
**Thomas P. DiNapoli
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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**HUDSON RIVER-BLACK
RIVER REGULATING
DISTRICT**

**COMPLIANCE WITH
FREEDOM OF
INFORMATION LAW
REQUIREMENTS**

Report 2007-S-41

AUDIT OBJECTIVE

Our objective was to determine whether the Hudson River-Black River Regulating District's (District) 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

FOIL specifies time frames for the processing of requests from the public for District records. 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 the District manages and monitors FOIL requests in a manner that results in the timely release of information consistent with FOIL.

When the District 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. We found that the District, which did not deny any requests during our audit period, acknowledged 26 of the 27 requests received within five days. One request was acknowledged four days late. We also found the District subsequently provided the records for all requests within specified time frames.

This report, dated August 9, 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

The District, a public benefit corporation, regulates the flow of the upper Hudson River and the Black River to reduce flooding caused by excess run-off and to augment river flow at times of drought. The District receives no direct State appropriations, but is instead funded by revenues from hydroelectric site agreements and Great Sacandaga Lake permit fees. A seven-member Board of Directors oversees the District's operation.

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.

The District received 27 FOIL requests during our audit period, January 1, 2006 through September 20, 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, FOIL specifies 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 RECOMMENDATIONS

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 the District developed its own written policies and procedures, which are equivalent to the provisions set forth in the FOIL statute.

In addition, 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 the District maintains an appropriate subject matter list.

Compliance with FOIL-Specified Time Frames

FOIL specifies time frames for the processing of requests. 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 the District manages and monitors FOIL requests in a manner that results in the timely release of information consistent with FOIL.

When the District 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 the District acknowledged 26 of the 27 requests received during our audit period within five days. The District stated that the one request acknowledged late was not initially treated as a FOIL request, which delayed the initial response. The District subsequently decided to treat it as a FOIL request, acknowledging the request nine days after receipt.

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. Our review found that 2 of the 27 requests were still pending at the time of our visit and, therefore, did not yet require action by the District. We found the District provided records within the specified time frames for all remaining 25 requests.

Denial of FOIL Requests

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. Within ten business days of the receipt of the appeal, the District must explain in writing the reason for further denial or provide access to the records sought. The District must also send copies of all appeals and subsequent determinations to COOG. We found that the District did not deny any requests during our audit period.

Recommendation

Continue efforts to manage and monitor FOIL requests in a manner that results in the timely release of information in compliance with FOIL requirements.

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 the District, one of these 22 authorities, and covers the period January 1, 2006 through September 20, 2006. A complete listing of all 22 reports is included in Exhibit A.

To accomplish our objective at the District, we reviewed the District's internal policies and procedures pertinent to FOIL to determine compliance with the law. In addition, we met with District officials to confirm and enhance our understanding of the authority's FOIL request process. We also reviewed all 27 FOIL requests the District reported receiving during our audit period, reviewed the steps the District took to process the requests, and evaluated their timeliness. In addition, we extensively reviewed each completed FOIL request, including the subject matter of the request and the dates when each was received, acknowledged and responded to by the authority.

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 pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution.

REPORTING REQUIREMENTS

Draft copies of this report were provided to District 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 Hudson River-Black River Regulating District 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, Kelly Engel and Sarah Purcell.



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

STATE OF NEW YORK



Board of Hudson River - Black River Regulating District

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Frank J. Houston
Audit Director
Office of the State Comptroller
Division Of State Government Accountability
123 William St.
New York, New York 10038

Dear Mr. Houston:

On behalf of Anne McDonald, Chairperson of the Hudson River - Black River Regulating District (Regulating District) I would like to take this opportunity to thank you and your staff for the professional and timely manner in which the recent audit (Report 2007-S-41) of the Regulating District's compliance with the Freedom of Information Law (FOIL) was completed.

Overall, the audit found that the Regulating District was fully compliant with the FOIL statute and did an effective job of managing FOIL requests. In fact, the only recommendation contained in the audit was to "continue efforts to manage and monitor FOIL requests in a manner that results in the timely release of information in compliance with FOIL requirements." The Regulating District will continue to process FOIL requests in an effective and efficient manner as found by the audit and strive to improve its current process.

The effective management of the Regulating District's response to FOIL requests has been enhanced by the availability and guidance of staff from the Committee on Open Government, specifically Robert Freeman and Camille Jobin-Davis. Without their aid and assistance the task of complying with the FOIL statute would be much more difficult.

There is one small point of clarification concerning the audit. The audit states that although the District "had not developed its own written policies and procedures it followed provisions set forth in the FOIL statute." I believe that this statement is in error because the Regulating District has in fact developed policies and procedures relating to the processing of FOIL requests. I would be happy to share a copy of these procedures with you for inclusion in your final audit report.

*
Comment

Again, I thank you and your staff for the professional manner in which this audit was conducted.

Sincerely,

A handwritten signature in black ink that reads "Glenn A. LaFave".

Glenn A. LaFave
Executive Director

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