

COUNTY OF ERIE

LOCAL LAW NO. 8 - 1978

A LOCAL LAW implementing the New York State Freedom of Information Law and REPEALING Local Law No. 10-1975 in relation thereto.

BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE, AS FOLLOWS:

FREEDOM OF INFORMATION

- Section 1. General Policy
- Section 2. Definitions
- Section 3. Personnel Records
- Section 4. List of agency records
- Section 5. Records to be maintained and made available to public
- Section 6. Prevention of unwarranted invasion of personal privacy
- Section 7. Procedure for examination or copying of records
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Section 1. General Policy.

The County Legislature hereby finds that county government best serves the interests of its citizens when it is responsive and responsible to the public, and makes the public aware of government actions. The more open a government is with its

citizens, the greater the understanding and participation of the public in government.

As County government services increase and public problems become more sophisticated and complex, it is incumbent on the County to extend public accountability wherever and whenever feasible.

The people's right to know the process of government decision making and to have access to the records leading to determinations is basic to the good and proper operation of County government.

The County Legislature declares that county government is the public's business and that the public, individually and collectively represented by a free news media, should have unimpaired access to records of county government set forth herein.

The County of Erie will comply fully with the provisions of the New York State Freedom of Information Law of 1974, as amended, by chapter nine hundred thirty-three of the laws of nineteen hundred seventy-seven, and will seek to protect and promote the public's right of access to County government records.

Section 2. Definitions.

(a) "Record" means any information kept, held, filed, produced or reproduced by, with or for any County of Erie agency in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

(b) "Agency" means the County Legislature or any County department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the County.

(c) "Records Access Officer" shall mean a person or persons designated by the head of a County agency, indicating the name or specific job title and business address of said person or persons, who shall have the duty of coordinating the

agency response to public requests for access to records.

Section 3. Personnel records.

The Commissioner of Personnel, County Office Building, 95 Franklin Street, Buffalo, New York, shall compile an itemized record setting forth the name, public office address, title and salary of every officer or employee of each county agency. Such records shall be made available for inspection to any person upon submission of written notice. The records may be inspected or copied under the supervision of a designated employee of the Personnel Department in the departmental offices during regular working hours on regular working days or at such other place as may be convenient to the Commissioner of Personnel. However, nothing herein shall be construed to require the disclosure of the name of any County officer or employee, if such information would be otherwise exempt from disclosure under paragraph six of subdivision (a) of section five hereof.

Section 4. List of agency records.

Each agency head shall maintain and shall make available for public inspection and copying through a designated representative, in conformity with such regulations as may be issued by the New York State Committee on Public Access to Records a reasonably detailed current list by subject matter of all records in its possession, whether or not the records are available under this local law or subdivision two of section eighty-seven of the Public Officers' Law. The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought. This list shall be known as the "departmental records list" of each agency. A copy of the list shall be filed with the Deputy County Executive. The list is to be updated semi-annually and the date of the most recent up-dating shall appear on the first page of the list.

Section 5. Records to be maintained and made available to public.

(a) Each agency, in accordance with the procedures set forth in this local law, in addition to records it may be required to maintain and make available pursuant to any other law, shall maintain and make available for public inspection

and copying all records, except that such agency may deny access to records or portions thereof that:

(1) are specifically exempted from disclosure by state or federal statute;

(2) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision (b) of section six of this local law;

(3) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;

(4) are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

(5) are compiled for law enforcement purposes and which, if disclosed, would:

- (i) interfere with law enforcement investigations or judicial proceedings;
- (ii) deprive a person of a right to a fair trial or impartial adjudication;
- (iii) identify a confidential source or disclose confidential information relating to a criminal investigation; or
- (iv) reveal criminal investigative techniques or procedures, except routine techniques and procedures.

(6) if disclosed would endanger the life or safety of any person;

(7) are inter-agency or intra-agency materials which are not:

- (i) statistical or factual tabulations or data;
- (ii) instructions to staff that affect the public; or
- (iii) final agency policy or determinations; or

(8) are examination questions or answers which are requested prior to the final administration of such questions.

(b) In addition to the requirements imposed by subdivision (a) hereof, each agency shall maintain a record of the final vote of each member in every agency proceeding in which the member votes.

Section 6. Prevention of unwarranted invasion of personal privacy.

(a) To prevent an unwarranted invasion of personal privacy, each agency will observe guidelines for the deletion of identifying details from specified records promulgated by the New York State Committee on Public Access to Records. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

(1) disclosure of employment, medical or credit histories or personal references of applicants for employment;

(2) disclosure of items involving the medical or personal records of a client or patient in a medical facility;

(3) sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising purposes;

(4) disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; or

(5) disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency.

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion

of personal privacy pursuant to subdivisions (a) and (b) of this section:

- (1) when identifying details are deleted;
- (2) when the person to whom a record pertains consents in writing to disclosure;
- (3) when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him.

Section 7. Procedure for examination or copying of records.

Procedure for the examination and copying of records will be in conformity with such regulations as may be issued by the New York State Committee on Public Access to Records, but in the absence of a regulation relating to a specific procedure by that body, the following regulations shall prevail:

(a) The head of each County agency or the governing body of such agency shall be responsible for insuring compliance with the regulations herein, and shall designate one or more persons as records access officer by name or by specific job title and business address, who shall have the duty of coordinating agency response to public requests for access to records. The designation of one or more records access officers 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.

(b) The records access officer is responsible for assuring that agency personnel:

- (1) Maintain an up-to-date subject matter list;
- (2) Assist the requester in identifying requested records, if necessary;
- (3) 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 therefor;

- (4) Upon request for copies of records:
 - (i) Make a copy available upon payment or offer to pay established fees, if any; or
 - (ii) Permit the requester to copy those records;
- (5) Upon request, certify that a record is a true copy; and
- (6) Upon failure to locate records, certify that:
 - (i) The agency is not the custodian for such records, or
 - (ii) The records of which the agency is a custodian cannot be found after diligent search.

(c) Any member of the public desiring to inspect or to obtain or make a copy of any agency's records shall submit to the records access officer of that agency a request form prescribed by the Deputy County Executive, unless the records access officer waives the requirement of a written request. The request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought. No records may be removed by the requester from the office where the record is located without the permission of a representative of the agency involved authorized by the head of the agency to give such permission.

(d) Records of an agency shall be made available for inspection or copying or copies shall be furnished at the principal office of an agency, if one exists, and if not, at a place designated by the records access officer, during regular business hours on regular working days. Records in storage or at a location different from the principal office of an agency shall be available for examination at those locations or at the principal office of the agency, as determined by the records access officer.

(e) An agency shall respond to any request reasonably describing the record or records sought within five business days of receipt of the request. If the agency does not

provide or deny access to the record sought within five business days of receipt of a request, the agency shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. If access to records is neither granted nor denied within ten business days after the date of acknowledgment of receipt of a request, the request may be construed as a denial of access that may be appealed. Nothing in this local law shall be construed to require any agency to prepare any record not possessed or maintained by such agency except the records specified in sections 3, 4 and 5(b) of this law.

(f) After locating the record, the records access officer before permitting inspection, furnishing copies, or permitting copies to be made, may delete any information which would constitute an unwarranted invasion of personal privacy as set forth in Section 6 of this local law.

(g) Any copying desired to be done by the applicant shall be done at a place specified or approved by the records access officer and in the presence of a person designated by the records access officer.

(h) If a record of which an agency is the legal custodian cannot be found after a reasonable search therefor, the applicant shall be so advised, and the records access officer, if so requested orally by the applicant, shall furnish the applicant with a certification that the record could not be found.

(i) Fees. Except when a different fee is otherwise prescribed by law:

(1) There shall be no fee charged for the following:

- (i) Inspection of records;
- (ii) Search for records; or
- (iii) Any certification pursuant to this section.

(2) An agency may provide copies of records without charging a fee; or

(3) An agency may charge a fee for copies of records provided that:

- (i) The fee for copying records shall not exceed 25 cents per page for photocopies not exceeding 9 x 14 inches. This section shall not be construed to mandate the raising of fees where agencies in the past have charged less than 25 cents for such copies .
- (ii) In agencies which do not have photocopying equipment, a transcript of the requested records shall be made upon request. Such transcripts may either be typed or handwritten. In such cases, the person requesting records may be charged for the clerical time involved in making the transcript.
- (iii) The fee for copies of records not covered by sub-paragraphs (i) and (ii) of this paragraph 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.

Section 8. Denial of Access

(a) In the event the records access officer denies access in whole or in part to the record requested, the party denied the access requested may appeal on a form prescribed by the Deputy County Executive, to the Deputy County Executive, except that as regards the Comptroller's Office, the County Clerk's Office, the District Attorney's Office, and the Sheriff's Department, the appeal shall be to the head of the agency or to a person designated by the head of that agency. In the case of the County Legislature, the appeal shall be to a person designated by the Chairman of the County Legislature. However, in no event shall the records access officer of an agency be the appeals officer for that agency.

(b) Denial of access shall be in writing stating the reason therefor and advising the person denied access of his or her right to appeal to the person or body established to hear appeals, and that person or body shall be identified by

name, title, business address and business telephone number.

(c) If an agency fails to respond to a request within five business days of receipt of a request as required in subdivision (e) of section 7 hereof, such failure shall be deemed a denial of access by the agency.

(d) Any person denied access to records may appeal within thirty days of a denial.

(e) The time for deciding an appeal by the individual or body designated to hear appeals shall commence upon receipt of written appeal identifying:

- (1) the date and location of a request for records;
- (2) the records that were denied; and
- (3) the name and return address of the appellant.

(f) The Deputy County Executive or any other County officer or employee authorized to determine appeals hereunder shall inform the appellant and the Committee on Public Access to Records of its determination in writing within seven business days of receipt of an appeal. In the event that the official designated to determine appeals for a particular agency shall deny access to the record, he shall, as part of his written determination, fully explain to the person requesting the record the reasons for further denial. Following denial of the appeal, the party denied access to a record may, in writing, request a further appeal to a board composed of a county official designated by the County Executive, a county official designated by the Chairman of the County Legislature and a third person selected by the other two. The third person shall not be a member or employee of any county agency. If the board by majority vote also denies such access, its reasons therefor shall be explained fully in writing within seven business days of the time of such appeal and shall be furnished to the requestor. A copy of the final determination of the board shall also be sent to the Committee on Public Access to Records within seven days of receipt of an appeal.

(g) A final denial of access to a requested record, as provided for in subdivision (f) of this section, shall be subject to court review, as provided for in Article 78 of the Civil Practice Law and Rules.

Section 9. Public Notice

Each agency having an office shall post in a conspicuous location in its principal office and in any place where it maintains records and file with the Deputy County Executive a notice, and agencies having no office shall publish in a local newspaper of general circulation and file with the Deputy County Executive a notice, setting forth the following items:

(a) The name, title, business address, business telephone number, or home address and home telephone number, if he has no business address or business telephone, of the designated records access officer for that agency;

(b) Where and when public records will be made available for inspection and copying, or in the case of agencies having no regular office or daily regular business hours the procedure by which a person may arrange for an appointment to inspect and copy records, the specified procedure to include the name, position, address and telephone number of the party to be contacted for the purpose of making an appointment;

(c) The right of appeal by any party denied access to a record for whatever reason, and the name and business address of the person to whom an appeal is to be directed.

Section 10. Notification to New York State Committee on Public Access to Records.

In addition to the information required to be transmitted to the New York State Committee on Public Access to Records under subdivision (f) of section 8 hereof, both the official designated to determine appeals for a particular agency and the three person board established pursuant to subdivision (f) of section 8 hereof, shall transmit to the aforementioned Committee, copies of all appeals upon receipt thereof. Said official or board shall also forward to the Committee the record upon review, including copies of any final judicial determination, whenever any agency determination is reviewed pursuant to article seventy-eight of the Civil Practice Law and Rules.

Section 11. Existing rights to records not affected.

Nothing in this local law shall be construed to limit

or abridge any existing right of access at law or in equity of any party to public records kept by any agency or municipality.

Section 12. Repeal of prior law.

Local Law No. 10 - 1975 is hereby REPEALED in its entirety.

Section 13. Effective date.

This local law shall be effective immediately.

Adopted by Legislature 5/18/78
Signed by County Executive Regan 6/5/78
Filed with Secretary of State 6/9/78
Acknowledged by Secy of State 6/12/78