



# ERIE COUNTY WATER AUTHORITY

## Freedom of Information Law

### Policy & Procedures for Accessing Public Records

#### Section 1: Public Declaration

The Erie County Water Authority (the “Authority”) is responsible for the treatment and distribution of 25 billion gallons of safe, clean, potable water annually to residential, commercial, and industrial customers in 36 municipalities located within Erie County and parts of Chautauqua, Cattaraugus, western Wyoming, and western Genesee counties, as well as the territories of the Seneca Nation of Indians. The Authority pledges to the public and its customers to operate in an open and transparent manner, ensuring that its policies, practices, procedures, and actions are available for public inspection and scrutiny.

The Authority adopts as its Policy the terms and requirements of the New York State Freedom of Information Law (“FOIL” Law) as set forth in Article 6 of the Public Officers Law, as amended from time to time.

These procedures are adopted to allow the public, individually and collectively as represented by a free press, to have access to the public records of the Authority, in accordance with the provisions of Article 6 of the Public Officers Law.

#### Section 2: Definition.

- (a) The “Authority” means the Erie County Water Authority, a body corporate and politic constituting a public benefit corporation of the State of New York, whose formation and powers are set forth in Public Authorities Law §§ 1050-1073.
- (b) The “Board” means the Authority’s Board of Commissioners.
- (c) “Business days” excludes weekends and legal holidays.
- (d) “Confidential or privileged information” means information described in Public Officer Laws § 87(2), which may be withheld from being publicly disclosed by the Authority.
- (e) “ECWA Website” means the website controlled and maintained by the Authority at <https://ecwa.org/>

- (f) “FOIL” means the Freedom of Information Law, set forth in §§ 84-90, Article 6, of the Public Officers Law.
- (g) “FOIL Officer” means the Secretary or a person designated by the Secretary.
- (h) “FOIL Request” means a request in writing (either letter or e-mail) by a member of the public or the media seeking access to public records pursuant to these procedures and Article 6 of the Public Officers Law.
- (i) “Office of the Secretary” means the office or department under the direction and control of the Secretary.
- (j) “Secretary” means the Secretary of the Authority. For purposes of these procedures, the term “Secretary” also includes any person designated by the Secretary to assist in responding to a FOIL request.
- (k) “Records” mean any information regardless of its physical form or characteristics, including information created, stored and retrievable by electronic means or that are kept, held, filed, produced or reproduced by the Authority in any physical form, including information maintained for the Authority by an entity under contract for records management purposes. It does not include records that are not already in existence and that would have to be created specifically to respond to a FOIL request.
- (l) “Written acknowledgement” means any correspondence acknowledging such receipt of a FOIL request send by the Secretary within five days of such receipt.

### **Section 3: Purpose and Scope.**

These procedures govern access to the Authority’s public records and implement and supplement the Freedom of Information Law contained in Article 6 of the Public Officers Law. These procedures should be read together with Article 6 of the Public Officers Law, which provides additional information about access to records and contains the specific exemptions that are applicable to withholding records. Any conflict among laws governing the access to public records will be construed in favor to the broader access to such records.

### **Section 4: Office of the Secretary.**

- (a) The Authority designates and charges the Office of the Secretary with the duties and responsibilities for insuring compliance with the procedures

and laws governing access to public records.

- (b) The Office of the Secretary will ensure that the Authority timely responds to all FOIL requests.
- (c) The Office of the Secretary will insure Authority personnel maintains a reasonably detailed current list by subject matter of all records in the possession of the Authority, updated annually with the date of the most recent update conspicuously marked in the footer of each page of the list. This list will be posted and updated on the ECWA Website.
- (d) The Secretary will immediately report and provide a copy of the FOIL request to the Board at its next regularly scheduled meeting. The Office of the Secretary will also post all FOIL requests on the ECWA Website, along with any letters and records responsive to these FOIL requests.
- (e) The Office of the Secretary may contact the person(s) seeking records that are voluminous, poorly or broadly described, or requiring substantial effort on the part of Authority personnel to locate such records so that the Authority may ascertain the nature of the records of primary interest and attempt to reasonably reduce the volume of records requested.

#### **Section 5: Public Inspection.**

Public records, upon request, are available for public inspection and review at no cost at the Authority's administrative offices located at the Ellicott Square Building, 295 Main Street, Room 350, Buffalo, New York during the normal business hours. Normal business hours, excluding legal holidays and weekends, are between 9:00 a.m. and 5:00 p.m. Monday through Friday.

#### **Section 6: Public Information on ECWA Website.**

On the ECWA Website, the public has access to the following public records:

- (1) [The Authority's Enabling Statute;](#)
- (2) [The Authority's By-Law;](#)
- (3) [ECWA Tariff;](#)
- (4) [The Duties and Responsibilities of the ECWA Board Members;](#)
- (5) [The Code of Ethics;](#)

- (6) [Employment Opportunity Posting Policy](#);
- (7) [Whistleblower Protection Policy](#);
- (8) [Board Meeting Schedule](#);
- (9) [Board and Committee Minutes](#), since 2014;
- (10) [Agenda, Resolutions and Board Packets](#) for all Board and Committee meeting since April 19, 2018;
- (11) [Audio](#) access to all board and committee meetings since May 17, 2018;
- (12) Annual [Water Quality Reports](#) since 2001;
- (13) The Annual Investments Reports, including [Audit Investments](#), and [Annual Investment Fees](#), from 2016 to the present, as well as the current [Investment Guidelines](#);
- (14) [The Comprehensive Annual Financial Report \(CAFR\)](#), from 2000 to the present;
- (15) [The Audited Financial Statements](#) from 2016 to the present;
- (16) The Authority [Mission Statement](#) and [Annual Performance Measures](#);
- (17) The Authority [Annual Budget](#) from 2017 to the present;
- (18) The Authority Bond Rating in [2016](#) and 2018;
- (19) [Management Assessment of Internal Controls](#) filed in 2016 to the present;
- (20) Annual [Operation Accomplishments](#) listed by Department since 2016;
- (21) The [Paris Reports](#), containing its [annual reports](#), its [budget reports](#), its [procurement report](#) and [staff compensation](#);
- (22) [Annual Financial Reporting Requirements](#);
- (23) [The Purchasing Guidelines and Procedures](#);
- (24) [Projects subject to the State Environmental Quality Review Act](#);

- (25) [News Release and Public Statement](#) issued by the Authority since 2002; and
- (26) [Media Guidelines](#) and [Media Policy](#);
- (27) [The Authority's FOIL Procedures](#) and [FOIL Officer](#).

## **Section 7: FOIL Requests**

All requests shall be in writing and directed to the Secretary of the Authority, Erie County Water Authority, 295 Main Street, Room 350, New York 14203, or by email to [foil@ecwa.org](mailto:foil@ecwa.org).

All written requests mailed or delivered to the Room 350 shall be time-stamped upon receipt, and a copy of the written request shall be scanned and emailed to [foil@ecwa.org](mailto:foil@ecwa.org), to create a secondary means of recording all FOIL requests. All FOIL requests must reasonably describe the record(s) sought for public disclosure, including the time period in which the record is being sought.

## **Section 8: Request for Confidential or Privileged Information.**

Once the Secretary has determined the records sought may be confidential or privileged information, the Secretary shall forward the FOIL request to the Authority's Legal Department. The Legal Department will prepare a privilege log, describing the record, the nature of the privilege, and the statutory section authorizing withholding this record from public disclosure. The Legal Department may also recommend to the Board whether it should publicly disclose any of the requested confidential or privileged records.

The Secretary shall advise the person requesting confidential or privileged records that only the Board has the power to disclose for public inspection and review confidential or privileged records. Whenever practical or feasible, after the Legal Department has reviewed these confidential or privileged records and has prepared a privilege log, the Board may examine these confidential or privileged records, and based on its sound discretion, disclose in whole or in part such records.

## **Section 9: Fees.**

- (a) If the person making a FOIL request desires copies of records, any fees or charges shall be applied in accordance with Public Officers Law § 87(1). Advanced payment is required before records will be copied or released. Check or money orders should be made payable to the "Erie County Water Authority."

- (b) Pages up to 9 inches by 14 inches are \$0.25 per page, or the actual cost of reproducing any other record.
- (c) The fees for reproducing a record may include the actual cost of the storage device or media, actual cost for engaging outside professional service to retrieve and produce the record, or the actual cost to the Authority based on the time spent by an Authority employee calculated by the hourly salary attributed to the lowest paid Authority employee who have the necessary skill required to retrieve and reproduce the requested record(s).
- (d) The Secretary, upon request, has the authority to waive any fees for FOIL request requiring minimum effort retrieve and/or copy.

**Section 10: Secretary's Response to FOIL Requests.**

- (a) The Secretary shall respond, within five business days of the receipt of a written FOIL request, by:
  - (1) Informing the person making the FOIL request that the request or a portion of the request does not reasonably describe the records sought, and providing the individual with a current, detailed list by subject matter of all records in the possession of the Authority;
  - (2) Granting or denying access to records in whole or in part; or
  - (3) Acknowledging in writing receipt of the FOIL request, including the approximate date when the Authority will respond to such request.
- (b) When the Secretary decides to grant the FOIL request in whole or in part, and if circumstances prevent disclosure of such record(s) within 20 business days from the date of the written acknowledgement, the Secretary shall state, in writing, both the reason for the inability to grant the request within 20 business days and a date certain when the request will be granted in whole or in part.
- (c) A failure to comply with the time limitations described in these procedures shall constitute a denial of the FOIL request that may be appealed to the Board.
- (d) When the Secretary decides to deny a FOIL request in whole or in

part, the Secretary shall send the person making the request a written statement as to the reasons why the request was denied in whole or in part and advising the person of the right to appeal the denial to the Board.

## **Section 11: Appeals**

- (a) Any denial, in whole or in part, of a request for records may be administratively appealed to the Board. This appeal right includes the right to appeal a request for which no timely response has been made, and from a response indicating no responsive records existed within the Authority's files, including its electronic files.
- (b) An appeal must be in writing and must be received by the Authority within 30 days after the date of the denial. All appeals should be addressed, and mailed or emailed to:

Board of Commissioners  
Erie County Water Authority  
295 Main Street, Room 350  
Buffalo, New York 142023  
Email: [foil@ecwa.org](mailto:foil@ecwa.org)

- (c) The Board shall inform the appellant and the Committee on Open Government of its determination in writing within 10 business days of the receipt of the written appeal. The failure to timely determine the appeal within 10 business days shall constitute a denial of the appeal, subject to judicial review pursuant to Article 78 of the Civil Practice Law and Rules.
- (d) After an appeal has been filed, the Secretary shall immediately transit to the Committee on Open Government copies of all papers submitted to the Board in the appeal. Copies of such papers shall be addressed to:

Committee on Open Government  
Department of State  
One Commerce Plaza  
99 Washington Avenue, Suite 650  
Albany, New York 12231

- (e) An appeal to the Board is considered a quasi-judicial proceeding pursuant Public Officers Law § 108 (1) and is not subject to the provisions of the Open Meetings Law.

**Section 12: Duty of the Authority Members, Officers and Personnel to Identify and Preserve Public Documents.**

[RESERVED]

**Section 13: FOIL Audit**

The Board may direct the Legal Department to conduct a compliance audit of all FOIL files and report its findings to the Authority's Governance Committee.

Adopted on September 20, 2018.