

## CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: [mail@judgewatch.org](mailto:mail@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

December 9, 2016

TO: Senate Republican Conference Counsel Beth Garvey

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

RE: APPEAL: FOIL/RECORDS REQUEST: Compliance with Legislative Law §91  
"Internal audit responsibilities"

Pursuant to the Senate's "Rules and Regulations Relating to Public Inspection and Copying of Legislative Records", §9 "Appeals", I here appeal Secretary of the Senate Francis Patience's December 1, 2016 disposition of my above-entitled records request dated November 23, 2016. As required, copies of both documents are attached.

Prior to taking this appeal, I sought clarification of Secretary Patience's December 1, 2016 disposition by a December 2, 2016 e-mail. Attached is a copy, along with Secretary Patience's December 5, 2016 clarification.

As reflected by my November 23, 2016 FOIL request and December 2, 2016 request for clarification, the records I am seeking are those relating establishing:

- (1) when, if ever, the Temporary Senate President and Assembly Speaker determined that an 'internal audit function' was not required in their respective houses and when, if ever, they 'periodically review[ed] such determination';
- (2) when, if ever, the Temporary Senate President and Assembly Speaker determined that an 'internal audit function' was required in their respective houses;
- (3) the manner in which any 'internal audit function' was conducted; its report evaluating the internal controls, identifying uncorrected internal control weaknesses, and its recommendations for correction of those weaknesses.

As Secretary Patience's clarification makes evident, these "records requested, if the records even exist, [are] not subject to disclosure pursuant to Senate Rules".

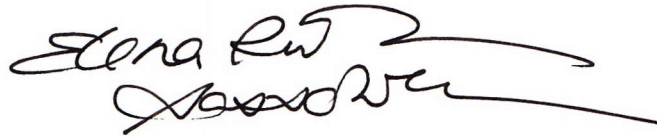
Such records certainly should exist if the Senate has complied with its "Internal audit responsibilities" pursuant to Legislative Law §91. Pursuant to FOIL, I believe I am entitled to know whether the records exist. I also believe I am entitled to know the unspecified Senate rule that exempts them from disclosure, especially inasmuch as Public Officers Law §88(2) requires the Legislature to make available:

“(e) internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;

(f) administrative staff manuals and instructions to staff that affect members of the public”. (underlining added).

Please advise – e-mailing your appeal decision to me at [elena@judgewatch.org](mailto:elena@judgewatch.org)

Thank you.



Enclosures

cc: Secretary of the Senate Francis Patience  
Assembly Records Access Officer Robin Marilla  
New York State Committee on Open Government Executive Director Robert Freeman  
Douglas Zimmerman, Chief Operating Officer/EFPR Group, LLP

# CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: [cja@judgewatch.org](mailto:cja@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

November 23, 2016

TO: New York State Senate  
Francis W. Patience, Secretary of the Senate  
  
New York State Assembly  
Robin Marilla, Assembly Records Access Officer

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

RE: RECORDS REQUEST: Compliance with Legislative Law §91 "Internal audit responsibilities"

Legislative Law §91, entitled "Internal audit responsibilities", reads as follows:

"1. The temporary president of the senate and the speaker of the assembly or their designees shall determine, and periodically review such determination of, whether an internal audit function within their respective house is required. Establishment of such function shall be based upon an evaluation of costs and benefits of implementation and other factors that are determined to be relevant. In the event it is determined that an internal audit function is required for one or both houses, the temporary president of the senate or the speaker of the assembly shall establish an internal audit function within the respective house which operates in accordance with generally accepted standards for internal auditing. Any such internal audit function shall be directed and shall report in a manner prescribed by the respective house. The internal audit function shall evaluate the respective house's internal controls, identify internal control weaknesses that have not been corrected and make recommendations to correct these weaknesses.

2. In the event the temporary president of the senate or the speaker of the assembly does not establish an internal audit function pursuant to subdivision one of this section he or she shall nevertheless establish and maintain the program of internal control review required by section ninety of this article."

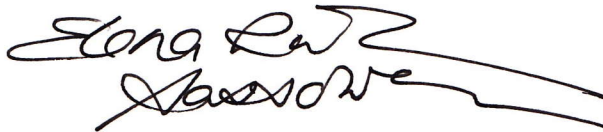


Pursuant to Senate Rule XV ("Freedom of Information") and Assembly VIII ("Public Access to Information"), this is to request records establishing compliance therewith, *to wit*, records establishing:

- (1) when, if ever, the Temporary Senate President and Assembly Speaker determined that an "internal audit function" was not required in their respective houses and when, if ever, they "periodically review[ed] such determination";
- (2) when, if ever, the Temporary Senate President and Assembly Speaker determined that an "internal audit function" was required in their respective houses;
- (3) the manner in which any "internal audit function" was conducted; its report evaluating the internal controls, identifying uncorrected internal control weaknesses, and its recommendations for correction of those weaknesses.

As such records are germane to the independent audit that EFPR Group, LLP is currently undertaking pursuant to Legislative Law §92, I am sending this records request to its Chief Operating Officer, Douglas Zimmerman, so that EFPR can expeditiously obtain such records for evaluation, if it has not already done so.

Thank you.

A handwritten signature in dark ink, appearing to read "Douglas Zimmerman", with a stylized flourish extending to the right.

cc: Douglas Zimmerman, Chief Operating Officer/EFPR Group, LLP

## Center for Judicial Accountability, Inc. (CJA)

---

**From:** Senate Foil <foil@nysenate.gov>  
**Sent:** Thursday, December 1, 2016 10:27 AM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
**Subject:** Freedom of Information RECORDS REQUEST / Response Compliance with Legislative Law Sec. 91  
**Attachments:** Rules and Regulations March 2013.pdf

December 1, 2016

Ms. Elena Ruth Sassower, Director  
Center for Judicial Accountability, Inc.  
Post Office Box 8101  
White Plains, NY 10602  
cja@judgewatch.org

Dear Ms. Sassower:

This is to acknowledge receipt of your email dated November 23, 2016 pursuant to the Freedom of Information Law.

You are requesting information / records relating to compliance with Legislative Law §91 "Internal audit responsibilities".

Please be advised the New York State Senate's internal controls audit is not complete for 2016, however, upon completion it would be available pursuant to Senate Rule. As the document you've requested is not currently completed your request for the same is denied.

Also, please be advised additional / remainder of records requested, if the records even exist, are not subject to disclosure pursuant to Senate Rules.

I have attached a copy of the Senate's Rules and Regulations Relating to the Public Inspection and Copying of Legislative Records for your information.

Sincerely,

Francis W. Patience  
Secretary of the Senate

(See attached file: Rules and Regulations March 2013.pdf)

## Center for Judicial Accountability, Inc. (CJA)

---

**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Thursday, December 1, 2016 2:52 PM  
**To:** 'Senate Foil'  
**Cc:** Robin Marilla; 'DZimmerman@EFPRgroup.com'  
**Subject:** OPPTS!: Correction -- Clarification of your today's response to Nov. 23, 2016 FOIL/records request for pertaining to LEGISLATIVE LAW 91.  
**Attachments:** 11-23-16-foil-leg-law-91.pdf

Dear Secretary of the Senate Patience --

On November 23, 2016, I sent you two FOIL/records requests. Your today's e-mail responds to only one -- that pertaining to Legislative Law 91. My below request for clarification was erroneous, as it was mistakenly premised on your having responded to the second FOIL/records request, which was for the Senate contract with EFPR Group.

I do apologize for my error. However, please clarify your e-mail. Apparently, the Temporary Senate President determined that an "internal audit function" was necessary for this year, 2016 -- which, when complete, will be "available pursuant to Senate Rule". Yet, it appears that records pertaining to the Temporary Senate President's determinations in past years -- "if the records even exist" -- are "not subject to disclosure pursuant to Senate Rules". Are you saying that 2016 is the FIRST and only year that the Temporary Senate President ever determined an "internal audit function" to be necessary -- and that records pertaining to his prior determinations that an "internal audit function" was not necessary are not subject to disclosure?

For your convenience, I have attached my November 23, 2016 FOIL/records request pertaining to Legislative Law 91.

Please advise.

Thank you.

Elena Sassower

-----Original Message-----

**From:** Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]  
**Sent:** Thursday, December 1, 2016 1:51 PM  
**To:** 'Senate Foil' <foil@nysenate.gov>  
**Cc:** Robin Marilla <marillar@assembly.state.ny.us>; 'DZimmerman@EFPRgroup.com' <DZimmerman@EFPRgroup.com>  
**Subject:** Clarification of your today's response to Nov. 23, 2016 FOIL/records request for the Senate Contract with EFPR Group...

Dear Secretary of the Senate Patience --

Please clarify your below e-mail response of today's date to my November 23, 2016 e-mail to you of a FOIL/records request pertaining to the Legislature's compliance with Legislative Law Sec. 91.

For your convenience, a copy of my November 23, 2016 e-mail FOIL/records request is attached. As reflected therein, it did NOT request a copy of this year's independent audit. Rather, its SOLE request was for: "a copy of the Senate and Assembly contract(s) retaining EFPR Group, LLP to conduct this year's independent audit of the internal controls of each house of the Legislature".



## Center for Judicial Accountability, Inc. (CJA)

---

**From:** Senate Foil <foil@nysenate.gov>  
**Sent:** Monday, December 5, 2016 3:40 PM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
**Subject:** Re: Clarification of your Dec. 1, 2016 response to Nov. 23, 2016 FOIL/records request pertaining to compliance with Legislative Law 91 "Internal audit responsibilities"  
**Attachments:** Rules and Regulations March 2013.pdf

December 5, 2016

Ms. Elena Ruth Sassower, Director  
Center for Judicial Accountability, Inc.  
Post Office Box 8101  
White Plains, NY 10602  
cja@judgewatch.org

Dear Ms. Sassower:

This letter is to provide explicit clarification to our FOIL response dated December 1, 2016 that acknowledges receipt of your email dated November 23, 2016 pursuant to the Freedom of Information Law.

In that letter, you were requesting information / records relating to compliance with Legislative Law §91 "Internal audit responsibilities".

I advised you that the New York State Senate's internal controls audit is not complete, however, is in the process of being concluded. To be clear, this is in reference to materials associated with the external audit being conducted by EFPR Group.

As additionally provided in the December 1, 2016 letter, I advised you that the additional / remainder of records requested, if the records even exist, were not subject to disclosure pursuant to Senate Rules.

I have attached a copy of the Senate's Rules and Regulations Relating to the Public Inspection and Copying of Legislative Records for your information.

Sincerely,

Francis W. Patience  
Secretary of the Senate

(See attached file: Rules and Regulations March 2013.pdf)

From: "Center for Judicial Accountability, Inc. \CJA\"  
<elena@judgewatch.org>  
To: ""Senate Foil"" <foil@nysenate.gov>