



August 13, 2021

**Via Email:** [elena@judgewatch.org](mailto:elena@judgewatch.org)

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

FOIL Request: #3483

Dear Elena Sassower:

This letter responds to your correspondence dated April 29, 2021, which pursuant to FOIL, requested:

Reference is made to the Delgado v. New York State citizen-taxpayer action (Albany County #907537-18), wherein, before Albany County Supreme Court Justice Christina Ryba, Assembly Speaker Heastie, represented by the law firm of Holwell Shuster & Goldberg LLP, sought and was granted amicus curiae status.

At the Appellate Division, Third Department (#529556), Assembly Speaker Heastie, represented by that same law firm, sought and was granted amicus curiae status. Additionally, Governor Cuomo, represented by the law firm Orrick, Herrington & Sutcliffe LLP, sought and was granted amicus curiae status, stating, by a September 14, 2020 affirmation of James McGuire, Esq. (¶4): "Holwell Shuster & Goldberg's fees for the preparation and submissions of this brief will be paid with state funds". Also, Senate Majority Leader Stewart-Cousins, represented by the law firm Cuti Hecker Wang LLP, sought and was granted amicus curiae status, stating, by a September 14, 2020 affirmation of Eric Hecker, Esq. (¶7): "my firm's fees for the preparation and submissions of this brief will be paid with state funds".

Pursuant to Public Officers Law Article VI (FOIL), Senate Rule \_\_\_ ("Freedom of Information"), and Assembly Rule VIII ("Public Access to Records"), this is to request all publicly-available records pertaining to:

(1) the determination(s), if any, by Attorney General James that the legal interests of the Assembly Speaker, Governor, and Senate Majority Leader could not be adequately protected and represented by her;

(2) Attorney General James' certification(s), if any, that it was appropriate for the Assembly Speaker, Governor, and Senate Majority Leader to each retain outside counsel to appear as amicus curiae;

(3) the process, if any, used by the Assembly Speaker, Governor, and Senate Majority Leader to select these law firms to represent them for amicus curiae purposes;

(4) the contracts retaining these law firm;

(5) the Attorney General's approvals, if any, of the contracts;

(6) the Comptroller's approvals of the contracts;

(7) payments made to the law firms pursuant to the contracts.

Enclosed please find records responsive to parts 4, 6 and 7 of your request.

Please be advised that portions of records responsive to your request are exempt from production pursuant to Public Officers Law § 87(2)(d). Public Officers Law § 87(2)(d) provides that an agency may deny access to records or portions thereof "that are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise."

Further, Public Officers Law § 87(2)(a) precludes access to records that are "specifically exempted from disclosure by state or federal statute." Accordingly, certain records that may be responsive to parts 1, 2 and 5 your request are exempt from production pursuant to Civil Practice Law and Rules §§ 3101(c) and 4503(a) because they constitute attorney work product or confidential communications made between an attorney and his or her client.

Finally, the Freedom of Information Law does not require responses to specific questions, but instead governs release of government records (Public Officers Law § 89(3) and Committee On Open Government Ad. Op. 16632a (June 18, 2007)). Part 3 of your request does not seek documents or records, but rather poses questions which would require that a response be prepared. Public Officers Law § 89(3)(a), indicates that an agency is not required to create a record in response to a request.

Pursuant to Public Officers Law § 89(4)(a), you have thirty (30) days to take a written appeal of this determination. You may appeal by writing: FOIL Appeals Officer, Executive Chamber, State Capitol, Albany, New York, 12224.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jaclyn Clemmer". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jaclyn Clemmer  
FOIL Counsel &  
Records Access Officer