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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

Audit Objective.....2

Audit Results - Summary.....2

Background.....3

**Audit Findings and
Recommendations.....3**

Internal Policies and Procedures.....3

Compliance with FOIL-Specified
Time Frames3

Processing of Appeals4

Recommendations.....5

Audit Scope and Methodology.....5

Authority6

Reporting Requirements.....6

Contributors to the Report6

Exhibit A7

Appendix A - Auditee Response....8

**HOUSING FINANCE
AGENCY**

**COMPLIANCE WITH
FREEDOM OF
INFORMATION LAW
REQUIREMENTS**

Report 2007-S-40

AUDIT OBJECTIVE

Our objective was to determine whether the Housing Finance Agency's (HFA) 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 HFA can improve its management and monitoring of FOIL requests to ensure the timely release of information.

When HFA 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 only 18 of the 36 requests received by HFA during our audit period were granted, denied or otherwise acknowledged within the five-day time frame. On average, HFA first acted on requests nine days after receipt; four days later than FOIL requires.

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. We found HFA failed to meet the specified time frame for 9 of the 36 FOIL requests we reviewed. Records for these nine requests were provided between 3 and 25 days late.

Our report contains seven recommendations to HFA officials to correct the problems identified during our audit. HFA officials generally agreed with our recommendations and are taking steps to implement changes.

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, 11th Floor
Albany, NY 12236

BACKGROUND

HFA was created in 1960 as a public benefit corporation to finance low income housing. HFA issues bonds and notes to raise private capital investment that funds housing accommodations and related facilities.

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.

HFA receives approximately 25 FOIL requests each year. 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 New York State 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

HFA provided us with its internal policies and procedures regarding FOIL requests. Our review found that these policies and procedures were equivalent to FOIL requirements.

Each agency is required to maintain a reasonably detailed current list by subject matter of all records in its possession (subject matter list), whether or not all items are available under FOIL. HFA does not maintain a separate subject matter list as required. Instead, officials informed us that they maintain a central files database, and publish Annual Financial Reports, as well as Annual and Quarterly Procurement Contract reports, which contain equivalent data.

However, these items are more appropriately characterized as individual records themselves, rather than a listing of all records maintained. These items do not provide a list of all records maintained by the authority nor, in the case of the central files database, are they even in a format that could be distributed to someone considering a potential FOIL request. As such, they do not meet the criteria for a subject matter list as provided by FOIL.

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 equate to a denial of the request and could result in unnecessary appeal proceedings for the agency. We found the need for improvements in this area.

Acknowledgment Letters

When HFA 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 reviewed the 36 requests that HFA received during the audit period for compliance with this requirement. We found that only 18 of the 36 requests were granted, denied or otherwise acknowledged within five business

days, with HFA taking an average of nine business days to first act on the 36 requests. The 18 late acknowledgments exceeded the five-day requirement by 1 to 31 days.

HFA officials indicated to us that not all FOIL requests were immediately sent to the FOIL officer upon receipt and this caused some delays in acknowledging requests. Further, HFA disagreed with how we calculated the number of business days between the date a request was received and the date the acknowledgment letter was sent. HFA does not have a system to date stamp or otherwise log in receipt of FOIL requests. This makes it difficult to ensure time frames are met. We therefore took a conservative approach and used the date on the request to calculate timeliness when the date a FOIL request was received was not recorded by HFA. HFA officials took issue with our approach and referred us to the New York State Civil Practice Law and Rules, which according to HFA officials, recognizes that service of legal papers must allow for mailing time. We note that using HFA's approach and adding five business days to the date on the FOIL request to establish the date of its receipt by HFA would still result in HFA having acknowledged 11 of its 36 FOIL requests (almost one-third) beyond the five-day FOIL requirement.

In addition, HFA officials believe where correspondence does not properly identify itself as a FOIL request, the five-day period should not be calculated until such time as a determination is made to treat the correspondence as a FOIL request. However, according to COOG, the five-day acknowledgment period begins when an agency is "in receipt" of a request. From COOG's perspective, the term "in receipt" is intended to refer to the time when a request comes into the possession of the agency. Therefore, the start of the acknowledgment

calculation should begin when HFA receives the request, not when it eventually determines to whom it should be sent.

Determination of Accessibility of Information

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. We found HFA provided the requested records with the acknowledgment letters for 3 of the 36 requests. For the other 33 requests, HFA's acknowledgment letters specified a date when it would make a determination, usually within between 20 and 30 days. However, we found HFA failed to meet the specified time frame for 9 of the 33 requests. Records for these nine requests were provided between 3 and 25 days late. On average, HFA took nine days longer than originally promised to fulfill these requests.

HFA officials stated that many requests are broad in scope, span long periods of time and may take more time than anticipated. However, FOIL allows for unanticipated delays in providing records; it simply requires that these situations be communicated in writing to the requester. Our review did not find documentation of this written notification in HFA's records.

Processing of Appeals

FOIL permits an agency to deny public access to records under certain circumstances. Any person denied access to records may, within 30 days, appeal in writing. 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.

In our review of HFA's 36 FOIL requests, we found that HFA fully denied two requests and partially denied another six. We found the reasons HFA cited for the denials were in accordance with those allowed by FOIL. Two of the eight denials were appealed and both appeals were further denied. HFA responded to these appeals after 14 and 15 days; both beyond the 10-day FOIL response requirement. HFA officials indicated that limited resources have been assigned to address appeals, but that additional resources are being assigned to address the recent increase in appeal activity.

We also reviewed COOG's files to determine whether HFA had sent copies of the two appeals to COOG, as required. COOG did not have one of these two appeals. HFA officials stated their records indicated the appeal had been forward to COOG shortly after the appeal decision was made.

Recommendations

1. Develop and maintain a subject matter list.
2. Acknowledge FOIL requests within five business days.
3. Ensure that FOIL requests are date stamped or otherwise logged in when received.
4. Notify staff of the need to appropriately route all FOIL requests directly to the FOIL officer upon receipt.
5. Correspond in writing to the requester when FOIL requests cannot be fulfilled within specified time frames, explaining why and providing a new time frame.

6. Allocate sufficient resources to ensure that appeals are responded to within FOIL-specified time frames.
7. Ensure appeal decisions are filed with COOG as required.

(HFA officials generally agreed with our recommendations and indicated they have already implemented many of them. For example, they have put in place a comprehensive log-in system to track and monitor compliance with all required time frames for FOIL inquires. They have also arranged to include a time/date stamp on all correspondence received.)

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, HFA, and covers the period January 1, 2005 through September 13, 2006. A complete listing of all 22 reports is included in Exhibit A.

To accomplish our objective, we examined HFA's FOIL request files and internal policies and procedures. We also interviewed HFA officials, who reported receiving 40 FOIL requests during our audit period. We reviewed 36 of these requests. Four requests were not included in our review because they had only recently been received and no action was due on them at the time of our audit. We reviewed HFA's appeal decisions and evaluated the timeliness of communication of the resulting decisions with the requester and COOG. We also compared HFA's appeal files at COOG to the appeals on file at HFA.

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

A draft copy of this report was provided to HFA 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 Chairperson of the Housing Finance 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 recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Frank Houston, John Buyce, Christine Rush, Myron Goldmeer, Lisa Rooney, David Louie, Kelly Engel, Jean-Renel Estime, 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 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



New York State Housing Finance Agency

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PRISCILLA ALMODOVAR
President/CEO

June 5, 2007

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

Dear Mr. Houston:

This letter will serve as the response of the New York State Housing Finance Agency (the "Agency") to the draft audit report sent to Priscilla Almodovar, President and Chief Executive Officer of the Agency, on May 7, 2007. The report contains results of your audit of the Agency's compliance with the provisions of the Freedom of Info Law.

We have reviewed your findings, and are in accord with the attendant recommendations. In fact, the Agency had already implemented many of these recommendations at the time of the audit. For example, HFA has in place a comprehensive "log-in" system for all FOIL inquiries it receives. This system is designed to track these requests and monitor compliance with all required time frames established under FOIL. This system has contributed a great deal to the improvement of our record of FOIL compliance.

We would note that only three (3) of the "late" acknowledgments referenced in the report occurred in the year 2006. Of these, our log and supporting documents contained in the files indicate that two (2) were actually acknowledged within two days of their receipt by the Agency, although the dates on the actual letters were several days prior. Of the third such late acknowledgment, the Agency was involved in related discussions with the requestor, and therefore a written acknowledgment may have been overlooked. We understand that the lack of a time stamp on these requests may contribute to the confusion as to the date of receipt, and have arranged to include time/date stamp on all correspondence received in the future. In addition, as many of our FOIL requests are now made via e-mail and our website, we expect to have an even faster response time.

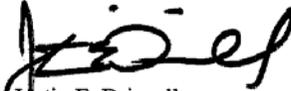
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Mr. Frank J. Houston
June 5, 2007
Page 2

Finally, with respect to appeals, the Agency received its first appeal in current memory during the period covered by the audit. While our inexperience with such matters may have contributed to slight lapses in full compliance with the appeal requirements, we feel the Agency is now very familiar with the necessary procedures.

We thank you for the thoroughness and professionalism displayed by your staff during the course of the audit, and appreciate the constructive advice you have provided.

Very truly yours,



Justin E. Driscoll
Senior Vice President and Counsel

cc: Priscilla Almodovar

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