

NEW YORK  
STATE  
SENATE

ALBANY, NEW YORK 12247



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December 22, 2016

Ms. Elena Ruth Sassower, Director  
Center for Judicial Accountability  
Post Office Box 8101  
White Plains, NY 10602  
[cja@judgewatch.org](mailto:cja@judgewatch.org)

Dear Ms. Sassower,

This letter is in response to your December 2, 2016 appeal of the initial finding of the Secretary of the Senate dated November 30, 2016 to your request for information pursuant to the New York State Freedom of Information Law ("FOIL"), dated November 22, 2016.

Pursuant to Article 6 of the Public Officers Law your original FOIL request sought the following documents: "records establishing:"

1. "the current 'system of internal control and... program of internal control review' that the Senate and Assembly established pursuant to Legislative Law §90(1)(b)"; and
2. "the current schedule listing 'all components' of the Senate and Assembly" - including, if identified therein, the 'components for which internal controls and internal control review' have been -or were to be- established pursuant to Legislative Law §90(2)".

The Secretary of the Senate denied this request in a response dated November 30, 2016.

You have appealed this decision and assert that the Senate rule exempting the records from disclosure is not specified. Additionally, you assert that you do not believe that the record is exempt from disclosure.

Upon careful review, your appeal is denied. The requested items are not subject to disclosure pursuant to provisions of the Rules of the Temporary President or the Public Officers Law.

In evaluating your request for "records establishing" the above listed items, the New York State Constitution Article III §11, commonly referred to as the "Speech and Debate Clause" states:

“For any speech or debate in either house of the legislature, the members shall not be questioned in any other place.” This constitutional protection provides members of the Legislature with immunity from divulging information related to legislative acts. As such this immunity is extended to conversations and debates that occur within majority or minority conferences and other caucuses. See *Urban Justice Ctr. v. Pataki*. Therefore, any internal conversations and debates that occurred in majority conference that led to the creation of the Senate rules are not subject to FOIL.

It should not, however, be inferred that the Senate has or maintains such records.

Related to your specific request contained within the first point above, the Secretary of the Senate has provided you with the record that operates as the “current system of internal control” which can be found in Rule XIV of the New York State Senate. A copy of that document has also been attached.

Also, Public Officers Law §88 (Access to legislative records) specifically enumerates various items that are subject to mandatory disclosure, which can be distinguished from Public Officers Law §87 (Access to agency records) which states that all records shall be made public unless the disclosure of such record meets an exception. The applicable legislative statute (POL §88) should not be interpreted to require an exemption to be cited, as you stated, rather if a type of record is not specifically listed it is not subject to disclosure. Public Officers Law §86(3) explicitly exempts the Legislature from the definition of an “agency” and therefore subjects legislative records to different disclosure requirements from agency records where an exemption is required to forego disclosure. See also FOIL Advisory Opinion- Committee on Open Government FOIL-AO-17574 (2009).

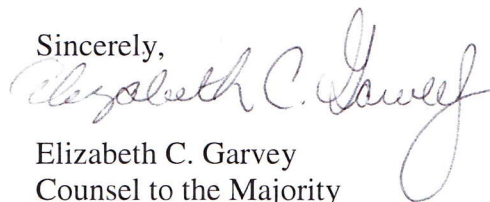
Additionally, the Senate does not retain such records in the specificity requested. Pursuant to the Senate Rules and Regulations Relating to the Public Inspection and Copying of Legislative Records §8:

“Nothing in these Rules and Regulations shall be construed to require the Senate or any of its committees, subcommittees, members, officers or employees to prepare or compile any record not possessed or maintained by them or otherwise required by law, by the Rules of the Senate or by these Rules and Regulations. (emphasis added)”

Related to your second request for the “current schedule listing ‘all components of the Senate...’”. Attached is a PDF version of the schedule listing all offices of the New York State Senate which are governed by the system of internal control, which has previously been provided to you. Additionally, a generalized directory of members of the New York State Senate and the committees of the Senate, all of which are subject to Rule XIV of the New York State Senate, can be found on the Senate Website: <https://www.nysenate.gov>.

This letter is the final determination of the New York State Senate Records Access Appeals Officer with respect to your appeal.

Sincerely,

A handwritten signature in dark ink, appearing to read "Elizabeth C. Garvey". The signature is fluid and cursive, with a large, stylized initial "E".

Elizabeth C. Garvey  
Counsel to the Majority  
Records Access Appeal Officer