



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

MICHAEL JERRY
ASSISTANT ATTORNEY GENERAL
RECORDS ACCESS OFFICER

November 3, 2016

via e-mail: elena@judgewatch.org

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

RE: Freedom of Information Law (FOIL) Request # 160706

Dear Ms. Sassower:

This letter responds to your correspondence dated September 28, 2016, which, pursuant to FOIL, requested the following:

“[P]ublicly-available records pertaining to:

- (1) the professional background, qualifications, and employment history of Assistant Attorney General Adrienne Kerwin;
- (2) Assistant Attorney General Kerwin’s annual salary during the years of her employment at the Attorney General’s office;
- (3) the names of the attorneys in the Attorney General’s office responsible for supervising Assistant Attorney General Kerwin’s work, presently and since March 28, 2014;
- (4) the meaning of, and basis for, the ‘of counsel’ designation of Assistant Attorney General Kerwin in the just-commenced citizen taxpayer action Center for Judicial Accountability v. Cuomo, et. al. (Albany Co. #5122-16) and in the now-concluded citizen taxpayer action Center for Judicial Accountability v. Cuomo, et al., commenced on March 28, 2014 (Albany County #1788-14);
- (5) the Attorney General’s guidelines, policies, and procedures pertaining to designation, payment, and oversight of its ‘of counsel’ attorneys;
- (6) the Attorney General’s guidelines, policies, and procedures for evaluating

conflicts of interest of its attorneys and for retaining outside counsel;

(7) the Attorney General's guidelines, policies, and procedures for determining the 'interest of the state', pursuant to Executive Law §63.1, and its duty to represent plaintiffs and/or intervene in their behalf in citizen-taxpayer actions, pursuant to State Finance Law Article 7-A.

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

Portions of your correspondence request information rather than records. FOIL requires the Office of the Attorney General ("OAG") to provide you with records in its possession. FOIL does not require the OAG to provide you with advice or information. Nor does FOIL require that we create records to respond to a FOIL request.

Attached to this e-mail are documents numbered 160706-1 through 160706-3 that respond to your request.

Please be advised that some of the records that respond to your request have been withheld in their entirety, or portions have been redacted and appear as blacked out in the documents produced to you. These records are exempt from disclosure pursuant to:

- Public Officers Law § 87(2)(a), which provides that records that are exempted from disclosure by state or federal statute are exempt from disclosure under FOIL. The records constitute confidential communication[s] made between attorney and client, which is exempt from disclosure under Civil Practice Law and Rules § 4503(a). *See Morgan v. New York State Department of Environmental Conservation*, 9 A.D.3d 586, 587 (3rd Dept. 2004).;
- Public Officers Law § 87(2)(a), which provides that records that are exempted from disclosure by state or federal statute are exempt from disclosure under FOIL. The records constitute attorney work product, which is exempt from disclosure under Civil Practice Law and Rules § 3101(c);
- Public Officers Law § 87(2)(b), because disclosure of the records would constitute an unwarranted invasion of personal privacy; and
- Public Officers Law § 87(2)(g), because the records are inter-agency or intra-agency materials.

You have a right to appeal the foregoing decision. If you should elect to file such an appeal, your written appeal must be submitted, within 30 days, to Kathryn Sheingold, Records Appeals Officer, State of New York, Office of the Attorney General, Division of Appeals and

Ms. Elena Sassower
November 3, 2016
Page 3

Opinions, The Capitol, Albany, New York 12224. You may reach the Records Appeals Officer at (518) 776-2009.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Jerry', with a long, sweeping horizontal stroke extending to the right.

Michael Jerry
Assistant Attorney General

Attachment