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## **Freedom of Information Policy and Procedure**

The Port Authority of New York and New Jersey recently has undertaken a number of actions to promote greater transparency and accountability in its dealings and communications with the public, recognizing that an informed citizenry enriches the function of government. Over the last two years, the Board has acted to increase openness and transparency by implementing a number of governance reforms, including revising the agency's Open Meetings Policy (in December 2006) and by amending and restating the By-Laws (in July 2007). At the request of the Commissioners, staff has continued to review agency practices and procedures.

The amended and restated By-Laws, as most recently amended in May 2008, provide that the Port Authority shall follow a Freedom of Information Policy that is consistent with the freedom of information laws of the States of New York and New Jersey. To that end, staff has undertaken and recently completed a review of the Port Authority's Policy and Procedure relating to Freedom of Information, first adopted by the Committee on Operations in 1977 and last amended in 1992, with particular emphasis on procedures and exemptions from disclosure. Staff recommended a number of procedural changes, which are designed to provide open, timely and uninhibited access to the Port Authority's (and its subsidiary corporations') public records and to reflect the New York Freedom of Information Law and New Jersey's Open Public Records Act.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Bauer, Blakeman, Chasanoff, Coscia, Hochberg, Holmes, Mack, Pocino, Sartor, Silverman and Steiner voting in favor; none against:

**RESOLVED**, that, as the governing body of The Port Authority of New York and New Jersey, the Commissioners express our continuing commitment to transparency in the conduct of the public's business, so that the Port Authority and its employees may hold the respect and confidence of the people of the States of New York and New Jersey; and it is further

**RESOLVED**, that the activities and decisions of the Port Authority (and its subsidiary corporations) are the public's business, and, therefore, the public should have access to the records of the Port Authority (and its subsidiary corporations); and it is further

**RESOLVED**, that the resolution of the Committee on Operations adopted on August 13, 1992, relating to Freedom of Information (appearing at pages 19, et seq. of the Committee minutes of that date), shall be, and it hereby is, rescinded; and it is further

**RESOLVED**, that all records of the Port Authority (and its subsidiary corporations), including records stored electronically, such as on computer

tapes or disks, shall be made available for public inspection and/or copying, except that such access may be denied as to records or portions thereof which:

- (1) are rendered confidential or privileged, or are exempted from disclosure by federal or state law or regulations or rules or decisions of court;
- (2) if disclosed, would constitute an unwarranted invasion of personal privacy of an individual or individuals (including personnel, medical or disciplinary records and any lists of names and addresses to be used for profit or financial gain);
- (3) if disclosed, would impair present or future awards or negotiations, including collective bargaining or negotiations of leases, permits, contracts or other agreements;
- (4) are trade secrets or are maintained for the regulation or supervision of commercial enterprise which, if disclosed, would cause injury to the competitive position of the enterprise;
- (5) are compiled for public safety, law enforcement or official investigatory (internal or external) purposes, when their disclosure may affect public safety, interfere with investigations, audits, law enforcement investigations, or judicial or disciplinary proceedings, or deny or prejudice a right to a fair trial or impartial adjudication, or identify a confidential source or disclose confidential information relating to an audit or a civil, criminal, or internal or external disciplinary investigation;
- (6) if disclosed, could endanger the life or safety of any person or jeopardize the safety and/or security of any facility or information technology system;
- (7) are inter-agency or intra-agency records other than statistical or factual tabulations of data, provided that instructions to staff that affect the public or final agency policy or determinations may not be exempted; or
- (8) are examination questions or answers which are requested prior to final administration of such questions;

and it is further

**RESOLVED**, that the Secretary of the Port Authority shall maintain a reasonably detailed current list, by subject matter, of all records in the possession of the Port Authority (and its subsidiary corporations), whether

or not available hereunder; and shall, under the direction of the Executive Director, administer this policy pursuant to the following procedures:

## **Procedures**

### **A. Requests**

Requests for inspection or copying of public records of the Port Authority may be made to the Secretary of the Port Authority (or the Secretary's designee), and must contain sufficient information to identify the particular record sought. Such requests may be made:

- (1) in person, during regular business hours at the Port Authority's main office;
- (2) by postal or private delivery, addressed to the Secretary, The Port Authority of New York and New Jersey, at the Port Authority's main office, Attention: FOI Administrator;
- (3) by facsimile, addressed to the Secretary, The Port Authority of New York and New Jersey, at the Port Authority's main office, Attention: FOI Administrator, at the telephone extension designated for this purpose; or
- (4) by electronic means, such as e-mail addressed to the Secretary, The Port Authority of New York and New Jersey, at the Port Authority's main office, Attention: FOI Administrator, at the e-mail address designated for this purpose, or through the Port Authority's Internet site.

### **B. Determination of Availability**

The Secretary of the Port Authority, or the Secretary's designee, shall respond to each request within five (5) business days of the receipt thereof by:

- (1) granting access to records requested in whole or in part,
- (2) denying access to records requested in whole or in part and providing reason(s) for denial, or
- (3) acknowledging the receipt of the request and providing a statement of the approximate date, within twenty (20) business days from the initial response, when the request will be granted or denied.

If the request is granted, the person making the request shall also be notified of the time and place when the records requested are to be made available for inspection and copying. Records may be inspected only under the supervision of such officers or employees of the Port Authority as may be designated by the Secretary, at the Port Authority's main office, during regular business hours, or at such other times or places as are deemed convenient by the Secretary.

If the request is denied, the person making the request shall be provided with the reason(s) for denial.

### **C. Appeals**

Any person who is denied access to a record of the Port Authority (or its subsidiary corporations) or who is denied copies of such a record may, within thirty (30) business days from such denial, file an appeal, in writing with the Port Authority's General Counsel. Such written appeal shall be accompanied by a memorandum in support thereof, setting forth the reasons why the requester is entitled, under the Freedom of Information Policy and Procedures, to access to or copies of the record requested.

General Counsel (or General Counsel's designee) shall decide such appeals in writing, within seven (7) business days of the receipt of such an appeal by General Counsel.

### **D. Fees**

When a requester seeks copies of records rather than access to them, such records will be copied by the Port Authority, if practical, for a fee of no less than twenty five cents (25¢) for each page, and no less than five dollars (\$5.00) for records provided in compact disk (or other comparable) format. Where practical, and upon request, the Port Authority may provide responses in electronic format. The Secretary of the Port Authority may, from time to time, establish appropriate fees for copies provided in other formats.

If it is not practical for the Port Authority to copy requested records, they will be reproduced commercially, and the person requesting the copy will be charged for the full cost of such commercial reproduction.

A fee of no less than two dollars (\$2.00) will be charged for certification by the Secretary of the Port Authority as to the authenticity of any document, or that a record of which the Port Authority would be the custodian cannot be found.

In the event a search for records requested will require more than one "person hour," or in the event a search of computer records will require programming that would take more than one "person hour," the person requesting the records will be advised of the anticipated cost in advance, which cost will be charged based on the labor cost of personnel assigned to such search or programming, as determined for such search by the Secretary of the Port Authority.

**E. Payment of Fees**

All fees and costs shall be paid in cash, or by certified check, money order or cashier's check, or by any other means deemed reasonable by the Secretary of the Port Authority. Checks or money orders are to be made payable to "The Port Authority of New York and New Jersey." Payment must be received in advance of the search or at the time of the delivery for inspection or copying of any records or the Secretary's certification; and it is further

**RESOLVED**, that the Executive Director, the Secretary of the Port Authority, and General Counsel be and each hereby is authorized, for and on behalf of the Port Authority, to take such actions with respect to the public inspection and copying of available records of the Port Authority (and its subsidiary corporations), consistent with this policy, as may be necessary or appropriate in the best interest of the Port Authority or of the public.

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