

NEW YORK COALITION
FOR
OPEN GOVERNMENT



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

www.nyopengov.org

Our Mission

Through advocacy, education, and civic engagement, the New York Coalition for Open Government promotes transparent government and defends citizens' rights to access information from public institutions at the village, town, city, county, and state level.

Who We Are

We are a non-partisan, non-profit organization comprised of journalists, activists, attorneys, educators, news media organizations, and concerned citizens who value Open Government.

What We Do

We educate the public regarding their rights under the Open Meetings Law and the Freedom of Information Law through training programs. We monitor how government officials are complying with the law. We bring like-minded individuals together from all across NY State to join forces and share information so that you do not have to stand alone to fight for open government in your community. NY State needs stronger open government laws, and we have a lot of ideas on how to improve things. We have gotten a few bills passed in Albany and are working on others.

Volunteers Welcome

Volunteers are always welcome to support our many active programs. If you want to make a difference in your community by joining like-minded people – we would love to have you.

Our meetings occur online via Zoom. Check out our website at www.nyopengov.org. Follow us on Facebook and Twitter. For more info, contact Coalition President Paul Wolf, Esq. at paulwolf2@gmail.com.

Your Open Meetings Law Rights

The New York State Open Meetings Law begins with the following:

“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.”

Who Does The Law Apply To? — The Open Meetings Law applies to public bodies such as Village Boards, Town Boards, City Councils, County Legislatures, Board of Supervisors, School Boards, Planning Boards, Zoning Boards, Industrial Development Agencies, and other public authorities.

Public Notice — If a meeting is scheduled a week or more in advance, notice of the meeting must be provided at least 72 hours prior to the meeting. If a meeting is scheduled less than a week in advance, then notice must be provided as best as practicable.

Meeting Documents — At least 24 hours prior to a meeting, any documents scheduled to be discussed on the meeting agenda, which board members have received, should be posted online for the public to see. You should not be in the dark about what your elected officials are discussing and voting on.

Meeting Minutes — No later than two weeks after a meeting, minutes or a recording of the meeting must be posted online. There is no requirement to approve minutes, and draft minutes can be posted.

Executive Sessions — A public body has the right, in very limited and specific circumstances, to discuss certain issues in private. An executive session should not be scheduled in advance there should not be an agenda item that states “Executive Session”. For an executive session to occur, a motion must be made in public that states a specific reason for the members to meet in private. The motion must be seconded, voted on, and approved by a majority of the board.

You have a right to know the specific reason the board is having a private discussion. Here are examples of common improper motions:

- “I move to go into executive session to discuss litigation or a pending legal matter.” This motion is not specific enough under the law, as you have the right to know the name of the litigation being discussed.
- “I move to go into executive session to discuss a personnel matter.” This motion is not specific enough under the law. While the name of a person does not have to be disclosed, you should be informed if the discussion is regarding hiring someone, firing someone, disciplining someone, etc.
- “I move to go into executive session to discuss union contract negotiations.” This motion is not specific enough under the law as the name of the collective bargaining union should be stated so that you have some idea as to what union they are discussing.
- A motion to discuss “the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation” is improper as there are 14 different reasons stated in this motion and the public has no idea what the reason is for the executive session. A correct motion would be a motion to discuss “the termination of a particular person” or to discuss “the appointment of a particular person.”

Just because a body has a right to go into an executive session does not mean it must. Nothing prevents a board from discussing the above items in public if they wish to do so.

Public Comment — Shockingly, you do not have a right to speak at government meetings. Many places provide an opportunity to speak, but they are not required to do so. There is nothing in the law that requires you to state your name and address in order to speak, but many places have rules that require you to do so. You should be allowed to speak on agenda and non-agenda items, but some places will only allow you to speak on agenda items. Board members are not obligated to respond to your public comments or questions. It is important that you make your point as brief and focused as possible without engaging in personal attacks or insults.

Committees — Many committees are not required to follow the Open Meetings Law. If all the members of a committee are elected officials, then the committee must follow the Open Meetings Law. If at least two members of a committee are elected officials, then a committee must follow the Open Meetings Law. If a committee only has the power to provide advice or recommendations to the full board, then it is considered an advisory committee, not required to follow the Open Meetings Law. Although an advisory committee is not required to follow the Open Meetings Law, the committee can voluntarily comply with the Open Meetings Law, or a local government can adopt rules that require all committees to comply with the law.

Political Caucus — The worst loophole in the law is that board members of the same political party can meet in private to discuss political party and public business. No public notice is required for these caucus meetings, and there are no meeting minutes. During these meetings, staff and others can be invited to attend as long as only board members of the same political party are in the room. We think the ability to discuss public business in private caucus meetings should be eliminated as it completely guts the Open Meetings Law.

Violations Of The Law — If your local government is violating the Open Meetings Law, you should try to interest a local news reporter in doing a story. Sometimes media attention will embarrass government officials into complying with the law. The only other option you have is to hire an attorney to file an Article 78 lawsuit. Don't be shy about pointing out violations you see during your public comment time when you can speak to the board.

Your Freedom of Information Law Rights

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

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.

Records — All government records are presumed to be available to the public. You have the right to inspect or obtain copies of reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, recordings, videos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

Records Access Officer — Every government entity is supposed to have a designated Records Access Officer responsible for processing Freedom of Information Law (FOIL) requests. Typically, the Village Clerk, Town Clerk, or City Clerk is the Records Access Officer. In many cities and counties, you have to file your request with a department head.

How To File Your Request — You can file a FOIL request by sending an email to your local clerk or to a specific department head. Be as specific and brief as possible regarding what records you are requesting. Your request should be a short, focused paragraph/page and not multiple pages long. Some local governments like to encourage you to use their FOIL request form, which may be helpful, but you are not required to use their form. If you would like a template to assist you with drafting your request, send an email to paulwolf2@gmail.com.

Time Limits —

- Within five business days, your request should be acknowledged in writing by whomever you sent it to.
- The government has 20 business days from acknowledgment to provide information which can be extended for reasonable circumstances with a deadline date provided.

Your Right To Appeal — If, after 30 calendar days, your request has been ignored or if you have not received the documents requested, you can file an administrative appeal. Every local government has a designated FOIL Appeal Officer, which your local clerk should be able to provide you with contact information for.

In many municipalities, the Appeal Officer is the town attorney, city attorney, county attorney, and sometimes the town supervisor. To appeal, you can simply forward an email to the Appeal officer stating that 30 days have elapsed, and your FOIL request has been ignored, your request denied in full or part, or that the deadline for your request keeps getting pushed back or is unreasonably too far away. The Appeal Officer has ten business days to respond to your appeal. Sometimes filing an appeal helps move your FOIL request forward. If you would like an appeal template, send an email to paulwolf2@gmail.com.

Your Right To Sue — If your appeal is unsuccessful or your request has simply been ignored, you can hire an attorney to file what is called an Article 78 lawsuit. You only have 120 days from the date of your appeal denial or the date of your FOIL request if your request has been ignored to file an Article 78 lawsuit. This is a very short time period, so you really have to be watching the clock.

Exemptions — While government records are presumed to be open and available to the public, there are items that are exempt from the law and which do not have to be disclosed. Some of the more common reasons your FOIL request may be denied are as follows:

- if disclosed, would constitute an unwarranted invasion of personal privacy;
- if disclosed, would impair present or imminent contract awards or collective bargaining negotiations;
- are compiled for law enforcement purposes and which, if disclosed, would interfere with law enforcement investigations or judicial proceedings;
- if disclosed, could endanger the life or safety of any person;
- are inter-agency or intra-agency materials which are not: i. statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii. final agency policy or determinations; or iv. external audits, including but not limited to audits performed by the comptroller and the federal government.

Inter-agency materials are a big loophole, which oftentimes is the reason for denying requests for internal emails.

Fees — For copying and providing hard copy documents to you, a fee of 25 cents per page can be charged to you. If you want to avoid paying the fee, you can request just to view the records. You can also request to receive your records electronically, for which a fee is typically not charged. If you request a large amount of information, your records may have to be placed on a computer disk or thumb drive, and you can be charged the cost of the disk or thumb drive.

There is what is called the 2-hour rule. If your request takes more than 2 hours of copying, a local government, instead of charging you 25 cents per page, can charge you the hourly rate of the lowest level employee for the work involved with your FOIL request.

They cannot charge you for their search or reviewing time, only the copying time. If they utilize an outside contractor to do this, the work can be billed the cost of the outside contractor.

To avoid any fee disputes, it is a good idea to state a fee limit in your FOIL request, such as “if the fees involved in completing your request are estimated to be more than \$20, please advise before completing the request”.

Additional Resources

- The New York Coalition For Open Government – www.nyopengov.org, you can join and support the Coalition at the cost of \$30 per year by going to this link <https://givebutter.com/NYCOGMember>
- The New York Committee on Open Government – www.opengovernment.ny.gov, where you can view the Open Meetings Law, Freedom of Information Law and also access many opinions by the Committee, which you view by subject or search by keywords.
- www.muckrock.com, a great resource for FOIL requests, as you can view requests done by others; they also provide templates and training resources.