
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**DEVELOPMENT
AUTHORITY OF THE
NORTH COUNTRY**

**COMPLIANCE WITH
FREEDOM OF
INFORMATION LAW
REQUIREMENTS**

Report 2007-S-37

AUDIT OBJECTIVE

Our objective was to determine whether the Development Authority of the North Country's (DANC) 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 DANC generally manages and monitors FOIL requests in a manner that results in the timely release of information consistent with FOIL. However, we also found the opportunity for improvement.

FOIL specifies time frames for the processing of requests received by agencies. When an agency 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. FOIL further specifies an acknowledgment letter must indicate the approximate date when the request will be granted or denied. Disclosure in most instances cannot exceed 20 additional business days, from the date of the acknowledgment letter.

DANC strives to provide or deny the information requested within five days of the receipt of the request. We found that DANC met its goal and provided a determination on access to requested records, on average, within three days after they received the request. DANC, however, was several days late in providing a determination for two of the nine FOIL requests they received during our audit period. If circumstances do not allow for the resolution of a FOIL request within five days of receipt, DANC should communicate with the requestor in writing to provide a date, within 20 days, when a determination on the accessibility of the records will be made. DANC officials agreed to implement this recommendation.

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

DANC is a New York State public benefit corporation, created in 1985 to address the infrastructure and community development needs of Jefferson, Lewis and St. Lawrence Counties in New York State. DANC is governed by a 13-member board of directors. Five non-voting members are appointed by the State, while eight voting members are appointed by Jefferson, Lewis and St. Lawrence Counties, and the City of Watertown.

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.

DANC received nine FOIL requests during our scope period, January 1, 2005 through September 20, 2006. 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. 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 RECOMMENDATION

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 DANC 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 current 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 DANC maintains an appropriate 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 to FOIL requests equate to a denial of the request and could result in unnecessary appeal proceedings for the agency. We found the opportunity for improvement in this area.

When DANC 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 nine requests DANC received during our audit period for compliance with this requirement. DANC does not routinely

issue acknowledgment letters, since it strives to provide or deny the information requested in its initial communication with the requester. We found, however, that in two of the nine cases, DANC exceeded the five-day requirement before first communicating with the requester. The longest time DANC took to acknowledge a request was nine days.

DANC officials stated that they were late responding because the FOIL officer was on vacation when one of the requests was received and the other request required more time than anticipated. However, under FOIL DANC has five business days to grant or deny access, or if more time is needed, to acknowledge the receipt of the request in writing, indicating the approximate date when the request will be granted or denied. This was not done in these two instances.

Denial of FOIL Requests

FOIL does not require authorities to maintain documentation of the information provided in response to requests and DANC 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 DANC. However, we did evaluate the nature of the information listed on the requests. Most of the information asked for in the FOIL requests related to the landfill that DANC oversees.

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 DANC's FOIL requests during our scope period, we found that DANC partially denied one request. The reason for the denial was

consistent with the exceptions allowed by FOIL. The denial was not appealed.

Recommendation

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 requestor in writing to provide a date, within 20 days, when a determination on the accessibility of the records will be made.

(DANC 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, DANC, and covers the period January 1, 2005 through September 20, 2006. A complete listing of all 22 reports is included in Exhibit A.

To accomplish our objective at DANC, we met with DANC officials to confirm and enhance our understanding of the authority's FOIL request process. We also reviewed all nine FOIL requests DANC reported receiving during our audit period, reviewed the steps DANC took to respond to the requests, and evaluated their timeliness. In addition, we extensively reviewed each FOIL request, including the subject matter of the request, and the dates when it was prepared, received and responded to by DANC.

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

Draft copies of this report were provided to DANC 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 Chair of the Development Authority of the North Country 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



June 11, 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

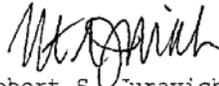
Re: Response - Audit Report 2007-5-37 - FOIL Compliance

Dear Mr. Houston:

We have reviewed and are in agreement with the captioned report. Further, we will implement your suggestion that, in cases where we cannot actually provide or deny information within five business days, an acknowledgement of receipt should be issued indicating when the request will be granted or denied, per FOIL requirements.

Thank you for the opportunity to comment.

Very truly yours,



Robert S. Curavich
Executive Director

RSJ/mkc

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