deceit on multiple grounds – and so-reflected by the e-mail chain beneath the "Record Access Officer"'s January 10, 2023 e-mail. It establishes:

- that I made NO "requests dated November 17, 2022";
- that by a [November 16, 2022 e-mail](#) I inquired as to the status of my [July 26, 2022 FOIL request](#);
- that by a [December 27, 2022 e-mail](#) I further inquired as to the status of my July 26, 2022 FOIL request – and added a NEW FOIL request, based on an unsigned [November 17, 2022 letter](#), purported to be from COELIG's "Investigations Division", purporting that "the Commission voted to 'close'" my [July 8, 2022 complaint](#) and [October 6, 2022 supplement](#) at its October 25, 2022 meeting.

To the extent that my NON-EXISTENT November 17, 2022 request, referred to by the "Record Access Officer"'s January 10, 2023 e-mail, is my December 27, 2022 FOIL request, I hereby challenge and appeal the bald pretense that it does "not seek or identify a record that is subject to disclosure pursuant to FOIL".

The first of the newly-requested are records of "all changes subsequently made" to the "'written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints', in effect on July 8, 2022". FOIL surely entitles me to this – just as I believe it entitles me to my other December 27, 2022 FOIL requests for:

"(2) records pertaining to why you did not months ago provide me with such 'written procedures';

(3) records pertaining to the November 17, 2022 letter from the 'Investigations Division' establishing:

(i) the identity of the person in the 'Investigations Division' responsible for it;

(ii) compliance by the Commission members with Executive Law §94.10(b):

'Upon the receipt of a complaint..., members of the commission shall disclose to the commission any personal, professional, financial, or other direct or indirect relationships a member of the commission may have with a complainant or respondent. If any commissioner determines a conflict of interest may exist, the commissioner shall, in writing, notify the other members of the commission setting forth the possible conflict of interest. The commissioner may recuse himself (sic) from all subsequent involvement in the consideration and determination of the matter. If, after the disclosure, the commissioner does not recuse himself from the matter, the commission, by a majority vote finding that the disclosed information creates a substantial conflict of interest, shall remove the conflicted commissioner from all subsequent involvement in the consideration and determination of the matter, provided the reason for the decision is clearly stated in the determination of the commission";

(iii) compliance by the Commission's executive director and Commission staff with comparable disclosure rules pertaining to conflicts of interest – and a copy of such disclosure rules applicable to them, if not posted on the Commission's website, as they do not appear to be;

- (iv) the specific provision of Executive Law §94 pursuant to which 'the Commission voted the close the matter' – and the basis for its supposed 'vote' to 'close';
- (v) that the Commission's supposed 'vote' was by the Commission members themselves and after they themselves had 'review[ed]' my July 8, 2022 complaint and October 6, 2022 supplement."

So that the COELIG members may be alerted to how FOIL has been handled both before and after their [December 16, 2022 elevation of Sanford Berland as COELIG's executive director](#) at a \$220,000 salary, I am cc'ing the members whose e-mail addresses I have, with a request that it be furnished to the balance.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

From: ethics.sm.records <records@ethics.ny.gov>
Sent: Tuesday, January 10, 2023 3:36 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Subject: RE: AGAIN, CJA's July 26, 2022 FOIL request -- PLUS new FOIL request

Ms. Sassower, please be advised that a search recovered no records responsive to your request for production of "written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints" in effect on July 8, 2022. It is noted that from that time to the present, the Commission has looked to Executive Law § 94(10) and the regulations on Adjudicatory Proceedings and Appeals Procedures (Title 19 NYCRR Part 941) to guide general steps of an investigation. Your requests dated November 17, 2022 are denied because they do not seek or identify a record that is subject to disclosure pursuant to FOIL.

You have 30 days from receipt of a denial of access to records or portions thereof to appeal to:

Keith C. St. John
Acting Co-General Counsel
NYS Commission on Ethics and Lobbying in Government
540 Broadway
Albany, NY 12207

Sincerely,

Records Access Officer
NYS Commission on Ethics and Lobbying in Government

540 Broadway
Albany, NY 12207
(518) 408-3976
records@ethics.ny.gov

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Tuesday, December 27, 2022 11:11 AM

To: ethics.sm.records <records@ethics.ny.gov>

Cc: Investigations <Investigations@ethics.ny.gov>; Smith, Peter (ETHICS) <Peter.Smith@ethics.ny.gov>

Subject: AGAIN, CJA's July 26, 2022 FOIL request -- PLUS new FOIL request

TO: Records Access Officer/Commission on Ethics & Lobbying in Government

On November 17, 2022, the day after sending you my below November 16th e-mail, inquiring as to the status of my July 26, 2022 FOIL request for CELG's "written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints" – to which I had cc'd investigations@ethics.ny.gov and Investigator Peter Smith – I received from investigations@ethics.ny.gov an e-mail attaching an unsigned [November 17, 2022 letter](#) from the "Investigations Division", not indicating the name of any person, bearing a single reference number, 22-099, and stating:

"On July 8, 2022, and October 6, 2022, the New York State Commission on Ethics and Lobbying in Government ('Commission') received a complaint and a supplemental complaint submitted by you asserted to be violations of the Public Officers Law. This letter is to inform you that following a review of your complaint, the Commission voted to close the matter on October 25, 2022."

Such indefensible letter only reinforces the importance of the "written procedures" sought by my July 26, 2022 FOIL request, which your above-attached August 2, 2022 acknowledgment promised would be forthcoming "by Wednesday, September 28, 2022".

Based on the foregoing, pursuant to FOIL, I hereby request:

- (1) immediate production of CELG's "written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints", in effect on July 8, 2022 – and all changes subsequently made to them;
- (2) records pertaining to why you did not months ago provide me with such "written procedures";
- (3) records pertaining to the November 17, 2022 letter from the "Investigations Division" establishing:
 - (i) the identity of the person in the "Investigations Division" responsible for it;
 - (ii) compliance by the Commission members with Executive Law §94.10(b):

"Upon the receipt of a complaint..., members of the commission shall disclose to the commission any personal,

professional, financial, or other direct or indirect relationships a member of the commission may have with a complainant or respondent. If any commissioner determines a conflict of interest may exist, the commissioner shall, in writing, notify the other members of the commission setting forth the possible conflict of interest. The commissioner may recuse themselves (sic) from all subsequent involvement in the consideration and determination of the matter. If, after the disclosure, the commissioner does not recuse themselves from the matter, the commission, by a majority vote finding that the disclosed information creates a substantial conflict of interest, shall remove the conflicted commissioner from all subsequent involvement in the consideration and determination of the matter, provided the reason for the decision is clearly stated in the determination of the commission”;

- (iii) compliance by the Commission’s executive director and Commission staff with comparable disclosure rules pertaining to conflicts of interest – and a copy of such disclosure rules applicable to them, if not posted on the Commission’s website, as they do not appear to be;
- (iv) the specific provision of Executive Law §94 pursuant to which “the Commission voted the close the matter” – and the basis for its supposed “vote” to “close”;
- (v) that the Commission’s supposed “vote” was by the Commission members themselves and after they themselves had “review[ed]” my July 8, 2022 complaint and October 6, 2022 supplement.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Wednesday, November 16, 2022 3:25 PM

To: 'records@ethics.ny.gov' <records@ethics.ny.gov>

Cc: 'investigations@ethics.ny.gov' <investigations@ethics.ny.gov>; 'peter.smith@ethics.ny.gov' <peter.smith@ethics.ny.gov>

Subject: STATUS -- CJA's July 26, 2022 FOIL request: CELG's written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints

TO: Records Access Officer/Commission on Ethics & Lobbying in Government

In response to my below July 26th FOIL request, I received from you, [by e-mail](#), the above-attached and here linked [August 2nd letter](#), stating:

“...it is anticipated that the Commission will be able to respond to your request, providing or denying access, in whole or in part, within forty-five (45) business days, or by Wednesday, September 28, 2022. We will notify you in writing if the Commission requires additional time to be responsive to your request.”

Please advise as to the status of my July 26th FOIL request, as I have received nothing from you since that August 2nd letter.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, July 26, 2022 12:13 PM
To: 'records@ethics.ny.gov' <records@ethics.ny.gov>
Cc: 'investigations@ethics.ny.gov' <investigations@ethics.ny.gov>; 'peter.smith@ethics.ny.gov' <peter.smith@ethics.ny.gov>

Subject: FOIL request: CELG's written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints

TO: Records Access Officer/Commission on Ethics & Lobbying in Government

Pursuant to FOIL (Public Officers Law Article VI) – and as requested by the below -- this is to request CELG's written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, July 26, 2022 12:01 PM
To: 'investigations@ethics.ny.gov' <investigations@ethics.ny.gov>
Cc: 'peter.smith@ethics.ny.gov' <peter.smith@ethics.ny.gov>

Subject: CJA's Day #1 Complaints to CELG -- & FOIL request

TO: Commission on Ethics & Lobbying in Government (CELG)

Notwithstanding new Executive Law §94.10(e) states: “The commission shall notify the complainant, if any, that the commission has received their complaint”, I have received no written notification from CELG of my above-attached & here linked [July 8, 2022 complaint](#) entitled “TESTING the ‘ethics commission reform act’ Commission on its DAY 1...”

Did you send me a notification and, if so, what numbers have you assigned to it – presumably eight numbers as the complaint is, **expressly**, a:

“Re-filing [of] the seven complaints [CJA] previously filed with JCOPE, plus a new eighth complaint against Attorney General Letitia James for litigation fraud in *CJA, et al. v. JCOPE, et al.* (Albany Co. #904235-22) – arising from the same conflict of interest Public Officers Law §74 violations as were the subject of CJA’s March 5, 2021 complaint, unaddressed by JCOPE”.

As CELG had NO operational e-mail for receipt of complaints until the afternoon of Monday, July 11th – and, as reflected by my below July 11th e-mail, Investigator Peter Smith orally acknowledged his receipt of the complaint that morning, upon my sending it to his own operational e-mail – I would assume that the eight complaints have been assigned numbers 1-8. Indeed, Mr. Smith stated to me that CJA’s complaint was CELG’s first.

Since CELG, unlike JCOPE, is subject to FOIL, this is to request CELG’s written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints. At present, pursuant to new Executive Law §94.1(e), these procedures are presumably the same procedures as JCOPE’s had been.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, July 11, 2022 4:09 PM
To: investigations@ethics.ny.gov
Cc: peter.smith@ethics.ny.gov

Subject: TESTING, this time the IT ! -- Day #1 Complaint to CELG

TO: Commission on Ethics & Lobbying in Government (CELG)

Checking to see if your techies have succeeded in resolving the problem with the e-mail address for complaints.

Above-attached is my July 8th “Day #1 complaint”, finally received by you, this morning, *via* Investigator Smith’s e-mail.

Thank you.

Elena Sassower

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, July 11, 2022 9:24 AM
To: 'peter.smith@ethics.ny.gov' <peter.smith@ethics.ny.gov>

Subject: Once more! -- AGAIN: Repeatedly sent: Day #1 Complaint to CELG

Here again. Thank you.

From: elenaruth@aol.com <elenaruth@aol.com>
Sent: Monday, July 11, 2022 9:21 AM
To: 'investigations@ethics.ny.gov' <investigations@ethics.ny.gov>

Subject: AGAIN: Repeatedly sent: Day #1 Complaint to CELG

Yet again.

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, July 11, 2022 9:16 AM
To: 'investigations@ethics.ny.gov' <investigations@ethics.ny.gov>

Subject: Repeatedly sent: Day #1 Complaint to CELG

TO: Commission on Ethics & Lobbying in Government (CELG)

Following up my phone call at 9:00 am (518-408-3976), answered by Investigator Peter Smith, confirming your correct e-mail address for complaints – and its operability – I am resending, after two attempts shortly before midnight on Friday, July 8th, and several times the next day – only partially reflected by the below – my July 8, 2022 complaint.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Saturday, July 9, 2022 10:05 PM
To: 'investigations@ethics.ny.gov' <investigations@ethics.ny.gov>; 'investigation@ethics.ny.gov' <investigation@ethics.ny.gov>
Cc: 'ethics.investigations@ethics.ny.gov' <ethics.investigations@ethics.ny.gov>; 'ethics.investigation@ethics.ny.gov' <ethics.investigation@ethics.ny.gov>

Subject: Day #1 Complaint to CELG

The below has bounced back from both addresses, so I'm trying again, with some variations.

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Saturday, July 9, 2022 9:55 PM
To: 'ethics.investigation@ethics.ny.gov' <ethics.investigation@ethics.ny.gov>
Cc: 'investigations@ethics.ny.gov' <investigations@ethics.ny.gov>

Subject: Day #1 Complaint to CELG

Did the below reach you?

I got a bounce-back from the investigations@ethics.ny.gov – posted on your website, which I had additionally used.

The above makes slight non-substantive changes & adds record references to the below, initially sent.

Thank you.

Elena Sassower

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, July 8, 2022 11:53 PM
To: 'ethics.investigation@ethics.ny' <ethics.investigation@ethics.ny>

Subject: Day #1 Complaint to CELG

Attached is my sworn complaint, as discussed earlier today with Investigator Peter Smith.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200