

Buffalo Niagara Coalition



for Open Government, Inc.

FREEDOM OF INFORMATION LAW
REPORT

October 18, 2019

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

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Our meetings are typically held at 6:30 p.m. the first Thursday 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.

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.

Each of the sixteen municipalities were sent the following FOIL request below by email on July 22, 2019.

Please consider the following a Freedom of Information Law (FOIL) request.

Please provide me with an electronic copy of the following emails sent from or to the top elected official from your municipality such as the County Executive, Mayor or Town Supervisor:

1) All emails and text messages sent to your top elected official by elected officials from your municipality (such as legislators, councilmembers, board members) from June 21, 2019 until July 19, 2019;

2) All emails and text messages sent by your top elected official to elected officials from your municipality, (such as legislators, councilmembers, board members) from June 21, 2019 until July 19, 2019.

This request includes emails and text messages sent from or received via a government computer/phone or from/to a personal computer/phone. I am only seeking emails and text messages that relate to governmental business.

*Paul Wolf, Esq.
President
Buffalo Niagara Coalition for Open Government*

Compliance with Acknowledging a 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. Thirteen out of the sixteen municipalities complied with the law by acknowledging our request within five business days. The City of Buffalo, City of North Tonawanda and the Town of Clarence did not respond within five days as required by law. The City of Buffalo responded nine days after our FOIL request. On August 12, 2019, a follow-up email was sent to the Town of Clarence and on August 14, 2019, a response was received denying our FOIL request.

The North Tonawanda Clerk Matthew Parish has not responded to our July 22, 2019, email or a follow-up email sent August 11, 2019. A letter was sent to Mr. Parish by regular mail on August 29, 2019 and by fax on August 29, 2019. In addition to these written communications Paul Wolf, Esq. as President of the Buffalo Niagara Coalition for Open Government, contacted Mr. Parish by telephone on September 27, 2019 at 12:15 pm and left a voice message for Mr. Parish. None of the emails, letters or telephone call have been responded to by Mr. Parish, which is incredible.

We are calling upon Arthur Pappas as the Mayor of North Tonawanda to suspend or remove Matthew Parish as the City Clerk. Under the North Tonawanda City Charter Article III, Section 3.004, the Mayor has the authority to remove the City Clerk for incompetency, misconduct in office, or neglect of duty.

The failure of Mr. Parish to respond to a FOIL request as required by New York State law is unacceptable and should be appropriately addressed by the Mayor. Copies of the above mentioned communications to Mr. Parish are attached at the end of this report.

The number of business days it took each municipality to acknowledge the FOIL request:

Same Day - Amherst, Town of Lancaster, Town of Lockport, Town of Lewiston

One Day – Erie County Clerk, Cheektowaga, Town of Tonawanda,

Two Days – Wheatfield

Three Days – Niagara County, Town of Hamburg,

Four Days – West Seneca, Niagara Falls, City of Lockport,

Nine Days - Buffalo

Twenty-Three Days After a Second Request – Clarence

No Response – North Tonawanda

Timeliness in Providing Information

Same Day – Amherst Town Clerk provided his emails (19 pages)

16 Days – West Seneca (provided 2 emails)

18 Days – Town of Lancaster (provided 35 emails)

32 Days – Town of Tonawanda (provided 10 pages of texts & 26 pages of emails)

45 Days – Niagara Falls (provided 4 pages of emails and 5 pages of texts)

51 Days – Amherst Town Board Members (provided emails)

52 Days – City of Lockport (Provided 36 pages of texts and 10 pages of emails)

53 Days – Erie County Clerk (email)

65 Days – Cheektowaga (provided 16 pages of emails)

No Information Provided 88 Days After FOIL Request

North Tonawanda, Buffalo, Niagara County, Wheatfield, Town of Hamburg (requested \$600 to complete).

Denial of Request

While the information could have been provided quicker, to their credit seven municipalities at least provided emails/text messages as requested. Three municipalities refused to provide any information on the basis that the information requested was an inter-agency communication which is exempt from disclosure under New York's Freedom of Information Law. Inter-agency communications can be withheld as a legitimate FOIL exemption. We appreciate that most municipalities did not withhold the information. The municipalities that refused to provide their emails and text messages were: Town of Lockport, Town of Lewiston and the Town of Clarence.

Cost Required to Obtain Information

No Charge, Info Sent by Email – Amherst, West Seneca, Town of Tonawanda, Niagara Falls, City of Lockport, Town of Lancaster, Erie County, Cheektowaga.

Demand for Payment – The Town of Hamburg requested payment of \$600 to provide copies of their emails and text messages. An outrageous figure, which was not paid. It should be noted that the Town of Hamburg was the only municipality to request payment to provide electronic documents, which every other municipality provided free of charge.

Conclusion

The good news is that 13 out of 16 of the local governments evaluated (80%) complied with the law by acknowledging our foil request within five business days. Eight municipalities provided the information requested in our FOIL, for a success rate of 50%. Of those municipalities that did provide information, it took an average of 33 days to complete the request.

Three municipalities (20%) denied our request on the basis that the information requested was exempt under the Freedom of Information Law as an inter-agency communication.

Five municipalities, eighty-eight days after our request, have not provided any information (30%).

The lack of Response by the North Tonawanda Town Clerk Matthew Parish to the Buffalo Niagara Coalition for Open Government FOIL request, which was sent by email, letter, fax and a telephone message is completely unacceptable. Mr. Parish has neglected his duty as the records access officer for the City of North Tonawanda and he should be held accountable for his failure to comply with New York State law.

As always, the Buffalo Niagara Coalition for Open Government, hopes that this report will be viewed as constructive criticism and that the local government officials from the sixteen municipalities reviewed will take steps to improve how they process and respond to FOIL requests.



Paul Wolf <paulwolf2@gmail.com>

FOIL Request

Paul Wolf <paulwolf2@gmail.com>

Mon, Jul 22, 2019 at 10:04 AM

Bcc: "Ball, Timothy" <tball@ch.ci.buffalo.ny.us>, "Zeplowitz, Jeffery" <jzeplowitz@amherst.ny.us>, "FOIL, CountyClerk" <ECCOFOIL@erie.gov>, townclerkwebmail@tocny.org, Jackie Felser <jfelser@twsny.org>, "Greco, Marguerite" <mgreco@tonawanda.ny.us>, Hamburg Town Clerk <townclerk@townofhamburgny.com>, Judi Newbold <townclerk@elockport.com>, "<rpasceri@lockportny.gov>" <rpasceri@lockportny.gov>, Diane Terranova <DTerranova@lancasterny.gov>, mattparish@northtonawanda.org, Kathy Harrington <KathyH@wheatfield.ny.us>, Donna Garfinkel <drgarfinkel@townoflewiston.us>, Nancy Metzger <nmetzger@clarencen.ny.us>, Lisa.Vitello@nigarafallsny.gov, Maryjo.Tamburlin@niagaracounty.com

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Paul Wolf, Esq.
President
Buffalo Niagara Coalition for Open Government



Paul Wolf <paulwolf2@gmail.com>

FOIL Request

Paul Wolf <paulwolf2@gmail.com>
To: mattparish@northtonawanda.org

Sun, Aug 11, 2019 at 10:51 AM

Mr. Parish:

On July 22, 2019, I sent the FOIL request below to you and have not received any response.

Please consider the following a Freedom of Information Law (FOIL) request.

Please provide me with an electronic copy of the following emails sent from or to the top elected official from your municipality such as the County Executive, Mayor or Town Supervisor:

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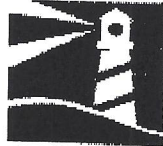
Paul Wolf, Esq.
President
Buffalo Niagara Coalition for Open Government

TRANSMISSION VERIFICATION REPORT

TIME : 08/29/2019 12:41PM
NAME :
FAX :
TEL :
SER. # : U64463F7N229876

DATE, TIME	08/29 12:41PM
FAX NO./NAME	6958557
DURATION	00:00:20
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

Buffalo Niagara Coalition



for Open Government, Inc.

Advocating for timely access to information & meaningful citizen participation

www.nyopengov.org

August 29, 2019

Matthew Parish
North Tonawanda City Clerk
216 Payne Avenue
North Tonawanda, NY 14120
Fax No. 695-8557

Re: Freedom of Information Law Request

Dear Mr. Parish:

On July 22, 2019, I forwarded a Freedom of Information Law request by email requesting information as explained in the enclosed email. I did not receive a response to that email. I sent the email a second time on August 11, 2019. To date, I have not received an acknowledgment of my FOIL request. I am now forwarding the request by regular mail and fax.

I look forward to your prompt response.

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August 29, 2019

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North Tonawanda City Clerk
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North Tonawanda, NY 14120
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I look forward to your prompt response.

Sincerely,

Paul W. Wolf, Esq.
President
Buffalo Niagara Coalition for Open Government
392 Evans Street
Williamsville, New York 14221
(716) 435-4976