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LAW #8 - 1978

COUNTY OF ERIE

RECEIVED
ERIE COUNTY
LEGISLATURE

LOCAL LAW NO. 10-1975

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LOCAL LAW INTRO. NO. 36 (Print #5)

1974

A LOCAL LAW implementing the New York State Freedom of Information Law of 1974.

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. Records specifically exempted from availability to public
- Section 8. Procedure for examination or copying of records
- Section 9. Public notice
- Section 10. Notification to New York State Committee on public access to records
- Section 11. Existing rights to records not affected
- Section 12. Effective date

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

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 and will seek to protect and promote the public's right of access to County government records.

Section 2. Definitions.

(1) "Record" means any document, statistical files, papers, photographs, exhibits, recording tapes, or other information in the possession of a County of Erie agency.

(2) "Agency" means the County Legislature and any county board, bureau, commission, council, department, public authority, public corporation, division or other governmental agency performing a governmental or proprietary function for the County of Erie.

(3) "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 serve as the fiscal officer referred to in the New York State Freedom of Information Law and shall compile an itemized record setting forth the name, address, title, and salary of every officer or employee of each county agency except those of the District Attorney's Office and the Sheriff's Department. A record shall ^{also} be compiled by the Commissioner of Personnel for the District Attorney's Office and the Sheriff's Department, but shall list the officials' or employees' titles and salary only, without identifying individual employees. Such records shall be made available for inspection to any person upon submission of written notice. The written notice shall be made upon a form prescribed by the comptroller of the state and shall be reasonable and specify what records are requested with particularity. 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.

Section 4. List of agency records.

Each agency head shall have prepared as soon as is reasonably possible, 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 current list, by subject matter, of

any records produced, filed or first kept or promulgated after September 1, 1974. The list shall be sufficiently detailed to permit the requester to identify the file category of the record sought. This list shall be known as the "departmental records list" of each agency. Such list may also set forth identifying information as to any records in the possession of the agency on or before September 1, 1974. A copy of the list shall be filed with the Deputy County Executive. The list is to be up-dated 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.

Each agency, in accordance with procedure 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:

- (1) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (2) those statements of policy and interpretations which have been adopted by the agency and any documents, memoranda, data, or other materials constituting statistical or factual tabulations which led to the formation thereof;
- (3) minutes of meetings of the governing body, if any, of the agency and of public

hearings held by the agency;

(4) internal or external audits and statistical or factual tabulations made by or for the agency;

(5) administrative staff manuals and instruction to staff that affect members of the public;

(6) police blotters and booking records;

(7) final determinations and dissenting opinions of members of the governing body, if any, of the agency;

(8) any other records required by any other provision of law to be made available for public inspection and copying;

(9) each agency controlled by a board, commission or other group having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding in which he votes.

Section 6. Prevention of unwarranted invasion of personal privacy.

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.

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

- (1) Disclosure of such personal matters as may have been reported in confidence to an agency or municipality and which are not relevant or essential to the ordinary work of the agency or the county;
- (2) Disclosure of employment, medical or credit histories or personal references of applicants for employment, except that such records may be disclosed when the applicant has provided a written release permitting such disclosure;
- (3) Disclosure of items involving the medical or personal records of a client or patient in a hospital or medical facility;
- (4) The sale or release of lists of names and addresses in the possession of any agency or the county if such lists would be used for private, commercial, or fund-raising purposes;
- (5) Disclosure of items of a personal nature when disclosure would result in economic or personal hardship to the subject party and such records are not relevant or essential to the ordinary work of the agency or municipality.

Section 7. Records specifically exempted from availability to public.

Notwithstanding Section 5 of this local law, this local law shall not apply to information that is

- (1) Specifically exempted by statute;
- (2) Confidentially disclosed to an agency and compiled and maintained for the regulation of commercial enterprise, including trade secrets, or for the grant or review of a license to do business and if openly disclosed would permit an unfair advantage to competitors of the subject enterprise, but this exemption shall not apply to records the disclosure or publication of which is directed by other statute;
- (3) If disclosed, an unwarranted invasion of personal privacy, pursuant to the provisions of Section 6 of this local law;
- (4) Part of investigatory files compiled for law enforcement purposes.

Section 8. 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:

- (1) Each agency shall designate at least one person by name or specific job title to be a records access officer who shall have the duty of coordinating the agency response to public requests for access to records. The records access officer is responsible for assuring that agency personnel:

(a) Maintain an up-to-date subject matter list.

(b) Assist the requester in identifying requested records, if necessary.

(c) Upon locating the records, take one of the following actions:

(i) Make records promptly available for inspection; or,

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

(d) 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.

(e) Upon request, certify that a transcript is a true copy of records copied.

(f) Upon failure to locate records, certify that:

(i) The agency is not the legal custodian for such records.

(ii) The records of which the agency is a legal custodian cannot be found.

(2) 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 or may make such request orally, except that requests for

personnel records shall be made in conformity with provisions of Section 3 of this law. A request for access to records should be sufficiently detailed to identify the records. Where possible, the requester should supply information regarding dates, titles, file designations or other information which may help identify the records. A request for any or all records falling within a specific category shall conform to the standard that records be identifiable. 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 to give such permission by the head of the agency.

(3) 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;

(4) After receipt of the request for an examination of or for a copy of records, the records access officer or other agency representative authorized to make records and information available shall respond promptly to the request. Except under extraordinary circumstances, his response shall be made no more than five working days after receipt of the request, whether the request is oral or in writing. If for any reason...

required to produce records, the agency shall acknowledge receipt of the request within five days with a brief explanation of the reason for the delay and an estimate of the date production or denial will be forthcoming;

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

(6) 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;

(7) 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;

(8) Fees. Except where fees or exemptions from fees have been established by law, rule or regulation prior to September 1, 1974:

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

- (i) Inspection of records.
- (ii) Search for records.
- (iii) Any certification pursuant

- (b) An agency may provide copies of records without charging a fee; or,
- (c) An agency may charge a fee for copies of records provided that:

(i) The fee for copying records shall not exceed 10 cents per page for photocopies not exceeding 8 1/2 by 14 inches. This section shall not be construed to mandate the raising of fees where agencies in the past have charged less than 10 cents for such copies.

(ii) In agencies which do not have photocopy equipment, a transcript of the requested records shall be made upon request. Such transcripts may either be typed or handwritten. In such cases, the requester may be charged for the clerical time involved in making the transcript. If the requester is charged, he may request an itemized accounting of the clerical time involved in making the transcript. The charge may not exceed the actual cost, including employee time and supplies, necessary in the completion of the work.

(iii) The fee for copies of records not covered by paragraphs (i) and (ii) of this subdivision, shall not exceed the actual copying cost which is the average unit cost for copying a record, excluding fixed costs of the agency such as operator salaries.

(9) In the event the records access officer denies access to the record requested, or furnishes the record with deletions he considers necessary to prevent an unwarranted invasion of personal privacy in accordance with Section 6 of this local law, 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 that 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. Any denial of access shall be in writing stating the reason therefor and advising the requester of his right to appeal to the individual established to hear appeals, which person shall be identified by name, title, business address, and business telephone number. If an agency fails to provide requested records promptly, as required by Section 8 (4) of this law, such failure shall be deemed a denial of access by the agency. The form prescribed for the appeal shall set forth the date and location of requests for records, the records to which the requester was denied access, and the name and return address of the requester. If the person authorized to consider the appeal further denies such access, his reasons therefor shall be explained fully in writing within seven business days of the time of such appeal and shall be furnished to the requester. Following denial of the appeal, the party denied access to a record may in writing request a further appeal

to a committee 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 two designees. The third person shall not be a member or employee of any county agency. If the committee 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 requester. Such denial shall be subject to review in the manner provided in article seventy-eight of the Civil Practice Law and Rules.

Section 9. Public Notice.

Each agency having an office shall post 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:

- (1) 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;
- (2) 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 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;

(3) 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.

Whenever any agency determination is reviewed pursuant to article seventy-eight of the Civil Practice Law and Rules, the official designated to determine appeals for that particular agency shall forward to the New York State committee on public access to records the complete record upon review, including copies of any final judicial determination.

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. Effective date. This local law shall be effective immediately.

July 1, 1975, Meeting No. 15, Item No. 2, adopted by Legislature
July 21, signed by County Executive after Public Hearing
July 24, filed with Secretary of State. *Robert Schimminger*

July 25, 1975 - acknowledgement from Secretary of State