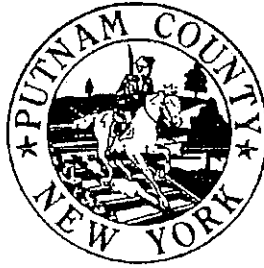


THE PUTNAM COUNTY LEGISLATURE

40 Gleneida Avenue  
Carmel, New York 10512  
(845) 808-1020 Fax (845) 808-1933



Joseph Castellano *Chairman*  
Toni Addonizio *Deputy Chair*  
Diane Schonfeld *Clerk*  
Robert Firriolo *Counsel*

Nancy Montgomery	Dist. 1
William Gouldman	Dist. 2
Toni E. Addonizio	Dist. 3
Ginny Nacerino	Dist. 4
Carl L. Albano	Dist. 5
Paul E. Jonke	Dist. 6
Joseph Castellano	Dist. 7
Amy E. Sayegh	Dist. 8
Neal L. Sullivan	Dist. 9

**STATEMENT BY MEMBERS OF THE PUTNAM COUNTY LEGISLATURE  
AT THE PUBLIC HEARING ON THE PROPOSED LOCAL LAW  
REGARDING NON-DISCLOSURE OF CONFIDENTIAL MATERIAL  
(RESOLUTION #154 OF 2019 – PASSED BY THE LEGISLATURE JULY 2, 2019)**

**JULY 24, 2019**

To address certain public comments received by the Putnam County Legislature, as well as information contained in certain news articles, the undersigned members of the Putnam County Legislature offer the following statement for the consideration of the Putnam County Executive at the Public Hearing, and also for the benefit of the public who have raised concerns about the proposed local law.

- 1) The proposed local law does not create any new type of confidential record which may be withheld from the public. Not only will disclosure of records under FOIL still be available, the County Code will also still make disclosure preferred to non-disclosure.**

The proposed law would not “lock down” confidential material, as stated in news reports. It would not create any new categories of confidential material that are not already recognized as confidential and protected from disclosure under law.

There are several misconceptions about the proposed local law that appear to come from mistakes in news reports. The proposed law does not state that anything marked “confidential” is exempt from disclosure under the Freedom of Information Law, or “FOIL.” It does not allow any county employee to stamp “confidential” on a record and turn it into a “secret.” It also does not automatically deem any kind of information to be a “secret.” In fact, while the term “secret” is all over the news articles, the word “secret” doesn’t even appear anywhere in the law.

The simple fact is that marking a record “confidential” does not in any way affect whether the public is entitled to obtain the record. Instead, it is just a notice to any county employee handling the document that it may contain information which is required to be kept

confidential by law or by regulation, and serves as a reminder that the employee must handle that information appropriately.

The proposed local law does not impose any new obligations. Instead, it only codifies the pre-existing legal and ethical obligations of Putnam County employees and officials to protect confidential information, and to not disclose government records except under the proper circumstances and in the proper way.

If there is any question about whether a record should be produced or withheld in response to a FOIL request, the County Code will still favor disclosure to the public. Should the new non-disclosure law conflict with the existing Code provision requiring disclosure under FOIL, disclosure to the public would be favored. The Code already states, “Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.” [Code § 90-1 (D)]. Nothing about the proposed local law changes that.

**2) County employees are already prohibited from disclosing confidential information under New York State law, and violation of that law is a crime.**

General Municipal Law Article 18 contains a state law that makes it illegal for any county officer or employee to “disclose confidential information acquired by him in the course of his official duties.” [GML § 805-a (1)(b)]. Intentional violation of this provision is punishable as a misdemeanor – a crime. [GML § 805]. A person who intentionally violates it may also be fined, suspended, or removed from office or employment. [GML § 805-a (2)]. That is New York State law, and the proposed Putnam County local law only prohibits the same misconduct, and allows the County Ethics Board to address violations.

This state law applies not only to county officers and employees, but to advisory board members and to “any officer or employee paid from county funds.” [GML § 800 (5)]. The state law therefore appears to apply to outside contractors and consultants paid from county funds, just like the new Putnam County Local Law.

It should be noted that “confidential information” is not defined in the state law. By defining it in the new local law, county employees and officials will now have guidance in complying with this existing state law that they previously did not have.

**3) Other provisions in New York State law also prohibit county employees from disclosing confidential government records.**

New York State Public Officers Law Article 6-A is the state’s “Personal Privacy Protection Law.” This state law imposes an affirmative duty on government employees not to disclose personal information except in certain limited circumstances.

The state Personal Privacy Protection Law says that government agencies may not disclose any personal information unless such disclosure is in response to a specific, written

request, or is made with the consent of the person the data is about. There are many limitations on disclosure in the law and numerous conditions apply, which are set forth in Public Officers Law Section 96.

The effect of this state law – Public Officers Law Section 96 – is to impose an obligation on all Putnam County employees and officials to not disclose certain kinds of government records which must be kept confidential, except under limited circumstances.

There are numerous other state and federal laws that require Putnam County to keep certain kinds of information confidential. Here are some examples of information that Putnam County employees are required to keep confidential:

1. Private information of county employees such as Social Security numbers, birth dates, driver license numbers, and banking information. Disclosure of this information could lead to identity theft and fraud.
2. Records specifically shielded by state or federal law, such as health and medical records under HIPAA; pistol license information under the Penal Law; attorney-client communications and work product under both the state Civil Practice Law and Rules and the state Public Officers Law; and court records held by the County Clerk's office that are protected by statute or court order.
3. Law enforcement information that could compromise investigations or endanger the safety or life of an officer, or that could reveal a confidential source that could endanger the safety or life of the informant.
4. Computer data such as passwords and login information that could expose the county to computer hacking or extortion.
5. Lists of names, addresses, telephone numbers, and email addresses of the public and of county employees, which could be used for commercial or fund-raising purposes.
6. Personal information about people who have been arrested or are being held in the County Jail, which is required by law to be kept confidential, and could expose the County to liability if disclosed.
7. Numerous types of private, personal information of members of the public who interact with the County in a wide variety of ways, such as people applying for a trade or business license, or people seeking assistance or services from Social Services, the Child Advocacy Center, the Health Department, Mental Health Services, the Office for People with Disabilities, the Veterans Service Agency, and other agencies dealing with sensitive, personal matters.

There are many more examples, but these should make clear that every day, the County handles information that it is required by law to protect. This is also information that the public expects the County to protect.

A County employee may not realize that a record he or she receives from another department contains confidential information. Having the sender mark the record "confidential" is just a sensible way to alert other County employees that the material they are handling needs to be safeguarded.

**4) The state and federal whistleblower protection laws are not in conflict with the Putnam County non-disclosure law.**

The federal whistleblower protection law [5 U.S.C. 2302(b)(8)-(9)] only applies to federal employees and federal agencies. It therefore does not apply to Putnam County employees.

The New York State whistleblower protection law appears in Labor Law Section 740. It does not prohibit the County from imposing a civil or criminal penalty if an employee improperly discloses confidential records.

The state whistleblower law prohibits "retaliatory personnel action," such as firing or demoting an employee. [§ 740(1)(e)]. The proposed Putnam County law does not conflict with the whistleblower law because the County law would not permit retaliatory personnel action.

The state whistleblower law obviously coexists with the other state law prohibiting disclosure of confidential material in General Municipal Law Article 18, which was previously discussed. As noted, the state non-disclosure law contains its own criminal penalties and also allows for the firing or suspension of an employee.

The state whistleblower law does not protect a county employee's disclosure of records to the general public or to the press. Instead, it protects disclosure of information to a supervisor, or to law enforcement, or to certain federal, state, or local government bodies. And, it only applies to information about a violation of law or regulation which constitutes a substantial and specific danger to the public health or safety, or which constitutes health care fraud. [§ 740(2)(a)].

The state whistleblower law also applies when an employee provides information to, or testifies before, a public body conducting an investigation, hearing or inquiry into a violation of a law, rule or regulation by an employer. [§ 740(2)(b)].

It is hard to conceive of a situation where a County employee who is protected by the state whistleblower law would be penalized under the Putnam County nondisclosure law. Under the Putnam County Ethics Code, anyone charged with violation of the new law must receive due process through the Ethics Board, and also review by the District Attorney if there is a criminal referral.

Four out of the five members of the Ethics Board come from outside county government. It seems extremely unlikely that the Ethics Board would find a violation of the non-disclosure law where an employee was testifying in an investigation or revealing illegal activity by the County. It seems equally unlikely that the District Attorney would prosecute somebody who was reporting illegal activity within the County government.

So the concerns expressed about a conflict between the proposed local law and whistleblower protections laws fall away when you actually look at the whistleblower laws and see how they work. The new County non-disclosure law is not going to penalize an employee for reporting a dangerous violation of a law or rule to a supervisor or to a government investigator.

**5) The procedure for obtaining records from the County has not changed, and the Legislature will not now control the release of County records to the public.**

The County Law Department will still process and respond to FOIL requests in full compliance with state law. Nothing in the proposed local law affects the Law Department's ability to determine for itself whether a record should be produced under FOIL or is exempt from disclosure.

A vote of the Legislature is not necessary to release County records, with one small exception that is really nothing new. The Legislature will have to vote to release legislative records, but only those protected by the attorney-client privilege and similar privileges recognized by law.

When the attorney-client privilege attaches to a legislative record, that privilege belongs to the entire legislature – all nine members. Under existing law and attorney ethics rules, only the client may waive attorney-client privilege, and with the Legislature all nine members are the clients. That is why the new local law says that only a unanimous vote of the legislature can waive the privilege. So not only is a unanimous vote already required by law and rules, it also prevents a majority of legislators from voting to take away the privilege that one or more other legislators may wish to preserve.

Again, the requirement of a unanimous vote to waive attorney-client privilege is already required by existing state and federal law, and also by the attorney ethics rules. The proposed local law only codifies these preexisting legal requirements. Even before the local law, the County was never able to release these kinds of privileged records unless the privilege was waived. The new law only recognizes an exception to the non-disclosure rule to account for when the entire Legislature agrees to waive the privilege on a record and make it available to others.

Beyond this very limited situation, the Legislature will not be controlling the release of County records to the public, either before or after passage of the proposed local law.

Thank you for your consideration of these comments by the undersigned members of the Legislature. We respectfully request that the Putnam County Executive sign the Local Law to Amend Chapter 55 of the Code of Putnam County, which was adopted by the Putnam County Legislature on July 2, 2019, by Resolution #154.



Joseph Castellano  
Chairman  
Putnam County Legislature  
District #7



Toni Addonizio  
Deputy Chair  
Putnam County Legislature  
District #3



William Gouldman  
Putnam County Legislature  
District #2



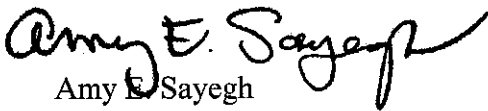
Ginny Nocerino  
Putnam County Legislature  
District #4



Carl I. Albano  
Putnam County Legislature  
District #5



Paul E. Jonke  
Putnam County Legislature  
District #6



Amy E. Sayegh  
Putnam County Legislature  
District #8



Neal L. Sullivan  
Putnam County Legislature  
District #9