

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

BY E-MAIL

October 21, 2015

TO: Joint Commission on Public Ethics (JCOPE)
Records Access Officer/Director for External Affairs Walter McClure

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: FOIL/Records Request I – Assisting the JCOPE/LEC Review Commission with a methodologically-sound review:
(1) JCOPE’s “internal procedures for intake and review of all tips and complaints”;
(2) JCOPE’s “case management system”

At the October 14, 2015 public hearing of the JCOPE/LEC Review Commission, Chairman Volker revealed that the Review Commission has been operating without funding for full-time paid staff and is assisted by volunteers: a single New York Law School staffer and a single New York Law School student.¹ Therefore, in a spirit of public service, I have taken upon myself to also volunteer – and to secure for the JCOPE/LEC Review Commission some of the documentary evidence it requires for a methodologically-sound review.

JCOPE’s reports are an appropriate starting point.

In JCOPE’s First-Year Report – released “in addition to, and in advance” of, its 2012 Annual Report – there is a section entitled “Pursuing Investigations and Enforcement”. Under the heading “Procedures”, it states:

“...the Commission adopted formal guidelines for filing sworn complaints alleging violations of the Public Officers Law or the Lobbying Act, which are available on the Commission’s website. **The Investigations Division also adopted internal procedures for intake and review of all tips and complaints and is in the process**

¹ In the words of Chairman Volker: “The Commission has no pay for a full-time staff and is wholly being assisted by volunteer staff. I want to recognize and thank Ariel Dvorkin, a member of the staff of New York Law School for all his work that he has done in helping the Commission to do its work, and Jonathan Sizemor, a New York law school student.” Upon information and belief, these two volunteers perform only administrative and technological functions.

of creating a new case management system.” (at p. 13, bold added).

This is repeated in JCOPE’s 2012 Annual Report, in a section entitled “Investigations and Enforcement”, under the heading “Overview”:

“In 2012, the Commission published procedures for filing sworn complaints alleging violations of the Public Officers Law or the Lobbying Act, which are available on the Commission’s website. [Click here to view the procedures for filing a sworn complaint.](#) **The Investigations Division also established internal procedures for intake and review of all tips and complaints and is in the process of creating a new case management system.”** (at p. 46, bold added).

JCOPE’s February 2015 Report, required by Executive Law §94.1, comparably states. Its section entitled “Investigations and Enforcement”, under the heading “Investigation and Enforcement Procedures”, reads, in pertinent part:

“Over the past three years, JCOPE has established internal procedures for intake and review of all tips and complaints and worked closely with the State Office of Information Technology Services to create an effective electronic case management system.” (at p. 37, bold added).

Of course, to be lawful, JCOPE’s “internal procedures for intake and review of all tips and complaints” must be consistent with Executive Law §94.² For example, they must track the mandatory language and time parameters of Executive Law §§94.13(a) and (b), which state, in pertinent part:

² Cf. Legislative Law §80, the statute pertaining to the Legislative Ethics Commission (LEC), whose subdivision (7)(c) states, in full:

“Adopt, amend, and rescind policies, rules and regulations consistent with this section to govern procedures of the commission which shall not be subject to the state administrative procedure act” (underlining added).

This is materially different from the corresponding subdivision of Executive Law §94 pertaining to JCOPE, subdivision (9)(c), which states, in full:

“Adopt, amend, and rescind rules and regulations to govern procedures of the commission, which shall include, but not be limited to, the procedure whereby a person who is required to file an annual financial disclosure statement with the commission may request an additional period of time within which to file such statement, other than members of the legislature, candidates for members of the legislature and legislative employees, due to justifiable cause or undue hardship; such rules or regulations shall provide for a date beyond which in all cases of justifiable cause or undue hardship no further extension of time will be granted”.

“(a) Investigations. If the commission receives a sworn complaint alleging a violation of section seventy-three, seventy-three-a, or seventy-four of the public officers law, section one hundred seven of the civil service law or article one-A of the legislative law by a person or entity subject to the jurisdiction of the commission including members of the legislature and legislative employees and candidates for member of the legislature, or if a reporting individual has filed a statement which reveals a possible violation of these provisions, or if the commission determines on its own initiative to investigate a possible violation, the commission shall notify the individual in writing, describe the possible or alleged violation of such laws and provide the person with a fifteen day period in which to submit a written response setting forth information relating to the activities cited as a possible or alleged violation of law. The commission shall, within forty-five calendar days after a complaint or a referral is received or an investigation is initiated on the commission's own initiative, vote on whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred...

(b) Substantial basis investigation.... If the commission determines at any stage that there is no violation or that any potential conflict of interest violation has been rectified, it shall so advise the individual and the complainant, if any.....” (underlining added).

Likewise, to be adequate, JCOPE’s “new case management system” must enable and facilitate JCOPE’s compliance with Executive Law §94’s mandatory and time-contingent requirements. As further illustrative, Executive Law §94.9(l), requiring that the Commission’s annual report:

“shall include: (i) a listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint, and (ii) where a matter has been resolved, the date and nature of the disposition and any sanction imposed, subject to the confidentiality requirements of this section...” (underlining added).³

³ Legislative Law §80.7(l) contains a near identical requirement for LEC, mandating that its annual report:

“shall include: (i) a listing by assigned number of each complaint and report received from the joint commission on public ethics which alleged a possible violation within its jurisdiction, including the current status of each complaint, and (ii) where a matter has been resolved, the date and nature of the disposition and any sanction imposed, subject to the confidentiality requirements of this section...” (underlining added).

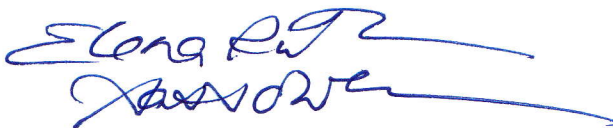
Consequently, pursuant to Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)] and other applicable statutory, as well as constitutional, provisions, I request – on behalf of the JCOPE/LEC Review Commission:

- (1) a copy of JCOPE's "internal procedures for intake and review of all tips and complaints", established in or about 2012 – including any subsequent modifications and/or amendments;
- (2) a copy of JCOPE's "case management system", created in 2012 – including any subsequent modifications and/or amendments.

Public Officers Law §89.3 requires your response "within five business days" of receipt of this request – and I would appreciate if you e-mailed it to me at elena@judgewatch.org.

For your convenience, the three above-cited JCOPE reports and Executive Law §94 and Legislative Law §80 are posted, with this letter, on CJA's webpage for JCOPE, accessible from our homepage, www.judgewatch.org, via the prominent link: "Exposing the Fraud of the Commission to Investigate Public Corruption".

Thank you.



cc: JCOPE/LEC Review Commission
Committee on Open Government
The Public