

rec'd 12/23/03



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

GEORGE E. PATAKI
GOVERNOR

RICHARD PLATKIN
COUNSEL TO THE GOVERNOR

December 19, 2003

Elena Ruth Sassower
Coordinator
Center for Judicial Accountability, Inc.
P.O. Box 69
Gedney Station
White Plains, New York 10605-0069

RE: FOIL Appeal 2003-5 (FOIL Appeal Request Dated December 5, 2003 and Received on December 5, 2003)

Dear Ms. Sassower:

I am in receipt of your letter (attached), received on or about December 8, 2003, in which you appeal from a November 5, 2003 determination of the Records Access Officer for the Executive Chamber (also attached) that granted you access to three (3) pages of responsive documents, portions of which were redacted pursuant to Public Officers Law § 87 (2)(b) because disclosure of such material would constitute an unwarranted invasion of personal privacy.

Although it is not entirely clear from your letter, you apparently appeal the November 5, 2003 determination on the grounds that: (i) no representation was made that the three (3) pages documents of documents is the extent of the responsive documents in the possession of the Executive Chamber; (ii) the financial statement that Judge Read was required to file as part of her application for the Court of Appeals was not made available; (iii) no explanatory or interpretive information was provided with the three (3) pages of documents that were made available; (iv) no documents constituting a job description for the position of Deputy Counsel to the Governor was made available; and (v) the existence of requested "work product" documents of Judge Read while she was an employee of the Executive Chamber was not identified. In addition, you had asked that I certify that the Executive Chamber does not possess any of the other documents that you had requested after a diligent search had been made.

As for the first ground of your appeal, Mr. Ustin stated in his letter that he had "determined that this office possesses three (3) pages of documents that are responsive to your requests." While it is true that Mr. Ustin did not affirmatively state that the three

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pages were the total extent of the responsive documents that he has located that were responsive to your request, one could reasonably infer that the omission of a reference to any other documents meant that there were no other documents that Mr. Ustin had found that were in the possession of the Executive Chamber and were responsive to your request. Further, I inquired of Mr. Ustin and he has indicated to me that there were no other such responsive documents. Therefore, this ground of appeal is hereby denied.

As for the second ground of your appeal, the financial statement that Judge Read was required to file as part of her application for the Court of Appeals was not made available to you because that document is no longer in the possession of the Executive Chamber. As you may know, the Freedom of Information Law (FOIL) deals only with access to records or documents, not requests for information. As with any FOIL Request, we are obligated to grant access to those documents or records which are kept by the Executive Chamber, subject to certain well-defined exemptions. We are not obligated to grant access to those documents or records that are not in the possession of the Executive Chamber or those documents or records that do not exist. In addition, FOIL does not require a state agency to create a document in response to a FOIL Request. Therefore, this ground of appeal is hereby denied.

As for the third ground of your appeal, no explanatory or interpretive information was provided with the three (3) pages of documents that were made available to you because this office does not possess any documents that would explain or interpret the information that was contained in those three pages. Further, any documents that would explain or interpret the information contained on those three pages were not requested as part of your FOIL Requests. As you may know, the Freedom of Information Law (FOIL) deals only with access to records or documents, not requests for information. As with any FOIL Request, we are obligated to grant access to those documents or records which are kept by the Executive Chamber, subject to certain well-defined exemptions. We are not obligated to grant access to those documents or records that are not in the possession of the Executive Chamber or those documents or records that do not exist. In addition, FOIL does not require a state agency to create a document in response to a FOIL Request. Therefore, this ground of appeal is hereby denied.

As for the fourth ground of your appeal, namely that no documents that constituted a job description for the position of Deputy Counsel to the Governor were made available, while Mr. Ustin did make available to you documents as to Judge Read's tenure in the Executive Chamber, he mistakenly did not provide you with a job description for the position of Deputy Counsel. I have found the enclosed one (1) page document that is responsive to your request and I am making this document available pursuant to Public Officers Law § 87 (2) at no cost to you.

As for the fifth ground of your appeal, that the existence of requested "work product" documents of Judge Read while she was an employee of the Executive Chamber was not identified, please be advised that I have inquired of Mr. Ustin whether he had

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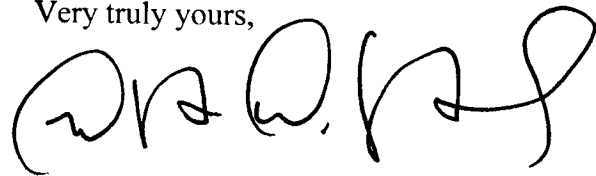
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identified any documents that were responsive to this portion of your request and he has advised me that he did not locate any such documents. Further, I have made independent inquiry and have not located any documents that were responsive to your request.

Finally, you had asked that I certify that the Executive Chamber does not possess any of the other documents you had requested (other than the documents already provided) after a diligent search had been made. I have made inquiry and to the best of my knowledge and belief, I hereby certify that the Executive Chamber does not possess any of the aforementioned documents after a diligent search.

Very truly yours,

A handwritten signature in black ink, appearing to read 'W. Brooks DeBow', written in a cursive style.

W. Brooks DeBow
Deputy Counsel to the Governor
Records Appeals Officer

c: Robert Freeman, Esq.
Committee on Open Government

Unit: Counsel's Office

Working Title: Deputy Counsel to the Governor

Incumbent: Brooks Debow

Salary Grade: N/S

General Description - Serves as the principal assistant to the Counsel to the Governor.

Duties -

- Directs and personally performs legal research and preparation of memoranda on legislation passed by the legislature and submitted to the Governor for executive action.
- Assists the Counsel to the Governor in preparing, monitoring and negotiating the Governor's legislative programs and directing and reviewing the preparation of legal memoranda on various legal issues.
- Acts as liaison for the Counsel to the Governor with State departments and agencies, and the Attorney General's office.
- Oversees staff of Assistant Counsels and their secretaries, the Legislative Secretary's Office and staff.
- Performs related duties as required.