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*Elena Ruth Sassower, Coordinator*

BY CERTIFIED MAIL/RRR: 7001-0320-0004-5457-4941

December 26, 2003

W. Brooks DeBow, Deputy Counsel to Governor Pataki  
Executive Chamber, The Capitol  
Albany, New York 12224

RE: **"FOIL APPEAL 2003-5"**: CJA's January 14, 2003 and January 16, 2003 Requests, Including Pursuant to F.O.I.L. and Judiciary Law §63.4, for Publicly-Available Materials Pertaining to Governor Pataki's Appointment of Court of Claims Presiding Judge Susan P. Read to the New York Court of Appeals"

Dear Deputy Counsel DeBow:

This responds to your December 19, 2003 letter relating to our December 5, 2003 appeal which you have denominated "FOIL Appeal 2003-5".

We take exception to your claim that our appeal is "not entirely clear" – and herein highlight various misleading aspects of your response.

As examination of our January 14, 2003 and January 16, 2003 letters to the Governor's then-counsel, James McGuire, makes plain, these letters were NOT limited to F.O.I.L. requests.

With respect to CJA's January 14, 2003 letter, it did not even invoke F.O.I.L. in requesting:

**"any publicly-available materials pertaining to Governor Pataki's appointment of Court of Claims Presiding Judge Susan P. Read to the Court of Appeals...includ[ing] evaluations and supporting materials received from the bar associations for these seven candidates."**

As to its request for "the financial statement that Judge Read was required to submit as part of her application for the Court of Appeals", such was based on Judiciary Law §63.4, whose mandatory language was quoted therein:

“...The governor shall make available to the public the financial statement filed by the person appointed to fill a vacancy.”

Unlike F.O.I.L., this mandatory language of Judiciary Law §63.4 contains NO “exemptions” to the Governor’s production obligation. Consequently, your claim that the financial statement is “no longer in the possession of the Executive Chamber” does NOT – as it would pursuant to F.O.I.L. -- relieve the Governor of his duty to make this financial statement “available”.

Notably, you do not state that Judge Read’s financial statement was not “in the possession of the Executive Chamber” on January 14, 2003, when we first made our request, and on January 20, 2003, when we reinforced the need for response “WITHOUT DELAY”.

Presumably, the Governor’s office knows where Judge Read’s financial statement is presently located and request is hereby made for that information, in the event the Governor refuses to recognize his production obligation pursuant to Judiciary Law §63.4.

With respect to our January 16, 2003 letter, its request for “*basic information*” was separate and apart from its F.O.I.L. request, properly limited to documents. As to this “*basic information*”, nothing precluded Mr. McGuire, his successor Richard Platkin, or other Executive Chamber personnel from providing same -- if they had any respect for the public’s right to “*basic information*” bearing upon the fitness of a judge appointed by the Governor to sit on our state’s highest court. As has long been obvious – and now reinforced by your December 19, 2003 letter – there is no such respect, even where the requested information is within the personal knowledge of Executive Chamber personnel.

Finally, please confirm that your certification that “the Executive Chamber does not possess any of the other documents [we] had requested (other than the documents already provided) after a diligent search had been made” accords with the interpretation of “possession”, cited by our December 5, 2003 appeal as set forth in the Committee on Open Government’s advisory opinion #10796 [“Record, Physical Custody of”].

Thank you.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability, Inc. (CJA)

cc: Committee on Open Government