



COMMITTEE ON OPEN GOVERNMENT

SEPTEMBER 2014

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40 YEARS OF

FOIL



FREEDOM OF INFORMATION LAW

AND THE COMMITTEE ON OPEN GOVERNMENT

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COMMITTEE MEMBERS:	CESAR A. PERALES	COLLEEN KAVANAGH	EXECUTIVE DIRECTOR:
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ROBERT J. DUFFY	M. JEAN HILL	FRANKLIN H. STONE	
ROBERT L. MEGNA	HADLEY HARRIGAN	STEPHEN B. WATERS	

Note: Prior to enactment of Freedom of Information Law in 1974 and Open Meetings Law in 1977, there was no general public right of access to government records or meetings of government bodies.

1973

February 1, 1973 – Assemblyman Taylor introduced an act to amend the Public Officers Law in relation to public access to records of state and local agencies, and to repeal §66 and §66(a) of such law.

1974

May 29, 1974 – Governor Malcolm Wilson approves legislation to enact Freedom of Information Law, known widely as “FOIL”. FOIL created the Committee on Public Access to Records, known widely then as “COPAR.” Committee housed, by law, in the Office of General Services.

July

- Task force recruited from state agencies consisting of liaisons with state agencies, municipalities, school and fire districts.

COPAE members are appointed. They are:

- Elie Abel, Dean, Graduate School of Journalism, Columbia University
- T. Elmer Bogardus, Publisher, Eagle Newspapers, Cazenovia
- Gilbert P. Smith, Executive Editor, Utica Observer-Dispatch
- Robert W. Sweet, Attorney, New York City
- Gen. A.C. O’Hara, Commissioner of General Services
- Richard L. Dunham, Director of the Budget
- Sal J. Prezioso, Commissioner, Office for Local Government

August - - First meeting of the Committee

- Elie Abel elected chairman.
- T. Elmer Bogardus elected Vice Chairman
- Introduction of staff and duties of the Committee; Louis Tomson is Executive Director.
- General O’Hara reported that letters sent to all state agencies and municipalities with copy of FOIL and an explanation of terms that notified agencies of their obligation to implement law, effective September 1, 1974.
- Liaison established with State agencies and municipal associations.
- Committee was receiving approximately 25 letters per day.

September

September 1, 1974 - FOIL goes into effect.

- Staff consisting of persons temporarily loaned by state agencies prepared and distributed a one-page questionnaire to assess compliance with FOIL to all state and local units of government. Executive: all 20 State Departments adopted or drafted resolutions. 85% of the remaining State agencies (including Authorities and Commissions) contacted adopted or drafted regulations.
- Tomson outlined law: major change brought by Law is that records are now open to all persons, regardless of residence or taxpaying status. For the first time, the public can know in advance the kinds of records available. The Court has final determination on what materials can be withheld on a case by case basis. Previously, many records were available only as a result of judicial action.
- Court of Appeals held that executive privilege exists despite passage of FOIL in Cirale v. 80 Pine St. Corp, 35 NY2d 113, 359 NYS2d 1 (1974).

October

- President Ford vetoed the amendments to federal Freedom of Information Act; veto later overridden by Congress.
- Memorandum on unwarranted invasion of personal privacy prepared by staff.
- As of October 23, 1974, 42% of all governmental agencies returned questionnaires, with over 80% of all units responding that they have adopted rules and regulations pursuant to §88(2).
- Committee meeting to discuss a resolution and a supporting memorandum dealing with unwarranted invasion of personal privacy. No clear standard and resolution was tabled. The following resolutions were adopted:
 - o Certain records of urban renewal agencies should be available to the public.
 - o Scope of Committee's regulatory authority defined.
 - o Access of records by any person defined.
 - o Memorandum on the historical perspective of FOIL revised and unanimously approved.
 - o All records in possession of an agency and municipality are subject to the mandates of the law, whether or not they were filed after September 1, 1974.
 - o Definition of "record" discussed, but tabled, because no clear standard.

December - - Committee meeting

- Staff authorized to prepare model regulations and to send a notice to agencies and municipalities stating that models are available on request.
- Adoption of internal regulations to be filed with Secretary of State as part 1400 of Title 21 of NY Codes, Rules and Regulations, "Public Access to Records of Committee on Public Access to Records."

- Changed appeal process to make it less difficult and costly for the public to challenge denial of access.
- Debated the need for open meetings legislation; directed the staff to draft an open meetings bill and report comments from interested persons and agencies.
- General agreement that the Committee could not carry out its legal mandate to recommend changes in law without a budget providing for a permanent staff (make a formal request for deficiency budget for the period January 1 – March 31, 1975).
- Recommended the removal of Director of the Division of the Budget from the Committee and replaced by the Chairman of the Consumer Protection Board.

Recommendations for more meaningful open government:

- o Elimination of ambiguities, such as inconsistent use of the terms “agency” and “municipality”; lack of definition of “minutes”, “audit”, “administrative staff manual”; lack of standard for unwarranted invasion of personal privacy.
- o Complete rewrite of law to incorporate the standard of accessibility used in federal Freedom of Information Act, and in the original 1974 legislative draft of a Freedom of Information Law, stating that ALL records are available, with certain exceptions.

Dillon v. Cahn, 79 Misc.2d 300, 359 NYS2d 981 (1974) – First FOIL decision; records of district attorneys are covered by FOIL.

1975

February – Committee determined that law should parallel the federal Freedom of Information Act and the original 1974 legislative draft of the current state law, making all records available with certain exceptions.

April – Office of Local Government functions transferred to Department of State; Mario Cuomo, Secretary of State, becomes member of the Committee. Committee offices moved from Office of General Services to Department of State.

Farrell v. Village Board of Trustees, 372 NYS2d 905 (1975) – Police officers’ reprimands available; led to passage of §50-a of Civil Rights Law.

1976

March – Robert Freeman, formerly counsel, appointed Executive Director.

June – Open Meetings Law passed.

November – Committee adopted several modifications to the Committee’s 1976 proposal to amend the Freedom of Information Law.

- Sent memorandum entitled “Problems and Solutions” to state and local agencies with copies of proposed amendments.

Burke v. Yudelson, 368 NYS2d 779, aff'd 51 AD2d 673, 378 NYS2d 165 (1976) – Landmark decision involving “any person” principle and cited COPAR resolution.

Zuckerman v. NYS Board of Parole, 385 NYS2d 811, 53 AD2d 405 (1976) – State agency regulations cannot be more restrictive than FOIL.

1977

January – Newly enacted Open Meetings Law becomes effective.

June – Completely revised Freedom of Information Law enacted based on the Committee’s proposal.

September – Model Rules pertaining to public notice under the Open Meetings Law.

October – Draft to be used as a basis for widely distributed pamphlet on the Freedom of Information Law first reviewed by the Committee.

December – Committee’s first annual report urged the Legislature to enact reforms to ensure that the goals in the Law’s statement of legislative intent are realized.

Dunlea v. Goldmark, 380 NYS2d 496, aff'd 54 AD2d 446, aff'd 43 NY2d 754 (1977) – Set definition of statistical or factual tabulations or data.

Kamlet v. Board of Education, Plainedge Union Free School District, 399 NYS2d 366 (1977) – First case to hold that any gathering of quorum for purpose of discussing public business constitutes a “meeting”.

Sheehan v. City of Binghamton, 59 AD2d 808 (1977) – Police blotters available.

Westchester Rockland v. Moczydlowski, 58 AD2d 234 (1977) – Exemption from FOIL only if records prepared solely for litigation.

1978

January 1, 1978 – New Freedom of Information Law, preserving the Committee on Public Access to Records and signed by Governor Carey, becomes effective.

February

- Amendment to FOIL required Committee to report to the Legislature annually.
- Committee reviewed and adopted proposed regulations drafted at the October meeting.

September – Revised index of the first 620 advisory opinions rendered by the Committee under FOIL prepared.

October – Committee meeting

- Alphabetical listing of judicial determinations involving the interpretation of FOIL and brief summaries was prepared by staff.

- The Committee provided a first draft on solutions and suggestions to remedy the problems under FOIL at its meeting; addressed issues concerning the rights of access to information outside the FOIL, summarized its activities with respect to the administration of the law since its effective date.
- Reported that 250 advisory opinions written at the request of the public, representatives of state and local government, the news media and interest groups (advisory opinions nos. 676-926) with well over 100 phone calls per week, since revised law in effect.
- FOIL guidance is disseminated by means of *Newsvane*, a publication of the Department of State distributed to all units of local government.
- Freeman discussed rights of access to criminal history records, commonly known as “rap sheets,” with the Division of Criminal Justice Services.
- Discussion and opinion offered on dissemination of information compiled for law enforcement purposes.

November – Committee meeting

- Developed draft report on the Freedom of Information Law.
- Conference of Mayors submitted two proposals to the Committee. The first suggested that the composition of the Committee be changed by means of the addition of representatives of local government. The second dealt with initial proposals made in the collective bargaining process. The Committee to study these issues.

Daily Gazette Co., Inc. v. North Colonie Board of Education, 67 AD2d 803 (1978) – Standing committees consisting of members of board of education found to be outside of OML; led to amendment to include committees within coverage of the statute a year later.

Orange County Publications, Division of Ottoway Newspapers, Inc. v. Council of the City of Newburgh, 60 AD2d 409, aff'd 45 NY2d 947 (1978) – Landmark decision that set the stage for expansive interpretation of OML. Held that “work sessions” and similar gatherings held for purpose of discussion and without intent to take action are “meetings” subject to OML. Also provided guidance concerning scope of “quasi-judicial.”

Warder v. Board of Regents, 410 NYS2d 742 (1978) – Personal notes taken during meeting are “records” subject to rights of access.

Zaleski v. Hicksville Union Free School District, Board of Education of Hicksville Union Free School, Sup. Ct., Nassau Cty., NYLJ, Dec. 27, 1978 – Tape recording of open meeting is accessible “record”; fee is cost of cassette.

1979

January

- Prepared annual report to the Legislature on the Open Meetings Law
- Lieutenant Governor Cuomo issued news release urging the Legislature to “provide the Committee on Public Access to Records with the authority to sue on behalf of the public, on carefully selected cases, to compel compliance with the Open Meetings Law.”

February – Governor Carey approved amendments to the Open Meetings Law. Effective October 1, 1979. Amendments include the redefinition of “meeting” and “public body”, a requirement that notice be posted in a designated public location, changes in two grounds for executive session and a new requirement that minutes of open meetings be prepared and made available within two weeks of a meeting.

July – Nearly 40,000 copies of a guide, “The New FOIL and How to Use It”, have been distributed.

July 24, 1979 – Gilbert Smith, Executive Editor of the Observer-Dispatch, was elected Chairman, replacing Elie Abel.

- Significant amendments concern the coverage of committees and subcommittees within the definition of “public body” and the narrowing of the so-called “personnel exception” for executive session

September

- The Committee discussed the use of tape recorders at open meetings and judicial proceedings and decided to send a report, including appendices and a legislative proposal, to Chief Judge Cooke of the Court of Appeals and applauded his efforts in opening judicial proceedings to television.
- News release issued announcing the release of a special report by the Committee that was transmitted to the Chief Judge, the Bar Association and the NYS Association of Broadcasters.
- The Attorney General’s Office stated it would start notifying the Committee and seek advice when a state agency is sued under the FOIL or OML.

November – Committee recommended that §89(2)(a) concerning the Committee’s capacity to issue guidelines on privacy should be omitted, but that §89(2)(b)(iv) and (v) should remain.

Doolan v. BOCES, 422 NYS2d 927, 48 NY2d 341 (1979) – FOIL is a governmental obligation, not gift or waste; rejection of executive privilege.

Fink v. Lefkowitz, 63 AD2d 610 (1978); modified in 47 NY2d 567 (1979) – Key Court of Appeals decision regarding investigative techniques and procedures.

Oneonta Star Division of Ottoway Newspapers, Inc. v. Board of Trustees of Oneonta School District, 66 AD2d 51 (1979) – Joint meetings that include quorum of two public bodies subject to OML.

People v. Ystueta, 99 Misc.2d 1105, 418 NYS2d 508 (1979) – First decision involving tape recording meetings; found that by-law with blanket prohibition invalid.

1980

January

- Committee was made an Associate Member of the Fair Trial/Free Press Conference
- Bennett Liebman, Governor Cuomo’s delegate, transmitted Governor’s inclination to include a recommendation in the report which, if enacted, would permit the Committee to sue.

- Enactment of Chapter 677 of Law of 1990 requiring the Committee to obtain information from state agencies regarding their systems of records concerning personally identifiable information.

August – NYPIRG Recommends merging Committee with Lobbying Commission.

December – Name changed to “Committee on Open Government”

Herald Co. v. School Dist., 430 NYS2d 460 (1980) – Unproven charges against public employee deniable.

Steinmetz v. Board of Education, East Moriches, Sup. Ct., Suffolk Cty., NYLJ, October 30, 1980 – No exemption regarding personnel records; content determines rights of access.

Westchester-Rockland v. Kimball, 50 NY2d 575 (1980) – Court of Appeals – Volunteer fire companies subject to FOIL despite status as not-for-profit corporations.

1981

September

- Procedural amendment regarding the receipt of records containing trade secrets by state agencies, treatment of trade secrets within agencies and the manner in which requests for records containing trade secrets are answered. The legislation also requires the promulgation of regulations by agencies that maintain records containing trade secrets.
- Committee recommended that the Law be strengthened by adding a provision that would enable a court to award reasonable attorney fees to petitioner who substantially prevails in a judicial challenge to a denial of access.

October

- Committee recommended that agencies charge no more than twenty-five cents per photocopy, unless a statute permits the assessment of a higher fee.
- Samuel Yasgur, Westchester County Attorney and President of the County’s Attorney’s Association, offered the following procedural recommendations:
 - Oral opinions should not be given;
 - Opinions should not deal with hypothetical situations;
 - Agencies should be made aware of advisory opinions before they are issued;
 - Advisory opinions should not be rendered after litigation has been commenced; and
 - The opinions should specify that they are the opinions of staff and not those of the Committee itself.
- First three were rejected.

- Committee agreed to include proposal designed to limit the disclosure of names and addresses to be included in the report: “a list of names and addresses need not be disclosed when such list would be used for purposes related to solicitation, fundraising, whether or not for profit or any commercial use.”
- Committee agreed to work with Barbara Shack, Legislative Director of the New York Civil Liberties Union, an expert in the area of privacy.

November

- Secretary Paterson suggested that the Committee or a designated subcommittee determine whether a written opinion should be issued where litigation is known to be pending; advisory opinions should be prepared by the staff and not the entire Committee.
- Committee determined that the following be included, when appropriate, on advisory opinions: “The staff of the Committee is authorized to issue advisory opinions.”
- Norma Rollins of the NYCLU presented to the Committee a draft report based on Chapter 677 of the Laws of 1980 and the Committee’s earlier survey on the subject of privacy legislation and offered four general proposals.

Concerned Citizens to Review the Jefferson Mall, Matter of v. Town Board of the Town of Yorktown, 84 AD2d 612, 54 NY2d 957 (1981) – Appeal dismissed. Confirmed that exception regarding executive sessions to discuss litigation are limited to consideration of strategy in private, without presence of adversary.

Daily Gazette v. Town Board, Town of Cobleskill, 444 NYS2d 44 (1981) – Motion for entry into executive session cannot “merely regurgitate” the language of an exception. Motion regarding litigation must include name of the case.

Doolittle, Matter of v. Board of Education, Sup. Ct., Chemung Cty., July 21, 1981 – Cannot schedule an executive session in advance of a meeting. Also, OML requires “necessary specificity” in motion for entry into executive session.

Geneva Printing Co. and Donald C. Hadley v. Village of Lyons, Supreme Court, Wayne County, March 25, 1981 – “Confidential” settlement agreement w/pub employee available.

Holden v. Board of Trustees of Cornell University, 440 NYS2d 58, aff’d 80 AD2d 378 (1981) – Meetings of Board of Trustees of Cornell University are subject to the Open Meetings Law when the Board deliberates with respect to the four statutory colleges of the State University of New York at Cornell and when it exercises powers delegated to it under §§5708 and 5709 of the Education Law; court cited opinion of Committee.

Kwitny v. McGuire, 53 NY2d 968 (1981) – Gun license applications available under Penal Law, despite FOIL exception.

Polansky v. Regan, 440 NYS2d 356, 81 AD2d 102 (1981) – Estimates and recommendations in form of numbers available as “statistical information”.

Sciolino v. Ryan, 103 Misc.2d 1021, 431 NYS2d 664, aff'd 81 AD2d 475, 440 NYS2d 795 (1981) – Early decision indicating that political caucus exemption inapplicable when a majority gathers to conduct public business. Later reversed via 1985 amendment.

1982

January

- Amendment that requires state agencies to promulgate regulations with the purpose of establishing procedures for the protection and maintenance of records characterized as trade secrets submitted by commercial enterprise becomes effective.
- Amendment to Open Meetings Law enables a court to nullify action taken in violation of the law if any meeting that led to action taken was closed in violation of the Open Meetings Law.
- New York State Society of Newspaper Editors presented Freeman with its Friend of the Free Press Award.

October

- Amendment permits agencies to charge no more than twenty-five cents per photocopy of records, unless a different fee is prescribed by statute, i.e., an act of the State Legislature.
- Amendment authorizes a court, in its discretion, to award reasonable attorney's fees when a person challenging a denial of access to records in court substantially prevails; however, the court must find that the record was of "clearly significant interest to the general public" and that the agency "lacked a reasonable basis in law for withholding the record."

Concerned Citizens Against Crossgates v. Town of Guilderland Zoning Board of Appeals, 91 AD2d 763 (1982) – Held that deliberations of zoning board of appeals were quasi-judicial and exempt from OML; led to amendment to OML specifying that the exemption regarding quasi-judicial proceedings does not apply to zoning boards of appeal.

Murray v. Troy Urban Renewal Agency, Sup. Ct., Rensselaer County, April 24, 1980, rev'd 84 AD2d 612, 56 NY2d 888 (1982) – Appraisal deniable prior to sale based on impairment of contract award.

Morris v. Martin, Chairman of the State Board of Equalization and Assessment, 440 NYS2d 365, 82 AD2d 965, reversed 449 NYS2d 712, 55 NY2d 1026 (1982) – Local enactment not a "statute" that exempts records from disclosure.

Short v. Board of Managers of Nassau County Medical Center, 57 NY2d 399 (1982) – If statute exempts class of records, they are exempt in entirety; no redaction.

Syracuse United Neighbors v. City of Syracuse, 437 NYS2d 466, 80 AD 2d 984, appeal dismissed, 55 NY2d 995 (1982) – Fourth Department found that task force and committee are covered by OML even though advisory only because recommendations uniformly approved.

1983

Babigian v. Evans, 427 NYS2d 699, aff'd 97 AD2d 992 (1983) – Office of Court Administration is not a court, but rather an “agency” subject to FOIL.

Becker v. Town of Roxbury, Sup. Ct., Chemung Cty., April 1, 1983 – Motion to discuss “personnel matters” without further specification inadequate; abolition of position should have been discussed in public; action invalidated and attorney’s fees awarded.

Weatherwax v. Town of Stony Point, 97 AD2d 840 (1983) – Fear that litigation might result insufficient to justify executive session, which is limited to discussions of litigation strategy. Also, even though decision affected only one employee, it was found to be a “policy decision” that would affect everyone in class of retirees, and therefore, executive session improper.

1984

March – Barbara Shack serves as Committee Chair for the first time.

September 1– Personal Privacy Protection Law becomes effective; requires State agencies to adopt rules and guidelines regarding the management of their records containing personal information.

Feldman v. Town of Bethel, 106 AD2d 695 (1984) – Although person had right to tape record meeting, no right to create public inconvenience, annoyance or alarm.

Johnson Newspapers Corp. v. Stainkamp, 94 AD2d 825, 61 NY2d 958 (1984) – Identities of persons arrested available unless dismissal.

King v. Dillon, Sup. Cty., Nassau Cty., December 19, 1984 – Minutes of open meetings used for law enforcement available.

M. Farbman & Sons v. New York City Health and Hosps. Corp., 62 NY2d 75 (1984) – Confirmation of “any person” rule; pendency of litigation irrelevant to FOIL.

1985

October - Barbara Shack is elected Chair.

December – Amendment to Open Meetings Law regarding political caucuses permits the members of a political party who serve in the Assembly or the Senate, or on the legislative body of a county, city, town or village to conduct closed political caucuses outside the requirements of the Open Meetings Law to discuss any subject, including public business. No notice or other requirement that a record be prepared indicating that such a gathering has been held.

Johnson Newspapers Corp. v. Call, 115 AD2d 335 (1985) – “Preference” of subject irrelevant to disclosure; law controls.

Mitchell v. Board of Education of the Garden City Union Free School District, 113 AD2d 924 (1985) – Use of unobtrusive, hand held tape recorder could not be prohibited, even though recordings could be edited or replayed.

Tri-Village Publishers, Inc. v. St. Johnsville Board of Education, 110 AD2d 932 (1985) – Series of less than quorum gatherings not covered by OML; no violation because of absence of intent to circumvent law.

Xerox Corporation v. Town of Webster, 65 NY2d 131, 490 NYS2d 488 (1985) – Court of Appeals – Records prepared by consultant retained by agency are intra-agency materials.

1986

October – Committee rejected proposal to permit telephonic meetings and agreed that the members of a public body should be physically present at the meetings.

Capital Newspapers v. Burns, 109 AD2d 92, aff'd 67 NY2d 562 (1986) – Police officer attendance records public, despite Civil Rights Law §50-a.

Konigsberg v. Coughlin, 68 NY2d 245 (1986) – Provides guidelines regarding “reasonably describe” standard.

McGraw-Edison v. Williams, 509 NYS2d 285 (1986) – inadvertent disclosure of deniable records does not create right of access.

Metro-ILA Pension Fund v. Waterfront Commission of New York Harbor, Sup. Ct., New York Cty., NYLJ, Dec. 16, 1986 – Bi-state agency not subject to FOIL.

Nalo v. Sullivan, 125 AD2d 311 (1986) – Agency not required to list or justify denial of access to each record withheld.

1987

October

- Ethics in Government Act effective: specifies that only certain records maintained by ethics commissions or public advisory councils created by the Act are available, but that certain other records maintained by those entities should be available.
- Committee worked with counterparts from Massachusetts and Connecticut to create an association consisting of state agency personnel who deal with access laws on an ongoing basis; first meeting at Exit 6 of Mass Pike!

Committee offered recommendations for more meaningful open government:

- grant courts broader discretion to award attorney’s fees to a person who “substantially prevails” in a suit brought under the Freedom of Information Law.
- give courts greater discretion to void action taken when the Open Meetings Law is violated.
- provide courts with discretionary authority to fine members of a public body individually when flagrant violation of law occurs.

Capital Newspapers Division of the Hearst Corporation v. Whalen, 69 NY2d 246 (1987) – “Corning papers” found to be “records” subjected to rights conferred by FOIL.

Runyon v. Board of Education, West Hempstead Union Free School District, Supreme Court, Nassau County, January 29, 1987 – Information derived from discussion in executive session not privileged.

Sheehan v. City of Syracuse, 521 NYS2d 207 (1987) – Fee in excess of 25 cents invalid if prescribed by local law, not statute.

1988

October

- On the subject of political caucuses, Committee recommended incorporation of two principles: first, that a legislative body should take of affirmative action, such as the adoption of a resolution or enactment of a local law, indicating that it intends to discuss public business in public; and second, that notice to public should be given prior to political caucuses.
- Because it was held that the Personal Privacy Protection Law pertains only to computerized files and not manual files, Committee recommended that the term “record” be amended to include manual files; later became law.

November – Committee made new proposal based upon concerns expressed by the Commission on Government Integrity and included in the Governor’s program legislation: a new provision concerning the intentional circumvention of the Open Meetings Law should be added to preclude a public body from intentionally or wilfully failing to invite to or excluding from a meeting any portion of its members for the purpose of circumventing the law.

Citizens for Alternatives to Animal Labs v. Bd. Of Trustees, 92NY2d 357 (1998) – Limited applicability of FOIL to Cornell Univ.

Fisher & Fisher v. Davison, Sup. Ct., New York Cty., NYLJ, October 6, 1988 – Unreasonably voluminous request.

Kerr v. Koch, Sup. Ct., New York Cty., NYLJ, Feb. 1, 1988 – NYC Mayor’s appointment calendar available.

NYPIRG v. Governor's Advisory Commission, 507 NYS2d 798; aff’d with no opinion, 135 AD2d 1149; motion for leave to appeal denied, 71 NY2d 964 (1988); Court of Appeals noted that denial of motion for leave to appeal “is not equivalent to an affirmance and has no precedential value” – Advisory body created by executive order outside OML because it “lacks the power to transact public business”.

Previdi v. Hirsch, 524 NYS2d 643 (1988) – Emergency meetings improper unless there is true emergency; consensus may represent final action; statute of limitations extended because minutes not prepared.

Prisoners' Legal Services of New York v. NYS Department of Correctional Services, 73 NY2d 26 (1988) – grievances and records of rules violation by correction officers subject to Civil Rights Law §50-a.

Smithson v. Ilion Housing Authority, 130 AD2d 965 (1987), aff’d 72 NY2d 1034 (1988) – Secret ballot voting improper.

1989

American Society for the Prevention of Cruelty to Animals v. NYS Department of Agriculture and Markets, Supreme Court, Albany County, May 10, 1989 – Business address not “personal” or “unwarranted invasion of personal privacy”.

City of New Rochelle v. Public Service Commission, 541 NYS2d 49, 150 AD2d 441 (1989) – Site visit in a van without discussion did not violate OML.

Goodson Todman Enterprises, Ltd. v. Town of Woodstock, Sup. Ct., Ulster Cty., January 7, 1985 – Ad hoc advisory body not subject to OML.

Moore v. Santucci, 543 NYS2d 103, 151 AD2d 677 (1989) – Records need not be disclosed second time; available if introduced in judicial proceeding.

1990

November

- Bill Bookman was elected Chairman. *Note: Bookman in 1974 recommended to Governor Wilson that weak FOI Law should be overseen by advisory body, which led to the creation of Committee as part of FOIL. Freeman refers to Bookman as the “Father of Open Government in New York”.*
- Freeman described a meeting with representatives from federal government at John Marshall Law School in Chicago and reported that New York appears to be a leader in the development of FOI law.

Barrett v. Morgenthau, 144 AD2d 1040, 74 NY2d 907 (1990) – Failure to inform of right to appeal enables person denied to sue.

Brownstone Publishers, Inc. v. New York City Department of Finance, 167 AD2d 166 (1990) – Applicant can choose electronic media over paper printout.

Goodson Todman Enterprises, Ltd. v. City of Kingston Common Council, 550 NYS2d 157, 153 AD2d 103 (1990) – Quorum of committee of city council at members home found to be a “meeting”, not a “casual encounter”; second meeting held at request of non-member was planned and also found to be a “meeting” subject to OML.

Miller v. Hewlett-Woodmere Union Free School District #14, Supreme Court, Nassau County, NYLJ, May 16, 1990 – Recommendation adopted becomes final determination.

Whitehead v. Morgenthau, 552 NYS2d 518 (1990) – No fee waiver required, even if request by indigent inmate.

1991

October

Freeman suggested that the exemption from the Open Meetings Law concerning political caucuses be revised to require that public business be discussed in public by local legislative bodies and the Senate and Assembly.

November

- Committee recommended amendment to require DCJS to “disclose records and data that are otherwise available to the public from a court or other governmental entity.”
- Due to his assistance in its development, Freeman keynotes 10th anniversary commemoration of Japan’s first FOI Law in Yokohama, Japan.

Cioci v. Mondello, Sup. Ct., Nassau County, March 18, 1991 – Gathering for purpose of seeking legal advice from attorney fell within attorney-client privilege and is exempt from OML.

1992

October

- Committee recommended language indicating that an agency should not be required to prepare electronic information that is not “retrievable in any form with reasonable effort.”
- Also recommended that a bill be modified to require disclosure of records accessible under FOIL, as well as those of greatest importance to the public, such as proposed laws, rules, regulations, and policies. Recommended that records intended to be discussed at meetings should be made available based upon the standards regarding notice under the Open Meetings Law.
- Freeman presented with First Amendment Awards, respectively, by the New York Press Association and the Deadline Club, the New York Chapter of the Society of Professional Journalists.

American Society for the Prevention of Cruelty to Animals v. Board of Trustees of SUNY, 582 NYS2d 983, 79 NY2d 927 (1992) – Court of Appeals held that entity outside coverage of OML because its powers “derive solely from federal law”. Also held that a “consensus” is a “judgment arrived at by most of those concerned by some sort of allocation by each member. Whether by “formal written ballot or informal oral expression, it is a vote” that must be recorded to comply with FOIL.

2nd case: American Society for the Prevention of Cruelty to Animals v. Board of Trustees of State University of New York, 584 NYS2d 198, 184 AD2d 508 (1992) – FOIL applies due to definition of “record” even though OML does not.

Buffalo News v. City of Buffalo Common Council, 585 NYS2d 275 (1992) – Caucus of city council consisting solely of members of one political party held to discuss public business found to be a “meeting” subject to OML, not a political caucus that is exempt from OML.

Hanig v. State Department of Motor Vehicles, 79 NY2d 106 (1992) – Reasonable person standard regarding unwarranted invasion of personal privacy.

Planned Parenthood of Westchester, Inc. v. Town Board of Town of Greenburgh, 587 NYS2d 461 (1992) – Mug shots available unless dismissal of charges.

1993

October – Freeman recommended that additional emphasis be placed on the proposal offered in the report to enable courts to fine members of public bodies when violations are found and stressed that is discretionary.

Gannett Co. Inc. v. City Clerk's Office, City of Rochester, 596 NYS2d 968; aff'd 197 AD2d 919 (1993) – Basic marriage license info available.

Glens Falls Newspapers, Inc. v. Solid Waste and Recycling Committee of the Warren County Board of Supervisors, 601 NYS2d 29, 195 AD2d 898 (1993) – Must be evidence to show that publicity would substantially affect value of real property to justify executive session; also, committees consisting of members of county board are subject to OML.

Mitzner v. Goshen Central School District Board of Education and Superintendent Colistra, Supreme Court, Orange Co, April 15, 1993 – Held that “bare-bones” resolutions and minutes that merely ratify action of president of board inadequate.

Professional Standards Review Council of America Inc. v. NYS Department of Health, 597 NYS2d 829, 193 AD2d 937 (1993) – Rating sheets in form of numbers are available as statistical information; narratives deniable.

Russo v. Nassau County Community College, 81 NY2d 690 (1993) – Films used in public college class available.

1994

October – Committee recommends that consideration be given to a provision specifying that agencies should not charge a fee if billing, bookkeeping, and ancillary administrative costs exceed the fees that would otherwise be charged.

December

- State Legislature approved a joint resolution to make legislative information available to anyone with a computer, a modem, and connection to an Internet Service Provider.
- At the request of the U.S. Department of State, Freeman participated in a conference on access to information, consulted with and spoke before government officials, members of the news media and attorneys in Hong Kong; assisted in development of access to information law, the first in China.

Buffalo Broadcasting Co., Inc. v. New York State Department of Correctional Services, 552 NYS2d 712, 155 AD2d 106 (1990) – Not-for-profit corp. under govt. control subject to FOIL.

Buffalo Teachers Federation v. Buffalo Board of Education, 549 NYS2d 541, 156 AD2d 1027 (1990) – Home addresses may be disclosed even though deniable.

Community Board 7 of Borough of Manhattan v. Schaeffer, 570 NYS 2d 769; affirmed, 83 AD 2d 422; reversed on other grounds, 84 NY 2d 148 (1994) – If no “inequality of knowledge”, negotiation records available.

Leeds v. Burns, 613 NYS2d 46, 205 AD2d 540 (1994) – No award of attorney's fees when pro se non-lawyer litigant.

Murtha v. Leonard, 210 AD2d 411, 620 NYS2d 101 (1994) – Limitation of time to inspect rejected; may do so during regular business hours.

Peloquin v. Arsenault, 616 NYS2d 716 (1994) – Board could not prohibit videotaping because it is “distasteful.”

Town of Moriah v. Cole - Layer Tumble Co., 606 NYS2d 822, 200 AD2d 879 (1994) –Vote to commence litigation in executive session valid, but failure to prepare minutes constituted failure to comply.

Weston v. Sloan, 84 NY2d 462 (1994) – Records regarding mailings of state senator available.

1995

October – Committee supported a bill that would significantly narrow the ability of legislative bodies, particularly at the local government level, to conduct closed caucuses.

Cross-Sound Ferry v. Department of Transportation, 634 NYS2d 575, 219 AD2d 346 (1995) – Contract award when agency chooses, not when all sign-offs obtained.

Encore College Bookstores, Inc. v. Auxiliary Service Corporation of the State University, 87 NY2d 410 (1995) – Record kept “for” agency; trade secret exception.

Gordon v. Village of Monticello, Supreme Court, Ulster County, August 5, 1993; modified, 620 NYS2d 573, 207 AD2d 55 (1994); reversed on other grounds, 87 NY2d 124 (1995) – Motions for executive sessions to discuss “personnel, contract and legal issue” insufficient; creation or elimination of positions improper subject for executive session; vacancy in elective office must be discussed in public; Court of Appeals found that denial of request for attorney’s fees would constitute an abuse of discretion when, as in this case, there was “intentional and deceitful conduct.”

Orange County Publications v. Kiryas Joel Union Free School District, 724 NYS2d 167, 282 AD2d 604 (2001) – General description of services rendered by attorneys available.

1996

April – The Governor Alfred E. Smith Award presented to Freeman by the Empire State Chapter of the American Society for Public Administration “for exceptional contribution to the Public Service” and for “Spearheading citizen access to government information.”

December

- Court of Appeals awards attorneys’ fees due to violation of Open Meetings Law based on a finding of a blatant violation such as a “denial of a request for attorney’s fees”. Gordon v. Village of Monticello, 87 NY2d 961 (1992).
- Freeman served as keynote speaker at the International Forum on the Protection of Personal Data sponsored by the Saitama Prefectural Government in Omiya, Japan.

- Implementation by the Senate and the Assembly of a joint resolution calling for the disclosure of a variety of records online to the public. For the first time, the State Legislature disclosed a detailed record involving its expenditures.
- High court construes FOIL broadly and provides guidance concerning trade secret exemption. Encore College Bookstores, Inc. v. Auxiliary Services Corporation of the State University of New York at Farmingdale, 87NYS2d 410 (1996).
- Committee provides leadership in information technology. The Committee worked with a Task Force in development of policy relative to an “intranet” in which state agencies and county governments will participate, and an “information security policy” that will serve as a guide and a model for agencies throughout the state.
- Distinguished Service Awards from the New York State Association of Town Clerks and the New York State Association of City and Village Clerks presented to Freeman.

Gould, Scott and DeFelice v. New York City Police Department, 653 NYS2d 54, 89 NY2d 267 (1996) – Ct. of Appeals rejected “blanket denial”; gave direction re inter/intra-agency exception.

1997

January

- Freeman honored by the Suffolk County Chapter of the New York Civil Liberties Union and presented with the Government Official Award by the Citizens’ Environmental Coalition.
- Committee endorsed the proposal to amend the FOIL prepared by the Office of Technology regarding geographic information system (GIS) that would encourage agencies to share geographic information economically, recognize the commercial value of the information by creating copyright like protection, and preserve public access rights.

December – Committee recommended that FOIL should be amended to ensure that electronic information systems are designed to segregate accessible and deniable information, thereby guaranteeing maximum public access while protecting personal privacy.

Goetschius v. Board of Education of Greenburgh Eleven Union Free School District, 664 NYS2d 811, 244 AD2d 552 (1997) – Meetings held at 7:30 a.m. found to be unreasonable and fail to comply with OML.

Mobil Oil Corp. v. City of Syracuse Industrial Development Agency, 646 NYS2d 741, 224 AD2d 15, leave to appeal denied, 89NY2d 811 (1997) – In absence of a quorum, OML does not apply.

1998

December

- Committee recommended that §94(17) of the Executive Law should be amended to require that records of the State Ethics Commission be available for copying, as well as inspection.

- Committee recommended that FOIL should be amended to insure that electronic information systems are designed to segregate accessible and deniable information, thereby guaranteeing maximum public access while protecting personal privacy.

Cheevers v. Town of Union, Supreme Court, Broome County, September 3, 1998 – Action taken by town board members by means of series of phone calls found to be violation of OML and a nullity; court awarded attorney’s fees.

Crain v. Reynolds, Supreme Court, New York County, August 12, 1998 – Meeting held in small room when known in advance that more would want to attend and alternative location available found to be failure to comply with OML. Led to amendment to OML in 2010.

Bogulski v. Erie County Medical Center, Supreme Court, Erie County, January 13, 1998 – Hospital board of managers and its subcommittees subject to OML.

1999

December

- Committee recommended that FOIL be amended to clearly enable government agencies to protect against disclosures that could damage or facilitate unauthorized access to their electronic information systems. It emphasized the need to develop electronic information systems that maximize access while concurrently protecting personal privacy.
- Freeman was cited in the *Empire State Report*, New York’s Independent Magazine of Politics, Policy and the Business of Government for his public service, determination, idealism to improve the lives of fellow New Yorkers during the past 25 years.

Daily Gazette Company v. City of Schenectady, 93 NY2d 145 (1999) – Upheld Civil Rights Law §50-a in “egg throwing” case.

Goetschius v. Board of Education, Supreme Court, Westchester County, March 8, 1999 -- (3 decisions) - - 1) Electronic screening devices used prior to attendance found to be “per se violation of Fourth Amendment and, necessarily” the OML; 2) Board situated 60 feet from audience without microphone made discussion inaudible and “tantamount to deliberate and intentional exclusion of public; meeting held 20 miles from usual location is violation of OML; 3) use of bomb sniffing dogs, security personnel and cameras on audience absent any established risk of violence found to be an attempt to “avoid public scrutiny” and “unwarranted”; attorney’s fees awarded

Kwasnik v. City of New York and City University of New York, 691 NYS2d 525, 262 AD2d 171 (1999) – Portions of resumes relevant to position available.

Mantica v. NYS Dept. of Health, 699 NYS2d 1, 94 NY2d 58 (1999) – Court of Appeals found that patients may obtain own medical records under FOIL.

Pittari v. Pirro, 258 AD2d 202 (1999) – Generic denial regarding interference with judicial proceeding proper.

Smith v. CUNY, 92 NY2d 707 (1999) – Court of Appeals held that college association comprised of administrators, faculty and students performed “substantially more than an advisory function” and has “decision-making authority to implement its own initiatives” and is a “public body” subject to OML.

Stoll v. NYS College of Veterinary Medicine at Cornell University, 94 NY2d 162, 101 NYS2d 316 (1999) – Records unique to Cornell’s statutory colleges subject to FOIL.

VanNess v. Center for Animal Care and Control, Supreme Court, New York County, January 28, 1999 – Govt.-created not-for-profit corp. subject to FOIL; no right to inspect when portions deniable.

2000

May – Freeman was presented with the Distinguished Public Service Award by the Nelson A. Rockefeller College of Public Affairs and Policy at the State University of New York at Albany.

December

- *The Impact of Technology on the Freedom of Information Law* written and released by the Committee.

Committee offered the following recommendations for more meaningful open government:

- The movement toward e-government should be fostered by encouraging agencies to make records available online for a reasonable fee.
- To comply with “safe harbor principles” established by the European Union, American companies must adhere to certain conditions designed to ensure the privacy and integrity of personal information.

2001

December

- Freeman shared his experience and guidance concerning access to information law in Bulgaria and participated in access to information events in Peru. Both events were sponsored by Article 19, a London-based organization that promotes freedom of expression and the right to information.

Committee made the following recommendations for more meaningful open government:

- The private sector in New York was encouraged to adopt fair information practices that deal effectively with privacy concerns. New York would distinguish itself by demonstrating its interest in privacy and a desire to conduct business in partnership with the global community.
- Records discussed at open meetings should generally be made available prior to or at meetings.
- The courts should have greater authority to invalidate action taken in violation of the Open Meetings Law and impose sanctions for flagrant violations.

County of Suffolk v. First American Real Estate Solutions, U.S Court of Appeals, 2nd Circuit, 261 F.3rd 179 (2001) – Agencies may claim copyright protection, but only if conditions met.

2002

December – Committee recommended that §308 of the County Law be amended to give law enforcement agencies the authority to disclose E911 records in the furtherance of their duties, while continuing to ensure the privacy of callers.

Canandaigua Messenger, Inc. v. Wharmby, Supreme Court, Ontario County, May 11, 2001, 739 NYS2d 508, 292 AD2d 835 (2002) – Board of not-for-profit corporation found to be subject to OML when all members appointed by government and performs a function “in place of the city”.

Gray v. University Auxiliary Services at Albany, Inc., Supreme Court, Albany County, July 25, 2002 – SUNY Auxiliary Services Corporation subject to OML.

Newsday v. Empire State Development Corporation, 98 NY2d 359, 746 NYS2d 855 (2002) – Record from court to agency is agency record subject to FOIL.

Riverkeeper v. Planning Board of the Town of Somers, Supreme Court, Westchester County, June 14, 2002 – Site visit for observation, not discussion, not subject to OML.

2003

Legislation amended FOIL to permit a denial of access when disclosure “could” (formerly “would”) endanger the life or safety of any person.

Daily News, L.P. v. New York City Office of Payroll Administration, 781 NYS2d 3, 9 AD3d 308 (2003) – Leave to appeal denied. Ages (not dates of birth) of public employees’ public.

Csorny v. Shoreham-Wading River Central School District, 759 NYS2d 513, 305 AD2d 83 (2003) – Claim of “intimidation” insufficient to prohibit use of video recording during meeting.

2004

December

- U.S. State Department sent Freeman to Mexico to assist in implementation of Mexican access to information law; first of 8 visits to various Mexican locations.

Committee proposed the following reforms:

- Records maintained and meetings conducted pursuant to the Ethics in Government Act should be subject to the same standard of openness and the ability to deny access to records or hold executive session as other government entities.
- The time in which agencies must respond to requests for records must be specified, and in situations in which agencies fail to comply with those limitations or essentially force members of the public to initiate judicial proceedings, a court should have greater discretion or in some instances an obligation to award attorney’s fees to a member of the public.

- FOIL is outdated and should be amended to require that agencies accept requests and respond to them via e-mail.
- When an agency has the ability to generate and disseminate information maintained electronically with reasonable effort, it should be required to do so.

Buono v. Brodsky, Supreme Court, Albany County, December 30, 2004 – Distinction between FOIL and subpoena; rejection of “executive privilege”.

2005

Committee recommended that:

- FOIL and Open Meetings Law should be amended to require the award of attorney’s fees in circumstances in which there are clear violations of the law.
- Sunshine Week, a nationwide effort by the news media to focus attention on freedom of information laws, benefits the public’s right to know.
- Freeman honored by the New York State Bar Association’s Committee on Attorneys in Public Service with the Award for Excellence in Public Service.

Jae and Lewis v. Board of Education of Pelham Union Free School District, 802 NYS2d 228, 22 AD3d 581 (2005) – Motion for entry into executive session need not identify non-members authorized to attend; advisory committees consisting solely of board members are subject to OML, those consisting of others or a combination of board members and others not subject to OML.

Newsday v. NYS Department of Transportation, 5NY3d 84, 833 NE2d 201 (2005) – Disclosure under Fed statute precluding discovery in litigation does not preclude FOIL.

NY Times v. City of NY Fire Dept., 4 NY3d 477, 796 NYS2d 302 (2005) – Recordings from Twin Towers denied in consideration of privacy of surviving family members; agency staff criticisms and suggestions deniable, even though not part of deliberative process; oral histories by employees intended to be historical record and available.

Perez v. City University of New York, 5 NY3d 522 (2005) – Court of Appeals found that Community College Senate and Executive Committee are subject to OML. Neither is “solely advisory”; both perform functions of advisory and determinative nature.

Town of Eastchester v. NYS Bd. Of Real Property Services, 23 AD3d 484, 808 NYS2d 90 (2005) – Two members of a 5 member board met, and a 3rd participated and voted by phone. Held that there was no quorum, no valid meeting, and that actions taken annulled.

2006

Archdeacon v. Town of Oyster Bay, Supreme Court, Nassau County, NYLJ, Feb. 28, 2006 – Financial Disclosure Statement available for inspection and copying.

Baynes v. Fairport Central School District, Supreme Court, Monroe County, November 1, 2006 – Union’s records on school district computer covered by FOIL.

Capital Newspapers v. Bruno and Silver, Supreme Court, Albany County, October 23, 2006 – Member item info available; attorney’s fees awarded.

2007

Data Tree, LLC v. Romaine, 9 NY3d 454, 880 NE2d 10 (2007) – Extraction of data not creation of record; no “unwarranted invasion of personal privacy” when no direct solicitation.

2008

Markowitz v. Serio, 11 NY3d 44, 893 NE2d 110 (2008) – Competitive harm must be proven, not speculative.

New York State Rifle and Pistol Association, Inc. v. Kelly, 863 NYS2d 439, 55 AD3d 222 (2008) – List of names and addresses sought for solicitation deniable.

- Committee praised Project Sunlight and Open Book New York for the development of the ability to acquire data involving government decision- making and source of influence.

2009

January – Enactment of amendment to PPPL prohibits disclosure of social security numbers.

December

- OML amended to require public bodies post notice of their meetings online in advance of meetings when they have ability to do so. PPPL amended to enable individuals who request records pertaining to themselves from state agencies to do so via email.
- Freeman and Assistant Director Jobin-Davis served as co-editors and contributing authors of the spring edition of the New York State Bar Association’s Government, Law and Policy Journal.
- The New York Civil Liberties Union presented Freeman with its Ned Pattison Award.

Bly v. City of Yonkers, Supreme Court, Westchester County, March 17, 2009 – Agency could not meet burden of proof relative blanket denial re unsolved 1952 murder.

Verizon N.Y., Inc. v. Devita, 879 NYS2d 140, 60 AD3d 956 (2009) – Agency may disclose if exception applies and reasoned decision to do so.

West Harlem Business Group v. Empire State Development Corporation, 13 NY 3d 882 (2009) – Court of Appeals found that agency did not meet burden of proof due to “superficial” determinations.

2010

- Freeman is the recipient of the John Peter Zenger Award conferred by the New York News Publishers Association and honored by the National Freedom of Information Coalition and the Society of Professional Journalists through receipt of the Heroes of the 50 States Award and induction into the Open Government Hall of Fame.
- Freedom of information becomes an international movement, with approximately 80 nations having enacted access to information laws.

Hearst Corporation v. Research Foundation of the State of New York, Supreme Court, Albany County, September 17, 2010 – Foundation subject to FOIL; issue remains unclear statewide.

Irwin v. Onondaga County Resource Recovery Agency, 70 AD3d 314, 895 NYS 2d 262 (2010) – Metadata constitutes a “record”.

New York State United Teachers v. Brighter Choice Charter School, 15 NY3d 560 (2010) –Charter schools subject to FOIL, but list of names of employees denied due to solicitation.

Schenectady County Society for the Prevention of Cruelty to Animals v. Mills, 74 AD3d 1417, 904 NYS2d 511 (2010) – Names and business address of licensed veterinarians; public: agency must disclose in part.

Town of Waterford v. NYS Department of Environmental Conservation, 77 AD3d 224, 906 NYS2d 651 (2010) – Communications between state and fed agency not inter-agency materials.

2011

September – The New York Associated Press Association presented Freeman with its Lifetime Achievement Award.

December – Committee recommended “proactive disclosure”—making information available on websites before the public requests it, or when it is recognized that the information is clearly available and of interest to the public.

2012

December

- The Department of Health served as a trailblazer developing accessible open datasets that have produced unforeseen benefits and generated substantial cost savings. Through its METRIX project, the Department made numerous datasets available through the same open data platform known as data.gov.
- The New York State’s Web Accessibility Policy promulgated by the Office of Information Technology Services (ITS) established minimum accessibility requirements for web-based information and applications developed, procured, maintained or used by state agencies. Pursuant to the policy, the Committee’s advisory opinions are available online in “html” format.

Harbatkin v. NYC Department of Records and Info. Services, 19 NY3d 373, 948 NYS2d 220 (2012) – Informants’ identities protected when given promise of confidentiality, but may become available due to passage of time.

Hernandez v Office of the Mayor of the City of New York, 100 AD3d 555, 955 NYS2d 7 (1st Dept 2012) – E-mail between Mayor and nominee for Chancellor not inter-agency or intra-agency because nominee not yet employed in that or other position.

Leshner v. Hynes, 19 NY3d 57, 945 NYS2d 214 (2012) – Generic denials of law enforcement records proper when investigation is ongoing, but records may be available in relation to “cold case”; must meet burden of proof.

Madera v. Elmont Public Library, 101 AD3d 726, 957 NYS2d 129 (2nd Dept 2012) – voluntary disclosure of report to third party constituted waiver of ability to withhold as intra-agency material or attorney-client privilege.

New Yorkers For Constitutional Freedoms v. NYS Senate, 98 AD3d285, 948 NYS2d 787 (2012) – New York State Senate did not violate Open Meetings Law in enacting the Marriage Equality Act, and marriages performed thereunder are not invalid. Closed political caucus found to be valid, even though guests were non-party members; also found that political caucus exemption applies only when attended by members of legislative body from one political party.

Porco v Fleischer, 100 AD3d 639, 953 NYS2d 282 (2nd Dept 2012) – EZ pass data not identifiable to specific customers not an unwarranted invasion of privacy.

Stevens and Zirilli v. NYS Thruway Authority, 86 F3d 289 (2012) – Names and addresses of employees of private companies that contract with agencies reported under prevailing wage requirements deniable as unwarranted invasion of personal privacy.

Weslowski v Vanderhoef, 98 AD3d 1123, 951 NYS2d 538 (3rd Dept 2012) – No justification for fees that included charges for search or verification of electronic records with paper copies; not permitted to charge for “extraordinary effort”, but only required to make reasonable effort.

Zehner v Board of Education of Jordan-Elbridge Central School District, 91 AD3d 1349, 937 NYS2d 510 (4th Dept 2012) – Court invalidated action and required training by Committee due to failure to provide sufficient detail in motions to enter into executive sessions.

2013

December

- A New Jersey court determined that the Port of Authority is not subject to that state’s access to records law, because FOIL does not apply to bi-state or international entities. Both New York and New Jersey would have to enact identical statutes to confer a right of public access to the PA’s records. Based on these assumptions, the Committee urges the New York State Legislature and its New Jersey counterpart to enact laws obligating to PA to comply with requests submitted under either NY FOIL or NJ Open Public Records Act (OPRA).
- Committee recommends enactment of legislation that embodies the goals of proactive disclosure introduced by Assemblymember Kavanagh (A.107) and Senator Krueger (S.3438) during each of the past two years.
- Publication of the Open Data Handbook by the Office of Information Technology Services will provide valuable guidance to state agencies in posting their data in an open source platform and achieving the goals described in the Executive Order.
- Movement towards open data is captured in legislation proposed by Assemblymembers Englebright and Hevesi (A.8197), a bill that incorporates many of the attributes of the Executive Order.

Hearst Corp. v. NYS Police, 109 AD3d, 966 NYS2d 557 (3rd Dept 2013) – Civil Rights Law §50-a exemption regarding police officers’ personnel records continues after officers’ retirement.

Legal Aid Society v. NYS Department of Corrections, 105 AD3d 1120, 962 NYS2d 773 (3rd Dept 2013) – award of attorney’s fees proper when applicant subjected to unreasonable delays and denials of access.

Loevy & Loevy v. NYPD, Supreme Court, New York County, October 10, 2013 – blanket denial regarding “cold case” inconsistent with FOIL.

Regenhard v. City of New York, 102 AD3d 612, 959 NYS2d (1st Dept, 2013) – Names and home addresses of families or representatives of 9/11 victims deniable.

2014

- Society of Professional Journalists confers Sunshine Award to Freeman at the annual convention in Nashville, Tennessee.

Empire Center for New York State Policy v. Teachers’ Retirement System of City of NY, 103 AD3d 1009, (3d Dept 2014) – Court of Appeals found that names of retirees accessible; beneficiaries are persons designated by retirees to receive pension following death of retirees.

Gannett Satellite Information Network v. County of Putnam, Supreme Court, Westchester County (March 5, 2014) – first decision under SAFE Act confirmed that names and addresses of licensees who do not choose to “opt out” of disclosure are accessible.

Note: Kudos to Lucya Pak, the Committee’s law student intern, who spent many hours researching and developing this unique history.