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MEMORANDUM

To: Kurt Triplett, City Manager

From: Ana Campbell, Deputy City Clerk
              Kathi Anderson, City Clerk/Public Records Officer
              Michael Olson, Director of Finance and Administration

Date: October 15, 2018

Subject: PUBLIC DISCLOSURE RESOURCES ISSUE PAPER

BACKGROUND:

At their July 16, 2013 City Council meeting, Council adopted Ordinance No. 4414 and Resolution No. 4987 related to public disclosure. The central purpose of the ordinance is twofold. The first is for the City Council to determine what comprises a reasonable commitment of resources to public records requests. The ordinance establishes that this determination shall be made during the biennial budget process when the Council balances all of the needs and priorities of the City. The second purpose is to enhance transparency and public confidence in the process through logs, best practices, and standardized communication with requestors so that requestors, Council and the public know the status of requests, the estimated time of response, and changes in status will be clearly tracked and communicated. The accompanying resolution updated the City's public records rules to be consistent with the ordinance, and further defined the City's process to help ensure compliance with the Public Records Act (PRA) and to prevent excessive interference with other essential functions of the City.

Public Disclosure Resources

One of the key objectives of the ordinance is to establish the level of effort devoted to public disclosure so that it does not create "excessive interference" with other essential functions of the agency. The primary purpose of the PRA is to create transparency and accountability in government. Since implementation of the program as achieved by the 2013 legislation, the City now has several years of actual expenditures as a base for ongoing resource budgeting estimates. The current estimates take into account trends experienced in the current biennial budget period, which are subject to a number of factors outside the City's control, in particular both the number and complexity of the requests received in any year.

Resources in the current budget period have been applied to: salary expenditures in reclassifying the public disclosure analyst position to an ongoing Deputy City Clerk with a public disclosure focus to effect a stabilization of staff turnovers which were requiring supplemental

contract services; the completion of a number of category 5 (the most complex) requests; and to the continued and expanded support of GovQA public disclosure request management software. In addition, Council established a $100,000 public records contingency fund (unexpended to date) at its November 8, 2017 meeting, which provides a conservative safety net if needed to meet any budgetary challenges due to the referenced factors which cannot be reliably forecast.

The reduction in the estimates for the upcoming budget period in the table below reflect the investments made in the factors referenced in the paragraph above.

	2017-2018	2019-2020
	Estimate	Budget
Public Disclosure Costs	$ 634,348	$ 569,334
Contingency Fund	$ -	$ 100,000
Total	$ 634,348	$ 669,334

Other factors affecting resource allocation in the current and upcoming budget periods include completed hiring processes for vacant key positions in the Police Department Records Unit which had resulted from retirements; the completion of a cycle of Citywide public records trainings; and a stronger focus on records management procedures.

As previously reported to Council, State legislation in the form of House Bill 1594, effective July 23, 2017, required that the City submit a report of 18 metrics this (and every) year to the Joint Legislative Audit and Review Committee[1]. These metrics allowed us to use data from the GovQA software to compare and more accurately estimate public disclosure resources allocated for the 2019-2020 biennial budget.

The costs reflected in the budget estimates do not include the time spent each year by City staff members without specific public records responsibilities, who are nevertheless called upon to identify and produce records in response to requests when required. The City's ordinance provides that, for those City employees for whom responding to records requests is not among their primary assigned duties, the need to devote more than ten hours per month to records requests is presumed to interfere with their ability to perform essential functions. This provision does not mean that the staff member does not continue to respond, only that the response may be delayed in order to accommodate those essential functions, and that the requestor will then be notified of the delay.

The ordinance also provides that, starting with the 2015-2016 biennial budget process, the City Council shall biennially determine and establish the level of effort to be devoted to public records responses and the amount of resources to be allocated. This determination is informed, in part, by the semi-annual report to the Council also required by the ordinance. During these reports, the Council can review the number of requests, the average time it is taking the City to respond, and then determine if additional resources are necessary. The ordinance specifies that during the Council budget deliberations, a portion of a public work session must be devoted to public records response resource allocation. This discussion will occur at the October 30, 2018 City Council Study Session on the 2019-2020 Preliminary Budget.

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[1] JLARC report is attached as Appendix A

Public Records Requests Report for Kirkland for 2017

Baseline data

The reporting period for 2017 is July 23, 2017 to December 31, 2017. The baseline data will be used by the reporting system to automate some of the calculations included in the metrics.

The reporting periods beginning in 2018 and onward will encompass a complete calendar year (January 1st to December 31st). Click here for guidance related to Baseline data.

Baseline data
Total number of open public records requests at the beginning of the reporting period
88
Total number of public records requests received during the reporting period
1938
Total number of public records requests closed during the reporting period
1918

Metric 1

Leading practices and processes for records management and retention implemented, including technological upgrades. Click here for guidance related to Metric 1.

Best practices

Responsibility Assigned
☑ Agency has assigned overall responsibility for managing and retaining records to someone (records officer)
☑ Agency has told Washington State Archives who their assigned person is
☑ Assigned person has the ability to influence the agency's policies, procedures, and compliance
☑ Assigned person is part of the agency's information governance team
☐ Other, please explain

Policies and Procedures Exist
☑ Agency has policies or procedures governing the management of records
☑ Policies and procedures are applicable to all record formats (including emerging technologies such as social media)
☑ Policies and procedures are part of a larger information governance framework
☐ Other, please explain

Tools Available
☑ Agency has appropriate software/systems to manage and retain: email, social media, Word documents, spreadsheets, PowerPoints, text messages, websites, etc.
☑ Software/systems include retention management functionality
☑ Agency has implemented or is in the process of implementing an enterprise content management system
☐ Other, please explain

Staff Trained

- ☑ Elected officials have completed open government training

- ☑ Records officers have completed open government training

- ☑ All other staff have been trained to manage the records they create or receive Records

- ☑ and information management training is part of new employee orientation Agency

- ☑ offers internal records and information management training on a regular basis Other,

- ☐ please explain

Retention Requirements Understood

- ☑ Key staff know how to locate all records retention schedules which are applicable to the agency, how to apply retention, and what records can be considered transitory

- ☑ All staff know how to apply retention to the records they create or receive and which records can be considered transitory

- ☐ Other, please explain

Records Are Inventoried

- ☐ Paper records have been inventoried at least once within the last 10 years

- ☐ Electronic records have been inventoried at least once within the last 10 years

- ☐ Records are inventoried on a regular, systematic basis

- ☑ Other, please explain

The City does not have a complete inventory of records.

Records Are Organized

- ☑ Some coordination at the work group level regarding where records are stored and the naming conventions used

- ☐ Records are organized through agency-wide file plans and/or file naming conventions

- ☐ Other, please explain

Records Are Kept for Required Time Period

- ☑ Electronic records are retained in electronic format

- ☑ Paper records are either retained in paper format or scanned and retained in electronic format according to Washington State Archives' scan & toss requirements

- ☑ Records remain accessible throughout the entirety of their retention periods

- ☑ Electronic records are migrated to new formats as needed

- ☑ Safeguards are in place to protect against accidental or deliberate destruction of records

- ☐ Other, please explain

Records Are Destroyed or Transferred

- ☑ Records are destroyed or transferred to the Washington State Archives at the end of their retention periods

- ☑ Records are destroyed or transferred as part of a planned and systematic process

- ☐ Other, please explain

Disaster Preparedness

- ☑ Essential records are identified
- ☑ Agency creates back-ups of essential records on a routine, systematic basis
- ☑ Ability to restore from back-up files is tested/checked regularly
- ☐ Other, please explain

Metric 2

Average time to respond to public records requests. Click here for guidance related to Metric 2.

Average time to respond

Total number of business days to respond to all requests

4500

Total number of requests for which a five-day acknowledgment letter was sent out after the five-day period expired

0

Average response time in days (calculated)

2.2

Metric 3

Percent of requests completed within five days of receipt and the percent of requests where an estimated response time beyond five days is provided. Click here for guidance related to Metric 3.

Percent of requests completed within 5 days

Number of requests closed within 5 days of request

1568

Number of requests where an estimated response time beyond 5 days was provided

360

Number of requests fulfilled within 5 days but had insufficient delivery info

0

Percentage of requests completed within 5 days (calculated)

81%

Percentage of requests for estimates greater than 5 days (calculated)

19%

Metric 4

Average number of days from receipt of request to the date of final disposition of request. Click here for guidance related to Metric 4.

Average number of days from receipt to final disposition

Number of requests with final disposition

1918

Number of days to final disposition

12093

Average number of days to final disposition (calculated)

6.3

Metric 5

Average time estimate provided for full disclosure compared to average actual time to provide full disclosure. Click here for guidance related to Metric 5.

Average time estimate provided compared to average actual time

Number of requests where the agency's initial response provided an estimate of when full disclosure would be provided

360 *19% of requests*

Average days estimated for full disclosure

61 *Calendar days*

Average actual days to provide full disclosure

57 *Calendar days*

Metric 6

Number of public records requests for which the agency formally sought additional clarification from the requester. Click here for guidance related to Metric 6.

Number of requests for which additional clarification was sought

Number of requests with additional clarification sought

158 *Formal clarification only, meaning staff would not be able to begin or continue processing any part of the records request without receiving clarification from the requestor.*

Metric 7

Number of requests denied and the most common reasons for denying requests. Click here for guidance related to Metric 7.

Number of requests denied

Number of closed requests that were denied in full

57

Number of closed reports that were partially denied or redacted

113

Please provide the 5 to 10 most common reasons for denying requests during this reporting period

Reason 1
42.56.240(1)
Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

Reason 2
42.56.240(2)
Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

Reason 3
5.60.060(2)(a)
An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

Reason 4
42.56.290
Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter.

Reason 5
42.56.230(3)
Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

Reason 6
42.56.230(5)
Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW 9.35.005 including social security numbers, except when disclosure is expressly required by or governed by other law;

Reason 7 42.56.250(1)	*Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;*	
Reason 8 42.56.250(2)	*All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;*	
Reason 9 42.56.250(4)	*The following information held by any public agency in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency: Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, driver's license numbers, identicard numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240;*	

Metric 8

Number of requests abandoned by requesters. Click here for guidance related to Metric 8.

Number of requests abandoned by requesters

Number of requests abandoned by requesters

122   *Roughly 6%*

Metric 9   *Does not equal total requests received (1,938) because this metric is self reported by requestors and is not required to submit a request.*

Number of requests, by type of requester. Click here for guidance related to Metric 9.

Number of requests, by type of requesters

Requester type	Other (please explain)	Total requests
Anonymous		22
Law firms		68
Current or former employees		1
Governments		28
Incarcerated persons		8
Individuals		267
Insurers		28
Media		8
Organizations		83
Other	Union	1

Metric 10

Percent of requests fulfilled electronically compared to the percent of requests fulfilled by physical records. Click here for guidance related to Metric 10.

Percent of requests fulfilled electronically compared to percent fulfilled by physical records

Number of requests fulfilled electronically

1501

Number of requests fulfilled by physical records

110

Number of requests fulfilled by electronic and physical records

127

Number of requests closed with no responsive records

180

Percent of requests fulfilled electronically (calculated)

78%

Percent of requests fulfilled by physical records (calculated)

6%

Percent of requests fulfilled by electronic and physical records (calculated)

7%

Percent of requests closed with no responsive records (calculated)

9%

Metric 11

Number of requests where one or more physical records were scanned to create an electronic version to fulfill disclosure. Click here for guidance related to Metric 11.

Number of requests where records were scanned
Requests scanned
325

Metric 12

Average estimated staff time spent on each public records request. Click here for guidance related to Metric 12.

Average estimated staff time spent on each request
Estimated total staff time in hours
1926
Average estimated staff time in hours per request (calculated)
1

Metric 13

Estimated total costs incurred by the agency in fulfilling records requests, including staff compensation and legal review and average cost per request. Click here for guidance related to Metric 13.

Estimated total costs incurred	
Estimated total cost	*If we extrapolate this for the whole year of 2017 the estimated total cost is $326,736, the original budgeted*
$136,140	*amount for 2017-2018 was $369,846.*
Average estimated cost per request (calculated)	
$67.20	

Metric 14

Number of claims filed alleging a violation of Chapter 42.56 or other public records statutes during the reporting period, categorized by type and exemption at issue (if applicable). Click here for guidance related to Metric 14.

Number of claims filed alleging a violation of Chapter 42.56 RCW

There were no claims filed alleging a violation of Chapter 42.56 RCW.

Metric 15

Costs incurred by the agency litigating claims alleging a violation of Chapter 42.56 RCW or other public records statutes during the reporting period, including any penalties imposed on the agency. Click here for guidance related to Metric 15.

Costs incurred litigating claims alleging a violation of Chapter 42.56 RCW

Total litigation costs

$0

Metric 16

Estimated costs incurred by the agency with managing and retaining records, including staff compensation and purchases of equipment, hardware, software, and services to manage and retain public records or otherwise assist in the fulfillment of public records requests. Click here for guidance related to Metric 16.

Estimated costs incurred managing and retaining records

Cost of agency staff who manage/retain records

$1,633,222

Cost of systems that manage/retain records

$147,700

Cost of services purchased for managing/retaining records

$21,199

Cost of systems/services for fulfillment of records requests

$43,695

Total estimated cost for managing and retaining records (calculated)

$1,845,816

Metric 17

Expenses recovered by the agency from requesters for fulfilling public records requests, including any customized charges. Click here for guidance related to Metric 17.

Expenses recovered from requesters

Total Expenses Recovered	Customized Service Charges	Description of Service Charges
$110	*This is an estimate because the City does not use the vendor's billing module to capture expenses recovered from requestors. This number was derived from payments made to the City Clerk's Office by check or cash for public records requests from July 23 - Dec 31, 2017.*	

Metric 18

Measures of requester satisfaction with agency responses, communication, and process relating to the fulfillment of public records requests. Click here for guidance related to Metric 18.

Requester satisfaction

Measures of Customer Satisfaction	Methods of Collecting Data

| Whether or not a requestor appeals (then sues) over PRA exemptions applied OR appeals (then sues) over the possibility that the agency withheld records or provided an inadequate search. | Each request has a status, and if a status shows 'appealed,' 'appeal upheld,' or 'appeal overturned,' we have chosen to use that as an indicator of dissatisfaction. |