



March 15, 2021

Comptroller Thomas DiNapoli

Via Email

Re: Please Conduct Audit of NYS Department of Health's Compliance with the Freedom of Information Law (FOIL)

Dear Comptroller DiNapoli,

We ask that you conduct an audit of the New York State Department of Health's (DOH) compliance with the Freedom of Information Law (FOIL) from January 1, 2015 to the present, including during the period of the COVID-19 pandemic.

The Comptroller's office regularly conducts audits to identify operational weaknesses. Given the recent public furor over COVID-19 nursing home resident death data, we believe there is an enormous public interest in DOH records related to the pandemic. We ask that you also consider additional audits of FOIL compliance at other agencies, learning from and building off of your review of the DOH.

The intent of the Freedom of Information Law is to ensure that New Yorkers have access to government records that enable them to evaluate how the government is spending taxpayer dollars and providing services to the public. The need for transparency and access to government records is especially important as our state government responds to the greatest public health crisis in our lifetimes.

The Office of the State Comptroller's (OSC) Division of State Government Accountability has conducted past audits on compliance with FOIL, most recently for the Capital District Transportation Authority (CDTA)¹ in 2020, and in 2006 regarding MTA New York City Transit's compliance with FOIL.² These audits have examined internal FOIL protocols and the extent to which statutory deadlines were met by the authorities.

¹ <https://www.osc.state.ny.us/files/state-agencies/audits/pdf/sga-2021-19s70.pdf>

² <https://web.osc.state.ny.us/audits/allaudits/093008/06s109.pdf>

Additionally, Governor Cuomo announced in June 2018 the launch of Open FOIL NY,³ a website that allowed for centralization of FOIL requests to multiple agencies. The “future steps” identified at that time included facilitating FOIL request processing and identification of frequently requested records for proactive release. Since the Open FOIL NY launch, however, no independent evaluation has been conducted of whether the new system has improved FOIL response times by agencies, or whether any of the “future steps” have been implemented.

We again urge that you use your audit authority to review FOIL compliance at the Department of Health. The Comptroller’s office can play an important role in both evaluating the rollout of Open FOIL NY via the DOH, as well as the DOH’s compliance with FOIL during and prior to the COVID-19 pandemic. Should you wish to discuss this matter further, please contact Rachael Fauss, Senior Research Analyst at Reinvent Albany, rachael@reinventalbany.org.

Sincerely,

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³ <https://www.governor.ny.gov/news/governor-cuomo-announces-open-foil-ny>