

Center for Judicial Accountability, Inc. (CJA)

From: Hillery, Michael J. <Michael.Hillery@erie.gov>
Sent: Monday, August 17, 2020 11:22 AM
To: 'mail@judgewatch.org'
Cc: Munro, Kait
Subject: FOIL Request

Dear Ms. Sassower:

In your July 27, 2020 correspondence, you request, pursuant to FOIL, “records reflecting the number of public corruption complaints the district attorney received” from 2017 to the present, and the number of those complaints “dismissed without presentment to grand juries”; that were “presented to grand juries that did not result in indictments”; that “resulted in indictments (and the names, docket numbers, and dispositions of those matters)”; that were “presented to grand juries that resulted in grand jury reports (and the docket numbers of those matters)”; and “from which the district attorney’s office recused itself.” Our office does not maintain records of these numbers or that kind of information in a manner that allows us to accommodate your request, nor is our office required to create records in order to achieve compliance with the freedom of information law (Public Officers Law § 89[3][a]; *Data Tree, LLC v Romaine*, 9 NY3d 454, 464 [2007]). Accordingly, the request for these records and information is denied.

Additionally, your request for “manuals, guides, and other records of the district attorney’s office setting forth its procedures for handling public corruption complaints” cannot be accommodated because the district attorney’s office does not have such items (see Public Officers Law § 89[3][a]).

Your request for “records as to the number of grand jury indictments that the Erie County district attorney has obtained against a ‘public servant’ and persons ‘acting in concert with a public servant’ pursuant to Penal Law §496 (‘The Public Trust Act’) – and the names of those indicted thereunder, the court index/docket numbers, and the dispositions of the indictments pursuant to County Law § 700.6” cannot be accommodated because compliance would necessitate the creation of a new document, which the freedom of information law does not require (Public Officers Law § 89[3][a]; *Data Tree, LLC v Romaine*, 9 NY3d 454, 464 [2007]).

Additionally, your request as to specific information concerning public corruption cases is also denied as far as those cases may have been terminated in a way that was favorable to the accused, such as by acquittal or dismissal, and accordingly are now sealed (Criminal Procedure Law §§ 160.50, 160.59). In this event, a court order would be required before a seeking party could gain access to records and information related to them.

As to your request for the “mailing/e-mail address of the Erie County grand jury,” we would have to create such an account to accommodate your request, which we are not required to do (Public Officers Law § 89[3][a]). Further, the secrecy of grand jury proceedings must be scrupulously maintained, and your request would require us to compromise that secrecy (see *Matter of District Attorney of Suffolk County*, 58 NY2d 436, 443-444 [1983]).

Finally, as to your request for information regarding the Erie County Commissioner of Jurors, please direct your request to that officer.

If you wish to appeal this determination, you may do so by contacting First Deputy District Attorney Michael J. Keane at the address below.

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