



**Legislative Department
Seattle City Council
Memorandum**

Date: February 20, 2009

To: Richard Conlin, Chair
Bruce Harrell, Vice Chair
Sally Clark, Member
Nick Licata, Member
Special Committee – Open Government

From: Michael Jenkins, Central Staff

Subject: Implementing Recommendations from the 2008 Washington State Auditors Report – Open Government Records Practices at 30 Government Entities

Overview

In May 2008, the Washington State Auditor published a Performance Audit Report concerning certain governmental agencies and their responsiveness to public records requests. Titled ‘Open Government Records Practices at 30 Government Entities’, the report detailed the study groups’ response to 10 identical record requests on a variety of topics ranging from requests for copies of agency travel policies to copies of cell phone records for the top non-elected official. Each request was sent concurrently to all 30 entities on the same dates. Each request was sent out in the identical manner, ranging from certified letters to email requests; one in person request was also submitted.

The objective of the audit was to evaluate if the records that were submitted met the timeframe and process outlined in the Public Records Act and in model rules developed by the Attorney General’s office. The audit was designed to meet auditing standards prescribed by the United States Governmental Accountability Office. The reason for the audit initially arose out of passage of Initiative 900, giving the State Auditor’s office the authority to conduct independent audits of state and local government entities. This was further underscored by the State Auditor’s office research on public records request issues throughout the State of Washington, including lawsuits concerning timely responses to public records requests. The audit was also an opportunity to evaluate the practices of these governmental entities’ practices in light of extensive changes to state statutes in 2005 governing public records requests.¹

Of the 10 requests, the City of Seattle submitted two timely and responsive requests. The remaining 8 records requests did not meet the timelines established under the Public Records Act² and the Attorney General’s office model rules supporting the state statute. While initial responses by the Mayor’s office questioned the framework of the Audit, based in part of the size

¹ Revised Code of Washington 42.56, adopted by 2005 legislature; the audit was conducted over an 16 month period

² One department did not accept the form of the request. The remaining seven requests were sent to the incorrect department and were not forwarded; the requester was told to resubmit.

and number of departments within the City's governance structure, the City has adopted measures to make public records requests easier and more effective:

1. Each department has indicated a specific point of contact for records requests
2. Individual departments are establishing webpages concerning public records requests
3. Training concerning correct response procedures for public records requests

Following the audit's publication the legislative department also made several improvements including the publication of detailed policies for records requests and modifications to its website to allow for online public records requests. In addition to the publication of responsiveness of each jurisdiction, the Audit also included a slate of other findings and recommendations. One noteworthy requirement arising from the Audit was a requirement that each audited government entity hold a public hearing to discuss the findings and to provide for public comment. This occurred before the Full Council on June 2, 2008. No members of the public provided comment on the Audit or its findings concerning Seattle's performance.

An important element in the Auditor's report was the publication of both model rules developed in 2007 by the Attorney General's office and a list of 'best practices' developed to improve responsiveness to public records requests. The model rules were developed following the 2005 adoption of revised public records act statutes as a guide for local jurisdictions in developing, through ordinance, local application of the state statutes. While compliance with the state statutes is required regardless of a local ordinance, local implementation could provide more clarity for respective jurisdictions and their citizenry. The audit also requires legislative action to report yearly on the status of implementing corrective actions suggested in the audit as well as consideration of the audit findings in relation to spending practices.

The best practices detailed in the report provide a series of specific actions for jurisdictions to consider when developing strategies to implement the findings of the audit and any local implementation of the 2005 public records act statutes. These best practices are designed to 'address the public's perception of accountability and transparency' and include:

- Establishing a culture of compliance
- Training for all staff most likely to encounter members of the public requesting records
- Developing a system to prioritize requests
- Developing a system to effectively track requests
- Developing a monitoring program for the requests from initial submittal through provision of responsive documents
- Monitoring email to catch filtered requests
- Having a central point of contact
- Developing a user friendly website to accommodate requests
- Developing a system for copying charges that differentiates between size of requests.

February 20, 2009
COW – Open government
Re: State auditor’s report
Next steps

I am drafting a Council Bill designed to set policy direction for the City as a whole that would require all departments to implement those best practices outlined in the Auditor’s report. The bill may also include elements to implement the model rules, including certain exemptions that are allowed under the state statute. I am currently working with the Law Department to address any legal concerns and with Executive staff to resolve concerns about implementation. A current draft is attached to this memorandum for your review.