



## **Evaluation of FOIL Reform**

### **Part BB of the Public Protection and General Government Article VII FY2019-2020 Executive Budget**

#### **Summary**

This bill makes the state legislature subject to the Freedom of Information (FOIL) law that applies to state executive and local government agencies. This includes acknowledging requests within five business days and denying requests with the justifications allowed by law. The legislature currently follows different standards for access to public records in section 88 of the Public Officers Law resulting in less transparency than for agencies. Section 88 is repealed by the bill.

The bill also requires both state agencies and the legislature to publish on their websites any information that they believe may be of “substantial interest to the public.”

This bill also removes a provision in the Environmental Conservation Law that subjects major regulatory permits to records access consistent with current access to state legislative records. With the bill making the legislature subject to FOIL, there would be a presumption of access to all records that are filed as part of the permit application process with the Department of Environmental Conservation.

Presently, FOIL requests can be denied because they could affect ongoing contract awards or collective bargaining agreements. When agreements must be ratified by members of an employee organization, public employer or legislative body, this law will require that the information be publicized after the details of the contract are finalized and submitted to those bodies for approval.

The bill also adds language so that access to agency and certain legislative records could be denied when disclosure would endanger critical infrastructure.

Under current law, persons, companies or entities that submit records to the government can have parts of records exempted indefinitely from FOIL disclosures.

This amendment places a five-year limit on those exemptions, with two-year extensions possible upon request. In addition, if requests for exemptions are denied, appeals of the denial, rather than languishing in the courts for years, must be given preference and considered within 45 days. Appellants who do not file a brief with the court within 30 days will have their appeal dismissed.

Finally, this law makes Enhanced 911 (E911) emergency calls subject to FOIL requests (E911 calls make the caller's phone number and location available to the call recipient). Currently, E911 calls outside the five boroughs are not subject to FOIL.

### **Reinvent Albany Position - Support and Recommend Improvements**

**Reinvent Albany supports applying FOIL to the legislature.** We believe it will open more information to the public without placing an undue burden on the legislative branch. Communications between the legislature and outside stakeholders will be subject to FOIL, as will final policy determinations. This will shed more light on how bills become law in the state legislature.

We note, however, that even when legislative FOIL becomes law, legislatures are rarely subject to requests. State legislatures in other states Reinvent Albany surveyed have received relatively few FOIL requests as noted in our 2016 report, "[Extending FOIL to the NY State Legislature.](#)" The New York City Council, which as a municipal legislature is subject to FOIL, received 70 FOIL requests in 2014 while New York City agencies received over 50,000.<sup>1</sup>

**We also support making contractual bargaining agreements subject to FOIL just before they are voted on by the membership.** Journalists and the public have an interest in understanding contractual bargaining agreements proposed for unions making up the state workforce before they are voted on by the full membership. State employees' salaries and benefits are paid for by taxpayers. We believe this strikes the right balance in considering both the public's right to know and confidential employer-employee negotiations.

**We support time limits on businesses, vendors and other third parties' ability to restrict access to records and information submitted to government.** The cost of goods and services provided to government agencies, for example, should not be indefinitely shielded from public access. By placing a 5-year

---

<sup>1</sup> <https://reinventalbany.org/wp-content/uploads/2016/01/Legislative-FOIL-Fact-Sheet.pdf>

limit on requests for exemptions from disclosure, and requiring 2-year renewals thereafter, we ensure greater public access to this information. These reforms were recommended in the [Committee on Open Government's 2018 report](#).<sup>2</sup>

**Reinvent Albany believes E911 calls should be subject to FOIL.** This is a nationwide issue, and access to E911 calls, which contain the information of the caller or anonymous callers, have been restricted in certain places mostly for privacy reasons. It can be heart-wrenching for victims' families to repeatedly hear emergency calls in the media. While we sympathize with victims' families, the release of E911 calls is critical for law enforcement oversight and accountability, and even of 911 operators themselves. In conferring with the National Freedom of Information Coalition (NFOIC) that Reinvent Albany is part of, we learned of numerous instances of 911 calls in other states revealing the slow response of law enforcement. One recent high-profile example is the Pulse nightclub shooting, in which the slow response of law enforcement to engage the shooter was revealed by 911 calls. But even everyday occurrences can be revealing, like a heart attack victim who had several more heart attacks while waiting for an ambulance to arrive or a child's call to a 911 operator that wasn't acted upon. FOIL allows for victims' records to be withheld so as not to violate their privacy. The law should be repealed, as COOG also recommended in its 2018 report.

**We recommend removing the provision creating an exception to FOIL when disclosure could endanger "critical infrastructure."** This language weakens FOIL. As Reinvent Albany and 11 other groups noted in [a 2016 letter to Governor Cuomo and Speaker Heastie](#), this exception could be exploited to deny records that officials might find embarrassing. We know of no cases where courts have ordered the disclosure of information regarding critical infrastructure that could put the public at risk.

---

<sup>2</sup> <https://www.dos.ny.gov/coog/pdfs/2018%20Annual%20Report.pdf>