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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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**CENTRAL NEW YORK  
REGIONAL  
TRANSPORTATION  
AUTHORITY**

**COMPLIANCE WITH  
FREEDOM OF  
INFORMATION LAW  
REQUIREMENTS**

**Report 2007-S-35**

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## AUDIT OBJECTIVE

Our objective was to determine whether the Central New York Regional Transportation Authority's (CNYRTA) 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 a timetable for the processing of FOIL requests, as well as how an agency should respond when granting or denying access to requested information. 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 CNYRTA can improve its management and monitoring of FOIL requests to better ensure the consistent timely release of information.

When CNYRTA 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 seven of the nine FOIL requests received

by CNYRTA during our audit period were acted upon within the five-day time frame requirement. The other two requests were not acted upon until 8 and 28 business days after receipt, respectively.

If an agency denies a person access to a record, FOIL allows the person to appeal the agency's decision. The agency then must either explain in writing the reasons for further denial or provide access to the record sought. We found that CNYRTA partially denied two of the nine requests received during our audit period. The reasons CNYRTA cited for the denials were consistent with the exemptions provided by law. None of the partial denials was appealed.

Our report contains two recommendations to help CNYRTA better address FOIL response times. Authority officials generally agreed with our recommendations and have taken steps to implement changes.

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, 11<sup>th</sup> Floor  
Albany, NY 12236

## BACKGROUND

CNYRTA is a public authority created in 1970 to provide transportation and other related services within the Central New York Transportation District, consisting of the counties of Onondaga, Oneida, Cayuga and Oswego. CNYRTA is governed by an 11-member Board of Directors.

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.

CNYRTA received nine FOIL requests during our scope period, January 1, 2005 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, 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 RECOMMENDATIONS

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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 that CNYRTA developed written policies and procedures that are equivalent to the FOIL statute.

In addition, FOIL requires agencies to maintain a reasonably detailed current subject matter list. This list is to be provided to the public upon request. We found CNYRTA 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.

When CNYRTA 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 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. Where an

agency is unable to provide the requested records within 20 additional business days, the agency shall provide a written explanation and a date certain within which the records will be provided.

We reviewed the nine requests CNYRTA received during our audit period for compliance with these requirements. We found seven requests were handled timely. However, for the other two cases, CNYRTA did not initially act on the request within five business days, as required. Rather, the first action taken for these two requests was the granting of the requests 8 and 28 business days after receipt, respectively. CNYRTA officials stated these cases were delayed because the FOIL requests were not immediately delivered to the FOIL officer after receipt in the mailroom. CNYRTA officials also noted that some verbal communications may have occurred with the requesters; however, FOIL requires such communication be written.

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#### *Denial of FOIL Requests*

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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. We found that CNYRTA partially denied two of the nine requests it received, but neither one was appealed. The reasons CNYRTA cited for the denials were consistent with the exemptions provided by law.

#### **Recommendations**

1. Take action to help ensure that all FOIL requests are immediately forwarded by the mailroom staff to the FOIL officer to enable initial, formal action within five days.

2. Grant or deny access to FOIL requests within five business days, or if more time is needed, acknowledge the receipt of the request in writing, indicating the approximate date when the request will be granted or denied.

#### **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, CNYRTA, and covers the period January 1, 2005 through September 20, 2006. A complete listing of all 22 reports is included in Exhibit A.

To accomplish our objective, we reviewed CNYRTA's internal policies and procedures pertinent to FOIL. In addition, we met with CNYRTA officials to confirm and enhance our understanding of the authority's FOIL request process. We also reviewed all nine FOIL requests reported as received by CNYRTA during our audit period, reviewed the steps CNYRTA took to process these requests, and evaluated their timeliness. In addition, we extensively reviewed each FOIL request, including the subject matter of the requests and the dates when each was prepared, received, acknowledged 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

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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 and Section 2803 of the Public Authorities Law.

### **REPORTING REQUIREMENTS**

Draft copies of this report were provided to CNYRTA 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 Central New York Regional Transportation 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 recommendations contained herein, and where the recommendations were 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 Paul Bachman.

## 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
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



**THE CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY**  
200 Cortland Avenue • P.O. Box 820 • Syracuse, NY 13205-0820 • (315) 442-3300

*Authority Members*  
Robert E. Colucci, Jr., Chairman  
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Vincent A. O'Neil

Frank Kobliski, Executive Director

July 9, 2007

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

Dear Mr. Houston:

We have received draft audit report 2007-S-35, which addressed the CNYRTA's efforts to manage and monitor Freedom of Information Law requests in accordance with New York State law.

Our response to the two recommendations is as follows:

The CNYRTA concurs with the Comptroller's recommendations. While seven of the nine requests reviewed by the audit staff were responded to as required by FOIL, the CNYRTA corrected, shortly after the receipt of the draft preliminary findings in October of 2006 (and long before the issuance of the final draft report) the conditions which delayed acknowledgement of the other two FOIL requests (responded to within 8 and 28 days respectively). In October of 2006, we fully instructed the mailroom and other appropriate personnel, including Receptionists, Information Technology and Marketing Department employees whose responsibilities include receipt of certain types of regular mail as well as reviewing emails received through the CNYRTA website. This instruction was given both verbally and in writing, and focused on how to recognize a FOIL request, and the immediate routing of email, regular mail or hand-delivered FOIL requests to the designated Records Access Officer or other qualified designee. These actions have ensured prompt responses within 5 business days (the desired action) or if necessary, acknowledgements within 5 business days with subsequent responses within 20 additional business days, for all FOIL requests received since receipt of the preliminary audit findings in October of 2006.

We appreciate the professionalism and constructive approach of your staff during this audit.

Sincerely,

A handwritten signature in black ink that reads "Frank Kobliski". The signature is written in a cursive style with a prominent initial "F".

Frank Kobliski  
Executive Director

CNY CENTRO, INC. • CENTRO OF CAYUGA, INC. • CENTRO OF ONEIDA, INC. • CENTRO OF OSWEGO, INC.  
CENTRO PARKING, INC. • CENTRO CALL-A-BUS, INC. • INTERMODAL TRANSPORTATION CENTER, INC.  
Public Benefit Subsidiary Corporations of the Central New York Regional Transportation Authority