

Elena Ruth Sassower, Director
Re: July 30, 2020 F.O.I.L. Request
Reference Number R001955-073020



THOMAS E. WALSH II
DISTRICT ATTORNEY

Office of the District Attorney County of Rockland



PATRICK A. FRAWLEY
CHIEF ASSISTANT DISTRICT ATTORNEY

August 26, 2020

VIA REGISTERED MAIL, CERTIFIED and EMAIL

Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc.
Post Office Box 8101
White Plains, New York 10602

Re: July 30, 2020 F.O.I.L. Request
Reference Number R001955-073020

Dear Ms. Sassower:

By this letter, the Rockland County District Attorney's Office responds to the above-referenced FOIL request wherein you have requested:

Pursuant to FOIL (Public Officers Law Article VI), this is to request records reflecting the functioning and performance of the Rockland County district attorney's office with respect to public corruption complaints filed with it by members of the public from 2017 to the present – these being the last three years of former Rockland County District Attorney Thomas Zugibe's third and final elective term and the first year of Rockland County District Attorney Thomas Walsh's first and current elective term, and, specifically, as to each of these four years:

- (1) records reflecting the number of public corruption complaints the district attorney received;
- (2) records reflecting the number of public corruption complaints the district attorney dismissed without presentment to grand juries;
- (3) records reflecting the number of public corruption complaints the district attorney presented to grand juries that did not result in indictments;

- (4) records reflecting the number of public corruption complaints the district attorney presented to grand juries that resulted in indictments, the names of those indicted, the court index/docket numbers, and the disposition of the indictments pursuant to County Law §700.6;
- (5) records reflecting the number of public corruption complaints the district attorney presented to grand juries that resulted in grand jury reports – and the court index/docket numbers thereof pursuant to Criminal Procedure Law §190.85, §190.90 and County Law §700.7;
- (6) records reflecting the number of public corruption complaints from which the district attorney’s office recused itself – and how such complaints were handled;
- (7) manuals, guides, and other records setting forth the policies and procedures of the district attorney’s office in instances of conflicts of interests of the district attorney or assistant district attorneys, *to wit*, financial interest and professional, political, and social relationships; Rockland County Records Access Officer Page Three July 30, 2020
- (8) manuals, guides, and other records of the district attorney’s office setting forth its procedures for handling public corruption complaints, as, for example:
 - (a) a requirement that public corruption complaints be handled by the district attorney personally, by top assistant district attorneys, or by a specially-designated public integrity/corruption unit;
 - (b) a requirement for preliminary investigation of each complaint not determined to be facially lacking in merit – with such preliminary investigation consisting, *at minimum*, of an interview of the complainant, under oath, and an examination of the documentary evidence the complainant has furnished and/or proffered in substantiation of the complaint;
 - (c) a requirement that each facially-meritorious complaint validated by preliminary investigation as supported by (1) the “rules of evidence” specified by Criminal Procedure Law §190.30; and (2) evidence determined to be “legally sufficient” and “competent and admissible”, specified by Criminal Procedure Law §190.65, be presented to the grand jury – with the complainant called to testify before the grand jury in support of the complaint and with his/her evidence pursuant to Criminal Procedure Law §190.50(2);
 - (d) the preservation/retention policy for public corruption complaints and records of the district attorney’s actions with respect thereto.

(9) records as to the number of grand jury indictments that the Rockland County district attorney has obtained against “a public servant” and persons “acting in concert with a public servant” pursuant to Penal Law §496 (“The Public Trust Act”) – and the names of those indicted thereunder, the court index/docket numbers, and the dispositions of the indictments pursuant to County Law §700.6.

Additionally, please furnish the mailing/e-mail address of the Rockland County grand jury through which it can receive communications directly from members of the public, unobstructed by the district attorney, in furtherance of its duty pursuant to Article I, §6 of the New York State Constitution and Criminal Procedure Law Article 190 – and the name, phone number, mail, and email address of the Rockland County Commissioner of Jurors.

As an initial matter, please note that I acknowledged receipt of your Request on July 31, 2020; I requested twenty (20) business days to respond to your request. Your request is partially denied and partially granted. Each of your requests, and our corresponding responses, are listed below in numbered order:

(1) records reflecting the number of public corruption complaints the district attorney received;

Although this request does not reasonably describe the documents that you are requesting, it is denied. The District Attorney’s Office denies this request as we do not maintain records in this manner. Under FOIL, the District Attorney’s Office is not required to disclose that which it does not possess. In addition, this request seeks information. FOIL is a request for documents, not information. The District Attorney’s Office is not required to compile information to create a new document. See Public Officers Law § 89(3); Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 464-65 (2007); Matter of Locator Servs. Group, Ltd. V. Suffolk County Comptroller, 40A.D.3d 760, 761 (2d Dept. 2007) (mem.); DiRose v. New York State Department of Correctional Services, 216 A.D.2d 691 (3d Dept.) (mem.); O’Shaughnessy v. New York State Division of State Police, 202 A.D.2d 508, 510 (2d Dept.) (mem.), appeal denied, 84 N.Y.2d 807 (1994). See also, Matter of James v. Goord, 35 A.D.3d 2006 (mem.), appeal denied 8 N.Y.3d 808, cert. denied, 552 U.S. 993 (2007). Additionally, there is no such record. Moreover, to the extent that any such complaint is part of an on-going investigation, such record would be exempt from disclosure.

(2) records reflecting the number of public corruption complaints the district attorney dismissed without presentment to grand juries;

Although this request does not reasonably describe the documents that you are requesting, it is denied. The District Attorney’s Office denies this request as we do not maintain records in this manner. Under FOIL, the District Attorney’s Office is not required to disclose that which it does not possess. In addition, this request seeks information. FOIL is a request for documents, not information. The District Attorney’s Office is not required to compile information to create a new document. See Public Officers

Law § 89(3); Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 464-65 (2007); Matter of Locator Servs. Group, Ltd. V. Suffolk County Comptroller, 40A.D.3d 760, 761 (2d Dept. 2007) (mem.); DiRose v. New York State Department of Correctional Services, 216 A.D.2d 691 (3d Dept.) (mem.); O'Shaughnessy v. New York State Division of State Police, 202 A.D.2d 508, 510 (2d Dept.) (mem.), appeal denied, 84 N.Y.2d 807 (1994). See also, Matter of James v. Goord, 35 A.D.3d 2006 (mem.), appeal denied 8 N.Y.3d 808, cert. denied, 552 U.S. 993 (2007). Additionally, there is no such record. Moreover, to the extent that any such complaint is part of an on-going investigation, such record would be exempt from disclosure. Lastly, if any such record did exist, this request would be denied in accordance with the sealing requirements of § 190.50 of the Criminal Procedure Law.

(3) records reflecting the number of public corruption complaints the district attorney presented to grand juries that did not result in indictments;

Although this request does not reasonably describe the documents that you are requesting, it is denied. The District Attorney's Office denies this request as we do not maintain records in this manner. Under FOIL, the District Attorney's Office is not required to disclose that which it does not possess. In addition, this request seeks information. FOIL is a request for documents, not information. The District Attorney's Office is not required to compile information to create a new document. See Public Officers Law § 89(3); Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 464-65 (2007); Matter of Locator Servs. Group, Ltd. V. Suffolk County Comptroller, 40A.D.3d 760, 761 (2d Dept. 2007) (mem.); DiRose v. New York State Department of Correctional Services, 216 A.D.2d 691 (3d Dept.) (mem.); O'Shaughnessy v. New York State Division of State Police, 202 A.D.2d 508, 510 (2d Dept.) (mem.), appeal denied, 84 N.Y.2d 807 (1994). See also, Matter of James v. Goord, 35 A.D.3d 2006 (mem.), appeal denied 8 N.Y.3d 808, cert. denied, 552 U.S. 993 (2007). Additionally, there is no such record. Moreover, to the extent that any such complaint is part of an on-going investigation, such record would be exempt from disclosure. Lastly, if any such record did exist, this request would be denied in accordance with the sealing requirements of § 190.50 of the Criminal Procedure Law.

(4) records reflecting the number of public corruption complaints the district attorney presented to grand juries that resulted in indictments, the names of those indicted, the court index/docket numbers, and the disposition of the indictments pursuant to County Law §700.6;

Although this request does not reasonably describe the documents that you are requesting, it is denied. The District Attorney's Office denies this request as we do not maintain records in this manner. Under FOIL, the District Attorney's Office is not required to disclose that which it does not possess. In addition, this request seeks information. FOIL is a request for documents, not information. The District Attorney's Office is not required to compile information to create a new document. See Public Officers Law § 89(3); Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 464-65 (2007); Matter of Locator Servs. Group, Ltd. V. Suffolk County Comptroller, 40A.D.3d 760, 761 (2d Dept. 2007) (mem.); DiRose v. New York State Department of Correctional Services, 216 A.D.2d 691 (3d Dept.) (mem.); O'Shaughnessy v. New York State Division of State Police, 202 A.D.2d 508, 510 (2d Dept.) (mem.), appeal denied, 84 N.Y.2d 807 (1994). See also, Matter of James v. Goord, 35 A.D.3d 2006 (mem.), appeal denied 8 N.Y.3d 808, cert. denied, 552 U.S. 993 (2007). Additionally, there is no

such record. Moreover, to the extent that any such complaint is part of an on-going investigation, such record would be exempt from disclosure. Also, if any such record did exist, this request would be denied as to any portion concerning a sealed indictment under § 210.10(3) of the Criminal Procedure Law and access would be denied as to any portion where sealing would be required under § 190.50 of the Criminal Procedure Law.

(5) records reflecting the number of public corruption complaints the district attorney presented to grand juries that resulted in grand jury reports – and the court index/docket numbers thereof pursuant to Criminal Procedure Law §190.85, §190.90 and County Law §700.7;

Although this request does not reasonably describe the documents that you are requesting, it is denied. The District Attorney's Office denies this request as we do not maintain records in this manner. Under FOIL, the District Attorney's Office is not required to disclose that which it does not possess. In addition, this request seeks information. FOIL is a request for documents, not information. The District Attorney's Office is not required to compile information to create a new document. See Public Officers Law § 89(3); Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 464-65 (2007); Matter of Locator Servs. Group, Ltd. V. Suffolk County Comptroller, 40A.D.3d 760, 761 (2d Dept. 2007) (mem.); DiRose v. New York State Department of Correctional Services, 216 A.D.2d 691 (3d Dept.) (mem.); O'Shaughnessy v. New York State Division of State Police, 202 A.D.2d 508, 510 (2d Dept.) (mem.), appeal denied, 84 N.Y.2d 807 (1994). See also, Matter of James v. Goord, 35 A.D.3d 2006 (mem.), appeal denied 8 N.Y.3d 808, cert. denied, 552 U.S. 993 (2007). Additionally, there is no such record. Moreover, if any such record did exist, this request would be denied as to any portion where sealing would be required under § 190.85 of the Criminal Procedure Law.

(6) records reflecting the number of public corruption complaints from which the district attorney's office recused itself – and how such complaints were handled

Although this request does not reasonably describe the documents that you are requesting, it is denied. The District Attorney's Office denies this request as we do not maintain records in this manner. Under FOIL, the District Attorney's Office is not required to disclose that which it does not possess. In addition, this request seeks information. FOIL is a request for documents, not information. The District Attorney's Office is not required to compile information to create a new document. See Public Officers Law § 89(3); Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 464-65 (2007); Matter of Locator Servs. Group, Ltd. V. Suffolk County Comptroller, 40A.D.3d 760, 761 (2d Dept. 2007) (mem.); DiRose v. New York State Department of Correctional Services, 216 A.D.2d 691 (3d Dept.) (mem.); O'Shaughnessy v. New York State Division of State Police, 202 A.D.2d 508, 510 (2d Dept.) (mem.), appeal denied, 84 N.Y.2d 807 (1994). See also, Matter of James v. Goord, 35 A.D.3d 2006 (mem.), appeal denied 8 N.Y.3d 808, cert. denied, 552 U.S. 993 (2007). Additionally, there is no such record.

(7) manuals, guides, and other records setting forth the policies and procedures of the district attorney's office in instances of conflicts of interests of the district attorney or assistant district attorneys, to wit, financial interest and professional, political, and social relationships;

Although this request does not reasonably describe the documents that you are requesting, it is denied in part and granted in part. The District Attorney's Office denies this request as we do not maintain records in this manner. Under FOIL, the District Attorney's Office is not required to disclose that which it does not possess. In addition, this request seeks information. FOIL is a request for documents, not information. However, the District Attorney's Office has identified one manual that may well be responsive to this request. This document is entitled "Do the Right Thing" and there are approximately forty (40) pages of documents contained in this manual. Since we store this document electronically, we are attaching a copy of the manual to our electronic response.

(8) manuals, guides, and other records of the district attorney's office setting forth its procedures for handling public corruption complaints, as, for example:

(a) a requirement that public corruption complaints be handled by the district attorney personally, by top assistant district attorneys, or by a specially-designated public integrity/corruption unit;

(b) a requirement for preliminary investigation of each complaint not determined to be facially lacking in merit – with such preliminary investigation consisting, *at minimum*, of an interview of the complainant, under oath, and an examination of the documentary evidence the complainant has furnished and/or proffered in substantiation of the complaint;

(c) a requirement that each facially-meritorious complaint validated by preliminary investigation as supported by (1) the "rules of evidence" specified by Criminal Procedure Law §190.30; and (2) evidence determined to be "legally sufficient" and "competent and admissible", specified by Criminal Procedure Law §190.65, be presented to the grand jury – with the complainant called to testify before the grand jury in support of the complaint and with his/her evidence pursuant to Criminal Procedure Law §190.50(2);

(d) the preservation/retention policy for public corruption complaints and records of the district attorney's actions with respect thereto.

Although this request does not reasonably describe the documents that you are requesting, it is denied. The District Attorney's Office denies this request as we do not maintain records in this manner. Under FOIL, the District Attorney's Office is not required to disclose that which it does not possess. In addition, this request seeks information. FOIL is a request for documents, not information. The District Attorney's Office is not required to compile information to create a new document. See Public Officers

Law § 89(3); Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 464-65 (2007); Matter of Locator Servs. Group, Ltd. V. Suffolk County Comptroller, 40A.D.3d 760, 761 (2d Dept. 2007) (mem.); DiRose v. New York State Department of Correctional Services, 216 A.D.2d 691 (3d Dept.) (mem.); O’Shaughnessy v. New York State Division of State Police, 202 A.D.2d 508, 510 (2d Dept.) (mem.), appeal denied, 84 N.Y.2d 807 (1994). See also, Matter of James v. Goord, 35 A.D.3d 2006 (mem.), appeal denied 8 N.Y.3d 808, cert. denied, 552 U.S. 993 (2007). Additionally, there is no such record. In addition, to the extent that this request seeks disclosure of intra-agency final agency policy or determination, it is denied. Finally, there are no documents that are responsive to this request.

(9) records as to the number of grand jury indictments that the Rockland County district attorney has obtained against “a public servant” and persons “acting in concert with a public servant” pursuant to Penal Law §496 (“The Public Trust Act”) – and the names of those indicted thereunder, the court index/docket numbers, and the dispositions of the indictments pursuant to County Law §700.6.

Although this request does not reasonably describe the documents that you are requesting, it is denied. The District Attorney’s Office denies this request as we do not maintain records in this manner. Under FOIL, the District Attorney’s Office is not required to disclose that which it does not possess. In addition, this request seeks information. FOIL is a request for documents, not information. The District Attorney’s Office is not required to compile information to create a new document. See Public Officers Law § 89(3); Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 464-65 (2007); Matter of Locator Servs. Group, Ltd. V. Suffolk County Comptroller, 40A.D.3d 760, 761 (2d Dept. 2007) (mem.); DiRose v. New York State Department of Correctional Services, 216 A.D.2d 691 (3d Dept.) (mem.); O’Shaughnessy v. New York State Division of State Police, 202 A.D.2d 508, 510 (2d Dept.) (mem.), appeal denied, 84 N.Y.2d 807 (1994). See also, Matter of James v. Goord, 35 A.D.3d 2006 (mem.), appeal denied 8 N.Y.3d 808, cert. denied, 552 U.S. 993 (2007). Additionally, there is no such record. Moreover, to the extent that any such complaint is part of an on-going investigation, such record would be exempt from disclosure. Also, if any such record did exist, this request would be denied as to any portion concerning a sealed indictment under § 210.10(3) of the Criminal Procedure Law and access would be denied as to any portion where sealing would be required under § 190.50 of the Criminal Procedure Law.

Additionally, please furnish the mailing/e-mail address of the Rockland County grand jury through which it can receive communications directly from members of the public, unobstructed by the district attorney, in furtherance of its duty pursuant to Article I, §6 of the New York State Constitution and Criminal Procedure Law Article 190 – and the name, phone number, mail, and email address of the Rockland County Commissioner of Jurors.

Elena Ruth Sassower, Director
Re: July 30, 2020 F.O.I.L. Request
Reference Number R001955-073020

Your request is denied in part and granted in part. First, this request does not reasonably describe the records that you are requesting. In addition, Grand Jury materials are specifically exempt from disclosure. Grand Jury proceedings are considered secret under New York law. See § 190.25(4) of the Criminal Procedure Law and § 215.70 of the Penal Law. Accordingly, the District Attorney's Office is under an obligation not to disclose information regarding Grand Jury matters. Moreover, "[t]he legal advisors to the grand jury are the court and the district attorney and the grand jury may not seek or receive legal advice from any other source." See § 190.25(6) of the Criminal Procedure Law. Further, there is no such mailing/email address of "the Rockland County grand jury," therefore, the District Attorney's Office has no such record. You have also requested information regarding the name, phone number, mail and email address of the Rockland County Commissioner of Jurors are matters of public record. Although this constitutes a request for information, not records, and although this information is readily available to the public, we have located a one-page document setting for this information and it is attached hereto as a courtesy copy.

Public Officers Law section 87(1)(b)(iii) sets forth a copying fee of .25 cents per page. Typically, our office requires receipt of a certified check for the copying, which would be made payable to the ROCKLAND COUNTY COMMISSIONER OF FINANCE. The responsive records listed above constitute forty (40) pages, which translates into a copying fee of \$10. Please remit a certified check for the copying and we will copy the responsive documents identified herein.

This Office reserves the right to deny your request on other grounds not otherwise stated herein. Since your request has been partially denied, I must inform you that you have the right to appeal the denial of your request pursuant to Public Officers Law 89(4)(a). If you wish to appeal, you may do so in writing within 30 days to Tina Guccione, Executive Assistant District Attorney and Appeals Records Access Officer, Office of the District Attorney, 1 South Main Street, Suite 500, New City, N.Y. 10956.

Thank you.

Sincerely,

THOMAS E. WALSH II
DISTRICT ATTORNEY

BY: Christine Reddy /kt
CHRISTINE REDDY
Assistant District Attorney
Assistant Records Access Officer

Enclosures (via E-Mail)