

UPDATE ON PUBLIC RECORDS REQUESTS

Presented by the City Clerk's Office
October 10, 2022 Finance & Governance Committee



THE PUBLIC RECORDS ACT (RCW 42.56)

PROGRAM OVERVIEW

LEGISLATIVE MANDATES

METRICS

AGENCY IMPACTS

SANCTIONS

SUMMARY

THE PUBLIC RECORDS ACT (RCW 42.56)

Agencies are required to make identifiable, non-exempt public records available for inspection and copying upon request and to publish rules of procedure that inform the public how access to public records will be accomplished.

Records are defined broadly as any writing created or received by an agency in connection with the transaction of business and may be physical or electronic.

PROGRAM OVERVIEW

The City Clerk's Office coordinates complex, multi-departmental requests, often in concurrence with pending litigation against the City. The City Clerk is the Public Records Officer and oversees compliance.

Program components include:

- Intake, distribution and monitoring of requests
- Interpretation of requests and generation of search parameters
- Review for responsiveness and potential exemptions to disclosure
- Communications to requestors, agencies, and staff
- Data collection and reporting
- Retention and destruction of public records

LEGISLATIVE MANDATES

5-Day Letter Rule

Within five business days, the City must provide one of the following responses:

1. Make the record available for inspection or copying; or
2. Provide an internet address and link on the agency's website to the specific records requested; or
3. Acknowledge that the request has been received and provide a reasonable estimate when records will be available; or
4. Request clarification and to the greatest extent possible, provide an estimate of the time to respond if the request is not clarified; or
5. Deny the request and provide a statutory reason as to why the request is being denied.

LEGISLATIVE MANDATES

As of 2017, the City is required by RCW 40.14.026 to report annually as a single agency to the State Legislature's Joint Legislative Audit and Review Committee (JLARC) on performance metrics related to public records retention, management, and disclosure.

Annual Reporting

JLARC requires agencies to capture 17 standardized metrics with 51 associated subsets of data each calendar year for reporting by July 1st of the following year.

The Clerk's Office compiles and standardizes data for submission to JLARC from all City departments with the exception of the Municipal Court, which is not subject to the Washington State Public Records Act but is instead regulated under Washington Court Rules.

LEGISLATIVE MANDATES

Open Government Training Act

The Open Government Training Act went into effect July 2014. Since then, the Clerk's Office has produced and presented training to the City Council every four years on:

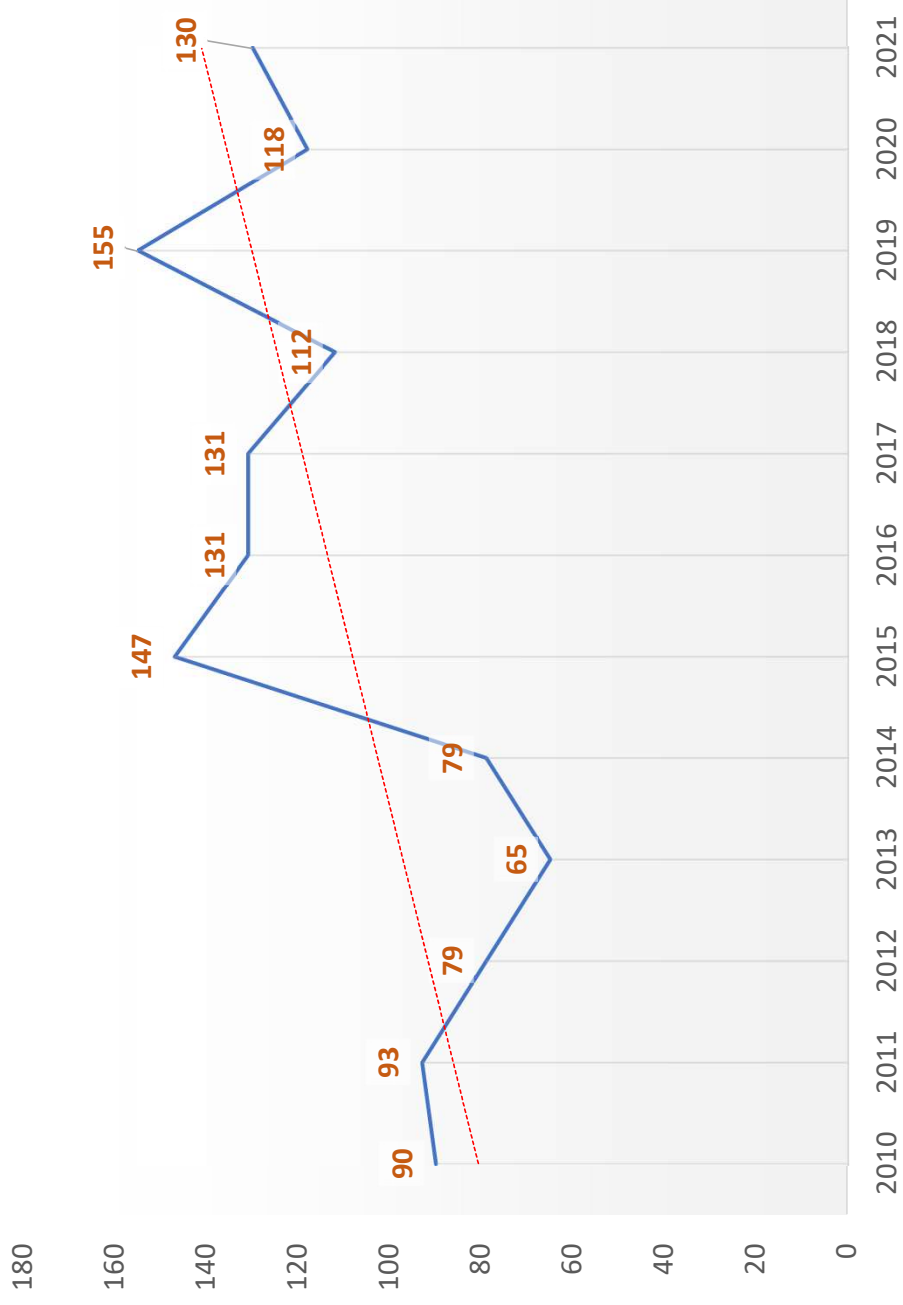
- Records management
- Public Records
- The Open Public Meetings Act

Other trainings provided by the Clerk's Office includes:

- New employee orientations on public records responsibilities
- Resources and direction to public records liaisons in other City departments

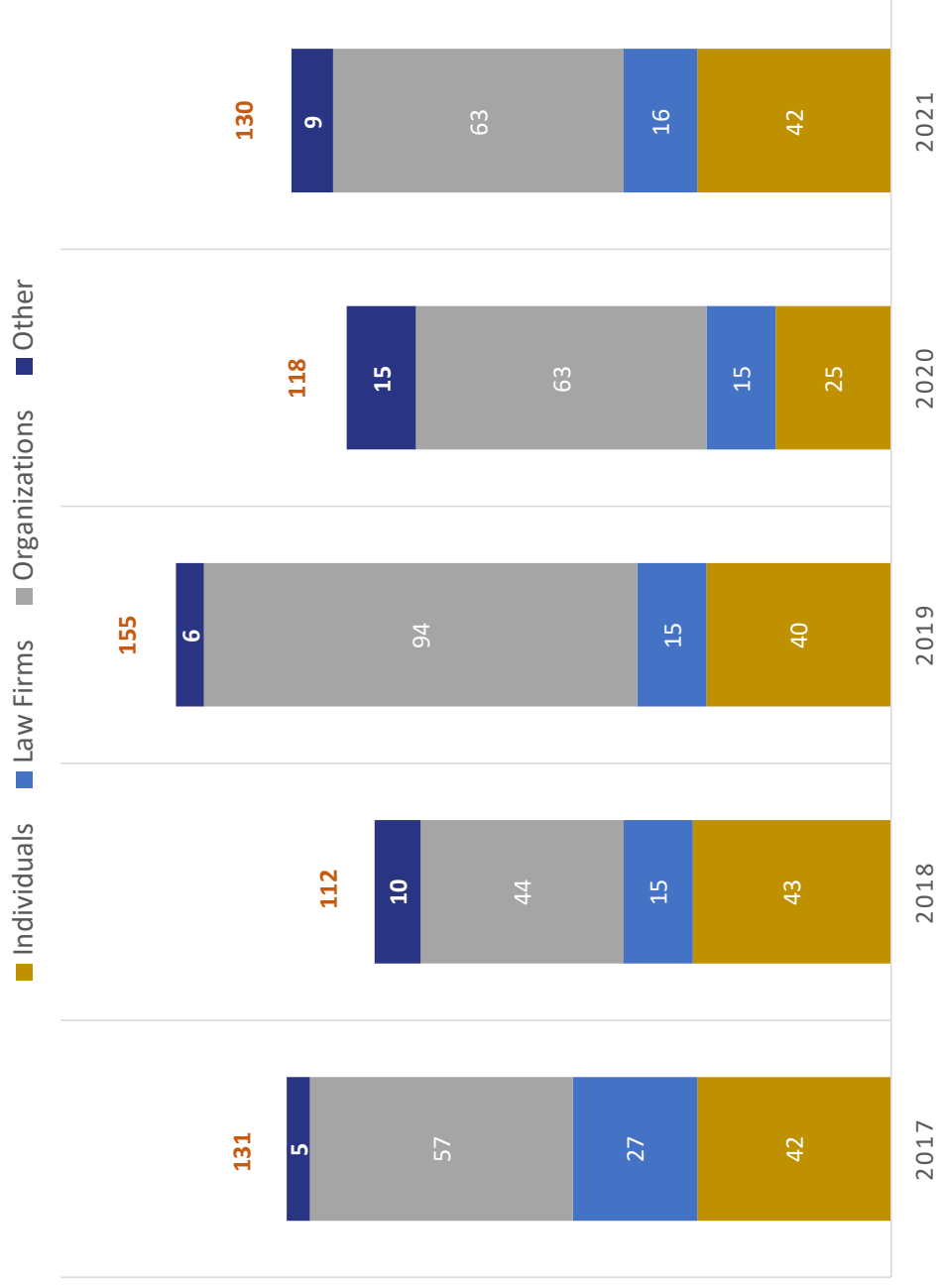
METRICS

Number of Requests
Received Annually
(Clerk's Office)



METRICS

Requestors by Type (Clerk's Office)



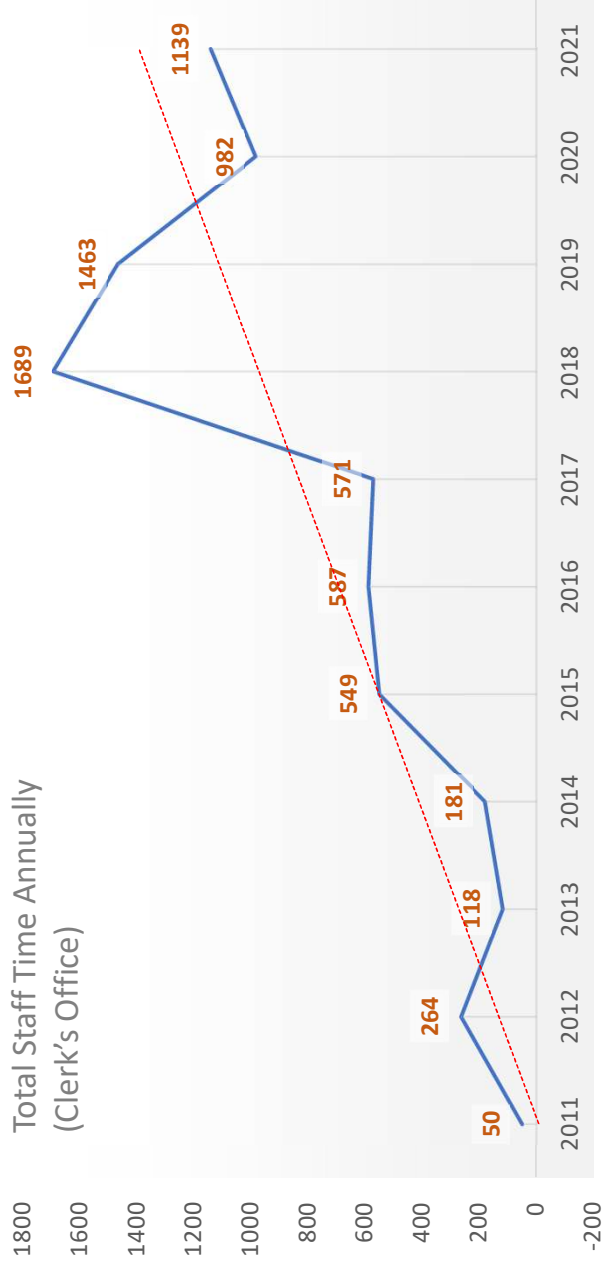
METRICS

Time to Close Requests Annually (Clerk's Office)

	2017	2018	2019	2020	2021
Percentage of requests closed in 5 days	77%	68%	73%	50%	56%
Percentage of requests fulfilled in 6-29 days	17%	18%	17%	19%	18%
Percentage of requests closed in 30 days or more	6%	14%	10%	31%	26%
Average number of days to close	11	18	16	23	19
Longest time taken to close a request	155 days	211 days	464 days	132 days	182 days

METRICS

Staff Time on Public Records Requests Annually (Clerk's Office)



	2017	2018	2019	2020	2021
Average estimated staff time (hours) per request	4	15	9	9	9

METRICS

2021 Costs Associated
with fulfilling Public
Records Requests
(Staff and legal)

DEPARTMENT	Sum of HOURS	Sum of LABOR	Sum of BENEFITS
FIRE MARSHAL	6.75	688.03	96.47
CITY CLERK	1,139.00	58,131.93	19,399.45
MAYORS	39.50	1,905.11	783.05
POLICE RECORDS	2,117.90	74,126.50	-
FIRE	117.12	2,870.61	-
FINANCE	9.50	429.30	293.91
DCD	448.75	14,341.89	2,916.73
COURT	124.00	3,717.53	1,339.47
TIS	10.50	523.02	273.54
PW – STREETS	36.00	1,800.76	959.55
PW	105.00	5,153.33	1,571.95
	4154.02	\$ 163,688.01	\$ 27,634.12
		STAFF COSTS	\$ 191,322.13

DEPARTMENT	HOURS	EXPENSES	FEES
CITY ATTY	170.9	\$ 42,216.00	
		LEGAL COSTS	\$ 42,216.00
		TOTAL AGENCY COST	\$ 233,538.13

AGENCY IMPACTS

For requests requiring an email and electronic data search, the number of results can be astounding. Here are some things that staff need to check for:

- Responsiveness
- Attorney/Client Privilege
- Email Attachments
- Tabs in Excel Files
- Files with Hyperlinks

Fun fact: The search results for one request resulted in 44,219 records, which had 37,287 attachments, thereby totaling 81,506 records to be reviewed.

Estimated Total Files and Emails Reviewed Annually	
2017	12,214
2018	131,508
2019	40,638
2020	11,688
2021	19,444

AGENCY IMPACTS (continued)

Interpreting a request is the first step, and criteria must be established to obtain the most **relevant** results:

Criteria used for all searches:

Smith & Lowmyer Law: 1/1/2017 thru 4/1/2022 for EMAIL AND NETWORK/SHAREPOINT/0365, ETC.

Keywords: "Stormwater Management Plan" OR "SWMP" OR "NPDES" from 1/1/2017 thru 4/1/2022

Results are as follows:

PD Data- 0 items
City Data- 6059 items
365- 10,946
Email- 21,079 items

Staff then review for **responsiveness**:



Records identified as containing sensitive information must then be **redacted** and accompanied by an **exemption log**:



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The city of opportunity, the community of choice.



There is also an increased need for:

- Nissen affidavits (for records potentially created or stored on staff cell phones)
- Third-Party Notices (providing affected parties opportunities to obtain an order enjoining release of records)

SANCTIONS

Any aggravating factors (delayed response, lack of training, bad faith, dishonesty) or civil penalties are awarded to the requestor. Following are other factors for which sanctions were awarded:

Aggravating Factors

- Request misdirected or not recognized as a formal request for public records.
- Records not found due to inadequate search
- Born-digital records were not provided in an electronic format or metadata was not provided.
- A request was construed narrowly, resulting in the silent withholding of records.
- Not responding to part or all of the request in a timely manner
- Unreasonable estimate of time for when records will be available
- Willful destruction or alteration of a public record

SANCTIONS

Public Records Act Penalties

University of Washington vs. The Seattle Times
The UW agreed to pay \$97,000 to settle a lawsuit filed by the Seattle Times alleging failure to provide public records that were inadvertently withheld.

Labor & Industries vs. The Seattle Times
L&I was fined \$503,000 for improperly delaying release of more than 5,400 pages of records.

Port of Quincy v. Dove
The Port paid \$350,000 in a settlement to Mr. Dove as a result of missing **one** email that landed in the spam folder in its response.

Nissen v. Pierce County
Work-related text message on a public employee's personal cell phone were found to be subject to disclosure by the WA State Supreme Court. Pierce County paid \$950,000 to Ms. Nissen for failing to disclose an employee's text messages.

SUMMARY

Many local governments struggle to balance their obligations under the Public Records Act with their existing staff and financial resources. In 2013, the City of Kirkland engaged in an 18-month process to examine this issue and reported:

Responding to public records requests is one of the City's unique and core essential functions and is also the responsibility of every City employee. In recent years, both the complexity and volume of records requested has grown, straining the capability of the City's resources.

In addition to the constant influx of new technologies that result in new records to manage, State laws evolve, creating new exemptions and obligations to provide notice, new training requirements, and new fee structures.

The City's ability to fulfill public records requests thoroughly and in a reasonable time frame is reliant on a systemic and compliant records governance program.

Part of that success is due to the development of the Digital Records Center (DRC), which contains 2,074,499 digitized high-retrieval records as of July 2022. Through the DRC, staff can provide hundreds of responsive records through one search.

The Clerk's Office also oversees the Citywide Records Management Program involving retaining, destroying and transferring records to the State Archives. Complying with records management laws mitigates legal and financial risk to the City and ensures the City only retains the records needed for operations.

The Clerk's Office has not had a failure or sanction.

Questions?