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PORT AUTHORITY OF NY & NJ  
OFFICE OF THE SECRETARY

2011 OCT 24 P 3:02

October 21, 2011

**Via Certified Mail, Return Receipt Requested**

Secretary  
Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, NY 10003  
Attn: FOI Administrator

Dear Freedom of Information Officer:

The Eastern Environmental Law Center ("EELC") writes on behalf of the Coalition for Healthy Ports ("the Coalition") regarding Reference Number 12337. The Coalition received the Port Authority of New York and New Jersey's ("the Port Authority") response to Reference Number 12337 on August 26, 2011. In assessing the response received from the Port Authority, however, the Coalition found that some of the documents were either inadequate or non-responsive to the material we sought after in our initial request.

In Reference Number 12337, we requested the following information from the Port Authority:

1. Any and all policies regarding eligibility for the Truck Replacement Program;
  - The Port Authority responded by merely referring the Coalition to its website to view its very basic and generic eligibility requirements. The Coalition is submitting a follow-up request at the end of this letter.
2. Total number of applicants to date, including whether those applicants have applied as independent owner-operators or as licensed motor carriers;
  - The Port Authority provided material it believed was responsive to our request. The Coalition is still reviewing the documents it received.
3. The total number of applicants, whether classified as independent owner-operators or licensed motor carriers, that have been denied either a loan or a grant or both;
  - The Port Authority provided material it believed was responsive to our request. The Coalition is still reviewing the documents it received.

4. The total number of grants and/or loans distributed to independent owner-operators, including the dollar amounts of each grant and/or loan;
  - The Port Authority provided material it believed was responsive to our request; however, the Coalition is submitting a follow-up request at the end of this letter.
5. The total number of grants and/or loans distributed to licensed motor carriers, including the dollar amounts of each grant and/or loan;
  - The Port Authority provided material it believed was responsive to our request; however, the Coalition is submitting a follow-up request at the end of this letter.
6. The total amount of money left in the program to date, as well as the total amount that has been distributed in grants or loans;
  - The Port Authority provided material it believed was responsive to our request. The Coalition is still reviewing the documents it received.
7. The total number of trucks that have been purchased through the Truck Replacement Program;
  - The Port Authority provided material it believed was responsive to our request. The Coalition is still reviewing the documents it received.
8. The total number of trucks that have been scrapped as a result of the Truck Replacement Program;
  - The Port Authority provided material it believed was responsive to our request. The Coalition is still reviewing the documents it received.
9. Any and all correspondence between the Port Authority and the United States Environmental Protection Agency related to or discussing the Truck Replacement Program;
  - A follow-up request was submitted directly to the U.S. Environmental Protection Agency on September 13, 2011, its response is currently pending.
  - A follow-up request was submitted to the Port Authority on September 1, 2011.
10. Any and all correspondence between the Port Authority and the New Jersey Department of Environmental Protection related to or discussing the Truck Replacement Program;
  - The Coalition has rescinded this request and will be submitting a follow-up request directly to the New Jersey Department of Environmental Protection.
11. Any and all correspondence between the Port Authority and the New York Department of Environmental Conservation related to or discussing the Truck Replacement Program;
  - The Coalition has rescinded this request and will be submitting a follow-up request directly to the New York Department of Environmental Conservation.

12. A copy of all records requests received by the Port Authority that request records pertaining to the Truck Replacement Program or the Drayage Truck Registry;
  - The Port Authority responded to this request by noting that some of the material responsive to this inquiry were exempt from disclosure pursuant to exemption (2). The Coalition is submitting a follow-up request at the end of this letter.
13. A copy of the list required to be kept by the Secretary of the Port Authority that details, by subject matter, all of the records in possession of the Port Authority (and its subsidiary corporations);
  - The Port Authority responded by providing the Coalition with a Subject Classification Index dated, January 1989. The Coalition is submitting a follow-up request at the end of this letter.
14. 2010 Port Authority 2010 Drayage Truck Survey;
  - The Port Authority provided material it believed was responsive to our request. The Coalition is still reviewing the documents it received.
15. Current Clean Air Plan and Truck Ban and Replacement policy documents from the PANYNJ;
  - The Port Authority responded by merely referring the Coalition to its website. The Coalition is submitting a follow-up request at the end of this letter.

We have been patient and compliant with the Port Authority since we first submitted our request on May 9, 2011. However, the Port Authority's actions and subsequent response have not been in conformity with the procedures and standards set forth in its Freedom of Information Policy and Procedure. This is not the first time the Port Authority has deviated from its own policies and procedures by ultimately refusing to be responsive to those seeking information through its Freedom of Information ("FOI") process. David Mendoza of the Puget Sound Sage has expressed his frustration with this particular Port Authority's inability to provide him with responsive documents for his most recent FOI request, Reference Number 11957. It took over eight (8) months for Mr. Mendoza to receive his response from the Port Authority. In the past, Mr. Mendoza has dealt with other Port Authorities throughout the country including: the Port of Los Angeles, the Port of Long Beach, the Port of Seattle, the South Carolina State Port Authority, and the Virginia Port Authority. Mr. Mendoza noted that in dealing with all of these different Ports, the Port Authority of New York and New Jersey was by far the most reluctant in providing him with the information he was entitled to receive under its Freedom of Information Policy.

Pursuant to a resolution adopted by the Port Authority's Board of Commissioners, "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)." Furthermore "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.” This agency’s failure to provide information that sufficiently addresses the requests made in Reference Number 12337 is a violation of its by-laws. The Coalition, therefore, is re-submitting an amended records request to the Port Authority. The Port Authority should be aware that the Coalition plans to file an immediate appeal with the Port Authority’s General Counsel in the event the Port Authority fails, for a second time, to be fully cooperative in providing an adequate response to this request.

### **The Coalitions’ Amended Records Request**

The Coalition hereby re-requests access to the following records pertaining to the Truck Replacement Program for inspection and/or copying:

1. Any and all policies regarding eligibility for the Truck Replacement Program, including the criteria used in determining the approval or denial of applications in addition to risk assessments and loan determinations;
2. A copy of all applications that were either approved, declined, or deemed incomplete under the Truck Replacement Program;
3. Names of all drivers approved under the Truck Replacement Program and copies of their grant and/or loan agreements;
4. A copy of the grant and/or loan agreements distributed to independent owner-operators and the names of the independent owner-operators;
5. A copy of the grant and/or loan agreements distributed to licensed motor carriers and the names of the licensed motor carriers;
6. Current copies of any and all documents, including electronic documents, that detail, by subject matter, all the records in possession of the Port Authority (and its subsidiary corporations) which is required by Port Authority’s Policy and Procedure; and
7. Briefing memorandums, notes, and staff documents that establish the current Clean Air Plan and Truck Ban and Replacement policy from the PANYNJ.

The Coalition would also like a detailed explanation clarifying what specific part of our previous request seeking “a copy of all record requests received by the Port Authority that requests records pertaining to the Truck Replacement Program or the Drayage Truck Registry” falls under exemption two (2) of its Freedom of Information Policy and Procedure.

Should the Secretary determine that any of the above requested records are exempt from disclosure, the Coalition requests that the Secretary identify which of the eight categories of exempted records in the Resolution applies to such requested records. Further, should the Secretary determine that any of the above requests are so overly broad so as to make it impracticable for the Secretary to identify such records, the Coalition requests that the Secretary identify such requests so that the Coalition may work cooperatively with the Port Authority to determine the records that the Coalition is seeking.

The Coalition would like to thank the Port Authority again for its attention to this follow-up records request. All correspondence regarding this request should be directed to William Schulte at (973) 424-1485 or by email at [wschulte@easternenvironmental.org](mailto:wschulte@easternenvironmental.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Schulte', with a long horizontal flourish extending to the right.

William J. Schulte, Esq.

cc: Governor Chris Christie  
Governor Andrew Cuomo  
Senator Frank Lautenberg  
Daniel D. Duffy, FOI Administrator, Port Authority of New York and New Jersey  
Chris Ward, Executive Director, Port Authority of New York and New Jersey  
Darrell Buchbinder, General Counsel, Port Authority of New York and New Jersey  
Amy Goldsmith, Chair, Coalition for Healthy Ports

**THE PORT AUTHORITY OF NY & NJ**

Daniel D. Duffy  
FOI Administrator

December 14, 2011

Mr. William J. Schulte  
Eastern Environmental Law Center  
744 Broad Street  
Suite 1525  
Newark, NJ 07102

Re: Freedom of Information Reference No. 12755

Dear Mr. Schulte:

This is a response to your October 21, 2011 request under The Port Authority of New York and New Jersey's Freedom of Information Policy (the "Policy") for copies of various records pertaining to the Port Authority's Truck Replacement Program.

Some material responsive to Item 1 of your request and available under the Policy was previously provided to you in response to FOI Request # 12337. Additional material responsive to Item 1 of your request and materials that are responsive to Item 7 of your request for, "documents that establish the current Clean Air Plan and Truck Ban and Replacement policy", which consist of 9 pages, is enclosed for a photocopying fee of \$2.25 (.50¢ per page). Payment should be made in cash, certified check, company check or money order payable to "The Port Authority of New York & New Jersey" and should be sent to my attention at 225 Park Avenue South, 17<sup>th</sup> Floor, New York, NY 10003. Material responsive to Item 6 of your request was previously provided in response to FOI Request # 12337.

Please be advised that the Policy provides that in the event a search for records requested requires more than one-person hour, or in the event a search of computer records requires programming that would take more than one-person hour, a fee will be charged. It is estimated that it will take approximately 40 hours of staff time at a composite hourly rate of \$66.87 for a total of \$2,674.74 to search for records that may be responsive to items 2, 3, 4 and 5 of your request. An accounting of the actual time spent searching for the records will be maintained and should it amount to less than the estimated hours, the unused portion of your payment will be refunded to you. Accordingly, if it takes more than the estimated hours, you will be advised of the additional fee.

225 Park Avenue South  
New York, NY 10003  
T: 212 435 3642 F: 212 435 7555

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Mr. William J. Schulte

December 14, 2011

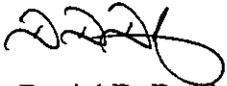
It is important to note that some or all of the documents or portions thereof, identified as being responsive to your request may be exempt from disclosure in whole or in part pursuant to one or more of the exemptions in the Policy. Additionally, there may be no records found that are responsive to your request. After a search has been conducted, you will be notified in writing as to the availability of documents under the Policy. At that time, you may schedule a mutually convenient time for the review of the available documents at our office, or pay the applicable photocopying fee (\$.25 per page) for the material.

If you would like us to proceed with the search, payment of \$2,674.74 must be received in advance in the form of a certified check or money order made payable to "The Port Authority of New York and New Jersey" and addressed to the undersigned at 225 Park Avenue South - 17<sup>th</sup> Floor, New York, NY 10003.

If you wish to narrow your request, you may do so in writing to the undersigned. A narrowing of your request may result in a reduced search fee.

Please refer to the above FOI Reference number in any future correspondence relating to your request.

Very truly yours,



Daniel D. Duffy  
FOI Administrator



Lending. Supporting. Inspiring.

#### **TRUCK PROGRAM BUSINESS GUARANTEE DOCUMENT LIST**

- 2 business references
- List and biographies of Executive Management team, and list and positions of Board Directors (if applicable)
- Proof of business existence (e.g., Articles of Incorporation, Schedule K-1)
- 2 most recent years audited, reviewed, or compiled statements (income statement, balance sheet, and cash flow statement)
- Capital structure page, or debt schedule, with principal & interest payments
- Visibility on revenue (list of contracts, etc.)
- List of debt covenants (if applicable)
- 1 year financial outlook (income statement, balance sheet, and cash flow statement).

**The following documents will be required for financing with your “Personal Guarantee”:**

**Financial Documents**

- Last two years of personal tax returns
- Last three months of business bank statements
- Last three months of personal bank statements
- Home LL reference (*if no mortgage*)
- 2 personal references (*these should be included on application*)

**Individual Information**

- Two forms of identification (*Commercial license & TWIC/SeaLink/SS card etc*)
- Proof of home address (telephone or utility bill)
- Credit report supplement: proof of paid collections accounts, tax liens, etc.
- Copy of home mortgage note (if applicable)
- “LMC Letter” (*this is the standard trucker base reference letter, it lists avg. weekly and monthly income*)

**Cosigner Documents (If required)**

- Completed and signed cosigner credit application
- Cosigner’s last two pay stubs or tax returns for the past two years (if cosigner is a business owner)
- Two forms of identification (one must be a photo ID)
- (*If cosigner is a trucker, ask for LMC letter or last 4 paystubs*)

**PORT OF NEW YORK AND NEW JERSEY – PORT AUTHORITY TRUCK REPLACEMENT PROGRAM – AMENDMENT**

It was recommended that the Board amend the Truck Replacement Program authorized by the Board at its meeting on July 23, 2009 (the Program) by expanding the eligibility of drayage trucks that can be replaced under the Program to include those drayage trucks with model year engines 2003 or older that frequently serve the Port of New York and New Jersey (Port), to enable the Program to achieve its goals to improve air quality at the Port and in the surrounding communities.

At its meeting of July 23, 2009, the Board authorized the establishment of the Program to effectuate the replacement of approximately 636 pre-1994 model drayage trucks that frequently serve the Port with newer drayage trucks that were built in 2004 or later and have engines that generate less emissions and have greater fuel efficiency. Under the Program, the Port Authority is investing up to \$28 million of operating funds to make payments to participating truck dealerships for qualifying truck purchases. Upon receipt of a qualifying vehicle purchase contract, the Port Authority provides payment to the dealer for the total vehicle purchase price. The Port Authority then forwards documentation to the United States Environmental Protection Agency (USEPA), which reimburses the Port Authority 25 percent of the vehicle purchase price via a \$7 million grant, and the remaining 75 percent is repaid to the Port Authority on a monthly basis by the trucking company or individual owner/operator at an interest rate of 5.25 percent over a five-year term. As part of that authorization, ACCION USA, Inc. (ACCION) was retained to manage the Program funds, at a total estimated cost to the Port Authority of \$2.7 million, and Tetra Tech, Inc. (Tetra Tech) was retained to provide overall Program management, at a total estimated cost of \$2.1 million. To date, applications to replace 215 older trucks have been submitted, and 74 trucks have been replaced.

At its meeting of February 24, 2011, the Board authorized the establishment of a Supplemental Program to effectuate the replacement of approximately 126 drayage trucks equipped with model year 1994–2003 engines that frequently visit the Port with drayage trucks equipped with engines of model year 2007 or later that emit lower levels of pollutants and are more fuel efficient. Under the Supplemental Program, a \$1,577,149 USEPA grant is being used to pay up to 25 percent of the cost to purchase a newer-model replacement truck, with the remaining 75 percent of the cost to be provided by the Port Authority through an incentive program, at a cost to the Port Authority of up to \$4,731,447. The actual number of trucks to be replaced under the Supplemental Program is contingent upon the actual purchase price of the newer trucks, up to a total cost of \$6.3 million. That authorization also included the award of contracts to ACCION to manage the Supplemental Program funds and to Tetra Tech to provide overall program management, at a total estimated cost to the Port Authority of \$362,600 and \$472,500, respectively.

Pursuant to the Rules and Regulations of the Marine Terminal Tariff-Federal Maritime Commission Schedule No. PA-10, effective January 1, 2011, drayage trucks with pre-1994 model year engines are no longer permitted to service the Port Authority's marine terminal facilities. Additionally, drayage trucks with engines that fail to meet or exceed 2007 model year on-road USEPA heavy-duty diesel-fueled emission standards will be denied access to the Port Authority's marine terminal facilities, effective January 1, 2017.

The estimated number of trucks to be replaced under the Program was based upon the results of a Drayage Truck Characterization Survey conducted in August 2008, which indicated that approximately 709 drayage trucks built prior to 1994 frequently serviced the Port at that time. However, due to a decline in the number of pre-1994 model year drayage trucks, the full amount of the authorized Port Authority and USEPA funding cannot be expended under the existing Program parameters, and only 36 percent of the anticipated emission reductions could be achieved. In addition, the USEPA requires that all funding under the Program be committed by September 30, 2011. In light of these issues, staff received approval from the USEPA to revise the work plan for the Program grant to expand the eligibility requirements to include drayage trucks with engines of model year 2003 or earlier, to enable the Program to achieve its original goals. All other parameters of the Program would remain in effect.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Bauer, Coscia, Holmes, Moerdler, Pocino, Samson, Sartor, Silverman and Steiner voting in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

**RESOLVED**, that the Port Authority's Truck Replacement Program, as authorized by the Board at its meeting of July 23, 2009, be and it hereby is amended, substantially in accordance with the terms outlined to the Board.

## **PORT OF NEW YORK AND NEW JERSEY – SUPPLEMENTAL PORT AUTHORITY TRUCK REPLACEMENT PROGRAM**

It was recommended that the Board authorize a supplement to the truck replacement program (the Program) to effectuate the replacement of approximately 126 drayage trucks equipped with model year 1994 through 2003 engines that frequently serve the Port of New York and New Jersey (Port) with drayage trucks equipped with engines built in model year 2007 or later that generate less emissions and have greater fuel efficiency, generally as set forth below.

In August 2008, the Port Authority performed a Drayage Truck Characterization Survey (Survey) that evaluated the profiles of drayage trucks visiting the Port's marine terminal facilities. The Survey estimated that approximately 700 drayage trucks built prior to 1994 service the Port's marine terminal facilities five or more times per week, and that approximately two-thirds of the drivers are independent owner/operators, while the remainder drive trucks owned by another entity.

In November 2008, the Board adopted a Statement of Principles for Improving Air Quality at the Port that reaffirmed its support of the Port Authority's continuing sustainability initiatives to reduce Port-related emissions of particulate matter, nitrogen oxides, and sulfur dioxides by three percent and greenhouse gases by five percent on an annual basis, with the goal of achieving 80 percent reduction in greenhouse gas emissions from 2006 levels by 2050.

In furtherance of these efforts, a Regional Truck Emission Reduction Program initiative was identified, which contains several components to reduce emissions from trucks serving the Port, one of which is the Program.

At its meeting of July 23, 2009, the Board authorized the establishment of the Program to effectuate the replacement of approximately 636 pre-1994 model drayage trucks that frequently serve the Port with newer drayage trucks that were built in 2004 or later and have engines that generate less emissions and have greater fuel efficiency. Under the Program, the Port Authority is investing up to \$28 million of operating funds to make payments to participating truck dealerships for qualifying truck purchases. Upon receipt of a qualifying vehicle purchase contract, the Port Authority provides payment to the dealer for the total vehicle purchase price. The Port Authority then forwards documentation to the United States Environmental Protection Agency (USEPA), which reimburses the Port Authority 25 percent of the vehicle purchase price, and the remaining 75 percent is repaid to the Port Authority on a monthly basis by the trucking company or individual owner/operator, at an interest rate of 5.25 percent over a five-year period. As part of that authorization, ACCION USA, Inc. (ACCION) was retained to manage the Program funds, at a total estimated cost to the Port Authority of \$2.7 million, and Tetra Tech, Inc. (Tetra Tech) was retained to provide overall Program management, at a total estimated cost of \$2.1 million. To date, applications to replace 201 older trucks have been submitted, and 53 trucks have been replaced.

In December 2010, a subsequent Drayage Truck Characterization Survey was performed, which estimated that approximately 3,990 drayage trucks of model years between 1994 and 2003, and approximately 231 drayage trucks of model years 1993 or older, now service the Port's marine terminal facilities three or more times per week. Pursuant to the Rules and Regulations of the Marine Terminal Tariff – Federal Maritime Commission Schedule No. PA-10, effective January 1, 2011, Class 8 drayage trucks (vehicles with a design-loaded weight greater than

33,000 pounds) with pre-1994 model year engines are no longer permitted to service the Port Authority's marine terminal facilities. Additionally, Class 8 drayage trucks with engines that fail to meet or exceed 2007 model year on-road federal USEPA heavy-duty diesel-fueled emission standards will be denied access to our marine terminal facilities, effective January 1, 2017.

Under the proposed supplement, the Port Authority would invest up to an additional \$4,731,447 of operating funds in the Program to provide for the replacement of approximately 126 drayage trucks with newer-model trucks. The actual number of trucks to be replaced under the supplement to the Program would be contingent upon the actual purchase price of the newer trucks, up to a total cost of approximately \$6.3 million (including \$1,577,149 to be provided by a grant from the USEPA). The administration of the supplemental Program would be consistent with that of the existing Program, as outlined above. In addition, under the supplemental Program the USEPA would continue to reimburse the Port Authority 25 percent of the vehicle purchase price, and the remaining 75 percent of the purchase price would continue to be repaid by the trucking company or individual owner/operator to the Port Authority, at an interest rate of 5.25 percent over a five-year term, under agreements to be entered into with the Port Authority.

ACCION would manage the supplemental Program funds, at a total estimated cost to the Port Authority of \$362,600. Tetra Tech would serve as the administrator for the supplemental Program, at a total estimated cost to the Port Authority of \$472,500.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Bauer, Coscia, Grayson, Holmes, Moerdler, Pocino, Samson, Sartor, Silverman and Steiner voting in favor; none against:

**RESOLVED**, that the Port Authority's Supplemental Truck Replacement Program (Supplemental Program), substantially in accordance with the terms outlined to the Board, be and it hereby is established and authorized; and it is further

**RESOLVED**, that, in addition to those instruments in which Port Authority operating funds may now be invested, the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to invest Port Authority operating funds in the Supplemental Program, substantially in accordance with the terms outlined to the Board; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into agreements with ACCION USA, Inc. and Tetra Tech, Inc. in connection with the management and administration of the Supplemental Program, substantially in accordance with the terms outlined to the Board; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to take any and all action to effectuate the foregoing, including the execution of contracts, agreements and other documents, together with amendments and supplements thereof, or amendments and supplements to existing contracts, agreements and other documents, and to take action in accordance with the terms of such contracts, agreements and documents, as may be necessary in connection therewith; and it is further

**RESOLVED**, that the form of all contracts, agreements and documents in connection with the foregoing shall be subject to the approval of General Counsel or his authorized representative.

## **PORT OF NEW YORK AND NEW JERSEY – PORT AUTHORITY TRUCK REPLACEMENT PROGRAM**

It was recommended that the Board establish and authorize a truck replacement program to effectuate the replacement of approximately 636 pre-1994 model drayage trucks that frequently serve the Port of New York and New Jersey (Port) with drayage trucks that were built in 2004 or later and have engines that generate less emissions and have greater fuel efficiency, generally as set forth below (the Program).

In August 2008, the Port Authority performed a Drayage Truck Characterization Survey (Survey) that evaluated the profiles of drayage trucks visiting the Port's marine terminal facilities. The Survey estimated that approximately 700 drayage trucks built prior to 1994 service the Port's marine terminal facilities five or more times per week. The survey also found that approximately two-thirds of the drivers are independent owner/operators, while the remainder drive trucks owned by another entity.

In November 2008, the Board adopted a Statement of Principles for Improving Air Quality at the Port of New York and New Jersey that reaffirmed its support of the Port Authority's continuing sustainability initiatives to reduce Port-related emissions of particulate matter, nitrogen oxides, and sulfur dioxides by three percent and greenhouse gases (GHG) by five percent on an annual basis, with the goal of achieving 80-percent reduction in GHG emissions from 2006 levels by 2050.

In furtherance of these efforts, a Regional Truck Emission Reduction Program initiative was identified, which contains several components to reduce emissions from trucks serving the Port. One of those components is the Program.

Drayage trucks, especially those owned and operated by individual owner/operators, play an important role in the Port's goods movement system, and are a necessary and critical part of the Port's operations and the regional economy. However, diesel emissions from trucks are believed to have an adverse effect on human health. The replacement of certain older pre-1994 model year drayage trucks that frequently utilize the Port through the Program is a critical component of the Regional Truck Emission Reduction Program.

The United States Environmental Protection Agency (USEPA) recently announced the award to the Port Authority of an American Recovery and Reinvestment Act – National Clean Diesel Funding Assistance Program Grant (Grant), in an amount up to \$7 million, toward the implementation of the Program.

The Port Authority would invest up to \$28 million of operating funds in the Program to make payments to participating truck dealerships for qualifying truck purchasers. Upon receipt of a vehicle purchase contract, the Port Authority would provide payment to the dealer for the total vehicle purchase price. The Port Authority would forward purchase documentation to the USEPA, which would reimburse the Port Authority 25 percent of the vehicle purchase price, with the remaining 75 percent of the purchase price to be repaid by the trucking company or individual owner/operator to the Port Authority at an interest rate of 5.25 percent over a five-year term, under agreements to be entered into with the Port Authority. ACCION USA, Inc. (ACCION) would manage the Program funds, at a total estimated cost to the Port Authority of

\$2.7 million. ACCION also would serve as the Port Authority's collection agent under the agreements with the trucking companies or individual owners/operators, and take enforcement actions, including repossession of the truck, as appropriate, in the event of payment defaults. Tetra Tech, Inc. (Tetra Tech), which would be partnering with Gladstein, Neandross and Associates, and TIAX LLC, would be responsible for overall Program management and would monitor compliance of the new vehicles with Grant requirements, and provide required reports, at a total estimated cost of \$2.1 million. Tetra Tech also would canvass and brief regional truck dealerships on the requirements to participate in the Program. Both Tetra Tech and ACCION would conduct outreach and education on the Program to truck owners serving the Port.

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

**RESOLVED**, that the Port Authority's Truck Replacement Program (Program), substantially in accordance with the terms outlined to the Board, be and it hereby is established and authorized; and it is further

**RESOLVED**, that, in addition to those instruments in which Port Authority operating funds may now be invested, the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to invest Port Authority operating funds in the Program, substantially in accordance with the terms outlined to the Board; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, in connection with the Program, to enter into agreements with ACCION USA, Inc. and Tetra Tech, Inc., substantially in accordance with the terms outlined to the Board; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to take any and all action necessary to effectuate the foregoing, including the execution of agreements, contracts and other documents to facilitate such action, together with amendments and supplements thereof, including amendments and supplements to existing agreements, and to take action in accordance with the terms of such agreements, contracts and other documents, as may be necessary in connection therewith; and it is further

**RESOLVED**, that the form of all agreements and other documents in connection with the foregoing shall be subject to the approval of General Counsel or his authorized representative.



744 Broad Street, Suite 1525  
Newark, NJ 07102  
ph 973 424 1156  
fx 973 710 4553  
easternenvironmental.org

January 11, 2012

**Via Certified Mail, Return Receipt Requested**

Office of the General Counsel  
Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, NY 10003

**RE: APPEAL OF DENIAL OF ACCESS TO RECORDS REQUESTED –  
REQUESTS #12337, 12590, and 12755**

To the Port Authority General Counsel:

The Eastern Environmental Law Center (“EELC”) respectfully writes on behalf of the Coalition for Healthy Ports (“the Coalition”) to file this appeal regarding the Coalition’s requests for access to public records from the Port Authority of New York and New Jersey (“the Port Authority”). We have been patient over the course of the last nine months in our correspondence with the Port Authority’s Freedom of Information (“FOI”) Administrator. Unfortunately, at this juncture we have been left with no choice but to file this appeal.

As detailed below, the FOI Administrator has chronically disregarded the procedural deadlines in the Port Authority’s FOI Policy and Procedure, has improperly used exemptions to shield public records from disclosure, and has unlawfully denied the Coalition access to public records that are currently in the Port Authority’s possession. Pursuant to the Port Authority’s FOI Policy and Procedure, “[a]ny 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 a denial, file an appeal with the Port Authority's General Counsel." As the General Counsel will see, EELC attempted on numerous occasions to remind the FOI Administrator of its duty to timely and meaningfully respond to the Coalition's requests for records. At this point however, we must conclude that the Port Authority is not currently living up to its commitment to transparency in the conduct of the public's business. Thus, the Coalition hereby submits this appeal to the General Counsel of the Port Authority.

More specifically, the EELC alleges as follows:

### HISTORY OF DOCUMENTS REQUESTS

#### REQUEST # 12337

- On May 9, 2011, the EELC submitted a written FOI request to the Port Authority Freedom of Information Administrator ("FOI Administrator") requesting records relating to the Port Authority's Truck Replacement Program. (Attached hereto as "Exhibit A").
- On May 18, 2011, the FOI Administrator notified EELC by letter that the Port Authority was in receipt of its May 10<sup>th</sup> FOI request. (Attached hereto as "Exhibit B") In its letter, the Port Authority assigned this request an internal reference number #12337.
- The FOI Administrator failed to grant or deny access to the records requested, and also failed to provide the EELC with a date within twenty (20) business days from the initial response on which the request would be granted or denied.
- Pursuant to the Port Authority's FOI Policy and Procedure, the Port Authority was under an obligation to respond to the EELC's request within twenty business days of its May 18<sup>th</sup> response, or June 7, 2011.
- The FOI Administrator failed to provide EELC with a response by June 7, 2011.

- On June 8, 2011, the EELC submitted a follow-up letter to the FOI Administrator informing it that it was in violation of its own FOI Policy and Procedure. (Attached hereto as "Exhibit C").
- On June 10, 2011, the FOI Administrator replied by letter to inform the EELC that it anticipated it would make a determination by July 15, 2011. (Attached hereto as "Exhibit D").
- Again, the FOI Administrator failed to provide a response by July 15, 2011.
- On July 20, 2011, the EELC submitted yet another follow-up letter to the Port Authority, pointing out its failure to respond in a timely fashion. (Attached hereto as "Exhibit E").
- On July 29, 2011, more than two months after the initial request, the FOI Administrator provided the EELC with a letter explaining that the FOI Administrator had located certain records responsive to EELC's request, certain records that were exempt from EELC's request, and that the location of other responsive records would require a search by staff and would cost an estimated \$2,959.27. (Attached hereto as "Exhibit F").
- On August 12, 2011, the EELC provided Port Authority with a check in the amount of \$52.75 in order to obtain the 211 pages of allegedly responsive records that the FOI Administrator had located.
- On August 22, 2011, more than three months after the initial request, the FOI Administrator provided the EELC, via mail, with the documents it believed were responsive to items 2, 3, 4, 5, 6, 7, 8, 12, 13, and 14 of its May 10<sup>th</sup> request. (Attached hereto as "Exhibit G").<sup>1</sup>

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<sup>1</sup> Please note, the EELC did not reproduce, as an exhibit, the entire 176 pages of the Subject Classification Index provided by the Port Authority.

- EELC has reason to believe that the Port Authority is in possession of additional records responsive to its request that were not provided. Moreover, some of the records provided were not responsive to EELC's request. These issues are dealt with in more detail below.

REQUEST # 12590

- On September, 1, 2011, the EELC submitted an additional FOI Request to supplement its May 10, 2011 request. Specifically, due to the estimated cost quoted by the FOI Administrator in response to Items 9, 10, and 11 of Request #12337, EELC sought to narrow its request in order to reduce the amount of time it would require staff to locate responsive records. (attached hereto as Exhibit "H")
- On September 12, 2011, the FOI Administrator notified the EELC by letter that the Port Authority was in receipt of its September 1<sup>st</sup> FOI request and assigned this request an internal reference number #12590. (Attached hereto as "Exhibit I") The FOI Administrator informed the EELC that EELC "will be advised in writing within 20 business days of the approximate date when we expect to complete the processing of your request." This contravenes Port Authority's FOI Policy and Procedure, which requires the FOI Administrator to provide a date that is within twenty business days of the initial response on which the request will be granted or denied.
- On October 11, 2011, more than a month after EELC's request, the FOI Administrator notified the EELC by letter that the Port Authority anticipated that a determination regarding request #12590 would be made by November 11, 2011. (Attached hereto as "Exhibit J").
- Again, the FOI Administrator failed to provide a determination by November 11, 2011.

- Instead, on November 14, 2011, the Port Authority notified the EELC by letter that a determination would be made on November 21, 2011. (Attached hereto as "Exhibit K").
- Yet again, the FOI Administrator failed to provide a determination by November 21, 2011.
- As a result, on November 23, 2011, the EELC followed up once more with the Port Authority and submitted a letter to the FOI Administrator informing him that the Port Authority was in violation of its own By-laws and Freedom of Information Policy and Procedure due to the untimely responses of both Request #12590 and Request #12755. The EELC also advised the FOI Administrator of its intent to file a formal complaint in the event it did not receive a written response on or before December 2, 2011 either granting or denying access to the records requested in both Request #12590 and Request #12755. (Attached hereto as "Exhibit L").
- On December 14, 2011, three and a half months after the initial request, the FOI Administrator provided the EELC with a single document it believed was responsive to EELC's September 1, 2011 request. (Attached hereto as "Exhibit M").
- By virtue of a similar FOIA request made to the United States Environmental Protection Agency for correspondence between Port Authority and the EPA pertaining to the Track Replacement Program, EELC has reason to believe that additional responsive records are in the Port Authority's possession and were not provided by the FOI Administrator. These issues will be dealt with in more detail below.

#### REQUEST # 12755

- On October 21, 2011, the EELC sent the FOI Administrator a letter and FOI request subsequent to EELC's receipt of the materials sent in response to its May 10<sup>th</sup> request.

(Attached hereto as "Exhibit N"). This letter sought to address the inadequacies found in the Port Authority's response to Request #12337 and to re-request information EELC believed the Port Authority failed to adequately respond to.

- On November 2, 2011, the FOI Administrator acknowledged the receipt of EELC's follow-up letter and follow-up FOI request and assigned this request an internal reference number #12755. (Attached hereto as "Exhibit O"). The FOI Administrator informed EELC that it "will be advised in writing within 20 business days of the approximate date when we expect to complete the processing of your request." As explained above, this contravenes Port Authority's FOI Policy and Procedure, which requires the FOI Administrator to provide a date, within twenty days of the initial response, on which the request will be granted or denied.
- Nevertheless, the FOI Administrator failed yet again to provide a response in writing within twenty business days, or November 30, 2011.
- On November 23, 2011, the EELC submitted a letter to the FOI Administrator informing him that the Port Authority was in violation of its own By-laws and Freedom of Information Policy and Procedure due to the untimely responses of both Request #12590 and Request #12755. The EELC also advised the FOI Administrator of its intent to file a formal complaint in the event it did not receive a written response on or before December 2, 2011 either granting or denying access to the records requested in both Request #12590 and Request #12755. (see Exhibit L).
- Completely disregarding the aforementioned letter, on December 5, 2011, the Port Authority notified the EELC by letter that it anticipated making a determination as to the

availability of the records responsive to EELC's request on or about January 16, 2012.

(Attached hereto as "Exhibit P").

- On December 14, 2011, the Port Authority provided the EELC with a brief explanation summarizing the material it believed was responsive and/or exempt from disclosure. (Attached hereto as "Exhibit Q"). In this same letter, the Port Authority explained that it had located a total of nine pages of responsive documents, that other responsive document were previously provided in response to request #12337, and that the location of other responsive records would require a search by staff and would cost an estimated \$2,674.74.
- Again, procedural violations aside, EELC has reason to believe that the FOI Administrator has failed to provide an adequate response to Request #12755. These issues will be discussed in more detail below.

### NATURE OF THE RESPONSES RECEIVED

#### REQUEST #12337

- The FOI Administrator's response to several Items of Request #12337 is clearly insufficient and inadequate.
- For example, Item 1 of Request #12337 requested from the Port Authority "any and all policies regarding eligibility for the Truck Replacement Program." Rather than providing the EELC with responsive material, the FOI Administrator merely referred the EELC to its website, which provides a very basic overview of eligibility requirements for the Truck Replacement Program. See <http://www.panynj.gov/truckers-resources/truck-replacement.html>.

- The Port Authority can not realistically expect the interested public to believe that the entirety of Port Authority's policies regarding eligibility for the Truck Replacement Program are contained on this website.
- Indeed, upon being presented with a second request for records responsive to Item 1 of Request #12337, the FOI Administrator provided 2 pages of documents ostensibly pertaining to the Port Authority's policies regarding eligibility for the Truck Replacement Program. (see Exhibit O). These documents will be discussed in more detail below in the section regarding Request #12755. However, the fact that it took a second request for the FOI Administrator to provide public records responsive to Request #12337 leads EELC to believe that the Port Authority is in possession of additional responsive records to which it has unlawfully denied access.
- Similarly, the FOI Administrator's initial response to Item 15 of Request #12337 is insufficient and inadequate. As such the Coalition has reason to believe that the FOI Administrator has still not provided the documents in Port Authority's possession that are responsive to this request.
- Specifically, the Coalition requested "[c]urrent Clean Air Plan and Truck Ban and Replacement policy documents from PANYNJ." (see Exhibit A).
- Again, the FOI Administrator, rather than providing documents responsive to this request, merely referred to the Port Authority website. (see Exhibit F).
- EELC submitted a follow-up request for records pertaining to the Clean Air Plan and Truck Ban and Replacement policy. (see Exhibit N). Specifically, EELC requested " briefing memorandums, notes and staff documents that establish the current Clean Air Plan and Truck Ban and Replacement Policy from the PANYNJ." (Id.). The

FOI Administrator did eventually provide 7 pages of ostensibly responsive documents that will be addressed in the discussion below regarding Request #12755. Again, the fact that it took a second request for the FOI Administrator to provide public records responsive to Request #12337 leads EELC to believe that the Port Authority is in possession of additional responsive records to which it has unlawfully denied access.

- The FOI Administrator also seems to have refused to disclose certain records by improperly depending upon exemptions in the Port Authority's FOI Policy and Procedure. Specifically, in Request #12337 EELC requested "a copy of all records requests received by the Port Authority that requests records pertaining to the Truck Replacement Program or the Drayage Truck Registry." (see Exhibit A).
- The FOI Administrator responded: "Some material responsive to Item 12 of your request is exempt from disclosure pursuant to exemption (2)." (see Exhibit F). As the General Counsel is aware, the second exemption in Port Authority's FOI Policy and Procedure states that public access may be denied as to records which, "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."
- Under both OPRA and FOIL, records requests themselves are public records, and are not exempt from disclosure under a privacy exemption. (See N.J.S.A. § 47:1A-A *et seq.* & Pub. Off. L., Art. 6, §§ 84-90). Thus, the FOI Administrator improperly denied access to these records.

- Moreover, EELC requested an explanation from the FOI Administrator as to what specific parts of this particular request fell under the second exemption to the Port Authority's FOI Policy and Procedure. (see Exhibit N).
- Since the FOI Administrator ignored this request, EELC has no way of evaluating the reasoning behind the FOI Administrator's denial of access to these public records.
- In Item 13 of Request #12337 EELC requested "a copy of the list required to be kept by the Secretary of the Port Authority that details, by subject matter, all of the records in possession of the Port Authority (and its subsidiary corporations)." (see Exhibit A).
- In response to this particular request, the FOI Administrator provided a booklet titled "Subject Classification Index." The Index provided to EELC was last updated in January of 1989, or 22 years ago.
- As a follow-up, on October 21, 2011 EELC requested "current copies of any and all documents, including electronic documents, that detail, by subject matter, all the records in possession of the Port Authority (and its subsidiary corporations), which is required by Port Authority's Policy and Procedure." (see Exhibit N).
- Rather than providing responsive records, the FOI Administrator merely stated that the records previously provided in response to this request were sufficient. (see Exhibit Q).

#### REQUEST #12590

- On September 1, 2011, EELC submitted a request electronically for "any and all correspondence between the Port Authority and the United States Environmental

Protection Agency related to or discussing the Truck Replacement Program from January 2008 to March 2009." (see Exhibit H).

- As stated above, three and a half months after EELC submitted this request to the FOI Administrator, the FOI Administrator produced a single document that it believed was responsive to this request. (see Exhibit M). This document consisted of a single email message.
- As stated above, EELC has reason to believe that the Port Authority is in possession of additional records that are responsive to this request and are not exempt from disclosure under the Port Authority's FOI Policy and Procedure.

#### REQUEST #12755

- On October 21, 2011 EELC submitted a records request to supplement Request #12337. EELC believes that the FOI Administrator has unlawfully denied access to these public records.
- Specifically, EELC requested "any and all policies regarding eligibility for the Truck Replacement Program, including the criteria used in determining the approval or denial of applications in addition to risk assessments and loan determinations." (see Exhibit N).
- The FOI Administrator provided a mere 2 pages of documents that appear to be a list of documents required from applicants for truck replacement loans. (see Exhibit Q).  
Putting aside the issue of whether the records provided by the FOI Administrator are actually responsive to this request, the fact that it took a second request for the FOI Administrator to provide public records responsive to Request #12337 leads EELC to

believe that the Port Authority is in possession of additional responsive records to which it has unlawfully denied access.

- As discussed above in reference to Request #12337, EELC also requested "current copies of any and all documents, including electronic documents, that detail, by subject matter, all the records in possession of the Port Authority (and its subsidiary corporations) which are required by the Port Authority's Policy and Procedure." In response to this supplemental request, the FOI Administrator merely stated that material responsive to this request was previously provided.
- The material provided in response to this request was a "Subject Classification Index," last updated in 1989. Thus, EELC believes that the FOI Administrator has unlawfully denied access to records responsive to this request.
- EELC also requested "briefing memorandums, notes and staff documents that establish the current Clean Air Plan and Truck Ban and Replacement policy from the PANYNJ." (see Exhibit N).
- In response to this request, the FOI Administrator only provided three resolutions adopted by the Port Authority Board of Commissioners, dated July 23, 2009, February 24, 2011, and May 25, 2011, respectively. As the General Counsel is aware, these resolutions are already available to the public on the Port Authority's website. See <http://www.panynj.gov/corporate-information/board-information.html>.
- As such, EELC believes that the FOI Administrator has unlawfully denied access to records responsive to this request. If such records do exist and the FOI Administrator believes that they are exempt from disclosure, the FOI Administrator should so state and give the reasons as to why they are exempt.

THE FOI ADMINISTRATOR'S FAILURE TO COMPLY WITH PORT  
AUTHORITY FOI POLICY AND PROCEDURE

As demonstrated above, the Port Authority's FOI Administrator has adopted a pattern of failing to comply with the procedural and substantive requirements of the Port Authority's FOI Policy and Procedure, the Port Authority's By-Laws, and New Jersey's Open Public Records Act, N.J.S.A. § 47:1A-1 *et seq.*, and New York's Freedom of Information Law, Public Officers Law, Art. 6, §§ 84-90. The FOI Administrator has simply ignored every single deadline for responding to our requests, improperly utilized exemptions to shield public records from disclosure, and has otherwise denied access to records that are public and are in possession of the Port Authority. Moreover, this experience is not limited to EELC's attempt to acquire public records.

This is especially troubling in light of the fact that in adopting its current FOI Policy and Procedure, the Commissioners of the Port Authority of New York and New Jersey expressed their "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." (*see* Port Authority FOI Policy and Procedure, dated November 20, 2008). Our course of dealing with the FOI Administrator has demonstrated that the Port Authority is not living up to that commitment. Instead, the Port Authority seems intent to withhold information from the public by improperly using exemptions, delay tactics, and by simply not disclosing records that are in fact in its possession.

CONCLUSION

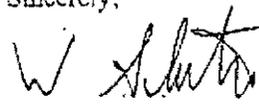
For the foregoing reasons, EELC hereby requests a determination from the General Counsel of the Port Authority that the FOI Administrator is in violation of the Port Authority's

FOI Policy and Procedure due to its failure to comply with procedural deadlines and its improper denial of access to responsive records that are in the possession of the Port Authority.

EELC also hereby requests an on-site meeting with the General Counsel (or the General Counsel's designee) and the FOI Administrator (or the FOI Administrator's designee) in order to discuss EELC's request for access to public records in an effort to reach a resolution of these issues. It is our hope that the Port Authority is truly committed to transparency in the conduct of the public's business, and that the General Counsel and FOI Administrator will therefore be willing to make a good-faith attempt at reaching a mutually agreeable resolution.

We very much look forward to receiving the General Counsel's response to the matters outlined above. Should the General Counsel have any specific questions, please feel free to contact William Schulte at [wschulte@easternenvironmental.org](mailto:wschulte@easternenvironmental.org) or (973) 424-1485.

Sincerely,



William J. Schulte, Esq.

cc: Governor Chris Christie (w/o enclosures)  
Governor Andrew Cuomo (w/o enclosures)  
Senator Frank Lautenberg (w/o enclosures)  
Senator Robert Menendez (w/o enclosures)  
Judith Enck, Regional Administrator, United States Environmental Protection Agency (w/o enclosures)  
Lisa Garcia, Associate Assistant Administrator for Environmental Justice, United States Environmental Protection Agency (w/o enclosures)  
Daniel Duffy, FOI Administrator, Port Authority of New York and New Jersey (w/o enclosures)  
Patrick J. Foye, Executive Director, Port Authority of New York and New Jersey (w/o enclosures)  
Amy Goldsmith, Chair, Coalition for Healthy Ports (w/o enclosures)

**THE PORT AUTHORITY OF NY & NJ**

Darrell Buchbinder, General Counsel

January 26, 2012

William J. Schulte, Esq.  
Eastern Environmental Law Center  
744 Broad Street, Suite 1525  
Newark, NJ 07102

RE: FOI Numbers 12755, 12590 and 12337

Dear Mr. Schulte:

This is a response under The Port Authority of New York and New Jersey's Freedom of Information – Policy and Procedures (the "Policy," a copy of which has been made available to you), to your letter dated January 11, 2012, addressed to and received in the Office of the General Counsel on January 18, 2012. Your letter regarding the referenced requests under the Policy, has been referred to me for response.

In your letter, you state that you have "reason to believe" that the Port Authority is in possession of records responsive to your requests that were not provided, that some of the records provided are not responsive to your requests, that the FOI Administrator applied Policy exemptions improperly, and that your requests were otherwise not processed in accordance with the Policy's procedural requirements.

A review of the files on the referenced requests reflects the following:

**With respect to FOI Number 12337**

By letter dated May 9, 2011, and received at the Office of the FOI Administrator on May 18, 2011, you requested fifteen categories of records relating to the Port Authority's Truck Replacement Program. The FOI Administrator, by letter dated July 29, 2011, informed you that a search fee of \$2,959.27 was required to search for records described in items 9, 10 and 11 of your request. Records responsive to items 2 through 8, and 12 through 14 of your request were transmitted to you on August 22, 2011, after the photocopying fee was paid. Exemption 2 of the Policy was applied to protect from disclosure addresses and telephone numbers contained in records provided to you in response to item 12 of your request, as information, which, if disclosed, would constitute an unwarranted invasion of personal privacy. You were also referred to the Port Authority's web site for the records responsive to items 1 and 15 of your request.

The file also reflects that since the applicable search fee was not paid, and you did not appeal the FOI Administrator determinations within the time set forth in Section C of the Policy's Procedures, the request was closed.

225 Park Avenue South  
New York, NY 10003

**THE PORT AUTHORITY OF NY & NJ**

William J. Schulte, Esq.

Page 2

January 26, 2012

**With respect to FOI Number 12590**

On September 1, 2011, the FOI Administrator received this request from Ms. Ogechi Onyeani, on behalf of the Eastern Environmental Law Center. Ms. Onyeani requested "[a]ny and all correspondence between the Port Authority and the United States Environment Protection Agency related to or discussing the Truck Replacement Program from January 2008 to March 2009." One document found responsive to that request was forwarded to Ms. Onyeani on December 14, 2011. Since the FOI Administrator did not deny access to records responsive to this request, there can be no appeal to the FOI Administrator's determination on this request.

**With respect to FOI Number 12755**

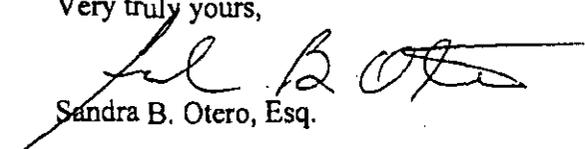
By letter dated October 21, 2011, and received at the Office of the FOI Administrator on October 24, 2011, you transmitted a new request also relating to the Truck Replacement Program. By letter dated December 14, 2011, the FOI Administrator advised you that a search fee of \$2,674.74 was required to search for records described in items 2, 3, 4, and 5 of the request. *Payment of the search fee was not received, and consequently the search was not conducted.* A record responsive to Item 6 of your request had already been provided to you in response to Item 13 of FOI Number 12337. The other records found responsive to this request not requiring a search fee were also transmitted to you on December 14, 2011.

**Conclusion**

The time to appeal the FOI Administrator's determinations on your FOI request number 12337 has expired. Therefore, your complaints relating to that request are moot. The record responsive to FOI Number 12590 was provided to Ms. Onyeani. Therefore, there can be no appeal to that request since no records were denied. Records that were located without the need for a search in excess of one hour were provided to you in response to your request number 12755.

You may consider paying the fees that apply to search for records responsive to those portions of your FOI request 12755, as determined by the Office of FOI Administrator. You may also consider requesting a certification as described in section D of the Policy's procedures "that a record of which the Port Authority would be the custodian cannot be found." Until then your appeal with respect to FOI Number 12755 is premature.

Very truly yours,

  
Sandra B. Otero, Esq.

Cc: Darrell Buchbinder, General Counsel  
Karen Eastman, Secretary  
Daniel Duffy, FOI Administrator

225 Park Avenue South  
New York, NY 10003