



New York Coalition For Open Government

Advocating for timely access to information & meaningful citizen participation
www.nyopengov.org

FOR IMMEDIATE RELEASE

Tuesday, March 12, 2024

Contacts:

- Axel Ebermann, NY Coalition for Open Government, (917) 478-3456, axel.ebermann@nyopengov.org
- Rachael Fauss, Reinvent Albany, (518) 859-5307, rachael@reinventalbany.org
- Sarah Roth, Surveillance Technology Oversight Project, sarah@stopspying.org

Press Conference

Date: Tuesday, 03/12

Time: 10:30 am

Where: Albany - New York State Capitol, fourth-floor lobby outside the Senate Chambers.
If you cannot attend in person, we plan to either livestream the event or upload a video shortly afterwards on our Facebook Page at: <https://www.facebook.com/nyopengov.org>

Transparency Advocates Urge Legislature and Governor to Strengthen Freedom of Information Law for Sunshine Week

More than 20 New York transparency advocates sent a Sunshine Week letter to Governor Hochul and the Legislative Leaders urging them to strengthen New York's Freedom of Information Law (FOIL). The groups also rallied in Albany with legislative champions to highlight four bills that bolster open records and transparency in New York.

According to advocates, Sunshine Week is the perfect time to confront and acknowledge the challenges facing the Freedom of Information Law (FOIL) in New York.

The groups say they are sounding a public alarm because while transparency is essential for a functioning democracy, FOIL is broken in New York. State and local agencies routinely take months or years to provide public records requested via FOIL. Not only are agencies incredibly slow to provide records, they often provide a fraction of the records requested and contrive endless excuses – basically daring the public to go to court.

The statistics tell the story of New York’s transparency crisis at the state and local levels:

- Only 31% of state agencies provided FOIL data in their 2022 Transparency Plans.
- 47% of state agencies failed to provide implementation timelines in their plans.
- Most state agencies take more than the 20 days required by the FOIL to provide requested records.
- 72% of towns do not post meeting documents online.
- 75% of planning boards do not post meeting documents online.
- 35% of villages did not even post a meeting agenda.
- Only 25% of villages posted meeting minutes online.
- 39% of counties failed to acknowledge FOIL requests within the required five business days.
- 73% of election boards failed to acknowledge requests within five business days.
- 28% of counties never acknowledged requests.

References:

Town Boards Across New York State Are Violating the Open Meeting Laws, NY Coalition for Open Government (2022)

Opening New York 2022: Rating 70 State Agency Transparency Plans, Reinvent Albany (2022)

New York Has An Open Government Crisis, NY Coalition for Open Government (2023)

Listening to FOIL 2024: Lessons from Six NYS Agencies, Reinvent Albany (2024)

Thankfully, there are four key bills in the NYS Legislature that will strengthen FOIL:

1. FOIL Timeline Act (A8586 (Raga) / S8128 (Skoufis))

New York state agencies frequently undermine the FOIL process through near-endless delays. This bill will speed up the FOIL process by deeming requests constructively denied if the agency does not acknowledge requests within five business days. The bill also makes 30 days the maximum amount of time an agency may take to deny requests, and 60 days the maximum to provide them. A

firm cap at 60 days will allow requestors to get documents and, if necessary, appeal and sue within a reasonable timeline.

Currently, requests are deemed “constructively denied” if an agency does not respond in a timely manner; however, as long as a judge thinks response delays are “reasonable,” an agency will not be held to have violated the law. This creates perverse incentives for agencies to short-staff their FOIL response teams and otherwise give themselves reasons to delay. In practice, while some agencies respond to requests promptly, others routinely delay six months or even a year or more before giving an initial response. By the time a requestor gets records, if they ever do, the records are often stale and unable to provide needed transparency.

2. FOIL Reporting Act (S8671 (Hoylman-Sigal))

It is impossible to assess the state of NYS FOIL because agencies are not required to publicly report basic information about how they deal with the FOIL requests they are receiving. The public must literally FOIL the agency FOIL logs to analyze the state of FOIL. This bill requires agencies to annually report FOIL data such as when each request was received, how it was resolved, and more to the Committee on Open Government. Publishing this data will show legislators and the public which agencies are complying with FOIL and which are shirking it. Access to this data is essential to keep implementation of our state’s core transparency law – FOIL – transparent. If our systems of transparency are themselves opaque, they are unlikely to be effective.

3. Limiting the Commercial FOIL Exemption Act (S3257 (Hoylman-Sigal))

Currently, if a business submits proprietary information to state or local governments, it can have that information exempted from public disclosure indefinitely. In other words, the business can keep what should be public records from ever being released. Functionally, this prevents taxpayers from being able to see who is getting their money and what goods and services vendors are providing. This bill will require businesses to reapply for the exemption every three years, preventing businesses, vendors, and other third parties from permanently exempting records submitted to the government from disclosure. The bill thereby closes a gaping loophole in the law that allows agencies to keep dealings with corporations secret under the false pretense that disclosure of any portion of any of the dealings would somehow hurt the company’s business interest.

4. FOIL Attorneys’ Fees

Thanks to a 2017 law, when a court decides that a state or local agency had no reasonable basis for denying records, the agency is now required to reimburse the requestor’s fees. While this a major step forward, there is much room for improvement – agencies routinely fail to provide records yet the prohibitive costs of Article 78 litigation means only a tiny handful of lawful FOILs requests are

upheld in court. We urge the Legislature to look at bills that would improve this process, such as [A5357-A \(Steck\)](#) / [S5801-A \(Liu\)](#).

Conclusion:

New Yorkers should be able to use the Freedom of Information Law (FOIL) to access the records they are entitled to—without experiencing delays, runarounds, or excessive costs. These bills are urgently needed to ensure that FOIL fulfills its intended purpose. The current situation is untenable, characterized by indefinite denials, costly litigation, and the misuse of exemptions that prevent access to government information.

In honor of Sunshine Week, the groups urged the Senate and Assembly to pass, and the Governor to sign, legislation strengthening the Freedom of Information Law.

[See the letter here](#)

