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for purposes of identification.*

October 19, 2017

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

VIA EMAIL AND U.S. MAIL

Re: Bill No. A2750A

Dear Governor Cuomo:

The Reporters Committee for Freedom of the Press (“Reporters Committee”) and 33 news media organizations, identified below, write to express support for Bill A2750A, which was passed by the Legislature on June 5, 2017. As members of and representatives of the news media, the undersigned organizations rely on New York’s Freedom of Information Law, N.Y. Pub. Off. Law §§ 84 *et seq.* (“FOIL”), to keep the public informed about the activities of state and local government officials and agencies. Bill A2750A strengthens FOIL’s important fee-recovery provision. We urge you to sign it into law.

As New York has long recognized, “[t]he people’s right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.”¹ Unfortunately, however, state and local governmental entities too often fail to comply with either the spirit or letter of FOIL, depriving the public of information it is entitled to.² Accordingly, to ensure that FOIL remains an effective tool for public oversight of government activity, it is essential that the Law provide the means for journalists and citizens alike to challenge unwarranted secrecy with minimal burden and expense.

Even when denials of requests for access are clearly in violation of a state public records law, financial hurdles can, and frequently do, prevent

¹ N.Y. Pub. Off. Law § 84

² See, e.g., CJ Ciarmella, *Secrets of the NYPD*, Salon.com (May 8, 2013), <https://perma.cc/27KH-9TPN> (reporting, *inter alia*, that the NYPD routinely ignores a third of all FOIL requests); Kate Taylor, *De Blasio Pushes on Information Requests*, The N.Y. Times (Oct. 19, 2011), <https://nyti.ms/2uG5seE>; Selim Algar, *DOE stalls for a year without answering FOIL request on librarians*, N.Y. Post (Aug. 8, 2017), <https://perma.cc/SR6M-PEWN>; Erin Durkin, *City Council is wrong in denying records of pension proposal to firefighters union: expert*, New York Daily News (Jul. 15, 2015), <https://perma.cc/VP4X-G497>; Jon Campbell, *In de Blasio’s New York, Transparency Laws Mean Nothing*, The Village Voice (Apr. 11, 2017), <https://perma.cc/86CB-YZ9S>.

requestors from challenging those denials in court. Indeed, journalists and members of the public may face thousands of dollars in attorney's fees and other litigation costs simply to enforce their statutory right to obtain government information. Without a provision in FOIL enabling requestors to recover those fees and costs, even the most meritorious litigation to vindicate the public's right to know can be thwarted. Although FOIL currently contains a discretionary fee-shifting provision,³ Bill A2750A would strengthen the existing provision, and produce important benefits for the public and government entities alike.

Mandatory fee-shifting provisions in public records laws encourage worthy enforcement actions by requestors while simultaneously discouraging frivolous claims. A requester who knows they will recover fees for a successful lawsuit is more likely to expend the money needed to vindicate the public's right to know and/or secure representation on a contingency or low-cost basis. And, by tying the award of fees to the plaintiff's success in the lawsuit, Bill A2750A encourages only meritorious litigation—a court must find that the agency had “no reasonable basis” for denying access for the mandatory fee provision to apply.

Adopting a merit-based mandatory fee provision like that contained in Bill A2750A will also create a financial incentive for state and local government officials and agencies to comply with FOIL when responding to requests. The ability of a prevailing plaintiff to recover her or his attorneys' fees from an agency in litigation will motivate agencies to avoid litigation in the first place, by promptly and properly fulfilling FOIL requests, and adopting more effective and efficient methods for the dissemination of public records. Indeed, such improvements can result in savings by state and local government entities over time, in addition to ensuring better compliance with New York FOIL.

Bill A2750A will help guarantee that FOIL's promise of transparency and accountability is a reality for the people of New York. We urge you to sign this bill into law.

Sincerely,

The Reporters Committee for Freedom of the Press
Advance Publications, Inc.
American Society of News Editors
Associated Press Media Editors
Association of Alternative Newsmedia
The Buffalo News
The Center for Investigative Reporting
The Citizen/auburnpub.com
Cortland Standard
Daily News, LP

³ N.Y. Pub. Off. Law § 89(4)(c).

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