



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 21, 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 2, 2023 request, described herein.

1. Background

On November 2, 2023 you submitted a FOIL request seeking records of the Commission’s efforts to retrieve “the EVIDENCE handed up to the 2011 and 2015 commissions and 2018 committee when Elena Sassower testified before each.”

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.

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). You did not give any other reason for your appeal.



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

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.

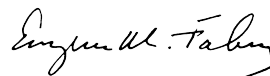
2. Determination on Appeal

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.

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). To minimize confusion, I provide further clarification that this Commission has no affiliation or relationship with the Committee on Legislative and Executive Compensation from 2018. This Commission also has not retained documents from the 2011 or 2015 Commission on Legislative, Judicial, and Executive Compensation besides what is available on our website.

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