



OFFICE OF THE DISTRICT ATTORNEY  
WESTCHESTER COUNTY

WESTCHESTER COUNTY COURTHOUSE  
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White Plains, New York 10601  
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ANTHONY A. SCARPINO, JR.  
DISTRICT ATTORNEY

September 24, 2020

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

Re: FOIL - Public Corruption complaints and Grand Jury

Dear Ms. Sassower:

This letter is in response to your Freedom of Information Law request (FOIL), dated July 28, 2020, requesting copies of records relating to “public corruption” complaints and the Westchester County Grand Jury.

To begin, please be advised that with the exception of your request number 9, which references Penal Law § 495, your request does not specifically define “public corruption”. Therefore, our response refers to complaints referred to the Public Integrity Bureau, which handles complaints regarding “public” individuals, to encompass, to the extent they exist, public servants, and/or public authorities, whether they were submitted via a complaint form from the public, or referred from outside agencies, for the relevant time period of 2017 to the present.

Additionally, nothing in FOIL requires government officers or employees respond to questions or supply information in response to questions. FOIL pertains only to existing records and specifies that government agencies need not create new records to comply with that law (Public Officer’s Law § 89 [3]; *see also Matter of Data Tree, LLC v. Romaine*, 9 NY3d 454, 464-465 (2007); *Matter of Locator Servs. Group, Ltd. v Suffolk County Comptroller*, 40 AD3d 760, 761 (2d Dept 2007); Comm on Open Govt FOIL-AO-16632a [2007][Note: FOIL Advisory Opinion]).

Further, as set forth below, many of the records in our file are not subject to public disclosure under FOIL.

**Item 1 of your request:** records reflecting the total number of public corruption complaints the District Attorney received:

E-mails, notes and memoranda prepared by the prosecutor (or at the behest of the prosecutor), as well as intra and/or inter-agency reports, in connection with and preparation for the prosecution of the criminal actions are protected under the attorney work product doctrine (*see* Public Officers Law § 87 [2] [a], CPLR § 3101 [c], [d]), insofar that such materials constitute core work product, which reveal the mental impressions, conclusions, opinions, or legal theories of an attorney (*see Hickman v*

*Taylor*, 329 US 495, 511-512 [1947]; *Hoffman v Ro-San Manor*, 73 AD2d 207 [1st Dept 1980], as well as the inter/intra agency exception for FOIL under Public Officer's Law § 87 [2] [g]).

**Item 2 of your request:** records reflecting the number of public corruption complaints the District Attorney dismissed without presentment to grand juries:

The Westchester County District Attorney's Office ("WCDAO") does not have or maintain a record which reflects the numbers of complaints. However, any underlying documents which would yield such information is denied as public dissemination of records relating to matters that did not culminate in a prosecution raises privacy concerns that render such records exempt under FOIL (Public Officer's Law §89 [2] [b], FOIL-AO-10399 [1997] [Note: FOIL Advisory Opinion]; FOIL-AO-12005 [2000] [Note: FOIL Advisory Opinion] [reports which include unsubstantiated allegations may be withheld]).

Also records, to include emails, notes, reports and correspondence, prepared by the prosecutor (or at the behest of the prosecutor) in connection with and preparation for the prosecution of criminal actions are protected under the attorney work product doctrine (CPLR § 3101 [c], [d]), insofar that such materials constitute core work product, which reveal the mental impressions, conclusions, opinions, or legal theories of an attorney (*see Hickman v Taylor*, 329 US 495, 511-512 [1947]; *Hoffman v Ro-San Manor*, 73 AD2d 207 [1st Dept 1980], as well as the inter/intra agency exception for FOIL under Public Officer's Law § 87 (2) (g). On these bases, your request is denied.

**Item 3 of your request:** records reflecting the number of public corruption complaints the District Attorney presented to grand juries that did not result in indictments:

This request is denied because there are no "complaints" that were presented to the Grand Jury, during the relevant period, that did not result in an indictment.

**Item 4 of your request:** records 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 § 700.7:

This request is denied with respect to any case which has been subsequently sealed pursuant to Criminal Procedure Law 160.50, as well as any pending criminal proceeding (Public Officers Law § 87 [2] [e] [i]; *Matter of Whitley v. New York County Dist. Attorney's Off.*, 101 AD3d 455 [2012], *Leshner v. Hynes*, 19 NY3d 57 [2012] [exemption based on risk that such disclosure would have chilling effect on pending prosecution, would create an interference with a pending criminal proceeding, including pending appeals, or would interfere with criminal discovery rules], *see also Legal Aid Soc. v New York City Police Dept.*, 274 AD2d 207, 213-214 [1st Dept 2000], *Matter of Pittari v Pirro*, 258 AD2d 202 [2d Dept 1999]).

In addition, Court documents – which include motions, decisions, orders, transcripts and the like – are not agency records and, therefore, are not available pursuant to FOIL

(*Roque v Kings County District Attorney*, 12 AD3d 374 [2d Dept 2004], *Matter of Gibson v Grady*, 192 AD2d 657 [2d Dept 1993]).

Also, access would be denied to any portion concerning a sealed indictment (CPL 210.10 [3]) and access would be denied to any portion where sealing is required pursuant to Criminal Procedure Law 190.50.

Documents reasonably responsive to your request for complaints the District Attorney presented to the Grand Jury that resulted in indictments, and that fall within the parameters delineated in paragraph 2 above, will be provided upon payment as outlined below.

**Item 5 of your request:** 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 request is denied, as no such report exists. In addition, if such record existed, access would be denied pursuant to Criminal Procedure Law 190.85 (3).

**Item 6 of your request:** records reflecting the number of public corruption complaints from which the district attorney recused itself – and how such complaints were handled:

Document(s) reasonably responsive to this request will be provided upon payment as outlined below.

**Item 7 of your request:** 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:

The handbook "Do the Right Thing" is reasonably responsive to this request, and may be provided upon receipt of payment as outlined below. The WCDAO does not have or maintain any other manual, guide or record described in this request.

**Item 8 (a) of your request:** a requirement that public corruption complaints be handled by the district attorney's "Public Integrity Bureau" of its "Investigations Division":

Document(s) reasonably responsive to this request will be provided upon payment as outlined below.

**Item 8 (b) of your request:** a requirement that such complaints be submitted in writing, with a signed attestation that knowingly false statements are punishable under Penal Law § 210.45:

Document(s) reasonably responsive to this request will be provided upon receipt of payment as outlined below.

**Items 8 (c) (d) (e) (f) and (g)** are denied as the District Attorney does not have any such manual(s), guide(s) or records described in these requests.

**Item 9 of your request:** 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:

As these records would be encompassed in item 4 of your request, please see the response therein.

Finally, your request for the email address for the Westchester County grand jury, as well as the information and contact for the Westchester County Commissioner of Jurors:

This request is denied as there is no email address for the Westchester County Grand Jury. Further Criminal Procedure Law 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 (CPL 190.25 [4]; Penal Law § 215.70, *see also Matter of James v. Donovan*, 130 AD3d 1032 [2d Dept 2019]; *New York News v. Office of the Special Prosecutor*, 153 AD2d 512 [1st Dept 1989]; *Ruggiero v. Fahey* 103 AD2d 65 [2d Dept 1984]).

We have located 84 documents that are reasonably responsive to this request. Upon receipt of payment in the amount of \$ \$21.00 (calculated at the statutory rate of \$.25 per page), payable to the “Westchester County District Attorney’s Office,” we will provide them to you.

Any appeal of these determinations must be made within 30 days to: Steven A. Bender, FOIL Appeals Officer, Office of the District Attorney, 111 Dr. Martin Luther King Jr. Blvd, White Plains, New York 10601.

Very truly yours,

ANTHONY A. SCARPINO, JR.  
DISTRICT ATTORNEY

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Virginia A. Marciano  
Assistant District Attorney  
Records Access Officer