

New York Coalition



For Open Government, Inc.

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New York Coalition For Open Government, Inc.

Non-Profit

Non-Partisan

*Advocating for timely access to information &
meaningful citizen participation*

www.nyopengov.org

6 Open Government Reforms

You Should Know About

We Have An Open Government Crisis

- 72% of towns not posting meeting documents online
- 25% of towns not posting meeting minutes or a recording
- 39% of counties failed to acknowledge a FOIL request within five business days as required by law.
- 75% of Planning Boards not posting meeting documents online
- Out of 158 school district executive session motions reviewed, 61% were not in compliance with the Open Meetings Law

(The above stats based on random samples of 20 entities)

There Is No Way To Enforce Open Government Laws Or To Hold Government Officials Accountable

- There is no independent body with the power to issue orders or penalties of any kind.
- Other than our organization no one even monitors compliance with the law in any way
- The NY Committee on Open Government only has advisory power
- The NY Attorney General unlike other states will not help in any way

The Public's Only Recourse

**For Addressing Violations of
the Open Meetings Law
&**

the Freedom of Information Law

Is to Sue

Suing Is Not Easy To Do

**And Government Officials Know
That**

There is a Four (4) month statute of limitation as to when you can sue in the case of a FOIL or OML violations:

- If you wish to sue, you must do so within the 4 month time period of the violation
- If you are able to pay an attorney to represent you, and you win, the Government should have to pay for your Attorney's fees
- This is NOT what typically happens in New York State

Reform #1 Mandate The Payment of Attorney Fees

New York's current attorney fee statute is weaker than many other states.

In states like California, Colorado, Delaware, Florida, Illinois, Louisiana, Michigan, Montana, New Jersey, Rhode Island, and Washington, attorney fees are awarded if a party ***“prevails”*** in a lawsuit.

In contrast, New York's statute requires that a party ***“substantially prevail”*** before attorney fees are awarded, which is a higher standard.

New York's statute also presents an additional hurdle.

The court must also find there was no reasonable basis for the agency to deny the Freedom of Information Law (FOIL) request, in order for attorney fees to be awarded.

This additional finding is not required in the states listed above.

Legislation Sponsored By Assemblymember Steck and Senator Liu (A5357A/S5801A)

This will change NY law by making it **mandatory** for reasonable attorney fees to be awarded if a petitioner simply prevails in an Open Meetings or FOIL lawsuit against a government agency.

The bill eliminates having to “*substantially prevail*”, eliminates having to address whether an agency acted reasonably in a FOIL case and eliminates the defense that a violation of the Open Meetings Law was unintentional.

Reform # 2

We Need An Independent Hearing Officer Process

If your FOIL request is denied you can file an administrative appeal, which is decided by the same agency that denied your request in the first place.

It is a rare occurrence to win an administrative appeal.

In the 1980's homeowners across New York State were angry about increasing property taxes.

The only recourse homeowners had to challenge their property assessments was to hire an attorney to file a lawsuit in Supreme Court, which was not easy or affordable.

In 1982, the New York State legislature passed legislation to help homeowners by creating a hearing officer system to hear property tax assessment cases.

Through this system, homeowners complete a simple application, pay a filing fee and the New York State Office of Court Administration appoints a hearing officer to decide the complaint.

Hearing officers are attorneys, realtors and others with experience in dealing with real property valuations.

In 2020, 102,000 assessment complaints were handled across the state through this hearing officer system. Applicants paid a \$30 filing fee and the Court Administration paid hearing officers \$75 per case.

The same system can and should be replicated to handle Freedom of Information Law and Open Meetings Law appeals.

Assembly Member Linda Rosenthal has introduced a bill (A7933) to create an independent hearing officer system to address Open Meetings Law and Freedom of Information Law complaints

We support a higher application fee of \$50 so that attorneys can be paid \$100 to hear such cases.

Reform #3

Constitutional Amendment

Several states have the right to open government stated in their Constitution (California, Florida, Louisiana, and Montana), New York does not.

Assembly Member Phil Steck and Senator Rachel May have introduced a bill to establish a right to open government in New York's Constitution (A4429/S1063)

The legislation simply states:

“The right to public information, being a necessary and vital part of democracy and public deliberation, shall be a fundamental right of the people. The right of the people to inspect and/or copy records of government, and to be provided notice of and attend public meetings of government, shall not be unreasonably restricted.”

Governor Hochul supports amending New York's Constitution so that more Judges can be appointed.

It will be interesting to see whether Governor Hochul supports a bill to amend the State Constitution to add a right to open government.

Reform #4

Requiring Local Governments To Live Stream Their Meetings

New York City Community Boards were mandated in 2014 to livestream their meetings and to post video recordings online.

In 2015, state agencies were required to do the same as “best as practicable.”

In 2019, Industrial Development Agencies were required to livestream and post video recordings of their meetings online “as best as practicable.”

In 2022, Governor Hochul signed legislation that expanded use of videoconferencing by public bodies to conduct meetings.

This new law allows members of a public body to participate in a meeting remotely provided written procedures have been adopted that set forth what the body determines to be “extraordinary circumstances.”

What is interesting about the new hybrid meeting legislation is that it is geared totally towards accommodating public body members who cannot attend a meeting in person due to disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event.

Interested members of the public who encounter such issues and cannot physically attend a village board or town board meeting are not provided any accommodation under current law.

If elected officials can be accommodated and allowed to attend meetings remotely, that same opportunity should be made available to the public at large.

In a recent review of over 1,200 villages, towns and cities, we determined that 23% are livestreaming their meetings.

It is not difficult or expensive to livestream and post video recordings online. In some Communities, residents or government officials livestream and film board meetings using a cell phone and a tripod.

During the pandemic, with the ability to watch meetings live and to view recordings anytime the number of people following local government meetings skyrocketed.

We support providing additional funding to local governments to address any technology needs or assistance required so they can livestream and record their town meetings.

Oregon and Indiana recently passed laws requiring local governments to livestream their meetings and to post recordings online. Similar bills have also been proposed in Virginia, Mississippi, Rhode Island and Maryland.

Senator Addabbo and Assembly Member Paulin have introduced a bill S4475/A2700

This bill will require “local governments” to Live Stream meetings and post recordings online within five days and requires local governments to retain the recordings for a period of five years.

Reform #5

Require Local Government Officials To Complete Open Government Training

Since 2007, it has been mandatory for members of Planning Boards and Zoning Boards to receive at least four (4) hours of specified annual training. Members of a public authority board are also required to complete training regarding their fiduciary, financial and ethical responsibilities.

Newly-elected school board members are also required to complete training within their first year of service.

This training requires topics on the essentials of school board governance and a minimum of six hours in fiscal oversight, accountability and fiduciary responsibilities of a school board member.

Every year newly elected Judges in N.Y. attend a week-long training prior to taking the bench. Attorneys and other professionals are required to complete continuing education programs as well.

There should be a law requiring elected officials at the village, town, city, county and school board level to complete annual training regarding the Open Meetings Law and Freedom of Information Law.

Assembly Member Karen McMahan has introduced a bill (A9135) requiring 2 hours of annual training for elected or appointed municipal employees.

Reform #6

Require State Agencies To Track FOIL Requests

In 2021, Governor Hochul issued a memo requiring 70 state agencies to prepare a Transparency Plan. New York State Agencies need to go beyond just having a plan.

State agencies should also be required to complete an annual report regarding their transparency plans.

Federal agencies are required to submit an annual report to the Department of Justice.

These reports provide helpful information as to the number of FOIL requests, appeals, average response time, reasons for denials etc.

Requiring state agencies to complete an annual report will provide a great deal of useful information, which is currently not being tracked or made available to the public. It also will be more transparent in terms of how various agencies handle these requests and what they do with them.

Because State Agencies **Do Not Track** FOIL requests they receive in any way, there is no record and no one knows:

- How Many Requests Are Received Each Year
- How Many Requests Are Granted Or Denied
- What The Average Response Time Is

Senator Hoylman-Sigal has introduced a bill (S8671)

Specifically, this bill would:

- require all agencies to submit to the Committee on Open Government a log of **all** Freedom of Information Law (FOIL) requests for each year in which they received or have pending, a request for records;
- require the Committee on Open Government to publish on one webpage, all freedom of information law request logs it receives.

This is at least a first step for getting more information out to the public

Website addresses of the bills covered in the presentation

<https://www.nysenate.gov/legislation/bills/2023/S8671> – This bill will require logs of FOIL requests by all governmental agencies

<https://www.nysenate.gov/legislation/bills/2023/A9135> - Requires members of a Public Body to complete a minimum of two hours of training on NYS Open Meetings Law and FOIL

<https://www.nysenate.gov/legislation/bills/2023/S4475> – Requires public bodies to post video recordings of open meetings on their websites within 5 days of meetings/ maintain for 5 years

<https://www.nysenate.gov/legislation/bills/2023/A4429> - Constitutional Amendment for the fundamental right of the public to have access to public information/ notice of/attend public meetings

<https://www.nysenate.gov/legislation/bills/2023/A7933> – Creates Special Proceedings (Hearing officer) for all FOIL and Open Meetings Law review/file a petition for review

<https://www.nysenate.gov/legislation/bills/2023/A5357> - Provides for the award of reasonable attorneys' fees in FOIL proceedings and Open Meetings Law proceedings

The New York Coalition For Open Government Is Here to Help

www.nyopengov.org

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