

The charge of “public corruption” is defined in Penal Law § 496.06.

Requests 1, 2 and 6:

The People are not in possession of a record which lists: (1) the number of public corruption complaints received by the District Attorney; (2) the number of complaints the District Attorney dismissed without presentment to a grand jury, or (3) the number of public corruption complaints from which the District Attorney has recused herself.

Nor is there a query which could be entered into our computer record system which would yield the sought after information. A response would require a further investigation on the part of the District Attorney, and an aggregation of data, from various sources, to compile a list of the requested information. Such an aggregation of data is outside of the scope and requirements of FOIL. It is well-settled that an agency is not required to create any record that the agency does not possess or maintain; nor is the agency required to compile data from documents in its possession (Public Officer Law § 89 (3); *Locator Services Group v Suffolk County* 40 AD3d 760 (2d Dept 2007); *Dirose v NYS Dept of Correctional Services* 216 AD2d 691, 692 (3d Dept 1995); *O’Shaughnessy v NYS Division of Police* 202 AD2d 508, 510 (2d Dept 1994).

Requests 3, 4 and 5:

There are no records of any “public corruption” (Penal Law § 496.06) prosecutions from 2016 until present. As for request #3, had there been a presentment and a subsequent decision by a grand jury not to take action, the case would be sealed. Records sealed pursuant to CPL 160.50 are exempt from FOIL (*Johnson Newspaper Corp. v Stainkamp*, 61 NY2d 958, 960-961 [1984]).

Request 7: “Do the Right Thing” training manual has been uploaded.

Request 8: No records

Request 9: No records of any prosecutions of a “public servant” pursuant to Penal Law §496.06

- Request 10: a. Monroe County Commissioner of Jurors, 99 Exchange Boulevard
Rochester New York 14614 (585-371-3833)
- b. Request for grand jury address denied. CPL 190.25 (4)(a) and
Penal Law §215.70 forbids the disclosure of grand jury records
(New York News v Office of the State Prosecutor 153 AD2d 512
[1st Dept 1989]).