



TO: Karen Persichilli Keogh, Secretary to the Governor
Elizabeth Fine, Counsel to the Governor

FROM: Kevin Younis, Chief Operating Officer and Executive Deputy Commissioner

RE: Government Transparency Initiative: Empire State Development

DATE: October 20, 2021

This memorandum summarizes Empire State Development's (ESD) review of current transparency-related practices and proposes a plan for increased transparency and public participation across ESD's work. This memo serves as ESD's response to Governor Kathy Hochul's September 20, 2021 Government Transparency Initiative directive.

BACKGROUND

Empire State Development is New York State's chief economic development entity, constituting the New York State Urban Development Corporation (UDC) and its subsidiaries, the New York Job Development Authority (JDA) and the New York State Department of Economic Development (DED). ESD's mission is to promote a vigorous and growing State economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing, and other forms of assistance.

ESD is committed to providing transparency and encouraging public engagement across its portfolio of programs and investments. Providing clear and current information in accessible formats is integral to maintaining public trust and encouraging citizen engagement in ESD's mission. Governor Hochul's administration has provided ESD with the opportunity to evaluate its current practices, to ensure ESD is identifying ways in which its focus on transparency can be enhanced.

EXECUTIVE SUMMARY

Following a comprehensive review of current transparency-related efforts, ESD has identified areas where our transparency initiatives are strong, as well as opportunities to improve and strengthen our processes. Recommended improvements are highlighted below:

1. **Make ESD Reports Accessible:** Ensure all ESD public information and reporting are highly visible and easily accessible online.
2. **Notify the Public of ESD Updates:** Regularly notify the public via social media and opt-in email alerts when agency information is updated. Such updates would include community meetings, ESD Board of Director meetings, and newly published reports.
3. **Ensure All Reports are On-Time:** Adopt a more robust management process to ensure all statutorily required reports are delivered on time.

4. **Expand the Database of Economic Incentives:** Continue to expand ESD’s Database of Economic Incentives, hosted on Open NY. The Database provides user-friendly searchable, downloadable, and regularly updated accounting of ESD-supported projects. This newly launched Database is one of the most comprehensive state-level databases of economic incentives in the nation.
5. **Foster Increased Public Engagement:** Encourage greater public participation in ESD Board of Directors meetings, by posting meeting agendas and materials earlier in advance of meetings. ESD also proposes to provide increased visibility and accessibility of public comments submitted in response to Board meeting agenda items, particularly during remotely held Board meetings.
6. **Foster Increased Community-Level Engagement:** ESD proposes to address this goal by:
 - a. Conducting “town halls” for critical ESD programs and processes, each of which will include a public informational webinar, opportunities for questions and answers, and strategies and results for each program (e.g., Small Business, General Project Plan process, Film and TV Tax Credit, Tourism, etc.); and
 - b. Creating a public opt-in system for email notifications to alert citizens of public event dates, with links to the public notice.

DETAILED REVIEW AND RECOMMENDATIONS

Our assessment of current practices, as well as planned improvements in each area are provided below.

1. *Making additional information available to the public on [ESD’s] website, or through the use of social and/or other media, while upholding the State’s commitment to language access.*

The ESD website (esd.ny.gov) is the primary resource for information regarding ESD’s programs, projects, and economic development mission. ESD’s website includes:

- More than 50 annual and quarterly program reports
- Information on dozens of ESD programs, including small business services, tax-based incentives, operational support to NYS businesses, innovation support, growth support, minority and woman-owned business enterprise (MWBE) support, and international business support, to name a few
- Information on New York State’s ten economic development regions
- Board meeting agendas, materials and minutes, and various public notices
- Press releases
- Requests for Proposals
- Information on ESD leadership, governance, policies, and contact information
- Career opportunities
- ESD and Subsidiary special projects

The information on ESD’s website provides the public, the Governor’s Office, our partner agencies, and the New York State Legislature, with a detailed view of ESD and its work.

To make this information even more accessible to the public, ESD will take steps to increase its visibility by:

- Adding a new landing page dedicated to ESD’s transparency efforts that will aggregate links to ESD-related public information currently on ESD’s website or on an external source, including ESD data sets on Open NY;
- Creating a promotional call-out on the ESD homepage that links to the new transparency page; and
- Promoting the new transparency page via social media to remind the public of what is available on the ESD website.

In addition, ESD will keep the public informed of updated information that may be of interest by:

- Posting Board meeting alerts and reminders via social media, including links to information specific to that meeting (such as its date, location, and agenda); and
- Including a feature on the new transparency page that will allow the public to sign up for emails alerting them each time a report, meeting notice, agenda, etc. is published on the ESD website. Users will have the ability to select which alerts to subscribe to.

2. Ensuring the timely preparation of all mandated reporting and identifying ways to make useful information available to the public.

ESD has significant reporting requirements and has worked to manage timely production and posting. While some of ESD’s reports provide information to help contextualize actions and initiatives beyond what is required, our review has identified opportunities to more effectively manage this process, including:

- Establishing regular meetings with agency leadership to discuss reports due within a three-month time frame, ensuring that staff are preparing their mandated reports, and that all resources necessary to produce timely reports are available;
- Creating a system to send automatic email reminders to senior staff and program staff about reports that are due, with a series of reminder emails as each report’s deadline approaches; and
- Instituting “review-by-date” requirements at all points of the process for all reviewing parties.

3. Ensuring the use of the Project Sunlight database in accordance with the Public Integrity Reform Act of 2011.

Project Sunlight requires the reporting of all in-person and video conference meetings between New York State staff and non-governmental third parties in connection with these five areas:

- Procurement of a state contract for real property, goods, or services
- Ratemaking
- Regulatory matters
- Judicial or quasi-judicial proceedings conducted by an agency
- Adoption or repeal of a rule or regulation

However, according to the FAQ and Policy guidance¹, the following appearances, among others, are not required to be reported:

- Telephone meetings as opposed to in-person or video conference meetings;

¹ See <https://projectsunlight.ny.gov/Resources.aspx>

- Appearances that pertain to non-discretionary tax credit programs, such as the film tax credit program, commercial tax credit program, and post-production film credit;
- Appearances related to the negotiation of economic development projects regarding the attraction, expansion, or retention of business in New York State that intend to utilize discretionary incentives, such as the Excelsior tax credit, that, if disclosed, would jeopardize the economic development project from being undertaken in New York and/or would damage New York's ability to attract the project given competition from other states and/or countries, until ESD Board approval or the release of public reports pertaining to the program; and
- Appearances during a competitive procurement process pursuant to State Finance Law.

Nearly all potentially reportable ESD meetings fall into one or more of these or other exceptions included in the posted guidance.

These guidance exceptions align with other legal exceptions (FOIL and Open Meetings Law) that help protect business trade secrets and confidential information through the State's economic development efforts to encourage business investment and job creation. Accordingly, ESD believes these exceptions should continue, though we recommend eliminating the distinction between video conference meetings and telephonic meetings.

4. Improving response time for all Freedom of Information Law (FOIL) requests, including by tracking monthly backlogs of outstanding requests and new requests, and by proactively posting frequently requested information or completed requests online.

Over the last few years, ESD has reduced its FOIL backlog significantly and has made timely FOIL responses a priority.

- ESD FOIL officers, the Director of Compliance, the General Counsel, and Public Affairs staff meet biweekly to review the FOIL log and strategize to efficiently gather documents and prepare responses.
- ESD maintains a backlog list of FOIL requests that are at least three-months old, and focuses on older FOILs, while simultaneously answering incoming FOIL requests in an efficient and timely manner.
- ESD's FOIL team meets with program teams to discuss frequently FOILed items, to identify commonly requested information that ESD should consider posting on its website, as an increased transparency measure.
- Prior to receiving FOIL requests, when ESD is considering a large project that will receive significant public attention, ESD considers what it should post on ESD's website to maximize transparency and preemptively reduce FOIL requests.

In response to this initiative, ESD will continue to focus on timely responses to FOIL requests. And, to minimize the need for interested parties to submit FOIL requests, ESD will prioritize the proactive disclosure of documents associated with large projects of broad public interest. Members of ESD's leadership will join ESD's FOIL meetings on a regular basis to discuss projects and documents that should be considered for proactive disclosure.

5. Complying fully with Executive Order 8.95 'Using Technology to Promote Transparency, Improve Government Performance and Enhance Citizen Engagement' regarding Open Data.

ESD has complied with the provisions of EO 8.95, and has made various Publishable State Data available on the Open NY website at data.ny.gov. Additionally, on October 7, 2021, ESD published a major quarterly update to the Database of Economic Incentives, the agency's flagship open dataset: The Database of Economic Incentives includes projects approved by ESD since January 1, 2018, for nearly every ESD economic assistance program, including the new additions of film, post-production and other entertainment industry tax credit programs. This recent enhancement has increased the total number of projects represented in the Database to over 1,700 projects. Based on its number of records and fields included, ESD believes that the Database will continue to be one of the most comprehensive state-level databases of economic incentives in the nation.

- In response to this initiative, ESD is in the process of adding several additional datasets of Publishable State Data to Open NY, including:
 1. US SBA COVID-19 Relief to New York State Businesses – Paycheck Protection Program
 2. US SBA COVID-19 Relief to New York State Businesses – Restaurant Revitalization Program
 3. US SBA COVID-19 Relief to New York State Businesses – Shuttered Venue Operator Grant Program
 4. New NY Broadband Program Grant Award Locations
 5. New York Forward Industry Status by Reopening Phase During the COVID-19 State of Emergency
 6. Census 2010 and 2020 Population State, Counties, Cities, Towns, Villages

Moving forward, ESD will continue to identify new potential open datasets to share with the public, as well as evaluate the datasets currently on Open NY.

6. Posting documents required for meetings open to the public at the same time the agenda is posted, to the extent practicable.

ESD's Board of Directors meets monthly and routinely has 20-30 items on the agendas. All such items require separate materials, attachments, and resolutions. In addition, staff supports ESD's active subsidiaries and affiliates, which also meet regularly. ESD works to post all agendas and materials in a timely manner, while producing agendas and materials that are detailed, accurate, and informative for both the Directors and the public. In response to this initiative, ESD and its active subsidiaries will:

- Endeavor to post Board Agendas and Materials simultaneously, and as early as possible, to provide ample time for public review and comment;
- Invite the public to opt-in for meeting alerts, as noted above that will notify subscribers of upcoming meetings, which are posted on ESD's website along with agendas and materials; and
- Seek public comment on all agenda items. These public comments will be provided to the Directors and, depending on the format of the meeting, will be posted online and/or presented at the meeting.

7. Reducing or eliminating the costs associated with providing data or records.

With very few exceptions, ESD does not charge FOIL requestors for the production and delivery of their requests. ESD intends to continue this policy of avoiding charging FOIL requestors for such costs.

8. Updating records retention policies, including ensuring the timely transfer of pertinent records to the State archives.

ESD has a Record Management Officer (RMO) and a Record Retention Policy, as required by law. Currently, the RMO periodically sends documents to State Archives for permanent retention at that location. In response to this initiative:

- ESD's RMO will, on an annual basis, canvas all ESD units that have a permanent record retention requirement for select documents and inquire if any documents are available for transfer to State Archives.

Note that ESD maintains many of its permanent retention records on site, for its own use.

9. Increasing participation of agency personnel in community events and town meetings and providing new avenues for public participation in government decision-making.

ESD has historically prioritized engaging the public on specific projects. Moving forward, ESD will broaden its outreach to include program- and process-related community outreach, while also engaging in robust project-related community outreach.

ESD's Current Outreach

Community engagement significantly contributes to shaping ESD's work on projects. ESD currently engages in the following public outreach:

- ESD holds specific types of public hearings depending on the project and applicable legal requirements: General Project Plan hearings for all capital projects, and/or projects involving property disposition; and environmental review hearings for those projects ESD is the lead agency. These include scoping hearings for projects requiring the preparation of an Environmental Impact Statement (EIS), as well as hearings on the Draft EIS, which is typically combined with the GPP hearing. ESD is required to solicit and consider public comments for each of these procedural hearings.

In addition, for certain projects, ESD engages in significant community engagement in the interested community. Such engagement can include the creation of committees of local elected officials and community stakeholders that act in an advisory capacity on the project; and, assignment of an ESD team member, who engages with the community and responds to community feedback and works directly with elected officials that represent the interested community.

Plan for New Outreach

ESD believes that outreach regarding ESD's programs, as well as its processes and procedures, will ensure the public has a better understanding of ESD's mission and work and will increase opportunities

for public dialogue about programs and processes.

Specifically, ESD will:

- Provide a broad overview to the public on the critical programs ESD manages, including Small Business, Tourism, the Film and TV Tax Credit, and Venture Funds as well as an overview of the General Project Plan (GPP) process, SEQRA environmental review process, and property disposition process. The format of these meetings will be public webinars where ESD personnel will highlight program goals, processes and, if applicable, results; the public would have an opportunity to ask questions. These webinars will also be posted to the ESD website for future viewing by the public.
- Create an opt-in system for members of the public to receive email notifications alerting them to event dates with links to notices and information related to projects.
- Post a link to any of the above-mentioned relevant webinars on individual project webpages and include the link in public hearing notices.

CONCLUSION

ESD appreciates the opportunity provided by Governor Hochul to review and improve upon ESD's existing transparency practices. Through this initiative, ESD is prepared to implement the above reforms in a timely manner. In addition, ESD will continue to evaluate additional opportunities to publicly share information on its operations to better foster a meaningful collaboration between the communities ESD is dedicated to supporting, and members and representatives of those communities.

