

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

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Monday, March 22, 2021 10:16 AM  
**To:** 'Senate Foil'  
**Subject:** CJA's April 15, 2020 FOIL/records request: Silver v. Pataki / Pataki v. Assembly & Senate  
**Attachments:** Rules and Regulations relating to Public Inspection and Copying of Legislative Records - January 2019\_blue.pdf; 4-15-20-foil-silver-pataki-litigations.pdf

**TO: Senate Records Access Officer/Secretary of the Senate Alejandra Paulino, ESQ.**

By the below April 22, 2020 e-mail, which you sent me with the first of the above two attachments, you responded to my April 15, 2020 FOIL request for records pertaining to *Silver v. Pataki/Pataki v. Assembly & Senate*, which is the second above-attachment – and also below.

You stated:

“Please be advised the New York State Senate Record Retention Policy for internal administrative purposes is seven (7) years. In terms of your request for answers to various questions, Freedom of Information Law is not a vehicle to answer questions but rather to produce records.”

My April 15, 2020 FOIL request had not asked you for “answers to various questions”, but records reflecting same – and as to such records you did not state that they had been disposed of pursuant to “the New York State Senate Record Retention Policy”, a copy of which you did not supply and which is not set forth in your attached “Rules and Regulations relating to Public Inspection and Copying of Legislative Records”. Nor is your response in keeping with such Rules and Regulations, including because you did not state, let alone “certify”, that you do not have possession of the requested records and that they could not be found “after diligent search”.

Consequently, and pursuant to Rule XIV (“Freedom of Information”) of the Senate’s 2019-2020 rules, accessible from the Senate’s “About the Senate” webpage as its current rules, I herewith resubmit the April 15, 2020 FOIL request – and add to it a 9<sup>th</sup> item – for the referred-to “New York State Senate Record Retention Policy”.

Thank you.

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

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**From:** Senate Foil <foil@nysenate.gov>  
**Sent:** Wednesday, April 22, 2020 6:21 PM  
**To:** Center for Judicial Accountability, Inc.(CJA) <elena@judgewatch.org>  
**Subject:** Re: FOIL/records request: Silver v. Pataki / Pataki v. Assembly & Senate



April 22, 2020

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

Dear Ms. Sassower:

This is to acknowledge receipt of your email dated April 15, 2020 pursuant to the Freedom of Information Law.

Your request included, "the following with respect to Silver v. Pataki (1998-2004) and Pataki v. Assembly & Senate (2001-2004): 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; records reflecting the basis upon which Attorney General Spitzer represented none of the parties, except, initially, defendant Governor Pataki in Silver v. Pataki; 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; records pertaining to the requests for, and authorization of, independent counsel; records reflecting the basis upon which independent counsel was selected – these being the law firms: Weil, Gotshal & Manges, representing LLP, representing Plaintiff Silver (Silver v. Pataki) and Defendant Assembly (Pataki v. Assembly); Hancock & Estabrook, LLP, representing (the belated) Plaintiff Senate (Silver v. Pataki) and Defendant Senate (Pataki v. Assembly); Cravath, Swaine & Moore, LLP, representing Defendant Pataki (Silver v. Pataki); Stillman & Friedman, P.C., representing Plaintiff Pataki (Pataki v. Assembly) the signed and approved contracts retaining the above four law firms to represent the parties; 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; 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."

Please be advised the New York State Senate Record Retention Policy for internal administrative purposes is seven (7) years. In terms of your request for answers to various questions, Freedom of Information Law is not a vehicle to answer questions but rather to produce records.

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,

Alejandra N. Paulino, Esq.  
Secretary of the Senate

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From: "Center for Judicial Accountability, Inc.\(CJA)" <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
To: <[records.access@exec.ny.gov](mailto:records.access@exec.ny.gov)>, <[foil@nysenate.gov](mailto:foil@nysenate.gov)>, <[marillar@nyassembly.gov](mailto:marillar@nyassembly.gov)>, "Theresa Klein-Franke"



<kleinfranket@nyassembly.gov>, "FOIL" <FOIL@osc.ny.gov>

Date: 04/15/2020 09:57 AM

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; r
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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