

# Sam Pratt Design & Consulting

SAMPRATT.COM | 175 HOYLE ROAD CRARYVILLE NY 12521 | SAMPRATT@MAC.COM | 518.755.6624

T O           New York State Committee on Open Government  
V I A         kristin.oneill@dos.ny.gov  
O N           17 May 2018

Dear Ms. O'Neill:

Pursuant to our phone conversations, I am writing to request an advisory opinion regarding a Freedom of Information Law (FOIL) request submitted to a Local Development Corporation (LDC), the Hudson Development Corporation (HDC) on 20 April 2018.

At issue is HDC's contention that it is somehow exempt from FOIL.

I am attaching my FOIL request, a short timeline of events, and several pages supplementary information researched from public sources, with footnoted links. Please let me know if there is additional material I can provide to inform a potential advisory opinion from the NYS COOG.

Thank you,

A handwritten signature in blue ink that reads "Samuel S. Pratt". The signature is stylized and includes a long horizontal line extending to the right.

SAM PRATT

cell | 518.755.6624  
email | [SAMPRATT@MAC.COM](mailto:SAMPRATT@MAC.COM)

*5 pages attached*

# Sam Pratt Design & Consulting

SAMPRATT.COM | 175 HOYLE ROAD CRARYVILLE NY 12521 | SAMPRATT@MAC.COM | 518.755.6624

**TO** Records Access Officer  
Hudson Development Corporation  
1 North Front Street  
Hudson NY 12534

**ON** 20 April 2018

**VIA** sheena@hudsonfirst.com, kristal@kristalheinz.com

To whom it may concern:

Pursuant to New York State Freedom of Information Law (a/k/a FOIL, Public Officers Law, Article 6) I hereby request records created between January 1st, 2017 and December 31st, 2017 which mention, discuss, originate from, or otherwise concern the A. Colarusso & Son company ("Colarusso").

Records responsive to this request which exist in electronic form should be delivered to:

sampratt@mac.com

Other records not in electronic form I will review in person to determine whether photocopies are necessary.

FOIL requires that an agency respond to a request within five business days of receipt of a request. If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

Sincerely,

SAM PRATT

cell | 518.755.6624  
email | SAMPRATT@MAC.COM  
cc | R. RECTOR

[COPY OF  
REQUEST]

## TIMELINE OF REQUEST & AGENCY RESPONSES

- On 20 April 2018, the attached FOIL request was submitted to HDC. (See previous page)
- On the same day, a reply was received from HDC Executive Director Sheena Salvino, which read in its entirety:

Sam,

HDC is reviewing your request and will respond accordingly in due course.

Sincerely,

Sheena Salvino  
Director, HDC  
sheena@hudsonfirst.com

- The above reply does not specify whether the request will be granted or denied within the required 5-day timeframe, nor whether an extension will be required.
- On 4 May 2018, I contacted HDC via email to notify them that the deadline for responding to my FOIL request had been exceeded, citing §89(3)(a) of FOIL, as well as guidance from the NYS COOG website.
- Salvino responded on that same day [*emphasis added*]:

Sam,

In response to your email, please be advised that HDC timely responded to your request and is working on a more detailed and comprehensive response. After consultation with legal council, HDC reserves the right to object to your request under the grounds that HDC, as a not-for-profit corporation not under substantial government control, is not subject to the provisions of the Freedom of Information Law ("FOIL") regarding production.

Notwithstanding, and without waiving any rights, defenses or objections, to the extent that HDC is in possession of any documents relevant to your request, HDC will produce same within twenty (20) days of today's date.

Sincerely,

Sheena Salvino  
Director  
Hudson Development Corporation  
Hudson Community Development & Planning Agency  
sheena@hudsonfirst.com  
www.hudsonfirst.com  
518.751.1044

## SUPPLEMENTARY INFORMATION FROM PUBLIC SOURCES INDICATING THAT HDC IS SUBJECT TO FOIL

— See footnotes for direct citations —

- The Hudson Development Corporation (HDC) identifies itself as a Local Development Corporation, stating on its website that “Local Development Corporations are created pursuant to Not-for-Profit Corporation Law, Section 1411” to “lessen the burdens of government.”<sup>1</sup>
- The City of Hudson lists HDC among its official Boards and Committees.<sup>2</sup> All of the entities on this list are well-understood to be agencies subject to FOIL, *e.g.* the Hudson Planning Commission, Board of Assessment Review, Historic Preservation Committee, Hudson Community Development and Planning Agency, *et al.*
- Describing its purposes, HDC notes that “LDCs are authorized under state law and are often used by municipalities to support particular public purposes.” HDC’s website further acknowledges that “LDCs created by municipalities are quasi-public entities undertaking activities in areas of public concern.”<sup>3</sup>
- The New York State Authorities Budget Office (ABO) lists HDC as a public authority, specifically an LDC. Multiple HDC annual reports and audits are archived on the ABO’s site, further reflecting its status as a quasi-governmental agency.<sup>4</sup> HDC’s minutes further show that the agency’s board is required to attend ABO trainings.<sup>5</sup>
- HDC’s own auditor has repeatedly stated in annual audits filed with the ABO that “The Organization receives substantially its entire grant and contract revenue from State and Local agencies.”<sup>6</sup> [*emphasis added*]
- HDC’s auditor has further noted that “any of the funding sources may, at its discretion, request reimbursement for expenses or return of funds, or both, as a result of non-compliance by the Organization with the terms of its grants/contracts.” This recognizes

---

<sup>1</sup> <http://hudsonfirst.com/about>

<sup>2</sup> [http://www.cityofhudson.org/board\\_and\\_committees](http://www.cityofhudson.org/board_and_committees)

<sup>3</sup> <http://hudsonfirst.com/about>

<sup>4</sup> [https://www.abo.ny.gov/paw/paw\\_weblistingLDC2.html](https://www.abo.ny.gov/paw/paw_weblistingLDC2.html)

<sup>5</sup> <http://hudsonfirst.com/wp-content/uploads/2015/03/HDC-February-2015-Minutes.pdf>

<sup>6</sup> <https://www.abo.ny.gov/annualreports/PARISAuditReports/FYE2015/LDC/HudsonDevelopmentCorporation2015.pdf>

government's power of the pursestrings over the agency, which includes discretion to discontinue future funding.<sup>7</sup>

- HDC holds public meetings, and sometimes goes into Executive Session, a feature of the Open Meetings Law. Were it not an agency, HDC's meetings would not be open to the public and its board would not need to hold Executive Sessions to discuss privileged information.<sup>8</sup>
- In December 2017, HDC was expected to apply for a grant on behalf of the City of Hudson, but was unable to do so because it did not publish a public notice, once again emphasizing its role as an arm of local government, and subject to the same requirements.<sup>9</sup>
- The Mayor and the President of the Common Council of the City of Hudson both serve *ex-officio* on the Board of HDC.<sup>10</sup> Until recently, the Common Council majority and minority leaders also served *ex officio* on the board of HDC. The number of Board members fluctuates a great deal, with frequent vacancies. For example, in 2014 elected officials represented 4 out of 8 members, or 50%. HDC often reports on its activities to the City of Hudson's Economic Development Committee, a subcommittee of the Common Council.<sup>11</sup>
- HDC's Executive Director and bookkeeper(s) have at times been jointly paid by the agency and HCDPA, another LDC subject to FOIL and supported by City government.<sup>12</sup> Salvino lists both HDC and HCDPA as her employer in the second email provided in the above timeline.
- The agency was formerly part of the Columbia-Hudson Partnership, which consisted of HDC and another LDC, the Columbia Economic Development Corporation (CEDC). The two separated more than a decade ago, but CEDC unlike HDC recognizes that it is subject to FOIL. (The writer has FOILED CEDC in the past without any obstructive behavior.)<sup>13</sup>
- The City of Hudson and its agencies have been known to dispose of, donate, or otherwise arrange for properties to be transferred for the purpose of redevelopment by HDC: "HDC is typically the receiver of property acquired by the City of Hudson. For example, when the

---

<sup>7</sup> <https://www.abo.ny.gov/annualreports/PARISAuditReports/FYE2015/LDC/HudsonDevelopmentCorporation2015.pdf> and <https://www.abo.ny.gov/annualreports/PARISAuditReports/FYE2016/LDC/HudsonDevelopmentCorporation2016.pdf>

<sup>8</sup> <http://hudsonfirst.com/wp-content/uploads/2013/01/HDC-JANUARY-2018-MINUTES.pdf>

<sup>9</sup> <http://gossipsofrivertown.blogspot.com/2018/01/intel-from-yesterdays-hdc-meeting.html>

<sup>10</sup> <http://hudsonfirst.com/about>

<sup>11</sup> <http://www.cityofhudson.org/Common%20Council/Minutes/2012/rmseptember18.2012.pdf>

<sup>12</sup> <http://hudsonfirst.com/wp-content/uploads/2017/07/2012-HDC-Audited-Financial-Statements.pdf>

<sup>13</sup> Personal direct knowledge from my prior service as the City of Hudson's Commissioner of Grants.

City took possession of the lone surviving Hudson River Knitting Mills building, HDC ended up owning the building.<sup>14</sup>

- HDC was deeply involved with the submission of a multimillion-dollar grant application to New York State's DRI program, which was awarded in 2018. HDC has proposed to manage some \$2,450,000 of this public funding.<sup>15 16</sup> A copy of the \$10 million application available at the website of one of its consultants, River Architects, lists HDC as the responsible agency on its front page.<sup>17</sup>
- HDC frequently seeks authorization from the Common Council to develop and submit grant proposals. It likewise frequently enters into agreements with the City to manage and/or expend grant funds received by the City, for example two agreements in 2012 to "expend funds" secured by the City for its LWRP and EPF activities at the City Waterfront.<sup>18</sup>
- HDC coordinates activities and proposals with numerous other governmental agencies<sup>19</sup> and routinely discusses and helps steer City business, *e.g.* the restoration of a pedestrian bridge over the CSX tracks, connecting Front Street to the Hudson Waterfront which involves among many others, the City of Hudson Public Works.<sup>20</sup>
- HDC has a 12-year lease for its offices from the City of Hudson, and has a joint agreement with the City for the renovation of the building it occupies, the former Washington Hose Firehouse.<sup>21</sup>
- Four of HDC's five incorporators in 1977 were the Mayor of Hudson, the President of the City of Hudson Common Council, and a Hudson Alderman (plus the wife of the Chair of its Planning Commission). This demonstrates that the agency was conceived of and created by local government.<sup>22</sup>

---

<sup>14</sup> <http://gossipsofrivertown.blogspot.com/2012/07/all-about-hdc.html>

<sup>15</sup> <http://hudsonfirst.com/wp-content/uploads/2013/01/HDC-FEBRUARY-2018-MINUTES.pdf>

<sup>16</sup> [http://hudsondri.org/wp-content/uploads/2017/11/Summary\\_DRI\\_projects\\_180308\\_for\\_website-1.pdf](http://hudsondri.org/wp-content/uploads/2017/11/Summary_DRI_projects_180308_for_website-1.pdf)

<sup>17</sup> <http://www.riverarchitects.com/s/Hudson-DRI-Submission-2017-FINAL-xmwh.pdf>

<sup>18</sup> <http://hudsonfirst.com/wp-content/uploads/2017/07/2012-HDC-Audited-Financial-Statements.pdf>

<sup>19</sup> <http://hudsonfirst.com/wp-content/uploads/2017/07/Hudson-Development-Corporation's-Projects-and-Accomplishments.pdf>

<sup>20</sup> <http://gossipsofrivertown.blogspot.com/2016/03/in-pursuit-of-bridge.html>

<sup>21</sup> <http://hudsonfirst.com/wp-content/uploads/2017/07/2012-HDC-Audited-Financial-Statements.pdf>

<sup>22</sup> <http://hudsonfirst.com/wp-content/uploads/2017/07/HDC-Articles.pdf>