



Open Records Requests Audit Report

Legal Department

April 09, 2024

AU24-001

City Auditor's Office, George H. Holland, City Auditor

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Executive Summary

The City Auditor's Office (CAO) conducted the audit of the Legal Department – Open Records Request AU24-001, in conformity with the 2024 Revised Annual Audit Plan.

Audit Objective

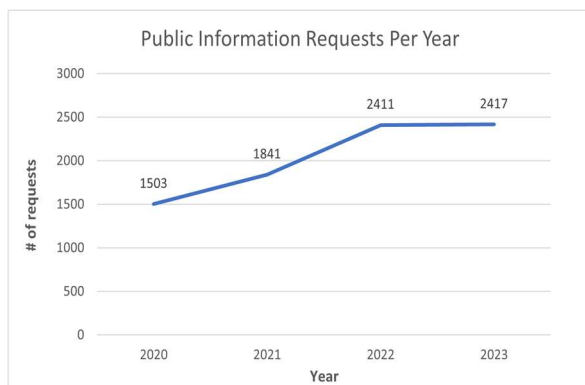
The audit objective was to evaluate the Legal Department Open Records timeliness of requests, and correct assessment of the fees for these requests that originate in the City Secretary's Office.

Background

The City Secretary is the Public Information Officer and is the recipient of records. The City Secretary's Office coordinates Open Record requests for all City departments except for the Corpus Christi Police Department (CCPD). The Legal department assists the City Secretary's Office in processing the requests.

CCPD has a separate process for Open Records requests and will not be included in the scope of this audit.

The City Secretary's Office manages the website and the online portal and handles the requests that come through the portal. The requests must be written by email, mail, and or in person.



The Texas Public Information Act (TPIA) was adopted in 1973, codified at chapter 552 of the Texas Government Code, and gives the public the right to request access to government information. The TPIA is triggered when a person submits a written request. The request must ask for records of information already in existence as governmental bodies are not required to create new information or perform legal research.

Governmental bodies are also provided with a preapproved list of exclusions so that privacy and confidentiality are maintained.

A governmental body may impose financial charges for access to information under certain limited circumstances. Selected public officials (or a coordinator designated by the public official) must complete the online training provided by the Attorney General's Office.

What We Found

The City Secretary's Office – Open Records is meeting its requirements with minimal exceptions. The observations include:

- ✓ Procedures
- ✓ Training
- ✓ Compliance Timeliness and Fees
- ✓ Cost Recovery
- ✓ Record Keeping

What We Recommend

PROCEDURES – Prepare Policies and Procedures for the Open Records Requests.

TRAINING – Complete required training per the Attorney General and retain evidence of training.

COMPLIANCE – Use Cost Estimate templates to clearly separate Programming and Manipulation

of data charges. Consider using GovQA System or another similar application to track request activities. Consider appointments for requestors.

COST RECOVERY – Consider accepting credit cards.

RECORD KEEPING - Modify the recordkeeping for a more comprehensive audit trail using a more detailed spreadsheet. Add accounts to the general ledger to identify income and expenses directly related to Open Records.

Scope

The Scope of the audit for the Open Records Requests – Legal Department is for the period from January 1, 2023, to December 31, 2023.

Methodology

The audit methodology involved developing an understanding of the processes and controls for receiving, tracking, and responding to requests. The audit procedures included interviews, testing of Open Records cash receipts, an observation of the process of completing an Open Record's request, and tests of Cost Estimates. Audit objectives were accomplished by random test samples as well as judgmentally selected samples of the data. The data was obtained from the Legal Department Open Records and the Finance Department.

This performance audit was conducted in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives.

Timeliness

Pursuant to the Public Information Act, Code Chapter 552, the public has the right to access

government records. The City is required to comply with one of the following:

1. Produce the information within 10 working days.
2. Prepare a cost estimate.
3. Request clarification.
4. Notify the requestor of a date and time when it will be available if more than 10 working days.
5. Notify the requestor that the request resulted in No Records Responsive.
6. Notify the requestor that the request is a fact question.
7. Request a decision from the Attorney General.

There were no timeliness complaints made to the Attorney General's Office. When additional time was required to fill the request, the requestor was notified, and an extended due date was determined. The CAO did not find any complaints about responding to requestors regarding timeliness. However, there were complaints about waiting time in person for the requests to be filled.

Surcharge Repealed

Fees for Public Information requests are authorized pursuant to Texas Government Code § 552.262. In 2014, the City decided to exercise its right to increase fees up to 25% over the fees established by the Attorney General. Back in 2014, City Ordinance 17-1 gave the City the statute to impose these surcharge fees. Requestors did not like the additional 25% fee when this surcharge was added to basic charges. On January 3, 2024, City Manager Peter Zanoni repealed the 25% surcharge of the Corpus Christi TPIA fees that were added in 2014. The TPIA charges reverted to and are currently the amounts authorized pursuant to Texas Government Code §552.262 and other applicable law.

Accuracy

From the testing of 100% of the paid invoices, small variations resulted in additional refund amounts of \$156.88 of additional overcharges that were not refunded to customers.

General Standards

Fee Schedule

The general rule for collecting fees for providing a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead charges. Texas Government Code § 552.261.

If a Cost Estimate is necessary to complete the record request, then the estimated charges are calculated and sent to the requestor.

General Rules:¹

- In general, copies are \$0.12 per copy.
- No labor charge is assessed for copies of 50 or fewer pages. If greater than 50 pages, the per hour labor charge does apply.
- \$18.75 per hour for labor.
- \$35.50 per hour for programming.
- 25% of labor is charged as overhead. Labor includes time spent:
 1. Finding the records that are responsive to the request.
 2. Gathering and pulling together the responsive information.
 3. Copying the responsive records.
 4. Redacting information.
 5. No labor charge for a request of less than 50 copies of records.
 6. No overhead charge for a request of less than 50 copies of records.
- Generally, a charge may not be imposed when making records available for inspection per § 552.271.

The TPIA allows the City to recover costs within specific limitations as set forth by the State of Texas Office of the Attorney General for charges such as copies, labor, and overhead. Various labor charges can be assessed depending on whether the labor used is for actual time to locate, compile, manipulate data, and reproduce the requested information.

In general, no labor charge (\$0) is assessed for copies of 50 or fewer pages.

Fees are determined per the Texas Administrative Code §70.3 – Charges for Providing Copies of Public Information.

Per the Attorney General, “programming” is the process of producing a sequence of coded instructions that can be executed by a computer. Likewise, per the Texas Government Code §552.003, “manipulation of data” means the process of modifying, reordering, or decoding of information with human intervention.

The City Auditor’s Office evaluated compliance with State law and found that Open Records is generally collecting the correct amounts, with exceptions regarding programming fees which should be designated as manipulation of data. The amount of refunds issued by the Attorney General’s office in calendar year 2023 was \$611.42.² Usually, the refunds resulted for two main reasons:

- The requestor chose to inspect the records only.
- The designation of some charges as programming should have been designated as manipulation of data.

¹ The fees in effect during the audit period included the surcharge from 2014. The surcharge was repealed on January 3, 2024, and the original fees are currently in effect.

² For invoice details on refunds given, see [Appendix B](#).

Fees are determined per the Texas Administrative Code §70.3 – Charges for Providing Copies of Public Information.

In September 2023, the billing template was updated to itemize the charges to include separate line items for programming fees and manipulation of data. This reflected the Attorney General’s decision that the charges on the cost estimates that had been submitted to them for review were not for programming.

Cost Recovery

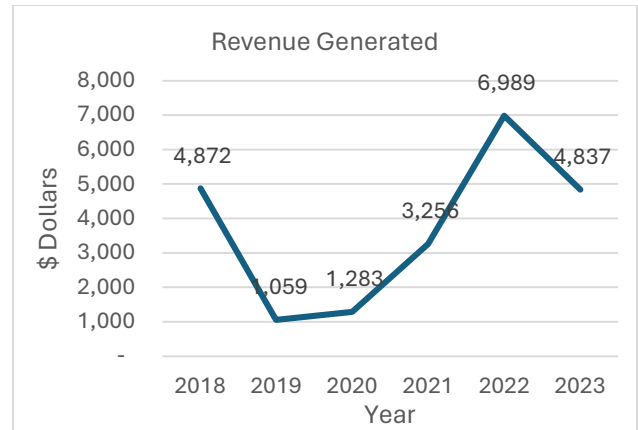
The Legal Department generates an average revenue of approximately \$3,700 annually from 2018 to 2023. In 2023, the revenue was \$4,837. The City incurs ongoing costs to process Open Record requests. With the increasing number of requests, the ability to serve the public virtually free of charge and minimize losses may not be attainable.

Due to the nature of the rules of charging amounts for Open Records fees, the expectation of covering costs through revenue generated with this process is unlikely. Two basic reasons:

- Labor is not charged when there are less than 50 paper copies to reproduce.
- Most requests result in providing the information free to the customer.

The City can collect designated costs from individuals, per the TPIA. This includes credit card fees and the direct cost of materials such as CDs, USB devices, and other media. However, the \$7.50 charged by the Attorney General for a request for a decision is not currently recoverable from the Open Records requestor.

The City Secretary’s Office received approximately 2417 Open Record requests for 2023. In addition to this were 216 requests for Animal Care Services. Of the 2417 Open Record requests, 57 were sent to the Attorney General’s office for its approval of confidentiality or other privilege from release. This “request for decision”



from the Attorney General’s office results in a nonrecoverable fee of \$7.50 to the City.

The City’s compliance costs will continue to rise as more entities seek information. During 2023, they provided records at no cost to requestors 90% of the time.

Other Matters

Credit Cards are not currently accepted by the City Secretary’s office for payment of copies of Open Records. Accepting this type of payment would most likely result in an increase in fees received by the City.

In response to a request to inspect information that exists in an electronic medium and that is not available directly on-line to the requestor, a charge may not be imposed for access to the information unless programming or manipulation of data is required. Per § 552.271 and § 552.272, in response to a request to inspect information that exists in an electronic form on a computer owned by a governmental body, the information may be copied from that computer without charge.

Furthermore, §552.272(d) states that “If information is created or kept in an electronic form, a governmental body is encouraged to explore options to separate out confidential

information and to make public information available to the public through electronic access through a computer network or by other means.”

The Legal Department should consider using GovQA System or a similar application to track request activities. This software would allow comprehensive reports to be utilized for budgeting and informed decision making.

Attorney General

There were no complaints regarding confidentiality during the scope of the audit. The Attorney General’s office issued 7 requests for decisions that resulted in refunds during this period. Also, there were three complaints about waiting to receive records requests. For invoice details on refunds given, see [Appendix B](#).

The Legal Department had characterized charges for manipulation of data as “programming,” which resulted in a charge of \$35.50 per hour. The Attorney General’s office issued reclassification of the charge as “manipulation of data,” which allows a lesser charge of \$18.75 per hour. The Legal Department complied with the Attorney General’s reclassification immediately after receiving it.

Complaints noted on wait times for Open Records Requests were only when the requestor chose to wait in person. The CAO found no complaints related to sending Open Records Requests through email or providing electronically and sending through either regular mail or in person.

Other charges that were charged incorrectly were charges for copies of the data, when in fact the requestor asked for inspection of data, for which there is not a charge.

Conclusion

Overall, the Legal Department processes Open Record requests on a timely basis. They are addressing any issues going forward regarding allegations of wait time for in-person requests.

Regarding open records fees, the Legal Department recognized a reclassification of charges from programming to manipulation of data.

Audit Results:

Finding A: Procedures

Formally documented policies and procedures at the Open Records level did not exist as of the Kick-Off Entrance meeting. Non-existent procedures could result in leaving out necessary compliance requirements. Legal responded that they refer to the Public Information Act Handbook 2022 for their duties to be performed in accordance with state law and applicable rules. The CAO explained to the Legal Department that Policies and Procedures at the City level are important to set forth the operational steps to be followed daily to initiate and complete an Open Records request.

Recommendation:

Compliance was timely performed, and the CAO received a Policies and Internal Procedures Legal Department guide. The guide gives a step-by-step account of the daily procedure of performing an Open Records request.



Finding B: Training

Evidence of the City personnel completing a required, one-hour educational course was retained by the City Secretary, who supplied a copy of the Attorney General training certificate to comply with § 552.012(a-h). The Texas Public Information Act requires that a one-hour educational course should be completed within 90 days after becoming a public official to comply with Texas Gov Code § 552.012.

A Public Information Coordinator was designated to be the City Secretary by Mayor Henry Garrett on January 10, 2006. Therefore, the Legal Department did not supply copies of the Attorney General training. The Legal Assistants who assist the City Secretary in providing Open Records state that they routinely take this training as part of their orientation.

Furthermore, the training available from the Attorney General's office is on the honor system when requesting a Certificate of Attendance at the end of the class.

Recommendation:

The CAO recommends that the Legal Department staff that assist in preparing the Open Records Requests also complete the one-hour educational course and retain the certificates.



Finding C: Compliance – Timeliness & Fees

Timeliness complaints were brought to the attention of the CAO. Upon interviews with the Legal Department, the CAO became aware that the waiting time in the lobby was due to the number of requests made at one time and on three separate occasions. The CAO became aware that one wait time of approximately two hours was a result of 15 requests that were inspected by the requestor on the same day.

The CAO interviewed the Legal Department about these incidents, it was explained to the CAO that the requestor was welcomed into the conference room of the Legal Department and invited to wait for his requests to be completed. Although the Legal Department processed the requests within the same day, the requestor stated that the wait time was unacceptable. The Legal Department Open Records never knows how long a request will require to be completed.

Overcharging complaints were reviewed and substantial test work was performed by the CAO. Of the five overcharging complaints, the requestors received refunds. Total refunds from complaints to the Attorney General's Office for 2023 resulted in \$611.42 to two requestors. (See Appendix B).

The Legal Department gained clarification from the Attorney General's Office between "programming," as described in § 552.003, and "manipulation," also in § 552.003, and prepared requestor invoices accordingly at the time that they became aware.

Recommendation:

Regarding the timeliness of requests, the CAO recommends that the requests be completed in a timely manner per the Public Information Act. Requestors should be given the option to pick up their information at a designated time once it has been gathered.



Finding D: Cost Recovery

Currently, the form of payment for Open Records requests is cash or check. The Legal Department continues to identify cost recovery options to fulfill Open Records requests.

Recommendation:

Additionally, the acceptance of credit cards would encourage easier payments for Public Records requests. Receiving results immediately instead of waiting for a check to be received by the City before releasing the public information request would expedite and enhance the collection of fees.



Finding E: Record Keeping

While the Legal Department has internal controls in place for their cash accounts and money received, they do not maintain a formal general ledger. The Legal Department cannot generate a profit and loss report with which to identify income and expenses attributable to Open Records. The addition of a few income and expense accounts would help identify the net revenue generated for Open Records requests.

Additionally, the Legal department does not currently do reconciliations of cash received to cash deposited. Although there exists a segregation of duties between the collecting of the funds received and the depositing of those funds, there is not a monthly reconciliation of cash and revenue.

The current spreadsheet used for tracking open records requests lacks information on the amounts paid per requestor, which would help in monthly reconciliations. The deposit information was made available to us in the deposit books. The CAO calculated a cash reconciliation based on deposit information included in the receipt books and the Legal Department should be commended that a negligible variance of \$3.53 existed.

Recommendation:

We recommend that the Legal Department work together with the Finance Department to add the following accounts to the general ledger: Open Records Revenue, and any other accounts as appropriate.

The CAO recommends that the Legal department prepare and maintain a monthly deposit reconciliation.

The department should include the amount paid by the requestor in their spreadsheet for tracking Open Record requests.



Additional Information:

See Appendix A for Management Responses.

Management Responses:

See Appendix B for Additional Follow-Up Information.

Staff Acknowledgment:

Wendy Pullin, CPA, Senior Auditor

Belia Fuentes, MBA, Auditor

Appendix A: Management's Response

April 9, 2024

George H. Holland,
City Auditor
Corpus Christi, Texas

RE: Legal Department Open Records Request

The Legal Department has reviewed the report and provided its comments below. As there are no recommendations for management, no responses are required.

☒ Agree

☐ Do Not Agree

Sincerely,

Miles K. Risley 3-21-24
Miles Risley Date
City Attorney

Rebecca L. Huerta 4/5/24
Rebecca L. Huerta Date
City Secretary

Constance P. Sanchez 3-22-2024
Constance Sanchez Date
Chief Financial Officer

Peter Zanoni April 3, 2024
Peter Zanoni Date
City Manager

Recommendation		Action Date	Action Plan	Responsible Party
PROCEDURES				
A.1	Policies and Procedures should be developed at the Open Records level.	February 2024 Completed	Compliance was timely performed, and the CAO received Policies and Internal Procedures Legal Department guide. The guide gives a step-by-step account of the daily procedures of performing an Open Records request.	Miles Risley, City Attorney
TRAINING				
B.1	Complete required training per the Attorney General and retain evidence of training.	January 2025	The Legal Department will consider retaining evidence of the Attorney General training.	Daniel De Leon, Legal Assistant Lauren Rickard, Attorney III
COMPLIANCE				
C.1	Waiting time in the lobby should be limited by the Legal Department when requestors choose to wait for their Open Records requests. A policy should be developed that anyone who requests more than one Open Record request at a time must make an appointment to return in person.	March 2024 Partially Completed	When a requestor gets to the 1-hour point of waiting for a request to be processed, the Legal Department will give them the option of returning at a later time and/or date.	Miles Risley, City Attorney
C.2	Overcharging for Open Records is due to the interpretation of programming when the correct charge and rate should be for manipulation of data.	September 2023 Completed	The charges for programming should have been designated as manipulation of data. This change was made by the Legal Department.	Miles Risley, City Attorney

COST RECOVERY				
D.1	Credit cards should be accepted as payment for Open Records requests to encourage easier payments for requestors.	July 2024	The Legal Department will evaluate the acceptance of credit cards and the associated fees and fixed costs that are required to provide this payment option.	Miles Risley, City Attorney
RECORD KEEPING				
E.1	The Legal Department should create a monthly “bank” reconciliation to match the income received to the deposits to the bank.	April 2024	The Legal Department will oversee and maintain a cash reconciliation of funds received and deposited for the Open Records income received.	Miles Risley, City Attorney
E.2	The Legal Department should request the Finance Department to set up General Ledger accounts that reflect the income and direct expenses of Open Records.	May 2024	The Legal Department will contact the Finance Department to set up a few General Ledger accounts as needed for recording of income and expenses.	Miles Risley, City Attorney

Appendix B: Additional Information

OPEN RECORD REQUESTS REFUNDS

	Requestor Name	Open Record Request #	Amount of Refund	Reason for Refund
1	Isabel Araiza	1545	\$5.86	Inspection of Records
2	John Weber	996	\$155.63	Manipulation of Data
3	John Weber	996	\$35.00	Manipulation of Data
4	John Weber	1231	\$319.38	Inspection of Records
5	John Weber	982	\$91.11	Manipulation of Data
6	John Weber	1140	\$4.44	Inspection of Records
			\$611.42³	

TIMELINESS COMPLAINTS

Requestor #	Estimated Total Wait Time	Wait-Time per Request ³	Number of Requests
1	60 minutes	7.5 minutes	8

Requestor #	Estimated Total Wait Time	Wait-Time per Request ³	Number of Requests
1	45 minutes	7.5 minutes	6

Requestor #	Estimated Total Wait Time	Wait-Time per Request ³	Number of Requests
1	120 minutes	8 minutes	15

ⁱ Of the 199 cost estimates, the sample size was 100%. The data was recalculated by the CAO and additional refunds of \$156.88 were identified on a dozen requestors. Of these same cost estimates, no variance was found on 187 of the 199 cost estimates.

³ An amended cost estimate was given to Mr. Weber after a complaint to the Attorney General. This resulted in a refund of \$155.63. Mr. Weber's new cost estimate was \$75.00. A second complaint was made ONLY to the City of Corpus Christi's Legal Department, and it resulted in another amended cost of \$40.00, of which \$35.00 was refunded.