

# ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

County Government Center  
255 Main Street  
Goshen, New York 10924  
Phone: 845-291-2700 Fax: 845-291-2724

James Petro, Jr., Chairman  
Robert Armistead, Vice Chairman  
Mary Ellen Rogulski, Second Vice Chairman  
Stephen Brescia, Secretary  
John Steinberg, Jr., Assistant Secretary  
Henry VanLeeuwen  
Robert J. Schreibeis, Sr.

James O'Donnell, Executive Director  
Joel Kleiman, Chief Financial Officer  
Philip A. Crotty, Attorney  
Laurie Villasuso, Administrative Assistant

## Agenda

PLEASE TAKE NOTICE, The Orange County Industrial Development Agency will hold a regularly scheduled meeting on March 21, 2012 at 3:00 p.m. in the Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York, to consider and/or act upon the following:

### Order of Business

- **Roll Call**
- **Approval of the minutes from February 15, 2012 meeting**
- **Financial Reports and/or Requests for Payments**
  - Presentation of Annual Audit – 2011 Financial Statements
- **New and Unfinished Business**
  - Chairman's Report
  - Executive Director Report
  - OCBA Report
    - Occupancy/Space (further Discussion)
    - Personnel Discussion
  - OCP Report
  - Discussions
    - Annual Report - Update
    - OCFC Micro-Loan Program – Update
    - The Marketplace - Update
    - OCCDC – Update
    - CNC Advanced Manufacturing – Update
    - Shamrock Creek/Center Line Studio – Update
    - \*CPV/New Hampton Fire District Article 78 – Final Decision (favorable)
- **Resolutions**
  - Resolution Approving Annual Report
- **Such other and further business as may be presented**
- **Public Comments**
- **Adjournment**

Dated: March 14, 2012

Stephen Brescia, Secretary

By: James O'Donnell, Executive Director

# Orange County IDA

## Received February/March 2012

Orange County Business Accelerator (4Q 2011 Reimbursement)	34,291.00
Leentjes/Castel Refinance	1,000.00
Orange County Choppers (legal fee reimbursement)	230.59
*Millennium Pipeline (Dep to Funding Corp Acct)	108,000.00
<b>Total</b>	<b>143,521.59</b>

## Vouchers & Payments March 2012

First Columbia (OCBA lease) --- PAID 2/15/12	5,000.00
Phil Crotty (Travel Expenses)	327.71
Burke, Miele & Golden LLP (Legal Services - New Hampton Fire)	2,767.50
Phil Crotty (Legal Fees 12/20-1/19)	7,955.00
Judelson, Giordano & Siegel (OCCDC fed and state final TR)	1,500.00
Hudson Valley Economic Development (2012 dues)	20,000.00
NYSEDC (Annual Meeting registration)	375.00
<b>Total</b>	<b>37,925.21</b>

# THE ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

COUNTY GOVERNMENT CENTER

GOSHEN, NY 10924

March 01, 2012 \_\_\_\_\_  
(Date)

Pay To Hudson Valley Economic Development

(For Agency Use Only)

Claim No. \_\_\_\_\_

Address 4 Crotty Lane, Ste 100

New Windsor, NY 12553

DATE	QUANTITY	DESCRIPTION OF MATERIALS OR SERVICES	UNIT PRICE	AMOUNT
2012	1	Hudson Valley Economic Development Corporation Dues		20,000 00
			<b>TOTAL</b>	<b>20,000 00</b>

I HEREBY CERTIFY that the above named articles, in the quantities specified were delivered to me upon the date indicated, and that the services have been rendered by the persons named, for the purposes and at the times indicated; and that such articles were for the sole use and benefit of the Orange County Industrial Development Agency.

Reviewed by CFO

(For Agency Use Only)

.....  
To be signed by the Officer of the Orange County Industrial Development Agency

STATE OF NEW YORK: COUNTY OF ORANGE:

Michael Oates says that he/she is President & CEO  
Title (President or other office or member)  
of Hudson Valley Economic Development Corporation  
Name of corporation or firm

The claimant mentioned in the within claim, is duly authorized to execute this proof of claim, and hereby certifies to the Orange County Industrial Development Agency, its officers and representatives that the above claim is true and correct; that the services charged for were actually rendered; that the articles charged for therein have been furnished and delivered; that the disbursements were actually and necessarily made; that the whole amount claimed remains due, owing and unpaid, and that there are no federal, state or city taxes included in said claim.

Claimant further certifies that neither himself, nor any of his employees, having an interest, direct or indirect, in this claim, are officers or employees of the Orange County Industrial Development Agency.

Claimant, a corporation, certifies that no officer or employee of said corporation, having an interest, direct or indirect, in this claim, are officers or employees of the Orange County Industrial Development Agency.

Claimant, is an employee or officer of the Orange County Industrial Development Agency, certifies that this claim is only for compensation and or necessary expenses incurred in the performance of duties.

This certification is made pursuant to the provisions of Article IV of the By-Laws of Orange County Industrial Development Agency.

(For Agency Use Only)

Dated \_\_\_\_\_

Audited \_\_\_\_\_ Date \_\_\_\_\_

Paid by Check \_\_\_\_\_

Signature of Claimant *Mike Oates*  
Date 03.07.12

# THE ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

COUNTY GOVERNMENT CENTER

GOSHEN, NY 10924

3/20/2012

(Date)

Pay To NYSEDC

Address 111 Washington Ave., 6<sup>th</sup> Floor

Albany, NY 12210

(For Agency Use Only)

Claim No. ....

DATE	QUANTITY	DESCRIPTION OF MATERIALS OR SERVICES	UNIT PRICE	AMOUNT
3/20/12		Reservation for NYSEDC 2012 Annual Meeting in Cooperstown May 23-25		375 00
			<b>TOTAL</b>	<b>375 00</b>

I HEREBY CERTIFY that the above named articles, in the quantities specified were delivered to me upon the date indicated, and that the services have been rendered by the persons named, for the purposes and at the times indicated; and that such articles were for the sole use and benefit of the Orange County Industrial Development Agency.

Reviewed by CFO

(For Agency Use Only)

.....  
To be signed by the Officer of the Orange County Industrial Development Agency

STATE OF NEW YORK: COUNTY OF ORANGE

\_\_\_\_\_ says that he/she is \_\_\_\_\_  
of \_\_\_\_\_ Title (President or other office or member)  
Name of corporation or firm

The claimant mentioned in the within claim, is duly authorized to execute this proof of claim, and hereby certifies to the Orange County Industrial Development Agency, its officers and representatives that the above claim is true and correct; that the services charged for were actually rendered; that the articles charged for therein have been furnished and delivered; that the disbursements were actually and necessarily made; that the whole amount claimed remains due, owing and unpaid, and that there are no federal, state or city taxes included in said claim.

Claimant further certifies that neither himself, nor any of his employees, having an interest, direct or indirect, in this claim, are officers or employees of the Orange County Industrial Development Agency.

Claimant, a corporation, certifies that no officer or employee of said corporation, having an interest, direct or indirect, in this claim, are officers or employees of the Orange County Industrial Development Agency.

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This certification is made pursuant to the provisions of Article IV of the By-Laws of Orange County Industrial Development Agency.

(For Agency Use Only)

Dated .....  
Audited ..... Date .....  
Paid by Check .....

Signature of Claimant \_\_\_\_\_

Date \_\_\_\_\_



New York State Economic Development Council

111 Washington Avenue, 6th Floor  
Albany, NY 12210

# Invoice

Date	Invoice #
3/20/2012	3842

<b>Bill To</b>
Orange County IDA James D. O'Donnell County Gov't Center, 255-275 Main Street Goshen, NY 10924

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
1	2012 Annual Meeting - Early Member Registration	375.00	375.00

<b>Phone #</b>	<b>Fax #</b>
(518) 426-4058	(518) 426-4059

<b>Total</b>	\$375.00
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2-15-2012  
PAC

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF ORANGE  
HON. PAUL I. MARX, J.S.C.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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In the Matter of the Application of

**NEW HAMPTON FIRE DISTRICT,**

Petitioner,

For a Judgment Under Article 78 of the CPLR to compel compliance with a request for information pursuant to New York's Freedom of Information Law

-against-

**THE ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY,**

Respondent.

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DECISION AND ORDER

Index No.: 10727/2011

Motion Date: January 27, 2012

The following papers numbered 1 to 8 were read on: (1) petitioner's application pursuant to CPLR Article 78 for judicial review of the denial of its request for information under the Freedom of Information Law ("FOIL"), N.Y. Public Officers Law § 87; and (2) respondent's motion to dismiss the petition pursuant to CPLR 3211(a)(1) and (7), CPLR 7804(f), CPLR 404(a), and CPLR 409(b):

Notice of Petition-Verified Petition-Exhibits A through D . . . . .	1-2
Notice of Motion to Dismiss Petition-Golden Affidavit-Exhibit A . . . . .	3-4
Memorandum in Support of Motion to Dismiss Petition . . . . .	5
Affirmation in Opposition . . . . .	6
Reply Memorandum of Law in Further Support of Motion to Dismiss . . . . .	7
O'Donnell Affidavit in Further Support of Motion to Dismiss . . . . .	8

Upon the foregoing papers it is ORDERED that the motion to dismiss is granted and the petition is dismissed in its entirety.

Petitioner seeks an order pursuant to CPLR § 7804 compelling respondent to fully respond to petitioner's FOIL request, dated June 27, 2011, for a copy of the report of respondent's consultant, or any other report, appraisal, or assessment relating to a proposed electric generating plant to be constructed by CPV Valley, LLC ("CPV") in the Town of Wawayanda. Respondent's FOIL Officer denied petitioner's request by letter dated July 28, 2011, upon the statutory ground that disclosure of the consultant's report would "impair present or imminent contract awards". N.Y. Public Officers Law § 87(2)(c). The agency's FOIL response also stated that it reserved the right to assert other grounds for exemption if the matter was appealed. Thereafter, petitioner appealed the denial of its FOIL request to respondent's FOIL Appeals Officer, and the appeal was denied. Petitioner subsequently brought the instant Article 78 proceeding seeking review of the agency's denial of its FOIL request.

Following initiation of this proceeding, respondent provided a copy of the subject report to petitioner, in which portions of the report were redacted to omit information deemed to be "intra-agency materials which are not statistical or factual tabulations or data". Public Officers Law 87(2)(g)(i). Respondent moved to dismiss the petition on the ground that the requested information initially was properly withheld and, notwithstanding its claimed exemption from disclosure, the document was subsequently provided to petitioner in a properly redacted form.

Petitioner raises several points in opposition to respondent's motion. First, petitioner argues that dismissal of its petition is not the appropriate remedy. Second, petitioner argues that respondent's initial ground for exemption merely parrots the language of the statute rather than providing a particularized reason for withholding the information. Third, petitioner argues that the intra-agency exemption, claimed by respondent as the basis for its redaction of information from the report, may not be asserted as a new ground for withholding information. Fourth, petitioner argues that the information redacted from the report goes to the heart of its FOIL request. Moreover, it claims that some of the redacted information is not covered by the intra-agency exemption because it is a statistical or factual tabulation of data. Fifth, petitioner claims that the intra-agency exemption does not apply because the consultant who authored the report may also be working for CPV and

discovery is needed to flesh out the relationship to determine whether it would invalidate the intra-agency exemption.<sup>1</sup>

The Court is mindful that FOIL is to be read liberally in favor of disclosure of public information and its exemptions are to be narrowly construed. *See, Encore College Bookstores, Inc. v. Auxiliary Service Corp. of SUNY Farmingdale*, 87 NY2d 410, 417 [1995]. In this case, the Court finds that respondent adequately responded to petitioner's FOIL request in its initial response and its denial of petitioner's appeal by fully explaining in writing its reasons for withholding the report. *See, West Harlem Business Group v Empire State Development Corp.*, 13 N.Y.3d 882 [2009]; *NYSUT v Brighter Choice Charter School*, 15 NY3d 560 [2010]. More to the point, upon review of the subject report, the Court finds that the exemption claimed by respondent – that disclosure would impair its contract negotiations with CPV – was properly asserted as a basis for withholding the report. *See, Murray v Troy Urban Renewal Agency*, 56 NY2d 888 [1982]. The information contained in the report relates directly to the payments that CPV would have to make under the payment-in-lieu-of-taxes agreement (“PILOT”) that respondent has been negotiating with CPV. If respondent had publicly disclosed the consultant's recommended amounts or even ranges, the disclosure would have severely compromised its ability to negotiate such amounts with CPV. Accordingly, respondent's decision to withhold the report based upon the impairment of contract exemption was proper.

With regard to the intra-agency exemption, the Court recognizes that the exemption was claimed by respondent for the first time in its motion to dismiss and was not initially asserted by respondent in its administrative review of petitioner's FOIL request. The Court will consider the arguments raised by the parties with regard to this exemption because respondent has opted to provide the report in redacted form and the Article 78 petition requests that respondent be ordered to “fully respond” to its FOIL request. Petitioner's arguments in opposition to respondent's motion

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<sup>1</sup> Based upon a review of the October 21, 2008 letter referenced in petitioner's opposition and the other materials provided with it, the Court sees no basis for finding that the consultant has a dual relationship that might invalidate the exemption. *See, Respondent's FOIL response, attached as Exhibit A to Notice of Motion to Dismiss.* Rather, the materials support a finding that the consultant was performing his due diligence in fully investigating CPV's proposed facility.



to dismiss clearly assert that the redacted report they received from respondent is not a full response. Thus, the Court will consider whether the intra-agency exemption was improperly applied such that petitioner is entitled to the information redacted from the report.

As an initial matter, the Court notes that the report qualifies as an agency record that would come within the intra-agency exemption because it was created at the agency's behest as part of its deliberative process and it is held by the agency. See, *Matter of Xerox Corporation v Town of Webster*, 65 NY2d 131, 133. It is plain that certain of the information contained in the report constitutes opinions upon which the agency relied, and continues to rely, throughout its deliberative process of ascertaining the proper amounts of the payments to be made by CPV in lieu of taxes. The Court is persuaded by respondent's reasoning that the form in which such information is presented is not alone dispositive of whether the exemption might apply to it. Specifically, recommended rates or payment amounts do not become factual merely because they are numbers arranged in a table format. Rather, to the extent that such data constitute recommendations that form the basis for the agency's deliberation and negotiation with CPV, they are exempt from disclosure under FOIL pursuant to the intra-agency exemption. See, *Gould v New York City Police Department*, 89 NY2d 267, 277 [1996] ("Factual data, therefore, simply means objective information, in contrast to opinions, ideas, or advice exchanged as part of the consultative or deliberative process of government decision making.").

Accordingly, the Court grants respondent's motion to dismiss the petition in its entirety. Respondent properly asserted statutory grounds for withholding information under FOIL.

The foregoing constitutes the decision and order of the Court.

Dated: March 12, 2012  
Goshen, New York

ENTER  
  
HON. PAUL I. MARX, J.S.C.

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