



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

APPEALS AND OPINIONS BUREAU

Telephone (518) 776-2009

January 31, 2017

Elena Sassower
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, NY 10602

VIA EMAIL: elena@judgewatch.org

Re: Appeal re: Freedom of Information Law Request # 160858

Dear Ms. Sassower:

I write in response to your January 12, 2017 email relating to the above-referenced Freedom of Information Law (FOIL) matter.

By correspondence dated December 5, 2016, you asked to “inspect the ‘register’ kept by Attorney General Schneiderman pursuant to Executive Law §65 - and, specifically, with regard to his prosecution/defense of ‘actions and proceedings’ pursuant to:

- (a) State Finance Law Article 7-A, ‘citizen-taxpayer action’;
- (b) State Finance Law Article 13: ‘New York false claims act’;
- (c) Executive Law §63-c: ‘Action by the people for illegal receipt or disposition of public funds or other property’.”

The Records Access Officer responded to you by letter dated January 11, 2017. He advised you that the records of the Office of the Attorney General (OAG) are not coded or maintained in a way that a search of the terms you provided would result in locating responsive records.

By email dated January 12, you asked the Records Access Officer to clarify his response. You explained that your request “was for the Attorney General’s ‘register of all actions and proceedings prosecuted or defended by him, and of all proceedings in relation thereto’, as required by Executive Law 65 – irrespective of whether it separately codes/lists actions and proceedings pursuant to: (1) State Finance Law Article 7-A (citizen-taxpayer actions); (2) State Finance Law Article 13 (New York false claims act); and (3) Executive Law 63-c (action by the people for illegal receipt or disposition of public funds or other property).” You then asked, “Does the Attorney General have the required ‘register’ that I may inspect?”

I view your emailed January 12 request for clarification as an administrative appeal.

First, to the extent your request, as rephrased in your administrative appeal, seeks information rather than records—“Does the Attorney General have the required ‘register’ that I may inspect?”—it does not come within the scope of FOIL. *In re Newman v. Dinallo*, 69 A.D.3d 636 (2d Dep’t 2010).

Second, the Records Access Officer reasonably interpreted your request as initially phrased as one for the register reflecting the prosecution and defense of actions and proceedings brought under State Finance Law Article 7-A, State Finance Law Article 13, or Executive Law § 63-c. And he correctly determined that the OAG does not index or categorize matters by the statute or statutes under which a matter proceeds. Executive Law § 65 does not require that the OAG do so.

Nor does Executive Law § 65 prescribe the format of the register. While historically the statute anticipated an incumbent physically transferring a book or books to his successor,¹ its purposes then and now—tracking the matters in which the OAG is involved and timely informing an incoming Attorney General of such matters—currently are served through electronic means. And, as discussed above, those means cannot be searched by statutory citation or subject matter. Nor does it constitute a discrete record that can be wholly publically inspected.

Consequently, your request as rephrased in your administrative appeal, although specific, does not reasonably describe the records you seek because it does not describe them in a way that would allow the OAG to identify and locate them. *See, e.g.*, Op. Comm. Open Gov’t No. FOIL-AO-18863.

¹ *See, e.g.*, Rev. Stat., vol. 1, ch. 8, title 5, § 17 (1829) (“The attorney-general shall keep, in proper books to be provided for that purpose, at the expense of the state, a register of all actions and demands prosecuted or defended by him in behalf of the people of this state, and of all proceedings had in relation thereto; and shall deliver the same to his successor in office.”).

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This is a final agency determination. Please be advised that judicial review of this determination can be obtained under Article 78 of the Civil Practice Law & Rules.

Very truly yours,



KATHRYN SHEINGOLD
Records Appeals Officer

Cc: Committee on Open Government
OAG Records Access Officer