

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Thursday, December 14, 2023 11:12 PM
To: 'NYS Salary Commission'

Subject: **Appeal for CJA's Nov 13th FOIL (#6) -- the draft report that was the subject & purpose of the Commission's Nov 13th meeting**

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 13th FOIL #6.

It purports – but not by any person identifying him/herself or who claims to be your FOIL records access officer – that written materials referred-to and discussed at your November 6th and November 13th meetings are “exempt from disclosure because they constitute ‘inter-agency or intra-agency materials’ which are not: statistical or factual tabulations or data; instructions to staff that affect the public; final agency policy or determinations; or external audits”, citing for this proposition Public Officers Law §87(2)(g).

I called the Committee on Open Government earlier today, so that I might have the benefit of its expertise on the subject. I spoke at length with Senior Attorney Christen Smith – and it appears you may be mistaken in withholding materials discussed at the meetings. She agreed that my appeal to you could properly request that you consult with the Committee on Open Government, which is what I here do.

You belatedly posted on [your webpage of “Submissions on Judicial Compensation”](#) the OCA submission referred-to at your November 6th meeting. You also belatedly posted on that webpage, Chief Administrative Judge Zayas’ letter, referred to at the November 13th meeting. However, **the draft report that was the subject and purpose of the Commission’s [November 13th meeting](#) you did not post or furnish me -- and it is this that I am specifically appealing.** By the same token, the [final report](#) – which was the subject and purpose of the Commission’s [December 4th meeting](#) was also not posted, in advance of that meeting, or for that meeting. Indeed, at the November 13th meeting – and reiterated at the December 4th meeting – it was announced that the final report would not be publicly released until December 5th.

Please note that following your determination of my appeal you are required to send it the Committee. Here’s the October 18, 2023 memo “[Furnishing FOIL Appeals and Determinations to the Committee](#)” of its executive director, Shoshanah Bewlay.

Thank you.

Elena Sassower, Director
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From: NYS Salary Commission <nyscompensation@gmail.com>
Sent: Wednesday, November 15, 2023 2:49 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Subject: Re: NOTICE of Your Violation of Open Meetings Law §103(e) -- & FOIL REQUEST #6: written materials discussed at your Nov 6th & Nov 13th meetings

The NYS Commission on Legislative, Judicial & Executive Compensation acknowledges receipt of your FOIL request dated 11/13/23, seeking:

ALL referred-to and discussed written materials

Please note, §103(e) of the Open Meetings Law notes that “agency records available to the public pursuant to article six of this chapter....shall be made available.” Please note, all referred-to and discussed written materials are exempt from disclosure because they constitute “inter-agency or intra-agency materials” which are not: statistical or factual tabulations or data; instructions to staff that affect the public; final agency policy or determinations; or external audits. Public Officers Law § 87(2)(g).

Pursuant to Public Officers Law § 89(4)(a), you have thirty (30) days to take a written appeal of this determination. You may submit such appeal by email to: nyscompensation@gmail.com

On Mon, Nov 13, 2023 at 12:27 PM Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org> wrote:

TO: 2023 Commission on Legislative, Judicial & Executive Compensation

Your today’s meeting – like your November 6, 2023 meeting – violated [Open Meetings Law §103\(e\)](#) in failing to make publicly-available, *in advance of the meeting*, written materials discussed at the meeting. As stated by the “[Open Meetings Regulation](#)” posted as part of [your October 2, 2023 organizational meeting materials](#):

“...since 2012, §103(e) of the Open Meetings Law has required public bodies...to make available to the public, within reasonable limitations, the records scheduled to be discussed during open meetings prior to the meetings. In 2021, §103(e) of the Open Meetings Law was amended to require that copies of records be made available to the public at least 24 hours before a public meeting, to the extent practicable. ...”

As reflected by the above-attached photo of your “Meetings” webpage for judicial compensation, NO written materials have been posted with respect to either of these two meetings.

Pursuant to FOIL, this is to request ALL referred-to and discussed written materials.

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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