

# COMMITTEE ON OPEN GOVERNMENT

STATE OF NEW YORK  
DEPARTMENT OF STATE  
ONE COMMERCE PLAZA  
99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001  
TELEPHONE: (518) 474-2518  
FAX: (518) 474-1927  
[WWW.OPENGOVERNMENT.NY.GOV](http://WWW.OPENGOVERNMENT.NY.GOV)

**COMMITTEE MEMBERS**  
BRIAN A. BENJAMIN  
ROANN M. DESTITO  
PETER D. GRIMM  
HADLEY HARRIGAN  
ROBERT F. MUJICA, JR.  
ROSSANA ROSADO  
DAVID A. SCHULZ  
FRANKLIN H. STONE  
STEPHEN B. WATERS

**EXECUTIVE DIRECTOR**  
SHOSHANAH BEWLAY

## MINUTES

### MEETING OF NYS COMMITTEE ON OPEN GOVERNMENT HELD IN-PERSON AND BY WEBEX PURSUANT TO CHAPTER 417 of LAWS of 2021

September 21, 2021, 10:00am

#### **Members Present:**

Stacy Lynch (Lt. Gov; in person), Phil Giltner (Lt. Gov; in person), Vilda Mayuga (Secretary of State; in person), William Bruso (OGS; by videoconference), Joel Lombardi (DOB; by videoconference), Stephen Waters (in person), David Schulz (by videoconference), Hadley Horrigan (by audio conference), Peter Grimm (in person), Franklin Stone (in person)

#### **Department of State Staff Present (in person):**

Shoshanah Bewlay, Christen Smith, Jake Forken

#### **Welcome:**

Quorum present

#### **Approval of Minutes:**

On motion to approve minutes of the December 11, 2020, meeting, approved with amendment to reflect that no additional information was available in the provided status update regarding member vacancies.

#### **Committee Vacancies and Committee Structure:**

Members discussed the need to fill two current Committee member vacancies which were the subject of Franklin Stone's September 2021 letter to Governor Hochul.

After a discussion among members, Franklin Stone stepped down as Chair. Members agreed that the Committee would not have a Chair pending a determination after further discussion of Committee structure and, potentially, the adoption of bylaws. Members agreed that the Committee letterhead should be amended to remove the designation of Chair.

There was a consensus that any discussion regarding Committee structure would wait until after the new year.

#### **Staff Activities and Updates:**

The Executive Director reported on her staff's activities for the period November 2020 through August 2021, representing the period since the last annual report was finalized. She reported: 1,203 calls handled; 1,745 informal advisory opinions issued; 38 formal advisory opinions issued; 4,337 appeals

reviewed; and 29 training sessions (both virtual and in-person) provided to 3,245 people (representing a large increase in participation in training sessions over the pre-pandemic period in 2019).

The Executive Director reported that in September 2021, the Department of State hired two new attorneys, Christen Smith and Jake Forken, assigning them to the Executive Director's staff to further support the Secretary's statutory role as secretariat to the Committee.

**Current Open Government Issues/Legislative Issues:**

The Executive Director invited staff members to raise issues they would like to see addressed in the next annual report. Members agreed that the Executive Director should prepare a draft report for review that includes discussions of the following issues:

- "virtual" and "hybrid" open meetings pursuant to the now-expired Executive Order 202.1 and the current Chapter 417 of the Laws of 2021, which is set to expire January 15, 2022.
- whether litigation following the repeal of § 50-a of the Civil Rights suggests that any amendments to FOIL are necessary, including whether legislative amendments clarifying the definition of "unsubstantiated complaints" made against government employees generally and the availability of those records in response to FOIL requests should be recommended.
- updates to aspects of prior annual report recommendations and proposals to assess them for possible continued inclusion in the 2021 annual report. These include: (i) a recommendation that the state legislature be subject to the Freedom of Information Law (FOIL); (ii) a recommendation concerning a limitation on the amount of time trade secrets may be exempt from FOIL disclosure; and (iii) possible amendments to the Open Meetings Law to require that meeting documents be posted online before a meeting and that minutes be posted after a meeting.

A member asked whether Committee had staff resources to investigate how other states operated with regard to oversight of open government statutes. Executive Director advised that staff could begin doing that research after the completion of the annual report.

A member suggested that the Committee consider inviting staff from the Governor's Executive Chamber or the Lieutenant Governor's office to a meeting to discuss issues they deem pressing.

**Rebranded Website:**

The Executive Director reported that as of May 2021, the Committee website had been rebranded consistent with the template for all state agency websites. A member suggested that the website should contain additional functionality concerning ready access to certain types of information and the Executive Director agreed to speak to the New York State Office of Information Technology Services to see what additions may be available.

**Discussion of Process for Possible Public Comment at Committee Meetings:**

Members asked the Executive Director and her staff to provide examples for their consideration of whether, and if so to what extent, other deliberative but not adjudicative committees and bodies within state government allow for public comment.

**Other or New Business:**

A member asked that the Executive Director and her staff research what statutory open government bodies do in other states in an effort to assess whether (and ensure that) New York continues to be at the leading edge of government transparency. The members may then assess whether there are any recommendations to make to the Legislature and Governor concerning the role of the Committee as defined in statute.

Members will discuss the 2021 annual report and any draft material therefore at future meetings. The Executive Director will facilitate the reservation of rooms and technology to permit the next meeting of the Committee in October 2021.

**Adjourned at 11:56 am**