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2021-01-15

### FOIL Response Letter, FOIL Request #2815 (2021=01-15)

Jaclyn Clemmer

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January 15, 2021

**Via Email: [dzloczower@appad.org](mailto:dzloczower@appad.org)**

Dina Zloczower  
Appellate Advocates  
111 John Street  
New York, New York 11201

RE: FOIL Request #2815

Dear Dina Zloczower:

This letter responds to your correspondence dated April 27, 2020, which pursuant to FOIL, requested:

records, documents, emails and files in the possession of the Executive Chamber, and/or the Office of the Governor of the State of New York ("Governor's Office) regarding the Board of Parole ("BOP") that were created, disseminated, or received between January 1, 2010 and the date this request is fulfilled. For purposes of this request, the term "Governor's Personnel" means the office employees, staff, and agents of the Governor of the State of New York.

I request any and all records, documents, emails, files, and correspondence that reference, relate to, or exhibit evidence of:

- 1) How the BOP reports parole board interviews to the Governor's Office and/or the Governor's Personnel.
- 2) How the BOP reports parole board hearings to the Governor's Office and/or the Governor's Personnel.
- 3) How the BOP reports parole board decisions to the Governor's Office and/or the Governor's Personnel.
- 4) How the BOP receives reports or guidance regarding parole board interviews from the Governor's Office and/or the Governor's Personnel.
- 5) How the BOP receives reports or guidance regarding parole board hearings from the Governor's Office and/or the Governor's Personnel.

- 6) How the BOP receives reports or guidance regarding parole board decisions from the Governor's Office and/or the Governor's Personnel.
- 7) Communications between the BOP, the Governor's Office, and/or the Governor's Personnel relating to the process by which parole decisions are made.
- 8) Communications between the BOP, the Governor's Office, and/or the Governor's Personnel relating to the role of the Governor's Office in parole decisions.
- 9) Communications between the BOP, the Governor's Office, and/or the Governor's Personnel relating to determinations, evaluations and/or assessments by the Correctional Offender Management Profiling for Alternative Sanctions tool (commonly known as COMPAS).

For the purposes of this request, the terms "records," "documents," "communications," emails," "correspondence," and "files" are intended to include, without limitation, any and all written, typed, printed, recorded, graphic, computer-generated, smart-phone-generated, or other matter of any kind from which information can be derived, whether produced, reproduced, or stored on paper, cards, tapes, films, electronic facsimiles, computer storage devices, or any other medium. These terms also include, without limitation, correspondence, letters, memoranda (including internal memoranda), calendars, schedules, books, indices, notes, printed forms, publications, press releases, notices, minutes, summaries, or abstracts, reports, files, transcripts, printouts, drawings, photographs, recordings, including videotapes, audiotapes, CDs or CD-ROMs, or any other form of electronic recordation, telegrams, facsimiles, telex messages, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

To the extent your request is reasonably described, enclosed please find records responsive to your request.

The remainder of your request is denied pursuant to Public Officers Law § 89(3) which requires a request for records to be "reasonably described." In order for a request to be reasonably described the request should, to the extent practicable, include parameters, such as: the names or roles of custodians to be searched; specific subject matter and/or search terms; and a reasonable and specific time period.

Please note that whether a request is reasonably described may be dependent upon the nature of an agency's filing or record keeping system and agency employees are not required to engage in herculean or unreasonable efforts to locate records. See Konigsberg v. Coughlin, 68 N.Y.2d 245 (N.Y. 1986) and the NYS Committee on Open Government's FOIL Advisory Opinions 18949 and 18863. The Committee on Open Government has explained that "a request

for 'all' records, without limitation, that include a certain name, for example, might not be found to reasonably describe the records." (COOG AO-18949 (Aug. 20, 2012)).

This denial is without prejudice to submit a new request that reasonably describes the records sought.

The Freedom of Information Law does not require responses to specific questions, but instead governs release of government records (Public Officers Law § 89(3) and Committee On Open Government Ad. Op. 16632a (June 18, 2007)). Your letter does not request documents or records, but rather poses questions which would require that a response be prepared. Public Officers Law § 89(3)(a), indicates that an agency is not required to create a record in response to a request.

Pursuant to Public Officers Law § 89(4)(a), you have thirty (30) days to take a written appeal of this determination. You may make an appeal by writing: FOIL Appeals Officer, Executive Chamber, State Capitol, Albany, New York, 12224.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jaclyn Clemmer', written in a cursive style.

Jaclyn Clemmer  
FOIL Counsel &  
Records Access Officer