

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

April 28, 2017

TO: Senate Records Access Officer/Secretary of the Senate Francis Patience
ATT: Colleen Glavin, Senate Freedom of Information Attorney

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Clarifying the Senate's response to CJA's March 24, 2017 FOIL/records request:
"March 13, 2017 'amending' of Governor Cuomo's budget bills for fiscal year 2017-2018"

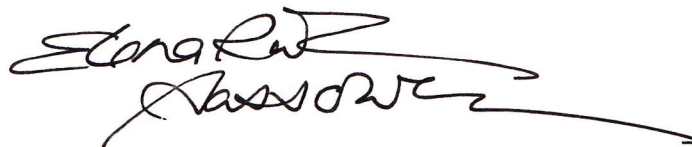
I understand that you have replaced James Curran as the Senate's Freedom of Information Attorney.

Enclosed is my already-written letter of today's date to Mr. Curran requesting clarification of what he told me, by phone, on April 4th, in response to my April 4th letter to Secretary of the Senate Patience concerning his March 31st e-mail response to the March 24th FOIL request I had filed for records pertaining to the "March 13, 2017 'amending' of Governor Cuomo's budget bills for fiscal year 2017-2018".

For your convenience, the full exchange of correspondence is enclosed.

Your expeditious clarification would be greatly appreciated.

Thank you.

A handwritten signature in black ink, appearing to read "Elena Ruth Sassower". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Enclosures

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TO: Senate Records Access Officer/Secretary of the Senate Francis Patience
ATT: James Curran, Senate Freedom of Information Attorney

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Your April 4, 2017 phone call clarification

Thank you for your April 4, 2017 phone call to me on behalf of Secretary of the Senate Patience, responding to my request of that date for clarification of your March 31, 2017 e-mail regarding CJA's March 24, 2017 FOIL request for records pertaining to the "amending" of eight of Governor Cuomo's budget bills for fiscal year 2017-2018 on March 13, 2017.

I understood you to have confirmed precisely what I surmised by my April 4, 2017 request for clarification, *to wit*, that none of the 3,871 pages that you had offered me at a cost of \$967.75 – pertaining to the eight budget bills, purportedly amended on March 13, 2017, were for:

- (1) records showing the 'non-sponsor' who introduced the amendments
- (3) records showing the date and time of the Senate Finance Committee meetings at which the motions to amend each of the eight budget bills was on its agenda – and the notice thereof furnished to Senate Finance Committee members and the public, required by Senate Rule VIII, §2...;
- (4) records of the Senate Finance Committee meetings at which the motions to amend each of the eight budget bills was deliberated and voted upon, including the number of senators present and the number of senators who had submitted voting sheets – and the vote on the motions to amend, including the votes of each member, such as required by Senate Rule VIII, §2.

As I recollect, you clarified that these are the "additional records", which "if the records even exist, are not subject to disclosure pursuant to Senate Rules".

I find it hard to believe that these "additional records", if they "even exist" would not be "subject to disclosure pursuant to Senate Rules" – and you have not specified which Senate rule would so-exempt them. Please, therefore, specify the Senate rule to which you are referring, as I see nothing in Senate Rule XV, "Freedom of Information", that would be applicable, especially its §1(a):

“Publication of records relating to Senate legislative and administrative records. Recognizing that legislative records available by request under the "freedom of information law" are of important public interest, the Senate shall make available through a searchable and sortable database on the Senate website: records of committees, agendas, votes, minutes, reports, attendance, fiscal notes, and records of the chamber including, active lists, votes, transcripts, calendars, the Senate payroll report and expenditure reports.”

Indeed, any Senate Rule that would bar the requested records would be unconstitutional, violating Article III, §10 of the New York State Constitution, which reads, in pertinent part:

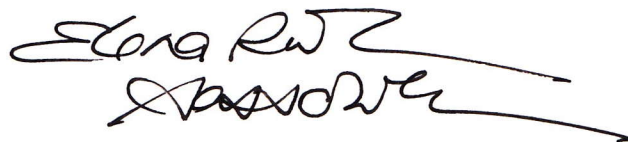
“Each house of the legislature shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy....”

As to what the proffered 3,871 pages consist of, I understood you to say that these are, as my April 4th clarification request surmised, responsive to #2 of my FOIL request for:

“records showing what specific changes the amendment made, as for instance, the ‘detail sheets’ and ‘amended memorandum”, required by Senate Rule VII, §4(b)...”

Before making arrangements to inspect and copy these 3,871 pages, pursuant to Senate Rule XV, §§1(b) and (c), please confirm that they are the “detail sheets” and “amended memorand[a]” – and not simply the Senate’s eight “amended” budget bills of March 13, 2017 from which the “specific changes” can only be discerned from line-by-line comparison with the Governor’s eight bills that they “amended”.

Thank you.

A handwritten signature in black ink, appearing to read "Elena Ruiz", with a long horizontal flourish extending to the right.

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March 24, 2017

TO: Senate Records Access Officer/Secretary of the Senate Francis Patience

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: FOIL/RECORDS REQUEST: March 13, 2017 “amending” of Governor Cuomo’s budget bills for fiscal year 2017-2018

Reference is made to Governor Cuomo’s budget bills for fiscal year 2017-2018. Senate Rule VII, §6, states:

“When a bill is submitted or proposed by the Governor by authority of Article VII of the Constitution, it shall become, for all legislative purposes, a legislative bill, and upon receipt thereof by the Senate it shall be endorsed ‘Budget Bill’ and be given a number by the Secretary and shall be referred to the Finance Committee. Budget bills may be reported from the Finance Committee direct to the third reading calendar.”

On January 23, 2017, the Governor’s budget bills, to which you assigned numbers #S.2000 – S.2009, were each referred to the Senate Finance Committee.

The webpages for these ten budget bills reflect that on March 13, 2017 eight were amended, but not reported out of committee. They were the following three “appropriations bills”:

- (1) State Operations Budget Bill #S.2000-A
- (2) Aid to Localities Budget Bill #S.2003-A
- (3) Capital Projects Budget Bill #S.2004-A

and the following five “Article VII bills” –

- (4) Public Protection and General Government Budget Bill #S.2005-A
- (5) Education, Labor and Family Assistance Budget Bill #S.2006-A
- (6) Health and Mental Hygiene Budget Bill #S.2007
- (7) Transportation, Economic Development and Environmental Conservation Budget Bill #S.2008-A
- (8) Revenue Bill #S.2009-A.

With respect to each of these eight “amended” budget bills, request is made, pursuant to Senate Rule XV “Freedom of Information”, for:

- (1) records showing the “non-sponsor” who introduced the amendment, since it obviously was not the Governor;
- (2) records showing what specific changes the amendment made, as for instance, the “detail sheets” and “amended memorandum”, required by Senate Rule VII, §4(b):

“...When amendments are offered to a printed bill, the proposed changes, indicating page and line numbers, shall be listed on four detail sheets and the same changes shall be incorporated and marked on two copies of the bill; provided, however, that no amendment shall be allowed to any bill which is not germane to the original object or purpose thereof. Furthermore, when a printed bill is amended the accompanying introducer’s memorandum, required pursuant to section one of this Rule, shall also be amended to reflect any changes...”

- (3) records showing the date and time of the Senate Finance Committee meeting at which the motion to amend was on its agenda – and the notice thereof furnished to Senate Finance Committee members and the public, required by Senate Rule VIII, §2:

“ a. (1) Standing committees shall hold regular meetings at such time and on such day as scheduled by the Majority Coalition Leaders in joint consultation with the chair and such schedule shall be published one week in advance of the date of such meeting and shall be posted on the Senate committee board and website.... Each chair of a standing committee shall to the extent practicable, no later than 5 p.m. the Thursday preceding the regular meeting, furnish to the Majority Coalition Leaders, and publish the agenda together with the introducer's memorandum for each bill listed on such agenda for such regular meeting. In addition, copies of such agenda for such regular meeting shall be made available to representatives of the news media and to the general public. However, in case of necessity, the chair with consent of the ranking Democratic Conference member may add no more than four items on the agenda or delete items on the agenda up to 24 hours in advance of the scheduled meeting and members shall be notified of such additions or deletions. ...

(2) Standing committees may hold special meetings in case of necessity upon the call of the chair when the announcement is made from the floor during session, or the ranking Democratic Conference

member of the committee consents thereto, or upon the call of a majority of all the members thereof, entry of which fact shall be made on the records of the committee and announced by the Secretary of the Senate.”

- (4) records of the Senate Finance Committee meeting at which the motion to amend was deliberated and voted upon, including the number of senators present and the number of senators who had submitted voting sheets – and the vote on the motion to amend, including the vote of each member, such as required by Senate Rule VIII, §2:

“a.(1) ...The attendance of the members of the committee shall be recorded at each meeting, and a copy of such report shall be filed with the Journal Clerk of the Senate and made available to the public. ...

...

(3) All meetings of committees shall be open to authorized representatives of the news media and the general public as observers.

(4) All meetings of committees shall be recorded by video and to the extent practicable webcast live. Video of all committee meetings shall be made available on the Senate website.

...

b. (1) Minutes shall be taken at all open meetings of committees which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

...

(3) Minutes of meetings of all committees shall be available to the public in accordance with the provisions of Article six of the Public Officers Law, ‘the freedom of information law’, and at such time and place as prescribed by the Temporary President jointly with the leader of the Independent Democratic Conference, provided, however, that minutes for executive session meetings shall be available to the public within one week from the date of such executive session.”

Suffice to say, that had the Senate Finance Committee voted the “amended” bill out of committee, Senate Rule VIII, §6, entitled “Reports”, would have been applicable:

“a. No committee shall vote to report a bill or other matter unless a majority of all the members thereof vote in favor of such report. Each report of a committee upon a bill shall have the vote of each Senator attached thereto and such report and vote shall be available for public

inspection. A member's vote on any matter before the committee shall be entered by the member on a signed official voting sheet delivered to the Committee Chair.

Any standing committee having secondary subject matter jurisdiction over a bill may request the chair of the committee having primary subject matter jurisdiction over said bill (which is the committee to which the said bill has been referred by the Majority Coalition Leaders pursuant to Rule VII) to commit the bill to the committee with secondary subject matter jurisdiction either when the bill is still in the primary committee or after it has been reported to the calendar. If the chair of the primary committee refuses said request, then the committee having secondary jurisdiction, through its chair, may request the Majority Coalition Leaders to consider such secondary referencing. If a secondary reference is so made, the secondary committee shall consider the bill forthwith and return said bill to the primary committee or the calendar, as the case may be, along with the secondary committee's recommendations.

...

b. Each bill reported by a standing committee shall be accompanied by a report, and the Democratic Conference shall file a Democratic Conference committee report within seven days of the bill being reported out of committee and said reports shall be filed with the Journal Clerk. The report of a committee upon any matter referred to it shall upon request include a brief statement of the opinion of any member or members of the committee voting in either the majority or minority."

Thank you.



Center for Judicial Accountability, Inc. (CJA)

From: Senate Foil <foil@nysenate.gov>
Sent: Friday, March 31, 2017 2:27 PM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: Re: FOIL/Records Request: March 13, 2017 "amending" of Governor' Cuomo's budget bills for fiscal year 2017-2018
Attachments: Rules and Regulations March 2013.pdf

March 31, 2017

Ms. Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc.
Post Office Box 8101
White Plains, NY 10602
elena@judgewatch.org

Dear Ms. Sassower:

This is to acknowledge receipt of your email dated March 24, 2017 pursuant to the Freedom of Information Law.

You are requesting ... " March 13, 2017 "amending" of Governor Cuomo's budget bills for fiscal year 2017 – 2018 ... " .

Information you request is available. When we receive a check in the amount of \$967.75 (3,871 pages @ \$.25 per page) made payable to the New York State Senate, we will forward the material.

Please be advised that any additional records requested, if the records even exist, are not subject to disclosure pursuant to Senate Rules.

I have attached a copy of the Senate's Rules and Regulations Relating to the Public Inspection and Copying of Legislative Records for your information.

Sincerely,

Francis W. Patience
Secretary of the Senate

(See attached file: Rules and Regulations March 2013.pdf)

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

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April 4, 2017

TO: Senate Records Access Officer/Secretary of the Senate Francis Patience

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Clarifying your March 31, 2017 response to CJA's March 24, 2017 FOIL/RECORDS REQUEST – RE: March 13, 2017 “amending” of Governor Cuomo’s budget bills for fiscal year 2017-2018

Thank you for your March 31, 2017 e-mail informing me that 3,871 pages, costing \$967.75, are responsive to my March 24, 2017 FOIL request pertaining to the Senate’s March 13, 2017 “amending” of Governor Cuomo's budget bills for fiscal year 2017-2018.

For immediate purposes, please advise as to how many of these 3,871 pages pertaining to eight budget bills are responsive – as to each bill – to #1, 3, and # 4 of my request for:

“(1) records showing the ‘non-sponsor’ who introduced the amendment, since it obviously was not the Governor;

...

(3) records showing the date and time of the Senate Finance Committee meeting at which the motion to amend was on its agenda – and the notice thereof furnished to Senate Finance Committee members and the public, required by Senate Rule VIII, §2...;

(4) records of the Senate Finance Committee meeting at which the motion to amend was deliberated and voted upon, including the number of senators present and the number of senators who had submitted voting sheets – and the vote on the motion to amend, including the vote of each member, such as required by Senate Rule VIII, §2...”.

I certainly would like to purchase these specific pages, at a cost of \$.25 per page. As to the balance, are these responsive to #2 of my request for:

“records showing what specific changes the amendment made, as for instance, the ‘detail sheets’ and ‘amended memorandum”, required by Senate Rule VII, §4(b)...”?

Thank you.

