

Subject: The Unconstitutionality of Public Officers Law §108.2(b) -- & the Test of Candidates seeking appointment as the New Executive Director of the NYS Committee on Open Government

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

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Subject: The Unconstitutionality of Public Officers Law §108.2(b) -- & the Test of Candidates seeking appointment as the New Executive Director of the NYS Committee on Open Government

TO: New York State Committee on Open Government/Assistant Director Kristin O'Neill

Following up our phone conversation this morning, below is my last e-mail to Committee on Open Government Executive Director Robert Freeman, dated March 9, 2017 and entitled "please advise when is the next meeting of the Committee on Open Government & confirm that my requests will be included on its agenda".

I have no record of any response from him. Please verify whether you have any record of a response – and, if so, forward same to me.

Based on the facts, law, and legal argument presented by my below March 9, 2017 e-mail, I hereby reiterate the requests therein made:

- (1) that the Committee on Open Government render an advisory opinion as to whether, pursuant to Article III, §10 of the New York State Constitution, Public Officers Law §108.2(b) is unconstitutional by its exemption of Senate and Assembly party conferences from the Open Meetings Law;
- (2) that the Committee on Open Government, alternatively and/or additionally, request an advisory opinion from the New York State Attorney General, whose duty it is to evaluate constitutionality;
- (3) that the Committee on Open Government request responses from the Senate and Assembly – particularly for information and documents pertaining to the "legislative process" underlying the introduction and enactment of the legislation that became Public Officers Law §108.2(b) – S.6284/A.7804 (May 1985) – including whether it was cleared by the Legislature's Bill Drafting Commission or other legal counsel with respect to its constitutionality, in light of Article III, §10 of the New York State Constitution.

As responses to the foregoing three requests are an appropriate, if not dispositive, test of the fitness of ANY candidate seeking appointment as the Committee on Open Government's new executive director, I have contacted the Department of State's Bureau of Human Resources Management for information about the selection process, which you stated you did not know: <https://statejobs.ny.gov/public/vacancyDetailsView.cfm?id=73232>.

To assist you and everyone else, I have created a webpage on the Center for Judicial Accountability's website pertaining to my below March 9, 2017 e-mail, my immediately prior exchange of e-mail with Executive Director Freeman – and this. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/committee-on-open-govt/nys-constitution-article3-sec10.htm>.

Finally, I would be remiss if I did not repeat what I stated to you and others, namely, that prior to my last conversation with Executive Director Freeman – on March 9, 2017, memorialized by my below e-mail – he had always been exemplary and professional in furnishing needed assistance pertaining to FOIL and the Open Meetings Law – and my contact with him extended back to 1995 and an advisory opinion he rendered pertaining to the Commission on Judicial Conduct's FOIL obligations: <http://www.judgewatch.org/correspondence-nys/1995/5-24-95-from-freeman.pdf>. He was one of the very, very few people in an important position of state government about whom I could say – and had said throughout more than two decades of contact – was actually doing his job.

Thank you.

Elena Sassower, Director
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