



Reinvent Albany’s Positions on COOG Proposed Legislation, Recent Changes to NYS Law, and Court Decisions in its 2019 Annual Report

Reinvent Albany, [the New York Chapter of the National Freedom of Information Coalition \(NFOIC\)](#), backs many of the legislative proposals in the NYS Committee on Open Government’s (COOG) 2019 annual report. We also support changes to New York State FOIL Law made in 2019 highlighted in the report, and call on the Governor and legislature to address matters raised in court decisions COOG has drawn attention to.

Below are Reinvent Albany’s positions on particular COOG legislative recommendations in its report:

Repeal Civil Rights Law 50-a

We support the Bar Associations, civil rights and criminal justice groups in their efforts to repeal 50-a, which protects police officers’ personnel records, including disciplinary records, from public scrutiny. In short, police officers are granted enormous responsibility and power in our society, and the public must have confidence in and visibility into the disciplinary system to ensure individual officers are not abusing that power.

Proactive Disclosure

Reinvent Albany has long supported proactive disclosure of records, championing the Governor’s [Open Data](#) Executive Order No. 95, that established a portal placing agency data online. Reinvent Albany has been actively working on improving open data and FOIL compliance at the MTA, releasing a [review of MTA FOIL performance](#) in 2018, and a follow-up [report on MTA transparency](#) in 2019. Ultimately, this secured a [pledge from Chairman/CEO Pat Foye in April 2019](#) to “overhaul” FOIL and open data processes at the agency.

The COOG report references *S1630-B(Skoufis)/A121-A(Buchwald)*, which requires agencies and the legislature, as able, to place records subject to FOIL on their websites if the records are of substantial interest to the public. We indicated to the bill sponsors last

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session we would support the bill if criteria are provided for the proactive disclosure of records like the most frequently requested FOIL records or datasets.

Government Created Entities Should Be Subject to FOIL

COOG supports FOIL applying to entities that are created by or affiliated with government, as does Reinvent Albany. However, we oppose COOG's proposed legislation that only applies FOIL to entities that have a majority of appointees chosen or designated by state or local government officials. We believe this standard does not cover enough government-affiliated entities, and believe a number of factors should be considered in determining whether an entity, in its totality, is carrying out a government purpose. We have provided language to that effect to the central staff in the legislature.

Bring JCOPE within the coverage of FOIL and the Open Meetings Law (OML)

[Reinvent Albany agrees with COOG and Governor Cuomo that JCOPE should follow FOIL and the OML](#), and that exceptions to the law require the necessary flexibility for the ethics body to protect the rights of the accused and investigative techniques. Municipal ethics bodies follow both laws.

Clarifying Amendments

[Reinvent Albany has previously supported one of COOG's clarifying amendments to make transparent lists of vendors and their addresses engaged in professional or business activity](#). Exemption from disclosure should only apply to natural persons and their addresses if a list is to be used for solicitation or fundraising. The Assembly passed this legislation and the Senate advanced it to third reading on the calendar in 2018.

Clarify Civil Rights Law §50-b to Protect Privacy of Victims of Sex Offenses, Not that of Defendants

[Reinvent Albany supported a bill with this proposal](#). It is in section 4 of [A.3939\(Englebright\)/ S.5496\(Skoufis\)](#), which passed the legislature and awaits the Governor's signature or veto. It would shield from disclosure any portion of a record revealing a victim of a sexual offense or HIV transmission, but not the entire record.

Disclose or Withhold E911 Records Pursuant to FOIL

Reinvent Albany agrees with COOG that E911 records should be subject to FOIL and not County Law. [Reinvent Albany supported this proposal in Governor Cuomo's FY2019-20 Executive Budget](#), believing it can reveal government inadequacies in emergency response while still protecting victims' privacy.

Amend FOIL to Create a Presumption of Access to Records of the State Legislature

[Reinvent Albany supported this proposal in Governor Cuomo's FY2019-20 Executive Budget](#), believing opening the legislative branch by requiring it to follow FOIL makes New York state government more transparent. [However, we also noted that state legislatures tend to receive few FOIL requests.](#)

Dealing with Lawsuits by Commercial Entities to Block Disclosure

Reinvent Albany agrees with COOG that companies should not be able to delay initiating a judicial proceeding to protect records that contain trade secrets from disclosure. [A.414-A\(Paulin\)/S.4685-A\(Skoufis\) backed by Reinvent Albany](#) would expedite such proceedings so a determination is made on whether a record can be released. This bill has been passed by the legislature and awaits the Governor's approval or veto.

2019 Legislative Amendments

The COOG Report notes three changes to the Freedom of Information Law that were made in 2019. The "Mugshot" bill prevents the disclosure of booking photographs when a person is arrested except if disclosure serves a law enforcement purpose and is not precluded by any state or federal law. The second change requires Industrial Development Agencies (IDAs) to livestream their proceedings (open meetings and hearings) and store the recordings on a public website for five years. The change goes into effect January 1, 2020. The third change requires state agencies which have websites to receive online requests for records on their websites.

Reinvent Albany supports all three of these amendments made this past year. While we favor transparency, the mugshot bill was needed because internet sites were posting photographs of people who were arrested and charging individuals for their removal, causing undue harm to people who may not even be convicted of wrongdoing they are arrested for. [We have called for greater transparency of IDAs beyond FOIL](#), and support livestreaming of government proceedings dating back to 2010. [We also supported the Governor's standardized online record request form](#) that [provides one-stop shopping for records requests across agencies.](#)

2019 Court Decisions of Note

The COOG report highlights FOIL-related court decisions from the previous year. Reinvent Albany is concerned about particular court decisions and thinks the legislature should act by changing the law:

Kosmider v. Whitney, 34 NY3d 48 (2019), reargument denied, 33 NY3d 1134 (2019)

This decision effectively makes images of paper ballots recorded by voting machines exempt from a FOIL request. Public access to digital images of cast ballots does not reveal the identity of the voter but does allow for checking the count of the votes cast, thereby ensuring the integrity of our elections.

Matter of Luongo v. Records Access Appeals Officer, 168 AD3d 504 (1st Dept 2019)

This decision exempts from disclosure summaries of “personnel orders” which may include disciplinary actions against police officers and civilian employees. The summaries were deemed exempt under Civil Rights Law 50-a because the details informed officer’s performance evaluations. Reinvent Albany believes these summaries should be made public, as they were in the past, because of the public interest in knowing whether police officers, who are granted extraordinary power and responsibility, are following the law.