

Doing the Public's Transparency Business

2023 Recommendations for COOG Annual Report



Reinvent Albany

Transparency - Accountability
Strong Democracy - Sensible Public Investment

Championing Transparency in New York Government



Our staff includes experts on FOIL, OML, Open Data, online disclosure, budget and spending transparency – laws, practices, systems, and implementation.

Our technology and legal consultants and advisors have led and staffed open government initiatives at the White House, federal, NYS and NYC agencies, and include some of New York's leading public interest FOIL attorneys.

Achievements for New York Transparency



We win laws, policies, and programs that increase NY government transparency. We usually work in coalitions, and often lead them. Here are some examples of where we have played a leading role:

- 2023: [LLC Transparency bill](#) (passed legislature)
- 2023: [Updating FOIL regs](#) of State Ethics Commission
- 2021-2023: [Hybrid Open Meeting Law](#)
- 2022: [Complete overhaul of NYS BOE campaign finance data](#)
- 2022: [Public ESD Community Advisory Board meetings](#)
- 2021: [Agency open data audits by OSC](#)
- 2021: [MTA Open Data Law](#)

Achievements for New York Transparency (cont.)

- 2020: (Part of huge coalition) Repeal of FOIL 50-a police records.
- 2017: Attorneys' fees law
- 2016: GASB 77 tax expenditure transparency
- 2015: State email retention policy / end to 90-day auto-delete
- 2014: Ongoing Upgrades of "Open Book" NYS spending (OSC)
- 2014: NYS Open Budget, machine-readable budget data.
- 2014: NYC OpenFOIL
- 2013 NYS Executive Order 95 (Open Data) OpenNY, Data Handbook
- 2012: NYC Open Data Law, nine amendments, OD Handbook.
- 2012-2023: Upgrades to NY Open Government site (OAG)

Powerful Research on NY Transparency



- 2022: [Rating of 70 NY State Agency Transparency Plans](#)
- 2021: [NY Government Needs a Really Big Dose of Sunshine](#)
- 2019: [“Open MTA” – 50 Things NY Can Do Now](#)
- 2019: [18 Specific Steps Forward for MTA FOIL and Open Data](#)
- 2017: [Courts Deny Attorney Fees in Nearly 1 in 4 Lawsuits](#)
- 2017: [NY Lobbying Transparency Undermined by Antiquated Tech](#)
- 2016: [Extending FOIL to Leg: Modest Burden, Modest Value](#)
- 2016: [What the NYC Open Data Law and 7 Amendments Require](#)
- 2015: [Transparency Setback - veto attys’ fees, agency appeal bills](#)

Powerful Research on NY Transparency (cont.)



- 2015: [Listening to FOIL at NYC DOITT: 311 Data Challenge](#)
- 2015: [Following the Money: Opening NY Campaign Finance Data](#)
- 2015: [Federal FOIA Advisory Committee “Listens to” RA](#)
- 2014: [Putting FOIL Online Will Massively Reduce NYC FOIL Costs](#)
- 2014: [Beyond Magic Markers: NYC Spends \\$400 / FOIL Request](#)

Bill Memos & Testimony

Reinvent Albany submits dozens of memos of support or opposition each legislative session.

Many of our memos are joined by other watchdog and advocacy groups.

This session we submitted testimony or testified directly to more than a dozen state legislative committees or hearings.

You can view our memos on the tracker on our [website](#).

Assembly Bill ↕	Senate Bill ↕	RA Position ↕	Status ↕	Issue ↕	Description (Links to Memo) ↕
	S1571 (Gianaris)	Support	On Senate Floor Calendar	Transparency	Requires online publishing of NYS judges' financial disclosure statements
A7266 (Rosenthal L)	S2422 (Hoylman-Sigal)	Support	On Senate Floor Calendar	Home Rule	Allows New York City to Set Speed Limits as Low as 20 mph (Sammy's Law)
A3778 (Zebrowski)	S521 (Comrie)	Support	Passed Senate, In Assembly Committee	Accountable Government	Repeals 2019 Changes to Public Authorities Control Board
A2229 (Hyndman)	S1081 (Comrie)	Support	On Senate Floor Calendar, In Assembly Committee	Accountable Government	Requires Municipal Housing Authorities to Report Use of State Funding to ABO Oversight
	S2872 (Comrie)	Support	On Senate Floor Calendar	Accountable Government	Exempts the MTA from State Bond Issuance Charges
A846 (Weprin)	S1632 (Kavanagh)	Support	In Committee	Tax Subsidies	Repeals Madison Square Garden Property Tax Exemption
A351 (Bronson)	S89 (Ryan)	Support	In Committee	Tax Subsidies	Prevents IDAs From Abating School District Taxes

Transparency Legislation We Support



- A3484 (Gallagher) / S995 (Hoylman-Sigal) – LLC Transparency Act
- S3257 (Hoylman-Sigal) – Ends commercial FOIL exemption
- S3502 (Skoufis) – End consultant report exception
- S2322 (Bailey) / A2442 (Gonzalez-Rojas) - Clarifies that 50-a repeal applies retroactively
- A5357 (Steck) / S5801 (Liu) – Strengthens FOIL attorneys’ fees
- A1560 (McDonald) / S3544 (Breslin) – Requires electronic filing of legislators’ financial disclosures, and requires posting in open data format

New York's 6 Transparency Principles



1. Government is the public's business.
2. A free society is maintained when government is responsive and responsible to the public, (and)
3. When the public is aware of governmental actions.
4. Extend public accountability wherever and whenever feasible.
5. The people's right to know the process of government decision-making is basic to our society.
6. Access to such information should not be shrouded with the cloak of secrecy or confidentiality.

**Does New York government
generally try to follow the six
transparency principles
in state law?**

No

New York government does not meet its own basic transparency requirements, public expectations, or best practices.



1. Billions of NY tax dollars are routinely spent in near secrecy via lump sum appropriations or via mega-projects shrouding their basic details in secrecy – this is an obvious corruption risk.
2. The Freedom of Information Law process is systemically dysfunctional: Agencies give themselves endless postponements, provide fragmentary records and delays of 8 months to a year are common. Agencies routinely game FOIL requests by abusing exceptions, or providing tabular data in a non-machine-readable format.
3. Agencies overwhelmingly fail to use the Internet to provide the public with basic information about their activities, spending, or priorities, or about their most frequently FOILED records.
4. Agencies generally do not comply with State EO 95 (open data) or use open data to reduce FOIL requests or maximize the public utility of their expensively collected data.
5. Agencies too often treat transparency as an afterthought or annoyance rather than a core mission and service to the public. Agency management and data collection can be atrocious.

**What can the Committee on
Open Government do?**

COOG can tell the truth



COOG staff does heroic work, but they cannot fix the massive, systemic transparency problems afflicting New York government.

What COOG can do is be much more upfront about the breadth and severity of the problems, and provide realistic programmatic and budget solutions.

What we think should be in the COOG Annual Report



- **Honest assessment of overall transparency efforts**, state and local implementation, and what is known and what should be known.
- **More emphasis on a clear hierarchy of priorities.** The traditional a la carte set of recommendations is not a strategy that can be built on: AKA COOG makes wish list, legislators introduce random items.
- **Topics for inclusion in Annual Report:**
 - **COOG:** Mission, role, capacity, funding, independent governance?
 - **FOIL:** Needed analysis and data collection. FOIL as an agency service to public and large-scale process (300k annual requests), dealing with volume, cost effectiveness, use and adoption of new software, leader/laggard agencies, critical points of failure (county clerks?).
 - **Proactive disclosure:** Basic expectations, needed research, best practices.
 - **Open data:** State and local initiatives, using FOIL to identify FAQ data sets.
 - **Open Meeting Law:** Most important questions that must be addressed post-COVID.

Honest assessment of transparency in NYS



COOG should be asking why there is such huge difference between what is included in the COOG Annual Report and the vastly more critical assessment of government transparency that can be seen on editorial pages statewide and in well-documented watchdog reports.

COOG should rise above politics to candidly report on the widespread dysfunction and flaunting of transparency laws and the State's official transparency philosophy.

Committee on Open Government Role, Function, and Future



1. “Open government” spans a huge number of NY government entities, topics and laws.
2. FOIL alone requires state and local agencies to spend millions of dollars to respond to what we believe are upwards of 300,000 records requests a year. (Nobody knows!)
3. State transparency laws like FOIL and OML apply to huge state authorities and tiny units of local government.
4. Many proposals to improve FOIL would require vastly more funding for COOG.

Committee on Open Government Role, Function, and Future



June 22, 2023

Governor Kathy Hochul

VIA EMAIL

RE: Please fill the long-standing vacancies in the Committee on Open Government immediately

Dear Governor Hochul,

We write to urge you to quickly fill the long-standing vacancies in the Committee on Open Government (COOG). Under the state's Freedom of Information Law (FOIL), the Governor is charged with appointing five members, but only three have been appointed to date. The law requires COOG to include members of core stakeholders, and one of the two vacant positions is to be a representative of the news media.

Leaving these positions vacant deprives these stakeholder groups of a valuable avenue for input into the crafting and implementation of important public policy. COOG was formed in 1974 to provide advisory opinions and training on the NYS FOI, Open Meetings (OML), and Personal Privacy Protection Laws (PPPL). Though COOG does not have enforcement powers, the committee holds an important role in interpreting transparency statutes, and its advisory opinions have guided numerous court decisions.

We respectfully ask that you move quickly to appoint the two missing members of COOG and ensure that the body is well-staffed and well-led.

Sincerely,

John Kaehny
Executive Director
Reinvent Albany

Noel Hidalgo
Executive Director
BetaNYC

Betsy Gotbaum
Executive Director
Citizens Union

Susan Lerner
Executive Director
Common Cause New York

Tim Hoefler
Executive Director
Empire Center for Public Policy

Laura Ladd Bierman
Executive Director
League of Women Voters of New York State

Diane Kennedy
President
New York News Publishers Association

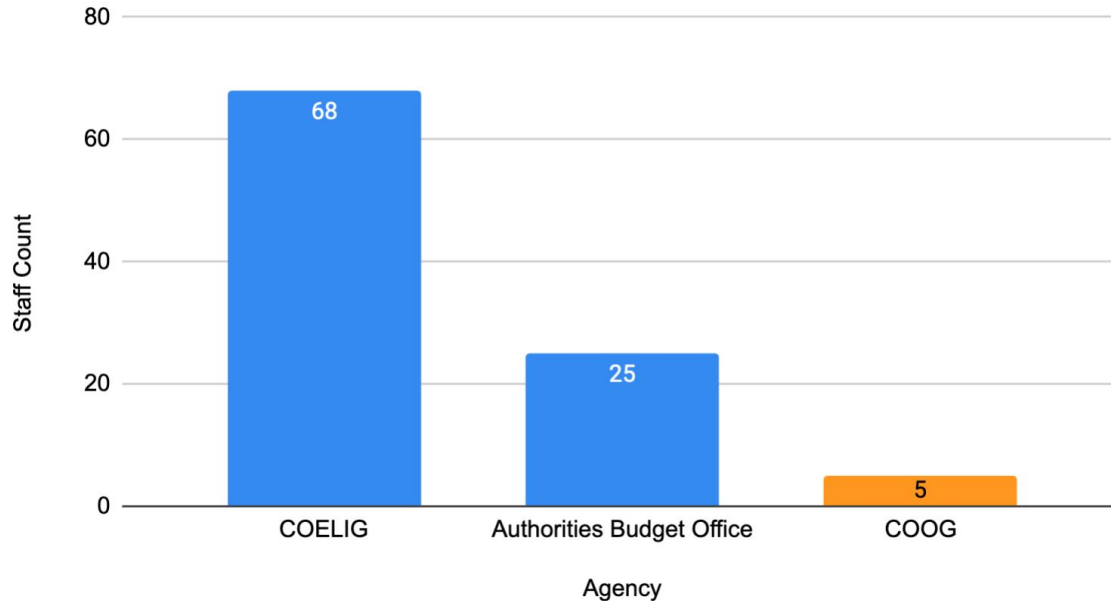
Blair Horner
Executive Director
New York Public Interest Research Group

cc:
Shoshannah Bewlay, Executive Director of the Committee on Open Government
Members of the Committee on Open Government

Committee on Open Government Role, Function, and Future



Head Count



Committee on Open Government Role, Function, and Future



Why does the Authorities Budget Office have 5x more staff than COOG?
The State Comptroller performs some of the same functions as ABO.

COOG is the only NYS body dedicated to state transparency laws.

How many people does COOG need to execute its current mission?

How many people would COOG need if it played a role in the FOIL
appeal process?

Freedom of Information Law



Reinvent Albany has made numerous recommendations to COOG, the Legislature and Governor on how to improve FOIL. They broadly ask for the following:

1. Consider FOIL as an agency service and core function
2. Vastly improve data collection per congressional mandate
3. Put FOIL process online (good to see \$2.6m NYS contract w GovQA)
4. Adopt “release to one, release to all” or “OpenFOIL”

2023 Specific and Achievable

5. Strong attorneys’ fees law – cut “~~substantially~~ prevail”
6. Encourage fast and expanded uptake of GovQA online FOIL software

FOIL Appeals and COOG



We completely share the frustration many stakeholders have with the FOIL appeal process and how expensive and cumbersome it is to litigate Article 78 claims under FOIL against government agencies.

If COOG is made part of the agency appeal process, it will need 5x to 10x more staff. Unless the Governor and Legislature sincerely agree to this increased budget, COOG will become a hindrance, not a help.

Open Meetings Law



Priority: COOG staff should be part of discussions about post-COVID-pandemic OML between Governor's Office and OML stakeholders that will create consensus language on a permanent hybrid OML.

In 2021, COOG staff issued a key advisory opinion in response to a request from Reinvent Albany and other groups.

We ask COOG to include in its annual report our recommendations for eight components needed for a successful hybrid OML process.

Proactive Disclosure



For the purpose of the 2023 Annual report, we suggest COOG recommends a law mandating that agencies publish on their websites three things:

1. Agency tables of organization, updated quarterly
2. All interagency agreements from the last ten years.
3. Beginning January 2024, all tabular data published online be available in a machine readable format – including that embedded in reports. (See Division of the Budget's [Open Budget NY.](#))

The Transparency Sun Will Rise in New York!

Reinvent
Albany.

