

MADELINE SINGAS
DISTRICT ATTORNEY

INVESTIGATIONS DIVISION
Charles A. Testagrossa, Executive

PUBLIC CORRUPTION BUREAU
Christine M. Maloney, Chief



OFFICE OF THE DISTRICT ATTORNEY
NASSAU COUNTY

September 28, 2020

Elena Sassower
Director
Center for Judicial Accountability, Inc.
PO Box 8101
White Plains NY 10602

Re: FOIL Request

Ms. Sassower:

I am writing regarding your Freedom of Information Law ("FOIL") request. A diligent search was conducted for responsive records for the requested time period. Based on your request, the time period search was from January 25, 2016 through the present. Your request sought the following: records reflecting the functioning and performance of the Nassau County district attorney's office with respect to public corruption complaints filed with it by members of the public each year from 2016 to the present – these being all four years of the first elective term of Nassau County District Attorney Madeline Singas and the first year of her current second elective term – and specifically, as to each of these five years:

- 1) Records reflecting the number of public corruption complaints the district attorney received;

The Public Corruption Bureau receives complaints, allegations, and/or information from a variety of sources and that information is not maintained by category. In 2016, the Bureau opened 195 investigations; in 2017, 237 investigations; in 2018, 152 investigations; in 2019, 120 investigations; and to date in 2020, 79 investigations.

- 2) Records reflecting the number of public corruption complaints the district attorney dismissed without presentment to grand juries;

A search revealed that there are no records responsive to this request. An agency is not required to create any record that the agency does not possess or maintain; nor is the agency required to compile data from documents in its possession. See Public Officers Law § 89(3); *Locator Services Group v. Suffolk Cnty.*, 40 A.D.3d 760, 761 (2d Dept. 2007); *DiRose v. N.Y. State Dep't of Corr. Services*, 216 A.D.2d 691, 692 (3rd Dept. 1995); *O'Shaughnessy v. N.Y. State Div. of State Police*, 202 A.D.2d 508, 510 (2d Dept. 1994); *Reubens v. Murray*, 194 A.D.2d 492, 492 (1st Dept. 1993). The agency is required merely to turn over records that already exist. See *Reubens v. Murray*, 194 A.D.2d at 492.

- 3) Records reflecting the number of public corruption complaints the district attorney presented to grand juries that did not result in indictments;

Where a criminal proceeding results in a disposition favorable to the accused and the records are sealed pursuant to C.P.L. § 160.50, all those records are exempt from disclosure under FOIL. *See Johnson Newspaper Corp. v. Stainkamp*, 61 N.Y.2d 958, 960-61 (1984) (records that have been sealed under C.P.L. § 160.50 cannot be obtained pursuant to a FOIL request); *Leibowitz v. Safir*, 251 A.D.2d 581, 582 (2d Dept. 1998) (same); *Acosta v. Phillips*, 193 A.D.2d 732, 732 (2d Dept. 1993) (same).

- 4) Records reflecting the number of public corruption complaints the district attorney presented to grand juries that resulted in indictments, the names of those indicted, the court index/docket numbers, and the disposition pursuant to County Law § 700.6;

The Public Corruption Bureau does not keep records of indictments by category. However, a record of all litigation cases within the Public Corruption Bureau does exist. Please advise if this is something that is being sought. The list would have to be redacted subject to the requested time period as well as for any exemptions pursuant to FOIL which would be outlined in a letter.

- 5) Records reflecting the number of public corruption complaints the district attorney presented to grand juries that resulted in grand jury reports – and the court index/docket numbers thereof pursuant to Criminal Procedure Law §190.85, §190.90 and County Law §700.7;

There were no Grand Jury reports issued during the requested time period that were connected to public corruption.

- 6) Records reflecting the number of public corruption complaints from which the district attorney's office recused itself – and how such complaints were handled;

There are records responsive to this request, but they are exempt from disclosure for several reasons. First, disclosure would interfere with ongoing law enforcement investigations. *See* Public Officers Law § 87(2)(e)(i) and *Lesher v. Hynes*, 19 N.Y.3d 57, 67 (2012). The records are also exempt on the grounds that disclosure would constitute “an unwarranted invasion of personal privacy” under Public Officers Law § 89(2). Lastly, they are exempt under Public Officers Law § 87(2)(g) because they are inter- or intra-agency materials that are not (i) statistical or factual tabulations or data, (ii) instructions to staff that affect the public, (iii) final agency policies or determinations, or (iv) external audits, including but not limited to audits performed by the comptroller and the federal government.

- 7) manuals, guides, and other records setting forth the policies and procedures of the district attorney's office in instances of conflicts of interests of the district attorney or assistant district attorneys, *to wit*, financial interest and professional, political and social relationships

The office has three pages of records responsive to this request: NCDA Policies, Sections 504(1), 504(2), 505.

- 8) manuals, guides, and other records of the district attorney's office setting forth its procedures for handling public corruption complaints, as, for example
 - a. a requirement that public corruption complaints be handled by its Public corruption Bureau: <https://view.publitas.com/nassau-county-district-attorney/ncda-2018-19-annual-report/page/58-59>

- b. a requirement for preliminary investigation of each complaint not determined to be facially lacking in merit – with such preliminary investigation consisting, *at minimum*, of an interview of the complainant, under oath, and an examination of the documentary evidence the complainant has furnished and/or proffered in substantiation of the complaint
- c. a requirement that each facially-meritorious complaint validated by preliminary investigation as supported by (1) the “rules of evidence” specified in Criminal Procedure Law § 190.30; and (2) evidence determined to be “legally sufficient” and competent and admissible” specified by Criminal Procedure Law §190.65, be presented to the grand jury – with the complainant called to testify before the grand jury in support of the complainant and with his/her evidence pursuant to Criminal Procedure Law §190.50(2);
- d. the preservation/retention policy for public corruption complaints and records of the district attorney’s actions with respect thereto

The office has two pages of records responsive to this request:

NCDA Policies, Section 304 – 1 page

NCDA Policies Section 309 – 1 page

We also have a Retention and Disposition Schedule for New York Local Government Records (LGS-01) 2020, which can be viewed free of charge at the following website:
<http://www.archives.nysed.gov/common/archives/files/lgs1.pdf>.

- 9) Records as to the number of grand jury indictments that the Nassau County district attorney has obtained against a “public servant” and persons “acting in concert with a public servant” pursuant to Penal Law § 496 (“The Public Trust Act”) and the names of those indicted thereunder, the court index/docket numbers, and the dispositions of the indictments pursuant to County Law §700.06.

As noted above, the Public Corruption Bureau does not keep records of indictments by category. However, a record of all litigation cases within the Public Corruption Bureau does exist. Please advise if this is something that is being sought. The list would have to be redacted subject to the requested time period as well as for any exemptions pursuant to FOIL which would be outlined in a letter.

- 10) **Additionally**, please furnish the mailing/email address of the Nassau county grand jury through which it can receive communications directly from members of the public, unobstructed by the district attorney, in furtherance of its duty pursuant to Article 1, §6 of the New York State Constitution and the Criminal Procedure Law Article 190 – and the name, phone number, mail, and email address of the Nassau County Commissioner of Jurors.

An agency is not required to create any record that the agency does not possess or maintain; nor is the agency required to compile data from documents in its possession. See Public Officers Law § 89(3); *Locator Services Group v. Suffolk Cnty.*, 40 A.D.3d 760, 761 (2d Dept. 2007); *DiRose v. N.Y. State Dep’t of Corr. Services*, 216 A.D.2d 691, 692 (3rd Dept. 1995); *O’Shaughnessy v. N.Y. State Div. of State Police*, 202 A.D.2d 508, 510 (2d Dept. 1994); *Reubens v. Murray*, 194 A.D.2d 492 (1st Dept. 1993). The

agency is required merely to turn over records that already exist. See *Reubens v. Murray*, 194 A.D.2d at 492.

As a courtesy, the following information is provided in response to the request. An internet search reveals that the Nassau County Commissioner of Jurors is Robert Truzzolino, 100 Supreme Court Drive, Mineola, NY 11501.

Please note that the following exemptions also apply to some of the information you have requested.

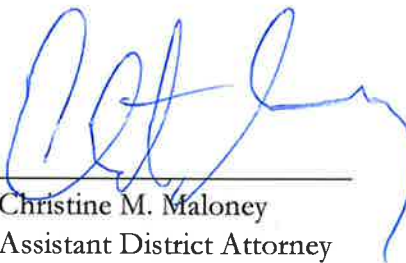
Inter-agency and intra-agency communications contained in the file that are not (i) statistical or factual tabulations or data; (ii) instructions to the staff that affect the public; (iii) final agency policy or determinations; or (iv) external audits are exempt from disclosure pursuant to Public Officers Law § 87(2)(g)(iii) and have been withheld.

Attorney work product is exempt from disclosure by the following two state statutes: (1) C.P.L. § 240.10(2)(3) which exempts from discovery attorney work product that “contains the opinions, theories or conclusions of the prosecutor”; and (2) C.P.L.R. § 3101(c), which provides that “[t]he work product of an attorney shall not be obtainable.” See *Woods v. Kings Cnty. Dist. Att’y’s Office*, 234 A.D.2d 554, 556 (2d Dept. 1996) (documents that constitute attorney work product and inter-agency or intra-agency materials that do not contain factual data are exempt from disclosure under FOIL); see also *Turner v. Dep’t of Fin.*, 242 A.D.2d 146, 148 (1st Dept. 1998) (same).

I have attached, free of charge, the aforementioned disclosable documents to an email accompanying this letter. If within 60 days of the date of this letter we do not receive confirmation that you want the remaining disclosable documents detailed above, we will consider your request closed.

If you wish to appeal the partial denial of your request, you must do so, within 30 days, to A.D.A. Andrea DiGregorio, Records Access Appeals Officer, Nassau County District Attorney’s Office, 262 Old Country Road, Mineola, New York 11501.

Very truly yours,



Christine M. Maloney
Assistant District Attorney
Chief, Public Corruption Bureau