Testimony

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Hearing on
Intro 328-2014 (Open FOIL), Intro 149 and Intro 363

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Good afternoon, I am John Kaehny, Executive Director of Reinvent Albany and Co-Chair of the NYC Transparency Working Group.

My organization is among the dozens of major civic groups who have signed a memo of support calling for the passage of Intro 328, the Open Freedom of Information or Open FOIL bill. The venerable Freedom of Information Law is our single most important transparency tool and Open FOIL will vastly increase transparency, speed responses and create a fairer and less expensive NYC FOIL system. Open FOIL is inspired by the 2013 recommendations of Public Advocate de Blasio, and we urge Mayor de Blasio to join with Council members Kallos and Vacca, and Manhattan Borough President Brewer to pass this bill as soon as possible.

We also support Intro 149, which mandates publishing city laws on a city website in a searchable form, and we support the intent of Intro 363 which requires the City Record be put online in a more useful format.

Problems with the NYC FOIL Process

Groups like the Community Service Society, Legal Aid Society and Transportation Alternatives support the Open FOIL bill because they know that the Freedom of Information Law process is not working very well for New Yorkers or city government. Stated plainly, the NYC FOIL process is an expensive, bureaucratic mess. Public Advocate de Blasio's laboriously researched 2013 report found that 10% of FOIL requests to city agencies – more than 5,000 a year – are ignored, and that 40% of agencies have not put basic FOIL information on their websites. His report

noted "deep inconsistencies" in how agencies responded to FOIL, and pervasive delays.

Mayor de Blasio has even more reasons for concern. Former and current high level city officials, with decades of experience, have confirmed to us what many have long suspected: the FOIL process is highly politicized. FOIL requests which city agencies might find embarrassing or inconvenient are routinely ignored, and responses are delayed or deliberately incomplete. The state Freedom of Information Law calls for all requests to be treated fairly and equally.

It's not just politics. The paper based process used by city agencies to respond to FOIL requests is slow, unreliable, expensive and opaque. Today, Reinvent Albany released *Beyond Magic Markers*, a report on NYC FOIL costs and potential savings. Based on a cost per FOIL request of $400, we estimate that NYC spends at least $20 million a year responding to FOIL requests, and that the city could save an estimated $13 million a year by adopting a centralized online system like that used by six federal agencies and the city of Oakland California. Our cost estimate is very conservative, and assumes that NYC's hodgepodge of paper FOIL processing systems cost less than federal agencies which have been using specialized software for many years. (Federal Freedom of Information requests cost an average of $658 each, and Britain's completely automated system averages $490 per request.)

When it comes to FOIL, NYC is primitive. City agencies use magic markers to black out information on paper, and then scan that paper and mail or email it. In sharp contrast, federal agencies and Britain use a digital tool to delete privileged information from a document. Agencies are flying blind. They do not collect or report basic information about how many requests they receive, the topic of those requests, or processing costs. It took Public Advocate de Blasio's staff two years to collect basic information on city FOIL requests that federal agencies publish online and automatically update.

Benefits of Open FOIL

New Yorkers deserve better. The Open FOIL bill does four things.

First, it *centralizes* the FOIL process so that all requests and responses go through the same online portal and database, where they can be publicly tracked.

Second, it *automates* the process and gives all agencies access to the same state of the art processing tools, including the digital redaction, or removal, of protected information.

Third, it opens the FOIL process so that the public (and government) can track requests, and see the topic of the request and the documents agencies provide in response. This will ensure requests are treated fairly, and help identify the most popular information and get that information online before it needs to be FOILed. (The EPA learned from their FOIA software that 20% of all requests were related to pesticides, and so they put that data online and reduced pesticide FOIA's by 85 %.)

We believe this is by far the most important transparency provision in the bill. Accordingly, we absolutely oppose allowing an "opt out" which allows FOILers to hide their FOIL requests for public information about government activities. (Requests by individuals for information about themselves should still be given a tracking number, but can still provide crucial transparency information while respecting privacy. For instance, the online summary of a persons request for arrest information about themselves can simply say: "Information about individual's arrest record from NYPD." But transparency advocates and government still need to know what is being requested to ensure a fair and responsive FOIL system.

Fourth, Open FOIL massively *boosts the Open Data Law* by requiring that public data sets released in whole or part through an agency response to a FOIL request be published in the Open Data Portal. "One strike you're in." (In other words, if a member of the public asks for and gets a list of street trees in Brooklyn from a citywide Parks tree data base, that whole data base – all five boroughs gets published in the Open Data Portal.)

The elements of Open FOIL have been tested and proven to work by big government agencies elsewhere. Six federal agencies are using FOIAonline, an online tool which tracks and displays records requests. Oakland's RecordTrac is free, open source software that NYC can modify. Chicago is putting a record of all FOIL requests in its open data portal.

Open FOIL does a great deal, what it does not do is undermine privacy. Under Open FOIL, the same agency FOIL officers with expertise in the state Freedom of Information Law and Privacy Act, and federal HIPAA and FERPA, will be redacting

documents and summarizing request topics. They will trade magic markers for digital redaction tools, but they will have the same expertise and responsibility to comply with the federal and state privacy laws which trump city law.

There is significant government experience with online FOIL systems and privacy laws. The federal FOIAonline system publishes request and responses, and more locally, so does the Port Authority. This transparency has raised few public concerns and no evidence that it has deterred the use of FOIL requests. (Notably, the federal FOIAonline, the Port Authority and Chicago reveal the identity of FOILers --- Open FOIL does not.)

The Council may be interested to know that the state Freedom of Information Law says that non-personal FOIL requests, FOIL logs and FOIL responses are subject to disclosure. Reinvent Albany has FOILed various agency logs, and we are told by some political beat reporters that they FOIL requests to City Hall and the Governor, and for FOILs from other journalists. So, it would be odd for journalists to complain about ruined scoops. In any event, the body of experience with public FOIL tracking elsewhere, the clear distinction FOIL makes between personal and non-personal requests, and the continued participation of experienced FOIL officers suggest that Open FOIL will ensure that privacy laws are fully respected.

In sum, we strongly support the Open FOIL bill and based on a mountain of real world experience and research, we believe it will vastly improve the responsiveness, transparency and fairness of the city's FOIL process. Open FOIL will also create new opportunities to use FOIL as a tool to promote open data, and save millions of dollars. This is a great bill and we applaud Council members Kallos, Vacca and Manhattan Borough President Brewer for championing it. We Mayor de Blasio and his administration to help pass it and to work hard to get Open FOIL up and running.