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Fighting jail suit was costly to county

Bill for protecting records tops \$27,000

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The Chris Collins team last summer tried to block the New York Civil Liberties Union's attempt to find out how much Erie County spends fending off jail-related lawsuits.

Collins' county attorney at the time, Cheryl A. Green, refused to turn over a trove of county records that would answer the Civil Liberties Union's questions. She was then brought into court and thumped so soundly Erie County was ordered to both turn over the documents and pay the opposition's legal fees.

But Erie County also was paying \$250 an hour to an outside law firm in its effort to keep those public records from public view. With that bill recently paid, the cost of the failed Collins-Green stonewall can now be tallied: \$27,523.

That's enough to have continued county grants in 2011 to, say, the Buffalo City Ballet, Road Less Traveled Productions, El Museo Gallery and the Community Music School of Buffalo — all among the dozens of nonprofit arts providers Collins froze out of his 2011 budget.

Here's the calculation:

- Erie County was ordered to pay \$9,123 to reimburse the Civil Liberties Union for its legal fees.
- It also recently paid \$18,400 to the firm of its outside lawyer, Dennis C. Vacco of Lippes, Mathias, Wexler and Friedman, for its work on the matter—twice what the Civil Liberties Union spent.

“If we had just provided the data in the first place, we would have saved \$18,000 for the outside counsel for the county and \$9,000 for the Civil Liberties Union,” said Comptroller Mark C. Poloncarz, whose staff issues the checks. “All we had to do was be transparent upfront. This follows a pattern of the administration not being open and rejecting requests for information not just from the public but from our office.”

Poloncarz said he’s seeing Collins turn more often to outside law firms for the county’s legal needs, especially with some key jobs now vacant in the County Attorney’s Office. Collins has yet to name the new Erie County attorney who will replace Green, who left in September.

In trying to deflect the Civil Liberties Union’s request for records, Green said she didn’t want the public to know how much the county has spent settling inmate lawsuits because it might encourage future lawsuits. The state Freedom of Information Law does not allow records to be concealed for those reasons.

Collins has said he wants to instill business principles in the running of county government.

How does spending \$27,523 to avoid turning over public records fit with that strategy?

“We objected from the start because we believed, and continue to believe, that NYCLU’s effort was incendiary,” Collins spokesman Grant Loomis explained recently, “and that trying to prevent unfounded lawsuits that could potentially cost taxpayers millions of dollars is a businesslike approach.”

At its office in New York City, the Civil Liberties Union has been amassing the records and tallying the amount spent over the years to defend Erie County from inmate lawsuits or to pay the settlements that make the lawsuits go away. The union’s lawyers are trying to determine if Erie County would have been better off spending that money improving jail conditions.

The Collins team provided a preliminary total: \$2.75 million spent over 10 years settling and defending lawsuits filed by inmates. That averages \$275,000 a year, though the sum is probably higher because the Civil Liberties Union has so far been provided the amount spent on attorney’s fees just since January 2008, not for all of the last decade.

By the time the records were turned over the fees were averaging \$11,000 a month, without including the difficult-to- determine value of the time spent on inmate lawsuits by the staff in the County Attorney’s Office, said Corey Stoughton, the lawyer who handled the Civil Liberties Union’s request for records under the Freedom of Information Law.

The Collins team points out that the \$2.75 million spent over the last 10 years is inflated by three large payouts for incidents that occurred before Collins took office:

- Michael Bennett was arrested in July 2002 when police found him walking naked

on Seventh Street. In the Holding Center three days later, he was throwing himself against his cell door and to the floor. He struggled with jail deputies and stopped breathing on the way to Erie County Medical Center, where he was declared dead. The State Commission of Correction attributed his death to traumatic asphyxia: A shoe had been pressed into his back. The case was settled with his estate for \$1 million in December 2008.

- Mark Curcie alleged that deputies used excessive force in the Holding Center booking area in April 2006. He suffered a punctured lung and had his spleen removed. The case was settled for \$250,000 in January 2009.
- Gloria Barclay Smith was thrown to the floor and injured in the Holding Center when she went to visit her husband in June 1991. The case was settled for \$375,000 in August 2003.

Then there are two lawsuits that have gobbled up hundreds of thousands of dollars in fees paid to the outside lawyers defending Erie County.

- By October of this year Erie County had paid about \$135,000 to the law firms Hiscock and Barclay and Mattar and D'Agastino defending the county in a class-action lawsuit alleging more than 30,000 Holding Center inmates were illegally strip-searched from 2001-04. Before she left office, Green had said she expected the county would have to pay a significant amount to settle the case.
- The county had paid about \$210,000 to the firms Alston and Bird of Washington, D. C., and Harter, Secrest and Emery of Buffalo to defend county officials from the U. S. Justice Department lawsuit seeking to improve conditions at the Holding Center and Correctional Facility in Alden.

In that matter, Vacco, a former state attorney general and U. S. attorney for Western New York, helped Erie County negotiate ways to improve its suicide-prevention methods. He did not charge for that work, Loomis said.