



Open Government Foundation, Inc.

*A Project to Open Legislation to You the People
Setting The Empire State's Legislation and Laws FREE*
OpenGovernmentFoundation.org

**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON TECHNOLOGY AND GOVERNMENT ON
INTRODUCTION 991: OPEN DATA STANDARDS**

June 29, 2009

Good morning, good government, transparency and community advocates. Council Members Lappin, Gonzalez, James, Liu, and de Blasio, thank you for recognizing the importance of this issue and for sponsoring this introduction. Council Member Brewer, thank you for chairing this committee, for being the first to propose this kind of ground breaking legislation, and most of all for being an amazing legislator and role model for so many.

My name is Benjamin Kallos, I am here before you today as a co-founder of the Open Government Foundation, Inc. (the "Foundation"), a New York State not-for-profit which aims to bring greater transparency, accountability and openness to government by making information available online for all to see.

Government is like any one of us, because it is comprised of so many of us, and it is subject to the same sicknesses and disease. Unlike us, we know the cure for most of the government's worst ailments and maladies. If we may be the first of many to quote him today, Justice Louis Brandeis famously wrote, "[p]ublicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." Transparency and openness in government should be likened to medicine or a vaccine. Like Buckley's, a medicine taken to cure a recurring ailment like a cough, "It Tastes Awful. And It Works." Like a vaccine, dreading the shot is often worse than the shot itself. While we have all acknowledged the value of vaccines, requiring measles, mumps, rubella amongst others, for all children who attend public schools, we must make sure our elected and appointed officials get a similar vaccine against corruption. While transparency might cause momentary pain, as when member item information was recently released and scandal uncovered, new reforms were created to avoid future corruption, leaving both City Council Members and New York City healthier in the long run.

Transparency, accountability and openness, (T.A.O.) can be brought to government through open data. In December of 2007, thirty open government advocates, including Lawrence Lessig of Stanford, Micah Sifry of the Sunlight Foundation, who founded the Personal Democracy Forum occurring today and tomorrow, David Moore of the Participatory Politics Foundation, Carl Malamud of Public.Resource.org, as well as Google, Yahoo, and O'Reilly Media, got together and drafted the eight principle of Open Government Data that we urge you to integrate into Introduction 991 of 2009:

1. Data Must Be Complete - All public data that is not subject to valid privacy, security or privilege limitations must be made available.



2. Data Must Be Primary - Data must be published as collected at the source, with the finest possible level of granularity, not in aggregate or modified forms.
3. Data Must Be Timely - Data must be made available as quickly as necessary to preserve the value of the data.
4. Data Must Be Accessible - Data must be available to the widest range of users for the widest range of purposes.
5. Data Must Be Machine Processable - Data must be reasonably structured to allow automated processing of it.
6. Access Must Be Non-Discriminatory - Data must be available to anyone, with no requirement of registration.
7. Data Formats Must Be Non-Proprietary - Data must be available in a format over which no entity has exclusive control.
8. Data Must Be License-free - Data must not be subject to any copyright, patent, trademark or trade secret regulation. Reasonable privacy, security and privilege restrictions may be allowed as governed by other statutes.

Finally, compliance must be reviewable.

In order to achieve our objective of bringing openness, transparency and accountability to government, we decided to start with the legislatures, and created OpenLegislation.org: “A Fifty State Project to OpenLegislation to You the People, Setting Your Legislation and Laws FREE, One State at a Time.” This choice was not made by accident, rather it is on the advice of Lawrence Lessig the Founder of Creative Commons, a license intended to reform our Country’s creativity stifling copyright laws. Lessig stepped down last year to begin work on a new project, Change Congress, with the acknowledgement that in the end, some changes cannot happen without some leadership and cooperation from the legislative bodies in our government.

Our initial legislative focus is making voting records accessible to the public. This has been identified as recently as last year by good government groups like the Brennan Center as necessary for achieving the “hallmarks of a robust legislative body: accessibility, accountability, deliberativeness, and representativeness.”¹ Further, the Brennan Center says that “much of the legislative process remains opaque; records are difficult to obtain without burdensome ‘freedom of information’ requests,” the results of

¹ *Still Broken: New York State Legislative Reform 2008 Update*, Brennan Center (2008), at 27 also available at: http://www.brennancenter.org/content/resource/still_broken_new_york_state_legislative_reform_2008_update/.



which “can take weeks to bear results”² suggesting that committees “publish all of their work on the Internet, including attendance records, vote records, and debate transcripts,”³ in order to provide crucial access and understanding for the legislative process.⁴

Earlier this year, our Foundation sent out a Freedom of Information of Law (“FOIL”) request to the New York State Assembly and Senate as well as the New York City Council. FOIL is the only means for good government groups and reporters, let alone citizens, to gain access to most government information. It is worth mentioning that most of this information must be made available within five to twenty days and paper records often have a statutory cost of twenty five cents per page.

In our experience, the New York State Assembly followed FOIL to the letter, quickly responded within the 5 day statutory time line, quickly delivered an electronic copy of every single bill and vote since 1995, which we promptly posted online at NewYork.OpenLegislation.org. The New York State Senate has since delivered committee voting information for 2007 and 2008, which was also promptly posted on the same site. Although both legislative bodies have been cooperative, many State Legislative records remain in paper form. For example, the New York State Assembly’s committee votes for 2008 number 5,356 pages and at the previously mentioned statutory 25 cents per page will cost \$1,339.00.

While the State Legislature has been compliant, the New York City Council has requested ninety days just to respond to the same request and our appeal, detailing how the City Council could and should comply with FOIL was recently denied. There are many instances where government bodies have demonstrated bad faith in non-compliance, requiring litigation to release public information, costing government and those exercising their rights hundreds of thousands.

While some critics of open government or this legislation might argue that freedom of information and open meetings law provides for sufficient access, we would simply point to our current interaction with this very institution where transparency, accountability and openness remain blocked while we wait three months for a response that the law dictates, and other legislative bodies have demonstrated, should take no more than five to twenty days.

In fact, in our Foundation’s efforts to set legislation free we’ve learned that government has incentivized itself to keep information secret. The government generates information that has value by virtue of the fact that it affects constituents. The government then pays a vendor to help it internally manage that information. At the same time as that vendor is getting paid by the government, the vendor becomes the only source of the data in manageable form. The vendor then licenses access to the

² *Id.* at 3, 12.

³ *Id.* at 11.

⁴ *Id.* at 3, 12.



public who need it so badly that they are willing to pay for it. We have been advised that should the State Legislature begin using our website or should they implement our free source code, it would save millions a year in management fees and eliminate costs in the tens of millions currently paid by the public to a vendor to gain access to the same information that should be made free by the government rather than a not-for-profit.

In an open, free democracy it shouldn't be up to the government to decide what information is important enough to be released to the citizens for free. Instead, all non-private data should be released in its entirety, and citizens should be empowered to decide what information they will consume, when they will consume it, how, where and why. Our mission is simple: wherever government neglects to release critical data to the public, whether through apathy, indifference, or impracticability, we will step in and use every means available to release the information for free ourselves.

When Council Member Brewer sent out a call for testimony, that was rightfully distributed widely throughout the open government Internet communities, asking the Internet community to help “[highlight] the advantage to web developers if there was city data available in an open data format...” Given our recent experience, having developed a website for State data and wishing to develop a website for City data, our Foundation heard this call loudly and clearly.

Data must be available over the Internet in accordance with the eight principles of open data to facilitate development, because in its absence, three problems virtually preclude any developers from building websites or applications to benefit New York City.

First, if the data is not available over the Internet, developers can't aggregate it, because it isn't there to collect. If the data is not freely available over the Internet, it requires burdensome, technical, lengthy, and expensive FOIL requests, discussed earlier, to actually gain possession of the data that is needed to power the website or application. Development is a technical, specialized field, and most developers are not lawyers, are not good government experts, and are not otherwise skilled maneuvering through bureaucracy. As a consequence, if the data is not freely available over the Internet in accordance with open data principles, and if enlightened volunteers do not otherwise obtain the data and release it to the developers in accordance with open data principles, the developers simply won't attempt to get access themselves and will instead focus on other development projects such as those in other cities, states or on the federal level.

Second, if the data is not in an open data format, developers won't be able to use it to create websites or applications. Again, developers are in a technical, specialized field, and they like presenting technical information to a user in simple and useful way. Many developers don't like to parse through flat files that result from FOIL-type requests. This poorly formatted data only presents yet another obstacle to making New York City's data useful. Our Foundation can testify that data obtained through a FOIL request, must be parsed into a format that can be easily manipulated by a website or application,



which is time consuming, difficult, and requires an esoteric skill set that is uncommon even in the most dedicated developer. Without data formatted in a way that is easy to acquire, use and manipulate, developers will not be able to create website or applications to benefit New York City.

Third, without strong legislation, government agencies are extremely unlikely to do what this introduction would require of their own accord. Our experience has shown that government is slow to take initiative and sometimes seeks to avoid compliance with the existing FOIL law. Once your introduction is passed into local law it will encounter similar resistance in compliance like FOIL. Our Foundation recommends adding a self enforcing provision aside from litigation to provide remedies to citizens, good government groups and journalists for failed compliance, which would state that City agencies may not charge FOIL's statutory fee for any records produced in exclusively physical paper form, after July 4, 2010. Without this legislation and strong incentive for compliance New York City will not be leading our nation with open data standards, let alone keeping up with national trends.

These three obstacles, taken together, effectively preclude developers from building websites or applications, without a well funded team consisting of lawyers, good government experts, developers, and computer scientists. Without this legislation, New York City will continue to fall behind Chicago, Seattle, and Washington D.C., and even lesser metropolitan areas, like Denver, Minneapolis/St. Paul and Atlanta, where open data will continue to improve quality of life, attracting our best and our brightest, slowly continuing to drain our local economy of its most valued assets, our residents.

Thank you again for considering the adoption of open data standards. We look forward to working with the New York City Council to make open data a reality in both the short and long term.