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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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**ENVIRONMENTAL  
FACILITIES CORPORATION**

**COMPLIANCE WITH  
FREEDOM OF  
INFORMATION LAW  
REQUIREMENTS**

**Report 2007-S-39**

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## AUDIT OBJECTIVE

Our objective was to determine whether the New York State Environmental Facilities Corporation's (EFC) 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 EFC generally manages and monitors FOIL requests in a manner that results in the timely release of information consistent with the law.

FOIL requires an agency to grant or deny access to records within five business days, or if more time is needed, to acknowledge the receipt of the request in writing, within that time frame. We found that all 24 requests received by EFC during our audit period were acknowledged within the five-day time frame. EFC acknowledged requests, on average, one day after they were received; four days earlier than FOIL requires.

FOIL specifies the acknowledgment letter must indicate a date when a determination on the accessibility to the requested records will be provided. We found EFC provided records, or denied the request, within the specified time frames for 23 of the 24 requests received during our audit period.

If an agency denies a person access to a record, FOIL allows that person to appeal the agency's decision. If appealed, the agency must either explain in writing the reasons for further denial or provide access to the record sought. In our review of the 24 FOIL requests during our scope period, we found that EFC denied two requests and partially

denied four others. One denial was appealed and the records were subsequently provided.

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, 11<sup>th</sup> Floor  
Albany, NY 12236

## BACKGROUND

EFC is a New York State public benefit corporation whose mission is to promote environmental quality by providing low-cost capital and expert technical assistance to municipalities, businesses, and State agencies for environmental projects in New York State. Its purpose is to help public and private entities comply with State and federal environmental requirements.

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.

EFC received 24 FOIL requests during our audit scope period, January 1, 2005 through September 5, 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.

## **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 EFC has developed its own written policies and procedures, which are equivalent to FOIL requirements.

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 EFC 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 EFC is timely in their response to FOIL requests.

When EFC 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 24 requests EFC received during our audit period and found it took EFC an average of one business day to acknowledge the requests. All 24 requests were acknowledged within five business days of receipt, meeting FOIL requirements.

FOIL further specifies an 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. We found determinations were made and the records provided, or access denied, within EFC-established time frames for all but one request. Records for that one request, which were promised in 20 business days, were provided one day late.

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### *Denial of FOIL Requests*

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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 24 FOIL requests during our scope period, we found that EFC fully denied two requests and partially denied four requests. The reasons cited for denial were consistent with the exemptions allowed by the law.

Any person denied access to a record may, within 30 days, appeal in writing to the head, chief executive or governing body of the entity, or the appropriate designee. Within ten business days of the receipt of an appeal, the entity is required to fully explain in writing to the person requesting the record,

the reasons for further denial, or provide access to the record sought. We found only one of the six denials was appealed. This decision was reversed by EFC within ten business days of receipt of the appeal and access provided.

Each entity is required to forward a copy of an appeal and the authority's decision related to the appeal to the Committee on Open Government (COOG). We therefore reviewed appeal records on file at COOG to determine EFC's compliance. Our review found that a copy of the one appeal was on file with COOG.

### **Recommendation**

Continue efforts to manage and monitor FOIL requests in a manner that results in the timely release of information in compliance with FOIL requirements.

### **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, EFC, and covers the period January 1, 2005 through September 5, 2006. A complete listing of all 22 reports is included in Exhibit A.

To accomplish our objective at EFC, we reviewed EFC's internal policies and procedures pertinent to FOIL to determine compliance with the law. In addition, we met with EFC officials to confirm and enhance our understanding of the authority's FOIL request process. We also reviewed all 24 FOIL requests EFC reported receiving during our audit period, reviewed the steps EFC 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, the request date, agency response date, and agency 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. 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**

Draft copies of this report were provided to EFC 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 Environmental Facilities Corporation shall

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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 and Sarah Purcell.

**Reports on Public Authority Compliance with FOIL Requirements**

<b><u>Report Number</u></b>	<b><u>Public Authority</u></b>
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



New York State  
ENVIRONMENTAL FACILITIES CORPORATION

David Sterman, *President*

June 12, 2007

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

Dear Mr. Houston:

Thank you for your letter of May 21, 2007, regarding your draft audit report (2007-S-39) of the New York State Environmental Facilities Corporation's (EFC) compliance with Freedom of Information Law (FOIL) requirements for the period January 1, 2005 through October 31, 2006.

Your findings reflect the seriousness with which we follow the FOIL process. We will continue to effectively manage and monitor the process to ensure compliance with FOIL requirements.

Sincerely,

David Sterman  
President

DS:JLS  
c: Lisa Ng, Division of the Budget

625 Broadway, Albany, New York 12207-2997  
518.402.6924 • 800.882.9721  
[www.nysefc.org](http://www.nysefc.org)