

## Center for Judicial Accountability, Inc. (CJA)

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgwatch.org>  
**Sent:** Thursday, July 15, 2021 7:24 PM  
**To:** 'foil@nysenate.gov'; 'coog@dos.ny.gov'  
**Subject:** Corrected FOIL -- The postponed July 12th Senate Ethics & Internal Governance Committee hearing on "New York State's System of Ethics Oversight and Enforcement"

**TO: Senate Records Access Officer/Secretary of the Senate Alejandra Paulino, ESQ.  
Committee on Open Government Executive Director Shoshanah Bewlay, ESQ.**

The FOIL request I e-mailed you at 3:38 p.m. contained several typos. Below is that same e-mail, with the typos corrected and some additional, mostly minor, non-substantive, changes. Please supersede -- & apologies for the inconvenience.

Future forwardings of the e-mail will be as below revised.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
[www.judgwatch.org](http://www.judgwatch.org)  
914-421-1200

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgwatch.org>  
**Sent:** Thursday, July 15, 2021 3:38 PM  
**To:** 'foil@nysenate.gov' <foil@nysenate.gov>  
**Cc:** 'coog@dos.ny.gov' <coog@dos.ny.gov>

**Subject: FOIL -- The postponed July 12th Senate Ethics & Internal Governance Committee hearing on "New York State's System of Ethics Oversight and Enforcement"**

**TO: Senate Records Access Officer/Secretary of the Senate Alejandra Paulino, ESQ.  
Committee on Open Government Executive Director Shoshanah Bewlay, ESQ.**

On Thursday, July 8<sup>th</sup> – sometime between 2 and 4 p.m. – an announcement was posted on the Senate's website entitled "[Senate to Host Hearing on Ethics Oversight and Enforcement](#)", stating that the Senate Ethics and Internal Governance Committee would be holding a hearing on Monday, July 12<sup>th</sup>, at 10 a.m., at which "registered speakers may participate" and furnishing an on-line link for "Individuals who would like to register to speak". The linked on-line registration webpage entitled "[New York State's System of Ethics Oversight and Enforcement Witness Request](#)" required registration and "written testimony" "no later than 72 hours prior to the scheduled time of the hearing" – in other words by 10 a.m. the next day, Friday, July 9<sup>th</sup>.

As reflected by photos and video clips accompanying July 12<sup>th</sup> press reports, Ranking Member Palumbo was present in the hearing room and, seemingly, a stenographer was also present. A large monitor showed other Senators present, electronically. Witnesses who were to testify were presumably either physically present or lined up electronically. Members of the public and the press were also either physically present or watching electronically. Nevertheless the hearing did not begin at 10 a.m. Instead, after about an hour, the hearing was postponed.

Contemporaneous reporting does not reveal how the postponement was announced. For those watching electronically, the fixed screen on which was written something to the effect that the hearing would shortly begin never changed. Only the accompanying music stopped, sometime after 11 a.m. It was necessary to refresh the webpage for notification that the hearing was postponed – with no information as to why, where, when, how, and by whom.

The Albany Times Union's July 12<sup>th</sup> article "[State ethics hearing delayed over transparency question](#)" (Chris Bragg) – seemingly the first to appear -- reported that Chair Biaggi furnished "a prepared statement" that:

"Out of an abundance of caution we are going to postpone today's ethics hearing to ensure we are fully complying with all state meetings laws. As the Senate Ethics Committee, and the first Senate Committee to hold a hearing since the end of the COVID-19 state of emergency, it is of the utmost importance we work with the highest level of integrity."

It is unclear whether this "prepared statement" was separate from Chair Biaggi's twitter at 11:05 a.m. <https://twitter.com/SenatorBiaggi/status/1414601940147769344>, reported by The New York Post (July 12<sup>th</sup>, "[NY state lawmakers cancel ethics hearing after rule mix-up](#)" (Bernadette Hogan)).

Obviously, if those reporters were in the hearing room, they would not have reported a "written statement" or "twitter", but what Chair Biaggi had said, in the hearing room. In any event, the implication in the "written statement" and "twitter", by their use of the pronoun "we", is that the decision was a Committee decision. Yet, as far as I can discern, not only is there no reporting that Chair Biaggi was actually herself in the hearing room, but also none that she invited the physically-present Ranking Member Palumbo and the electronically-present other Committee members to participate in any discussion of the Open Meetings Law issue – with a vote thereafter democratically taken as to what should be done. To the contrary, this is what is described:

"[Ranking Member Palumbo] waited for an hour in the hearing room before he was told of the cancellation. He said he believes the hearing, as it was structured, would not have violated the Open Meetings Law. ...Palumbo, from eastern Long Island, has one of the longest commutes to Albany. He said other Republican senators on the committee would have come in person if they were told that was the rule." (July 12<sup>th</sup>, "[New York Senate Ethics Hearing Delayed Due to Open Meeting Concerns](#)", Public Radio (Karen DeWitt)).

Indeed, Chair Biaggi apparently did not apprise Committee members of any Open Meetings Law concern – or at least not the members of the Republican minority – until her seemingly unilateral July 12<sup>th</sup> postponement of the hearing, at the hearing:

"Palumbo said Republicans were never alerted about the hearing being switched to partially in person and said more members would have showed up. Senate Democrats control the hearing since they are in the majority. 'We discovered this, our staff did, from the Senate website that it would now be in person about I think it was two days ago and I just, fortunately was able to scramble together and find suit pants, Palumbo said.'" (July 12<sup>th</sup>, "[Senators 'Zooming' from home causes ethics hearing to be postponed](#)", Spectrum News-NY1 (Morgan McKay)).

Suffice to add, with respect to Committee on Open Government Executive Director Bewlay's e-mail to The Post:

"In my opinion, on or after June 25, 2021, a member of a public body wishing to form a part of the quorum for or cast a vote in a meeting subject to the law...held by videoconference (*i.e.*, Zoom) may do so only if the public is permitted to be physically present with the member at the member's location,"



The Post article does not state that Chair Biaggi had contacted the Committee on Open Government requesting an opinion, or that she had been furnished with an opinion – let alone one tailored to a hearing where witnesses had already arranged their schedules, prepared, and travelled to testify and the public interest would plainly be prejudiced by delay. In fact, it would seem that Chair Biaggi’s postponement of the hearing was for purposes of obtaining such opinion, presumably from the Committee on Open Government:

“Senator Biaggi, a Democrat, said she believes that the public hearing falls into a gray area of the rules, but did not want to taint the proceedings by any suggestion that they did something improper. ‘Because there is no question that we will not even give the perception of violating the Open Meetings Law, we are postponing it until we have clarity around this issue,’” (July 12<sup>th</sup>, "[New York Senate Ethics Hearing Delayed Due to Open Meeting Concerns](#)", Public Radio (Karen DeWitt)).

That being said, it is somewhat contradictory that the above Public Radio reporting includes an audio of Chair Biaggi speaking -- not stated to be from the hearing room on July 12<sup>th</sup> – wherein she asserts: “There was a concern that was brought to our attention from the Committee on Open Government as to whether or not the Open Meetings Law applies to hearings”. Albany’s News 10 likewise reported that the July 12<sup>th</sup> hearing “never launched because the Committee on Open Government raised concerns” (July 12<sup>th</sup>, "[NYS Senate ethics hearing postponed](#)". (Corina Cappabianca) and the above July 12<sup>th</sup> Post article reflects this, as well. Is this true? And what about the different spin for the genesis of the postponement, appearing in today’s July 15<sup>th</sup> article "[Open Meetings Law concerns stalls ethics hearing](#)" (Johnson Newspapers (Kate Lisa)):

“A reporter in the Capitol’s Legislative Correspondents Association was going to file a complaint with the Committee on Open Government, saying the hearing would violate the Open Meetings Law without an in-person quorum, a spokesman with the Senate Democratic Caucus said.”

Consequently, pursuant to FOIL and Senate Rule XIV – and in keeping with Chair Biaggi’s assertions: “The most important thing we can do as a government is to be transparent in our actions because everything we do is in service of the public” (July 13<sup>th</sup>, "[New York Sen. Biaggi talks reforming Albany’s ethics watchdog](#)", Spectrum News/Capital Tonight Interview (Nick Reisman) and “The public does deserve transparency, which is the point of the hearing” (July 12<sup>th</sup>, "[NYS Senate ethics hearing postponed](#)", Albany News 10 (Corina Cappabianca)) – this is to request:

- (1) the video and/or transcription of the announcement in the hearing room on July 12<sup>th</sup>, postponing the Senate Ethics and Internal Governance Committee’s hearing on “New York State’s System of Ethics Oversight and Enforcement”, including any discussion prior thereto by Committee members, any vote by them, and any statements thereupon put on the record;
- (2) records reflecting why the Committee proceedings of July 12<sup>th</sup> were not live-streamed, [why the video has not been posted](#), and why no statement has been posted explaining the postponement of the July 12<sup>th</sup> hearing;
- (3) the list of witnesses scheduled to testify at the July 12<sup>th</sup> hearing;
- (4) the written testimonies the witnesses had submitted;
- (5) records reflecting the date and time witnesses had registered and submitted their required written testimonies – or reflecting their exemptions from same because they were invited to testify;

- (6) records reflecting the names of registrants whose requests to orally testify were not approved – and the reasons therefor;
- (7) records reflecting when and in what fashion Chair Biaggi became aware of the Open Meetings Law issue and whether the change of the hearing format from ZOOM only to a hybrid of ZOOM and in-person, reported by Politico's July 11<sup>th</sup> article "[How will government meetings adjust to a post-Zoom world?](#)" (Bill Mahoney), was the result of consultation with the Committee on Open Government;
- (8) records reflecting Chair Biaggi's communications with Ranking Member Palumbo and the Committee's five other members pertaining to the Open Meetings Law issue, including the need for a quorum of the Committee's members to be "physically present" for the July 12<sup>th</sup> hearing – so-highlighted by Politico's July 11<sup>th</sup> article;
- (9) records of communications from the Committee on Open Government to Chair Biaggi raising "concerns" about the July 12<sup>th</sup> hearing;
- (10) records reflecting that a "A reporter in the Capitol's Legislative Correspondents Association was going to file a complaint with the Committee on Open Government, saying the hearing would violate the Open Meetings Law without an in-person quorum";
- (11) records reflecting whether – prior to postponing the July 12<sup>th</sup> hearing – Chair Biaggi read CJA's July 12<sup>th</sup> "Written Testimony in Lieu of Oral Testimony", e-mailed to her at 9:46 a.m. – and whether it factored into her decision to postpone the hearing;
- (12) records reflecting whether – following postponement of the July 12<sup>th</sup> hearing – Chair Biaggi forwarded to the Committee's six other members CJA's July 12<sup>th</sup> e-mail, sent to her at 11:53 a.m., inviting her and the other Committee members to a ZOOM meeting concerning CJA's "serious and substantial testimony, so that we can discuss what needs to happen, going forward, consistent with the duties you owe the People of the State of New York".

Thank you.

Elena Sassower, Director  
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