

ACCESS TO PORT AUTHORITY RECORDS – ENHANCED TRANSPARENCY AND EFFICIENCY – REVISED PORT AUTHORITY FREEDOM OF INFORMATION POLICY

On September 17, 2014, the Board directed the Secretary of the Port Authority, with the assistance of General Counsel of the Port Authority, to prepare a revised Freedom of Information policy for consideration by the Board, at this meeting, that would: (i) provide for the disclosure of Port Authority records to the same extent that comparable records would be disclosable by either the State of New York or the State of New Jersey under their respective freedom of information and privacy laws; and (ii) create a two-tiered appeals process that would be available to any person who is denied access to a record of the Port Authority, consisting in the first instance of the consideration of such matter by a Freedom of Information Review Board to be established within the agency, to be followed, if necessary, with a binding independent arbitration process to be conducted by a neutral, third-party alternative dispute resolution provider.

Pursuant to the foregoing report, the Board adopted the following resolution, with Commissioners Degnan, Laufenberg, Lipper, Lynford, Moerdler, Pocino, Rechler, Rosado and Schuber 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, as the governing body of The Port Authority of New York and New Jersey, the Commissioners express their continuing belief that, as a public sector entity playing a pivotal role in supporting economic activity throughout the Port District on behalf of the States of New York and New Jersey, the Port Authority must conduct its business in the public interest in a transparent manner that will maintain and bolster public knowledge of, and confidence in, the agency and its activities; and it is further

RESOLVED, that the Board has determined that the Port Authority's Freedom of Information Code shall be revised, effective as of January 1, 2015, to further enhance the openness and transparency of agency action, through timely access to the public records of the Port Authority and its subsidiary corporations, by: (i) providing for the disclosure of Port Authority records to the same extent that comparable records would be disclosable by either the State of New York or the State of New Jersey under their respective freedom of information and privacy laws; and (ii) creating a two-tiered appeals process that will be available to any person denied access to a record of the Port Authority; and it is further

RESOLVED, that the resolution adopted on March 29, 2012, entitled "*Access to Port Authority Records – Ensuring Open Public Records – Port Authority Freedom of Information Code*" (appearing at pages 38, *et. seq.* of the Special Committee on Operations minutes of that date), shall be, and it hereby is, rescinded, effective as of January 1, 2015; and it is further

RESOLVED, that any paper, written or printed book, document, report, statement, examination, memorandum, opinion, folder, file, manual, pamphlet, form, design, drawing, map, plan, photograph, letter, microfilm, computer tape or disc, rule,

regulation or code, data-processed or image-processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, generated, maintained, received in the course of transacting official business or kept on file (collectively “Records”) of the Port Authority, shall be made available for public inspection and/or copying to the same extent that comparable records would be disclosable by either (i) the State of New York under the New York Freedom of Information Law and Personal Privacy Protection Law, and relevant administrative provisions and judicial decisions; or (ii) the State of New Jersey under the New Jersey Open Public Records Act, and relevant administrative provisions and judicial decisions; and it is further

RESOLVED, that the Secretary of the Port Authority shall administer this Code pursuant to the following procedures:

A. Requests

Requests for inspection or copying of Records may be made to the Secretary of the Port Authority (or the Secretary’s designee) in writing, and may be submitted:

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 electronic mail addressed to the Secretary, The Port Authority of New York and New Jersey, Attention: FOI Administrator, at the e-mail address designated for this purpose, or through the Port Authority’s Web site.

Requests must contain sufficient information to locate and identify the particular Records sought. Such requests must not be overly broad, but must be as detailed as possible and provide, at a minimum, a clear description of the Record or type of Record being sought. Requests seeking “any and all records” regarding a facility, project, contract, or other activity are presumptively overly broad.

B. Determination of Availability

Within five (5) business days following the receipt of a request, the Secretary of the Port Authority (or the Secretary’s designee) must:

1. make the Record available, in whole or in part; or
2. deny the request; or
3. acknowledge the receipt of the request and provide a written statement to the requester of the approximate date by which the requester may expect a response. If a determination of availability is anticipated to be later than twenty (20) business days from the date of acknowledgement, the Secretary of the Port Authority (or the Secretary's designee) must advise the requester in the written statement of the reason for such anticipated response timeframe.

If the request is granted in whole or in part, the requester shall be notified that the responsive Records have been posted on the Port Authority's Web site (including the specific location) and are available for inspection. If the requester wishes to obtain paper copies of the available responsive Records, copies will be made available upon payment of the appropriate fees.

If the request is denied, the requester shall be advised in writing of the reasons, including the exemption(s) applied to deny access to the requested Record.

If no responsive Records are found, the requester will be notified in writing.

C. Appeal to Freedom of Information Review Board and Binding Arbitration Process

1. The determinations made under this Code by the Secretary of the Port Authority (or the Secretary's designee) with respect to access to Records shall, upon appeal by a requester whose request for access has been denied in whole or in part, be subject to review by the Port Authority Freedom of Information Review Board ("FIRB"), composed of three Port Authority staff members designated from time to time by the Chairman of the Port Authority. Such appeals should be addressed to the Secretary of the Port Authority on behalf of the FIRB in the same manner as set forth in subparagraphs A-2, A-3 or A-4 above with respect to initial requests. The FIRB shall, upon appeal by a requester, review any or all determinations of the Secretary of the Port Authority (or designee) with respect to access to Records and either uphold or reverse them. In making such decision, the FIRB may seek additional information from the Secretary of the Port Authority and/or the requester. Action by the FIRB requires the assent of a majority of the members, but in no event fewer than two members present and voting. Except in a situation where a requester has unreasonably refused to provide additional information requested by the FIRB, the failure of the FIRB to provide a final response to a requester's appeal within sixty (60) days of receipt of that request by the Office of the Secretary shall be deemed a denial of such request.

2. Upon denial by the FIRB of a requester's appeal, in the event that the requester determines to challenge such denial, the requester shall submit the matter to final and binding arbitration in New York City through JAMS (or, in the event that JAMS is unavailable, through a successor neutral, third-party alternative dispute resolution provider designated by the Chairman). Instructions for submittal of arbitration to JAMS may be found on the JAMS website at: <http://www.jamsadr.com/arbitration-forms>. In the event the position of the Port Authority is not upheld at the conclusion of the arbitration, the Port Authority shall reimburse the requester for the amount of the arbitration filing fee and the arbitrator's fee paid by the requester.

D. Fees

When a request for access to Records is granted, in whole or in part, the responsive Records will be posted on the Port Authority's Web site (subject to any applicable redactions consistent with this Code). If the requester wishes to personally review the Records, they will be made available for inspection under the supervision of such officers or employees of the Port Authority at such locations and at such times as may be designated by the Secretary of the Port Authority.

If a requester seeks tangible, "hard" copies of Records rather than or in addition to access to Records, such Records will be copied by the Port Authority, if practical, for a fee of twenty-five cents (25¢) for each page and five dollars (\$5.00) for Records provided in compact disk (or other comparable) format. The Secretary of the Port Authority may modify or establish, from time to time, appropriate fees for producing copies, including copies in other formats, such as when such Records are of unique size or volume or when it may not be practical for the Port Authority to reproduce or make available on the Port Authority's Web site. In such instances, the requested Records may 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 as to the authenticity of any document, or that a Record 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 requester will be advised in advance of the anticipated cost, which will be charged based on the labor cost of personnel assigned to conduct the search or programming, as determined for such search by the Secretary of the Port Authority. Payment of the search fee does not guarantee that any Records responsive to the request will be located or if located that such Records responsive to the request will be available for disclosure under this Code.

When the Port Authority is required to pay a contractor or other third party in possession of Records for purposes of effectuating such Port Authority contract, the Secretary of the Port Authority may establish and charge appropriate fees to defray the Port Authority's costs for such search. Such fees shall be reasonable and based upon the actual direct cost of obtaining the Records in the possession of the third party. In all cases, the requester shall be advised of the proposed fees in advance. Payment of the search fee does not guarantee that any Records responsive to the request will be located or if located that such Records responsive to the request will be available for disclosure under this Code.

E. Payment of Fees

All fees and costs shall be paid in cash, 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 Parts D and E (involving the collection of fees) in the immediately preceding procedures for administration of this Code shall be and they hereby are suspended on a trial basis until notice of the termination of such trial period is published by the Secretary of the Port Authority on the Port Authority's Web site; and it is further

RESOLVED, that the Secretary of the Port Authority be and 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, consistent with this Code, as may be necessary or appropriate in the best interest of the Port Authority or of the public; and it is further

RESOLVED, that, consistent with Port Authority policies and relevant provisions of law, information about the business of the Port Authority will continue to be posted on the Port Authority's Web site, from time to time, irrespective of whether such information is requested under this Code.