



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, NY 12224

DENNIS C. VACCO
Attorney General

March 30, 1995

Ms. Elena Sassower
Center for Judicial Accountability, Inc.
Box 69, Gedney Station
White Plains, New York 10606-0069

Dear Ms. Sassower:

This is in response to your FOIL request concerning the names and index numbers of 4 categories of cases. Request (1) seeks the name and index number of cases concerning constitutional challenges to Judiciary Law § 90, and (2) seeks the name and index number of cases concerning constitutional challenges to 212 NYCRR § 691.4.

The Department of Law does not index or categorize its cases according to the specific topic or subject matter of the case. The Department maintains lists of active and recently closed cases. The list identifies the name of the case, the type of action brought (i.e. Article 78, Federal 1983, etc.), the bureau handling the case and the specific attorney assigned. Some, but not all, index numbers are included.

A list such as you request, reflecting challenges to a specific statute or regulation, does not exist. In order to respond to your FOIL request, the Department would have to go through the list of all its cases, examine the pleadings in each case, determine whether the case concerned the specific issues that you requested, and create a list of such cases. The Freedom of Information Law does not require the Department to create a listing that does not otherwise exist. See Public Officers Law § 89(3). See also Guerrier v. Hernandez-Cuebas, 165 A.D.2d 218 (3 Dept. 1991); Wattenmaker v. N.Y.S. Employees' Retirement System, 95 A.D.2d 910 (3 Dept. 1983); Gannett Co. v. County of Monroe, 59 A.D.2d 309, 313 (4 Dept.) affd. 45 N.Y.2d 954 (1978); D'Alessandro v. Unemployment Insurance Appeal Board, 56 A.D.2d 762 (1 Dept. 1977). The Department is not required to compile information or to rearrange its filing system so as to facilitate a requestor's research. White v. Reagan, 171 A.D.2d 197 (3 Dept. 1991). Moreover, the law does not require the Department to categorize its cases into the subcategories you request.

The Department does maintain summaries of selected cases and appeals, however, as well as summaries of selected filed briefs (Cases and Points). These summaries are not organized by subject matter. You may review these summaries to determine which cases, if any, concern the statute you request.

Requests (3) and (4) seeks the names and index numbers of all cases raising constitutional challenges relating to Article 78 proceedings against Supreme Court judges and cases against Appellate Division judges. Once again, the Department's cases are not indexed according to the specific type of challenge brought. Furthermore, as previously indicated, the list of cases maintained by the Department would not include inactive cases other than those recently closed.

Please contact me at (518) 474-7134 if you wish to review the above-referenced summaries.

Since this constitutes a partial denial of your request under the Freedom of Information Law, you have a right to appeal. Such appeal may be submitted no later than 30 days after receipt of this decision to Harvey Golubock, Esq., Deputy First Assistant Attorney General, Records Access Appeal Officer, Department of Law, 120 Broadway, New York, New York 10271.

Sincerely,

A handwritten signature in blue ink that reads "Marin E. Gibson". The signature is stylized, with the first letters of the first and last names being capitalized and prominent.

MARIN E. GIBSON
Assistant Attorney General
FOIL Officer
Department of Law