

**Proposal to Update and Amend LIPA's Rules for Accessing Records
Under the Freedom of Information Law**

Requested Action:

The Long Island Power Authority ("LIPA" or the "Authority") staff ("Staff") proposes to update its regulations for filing requests for records under New York State's Freedom of Information Law ("FOIL") and to conform with FOIL's statutory provisions regarding the collection of fees for copying and producing records.

Background:

New York's FOIL statute, Article 6 (Sections 84-90) of the Public Officers Law, requires that LIPA promulgate rules and regulations: in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

- i. the times and places such records are available;
- ii. the persons from whom such records may be obtained; and
- iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record in accordance with the provisions of paragraph (c) of this subdivision, except when a different fee is otherwise prescribed by statute.

See, Public Officers Law, section 87(1)(b).

LIPA's current regulations were promulgated in 1994, prior to its acquisition of the transmission and distribution system previously operated by the Long Island Lighting Company. This proposal seeks to revise those regulations to make technical corrections regarding the methods by which FOIL requests may be filed and to amend existing fees that may be collected for copying of records provided to the public by conforming with FOIL's provisions. This proposal also seeks to address the concerns raised by various stakeholders relating to the proposed Notice of Proposed Rulemaking originally filed in September 2021.

Proposal:

Staff is proposing to modify or repeal portions of its regulations regarding access to records, and fees currently set forth at 21 NYCRR Section 10050. The specific proposed revisions are as follows:

Section 10050.1 would be updated to provide LIPA's current business headquarters at 333 Earle Ovington Boulevard, Suite 403, Uniondale, NY 11553.

Section 10050.2, subdivisions (a) and (b) would be similarly amended to update LIPA's address and add a notice that the public may request records through LIPA's website using New York State's Open FOIL on-line platform. The subsection would also remove the requirement for a self-addressed envelope and pre-paid postage when mailing a request for records because of the general availability of email and other forms of electronic communications to produce responsive records. Finally, the proposed modifications would designate LIPA's General Counsel as LIPA's Records Access Officer, pursuant to LIPA Board of Trustee policy, and clarify that records held on LIPA's behalf by its service providers are also subject to FOIL.

Section 10050.4 would modify the existing provisions regarding the collection of fees by LIPA for copying records to better conform with the FOIL statute. As is LIPA's current practice, the revision would make clear that fees are not charged nor collected from customers seeking copies of their own account records which are typically available in digital format and easily transmitted via email or other methods.

For all others requesting records, the regulation would be amended to conform to the fee-collection provisions of FOIL, which permits collecting the actual cost of reproducing records as follows:

- i. an amount equal to the hourly salary attributed to the lowest paid agency employee who has the necessary skill required to prepare a copy of the requested record;
- ii. the actual cost of the storage devices or media provided to the person making the request in complying with such request;
- iii. the actual cost to the agency of engaging an outside professional service to prepare a copy of a record, but only when an agency's information technology equipment is inadequate to prepare a copy, if such service is used to prepare the copy.

Public Officers Law, section 87(c).

Staff proposes to amend LIPA's regulation concerning fee-collection at 21 NYCRR, section 10050.4 to track fully the statutory language in FOIL.

Finally, in a couple of housekeeping changes, section 10050.5(b) would correct the title of LIPA's administrative appeals officer in cases involving a denial of records and LIPA's present address where appeals may be filed. Staff also proposes to delete sub-division (c), which merely restates FOIL's provision regarding judicial hearing of a denial of records access pursuant to Article 78 of the New York Civil Procedure and Law Rules.

Financial Impacts:

There is no financial impact associated with the proposed changes, to LIPA or its customers. As for changes in the collection of copying fees, Staff notes that the number of FOIL requests from commercial enterprises seeking LIPA records has increased significantly over recent years. While the fee for actual labor costs associated with copying records may impact such requestors, the proposed modification would merely comply with the language in FOIL that permits such fees, and thereby help to defray at least a portion of the administrative cost of FOIL compliance that is currently being borne entirely by LIPA customers.

Summary of Proposed Changes:

Staff is proposing the following technical corrections and updates, and modifications as to fee-collection, pursuant to FOIL.

21 NYCRR 10050.1

Section 10050.1. Availability of public records

(a) The public records of the Long Island Power Authority (the “Authority”, or “LIPA”) shall be available in accordance with this Part for inspection and copying upon written or oral request, reasonably describing the record or records sought, during the times provided in this Part at the Authority’s main office at 200 Garden City Plaza, Garden City, NY 11530, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553

21 NYCRR 10050.2

Section 10050.2. Procedures regarding access to public records

(a) A request for inspection or copying of a public record of the Authority shall be made to the records access officer of the Authority orally or in ~~writing, and~~ writing and shall contain sufficient information to identify the ~~particular record~~ record sought, including, if possible, information regarding the date, subject matter or other information describing the record sought. Any request shall be made either:

(1) ~~(1)~~ electronically by using Open FOIL New York at <https://www.lipower.org>.

~~(1)~~(2) _____ in person, Monday through Friday, during regular business hours at the Authority’s main office at ~~200 Garden City Plaza, Garden City, NY 11530~~ 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553; or

~~(2)~~(2)-(3) by mailing such request, ~~postage prepaid~~, to the Records Access Officer, Long Island Power Authority, at the aforesaid address.

(b) LIPA’s ~~The deputy general~~ General Counsel is designated the Records Access Officer. The ~~R~~ecords ~~a~~ccess ~~o~~fficer, or designee, shall coordinate within the Authority and with the service provider to the extent that responsive records are held by the service provider on behalf of the Authority, to ensure provide timely responses to requests for public access to records ~~are addressed in a timely manner~~. Designation of a records access officer shall not be construed to prohibit officials who have in the past been authorized to make records or information available, from continuing to do so.

21 NYCRR 10050.4

Section 10050.4. Fees

(a) There shall be no fee charged for:

(1) inspection of records; or

(2) records that are readily available in digital format, capable of being transmitted via electronic mail, and are the requestor's own electric service customer account records.

~~(2) search for records.~~

(b) ~~Persons requesting r~~Records ~~required~~ to be made available in paper format or for records not readily available in digital format, for public inspection will be photocopied by the authority if practicable and the person requesting a copy will be charged a fee of 25 cents per page for copies of such documents not exceeding 9" x 14", or the actual cost of reproducing such records if larger copies are required. or the actual cost of reproducing any other record in accordance with the provisions of paragraph (c). If it is not practicable for the authority to photocopy any such record, it will be copied commercially and the person requesting the copy will be charged a fee equal to the cost of such commercial reproduction.

(c) In determining the actual cost of reproducing a record, the Authority may charge a fee consisting of:

- i. an amount equal to the hourly salary attributed to the lowest paid employee who has the necessary skill required to prepare a copy of the requested record;
- ii. the actual cost of the storage devices or media provided to the person making the request in complying with such request;
- iii. the actual cost to the Authority of engaging an outside professional service to prepare a copy of a record, but only when the Authority or its service provider's information technology equipment is inadequate to prepare a copy, if such service is used to prepare the copy.

(d) ~~Fees shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of agency employee time is needed to prepare a copy of the record requested. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two hours of an agency employee's time is needed, or if an outside professional service would be retained to prepare a copy of the record. Upon payment of the fee determined by the authority for copying a record required to be made available for public inspection, the authority shall provide a copy of such record, and the records access officer shall certify to the correctness of such copy if so requested in writing, or, as the case may be, shall certify that the authority does not have possession of such record or that such record cannot be found after diligent search.~~

~~(e)~~ Any fee charged by the Authority pursuant to this Part shall be paid by the person making the request in cash, certified check or bank cashier's check, in the manner prescribed by the Authority at the time such

fee has been ascertained, and in advance of the delivery of copies of any record referred to in this Part.

21 NYCRR 10050.5

Section 10050.5. Appeals

(a) Any person who is denied access to a public record of the Authority by the records access officer of the Authority may, within 30 days of such denial, file an appeal from such denial with the Authority's appeals officer. Appeals pursuant to this subdivision shall be decided by the appeals officer. If an appeal is denied, the reasons therefor shall be explained fully in writing to the person requesting the record within seven business days of the date on which such appeal is received by the appeals officer. The appeals officer will forward to the Committee on Open Government of the Department of State a copy of such appeal and the appeals officer's determination.

(b) The following person shall hear appeals from denials of access to records, under section 89(4)(a) of the Public Officers Law: the Chief Executive Director/Officer, Long Island Power Authority, 200 Garden City Plaza, Garden City333 Earle Ovington Boulevard, Uniondale, NY 1155330.

~~(c) A determination by the appeals officer upholding a denial of access to records shall be subject to court review as provided for in article 78 of the Civil Practice Law and Rules.~~