



## NIAGARA COUNTY DISTRICT ATTORNEY

NIAGARA COUNTY COURTHOUSE  
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*Assistant District Attorneys*

September 18, 2020

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Elena Sassower  
Director, Center for Judicial Accountability, Inc. (CJA)  
Post Office Box 8101  
White Plains, New York 10602

RE: Center for Judicial Accountability, Inc.  
FOIL/Information Request  
NYS Freedom of Information Law (FOIL) No. 144-20

Dear Ms. Sassower:

This is an attempt to respond to your FOIL inquiry, dated July 27, 2020. Your request fails to reasonably describe the records sought. The phrase "public corruption" can mean different things to different people. As such, we will treat your request as one within the confines of New York State Penal Law §496.06. In the event this response does not address your meaning of the phrase "public corruption," please provide a specific definition, or description, of the particular records you seek. We cannot begin to search for records without that specificity.

As for records related to New York State Penal Law §496.06, please see our response to your request below:

Generally speaking, your requests are denied (with the exceptions noted herein) because the Niagara County District Attorney does not maintain records of public corruption complaints received and/or the dispositions of such complaints. Additionally, 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, i.e. "public corruption."

Furthermore, an agency cannot disclose what it does not possess. Similarly, an agency is not required, under Public Officer's Law to compile information to create a new document, or to answer questions. The only obligation is to provide non-exempt records. (See Public Officers Law § 89(3)(a); Mtr. of Data Tree, LLC v. Romaine, 9 NY3d 454, 464-65 (2007); Mtr. of Locator Servs. Group, Ltd. v. Suffolk County Comptroller, 40 AD3d 760, 761 (2nd Dept. 2007) (mem.); DiRose v. New York State Department of Correctional Services, 216 AD2d 691

(3rd Dept.) (mem.); O'Shaughnessy v. New York State Division of State Police, 202 AD2d 508, 510 (2<sup>nd</sup> Dept.) (mem.), appeal denied 84 NY2d 807 (1994). See also Mtr. of James v. Goord, 35 AD3d 2006) (mem.), appeal denied 8 NY3d 808; cert. denied 552 U.S. 993 (2007).

**As to your request for “records reflecting the functioning and performance of the Niagara County district attorney’s office with respect to public corruption complaints filed with it by members of the public each year from 2017 to the present,”** This office does not possess the records pursuant to your request.

#### **SPECIFIC INQUIRIES:**

**1. As to your request for “records reflecting the number of public corruption complaints the district attorney received,”** This office does not possess records pursuant to your request.

**2. As to your request for “records reflecting the number of public corruption complaints the district attorney dismissed without presentment to grand juries,”** This office does not possess records pursuant to your request. Additionally, any such records would be exempt per Public Officer’s Law § 87(2)(a) and CPL § 190.50 as any records relating to a criminal charge dismissed in favor of any person accused of a crime are sealed pursuant to.

**3. As to your request for “records reflecting the number of public corruption complaints the district attorney presented to grand juries that did not result in indictments,”** This office does not possess records pursuant to your request. Additionally, any such records would be exempt per Public Officer’s Law § 87(2)(a) and Criminal Procedure Law §§ 190.50 and 190.75 as such records would be denied in light of the sealing requirements.

**4. As to your request for “records reflecting the number of public corruption 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 §700.6,”** This office does not possess records pursuant to your request. Additionally, any such records would be exempt per Public Officer’s Law § 87(2)(a) and Criminal Procedure Law §§ 190.50, 210.10 (3)) and Criminal Procedure Law Article 720.

**5. As to your request for “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,** This office does not possess records pursuant to your request. Additionally, any such records would be exempt per Public Officer’s Law § 87(2)(a) and Criminal Procedure Law §§ 190.25(4) and 190.85.

**6. As to your request for “records reflecting the number of public corruption complaints from which the district attorney’s office recused itself – and how such complaints were handled,”** This office does not possess records pursuant to your request.

7. As to your request for **“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 to the extent of providing you with pertinent pages of an attachment of *“Do the Right Thing,”* the Niagara County District Attorney’s Office Ethics Policy, Ethics Pledge, the Code of Ethics for Niagara County and New York Rules of Professional Conduct. Additionally, a 2-page Memorandum concerning the subject of conflicts of interest, dated January 19, 2017 exists. That constitutes an intra-agency Memorandum and is exempt per Public Officer’s Law § 87(2)(g). Please provide \$24.00 (96 pages @ \$0.25/page) and the copies will be sent to you.

8(a). As to your request for **“manuals, guides, and other records of the district attorney’s office setting forth its procedures for handling public corruption complaints, as for example: a requirement that public corruption complaints be handled by the district attorney personally, by top assistant district attorneys or by a designated public integrity /corruption unit”** This office does not possess records pursuant to your request.

8(b). Your request for **“manuals, guides, and other records of the district attorney’s office setting forth its procedures for handling public corruption complaints, as for example: a requirement for preliminary investigation of each complaint not determined to be facially lacking in merit – with such preliminary investigation consisting, *at minimum*, of an interview of the complainant, under oath, and an examination of the documentary evidence the complainant has furnished and/or proffered in substantiation of the complaint”** This office does not possess records pursuant to your request.

8(c). As to your request for **“manuals, guides, and other records of the district attorney’s office setting forth its procedures for handling public corruption complaints, as for example: a requirement that each facially-meritorious complaint validated by preliminary investigation as supported by (1) the rules of evidence specified by the Criminal Procedure Law §190.30; and (2) evidence determined to be “legally sufficient” and “competent and admissible”, specified by Criminal Procedure Law §190.65, be presented to a grand jury – with the complainant called to testify before a grand jury in support of the complaint and with his/her evidence pursuant to Criminal Procedure Law §190.50(2)”** This office does not possess records pursuant to your request.

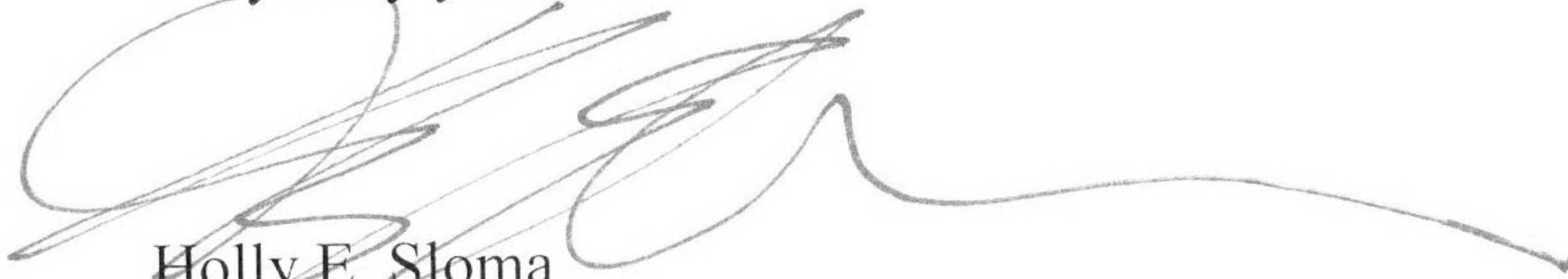
8(d). As to your request for **manuals, guides, and other records of the district attorney’s office setting forth its procedures for handling public corruption complaints, as for example: the preservation/retention policy for public corruption complaints and records of the district attorney’s actions with respect thereto”** This office does not possess records pursuant to your request.

9. Your request for **“records as to the number of grand jury indictments the Niagara 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”** This office does not possess records pursuant to your request. If such record existed, access would be denied pursuant to Public Officer’s Law § 87(2)(a) and Criminal Procedure Law §§ 210.10 (3)) and 190.50 and Criminal Procedure Law Article 720.

As to your request to “furnish the mailing/e-mail address of the Niagara County grand jury through which it can receive communications directly from members of the public, unobstructed by the district attorney – in furtherance of its duty pursuant to Article I, §6 of the New York State Constitution and Criminal Procedure Law Article 190,” This office does not possess records pursuant to your request. If such record existed, access would be denied pursuant to Public Officer’s Law § 87(2)(a) and Criminal Procedure Law Article 190 concerning the grand jury and its proceedings. Similarly, 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. (See Criminal Procedure Law §190.25(6)). Moreover, in New York State, grand jury proceedings are secret. (See Criminal Procedure Law §190.25(4) and Penal Law § 215.70); (See also Mtr of James v. Donovan, 130 A.D.3d 1032 (2d Dept.) (mem.), appeal denied 26 NY3d 1048 (2015); New York News v. Office of the Special Prosecutor, 153 AD2d 512 (1st Dept. 1989) and Ruggiero v. Fahey 103 AD2d 65 (2d Dept.1984) (mem.)). In addition thereto, if such records existed, they may be exempt pursuant to Public Officer’s Law 87(2)(b), an unwarranted invasion of personal privacy and Public Officer’s Law 87(2)(e), records compiled for law enforcement purposes and would interfere with judicial proceedings or deprive a person of a right to a fair trial or impartial adjudication and Public Officer’s Law § 87(2)(f) may endanger the life and safety of an individual if disclosed.

**As to your request for the name, phone number, mail, and email address of the Niagara County Commissioner of Jurors”** This office does not possess records pursuant to your request. You may try the nycourts.gov website which provides the following information. Niagara County Commissioner of Jurors Office, 175 Hawley Street, Lockport New York 14094. Commissioner of Jurors: Christopher Pannozzo, Phone (716) 280-6450; [cpannozz@nycourts.gov](mailto:cpannozz@nycourts.gov)

Very truly yours,



Holly E. Sloma  
First Assistant District Attorney

YOU HAVE A RIGHT TO APPEAL THIS DECISION, SHOULD YOU DESIRE, DIRECTLY TO THE CHAIRMAN OF THE NIAGARA COUNTY LEGISLATURE, NIAGARA COUNTY COURTHOUSE, 175 HAWLEY STREET, LOCKPORT, NEW YORK 14094. SUCH AN APPEAL MUST BE IN WRITING, YOU MUST INCLUDE A COPY OF BOTH YOUR FOIL REQUEST AND THIS DEPARTMENT’S REPLY. YOU MUST SERVE THE APPEAL NOTICE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS REPLY.

cc: John Sansone, Esq., Assistant County Attorney