



Monroe County Legislature

WILLIE J. LIGHTFOOT
LEGISLATOR - DISTRICT 27

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March 20, 2009

Honorable Wayne E. Zyra, President
Monroe County Legislature
Room 410 County Office Building
39 West Main Street
Rochester, New York 14614

Dear President Zyra:

In accordance with Section 545-24(A) of the Monroe County Code, I ask that my proposal entitled "Guaranteeing Freedom of Information Rights of Citizens and Public Officials" be considered a Matter of Importance for the current legislative cycle.

I believe that the merits of the proposal, including its implementation by existing resources and personnel, are worthy of deliberation by my colleagues during the legislative committee process.

In advance, thank you for forwarding this matter to the appropriate committee(s).

Respectfully submitted,

Willie Joe Lightfoot
Legislator - District 27



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March 20, 2009

To the Honorable
Monroe County Legislature
407 County Office Building
39 West Main Street
Rochester, New York 14614

Re: Guaranteeing Freedom of Information Rights of Citizens and Public Officials

Honorable Legislators:

New York State's Freedom of Information Law (FOIL) rightly states that "a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government."

It is the duty of this Honorable Body to do everything within our power to guarantee that a government "for the people" is accessible "by the people" and that the flow of information and ideas between government and constituents remains open and constant. In order to increase and expedite public access to County information and records, we recommend that the County's freedom of information procedure become more efficient and citizen-friendly.

Therefore, we propose the following legislative actions:

1. Schedule and hold a public hearing on the proposed local law.
2. Enact a local law amending the Monroe County Charter, as attached.

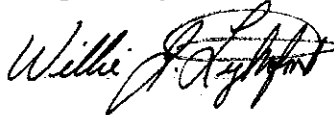
Section §C6-4 of the Monroe County Code states that the County's Communications Director shall bear the responsibility to "provide the general supervision over and coordination of the public information programs and personnel of County agencies" as well as "administer, as the County's record access officer, the Freedom of Information procedures and laws of the State of New York." This proposal shall clarify

and strengthen the responsibilities of the records access officer, which through existing County statute fall under the responsibility of the Administration.

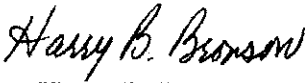
This section of the Monroe County Code also states that the Communications Director shall also "perform such other duties as may be required by the Administrative Code and other laws," therefore any cost associated with this administrative function shall be included in the current and future Monroe County budget.

The implementation of this policy shall be achieved through existing personnel and resources, and any additional costs will be derived from the FOIL document duplication fee revenues that are collected and budgeted for annually by the Department of Communications.


Respectfully submitted,




Willie Joe Lightfoot
Legislator – District 27




Harry B. Bronson
Democratic Minority Leader



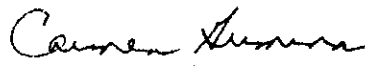
Carrie M. Andrews
Assistant Minority Leader



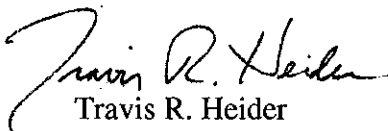
Calvin Lee, Jr.
Assistant Minority Leader



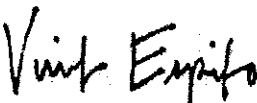
Richard A. Beebe
Legislator – District 6




Carmen F. Gumina
Legislator – District 8




Travis R. Heider
Legislator - District 14



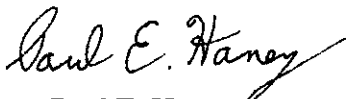
Vincent Esposito
Legislator – District 16



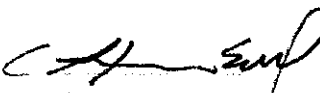
Ted O'Brien
Legislator – District 17



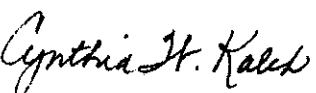
Glenn J. Gamble
Legislator – District 22




Paul E. Haney
Legislator – District 23



C. Stephen Eckel
Legislator - District 26



Cynthia W. Kales
Legislator – District 28



Jose A. Cruz
Legislator – District 29

By Legislators _____ and _____

Intro. No. _____

LOCAL LAW NO. _____ OF 2009

A LOCAL LAW ENTITLED "AMENDING MONROE COUNTY ADMINISTRATIVE CODE AND CHARTER RELATING TO GUARANTEEING FREEDOM OF INFORMATION RIGHTS OF CITIZENS AND PUBLIC OFFICIALS"

BE IT ENACTED BY THE LEGISLATURE OF THE COUNTY OF MONROE, as follows:

Section 1. Section §C6-4(B)(8) of the Monroe County Charter is hereby to read as follows:

§C6-4(B)(8) To administer and manage, as the County's records access officer, the Freedom of Information procedures and laws of the State of New York. The records access officer is responsible for ensuring appropriate agency response to public requests for access to records. The designation of a records access officer shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so.

(a) Records Access Officer. In addition to any other requirements provided by law, the duties of the records access officer shall include, but not be limited to:

[1] Assist persons seeking records to identify the records sought, if necessary, and when appropriate, indicate the manner in which the records are filed, retrieved or generated to assist persons in reasonably describing records.

[2] Contact persons seeking records when a request is voluminous or when locating the records involves substantial effort, so that personnel may ascertain the nature of records of primary interest and attempt to reasonably reduce the volume of records requested.

[a] Upon locating the records, take one of the following actions:

(i) Make records available for inspection; or,

(ii) Deny access to the records in whole or in part and explain in writing the reasons therefore.

[b] Upon request for copies of records:

(i) Make a copy available upon payment or offer to pay established fees from the established fee schedule, as set forth in §C6-4(B)(8)(g) of this section; or,

(ii) Permit the requester to copy those records.

[c] Upon request, certify that a record is a true copy; and

[d] Upon failure to locate records, certify that:

(i) Monroe County is not the custodian for such records; or,

(ii) The records of which Monroe County is a custodian cannot be found after diligent search.

(b) Annual Report. On or before December 31, 2009 and continuing each following calendar year, the records access officer shall submit an annual report to the Monroe County Legislature, disclosing the number of submitted FOIL requests, the average time in response to FOIL requests and the number of responses exceeding the mandated 20 day period.

(c) Subject Matter List. The records access officer shall maintain a reasonably detailed current list by subject matter of all records in its possession, whether or not records are available pursuant to

subdivision two of Section eighty-seven of the New York State Public Officers Law.

- [1] The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.
- [2] The subject matter list shall be updated annually. The most recent update shall appear on the first page of the subject matter list.
- [3] Upon completion, the annually updated subject matter list shall be filed in a timely manner with the Clerk of the Legislature.

(d) Requests for Public Access to Records.

- [1] A written request may be required, but oral requests shall be accepted when records are readily available.
- [2] If records are maintained on the internet, the requester shall be informed that the records are accessible via the internet and in printed form either on paper or other information storage medium.
- [3] A response shall be given within five (5) business days of receipt of a request by:
 - [a] informing a person requesting records that the request or portion of the request does not reasonably describe the records sought, including direction, to the extent possible, that would enable that person to request records reasonably described;
 - [b] granting or denying access to records in whole or in part;
 - [c] acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than twenty (20) business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within twenty (20) business days from the date of such acknowledgment, providing a statement in writing indicating the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part; or
 - [d] if the receipt of request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part within twenty (20) business days of such acknowledgment, but circumstances prevent disclosure within that time, providing a statement in writing within twenty (20) business days of such acknowledgment specifying the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.
- [4] In determining a reasonable time for granting or denying a request under the circumstances of a request, the records access officer shall consider the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the agency, and similar factors that bear on the ability to grant access to records promptly and within a reasonable time.
- [5] A failure to comply with the time limitations described herein shall constitute a denial of a request and may be appealed. Such failure shall include situations in which an officer or employee:
 - [a] fails to grant access to the records sought, denies access in writing or fails to acknowledge the receipt of a request within five (5) business days of the receipt of a request;
 - [b] acknowledges the receipt of a request within five (5) business days but fails to furnish an approximate date when the request will be granted or denied in whole or in part;

- [c] furnishes an acknowledgment of the receipt of a request within five (5) business days with an approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request;
- [d] fails to respond to a request within a reasonable time after the approximate date given or within twenty (20) business days after the date of the acknowledgment of the receipt of a request;
- [e] determines to grant a request in whole or in part within twenty (20) business days of the acknowledgment of the receipt of a request, but fails to do so, unless the agency provides the reason for its inability to do so in writing and a reasonable date certain within which the request will be granted in whole or in part;
- [f] does not grant a request in whole or in part within twenty (20) business days of the acknowledgment of the receipt of a request and fails to provide the reason in writing explaining the inability to do so and a reasonable date certain by which the request will be granted in whole or in part; or
- [g] responds to a request, stating that more than twenty (20) business days is needed to grant or deny the request in whole or in part and provides a date certain within which that will be accomplished, but such date is unreasonable under the circumstances of the request.

(e) Denial of Access to Records.

- [1] Denial of access to records shall be in writing stating the reason therefore and advising the requester of the right to appeal to the individual or body established to determine appeals, who shall be identified by name, title, business address and business telephone number.
- [2] If requested records are not provided promptly, as required in §C6-4(B)(8)(d)(5), such failure shall also be deemed a denial of access.
- [3] The President of the Monroe County Legislature shall determine appeals regarding denial of access to records under the Freedom of Information Law.
 - [a] Upon receipt of an appeal, the President of the Monroe County Legislature shall file a copy of such appeal with the Legislative Clerk.
- [4] Any person denied access to records may appeal in writing within thirty days of a denial.
- [5] A failure to determine an appeal within ten business days of its receipt by granting access to the records sought or fully explaining the reasons for further denial in writing shall constitute a denial of the appeal.
- [6] The person or body designated to determine appeals shall transmit to the New York State Committee on Open Government copies of all appeals upon receipt of appeals.

(f) Posting of Commonly-Requested Records to the County's Website. The records access officer shall make available on the County's website the ten most commonly-requested records.

(g) Fees. The fee schedule shall be considered and determined annually by the Monroe County Legislature by the first regularly-scheduled meeting on each year. Such fees shall not exceed the amount allowed by law.

- [1] There shall be no fee charged for:
 - [a] inspection of records;
 - [b] search for records; or
 - [c] any certification pursuant to this part.
- [2] Copies may be provided without charging a fee.
- [3] Fees for copies may be charged, provided that:

[a] the fee for copying records shall not exceed 25 cents per page for photocopies not exceeding 9 by 14 inches. This section shall not be construed to mandate the raising of fees where agencies or municipalities in the past have charged less than 25 cents for such copies;

[b] the fee for copies of records not covered by paragraphs (1) and (2) of this subdivision, shall not exceed the actual reproduction cost which is the average unit cost for copying a record, excluding fixed costs of the agency such as operator salaries.

(h) Severability. If any provision of these regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of these regulations or the application thereof to other persons and circumstances.

File No. 09-0_____.LL

ADOPTION: Date: _____ Vote: _____

ACTION BY THE COUNTY EXECUTIVE

APPROVED: _____ VETOED: _____

SIGNATURE: _____ DATE: _____

EFFECTIVE DATE OF LOCAL LAW: _____

Added Language is underlined

Deleted Language is ~~stricken~~