

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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April 20, 1995

State Commission on Judicial Conduct  
801 Second Avenue  
New York, New York 10017

ATT: Gerald Stern, Administrator

Dear Mr. Stern:

Reference is made to your letter of April 6, 1995 (Exhibit "A"), purporting to deny our April 4, 1995 appeal (Exhibit "B") of Ms. Savanyu's denial of information we requested "pursuant to 22 NYCRR §7001 et seq., as well as the Freedom of Information Law". As reflected by our April 4th letter (Exhibit "B"), copies of our initial March 20, 1995 information request and Ms. Savanyu's March 21, 1995 denial were annexed thereto.

Your insulting and unprofessional April 6th letter (Exhibit "A") wholly ignores Ms. Savanyu's failure to meet her obligation under 22 NYCRR §7001.8(a) to inform us of our right to appeal the denial of our information request, as well as her obligation under §7001.3(c)(2) to "assist...[us] in identifying requested records" -- which we pointed out in our April 4th letter (Exhibit "B").

However, by your statement "I find Ms. Savanyu's denial of your [information] request to be appropriate" (emphasis added), it would appear that you have also ignored that under 22 NYCRR §7001.8, it is the Commission on Judicial Conduct -- not its Administrator -- who "shall hear appeals for denial of access to records under the Freedom of Information Law" (22 NYCRR §7001.8(c)) -- a fact reinforced by 22 NYCRR §7001.8(e), which provides that:

"The State Commission on Judicial Conduct shall inform the requester of its decision in writing promptly *following its first meeting* after receipt of the appeal" (emphasis added).

If rules amending 22 NYCRR §7001.8 have been promulgated by the Commission, please provide us with a copy.

Additionally, under 22 NYCRR §7001.8(f), the Commission on Judicial Conduct is obligated to "transmit to the Committee on Public Access to Records copies of *all appeals upon receipt of appeals.*" Such requirement for *immediate* transmittal is also reflected in §89(4)(b) of the Public Officers Law. According to the pamphlet entitled "Your Right to Know", distributed by the office of the New York State Attorney General, such provision of the Public Officers Law is designed to enable the Committee on Open Government, formerly the Committee on Public Access to Records, "to monitor compliance with law and intercede when a denial of access may be improper." (at p. 7)

However, I have today confirmed with Robert J. Freeman, Executive Director of the Committee on Open Government, that the Committee has *not* received any transmittal from the Commission on Judicial Conduct of our April 4th appeal (Exhibit "B") or your April 6th determination (Exhibit "A").

In purporting to deny our appeal, your letter suggests that we "consult with an attorney...[to] explain [our] rights under the Freedom of Information Law"--- thereby leaving us to believe that we had to avail ourselves of private counsel for such purpose. However, the state government has created the Committee on Open Government for purposes including advising and mediating controversies over F.O.I.L. entitlements.

Indeed, the opening page of "Your Right to Know" which describes the Committee on Open Government contains the following *express* invitation:

"When questions arise under either the Freedom of Information Law or the Open Meetings Law, the committee can provide written or oral advice and mediate in controversies in which rights may be unclear. Since its creation in 1974, more than 9,000 written advisory opinions were prepared by the committee at the request of government, the public and the news media. In addition, several thousand oral opinions have been provided by telephone.

If you need advice regarding either the Freedom of Information Law or the Open Meetings Law, feel free to write to:

Committee on Open Government  
NYS Department of State  
162 Washington Avenue  
Albany, NY 12231

or call (518) 474-2518."

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As hereinabove indicated, I telephoned the Committee on Open Government and had the *pleasure* of speaking to Mr. Freeman -- who, unlike yourself and the Commission's Clerk, Albert Lawrence -- is more than ready to speak to members of the public and address their informational inquiries.

Mr. Freeman took the view that notwithstanding the broadness of Judiciary Law §45, it was not the intent of that section to make records relating to the procedural rules of the Commission on Judicial Conduct (22 NYCRR §7000. et seq.) confidential. I would point out that among the inquiries in our April 4th letter (Exhibit "B") which you have *not* addressed is that contained in our paragraph 4 relative to whether such rule-making history is confidential.

Although paragraph 2 of your letter (Exhibit "A") states: "If you request documents in *public files*, you may obtain them upon the payment of the required charges" (emphasis added), what that means in the context of our request is unclear. Therefore, pursuant to 22 NYCRR §7001.3(c)(2), we ask your assistance in identifying which documents are, in fact, in public files. So that we can help in that process, we also request the Commission's most "up-to-date subject matter list", maintained pursuant to 22 NYCRR §7001.3(c)(1) and §7001.7. Mr. Freedman indicated that that should be available to us.

Since the Commission's Annual Reports include a section entitled "Challenges to Commission Procedures", presumably such category -- in which we would be particularly interested -- is among your "subject matter" lists.

Indeed, you will note that among the questions our April 4th letter specifically asked, but which your April 6th letter did not answer, was:

"Does the Commission not maintain subject lists of litigation to which it is or has been a party -- and to which 22 NYCRR §7001 et seq and FOIL would entitle us?" (Exhibit "B", at p. 2)

Quite apart from our entitlement under F.O.I.L. confined to record requests, we reiterate the view expressed in our April 4th letter, to which you have not responded, that

"the public is entitled to some explanation from you, as Administrator of the Commission since its inception, with, presumably, first-hand knowledge of 22 NYCRR §7000 et seq. -- as to how you reconcile the apparent discrepancy between §7000.3 and Judiciary Law §44.1" (Exhibit "B", at p. 2).

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Finally, we take strong exception to your completely *unspecified* and *hearsay* claim of "rhetoric" having been used in our telephone conversation with Ms. Savanyu. We trust this is not the basis for your denying our request for a telephone conference, made nearly 2-1/2 years ago, but unanswered until now. Indeed, although the last sentence of your April 6th letter promises that "[a]ny letters [we] send will be promptly answered", we still have had *no* response to *any* of the substantive issues raised by our January 22, 1993 letter -- as to which you are refusing to have a telephone conference -- or to our hand-delivered March 10, 1995 letter.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability, Inc.

Enclosures: (a) 4/6/95 ltr from Gerald Stern  
(b) 4/4/95 ltr from CJA, with enclosures

cc: Robert J. Freeman, Executive Director  
Committee on Open Government  
New York State Attorney General  
New York State Ethics Commission