



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

APPEALS AND OPINIONS BUREAU

Telephone (518) 776-2009

December 15, 2016

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

VIA EMAIL: [elena@judgewatch.org](mailto:elena@judgewatch.org)

Re: Appeal re: Freedom of Information Law Request # 160706

Dear Ms. Sassower:

I write in response to your December 1, 2016 administrative appeal letter in the above-referenced Freedom of Information Law (FOIL) matter.

By correspondence dated September 28, 2016, you requested records relating to the following:

1. The professional background, qualifications, and employment history of Assistant Attorney General (AAG) Adrienne Kerwin;
2. AAG Kerwin's annual salary during the years of her employment at the Office of the Attorney General (OAG);
3. The names of the attorneys in the OAG responsible for supervising AAG Kerwin's work, presently and since March 28, 2014;
4. The meaning of and basis for the "of counsel" designation of AAG Kerwin in the taxpayer action's Center for Judicial Accountability v. Cuomo, et. al. (Albany Co. #5122-16) and Center for Judicial Accountability v. Cuomo, et al., (Albany Co. #1788-14);
5. The OAG's guidelines, policies, and procedures pertaining to designation, payment, and oversight of its "of counsel" attorneys;

6. The OAG's guidelines, policies, and procedures for evaluating conflicts of interest of its attorneys and for retaining outside counsel; and
7. The OAG's guidelines, policies, and procedures for determining the "interest of the state," pursuant to Executive Law § 63(1), and its duty to represent plaintiffs or intervene in their behalf in citizen-taxpayer actions, pursuant to State Finance Law Article 7-A.

The Records Access Officer responded to you by letter dated November 3, 2016. He sent three pages of responsive records and stated that some responsive records were being withheld (1) as attorney-client confidential communications or attorney work product, they were specifically exempted from disclosure by Public Officers Law § 87(2)(a) and CPLR 3101(c) or CPLR 4503(a); (2) because disclosure of the records would constitute an unwarranted invasion of personal privacy under Public Officers Law § 87(2)(b); or (3) the records are inter- or intra-agency materials and can be withheld under Public Officers Law § 87(2)(g).

You administratively appeal the denial.

You do not administratively appeal the Records Access Officer's determination with respect to the first and second items of your request. You do administratively appeal the Records Access Officer's determination as to the third item of your request, "records pertaining to . . . the names of the attorneys in the [OAG] responsible for supervising [AAG] Kerwin's work, presently and since March 28, 2014." That item could reasonably be interpreted to include any record that includes the name of an attorney who has supervised AAG Kerwin since March 28, 2014—for example, an email written by or copied to such an attorney or a court document submitted by that attorney. Such a request does not reasonably describe the records you seek. Assuming that what you actually seek are the names themselves, this request asks for information rather than records, as the Records Access Officer correctly determined, and which the OAG need not provide. However, I am including the information I believe you seek: since March 28, 2014, AAG Kerwin's supervisory chain has been James B. McGowan, AAG, Section Head (no longer with the OAG); Stephen M. Kerwin, AAG, Deputy Bureau Chief; Jeffrey M. Dvorin, AAG, Bureau Chief; Megan Levine, Deputy Attorney General for State Counsel; and Kent Stauffer, Executive Deputy Attorney General for State Counsel.

With respect to the fourth and fifth items of your request—"records pertaining to . . . the meaning of, and basis for, the 'of counsel' designation" of AAG Kerwin in two specific taxpayer actions and "records pertaining to . . . the [OAG's] guidelines, policies, and procedures pertaining to the designation, payment, and oversight of its 'of counsel' attorneys"—your request does not reasonably describe

the records you seek. The OAG has no identifiable record or set of records that explains the meaning of and the basis for the “of counsel” designation or that establishes the procedure for designating, paying, and overseeing ‘of counsel’ attorneys. In an effort to clarify what I believe you may misunderstand, I note that the phrase “of counsel” does not refer to outside counsel but rather indicates the Assistant Attorney General—an employee of the OAG—who is the OAG’s representative in a particular case.

The sixth item of your request was for records pertaining to the OAG’s guidelines, policies, and procedures for evaluating attorney conflicts of interest and retaining outside counsel. With respect to records pertaining to guidelines, policies, and procedures for retaining outside counsel, the OAG has no responsive records. Again in an effort to clarify an apparent misunderstanding, the OAG itself does not retain outside counsel; that would be done by the state entity or employee that needs the outside counsel. With respect to the records pertaining to guidelines, policies, and procedures for evaluating attorney conflicts of interest, I am enclosing a copy of the OAG’s Conflict of Interest Screening Procedures.

With respect to the seventh item of your request, please be advised that, after a diligent search, the OAG located no responsive records.

This is a final agency determination. Please be advised that judicial review of this determination can be obtained under Article 78 of the Civil Practice Law & Rules.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Kathryn Sheingold", enclosed in a rectangular box.

KATHRYN SHEINGOLD  
Records Appeals Officer

Cc: Committee on Open Government  
OAG Records Access Officer