
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**OLYMPIC REGIONAL
DEVELOPMENT
AUTHORITY**

**COMPLIANCE WITH
FREEDOM OF
INFORMATION LAW
REQUIREMENT**

Report 2007-S-45

AUDIT OBJECTIVE

Our objective was to determine whether the Olympic Regional Development Authority's (ORDA) 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

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 ORDA can improve its management and monitoring of FOIL requests to ensure the consistent timely release of information.

When ORDA 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 ORDA was up to four days late in initially responding to 5 of the 19 FOIL requests it received during our audit period. In addition, ORDA failed to meet the time frames promised in its acknowledgment letters for three of the requests. ORDA provided its determination to the three requests from 9 to 24 business days late.

Our report contains five recommendations to help correct the weaknesses identified during our audit. ORDA officials generally agreed with our recommendations and are taking steps to implement changes.

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

ORDA, which is governed by a ten-member Board of Directors, was created by statute in 1981 to manage the facilities used during the 1980 Winter Olympic Games at Lake Placid. ORDA operates ski areas at Whiteface Mountain and Gore Mountain; the Olympic Sports Complex at Mt. Van Hoevenberg; and the Olympic ice and jumping complexes in the Village of Lake Placid. It has hosted both national and international championships at these venues, bringing millions of athletes and spectators to the region.

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.

ORDA received 19 FOIL requests between January 1, 2005 and September 19, 2006. FOIL specifies a timetable on how requests are to be processed and how an agency should respond when granting or denying access to requested information. If a denied request is appealed, the agency must send copies of the appeal and subsequent determination to the New York State Committee on Open Government (COOG). Among other things, COOG issues advisory opinions and makes recommendations to the Legislature on matters relating to FOIL. Each agency is also 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. Lastly, 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 ORDA has not developed its own written policies and procedures related to FOIL, but follows the provisions set forth in the FOIL statute.

Each agency is required to maintain a reasonably detailed subject matter list. ORDA officials were unable to provide us with 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 to FOIL requests equate to a denial of the request and could result in unnecessary appeal proceedings for the agency. We found the need for some improvements in ORDA's compliance with FOIL time frames.

When ORDA 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 ORDA's compliance with this requirement and found that, on average, the authority acted on requests within four days. However, we did note that ORDA failed to act on 5 of the 19 requests within the five-day required time frame, with the longest delay being nine days.

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. 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 ORDA failed to meet the time frames promised in its acknowledgment letters for three of the requests we reviewed, and did not follow up in writing with the requester, as required. The authority provided its determination to the three requests from 9 to 24 business days late.

Officials explained delays were sometimes caused by requests not being forwarded to the

FOIL officer promptly or the FOIL officer being on leave.

Denial of FOIL Requests

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 the authority has not set such a policy to maintain this documentation. Therefore, we were not able to evaluate the nature of the content of all the information provided in response to the 19 requests we examined. However, we did evaluate the information listed on the requests. We found that ORDA fully denied one request and partially denied one other. The reasons ORDA cited for the denials were consistent with the exemptions allowed by the law. Neither denial was appealed.

Recommendations

1. Develop and maintain a current list by subject matter of all records in the possession of the agency to be distributed to the public upon request.
2. 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.
3. Correspond in writing to the requester when FOIL requests cannot be fulfilled within specified time frames, explaining why and providing a new time frame.

4. Allocate sufficient resources to ensure that requests are responded to within FOIL-specified time frames.
5. Notify staff of the need to appropriately route all FOIL requests directly to the FOIL officer upon receipt.

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance 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, ORDA, and covers the period January 1, 2005 through September 19, 2006. A complete listing of all 22 reports is included in Exhibit A.

To accomplish our objective, we met with ORDA officials to confirm and enhance our understanding of the authority's FOIL request process. We also reviewed all 19 FOIL requests that ORDA reported receiving during our audit period, reviewed the steps ORDA 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 the dates when each was prepared, received and responded to by the authority.

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 ORDA 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 Chairman of the Olympic Regional Development 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, Richard 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



Mr. Frank J. Houston, Audit Director
State of New York Office of the State Comptroller
110 State Street
Albany, NY 12236

June 11, 2007

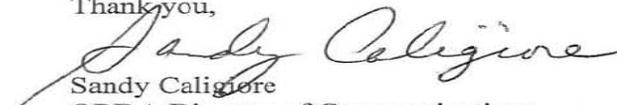
Dear Mr. Houston:

ORDA has taken some key steps to expedite the reply time to initial FOIL requests:

1. Staff has been informed to move the FOIL request to the Communications Department ASAP so as to not lose time;
2. Now that email correspondence is considered official, replies will arrive immediately instead of through the use of snail mail;
3. Given item #2, ORDA has established a link and accompanying email address on its website (www.orda.org) where FOIL request can be sent. That FOIL bin is monitored daily and responses crafted and sent same day.

We believe these steps will make a responsive process even better.

Thank you,


Sandy Caligiore
ORDA Director of Communications