

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914) 421-1200

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

BY E-MAIL: opinions@ag.ny.gov

December 1, 2016

TO: Assistant Solicitor General Kathryn Sheingold/Division of Appeals & Opinions
Records Appeals Officer for Attorney General Eric Schneiderman

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

RE: FOIL APPEAL: Request #160706 –
Assistant Attorney General Adrienne Kerwin & Guidelines, Policies & Procedures

Pursuant to Public Officers Law §89(4)(a) [FOIL], I here appeal the November 3, 2016 letter of Attorney General Schneiderman's Records Access Officer Michael Jerry, responding to my September 28, 2016 FOIL request. For your convenience, both documents are enclosed.

Notwithstanding my FOIL request sought "publicly-available records pertaining to" seven enumerated items, AG Records Access Officer Jerry begins his response by purporting that "portions of [my] correspondence request information rather than records". This is false – and, therefore, his further assertions based thereon are of no relevance to my request:

"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."

AG Records Access Officer Jerry then attaches three pages which he purports "respond to [my] request". In so doing, he does not identify to which of the seven enumerated items these three pages are responsive – thereby concealing that they respond to only the first two, *to wit*, "publicly-available records pertaining to":

"(1) the professional background, qualifications, and employment history of Assistant Attorney General Adrienne Kerwin;"

(2) Assistant Attorney General Adrienne Kerwin's annual salary during the years of her employment at the Attorney General's office".

As to the five enumerated items for which AG Records Access Officer Jerry provides no records – and as to the three pages he has supplied, responsive to the first two enumerated items – he states:

“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.”

Apart from the fact that these four grounds for denying a FOIL request pursuant to Public Officers Law §87(2) are permissive, not mandatory, I do not believe they are applicable to enumerated items #5, #6, and #7 of my FOIL request for “publicly-available records pertaining to”:

“(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 on their behalf in citizen-taxpayer actions, pursuant to State Finance Law Article 7-A.”

Indeed, I would note that Public Officers Law §87(2)(g) expressly exempts from the “inter-agency or intra-agency materials” that can be withheld “ii. instructions to staff that affect the public” and “iii. final agency policy or determinations”.

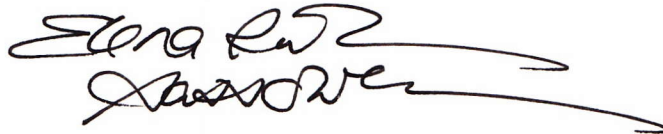
I also question whether any of these four grounds are properly invoked to bar records production responsive to my enumerated items #3 and #4 for “publicly-available records pertaining to”:

“(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).”

To facilitate the expedition mandated by Public Officers Law §89(4)(a), kindly e-mail me your determination of this appeal at elena@judgewatch.org.

Thank you.

A handwritten signature in dark ink, appearing to read "Elena R. J. Sheingold", with a long horizontal flourish extending to the right.

Enclosures

cc: AG Records Access Officer Michael Jerry
Robert Freeman/Executive Director, NYS Committee on Open Government

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914) 421-1200

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Website: www.judgewatch.org

BY E-MAIL: FOIL@ag.ny.gov

September 28, 2016

TO: Records Access Officer/NYS Attorney General Eric Schneiderman

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

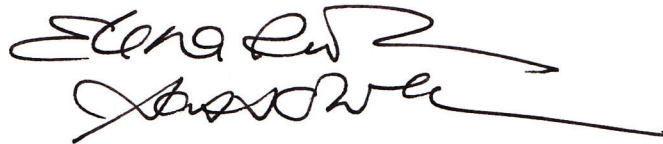
RE: FOIL REQUEST:
Assistant Attorney General Adrienne Kerwin & Guidelines, Policies & Procedures

Pursuant to Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], request is made for publicly-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 on 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.

Thank you.

A handwritten signature in black ink, appearing to read "Elena Lu", with a long horizontal flourish extending to the right.



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
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:

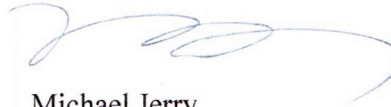
- Public Officers Law § 87(2)(a), which provides that records that are exempted from disclosure by state or federal statute are exempt from disclosure under FOIL. The records constitute confidential communication[s] made between attorney and client, which is exempt from disclosure under Civil Practice 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 blue ink, appearing to read "Michael Jerry", with a stylized flourish extending to the right.

Michael Jerry
Assistant Attorney General

Attachment



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as of 10/06/2016

Registration Number:	2941110
E-mail Address:	
Year Admitted in NY:	1999
Appellate Division	
Department of Admission:	3
Law School:	ALBANY LAW SCHOOL OF UNION UNIVERSITY
Registration Status:	Currently registered
Next Registration:	Dec 2017
Disciplinary History:	No record of public discipline

The Detail Report above contains information that has been provided by the attorney listed, with the exception of REGISTRATION STATUS, which is generated from the OCA database. Every effort is made to insure the information in the database is accurate and up-to-date.

The good standing of an attorney and/or any information regarding disciplinary actions must be confirmed with the appropriate Appellate Division Department. Information on how to contact the [Appellate Divisions](#) of the Supreme Court in New York is available at www.nycourts.gov/courts.

If the name of the attorney you are searching for does not appear, please try again with a different spelling. In addition, please be advised that attorneys listed in this database are listed by the name that corresponds to their name in the Appellate Division Admissions file. There are attorneys who currently use a name that differs from the name under which they were admitted. If you need additional information, please contact the NYS Office of Court Administration, Attorney Registration Unit at 212-428-2800.

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KERWIN,ADRIENNE J

ID [REDACTED]

Empl 0

Record

SSN [REDACTED]

Effdt	Act / Res	Pos #	NYS Title	Anniv Dt	Salary	EE% / Ind	Appl Cd	EE Type	Long NYS Title
Seq #	Agency	NYS Pos#	Grade	Ins Cd	PBC	Jur CL	Pay Grp	Earn Prog	Long Agency Name
EE Status	Act Dt	Line#	BU	FIS Sal	Comp RI	Wk Sch	Pos FTE	Company	Position Loc Code

History Information

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04/07/2016	PAY SAC	00373453	ASSNT ATTO 10/08/2007	\$17300.00	1.0000 / F	PERM	8		ASSNT ATTORNEY GEN Office of the Attorney General 0110
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04/04/2016	PAY BDA	00373453	ASSNT ATTO 10/08/2007	\$116000.00	1.0000 / F	PERM	8		ASSNT ATTORNEY GEN Office of the Attorney General 0110
07/02/2016	PAY CSL	00373453	ASSNT ATTO 10/08/2007	\$105580.00	1.0000 / F	PERM	8		ASSNT ATTORNEY GEN Office of the Attorney General 0110
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03/31/2011	PAY PAV	00373453	ASSNT ATTO 10/08/2007	\$89993.00	1.0000 / F	PERM	8		ASSNT ATTORNEY GEN

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[REDACTED]						

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