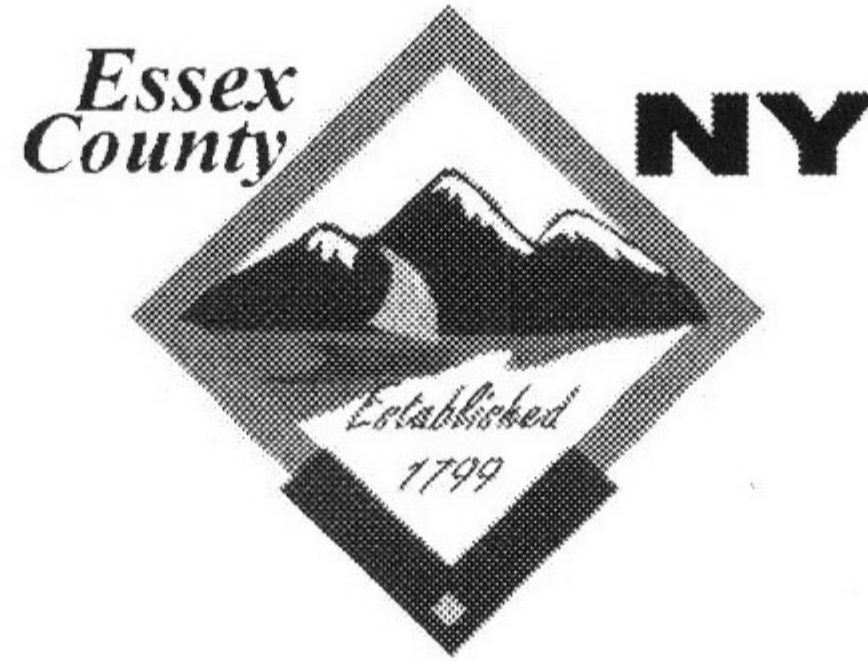


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**ESSEX COUNTY ATTORNEY**

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September 28, 2020

Elena Ruth Sassower, Director  
Center for Judicial Accountability, Inc.  
P.O. Box 8101  
White Plains, New York 10602

Re: Freedom of Information Act Request

Dear Ms. Sassower:

This letter is in response to your Freedom of Information Law request (FOIL) dated July 30, 2020 seeking copies of records relating to public corruption prosecutions and the Essex County Grand Jury. For the following reasons, your requests are hereby denied, with the exception of request (7) which is addressed below.

Initially, your requests are denied because the Essex County District Attorney does not maintain records of public corruption complaints received and/or the dispositions of such complaints. In addition, there is no query which could be entered into the District Attorney's computer record system which would yield the lists of information you are requesting. An agency is not required to disclose what it does not possess; similarly, an agency is not required, under FOIL, to compile information to create a new document. See Public Officers Law §89 (3) (a); Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 464-65 (2007); Matter of Locator Servs. Group, Ltd. V. Suffolk County Comptroller, 40 A.D.3d 760, 761 (2d Dept. 2007) (mem.); DiRose v. New York State Department of Correctional Services, 216 A.D.2d 691 (3d Dept.) (mem.); O'Shaughnessy v. New York State Division of State Police, 202 A.D.2d 508, 510 (2d Dept.) (mem.), appeal denied 84 N.Y.2d 807 (1994). See also Matter of James v. Goord, 35 A.D.3d 2006 (mem.), appeal denied 8 N.Y.3d 808; , cert. denied 552 U.S. 993 (2007).

Your request seeking records reflecting the total number of public corruption complaints the District Attorney received is denied because the District Attorney does not have or maintain such record.

Your request seeking records reflecting the number of public corruption complaints the District Attorney dismissed without presentment to grand juries is denied because the District Attorney does not have or maintain such a record. In addition, if such record existed, access would be denied in light of the sealing requirements of Criminal Procedure Law § 190.50.

Your request seeking records reflecting the number of public corruption complaints the District Attorney presented to grand juries that did not result in indictments is denied because the District Attorney does not have or maintain such record. In addition, if such record existed, access would be denied in light of the sealing requirements of Criminal Procedure Law §190.50 and §190.75.

Your request seeking record of complaints the District Attorney presented to grand juries that resulted in indictments, the names of those indicted, the court index/docket numbers, and the disposition of the indictments pursuant to County Law sec. 700.7 is denied because the District Attorney does not have or maintain such record. In addition, if such record did exist, access would be denied to any portion concerning a sealed indictment (Criminal Procedure Law §210.10 (3)) and access would be denied to any portion where sealing is required pursuant to CPL §190.50. Also if such record did exist, access would be denied where required by Criminal Procedure Law Article 720.

Your request seeking records reflecting the number of public corruption complaints the District Attorney presented to grand juries that resulted in grand jury reports – and the court index/docket numbers thereof pursuant to Criminal Procedure Law §190.85, §190.90 and County Law § 700.7 is denied because the District Attorney does not have or maintain such record. In addition, if such record existed, access would be denied to any portion where sealing is required pursuant to Criminal Procedure Law §190.85.

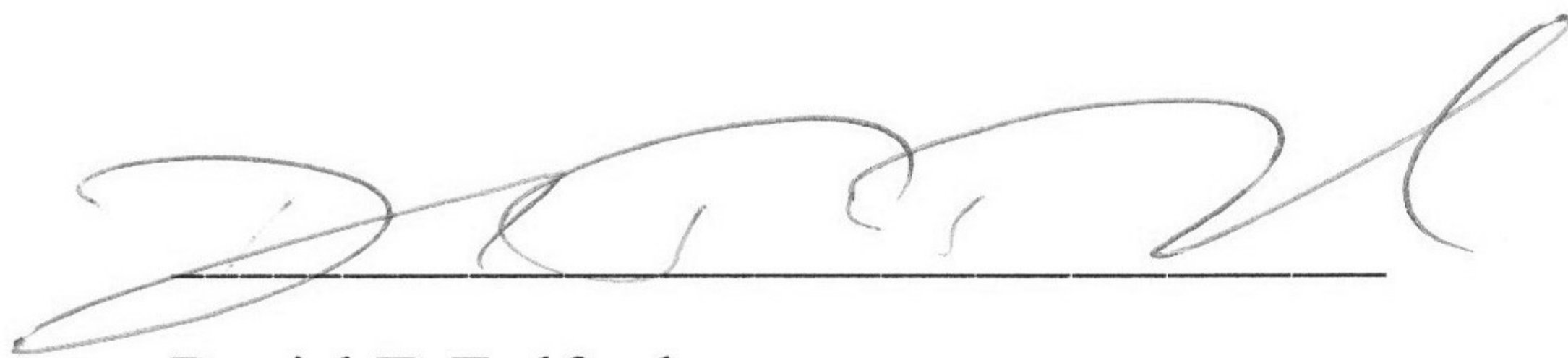
Your request seeking records reflecting the number of public corruption complaints from which the district attorney recused itself – and how such complaints were handled is denied because the District Attorney does not have or maintain such records.

Your request seeking manuals, guides, and other records setting forth the policies and procedures of the District Attorney's Office in instances of conflicts of interests of the district attorney or assistant district attorneys, *to wit*, financial interest and professional, political, and social relationships is granted. Such record is attached hereto. The District Attorney's Office possesses no other records that are responsive to this particular request.

Your request seeking manuals, guides, and other records of the District Attorney's office setting forth its procedures for handling public corruption complaints is denied because the District Attorney does not have such manual(s), guide(s) or records described.

Your request seeking records as to the number of grand jury indictments that the District Attorney 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 is denied because the District Attorney does not have or maintain such records and is not required to create such record. If such record existed, access would be denied would be denied to any portion concerning a sealed indictment (Criminal Procedure Law §210.10 (3)) and access would be denied to any portion where sealing is required pursuant to CPL §190.50. Also if such record did exist, access would be denied where required by Criminal Procedure Law Article 720.

Finally, you request contact information for the Essex County Commissioner of Jurors. This is not a record maintained by the District Attorney. However, for your convenience, the Commissioner of Jurors is: Andrew Quinn, 7559 Court Street, Elizabethtown, New York 12932; phone – 518-873-3377. You also request an address for direct contact to the Grand Jury. This request is denied because the District Attorney does not have such a record. Criminal Procedure Law Article 190 concerns the grand jury and its proceedings. The legal advisors to the Grand Jury are the Court and District Attorney “and the grand jury may not seek or receive legal advice from any other source.” Criminal Procedure Law §190.25 (6). Moreover, in New York State, grand jury proceedings are secret. See Criminal Procedure Law §190.25 (4); Penal Law §215.70. See also Matter of James v. Donovan, 130 A.D.3d 1032 (2d Dept.) (mem.), appeal denied 26 N.Y.3d 1048 (2015); New York News v. Office of the Special Prosecutor, 153 A.D.2d 512 (1st Dept. 1989); Ruggiero v. Fahey 103 A.D.2d 65 (2d Dept. 1984) (mem.). You may appeal this decision within 30 days. The appeal should be addressed to Daniel Palmer, 7551 Court Street, PO Box 217, Elizabethtown, NY 12932.

A handwritten signature in black ink, appearing to read 'Daniel T. Tedford', is written over a horizontal line.

Daniel T. Tedford

## **ETHICS POLICY OF THE ESSEX COUNTY DISTRICT ATTORNEY'S OFFICE**

### **I. Introduction:**

A copy of the following ethics material shall be distributed to each prosecutor working in the Essex County District Attorney's Office: (a) New York Rules of Professional Conduct; and (b) The Right Thing: Ethical Guidelines for Prosecutors.

Each prosecutor must read these documents before beginning work as a prosecutor in the office and submit a written statement, signed and dated, that he/she has done so. This statement shall be kept in the prosecutor's personnel file.

### **II. Continuing ethical obligations of each prosecutor:**

Each prosecutor working in the Essex County District Attorney's Office must: (a) earn the required annual CLE credits regarding ethics; (b) regularly read the ethics update material distributed by NYPTI ("Ethics Watch"); and (c) consult with the First Assistant District Attorney or the District Attorney about any ethical issue which he/she is unsure of.

### **III. Duty to report and to consult:**

Each prosecutor must report to the District Attorney or the First Assistant District Attorney, should the District Attorney be unavailable, any allegation of prosecutorial misconduct, whether made by a citizen, lawyer or judge. This includes the issuance of any judicial opinion discussing an allegation of prosecutorial misconduct.

If any prosecutor is unsure as to an ethical obligation regarding his/her professional conduct, the prosecutor should consult with the First Assistant District Attorney or District Attorney about the issue. If prior consultation is not possible, the prosecutor shall advise the First Assistant District Attorney about the issue at the earliest opportunity.

### **IV. Review:**

The District Attorney shall review any allegation of prosecutorial misconduct and make a determination as to whether further investigation, discussion or action is warranted. The District Attorney shall be responsible for making the final internal decision as to whether any form of counselling or disciplinary action is warranted.