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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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**NIAGARA FRONTIER  
TRANSPORTATION  
AUTHORITY**

**COMPLIANCE WITH  
FREEDOM OF  
INFORMATION LAW  
REQUIREMENTS**

**Report 2007-S-43**

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## AUDIT OBJECTIVE

Our objective was to determine whether the Niagara Frontier Transportation Authority's (NFTA) 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 NFTA generally manages and monitors FOIL requests in a manner that results in the timely release of information consistent with FOIL.

When NFTA 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 NFTA acknowledged the 63 requests we reviewed an average of five business days after their receipt. However, 12 acknowledgments were made beyond the five-day requirement, ranging from 1 to 17 days late.

FOIL further specifies the acknowledgment letter must indicate the approximate date when the request will be granted or denied. We found NFTA provided records within the specified time frames for 62 of the 63 requests we reviewed. The records for one request were provided four days later than promised.

Our report contains one recommendation to better ensure all requests are acknowledged timely. NFTA officials generally agreed with our recommendation and are taking steps to implement changes where necessary.

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

NFTA operates rail, bus, marine and air transportation services in western New York State. NFTA was created to develop and improve transportation and other services within the NFTA district. NFTA is governed by an 11-member Board, which consists of a Chairperson and ten other members appointed by the Governor.

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.

NFTA receives approximately 35 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 Committee on Open Government (COOG). Among other things, COOG issues advisory

opinions, and makes recommendations to the Legislature, on matters relating to FOIL.

Each agency is also 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. Further, the New York State Archives and Records Administration (SARA) requires that all correspondence documenting an agency's FOIL requests be maintained for six months after resolution of the request.

## **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 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 NFTA did not develop its own written policies and procedures, it does follow the provisions set forth in the FOIL statute.

FOIL also requires agencies to maintain a 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 NFTA 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 an opportunity for improvement in this area.

When NFTA 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 64 requests NFTA received during our audit period for compliance with this requirement. We found NFTA lacked documentation which would specify how one of the 64 FOIL requests was resolved. Officials indicated this request was processed by another department, not by the FOIL officer.

SARA specifies that documentation supporting the disposition of a FOIL request be maintained on file for six months after the FOIL request is resolved. This request was received by NFTA more than six months prior to our site visit at the authority and documentation was no longer available for review. Therefore, we were unable to determine whether this request was acknowledged timely.

Regarding the other 63 requests, we found NFTA acknowledged them an average of five business days after receipt. However, 12 of the 63 acknowledgments exceeded the five-day requirement, ranging from 1 to 17 days late. NFTA officials stated that the delays were caused by the lack of a back-up person to fill in when the FOIL officer was absent or otherwise unavailable.

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 NFTA met the specified time frames for 62 of date of the acknowledgment letter. We found the requests. Records for one request were provided four days later than the date promised in NFTA's acknowledgment letter.

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### *Denials of FOIL Requests*

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FOIL does not require authorities to maintain documentation of the information provided in response to requests and NFTA 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 NFTA. However, we did evaluate the nature of the information listed on the requests. Most of the information requested included the following subjects: list of NFTA salary and financial information; grants and contracts; bid results; incident reports; and accident reports.

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 NFTA's FOIL requests during our scope period, we found that NFTA fully denied two requests and partially denied one other. The reasons NFTA cited for the denials were in accordance with those allowed by FOIL. None of the denials were appealed.

### **Recommendation**

Acknowledge and respond to FOIL requests within the required time frames, and allocate sufficient resources to FOIL requests to enable compliance with these time frames.

(NFTA officials agreed to implement this recommendation.)

## **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, NFTA, 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 reviewed NFTA's internal policies and procedures pertinent to FOIL to determine compliance with the law. In addition, we met with NFTA officials to confirm and enhance our understanding of the FOIL request process. We also reviewed all 64 FOIL requests that NFTA reported receiving during our audit period, reviewed the steps NFTA took to process the 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 by NFTA, acknowledged and, in the end, 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, 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

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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 NFTA 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 Niagara Frontier 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 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, W Sage Hopmeier, Sarah Purcell 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



Niagara Frontier Transportation Authority  
*Serving the Niagara Region*

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Buffalo, New York 14203  
www.nfta.com

Lawrence M. Meckler  
Executive Director  
716-855-7389  
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June 12, 2007

### VIA FEDERAL EXPRESS

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, NY 10038

Dear Mr. Houston:

We concur with your recommendation that the NFTA acknowledge and respond to FOIL requests within the required time frames, and allocate sufficient resources to FOIL requests to enable compliance with these deadlines.

To address this issue, each time the FOIL log is updated by the Administrative Assistant, a copy is given to the Records Access Officer to ensure timely responses regardless of staff attendance.

If you have any questions or if clarification is necessary, please contact Deborah Leous, Records Access Officer, at 716-855-7250.

Respectfully submitted,

A handwritten signature in black ink that reads "Lawrence M. Meckler".

Lawrence M. Meckler  
Executive Director

LMM/cf

cc: Deborah C. Leous  
Patrick Dalton