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City Council Update on California Public Records Act Requests

SUMMARY

The California Public Record Act ("CPRA") is State law. The City has an excellent record of responding to requests for public information in a timely manner. Recently, the quantity, complexity, and scope of CPRA requests submitted to the City has increased substantially (86% since 2017). While there is no single reason as to why an increase has occurred, there are some distinct variables that outline the cause. Some of the reasons are due to changes in law, increase in civic engagement, and an increase in the use of technology.

BACKGROUND

The CPRA (Government Code Section 6250 *et seq.*) is California's version of the federal Freedom of Information Act (FOIA). The CPRA requires the City to make public records available for inspection or duplication upon request. A public record includes "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained" by the City. Virtually every accessible document to which a public employee and city official have access, is a public record. However, certain public records are exempt from disclosure under the CPRA. The majority of the exemptions are to protect the privacy of individuals and confidential materials.

When the City receives a request for records, the CPRA requires the City respond to the requester within ten calendar days. The City is not required to produce the responsive records within ten days. Rather, the City must acknowledge the request within the ten calendar days, which should include if the City has responsive records and how long the City will need to produce the records in the manner in which they were requested.

Analysis

Processing Requests

Ideally, a requesting party would fill out the City's standard CPRA request form. If the request is made orally, staff will offer and provide the City's standard form and encourage the requesting party to fill it out. If the requesting party is unwilling to reduce its CPRA request to writing, staff documents the request to the best of its ability on the City standard form. Staff sends a written confirmation of the oral request to the requesting party. This gives the requesting party the ability to correct any misunderstanding related to their request and provides the City with written confirmation of the request.

The City Clerk's office is responsible for coordinating and tracking all CPRA requests received by the City. The City Clerk's office coordinates the ten day written response to the requesting party.

The gathering of the responsive records includes the City Clerk working with City staff gathering the documents responsive to the request. Requests that seek a large volume of records or oversized documents may require additional attention, time, and facilities. Actual disclosure of the records may depend on when the records are assembled and whether it requires further review from various departments. If the request is particularly voluminous, the City may provide such records in batches, based on reasonable processing times and available staff resources.

In order to efficiently manage and process records requests, the City Clerk keeps a file of all requests processed under the California Public Records Act. The file includes but is not limited to, responses, general descriptions of the records provided, and a copy of the records disclosed in response to each request (**Attachment 1**).

Challenges surrounding the current process include the multi-departmental nature of requests and ensuring all communication is channeled through the City Clerk's Division to enable consistent answers and the elimination of duplicative effort. In addition, at this time the City does not have an automated tracking system to monitor progress of CPRA requests or a scheduling mechanism that allows for due date reminders. In addition, the City currently uses Adobe Pro with optical character recognition (OCR) for redaction that requires additional time in resolving issues with scanned documents.

Finally, several Departments complete simple CPRA requests internally without including the City Clerk because they understand current staff resources in the City Clerk's Office are not sufficient to handle the volume of work. This can cause confusion about who is responsible for the response and whether the timelines have been met.

Associated Time and Cost

Processing CPRA requests takes time. In most cases, there is no legal ability to charge staff time for CPRA requests; thus the cost must be absorbed by the City. However, the City can recover costs for copying, producing or creating a record that does not currently exist. In addition, paper copies may be available at a cost of ten cent (\$0.10) per page, and the City may charge a retrieval fee not to exceed five dollars (\$5.00) per request for copies of reports and statements, which are five (5) or more years old.

Since every CPRA request is distinct and the information requests vary, the average time spent by

staff time varies widely. Currently, the City does not track time associated by individual per each CPRA request. Although, a general CPRA request involving one department/division may take about four to six hours to complete and may only involve a few staff, there are CPRA requests that can be quite large, involve multiple departments/divisions, require the City Attorney's Office advice on application of CPRA exemptions, and/or affect dozens of individuals. For example, there have been CPRA requests for records involving every City employee or of a development project that has been in the works for decades. CPRA requests of this scope are hard to quantify, but they could exceed over 100 hours of total staff time.

Although we do not currently track individual hours per request, a cursory review of the requests over the last two years appears to show the increase in volume may equate to approximately 1,500 to 2,000 more hours spent managing, processing, tracking, coordinating, and finalizing CPRA requests city wide (not counting CPRA requests not coming through the City Clerk's office). While there has been a large increase in the number of CPRAs, the time associated with them has also significantly increased, especially with Police Department record requests.

Number of City-wide Public Record Act Requests

2017	135
2018	187
2019 (through November 30, 2019)	251

Over the last two years, there has been an 86 percent increase in the volume of CPRA requests.

The Public Record Request Break-down by Department

Of the 251 public records requests received so far by the City Clerk's Office in 2019, the following numbers show which departments have received requests and their percentage of the overall total:

Department	No. of Requests	Percent of Total
Community Development	86	28%
Police	76	25%
Public Works	39	13%
Finance	33	11%
City Manager's Office	29	09%
Fire Department	15	05%
Information Technology	15	05%
Engineering & Transportation	10	03%
Human Resources	04	01%

Each department gathers responsive documents and submits the records to the City Clerk for review, redaction, and dissemination to the requester. Some requests require City Attorney involvement and coordination. This can be very time consuming, especially with Police records and videos.

One of the new laws, Senate Bill 1421, expands the types of police records that are accessible to the public. SB1421, enacted January 1, 2019, requires the release of records associated with the following:

- all Use of Force reports resulting in great bodily injury or death;

- the discharge of a firearm at a person, sexual assault by a police officer involving a member of the public resulting in a sustained finding;
- a sustained finding of dishonesty by a police officer; and

SB1421 and AB748 have specific response and status update timelines creating additional correspondence.

The Police Department has created a public link - Informational Portal, on the Police Department's web page for ease of dissemination. However, City software does not automatically notify support staff of an SB1421 related incident and there is no automatic purging process to delete records based on the City's document retention schedule, which thus is done manually.

Total Recent Police Department Public Record Act requests:

2016	36
2017	38
2018	34
2019 (through Nov. 11, 2019)	76

Increase in PRA requests over 2018 (through Nov. 11, 2019) 102%

Based on the monthly average, the Department is tracking to be at 120% above average by the end of the year. The number of PRA requests noted above does not include police reports, accident reports or incident report requests received at the front counter of the PD.

Scope of Requests

The number and type of records requested vary dramatically, but the recent surge in requests have been focused on Land Use documents, including property information, building permits, open violations, and business license permits; ordinances, resolutions, agendas and meeting minutes; public infrastructure; public property information; and police records to name a few. There has also been an increase from marketing companies who, rather than paying for zoning letters, seek the information through a CPRA and thereafter sell the information they've received to interested parties.

Transparency in the PRA process

Currently, the public cannot go on the City's website to see the status of their CPRA request. Staff is considering implementing a system that provides a status listing of current requests online that is easy to access and follow. Such a system could allow for automated reminders by email and reporting functions that assign tasks and timelines. This type of program would improve public transparency, reduce staff time, have a location accessible by the public where documents previously requested will be listed, and be searchable.

Conclusions

San Leandro has seen a dramatic increase in the number of CPRA requests over the last two years - almost double. While anecdotal information shows increases in CPRA requests vary from city to city, those who have taken a proactive approach in decreasing costs have or are moving towards applying

software to help automatically track the requests as well as making the result to the requester available on the city's web site.

Some indicators show that the volume of CPRA requests will likely continue to increase; some projections show double digit increases in the coming years. Additional staff resources and systems will increase the efficiency, transparency, ability to track accurate numbers through a systemized process and ensure the City maintains compliance with the CPRA.

ATTACHMENT(S)

Attachment 1 Records Request Log 2019

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