

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: December 13, 2019

TO: Kyle Elser, Interim City Auditor

FROM: City Attorney

SUBJECT: Hotline Report of Public Records Act Responses

On December 13, 2019, the City Auditor released a fraud hotline report (Report) relating to the City of San Diego's (City) responses to California Public Records Act (PRA) requests. This response is intended to provide legal context to the final report.

Each year, the City receives thousands of PRA requests. Based on our research, since the City began using NextRequest in December 2015, the City has received over 17,400 PRA requests. The volume of requests has increased by an average of 25% each year; thus far, the City has received almost 5,700 PRA requests in 2019 alone.¹ The number of lawsuits filed against the City for violations of the PRA has also increased. This, in turn, has resulted in increased City liability. We believe that with better practices and training, and an increased allocation of resources, this rising trend of liability can be stemmed. In the absence of change and institution of better practices, the City's liability will likely continue to increase.

For these reasons, our Office strongly agrees with the recommendations in the Report with respect to coordinated citywide training on employee obligations under the PRA and development of consistent policies and procedures (see Recommendation Nos. 1 and 4). As the Report indicates, staff turnover and training challenges have led to inconsistent application of PRA procedures and exemptions, and the phrasing of responses, which can increase the City's exposure. Part of the problem may be that staffing resources have simply not been able to keep pace with the sheer volume of requests that the City has experienced in recent years.

¹ We have conferred with other cities regarding their PRA practices. Of the 10 largest cities in California that we spoke with, the City of San Diego is on track to receive the highest number of PRA requests this year. By way of comparison, the City has received more than double the number of PRA requests received by the City of Los Angeles.

We applaud the increase in access and transparency that the NextRequest system has afforded to members of the public. At the same time, City departments could benefit from improved coordination when posting responses in the NextRequest system to avoid confusion, inconsistency, and incomplete responses to requestors. Therefore, in addition to the Interim Auditor's recommendations, we would advise that the City develop a more centralized process for responding to PRA requests. This might take the form of an inter-departmental team that handles all communications with the public regarding PRA requests on behalf of the City, including both mayoral and independent departments.

Centralizing this function would allow for more efficient and complete records collection and production by coordinating search parameters and efforts across affected departments. It would also enable our Office to more effectively and efficiently advise on consistent phrasing in 10-day and 14-day responses, the application of exemptions, and coordination with outside counsel on particularly voluminous or complex requests, as needed and appropriate. We acknowledge that this may require a greater budgetary commitment from the Mayor and City Council, but believe the investment would be offset by improved access and a corresponding reduction in liability.²

In addition, the City may wish to revisit its current practice of retaining all emails beyond that period of time required by applicable records retention laws and policies. This practice has resulted in increases in the costs of storage and associated search tools, and it has made it more difficult to quickly and efficiently search for specific documents due to the massive volume of non-responsive emails that one must sort through when responding to requests.³

Finally, with respect to Recommendation No. 2 (revisions to Administrative Regulation 95.21), we agree in part and disagree in part with the Interim Auditor's Report. We agree that the new Administrative Regulation (A.R. 95.21) is an improvement over the prior A.R. 95.20. However, we do not agree that A.R. 95.21 should be a verbatim recitation of the provisions of the PRA codified in California Government Code section 6250, et. seq. Rather, we believe that administrative regulations should provide user-friendly instructions that any City employee can

² We note that the City appears to have ceased regularly charging for copies of documents since it transitioned to the NextRequest system. Other government agencies, such as the state and federal courts, charge for electronic copies through a user portal that accepts credit cards. This could be an additional source of income to fund PRA administration.

³ Emails that rise to the level of records should be transferred to an appropriate format in accordance with the City's Master Record Retention Schedule (see Administrative Regulation No. 85.10), and any emails relevant to litigation should be preserved under a litigation hold or preservation request. Beyond those imperatives, the City has no obligation to preserve all emails indefinitely. We are not aware of any other local agency that retains emails in this manner.

