

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

COMMITTEE MEMBERS
ANTONIO DELGADO
PETER D. GRIMM
HADLEY HORRIGAN
JEANETTE M. MOY
ROBERT F. MUJICA, JR.
ROBERT J. RODRIGUEZ
DAVID A. SCHULZ
FRANKLIN H. STONE
STEPHEN B. WATERS

EXECUTIVE DIRECTOR
SHOSHANAH BEWLAY

MINUTES

MEETING OF NYS COMMITTEE ON OPEN GOVERNMENT

September 15, 2022, at 10am

Members Present:

Albany: Ian MacCallum (OGS), Peter Grimm, Amanda De Santis (Lt. Governor), Stephen Waters

New York City: Zoila Del Castillo (Secretary of State), Franklin Stone, David Schulz

Quorum present

Executive Director's Staff Present:

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

Welcome:

Introduction of Members and Committee staff.

OML § 103-a Resolution and related Procedures:

Committee held a public hearing regarding the implementation of OML § 103-a in July. On motion to approve the adoption of OML § 103-a Resolution and related Procedures, all were in favor and the Resolution and related Procedures were adopted. Procedures to be posted on Committee website.

Approval of Minutes:

Call for discussion of the draft June 7, 2022, Committee meeting minutes. Hearing none, on a motion to approve the minutes, all were in favor. June 7, 2022, Committee meeting minutes were approved.

Staff Activities:

The Executive Director reported for the period June 2022 through August 2022, representing the period since our last meeting in June. The Executive Director reported the following activities: 500+ calls handled; 500+ informal advisory opinions issued; 8 formal advisory opinions issued; 1300 appeals/determinations reviewed; 11 training sessions (both virtual and in-person) provided to 1700 people; and several CLE trainings and a PBS interview. The Executive Director also reported activities between November 2021 through August 2022: 1458 calls, 1600 informal advisory opinions, 30 formal advisory opinions, 41 training sessions (both virtual and in-person) provided to 4500 people and 4000 appeals/determinations reviewed.

Members suggested that the inclusion of appeals data, by agency, be incorporated into annual report and proactively disclosed to the public. Members expressed interest in tracking certain information concerning each appeal, including outcome, which agencies are not currently required to report to the Committee and which may be inferred in some but not all cases by reviewing the correspondence sent

to the Committee. Executive Director and her staff will discuss whether a more detailed tracking system is possible.

Discussion of Proposals for Draft 2022 Annual Report:

Clarification of legislative intent concerning changes to FOIL resulting from repeal of CRL § 50-a

The Executive Director's staff will provide a discussion of issues arising since repeal, including litigation updates, clarification, and legislative intent regarding Civil Rights Law § 50-a as it relates to "substantiated" and "unsubstantiated" complaints and retroactive application.

Expanding FOIL

A member proposed inclusion of a discussion of the bill(s) proposing changes to the definition of "agency." A proposal was made to address Senate Bill 8925 or 8926, which deals with public agencies outsourcing various governmental functions to nonprofits. In particular, state universities create nonprofits to manage their sports programs, so that their expenditures are not subject to the Freedom of Information Law.

Clarification of legislative intent concerning repeated extensions of FOIL deadlines

Members propose that the Committee report urge Legislature to incorporate a standard of "reasonableness" and identify the reasonableness factors promulgated in the Committee Regulations. Members suggest that the Report recommend that the Legislature require public agencies to report FOIL request data to a centralized location, such as the Committee, for publication on the website.

FOIL Oversight and Compliance

Members suggest that this year's report, like previous reports, make recommendations for additional mechanisms for oversight that exist in other states, including models with centralized attorney general or specialized court or committee body review FOIL appeals.

Implementation of OML 103-a

Report should contain a discussion of this new addition to the OML and public body experience to date.

Use of Algorithms or Artificial Intelligence

A member suggested that the Report contain a proposal concerning transparency issues arising from possible use of algorithms to aid in or make agency decisions.

Public Comment:

The Committee heard comments from Tom Speaker of Reinvent Albany, Michelle Allen, Miriam Snyder, and "Mark."

Other or New Business:

The Executive Director will propose possible dates for a meeting to be held in October 2022. She will circulate a draft report prior to the next meeting.

Adjourned at 11:29 am