

**Meeting Minutes of NY COALITION FOR OPEN GOVERNMENT February 8, 2024
via zoom**

PRESENT ON ZOOM: Michelle, Axel, Pat, Maria, Janet, Darlene, Sue, Timothy P., Ken, Stuart, Annmarie, Alberta, Paul Wolf, and Others.

MEETING MINUTES OF January 11, 2024: **Motion to accept Meeting Minutes of Jan 11, 2024** made by Axel and second by Pat; motion carries.

TREASURER'S REPORT: Motion to accept Treasurer's Report of 1-31-24 (\$5,577.81) made by Maria with second by Alberta; motion carries.

DRAFT CALENDAR: This 2024 calendar included (on pages 6-8) for informational purposes.

BUFFALO MEETING LAWSUIT: The update is that a hearing for this Article 78 filing was held and a decision by the Judge is being awaited. There were 14, 5000 views on Twitter with 3 media at hearing.

PUBLIC RELATIONS/EDUCATION COMMITTEE: Axel, Chair reporting on 4 issues. 1. The AI question of recording minutes had robust discussion and AI was disabled on Zoom. 2. Social media content issue discussed.

Motion to have Committee develop a policy made by Maria and seconded by Sue; motion carries.

3. The opportunity for educating Legislators in Albany regarding our bills on March 11th and 12th is discussed with other organizations wanting to join us. We plan to contact 45 Legislators related to the Committees our bills are in with the goal of moving out of Committee. 4. Facebook Friday 12-12:30pm is getting off the ground and may do one from Albany. 5. The Fundraising Research Committee had its first meeting with three areas so far to focus on for grant writing.

OPEN MEETINGS LAW COMMITTEE: Chair, Michelle reported on two issues. 1. Letters via email went out to 177 towns who have been identified as not allowing public comments at their meetings. About 30 towns responded and we will take a look at getting back to them. Of 177 sent out, so far, 130 did not respond. 2. Training session planned on how to make public comments at regular meetings and public hearings.

FREEDOM OF INFORMATION LAW COMMITTEE: Chair, Maria reporting (and Michelle taking over meeting as Paul left as planned) on four issues; 1. Final FOIL report regarding State Agencies close to being completed. Update(#6) being done to responses still coming in. 2. Training session planned for March 28th at 5:30 pm regarding the need for an independent officer hearing system. Three experts will be doing the training. 3. Committee is recommending doing a FOIL project where we

request public comment policies from 62 City Councils. Volunteers will be requested to do this project.

Motion to do the FOIL Project on City Councils made by Maria and seconded by Annmarie; motion carries.

4. The National Freedom of Information Coalition (NFOIC) has a great opportunity where the Coalition can obtain an award for FOIL research work; there are deadlines. The Committee recommends that the Board refer this grant opportunity to the Fundraising Work Group for review.

NEW BUSINESS: Janet is almost through reviewing by-laws and will get that out next week. Axel would like to spend some money(now that we have some) on our handbook on open government. Annmarie has ordered more business cards for NYCOG and can make them available to members. Axel will send survey to members about what expertise they have to offer other members.

Meeting ended on motion by Annmarie and was seconded by Maria at 7:25pm.

NEXT BOARD MEETING: March 14, 2024 at 6:30 pm via zoom.

Zoom Meeting March 14, 2024

NEW YORK COALITION FOR OPEN GOVERNMENT

Treasurer's Report February 29, 2024

Paid Members = 47 as of 2/29/2024

Bank Balance - as of January 31, 2024		\$5,937.81
Deposits - Bank - Mail-In - 2/23/2024 - \$30.00		30.00
Deposits - Direct Online Deposits - 2/21/2024 - \$90.00		<u>90.00</u>
	Total	\$6,057.81
	(Restricted Donations)	-360.00
	<u>NYCOG Available Funds 2/29/2024</u>	<u>\$5,697.81</u>

Larry Vito Memorial Fund (Givebutter)

(2023 Restricted Donations)	\$360.00	<u>360.00</u>
Check Book/Bank Balance 2/29/2024		\$6,057.81

Janet Vito
Treasurer



New York Coalition for Open Government 2024 Goals

Internal Goals

- Increase membership (93 as of 12/10/23)
- Start Sharing Our Stories Through Videos
- Increase Facebook followers (684 as of 12/10/23)
- Increase Twitter followers (421 as of 12/10/23)

Project Goals

- Increase training sessions on OML & FOIL
- FOIL report regarding public comment policies
- Sunshine Week Event Albany Day
- Annual Meeting
- In person Meetings/Events

January

Board Appointments

Membership Renewals

Op-Ed regarding open government resolutions for New Year

January 1, 1977, anniversary of Open Meetings Law

Plan Sunshine Week Event for March (Albany Day)

Contacting State Legislators

February

Plan Sunshine Week Event for March

Draft Op-ed for Sunshine Week

Plan May Annual Meeting

Contacting State Legislators

2/23 Student Press Freedom Day

March

1st Tuesday in March, National Town Meeting Day

Sunshine Week Op-ed

Sunshine Week Event (March 11 to 15 Sunshine Week)

Forum Re Hearing Officer bill 3/28, 5:30 pm

Plan May Annual Meeting
OML Forum

April

Planning for Annual Meeting
Start gathering info for new FOIL report

May

Annual Meeting
OML Forum

June

July

Op-ed regarding anniversary of Freedom of Information Act
Continue gathering info for FOIL report
July 19-20, 1848 Anniversary of Seneca Falls Women's convention

August

Continue gathering info for FOIL report

September

FOIL report press conference
Sept 1, 1974, anniversary of FOIL
Sept 15th, Democracy Day
Sept 17th Constitution Day, 17-23 Constitution Week
Sept. 28th universal access to information day
Plan member in person meeting for November
Live Streaming Meeting Forum

October

October 17th, School Board Recognition Week
Plan Member in person meeting for November

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November

In person member meeting

December

End of year review, 2025 goals
Plan Board and Officer elections for 2025

At a Special Term, Part 31 of the Supreme Court held in and for the County of Erie at the Courthouse at Buffalo, New York on the 6th day of February 2024

PRESENT: HON. CRAIG D. HANNAH
Justice of the Supreme Court

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

NEW YORK COALITION FOR
OPEN GOVERNMENT, INC.,
NATHAN FEIST, and
MATTHEW AUSTIN,

DECISION AND ORDER

Petitioners,

Index. No. 816293/2023

For a Judgment Pursuant to Article 78 of the New York Civil Practice Law and Rules,

-against-

CITY OF BUFFALO,
CITIZEN SALARY REVIEW COMMISSION,
CITY OF BUFFALO BOARD OF REVIEW, and
BUFFALO COMMON COUNCIL,

Respondents.

PAUL W. WOLFE, ESQ.
Attorney for Petitioners
392 Evans Street
Williamsville, New York 14221

CRAIG R. BUCKI, ESQ.
Attorney for Respondents
City of Buffalo, et al.
One Canalside
125 Main Street
Buffalo, New York 14203-2887

CARIN S. GORDON, ESQ., Of Counsel
CAVETTE A. CHAMBERS, ESQ.
CORPORATION COUNSEL
CITY OF BUFFALO
*Attorney for Respondents,
City of Buffalo, et. al.*
1100 City Hall
65 Niagara Square
Buffalo, New York 14202

HON. CRAIG D. HANNAH, S.C.J.

At a special term of this Court, the petitioners, NEW YORK COALITION FOR OPEN GOVERNMENT, INC., NATHAN FEIST, and MATTHEW AUSTIN, by their attorney Paul W. Wolfe, Esq., having duly moved for an order pursuant NY CPLR §3001 for a declaratory judgment seeking to invalidate and declare Local Law No. 2 (2023) null and void upon the grounds that Respondents, CITY OF BUFFALO, CITIZEN SALARY REVIEW COMMISSION, CITY OF BUFFALO BOARD OF REVIEW and BUFFALO COMMON COUNCIL (hereinafter collectively referred to as "Respondents") have violated the New York Open Meetings Law, pursuant to NY Public Officers Law §102; and petitioners having moved for a temporary injunction immediately halting the salary increases for certain City officials, which increases occurred on January 1, 2024. Respondents opposed this application and seek dismissal of the verified petition, with prejudice.

This instant matter arises out of Respondents creating a salary legislation in 2023, which made salary adjustments for certain City officials; to wit: the Mayor, Common Council Members, City Comptroller, and School Board Members. Respondents created a Salary Review Commission, as required by law, and the Salary Review Commission recommended adjustments to these City officials' salaries. Petitioners allege that the Salary Review Commission was not properly appointed and that its meetings violated the State's Open Meetings Law. Respondents assert that,

inter alia, petitioners' allegations are time barred and that the Open Meetings Law did not apply to the Salary Review Commission.

Initially, it is noted by the Court that petitioners, by their attorney, Paul W. Wolfe, Esq., made certain assertions in the media that the Court should recuse itself from the instant matter based upon on the Court's familiarity with the Respondents. Although no formal application was ever made or filed with the Court, and no party moved for a hearing regarding same, and although Respondents objected to any oral application for recusal because it was improper and untimely, the Court, *sua sponte*, addressed petitioners' concerns on the record. The Court established that it has a certain familiarity with all of the parties in this case at bar, including petitioners' attorney. The Court's role is to be fair and impartial, preside over the matter without prejudice, and decide the issues by applying the law to the evidence presented by the parties. The Court feels that its familiarity with the parties in no way impairs its ability and duty to preside impartially over this case and, therefore, the Court sees no basis for recusal. After establishing this on the record, all parties agreed to go forward with argument.

Before the Court can address the merits of petitioners' arguments, the Court must first address the procedural issues raised by Respondents. Specifically, whether the statute of limitations to bring this action expired and whether petitioners' action is time-barred as a matter of law. In New York, it is well settled that causes of action alleging violations of the Open Meetings Law are subject to a four-month statute of limitations and the four-month clock starts, at the latest, when the minutes of challenged meeting are released to the public. *See, Jones v Bayshore Union Free Sch. Dist.*, 170 F Supp 3d 420, 434 (EDNY 2016); *see also, Our City Action Buffalo, Inc. v Comm. Council of the City of Buffalo*, 77 Misc 3d 1107, (Sup Ct Erie County 2022); citing *Matter of Smith v. City Univ of NY*, 92 NY2d 707, 717 (1999).

Here, on May 2, 2023, the Citizens Salary Review Commission recommendations [minutes] were filed as Item No. 56 with the Buffalo Common Council Meeting Agenda and, thereby, made public. Accordingly, the commencement of the four-month statute of limitations began on May 2, 2023, and ended on September 2, 2023. Petitioners filed their verified petition in this action on December 20, 2023, which was 3½ months after the deadline to file such a claim. Thus, their claims based upon the Open Meetings Law are time barred, as a matter of law.

Additionally, *Our City Action Buffalo, Inc. v Comm. Council of the City of Buffalo*, 77 Misc 3d 1107, (Sup Ct Erie County 2022), is analogous to this a case at bar. Based upon the holding and precedent established in *Our City Action Buffalo Inc.*, the Salary Review Commission would not qualify as a public body and, therefore, would not be subject to the Open Meetings Law. The case states in pertinent part:

“...the Open Meetings Law governs entities that qualify as a ‘public body’ under New York Public Officers Law (“POL”) §102(2). Because the Citizens Commission does not require a quorum to conduct its business under the Charter or the General Construction Law, it is not a ‘public body,’ and is not subject to the Open Meetings Law.”

Based upon the foregoing, and after due deliberation having been held thereon, it is hereby **ORDERED, ADJUDGED and DECREED**, that Petitioners’ motion for a temporary injunction immediately halting the salary adjustments for certain City officials, which increases occurred on January 1, 2024, be and the same is hereby Denied, in its entirety; and it is further

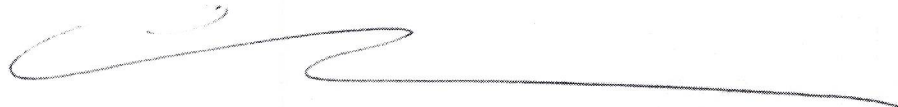
ORDERED, ADJUDGED and DECREED, that petitioners’ motion for a declaratory judgment seeking to invalidate and declare Local Law No. 2 (2023) null and void upon the grounds that Respondents have violated the New York Open Meetings Law, pursuant to NY Public Officers Law §102, be and the same is hereby Denied, in its entirety; and it is further

ORDERED, ADJUDGED and DECREED, that Respondents' motion to dismiss is hereby
Granted, in its entirety, and the verified petition in this matter is dismissed, in its entirety.

This decision shall constitute the Order of this Court in this matter and no other or further
Order shall be required.

SO ORDERED.

DATED: Buffalo, New York
February 27, 2024



HON. CRAIG D. HANNAH, S.C.J.



NYSCEF Payment Receipt

Erie County Supreme Court



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Index Number NOT assigned

New York Coalition for Open Government, Inc. et al v. City of Buffalo et al

Documents Received on 12/20/2023 03:22 PM

Doc #	Document Type	Control #	Motion #	Fee
1	PETITION			\$0.00
2	RJI -RE: OTHER			\$95.00
			<i>Index Fee</i>	+ \$210.00
			<i>Credit Card Service Fee:*</i>	+ \$9.12
			Total Fee	\$314.12

Payment Information

Generated Receipt #: 0005214825
 Payment Type: **VISA/MC**
 Date Paid: **12/20/2023**
 Filing Fee: **\$305.00 (Authorization Code: 05234S)**
 Credit Card Service Fee:* **\$9.12 (Authorization Code: 09367S)**

Filing User

Paul W. Wolf | paulwolf2@gmail.com
 392 Evans St, Williamsville, NY 14221

* **Credit Card Service Fee:** This fee is in addition to the amount paid to the biller and will appear as a separate charge on your credit or debit card statement. This service fee is non-refundable.

Michael P. Kearns, Erie County Clerk

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Erie County Supreme Court



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816293/2023

New York Coalition for Open Government, Inc. et al v. City of Buffalo et al

Documents Received on 12/20/2023 04:23 PM

Doc #	Document Type	Control #	Motion #	Fee
3	NOTICE OF PETITION			\$45.00
			<i>Credit Card Service Fee:*</i>	+ \$1.35
			Total Fee	\$46.35

Payment Information

Generated Receipt #: 0005215379
 Payment Type: **VISA/MC**
 Date Paid: **12/20/2023**
 Filing Fee: **\$45.00 (Authorization Code: 03157S)**
 Credit Card Service Fee:* **\$1.35 (Authorization Code: 01528S)**

Filing User

Paul W. Wolf | paulwolf2@gmail.com
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New York Coalition For Open Government
Freedom of Information Law Committee Meeting - Minutes

Thursday February 22, 2024 6:30 PM, via Zoom

Meeting was called to order by the Chair, Maria Tisby, at 6:34 pm.

ATTENDED BY: Maria T., Michelle A., Michael F., Sonia D, Christine C., Axel E., Janet V., Darlene B., Pat I., Stuart, A., Betsy, M., Anthony, F., and Linda, B.

Motion by Axel to approve the minutes of the January 25, 2024 meeting and Seconded by Pat. All in favor. None opposed, Motion carried.

Agency FOIL Project:

1. Maria reported on the Agency FOIL project. Annmarie was unable to attend the meeting and submitted a status report overview (*see page 2 of these minutes*).
2. Maria asked for samples of a FOIL request and Anthony Fasano put a sample in the chat during this meeting.
3. Axel and Maria had a discussion about recruiting college people for our projects, suggesting a younger audience to be involved.

Facebook Sessions:

4. Axel reminded us to join the Friday Facebook sessions at noon. This past Friday, Michael Franklin spoke about his successful Article 78 lawsuit against the city of Syracuse for withholding records. To review our Friday Facebook session, go to our Coalition web page. Look for a new link soon to be available as well as more Facebook sessions.

Michael Franklin successful Court Challenge:

5. M. Franklin spoke about the challenges of his court case (addressed earlier by Axel) that personally cost him \$650.00 although he won the case, the decision did not support any reimbursement expenses.

Bills we are supporting in Albany next month:

Maria discussed the bills we are supporting in Albany next month. Please review the website for details.

NEW BUSINESS:

1. Darlene talked about cross-agencies within New York State using attorney's without recognizing the New York State FOIL laws (i.e. time-frame guidelines). She is working on a FOIL project relating to a public land purchase involving eminent domain.
2. Maria discussed the Buffalo lawsuit (violations of open meetings law). The decision has not been released as of our meeting tonight.
3. Cameras in the courtroom was brought up by M. Franklin. He informed us about not having cameras or transcripts during assessment matters. There is a camera in the courtroom group on-line (maybe from Binghamton) and if interested, you can read about it.
4. Business Cards: Maria informed us that Annmarie has more business cards, if you are interested, contact her.

The next FOIL Meeting is March 28, 2024 at 6:30pm but will be preceded by a 5:30pm **Hearing Officer System Forum** both via zoom.

Motion to adjourn meeting at 7:41 pm was made by Pat and Seconded by Sonia. All were in favor, none opposed, **Motion carried.**

Minutes prepared by Pat Irving

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FOIL Meeting Info

Annmarie Reeb

Thu, Feb 22,
3:50 PM (6 days
ago)

FOIL Report Status - Paul and Annmarie have been working on this report. It was delayed because of two State agencies that provided their FOIL responses in January/February of 2024. Because it was decided to include these results, the graphs/exhibits and parts of the report had to be updated. Paul is currently finishing the report for final review. They hope to have this released soon.

Independent Hearing Officer System - Hosted by Maria Tisby - Guest Speakers will be Paul Wolf, Michael Franklin and Assemblymember Rosenthal.

City Council FOIL Project for April 2024 - Dual Purpose of this project is to see if City Councils have a Public Comment Procedure and Are City Councils adhering to the Freedom of Information Law and the time constraints.

1. Annmarie has started creating the databases. Here is some initial information:

- One of the databases will track the response times of the FOIL Requests, which will be a duplicate of the information we used to track the State FOIL Project. Such as: Original Request Date and Receipt Dates for Acknowledgements, Extensions and Appeals.
- The second database will house all the information on the cities, such as the Record Access Officers Name and Email address and/or the procedure for FOILING each particular city, etc.
- Some cities may require you to FOIL via GOVQA which is through an online account or another online format.
- Even though there are 62 cities in NYS, we will be FOILING 61. We will be excluding New York City.
- We will need approximately 9 volunteers to FOIL six cities each. Annmarie will also be FOILING. So, the total of volunteers will be 10.
- We will need approximately 6 additional volunteers to Verify data received which will be used in the report.
- This project can take as little as two weeks or as long as 3 months. A letter will be sent out requesting volunteers prior to the start of the project. No prior FOIL experience required.

2. We need to create the initial FOIL Request.

3. No need to create draft FOIL Appeals because Annmarie has them from the last FOIL Project.

Let me know if you have any questions.

Annmarie