



This Week in New York

Covering New York State and City Government

A Publication of Pitta Bishop Del Giorno & Giblin LLC

October 28, 2011 Edition



In the News – New York State



Sunshine vs. Privacy

Court Reminds State Agencies of FOIL Obligations

Agencies Left to Mull Privacy Protections



The New York State Court of Appeals this week fired a warning shot at state agencies, directing them to “comply with their FOIL obligations in a more efficient way.”

In a unanimous decision, the Court of Appeals admonished the New York State Education Department (SED), which licenses New York’s 49 professions, for not fully complying with an information request from the Schenectady County Society for the Prevention of Cruelty to Animals (SPCA). “We’re at a loss to understand why this case has been litigated,” Associate Judge Robert S. Smith wrote on behalf of the Court in a decision that affirmed a ruling of a mid-level appellate court.

The SPCA requested the names and addresses of 72 veterinarians and veterinary technicians in Schenectady County. In its FOIL response, SED indicated that it could only provide the licensee names because the agency could not determine whether the provided addresses were business or personal. Disclosure of home addresses raised privacy concerns. However, the Court ruled that determining which addresses were personal and therefore exempt from FOIL “...should not be a burdensome task” because of the relatively small pool of licensees.

“We hold that an agency responding to a demand under the Freedom of Information Law may not withhold a record solely because some of the information in that record may be exempt from disclosure,” Judge Smith wrote. “Where it can do so without unreasonable difficulty, the agency must redact the record to take out the exempt information.”

“It seems that an agency sensitive to its FOIL obligations could have furnished petitioner a redacted list with a few hours effort, and at negligible cost,” Judge Smith concluded. “Instead, lawyers for both sides have submitted briefs and argued the case in three courts, demanding the attention of 13 judges, generating four judicial opinions and resulting in a delay in disclosure of almost four years. It is our hope that the department, and other agencies of government, will generally comply with their FOIL obligations in a more efficient way.”

SED officials view the issue from a more global perspective and question its impact on the information of all of New York’s 800,000 practitioners. SED’s Office of Professions regulates the activities of the State’s professions including doctors, nurses, chiropractors, physical therapists, psychologists, social workers, engineers, massage therapists, and mental health practitioners.

“When I fill out my license application, I put down my address as 89 Washington Avenue (the State Education Department Building),” Douglas Lentivech, Deputy Commissioner, Office of the Professions, explained in addressing the State Board of Mental Health Practitioners. “However, not every licensee can do that.”

Deputy Commissioner Lentivech defended the sensitivity related to the information disclosure issue, particularly in the professions in which the majority of the practitioners are women.

In response to the Court’s directive, SED is reviewing its computer system to facilitate compliance.

In the News – New York City

Message to CFB: Protect Union Communications

City officials, good government groups, and union representatives alike called upon the New York City Campaign Finance Board (CFB) to protect member-to-member communications when finalizing its proposed rules for the disclosure of independent expenditures in City elections.

“I have deep concerns about the inclusion of ‘member-to-member communications’ as independent expenditures,” City Council Speaker Christine Quinn said in written testimony. “I strongly urge you to reconsider this position.”

Following the U.S. Supreme Court’s decision in *Citizens United*, the Campaign Finance Board queried New Yorkers in relation to disclosure of independent campaign expenditures. In November 2010, voters approved an amendment to the City Charter that requires public disclosure of independent spending in future City elections. The proposed regulations implement the approved amendment.

Speaker Quinn asserted that member-to-member communications that would be covered are overly broad, and that the resulting compliance obligations are unduly burdensome.

“As a result, these proposals, if adopted, would chill speech for both election and non-election activities and would be unnecessarily burdensome and costly,” Speaker Quinn wrote.

Speaker Quinn explained that the Charter Amendment provides no basis for treating member-to-member communications as independent expenditures. In addition, the Speaker asserted that at no point during the Charter Revision Commission’s consideration of the Charter Amendment, or the information provided to voters for their consideration, was there any indication that the Charter Amendment was meant to capture anything other than communications directed to the general electorate.



Speaker Quinn

Municipal union and membership organization representative Robert Bishop, one of the founding members of Pitta Bishop Del Giorno & Giblin LLC, expressed his concerns regarding the regulations' expansive scope, the severe penalties for violations, and the CFB's "seemingly unchecked auditing authority."



Robert Bishop

"Capturing member-to-member communications within the definitions of 'express advocacy communications' and 'electioneering communications' when coupled with the potential penalties, both civil and criminal, for violations of the proposed rules will surely chill the speech of membership organizations," Mr. Bishop explained. "Given the confusing distinctions contained in the proposed rules and the CFB's Guide to the Proposed Rules, various membership organizations, particularly smaller and less sophisticated ones, will choose to not engage in activities that might be construed as regulated conduct, in hopes of avoiding potential penalties."

Speaker Quinn noted the ironic impact of the proposed regulations in relation to CFB's mission.

"In the face of the daunting prospect of having to account for and report this amorphous range of activity, the response will be for many membership organizations, both big and small, to curtail or forgo legitimate political activity," she explained. "As the agency that, in addition to running our public campaign financing program is also mandated to encourage and promote voter participation in elections, CFB should most certainly wish to avoid such a consequence."

Similarly, Common Cause/NY took issue with the regulations, asserting that the emphasis is misguided.

"...We are concerned with organized money, not organized people, which is why we do not believe that member to member communications within a union should have to be disclosed as independent expenditures," Deanna Bitetti, Associate Director of Common Cause/NY.

NYC Pension Fund Change Proposed

Mayor Michael Bloomberg, City Comptroller John Liu, and representatives of the City's "Big Five" pension systems –The New York City Police Pension Fund, the New York City Fire Department Pension Fund, the New York City Teachers' Retirement System, the New York City Employees' Retirement System, and the Board of Education Retirement System—announced an agreement this week on a proposal to reform the City's pension fund management.

The proposal would place investment advisory authority for all five of the currently independent City pension funds under one new pension board, supported by an independent, full-time staff led by a Chief Investment Officer. Currently, the City's five pension funds currently have 58 trustees, each with a different weighted vote, who decide investment policy.

Under the proposal, which requires State Legislative approval, the assets of the five pension funds will remain separate and each fund will continue to administer benefits and make disability determinations independently.



Mayor Bloomberg

Although Mayor Bloomberg indicated that the proposal is estimated to generate “significant” pension-related savings, he remained steadfast in his contention that a new Tier V pension program “is the only way to reduce pension costs.” Meanwhile, Comptroller Liu recently released a report, “A Better Bang, For New York City’s Buck,” that found that the city could deliver the same retirement income through defined benefit pension plans at a 40% lower cost than a defined contribution 401(k)-type individual account.



Comptroller Liu

The major provisions of the investment reform proposal include:

- The five New York City Pension Funds would delegate investment authority to a newly created pension investment board composed of City and labor representatives. The board would set strategic objectives and policy for the funds.
- The Bureau of Asset Management would be moved out of the Comptroller’s Office and be re-established as an independent investment entity that will determine consultant and asset manager pools and manage certain asset classes in-house. The proposal calls for the investment entity to be staffed by experienced industry professionals and for compensation packages to attract those investment professionals.
- A Chief Investment Officer will lead the new investment management entity. The Chief Investment Officer will report to the new pension investment board – not to any individual elected official – and will be appointed to a fixed term that will not coincide with citywide election cycles.
- The new pension investment board and new investment staff will adopt best-in-class ethics, governance, training, and code of conduct policies and procedures to protect against fraud, waste and abuse.

NYC Police Overtime Costs

The New York City Independent Budget Office (IBO) this week released a report analyzing police overtime costs. According to the IBO, overtime costs for New York City police have grown steadily since 2006. Specifically, costs grew from \$412.0 million in 2006 to \$538.4 million in 2010. In fiscal year 2011, which ended on June 30, police overtime totaled \$549.5 million.

The IBO explained that two broad overtime categories – special enforcement programs and events overtime -- drove the initial growth and help to explain why overtime continues to remain high.

Special enforcement program overtime includes initiatives intended to address a specific need such as an increase in drug activity. For example, overtime costs associated with Operation Condor (which brought narcotics officers in for one overtime tour each week) accounted for nearly all expenditures within this category. The program was later expanded to include violent street crimes (such as assaults on taxi/livery drivers) as well as less serious quality-of life. The program was eliminated this year.

Events overtime is broken down into subsets including events planned and events unplanned. Planned events overtime is incurred in connection with numerous parades, festivals, and street fairs held each year throughout the City. About 4,500 street activity permits are issued by the City each year, about 400 of which involve the use of multiple blocks over several days. Although the total number of planned events has not grown substantially in recent years, the size, scope and popularity of many events has increased, thereby requiring an additional police presence. In addition, heightened security concerns since September 11, 2001 have also led to a general increase in the number of police officers deployed to planned events, including members of specialized police units such as counter terrorism and intelligence. Unplanned events are nonrecurring and include various contingencies such as street protests and demonstrations, weather emergencies, special celebratory parades (e.g., for World Series championships).

NYC Police Overtime

New York City Marathon	\$2.3 M
President Obama (7 NYC visits) --	\$2.4 M
2010 Christmas Blizzard	\$1.6 M
January 2011 Snowstorms....	\$883,721
Death of Osama bin Laden ...	\$773,981
2010 Yankees/Boston	\$410,948
September 2010 Tornado	\$318,407
2010 Yankees/Twins	\$305,045
Thanksgiving Day Parade	\$192,763

In Brief

NY Launches Statewide Alert System for Missing Vulnerable Adults

New York this week launched the "Missing Adult Alerts" system that will assist local law enforcement officials in notifying communities when a cognitively impaired New Yorker goes missing.

In July Governor Andrew Cuomo signed legislation to create the notification system to provide rapid public dissemination of information regarding missing adults with dementia, Alzheimer's, or other cognitive impairments. The Missing Adult Alerts will use the same tools as the state's Missing Persons Clearinghouse and State Police use to issue an AMBER Alert to find missing children. Those tools include distribution of posters, a toll-free twenty-four hour hotline, and partnerships with local broadcasters for quick dissemination of information.

Homeland Security Appointments

Governor Andrew M. Cuomo this week announced the nomination of Jerome M. Hauer to Commissioner of the Division of Homeland Security and Emergency Services (DHSES) and the appointment of Steven Kuhr to Executive Deputy Commissioner of DHSES. Mr. Kuhr will also serve as Director of the State Office of Emergency Management.

Jerome Hauer is currently the Chief Executive Officer of the Hauer Group, an emergency management consulting firm. Prior to starting the Hauer Group, Mr. Hauer served as a Co-Chair of the homeland security practice of Fleishman-Hillard Government Relations. From 2002 to 2003, he was the Acting Assistant Secretary for the Office of Public Health Emergency Preparedness at the U.S. Department of Health and Human Services. Mr. Hauer previously served as Director of the Office of Emergency Management in New York City from 1996-2000.

Steven Kuhr currently serves as President and Chief Operating Officer of Strategic Emergency Group LLC, an emergency management and homeland security consulting firm. Prior to joining the private sector, Mr. Kuhr served with the City of New York for 20 years. He was Deputy Director for Operations and Planning for the Office of Emergency Management and he served as Chief and Division Captain of EMS Special Operations with the New York City Fire Department.

DHSES includes the Office of Counterterrorism, Office of Cyber Security, Office of Fire Prevention and Control, Office of Interoperable and Emergency Communications, and the Office of Emergency Management. The Division is responsible for helping to prepare for and respond to terrorism and other man-made and natural disasters.

Fracking Delayed?

State Department of Environmental Conservation Commissioner Joseph Martens indicated this week that it is “hard to predict” whether high-volume hydraulic fracturing will begin in New York next year.

Procedural changes in relation to the development of state-level recommendations (including a new fee structure for gas drillers) have pushed back the anticipated release date. Commissioner Martens said it was “unlikely” the panel would have its recommendations completed in time to be included in the Executive Budget in January. DEC, the Public Service Commission, and the Department of Health have called for additional funding to implement the program.

Shari C. Hyam: Commissioner and Chair of the NYC Business Integrity Commission

Shari C. Hyman has been appointed as Commissioner and Chair of the Business Integrity Commission, succeeding Michael J. Mansfield, who is leaving City service for the public sector.

Commissioner Hyman served as Director of Business Acceleration and Senior Counsel to the Deputy Mayor for Operations. She also served as the First Deputy Criminal Justice Coordinator in the Mayor’s Office of the Criminal Justice Coordinator and Coordinator and the Director of the Mayor’s Office of Special Enforcement. A graduate of Northwestern University School of Law and Columbia University, Commissioner Hyman served as Deputy Executive Director of the Civilian Complaint Review Board and was Assistant District Attorney in Manhattan,

BIC was created in 2001 to consolidate regulatory jurisdiction over the private carting industry, businesses operating in the City’s public wholesale markets, and the shipboard gambling industry. There are more than 1,500 active carting companies operating in New York City and approximately 150 wholesale businesses operating in three of the City’s wholesale public markets.

General Election, Tuesday, November 8th



VOTE. OR LIBERTY IS HISTORY.

Polls Open, 6 a.m. to 9 p.m.



A Listing of New York City candidates attached

Coming Up

New York State

Monday, October 31st

Child Product Safety

Assembly Committees on Consumer Affairs and Protection & Children and Families
Assembly Hearing Room, 250 Broadway, Room 1923, 19th Floor, New York, 10:30 a.m.

Tuesday, November 1st

Impact of Tourism on Job Growth and the State's Economy

Assembly Committee on Tourism, Parks, Arts and Sports Development
Assembly Hearing Room, 250 Broadway, Room 1923, 19th Floor, New York, 11 a.m.

New York City

Monday, October 31st

Committee on Civil Rights, Jointly with the Committee on Mental Health, Mental Retardation, Alcoholism, Drug Abuse and Disability Services, 250 Broadway - Committee Rm, 14th Fl., 10 a.m.
Oversight – Access to New York City Businesses for Persons with Disabilities.

Committee on Parks and Recreation Jointly with the Committee on Lower Manhattan Redevelopment, 250 Broadway - Hearing Rm, 16th Fl., 10 a.m.
Oversight – Status of Parkland Redevelopment in Lower Manhattan.

Committee on Contracts Jointly with the Committee on Technology, 250 Broadway - Committee Rm, 16th Fl., 10 a.m.
Oversight – Managing New York City Government IT Contracts.

Committee on Small Business Jointly with the Committee on Economic Development, Long Island City Industrial Business Zone 31-00 47th Avenue (Lobby) Long Island City, Queens 10 a.m.
Tour: Long Island City Industrial Business Zone

Committee on Transportation Jointly with the Committee on Civil Service and Labor, 250 Broadway - Committee Rm, 16th Fl., 1 p.m.
Oversight – Ensuring the Safety of Transit Workers.

Committee on Juvenile Justice Jointly with the Committee on Cultural Affairs, Libraries and International Intergroup Relations, 250 Broadway - Committee Rm, 14th Fl., 1 p.m.
Oversight – A Review of Programs Offered by Cultural Institutions and Libraries to Incarcerated Populations, Ex-Offenders, and Youth Involved in the Juvenile Justice System.

Tuesday November, 1st

Committee on Juvenile Justice, 250 Broadway - Committee Rm, 14th Fl., 10 a.m.

Res -1067-2011 Resolution supporting New York State Chief Judge Jonathan Lippman's call on the New York State Legislature to pass and the Governor to sign legislation raising the age of criminal responsibility for nonviolent offenses to 18 and permit the cases of 16 and 17 year-olds charged with such offenses to be adjudicated in the Family Court rather than the adult criminal justice system.

Committee on Land Use, 250 Broadway - Committee Rm, 16th Fl., 10 a.m.

Committee on Transportation, 250 Broadway - Committee Rm, 14th Fl., 1 p.m.

Int 0546-2011 In relation to prohibiting the affixing of adhesive stickers on motor vehicles.

Int 0567-2011 In relation to requiring the department of transportation to provide online access to street resurfacing and capital improvement information for each city block.

Int 0629-2011 In relation to reporting on certain repair work by the department of transportation.

Int 0412-2010 In relation to requiring the department of transportation to hold hearings with affected community boards before a bicycle lane is constructed or removed.

Wednesday, November 2nd

Committee on Housing and Buildings, 250 Broadway - Committee Rm, 16th Fl., 10 a.m.

Oversight – The Loft Board: Its Functions and Responsibilities.

Committee on Technology, 250 Broadway - Hearing Rm, 16th Fl., 10 a.m.

Res 0870-2011 Resolution calling on the United States Congress to pass and the President to sign into law the Public Safety Spectrum and Wireless Innovation Act (S.911), which amends the Communications Act of 1934 to provide public safety providers an additional ten (10) megahertz of spectrum to support a national, interoperable wireless broadband network and authorizes the Federal Communications Commission to hold incentive auctions to provide funding to support such a network.

Res 0999-2011 Resolution pursuant to section 104-c of the New York State General Municipal Law, authorizing the New York City Department of Citywide Administrative Services to donate surplus city-owned computers, computer software and computer equipment to public and private institutions for secular educational use and to not-for-profit institutions for use by individuals with disabilities, senior citizens, or low income individuals.

Committee on State and Federal Legislation, 250 Broadway - Committee Rm, 14th Fl., 10:30 a.m.

T2011-3202 State Legislation Resolution requesting the New York State Legislature to pass bills introduced by Senator Squadron, S.2325, and Assembly Member Millman, A.4266, "AN ACT to amend the vehicle and traffic law, in relation to authorizing a residential parking permit system in the city of New York".

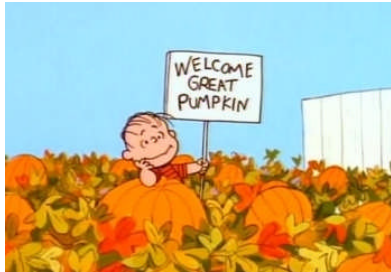
Committee on Finance & the Committee on Youth Services, 250 Broadway, 16th Fl., 1 p.m.

Oversight: Examining the Implementation of the Young Men's Initiative.

Wednesday, November 3rd

Committee on Finance, 250 Broadway - Committee Rm, 16th Fl., 10 a.m.

City Council Stated Meeting, Emigrant Savings Bank - 49-51 Chambers Street, 1:30 p.m.



**There are three things I have learned never to discuss
with people:**

Religion, Politics and the Great Pumpkin.

-Linus Van Pelt in It's the Great Pumpkin, Charlie Brown

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