Memorandum

TO:	Carla Reece, City Clerk, City Clerk's Office
	Sonia Blain, City Attorney, City Attorney's Office
THRU:	Bill Greene, City Auditor (X8982)
FROM:	Angela Hill, Internal Auditor (X8866)
CC:	Andrew Ching, City Manager
	Tom Duensing, Deputy City Manager
	Rosa Inchausti, Deputy City Manager
	Keith Burke, Deputy City Manager
	Clarence Matherson Jr, Deputy City Attorney
	Karen Doncovio, Assistant City Clerk

DATE:	June 22, 2022
SUBJECT:	FINAL REPORT: Audit of Public Records Request Process

Attached is our final report on the subject audit. Copies of this report will be distributed to the mayor and council and posted to the Internal Audit Office website.

Thank you and your staff for your cooperation during this project.

Audit of Public Records Request Process

June 22, 2022

Project Team:

Bill Greene, City Auditor
Angela Hill, Internal Auditor

Mission Statement

To enhance and protect organizational value by providing high-quality, objective, risk-based audit and consulting services to assist the City in accomplishing strategic priorities, goals, and objectives.

Tempe®
Internal Audit

20 E. 6th Street, 2nd Floor | Tempe, AZ 85281 | 480-350-8982
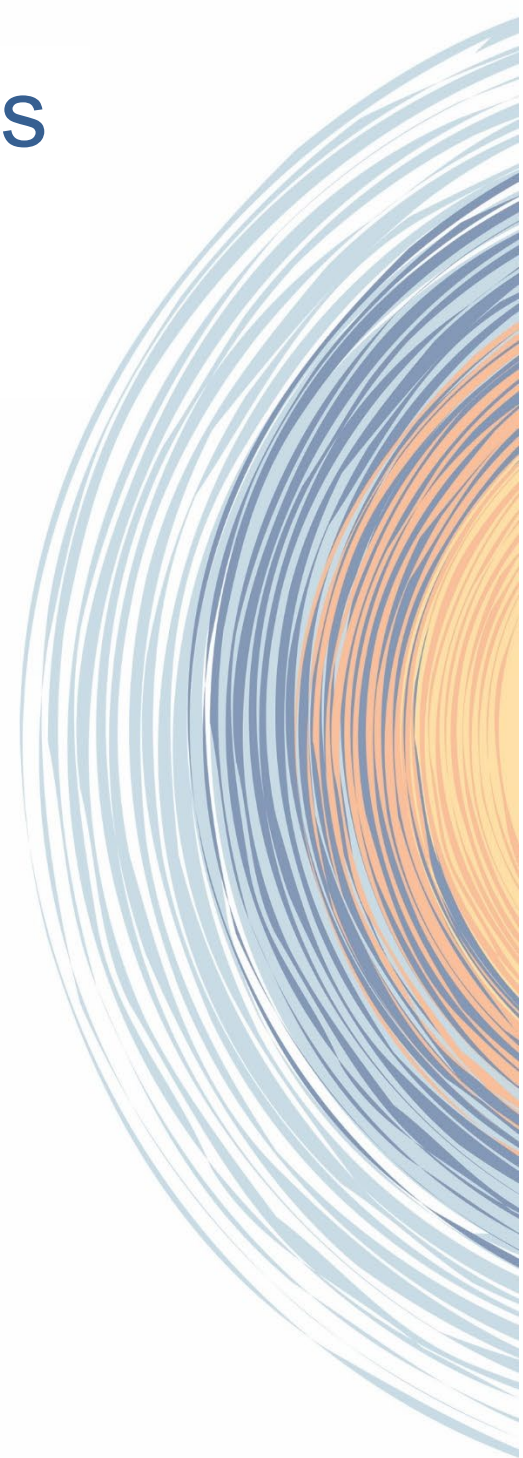
Executive Summary

Purpose

We audited the City of Tempe (City's) Public Records Request process to determine if policies, procedures and related controls ensure consistent management of record requests and compliance with legal requirements. We also evaluated public transparency of the request process.

Background

Public records requests provide an opportunity for the public to access government information. The goal of the public record requests process is to develop public trust through government accountability. Arizona Revised Statues outline the legal requirement for government agencies to respond to records requests. Within the City of Tempe (City), the management of and response to requests is a decentralized process handled independently by individual City departments. The City maintains a public website with options to submit public records requests directly to the City Clerk's office and several commonly requested departments.

The City of Tempe communicates the importance of transparency within government through the development of City Council Strategic Priorities that emphasize the significance of organizational transparency, the commitment to open government, and communication with community members. Transparency within government processes is generally recognized as a foundation for gaining public trust by promoting accountability and providing insight to constituents on how their government operates.

Results in Brief

1. The City's current decentralized process for managing public record requests results in different outcomes when responding to requests and introduces the risk of noncompliance with legal requirements. Development of a Citywide policy, department-level procedures, and training are needed to help ensure consistent practices. In addition, deployment of the planned enterprise-level record request management system (OnBase) should include the consideration of appropriate business processes and system controls.

2. The City is working toward increased transparency of the public record request process through software implementation and data accessibility. Implementation of the OnBase software will allow the public to access information via a searchable online portal. The City is also in development to provide commonly requested information online through a database.

Recommendations

Our detailed report contains recommendations to address policy and procedure development and employee training.

Internal Audit Office

Department Responses to Recommendations

<table>
<tr>
<td colspan="2">Rec. 1.1: Develop a Citywide policy covering key legal elements and minimum management expectations for the uniform management and processing of public records requests.</td>
</tr>
<tr>
<td>Response: The City Attorney's Office will develop and implement a training program for city departments that covers the key legal elements and management expectations for responding to public records requests. The City Attorney's Office will determine the most effective approach in implementing the program citywide.</td>
<td>Target Date:

January 2023</td>
</tr>
<tr>
<td colspan="2">Explanation, Target Date > 90 Days: This will be a new training program and will require coordination with the City Attorney's Office, the City Clerk's Office, and possibly other offices. Sufficient time is needed to ensure that the program meets the needs of the City.</td>
</tr>
<tr>
<td colspan="2">Rec. 1.2: Develop a public records request training program to supplement the City's <u>Public Records Request Handbook</u> and any newly developed Citywide policies.</td>
</tr>
<tr>
<td>Response: This program will be developed and possibly include outside presenters from the Arizona State Library Archives and Public Records Division. It will be overseen by the City Clerk's Office Records Administrator.</td>
<td>Target Date:

January 2023</td>
</tr>
<tr>
<td colspan="2">Explanation, Target Date > 90 Days: This is a new training program and will require coordination with the City Attorney's Office and outside State Agency. While some materials already exist, it will take some time to develop this for Tempe specific program that can address.</td>
</tr>
<tr>
<td colspan="2">Rec. 2.1: In conjunction with the planned implementation of OnBase, develop written department-level procedures and integrate appropriate system controls (e.g., tracking of requests through fulfillment) to ensure consistent application of City policies.</td>
</tr>
<tr>
<td>Response: This was a recommendation suggested and supported by the City Clerk and City Attorney. Once the software has been tested and implemented the procedures will be outlined and documented for personnel assigned to these functions. A copy will be provided to Audit and the City Attorney for review.</td>
<td>Target Date:

January 2023</td>
</tr>
<tr>
<td colspan="2">Explanation, Target Date > 90 Days: The OnBase public records software has not yet been implemented and is part of a multi-phase technology project. We do not have a timeline established for the implantation at this time.</td>
</tr>
</table>

1 – Public Records Request Requirements and Policy

Background

The City of Tempe (City) maintains a public website with options to submit public records requests directly to the City Clerk's office and several commonly requested departments. Overall, management of and response to City public records requests is a decentralized process handled independently by individual City departments.

Approach

We conducted the following steps to verify if City policies and procedures ensure consistency and compliance with legal requirements related to public record requests:

- Identified legal requirements associated with public records requests;
- Identified citywide policies or department-specific policies and procedures governing public records requests;
- Met with department staff to discuss training related to the request fulfillment process.

Results

A citywide public records policy, written department procedures and associated training program are needed to ensure consistent processing for public records requests in accordance with legal requirements.

Legal Requirements

The City is legally required to comply with public records requests. Arizona Revised Statue (A.R.S.) 39-1221.01 (B) states,

> "All officers and public bodies shall maintain all records … reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities that are supported by monies from this state or any political subdivision of this state."

As outlined in A.R.S 39-12, public records are additionally required to, "be open to inspection by any person at all times during office hours." Related case law supports a "reasonable" timeframe to provide records. As noted in *Judicial Watch, Inc. v. City of*

Phoenix, "promptness of a production of public records for inspection varies with the circumstances." The government, "can expend time reasonably necessary to make redactions.'

The Arizona Attorney General (AG) produced guidance on public records for agencies to use in determining which documents may be subject to public inspection pursuant Arizona Public Records Law. The items shown below represent key subject areas from the AG handbook:

- Arizona's Policy of Public Disclosure
- Defining a Public Record
- Persons Subject to the Public Records Law
- Denying Public Inspection
- Records Confidential by Statute
- Records Involving Privacy Interests
- Restricting Access to Records Based Upon the Best Interests of the State
- Duty to Redact
- Commercial Use
- Free Copies Revised 2018 Section 6.6 Consequences of Wrongful Refusal to Disclose
- Preservation, Maintenance, Reproduction, and Disposition of Public Records.

Citywide Policies

Currently, there is no citywide policy that establishes standard requirements and processes for responding to public records requests in accordance with legal requirements. In the absence of citywide policy, the City Attorney's Office developed the Public Records Request Handbook which addresses requirements of Arizona public records law. It is a guide to help employees be aware of relevant legal requirements. The handbook outlines the components of Chapter 6 of the Attorney General's *Agency Handbook* which addresses Arizona statues on public records.

Department-Level Procedures

IAO identified five departments for review based on those receiving the highest number of record requests from the City Clerk's Office. We interviewed department representatives from the following departments to discuss their public records requests policies:
- Police
- Community Development
- Human Resources
- Municipal Utilities
- Engineering and Transportation

Of the five departments reviewed, two had developed written procedure describing their public record request management process. Review of these procedures demonstrated alignment with some of the key subject areas included in the Attorney General's *Agency*

Handbook (e.g., duty to redact, commercial use, confidentiality). Approximately fifteen additional public records law subjects (e.g., damages and attorney's fees) identified from the AG handbook are not covered in department-level procedures.

Of the three remaining departments, one was currently developing written procedures for a specific workgroup, one had no written procedure but there was a system in place to log requests, and the last had no written procedures. Department procedures are discussed in further detail in Section 2 of this report.

<u>Training</u>

The City does not offer training on the City Attorney's <u>Public Records Request Handbook</u> or organizational expectations regarding the fulfillment of record requests. During staff interviews, we asked department liaisons about any concerns with the public record request process. Employees indicated that the <u>Public Records Request Handbook</u> was useful, but insufficient to answer all their department-specific questions. Further, they were unaware of a City resource from which to request additional information. They also felt that knowledge of recommended business processes was relayed as, "secondhand information" and were unsure if current practices were consistent citywide or represented examples of "best practices."

The absence of policy and related training creates the risk of multiple interpretations of public records request requirements and expectations. Development of policy and related training is important to help ensure consistent practices citywide and compliance with legal requirements.

Recommendations

1.1   Develop a Citywide policy covering key legal elements and minimum management expectations for the uniform management and processing of public records requests.

1.2   Develop a public records request training program to supplement the City's <u>Public Records Request Handbook</u> and any newly developed Citywide policies.

2 – Public Record Request Management

Background

City record requests provide the public an opportunity to access government information and ensure government agencies are accountable. The City is also legally required to comply with state laws regarding public record retention and requests for documents. The overarching goal of the public record requests process is to develop public trust through government accountability. The City's public record requests process is decentralized throughout City departments, but most requests can be submitted online, in-person, or by mail.

Approach

To evaluate the controls over public records request management, we:

- Identified whether the City tracks the number and type of public record requests received;
- Met with departments to document processes and identified relevant controls based on review of policies, procedures and interviews;
- Evaluated department procedures for logging and tracking the fulfillment of public record requests.

Results

The City Clerk's Office is currently working with Information Technology to implement an enterprise-level system to manage and track public records requests from submittal to fulfillment. This system will help promote consistent business processes and should include controls that help ensure compliance with legal requirements.

Record Request Tracking

IAO met with Media Relations staff to identify data available from the public records requests page on the City of Tempe public website. Media relations staff indicated that data is not currently available to identify or quantify public records requests received. The City's public record webpage displays five "tiles" for department-specific, general requests, and procurement contracts. The tiles are links that redirect the user to another webpage with information on request submittals.

The general records requests tile allows users to directly submit record request forms to the City Clerk's Office while the procurement contract tile links to a searchable database. Of the five tiles on the public website, only one tile is built in the website to enable the direct transmission of the requestor's form to the receiving department. The three remaining department specific request tiles lead visitors to a pdf request form.

Processing of public records requests is decentralized throughout the City and departments decide how requests forms are submitted. Options to track request submissions and website activity are limited to the development of heat maps. These maps monitor site activity for a specified period, but there is not a current process in place to track the site activity for specific requests by department or citywide. The absence of a system to capture incoming requests presents a risk that requests may not be fulfilled in a reasonable timeframe, as required by state law. Without a comprehensive system in place, it is difficult to implement effective management controls to ensure all public records requests are received by appropriate City personnel, sent to the correct department, and addressed within a reasonable time frame.

Public Records Request Management System

Information Technology (IT) is in development with the City Clerk's Office to implement OnBase, an enterprise-level public records request software. OnBase will enable departments to record incoming public records requests, set up workflow notifications, generate reports, and have a searchable database for public consumption. Implementation of this of system, along with appropriate business processes and controls, will help address associated risks.

Development of written department-level business procedures addressing the management of public records request process is needed to ensure adequate controls are in place to ensure requests are fulfilled in accordance with City expectations and legal requirements. These procedures should be developed in conjunction with the implementation of the new OnBase system.

IAO met with public records requests liaisons from the following departments:
- Human Resources
- Police
- Municipal Utilities
- Community Development
- Engineering and Transportation

These departments were selected because they were estimated as the five departments with the highest number of public record requests. We conducted staff interviews to discuss business processes surrounding public records requests and review department logs and supporting documentation.

Of these five departments:
- two had formalized processes;
- two had informal processes;
- one had no process in place.

Formalized processes consisted of a written, department-level policy and a documented structure to record incoming requests, fulfillment, and requestor communication. Informal processes included systems to track requests without a supporting written

procedure. The remaining area had an absence of written policy or a systematic method to record or track requests.

During staff interviews, we also asked department liaisons about issues concerning request fulfillment. A common theme among staff interviews was timeliness of request completion. Employees shared that requests are sometimes forwarded to the wrong department/workgroup/individual and this can cause delays in fulfillment. Liaisons also emphasized that some requests require a multi-department response and often not all appropriate departments are included in the initial notification. In the absence of a system to track records requests and multi-department communications, employees coordinate requests via email to connect the necessary parties to meet obligations of the request. This process is inefficient and time consuming.

Recommendations

2.1 In conjunction with the planned implementation of OnBase, develop written department-level procedures and integrate appropriate system controls (e.g., tracking of requests through fulfillment) to ensure consistent application of City policies.

3 – Process Transparency

Background

Transparency within government processes is generally recognized as a cornerstone for gaining public trust by promoting accountability and providing insight to constituents on how their government operates. A.R.S. § 39-121: states "Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours." The City of Tempe actively supports the importance of transparency within government through the development of City Council Strategic Priorities. Strategic Priority 2 *Strong Community Connections* emphasizes the importance of organizational transparency and the commitment to open government, customer service, and communication with community members.

Approach

To identify how the City makes the public records process accessible and transparent we:

- Interviewed departments and discussed practices to make public records requests accessible and transparent;
- Reviewed public records requests websites of comparable organizations to evaluate information publicly available and measures taken to enhance transparency.

Results

Additional opportunities exist to increase the transparency of the public records request process in conjunction with the implementation of the OnBase system.

IAO reviewed information on transparency in local government to ascertain common practices and potential recommendations for development and implementation. Research from the International City/County Management (ICMA) discussed the importance of open governance and emphasized that, "Availability of information on government policies and actions, a clear sense of organizational responsibility, and an assurance that governments are efficiently administered and free of systemic corruption" is critical to transparency. ICMA works to achieve this through their cornerstone missions of public administration reform, local government transparency, government and ethics enforcement, open budget process, transparent service delivery, and public private partnerships. ICMA additionally recommends the implementation of performance measures as monitoring mechanisms, a code of ethics as an internal control, and the development of methods to enable feedback from citizens and stakeholders.

We also reviewed websites of the following jurisdictions to identify any specific processes implemented to promote transparency of the public records requests process. These jurisdictions were recommended by City staff for having transparent public record request processes.

- City of Miami, FL
- City of San Diego, CA
- City of Prescott, AZ

The websites from all three of these jurisdictions stated that they use Next Request, a public records request management software geared toward government fulfillment of Freedom of Information Act (FOIA) requests. Using this system, the jurisdictions make accessible on their websites a database showing all closed public record requests. This database allows members of the public to access record request dates, fulfillment department, point of contact information, and a description of the request. Users also have the capability to filter results by point of contact, department, and request information. The City of San Diego also provides a frequently asked question section, minimum turnaround time on requests, summary of the Attorney General guidance on request fulfillment, and related state law.

At an organizational level, the City of Tempe has implemented the common practices indicated by the ICMA. Strategic Priority 2: *Strong Community Connections* highlights the importance of organizational transparency and the City's commitment to open government. This priority is supported by department-level performance measures that support customer service and public trust. Tempe also has an open data catalogue which can be used to review historical budget documents, performance measure progress, census data, and several other service areas with downloadable data sets.

The City's Personnel Rules outline ethical expectations in addition to guidance provided in the Ethics in the Workplace handbook. Specific to public records requests, the City's public website has five tiles that provide general public records request and department specific information on how to submit requests and department policies. Commonly requested public records such as meeting schedules, meeting minutes, and agendas for city council, committees, and commissions are available online. Tempe additionally maintains an online searchable database for procurement contracts.

There are additional opportunities to increase transparency and efficiency at an organizational level. Information Technology and Human Resources management indicated a number of initiatives to promote transparency in the public records process. Currently, Human Resources is working with IT to proactively provide online access for commonly requested personnel information. For instance, Human Resources receives quarterly requests for employee salary and hire date information. In an effort to increase transparency while simultaneously reducing public records requests, IT is developing a database to provide the commonly requested information through the public website. This database will enable requestors to review current information and eliminate the need for quarterly requests.

IT is also in development with the City Clerk's Office to implement OnBase, a public records request software. The implementation will provide the capability of a searchable online portal for submitted records requests, workflow notifications for staff, and reporting functionality. These key components of the software will increase transparency in the public records process and enable staff to work more collaboratively and potentially decrease request fulfillment time.

Recommendations

None. For information only.

Scope, Methods, and Standards

Scope

IAO reviewed current public records requests policies, City Attorney's <u>Public Records Request Handbook</u>, and department request logs and records from June 2020 through December of 2021.

Methods

We used the following methods to complete this audit:

- Identified legal requirements associated with public records requests;
- Assessed citywide policies or department-specific policies and procedures governing public records requests;
- Met with department staff to discuss training related to the request fulfillment process;
- Identified whether the City tracks the number and type of public record requests received;
- Met with departments to document processes and identified relevant controls based on review of policies, procedures and interviews;
- Evaluated department procedures for logging and tracking the fulfillment of public record requests;
- Reviewed public records requests websites of comparable organizations to evaluate information publicly available and measures taken to enhance transparency.

Unless otherwise stated in the report, all sampling in this audit was conducted using a judgmental methodology to maximize efficiency based on auditor knowledge of the population being tested. As such, sample results cannot be extrapolated to the entire population and are limited to a discussion of only those items reviewed.