

FOIL that Works

Increasing MTA transparency and accountability by
putting FOIL online

October 2018



“...a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government...it is incumbent upon the state to extend public accountability wherever and whenever feasible.”

NYS Public Officers Law, Article 6

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Introduction

The Metropolitan Transportation Authority (MTA) is both the largest public authority in New York State and the largest public transportation system in North America.¹ With an operating budget of \$14.9 billion² in 2018 and a 2015-2019 capital plan to spend \$33.3 billion³, its spending is larger than many state governments. The public - including advocates and journalists - have a large interest in its operations given its vast scope. Holding the MTA accountable is dependent on being able to access information about how it operates and makes decisions, and currently, the public cannot effectively do so.

Despite some improvements to the MTA website and the publication of some data online, Freedom of Information Law requests are crucial for ensuring the MTA is transparent and accountable to the public. The MTA receives close to 9,000 FOIL requests a year. Unfortunately, it can take the public over a year to receive requested records from the MTA, responses are often incomplete, and tabular data is often sent in non-machine readable formats that are costly and difficult to analyze.

This report will show that the MTA's responses to Freedom of Information Law (FOIL) requests are antiquated, slow and fragmented, and that the MTA lags badly behind comparable agencies such as the Port Authority of New York and New Jersey (Port Authority). The MTA could reduce lengthy delays, and save money and staff time by creating an OpenFOIL platform and in-house portal for the thousands of police incident reports which are currently processed as FOIL requests.

This report on MTA FOIL is part of Reinvent Albany's mission to create a transparent and accountable New York State government. Reinvent Albany is New York State's member of the National Freedom of Information Coalition and has won the passage of important state laws strengthening FOIL, as well as the NYC Open Data Law and amendments.

Included in this report is an analysis of the MTA's FOIL website, FOIL logs obtained via FOIL requests, best practices from other jurisdictions, and recommendations for Open

¹ Office of the State Comptroller. "Public Authorities by the Numbers, 2017." Jan 2017. Available at: <http://www.osc.state.ny.us/pubauth/reports/pub-auth-num-2017.pdf> and MTA website, <http://web.mta.info/mta/network.htm>

² Metropolitan Transportation Authority. April 2018 Amendment to Capital Plan, 2015-2019. http://web.mta.info/mta/news/books/docs/2018_April-Capital-Amendment.pdf

³ Metropolitan Transportation Authority. "MTA 2015-2019 Capital Plan, Amendment 2." As approved by CPRB July 31, 2017. http://web.mta.info/capital/pdf/2015-2019-Program_APPROVEDv5_reduced.pdf

FOIL and police incident websites for the MTA. The FOIL logs were obtained via FOIL request, providing another window into the process used by the MTA.

An Open FOIL platform, coupled with an online portal for requesting MTA Police Incident Reports, will vastly increase the efficiency of the MTA's FOIL process and produce significant cost savings and better service to the public. The MTA can act on its own to create these platforms, following best practices from other jurisdictions to improve its own operations, create a more efficient FOIL process, and better serve the public.

Major Findings and Summary of Recommendations

This report provides a comprehensive analysis of FOIL processes at the MTA. In conducting this analysis, Reinvent Albany reviewed the MTA's FOIL website, requested the MTA's logs of FOIL requests received in 2017, and examined other studies of the MTA's FOIL process. Below is a summary of major findings from this original analysis.

1. None of the Eight MTA Agencies Reinvent Albany FOILED Provided Records Within the 20 Business Days Required by Law

On March 12, 2018, Reinvent Albany sent FOIL requests to eight MTA agencies:

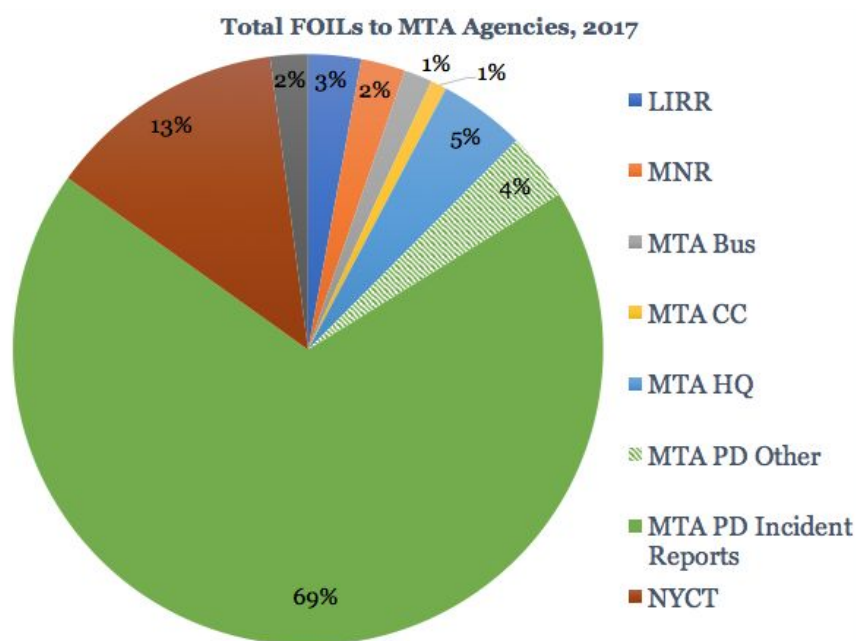
- | | |
|-----------------------------|--------------------------|
| 1. MTA Headquarters | 5. MTA Police |
| 2. MTA Bridges and Tunnels | 6. NYC Transit |
| 3. MTA Bus Company | 7. Long Island Rail Road |
| 4. MTA Capital Construction | 8. Metro-North Railroad |

Reinvent Albany specifically requested FOIL logs listing Freedom of Information Requests received, including information about requestors, subjects of requests, and dates of receipt and closing, and final determinations. Despite the simple nature of the request, no MTA agency provided Reinvent Albany with the records within the 20 business days required under the Freedom of Information Law (Public Officers law, Article 6, Section 89(3)).

MTA Bus never acknowledged receipt of the request. NYCT sent a hard copy letter to acknowledge the FOIL request, while all other agencies sent email responses.

To get our request fulfilled, Reinvent Albany had to submit an administrative appeal to all eight MTA agencies we FOILED. Ultimately, the MTA agencies took between 52 and 64 business days to send the FOIL logs, well beyond the 20 business days required under FOIL for responses for simple records requests.

Most agencies (6/8) initially sent records in PDF, though the request was for CSV spreadsheet files (FOIL states that records must be sent in the form requested - FOIL logs are all tabular data that the MTA agencies keep in a spreadsheet format).



2. Two-thirds of MTA FOIL Requests are for Police Incident Reports

The MTA received at least 8,900 requests in 2017, with the majority coming to the MTA police department, mostly for incident reports (at least 6,112 in total). This high volume of incident requests points to the need for the MTA to provide a separate, online portal for the public to privately access incident reports (see recommendations for more details).

MTA Agency	Total 2017 FOIL Requests
Long Island Rail Road	258
Metro North Railroad	216
MTA Bus	137
MTA Bridges and Tunnels	183
MTA Capital Construction	79
MTA Headquarters	421
MTA New York City Transit	1,164
MTA Police Department	6,442
Grand Total	8,900

3. Records of MTA Agency FOIL Tracking Inconsistent, Incomplete

The FOIL Logs provided by MTA agencies had varying amounts of information and different formats, further demonstrating the MTA's fragmented approach to FOIL.

- Records provided by Metro North only included FOIL requests labeled “done,” suggesting they did not provide the requested list of all FOIL requests.
- New York City Transit sent *less* information about FOIL requests than it sent in response to a 2013 Reinvent Albany request. That year, NYCTA sent FOIL logs that included the topic of the FOIL request (which is required under FOIL case law.) In 2018, NYCTA did not send the topics of the requests.
- MTA Capital Construction was the only agency to provide details regarding the organizations/companies making up the 79 FOIL requests they received. The majority of their requests, 38% (30), came from the press, with one-third, or 33% (26), coming from law firms that represented contractors or individuals pursuing personal injury cases. An additional 14% (11) came directly from contractors.

4. MTA Closes FOIL Cases, but Doesn't Necessarily Fulfill Them

Reinvent Albany was able to determine the status of requests and the time it took to “close” them for 6 of the 8 MTA agencies. Metro North Railroad and the MTA Police Department did not provide sufficient data for this analysis, who had over two-thirds of all requests. (Closures may include requests that were denied, or partially fulfilled, and do not mean all of the requested records were provided.)

- More than half (61%) of requests that were “closed” by the agencies were done so within 20 days, the timeframe required under law for simple FOIL requests. Note this does not include cases that remained open.
- In 2017, it took MTA agencies an average of 32 business days to close a request.
- Long Island Railroad and MTA Capital Construction had the longest average time to close requests at 42 days each, followed by New York City Transit and NYC Bridges and Tunnels at 39 days each.
- MTA Bus and MTA Headquarters closed cases on average within 11 and 10 days, respectively.
- In 157 cases (8% of the total), however, requests took more than 100 business days to be closed.
- New York City Transit had the highest percentage of open requests (19%), followed by MTA Capital Construction (11%), and MTA Headquarters (9%).
- There were still 277 FOIL requests to MTA agencies from 2017 that had not been fulfilled as of the date that logs were sent (between May 30th and June 15th,

2018). On average, the people making these FOIL requests had been waiting 212 business days.

- As of June 15, 2018, New York City Transit had 216 unfulfilled FOIL requests from 2017. On average, FOILers of NYCT had been waiting 215 days for the records they requested.

Outside of requesting the MTA's FOIL logs, Reinvent Albany has requested other information from the MTA and found a troubling lack of responsiveness and adherence to the law. Simple requests have often taken more than 20 days, and requests involving contracts remain unfulfilled as of the time of this report. One request for the MTA's capital plans from 2000-2004 and the original, non-amended version of the 2005-2009 plan, which are not currently available online, was stated to take 90 days, though the MTA has PDFs of the 2010-2014 and 2015-2019 plans online. Another request regarding contract data took 76 days to fulfill, and only included partial data. The MTA never responded to an appeal for the missing information. Correspondence regarding this request is provided at the end of this report in Appendix 3 to show another glimpse into the process for requesting information.

5. Best Practices for Open FOIL and Incident Reports

The MTA lags badly behind other governments, both local and federal, in its handling of Freedom of Information Law requests. Online portals for requesting information, tracking requests, and online posting of released records provide important models for the MTA to follow. These include the federal FOIAOnline portal,⁴ the Port Authority of New York and New Jersey's Public Records Portal,⁵ and data released by Montgomery County Maryland via its Open Data portal.⁶

When it comes to freedom of information requests, the nearby Port Authority of New York and New Jersey is light-years ahead of the MTA. Like the MTA, it is also a gigantic public authority that operates rail and bus transit, collects tolls and has complex sub-entities. Since 2012, the Port Authority's Public Records Access website has shown the public who is making FOI requests, what they are asking and what records they are given by the Port and its subsidiaries. The former Executive Director of the Port

⁴ FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>

⁵ Port Authority of New York and New Jersey, "Public Records Fulfilled Requests." <http://corpinfo.panynj.gov/pages/public-records-fulfilled-requests/>

⁶ Data Montgomery, "Maryland Public Information Act (MPIA) Request Responses," Montgomery County Government. <https://data.montgomerycountymd.gov/Government/Maryland-Public-Information-Act-MPIA-Request-Respo/99ya-kjir>

Authority, Pat Foye (who is now the MTA's President), noted the benefits of its improved records access policy in an announcement of the changes:

*"The new FOI Code streamlines, modernizes, and clarifies an out-of-date system that was clearly not meeting the public's needs. By holding ourselves to a higher standard of transparency and by voluntarily posting online thousands of documents now, we make the agency a stronger and more accountable institution."*⁷

Additionally, the Port Authority is among many agencies, including the NYS DMV, NYPD, and Pennsylvania State Police, that use a separate police incidents portal which allows the public to privately access records, helping lessen the number of FOIL requests coming in for these reports. (Two-thirds of all MTA-related FOIL requests are for incident reports, as noted previously.)

The MTA is not included in Governor Cuomo's "Open FOIL NY" upgrade, which created a central portal for submitting FOIL requests to New York State agencies - 59 other agencies and public authorities such as the Economic Development Corporation.

6. Recommendations

The MTA should adopt an Open FOIL platform using best practices from the Port Authority and NYC Open Records Portal. This will vastly increase the efficiency of the MTA's FOIL process, produce significant cost savings, and better serve the public.

The MTA should create an in-house portal for requesting MTA Police Incident Reports, using the models from the NYS DMV and Pennsylvania State Police, allowing the public to privately request incident reports online. This portal could save the MTA significant time processing FOIL requests, given that more than two-thirds of current FOIL requests involve incident reports.

An Open FOIL portal would have the following features:

1. A central portal for the public to submit information requests to all MTA subsidiaries/affiliates and view all public requests, with public posting of records

⁷ Port Authority of New York and New Jersey. "Port Authority Makes Major Enhancements to How Agency Will Release Public Records to Provide Greater Transparency and Accountability." March 29, 2012 http://www.panynj.gov/press-room/press-item.cfm?headLine_id=1553

2. Requests sent to the wrong MTA subsidiary/affiliate should be automatically forwarded to the correct agency, without the need for the public to re-submit a request.
3. A public directory of MTA FOIL Officers, including email and phone
4. Access via API to all FOIL portal data
5. Creation of a “Reading Room” of Frequently FOILed records
6. MTA FOIL Performance Metrics, per FOIAOnline
7. An annual report on MTA FOIL operations, performance and plans for improvement
8. Relevant datasets should be posted to the NYS Open Data Portal including: FOIL requests, performance metrics and any tabular data released via FOIL responses

The NYS Freedom of Information Law

In handling requests for information, as a public authority the MTA is subject to the requirements of the state’s Freedom of Information Law (FOIL) under Sections 84-90 of Article 6 of the Public Officers Law. FOIL specifies how agencies must respond to requests for records, and sets minimum standards for state agencies to follow. Below is a summary of some of the deadlines in law.

- Agencies are generally required to acknowledge receipt of requests within 5 days, and provide the anticipated date by which the requested information will be sent, or state if the records are not available, or the request doesn’t “reasonably describe” the requested records.⁸
- The law generally provides that simple requests be processed within 20 business days of acknowledging the request.⁹
- The public has 30 days to appeal denials of information, and agencies must respond to appeals within 10 days.¹⁰

The format of records is also covered under Section 87(5) of FOIL; records must be provided “on the medium requested by a person, if the agency can reasonably make such copy or have such copy made by engaging an outside professional service.” This means that if data is requested in tabular form, i.e. excel or CSV, the agency must

⁸ Public Officers Law, Article 6, Section 89(3).

⁹ Public Officers Law, Article 6, Section 89(3).

¹⁰ Public Officers Law, Article 6, Section 89(4).

provide tabular data rather than a scanned PDF. The agency is also required to convert records from one electronic format into a more desirable format upon request.¹¹

a. Who Oversees FOIL

The Committee on Open Government is charged with overseeing and advising the government, public and news media on the Freedom of Information Law, and publishes advisory opinions and FAQs about the administration of FOIL.¹² For example, one opinion relates to the availability of FOIL logs (lists of requests submitted by the public, including the agency's determinations) maintained by government agencies which notes that FOIL requests cannot be withheld and notes that "records" are defined broadly as:

"any information kept, held, filed, produced, reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes."

The Governor, as the state executive, also has a role in overseeing the implementation of FOIL. The Governor's Office recently announced the creation of an online FOIL website which provides a standard form for requests to 59 state agencies and authorities (though the MTA is not currently included), with agencies expected to use software to streamline and automate their responses. An online tracker is anticipated to be created in 2019, though it is unclear what information will be public-facing and what information will be only provided to requestors of information.¹³

How the MTA Implements FOIL

a. Methodology

In order to understand the process of requesting information from individual MTA agencies and learn more about the volume of requests received by the MTA agencies, Reinvent Albany reviewed the MTA's FOIL website, requested the MTA's logs of FOIL

¹¹ Committee on Open Government. "FAQ - Freedom of Information Law."

<https://www.dos.ny.gov/coog/freedomfaq.html>

¹² For more information, see the NYS Committee on Open Government website:

<https://www.dos.ny.gov/coog/index.html>

¹³ Press Release. "Governor Cuomo Announces Open FOIL NY." June 26, 2018. Office of Governor Cuomo. <https://www.governor.ny.gov/news/governor-cuomo-announces-open-foil-ny>

requests received in 2017, and examined other studies of the MTA's FOIL process. We also reviewed audits conducted by the NYS Comptroller of MTA subsidiaries and affiliates to determine if our findings were similar. Lastly, we reviewed Article 78 proceedings conducted against the MTA for denial of FOIL requests.

b. MTA FOIL Website

The MTA's current process for administering FOIL is fragmented and not user-friendly, with requests handled separately by MTA agencies, which is reflected on its FOIL Website, <http://web.mta.info/mta/foil.htm>. The MTA website provides only basic information about how to submit information requests, including:

- Disclaimers state that if requests are sent to the wrong agency, you will not receive the records you are seeking.¹⁴ They also note that some records are only available on paper for inspection and copying by appointment only.
- A draft FOIL request letter with suggested language.
- Links to submit requests via the general MTA Customer Service Web Form to the MTA's subsidiaries and affiliates.¹⁵
- "Subject Matter Lists" which are required by law to be kept and include dozens of categories of records maintained by the agency and may be subject to FOIL.
- A link to the NYS Committee on Open Government website.
- A listing of mailing addresses for designated FOIL officers. This does not include email addresses or telephone numbers.

The MTA's FOIL website is missing a number of components that would make it a more accessible and helpful resource for the public. By listing disclaimers first and not including FAQs or guidelines in plain language, the MTA does not set a tone of openness for those submitting requests. Further, the website does not include any statistics about requests received or fulfilled, or a website that creates a "reading room" of commonly requested items.

While the MTA has a separate "Transparency" section of its website that includes board materials, financial information and dashboards, this information is not linked to from the FOIL website. The public therefore may be requesting information that is already online but hard to find. Further, documents in the "Transparency" website are generally

¹⁴ Reinvent Albany experienced this for one FOIL request related to MTA contracts, which had to be resent to MTA Headquarters after being initially sent to New York City Transit.

¹⁵ This includes: MTA Headquarters, NYC Transit, Long Island Rail Road, Metro-North Railroad, Bridges and Tunnels, Capital Construction, Bus Company and MTA Police. For more information on MTA's subsidiaries and affiliates see: MTA. "The Related Entities: Legal Status and Purpose." <http://web.mta.info/mta/compliance/pdf/MTA-Creation-Structure.pdf>

in PDF format but for the capital plan dashboard which has limited information available for bulk download in CSV format (“click-through” information is not available for download).

c. Analysis of MTA FOIL Logs

FOIL logs are considered public information under the Freedom of Information Law, as noted previously, and are included in the lists of “subject matters” available by MTA agencies under FOIL.¹⁶ On March 12, 2018, Reinvent Albany sent requests for FOIL logs to each of the individual MTA agencies listed on its FOIL website. We requested the following information:

- the name of the requesting party
- the date of the request
- the subject of the request
- the date(s) of the agency’s response(s) to the request, and
- the final determination of the request.

We analyzed the logs, as well as the MTA’s process for responding to our requests, and hoped to answer the following questions:

- **Acknowledgement of Requests:** Do the MTA’s subsidiaries and affiliates acknowledge FOIL requests in the same way?
- **Resolution of Requests:** How long does it take each MTA subsidiary and affiliate to close requests? (Note that an agency’s definition of “close” may not reflect whether a member of the public was satisfied with the response and/or records received.)
- **Format of FOIL Logs:** Does each subsidiary/affiliate set up their own logs differently?
- **Volume of Requests:** What is the volume of requests received by each subsidiary and affiliate?
- **Requestors:** Who FOILs the MTA?

Our analysis of how the FOIL logs answer each of these questions follows.

¹⁶ See for example the Subject Matter list for MTA Headquarters which lists “FREEDOM OF INFORMATION REQUESTS” among their listing. <http://web.mta.info/mta/foil/mtahq.html>

i. Acknowledgement of Requests

In responding to Reinvent Albany's requests, all agencies except MTA Bus acknowledged receipt within five business days. New York City Transit (NYCT) responded that the request would take 4 months to fulfill, while other agencies stated that 20 or 30 business days would be needed (though MTA Bus never acknowledged receipt of the request).

The MTA's individual entities also have their own unique processes for acknowledging requests. For example:

- Most agencies send acknowledgements of FOIL requests via email, while New York City Transit mostly sent hard copy letters.
- For the same records, agencies provided different responses for how long it would take to provide records.
- Some FOIL Officers send responses directly from their individual MTA email accounts, while others send communications via the MTA's general customer help system, which does not allow for individual follow-up.

ii. Resolution of Requests

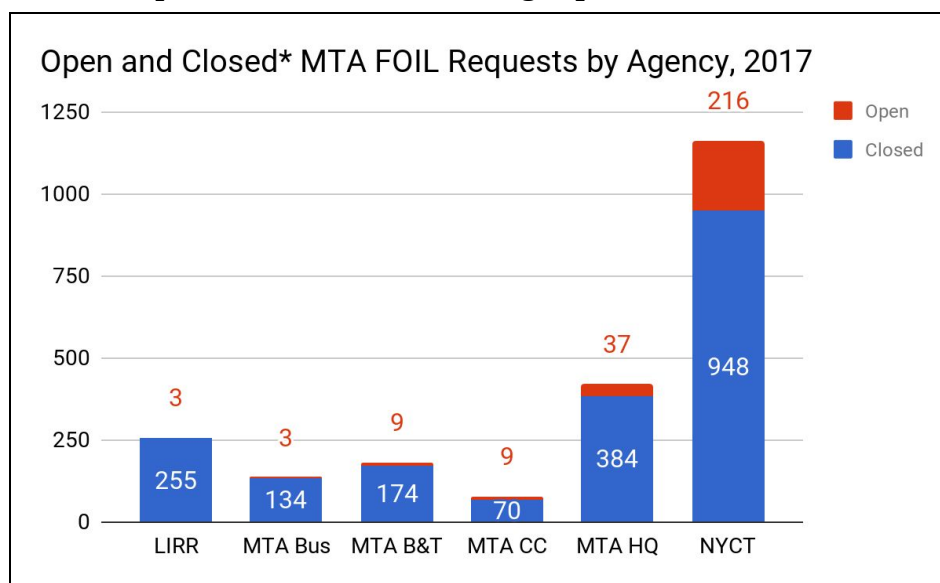
Agency	Response method	Business days until sent, from acknowledgement
MTA Headquarters	Email	53
MTA Bus	Email	58
MTA Bridges and Tunnels	Email	62
MTA Capital Construction	Email	53
MTA Police	Email	53
New York City Transit	Letter	64
Long Island Railroad	Email	52
Metro North Railroad	Email	52

The chart above shows the amount of time required for each of the eight MTA agencies to send Reinvent Albany their FOIL logs, a simple request that, under FOIL, should take 20 business days.

Eight out of eight MTA agencies failed to provide FOIL logs within 20 business days, as required by law, and in some cases did not follow their own deadlines. An appeal was required for each subsidiary/affiliate (for MTA Bus, an appeal was required because they did not send an acknowledgement).

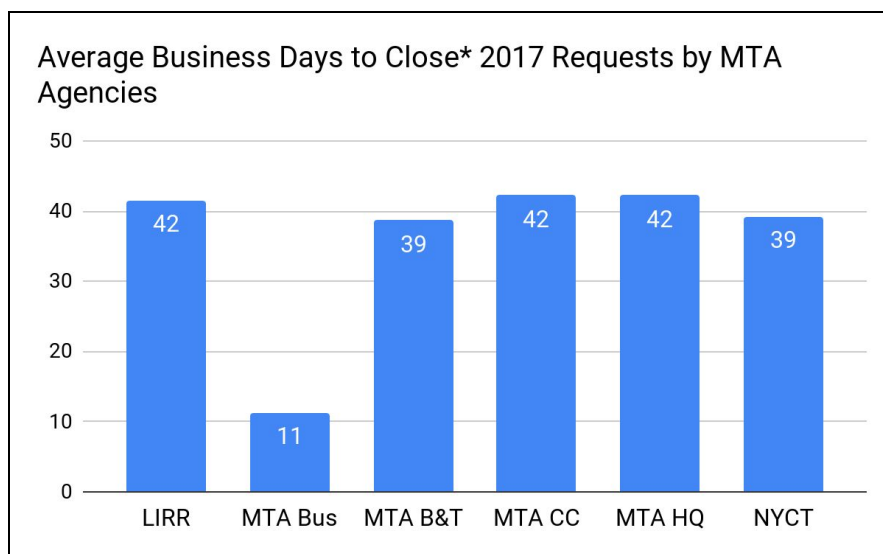
Reinvent Albany's appeal to NYCT was based on their statement that considerably more time - 4 months - was required for the same records that other agencies said only needed 20 or 30 business days. Agencies sent the records without directly responding to the appeal letter, though MTA Headquarters sent an acknowledgement of the appeal stating that agencies would respond individually.

Some agencies - 6 out of the 8 - provided enough data to allow for the percentages of open and closed requests to be analyzed, as well as how long it takes to close requests. Metro North Railroad and MTA Police Department did not provide sufficient data for this analysis. (Please note that "closed" is the agencies' determinations for the requests, may not reflect whether the individual requestor was satisfied that the request was met in full, and may also represent denials of records.) New York City Transit had the highest percentage of open requests (19%), followed by MTA Capital Construction (11%), and then MTA Headquarters (9%). A full listing is provided in the chart below.



**Closed as determined by the agencies. These may contain denials of records or only partially fulfilled requests.*

Data was provided either regarding the receipt of the FOIL or the “date created,” as well as the date closed. Reinvent Albany used these dates where possible to calculate the total number of business days it took to resolve requests. Below is a summary of our findings regarding the time it took to “close” requests.

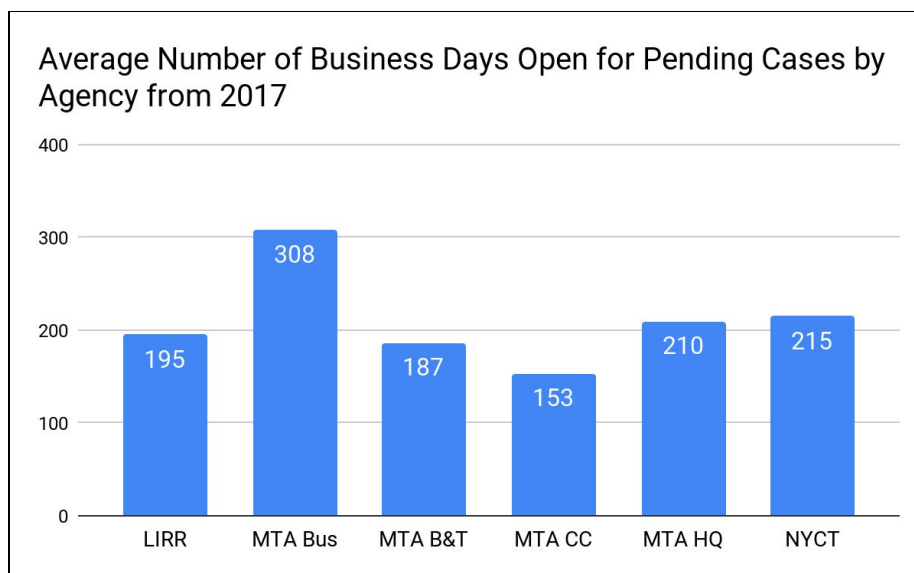


**Closed as determined by the agencies. These may contain denials of records or only partially fulfilled requests.*

More than half (61%) of requests that were “closed” by the agencies were done so within 20 days, the timeframe required under law for simple FOIL requests. The average time to “close” requests was 32 business days (note: this does not include cases that were open from 2017 as of the time we received the FOIL logs). Long Island Railroad and MTA Capital Construction had the longest average time for closing requests at 42 days each, followed by New York City Transit and NYC Bridges and Tunnels at 39 days each. MTA Bus and MTA Headquarters closed cases on average within 11 and 10 days, respectively. In 157 cases (8% of the total), however, requests took more than 100 business days.

For 2017 requests not yet resolved as of the date they were sent to Reinvent Albany¹⁷, 277 cases had remained open. On average, the people making these FOIL requests had been waiting 212 business days. MTA Bus has the highest average length for open cases at 308 days (note however that this is for 3 outstanding requests). As of June 15, 2018, New York City Transit had 216 unfulfilled FOIL requests from 2017. On average, FOILers of NYCT have been waiting 215 days for the records they requested.

¹⁷ Logs were sent between May 30, 2018 and June 15, 2018 by the six agencies.



iii. Format of FOIL Logs

Long Island Railroad, Metro North Railroad and MTA Capital Construction were the only agencies to send information in spreadsheet form; however, MTA Capital Construction initially sent the list in an image-file PDF that was not machine-readable. MTA Police was the only agency which sent a machine-readable PDF. The format of responses is listed below.

Agency	Format of responsive data
MTA Headquarters	Emailed PDF, scanned image
MTA Bus	Emailed PDF, scanned image
MTA Bridges and Tunnels	Emailed PDF, scanned image
MTA Capital Construction	Emailed XLS spreadsheet (originally sent via PDF, but sent in XLS after requested)
MTA Police	Emailed PDF, machine-readable
New York City Transit	Emailed PDF, scanned image
Long Island Railroad	Emailed XLS spreadsheet
Metro North Railroad	Emailed XLS spreadsheet

Though all agencies received the same requests for information, each agency sent different fields of data, though some appeared to have similar fields such as “date

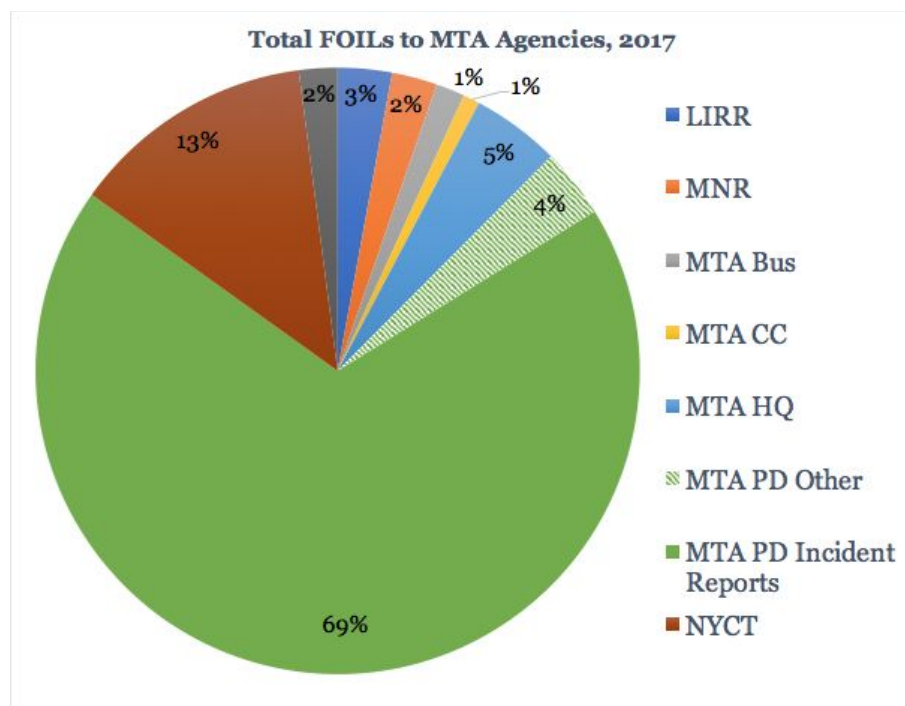
created” and “date closed,” which indicates that some may share systems. A summary of the differing information sent is below.

- Long Island Railroad was the only agency to provide a “Status” column with data including the following designations by the agency: “FOIL Completed,” “FOIL Acknowledg,” “FOIL Received” and “Not / Wrong FOI.”
- MTA Capital Construction was the only agency to send information that included the company of the requestor, which often included vendors. Yet the file that was originally sent was scanned PDF image that included large amounts of blacked out, redacted areas. Upon request, however, they provided a redacted XLS file.
- It appears that some agencies, such as Metro North Railroad, only sent FOIL requests that have been “closed” (the file included an ambiguously titled column of “Done” that had an “X” in each entry), which presumably means those cases closed by the agency, so the volume of requests may be higher. Additionally, “closed” requests may include requests that were denied, or where only partial information was sent, so may not reflect whether the public requestor received all the information asked for.
- New York City Transit sent its log the latest, and with only 3 columns of data. Reinvent Albany previously requested NYCT’s logs in 2013, and at that time received two additional fields of data, including the subject of the request and internal reference number.

A comparison of the information sent is provided below.

Field of Information	MTA HQ	MTA Bus	MTA CC	MTA PD	MNR	LIRR	MTA B&T	NYCT (2017)	NYCT (2013)
<i>Reference Number</i>	No	Yes	No	No	No	No	No	No	Yes
<i>First Name</i>	No	No	Yes	No	No	No	No	No	No
<i>Last Name</i>	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
<i>Requestor Company/ Organization</i>	No	No	Yes	No	No	No	No	No	No
<i>Subject</i>	Yes	Yes	Yes	Partial	No	Yes	No	No	Yes
<i>Status</i>	No	No	No	No	Partial	Yes	Yes	No	No
<i>Request Date/ Received Date</i>	No	No	Yes	No	No	No	Yes	Yes	Yes
<i>Date Created (MTA)</i>	Yes	Yes	Yes	No	No	Yes	No	No	No
<i>Date Closed/ Completed</i>	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
<i>Unknown Date</i>	N/A	N/A	N/A	Yes	Yes	N/A	N/A	N/A	N/A

iv. Volume of Requests



Based on the FOIL logs provided by agencies, the MTA received at least 8,900 requests in 2017¹⁸, with the majority (6,442) coming to the MTA Police Department, mostly for incident reports (6,112 requests). Incident reports are requested through the department's Records Division through a PDF form, which is printed and mailed hard copy to the MTA PD's Records Department, or can be submitted via email as a FOIL request.¹⁹

MTA Agency	Total Entries in 2017 FOIL Logs Provided
Long Island Rail Road	258
Metro North Railroad	216
MTA Bus	137
MTA Bridges and Tunnels	183
MTA Capital Construction	79
MTA Headquarters	421
MTA New York City Transit	1,164
MTA Police Department	6,442
Grand Total	8,900

FOIL requests to the MTA Police Department account for 72% of all requests sent to MTA agencies, with the next highest number, 1,164 (13%) going to New York City Transit. MTA Headquarters received 421 requests (5% of the total). The remaining

¹⁸ The number may be higher, as the FOIL log provided by Metro North Railroad contained only completed FOIL requests. While it is possible that 100% of their requests from 2017 were fulfilled as May 30, 2018 when the logs were sent, all other agencies had open requests as of the time of sending their logs.

¹⁹ MTA Police Department. Request for Police Report. <http://web.mta.info/mta/police/police-report.htm>

agencies - Long Island Railroad, Metro North Railroad, Bridges and Tunnels, MTA Bus, and MTA Capital Construction - together received 10% of requests.

v. Requestors: Who FOILs the MTA

MTA Capital Construction was the only agency to provide details regarding the organizations/companies filing the requests. The majority, 38% (30), came from the press, with one-third, or 33% (26) coming from law firms that either represent contractors or handle personal injury cases, and an additional 11 (14%) come directly from contractors. A summary of the types of organizations/individuals filing requests is below.

<i>Type of Requestor</i>	Number of Requests	Percentage
Academic	4	5%
Advocacy	1	1%
Contractor	11	14%
Financial services	1	1%
Individual	1	1%
Law firm	26	33%
Press	30	38%
Private Investigator/Trial Prep	2	3%
Union	1	1%
Unknown	2	3%
Total	79	100%

d. Past Audits of MTA FOIL Performance - NYS Comptroller

Reinvent Albany reviewed previous audits by the New York State Comptroller, finding that FOIL audits were last conducted in 2006 and 2007 on FOIL performance of New York City Transit and MTA Bridges and Tunnels, respectively.²⁰ Note that these audits

²⁰ Office of the New York State Comptroller. "Metropolitan Transportation Authority - New York City Transit Compliance with Freedom of Information Law Requirements, Report 2006-S-109." 2006. <https://osc.state.ny.us/audits/allaudits/093008/06s109.pdf> and Office of the New York State Comptroller. "Metropolitan Transportation Authority - Bridges and Tunnels Compliance with Freedom of Information Law Requirements, Report 2007-s-50" 2007. <http://osc.state.ny.us/audits/allaudits/093007/07s50.pdf>

are more than a decade old, and as such do not reflect recent best practices in FOIL. Their audits instead focused on compliance with the response deadlines set forth in the Freedom of Information Law, and measured the MTA on their compliance with the deadlines they set for themselves (this is beyond the scope of information provided to Reinvent Albany for our analysis, as we were not sent detailed correspondence records). A summary of the findings is below.

- NYCT - For 50% of requests reviewed, the time to release records took on average 33 days longer than the agency had initially stated. This is consistent with Reinvent Albany's experience requesting FOIL logs.
- NYCT - For open cases as of the time of the audit, they had been open for 136 days on average. This is less than the 212 days found by Reinvent Albany (note however, that we only examined requests submitted in 2017).
- For all MTA agencies, 29 appeals were received for requests, 7 of which were related to NYC Transit. The average time MTA took to make a decision regarding the 29 appeals was 22 business days, or 12 days beyond the FOIL requirement, with late responses ranging from 11 to 66 days late.
- MTA Bridges and Tunnels on average acknowledged requests within one day.
- More than half of acknowledgement letters sent by Bridges and Tunnels did not provide a deadline for when records would be provided, as required by FOIL, and for 10 percent of requests, they were sent later than the 20-day requirement provided under FOIL.

The MTA agreed to the State Comptroller's recommendations in these audits, which generally related to the timeframe for agency responses, as required by FOIL. These audits were conducted prior to the large-scale adoption of open data initiatives, and therefore focused solely on legal compliance with FOIL.

e. Court Proceedings Against MTA on FOIL

Under Article 78 of the New York Civil Practice Law and Rules, proceedings can be commenced to challenge administrative decisions of state agencies. Denials of FOIL requests fall in to this category, and can be brought against agencies like the MTA. Reinvent Albany conducted a review of court cases such as Article 78 proceedings involving the MTA and its affiliates, finding at least 19 FOIL lawsuits involving the MTA or its affiliates since FOIL's inception.²¹ They have involved petitioners seeking

²¹ Reinvent Albany reviewed Article 78 cases from the Committee on Open Government's website, https://www.dos.ny.gov/coog/caselaw_foil.html, from FastCase access via the NYS Library <http://www.nysl.nysed.gov/gate/esubject.htm> New York State Unified Court System (WebCivil Supreme)

information on contracts (vendors), incidents with MTA police or the Transit Adjudication Bureau²², personnel matters, records related to personal injury cases, and included one Article 78 from the press. This is consistent with our findings regarding FOILs filed with MTA Capital Construction, in which a large number of FOILs came from law firms representing contractors or handling personal injury issues.

Cases may also be settled out of court, such as a 2015 case in which the Empire Center sought payroll records that were not provided in a timely manner. The MTA ultimately released the payroll records, and paid \$2,680 in legal fees to Empire Center.²³

Best Practices on Open FOIL and Records Requests

The MTA lags badly behind other governments, both local and federal, in its handling of Freedom of Information Law requests. Online portals for requesting information, tracking requests, and viewing released records have been in existence for a number of years, and provide important models for the MTA to follow. These include the nearby Port Authority of New York and New Jersey's Public Records Portal²⁴, the federal FOIAOnline portal,²⁵ and data released by Montgomery County Maryland via its Open Data portal²⁶. A summary chart of the features of these portals is included at the end of this report, as well as a list of previous reports by Reinvent Albany on FOIL.

<https://iapps.courts.state.ny.us/webcivil/FCASResources> and Supreme Court Records On-line Library, NY County (SCROLL) <http://iapps.courts.state.ny.us/iscroll/>

²² According to its website, the Transit Adjudication Bureau "is responsible for processing summonses issued to individuals who have allegedly violated one or more of the rules governing conduct in the use of subway or bus facilities in the New York City Transit system. Violations are issued by NYC Police Officers and/or NYC Transit Inspectors who enforce the Rules of Conduct." See

<http://web.mta.info/nyct/TransitAdjudicationBureau.html>

²³ Empire Center for Public Policy. "Empire Center Wins in MTA Fight." August 7, 2015

<https://www.empirecenter.org/publications/empire-center-wins-in-mta-fight/> and "MTA to pay legal fees for group that sued over records" August 7, 2015,

<https://www.empirecenter.org/publications/mta-to-pay-legal-fees-for-group-that-sued-over-records/>

²⁴ Port Authority of New York and New Jersey, "Public Records Fulfilled Requests."

<http://corpinfo.panynj.gov/pages/public-records-fulfilled-requests/>

²⁵ FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>

²⁶ Data Montgomery, "Maryland Public Information Act (MPIA) Request Responses," Montgomery County Government.

<https://data.montgomerycountymd.gov/Government/Maryland-Public-Information-Act-MPIA-Request-Respo/99ya-kjir>

At the federal level, combined with FOIAOnline, agencies are increasingly using new technologies to aid staff in sorting through documents to accelerate the fulfillment of requests, such as e-Discovery tools typically used by law firms. The U.S. Justice Department, which oversees Freedom of Information Act implementation at the federal level, has promoted these tools, which are in use by federal agencies.²⁷

New York City has created a central portal for FOIL requests, “Open Records,”²⁸ which allows users to submit requests online in a central place and review others’ requests. The platform, which was developed using open source software, has been positively received by NYC agency FOIL officers in terms of its ease of use and refined since its launch in 2015. A bill in the City Council would create a fully Open FOIL portal, expanding the current portal to include fulfilled records requests.²⁹

Building off of its Open Data initiatives under Executive Order 95³⁰, New York State government in June 2018 announced “Open FOIL NY”³¹, which is a consolidated portal for submitting FOIL requests to up to 3 New York State agencies at a time. A total of 59 other public agencies are participating - including the Empire State Development Corporation, another public authority. In the future, the state plans to provide software to agencies to simplify tracking requests and the posting of information, create a public-facing tracker to allow users to track their requests, receive records online, and identify of records for proactive release.

a. Case Study - Port Authority of New York and New Jersey

The Port Authority of New York and New Jersey (Port Authority) has much in common with the MTA, providing transit services via the PATH train and also operating in the NYC metro area. As a bi-state agency, the Port Authority is subject to both New York and New Jersey law regarding records requests, and as such, has its own Freedom of

²⁷ Clark, Charles. “Could New Software Speed Up FOIA Responses?.” Government Executive. July 17, 2018. <https://m.govexec.com/technology/2018/07/could-new-software-speed-foia-responses/149793/>

²⁸ City of New York. “Open Records.” <https://a860-openrecords.nyc.gov/>

²⁹ New York City Council Intro 328 of 2014, <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1796964&GUID=125D4F8F-E4DE-47CA-882D-2C607A5EA819&Options=ID%7cText%7c&Search=FOIL>

³⁰ Executive Order 95, Governor Andrew Cuomo. <https://www.governor.ny.gov/news/no-95-using-technology-promote-transparency-improve-government-performance-and-enhance-citizen>

³¹ State of New York. “Open FOIL NY.” <https://openfoil.ny.gov/> See also Office of the Governor, “Governor Cuomo Announces Open FOIL.” June 26, 2018. <https://www.governor.ny.gov/news/governor-cuomo-announces-open-foil-ny>

Information (FOI) policy.³² It made major updates to its Freedom of Information (FOI) policy in 2012, making proactive disclosure a hallmark of the effort. The Port Authority now posts on its website fulfilled freedom of information requests, including all communications, the names of the requestor and the released documents. These items are searchable via a detailed description for each request, though the records themselves are not externally searchable. The Port Authority also has a detailed, standardized response form that makes it very clear to the public the reasons why records may not be immediately available, and the category under which the request falls.

The former Executive Director of the Port Authority, Pat Foye (who is now the MTA's President), noted the benefits of its improved records access policy in an announcement of the changes:

*"The new FOI Code streamlines, modernizes, and clarifies an out-of-date system that was clearly not meeting the public's needs. By holding ourselves to a higher standard of transparency and by voluntarily posting online thousands of documents now, we make the agency a stronger and more accountable institution."*³³

The Port Authority's then-Vice Chairman, Scott Rechler (now a member of the MTA Board) noted the following:

*"This is an exemplary step forward in making the Port Authority more accountable and reaching our goal of setting the best-in-class standards...This agency should never settle for mediocrity when it comes to letting the public know how we are carrying out our mission and our responsibilities."*³⁴

In an interview with Reinvent Albany, the Port Authority reported that it receives approximately 1,200 FOI requests on an annual basis, with 9 staff working on FOI requests, 4 of whom work on on a near full-time basis, including 2 lawyers. Approximately 70-80% of FOI requests are now submitted online, while in the past a larger number came in via paper. The greatest savings realized have been in staff time

³² Note that new legislation was enacted by New York and New Jersey to reconcile application of both laws. For more information see this explainer from the New Jersey Foundation for Open Government: <http://njfog.org/2017/07/04/nj-legislature-clarifies-intent-of-port-authority-public-records-law/> and the current FOI code, which was updated in December 2017:

<https://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/>

³³ Port Authority of New York and New Jersey. "Port Authority Makes Major Enhancements to How Agency Will Release Public Records to Provide Greater Transparency and Accountability." March 29, 2012 http://www.panynj.gov/press-room/press-item.cfm?headLine_id=1553

³⁴ Ibid.

and supplies. The process used to entail burning CDs or printing documents and sending them via mail due to the large size of the files. By posting information online, the staff is now able to be more efficient, and the public is better served.

According to the staff, in spite of the ease of filing requests, it is likely that the number of requests have remained largely level, as the public finds more records online rather than requesting them.³⁵ The Port Authority has also minimized the volume of requests received by its FOI officers by using a third-party portal for requests for motor vehicle crash reports.³⁶

The Port Authority has also been continually refining its operations, as it recently moved its FOI staffing to the General Counsel's office from its Board Secretary, and is also examining the creation of a website that contains a "reading room" of reports and commonly requested information.

b. Case Study - Incident Reports

Incident reports related to motor vehicle crashes are a common request of government, as they may be required for insurance claims to be processed. Several states, including New York and Pennsylvania, have created online portals for the public and those acting on their behalf (lawyers or insurance companies) to privately request incident reports. The Port Authority also provides private access to incident reports through a contract with a third-party, Lexis Nexis.

The New York State Department of Motor Vehicles (NYS DMV) has a portal for searching incident reports, allowing users to select multiple options for viewing records dating back 4 years. This portal aggregates reports filed by car drivers as well as police, either electronically or via paper. For individuals seeking access to their private records, the website notes that there is a legally mandated fee for searching (\$7) and/or viewing individual records (\$15). The site also provides the ability to search for a list of motor vehicle crash reports in a county on a given date without charge for statistical analysis purposes. This listing does not provide any personal information, providing only the date of incident, incident number, type of incident report filed, and license plate number.³⁷

³⁵ Reinvent Albany interview with Port Authority of New York and New Jersey staff Steve Coleman, Press Office, and Stephen Marinko, Assistant General Counsel, May 21, 2018.

³⁶ For more information see <https://www.panynj.gov/police/police-reports.html>

³⁷ New York State Department of Motor Vehicles. "Order and Access Motor Vehicle Accident Reports" <https://transact2.dmv.ny.gov/AccidentSales/>

The NYS DMV provides an explainer about how to use the portal, and notes the expected time frames under which reports are made available, depending on how they are filed. For example, the website notes that it will take 14 days for records filed by the New York Police Department (NYPD) to be posted on the site (the NYPD has a separate Collision Portal that can be accessed via their website³⁸).³⁹

The Pennsylvania State Police in September 2017 launched an Online Crash Report Requests website⁴⁰ to replace their paper-based request system, now allowing reports to be privately requested online with a case number or a last name together with the incident date. Reports cost the public \$22, which goes to the State Police to recoup the staff processing costs. The portal was developed by in-house IT staff, using their existing electronic incidents reporting software, TraCS, and creating a public-facing website.⁴¹ The State Police Commissioner noted the value to the public of the portal in the release:

“...The paperwork associated with even a minor crash can feel overwhelming. By embracing technology and creating an online portal to obtain relevant documents, we hope to relieve some of the stress associated with a motor vehicle crash.”

The potential volume of requests through the portal is large - the release notes that in 2016, the Pennsylvania State Police investigated 79,704 crashes.⁴²

Detailed Recommendations

The MTA should adopt an Open FOIL platform using best practices from other jurisdictions and within New York State. This will vastly increase efficiency of the MTA’s Freedom of Information Law process and produce significant cost savings and better service to the public. By making all responses publicly available in a searchable and machine-readable format, the MTA will see a sharp reduction in duplicative requests and staff time required to process them.. In addition, an automated dashboard system will give managers a complete picture of their FOIL compliance at all time.

The OpenFOIL portal should have the following features:

³⁸ New York Police Department. Collision Reports. <https://collisionreport.nypdonline.org/>

³⁹ New York State Department of Motor Vehicles. “Get an Accident Report.”

<https://dmv.ny.gov/get-accident-report>

⁴⁰ Pennsylvania State Police. “Online Crash Report Requests Portal.”

<https://crashreports.psp.pa.gov/home>

⁴¹ Interview with Cop. Adam Reed, Pennsylvania State Police. September 4, 2018.

⁴² Pennsylvania State Pressroom. “Pennsylvania State Police Makes Crash Reports Available Online” September 14, 2017. <https://www.media.pa.gov/Pages/PA-State-Police-Details.aspx?newsid=327>

1. **A central portal for the public to submit information requests to all MTA subsidiaries/affiliates and view all public requests**, expanding upon the open source software from the NYC Open Records portal to include:
 - The names and organizations of those who submit requests;
 - Public tracking of the status of all requests;
 - Notifications to requestors and FOIL staff;
 - Posting of communications by FOIL staff regarding the status of requests, and release or denial of information;
 - Automatic posting of records released in machine-readable formats; and
 - Searchability of requests, communications, and released records, creating ease of use for individuals looking for records
2. **Links to a new, online portal for MTA Police Incident reports**
3. **Requests sent to the wrong MTA agency** should be automatically forwarded to the correct agency.
4. **A public directory of MTA FOIL Officers, including email and phone.**
5. **Access via API to all FOIL portal data.**
6. **Creation of an online “Reading Room” of Frequently FOILED records and other reports of public interest.**
7. **MTA FOIL Performance Metrics, per FOIAOnline:**
 - Requests Received, Processed, and Pending
 - Median Number of Days for Processed Perfected Requests
 - Requests Fully Granted
 - Requests Partially Granted/Partially Denied
 - Requests Fully Denied
 - Number of Denials Based on Exemptions
 - Number of Denials Based on Reasons Other than Exemptions
8. **Annual report to MTA Board on MTA FOIL operations, performance and plans for improvement.**
9. **Relevant Data Sets should be posted to the NYS Open Data Portal including:**
 - Current and historic FOIL requests from the portal
 - MTA FOIL Performance Metrics
 - Any tabular data released via FOIL responses

The MTA should create **an in-house MTA Police incident reports portal**, using the models from the NYS DMV and Pennsylvania State Police, allowing the public to privately request incident reports online. This should be publicized on the MTA Open FOIL portal. This portal could save the MTA significant time processing other FOIL requests, given that two-thirds of current FOIL requests involve incident reports.

Appendix 1: Summary of “OpenFOIL” Websites

(As of October 2018)

Category of Request	Information Published on Portal	MTA	NYC Open FOIL Bill	NYC Open Records	Port Authority NY/NJ	Chicago	Federal FOIA online	Montgomery County MD
	Link to site:	<u>URL</u>	<u>URL</u>	<u>URL</u>	<u>URL</u>	<u>URL</u>	<u>URL</u>	<u>URL</u>
Requestor and Original Request	Requests May Be Filed On Portal	No	Yes	Yes	Yes	No	Yes	No
	Name and Organization of Requestor	No	No	No	Yes	Yes	Yes	Yes
	Search for Requestor Names?	No	No	No	Yes	Yes	Yes	Yes
	Content of Original Request	No	Yes	No	Yes	No	Yes	Yes
	Summary of Content of Request	No	N/A	Partial	Yes	Yes	N/A	Yes
	Search for Content of Request?	No	Yes	Summary only	Summary only	Summary only	Yes	Yes
Agency Communication	Date of All Correspondence	No	Yes	Yes	Yes	Yes	Yes	Yes
	Notifications	No	Yes	Yes	No	No	Partial	No
	Agency response(s) to request	No	Yes	No	Yes	No	Yes	Yes
Records	Responsive records	No	Yes	Partial	Yes	No	Yes	Yes
	Records are Downloadable	No	Yes	Partial	Yes	No	Yes	Yes
	Responsive Records are Externally Searchable	No	Yes	No	No	No	Yes	No
	Records are in Native Formats	No	Yes	Partial	No	No	Yes	No
Transparency	FOIL Statistics	No	Yes	Partial	No	No	Yes	No
	API Access	No	Yes	No	No	Yes	No	Yes
	FOIL Officer Directory	Yes	Yes	No	No	Yes	No	No

Appendix 2: Previous FOIL Reports Published by Reinvent Albany

Listening to FOIL

Using FOIL Logs to Guide the Publication of Open Data

An Analysis of the 2013 FOIL Logs of the NYS Department of Environmental Conservation

July 2014

<https://reinventalbany.org/wp-content/uploads/2014/07/Final-DEC-FOIL-Analysis.pdf>

Beyond Magic Markers

Faster, Less Expensive Freedom of Information Law in New York City

June 2014

<https://reinventalbany.org/wp-content/uploads/2014/06/beyond.magic.markers.2014.pdf>

Appendix 3: Correspondence from MTA for Contracts FOIL

(see next page)



Rachael Fauss <rachael@reinventalbany.org>

Request for MTA NYCT and CCC contracts [Incident: 180129-000366]

Carby, Kimlyn <kcarby@mtahq.org>

Wed, May 2, 2018 at 3:11 PM

To: Rachael Fauss <rachael@reinventalbany.org>

Hi Rachel,

I will be sending you the information we are able to obtain next week.

Best.

Kimlyn Carby

 212-878-1039

 Please consider the environment before printing this email

From: Rachael Fauss [mailto:rachael@reinventalbany.org]

Sent: Monday, April 30, 2018 9:25 AM

To: Carby, Kimlyn <kcarby@mtahq.org>

Subject: Re: Request for MTA NYCT and CCC contracts [Incident: 180129-000366]

Hi Kimlyn,

I wanted to check on the status of this request, as 30 business days landed us at approx. April 26th.

Please let me know if the data is available.

Best,

Rachael

On Wed, Mar 21, 2018 at 10:35 AM, Carby, Kimlyn <kcarby@mtahq.org> wrote:

You're welcome Rachel.

Kimlyn Carby

 212-878-1039

 Please consider the environment before printing this email

From: Rachael Fauss [mailto:rachael@reinventalbany.org]

Sent: Wednesday, March 21, 2018 8:44 AM

To: Carby, Kimlyn <kcarby@mtahq.org>

Subject: Re: Request for MTA NYCT and CCC contracts [Incident: 180129-000366]

Thank you for your response, Kimlyn. It is appreciated.

On Thu, Mar 15, 2018 at 2:44 PM, Carby, Kimlyn <kcarby@mtahq.org> wrote:

Dear Ms. Fauss,

Sorry for the delay in responding to this email - I was out of the office. Please be advised that we are diligently working on obtaining documents responsive to your January 29, 2018 FOIL request. This has turned out to be more arduous and time-consuming than I originally expected. As a result, we will need an additional thirty (30) business days from today's date.

We will continue to update you as to the status of our response.

Best regards,

Kimlyn Carby



Please consider the environment before printing this email

From: Rachael Fauss [<mailto:rachael@reinventalbany.org>]

Sent: Tuesday, March 13, 2018 11:31 AM

To: MTA Email <mta_nyc@custhelp.com>; Carby, Kimlyn <kcarby@mtahq.org>

Subject: Re: Request for MTA NYCT and CCC contracts [Incident: 180129-000366]

Ms. Carby,

I am writing to follow up on your communication from January regarding the anticipated time of a response for my FOIL request, tracking number #180129-000366.

Please advise as to the time I may expect a response.

Thank you,

Rachael

On Mon, Feb 5, 2018 at 10:05 AM, MTA Email <mta_nyc@custhelp.com> wrote:



Recently you requested personal assistance from our on-line support center. Below is a summary of your request and our response.

We are continuing to work on your issue. To update your question with additional information, [click here](#)

Subject

Request for MTA NYCT and CCC contracts

Response By Email (Kimlyn Carby) (02/05/2018 10:05 AM)

Dear Ms. Fauss,

This will acknowledge receipt of your January 29, 2018 FOIL request.

We will review our files to identify responsive records that are subject to disclosure pursuant to FOIL and anticipate being able to reply within approximately thirty (30) business days.

Very truly yours,

Kimlyn Carby

Paralegal

kcarby@mtahq.org

Customer By CSS Web (Rachael Fauss) (01/29/2018 12:16 PM)

Dear Records Access Officer:

Please email the following records to me at rachael@reinventalbany.org:

A listing of all MTA New York City Transit and MTA Capital Construction Company contracts from 2008 to present, including but not limited to a separate listing of all associated amendments to contracts, in machine-readable, tabular form (CSV or XLSX) that includes the following information:

Vendor name
Vendor description
Vendor unique identifier
Vendor city, state, zip
Department/facility
Contract number (including modification number, where appropriate)
Contract approval date
Contract start date
Contract end date
Contract term
Award Date
Original contract amount
Current contract amount
Amount expended to date
Amount expended by fiscal year
Current or Outstanding Balance
Amendment amount
Total of prior amendments
Procurement type (personal service, design, construction, etc)
Awards process (competitive, noncompetitive, etc.)
Solicitation type (RFP, Bid, Modification)
Number of Bids or Proposals Received
Whether Vendor is a MWBE
Solicited MWBEs
Number of MWBEs Proposals
Funding source (operating, capital, federal, other)

Please note that this information is not publicly available via the Authority Budget Office's Procurements information which can be downloaded from the state open data portal. This ABO data does not provide the contract number, or the subdivision of the MTA, or amendment information.

The requested information is also not available on the State Comptroller's Open Book NY website, which does not provide detailed information about awards processes, bids, amount expended to date, original contract amount, and other more detailed financial information.

The requested information is partially contained in non-tabular form via pdfs of MTA Board and Committee Books, which provide schedules of contracts and modifications for Board Approval. The data populating the schedules is presumably available from a larger contracts database.

If my request is too broad or does not reasonably describe the records, please contact me via email so that I may clarify my request, and when appropriate inform me of the manner in which records are filed, retrieved or generated.

If it is necessary to modify my request, and an email response is not preferred, please contact me at the following telephone number: [518-859-5307](tel:518-859-5307)

If for any reason any portion of my request is denied, please inform me of the reasons for the denial and provide me with the name, address and email address of the person or body to whom an appeal should be directed.

Thank you,

Rachael Fauss
Senior Research Analyst
Reinvent Albany
[148 Lafayette Street. 12th Floor](#)
[New York, NY 10013](#)
rachael@reinventalbany.org
[518-859-5307](tel:518-859-5307)

Question Reference # 180129-000366

- Date Created: 01/29/2018 12:16 PM
- Date Last Updated: 02/05/2018 10:05 AM
- Status: FOIL Acknowledged



Rachael Fauss <rachael@reinventalbany.org>

Request for MTA NYCT and CCC contracts [Incident: 180129-000366]

MTA Email <mta_nyc@custhelp.com>

Reply-To: MTA Email <mta_nyc@custhelp.com>

To: rachael@reinventalbany.org

Wed, May 16, 2018 at 5:25 PM



Recently you requested personal assistance from our on-line support center. Below is a summary of your request and our response. If this issue is not resolved to your satisfaction, you may reopen it within the next days. Thank you for allowing us to be of service to you.

[To access your question from our support site, click here](#)

Subject**Request for MTA NYCT and CCC contracts****Response By Email (Kimlyn Carby) (05/16/2018 05:25 PM)**

Hi Rachael,

In response to your FOIL request, Reference No. **180129-000366**, please find a list of all NYCTA and MTACC contracts starting from January 1, 2008 to date.. Thank you for your continued patience.

Please note that it was an especially arduous search in finding the right persons or group to fill this request. This particular FOIL was beyond a simple query of our Database. We likely would have needed an enhancement request and IT development to pull both contract and contract amendment data and payment data which is beyond the scope of our FOIL responsibility.

You may appeal this determination in writing, within thirty (30) days, to MTA Managing Director, Veronique Hakim, 2 Broadway, New York, NY 10004

This completes the MTA's response to your FOIL request and this FOIL request will now be closed.

Very truly yours,

Kimlyn Carby
kcarby@mtahq.org

Customer By CSS Email (Rachael Fauss) (03/13/2018 11:31 AM)

Ms. Carby,

I am writing to follow up on your communication from January regarding the anticipated time of a response for my FOIL request, tracking number #180129-000366.

Please advise as to the time I may expect a response.

Thank you,

Rachael

--

Rachael Fauss
Senior Research Analyst
Reinvent Albany
148 Lafayette St, 12th Floor
New York, NY 10013
Cell: 518-859-5307
rachael@reinventalbany.org

Response By Email (Kimlyn Carby) (02/05/2018 10:05 AM)

Dear Ms. Fauss,

This will acknowledge receipt of your January 29, 2018 FOIL request.

We will review our files to identify responsive records that are subject to disclosure pursuant to FOIL and anticipate being able to reply within approximately thirty (30) business days.

Very truly yours,

Kimlyn Carby
Paralegal
kcarby@mtahq.org



May 31, 2018

Veronique Hakim
MTA Managing Director
MTA Headquarters
2 Broadway
New York, NY 10004

Re: Freedom of Information Law Appeal: Request #180129-000366

Dear Ms. Hakim:

On January 29, 2018, I made a request to MTA Headquarters for a listing of all MTA New York City Transit and MTA Capital Construction Company contracts from 2008 to present, including but not limited to a separate listing of all associated amendments to contracts, in machine-readable, tabular form (CSV or XLS) that includes the following information:

- Vendor name
- Vendor description
- Vendor unique identifier
- Vendor city, state, zip
- Department/facility
- Contract number (including modification number, where appropriate)
- Contract approval date
- Contract start date
- Contract end date
- Contract term
- Award Date
- Original contract amount
- Current contract amount
- Amount expended to date
- Amount expended by fiscal year
- Current or Outstanding Balance
- Amendment amount
- Total of prior amendments

- Procurement type (personal service, design, construction, etc)
- Awards process (competitive, noncompetitive, etc.)
- Solicitation type (RFP, Bid, Modification)
- Number of Bids or Proposals Received
- Whether Vendor is a MWBE
- Solicited MWBEs
- Number of MWBEs Proposals
- Funding source (operating, capital, federal, other)

The webform assigned my request an “incident number,” #180129-000366.

I received an acknowledgement via email on January 29th, the same day as my request, that I would receive a response in 30 business days. On March 14th, I received a subsequent response that another 30 business days were needed, which is April 26th. Ultimately, after following up via email and phone, I received an email with an attached excel spreadsheet for my request on May 16th, 76 business days after my request was first submitted.

The response contains only some of the data requested and is missing a number of categories of information, and incomplete information for other categories. The attached spreadsheet contains a listing of all the information that has been partially or fully denied, and the sources of where the MTA has published this information. It is obvious that the MTA has a database of contract information that it draws on for MTA Board Books and data sent to the Authorities Budget Office¹. However, the MTA Board Books only provide information in PDF, and overall the MTA does not include enough information to link data together to provide a complete picture of contracts. For instance, the procurements listing for the MTA that is provided online by the Authorities Budget Office does not include contract numbers. The reason for our request is to get the complete contract data in a machine readable format. The MTA should already be providing this tabular data online as part of complying with the Governor’s Open Data Executive Order 95 of 2013.

Given that this information is known to be held by the MTA in other documents, I consider the request to have been denied, and I am appealing on this basis. Your response stated:

"Please note that it was an especially arduous search in finding the right persons or group to fill this request. This particular FOIL was beyond a simple query of our Database. We likely would have needed an enhancement request and IT development to pull both contract and contract amendment data and payment

¹ The Authorities Budget Office provides submissions of procurement reports from agencies, including the MTA here: <https://www.abo.ny.gov/publicauthoritydata/PublicAuthorityDataProcurementReport.html>

data which is beyond the scope of our FOIL responsibility."

Given that some of this data is provided in spreadsheet form via the ABO Procurements Listing, it is not credible that some categories of information would have required IT development. Further, amendment data is currently provided in the MTA Board Books, but tracking it is nearly impossible for a member of the public given that it is provided in thousands of PDF pages. Surely the MTA is able to collate this data in a manner that is far less "arduous" than it would be for the public.

As required by the Freedom of Information Law, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of the receipt of an appeal. If the records are denied on appeal, please explain the reasons for the denial fully in writing as required by law.

In addition, please be advised that the Freedom of Information Law §89(4) directs that all appeals and the determinations that follow be sent to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, New York 12231.

Sincerely,

Rachael Fauss
Senior Research Analyst
Reinvent Albany
148 Lafayette Street, 12th Floor
New York, NY 10013
rachael@reinventalbany.org
Cell: 518-859-5307

Cc. Robert Freeman, Executive Director, Committee on Open Government

Attachment - Reinvent Albany List of Denied MTA Contracts Data - #180129-000366

Reinvent Albany Contract Data Request - #180129-000366			
Request	Full or partial denial of information	Missing information/ how information denied	Where MTA provides this information partially online elsewhere
Contract end date	Partial denial	Data not provided for all contracts	MTA Board Books; Procurements list submitted to Authorities Budget Office*
Current contract amount	Partial denial	Data provided contains only one column of budgetary information, the maximum contract amount	MTA Board Books
Procurement type (personal service, design, construction, etc)	Partial denial	Not provided for all contracts	MTA Board Books; Procurements list submitted to Authorities Budget Office
Awards process (competitive, noncompetitive, etc.)	Partial denial	Not provided for all contracts	MTA Board Books; Procurements list submitted to Authorities Budget Office
Contract number (including modification number, where appropriate)	Partial denial	Data provided does not include any amendments or modification	MTA Board Books
Funding source (operating, capital, federal, other)	Partial denial	Only includes whether federally funded	MTA Board Books
Contract term	Full denial	Not provided	MTA Board Books
Original contract amount	Full denial	Not provided	MTA Board Books
Amount expended to date	Full denial	Not provided	Procurements list submitted to Authorities Budget Office
Amount expended by fiscal year	Full denial	Not provided	Procurements list submitted to Authorities Budget Office
Current or Outstanding Balance	Full denial	Not provided	MTA Board Books; Procurements list submitted to Authorities Budget Office
Amendment amount	Full denial	Not provided	MTA Board Books
Total of prior amendments	Full denial	Not provided	MTA Board Books
Solicitation type (RFP, Bid, Modification)	Full denial	Not provided	MTA Board Books
*The Authorities Budget Office provides submissions from agencies, including the MTA here:			
https://www.abo.ny.gov/publicauthoritydata/PublicAuthorityDataProcurementReport.html			