

Center for Judicial Accountability, Inc. (CJA)

From: Li, Margaret <mli@co.seneca.ny.us>
Sent: Monday, August 31, 2020 2:54 PM
To: elena@judgewatch.org
Subject: REPLY: FOIL/Information Request: (1) the functioning of the Seneca County district attorney's office & performance of its duties with respect to public corruption complaints filed by members of the public; (2) access to the Seneca County grand jury...
Attachments: seneca-7-31-20-da-foil.pdf

August 31, 2020

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

Re: Freedom of Information Act Request – public corruption complaints and Seneca County Grand Jury

Dear Ms. Sassower:

This letter is in response to your Freedom of Information Law request (FOIL) dated July 31, 2020 and received by this office on same, seeking copies of records relating to public corruption prosecutions and the Seneca County Grand Jury.

Public Corruption is a crime defined by Penal Law sec. 496.06 which became effective on April 30, 2014.

For the following reasons, your requests are hereby denied, with the exception of Request #7 which is granted to the extent of providing you with a copy of "The Right Thing."

Initially, your requests are denied because the Seneca 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 sec. 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 #1 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 #2 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 record. In addition, if such record existed, access would be denied in light of the sealing requirements of Criminal Procedure Law sec. 190.50.

Your request #3 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 secs. 190.50 and 190.75.

Your request #4 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 sec. 210.10 (3)) and access would be denied to any portion where sealing is required pursuant to CPL sec. 190.50. Also if such record did exist, access would be denied where required by Criminal Procedure Law Article 720.

Your request #5 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 secs. 190.85, 190.90 and County Law sec. 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 sec. 190.85.

Your request #6 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 #7 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 to the extent of providing you with an attachment of "Do the Right Thing." The District Attorney does not have or maintain any other manual, guide or record described in your request #7.

Your request #8 (a) (b) (c) and (d) 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 in your request #8.

Your request #9 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 sec. 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 sec. 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 sec. 210.10 (3)) and access would be denied to any portion where sealing is required pursuant to CPL sec. 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 Seneca County Commissioner of Jurors. This is not a record maintained by the District Attorney. However, for your convenience, the Commissioner of Jurors is: Susan Maleski, 48 West Williams Street, Waterloo, NY, 13165; phone 315-835-6230.

You also request an address for direct contact to the Grand Jury. This request is denied because the District Attorney does not have a record of that. 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 sec. 190.25 (6). Moreover, in New York State, grand jury proceedings are secret. See Criminal Procedure Law sec. 190.25 (4); Penal Law sec. 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 Chairman of the Seneca County Board of Supervisors, Seneca County Office Building, 1 DiPronio Drive, Waterloo, NY, 13165; or by sending an appeal via this email with APPEAL OF FOIL in the subject line.

Sincerely,
Margaret E. Li

*Margaret E. Li, Clerk to the Board
Seneca County Board of Supervisors
1 DiPronio Drive, Waterloo, NY 13165
(P) 315-539-1700
Website: www.co.seneca.ny.us*

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]

Sent: Friday, July 31, 2020 10:14 AM

To: Li, Margaret

Subject: FOIL/Information Request: (1) the functioning of the Seneca County district attorney's office & performance of its duties with respect to public corruption complaints filed by members of the public; (2) access to the Seneca County grand jury...

TO: Seneca County FOIL Officer & Clerk to the Board of Supervisors Margaret Li

Thank you for your prompt return call. As discussed, attached is my FOIL/information request of today's date.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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www.judgewatch.org
elena@judgewatch.org