

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, December 14, 2023 5:17 PM
To: 'NYS Salary Commission'

Subject: **Appeal & Certification for CJA's Nov 1st FOIL (#2) -- Records of the Commission's public outreach: Oct 2nd meeting & Oct 13th & Oct 31st hearings on judicial compensation**

TO: 2023 Commission on Legislative, Judicial & Executive Compensation

Pursuant to [FOIL](#) – Public Officers Law §89.4(a) – I hereby appeal your below November 15th response to my below November 1st FOIL #2 entitled: “Records of the Commission's public outreach: Oct 2nd meeting & Oct 13th & Oct 31st hearings on judicial compensation”.

It purports – I believe falsely – and not by any person identifying him/herself or who purports to be your FOIL records access officer, or who notifies me of my right to appeal, within 30 days – “the Commission has conducted a diligent search of available records and has not located any records responsive to your request”.

It then states, “As a courtesy” – and without furnishing records that obviously exist – “the Commission sent out social media posts on both X (formerly known as Twitter), Facebook, and LinkedIn through the Unified Court System’s official pages”. This “courtesy” does not include the text of the posts, the dates of their posting, electronic links to them, or screenshots.

If, upon this appeal, further “diligent search” STILL does not locate responsive records, I request certification pursuant to Public Officers Law §89.3(a), which reads:

“...Upon payment of, or offer to pay, the fee prescribed therefor, the entity...shall certify that it does not have possession of such record or that such record cannot be found after diligent search.”

As I trust a certification will be by a person so-authorized on behalf of the “entity”, I hereby offer to make such payment.

Thank you.

Elena Sassower, Director
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From: NYS Salary Commission <nyscompensation@gmail.com>
Sent: Wednesday, November 15, 2023 11:34 AM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Subject: Re: FOIL REQUEST #2: Records of the Commission's public outreach: Oct 2nd meeting & Oct 13th & Oct 31st hearings on judicial compensation

The NYS Commission on Legislative, Judicial & Executive Compensation acknowledges receipt of your FOIL request dated 11/1/23, seeking:

request Chair Fahey's "note" that he sent "to everyone" and other publicly-available records showing:

1. the identities of the "over one hundred outlets" to which [the Commission's September 26th media advisory for the October 2nd meeting](#) was sent – and proof of its sending;
2. the identities of the "outlets" to which [the Commission's October 4th media advisory for the October 13th hearing](#) was sent – and proof of its sending;
3. the identities of the "outlets" to which a media advisory of the October 31st hearing was sent, proof of its sending, and the media advisory, as none is posted on the [Commission's website](#).
4. the identities of "all professional associations" that Chair Fahey stated would be notified of the October 13th hearing (Tr. 7) – and, inferentially, of the October 31st hearing;
5. whether "notifications" were sent "to people that testified in the past", as Ms. Jeng suggested could be done (Tr. 8) – and, if so, whether this included "people that testified in the past" in opposition to judicial salary increases;
6. whether "social media" was utilized, as Commissioners Egan suggested and as to which Chair Fahey stated "let's do that" (Tr. 8-9) – and which "social media" and proof thereof.

In response to your request for "Chair Fahey's "note" that he sent "to everyone," as well as requests 1-6, the Commission has conducted a diligent search of available records and has not located any records responsive to your request. As a courtesy, please note that in response to your sixth request, the Commission sent out social media posts on both X (formerly known as Twitter), Facebook, and LinkedIn through the Unified Court System's official pages.

Additionally, please note that it has long been established that FOIL does not require responses to specific questions, but instead governs release of government records. See Public Officers Law § 89(3)(a) (indicating that an agency is not required to create a record in response to a request). "There is nothing in the Freedom of Information Law or the Open Meetings Law that requires that government officers or employees respond to questions, supply information in response to questions or offer explanations for their governmental activities."

No records responsive to your request are withheld or redacted pursuant to any provision of FOIL, and your request is now considered closed.

On Wed, Nov 1, 2023 at 11:17 AM Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org> wrote:

TO: 2023 Commission on Legislative, Judicial & Executive Compensation

At the Commission's October 2, 2023 organizational meeting ([Tr. 7-9; VIDEO](#)), Chair Fahey stated his "understanding" that "over one hundred outlets" had been notified about the meeting – and that such

notification would also be given for the October 13th hearing on judicial compensation and, inferentially, the October 31st hearing on judicial compensation.

Mindy Jeng, who Chair Fahey introduced as “OCA’s representative”, stated she would “ask our press office about their exact list of contacts that they send the media advisory to”, to which Chair Fahey replied:

“So let’s do it this way. Give Mindy some time to check into it and I will send a note out to everyone. And I will send information out to everyone on what the response is.”

Pursuant to FOIL (Public Officers Law, Article VI), this is to request Chair Fahey’s “note” that he sent “to everyone” and other publicly-available records showing:

1. the identities of the “over one hundred outlets” to which [the Commission’s September 26th media advisory for the October 2nd meeting](#) was sent – and proof of its sending;
2. the identities of the “outlets” to which [the Commission’s October 4th media advisory for the October 13th hearing](#) was sent – and proof of its sending;
3. the identities of the “outlets” to which a media advisory of the October 31st hearing was sent, proof of its sending, and the media advisory, as none is posted on the [Commission’s website](#).
4. the identities of “all professional associations” that Chair Fahey stated would be notified of the October 13th hearing (Tr. 7) – and, inferentially, of the October 31st hearing;
5. whether “notifications” were sent “to people that testified in the past”, as Ms. Jeng suggested could be done (Tr. 8) – and, if so, whether this included “people that testified in the past” in opposition to judicial salary increases;
6. whether “social media” was utilized, as Commissioners Egan suggested and as to which Chair Fahey stated “let’s do that” (Tr. 8-9) – and which “social media” and proof thereof.

Pursuant to Public Officers Law §89.3, your response is required “within five business days” of your receipt of this request. Please e-mail it to me at elena@judgewatch.org.

Thank you.

Elena Sassower, Director
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