

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 2003-4 (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 5, 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 one (1) page of documents and denied you access to federal Judicial Screening Committee (JSC) questionnaires on the grounds that the Freedom of Information Law (FOIL) does not require the disclosure of such documents insofar as the JSC performs a purely advisory function, citing Baumgarten v. Koch, 97 Misc.2d 449 (New York Co. Sup. Ct. 1978).

Although it is not entirely clear from your letter, you apparently appeal the November 6, 2003 determination on the ground that a blank questionnaire of the federal JSC should have been made available, notwithstanding Mr. Ustin's finding that FOIL does not require the disclosure of the questionnaire insofar as the committee at issue performs a purely advisory function, citing Baumgarten v. Koch [citation *supra*]. In addition, you had asked that I certify that the Executive Chamber does not possess any of the documents requested in your FOIL Request (other than the documents identified in Mr. Ustin's FOIL Determination) after a diligent search had been made.

As for your only ground of appeal, namely that the questionnaire of the federal JSC should have been made available, notwithstanding Mr. Ustin's finding that FOIL does not require the disclosure of the questionnaire insofar as the committee at issue performs a purely advisory function, I concur with Mr. Ustin that the questionnaire may properly be withheld from disclosure. However, I am nonetheless granting you access to the blank questionnaire, totaling forty-two (42) pages, pursuant to Public Officers Law §

Elena Ruth Sassower

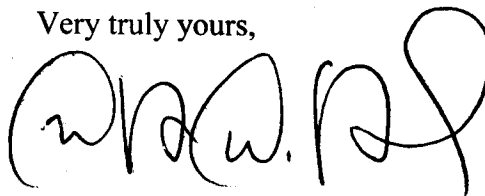
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87 (2). Under the Public Officers Law, you have the right to inspect and make photocopies of these documents at a cost of twenty five cents (\$.25) per page. If you would otherwise prefer, this office can photocopy all of the documents to which you were granted access and forward them to you at a cost of ten dollars and fifty cents (\$10.50) by check payable to the Executive Chamber.

Finally, you had asked that I certify that the Executive Chamber does not possess any of the documents requested in your FOIL Request (other than the documents identified in Mr. Ustin's FOIL Determination) 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". The signature is fluid and cursive, with a large loop at the end.

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

c: Robert Freeman, Esq.
Committee on Open Government