



VIA EMAIL

June 9, 2023

Megan Mutolo
Deputy Director of Lobbying
NYS Commission on Ethics and Lobbying in Government
megan.mutolo@ethics.ny.gov

Re: Updating the Commission on Ethics and Lobbying in Governor's Regulations on FOIL and Records Access, Part 937

Dear Ms. Mutolo,

We write to provide comments on the [proposed new Part 937](#), "Publicly Available Information and Documents and Records Access Requests," and request that you update and significantly modernize the rules to fully reflect the ubiquitous use of digital communications and data. We further ask that COELIG's regulations reflect New York State's stated commitment to proactive disclosure, open government and open data.

Specifically, we ask that you amend the regulations to accomplish the following three goals:

1. **Align the regulations with the Committee on Open Government's [Model Freedom of Information law \(FOIL\) Rules for Agencies](#).** These model rules provide important purpose and scope language that emphasize the intent of FOIL and the public's right to information. The model rules also include complete information regarding records requests that fully align with FOIL's requirements.
2. **Explicitly require proactive disclosure of information, and adopt procedures consistent with the "Open Data" Executive Order 95 of 2013.** [Executive Order 95 of 2013](#), "Using Technology to Promote Transparency, Improve Government Performance and Enhance Citizen Engagement," created data.ny.gov, New York's

open data portal. We urge COELIG to continuously work to increase proactive disclosure of information on its website and the state open data portal, and use FOIL requests as a guide to understand what records the public wants to see. By publishing commonly requested public records online, COELIG can reduce its FOIL caseload. Lastly, as the State's ethics body, we think it would be valuable for COELIG practices and regulations to explicitly acknowledge New York State's official philosophy on transparency, per the legislative declaration of the Freedom of Information Law:

"The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality."

- 3. Recognize that New York's people and government overwhelmingly conduct business using digital communication and the internet – not paper.** The regulations cite archaic language in the Freedom of Information Law (FOIL) regarding "public inspection" and provide business addresses instead of email addresses for FOIL communications. FOIL has been amended in recent years to recognize electronic means of communication and receipt of information, which should be reflected in the regulations, as provided by COOG's model rules.

More detailed comments are provided for individual sections of the draft regulations below.

937.1 Purpose and Scope

- **Recommendation:** The regulations should incorporate language from COOG's model rules regarding the people's right to know. The regs currently cite Executive Law §94 and Article Six of Public Officers Law, known as the Freedom of Information Law, but should include the Commission's commitment to publish data, consistent with Executive Order 95 of 2013. COELIG has an important opportunity to expand the amount of data it publishes on data.ny.gov.

937.2 Information and Documents Publicly Available

- **Recommendation:** The regulations repeat what information is required to be posted on the Commission's website pursuant to Executive Law or the Lobbying Law, but should also reference the data to be published on data.ny.gov.
 - COELIG's predecessor, JCOPE, was specifically exempted from FOIL and thus had a list of information that was disclosable. The emphasis now should be on proactive disclosure of information to reduce the need for FOIL requests by posting more data on data.ny.gov.

947.3 Records Access & 937.6 Requests for Public Access to Records

- **Recommendation:** Rather than referencing the archaic provisions of FOIL regarding public inspection of records as provided in 937.5, “Location and Hours for Public Inspection of Record,” these sections should emphasize more recent amendments to FOIL, such as those provided in COOG’s model rules, including:
 - When an agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, or when doing so requires less employee time than engaging in manual retrieval or redactions from non-electronic records, the agency shall be required to retrieve or extract such record or data electronically.
 - When records maintained electronically include items of information subject to FOIL, as well as items that may be withheld, an agency in designing its information retrieval methods, whenever practicable and reasonable, shall do so in a manner that permit the segregation and retrieval of available items in order to provide maximum public access.

937.4 Designation of Records Access Officer & 937.8 Denial of Access to Records

- **Recommendation:** The regulations should require COELIG to publish on its website the name, title, business address, phone number, and email address for both its records access officer and appeals officer.

937.6 Requests for Public Access to Records & 937.10 Public Notice

- **Recommendation:** COELIG should use language from COOG’s model rules regarding public notice, and pursuant to FOIL should accept requests for records submitted by email in addition to its online form.

937.7 Subject Matter List

- **Recommendation:** The regulations should require the FOIL subject matter list be published on COELIG’s website. This list is only helpful to FOILers if it is made easily available.

Thank you for your consideration.

Sincerely,

Rachael Fauss
Senior Policy Advisor
Reinvent Albany

Betsy Gotbaum
Executive Director
Citizens Union

Susan Lerner
Executive Director
Common Cause NY

Laura Ladd Bierman
Executive Director
League of Women Voters of NYS

Elizabeth Kocienda
Director of Advocacy
New York City Bar Association

Blair Horner
Executive Director
New York Public Interest Research Group

cc. Members of the Commission on Ethics and Lobbying in Government