

**WRITTEN TESTIMONY OF COMMON CAUSE/NY
FOR THE PUBLIC HEARING RE: PROPOSED AMENDMENT TO
CHAPTER 55 OF THE PUTNAM COUNTY CODE OF ETHICS****July 24, 2019**

Thank you for the opportunity to submit this testimony. Common Cause is a national nonpartisan, nonprofit public advocacy organization founded in New York in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest. With more than 1 million members and supporters and 30 state organizations, Common Cause is committed to honest, open and accountable government and to encourage citizen participation in democracy. Since its inception, the New York chapter has always been and continues to be one of the most active state organizations in the country, representing nearly 70,000 New Yorkers throughout the state, with more than 400 of them in Putnam County.

Common Cause fights to strengthen public participation and faith in our institutions of self-government and to ensure that government and political processes serve the general interest, and not simply the special interests. For more than 30 years, we have worked at both the state and municipal level to bring about honest, open and accountable government. One of our core issues is seeking to promote transparency in government and compliance with ethics laws. Accountability to the public is a foundational value of a healthy democracy, and any retrograde movement on this value can only serve to weaken the public trust in the functioning of government.

We are proud to be strong supporters of New York's well regarded ethics laws, having worked on and supported them from their inception and contributed substantively to the ongoing successful revisions to the laws which have allowed them to remain effective over time.

**COMMON CAUSE/NY OPPOSES AMENDING CHAPTER 55 OF THE COUNTY ETHICS CODE TO
GRANT AGENTS OF THE COUNTY AUTHORITY TO MARK ITEMS AS CONFIDENTIAL**

There is a constant dynamic tension between the public's desire for full and complete transparency and the administrative burden which full disclosure places on reporting entities. We believe that the proposed amendments do not strike an appropriate balance. Common Cause/NY opposes the proposed amendments to chapter 55.

The Interaction between the County Ethics Code and Committee on Open Government ("COOG") Advisory Opinions should be specifically addressed.

It is Common Cause/NY's position that chapter 55 should be not be amended as written without alterations made to ensure that in no way does the county seek to supplant, substitute for, or eliminate, the determinations made in COOG Advisory opinion 15374 which asserts that agencies may not declare items confidential, and the Court of Appeals in *Capital Newspapers v. Burns*, 67 NY2d 562, 567 (1986) where it is stated that:

"A promise or any assertion of confidentiality is all but meaningless; unless one or more grounds for denial appearing in the Freedom of Information Law ("FOIL") may appropriately be asserted, the record sought must be made available."

Since the proposed legislation already includes a provision encompassing the limited circumstances granted by FOIL to withhold records, the addition of the provision defining confidential material as any other record marked so by a Putnam County agent clearly oversteps the county's authority in this matter. The only way to conform to COOG and Court of Appeals standards in this regard would be to abandon any notion that county agents may determine what is and is not confidential beyond the specific grounds already defined by FOIL.

The passage of this bill would only unnecessarily, and at great expense, shift the burden of determining what we already know cannot be confidential to the public, the court system, and the taxpayer. We note that COOG currently posts static document images of the relevant Advisory opinions on its website.

THE COUNTY DOES NOT HAVE THE AUTHORITY TO EXPAND THE STATE'S DEFINITION OF CONFIDENTIAL

It has long been Common Cause/NY's position that local governments should conform to the highest standards of government transparency and make their best effort to make as much information as possible available to the public for inspection. The proposed bill would shrink what is available for public inspection, and would do so without statutory authority.

The New York Freedom of Information Law defines what may be marked confidential and unavailable to FOIL requestors. COOG, citing the Court of Appeals, has explicitly noted that only state or federal statute may enumerate what documents can be made confidential. (AO-18476, AO-15374, *Morris v. Martin* 440 NYS 2d 365, 82 Ad 2d 965, reversed 55 NY 2d 1026 (1982); *Zuckerman v. NYS Board of Parole*, 385 NYS 2d 811, 53 AD 2d 405 (1976); *Sheehan v. Syracuse*, 521 NYS 2d 207 (1987)) It is without statutory authority, contradicting the explicit determination of COOG and against the holdings of the Court of Appeals that Putnam County seeks to expand its authority with this bill.

Common Cause/NY urges Putnam County to forego the needless expense it will bring on the taxpayer to resolve this issue in the courts, where the County will not prevail.