

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, March 22, 2021 10:29 AM
To: 'FOIL@osc.ny.gov'
Subject: CJA's April 15, 2020 FOIL/records request: Silver v. Pataki / Pataki v. Assembly & Senate
Attachments: 4-22-20-comptroller-acknowledgment.pdf; 5-20-20-comptroller-extension-ltr.pdf; 8-12-20-comptroller-response.pdf

TO: Comptroller DiNapoli's Records Access Officer Jane Hall

On April 15, 2020, I sent the below FOIL request for records pertaining to *Silver v. Pataki/Pataki v. Assembly & Senate*. You acknowledged same by e-mails dated April 22, 2020 and May 20, 2022, thereafter responding by an August 12, 2020 letter, stating:

"Unfortunately, we have no records in response to your request. This office would potentially have had records responsive to parts 6 and 7 of your requests, but all records relating to those parts have been destroyed in conformity with this office's records retention policy."

For your convenience, those e-mails and letter are above attached.

Pursuant to FOIL (Public Officer Law VI), this is to request the Comptroller's "records retention policy", pursuant to which responsive records were destroyed.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, April 15, 2020 9:57 AM
To: 'records.access@exec.ny.gov' <records.access@exec.ny.gov>; 'foil@nysenate.gov' <foil@nysenate.gov>; 'marillar@nyassembly.gov' <marillar@nyassembly.gov>; 'Theresa Klein-Franke' <kleinfranket@nyassembly.gov>; 'FOIL' <FOIL@osc.ny.gov>

Subject: FOIL/records request: Silver v. Pataki / Pataki v. Assembly & Senate

TO: Records Access Officers of the Governor, Senate, Assembly, Attorney General, Comptroller

Pursuant to Public Officers Law VI ("Freedom of Information"), Senate Rule XIV ("Freedom of Information"), and Assembly Rule VIII ("Public Access to Records"), this is to request the following with respect to *Silver v. Pataki* (1998-2004) and *Pataki v. Assembly & Senate* (2001-2004):

- (1) records pertaining to requests, if any, by the Assembly, Senate, or Governor Pataki for an opinion from then Attorney General Spitzer as to the constitutionality of Governor Pataki's budget bills for FY1998-

1999 and FY2001-2002 and of the Legislature's proceedings thereon – whether prior to or after commencement of the litigations;

- (2) records reflecting the basis upon which Attorney General Spitzer represented none of the parties, except, initially, defendant Governor Pataki in *Silver v. Pataki*;
- (3) records reflecting why, with respect to the constitutional issues, Attorney General Spitzer did not intervene as plaintiff or defendant in either litigation, at any point, nor file a single *amicus curiae* brief;
- (4) records pertaining to the requests for, and authorization of, independent counsel;
- (5) records reflecting the basis upon which independent counsel was selected – these being the law firms:
 - (a) Weil, Gotshal & Manges, representing LLP, representing Plaintiff Silver (*Silver v. Pataki*) and Defendant Assembly (*Pataki v. Assembly*);
 - (b) Hancock & Estabrook, LLP, representing (the belated) Plaintiff Senate (*Silver v. Pataki*) and Defendant Senate (*Pataki v. Assembly*);
 - (c) Cravath, Swaine & Moore, LLP, representing Defendant Pataki (*Silver v. Pataki*);
 - (d) Stillman & Friedman, P.C., representing Plaintiff Pataki (*Pataki v. Assembly*).
- (6) the signed and approved contracts retaining the above four law firms to represent the parties;
- (7) records reflecting total payments to each of the law firms for the litigations at each court level – Supreme Court; Appellate Division; and Court of Appeals;
- (8) records reflecting why, following the Court of Appeals' December 16, 2004 decision (4 N.Y.3d 75), neither of the two law firms representing the Senate and Assembly made a motion for reargument/reconsideration thereof or filed a petition for a writ of certiorari to the U.S. Supreme Court – and why, under such circumstances, Attorney General Spitzer did not do so, including *via* a motion to intervene on behalf of the People of the State of New York.

Thank you.

Elena Sassower, Director
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