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May 24, 2021

Dear Ms. Elena Sassower:

I am in receipt of your email, dated May 14, 2021, appealing the determination of the Assembly Public Information Officer issued on May 13, 2021.

A. Request for Records and Appeal

On March 22, 2021, you requested certain records pursuant to the Freedom of Information Law ("FOIL") relating to "all publically available records pertaining to the retention of the law firm of Davis Polk & Wardell, LLP."

Specifically you requested:

"...(1) records establishing the 'vigorous search for a top-flight firm to assist with the investigation' undertaken by Chair Lavine; (2) the contract specifying the basis for the retention, its scope – and the cost; and (3) approval by the Comptroller."

In response to your request, the Public Information office provided you with the New York State Assembly's contract with Davis Polk & Wardwell, LLP related to an investigation by the New York State Assembly Judiciary Committee.

B. Decision

Your appeal asserts that you were not provided any records pertaining to "the 'vigorous search for a top-flight firm to assist with the investigation' undertaken by Chair Lavine." Any records pertaining to the research and vetting of potentially retained law firms would constitute attorney work product and would not be records produced under FOIL as said research was conducted by Assembly attorneys and Chairman Lavine. However, in light of your request, attached is a copy of the justification letter provided to the Office of the State Comptroller detailing the reasoning for the hourly rate and factors considered for retaining the law firm of Davis Polk & Wardwell, LLP.

Lastly, your appeal also requests "any additional written agreements and documents" between the Assembly and Davis Polk & Wardell, LLP. There are no documents responsive to this request as there are no further agreements between the Assembly and the law firm of Davis Polk & Wardwell, LLP.

Sincerely,  
David Mushett

A handwritten signature in black ink, appearing to read "David Mushett", written over a horizontal line.



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April 26, 2021

Ms. Jacklyn Roberts  
Office of the State Comptroller  
110 State Street  
Albany, NY 12236

RE: Justification for the Contract between the New York State Assembly and Davis Polk & Wardwell LLP (C600004).

The Assembly wishes to enter into new contract C600004 with the law firm of Davis Polk & Wardwell LLP for the purposes of assisting the New York State Assembly Judiciary Committee in conducting an investigation into the allegations against Governor Andrew Cuomo that may be the basis of articles of impeachment and assist in any proceedings in the Assembly or other body based on or related to those investigations. This investigatory role would not be appropriate for the Office of the Attorney General and as such the OAG has recused itself from any matters relating to this contract.

In selecting the law firm of Davis Polk & Wardwell LLP, the Assembly Judiciary Chairman, along with three top ranking Assembly counsels, reviewed and analyzed potential New York law firms that would have the capacity to undertake such an investigation. The Chairman and Counsels researched over 16 different firms that would have the capacity to undertake such an investigation and then vetted each firm for apparent or actual conflicts. After researching each of these law firms, the Chairman and Counsel ultimately interviewed 6 firms and subsequently determined Davis Polk & Wardwell LLP as the best candidate to assist in conducting the investigations. The team of attorneys proposed by Davis Polk & Wardwell LLP consisted of a multitude of experience ranging from former federal prosecutors, attorney investigators of harassment and discrimination claims, as well as lifetime litigators. Davis Polk & Wardwell LLP was also free of any apparent or actual conflicts.

Davis Polk & Wardell LLP has agreed to offer the Assembly largely discounted rates for both Partners and Associates at the rate of Six Hundred Dollars (\$600.00) per hour for time spent by both Partners and Associates, as well as the discounted rate of Two Hundred Fifty Dollars (\$250.00) per hour for the work of paralegals. Additionally, this contract contains a not to exceed amount of Two Hundred Fifty Thousand Dollars (\$250,000.00). This firm maintains professional liability coverage. The Assembly does not have any previous contracts with this firm. Please let me know if I can be of further assistance in this matter

Very truly yours,

A handwritten signature in black ink, appearing to read "David Mushett", written over a horizontal line.

David Mushett