

Testimony of Maya Wiley, Counsel to the Mayor
Before the Governmental Operations and Technology Committees
New York City Council
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Good afternoon. My name is Maya Wiley, and I am Counsel to Mayor Bill de Blasio. Thank you Chairs Kallos and Vacca and members of the Committees on Governmental Operations and Technology for the opportunity to testify before you today on these three introduced bills.

Mayor de Blasio is deeply committed to ensuring that government is open, accessible, and transparent, so that residents of New York City can engage with City government in a meaningful way. And he has long been a champion on transparency. Today, I will be sharing with you some of the progress we have made on this front.

I will first briefly discuss Intros 149 and 363, and will end with a discussion of 328, OpenFOIL.

Introduction 149: Publication of City Laws Online

As you know, Intro. 149 would amend the City Charter to require Corporation Counsel to publish on the City's website the City Charter, Administrative Code, and the Rules of the City of New York in a searchable format. This bill essentially codifies what we already do. The Law Department has a contract with New York Legal Publishing to make available this body of law online, in plain text form. The text is word searchable, and is updated twice a year.

In about a year, a new contract for publication of the City's laws will be awarded. We will be reviewing our options to ensure that we continue to improve the user experience.

We are not waiting to make improvements we can make now. Until recently it was hard to find the link to the law portal on the City's website. We worked with DoITT to ensure that the link is now prominently displayed on the "Resident Toolkit" page of the City's website. See: <http://www1.nyc.gov/nyc-resources/resident-toolkit.page>

We are interested in and welcome feedback from the public to understand additional ways to improve the user experience.

Introduction 363: Online Publication of the City Record

Intro. 363 would require that the City publish the City Record, the official journal of the City of New York, online, and distribute an email copy to the various designated

parties outlined in the Charter. As written, it would end the requirement that the Department of Citywide Administrative Services (DCAS) print the City Record.

By way of background, the City Record is published each weekday except legal holidays and contains official legal notices produced by New York City agencies. Announcements published in the City Record include: upcoming public hearings and meetings; procurement bid solicitations; selected court decisions; bid awards; public auctions and other property disposition actions; and official rules proposed and adopted by City agencies. Per the New York City Charter, it is manually distributed to libraries, local government offices, community boards, and various news media.

Since 2011, each day's printed City Record has been posted on the City Record On-Line ("CROL") website in a pdf format. Each individual pdf is searchable by agency, keyword and category, but there is currently no ability to search multiple pdfs at the same time.

The bill requires that the City create a beta website within 90 days of enactment that would place the City Record online in a machine and human readable format, and then create a final site within 180 days. While we applaud the goals of this legislation, and are committed to getting the City Record online in an easy-to-use format, there are a few concerns that we have with the bill that I would like to highlight.

First, there are legal issues with requiring the City Record to be exclusively published online. According to the Law Department, requiring the City Record to appear only in electronic form would not have its intended effect without a change in New York State law.

Sec. 60(a) of the New York State General Construction Law requires that an official publication like the City Record be distributed in print form in order to be a newspaper in which legal notices may be placed. In fact, the past administration advocated for an amendment of State law to allow for electronic publishing of the City Record, but those efforts have not yet been successful. In short, until State law is amended, we must print the City Record. Also, as an administration committed to helping all New Yorkers access affordable broadband, we are keenly aware that not all New Yorkers have a computer at home or the ability to easily get online.

Second, even if there were no legal issues with ending the printed version of the City Record and all New Yorkers had the ability to access it online, the timeframe afforded in this legislation to develop the website is not feasible. As I mentioned, we believe this is a worthy goal and something we would like to do, but DCAS has reviewed the bill and does not believe it could develop a beta website within 90 days because of the complexity of revising and creating code to make all City Record information searchable, and creating a database for this information.

That being said, we believe this is an important goal and we are committed to working with the Council to make sure that the City Record On-Line website is as well-designed and useful to the public as possible.

Introduction 328: OpenFOIL

As I mentioned before, Mayor de Blasio is committed to open and transparent government, and a critical element of that goal is FOIL reform. He has long been a champion of this, often in partnership with now-Manhattan Borough President Gale Brewer. As Public Advocate, the Mayor launched a citywide investigation into FOIL compliance - the first comprehensive study of its kind. In 2012, the Public Advocate's office collected and scrutinized information on more than 10,000 FOIL requests, resulting in a "Transparency Report Card" that graded each of the City agencies on their adherence to the law.

The results demonstrate the magnitude of the challenge that we face in this effort, but I am pleased to report that the administration is making progress.

First, the Department of Records and Information Services (DORIS) – under the leadership of Commissioner Pauline Toole – is now completely revamping the way in which the City catalogues and makes government records and reports available to the public. Before the end of the year, we plan to unveil new, fully-searchable tools to dramatically expand public access to government documents.

This is important to emphasize because in the long run, the best way to ensure swift and efficient public access to government documents is through proactive disclosure. In an era in which the proliferation of electronic communications is making it more and more expensive and time-consuming to search vast volumes of records, FOIL reform must also be about proactively pushing out information into the public space and thereby decreasing need and reliance on our freedom of information laws.

In addition, today we made live the first-ever City Hall FOIL tracker. The FOIL tracker is a public-facing webpage on NYC.gov that allows individuals to submit FOIL requests via the site and then track the status of those requests.

It is the goal of this administration to create a centralized City-wide portal for all FOIL requests. This is a huge undertaking. There are dozens of agencies in City government, each having its own FOIL process and different demands and capacities. To bring all agencies' FOIL operations under one umbrella will require a large degree of coordination and planning that we have already begun, and will take time.

We see the City Hall tracker as an excellent first step in this effort. We will be able to use it as a pilot—evaluating its functionality and determining how to scale what works.

To give you a sense of the size of a project to create a centralized FOIL tracker system for the City—we estimate that the City receives more than 50,000 FOIL requests each year—and each agency has a different way of addressing them. For example, the Department of Transportation alone receives 7,000 requests per year, and has a sophisticated system and large staff dedicated to responding to requests. In order for a centralized system to work, we will need to carefully review the operations of the agencies and coordinate with all agencies to ensure that the final product increases efficiency rather than adds bureaucracy.

We share this legislation's goal to create a centralized system, but it is important that we do it right. In that vein, I would like to offer a few comments on Intro. 328.

As you know, Intro 328 would create a centralized, online portal for all FOIL requests. The bill, in part, would allow the public to submit a request to any agency from a centralized site. That site would track each request and provide the requester with an update at each step in the process of responding to the request, and make public all requests and records produced in response to all requests. The bill requires that the site be up and running with all agencies having transferred their FOIL operations to it within a year.

As the launch of the City Hall FOIL tracker illustrates, this administration is committed to making it easier to make FOIL requests. At present, however, we have some concerns with the bill as drafted.

1. We are concerned about a one year timeline for completion. This is a massive undertaking that will require resources that are not readily available. As I mentioned, some agencies have extensive and elaborate operations for responding to FOIL that will not be easy to transition quickly. If we have to do any significant procurement to implement this, a year timeline will also not be feasible. We would like the flexibility to bring something of this nature online in phases.
2. As drafted, the bill does not allow the City to choose which responsive records to post publicly and which to send only to the requester. This could potentially lead to a situation where the City must post certain documents that while not entirely exempt from disclosure under FOIL are nevertheless inappropriate for mass distribution (like an individual's case file).
3. The bill also appears to require agencies to post records to the centralized site before redacting them and to redact them once uploaded – that could risk broad distribution within the government of sensitive information such as personal health and education data or law enforcement materials that should only be viewed by those officials who have a need and the authority to see them.

4. Lastly, the bill appears to require public disclosure of every data set from which records are produced pursuant to a FOIL request. While it is our goal to post as many data sets as possible, data sets often require careful review before posting to ensure exempt materials are not unintentionally disclosed. Requiring disclosure of every data set from which a record is drawn in response to FOIL would require the City to undertake massive data review exercises in response to FOIL requests even when the data set at issue may not be the highest priority to publish at that given time. This will lead either to a delay in responding to those FOIL requests or an ordering of the disclosure of data sets that is driven by random FOIL requests rather than well-considered prioritization.

Again, I want to reiterate the Mayor's commitment to FOIL reform, and to ensuring that completing a FOIL request is a simple, efficient, and open process. We believe that to do it right, the administration needs more flexibility than this bill currently provides.

We want to commend the City Council for helping to push forward these important issues, and I would be happy to take any questions you may have.