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**Thomas P. DiNapoli  
COMPTROLLER**



**Audit Objective.....2**

**Audit Results - Summary.....2**

**Background.....3**

**Audit Findings and  
Recommendations.....3**

Internal Policies and Procedures.....3

Compliance with FOIL-Specified  
Time Frames .....3

Exempt Information and Denials.....5

*Recommendations.....5*

**Audit Scope and Methodology.....5**

**Authority .....6**

**Reporting Requirements.....6**

**Contributors to the Report .....6**

**Exhibit A .....7**

**Appendix A -Auditee Response.....8**

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**OFFICE OF THE  
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE  
GOVERNMENT ACCOUNTABILITY**

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**METROPOLITAN  
TRANSPORTATION  
AUTHORITY - BRIDGES  
AND TUNNELS**

**COMPLIANCE WITH  
FREEDOM OF  
INFORMATION LAW  
REQUIREMENTS**

**Report 2007-S-50**

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## AUDIT OBJECTIVE

Our objective was to determine whether the Metropolitan Transportation Authority (MTA) Bridges and Tunnels' (B&T) 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 equate to a denial of the request and could result in unnecessary appeal proceedings for the agency. Our review found that B&T generally has adequate policies and procedures in place to process FOIL requests timely. However, we identified opportunities for B&T to provide more timely release of information consistent with FOIL and to more thoroughly review records made available to the public to prevent the release of personal and confidential information.

FOIL requires an agency to grant, deny, or acknowledge in writing, within five business days, the receipt of a written request for a record. We found that B&T acknowledges requests, on average, within one day of receipt. However, B&T did acknowledge three of the 73 requests we reviewed late - between 4 and 14 days beyond the 5-day requirement.

FOIL specifies that the acknowledgment letter must provide an estimated date, within 20 business days, when a determination on the accessibility to the requested records will be provided. We found more than half (46) of the acknowledgment letters issued by B&T during our audit period did not specify an approximate date when the request would be granted or denied. In addition, we found

B&T failed to meet the 20-day time frame allowed by the law for about 10 percent of the requests. Records for these 6 requests were provided, on average, 16 days later than allowed. Further, we were unable to determine when, or even if, one request was resolved, because the FOIL officer had forwarded the request to B&T's Legal Department and had not retained documentation to support the final disposition, as required.

FOIL exempts certain information from disclosure, including information that would constitute an unwarranted invasion of personal privacy. We found B&T failed to appropriately redact certain personally-identifying information, including home addresses, telephone numbers, and social security numbers, from records prepared for one requester. Fortunately, this information was not released, but only because the requester failed to pay the fee assessed for copying the records.

Our report contains five recommendations to help correct the problems identified during our audit. MTA B&T officials agreed with our recommendations and have taken steps to implement them.

This report, dated August 29, 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

The Metropolitan Transportation Authority (MTA) is a public benefit corporation providing transportation services in and around the New York City metropolitan area. The MTA consists of various constituent agencies, each providing different transportation services. One of these constituent agencies, Bridges and Tunnels (B&T), operates seven bridges and two tunnels in New York City. Largest among the nation's bridge and tunnel toll authorities in terms of traffic volume, B&T serves more than one million people daily in the New York City metropolitan area.

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.

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 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.

## AUDIT FINDINGS AND RECOMMENDATIONS

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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 B&T developed written policies and procedures that were equivalent to FOIL statute.

In addition, FOIL requires that agencies 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 B&T 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 FOIL requests received by agencies. Compliance is important because delays in responding to requests equate to a denial of the FOIL request and could result in unnecessary appeal proceedings for the agency.

FOIL requires an agency to grant, deny, or acknowledge in writing, within five business days, the receipt of a written request for a record. We reviewed 73 of the 76 requests B&T reported receiving during our audit

period for compliance with this requirement. The other three requests were recently received by B&T and did not yet require any action by B&T at the time of our visit and were, therefore, excluded from our review.

We found it took B&T an average of only one business day to acknowledge the 73 requests. Three requests were not acted upon within the 5-day requirement, ranging from 4 to 14 days late. B&T indicated that these delays were due to individual instances where the FOIL requests were not immediately forwarded to the FOIL officer, or the FOIL officer was absent.

FOIL further 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 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.

Two of the 73 requests we reviewed during our audit scope were subsequently cancelled; one by the requester and the other by the FOIL officer when it was determined to be an internal request for information, rather than a FOIL submission. For the remaining 71 requests, we found 46 acknowledgment letters did not include the estimated date for a decision, as required by the law. The other 25 letters specified that a determination would be made within 20 days - the maximum time allowed by statute.

Since the statute would have allowed B&T up to 20 days to respond to each of these requests, we evaluated the timeliness of

B&T's responses in comparison with that 20-day standard. We found B&T provided records within FOIL-specified time frames for 64 of the 71 requests we reviewed. Records for 6 requests were provided between 1 and 46 days late. On average, B&T took 16 days longer than originally indicated for these 6 requests. Three of the six late responses were provided more than ten business days beyond the date originally specified. According to B&T officials, some delays in the release of information were relayed to the requester by telephone; however, FOIL specifies delays must be communicated in writing.

One of the 71 requests lacked sufficient documentation for us to determine when, or even if, it was resolved. We were, therefore, unable to determine whether this request was responded to according to FOIL requirements. 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. B&T had information in the files which indicated this request should have been resolved less than six months prior to our site visit. Therefore, complete documentation supporting this FOIL request's disposition should have been on file.

B&T officials indicated this request was forwarded to B&T's Legal Department for resolution. However, the FOIL officer is responsible for coordinating the agency response to requested records. Therefore, the FOIL officer should have followed up to ensure this request was responded to appropriately and included documentation of the resolution of this request in the FOIL folder.

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### *Exempt Information and Denials*

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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, in most cases we were not able to evaluate the content of the information provided in response to the FOIL requests in our sample. However, we did evaluate the nature of the information listed on the requests.

Our review of FOIL files identified one instance where exempt information was made available to the requester. B&T had compiled various documents related to physicians doing business with the authority in response to a request, but had failed to properly redact personally-identifying information, such as home addresses and telephone numbers, and in at least one case the social security number of the individual physician. We were able to identify this problem only because the requester had failed to remit payment for the copied records. Accordingly, the package of information prepared for release was still in the FOIL file at the time of our review and was never actually released.

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. We found that B&T denied 12 requests - 9 full denials and 3 partial denials. The reasons B&T cited for the denials were consistent with the exceptions allowed by the FOIL statute. Four of the 12 denials were appealed. The MTA handles FOIL appeals for all its subsidiary organizations, including B&T. The results of our examination of this process are included in our report on FOIL compliance by B&T's

sister organization, the New York City Transit Authority (Report 2006-S-109).

#### **Recommendations**

1. Take action to help ensure that all FOIL requests are immediately delivered to the authority's FOIL officer to enable initial, formal action within five days.
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. Maintain all correspondence documenting FOIL requests for six months after resolution of the request.
5. Thoroughly review all information compiled in response to FOIL requests to ensure that exempt information has been appropriately redacted and/or excluded.

#### **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, B&T, and covers the period January 1, 2005 through September 28, 2006. A complete listing of all 22 reports is included in Exhibit A.

To accomplish our objective at B&T, we reviewed B&T's internal policies and

procedures pertinent to FOIL to determine compliance with the law. In addition, we met with B&T officials to confirm and enhance our understanding of their FOIL request process. We also reviewed 71 of the 76 FOIL requests B&T reported as received during our audit period, reviewed the steps B&T took to process the requests, and evaluated their timeliness. Three requests were excluded from our review because they had only recently been received by B&T and no action was yet due on them at the time of our visit. Two other requests were excluded from part of our review because they were withdrawn or canceled before a final response was provided. For the remaining cases, we extensively reviewed each FOIL request, including the subject matter of the request and the dates when each was prepared, received, acknowledged, and resolved.

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.

### **REPORTING REQUIREMENTS**

Draft copies of this report were provided to B&T 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 MTA 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 the 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, Rick Podagrosi, Kelly Engel, and Sarah Purcell.



## 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
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

347 Madison Avenue  
New York, NY 10017-3759  
212 878-7200 Tel  
212 878-7030 Fax

Peter S. Kalkow  
Chairman



**Metropolitan Transportation Authority**

State of New York

August 7, 2007

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

**Re: Report #2007-S-50 Metropolitan Transportation Authority – Bridges and  
Tunnels Compliance with Freedom of Information Law Requirements**

Dear Mr. Houston:

This is in reply to your letter requesting a response to the above-referenced draft audit report.

I have attached for your information the comments of Mr. David Moretti, Acting President, MTA Bridges and Tunnels, which address this report.

Sincerely,

A handwritten signature in black ink, appearing to be "David Moretti".

Attachment

*The agencies of the MTA*  
MTA New York City Transit  
MTA Long Island Rail Road

MTA Long Island Bus  
MTA Metro-North Railroad

MTA Bridges and Tunnels  
MTA Capital Construction

2 Broadway  
New York, NY 10004  
646-252-7000 Tel  
646-252-7902 TTY

Susan L. Kupferman  
President



## Bridges and Tunnels

July 30, 2007

Chairman Peter S. Kalikow  
Metropolitan Transportation Authority  
347 Madison Avenue  
New York, NY 10017-3739

Re: Metropolitan Transportation Authority Bridges and Tunnels  
Compliance with Freedom of Information Law Requirements  
Report 2007-S-50

Dear Chairman Kalikow:

In response to the draft audit report captioned above, the five recommendations on page 5 were implemented soon after the audit took place in October, 2006. The following is specific information regarding the recommendations:

1. An e-mail message was sent to all employees on October 18, 2006 instructing them to forward all freedom of information requests or any requests for information from the Authority to the FOIL Officer's attention immediately.
2. Arrangements have been made for backup personnel to address incoming FOIL requests immediately if FOIL staff are out ill, which was the case with the three late acknowledgement letters. Also, a statement of the approximate date when the request will be granted or denied has been included in the acknowledgement letter since December 16, 2006.
3. The FOIL Officer erroneously believed that telephoning the FOIL requestor when the search for information exceeded the 20-day period was an acceptable means of contact. This was corrected during the audit period and written notice is being provided in such cases.

MTA Bridges and Tunnels (legal name, Triborough Bridge and Tunnel Authority) is an agency of the Metropolitan Transportation Authority, State of New York, Peter S. Kalikow, Chairman

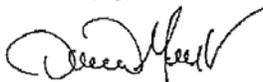
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Chairman Peter S. Kalikow  
July 30, 2007  
Page 2

4. All FOIL correspondence is maintained for at least six months after the resolution of the request and longer. In the specific case referred to on page 4 of the draft report, the Law Department had taken over the FOIL request. Should this occur in the future, the Law Department will be requested to provide written confirmation of resolution of the request for the file.
5. In regard to the case of exempt information that could have been released but was not sent to the requester, the FOIL Officer and the Law Department personnel have been instructed to double check all material intended for release to ensure that exempt information is excluded.

I trust you find this information is responsive to the audit. If you have any questions, please contact me.

Sincerely,



David Moretti  
Acting President

cc: Catherine Sweeney, Chief of Staff and Vice President, Staff Services