

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

May 21, 2021

TO: New York State Law Revision Commission Records Access Officer Barbara Hancock, Esq.
Governor Cuomo's Records Access Officer Jaclyn Clemmer, Esq.
Division of the Budget FOIL Officer Joel Lombardi, Esq.
Senate Records Access Officer/Secretary of the Senate Alejandra Paulino, Esq.
Assembly Records Access Officer Robin Marilla

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

RE: FOIL/RECORDS REQUEST: New York State Law Revision Commission

This follows up my June 22, 2016 FOIL request pertaining to the New York State Law Revision Commission, established by Legislative Law Article 4-A (Chapter 597 of the Laws of 1934), seeking:

- (1) records identifying "the amount appropriated for the commission" since 1990, including where, in the budget, such line-item appropriation can be found;
- (2) the Commission's annual reports to the Legislature since 1990.

For your convenience, the June 22, 2016 FOIL request and the responses of the Senate, Assembly, Governor, and Division of the Budget are posted on CJA's webpage of FOIL and correspondence relating to the Law Revision Commission, here: <http://www.judgewatch.org/web-pages/searching-nys/leg-committees-commissions/nys-law-revision-commission/foil-correspondence-nys-law-revision-commission.htm>.

Pursuant to Public Officers Law Article VI [Freedom of Information Law (F.O.I.L.)], Senate Rule XIV ["Freedom of Information"], and Assembly Rule VIII ["Public Access to Records"], please furnish the SAME records for the past five years, *to wit*:

- (1) records of "the amount appropriated for the commission" in each of the five subsequent fiscal years: 2017-18, 2018-19, 2019-20, 2020-21, and 2021-22, including "where, in the budget, such line-item appropriation can be found" – plus in fiscal year 2016-17¹; and

¹ FY2016-17 was omitted by the Division of the Budget's May 4, 2017 response to the June 22, 2016 FOIL request.

(2) the Commission's annual reports to the Legislature for each of the five subsequent years: 2016, 2017, 2018, 2019, and 2020.

Additionally, inasmuch as the Division of the Budget's May 4, 2017 response stated:

"The Commission had its own discrete appropriations for SFY 1990-1991 through SFY 2008-09. For SFY 2009-10 through SFY 2015-16, there were no discrete appropriations for the Commission. Rather, Commission expenses were budgeted in, and paid for through, General Fund appropriations for the Division",

please furnish, for the eight fiscal years: 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, and 2016-17, records of the Commission's requests for, and/or the Division of the Budget's payments of:

- (1) the Commission's "necessary expenses" of its nine members for "performance of official duty";
- (2) the Commission's "compensation" of its executive director and any other staff; and
- (3) other Commission expenses, as, for instance, its office at Albany Law School, its telephone, etc.

To the extent that the budget for the five subsequent fiscal years also contained "no discrete appropriations for the Commission",² please also provide records of the Commission's requests for the same three items, and/or the Division of the Budget's payments thereof, for fiscal years 2017-18, 2018-19, 2019-20, 2020-21, and 2021-22.

Additionally, please furnish records of the dates on which the five gubernatorially-appointed members of the Commission – beginning with its chair – all appointed more than five years ago, were re-appointed by Governor Cuomo.

As to all of the foregoing, I also request:

- (1) all records of communications from any of the Commission's nine members or from its executive director to the Governor pertaining to the expiration of the five-year terms of the five Commission members whose appointments

² The Division of the Budget's May 4, 2017 response refers only to the "Enacted Budgets since State Fiscal Year ('SFY') 1990-91". Pursuant to FOIL, please clarify if the absence of "discrete appropriations for the Commission" in the enacted budgets for FY 2009-10 through FY2016-17 meant there were also none in the Governor's proposed budgets for those fiscal years – and that none were added by the Legislature pursuant to Article VII, §4 of the New York State Constitution or otherwise.

were his duty to make pursuant to Legislative Law §70³;

- (2) all records of communications from any of the Commission's nine members or from its executive director to the Governor and/or Legislature, including testimony at the Legislature's budget hearings: (a) objecting to the inadequacy of the line-item appropriations for the Commission⁴ and, from 2009 onward, to the elimination of a line item from the executive budget and/or the inadequacy of the Division of the Budget's funding of the Commission's "necessary expenses" and "compensation" of its staff; (b) proposing, alternatively, to the Legislature that it fund the Commission through its legislative budget – and by a line item; (c) responding to, or commenting upon, the July 11, 2016 article "[*Defunding the New York State Law Revision Commission*](#)" by Bennett Liebman, a "Government Lawyer in Residence" at Albany Law School's Government Law Center, who had formerly served as its executive director;
- (3) all records of communications from any of the Commission's nine members or from its executive director to Albany Law School, including, specifically, its Government Law Center, its Center for Judicial Process, and its Justice

³ The Commission's website, <https://lawrevision.state.ny.us/commissioners-and-staff/>, identifies Peter J. Kiernan as appointed as a member and chair of the Commission by Governor Paterson in December 2010; Michael J. Hutter as appointed in 1997, which would have been by Governor Pataki; John A. Cirando as appointed in 2006, which would have been by Governor Pataki; Jay C. Carlisle, III as appointed in 2009, which would have been by Governor Paterson; and Alfred J. Weiner as appointed in 2014, which would have been by Governor Cuomo. Each of their professional websites &/or posted CVs include, as current, their membership on the Commission.

⁴ Based on the Division of the Budget's May 4, 2017 response, the appropriations for the Commission, starting in 1990, appear to be, as follows: 1990-91: \$466,300 (State Operations Bill – Miscellaneous, p. 467); 1991-92: \$466,300 (State Operations Bill – Miscellaneous, p. 491); 1992-93: \$350,000 (State Operations – General Fund) [bill missing]; 1993-94: \$357,600 (State Operations Bill – Miscellaneous, p. 474); 1994-95: \$359,600 (State Operations Bill – Miscellaneous Agencies, at p. 381); (State Operations – General Fund (p. 42): \$0); 1995-96: \$90,000 (State Operations – General Fund (p. 42): \$90,000 [bill missing]; 1996-97: \$90,000 (State Operations & Aid to Localities Bill – Miscellaneous – All State Agencies, p. 146); 1997-98: \$90,000 (State Operations & Aid to Localities Bill, p. 15 "Administrative Services Program"); 1998-99: \$150,000 (State Operations & Aid to Localities Bill, p.17: "Budget Division Program"); 1999-00: \$150,000 (State Operations & Aid to Localities Bill, p.14: "Budget Division Program"); 2000-01: \$150,000 (State Operations & Aid to Localities Bill – "Budget Division Program"); 2001-02: \$150,000 (State Program & Aid to Localities Bill – "Budget Division Program"); 2002-03: \$150,000 (State Operations & Aid to Localities Bill – "Budget Division Program"); 2003-04: \$150,000 (State Operations & Aid to Localities Bill – "Budget Division Program"); 2004-05: \$150,000 (State Operations & Aid to Localities Bill – "Budget Division Program"); 2005-06: \$150,000 (State Operations & Aid to Localities Bill – "Budget Division Program"); 2006-07: \$150,000 (State Operations & Aid to Localities Bill – "Budget Division Program"); 2007-08: \$150,000 (State Operations & Aid to Localities Bill – Division of the Budget – Maintenance Undistributed"); 2008-09: \$158,000 (State Operations & Aid to Localities Bill – "Department of State").

Center, for law school or graduate interns willing to work free of charge, including in exchange for academic credits – or such similar outreach to New York’s 12 other law schools and its multitude of universities, colleges, and schools with graduate programs in law, public policy, etc.;

- (4) all records of communications from any of the Commission’s nine members or from its executive director to the multitude of bar associations in this state, beginning with the New York State Bar Association, the New York City Bar Association, and the New York County Lawyers Association, for *pro bono* assistance from their members so as to enable the Commission to fulfil its duties pursuant to Legislative Law §72 – also quoted, *verbatim*, on the Commission’s homepage, <https://lawrevision.state.ny.us/>:

“1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

2. To receive and consider proposed changes in the law recommended by the American law institute, the commissioners for the promotion of uniformity of legislation in the United States, any bar association or other learned bodies.

3. To receive and consider suggestions from judges, justices, public officials, lawyers and the public generally as to defects and anachronisms in the law.

4. To recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal, into harmony with modern conditions.

5. To report its proceedings annually to the legislature on or before February first, and, if it deems advisable, to accompany its report with proposed bills to carry out any of its recommendations.”

- (5) all records of communications from any of the Commission’s nine members or from its executive director about updating the Commission’s website, <https://lawrevision.state.ny.us/>, as, for instance, with the current *ex officio* Commission members of the Senate and Assembly Judiciary and Codes

Committees and modifying the homepage so that it does NOT falsely appear, as it currently does, that the Commission is a functioning entity, as by its second sentence: “The Commission is the oldest continuous agency in the common-law world devoted to law reform through legislation.”;

- (6) all records reflecting Commission meetings, activity, and work-product since 2014 – the last year of any posted activity;
- (7) all records of communications from the Commission’s chair, Peter Kiernan, Esq., and its executive director, Mary Rose Bailly, Esq., between themselves and to the other eight Commission members concerning any of the e-mails I sent them in 2017, particularly as to the exigency for scholarship of the Court of Appeals’ 2004 *Silver v. Pataki/Pataki v. Assembly* decision on the state budget – as by my enclosed [April 18, 2017 e-mail](#) with the subject line: “In search of scholarship: ‘Budgets and the Balance of Power: The Lasting Impact of Silver v. Pataki and How It Shapes the Future of Government in New York State’ – June 16, 2015 forum” – and then re-sent on [July 20, 2017](#) with the subject line “STILL in search of scholarship: ‘Budgets and the Balance of Power: The Lasting Impact of Silver v. Pataki and How It Shapes the Future of Government in New York State’ – June 16, 2015 forum”;
- (8) all records of the Commission’s examinations and recommendations, if any, from the time of its establishment, in 1934, to the present, of the decisions of the Court of Appeals and lower state courts pertaining to the New York state budget.

So that the five gubernatorially-appointed Commission members who are cc’d on this FOIL request can get a look at what appears to be the ONLY scholarship/analysis of the Court of Appeals’ 2004 *Silver v. Pataki/Pataki v. Assembly* decision – *to wit*, my own – enclosed is my [March 18, 2020 letter to Governor Cuomo](#) embodying same, provided, simultaneously and thereafter, to the Senate and Assembly, as well as to others including the director of the Division of the Budget and to the Legislative Bill Drafting Commission. None have denied or disputed its accuracy in any respect.

Again, for the convenience of all, this FOIL request will be posted on CJA’s website, www.judgewatch.org. The link to the menu page for the New York State Law Revision Commission, from which it and articles about the Commission are accessible, is here: <http://www.judgewatch.org/web-pages/searching-nys/leg-committees-commissions/nys-law-revision-commission/menu-nys-law-revision-commission.htm>

Thank you.

See next page for enclosures & cc’s

Enclosures: (1) CJA's April 18, 2017 e-mail
(2) CJA's March 18, 2020 letter

cc: New York State Law Revision Commission Executive Director & Members

Executive Director Rose Mary Bailly, Esq.

Chair Peter J. Kiernan, Esq.

Member Professor Michael J. Hutter, Esq.

Member Professor Jay C. Carlisle, Esq.

Member John A. Cirando, Esq.

Member Alfred J. Weiner, Esq.

Member Senate Judiciary Committee Chair Brad Hoylman, Esq.

Member Assembly Judiciary Committee Chair Charles Lavine, Esq.

Member Senate Codes Committee Chair Jamaal Bailey, Esq.

Member Assembly Codes Committee Chair Jeffrey Dinowitz, Esq.

Bennett Liebman, Esq,

“Government Lawyer in Residence”/Albany Law School – Government Law Center