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**Thomas P. DiNapoli  
COMPTROLLER**



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**OFFICE OF THE  
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE  
GOVERNMENT ACCOUNTABILITY**

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**DORMITORY AUTHORITY  
OF THE STATE OF NEW  
YORK**

**COMPLIANCE WITH  
FREEDOM OF  
INFORMATION LAW  
REQUIREMENTS**

**Report 2007-S-38**

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## AUDIT OBJECTIVE

Our objective was to determine whether the Dormitory Authority of the State of New York's (DASNY) 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 DASNY generally manages and monitors FOIL requests in a manner that results in the timely release of information consistent with FOIL.

When DASNY 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. We found that for the 146 requests received during our audit period, DASNY either granted or denied access to the records or acknowledged receipt, on average, one day after the request was received. Only one of the 146 requests was acknowledged late.

FOIL specifies the acknowledgment letter must indicate the approximate date when the request will be granted or denied, which in

most cases cannot exceed 20 additional business days from the date of the letter. DASNY generally indicated records would be provided within 10 business days. We found that DASNY met that time frame for 110 of 126 requests. All but two of the 16 requests which did not meet DASNY's ten-day time frame were provided within FOIL's 20-day limit.

When the time frames specified in the acknowledgment letters cannot be met, FOIL requires an agency to correspond in writing with the requester, notifying them of the delays and the anticipated release date of the records. DASNY's practice is to communicate verbally with the requester indicating that the request will be delayed. DASNY officials agreed with our recommendation to communicate delays in writing, with the anticipated release date of the records.

This report, dated June 26, 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, 11<sup>th</sup> Floor  
Albany, NY 12236

## BACKGROUND

DASNY is a public benefit corporation serving the citizens of New York through construction and financing programs. DASNY issues tax-exempt securities and then lends the proceeds to clients to finance the construction, rehabilitation, or equipping of facilities needed to furnish services to New Yorkers. Originally created in 1944 to construct dormitories for State teachers' colleges, DASNY currently finances and builds all types of facilities for use in higher education, health care and courts, as well as certain nonprofit institutions and public agencies.

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.

DASNY receives about 250 FOIL requests each year. FOIL specifies time frames for the processing of FOIL requests by agencies when granting or denying access to requested records. However, agencies may develop their own more stringent internal policies and procedures for the processing of FOIL requests. 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.

## AUDIT FINDINGS AND RECOMMENDATION

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### *Internal Policies and Procedures*

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Under FOIL, agencies are required to make all eligible records available for public inspection or copying and to 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 DASNY has developed its own written policies and procedures, which are consistent with, and in some cases more stringent than, the provisions set forth in the FOIL statute.

FOIL requires agencies maintain a reasonably detailed current list by subject matter (subject matter list) of all records in the possession of the agency, whether or not they are available under FOIL. This list is to be provided to the public upon request. We found DASNY maintains an appropriate subject matter list.

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### *Compliance with FOIL-Specified Time Frames*

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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 DASNY to be generally in compliance with FOIL-specified time frames.

### **Acknowledgment Letters**

When DASNY 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 in writing. We reviewed the 146 requests DASNY received during our audit period for compliance with this requirement. We found it took DASNY an average of one business day to grant or deny access, or to acknowledge the requests. Only one of the 146 requests we reviewed was not acted upon within five business days. Further, the acknowledgment letter for the single late request was only one day late and it included the requested information.

### **Determination of Accessibility of Information**

FOIL specifies the 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.

Four of the 146 requests DASNY received had been withdrawn by the requestors after acknowledgment; therefore, we reviewed the remaining 142 requests for compliance. We found DASNY granted or denied access for 16 of the 142 requests within five business days. For the remaining 126 requests, DASNY specified records would be provided within 10 business days, in accordance with its more stringent internal policy. DASNY met this ten-day requirement for 110 requests. We found that records for 14 of the 16 requests which did not meet DASNY's self imposed ten-day time frame were provided within FOIL's 20-day limit. Records for the other two requests were not provided until 44 and 45 days after DASNY's promised date.

When the time frames specified in the acknowledgment letters cannot be met, FOIL requires an agency to correspond in writing with the requester, notifying them of the delays and the anticipated release date of the

records. DASNY's practice is to communicate verbally with the requestor indicating that the request will be delayed. DASNY officials generally agreed with our recommendation to communicate all extensions of their ten business day response period in writing and stated that they have taken steps to revise their internal FOIL policy appropriately.

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### *Denial of FOIL Requests*

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FOIL permits an agency to deny public access to records under certain circumstances. Any person denied access to records may appeal in writing within 30 days. An agency must then explain in writing the reason for further denial or provide access to the records sought within ten business days of the receipt of the appeal. An agency must also send copies of all appeals and subsequent determinations to COOG.

DASNY denied three requests during our audit period. We found that in all instances, the reasons DASNY cited for the denials were consistent with the exemptions provided by FOIL. There were no appeals of the three denials.

### **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 compliance 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, DASNY, and covers the

period January 1, 2006 through September 13, 2006. A complete listing of all 22 reports is included in Exhibit A.

To accomplish our objective at DASNY, we reviewed DASNY's internal policies and procedures pertinent to FOIL to determine their compliance with the law. In addition, we met with DASNY officials to confirm and enhance our understanding of their FOIL request process. We also reviewed all 146 FOIL requests DASNY reported receiving during our audit period, reviewed the steps DASNY took to process the requests, and evaluated their timeliness.

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, several of which are performed by the Office of Operations. 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 management functions do not affect our ability to conduct independent audits of program performance.

## **AUTHORITY**

The audit was performed pursuant to the State Comptroller's authority as set forth in 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 DASNY officials for their review and comments. Their comments were considered in preparing this 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 Chair of the Dormitory Authority of the State of New York 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, Rick Podagrosi, and Kelly Engel.

## EXHIBIT A

### 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



*Gail Hill Gordon, Chair*  
*David D. Brown, IV, Executive Director*

May 24, 2007

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

Re: Compliance with Freedom of Information Law Requirements  
Report 2007-S-38

Dear Mr. Houston:

The Dormitory Authority – State of New York (the “Authority”) has reviewed the Office of the State Comptroller’s draft audit report on the Compliance with Freedom of Information Law Requirements (Report 2007-S-38).

We alert you to the following inaccuracy we have identified in this current draft report:

- On Page 5, the report states, “DASNY receives about 90 FOIL requests each year.” In fact, DASNY receives approximately 250 FOIL request each year.

The audit recognized the Authority’s existing policies and procedures and recommends additional documentation in writing to the requester when FOIL requests cannot be fulfilled within DASNY’s ten day specified time frame, explaining why and providing a new time frame. The Authority has accepted OSC’s recommendation and has added this step to our procedures.

\*

Comment

**CORPORATE HEADQUARTERS**  
515 Broadway  
Albany, New York 12207-2984

Tel: 518-257-3000  
Fax: 518-257-3100

**NEW YORK OFFICE**  
One Penn Plaza, 52nd Floor  
New York, New York 10119-0098

Tel: 212-273-5000  
Fax: 212-273-5121

**BUFFALO OFFICE**  
539 Franklin Street  
Buffalo, New York 14202-1109

Tel: 716-884-9780  
Fax: 716-884-9787

**WEB**  
[www.dasny.org](http://www.dasny.org)

\* State Comptroller’s Comment: We revised our report to reflect this information.



**Dormitory Authority  
State of New York**

Frank J. Houston  
May 24, 2007  
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We appreciate this opportunity to respond to the Comptroller's evaluation of our Freedom of Information Law request process, and we look forward to updating the Comptroller, the Governor and the Legislature on our process upon the final release of this report.

Sincerely,

A handwritten signature in black ink, appearing to read 'David D. Brown, IV', with a small flourish at the end.

David D. Brown, IV  
Executive Director

cc: Gail Gordon, Chair  
Michael T. Corrigan, Deputy Executive Director  
Paul Burgdorf, Director Communication & Marketing