



ERIE COUNTY WATER AUTHORITY INTEROFFICE MEMORANDUM

TO: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele M. Iannello, Treasurer

FROM: Terrence D. McCracken, Secretary to the Authority

DATE: July 14, 2025

SUBJECT: Amendment to FOIL Policy

In reviewing the Authority's current FOIL Policy with the Legal Department, it was determined that updates were needed. The most important change included Section 11: Appeals. Currently, any appeals are submitted directly to the Commissioners. In the newly updated draft, these appeals will be addressed to General Counsel. Other changes include removing hyperlinks from the list of publicly available information, as these were cumbersome to maintain. Many items had dates attached to them that were the dates the Authority started maintaining certain records on our website. The dates were updated to state "for a period of at least the past five years" as that is the longest statutory period we are required to maintain these items on the website, to the best of our knowledge. Time frames were also added so that we will not have to modify the policy later on when maintaining 10+ years of records on the website. The Policy also received minor revisions and was reformatted.

An amended draft of the FOIL Policy has been included in the July 23, 2025 Governance and Board Meeting packets for your review and approval to amend.

Thank you.

TDM:alh

**ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Board Meeting Documents**

Document Name: _____ **Project No.:** _____

Description: _____

Item Description:

Choose one:

Other: _____

Action Requested:

Choose one:

Other: _____

Approvals Required:

APPROVED AS TO CONTENT:

Chief Financial Officer



Date: 07/14/2025

Chief Operating Officer



Date: 7/15/2025

Claims Rep. – Risk Manager

Date: _____

Comptroller

Date: _____

Director of Administration

Date: _____

Director of Distribution

Date: _____

Director of Human Resources

Date: _____

Director of IT

Date: _____

Director of Production

Date: _____

Director of Water Quality

Date: _____

Executive Engineer

Date: _____

General Counsel (Legal)



Date: 7/14/2025

Other: _____ Date: _____

APPROVED FOR BOARD RESOLUTION:

Secretary to the Authority



Date: 7/15/2025

Remarks: _____

Resolution Date: _____ **Item No:** _____



ERIE COUNTY WATER AUTHORITY

Freedom of Information Law

Policy & Procedures for Accessing Public Records

Section 1: Public Declaration

The Erie County Water Authority (the “Authority”) is responsible for the treatment and distribution of 25 billion gallons of safe, clean, potable water annually to residential, commercial, and industrial customers in 36 municipalities located within Erie County and parts of Chautauqua, Cattaraugus, western Wyoming, and western Genesee counties, as well as the territories of the Seneca Nation of Indians. The Authority pledges to the public and its customers to operate in an open and transparent manner, ensuring that its policies, practices, procedures, and actions are available for public inspection and scrutiny.

The Authority adopts as its Policy the terms and requirements of the New York State Freedom of Information Law (“FOIL” ~~Law~~) as set forth in Article 6 of the Public Officers Law, as amended from time to time.

These procedures are adopted to allow the public, individually and collectively as represented by a free press, to have access to the public records of the Authority, in accordance with the provisions of Article 6 of the Public Officers Law.

Section 2: Definitions.

(a) The “Authority” means the Erie County Water Authority, a body corporate and politic constituting a public benefit corporation of the State of New York, whose formation and powers are set forth in Public Authorities Law §§ 1050-1073.

(b) The “Board” means the Authority’s Board of Commissioners.

~~(c) “Business days” excludes weekends and legal holidays.~~

~~(d)~~(c) “Confidential or privileged information” means information described in Public Officer Laws § 87(2), which may be withheld from being publicly disclosed by the Authority.

~~(e)~~(d) “ECWA Website” means the website controlled and maintained by the Authority at <https://www.ecwa.org>.

~~(f)~~(e) “FOIL” means the Freedom of Information Law, set forth in §§ 84-90, Article 6, of the Public Officers Law.

~~(g)~~(f) “FOIL Officer” means the Secretary or a person designated by the Secretary.

~~(h)~~(g) “FOIL Request” means a request in writing (either letter or e-mail) by a member of the public or the media seeking access to public records pursuant to these procedures and Article 6 of the Public Officers Law.

~~(i)~~(h) “Office of the Secretary” means the office or department under the direction and control of the Secretary.

~~(j)~~(i) “Secretary” means the Secretary of the Authority. For purposes of these procedures, the term “Secretary” also includes any person designated by the Secretary to assist in responding to a FOIL request.

~~(k)~~(j) “Records” mean any information regardless of its physical form or characteristics, including information created, stored and retrievable by electronic means or that are kept, held, filed, produced or reproduced by the Authority in any physical form, including information maintained for the Authority by an entity under contract for records management purposes. It does not include records that are not already in existence and that would have to be created specifically to respond to a FOIL request.

~~(l)~~(k) “Written acknowledgement” means any correspondence acknowledging such receipt of a FOIL request sent by the Secretary within five days of such receipt.

Section 3: Purpose and Scope.

These procedures govern access to the Authority’s public records and implement and supplement the Freedom of Information Law contained in Article 6 of the Public Officers Law. These procedures should be read together with Article 6 of the Public Officers Law, which provides additional information about access to records and contains the specific exemptions that are applicable to withholding records. Any conflict among laws governing ~~the~~ access to public records will be construed in favor to the broader access to such records.

Section 4: Office of the Secretary.

- (a) The Authority designates and charges the Office of the Secretary with the duties and responsibilities for ensuring compliance with the procedures and laws governing access to public records. The Secretary is designated as the Authority’s Records Access Officer.
- (b) The Office of the Secretary will ensure that the Authority timely responds to all FOIL requests.
- (c) The Office of the Secretary will ~~e~~insure Authority personnel maintains a reasonably detailed current list by subject matter of all records in the possession of the Authority, updated annually with the date of the most recent update conspicuously marked in the footer of each page of the list. This list will be posted and updated on the ECWA Website.
- (d) The Secretary will immediately report and provide a copy of the FOIL request to the

Board at its next regularly scheduled meeting. The Office of the Secretary will also post all FOIL requests on the Authority's ECWA Website, as part of the Board's agenda as a communication item.

- (e) The Office of the Secretary may contact the person(s) seeking records that are voluminous, poorly or broadly described, or requiring substantial effort on the part of Authority personnel to locate such records so that the Authority may ascertain the nature of the records of primary interest and attempt to reasonably reduce the volume of records requested.

Section 5: Public Inspection.

Public records, upon request, are available for public inspection and review at no cost at the Authority's administrative offices located at the Ellicott Square Building, 295 Main Street, Room 350, Buffalo, New York during ~~the~~ normal business hours. Normal business hours ~~excluding legal holidays and weekends,~~ are between 9:00 a.m. and 5:00 p.m., Monday through Friday.

Section 6: Public Information on ECWA Website.

On the ECWA Website, the public has access to the following public records:

- (1) The Authority's Enabling Statute;
- (2) The Authority's By-Laws;
- (3) The Authority's Tariff;
- (4) The Duties and Responsibilities of the Authority's Board Members;
- (5) The Code of Ethics Policy;
- (6) The Employment Opportunity Posting Policy;
- (7) The Whistleblower Protection Policy;
- (8) The Board Meeting Schedule;
- (9) The Board and Committee Minutes;
- (10) Agenda, Resolutions and Board Packets for all Board and Committee Meetings ~~since for~~ a period of at least the past five years April 19, 2018;
- (11) ~~Video/Audio~~ access to all Board and Committee meetings for a period of at least the past five years since May 17, 2018;
- (12) The Authority's Annual Water Quality Reports since 2001;
- (13) The Annual Investment Reports, including Audit Investments and Annual Investment Fees for a period of at least the past five years from 2016 to the present, as well as the current Investment Guidelines;
- (14) The Comprehensive Annual Financial Report (CAFR) from 2000 to the present;
- (15) The Audited Financial Statements for a period of at least the past five years from 2016 to the present;
- (16) The Authority Mission Statement and Annual Performance Measures;
- (17) The Authority Annual Budget from for a period of at least the past five years 2017 to the present;
- (18) The Authority's current Bond Rating ~~in 2016 and 2018;~~
- (19) Management of Internal Controls filed for a period of at least the past five years in 2016 to the present;
- ~~(20)~~ Annual Operations and Accomplishments listed by Department for a period of at least the

- ~~past five years; since 2016;~~
- (20) ~~_____~~
- (21) The Paris Reports, containing annual reports, budget reports, procurement reports, and staff compensation for a period of at least the past five years;
- (22) Management Letter from internal auditors for a period of at least the past five years~~Annual Financial Reporting Requirements;~~
- (23) Procurement Policy;
- (24) Projects subject to the State Environmental Quality Review Act for a period of at least the past five years;
- (25) News Releases and Public Statements for a period of at least the past five years;
- (26) Media Guidelines and Media Policy;
- (27) The Authority's FOIL Policy and FOIL Officer.

Section 7: FOIL Requests

All requests shall be in writing and directed to the Secretary of the Authority, Erie County Water Authority, 295 Main Street, Room 350, New York 14203, or by email to foil@ecwa.org.

All written requests mailed or delivered to the Room 350 shall be time-stamped upon receipt, and a copy of the written request shall be scanned and emailed to foil@ecwa.org, to create a secondary means of recording all FOIL requests. All FOIL requests must reasonably describe the record(s) sought for public disclosure, including the time period in which the record is being sought. ~~All FOIL requests must also include the requestor's full name together with complete mailing address and contact information (email and/or telephone number).~~

Section 8: Request for Confidential or Privileged Information.

~~If~~Once the Secretary has determined the records sought may ~~contain~~be confidential or privileged information, the Secretary shall forward the FOIL request to the Authority's Legal Department. The Legal Department will prepare a privilege log, describing the record, the nature of the privilege, and the statutory section authorizing withholding this record from public disclosure. The Legal Department may also recommend to the Board whether it should publicly disclose any of the requested confidential or privileged records.

The Secretary shall advise the person requesting confidential or privileged records that only the Board has the power to disclose for public inspection and review confidential or privileged records. Whenever practical or feasible, after the Legal Department has reviewed these confidential or privileged records and has prepared a privilege log, the Board may examine these confidential or privileged records, and based on its sound discretion, disclose in whole or in part such records.

Section 9: Fees.

(a) There shall be no fees for electronic records.

~~(a)~~(b) If the person making a FOIL request desires physical copies of records, any fees or charges shall be applied in accordance with Public Officers Law §87(1). Advance payment is required before records will be copied or released. Check or money orders

should be made payable to the “Erie County Water Authority.”

~~(b)(c)~~ Pages up to 9 inches by 14 inches are \$0.25 per page. For larger or special format records, the fees will reflect the, or the actual cost of reproductioning any other record.

~~(e) — The fees for reproducing a record may include the actual cost of the storage device or media, actual cost for engaging outside professional service to retrieve and produce the record, or the actual cost to the Authority based on the time spent by an Authority employee calculated by the hourly salary attributed to the lowest paid Authority employee who have the necessary skill required to retrieve and reproduce the requested record(s).~~

(d) The Secretary, upon request, has the authority to waive any fees for FOIL requests requiring minimum effort retrieve and/or copy.

Section 10: Secretary’s Response to FOIL Requests.

(a) The Secretary shall respond, within five business days of the receipt of a written FOIL request, by:

(1) Informing the person making the FOIL request that the request or a portion of the request does not reasonably describe the records sought, and providing the individual with a current, detailed list by subject matter of all records in the possession of the Authority;

(2) Granting or denying access to records in whole or in part; or

(3) Acknowledging in writing receipt of the FOIL request, including the approximate date when the Authority will respond to such request.

(b) When the Secretary decides to grant the FOIL request in whole or in part, and if circumstances prevent disclosure of such record(s) within 20 business days from the date of the written acknowledgement, the Secretary shall state, in writing, both the reason for the inability to grant the request within 20 business days and a date certain when the request will be granted in whole or in part.

(c) A failure to comply with the time limitations described in these procedures shall constitute a denial of the FOIL request that may be appealed ~~to the Board.~~

(d) When the Secretary decides to deny a FOIL request in whole or in part, the Secretary shall send the person making the request a written statement as to the reasons why the request was denied in whole or in part and advising the person of the right to appeal the denial ~~to the Board.~~

Section 11: Appeals

- ~~(a) Any denial, in whole or in part, of a request for records may be administratively appealed to the Board. This appeal right includes the right to appeal a request for which no timely response has been made, and from a response indicating no responsive records existed within the Authority's files, including its electronic files.~~
- ~~(b)~~
- ~~(c) An appeal must be in writing and must be received by the Authority within 30 days after the date of the denial. All appeals should be addressed, and mailed or emailed to:~~
- ~~(d)~~
- ~~(e) Board of Commissioners~~
- ~~(f) Erie County Water Authority~~
- ~~(g) 295 Main Street, Room 350~~
- ~~(h) Buffalo, New York 14203~~
- ~~(i) Email: foil@ecwa.org~~
- ~~(j) The Board shall inform the appellant and the Committee on Open Government of its determination in writing within 10 business days of the receipt of the written appeal. The failure to timely determine the appeal within 10 business days shall constitute a denial of the appeal, subject to judicial review pursuant to Article 78 of the Civil Practice Law and Rules.~~
- ~~(k) After an appeal has been filed, the Secretary shall immediately transmit to the Committee on Open Government copies of all papers submitted to the Board in the appeal. Copies of such papers shall be addressed to:~~
- ~~(l)~~
- ~~(m)~~
- ~~(n) Committee on Open Government~~
- ~~(o) Department of State~~
- ~~(p) One Commerce Plaza~~
- ~~(q) 99 Washington Avenue, Suite 650~~
- ~~(r) Albany, New York 12231~~
- ~~(s) An appeal to the Board is considered a quasi-judicial proceeding pursuant Public Officers Law § 108 (1) and is not subject to the provisions of the Open Meetings Law.~~
- ~~(t)~~
- ~~(u)~~

(a) The following body shall determine appeals regarding denial of access to records under FOIL:

Office of General Counsel
Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203
Email: foil@ecwa.org

~~(v)~~(b) Any individual denied access to records may appeal within thirty (30) days of a denial.

~~(w)~~(c) The time for deciding an appeal by the Authority's Office of General Counsel shall commence upon receipt of a written appeal identifying: (i) the date and location of requests for records; (ii) a description, to the extent possible of the records that were denied; and (iii) the name and return address of the person denied access.

- (d) After an appeal has been filed, the Secretary shall transmit to the Committee on Open Government copies of all papers submitted to the General Counsel relating to the appeal. Copies of such papers shall be addressed to:

Committee on Open Government
Department of State
One Commerce Plaza
99 Washington Avenue, Suite 650
Albany, New York 12231

- (e) The General Counsel shall inform the appellant and the Committee on Open Government of its determination in writing within 10 business days of the receipt of the written appeal. The failure to timely determine the appeal within 10 business days shall constitute a denial of the appeal, subject to judicial review pursuant to Article 78 of the Civil Practice Law and Rules.

~~Section 12: Duty of the Authority Members, Officers and Personnel to Identify and Preserve Public Documents.~~

[RESERVED]

Section 123: FOIL Audit

The Board may direct the Legal Department to conduct a compliance audit of all FOIL files and report its findings to the Authority's Governance Committee.

Adopted on September 20, 2018

Revised on September 5, 2019

Revised on July 23, 2025