



## MEMORANDUM

To: Seattle City Councilmembers

From: Fred Podesta, FAS Director

Date: July 31, 2014

Subject: Public Disclosure Process Review SLI Response  
(SLI 13-2-A-1)

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As part of the 2014 budget, the City Council adopted Statement of Legislative Intent 13-2-A-1, requesting that the City Clerk, City Attorney's Office, and Executive, including representatives from the Mayor's Office, the Department of Finance and Administrative Services, and the Department of Information Technology, form a Public Disclosure Request Task Force to review current practices, identify shortcomings and provide an initial set of recommendations regarding Citywide policies, procedures, and organizational structures by July 31, 2014. Council specifically expressed its interest in ensuring the City fulfills public disclosure requests consistently, efficiently and effectively.

I am pleased to transmit the Task Force's SLI response, which presents data analysis and an inventory of promising practices, identifies current risks, and provides five preliminary recommendations addressing those risks, as well as a structure and detailed task breakdown supporting the preliminary recommendations. Taken as a whole, the intent of the preliminary recommendations is for the City to approach the infrastructure of public disclosure request response as a distinct, sustainable, Citywide line of business.

FAS appreciated the opportunity to oversee this project, as well as the thoughtful consideration and expertise the Task Force members brought to this effort. Thank you for your review and consideration of our response to this SLI. Please do not hesitate to let me know if you have any questions.

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**City of Seattle**  
**2014 Council SLI 13-2-A-1**



**Public Disclosure  
Process Review  
SLI Response**

**July 31, 2014**

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## EXECUTIVE SUMMARY

### Introduction

As part of the 2014 budget, the City Council adopted [Statement of Legislative Intent 13-2-A-1](#), requesting that the City Clerk, City Attorney's Office, and Executive, including representatives from the Mayor's Office, the Department of Finance and Administrative Services, and the Department of Information Technology, form a Public Disclosure Request (PDR) Task Force to review current practices, identify shortcomings and provide an initial set of recommendations regarding Citywide policies, procedures, and organizational structures by July 31, 2014. Council specifically expressed its interest in ensuring the City fulfills public disclosure requests consistently, efficiently and effectively.

In addition, Council directed the City Auditor to conduct an audit of the Seattle Police Department's (SPD) PDR procedures, including an examination of SPD's current policies, protocols and practices. The Council further provided \$300,000 for the City Auditor to contract for technical assistance for this audit. To avoid needless duplication of effort, the response to this SLI does not include a review of the Seattle Police Department's procedures for responding to public disclosure requests. The City Auditor's final performance audit of SPD's PDR system will be reviewed to identify opportunities to improve Citywide processes around public disclosure.

This SLI response presents data analysis and an inventory of promising practices, identifies current risks, and provides five preliminary recommendations addressing those risks, as well as a structure and detailed task breakdown supporting the preliminary recommendations. Taken as a whole, the intent of the preliminary recommendations is for the City to approach the infrastructure of PDR response as a distinct, sustainable, Citywide line of business.

### Background

Since 2008, both the Executive departments and the City Attorney's Office (CAO) have tracked PDR data in a central database, the Public Disclosure Tracking System (PDTs), maintained by the Department of Finance and Administrative Services. SPD and the Legislative branch<sup>1</sup> maintain their own PDR tracking systems.

Data shows the City averages 5,500 PDRs annually, totaling nearly 33,000 since 2008. SPD accounts for 74 percent of that total. While SPD does not track requestors by affiliation, the breakdown of Executive Branch and the CAO requests indicate that 53 percent are from general constituents, 30 percent from attorneys and 7 percent from the media, with another 10 percent from other sources (business, City employees, labor, and inmates). The Legislative Department estimates its annual requestor categories include 86 percent constituent, 7 percent attorney, 5 percent media and 2 percent inmate requests.

Trend analysis of all available data indicates that, in general, from both a customer service and legal perspective, the City handles the bulk of its public disclosure requests efficiently and accurately and PDRs are part of hundreds of daily incidences of information assistance occurring

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<sup>1</sup> The Legislative Branch began using the PDTs July 1, 2014.

across City government. However, both anecdotal and hard data in the form of litigation and resources indicate that complex requests are increasingly straining the City's system for handling requests.

The analysis also shows that any request can become complex for a variety of factors and at different points in the process. Complex requests in this context are those PDRs that have either resulted in litigation and/or have involved multiple resources and hours to fulfill. Some of the factors that can lead to a complex request include requests that: require clarification beyond simple parameters, such as date range; require legal clarification regarding any potential exemptions; or involve gray areas of the law, such as the limits of "fullest assistance." Complex requests could also require technical assistance to fulfill because they involve unique databases or technologies (e.g., digital cameras, video feeds, and customized software programs).

While less than one-tenth of 1 percent of the nearly 33,000 public disclosure requests received by the City over the last six years have resulted in litigation, those few proved costly. The City has been party to 25 cases of PDR-related litigation since 2008, paying out a total of \$1 million in claims, settlements and judgments. Clearly, it benefits the City to mitigate the risk of litigation where it can and the preliminary recommendations offered in this SLI response are directly designed to mitigate the factors underlying past lawsuits (e.g., human error, inadequate search, technology challenges and exemption disputes). Analysis of court opinions also demonstrates courts have become more proactive over time in making judgments based on actual compliance with the Public Records Act (PRA), as well as effectiveness of the production process and evidence of the City's good faith efforts when fulfilling requests. (See Appendix 3 for CAO memo: Significant Lessons from Recent PRA Cases.)

In addition to litigation costs, there are other costs associated with fulfilling public disclosure requests. Currently, the reported annual production costs are \$486,677. This figure drastically underestimates costs for two main reasons: departments tend to underreport staff time and costs, and Seattle Police Department data is not currently captured. When those factors are taken into account, it is not unreasonable to estimate that the City spends upwards of \$1.5 million annually responding to public disclosure requests.

### **Current Challenges**

After observation and discussion of promising practices with many outside entities, it is clear the City's system is grappling with similar issues identified across the country. These challenges include:

- Determining the right mix of staff capacity with necessary skill sets to do well in a Public Disclosure Officer (PDO) position, which requires significant discretionary judgment;
- Ensuring supervisory and department management teams understand the risk management and customer service aspects of PRA responses and support this function within their operations appropriately, including actively managing requests and monitoring agency capacity to respond (e.g., succession planning, inclusion in budget planning);
- Handling frequent requestors while balancing the Public Records Act standard of "fullest assistance" with other government operations mandates;

- Determining whether to create “real-time” public interfaces that allow requestors to track their own or all PDRs as submitted, and if so, how to accomplish this; and
- Determining the right balance of oversight and quality control measurements without adding layers of bureaucracy that can ultimately slow accurate and timely responses to requests.

### **Current Risks**

During its analysis, the Task Force identified current risks within the City’s PDR processing system that, if addressed, will lead to greater customer satisfaction and less litigation, including:

- Informal, decentralized management.
- Minimal support for production of multidepartment, multibranch of government (e.g., Executive, Legislative and City Attorney’s Office), complex and/or high-volume requests.
- Inconsistent operational policies and procedures impacting the public disclosure request system.
- Insufficient use of technology for managing and tracking public disclosure requests, records retention, search, production and ease of requestor access to City records.
- Varying levels of agency training and staff capacity to respond to complex requests.

### **Preliminary Recommendations**

While the City’s PDR processing system is not broken as evidenced by the relatively low incident of litigation (25 cases out of 33,000 requests, less than one-tenth of 1 percent), there are definitely things the City can do better. To address the City’s challenges and current risks, the Task Force offers the following five preliminary recommendations to support changes Citywide:

1. **Create a Citywide Public Records Act (CPRA) Program to centrally manage the City’s public disclosure request function; support multidepartment, multibranch of government, complex and/or high-volume requests; and develop consistent operational policies and procedures.**  
Using existing resources,<sup>2</sup> enhance the current Executive branch Public Disclosure Request coordination function created in 2009<sup>3</sup> through development of a centralized CPRA program, guided by an ongoing Steering Committee and overseen by a group of Program Sponsors.
2. **Strengthen Support for the Public Disclosure Officer Function.**  
Under the CPRA Program, develop a proposal for ensuring management support that job classifications, qualifications, and/or skill sets of staff assigned PDR responsibilities are

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<sup>2</sup> Council added one Strategic Advisor 2 position in FAS to support the evaluation of the City’s public disclosure system. While the position is due to sunset June 30, 2015, Council noted “the position could potentially take on a long-term role in Citywide PDR coordination and compliance, depending on the Task Force’s final recommendations.” If additional resources can be secured or funding redirected from other sources, the Task Force recommends converting this to a permanent position in FAS as this action will benefit the City’s management of its public disclosure program.

<sup>3</sup> See Full Report, Section I, Background for details.

consistent with the level of discretion and expertise necessitated by demands of the Public Records Act.

**3. Develop a Centralized PDR Portal and Tracking System.**

Under the CPRA Program, prepare a proposal for enhancing the existing Citywide public disclosure tracking system to support centralization and provide a public portal for submitting and tracking public disclosure requests. The proposal should include an examination of modifying the existing stand-alone system, using the City's current Customer Service Requests system and the merits of other proprietary/public domain systems with proven track records in the public sector.

**4. Expand the City's Existing Public Records Act Training Program.**

Under the CPRA Program, using both internal and external resources (e.g., web-based training, in-house experts, on-demand modules developed by agencies, such as the Washington Association of Records Professionals and State Attorney General's Office), develop and monitor a consistent training curriculum customized to a variety of audiences, including:

- Department executives and leadership teams
- Public Disclosure Officers, Records Coordinators and correspondence liaison staff
- Investigatory records custodians
- New employees

**5. Measure Customer Satisfaction.**

Under the CPRA Program, engage requestors and key clients of the PDR system to determine their challenges and satisfaction with City processes to aid the development of customer service objectives and metrics for accessibility, responsiveness and "user-friendliness" of the City's system.

Preliminary recommendation #1 can be implemented using existing resources. Information regarding the potential need for additional resources to support this line of business will naturally flow out of this work. Once that information is available, the City can decide the best mechanism for prioritizing resources to support this line of business, e.g., secure additional resources, redirect funding from other sources, etc.

As for many projects of this scope and scale, the usefulness of the work is often contained in the details. The "Detailed Tasks Table" in the Full Report (Appendix 4) illustrates specific tasks that would be undertaken by the proposed CPRA Program.

# FULL REPORT

## I. Introduction

### **Statement of Legislative Intent Mandate**

[Statement of Legislative Intent 13-2-A-1](#), adopted with the 2014 budget, directed the Department of Finance and Administrative Services (FAS) to facilitate a Task Force to:

- Review Citywide<sup>4</sup> practices handling responses to Public Disclosure Requests (PDR),
- Identify any shortcomings or areas of potential improvement, and
- Make preliminary recommendations for implementing identified improvements.

The Public Disclosure Review Project Charter signed by Task Force members on May 14, 2014, details the full scope of the project. Please see Appendix 1 for details.

### **Background**

In April 2009, Council adopted [Ordinance 122969](#), which provided findings, specific rules and requirements toward making public records available in a timely and orderly manner; and added new sections to [Seattle Municipal Code Chapter 3.104](#), City Records and Books. Per the ordinance, a central Public Disclosure Coordinator (PDC) position was established within FAS for Executive departments. In November 2009, as required in the ordinance, the Public Disclosure Coordinator, with the advice of the City Attorney's Office, drafted model rules that apply to every Executive agency. Public notice was given and comments accepted. The rule was signed by Mayor Greg Nickels and is available on the City's public disclosure [website](#).

The [City Attorney's Office](#) and the [Legislative Department](#) published similar policies, which are posted on their respective websites.

Currently, the City has the following public disclosure response structure in place:

- Each Executive agency has a specified Public Disclosure Officer (PDO) who:
  - responds to public disclosure requests,
  - tracks public disclosure requests processes and outcomes either internally to their department and/or on the Public Disclosure Tracking System (PDTS), and
  - is responsible for working with both the City Attorney's Office and the Public Disclosure Coordinator on interdepartmental requests.

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<sup>4</sup> To avoid needless duplication of effort, the response to this SLI does not include a review of the Seattle Police Department's procedures for responding to public disclosure requests as they are being reviewed by the City Auditor. Note that while the Municipal Court is exempt from the provisions of the Public Records Act (PRA), it has an assigned Public Disclosure Officer who is included on the centralized website, participates in training and in general follows City policies in responding to requests. In addition, the Municipal Court recently adopted new Court Rules that have opened up categories of records that will be available for disclosure.

- A dedicated Public Disclosure webpage that includes:
  - A list of Public Disclosure Officers' names, direct phone numbers and email addresses.
  - The name and direct contact information for the Public Disclosure Coordinator.
  - Ways to obtain assistance on making public disclosure requests.
  - Reference materials and links.
- A Public Disclosure Tracking System (PDTTS<sup>5</sup>) developed by the Department of Information Technology and now maintained by FAS. Data is entered by Public Disclosure Officers and the system tracks the following information:
  - Requestor name
  - Requestor affiliation (constituent, media, attorney, business, employee, etc.)
  - Summary of request
  - Cost to fulfill request
  - Resolution of Request (fulfilled with exemptions, fulfilled without exemptions, abandoned, failed to pick up records).
- The FAS Public Disclosure Coordinator, who serves as a quasi-public disclosure administrator for the Executive departments (with the exception of the SPD), provides technical assistance, guidance, training, and coordination of complex requests.
- The Legislative Department's dedicated Public Disclosure Officer responds to public disclosure requests, provides staff training, and advises the nine-member City Council, Council Central Staff, and the Office of the City Clerk. A Public Records Assistant was hired in July 2014 to support the PDO.
- The City Attorney's Office has one dedicated PDO to respond to PDRs received directly by the CAO. Currently the office spreads PRA litigation work and Citywide PRA support among two attorneys whose time represents the equivalent of 1.6 FTE. CAO staff provide legal advice, training, handle litigation arising from public disclosure requests, and assist in the coordination of complex record requests between branches of Seattle's municipal government and departments.
- The City Attorney's Office and the FAS Public Disclosure Coordinator provide ongoing consultation and present regular trainings for new and current PDOs, including case-law updates, templates, policies and other tools.

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<sup>5</sup> Since 2008, both the Executive departments and the City Attorney's Office have tracked PDR data in the current central database, the Public Disclosure Tracking System. SPD and the Legislative branch maintain their own PDR tracking systems. As of July 1, 2014, the Legislative Department began tracking requests in the PDTTS.

## II. Assessment Results

This analysis relied on data available from the Public Disclosure Tracking System, developed in-house and used by all the Executive departments with the exception of the Seattle Police Department. The existence and high level of participation internally in this database allowed the Task Force to conduct a fact-based assessment of the impact of PDRs Citywide. The PDTS data was supplemented with information from the Seattle Police Department's database and Legislative branch's separate tracking records.

This analysis also used other City sources, assessed promising practices from local, state and federal jurisdictions, and interviews with both internal Public Disclosure Officers and external experts in the field. The comparative data used by the Task Force informed the analysis of scope and scale issues, as well as helped determine where significant risk management issues exist.

This PDR Review project began with an assessment of the current statutory mandates and regulatory guidance provided by the State of Washington to implement Revised Code of Washington (RCW) [42.56](#) the Public Records Act. Since 2005, the State Attorney General's Office has published the [Public Records Act – Model Rules](#), which are the result of several versions of Washington Administrative Code (WAC) rule promulgations. While the Model Rules are not binding authority for other jurisdictions, these two sources create the administrative framework for local governments as they design and refine public disclosure response and records management systems.

Based on amended RCW 42.56, the City passed [Ordinance 122969](#) in April 2009. Mayor Greg Nickels established [Public Disclosure Policies & Guidelines for the Executive Branch](#), which provide the framework for the City's current PDR System of decentralized PDOs for each agency and voluntary central coordination through the Executive's Public Disclosure Coordinator housed in the Department of Finance and Administrative Services.

For the last decade, local governments have been working to strike the best balance among requirements for PDR systems. The following comment from the Model Rules illustrates the sometimes competing demands of public disclosure:

**WAC 44-14-01002 Requirement that agencies adopt reasonable regulations for public records requests.** The act provides: "Agencies shall adopt and enforce reasonable rules and regulations...to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency.... Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information." RCW 42.56.100. Therefore, an agency must adopt "reasonable" regulations providing for the "fullest assistance" to requestors and the "most timely possible action on requests." At the same time, an agency's regulations must "protect public records from damage or disorganization" and "prevent excessive interference" with other essential agency functions. Another provision of the act states that providing public records should not "unreasonably disrupt the operations of the agency." RCW 42.56.080.

While it is beyond the scope of this SLI response to conduct a detailed analysis of the statutory mandates, this response does provide the following highlights based on RCW 42.56, the Model Rules and precedents set by the last decade of case precedents, particularly recent cases involving City of Seattle PDRs.

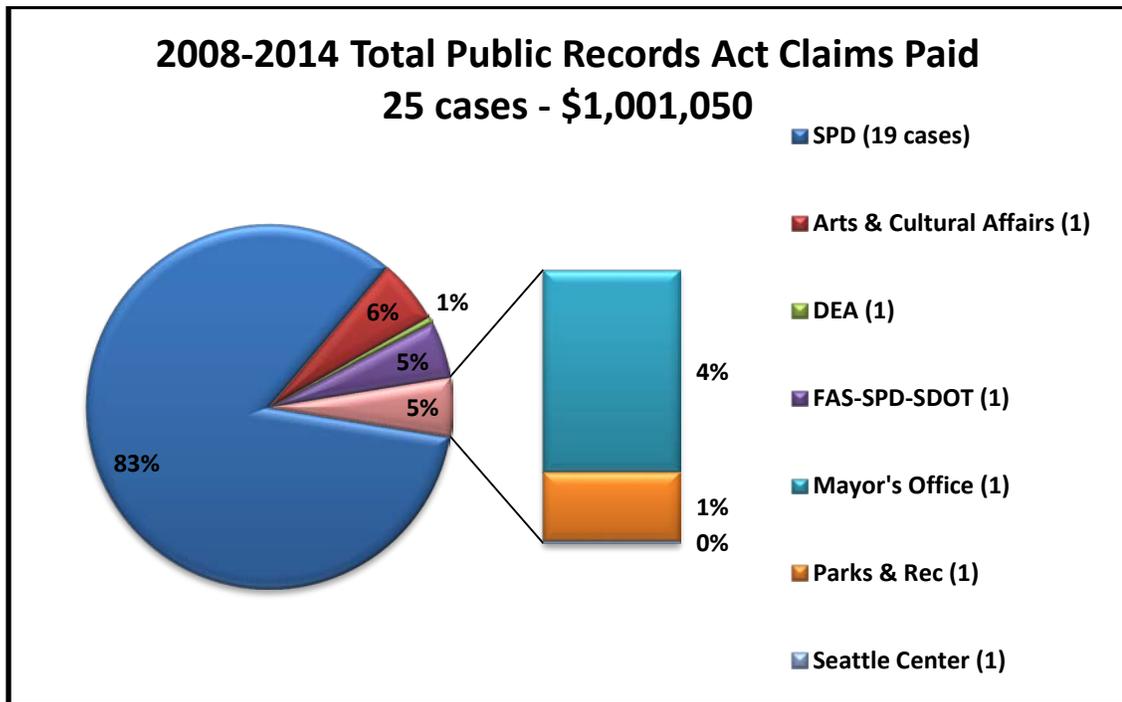
### **Case Precedents with Direct Impact on PDR Procedures**

City Attorney's Office staff work closely with all departments and particularly with the Executive Departments' Public Disclosure Coordinator. One of the key benefits of this relationship is the CAO's ability to stay current and transmit through participation in training efforts and individual consultations with PDOs the impact of case precedents on PDR processing. The following is excerpted from Assistant City Attorney Mary Perry's "Significant Lessons from Recent PRA Cases" memo dated July 2014. Please see Appendix 3 for the full text of the memorandum, which cites critical case holdings governing PDR fulfillment, including:

- An agency has to look for many more public records than before.
  - Public records may include "personal" communications written by a government employee at work.
  - Public records may include records "used" by an agency but possessed by someone else.
  - Public records may include records received or created on a personal computer or device.
  - Extracting information from a database is not "creating" a record.
  - An independent contractor may be subject to the PRA.
  - Metadata of electronic records is a public record subject to the PRA.
  - Pending cases may expand this further.
- The City must conduct an adequate search for records reasonably calculated to uncover all relevant records, and if challenged, the City bears the burden of showing, beyond material doubt, that its search was adequate. Courts emphasize the agency's duty to provide "fullest assistance" A requestor may obtain an injunction ordering an agency to produce records in a particular format.
- Courts impose liability for agency processing errors even if the agency provides all records or correctly withholds only records that are exempt.
  - Even minor errors can be costly to an agency.
  - Partial records must now be disclosed even when the agency does not have the capability of providing a record that contains all of the information requested.

The critical point of this analysis is that PRA practices will continue to change due to new case precedents, changing technology and increasing sophistication of requestors in use of the PRA.

As the City plans for a *distinct, sustainable, Citywide* line of PDR business, these facts need to be taken into consideration. A summary of PRA claims paid and an analysis of underlying causes appears below:



Number of cases 2008-2014	Underlying Causes: Basis for Settlement/Claim/Judgment (City Attorney's Office analysis)
5	Exemption Disputes
12	Human Error
7	Inadequate Search
1	Technology-Electronic Systems Complexity
<b>25 total</b>	

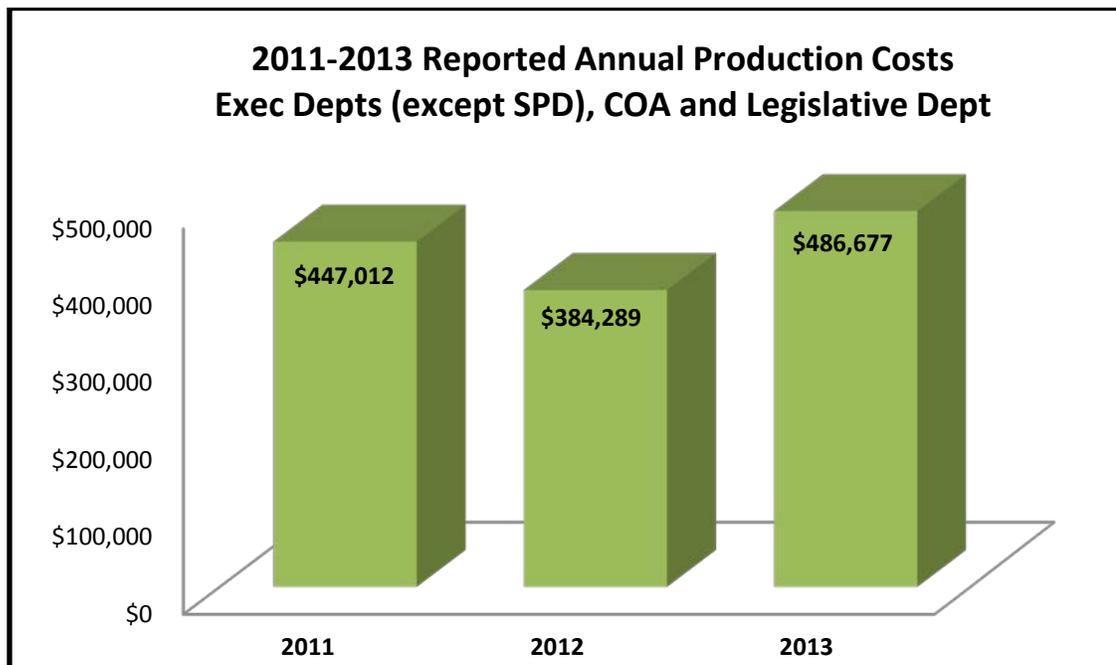
- Exemption Disputes: City argument regarding correct use of exemption is not supported by the court as a matter of law.
- Human Error: includes actions of inadvertent omission (e.g., failure to provide an exemption log, misinterpretation of a requestor's desired records).
- Inadequate Search: includes a broader category of actions (e.g., inaccurately defining a set of records as belonging to another jurisdiction and therefore not disclosable as part of the City's records, or overlooking a responsive record in larger production efforts).
- Technology-Electronic Systems Complexity: challenges in producing records given multiple databases, changing technology that makes records difficult or cost prohibitive to produce in requested formats, etc.

Preventing litigation is one measure of success for a PDR system. Since **2008, the City has had only 25 cases** out of nearly **33,000** fulfilled requests (less than one-tenth of 1 percent of total PDRs received) settled or resulting in monetary judgments where the Court ruled that the City violated the PRA. This experience illustrates the City's current system has so far enabled it to stay largely in compliance with the PRA.

Between 2011 and 2013, the City's Executive department, City Attorney Office, and estimated Legislative Department production costs totaled \$1.3 million dollars spent. Expanding participation in a central tracking system in the future should increase the City's ability to track production costs and help departments budget appropriately for this line of business.

PDTS production cost calculations are based on both direct and indirect costs aggregated into per hour rates for various position classifications (e.g., Strategic Advisor 2, Administrative Specialist 2, IT Specialist) using 2011 payroll rates and sorted by type of activity (e.g., Intake, Communicating with Requestor, Review/Redaction/Exemption Log). For example, an entry of time in the category including "gather/review/produce records" staff time is calculated at \$53.41 per hour.

The Reported Annual Production Costs chart is a good start, but **drastically underestimates costs** for two main reasons: departments tend to underreport staff time and costs; and the Seattle Police Department data is not currently captured in PDTS. SPD handles **almost four times** the amount of requests per year than the remaining Executive Departments (please see "Top Ten PDRs Received by Agency" chart on page 14). When those factors are taken into account, it is not unreasonable to estimate that the City is spending upwards of \$1.5 million annually at current levels of PDR demand.



Source: City's Public Disclosure Tracking System (PDTS) and estimates from the Legislative Dept.

## **Upstream Factors to Consider**

In addition, efforts to improve PDR response should focus on the “upstream” factors that can be influenced or controlled by the City. These factors include diligent records retention, disposition and management, access to technology that makes the process easier without excessive bureaucracy, and a customer-service approach that is both efficient and dependent on staff empowered with the skill set needed to avoid escalation of request disputes where possible. It is important to note, however, that even with high levels of compliance with the best possible procedures, governments are unlikely to be able to mitigate all litigation risk under the PRA.

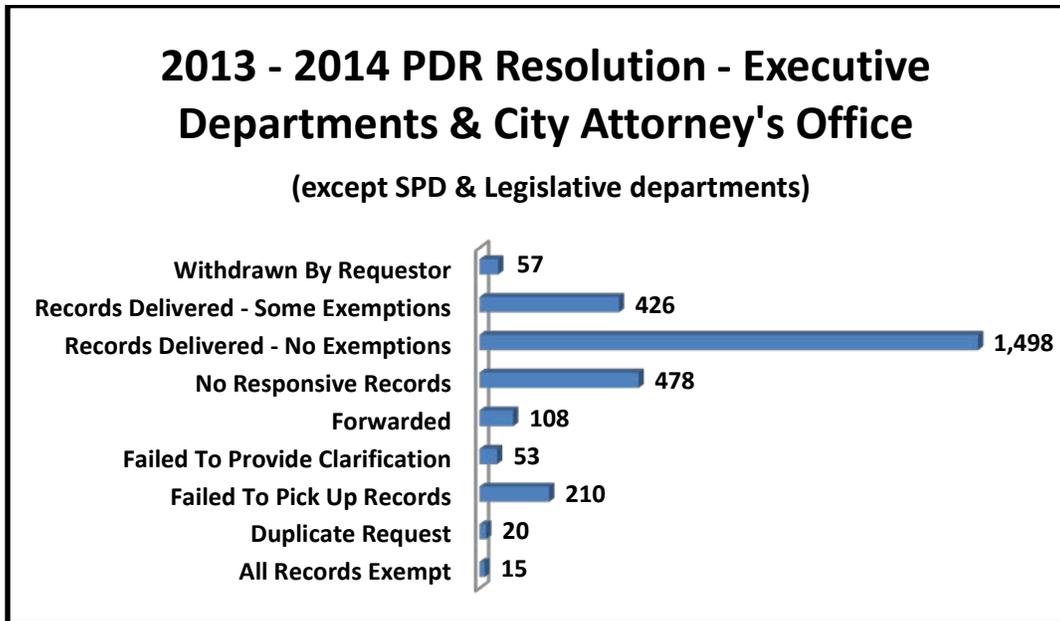
Moving forward, the City can expect a steady increase in the volume of requests, increasing sophistication of requestors, and high public expectation for ease of access to records will increase the potential risk and costs of litigation.

Beyond the legal compliance required of a PDR system, the Task Force *emphasizes several other operational goals* desired as a result of implementing the recommended changes to the City’s current PDR structure, including:

- Responsive customer service that enhances the public’s trust in City government.
- User friendliness and customers’ ease of access to the process.
- Consistent policies and application of procedures that mitigate risk of noncompliance with PRA requirements, while also allowing reasonable management of the PDR workload and flexibility sufficient to reflect the diverse nature of requests.
- Available and user-friendly technology to assist in processing, producing and tracking requests.
- Inclusion of public access and customers’ expectations in the development and design of major record-keeping initiatives.
- Inclusion of a communication plan for providing records and information online for major and high-visibility City projects.

## What is Working Within the City's PDR System?

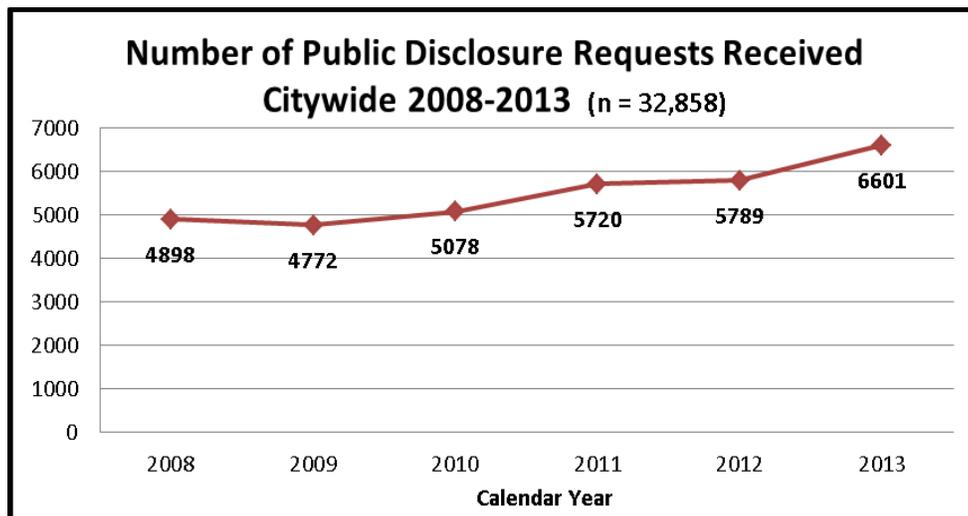
Based on the Public Disclosure Tracking System (PDTs) data, interviews with City PDOs and the low incidence of PDR-related litigation, it is reasonable to infer that the current system is generally responsive and accurate in its handling of the bulk of its requests.



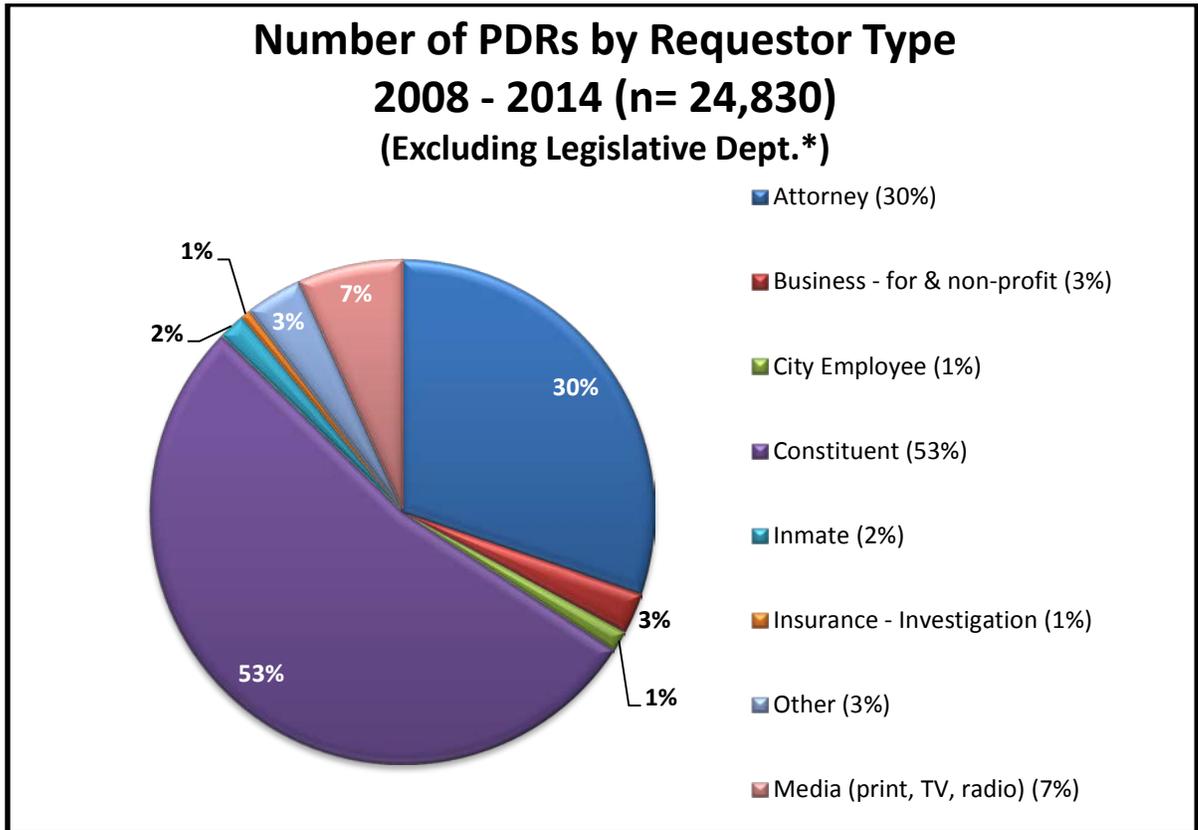
Source: PDTs recorded resolution status available as of June 27, 2014.

Over the last six years, the City *received nearly 33,000 requests, averaging about 5,500* per year Citywide. The Seattle Police Department (SPD) receives the greatest number of requests, averaging *4,000* per year. Other jurisdictions interviewed in the course of this assessment reported a similar incidence of high volumes of requests received by law enforcement agencies.

The City's overall trend, shown on the following page, reveals an increase in the number of PDRs received annually. However, the data for 2013 is skewed by the fact that one requestor submitted 500 separate requests in that year.



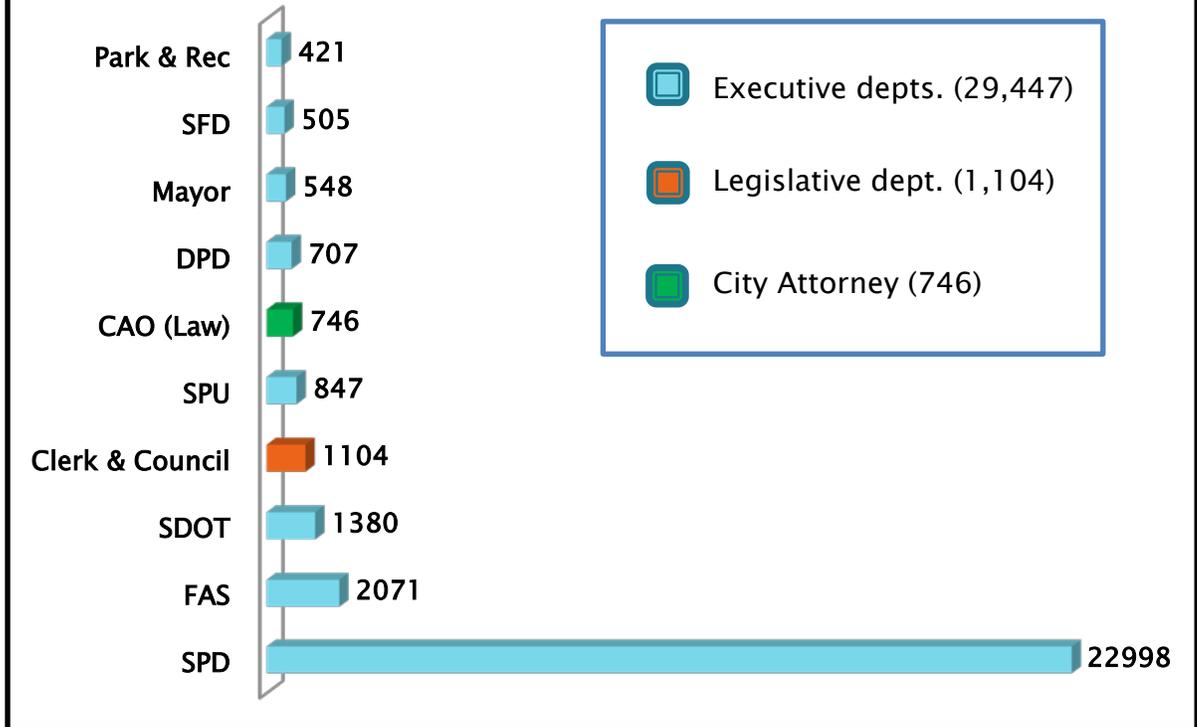
PDTS data also show that the majority of requests come from the general constituent requestor (see requestor profile chart below). Both the Task Force members and PDOs were surprised to see this distribution because there is often an additional sense of urgency or risk associated with attorney or media requests. Typically, constituent requests are for specific records personal to an individual’s situation, e.g., problematic neighbors, dog bites, police incidents, accident reports, and code compliance.



Source: PDTS. \*Legislative Department also estimated that its annual requestor categories included 86% Constituent, 7% Attorney, 5% Media and 2% Inmate requests.

Comparison of the highest volume of PDRs received by the City clearly indicates that the bulk of requests are received by the Executive departments (see “Top Ten” chart on the following page).

## “Top Ten” – PDRs Received By Agency 2008–2013



The following are *strengths* in the current PDR system:

- Current production structure for the bulk of record requests is managed in timely manner and department staff is clearly assigned responsibility for these requests and have procedures in place. However, capacity to handle requests that are more complex or high-volume varies.
- The integrity, professionalism and desire of the City PDOs (regardless of experience and support) is exceptional, especially considering the decentralized and often daunting nature of the function.
- Departments make frequent use of established central resources:
  - Public Disclosure Coordinator.
  - Consultation with City Attorneys.
  - Sharing of best practices among PDOs.
  - Basic training with limited ongoing training capacity.
  - Public Disclosure Tracking System.

- Most departments have created electronic access to PDR services:
  - Links on websites and hyperlinks to the City’s central PDR website.
  - Production of records via email is common.
  - Use of software tools to assist in email searches and production of records.
- Experienced PDOs have a clear understanding of the importance of documentation of the process, the value of clarifying requests with requestors within the bounds of what the statute allows, and the challenges involved in balancing “fullest assistance” with other operational responsibilities. Again, staff capacity to manage these competing demands varies, as does the level of anxiety regarding the level of responsibility the job requires.

### **What Needs Improvement Within the City’s PDR System?**

Every system can be improved and needs recalibration over time to meet changing demands. The following items are the most relevant areas for improvement identified by this assessment.

- Management of complex requests. These requests can include:
  - Complex email searches.<sup>6</sup>
  - Searches for paper records, extraction and preparation of other digital and traditional formats (audio files, photos, large maps/architectural documents, data from security cameras, data in multiple proprietary and in-house designed software formats).
  - Requests involving multiple departments or multiple branches of government.
  - Requests related to high-profile issues and/or a higher likelihood of litigation.
- Consistent access to and training in the technology needed for email and other e-document searches, review, redaction and production of records to requestors.
- Operational consistency:
  - Lack of consistent backup and succession planning for PDR function within departments and offices.
  - Lack of consistent application of policies supporting best records retention practices (e.g., handling records for staff who resign, leave employment, go on leaves of absence or out-of-class assignments).
  - Lack of consistent application of policies related to litigation holds in consultation with impacted departments and the City Attorney’s Office.
- Adequate staffing capacity and appropriate training and support, including:
  - Need for increased capacity for expertise in handling complex requests, assistance

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<sup>6</sup> Complex requests in this context are those PDRs that have either resulted in litigation and/or have involved multiple resources and hours to fulfill. Some of the factors that can lead to a complex request include requests that: require clarification beyond simple parameters, such as date range; require legal clarification regarding any potential exemptions; or involve gray areas of the law, such as the limits of “fullest assistance.” Complex requests could also require technical assistance to fulfill because they involve unique databases or technologies (e.g., digital cameras, video feeds, and customized software programs).

- with clarification process, and experience organizing production for broad and/or high-volume records requests.
- Need to increase connection among PIO, PDO, and Records and Correspondence coordinator roles that deal with like functions: customer support, record keeping and public relations.
  - Need to empower PDOs to become integral to departments' operations planning and elevate the overall status the PDR function Citywide.
  - Need to increase training capacity, access to alternative training formats and consistency of training appropriate for different types of audiences including:
    - Records creators, such as elected officials, community advisory groups, stakeholders.
    - PDOs and staff who directly produce/manage records
    - Customized, hands-on approach to training PDOs to ensure legal compliance and address specialized records (e.g., investigations records, third-party notice, etc.).
  - Need for consistent customer service strategy:
    - Lack of analysis and input from customers regarding need for information and what challenges they face with City processes.
    - Lack of customer-service objectives and metrics for measuring customer satisfaction, accessibility, responsiveness, and completeness.

### **Highlights of Promising Practices Review**

This assessment included a dozen interviews with key practitioners and legal experts from other Washington and federal jurisdictions, as well as web-based research on promising practices experienced by other entities, including the Association of Washington Cities, the Municipal Research and Services Center, the state Attorney General's Office, the cities of Everett, Tacoma, and Kirkland, and the federal Freedom of Information Act director for the federal Department of Health and Human Services. It is clear that the City's system is grappling with similar issues identified across the country. (Please see Appendix 2 for full list of contacts.)

While many agencies and governments do not deal with scope and scale of PDRs experienced in Seattle, the basic challenges of complying with the PRA are similar. Interviewees noted common issues, including: technology changes outpacing processing capacity; difficulties in document storage and retrieval, request clarification, and identifying relevant records; efficiency in redaction and production of electronic records; dealing with frequent requestors; and sustaining public trust in PDR interactions.

Several promising practices surfaced, including:

- The City of Kirkland moved to a single public disclosure database that allows requestors to track the status of their own requests. Kirkland also chose to allow the public to see all requests submitted to make the "queue" of requestors more understandable to the public. Records produced in response to requests are made public via the website at Kirkland PDR Portal. Kirkland implemented its new PDR Portal and central tracking system in January 2014.

Kirkland also incorporated annual review of actual production costs into its annual budget deliberations to ensure its PDR response system becomes “a sustainable line of business.” The Council published [Ordinance 4414](#) and updated its Public Records Act Rules as part of this initiative.

- Many agencies use the Adobe Acrobat Professional version software to redact e-documents. The State Attorney General’s Office takes that one step further to reduce the time spent in producing exemption logs for requestors by creating an index of vetted exemptions commonly used by staff responding to PDRs. A central coordinator then applies the code explaining an exemption redaction directly over the blackout box imaged in Adobe. The requestor is provided the redacted material and the code key at the same time. To date, the methodology has not been challenged by requestors. This system has the added benefit of producing e-versions of both redacted and unredacted materials at the same time, useful if the need for Court review of documents arises. Attorneys vet the final redacted material to ensure appropriate use of exemptions. One potential caution regarding this methodology: the potential for sophisticated users to “undo” the redactions to reveal the exempt material.
- Expanding use of Washington Association of Professional Records Officers (WAPRO), Association of Washington Cities (AWC), and the Municipal Research and Services Center (MRSC) for professional networking, training in several formats, best practice inventories, and evolving professional certification of staff responsible for responding to public disclosure requests.
- Increasing emphasis on professional standards and elevated training required for those working in public disclosure. The state AGO has significantly upgraded its website, offers online and in-person training modules, and expanded the function of the statewide ombudsperson to assist both requestors and governments seeking compliance with the PRA.
- Technology trends: development of both proprietary and public domain software systems that create real-time public interfaces with government PDR processes. The city of Oakland uses RecordTrac software for its public PDR portal. The system was designed by fellows in the federal government’s Code for America program and is available for use by any public entity. Use of proprietary systems, such as GovQA, is expanding rapidly. The emerging areas of records preservation, search and retrieval include technology solutions that interact with Facebook, Twitter and other social media forums to preserve records characterized as public records.
- Agencies, Open Government advocates and some requestor alliances are calling for a mediation option to resolve PDR disputes without resorting to lawsuits. AWC, MRSC, and the Washington State University Ruckelshaus Report - Situation Assessment of PDRs to Local Governments (conducted for the state legislature) have all begun exploring feasibility of such an option.

## **Summary Findings**

Based on its analysis, the Task Force drew the following conclusions:

First, the City invested wisely by implementing [Ordinance 122969](#), which created, for the Executive branch and City Attorney's Office generally, central coordination to provide advice to department-based Public Disclosure Officers regarding clarification of requests with requestors, production of records, and strategies to handle large volume and/or complex requests.

Second, while the City of Seattle has a great start in the established use of the PDTS, refining a system to streamline the process, provide some additional tools for oversight and a way to work with requestors in a more interactive manner is recommended.

Third, while the City laid a positive foundation for the PDR response system in the 2009 Ordinance, the increasing volume of requests and, more importantly, the increasing complexity of requests demands new approaches to improve aspects of the central coordination function. Significantly, customer expectations about ease of access to records and government transparency rose rapidly along with technology and communications capabilities (e.g., City staff and constituents increasingly rely on online applications, communications via email, Twitter and other social media), and the general move to automate record-keeping in the public sector.

Fourth, the recent tendency of the Courts to base judgments not just upon compliance with the Public Records Act, but to use opinions as an opportunity to enforce standards upon *methods of producing* those records increases the risk management aspect of this line of business for the City.

For these reasons, Seattle has a greater incentive to create the right mix of staffing, technology tools, and quality control oversight to ensure that PDRs are handled as a distinct, sustainable line of business as it would for other infrastructure, such as information technology investments or fleets and facilities management.

Finally, the City has a window of opportunity to make the PDR system more efficient and transparent because of the confluence of a number of other initiatives, such as the City Auditor's current review of SPD PRA practices, replacing the City's email archiving software, upgrading to Microsoft Office 365 (cloud-based computing) and installing SharePoint Online as the preferred technology for project management and sharing documents other than email.

In summary, thanks to the proactive foundation set in 2009 and the potential benefits of adopting emerging promising practices, the City is well positioned to evolve the next generation of a PDR response system. Though there is no "one-size-fits-all" approach to fulfilling PDRs, there are certainly actions that can be taken immediately and over time to support a user-friendly, legally compliant, and operationally sustainable City PDR infrastructure.

### III. Preliminary Recommendations

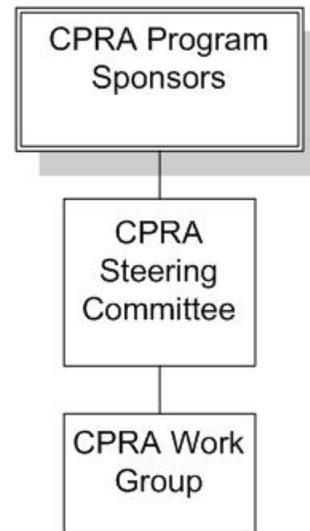
During its analysis, the Task Force identified current risks within the City’s PDR processing system that, if addressed, will lead to greater customer satisfaction and less litigation, including:

- Informal de-centralized management.
- Minimal support for production of multidepartment, multibranch of government (e.g., Executive, Legislative and City Attorney’s Office), complex and/or high-volume requests.
- Inconsistent operational policies and procedures impacting the public disclosure request system.
- Insufficient use of technology for managing and tracking public disclosure requests, records retention, search, production and ease of requestor access to City records.
- Varying levels of agency training and staff capacity to respond to complex requests.

To address the current risks, the following *five preliminary recommendations* are proposed by the PDR Task Force:

- 1. Create a Citywide Public Records Act (CPRA) Program to centrally manage the City’s public disclosure request function; support multidepartment, multibranch of government, complex and/or high-volume requests; and develop consistent operational policies and procedures.**

Using existing resources, enhance the current Executive branch Public Disclosure Request coordination function created in 2009 through development of a centralized CPRA program, guided by an ongoing Steering Committee and overseen by a group of Program Sponsors. Secure support for the CPRA Program initiative via a charter signed by the program sponsors. In addition to improving the City’s ability to monitor and respond to public records requests, the program should determine the best way to establish an independent appeal review board for records requestors and address quality-control and customer-service issues. Membership on the teams will change over time, but the represented expertise should remain stable.



**Proposed group of Program Sponsors:**

- Mayor’s Legal Counsel
- City Council – Councilmember or City Clerk
- Finance and Administrative Services

The Program Sponsors group will receive regular reports from the CPRA Steering Committee, providing guidance and direction as needed to ensure the successful implementation and ongoing operations of the City’s CPRA program.

**Proposed Steering Committee representatives:**

- City Attorney's Office – two PRA attorneys
- Seattle Police Department – Police Records Unit Manager
- City Clerk
- Finance & Administrative Services – Communications and Customer Relations Director
- Finance & Administrative Services – Executive Departments' Central Public Disclosure Coordinator
- Steering Committee Staff – FAS Strategic Advisor 2

The CPRA Steering Committee will oversee the CPRA Work Group (see following section for details). The Steering Committee's primary functions could include:

- Review and approve CPRA Program work plan and charter developed by the CPRA Work Group.
- Review and approve policy and procedure changes forwarded from the CPRA Work Group and/or identified by the Committee, including a method for providing a Citywide appeals process.
- Review the City Auditor's performance audit of SPD's PDR system to identify opportunities to improve Citywide processes.
- Oversee PDR improvement project implementation and evaluate performance of PDR system Citywide via trend data analysis, and quality-control metrics.
- Conduct targeted outreach and customer satisfaction research.
- Based on Seattle's experiences, work to propose legislation or support for initiatives which could benefit public disclosure systems as a whole statewide.
- Coordinate PDR and litigation liaison management to ensure legal compliance regarding record "holds" for suits in process and minimize operational impact on PDR production.
- Analyze impact of new record-producing systems (e.g., cell phones and personal devices, social media, video and camera digital records, etc.) on public disclosure and develop policies accordingly.
- Provide regular reports to CPRA Program Sponsors.

**Proposed CPRA Work Group representatives:**

- Finance & Administrative Services – Executive Departments' Public Disclosure Coordinator and FAS Strategic Advisor 2
- City Attorney's Office – two PRA attorneys
- Legislative Department – public disclosure officer

- Executive Departments – public disclosure officers from Seattle City Light, Seattle Department of Transportation and Seattle Public Utilities.
- DoIT/FAS Business Technology – As needed technical assistance for digital record extraction, storage and production of large volumes of e-documents.

The Citywide Public Disclosure Request Work Group could enhance the City’s capacity to provide centralized assessment and triage support, request-clarification expertise, technical assistance, proactive legal advice, and organizational production strategies for multidepartment and/or complex or high-volume requests. The CPRA Work Group and Steering Committee should work together to develop and implement the CPRA Program.

The Work Group will develop the CPRA program, including a draft program charter, for review and approval by the Steering Committee. The proposal will include staffing and technological recommendations to address the sources of risk identified by the Task Force. CPRA functions may include:

- Review complex PDR requests.
- Provide technical assistance and expertise in advising agencies’ handling of large/broad requests.
- Provide single point of contact for requestors during coordination of PDRs involving multiple departments and/or across branches of City government.
- Provide proactive legal review and advice where there is likelihood of litigation or connection to other non-PRA related claims against the City.
- Development of a centralized portal and tracking system.
- Provide regular reports to the Steering Committee.

Council added one Strategic Advisor 2 position in FAS to support the evaluation of the City’s public disclosure system. While the position is due to sunset June 30, 2015, Council noted “the position could potentially take on a long-term role in Citywide PDR coordination and compliance, depending on the Task Force’s final recommendations.” If additional resources can be secured or funding redirected from other sources, the Task Force recommends converting this to a permanent position in FAS as this action will benefit the City’s management of its public disclosure program.

## **2. Strengthen Support of the Public Disclosure Request Function.**

Under the CPRA Program, develop a proposal for ensuring management support that job classifications, qualifications, and/or skill sets of staff assigned PDR responsibilities are consistent with the level of discretion and expertise necessitated by demands of the Public Records Act.

## **3. Develop a Centralized PDR Portal and Tracking System.**

Under the CPRA Program, prepare a proposal for enhancing the existing Citywide public disclosure tracking system to support centralization and provide a public portal for

submitting and tracking requests. The proposal should include an examination of modifying the existing stand-alone system, using the City’s current Customer Service Requests system and the merits of other proprietary/public domain systems with proven track records in the public sector.

#### **4. Expand the Public Records Act Training Program.**

Under the CPRA Program, Using both internal and external resources (e.g., web-based training, in-house experts, on-demand modules developed by agencies such as the Washington Association of Records Professionals and state Attorney General’s Office), develop and monitor a consistent training curriculum customized to a variety of audiences, including:

- Department executives and leadership teams
- Public Disclosure Officers, Records Coordinators and correspondence liaison staff
- Custodians of investigatory records
- New employees and existing staff over time

#### **5. Measure Customer Satisfaction**

Under the CPRA Program, engage requestors and key clients of the PDR system to determine their challenges with City processes to aid the development of customer-service objectives and metrics for accessibility, responsiveness and “user-friendliness” of the City’s system.

Preliminary recommendation #1 can be implemented using existing resources. Information regarding the potential need for additional resources to support this line of business will naturally flow out of this work. Once that information is available, the City can decide the best mechanism for prioritizing resources to support this line of business, e.g., secure additional resources, redirect funding from other sources, etc.

As for many projects of this scope and scale, the usefulness of the work is often contained in the details. The “Detailed Tasks Table” in the Full Report (Appendix 4) illustrates specific tasks that would be undertaken by the proposed CPRA Program.

## **Appendices**

1. Public Disclosure Review Project Charter
2. Promising Practices Sources
3. CAO Memorandum: Significant Lessons from Recent Public Records Act Cases
4. Detailed Tasks Table

# City of Seattle

## 2014 Council [SLI 13-2-A-1](#)



# Public Disclosure Process Review

# Charter

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## A. Project Overview, Task Force, Staffing, Background

### Project Overview

As part of the 2014 budget, the City Council adopted [Statement of Legislative Intent 13-2-A-1](#), requesting that the City Clerk, City Attorney's Office, and Executive, including representatives from the Mayor's Office, the Department of Finance and Administrative Services (FAS), and the Department of Information Technology, form a Public Disclosure Request (PDR) Task Force to review current practices, identify shortcomings and provide an initial set of recommendations regarding Citywide policies, procedures, and organizational structures by July 31, 2014.

Council specifically expressed its interest in ensuring the City fulfills public disclosure requests consistently, efficiently and effectively.

Council also asked project staff to coordinate with staff involved in the email archive and e-discovery project.

Also as part of the 2014 budget, the City Council shifted \$300,000 into the Office of the City Auditor from the Judgment and Claims Fund to pay for an audit of the Seattle Police Department's (SPD) procedures for responding to public disclosure requests. The Council took this action because the City has paid a number of settlements related to SPD's public disclosure requests in recent years.

To avoid needless duplication of effort, the response to this SLI will not include a review of the Seattle Police Department's procedures for responding to public disclosure requests. FAS and the Office of the City Auditor will stay in contact as each works on its respective project. While the City Auditor has not yet developed a timeline for this project, the goal is to have some preliminary recommendations to Council by either August or September in time for consideration as part of the 2015 budget process. Recommendations from both reports will ultimately be reconciled as necessary once all of this work is complete.

### Task Force

Task Force members are:

- Fred Podesta, Director, Department of Finance and Administrative Services, and also representing the Mayor's Office
- Katherine Schubert-Knapp, Director, Communications and Customer Relations, FAS
- Monica Martinez Simmons, City Clerk, Legislative Department
- Martha Lester, Council Central Staff, Legislative Department
- Mary Perry, Assistant City Attorney, City Attorney's Office
- Matthew Jaeger, Public Disclosure Officer, City Attorney's Office

## Staffing

Council provided FAS funding for a temporary policy-level position, which is part of FAS' Director's Office. Debra Rhinehart, hired to fill this role, comes with significant public disclosure and project management experience, in addition to holding a law degree. Debra joined FAS on March 12. Council also provided funds for consultant assistance.

## B. City of Seattle Public Disclosure Background

In April 2009, Council adopted [Ordinance 122969](#), which provided findings, specific rules and requirements toward making public records available in a timely and orderly manner; and added new sections to [Seattle Municipal Code Chapter 3.104](#), City Records and Books. In November 2009, as required in the ordinance, Executive departments adopted [one centralized administrative procedure](#) signed by Mayor Nickels and available on the City's public disclosure [website](#). Per the Council's ordinance, a Central Public Disclosure Coordinator (PDC) position was established within FAS for Executive departments.

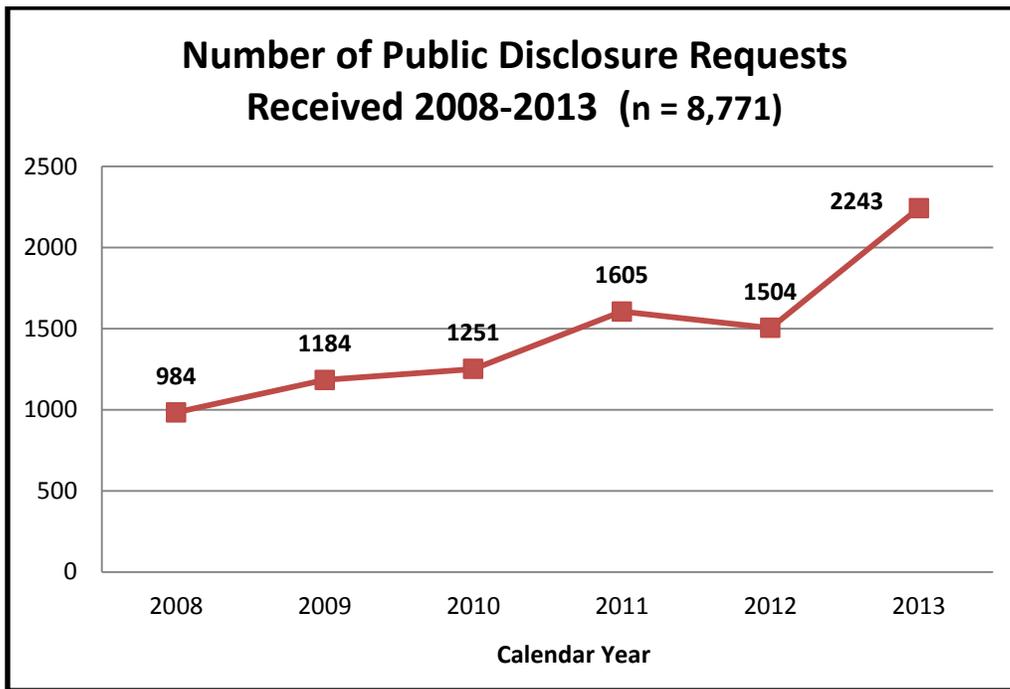
The [City Attorney's Office](#) and the [Legislative Department](#) published similar policies, which are posted on their websites.

Currently, the City has the following public disclosure response structure in place:

- Each department has a specified public disclosure officer (PDO) who;
  - responds to public disclosure requests,
  - tracks public disclosure requests process and outcome either internally to their department and/or on the Public Disclosure Tracking System (PDTs), and
  - provides support and/or training regarding public disclosure requests.
- FAS developed and maintains the City's PDTs and public disclosure related website for use by internal and external customers. The PDTs is used by the City Attorney's Office and all Executive departments with the exception of Seattle Police Department (SPD). The Legislative Department maintains a separate database.
- The FAS Public Disclosure Coordinator serves as central contact for the Executive departments (with the exception of the SPD), providing technical assistance, guidance, training, and coordination of complex requests.
- The City Clerk's Office has a dedicated PDO who trains and supports Legislative personnel, responds to requests for City Clerk records, and coordinates request involving one or more City Councilmembers.
- The City Attorney's Office has two attorneys (1.6 FTE) and a PDO who provide legal advice, training, handle litigation arising from public disclosure requests, and coordinate complex record requests between branches of Seattle's municipal government and departments.
- FAS and the Department of Information Technology (DoIT) provide and maintain software systems for the archiving, collection, processing and review of City records.

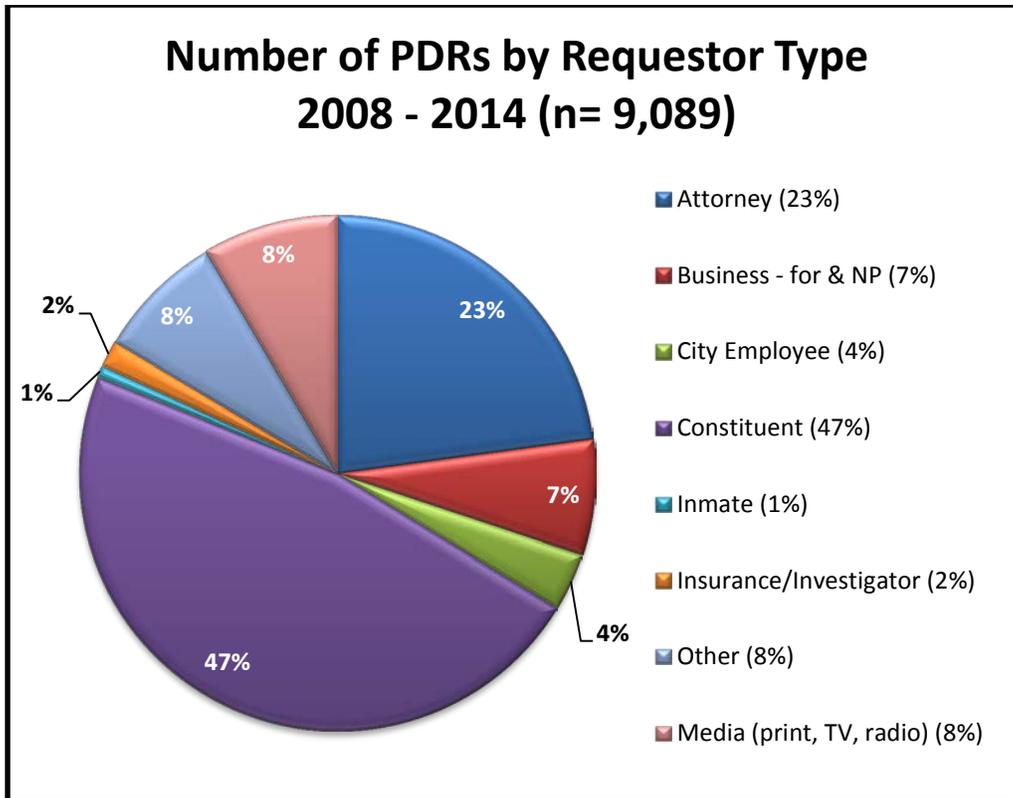
While the number of requests has shown an upward trend overall, the complexity and size of public disclosure requests have grown exponentially and it is this factor which tests the City's current capacity to manage PDR responses. The inflexibility of the statute and the increase of shared record-keeping systems, such as email, coupled with departments' reliance on numerous and scattered record technologies, has put a unsustainable strain on the City of Seattle's ability to process requests effectively and efficiently.

The number of PDRs Citywide has increased each year, with notable spikes in activity often tied to events, such as municipal elections or major development projects (see chart below).



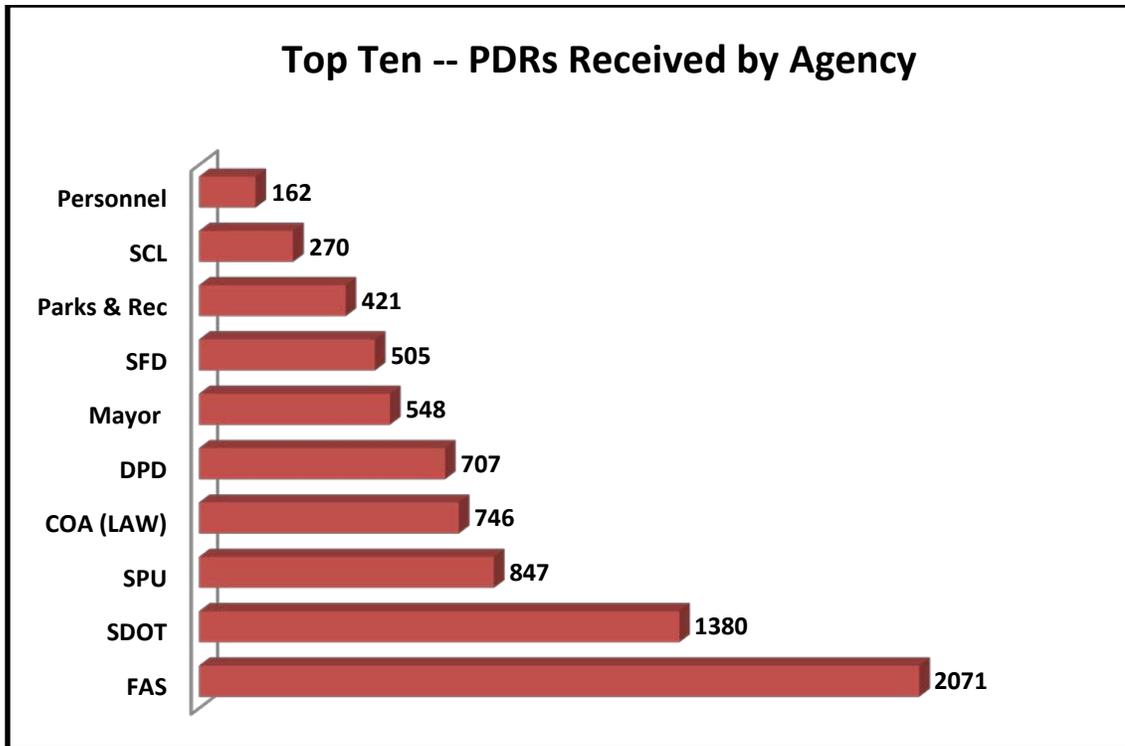
- **Source:** Public Disclosure Tracking System (PDTs); includes Executive departments (with the exception of SPD) and City Attorney's Office data. (Will be updated with Legislative Department data.) In early years of PDTs database use (2008-2010), requests likely under-reported.
- **Note:** Data for 2013 includes one requestor filing 500 individual requests across multiple departments, which skews the trend.

The exponential growth of electronic communications and the public's expectation of immediate accessibility of records produced by those systems have also increased the complexity of accurate and timely response. In addition, the City's technology and infrastructure (e.g., policies, staffing capacity, training curriculums) is being impacted by the demands of public disclosure in the digital age.



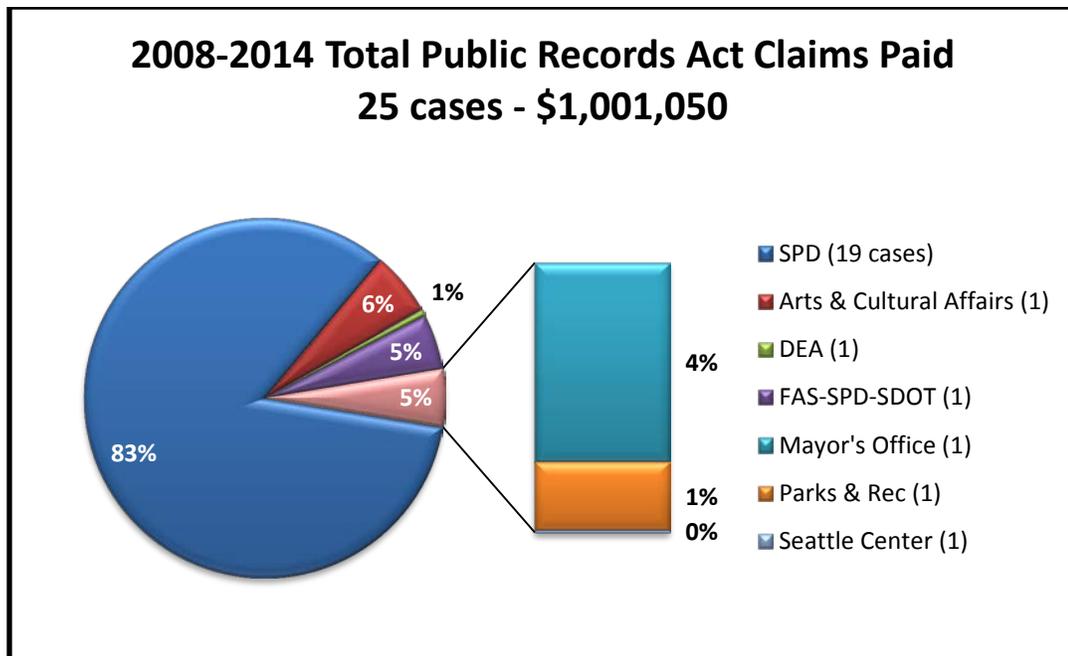
- **Source:** Public Disclosure Tracking System (PDTs); includes Executive departments (with the exception of SPD) and City Attorney's Office data. Will be updated with Legislative Department data.

Similarly, the legal landscape of both public disclosure and litigation involving electronic discovery (“e-discovery”) has changed significantly in the last few years due to the points previously mentioned, as well as recent case precedents. Public entities must develop records management systems involving all forms of records: paper, digital, e-mail, personal devices, video/audio recordings, etc. according to State and local document retention schedules. Public entities must also develop systems to support reasonable preparation for complex litigation.



- **Source:** Public Disclosure Tracking System (PDTs); includes Executive departments (with the exception of SPD) and City Attorney's Office data. Will be updated with Legislative Department data.
- **Note:** The City's procurement function is housed in FAS, resulting in numerous requests for bid- and RFP-related records. Animal Control is also part of FAS and generated 798 requests during this time period.

The cost of penalties assessed as part of judgments involving PDR litigation tends to drive concern over managing records. Though PDRs that lead to litigation represent only a small percentage of the overall number of requests received and completed, the cost of these cases and claims are significant. Recent data from the City Attorney's Office indicates that since 2008, the City has been subject to 25 Public Records Act (PRA)-related lawsuits and paid judgments or settlements totaling \$1 million.



**Note:** Three additional cases or appeals are currently pending in court.

In addition to litigation costs, many City departments have tracked the costs related to responding to PDRs in the last several years, generally as an expression of staff time for search, review and production of records.

### C. Project Scope

**Establish a Task Force to assess public disclosure practices Citywide, prepare a report summarizing findings and offer an initial set of recommendations.**

- Review the City's current public disclosure practices to determine:
  - What is working;
  - What could be improved, and
  - What would be most helpful to staff who work on PDR search, review and production.
- Research and analyze:
  - Existing data;
  - Best practices;
  - Policies and practices;
  - Issues;
  - Risks;
  - Impacts of the City's technology infrastructure

## Public Disclosure Process Review Charter – May 14, 2014

- Organizational structure of the City’s public disclosure processes (points of contact for requestors, coordination on multiple department/large requests, triage issues)
  - Costs associated with current public disclosure responses
  - Risks; and
  - Other issues as they arise
- **Deliverable:** Report summarizing review of current practices and providing an initial set of recommendations regarding legally compliant citywide policies, procedures and organizational structures to ensure consistency, efficiency, and effectiveness when responding to public disclosure requests.

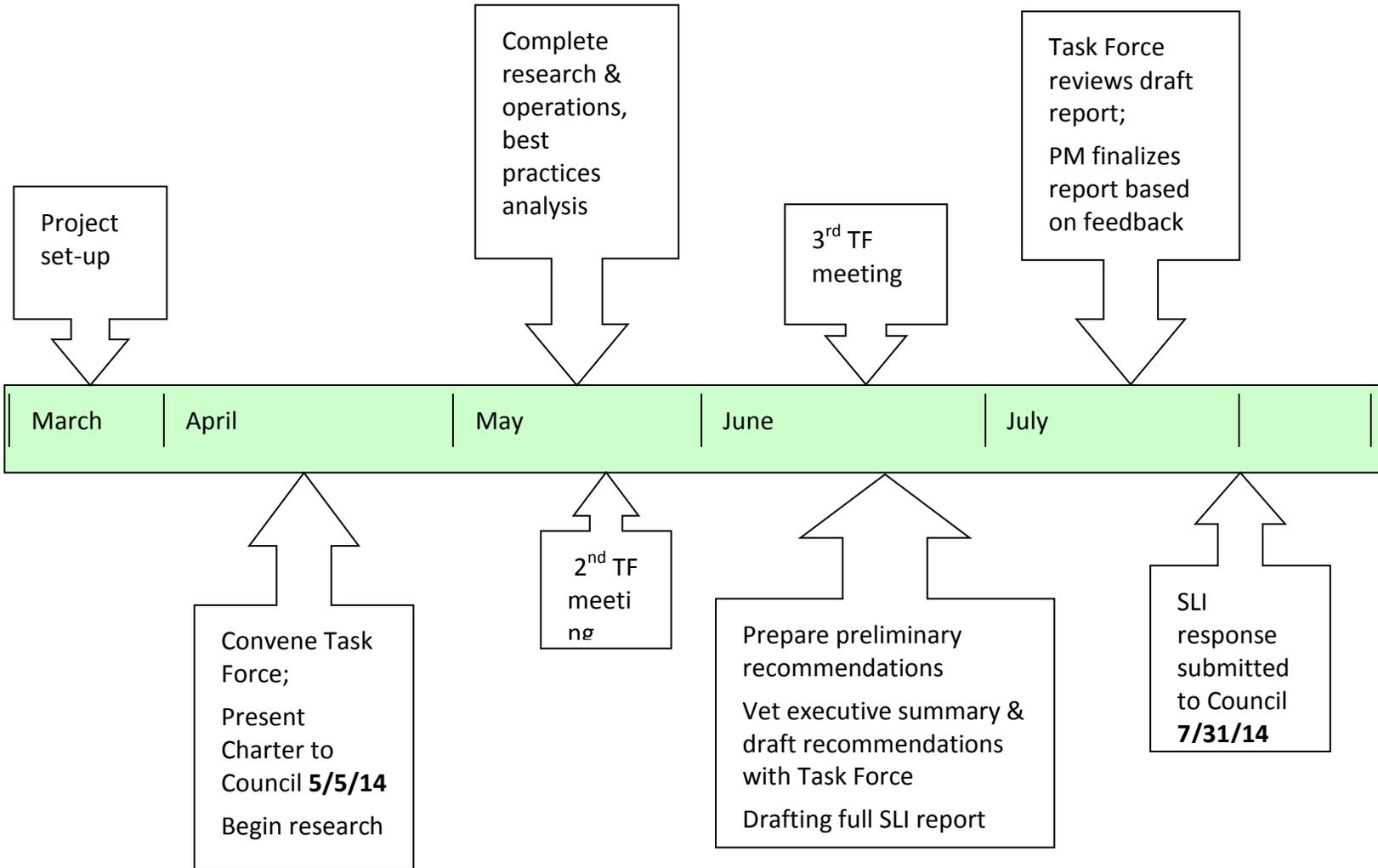
### What Project Scope Does Not Include

Council provided the City Auditor with \$300,000 for a 2014 audit of the Seattle Police Department’s (SPD) procedures for responding to public disclosure requests. In collaboration with the City Attorney’s office, the Auditor will conduct an audit that will include an examination of SPD’s current policies, protocols and practices regarding the intake, tracking and fulfillment of PDRs and whether the recommendations from previous audits have been implemented.

As noted earlier in this document, to avoid needless duplication of effort, the response to this SLI will not include a review of the Seattle Police Department’s procedures for responding to public disclosure requests. FAS and the Office of the City Auditor will stay in contact as each works on its respective project. While the City Auditor has not yet developed a timeline for this project, the goal is to have some preliminary recommendations to Council by either August or September in time for consideration as part of the 2015 budget process. Recommendations from both reports will ultimately be reconciled as necessary once all of this work is complete.

D. Timeline

### 2014 City PDR Review



## E. Responsibilities

### Task Force

- Review and approve project scope of work.
- Vet draft report executive summary and preliminary policy suggestions.
- Review and approve final report and preliminary recommendations to Council.

### Project Manager

- Staff the Task Force.
- Perform required research and analysis to prepare draft report executive summary and preliminary policy recommendations.
- Stay in contact with City Auditor team working on audit of SPD's PDR process.
- Prepare final report and preliminary recommendations to Council.

## F. Approvals

We, the undersigned Task Force members\*, have reviewed this document and approve its contents.

Name and Title	Signature	Date
<b>Fred Podesta</b> Director Dept. of Finance and Administrative Services, and on behalf of Mayor's Office		
<b>Katherine Schubert-Knapp</b> Director, Communications and Customer Relations, FAS		
<b>Monica Martinez Simmons</b> City Clerk Legislative Department		
<b>Martha Lester</b> <b>Council Central Staff</b> <b>(Rebecca Herzfeld</b> Interim Central Staff Director Legislative Department will serve as back-up representative)		

Public Disclosure Process Review Charter – May 14, 2014

Name and Title	Signature	Date
<b>Mary Perry</b> Assistant City Attorney City Attorney's Office		
<b>Matthew Jaeger</b> Public Disclosure Officer City Attorney's Office		

*\*Note: DoIT representative to be determined once scope of preliminary recommendations understood.*

## Appendix 2 – Promising Practices Sources

<b>Public Disclosure Contacts</b>			
<b>City of Everett - City Attorney's Office</b>	Ramsey Ramerman	<a href="mailto:ramsey.ramerman@everettwa.gov">ramsey.ramerman@everettwa.gov</a>	<a href="#">City of Everett - Legal Department</a>
<b>Municipal Research &amp; Service Center (MRSC)</b>	Flanery Collins	<a href="mailto:fcollins@mrsc.org">fcollins@mrsc.org</a>	<a href="#">MRSC Home</a>
<b>City of Kirkland</b>	Councilmember Toby Nixon Kathi Anderson, City Clerk	<a href="mailto:tnixon@kirklandwa.gov">tnixon@kirklandwa.gov</a> <a href="mailto:kanderson@kirklandwa.gov">kanderson@kirklandwa.gov</a>	<a href="#">City of Kirkland PDR site</a>
<b>Association of WA Cities, General Counsel</b>	Sheila Gall	<a href="mailto:sheilag@awcnet.org">sheilag@awcnet.org</a>	<a href="#">AWC Home</a>
<b>WA Attorney General's Ombudsperson</b>	Nancy Krier, Statewide Ombudsperson	<a href="mailto:nancyk1@atg.wa.gov">nancyk1@atg.wa.gov</a>	<a href="#">State AGO Ombuds Office</a>
<b>Tacoma City Attorney's Office</b>	Martha Lantz	<a href="mailto:pdr@cityoftacoma.org">pdr@cityoftacoma.org</a>	<a href="#">City of Tacoma PDR Portal</a>
<b>Washington State Attorney General's Office (AGO)</b>	Kathy Bodnar, AGO Public Disclosure Officer	<a href="mailto:KathyB@ATG.WA.GOV">KathyB@ATG.WA.GOV</a>	<a href="#">State AGO PDR Portal</a>
<b>King County Office of Civil Rights &amp; Open Government</b>	Shelby Miklethun, Program Coordinator	<a href="mailto:shelby.miklethun@kingcounty.gov">shelby.miklethun@kingcounty.gov</a>	<a href="#">King County PDR Portal</a>
<b>City of Oakland (Records Trac database user)</b>	Mai-Ling Garcia (RecordsTrac rep @ Oakland)	<a href="mailto:mgarcia@oaklandnet.com">mgarcia@oaklandnet.com</a>	<a href="#">City of Oakland PDR Online Portal</a>
<b>Seattle City Clerk's Office</b>	Jennifer Winkler	<a href="mailto:jennifer.winkler@seattle.gov">jennifer.winkler@seattle.gov</a>	
<b>Federal Department of Health and Human Services, Wash DC</b>	Michael Marquis, FOI Director DHHS	<a href="mailto:michael.marquis@hhs.gov">michael.marquis@hhs.gov</a>	<a href="#">Federal Dept. of Justice - FOIA Guide</a>
<b>City of Seattle Public Disclosure Officers</b>	17 interviews completed at time of draft	Various	

<b>Associations</b>			
<b>Washington Association of Public Records Officers (WAPRO)</b>			<a href="#"><u>WAPRO Home</u></a>
<b>Washington Coalition for Open Government (WCOG)</b>			<a href="#"><u>WCOG Home</u></a>
<b>WA Municipal Clerks Association (WMCA)</b>			<a href="#"><u>WMCA Home</u></a>

## Appendix 3 – Significant Lessons from Recent PRA Cases

Author: Mary Perry, Assistant Seattle City Attorney (July 2014)

### 1. An agency has to look for public records in many more places than before.

#### Public records may include “personal” communications written by a government employee at work.

*Tiberino v. Spokane County*, 103 Wn.App. 680, 13 P.3d 1104 (2000). An agency used personal email messages sent on agency computer when they were downloaded in connection with disciplinary action against employee for excessive personal use of email system.

#### Public records may include records “used” by an agency but possessed by someone else.

*Concerned Ratepayers v. PUD No. 1*, 138 Wn.2d 950, 983 P.2d 635 (1999) An agency used an engineering design diagram created by business firm when agency cited it in decision choosing a different design even though the diagram had never left the business premises.

#### Public records may include records received or created on a personal computer or device.

*O’Neill v. City of Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010). An email sent to assistant mayor’s home computer became a public record when she cited it at a public meeting. See also, *Mechling v. City of Monroe*, 152 Wn.App. 830, 222 P.3d 808 (2009), review denied, 169 Wn.2d 1007, 236 P.3d 2010) City could not redact personal email address from City official’s email discussing City business sent from personal computer.

#### Extracting information from a database is not “creating” a record

*Fisher Broadcasting v. City of Seattle*, \_\_\_ Wn.2d \_\_\_, 326 P.3d 688 (2014). Merely because information is in a database designed for a different purpose does not make producing the information “creating” a record.

#### An independent contractor may be subject to the PRA.

*Clarke v. Tri-Cities Animal Care & Control Shelter*, 144 Wn.App.185 (Div. 3, 2008). Privately run corporation that contracted with a regional animal-control authority to provide animal control services was subject to the PRA because it was the “functional equivalent” of a government agency.

#### Metadata is a public record subject to the PRA.

*O’Neill v. City of Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010). Metadata is a “public record” within the Public Records Act, and is subject to disclosure. When a requestor asks for metadata related to a record, an agency must produce it.

#### Pending cases may expand this further

*Nissen v. Pierce County*, No. 45039-9-II, pending in Court of Appeals, Division 2, asks whether the phone-billing records of an official’s personally paid-for phone are public records because, *inter alia*, they would show how much of his paid on-the clock time he spent on personal calls.

*Cedar Grove Composting v. Marysville*, No. 71052-4-I, pending in Court of Appeals, Division 2, asks whether a consultant's internal records that were never possessed or reviewed by an agency are public records.

## **2. Courts focus on the agency's search.**

**To be adequate, the agency must be able to show that its search was reasonably calculated to uncover all relevant records.**

*Neighborhood Alliance of Spokane v. County of Spokane*, 172 Wn.2d 702, 719, 261 P.3d 119 (2011). An adequate search must be reasonably calculated to uncover all relevant records. This includes following obvious leads as they are uncovered. Most importantly, when a requestor challenges the adequacy of a search, the agency bears the burden of showing, beyond material doubt, that its search was adequate by providing reasonably detailed, nonconclusory affidavits identifying the search terms and the type of search performed, and establishing that all places likely to contain responsive materials were searched.

**An agency may have to examine a computer hard drive to perform an adequate search.**

*Neighborhood Alliance of Spokane v. County of Spokane*, *supra*. The Alliance questioned the date when a seating chart was created and asked for records evidencing that date. The computer of the county employee who had created the chart had been replaced, and her computer was rebuilt and given to another employee three months later. The county had not actually examined the hard drive said that it was the county's "usual practice" to wipe hard drives of all data before giving computers to different employees. The Court held that the county had not conducted an adequate search because the county did not actually examine the hard drive or provide specific evidence of when or whether the hard drive had been erased. See similar result in *O'Neill v. City of Shoreline*, *supra*. The Court gave the agency the opportunity to search the personal computer hard drive on which the email was received.

## **3. Courts emphasize an agency's duty to provide the "fullest assistance."**

*Fisher Broadcasting v. City of Seattle*, *supra*, if an agency has partially responsive record, it must produce it even if it cannot produce a record that is completely responsive.

*Resident Action Council v. Seattle Housing Authority*, 177 Wn.2d 417, 300 P.3d 376 (2013). A requestor may obtain an injunction ordering an agency to produce records in a particular format.

## **4. Courts impose liability for agency processing errors even if the agency provides all records or correctly withholds only records that are exempt.**

*Rental Housing Authority of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009) The exemption log that identifies records withheld in response to a request must state the title, author and recipient, date, number of pages, specific statutory exemption, and brief explanation for withholding a particular record. The statute of limitations does not start to run if there is no adequate exemption log.

*Sanders v. State*, 169 Wn.2d 827, 240 P.3d 120 (2010). Failing to provide a "brief explanation" in an exemption log is an aggravating factor to be considered in determining penalties for wrongfully withholding records.

*City of Lakewood v. Koenig*, 176 Wn. App. 397, 309 P.3d 610 (2013). A requestor is entitled to recover attorney fees and costs because an agency failed to provide a “brief explanation” in an exemption log for records that were correctly withheld as exempt.

## Appendix 4

### 2014 Public Disclosure Review Project – Detailed Tasks Table

As for many projects of this scope and scale, the usefulness of the work is often contained in the details. The following illustrates the specific tasks that could be undertaken by the proposed CPRA Program.

Issue Identified	Detailed Tasks
<p><b>A. Improve management of PDR* system as sustainable line of business</b>  <i>*(see acronyms key at the end of the table)</i></p>	<ol style="list-style-type: none"> <li>1. Create Citywide Public Records Act (CPRA) Program to improve ability to monitor and respond to quality-control and customer-service issues. Authorize CPRA Program to implement Citywide policies and procedures directly related to PDR processing and risk mitigation.</li> <li>2. Monitor City’s PDR system performance based on metrics measuring responsiveness and completeness, and assess customer satisfaction. Use that feedback to inform City managers, policymakers and PDOs, and enhance proposed PDR training curriculum.</li> <li>3. Enhance central expertise and technical assistance accessible Citywide by department management and staff.</li> <li>4. Streamline the point(s) of contact to answer general inquiries regarding public disclosure.</li> <li>5. Recommend optimal staffing capacity to address PDRs depending on level of public interest in departments’ business operations, risk of litigation and nature of records created or held.</li> <li>6. Research and publish ideal candidate profiles and/or job descriptions for PDOs.</li> <li>7. Determine minimum and desired staff training curriculum. Plan for meeting training needs sustainably over time. Customize training to needs of new employee orientation, PDOs/records management staff, management teams, elected officials and advisory groups to ensure legal compliance, operational efficiency, requestor assistance that is “user-friendly.”</li> <li>8. Integrate diverse methods of training into curriculum including: use of web-based training modules created in-house or by other</li> </ol>

	<p>entities (e.g., state Attorney General’s office ombudsman office); peer-to-peer shadowing, and hands-on training customized for small targeted audiences (e.g., custodians of investigatory records) using in-house and local subject experts.</p> <ol style="list-style-type: none"> <li>9. Ask departments to address in budgets, management and staffing plan procedures succession and back up for PDO function.</li> <li>10. Determine need for and method to implement certification and/or accreditation of PDO/Records Coordinator position as job classification in the City.</li> <li>11. Determine best method to provide Citywide administrative appeal process.</li> <li>12. Support continued benefits of PDO peer-to-peer network and career development.</li> <li>13. Create defensible evidence of good faith effort to comply with PRA for the courts.</li> </ol>
<p><b><i>B. Improve production of multidepartment and/or complex requests</i></b></p>	
	<ol style="list-style-type: none"> <li>1. Under CPRA Program, create central assessment and response capacity for Citywide PDR production to deal with complex and multidepartment request, including ability to shift administrative assistance for particularly large/complex requests received by individual departments.</li> <li>2. Continue training and supporting decentralized PDOs embedded in departments with higher volume PDR demand.</li> <li>3. Create protocol for shared PDO unit, records management and production staff for smaller/low-volume City offices, commissions and departments.</li> </ol>
<p><b><i>C. Improve use of technology for records retention, search, production and ease of requestor access to City records</i></b></p>	
	<ol style="list-style-type: none"> <li>1. Integrate PDR SLI recommendations and improvement outcomes into new technology initiatives. Require all City agencies to participate in a central PDR tracking system to enable tracking of quality control measures and document request processing. Note: this does not preclude use of separate systems to track more than what is needed for the central</li> </ol>

	<p>database depending on a specific agency’s needs.</p> <ol style="list-style-type: none"> <li>2. Plan for appropriate support of the Citywide PDR infrastructure through use of the centralized data on costs of production.</li> <li>3. For complex requests elevated to the CPRA Work Group, develop protocol for using available technology to conduct centralized searches in context of public disclosure responses and e-discovery in preparation for litigation.</li> <li>4. Determine merits of using Adobe Acrobat Professional software for automated editing/redaction of records to be disclosed by PDOs. If use is warranted, work with DoIT to implement Citywide.</li> <li>5. Explore creation of a uniform exemptions code key for use by all departments (State AG method) to decrease amount of time needed for records release and exemption log creation.</li> <li>6. Determine how to supplement the current PDTS system to allow requestors to track status of PDRs in process and view released records.</li> <li>7. Determine feasibility of easing constituent access to PDR system by using Customer Service Bureau as initial point of contact for requests.</li> <li>8. Systematically work with City agencies to automate access to most frequently requested records via Web links or searchable databases where feasible and legally appropriate. (e.g., DPD microfilm library)</li> </ol>
<p><b><i>D. Improve operational policies &amp; procedures impacting PDR system</i></b></p>	
	<ol style="list-style-type: none"> <li>1. Update Citywide mandate for PDR policy and procedures by re-promulgating the 2009 Executive Department Rule to ensure legal compliance and best practices.</li> <li>2. Update current sample PDR response letters and guides to reflect changes supported by promising practices research and/or requirements of recent legal case precedents.</li> <li>3. Develop plan for surveying customers and/or advisory groups to determine their needs for information and what challenges they face with City PDR processes as part of continuous improvement in the City’s PDR system.</li> <li>4. Establish customer service objectives and quality control metrics</li> </ol>

	<p>for accessibility, responsiveness, and completeness of responses.</p> <ol style="list-style-type: none"> <li>5. Work with the City Clerk’s office to adopt policies reflecting best records retention practices consistent with PDR improvement efforts. Assist departments to implement and sustain these efforts (e.g., handling e-records for staff who resign, take leaves of absence or out-of-class assignments).</li> <li>6. Institutionalize debriefings with department leadership after handling complex PDRs, and/or set up response management teams during such efforts.</li> <li>7. Work with the departments and City Attorney’s Office to adopt protocol for implementing litigation holds and resolving long-standing holds affecting staff records.</li> <li>8. Develop Citywide tracking of compliance with Engrossed Senate Bill 5964 requirements for training of elected officials and PDO/Records management staff.</li> </ol>

**Acronyms Key:**

- CPRA – Citywide Public Records Act
- PDO – Public Disclosure Officer
- PDR – Public Disclosure Request
- PDTS – Public Disclosure Tracking System (the current database used by to manage and track all but SPD’s requests)
- PRA – Public Records Act