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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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**ROCHESTER-GENESEE  
REGIONAL  
TRANSPORTATION  
AUTHORITY**

**COMPLIANCE WITH  
FREEDOM OF  
INFORMATION LAW  
REQUIREMENTS**

**Report 2007-S-47**

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## AUDIT OBJECTIVE

Our objective was to determine whether the Rochester-Genesee Regional Transportation Authority's (RGRTA) 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 RGRTA is generally in compliance with FOIL requirements. However, we did note some improvement opportunities.

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. When RGRTA 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. Such acknowledgment must indicate the approximate date when the request will be granted or denied.

For all 27 FOIL requests we reviewed, we found RGRTA either granted or denied access to the records or acknowledged receipt of the request within the required five business days. RGRTA, however, was late in providing access to requested records in five instances. Records for these five requests were provided on average nine days beyond the date originally indicated by RGRTA. In addition, documentation was not available for three other requests to enable us to determine if access was granted timely.

Our report contains two recommendations to address the above issues. Authority officials generally agreed with our recommendations and are taking steps to implement changes.

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

## BACKGROUND

RGRTA was created in 1969 to oversee public transportation in Monroe, Genesee, Livingston, Orleans, Wayne, Wyoming and Seneca counties. RGRTA also serves as the host agency to a planning organization known as the Genesee Transportation Council.

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.

RGRTA receives approximately 15 FOIL requests each year. FOIL specifies a time frame for 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.

The New York State Archives and Records Administration (SARA) specifies requirements for FOIL record retention. Generally, all correspondence documenting an agency's FOIL requests is to be maintained for six months after resolution of the request. While RGRTA is not subject to SARA requirements, good business practices would advocate RGRTA to adopt similar requirements.

## AUDIT FINDINGS AND RECOMMENDATIONS

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### *Internal Policies and Procedures*

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RGRTA provided us with their internal policies and procedures regarding FOIL requests. Our review found that their policies and procedures were equivalent to FOIL requirements.

Each agency is required to maintain a reasonably detailed current list by subject matter (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 RGRTA 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 opportunities for improvement in this area.

When RGRTA 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 27 requests RGRTA received during our audit period for compliance with this requirement. We found in all instances RGRTA either granted or denied access to the records or acknowledged receipt within five business days. Most requests were handled within one day of receipt.

FOIL also specifies that the acknowledgment letter must indicate the approximate date when the request will be granted or denied. Where an agency determines to grant a request, disclosure in most instances cannot exceed 20 additional business days from the date of the acknowledgment letter.

We found RGRTA granted or denied access for three of the 27 FOIL requests within five business days. RGRTA lacked documentation which would specify the date RGRTA provided access to the records for three other requests. Therefore, we were unable to determine whether RGRTA processed these three requests in accordance with FOIL. We evaluated RGRTA's responses to the remaining 21 requests and found RGRTA failed to meet the specified time frame for five of them. Records for these five requests were provided from 5 to 13 days late. On average, RGRTA took nine days longer than originally indicated to fulfill these requests.

RGRTA officials stated that it was an oversight on their behalf that the five requests were not processed timely, or that no documentation was kept on file for the three other requests.

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### *Processing of Appeals*

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FOIL permits an agency to deny public access to records under certain circumstances. Any person denied access to records may appeal in writing within 30 days. An agency must then explain in writing the reason for further denial or provide access to the records sought within ten business days of the receipt of the appeal. An agency must also send copies of all appeals and subsequent determinations to COOG.

We found that RGRTA denied two requests. The reasons cited for the denials were

consistent with FOIL. Neither of the two denials was appealed.

### **Recommendations**

1. Maintain all correspondence documenting FOIL requests for six months after resolution of the request.
2. Correspond in writing to the requester when FOIL requests cannot be fulfilled within specified time frames, explaining why and providing a new time frame.

### **AUDIT SCOPE AND METHODOLOGY**

We conducted our performance audit in conformance 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, RGRTA, and covers the period January 1, 2005 through September 12, 2006. A complete listing of all 22 reports is included in Exhibit A.

To accomplish our objective at RGRTA, we examined RGRTA's FOIL request files and internal policies and procedures. We also interviewed RGRTA officials. We reviewed each of the 27 FOIL requests that RGRTA reported receiving during our audit period.

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

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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 RGRTA 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 Rochester-Genesee Regional Transportation 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, Richard Podagrosi, 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



ROCHESTER-GENESEE REGIONAL TRANSPORTATION AUTHORITY

1372 East Main Street • Rochester, New York 14609  
Phone (585) 654-0200 • Fax (585) 654-0293 • www.rgta.com

May 16, 2007

Commissioners  
Monroe County  
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Leslie M. Goldstein  
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Re: Rochester-Genesee Regional Transportation Authority – Freedom of Information Law Audit Report (2007-S-47)

Genesee County

Dear Mr. Houston:

Livingston County  
Milo I. Turner  
Vice Chairman

Thank you for the opportunity to review and comment on your draft audit report (2007-S-47) pertaining to compliance by Rochester-Genesee Regional Transportation Authority with the requirements under the New York Freedom of Information Law.

Orleans County

We are pleased that you confirmed that our Policies and Procedures, Subject Matter List, and reasons for denials of FOIL requests are and have been in compliance with the statutory and regulatory requirements. We have only a few comments with regard to your preliminary findings.

Seneca County  
Edward W. White

Wayne County  
Michael P. Jankowski  
Secretary

In the "Background" section of the draft audit report, there is a paragraph reading as follows:

Wyoming County  
Frank Vitagliano, Jr.  
Treasurer

The New York State Archives and Records Administration specifies requirements for FOIL record retention. Generally, all correspondence documenting agency's FOIL requests is to be maintained for six months after resolution of the request.

Under your Recommendations section, you suggest that RGRTA maintain all correspondence documenting FOIL requests for six months after resolution of the request. Although your audit report does not specifically state that RGRTA is subject to the requirements of the New York State Archives and Records Administration, one could conclude that such a finding was made.

RGRTA certainly has no objection to adopting a policy of maintaining all correspondence documenting FOIL requests for six months after resolution of the request, and plans to adopt such a policy in conformity with your Recommendations. However, we want to make clear that our position is that we are not subject to the requirements of the New York State Archives and Records Administration.

\*  
Comment

\* State Comptroller's Comment: We revised our report to reflect this information.

Regional Transit Service, Inc. • Wayne Area Transportation Service, Inc. • Livingston Area Transportation Service, Inc. • Lift Line, Inc.  
Wyoming Transit Service, Inc. • Genesee Transportation Council Staff, Inc. • Orleans Transit Service, Inc. • Batavia Bus Service, Inc.  
Seneca Transit Service, Inc. • Renaissance Square Corporation

On page 2 of the New York State Archives and Records Administration (SARA) State Government Records Programs publication "*General Retention and Disposition Schedule for the New York State Government Records*," (which is where the six-month retention requirement appears) under the heading "Scope of Schedule," SARA indicates that the requirements of that document apply only to "state agencies." Footnote 4 states: "For the purposes of this schedule, state agency means any State board, bureau, division, committee, commission, council, department, division, office, or other governmental entity subject to Arts and Cultural Affairs Law Section 57.05." The definition of "state agency" found in 8 NYCRR §188.2 (which implements the requirements of the Arts and Cultural Affairs Law with respect to State Government Archives and Records Administration) states that the term means: "any department, division, board, bureau, office, council, commission, authority, public benefit corporation having statewide responsibility, or a separate unit of the executive branch of state government created or established by law or executive order." (Emphasis supplied) Thus, public benefit corporations are subject to Arts and Cultural Affairs Law Section 57.05 and 8 NYCRR Part 188 only if they have "statewide responsibility."

Public Authorities Law §1299-dd states that Rochester-Genesee Regional Transportation is "a body corporate and politic constituting a public benefit corporation." Thus, RGRTA is clearly "public benefit corporation." However, RGRTA does not have "statewide responsibility." Indeed, Public Authorities Law §1299-cc describes the Rochester-Genesee Regional Transportation District as including only "the county of Monroe and such of the following counties as may elect to become members by action of their governing bodies: all counties included within the Lake Ontario region as designated by the New York state office of planning services, namely, Genesee, Livingston, Ontario, Orleans, Seneca, Wayne and Yates, and any county contiguous to this region." As a result, our position is that RGRTA is not subject to the requirements in the General Retention and Disposition Schedule.

Nevertheless, we intend to implement the six-month retention period policy with respect to FOIL requests as a matter of good governance.

Very truly yours,



Stephen W. Hendershott  
Chief Operating Officer