

Thomas P. DiNapoli  
COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

December 17, 2009

Mr. Gerald T. McQueen  
President and Chief Executive Officer  
New York Convention Center Operating Corporation  
655 West 34<sup>th</sup> Street  
New York, NY 10001-1188

Re: Report 2009-F-50

Dear Mr. McQueen:

Pursuant to the State Comptroller's authority as set forth Article X, Section 5 of the State Constitution; and Section 2803 of the Public Authorities Law, we have followed up on the actions taken by officials of the New York Convention Center Operating Corporation (CCOC) to implement the recommendations contained in our audit report, *Compliance With Freedom of Information Law Requirements* (Report 2007-S-36).

**Background, Scope and Objective**

CCOC was established in 1979 as a public benefit corporation to operate and maintain the Jacob K. Javits Convention Center (Convention Center) in New York City. The Convention Center hosts events including conventions, fashion shows, association meetings and trade shows. CCOC leases the Convention Center from New York for a nominal amount. CCOC derives its revenue from rental and event services fees, as well as from revenue contracts for advertising and concessions operation at the Convention Center.

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, CCOC is required to make all eligible records available for public inspection or copying within certain time frames.

Our initial audit report, which was issued on July 16, 2007, examined CCOC's compliance with the FOIL requirements and identified the need for certain improvements. FOIL requires an agency to either grant, deny or acknowledge the receipt of a written request for a record in writing, within five business days. We found that CCOC did not meet the 5-day time frame for 8 of the 27 requests received during our audit period. On average, we found that CCOC initially acted on FOIL requests 13 days after receipt: 8 days later than FOIL requires. The objective of our follow-up was to assess the extent of implementation, as of December 3, 2009, of the five recommendations

included in our initial report.

### **Summary Conclusions and Status of Audit Recommendations**

CCOC officials have made significant progress in addressing the matters we identified in the initial report. Of the five prior audit recommendations, four recommendations have been implemented and one recommendation has not been implemented.

### **Follow-up Observations**

#### **Recommendation 1**

*Develop and maintain a current list by subject matter of all records in the possession of CCOC to be distributed to the public upon request.*

Status - Implemented

Agency Action - CCOC hired a consultant to compile an inventory by subject matter of all of the records in the possession of CCOC that can be distributed to the public upon request. CCOC officials provided us with a copy of that list.

#### **Recommendation 2**

*Acknowledge and respond to FOIL requests within the time frames required by law. If circumstances do not allow for the resolution of a FOIL request within five days of receipt, communicate with the requester in writing to provide a date, within 20 days, when a determination on the accessibility of the records will be made.*

Status - Implemented

Agency Action - We reviewed a random sample of 10 of the 42 FOIL requests that CCOC records indicate were received between January 1 and December 1, 2009. We found that nine were responded to within the five-day requirement; the remaining request was responded to on the sixth day. Documentation further supports that CCOC provided the requested information for all 10 requests within 20 business days, as required.

#### **Recommendation 3**

*Maintain a log of all FOIL requests and related communications with requesters and monitor this activity to ensure compliance with required timeframes.*

Status - Implemented

Agency Action - CCOC officials have created an electronic log to record the receipt of FOIL requests and actions taken. CCOC's General Counsel stated that she monitors this log periodically and that it is programmed to send electronic reminders to her on the fourth business day following receipt of a FOIL request.

**Recommendation 4**

*Maintain all correspondence relating to FOIL requests for at least six months following resolution.*

Status - Implemented

Agency Action - In December 2009, we reviewed a sample of 7 of the 27 FOIL requests that CCOC received during calendar year 2008. We found CCOC had retained correspondence relating to these seven FOIL requests for at least six months following resolution.

**Recommendation 5**

*Ensure that all appeal decisions and related correspondence are submitted to the Committee on Open Government as required by FOIL.*

Status - Not implemented

Agency Action - For the period July 17, 2007 through October 31, 2009, CCOC received one appeal. According to the CCOC officials, a copy of the appeal decision and related correspondence was inadvertently not submitted to the Committee on Open Government as required.

Major contributors to this report were Cindi Frieder, Myron Goldmeer, Irina Kovaneva, Jean-Renel Estime, and Menard Petit-Phar.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of CCOC for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Frank J. Houston  
Audit Director

cc: Mr. Edward B. MacDonald, Chief Financial Officer and Senior Vice President  
Mr. Thomas Lukacs, Division of the Budget