

New York Coalition



For Open Government, Inc.

2023 Legislative Priorities

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About

The New York Coalition For Open Government (NYCOG) is a nonpartisan, nonprofit charitable organization comprised of journalists, educators, attorneys, activists, news media organizations, and other concerned citizens who value open government and freedom of information.

Mission

Through education and civic engagement, the NYCOG advocates for open, transparent government and defends citizens' right to access information from public institutions at the local, 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 also should be open to the people

Government exists to serve its citizens. Access to public information should be simple.

The New York State Freedom of Information Law and the 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 NYCOG works to ensure that all people have full access to government records and proceedings on the local, county, and state levels. Such access fosters responsive, accountable government, stimulates civic involvement, and builds trust in government.

Legislation Preamble

The Freedom of Information Law (FOIL), which became effective on September 1, 1974, was one of the first of its type in the nation nearly 50 years ago, requiring government agencies to make available to the public certain types of documents within their possession.

A little over three years later, on January 1, 1978, the law, in essence, was reversed in scope, making all government documents open to the public, except for those which specifically are exempted by law.

In the meantime, on January 1, 1977, the Open Meetings Law (OML) became effective, setting forth the requirements for public bodies to follow in order to provide access to the public to observe their governments in action.

Public Officers Law – Article XI – Freedom of Information Law

Legislative Declaration

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible.

The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality. The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

Public Officers Law – Article XII – Open Meetings Law

Legislative Declaration

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it.

In the nearly half-century history of these statutes, many issues have been encountered with government entities denying access to both documents and meetings.

In quarterly surveys conducted by the New York Coalition for Open Government, NYCOG has found repeatedly that a majority of government entities fail to follow the various laws which do exist and, in some instances, ignore repeated attempts to obtain compliance.

Although some corrective legislation has been approved by the State Legislature and Governor over the years, much more needs to be done to help ensure compliance with the legislative declarations already set forth and to protect the public's right to know what their governments, leaders, and public agencies are doing.

Enforcement of Open Government Laws

In New York State, unlike some of its counterparts throughout the nation, the only way to enforce violations of the open government laws and hold public bodies accountable is for a private citizen to obtain legal assistance, at his or her own expense, to secure a court determination to require compliance.

Instead of this cumbersome and expensive process, the NYCOG proposes:

Open Government Laws Enforcement Reforms

- **Restructure the New York State Committee on Open Government** to make it more representative of both government and citizen interests, with the following 11 members:
 - Lieutenant Governor or a representative
 - Secretary of State or a representative
 - The Attorney General or a representative
 - The State Comptroller or a representative
 - A representative of the majority and minority in both houses of the Legislature.
 - A representative of local governments, appointed by the governor
 - A representative of the news media, appointed by the governor
 - A representative of open government groups, appointed by the governor
- Empower, direct, and fund the Committee on Open Government to hear and determine appeals from the public for violations of both the FOIL and OML through an administrative process, including award of attorney fees for violations, with such determinations being subject to further review by the courts, as appropriate.
- Authorize and empower the State Attorney General to bring actions against public agencies and officers for continuing or egregious violations of the laws, to include individual and corporate civil and criminal penalties. Attorney Generals in other states have created Open Government Units and mediation programs to address open government issues. We need the New York Attorney General to undertake a similar approach.

Freedom of Information Law Reforms

Establish minimum acceptable standards for letting the public know about FOIL and OML provisions and how to appeal negative government decisions.

- Require prominent placement of a public bulletin board at the primary inside public entrance of each building owned and used by a public body and inside the public reception area for any facilities rented or otherwise secured by a public body for the purpose of transacting public business.
- Prominently mark the Open Government area on a public bulletin board in which such public notices are provided and updated.
- Post a list of public body documents which are readily available for public inspection without a FOIL request due to their use by public officials and employees on an ongoing or patterned basis.
- Provide a notice of the process for FOIL and OML appeals.
- Provide a notice of website, Facebook or other internet locations at which public agency business or promotion of such governmental entity is presented.
- Prominently display on the front page of a public agency website, under the title of Open Government, a link to all FOIL and OML information.
- Prominently display on Facebook and similar social media accounts a link to all FOIL and OML information.
- Require documents which are requested by the public on a more than three times a year basis to be posted online.

Expand the FOIL to include nonprofit organizations and advisory committees established by a public body.

Processing of FOIL requests

- Require public bodies to acknowledge receipt of online FOIL requests within 24 hours of submission by a requester, to include the name, email and telephone number of the individual responding to the FOIL request. If the recipient of a FOIL request is the incorrect person to receive such request, the response shall include the name, public agency, email address and telephone number of the individual to which such request has been forwarded. Any forwarding times shall be included as part of the time to respond to a FOIL request.

- Clarify that public bodies have five business days from receipt a FOIL request to provide the FOIL information requested. If the response is unable to be provided within five days due to a reasonable and necessary hardship, such delay shall be made know immediately to the requester, together with the specific reason for the delay and the anticipated response date when the information will be provided,. Such response date shall not to be more than 20 business days from the date of the request, or a lesser time if such information becomes available earlier. If additional time is required beyond the initial 20 business days, the public body then may notify the requester one or more times as to anticipated delivery within the following 20 business days period, each time providing a reasonable and necessary cause for the delay. All delays in responding to a FOIL request shall be based on availability of a record and not on inaction of a public body in supplying it.
- Require that a suitable location be provided to requesters of public records, including those with disabilities, for on-site inspection, copying or photographing of such records. Suitable space shall include, at minimum, a tabletop at least six feet by two feet, two chairs, and appropriate lighting.
- Clarify that the requester shall be able to determine whether FOIL documents shall be delivered electronically or through in-person inspection.
- Clarify that there is no cost for electronically-delivered documents and it is the responsibility of the public agency to notify the requester in advance and to receive agreement of any authorized costs for paper copies.

Additional FOIL Reforms

- Clarify that emails, texts and other forms of electronic communications on both government and private accounts are subject to the FOIL.
- Clarify that emails, texts and other forms of electronic communication related to public business may not be deleted but must be retained in accordance with public records retention requirements.
- Prohibit use by any public official or employee of using encryption programs and apps that result in deleted messages or which cannot be readily converted to plain text by the public body in response to a FOIL request.
- Clarify that all documents are discoverable even though portions may be redacted for authorized reasons.
- Require that local elected officials post their annual financial disclosure forms online.
- Require acceptance of blanket FOIL requests for future documents for which requests otherwise would need to be made on a repetitive basis including, but

not limited to, daily, weekly or monthly reports of a public body or department, minutes of public bodies, or legal notices.

- Require that state economic development grants be available in an online searchable database.
- Apply the FOIL to the State Legislature which currently is exempt under the law.
- Require state agencies to complete an annual report where they document the number of FOIL requests received, average response times, number of denials and reasons for denials etc.
- Require elected officials to complete four hours of annual training on the Open Meetings Law and Freedom of Information Law.

Open Meetings Law Reforms

Eliminate Open Meetings Law loopholes which allow public bodies to close their doors to public business which should be discussed and determined in public, including:

- Political party caucuses conducted primarily for the purpose of discussing public, versus party, business.
- Meetings with legal counsel other than for the purpose of discussing business which specifically is subject to exemptions for executive sessions pursuant to the OML .
- Meetings for which no specificity is provided as they relate to executive session exclusions.
- Interviews of individuals being considered for vacancies in elected public positions.

Include all advisory and similar committees, along with other groups appointed by a government body, to be subject to the OML.

Conduct of Meetings

- Require agendas to be provided for all actions to be undertaken by a public body at a meeting.
- Require public bodies to entertain public comment which is reasonable in length and not less than three minutes per person in regard to all agenda or other items which a speaker wishes to bring to the attention of a public body. Public comments shall take place at the beginning of a meeting and prior to public body actions on any amendments to agenda items. Any time limits shall not govern comments at public hearings required in regard to any matter before a public body.

- Require meeting agendas and all documents which are to be discussed at a meeting to be posted online and on a public agency's public bulletin board at least 72 hours prior to a meeting, excluding weekends and holidays.
- Require minutes of all meetings of public bodies at which recommendations for action are being made to the same or different body to be available as part of the published agenda items posted for the subsequent meeting or meetings at which action is taken.
- Require public bodies maintaining Facebook or other social media accounts to post notices of meetings, including a link to the notice of the meeting on its website.
- Require public bodies to maintain an email list of individuals who wish to obtain notice of meetings and items to be discussed and to notify those individuals of such meetings, consistent with the public notices time frames.
- Require public bodies to maintain a calendar of upcoming meetings of public bodies on the front page of its website under a Calendar listing, with links to agendas.
- Require public bodies to receive emails and printed correspondence about agenda items and note them as correspondence on the agenda. Notation of any correspondence received after publication of the agenda shall be added to the agenda correspondence verbally at a meeting and noted as part of the minutes of the meeting. Public comments shall be summarized and documented as part of meeting minutes.

Video livestreaming of meetings.

- Require video livestreaming of meetings of public bodies, except when a public body doesn't have internet service available for use at a meeting site which is capable of livestreaming such proceedings, and subject to the following:
 - Provision for live public comments and video must be made through both social media platforms and telephone connections.
 - Members of the public shall not be required to identify themselves in order to comment.
 - Livestreams must be posted to a public body's website within 24 hours of their recording.
 - Livestreams must be retained for at least five years.
 - Livestreams may not be substituted for minutes of meetings.

- If a public body enters into an executive session, the livestream must be re-started when the public body re-enters into public session.
- Require that an executive session expected to last more than 15 minutes shall be conducted at the end of a meeting of a public body.
- Require that all actions taken by a public body by general agreement or consent in an executive session, shall be recorded in the official minutes of the public body.
- Require written meeting minutes to be posted online within 14 days of a public meeting and seven days of an executive session, except that the posting of both shall occur before any notice is given of a subsequent meeting at which resulting action is to be taken.