

Kirk O. Martin  
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**OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF TIOGA**

November 18, 2020

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

Re: Freedom of Information Act Request –  
public corruption complaints and Tioga County Grand Jury

Dear Ms. Sassower:

This letter is in response to your Freedom of Information Law request (FOIL) received by Tioga County, seeking copies of records relating to public corruption prosecutions and the Tioga or Chemung County Grand Jury.

Public Corruption is a crime defined by Penal Law sec. 496.06 which became effective on April 30, 2014. For the following reasons, your requests are hereby denied, with the exception of Request # 7 which is granted to the extent of providing you with a copy of “The Right Thing.”

Initially, your requests are denied because the Tioga County District Attorney does not maintain records of public corruption complaints received and/or the dispositions of such complaints. In addition, there is no query which could be entered into the District Attorney’s computer record system which would yield the lists of information you are requesting. An agency is not required to disclose what it does not possess; similarly, an agency is not required, under FOIL, to compile information to create a new document. See Public Officers Law sec. 89 (3) (a); 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, 40 A.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). The District Attorney also does not maintain any records relative to Chemung County.

Request # 1. DENIED, the District Attorney does not have or maintain such record.

Request # 2 DENIED, the District Attorney does not have or maintain such record. In addition, if such record existed, access would be denied in light of the sealing requirements of Criminal Procedure Law sec. 190.50.

Request # 3 DENIED, the District Attorney does not have or maintain such record. In addition, if such record existed, access would be denied in light of the sealing requirements of Criminal Procedure Law sec. 190.50 and 190.75.

Request # 4 DENIED, the District Attorney does not have or maintain such record. In addition, if such record existed, access would be denied in light of the sealing requirements of Criminal Procedure Law sec. 190.50. Also if such record did exist, access would be denied where required by Criminal Procedure Law Article 720.

Request # 5 DENIED, the District Attorney does not have or maintain such record. In addition, if such record existed, access would be denied in light of Criminal Procedure Law sec. 190.85.

Request # 6 DENIED, the District Attorney does not have or maintain such record.

Request # 7 DENIED, the District Attorney does not have or maintain any other manual, guide or record but for “The Right Thing”.

Request # 8 (a) (b) (c) and (d) DENIED, the District Attorney does not have or maintain such record.

Request # 9 DENIED, the District Attorney does not have or maintain such record and is not required to create such record. If such record existed, access would be denied to any portion concerning a sealed indictment (Criminal Procedure Law sec. 210.10 (3)) and access would be denied to any portion where sealing is required pursuant to CPL sec. 190.50. Also if such record did exist, access would be denied where required by Criminal Procedure Law Article 720.

Finally, you request contact information for the Tioga County Commissioner of Jurors. DENIED, this is not a record maintained by the District Attorney. You also request an address for direct contact to the Grand Jury. This request is denied because the District Attorney does not have a record of that. Criminal Procedure Law Article 190 concerns the grand jury and its proceedings. The legal advisors to the Grand Jury are the Court and District Attorney “and the grand jury may not seek or receive legal advice from any other source. Criminal Procedure Law sec. 190.25 (6). Moreover, in New York State, grand jury proceedings are secret. See Criminal Procedure Law sec. 190.25 (4); Penal Law sec. 215.70. See also Matter of James v. Donovan, 130 A.D.3d 1032 (2d Dept.) (mem.), appeal denied 26 N.Y.3d 1048 (2015); New York News v. Office of the Special Prosecutor, 153 A.D.2d 512 (1<sup>st</sup> Dept. 1989); Ruggiero v. Fahey 103 A.D.2d 65 (2d Dept. 1984) (mem.).