

Center for Judicial Accountability, Inc. (CJA)

From: Senate Foil <foil@nysenate.gov>
Sent: Tuesday, July 27, 2021 10:45 AM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: Re: Corrected FOIL -- The postponed July 12th Senate Ethics & Internal Governance Committee hearing on "New York State's System of Ethics Oversight and Enforcement" Rules and Regulations relating to Public Inspection and Copying of Legislative Records - January 2019_blue (1).pdf; SHWG_Testimony_Senate Ethics Hearing_7.12.21 1.docx; NYC Bar Association Testimony July 2021.pdf; Ethics hearing testimony 7.11.21.pdf; NYPIRG testimony.pdf
Attachments:

July 27, 2021

Ms. Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc.
Post Office Box 8101
White Plains, NY 10602
cja@judgewatch.org

Dear Ms. Sassower:

This is to acknowledge receipt of your email dated July 15, 2021 pursuant to the Freedom of Information Law.

Your request included,

1. the video and/or transcription of the announcement in the hearing room on July 12th, 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;

No announcement was made in the hearing room nor was their discussion prior to the postponement by any members present.

Statement released by Senator Biaggi regarding the postponement of the hearing:

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No announcement was made in the hearing room nor was their discussion prior to the postponement by any members present.

Statement released by Senator Biaggi regarding the postponement of the hearing:

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. We are committed to holding this hearing as soon as possible.

2. records reflecting why the Committee proceedings of July 12th were not live-streamed, [why the video has not been posted](#), and why no statement has been posted explaining the postponement of the July 12th hearing;

The hearing never began so the live stream never began. There is no video to share or post.

3. the list of witnesses scheduled to testify at the July 12th hearing;

- Judge Sanford Berland, Executive Director, Joint Commission on Public Ethics
- Senator Tom Begich, Member, Alaska Legislature Select Committee on Legislative Ethics
- Erica Vladimer, Member, Sexual Harassment Working Group
- Rachael Fauss, Senior Research Analyst, Reinvent Albany
- Evan Davis, Member, Committee to Reform the State Constitution
- Ed Murray, Chair, New York City Bar Association's Government Ethics and State Affairs Committee
- Jennifer Wilson, Deputy Director, League of Women Voters
- Blair Horner, Executive Director, New York Public Interest Research Group
- Rachel Bloom, Director of Public Policy and Programs, Citizen Union
- Senator Louis DiPalma, Chair, Rhode Island Senate Committee on Rules, Government Ethics, and Oversight

- (4) the written testimonies the witnesses had submitted;

Please see attached.

(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;

Registered Witnesses

- July 8, 2021 at 5:32pm: Elena Sassower, written testimony received: July 12, 2021 at 9:45am
- July 8, 2021 at 6:55pm: Sherlivia Thomas-Murchison, written testimony not submitted
- July 12, 2021 at 2:49AM: Karen Greenwood, written testimony received: July 12, 2021 at 8:49am

(6) records reflecting the names of registrants whose requests to orally testify were not approved – and the reasons therefor;

- Elena Sassower: Correspondence sent below
- Sherlivia Thomas-Murchison: Correspondence sent below
- Karen Greenwood (No correspondence was given due to the request falling within 72 hours of the hearing)

Correspondence regarding testimony request sent Friday evening:

Good Evening: Hope all is well. Thank you for your interest in participating in the New York's System of Ethics Oversight and Enforcement this Monday, July 12th at 10am, unfortunately due to time constraints we will not be able to accommodate your oral testimony. If you would like your written testimony to be a part of the official record please send it to reppy@nysenate.gov and jonesjj@nysenate.gov prior to the start of the hearing on Monday at 10am.

Although we are unable to accommodate you at this time we are looking to have another hearing in the fall.

Much Appreciated,

Jordine Jones | Chief of Staff NYS Senator Alessandra Biaggi | Bronx & Westchester (518) 455-3595 | jonesjj@nysenate.gov

July 27, 2021

Ms. Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc.
Post Office Box 8101
White Plains, NY 10602
cja@judgewatch.org

Dear Ms. Sassower:

This is to acknowledge receipt of your email dated July 15, 2021 pursuant to the Freedom of Information Law.

Your request included,

- (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 11th 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 12th hearing – so-highlighted by Politico's July 11th article;
- (9) records of communications from the Committee on Open Government to Chair Biaggi raising "concerns" about the July 12th 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 12th hearing – Chair Biaggi read CJA's July 12th "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 12th hearing – Chair Biaggi forwarded to the Committee's six other members CJA's July 12th 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".

In terms of your request for answers to various questions, the Freedom of Information Law is not a vehicle to answer questions but rather to produce records. Therefore, your request is denied. Further, your email does not reasonably request or describe records that may be in the possession of the Senate.

Sincerely,

Alejandra N. Paulino, Esq.
Secretary of the Senate

I have attached a copy of the Senate's Rules and Regulations Relating to the Public Inspection and Copying of Legislative Records for your information.

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgwatch.org>
Sent: Thursday, July 15, 2021 11:23 PM
To: Senate Foil <foil@nysenate.gov>; coog@dos.ny.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
914-421-1200

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 8th – 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 12th, 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 9th.

As reflected by photos and video clips accompanying July 12th 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 12th 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 12th, “[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