



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

To: Jerome D. Schad, Chair
Mark S. Carney, Vice Chair

Cc: Terrence D. McCracken, Secretary
Karen A. Prendergast, Chief Financial Officer
Russell J. Stoll, Chief Operating Officer
Leonard F. Kowalski, Executive Engineer

From: Margaret A. Murphy, Attorney
David C. Mineo, Associate Attorney

Subject: 2018 FOIL Audit

Dated: March 27, 2020

The Erie County Water Authority (the "Authority"), in keeping with its pledge to the public and its customers to operate in an open and transparent manner, has adopted [Freedom of Information Law: Policy & Procedure for Accessing Public Records](#) ("FOIL Policy"). Pursuant to FOIL Policy § 13, the Legal Department has performed a FOIL Audit for calendar year 2019.

2019 FOIL REQUESTS

During 2019, the Authority received 49 FOIL requests. Paper files are opened for each FOIL request and duplicated by use of an electronic file. The paper files of all 49 requests were reviewed using the FOIL checklist created in September 2018. Each file was reviewed twice to verify dates of FOIL receipt, deadline dates and initial/final response dates. Access was also available to the electronic files which were reviewed as needed.

In reviewing these paper and electronic files, we have determined that one file had information showing non-compliance with FOIL requirements. A single failure on any one checklist item constitutes a "failed" file. The details on the one "failed" file is listed below:

1 FAILED FOIL FILE

FOIL 2019-0009: Received: March 7, 2019 Requestor: Jennings, Annoise

Request: Listing of all homes in Erie County that had water service shut off for six months or more.

Problem: The initial response letter was due March 14, 2019. This FOIL request was overlooked, and the initial response letter was sent March 18, 2019, making it two business days late. Although the initial response time was missed, the final response letter was sent on time and provided the information requested.

OBSERVATIONS & RECOMMENDATIONS

Public Officers Law § 89(3)(a) and FOIL Policy § 10(a)(3) require any request to be acknowledged within five business days and to indicate an approximate date by which the Authority will respond to the request, usually not more than 20 additional business days. When the Authority did not provide requested public records within the initial five business days, we could not find any initial letters providing an approximate date as to when the Authority would provide the requested information. If public records cannot be produced within five business days of the request, we recommend the initial letter should state the following:

Please allow this letter to serve as our five-day response to your initial request. Our offices will review whatever records we have regarding this matter and will forward the information to you within 20 business days.

As a positive note, the Legal Department found requested public documents and information were supplied within five business days for 29 of the 49 FOIL requests. This means 62% of all FOIL requests had public records received by the requestor within five business days. The median number of business days for a requestor to receive responsive public records was four.

In 2019, no one was denied access to any public record and therefore, no appeals were brought before the Authority's Board of Commissioners.