



NEW YORK STATE COMMISSION ON
LEGISLATIVE, JUDICIAL, & EXECUTIVE COMPENSATION

COMMISSIONERS

EUGENE M. FAHEY, CHAIR
HELENE E. BLANK
THERESA L. EGAN
R. NADINE FONTAINE
VICTOR KOVNER
ROBERT L. MEGNA
JEREMY S. WEINSTEIN

December 26, 2023

Director Elena Sassower
Center for Judicial Accountability, Inc.
elena@judgewatch.org

Dear Ms. Sassower,

This is in response to your Freedom of Information Law (“FOIL”) appeal, dated December 14, 2023, received via e-mail, concerning your November 1, 2023 request, described herein.

1. Background

On November 1, 2023 you submitted a FOIL request seeking “Chair Fahey’s “note” that he sent “to everyone” and other publicly-available records showing:

1. the identities of the “over one hundred outlets” to which [the Commission’s September 26th media advisory for the October 2nd meeting](#) was sent – and proof of its sending;
2. the identities of the “outlets” to which [the Commission’s October 4th media advisory for the October 13th hearing](#) was sent – and proof of its sending;
3. the identities of the “outlets” to which a media advisory of the October 31st hearing was sent, proof of its sending, and the media advisory, as none is posted on the [Commission’s website](#).



NEW YORK STATE COMMISSION ON LEGISLATIVE, JUDICIAL, & EXECUTIVE COMPENSATION

COMMISSIONERS

EUGENE M. FAHEY, CHAIR
HELENE E. BLANK
THERESA L. EGAN
R. NADINE FONTAINE
VICTOR KOVNER
ROBERT L. MEGNA
JEREMY S. WEINSTEIN

4. the identities of “all professional associations” that Chair Fahey stated would be notified of the October 13th hearing (Tr. 7) – and, inferentially, of the October 31st hearing;
5. whether “notifications” were sent “to people that testified in the past”, as Ms. Jeng suggested could be done (Tr. 8) – and, if so, whether this included “people that testified in the past” in opposition to judicial salary increases;
6. whether “social media” was utilized, as Commissioners Egan suggested and as to which Chair Fahey stated “let’s do that” (Tr. 8-9) – and which “social media” and proof thereof.”

On November 15, 2023, the Records Access Officer (“RAO”) for the Commission responded to your FOIL request, stating that the Commission conducted a diligent search of available records and has not located any records responsive to your request. The Records Access Officer also stated, “As a courtesy, please note that in response to your sixth request, the Commission sent out social media posts on both X (formerly known as Twitter), Facebook, and LinkedIn through the Unified Court System’s official pages.”

By email, dated December 14, 2023, you appealed the RAO’s November 15 determination. You requested certification pursuant to Public Officers Law § 89.3(a).

On December 19, 2023, Mindy Jeng, the RAO for the Commission, sent you a certification stating that the records you requested could not be found after a diligent search.

NEW YORK STATE COMMISSION ON
LEGISLATIVE, JUDICIAL, & EXECUTIVE COMPENSATION

COMMISSIONERS

EUGENE M. FAHEY, CHAIR
HELENE E. BLANK
THERESA L. EGAN
R. NADINE FONTAINE
VICTOR KOVNER
ROBERT L. MEGNA
JEREMY S. WEINSTEIN

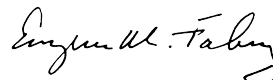
2. Determination on Appeal

In my review of the matter, I deny your appeal and uphold the RAO's determination. The right to appeal a determination of a FOIL request is limited to challenging an agency's denial of a request or its withholding of documents (or redacting parts thereof) deemed exempt from disclosure pursuant to statute. *See* POL § 89(4)(a). Your appeal is denied as non-appealable because there were no responsive records found. Though the social media posts from the Office of Court Administration are not in the Commission's custody, we provide screenshots of the publicly available posts relating to the Commission here as a courtesy.

Furthermore, it has long been established that FOIL does not require responses to specific questions, but instead governs release of government records. See Public Officers Law § 89(3)(a) (indicating that an agency is not required to create a record in response to a request).

Your appeal of the Commission's November 15, 2023, determination and response to your FOIL request is denied in accordance with the reasoning herein.

Very truly yours,



Hon. Eugene M. Fahey (Ret.)
Chair, Commission on Legislative,
Judicial and Executive Compensation

cc: Committee on Open Government

Attachments