

**Buffalo Niagara Coalition
for
Open Government**

**FREEDOM OF INFORMATION LAW
REPORT**

May 17, 2017

Buffalo Niagara Coalition for Open Government

The Buffalo Niagara Coalition for Open Government is a nonpartisan charitable organization comprised of journalists, activists, attorneys, educators, news media organizations, and other concerned citizens who value open government and freedom of information.

Mission Statement:

Through education and civic engagement, the Buffalo Niagara Coalition for Open Government advocates for open, transparent government and defends citizens' right to access information from public institutions at the city, county, and state levels.

Statement of Purpose:

We believe that, if government is of the people, by the people and for the people, then it should also be open *to* the people. Government exists to serve its citizens, so access to public information should be simple. Freedom of Information Laws and the New York Open Meetings Law make access to public records a right.

When government operates openly and honestly, we, the people, can hold our elected officials accountable, fulfilling our duties as an informed citizenry. The Buffalo Niagara Coalition for Open Government works to ensure that all people have full access to government records and proceedings on the city, county, and state levels. Such access fosters responsive, accountable government, stimulates civic involvement and builds trust in government.

Buffalo Niagara Coalition for Open Government

Board of Directors

Paul Wolf	President
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The following members also contributed to the completion of this report: **Nancy Correa, Karen Lyle, Stephen Lyle, Ken Foit, Jason Chow, Michael Kless, Joseph Kissel.**

Our meetings are typically held at 5:30 p.m. the last Tuesday of the month, at the Williamsville Library on Main Street. Board President Paul Wolf, Esq. can be contacted at 435-4976, or by email at paulwolf2@gmail.com. Our website is www.nyopengov.org and we have a Facebook page.

EXECUTIVE SUMMARY

New York's Freedom of Information Law

New York State's Freedom of Information Law begins with the following statement:

“The Freedom of Information Law, effective January 1, 1978, reaffirms your right to know how your government operates. It provides rights of access to records reflective of governmental decisions and policies that affect the lives of every New Yorker.”

State and local government agencies including public corporations and authorities are subject to the Freedom of Information Law.

Within five business days of receiving a FOIL request, government officials are required to make the requested information available, deny the request in writing or respond in writing acknowledging the request and providing a timeframe by which a response will be provided.

Government officials can charge up to 25 cents per page for paper up to 9 by 14 inches. Fees for copies of other sized records can be based upon the actual cost of reproduction. Records that are transmitted electronically are often done so without charge but an agency can charge for employee time spent preparing the electronic data.

Our FOIL Request

The Buffalo Niagara Coalition for Open Government evaluated the response of a Freedom of Information Law (FOIL) request to sixteen municipalities in Erie and Niagara County.

On the same date, February 13, 2017, after business hours (approximately 10:00 p.m.), each of the sixteen municipalities were sent a FOIL request by email requesting a copy of the top elected officials calendar/schedule from 2016. For Niagara County the request was made for the Chairman of the Legislature's schedule. In Erie County the request was made for the County Executive's schedule. For a City/Village the request was made for the Mayor's schedule, for a Town the request was made for the Supervisor's schedule.

A copy of the FOIL request made is below:

Please consider this a Freedom of Information Law request to obtain a copy of the Supervisor's 2016 calendar/schedule.

My preference is to obtain this information electronically, which typically does not involve a copying charge.

Thank you

Paul Wolf

Compliance with Acknowledging the FOIL Request

In most municipalities FOIL requests are sent to the City/Town Clerk. New York's Freedom of Information Law requires that government officials acknowledge a FOIL request in writing within five business days. All sixteen municipalities complied with the law by responding within five business days. As Monday February 20th was a holiday, the five business day deadline was February 22nd.

The good news is that municipalities are complying with the required response time and a majority of them, (9 out of 16) responded within two business days.

The municipalities that were sent a FOIL on 2/13/17 at 10:00 p.m. and the date they acknowledged the request are listed below:

- 2/14/17 - Amherst, Cheektowaga, Lockport (City), Niagara County, Tonawanda (Town), Wheatfield,
- 2/15/17 Lancaster (Town), Lewiston (Village), North Tonawanda
- 2/16/17 Erie County
- 2/17/17 Hamburg (Town), Lewiston (Town), Lockport (Town)
- 2/21/17 Niagara Falls, West Seneca
- 2/22/17 Buffalo

Five Elected Officials Claim They Don't Keep a Schedule

Surprisingly 1/3 of the elected officials claimed they do not keep a schedule/calendar of their government related activities, when a FOIL request was made for the information. The five elected officials are:

- Barry Weinstein, Amherst Supervisor
- Steve Broderick, Town of Lewiston Supervisor
- Mark Crocker, Town of Lockport Supervisor
- Terry Collesano, Village of Lewiston Mayor
- Robert Cliffe, Wheatfield Supervisor

Each of the five elected officials above has publicly stated that they support transparency in government. It is hard to believe that a Town Supervisor or Mayor regardless of the size of the government they lead does not keep a calendar or schedule. Either they do not have much activity going on or they simply do not want to release their information to public scrutiny. Attached at the end of this report is a copy of the email exchanges requesting the schedules of the five above named elected officials.

Citizens have a right to know what their elected officials are doing as far as meetings, appointments and events. Elected officials, unlike other governmental employees, are not required to document their work hours. Almost every part-time elected official claims they work thirty hours per week, which allows them to earn full time pensions for part-time work.

The Town of Amherst with a population of 122,000 people is the second largest municipality in the Erie/Niagara region. In 2016, Supervisor Weinstein's salary was increased from \$75,000 to \$105,000, yet Weinstein claims he does not keep a schedule regarding his job duties. In 2013, Paul Wolf, Esq. requested and received a copy of Supervisor Weinstein's schedule through FOIL. In 2017, Mr. Weinstein claims that he no longer keeps a schedule.

When running for town of Lewiston Supervisor, Steve Broderick stated "We need to promote transparency, we need to keep in touch, and we need to make sure our residents know we want input in how we operate their government."

When running for Lockport Town Supervisor Mark Crocker stated "I promise accountable and transparent government."

After being elected as Mayor of the Village of Lewiston in 2014, Terry Collesano stated "... we'll just continue doing what we have been doing: have transparency; open government; have people see what we're doing."

Mr. Cliffe has announced that he is not seeking re-election as Wheatfield Supervisor this year.

Maintaining and providing a schedule of activities when requested is an important part of transparency in government.

Timeliness in Providing Information & Cost

Other than the five elected officials who stated that they did not keep a schedule, the requested information was promptly provided by nine out of eleven municipalities, (80%). With the exception of Niagara Falls and Buffalo, every municipality was able to complete the FOIL requesting by providing information within thirty days.

As previously stated, local governments can charge twenty-five cents per page for documents provided due to a FOIL request. Many municipalities do not charge for sending information electronically. There is also not a charge for viewing documents instead of obtaining a copy. Most municipalities did not charge for responding to the FOIL, as the information was provided electronically.

Three of the eleven municipalities that provided information requested a fee, with North Tonawanda's fee being unusually high at \$106.00. A listing of the responses received by date and the fees requested are below:

Niagara County	2/14/17	No Charge
Cheektowaga	2/22/17	No Charge
North Tonawanda	3/6/17	\$106.00
Lancaster	3/6/17	No Charge
Lockport (City)	3/13/17	\$26.25
Erie County	3/14/17	No Charge
West Seneca	3/14/17	No Charge

Tonawanda (Town)	3/14/17	No Charge
Hamburg (Town)	3/15/17	No Charge
Niagara Falls	3/24/17	\$16.50
Buffalo	3/27/17	No Charge

Conclusion

The good news is that 100% of the local governments evaluated complied with the law by acknowledging the foil request within five business days. The information requested was provided within thirty days by 80% of the responding local governments. Only 25% of the responding local governments requested a fee for the information.

The fact that 33% of the local elected officials did not provide a copy of their 2016 schedule because they claimed they did not keep a schedule is disturbing. Citizens have a right to know what their elected officials are doing as far as meetings, appointments and events. Elected officials, unlike other governmental employees, are not required to document their work hours. Almost every part-time elected official claims they work thirty hours per week, which allows them to earn full time pensions for part-time work. How a Town Supervisor or a Village Mayor can carry out their elected duties without keeping a schedule is hard to imagine.

As part of its mission the Buffalo Niagara Coalition for Open Government will continue to evaluate and advocate for transparency in government.

Email Communications with Amherst Supervisor Barry Weinstein

Weinstein, Barry <BWeinstein@amherst.ny.us>

Feb
14

to me, Marjory

There is no Supervisor's calendar for 2016.



Paul Wolf <paulwolf2@gmail.com>

Feb
14

to Barry, Marjory

How is that possible? In the past I have requested and received a copy of Mr. Weinstein's schedule. He must have some way of keeping track of town related meetings and appointments.



Paul Wolf <paulwolf2@gmail.com>

Mar
14

to Barry, Marjory

I have not received a response to the email below.



Weinstein, Barry <BWeinstein@amherst.ny.us>

Mar
14

to me

There is no Supervisor's calendar for 2016.

From: Paul Wolf [mailto:paulwolf2@gmail.com]

Sent: Tuesday, March 14, 2017 10:35 AM

To: Weinstein, Barry; Jaeger, Marjory

Subject: Fwd: calendar



Paul Wolf <paulwolf2@gmail.com>

Mar
14

to Barry

There was one kept in the past, why would there not be one for 2016? How do you possibly keep track of meetings and appointments?

Emails Regarding Town of Lewiston Supervisor Schedule

Donna Garfinkel <DrGarfinkel@townoflewiston.us>

Feb
17

to me

February 17, 2017

The Town received an emailed Freedom of Information Law (FOIL) request from you dated February 13, 2017.

Your request was "*a copy of the Supervisor's 2016 calendar/schedule*".

RESPONSE: No responsive records located.

You have the right to Appeal this decision. The Town Board has designated A. Joseph Catalano, Attorney for the Town, as its FOIL appeals officer.

A written appeal may be directed to A. Joseph Catalano, 730 Main St., Second Floor, Niagara Falls, NY 14301; [\(716\) 205-0017](tel:7162050017).

Sincerely,

Donna R. Garfinkel, RMC
Town Clerk / Tax Collector - Lewiston
1375 Ridge Road
Lewiston, New York 14092
drgarfinkel@townoflewiston.us
[\(716\) 754-8213, ext. 222](tel:7167548213)

From: Paul Wolf [mailto:paulwolf2@gmail.com]

Sent: Monday, February 13, 2017 10:47 PM

To: Donna Garfinkel

Subject: FOIL Request



Paul Wolf <paulwolf2@gmail.com>

Feb
17

to Donna

I understand that the Supervisor probably does not file his calendar/schedule with the Clerk's Office but did you ask the Supervisor to provide a copy of his calendar/schedule in response to my FOIL request?

How is it possible that the Town Supervisor does not have scheduled meetings with department heads, residents, businesses, meetings regarding legal matters or the budget?



Paul Wolf <paulwolf2@gmail.com>

Mar
14

to Donna

I have not received a response to my email below.



Donna Garfinkel <DrGarfinkel@townoflewiston.us>

Mar
14

to me

Good Morning Mr. Wolf,

You have the right to Appeal the decision sent to you on February 17, 2017. The Town Board has designated A. Joseph Catalano, Attorney for the Town, as its FOIL appeals officer.

A written appeal may be directed to A. Joseph Catalano, 730 Main St., Second Floor, Niagara Falls, NY 14301; [\(716\) 205-0017](tel:(716)205-0017).

Donna R. Garfinkel, RMC

Town Clerk / Tax Collector - Lewiston

1375 Ridge Road

Lewiston, New York 14092

drgarfinkel@townoflewiston.us

[\(716\) 754-8213, ext. 222](tel:(716)754-8213)

From: Paul Wolf [mailto:paulwolf2@gmail.com]

Sent: Tuesday, March 14, 2017 10:30 AM

To: Donna Garfinkel

Subject: Fwd: FOIL Request



Paul Wolf <paulwolf2@gmail.com>

Mar
14

to Donna

I understand that I have a right to appeal, I am simply asking a question:

I never received a response to the email above.

The following email was sent to Lockport Supervisor Mark Crocker, which was not responded to:

Paul Wolf <paulwolf2@gmail.com>

May 7 (5 days ago)

to crocker

Mr. Crocker:

In February I forwarded a FOIL request seeking a copy of your 2016 calendar/schedule.

As stated in the emails below, the Town Clerk's response was that a copy of your schedule could not be located.

Does a copy of your 2016 calendar/schedule exist and can I obtain an electronic copy of it?

Paul Wolf

Judi Newbold <townclerk@elockport.com>

Feb
24

to me

Dear Mr. Wolf,

I am responding with regard to your FOIL request dated February 13, 2017, requesting a copy of the Supervisor's 2016 calendar/schedule. After a diligent search of the Town records, no responsive records were located.

You have the right to appeal this decision. An appeal should be directed to:

Lockport Town Board
6560 Dysinger Road
Lockport, NY 14094
[\(716\) 439-9520](tel:(716)439-9520)

Thank you,

Judith A. Newbold
Town Clerk
Town of Lockport



Feb
24

to Judi

I understand that the town supervisor probably does not file their schedule with the town clerk.

However was a request made to the Supervisor for his/her schedule/calendar?

How is it possible that the Supervisor does not maintain a schedule for appointments to meet with department heads, legal counsel, residents, businesses etc?

Paul Wolf

Sent from my iPhone



Paul Wolf <paulwolf2@gmail.com>

Mar
14

to Judi

I have not received a response to my email below.

The email Exchange Regarding Village of Lewiston Mayor Schedule is Below:

Amy Salada <clerk@villageoflewiston.com>

Feb
15

to me

Dear Paul Wolf,

Please consider this as an answer to your FOIL request on Monday, February 13, 2017 at 10:41 PM.

The Mayor's schedule changes on a daily basis. He is not held to regular office hours as his position as Mayor to our Village is a twenty four seven requirement. He sets up his own meetings, and he is not required to keep a schedule other than to reside over the Village Board meetings held every third Monday of the month unless there is a holiday then it is the third Tuesday of the month. A work session is held every first Monday of the month unless there is a holiday then it is the first Tuesday of the month. The Village of Lewiston does not hold work sessions in June, July, and August. The Mayor currently residing typically spends Mondays in the Village office. There is no retained record of the Mayor's meetings in 2016.

Respectfully,

Amy Salada, Clerk Treasurer
Village of Lewiston
145 N. 4th St., P.O. Box 325
Lewiston, NY 14092

Phone: [\(716\)754-8271](tel:(716)754-8271)
FAX: [\(716\)754-2703](tel:(716)754-2703)
E-mail address clerk@villageoflewiston.com

From: Paul Wolf [mailto:paulwolf2@gmail.com]
Sent: Monday, February 13, 2017 10:41 PM
To: Amy Salada
Subject: FOIL Request



Paul Wolf <paulwolf2@gmail.com>

to Amy

Surely the Mayor must have scheduled meetings of some sort regarding the budget, legal matters, meeting with businesses and residents and there must be some record of that?

The public has a right to know how elected officials spend their time and whom they meet with. I am disappointed in the Mayor's unwillingness to be transparent in his elected duties. He must have a calendar but for whatever reason he is unwilling to share it.

I did not receive a response to the email above.

Feb
15

Emails regarding Wheatfield Supervisor Cliffe's Schedule

Kathy Harrington <kathyh@wheatfield.ny.us>

Feb
14

to me

Dear Mr. Wolf:

Re: Freedom of Information Request – Supervisor's 2016 calendar/schedule

Please be advised no such records exist. Supervisor Cliffe does not maintain a calendar/schedule. There are Town Board meetings, Planning Board meetings, and Focus Group meetings which Supervisor Cliffe attends and those schedules are available on the Town website as well as the agendas and minutes from the meetings (I have attached a copy of the Town Board meeting schedule).

Please do not hesitate to contact me by email or at 694-6441 should you have any questions or would like me to provide additional meeting schedules.

Sincerely,

Kathleen Harrington-McDonell

Kathleen Harrington-McDonell
Town Clerk

From: Paul Wolf [mailto:paulwolf2@gmail.com]

Sent: Monday, February 13, 2017 10:48 PM

To: KathyH@wheatfield.ny.us

Subject: FOIL Request

Attachments area



Paul Wolf <paulwolf2@gmail.com>

Feb
14

to kathyh

How is it possible that the Supervisor does not maintain a calendar/schedule? He must at times have scheduled meetings with department heads, residents, business people, legal staff, budget meetings etc.

I never received a response to my last email to the Wheatfield Town Clerk. I contacted Supervisor Cliffe directly and he explained the following regarding his schedule/calendar:

rbcliffe@aol.com

Feb
21

to me

Paul,

I keep a desk calendar at work at Helmel Engineering. Each month I rip it off and toss out the old.

In my cell phone are those meetings where I took the time to make an entry, a reminder. But I don't keep any written record. If you wish to come out and look at the cell phone, you may. It is a phone supplied by the taxpayers so it is available if you wish.

Bob

I asked the Supervisor to print out and forward a copy of the meetings on his cell phone, but he replied that he did not know how to do so. The Supervisor offered to have me come look at his phone.