
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**NEW YORK STATE BRIDGE
AUTHORITY**

**COMPLIANCE WITH
FREEDOM OF
INFORMATION LAW
REQUIREMENTS**

Report 2007-S-34

AUDIT OBJECTIVE

Our objective was to determine whether the New York State Bridge Authority's (NYSBA) efforts to manage and monitor Freedom of Information Law (FOIL) requests result in the timely release of information consistent with FOIL requirements.

AUDIT RESULTS - SUMMARY

We found NYSBA can improve its management and monitoring of FOIL requests to ensure the consistent timely release of information.

FOIL specifies time frames for the processing of requests received by agencies. NYSBA was late in providing a determination on access to requested records for two of the nine

FOIL requests they received during our audit period. On average, NYSBA took seven days longer than promised to respond to these two requests.

Our report contains one recommendation to help correct the problem identified during our audit. NYSBA officials agreed with our recommendation and are taking steps to implement changes.

This report dated, July 16, 2007, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

NYSBA was created in 1932 to meet the need for a bridge over the Hudson River between the City of Hudson and the Village of Catskill. The current mission of NYSBA is defined by the Public Authorities Law, which charges it with maintaining and operating various vehicle crossings of the Hudson River for the economic and social benefit of the people of the State.

Article 6 of the New York State Public Officers Law provides for public access to government records. The statute, generally referred to as the Freedom of Information Law (FOIL), applies to any State agency, public authority and local government entity, with the exception of the Judiciary and the State Legislature. Under FOIL, each agency, including public authorities, is required to make all eligible records available for public inspection or copying. Such records include, but are not limited to, reports, statements, opinions, folders, files, microfilms, and computer tapes or discs.

NYSBA received nine FOIL requests during the period of our audit, January 1, 2005 through September 13, 2006. FOIL specifies time frames for the processing of FOIL requests by agencies when granting or denying access to requested records. If a denied request is appealed, the agency must send copies of the appeal and subsequent determination to the Committee on Open Government (COOG). Among other things, COOG issues advisory opinions, and makes recommendations to the Legislature, on matters relating to FOIL. In addition, each agency is required to maintain a reasonably detailed current list by subject matter (subject matter list) of all agency records, whether or not they are available under FOIL.

AUDIT FINDINGS AND RECOMMENDATION

Internal Policies and Procedures

Under FOIL, agencies are required to make all eligible records available for public inspection or copying and promulgate rules and regulations including: the times and places such records are available; the persons from whom such records may be obtained; and the fees for copies of records, which generally may not exceed 25 cents per page. We found that, although NYSBA has not developed its own written policies and procedures, it does follow the provisions set forth in the FOIL statute.

Each agency is also required to maintain a reasonably detailed current subject matter list of all records in the possession of the agency, whether or not they are available under FOIL. We found NYSBA maintains an appropriate subject matter list.

Compliance with FOIL-Specified Time Frames

FOIL specifies time frames for the processing of requests received by agencies. Compliance is important because delays in responding to FOIL requests equate to a denial of the request and could result in unnecessary appeal proceedings for the agency. We found that NYSBA could improve in this area.

When NYSBA receives a written request for records from the public under FOIL, it has five business days to grant or deny access, or if more time is needed, to acknowledge the receipt of the request in writing. FOIL further specifies an acknowledgment letter must indicate the approximate date when the request will be granted or denied. Where an agency determines to grant a request in whole

or in part, disclosure in most instances cannot exceed 20 additional business days, from the date of the acknowledgment letter.

We reviewed the nine requests NYSBA received during our audit period for compliance with these requirements. We found NYSBA acted on the nine requests within three days of receipt. However, in three instances, more time was needed to make the determination. As required, NYSBA sent acknowledgment letters for those three requests specifying a date when it would make a determination. However, we found NYSBA failed to meet the specified time frame for determination for two of the three requests. On average, NYSBA took seven days longer than originally promised to respond to these two requests.

According to NYSBA officials, one of the two requests was responded to late due to an error in calculating the projected date in the acknowledgment letter. NYSBA was unable to identify the reason for the delay in the other response, because the FOIL officer who handled the request has since retired. We note that FOIL specifies delays in providing records are to be communicated in writing to the requester. Our review did not find documentation of this written notification in NYSBA's FOIL records.

Denial of FOIL Requests

FOIL does not require authorities to maintain documentation of the information provided in response to requests and NYSBA has not set such a policy to maintain this documentation. Therefore, we were not able to evaluate the content of all the information provided in response to the FOIL requests we reviewed at NYSBA. However, we did evaluate the nature of the information listed on the requests.

FOIL specifies authorities may deny information requests for specific reasons, such as a request which would constitute an unwarranted invasion of personal privacy or when disclosure could endanger the life or safety of any person. In our review of the NYSBA's FOIL requests during our scope period, we found that NYSBA partially denied two requests. The reasons NYSBA cited for the denials were consistent with the exceptions provided by FOIL. The partial denials were not appealed.

Recommendation

Correspond in writing to the requester when FOIL requests cannot be fulfilled within specified time frames, explaining why and providing a new time frame.

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in conformance with generally accepted government auditing standards. We audited the efforts by 22 selected public authorities to manage and monitor FOIL requests. This report includes details of our audit of one of these 22 authorities, NYSBA, and covers the period January 1, 2005 through September 13, 2006. A complete listing of all 22 reports is included as Exhibit A.

To accomplish our objective at NYSBA, we reviewed the FOIL statute and met with NYSBA officials to confirm and enhance our understanding of the authority's FOIL request process. We also reviewed all nine FOIL requests that NYSBA reported receiving during our audit period, reviewed the steps NYSBA took to process these requests, and evaluated their timeliness. In addition, we extensively reviewed each FOIL request, including the subject matter of the request and the dates upon which it was prepared, received and resolved.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was performed according to the State Comptroller's authority under Article X, Section 5, of the State Constitution; and Section 2803 of the Public Authorities Law.

REPORTING REQUIREMENTS

Draft copies of this report were provided to NYSBA officials for their review and comments. Their comments were considered in preparing this draft report, and are included as Appendix A.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Bridge Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendation contained herein, and where the recommendation was not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Frank Houston, John Buyce, Christine Rush, Lisa Rooney, W Sage Hopmeier and Rick Podagrosi.

Reports on Public Authority Compliance with FOIL Requirements

<u>Report Number</u>	<u>Public Authority</u>
2006-S-107	New York State Thruway Authority
2006-S-108	Long Island Power Authority
2006-S-109	MTA/New York City Transit
2006-S-110	Empire State Development Corporation
2007-S-33	Battery Park City Authority
2007-S-34	New York State Bridge Authority
2007-S-35	Central New York Regional Transportation Authority
2007-S-36	Convention Center Operating Corporation, NYC
2007-S-37	Development Authority of the North Country
2007-S-38	Dormitory Authority of the State of New York
2007-S-39	Environmental Facilities Corporation
2007-S-40	Housing Finance Agency
2007-S-41	Hudson River/Black River Regulating District Authority
2007-S-42	New York Power Authority
2007-S-43	Niagara Frontier Transportation Authority
2007-S-44	Ogdensburg Bridge and Port Authority
2007-S-45	Olympic Regional Development Authority
2007-S-46	Port of Oswego Authority
2007-S-47	Rochester-Genesee Regional Transportation Authority
2007-S-48	Roosevelt Island Operating Corporation
2007-S-49	Thousand Islands Bridge Authority
2007-S-50	MTA/Bridges and Tunnels

APPENDIX A - AUDITEE RESPONSE



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NEW YORK STATE BRIDGE AUTHORITY

May 22, 2007

Mr. Frank J. Houston, Audit Director
Office of the State Comptroller
Division of State Services
State Audit Bureau
123 William Street – 21st Floor
New York, NY 10038

Re: Audit Report 2007-S-34
NYS Bridge Authority compliance with FOIL requests

Dear Mr. Houston:

We are pleased that your audit of our FOIL request compliance and process found only two minor processing delays, and that those two instances of delay were no more recent than 2005.

Please be advised that the Bridge Authority adopted a procedure in 2006 to insure that any delay in compiling requested information under FOIL will be documented in writing and that the requestor will be advised in an appropriate manner.

Thank you for your comments.

Very truly yours,

A handwritten signature in black ink that reads "George C. Sinnott".

George C. Sinnott
Executive Director

cc: Mr. John R. Bellucci, NYS Bridge Authority
Ms. Lisa Ng, Division of the Budget

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