
**Thomas P. DiNapoli
COMPTROLLER**



Audit Objective..... 2

Audit Results - Summary..... 2

Background..... 2

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

Internal Policies and Procedures..... 3

Compliance with FOIL-Specified
Time Frames 3

Denial of FOIL Requests..... 4

Recommendation 4

Audit Scope and Methodology..... 4

Authority 5

Reporting Requirements..... 5

Contributors to the Report 5

Exhibit A 6

Appendix A - Auditee Response 7

**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**OGDENSBURG BRIDGE
AND PORT AUTHORITY**

**COMPLIANCE WITH
FREEDOM OF
INFORMATION LAW
REQUIREMENTS**

Report 2007-S-44

AUDIT OBJECTIVE

Our objective was to determine whether the Ogdensburg Bridge and Port Authority's (OBPA) 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 OBPA manages and monitors FOIL requests in a manner that results in the timely release of information consistent with FOIL.

When OBPA 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. If OBPA grants a request in whole or in part, disclosure in most instances cannot exceed 20 additional business days, from the date of the acknowledgment letter.

We found OBPA took action within five business days regarding three of the four requests it received during our audit period. However, OBPA did not acknowledge the fourth request in writing until 15 business days after it was received, when OBPA provided the requested records. (Officials claimed there was verbal contact with the requester within the first five days.) Since OBPA did provide the requested information 15 days after receipt of the request, we concluded OBPA ultimately responded promptly to all four requests reviewed during our audit.

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

This report, dated July 16, 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

Founded in 1950 and based in Ogdensburg, New York, OBPA is a New York State public benefit corporation with a seven-member Board of Directors appointed by the Governor. OBPA's mission is to engage in transportation services and real estate development for commercial/industrial clients. As such, OBPA is implicitly engaged in regional economic development and physical asset management for the benefit of the greater Ogdensburg area.

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.

OBPA received four FOIL requests between January 1, 2005 and September 16, 2006. FOIL specifies time frames for the processing of requests received by agencies. 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. Finally, the New York State Archives and Records Administration specifies all correspondence documenting an agency's FOIL requests be maintained for six months after resolution of the request.

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, although OBPA did not develop its own written policies and procedures, it did follow the provisions set forth in the FOIL statute.

In addition, FOIL requires agencies maintain a reasonably detailed 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 OBPA maintains an appropriate subject matter list.

Compliance with FOIL-Specified Time Frames

FOIL specifies time frames for the processing of FOIL 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 OBPA 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 four requests OBPA received during our audit period for compliance with this requirement. We found OBPA acted on three of the four requests within five days of receipt. However, OBPA did not acknowledge the fourth request for 15 business days; 10 days later than required by FOIL. OBPA's FOIL officer explained that the authority verbally acknowledged the request via a phone conversation with the requesting party within five days. However, FOIL requires that the acknowledgment be 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. Although OBPA did not send an acknowledgment letter for the fourth request, the requested information was

provided 15 business days after receipt of the request. Since OBPA ultimately provided the requested information within 20 business days, we considered its overall response to be timely.

Denial of FOIL Requests

FOIL does not require authorities to maintain documentation of the information provided in response to requests and OBPA 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 OBPA. However, we did evaluate the nature of the information listed on the requests. Most of the information requested included the following subjects: list of salary and financial information of the authority; 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 the OBPA's FOIL requests during our scope period, we found that OBPA partially denied one request. The reason OBPA cited for the denial was consistent with the exceptions provided by FOIL. The partial denial was not appealed.

Recommendation

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, OBPA, and covers the period January 1, 2005 through September 16, 2006. A complete listing of all 22 reports is included as Exhibit A.

To accomplish our objective, we met with OBPA officials to confirm and enhance our understanding of their FOIL request process. We also reviewed all four FOIL requests OBPA reported receiving during our audit period, reviewed the steps OBPA 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 dates when each was prepared, received and responded to.

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 and Section 2803 of the Public Authorities Law.

REPORTING REQUIREMENTS

A draft copy of this report was provided to OBPA 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

Ogdensburg Bridge and Port 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 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



Ogdensburg Bridge & Port Authority

June 19, 2007

Mr. Frank J. Houston
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, NY 10038

Dear Mr. Houston:

The Ogdensburg Bridge and Port Authority is pleased to provide the following response to the Office of the State Comptroller's draft audit report (2007-S-44) addressing the Authority's compliance with Freedom of Information Law requirements. The Authority understands that this response will be included as an appendix to the final audit report.

The Authority appreciates the opportunity to respond in writing and the following response is categorized based upon the topics specified in the draft report's Audit Findings and Recommendations.

Internal Policies and Procedures

The Authority uses the actual written law (Article 6 of the New York State Public Officers Law) as its written internal policy as noted in the audit. The Authority has found this to be the most appropriate way of insuring that the provisions set forth in the law are followed.

The Authority is pleased to learn that the audit found the Authority's detailed subject matter list to be appropriate.

Compliance with FOIL-Specified Time Frames

The Authority understands that all requests must be acted upon or acknowledged, in writing, within five (5) days of receipt. Therefore, if verbal confirmation and clarification of a request is made, a formal written acknowledgement will also be made to comply with regulations.

The above practice will insure that the Authority complies with the audit recommendation that all requests be acknowledged in writing within five days.

Telephone: (315) 393-4080

One Bridge Plaza, Ogdensburg, NY 13669
Fax: (315) 393-7068

Website: www.ogdensport.com

Mr. Frank J. Houston
Page 2
June 19, 2007

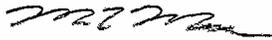
Denial of FOIL Requests

As stated in the audit report, FOIL does not require authorities to maintain documentation of the information provided in response to requests. However, the Authority does maintain all documentation provided in response to requests and this information was available at the time the audit was conducted.

In addition to the matters identified above, the Authority now provides a link on its website to educate and allow easier access to FOIL items. This provides FOIL request notification to multiple parties (including the FOIL officer) within the Authority and enables a faster response by the Authority at no cost to the recipient if the electronic response option is selected. This link can be accessed on the Authority's website or at: <http://www.ogdensport.com/FOIL.html>.

The Ogdensburg Bridge and Port Authority appreciates the professional and cooperative nature extended by the Office of the State Comptroller while performing this audit.

Very truly yours,



Mark T. Mashaw, CPA
Chief Financial Officer

MTM/pb

Telephone: (315) 393-4080

One Bridge Plaza, Ogdensburg, NY 13669
Fax: (315) 393-7068

Website: www.ogdensport.com