
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**BATTERY PARK CITY
AUTHORITY**

**COMPLIANCE WITH
FREEDOM OF
INFORMATION LAW
REQUIREMENTS**

Report 2007-S-33

AUDIT OBJECTIVE

Our objective was to determine whether the Battery Park City Authority's (BPCA) 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 BPCA generally manages and monitors FOIL requests in a manner that results in the timely release of information consistent with the law; however, we identified opportunities for BPCA to further improve its FOIL practices.

When BPCA 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 21 of the 33 requests received by BPCA during our audit period were acknowledged within the five-day time frame. On average, BPCA

acknowledged requests six days after receipt; one day later than FOIL requires.

FOIL specifies the acknowledgment letter must indicate the approximate date when the request will be granted or denied. We found BPCA provided records within FOIL specified time frames for all 33 requests received during our audit period. BPCA did not deny any requests.

Our report contains two recommendations to BPCA officials regarding the receipt of FOIL requests. BPCA officials generally agreed with our recommendations and are taking steps to implement them.

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

BPCA is a New York State public benefit corporation whose mission is to plan, create, coordinate and maintain a balanced community of commercial, residential, retail, and park space within its designated 92-acre site on the lower west side of Manhattan.

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.

BPCA receives approximately 20 FOIL requests each year. FOIL specifies time frames for the processing of FOIL requests by agencies. 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

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.

Although BPCA did not develop its own written policies and procedures, we found it did 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 BPCA maintains a subject matter list.

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 opportunity for improvements in this area.

When BPCA 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 BPCA's compliance with this five-day requirement for the 33 FOIL requests received during our audit period. We found that for 21 requests BPCA either provided the requested records or acknowledged the receipt of the request within five business days. The other 12 requests were not first acknowledged until after five days, ranging from 1 to 28 days late. On average, BPCA first acknowledged requests six days after receipt.

BPCA officials disagree with how we calculated the number of business days between the date a request was received and the date the acknowledgment letter was sent. BPCA 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 BPCA. BPCA officials took issue with our approach and referred us to the New York State Civil Practice Law and Rules, which according to BPCA officials, recognizes that service of legal papers must allow for mailing time. We note, however, that even if five business days were added to the date on the request, BPCA would still have acknowledged 6 of its 33 requests beyond the five-day requirement.

In addition, FOIL specifies the acknowledgment letter must indicate the approximate date when the request will be granted or denied. 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 found BPCA's initial response was to grant the requests for 21 of the 33 requests and it provided records for the remaining 12 requests within BPCA's specified time frames. Therefore, BPCA promptly provided records to the 33 requests reviewed during our audit.

Exempt Information and Denials

FOIL specifies that 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.

FOIL does not require authorities to maintain documentation of the information provided in response to requests, and BPCA 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 33 FOIL requests in our sample. However, we did evaluate the nature of the information listed on the requests in our sample.

Most of the information asked for in the FOIL requests included the following subjects: salaries and other financial information; grants and contracts; bid results; incident reports; board meeting minutes; lease holders' names; maps of property; zoning information; and accident reports. We found that BPCA appropriately did not deny any requests and, as a result, there were no appeals.

Recommendations

1. Acknowledge FOIL requests within five business days.
2. Ensure that FOIL requests are date stamped or otherwise logged in when received.

(BPCA officials indicated that effective December 1, 2006, they have instituted an electronic log of all FOIL requests received, together with the dates on which acknowledgments and/or response materials are sent.)

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, BPCA, 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 objectives at BPCA, we reviewed BPCA's internal policies and

procedures pertinent to FOIL to determine compliance with the law. In addition, we met with BPCA officials to confirm and enhance our understanding of their FOIL request process. We also reviewed all 33 FOIL requests BPCA reported receiving during our audit period, reviewed the steps BPCA took to process the requests, and evaluated their timeliness. In addition, we extensively reviewed each FOIL request, including the subject matter of the request, the request date, authority response date, and authority received date.

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 BPCA 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 Battery City Park 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, Lisa Rooney, Kelly Engel, W Sage Hopmeier, 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 Authority
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/Triborough Bridge and Tunnel Authority

APPENDIX A - AUDITEE RESPONSE

JAMES CAVANAUGH
PRESIDENT & CEO

May 25, 2007

Mr. Frank Houston
Audit Director
Office of the State Comptroller
Division of State Services
123 Williams Street, 21st Floor
New York, NY 10038



HUGH L. CAREY
BATTERY PARK
CITY AUTHORITY

Re: Report 2007-S-33
Draft Report Response

Dear Mr. Houston:

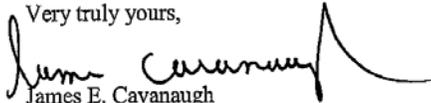
This is a response to the Draft Audit Report (2007-S-33) by the New York State Office of the Comptroller about Compliance with the Freedom of Information Law ("FOIL") requirements at Battery Park City Authority ("the Authority"). We thank you for your audit services and the balanced and fair presentation of the audit findings. At this time, we are pleased to advise the Comptroller that we have implemented the recommendations made by the auditors and are in full compliance with all requirements of FOIL.

In order to better document our compliance with these requirements, the Authority has implemented, as of December 1, 2006, an electronic log of all FOIL requests received, together with the dates on which acknowledgements of the request are sent, and the date on which responsive materials are sent (if different from the acknowledgement date). The log will also detail whether a request has been denied and the reason for any such denial (although, to date, no requests for information have been denied).

Moreover, since the audit, the Authority has complied, in every instance, with the five business day acknowledgement requirement.

We would like to express our appreciation for your audit services and will continue to provide our fullest cooperation to the auditors.

Very truly yours,


James E. Cavanaugh
President & CEO

cc: Hon. Thomas P. DiNapoli

ELIOT SPITZER, GOVERNOR, STATE OF NEW YORK
ONE WORLD FINANCIAL CENTER, NEW YORK, NY 10281-1097 (212) 417-4205 FAX: (212) 417-4153 CAVANAJ@BATTERYPARKCITY.ORG