

COMMITTEE ON OPEN GOVERNMENT

STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
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COMMITTEE MEMBERS
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PETER D. GRIMM
HADLEY HORRIGAN
JEANETTE MOY
ROBERT F. MUJICA, JR.
ROBERT J. RODRIGUEZ
DAVID A. SCHULZ
FRANKLIN H. STONE
STEPHEN B. WATERS

EXECUTIVE DIRECTOR
SHOSHANAH BEWLAY

MEETING AGENDA NYS COMMITTEE ON OPEN GOVERNMENT September 15, 2022

1. Welcome and Roll Call
2. Post-hearing vote on possible adoption of OML § 103-a Resolution and related Procedures
3. Approval of minutes of June 7, 2022, meeting
4. Brief report on activities of Executive Director's staff since last meeting
5. Discussion of possible content for Annual Report (issues that continue to come up in correspondence with Director's staff include):
 - a. clarification of legislative intent concerning changes to FOIL resulting from repeal of CRL 50-a in light of inconsistent case law;
 - b. clarification of legislative intent concerning repeated extensions of FOIL deadlines;
 - c. additional or modified oversight of agency/public entity compliance with open government statutory requirements; and
 - d. discussion of comments/experiences to date concerning implementation of OML 103-a.
6. Continuation of discussion of transparency issues arising from government use of algorithms or artificial intelligence to conduct business
7. Public Comment
8. Other or New Business

Adjourn

Resolution No. 1

The New York State Committee on Open Government

WHEREAS, by passing Chapter 56 of the Laws of 2022 (“Chapter 56”), the New York State Legislature amended Section 103 of the Open Meetings Law; and

WHEREAS, Chapter 56 adds Section 103-a of the Open Meetings Law, permitting the Committee on Open Government to authorize its members to attend meetings by videoconferencing under extraordinary circumstances; and

WHEREAS, Section 103-a(2)(a) requires the Committee on Open Government to adopt a resolution authorizing the limited use of videoconferencing under such circumstances; and

WHEREAS, Section 103-a(2) allows for hybrid meetings by requiring “that a minimum number of members are present to fulfill the public body’s quorum requirement in the same physical location or locations where the public can attend”; and

WHEREAS, Section 103-a(2)(c) requires that members be physically present at any such meeting “unless such member is unable to be physically present at any such meeting location due to extraordinary circumstances . . . including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting”; and

WHEREAS, in accordance with Section 103-a(2)(d), any members attending by videoconference must be “heard, seen and identified, while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon”; and

WHEREAS, Section 103-a(2)(g) requires that any meeting where a member attends by videoconference be recorded, posted to the Committee on Open Government webpage within five business days, and transcribed upon request; and

WHEREAS, Section 103-a(2)(h) requires that members of the public be permitted to attend and participate, if authorized, in any meeting by videoconference when a member attends by videoconference.

BE IT RESOLVED, that the Committee on Open Government authorizes its members who experience an extraordinary circumstance, as described above and further defined by any rules or written procedures later adopted, to attend meetings by videoconference: (i) as long as a quorum of the members attend in-person at one or more locations open to the public; (ii) as long as the member can be seen, heard, and identified while the meeting is being conducted; and (iii) as otherwise permitted under Chapter 56 of the Laws of 2022; and be it further

RESOLVED, that the Committee on Open Government shall create written procedures further governing its use of videoconferencing by its members in compliance with Chapter 56 of the Laws of 2022.

**The Committee on Open Government
Procedures for Member Videoconferencing
Pursuant to Public Officers Law § 103-a**

In compliance with Public Officers Law (POL) § 103-a(2)(a), the Committee on Open Government (the “Committee”), following a public hearing, authorized by resolution on [insert date] the use of videoconferencing as described in POL § 103-a.

The following procedures are hereby established to satisfy the requirement of POL § 103-a(2)(b) that any public body which in its discretion wishes to permit its members to participate in meetings by videoconferencing from private locations – under extraordinary circumstances – must establish written procedures governing member and public attendance.

1. Committee members shall be physically present at any meeting of the Committee unless such member is unable to be physically present at one of the designated public meeting locations due to extraordinary circumstances.
2. For purposes of these procedures, the term “extraordinary circumstances” includes disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting.
3. If a member is unable to be physically present at one of the designated public meeting locations and wishes to participate by videoconferencing from a private location due to extraordinary circumstances, the member must notify the Executive Director of the Committee no later than four business days prior to the scheduled meeting in order for proper notice to the public to be given.
4. If there is a quorum of members participating at a physical location(s) open to the public, the Committee may properly convene a meeting. A member who is participating from a remote location that is not open to in-person physical attendance by the public *shall not* count toward a quorum of the Committee but may participate and vote if there is a quorum of members at a physical location(s) open to the public.
5. Except in the case of executive sessions conducted pursuant to POL § 105, the Committee shall ensure that its members can be heard, seen, and identified while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon. This shall include the use of first and last name placards physically placed in front of the members or, for members participating by videoconferencing from private locations due to extraordinary circumstances, such members must ensure that their full first and last name appears on their videoconferencing screen.
6. The minutes of the meetings involving videoconferencing based on extraordinary circumstances pursuant to POL § 103-a shall include which, if any, members participated by videoconferencing from a private location due to such extraordinary circumstances.

**The Committee on Open Government
Procedures for Member Videoconferencing
Pursuant to Public Officers Law § 103-a**

7. The public notice for the meeting shall inform the public: (i) that extraordinary circumstances videoconferencing will (or may) be used, (ii) where the public can view and/or participate in such meeting, (iii) where required documents and records will be posted or available, and (iv) the physical location(s) for the meeting where the public can attend.
8. The Committee shall provide that each open portion of any meeting conducted using extraordinary circumstances videoconferencing shall be recorded and such recordings posted or linked on the Committee's website (www.opengovernment.ny.gov) within five business days following the meeting, and shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request.
9. If members of the Committee are authorized to participate by videoconferencing from a private location due to extraordinary circumstances, the Committee shall provide the opportunity for members of the public to view such meeting by video, and to participate in proceedings by videoconference in real time where public comment or participation is authorized. The Committee shall ensure that where extraordinary circumstances videoconferencing is used, it authorizes the same public participation or testimony as in person participation or testimony.
10. Open meetings of the Committee conducted using extraordinary circumstances videoconferencing pursuant to the provisions of POL § 103-a shall be broadcast pursuant to the requirements of POL § 103(f) and shall utilize technology to permit access by members of the public with disabilities consistent with the 1990 Americans with Disabilities Act (ADA), as amended, and corresponding guidelines. For the purposes of this guideline, "disability" shall have the meaning defined in Executive Law § 292.
11. The in-person participation requirements of POL § 103-a(2)(c) shall not apply during a state disaster emergency declared by the governor pursuant to Executive Law § 28 if the Committee determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the Committee to hold an in-person meeting.
12. These procedures shall be conspicuously posted on the Committee's website (www.opengovernment.ny.gov).

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SHOSHANAH BEWLAY

DRAFT MINUTES

MEETING OF NYS COMMITTEE ON OPEN GOVERNMENT

Held by WebEx Pursuant to Chapter 417 of the Laws of 2021,
as modified by Chapter 1 of the Laws of 2022.

June 7, 2022, at 10am

Members Present by WebEx:

Zoila Del Castillo (Secretary of State), William Bruso (OGS), Joel Lombardi (DOB), Peter Grimm, Franklin Stone, David Schulz, Amanda De Santis (Lt. Governor), Stephen Waters, Hadley Horrigan

Executive Director's Staff Present in Person:

Shoshanah Bewlay, Kristin O'Neill, Jake Forken, Candace Watson

Executive Director's Staff Present by WebEx:

Christen Smith

Welcome:

Introduction new member designees Amanda De Santis (Lt. Governor) and Ziola Del Castillo (Secretary of State). Ian MacCallum, present by WebEx, will replace William Bruso as designee for OGS at the next meeting.

Quorum present

Approval of Minutes:

On a motion to approve the minutes of the December 8, 2021, Committee meeting, all were in favor and the minutes were approved.

Staff Activities:

The Executive Director reported for the period November 2021 through May 2022, representing the period since the last annual report was finalized, the following activities: 1100 calls handled; 1100 informal advisory opinions issued; 22 formal advisory opinions issued; 2600 appeals/determinations reviewed; 30 training sessions (both virtual and in-person) provided to 2872 people; and several recorded presentations given for Albany Law School.

Chapter 56 of the Laws of 2022:

The Executive Director gave a brief overview of Chapter 56 of the Laws of 2022, an amendment to the Open Meetings Law (OML) to make permanent (until July 1, 2024) the expanded use of videoconferencing by public bodies to conduct open meetings, under extraordinary circumstances, regardless of a declaration of emergency.

She identified that if the Committee wishes to leverage this provision of law, it must hold a public hearing and thereafter adopt a resolution approving it. On a motion to approve the proposed/draft OML § 103-a Resolution and related Procedures circulated to members, Committee members were unanimously in favor and authorized the Executive Director's staff to move forward with scheduling a public hearing. The Executive Director will keep members apprised of all progress on the scheduling of the public hearing.

Possible adoption of bylaws or other rules/processes:

The bylaws committee, formed at the December 2021 meeting, will continue to review models provided and will examine this question more closely when the Committee membership is full upon the appointment of two new members.

Transparency issues arising from government use of algorithms to conduct business:

David Schultz suggested that the Committee consider recommendations for an amendment to FOIL to ensure that the public may understand and have visibility into algorithms used by government agencies to make government decisions. In this connection, he will work with the Executive Director to further identify possible areas for proposals to the current transparency laws for consideration by Committee members.

Possible additional oversight mechanisms for Agency non-compliance with FOIL:

David Schultz suggested, consistent with the idea raised the 2021 Annual Report, that New York may need recommendations for additional mechanisms for oversight of government transparency laws such as exist in other states, including models with centralized attorney general or specialized court or committee body review of all FOIL appeals. Committee members will consider possible recommendations for this year's report.

Public Comment:

The Committee heard comments from WebEx attendees (i) David and (ii) Paul Wolf.

Other or New Business:

The Executive Director's staff will provide members with possible dates for a meeting to be held in September 2022.

Adjourned at 11:44 am