May 22, 2020

Via Email: elena@judgewatch.org
Elena Sassower
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, New York 10602

    FOIL Request: #2772

Dear Elena Sassower:

    This letters responds to your correspondence dated April 6, 2020, which pursuant to FOIL, requested:

> (1)   records establishing that the Governor, Temporary Senate President, and Assembly Speaker were constitutionally-entitled to "amend" these seven budget bills on March 31-April 2, 2020 -and to do so behind-closed-doors;
>
> (2)   records showing what specific changes the "amendments" made, as for instance, the "detail sheets" and "amended memoranda]", required by Senate Rule VI, §4(b):
>
> " ... When amendments are offered to a printed bill, the proposed changes, indicating page and line numbers, shall be listed on four detail sheets and the same changes shall be incorporated and marked on two copies of the bill; provided, however, that no amendment shall be allowed to any bill which is not germane to the original object or purpose thereof. Furthern1ore, when a printed bill is amended the accompanying introducer's memorandum, required pursuant to section one of this Rule, shall also be amended to reflect any changes …"
>
> and the "detailed description[s]" required by Assembly Rule III, §6(a):
>
> "No amendment to a bill may be offered unless the member proposing the amendment delivers three copies of the bill with the proposed amendment correctly marked thereon and six copies of

the detailed description of such amendment to the Clerk of the Assembly."

To the extent that your request is reasonably described, for the first portion of your request, please see the following link to Article VII Section 3 of the NYS Constitution which makes clear that the Executive Budget may be amended after the 30-day deadline with the consent of the Legislature:
    https://www.dos.ny.gov/info/constitution/article_7_state_finances.html.

In addition, please find relevant budget documents located at the following website: https://openbudget.ny.gov/. For the second portion of your request, please be advised the Executive Chamber is not required to maintain records pursuant to the rules of the New York State Senate or the New York State Assembly.

The remainder of your request is denied pursuant to Public Officers Law § 89(3) which requires a request for records to be "reasonably described." In order for a request to be reasonably described the request should, to the extent practicable, include parameters, such as: the names or roles of custodians to be searched; specific subject matter and/or search terms; and a reasonable and specific time period.
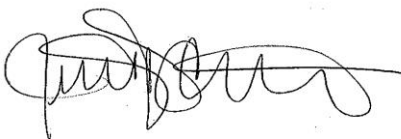
Please note that whether a request is reasonably described may be dependent upon the nature of an agency's filing or record keeping system and agency employees are not required to engage in herculean or unreasonable efforts to locate records. See Konigsberg v. Coughlin, 68 N.Y.2d 245 (N.Y. 1986) and the NYS Committee on Open Government's FOIL Advisory Opinions 18949 and 18863. The Committee on Open Government has explained that "a request for 'all' records, without limitation, that include a certain name, for example, might not be found to reasonably describe the records." (COOG AO-18949 (Aug. 20, 2012)).

The Executive Chamber employs nearly 200 individuals and does not maintain records in a manner that allows all records sent and received by all employees on a given day to be readily accessed, segregated, and reviewed. The broad scope of your request does not sufficiently identify the types of records sought to enable the Executive Chamber to conduct a search and locate responsive records.

This denial is without prejudice to submit a new request that reasonably describes the records sought.

Pursuant to Public Officers Law § 89(4)(a), you have thirty (30) days to take a written appeal of this determination. You may appeal by writing: FOIL Appeals Officer, Executive Chamber, State Capitol, Albany, New York, 12224.

Very truly yours,

Jillian Diaz Cringle
Acting FOIL Counsel &

2