

Performance Audit Draft Report

30 entities' performance in providing public records to citizens

March 19, 2008



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This draft audit report is not a disclosable document under RCW 42.56.280.

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About the Public Records Act

In 1972, Washington voters approved Initiative 276, requiring that most records maintained by state, county and city governments be available to members of the public. The original citizens initiative contained 10 exemptions to public records disclosure. Since 1972, more than 300 exemptions have been added. Furthermore, many court decisions have affected the application of state laws on disclosure.

Public disclosure laws are found in chapter 42.56 in the Revised Code of Washington and are now referred to as the "Public Records Act." The 2007 Legislature created the Sunshine Committee, to review exemptions to the public records act annually and to recommend exemptions to repeal or amend.

In 2005, the Legislature directed the State Attorney General to adopt advisory public records model rules for state and local agencies. As noted in the model rules, "*The overall goal of the model rules is to establish a culture of compliance among agencies and a culture of cooperation among requestors by standardizing best practices throughout the state.*" These model rules are now published in the Washington Administrative Code, Chapter 44-14. In June 2007, the Attorney General's Office amended its model rules to provide guidance related to electronic records. The model rules focus primarily upon disclosure procedures; however, the rules provide guidance regarding some specific disclosure exemptions, such as the right to privacy, attorney-client privilege and the deliberative process exemption. The model rules, along with the public records act, were used to develop expectations of processes state and local governments should have in place. A complete copy of the Attorney General's model rules can be found at:

- Paper Records:
http://www.atg.wa.gov/uploadedFiles/Another/About_the_Office/Open_Government/Final%20Model%20Rules%20WACs.pdf
- Electronic Records:
http://www.atg.wa.gov/uploadedFiles/Another/About_the_Office/Open_Government/Model%20Rules%20Electronic%20Records.pdf

The following summarizes the key elements found in the Washington's Public Records Act. Much of the information presented below is from the Attorney General's Office's "Open Government Internet Deskbook." Those key elements are summarized as follows:

- **The Public Records Act (Act) is to be interpreted in favor of disclosure.** The citizens of the state have the right to know almost all the details of how state and local governments are run.
- **What is a Public Record?** The definition of a public record is found in RCW 42.56.010(2) in part:

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"Public record includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."

Public records can be found in a variety of forms. Public records are more than text on paper, but include maps, photographs, and publications as well. Public records also include their electronic equivalents including word processing files, spreadsheets, databases, graphics and video and sound recordings.

- **What is an “agency” subject to the Act?** Beyond state agencies, the Act applies equally to “every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district” or “any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.”
- **Records retention duties of agencies:** State law requires agencies to adopt and enforce reasonable rules to protect public records from damage or disorganization and to retain records utilizing the State Archivist’s records retention schedule. Additionally, agencies should have in place reasonable practices which allow them to promptly locate and produce requested documents if they are reasonably identified.
- **Procedures to make a request:**
 - Records requests should be acknowledged and accepted in a variety of forms. Those forms may include: in-person, telephone, e-mail, fax, and standard or certified mail.
 - Requestors are not required to provide a reason for their request. Agencies are allowed to ask questions to help identify the specific record(s) being requested.
 - Records requests for lists of individuals for commercial purposes are not permitted.
 - Indexes of an agency’s records must be made available to the public
 - Only “identifiable records” must be provided. Agencies are not required to create records in response to a request.
- **Agency responsibilities under the Act:** Agencies must provide the fullest assistance to inquirers and the most timely possible action on requests for information. Some specific requirements are:
 - Agencies must have a public records officer.
 - Agencies must make documents available, either for inspection or as copies.
 - Agencies must make their facilities available for copying.
 - Agencies must establish times for inspection and copying.
 - Agencies may charge for copies of records provided to cover their copying costs.
 - Agencies must provide prompt written responses.
 - Agencies must delete or redact portions of records exempt under the state law and disclose the rest of the document.
 - Agencies and their employees have no liability to third parties for “good faith” responses where an exempt portion of a record is inadvertently disclosed. This exemption does not apply to an agency’s failure to disclose information.

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COSTS OF NONCOMPLIANCE

Untimely and Unresponsive to Public Records Requests:

In recent years, court cases in which state agencies and local governments have been assessed fines and penalties have been specifically related to the entities' improperly withholding public records and/or delaying release of the records. We did not identify litigation that was based on entities' practices other than improper denials or excessive delays. In addition to penalties, attorneys' fees, and costs awarded by the court, the entity also bears its own legal costs of the litigation. Accordingly, minor court awards can be expensive if the legal costs associated with the litigation are considered as well. Examples of recent lawsuits include:

- The Department of Corrections settled a lawsuit for \$65,000 in late 2007. A Tacoma man made public records requests at 10 government agencies for information about employee health insurance coverage. The Department failed to provide the records electronically because it said it could not electronically redact protected employee information, but offered to provide paper copies at a cost of \$8,900. The agency ultimately provided the records electronically on Oct. 15, 2007. A Thurston County judge had previously ruled that the Public Records Act does not require agencies to provide records in an electronic format. However, the Department agreed in its settlement not to deny requests for electronic copies of records.
- The Department of Corrections settled another public records lawsuit earlier in 2007 for \$541,000. Prison Legal News, a watchdog newspaper, requested records in 2000 that the Department failed to produce.
- In 2006, the City of Spokane settled a case for \$299,000 involving its refusal to release public records regarding financing of a parking garage. At the time, it was thought to be the largest public records-related settlement in the history of the 1972 Public Records Act.
- A state Court of Appeals judge in 2007 fined the King County Executive \$123,000 for failing to comply with the state's Public Disclosure Act. A Seattle businessman took a case to court in 2000 after the Executive's office failed to respond to a 1997 public records request for documents regarding the public financing of Qwest Field. A King County Superior Court judge originally fined the Executive \$5 per day for each day it failed to produce the requested records. The Act allows up to \$100 per day. The case was still being resolved at the time of the audit.

In addition to the financial expense of being involved in a legal dispute involving public records, failing to respond properly to public records requests can erode the public's overall trust and regard for the entity and government in general.

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RECENT DEVELOPMENTS IN PUBLIC RECORDS MANAGEMENT

Challenges of Records Management in the Electronic Age

In recent years, the number of electronic records that are created and stored electronically and are not preserved in a paper form has grown significantly. A study published in 2004 by the University of California Berkeley found that the amount of new information had roughly doubled in prior three years. About 93 percent of that information was created and stored electronically.

This has affected the way government does business. Consequently, records are becoming more difficult to manage. In fact this was one of the most prominent concerns voiced by the entities in our interviews. One area consistently mentioned is the desire of the entities to improve storage and access to electronic records.

Managing e-mail is a challenge. E-mail messages should be handled the same as any other public records.

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About the Audit

Objective, Scope and Methodology

Objective

This performance audit was designed to answer the following question:

How effective were 10 selected cities, 10 selected counties and 10 selected state agencies at responding to 10 public records requests in a prompt and cooperative manner?

Our audit objective was to evaluate performance of the selected entities in responding to public records requests. The Public Records Act and the Washington Attorney General's model rules on public records practices provided benchmarks and best practices for our evaluations of entities' performance.

Scope

We conducted our work from November 2006 through September 2007 in accordance with generally accepted government auditing standards.

The audit evaluated the operational performance of the following 30 entities:

Counties	Cities	State Agencies
King	Seattle	Department of Revenue
Pierce	Spokane	Office of Insurance Commissioner
Snohomish	Tacoma	Department of Social and Health Services
Spokane	Vancouver	Department of Labor and Industries
Clark	Bellevue	Washington State Patrol
Kitsap	Everett	Department of General Administration
Yakima	Spokane Valley	Department of Corrections
Thurston	Federal Way	Washington State Lottery
Whatcom	Kent	Office of Financial Management
Benton	Yakima	Washington State Investment Board

We provided a draft of this report to the 30 entities for their review and comments, which are in Appendices A, B and C.

The State Auditor's Office conducted this performance audit in accordance with Generally Accepted *Government Auditing Standards*, prescribed by the U.S. Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence that provides a reasonable basis for our findings and conclusions based on our audit objectives. The scope of our audit was limited to an analysis of results of our unannounced public records requests and interviews with Public Records Officers. Our audit procedures did not extend to verifying and evaluating the design or effectiveness of the entities' internal controls over its public

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records request processes. We believe the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

METHODOLOGY

To address the objectives, we submitted 10 unannounced requests at the 30 entities using a variety of methods. Some of the requestors were Auditor's Office staff who did not identify themselves as such, others were not employees of the Auditor's Office. We believe that had the requests been identified as coming from the State Auditor's Office, the results would not reliably portray entities' responsiveness to citizens. Furthermore, unannounced procedures are a standard methodology under professional auditing standards. Since most public records requests are received in writing, we made our requests in the following manner:

- Eight requests at each entity were sent using a standard letter format, clearly describing the record we sought. An e-mail address and phone number were provided in these requests, which were sent to the entity via the U.S. Postal Service. Four were sent by certified mail and four were sent through standard mail.
- One request was sent to each entity via e-mail in the same format as the standard letter. A phone number was not included in the request.
- One request was made in person at each entity by a team of two Auditor's Office employees.

We chose the type of records to request by ease of retrieval for the entity. Here are details of the 10 requests and the methods used to make them:

The list of requested records was established with the following criteria:

- The records likely existed at all 30 entities.
- The records would be readily identifiable.
- The records should not impose a significant burden upon the agencies to locate and retrieve.
- All 30 entities received the same requests. The e-mailed and mailed requests were sent on the same day.

Uniformity and consistency among the requests was critical to our ability to measure the entities' performance and provide meaningful comparisons, analysis and conclusions.

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<i>Request Mode</i>	<i>Description</i>
In-Person Request	Copy of the entity's sexual harassment policy. These requests occurred between February 9 and February 16, 2007.
Certified Letter Request	Records showing the names, positions and compensation amounts for the entity's top five compensated employees for calendar year 2005. The requests were sent on November 22, 2006.
E-Mail Request	Copy of entity's travel policies. These requests were sent on December 14, 2006.
Certified Letter Request	Travel Voucher(s) for selected employees for July through December 2005. These requests were sent on December 21, 2006.
Certified Letter Request	May 2006 entity-owned cell phone record for the top non-elected official or chief agency official. These requests were sent on December 28, 2006.
Standard Letter Request	Vacation records for the entity's top, non-elected financial officer for January 2006 through June 2006. These requests were sent on December 28, 2006.
Standard Letter Request	Job description for the entity's Director of Information Technology or equivalent employee. These requests were sent on December 28, 2006.
Certified Letter Request	All records and vouchers showing out-of-state travel reimbursements or travel costs for July 2005 through June 2006. One individual was selected from each entity. For Counties and Cities, the top law enforcement officer was selected. These requests were sent on December 29, 2006.
Standard Letter Request	For selected entity departments, all records or vouchers showing expenditures for employee awards and/or recognition in December 2005 and January 2006. These requests were sent on January 3, 2007.
Standard Letter Request	Requested a copy of the entity's most current phone directory or of one department of the entity when we believed the entire entity directory would be too large. These requests were sent on January 5, 2007.

Evaluation criteria

We used the following criteria to determine whether the entity was responsive or nonresponsive:

- **Sufficient responses.** We considered responses sufficient if the records we received were consistent with what we requested. We considered responses complete if a record was close to being responsive to the request and if the entity explained it was the best available information. We also considered responses sufficient if the entity indicated that it did not have the record.
- **Insufficient or incomplete records or responses.** We considered responses insufficient or incomplete if:

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- The record was not relevant to the request.
 - The record was incomplete.
 - The record was Improperly redacted.
 - The entity provided a link to a Web site that contained information that did not fulfill the request.
-
- **Nonresponsive.** We considered entities nonresponsive if the entity did not provide records.

 - **Request not received.** Entity stated it did not receive the request.

Measuring the Entity's Performance (Responsiveness)

We measured each entity's performance by the number of business days it took to respond to our public records requests. We did not count holidays or weekends. Our count started with the business day after we sent the request and included all business days until the date we received the entity's response. Certain adjustments were made to reduce the time counted when the entity sought clarification and could not fulfill the request until they received further instruction. In instances where the entity charged for records and then provided the records once payment was received, the time was counted in the measure.

Interviews with Public Records Officers and Coordinators

We interviewed 58 Public Records Officers/Coordinators of the 30 entities to assess their knowledge of the Public Records Act and to gain an understanding of each entity's organizational structure and policies and procedures for responding to public records requests. Our audit procedures were limited to the representations made to us by the interviewees.

We encountered one incident in which the scope of our audit was limited and may have affected our audit results. The Thurston County Commissioners refused our request to interview their Public Records Officer alone and insisted that our interview be conducted in the presence of a County Commissioner. The Commissioner's presence during the interview could have affected the interviewee's ability to speak freely to the auditors.¹ The letter from the Thurston County Commissioners denying our ability to interview the public records officer without oversight is contained in Appendix B.

The scope of our audit was limited to an analysis of results of our public records requests and interviews with Public Records Officers. Our audit procedures did not include verifying and evaluating the design or effectiveness of the entities' internal controls over its public records request processes.

¹ *Government Auditing Standards*, 2003 Revision - paragraph 7.53(d) Testimonial evidence obtained under conditions where persons may speak freely is more competent than testimonial evidence obtained under compromising conditions (for example, where the persons may be intimidated).

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Audit results

Overarching Conclusion

Our audit work revealed that, by and large, nearly all 30 entities we audited are providing good customer service in responding to public records requests. We tested entities' performance by making 10 public records requests of each entity like a citizen would. Our testing identified some trouble spots in which entities need training on the Public Records Act, have problems tracking requests or lose them due to e-mail filters or other issues with their mail systems.

We identified best practices that the audited entities should follow in order to improve their performance. Those best practices are contained in this report and in the Washington Attorney General's model rules for paper and electronic records.

Our overarching conclusion is that most of the selected entities responded cooperatively and in a timely manner to our public records requests.

Overarching Recommendations

We developed the following overarching recommendations:

- We recommend that entities institute as many elements as is practical from the best practices in this report and the Washington Attorney General's model rules regarding paper and electronic records.
- The Washington State Attorney General's Office should create standard, formal training, which may or may not include a credential, for all public records officers in the state based on the Washington Attorney General's model rules. The state Legislature should provide funding to the Attorney General's Office for this training.

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Audit Results Table

The information presented in this table is discussed in more detail in Findings 1, 2, 3, 4 and Appendices A, B and C.

Entity Name	# of Requests Quicker Than Average	# of Requests with Conforming Records Provided
Spokane County	7	9
Whatcom County	7	9
Benton County	7	9
Kitsap County	7	8
Clark County	6	9
Snohomish County	6	9
King County	4	9
Pierce County	4	9
Thurston County	3	8
Yakima County	2	5
City of Spokane Valley	9	10
City of Vancouver	8	10
City of Bellevue	7	10
City of Tacoma	6	10
City of Yakima	6	10
City of Everett	5	8
City of Federal Way	4	9
City of Spokane	4	8
City of Kent	3	9
City of Seattle	2	2
Department of General Administration	10	10
Washington State Lottery	8	8
Department of Social and Health Services	7	10
Office of Insurance Commissioner	7	9
Office of Financial Management	6	10
Washington State Investment Board	5	8
Department of Revenue	4	10
Department of Labor and Industries	4	9
Washington State Patrol	3	10
Department of Corrections	2	7

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Finding 1:

Thirty-two of 300 unannounced public records requests (11 percent) were considered nonresponsive. An additional seven responses (2 percent) were either nonconforming or incomplete.

Background

We considered entities nonresponsive if:

- The entity did not acknowledge the request.
- The entity acknowledged the request but required the requestor to submit a second request to another department.
- The entity acknowledged the request but did not provide the records or inform the requestor that no records had been found that were responsive to the request.
- The entity's response was not received.

We considered entities' responses incomplete if:

- The records were redacted so extensively that the information requested was no longer visible,
- The records were for a period of time outside of the time period requested,
- The records provided were not the best available to fulfill the request. In one case we received a generic job description for "Director" when a more accurate document was available.
- The requestor was pointed to a Web site that did not provide the records requested.
- The entity did not provide all of the available pages.

Overall Condition

We did not receive responses to 32 (11 percent) of our 300 public records requests.

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Summary of Non-Responsive Requests (does not include the seven incomplete records)

Non-Response Rate by Request Method

Request Method	Requests	Non-Responsive	Percent Non-Responsive
Certified Mail	120	10	8.3%
Standard Mail	120	12 ²	10.0%
E-Mail	30	8	26.7%
In-Person	<u>30</u>	<u>2</u>	<u>6.7%</u>
Totals:	<u>300</u>	<u>32</u>	<u>10.7%</u>

² Three of the 12 requests included in this figure did not receive responses. Two of the requests were submitted to Kitsap County and one request was submitted to City of Everett. The Public Records Officers at those entities did not have a record of having received the three requests. We could not determine the reason the requests were not received.

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Condition by Entity

<i>Entity</i>	<i>Requests not received by the entity's Public Records Officer</i>	<i>Entity directed the requestor to resubmit the request to another department within the entity</i>	<i>Entity response drafted or issued, but not received by requestor</i>	<i>Entity did not correctly process the request; no response received</i>	<i>Entity did not accept the format of the request</i>	<i>Entity responded with incomplete or insufficient records</i>
City of Seattle		7			1	
Yakima County			4			1
Dept. of Corrections		1	1			1
Kitsap County	2					
Thurston County		2				
City of Spokane				1		1
City of Everett	1			1		
Washington State Lottery					2	
Washington State Investment Board				1		1
King County		1				
Pierce County					1	
Snohomish County			1			
Spokane County			1			
Clark County				1		
Whatcom County			1			
Benton County				1		
City of Federal Way			1			
City of Kent						1
Office of Insurance Commissioner						1
Dept. of Labor and Industries						1
Totals by Category:	<u>3</u>	<u>11</u>	<u>9</u>	<u>5</u>	<u>4</u>	<u>7</u>

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Description of the non-responsive requests:

In instances in which neither responses nor records were received, or when the records were not responsive to the request, we sought explanation from the entities. Explanations were:

- **Requests were not received by entities:** Two entities' Public Records Officers stated they had no record of receiving three (1 percent) of our requests.
 - Kitsap County – Two requests submitted via standard mail,
 - City of Everett – One request submitted via standard mail.

We submitted nine written requests to each entity and submitted one request to each entity in person. We submitted all mailed requests to each entity to the same address as part of the audit testing. We could not determine whether the three requests in question were lost prior to reaching the entity or if they were lost in the entities' internal mail handling system. Therefore, we could not use these requests to evaluate the entity's responsiveness.

- **Requests redirected back to the requestor:** Eleven (almost 4 percent) of our requests were redirected. The request was received by the entity but the requestor was directed to resubmit the request to another department or division within the entity. In these circumstances, we consider the entity to be non-responsive to our original request. This occurred at:
 - King County – One instance
 - City of Seattle – Seven instances
 - Department of Corrections – One instance
 - Thurston County – Two instances

In each instance, the requests were acknowledged as received by the entities and a search of the department for responsive records was performed with no result. The entity department then told the requestor in the acknowledgement to resubmit the request a second time to another department within the same entity.

When we brought our concerns about redirected public records requests to the attention of Thurston County, we received the following reply from the County's Chief Administrative Officer.

"We do not believe the Board of Commissioners can, or should be responsible for coordinating public records requests for other Elected Officials such as the Sheriff or

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Auditor. Consequently, we believe our timely written responses to these two requests should be regarded as responsive. Additionally, not only did the County respond, but forwarded the requests and a copy of our response letter to the Sheriff and Auditor's offices as a courtesy. We believe this is the appropriate practice for a county government that has 21 independently elected officials, each of whom is independently accountable to the public."

The Thurston County Treasurer submitted a similar concern to our Office.

Thurston County's full response regarding redirecting requests is available in Appendix B.

- **Responses Not Received by our Office:** In nine instances (3 percent), we did not receive responses from the entities for reasons we were unable to determine. We noted two instances in which entities could document that they responded to our requests. In one instance, the entity sent a request for clarification that was never received by our Office. We performed follow-up procedures to determine why the requestor did not receive a response:
 - Spokane County and Whatcom County each had one instance in which they could not document that a response had been drafted and mailed.
 - Yakima County provided correspondence for all four instances and stated the correspondence likely was lost in its mail system.
 - Snohomish County, City of Federal Way and Department of Corrections each had one instance, but provided us a copy of their e-mail responses. The reason the e-mails did not reach the requestor could not be determined.

- **Request not processed, response not issued:** We followed up with entities to determine why they were not responsive to our requests. We found five requests (approximately 2 percent) in which the entity received the requests but for various reasons, did not fully process them. Specifically:
 - **City of Everett:** The City's Administration Department received an e-mail request for the City's travel policy. The staff member who usually receives the e-mail was on leave and had been replaced with a staff member who was not familiar with handling public records requests. Consequently, the request was not forwarded for further response.

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- **Benton County:** The County acknowledged receiving an e-mail request for its travel policy, but was uncertain whether a response had been sent. The County did not have documentation to show a response had been drafted.
- **Clark County:** The County received a certified mail request for Sheriff's out-of-state travel. The County mailed a response to the requestor using an incorrect address due to a clerical error. We submitted a second request and the records were received.
- **City of Spokane:** The City received a certified mail request for the Police Department's out-of-state travel. The employee who processed the request sought guidance from the City Attorney. City staff told us the request was on hold, pending advice from the attorney, who never provided guidance. The City did not respond to the request.
- **Washington State Investment Board:** The Board received an e-mail request for a copy of its travel policy. When we followed up with the agency, staff couldn't document that they had responded to that request. They later produced an e-mail string showing that they had received the request but did not respond.
- **Requests not accepted due to format of submittal:** When the requestors went to Lottery headquarters, the security officer at the front counter attempted to contact the Lottery's Public Records Officer without success. He was then instructed to contact an attorney by an unidentified Lottery employee passing by. The security officer then called the attorney and reported to the requestors that the attorney stated the requestors would be required to submit a formal public records request by mail.

During our follow-up with Lottery management, they stated the security officer at the front desk was an employee of a private third party and was not familiar with the Public Records Act. At the time of the walk-in request, the requestors believed they were submitting their records request to a Lottery employee.

Three requests sent via e-mail to three separate entities were not received. The entities stated that they suspected the e-mails were blocked by their e-mail filters. We were able to verify the e-mail filter as the cause only at the Lottery because the other entities do not keep a record of blocked e-mails.

The e-mail addresses we used to make the requests were provided on the entities' own Web sites. Those three entities were:

- Pierce County: hstansb@co.pierce.wa.us.

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- City of Seattle: clerk@seattle.gov.
 - Washington State Lottery: Director's_Office@walottery.com.
- **Nonconforming records received:** We received seven responses (more than 2 percent) that either did not conform to our requests or were incomplete.
 - **City of Kent.** The City received a request for the five highest-paid employees. The City responded with W-2 forms that were almost completely redacted, identifying only "Employer" and "Gross Wages," rendering the document of no use. The City's response was inconsistent with the request, which stated, "I would like to identify your agency's five highest compensated employees" by providing "copies of the 2005 year-end W-2s or equivalent records."
 - **Office of the Insurance Commissioner:** The auditors submitted a walk-in request for the Office's sexual harassment policy. The agency sent its response via e-mail with an image file of the documents attached, which did not contain page 3 of the four-page document.
 - **Department of Labor and Industries:** The auditors submitted a walk-in request for the Department's sexual harassment policy. An agency employee asked the auditors to write down the request on a plain piece of paper and then directed the auditors to the Human Rights Commission.
 - **City of Spokane:** The City received an e-mail request for its travel policy. The City's initial response to the request was to provide a Web address that did not produce the records or link to the records. When we followed up, the City provided a correct Web address and we were able to locate the requested records.
 - **Department of Corrections:** The Department received a certified letter requesting the Health Services Administrator's travel records. The Department responded via e-mail with an attachment that did not contain page 2 of the nine-page file.
 - **Washington State Investment Board:** The Board received an e-mail request for entity's five highest-paid employees. The Board responded to our request via e-mail by providing a Web site link to the "2005 Personnel Detail Report." The general salary information listed in the report was the pay rate effective December 15, 2004 as paid on December 25, 2004, contrary to our request for information as of the end of 2005. When we

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followed up with the Board, it provided the requested information.

- **Yakima County:** The County received a standard mail request for the job description of its Information Technology Director. In response, the County sent a generic job description for a "Director" position. Our follow-up with the County found it had a job description specifically applicable to its Information Technology Director and we were provided that record at that time.

Cause

The underlying cause for failure to successfully respond to public records requests is when entities do not follow best practices and the guidelines contained in the Attorney General's model rules.

Contributing factors include:

- Entities that do not review records to make sure they fulfill the request before providing them to requestors.
- Entities that rely on a method of mail delivery that failed, such as e-mail transmission failures or delivery failures.

Effect or potential effect

The failure to be responsive to public records requests exposes the entities to a loss of public trust and possible litigation.

Recommendations

We recommend that entities:

- Follow the Attorney General's model rules and the best practices identified in this report to the fullest extent possible, particularly in regard to the following:
 - Establish and follow processes to ensure that all requests are received.
 - Evaluate processes and controls around incoming mail to ensure records requests are found and properly routed.
- Refrain from redirecting requestors to another department within the same entity or requiring requestors to initiate a "new" request within the same entity.

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- Avoid the use of e-mail filters that result in the entity rejecting or overlooking public records requests. See related Finding No. 2.
- Review responses and communicate with requestors to ensure the records to be provided are consistent with the request.

Criteria

See Appendix K

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Finding 2:

Some entities do not accommodate a variety of public records requests and therefore do not provide the public with the fullest assistance.

Condition

During our audit, we observed:

- The following entities' policies or practices require all requestors to use a public records request form, and do not accommodate other forms of requests.
 - City of Vancouver³
 - City of Federal Way
 - City of Kent
- The following four entities stated they require a public records request form for in-person requests. However, two of the four entities (City of Spokane and Thurston County) did not require us to fill out a public records form when we conducted our walk-in requests for a copy of the entity's sexual harassment policy.
 - City of Spokane
 - City of Kent
 - Thurston County
 - Office of the Insurance Commissioner
- The following entities' policies or practices do not accommodate public records requests submitted by e-mail. Such policies may prevent requestors who do not have other means of interacting with the entity.
 - Spokane County
 - City of Spokane
 - City of Kent

Despite their stated policies, these entities accepted and responded to our unannounced e-mailed requests.

- The following entities' e-mail filters prevented them from receiving the records requests, despite providing e-mail addresses on their Web sites for the public to contact them:
 - Pierce County: hstansb@co.pierce.wa.us
 - City of Seattle: clerk@seattle.gov
 - Washington State Lottery: Director's_Office@walottery.com

³ The City of Vancouver indicated that it does not require a form be completed if the records can be provided at the time the request is received. Rather, the City will document the request occurred for its internal tracking.

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- Most entities have not capitalized on available technology for the public to submit requests through their Web sites.

The following entities provide records request forms on their Web sites, but do not allow those forms to be submitted through their Web sites.

- Spokane County
- Whatcom County
- City of Vancouver
- City of Bellevue
- City of Everett
- City of Spokane Valley
- City of Federal Way
- City of Kent
- Department of Labor and Industries
- Washington State Patrol
- Department of Corrections

It is important to note, however, that two entities employ a best practice of facilitating online public records requests through their Web sites:

- Kitsap County
- Department of Revenue

- Five entities stated they do not accommodate public records requests by telephone. They were:
 - Benton County (Commissioner's Office, Sheriff's Department, and Planning and Building Department)
 - City of Spokane (Clerk's Office and Police Department)
 - City of Kent does not accommodate requests by telephone or fax
 - Office of the Insurance Commissioner
 - Washington State Patrol

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Cause

Fulfilling public records requests is a unique and fundamental responsibility of government for providing accountability and transparency to the public. The audit revealed that an entity's attitude towards public records requests in general influences how responsive it will be to public records requests.

Entities that demonstrate an awareness of how they can make public records requests easier for citizens demonstrated better customer service in responding to public records requests.

Entity leaders and managers can encourage entity staff to embrace the spirit of the Public Records Act by communicating the importance of promoting transparency and openness through fulfilling public records requests.

Effect

Entities that do not accommodate a variety of forms of public records requests do not provide the public with the fullest assistance required by the Act. Failure to respond to public records requests has a negative affect on the public's perception of the entity's openness to citizens and increases an entity's litigation risk.

Recommendation(s)

We recommend that entities:

- Establish policies that are consistent with the Public Records Act, using the Attorney General's model rules as a guide.
- Conduct broad staff training on the Public Records Act
- Accommodate as many modes of requesting public records as is practically possible.
- Select and set e-mail filters at a level that will not block public records requests.
- Consider receiving records requests online.
- Develop a policy that clearly outlines how public records requests can be accepted and make that policy readily available to the public.

Criteria

See Appendix K

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Finding 3:

Some entities did not provide complete and satisfactory explanations for redactions of public records and some records were improperly redacted.

Background

Numerous exemptions from public disclosure of information exist in state law. The Public Records Act says redacted documents should also have an explanation for the redactions.

More than 300 exemptions are contained in the Public Records Act; many more are scattered throughout state law. The Sunshine Committee has identified the 300-plus exemptions, located at:

<http://www.atg.wa.gov/opengovernment/sunshine.aspx>.

The Attorney General's Office Open Government Internet Manual, which includes current exemptions, is available at:

<http://www.atg.wa.gov/OpenGovernment/InternetManual.aspx>

The original 10 exemptions from 1972 are:

1. Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers or parolees.
2. Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.
3. Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would violate the taxpayer's right to privacy or would result in unfair competitive disadvantage to such taxpayer.
4. Specific intelligence information and specific investigative files compiled by investigative, law enforcement and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.
5. Information revealing the identity of persons who file complaints with an investigative, law enforcement or penology agencies, except as the complainant may authorize.
6. Test questions, scoring keys, and other examination data used to administer a license, employment or academic examination.
7. Except as provided by chapter 8.26 RCW, the contents of real estate appraisals made for or by any agency relative to the acquisition of property until the project is abandoned or until such time as all of the property has been acquired, but in no event shall disclosure be denied for more than three years after the appraisal.

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8. Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss
9. Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.
10. Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

All of the original 10 exemptions still exist in state law, but most have been modified from their original forms.

All entity records are available for review by the public unless state law specifically exempts them from disclosure. If no exemption applies, the requested records are disclosable. People who are named in a record or who are the subject of a record may seek a court injunction to prevent the disclosure of a record. Public entities are not relieved of their obligations to respond to requests for public records because a portion of the document is exempt. Public entities have a duty to redact specific information covered by an exemption and disclose the remainder of the document. The Public Records Act provides that exemptions are to be narrowly construed.

A good faith response by a public agency in releasing a public record absolves the agency or any public official or employee from liability arising from the disclosure. For example, an individual named in a public record may not hold a public agency liable for a good faith release of that record on the grounds that disclosure violates an individual's "right to privacy." Agencies that release records with possible privacy implications may wish to contact the individual.

Washington courts have not defined specifically which records, if released, could violate a right of privacy. For example, state law specifically exempts residential addresses and telephone numbers for public employees from disclosure.

The Act lists 34 categories of public records that are exempt from disclosure. These are exemptions, not prohibitions; an agency may waive an exemption if it chooses to do so.

Other state laws specifically prohibit the release of some information. And many documents contain some information that is exempt along with other information that is not exempt.

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Condition

We received 43 records with acceptable redactions, 11 (26 percent) of which did not cite the specific legal exemption for the redactions, as required by the Act.

- Benton County: Five highest-paid employees
- City of Bellevue: Out-of-state travel
- City of Everett: Out-of-state travel
- Department of Corrections: Travel vouchers for selected employees
- Department of Revenue: Travel vouchers for selected employees
- Pierce County: Vacation records for entity's top financial officer,
- Snohomish County: Entity owned cell phone record for the top non-elected officer, January through June 2006
- Spokane County (2):
 - Out-of-state Travel
 - Voucher for employee awards
- Washington State Investment Board: Out-of-state travel
- Whatcom County: Travel vouchers for selected employees

In one instance, we believe elements of the records were redacted inappropriately. The redactions affected the usability of the records. When the City of Kent responded to our request for the names and salaries of the five highest-paid employees, some of the redactions were appropriate, such as Social Security numbers and home addresses. However, the names of the employees were legally required to be disclosed, and the records did not provide that information.

Cause

Based on our interviews with public records staff at the 30 entities, we found:

Lack of training:

- In some instances, entity staff who are responsible for filling records requests do not appear to understand what information may be legally redacted and what information may not be redacted. Based on our review and analysis of the records that entities provided in response to the requests, it was evident the records had been compiled and put through a redaction review process. However, the reasons for the redactions were not explained in the correspondence with the requestor.
- Entity staff may interpret "right to privacy" much more broadly than state law does. Our interviews with entity staff indicated that some public employees and public records officers have a perception that public employees' right to privacy is compromised by public records requests. In fact, employee information such as salaries, is disclosable under state law.

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- At least three entity public records disclosure staff who responded to our unannounced request stated they felt privacy laws were unclear. As a result, they were apprehensive about failing to redact information that is exempt from disclosure. This may result in inappropriate redactions and illustrates the need for training.

Conflict with the requestor:

- Some entities receive a large number of records requests from a small number of individuals and, in some cases, an adversarial relationship has developed between the entity and the requestor(s).

Attitude:

- Some entities see the Act as an unfunded mandate imposed upon the entity.
- Some entities expressed concern that some records could embarrass the entity.

Effect or potential effect

Citizens want and expect government to be accountable and transparent. A public entity's failure to explain redactions can lead to distrust and suspicion by the requestor and can erode the public's perception of the entity's commitment to accountability and transparency. Additionally, improper redactions increase entities' risk of lawsuits, court-imposed penalties and associated legal costs for failure to comply with the requirements of the Act.

Recommendation(s)

We recommend that entities:

- Provide comprehensive training and resource materials on legal exemptions to staff who respond to records requests.
- Describe the specific exemption that applies to each redaction when the records are provided to requestors.
- Inform requestors about their rights to appeal the entity's denial of all or part of their records request and the process available to them to appeal the denial.
- Seek guidance when determining whether redactions are legal.

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Criteria
See Appendix K

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Finding 4:

Some entities provided the requested public records in a less timely manner than their peers.

Background

Within five days of receiving a public records request, state law requires entities to:

- Provide the requested record.
- Acknowledge receipt of the request and provide a reasonable estimate of the time required to fill the request.
- Deny the request and notify the requestor of the reason.

Public entities invest much of their resources in their day-to-day operations. Although public records requests often occur at busy times, the Public Records Act requires public entities to adopt procedures that provide full access to public records while preventing excessive interference with their other essential functions and to provide the “fullest assistance” to requestors and provide the “most timely possible action” on public records requests. As noted in the Attorney General’s Office’s advisory model rules:

“In general, an agency should devote sufficient staff time to processing records requests, consistent with the act’s requirements that fulfilling requests should not be an “excessive interference” with the agency’s “other essential functions.” The agency should recognize that fulfilling public records requests is one of the agency’s duties, along with its others.”

The Public Records Act requires entities to address these questions when they receive a request for public records:

- Is/are the requested record(s) exempt from disclosure or prohibited from being disclosed?
- If the requested record(s) is/are exempt, what information can be redacted from the record(s) so the records might still be released?

The Act requires a “timely” response, which it loosely defines as “prompt” and “most timely possible.” Factors affecting the timeliness of responses to public records requests are:

- Entity seeks clarification from the requestor.
- The amount of time it takes to locate and assemble the records.
- Notifying third parties or agencies affected by the request.

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- Determining whether any of the information is exempt and whether a denial should be made to all, or part, of the request.
- The volume, nature and availability of the requested records.

Condition

The table below shows the slowest requests by entity. The table shows how long each entity took to respond to the requests, the average for other entities of the same type and the reason for the length of time for the response.

Entity	Request	Actual Response Time (business days)	Average Business Days Response Time for entity type	Reason(s) communicated or explanations observed at the time records were sent to the requestor
Counties				
Pierce County ¹ Pierce County produced an e-mail that was sent 1/11/07 that was not received by the requestor. Consideration of that e-mail would have resulted in a response provided in 16 business days, three business days less than what we observed.	Travel vouchers	19	10	Copies were provided after requestor paid copying fees. The County drafted a letter requesting payment that was received six calendar days after date of the letter. Records were received three business days after payment was mailed.
Pierce County	Cell phone invoice	11	6	Copies were provided after requestor paid copying fees. Records were received three business days after payment was mailed.

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Entity	Request	Actual Response Time (business days)	Average Business Days Response Time for entity type	Reason(s) communicated or explanations observed at the time records were sent to the requestor
Snohomish County	Cell phone invoice	14	6	Copies were provided after requestor paid copying fees. Records were received two business days after payment was mailed.
Snohomish County	Vacation records	22	8	Copies were provided after requestor paid copying fees. Entity miscalculated the cost of the copies and adjusted charges. Requestor provided payment for an incorrect amount. These delayed the response by 14 business days. Records were received four business days after correct payment was mailed.
Snohomish County	Out-of-state travel	22	16	Copies were provided after requestor paid copying fees. Records were provided three business days after payment was mailed.
Spokane County	Information Technology Director job description	18	7	Entity apologized for being "late" with the response. No reason for the delay was provided.

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Entity	Request	Actual Response Time (business days)	Average Business Days Response Time for entity type	Reason(s) communicated or explanations observed at the time records were sent to the requestor
Spokane County	Employee recognition awards	15	8	Entity did not provide a reason for delay which appeared to result from the large number of documents (32 pages with redactions) provided.
Kitsap County	Out-of-state travel	29	16	Entity explained the delay occurred because the request was "misdirected through the County mail system" when it was transferred to the Sheriff's Department. The Department received the request 6 business days after it was mailed. The County took an additional 23 business days to provide 21 documents that contained redactions.
Yakima County	2005 Top 5 highest-paid employees	14	6	The entity did not provide a reason for delay.

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Entity	Request	Actual Response Time (business days)	Average Business Days Response Time for entity type	Reason(s) communicated or explanations observed at the time records were sent to the requestor
Thurston County	Travel vouchers	15	10	The entity phoned the requestor to apologize for delay caused by staff responsible for handling the request needing to take emergency leave.
Cities				
City of Spokane	Travel vouchers	16	9	The entity anticipated delays in providing the records due to short staffing during the holidays.
City of Tacoma	Out-of-State travel	40	16	Entity told the requestor response was delayed due to weather-related staffing issues.
City of Vancouver	Cell phone invoice	13	7	The entity did not provide an explanation for the delay.
City of Bellevue	Out-of-state travel	21	16	The entity provided the status of request during processing. The response appears to have been delayed due to the large number of records (105 pages) gathered, which took 14 business days.

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Entity	Request	Actual Response Time (business days)	Average Business Days Response Time for entity type	Reason(s) communicated or explanations observed at the time records were sent to the requestor
City of Federal Way	Travel vouchers	19	9	Records were received two business days after the requestor mailed payment for copying. The entity did not provide a reason for the delay.
City of Federal Way	Out-of-State travel	35	16	Entity's response with records was received five business days after the requestor mailed payment for copying. The entity did not explain the reason for the delay.
City of Kent	2005 Top 5 highest-paid employees	20	7	Entity estimated a response in 21 calendar days or less, but did not explain why.
City of Kent	Information Technology Director job description	13	5	The entity estimated a response in 21 calendar days or less, but did not explain why.
State Agencies				

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Entity	Request	Actual Response Time (business days)	Average Business Days Response Time for entity type	Reason(s) communicated or explanations observed at the time records were sent to the requestor
Department of Revenue	2005 Top 5 highest-paid employees	26	10	Entity asked for clarification from the requestor in e-mail. E-mails sent by the requestor were denied by the entity's e-mail system. Requestor had to provide information by standard mail, which caused the process to take longer.
<p>Note: Department of Revenue Management stated the Department has a policy on how all requests are to be processed. The most common requests the Department receives are for records that contain information on private businesses. As a result, all documents are reviewed carefully for exempt information prior to release. Further, the Department has a policy to provide documents only in hardcopy format and does not permit responses to be sent using e-mail. These practices result in additional time required to fill each request.</p>				
Office of the Insurance Commissioner	Travel policy	13	4	The entity apologized to the requestor for the delay in providing the records that was caused by equipment problems.
Department of Social and Health Services	2005 Top 5 highest-paid employees	17	12	Entity informed the requestor more time was needed to provide those named in the request time to seek a court injunction to block the release of the records, consistent with its procedures.

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Entity	Request	Actual Response Time (business days)	Average Business Days Response Time for entity type	Reason(s) communicated or explanations observed at the time records were sent to the requestor
Department of Social and Health Services	Vacation records	14	9	The entity did not explain the reason for the delay.
Department of Social and Health Services	Out-of-state travel	19	8	Entity informed the requestor more time was needed to provide those named in the request time to seek a court injunction to block the release of the records, consistent with its procedures.
<p>Note: DSHS stated three of the five employees included in the request for payroll records are subject to a collective bargaining agreement that requires the agency to notify employees when documents in a personnel file are requested under public disclosure laws. As a result, the Department's responses to such requests are likely to take longer to be filled than for agencies that are not subject to the same agreement. That Department did not communicate that when it provided the records.</p>				
Department of Labor and Industries	Entity phone directory	14	6	The entity did not explain the reason for the delay.
Washington State Patrol	Travel vouchers	27	13	Records were received from the entity 10 business days after the requestor mailed copying fees. The entity did not provide a reason for delay.

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Entity	Request	Actual Response Time (business days)	Average Business Days Response Time for entity type	Reason(s) communicated or explanations observed at the time records were sent to the requestor
Washington State Patrol	Cell phone invoice	13	8	The entity did not explain the reason for the delay.
Washington State Patrol	Out-of-state travel	24	8	Records were received four business days after the requestor mailed copying fees. The entity did not provide a reason for delay, which appeared to be due to the large number of documents (57 pages with redactions) provided.
Washington State Patrol	Employee recognition awards	15	8	The entity did not explain the reason for the delay.
Department of Corrections	2005 Top 5 highest-paid employees	17	12	Entity informed the requestor the request would require entity staff to manually sort W-2s for more than 16,000 employees to find the information requested. Records were received eight business days following notification the entity received the request.

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Entity	Request	Actual Response Time (business days)	Average Business Days Response Time for entity type	Reason(s) communicated or explanations observed at the time records were sent to the requestor
Department of Corrections	Travel vouchers	21	13	Entity apologized for missing their response timeline, citing "weather and other events" as a reason for the delay.
Department of Corrections	Cell phone invoice	14	8	Records were received from the entity nine business days after the requestor mailed payment for copying. The entity did not provide a reason for delay.
Department of Corrections	Vacation records	19	9	Entity indicated an additional 10 business days was needed to give the staff named a chance to block the request by seeking court order. Records were received from the entity five business days after the requestor mailed payment for copying fees. The entity did not provide a reason for delay.

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Entity	Request	Actual Response Time (business days)	Average Business Days Response Time for entity type	Reason(s) communicated or explanations observed at the time records were sent to the requestor
Department of Corrections	Information Technology Director job description	20	7	Records were received 12 business days after the requestor mailed payment for copying fees. The entity did not provide a reason for delay.
Department of Corrections	Phone Directory	14	6	Records were received six business days after the requestor mailed payment for copying. The entity did not provide a reason for delay.
Washington State Investment Board	Travel vouchers	19	13	The entity informed us the request would be delayed because the records needed to be redacted. The entity provided 105 pages with redactions, which was larger than any other entity's response to this request.
Washington State Investment Board	Cell phone invoice	15	8	The entity did not explain the reason for the delay.

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Cause

Based on our analysis of the responses to our unannounced records requests, interviews with the entities and our research, we found timeliness in responding to public records requests is affected by:

- **Attitude:** An organization's attitude toward records requests is critical to how successfully an entity responds to public records requests. In our interviews with entity staff, more than half responded that attitude and customer service are critical elements to a successful response. (See Appendix C) One entity – the City of Spokane – stated that the Public Records Act is an “unfunded mandate” and placed it on its legislative agenda to modify the Act.⁴
 - **Entity focus:** An entity can focus on what records or elements of records should not be provided or it can focus on providing the records, while still complying with exemptions from disclosure. It comes down to whether the entity's overall goal is to establish a culture of compliance accompanied by a culture of cooperation in responding to public records requests.
- **Training:** In our interviews, staff at 18 of the 30 entities identified training as a critical factor in successfully responding to public records requests. Our audit testing and follow-up interviews suggests that a lack of understanding of the Act and the Attorney General's model rules affects an entity's timeliness in responding to public records requests. For example, during interviews, we heard concerns about public employees' “right to privacy” and a lack of understanding on which records are disclosable and which are exempt. This appears to have resulted in some entities being less timely in responding to requests.
- **Communications with the requestor:** Some entities provided records with no explanation of why a response was delayed. We noted at least three cases at two entities in which the entities allowed employees named in the request additional time to seek a court injunction. The entities informed the requestor that this process was taking place and would likely result in a delay in providing the records. The entities explained this process was part of their policy or procedures. They did not explain why these policies or procedures were necessary. For these requests, the affect was a less timely response than entities that did not apply the same practice.
- **Operating environment:** We identified three factors affecting an entity's operating environment:

⁴ City of Spokane 2007 Legislative Agenda

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- ***Sensitive and proprietary records:*** In instances in which many of a public entity's activities deal with proprietary or sensitive information, staff has a heightened sensitivity to records requests that could place an agency in violation of state law. For example, the Department of Revenue indicated it has incorporated procedures that are applied to all responses to avoid disclosing records inappropriately.
- ***Size and complexity:*** An entity's size and complexity may contribute to it being less timely in locating and responding to public records requests. A culture of bureaucracy and red tape can affect the process. In some cases, this is seen in an agency's failure to empower employees to provide records, including simple requests, without supervisory review.
- ***Organizational structure:*** Organizational structure can affect an entity's timely response to records requests. Many public entities are organized into separate divisions or workgroups that operate with significant autonomy from the whole. We noted instances, including Thurston County and City of Seattle, where an entity's departments/organizational units have individual and different policies and practices for processing records requests. This is problematic because the public often perceives one entity – such as a county – as a unified organization and if the requestor does not make a request to the appropriate department, the timeliness of the response can be significantly delayed. One entity told us that rather than referring the request internally to the appropriate department for the requestor, they help the requestor identify the appropriate department and direct them to resubmit the request.

Electronic records

Our testing showed that the average response time with electronic records was 1.6 days, versus an average of 4.2 days with paper records. In other words, entities responded four times faster when they provided electronic records instead of hard copies of records. Providing records electronically also avoids the expense associated with producing, mailing and billing for copies.

As part of our unannounced public records requests we provided the entities with an e-mail address. Many of the entities used the e-mail addresses to respond and to provide the records electronically.

Staff interviewed at 17 of the 30 entities voiced the desire for their entities to convert more records to electronic format, believing it would improve the accessibility and retrieval of records. (See Appendix E)

Copy Fees

Forty-six responses from 19 entities included charges for copying fees. Entities that provided copies with a bill for copy fees responded to their requests faster than entities that provided records after receiving payment from the requestor.

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Entities that required payment before sending out the records did have the records available for inspection prior to release to the requestor.

Four entities provided records along with the request for payment of copy fees:

- Spokane County – one response
- City of Seattle – one response
- Office of Financial Management – two responses
- Washington State Investment Board – three responses

Nine entities withheld records pending payment of the copy fees:

- King County – one response
- Snohomish County – three responses
- Whatcom County – two responses
- City of Tacoma – one response
- City of Bellevue – one response
- City of Federal Way – two responses
- City of Kent – one response
- Washington State Patrol – two responses
- Department of Corrections – five responses

Six entities had mixed results where some records were provided with the request for payment and some copies of the records were withheld pending payment of copy fees:

- Pierce County – three responses withheld; one response provided
- Kitsap County – one response withheld; one response provided
- City of Spokane - one response withheld; one response provided
- City of Everett – one response withheld; three responses provided
- City of Spokane Valley – three responses provided; one response withheld
- Department of Social and Health Services – two requests withheld; two requests provided

Redactions: We examined whether redactions affected an entity's timeliness in providing public records. We expected that if a requested record contained information subject to redaction, it would slow down the response. The results of our analysis of the unannounced requests disclosed that responses with records containing redactions took an average of 13.3 days versus 5.7 days for records without redactions.

Effect or potential effect

- Entities failing to respond in a timely manner risk the loss of public confidence and litigation.

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- Many public records are perceived as being “time sensitive” to requestors. When a public entity fails to provide records in a timely manner, the result may be that the records are no longer useful to the requestor.

Recommendations

We recommend entities review their public records requests processes to identify and eliminate those elements that may delay providing records to. Specifically, we recommend entities:

- Prioritize incoming records requests to identify those that require review and/or redaction versus more straightforward requests that can be fulfilled more quickly.
- Use e-mail to respond to public records requests whenever possible.
- Explore opportunities for providing records electronically.
- Provide training for staff on processing public records requests.
- Provide cross-training to other staff to prepare them for acknowledging and responding to requests.
- Provide records in installments.
- Consider waiving copying charges for small records requests.
- Engage in ongoing communication with the requestor about priorities and timelines when a request is identified that may take some time to fill.

Criteria

See Appendix K

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Best practices identified during the audit

Our audit identified elements and processes we consider to be best practices in responding to public records requests. Some of these also are found in the Attorney General's Office model rules and are addressed in the audit findings. They are:

- **Entity management attitude.** Entity management's attitude toward customer service partly determines how it will respond to public records requests. This element is addressed in the Attorney General's Office model rules with an overall goal of establishing a "culture of compliance" for the public entities and a "culture of cooperation" among the requestors. Public records officers and coordinators stated that when public records requests are given a priority, it positively affects the entity's efficiency and effectiveness in filling those requests. An entity with a commitment to customer service and that responds to records requests in a positive manner demonstrates the entity's commitment to accountability and transparency. Such an entity will likely diffuse tension, reduce conflict, and more importantly build goodwill and trust with the public. A positive attitude is also demonstrated when entities follow up after the request has been filled to ensure that the information requested was provided and useful to the requestor.
- **Training.** Training is necessary to an entity's success in responding to records requests. An entity must be knowledgeable of the Act and of exemptions to public disclosure.

Public records training should extend beyond the entity's management and supervisors. Entities should provide training to all entity staff likely to encounter members of the public requesting public records. For example, training should be provided to front-line staff who come into daily contact with the public to assist them in recognizing when a request/inquiry from the public should be considered a records request.

When all appropriate entity staff receive training in the Public Records Act and in their own entities' policies, they are in a better position to provide the fullest assistance to the public and to take the most timely possible action in responding to requests.

- **Prioritizing requests.** When a records request is received, entities should assess its complexity. Requests that are easy to accommodate should be processed more quickly than the larger and more complex requests. Entities should avoid the "one size fits all" approach to responding to public records requests.

In the case of more complex records requests, entities may want to do a more detailed evaluation to determine the record's existence, location, sensitivity to exemptions and the time needed to locate the records and then get them to the requestor. The Act, however requires the entity to acknowledge the request within five days, and states if the record(s) can't be provided at that time, a reasonable estimate of when the records will be provided must be given.

- **Tracking requests.** Agencies should have a process for tracking requests that begins when the request is received. Tracking requests reduces the risk of losing or

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overlooking requests, can speed up responsiveness and provides a paper trail in the event of disputes. All entities indicated they had a variety of mechanisms established for tracking requests received, however these ranged from informal, manual tracking to database software applications. The level of sophistication was determined by the quantity of requests an entity receives. Further, these vary based on the department within the entity.

- **Effective monitoring.** Effectively managing and monitoring records requests from receipt to completion provides a more timely and complete response to requests. Further, monitoring public records requests helps verify that record(s) provided were reviewed for consistency with the letter of the request(s) prior to being provided to the requestor(s). This was evident from the number of requests that received correct responses, as noted in our "Overall Results in Appendix J."
- **Central point of contact for public records.** The administration of public records should be centralized in some fashion to improve effective monitoring of the entity's efficiency and effectiveness in responding to public records requests. The concept of centralization is more than the entity using a central location for public records administration. For large and complex entities, centralization can occur when the departments or divisions have separately designated public records officers and elected officials who field and process requests specific to their departments.

Regardless of the entity's organizational structure, it is important that no matter **where** the request is received, the request must be referred internally to the appropriate department or division. The entity should avoid redirecting the requestor to another department or division.

Our analysis of the responsiveness of the entities using centralized monitoring systems versus those with a decentralized monitoring process shows centralized methods were more likely to provide correct responses. Entities who exhibited centralized processing functions are as follows:

- City of Bellevue
 - City of Kent
 - City of Spokane Valley
 - City of Vancouver
 - City of Yakima
 - Clark County
 - Kitsap County
 - Snohomish County
 - Spokane County
 - Whatcom County
 - Yakima County
 - All 10 State Agencies
- **Visible signage.** Providing signage to assist requestors in directing their requests provides a customer-friendly atmosphere and demonstrates a culture of openness. Entities should evaluate signage to determine if it assists the public in making successful public records requests. For example, Kitsap County's administration building houses a kiosk with a touch screen listing all services provided by the

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County, including public disclosure requests. Entities where visible signage was observed by those who submitted our walk-in requests were:

- Pierce County
 - Kitsap County
 - City of Seattle
 - City of Yakima
 - Department of General Administration
-
- **Transparency and communication.** Providing tools such as a Web site to assist requestors is a best practice that should be considered. Keeping requestors informed of the status of their requests, in particular, seeking clarification of the requests and/or requesting additional time to fulfill the request(s) demonstrates accountability and transparency. Providing an accurate and reasonable estimate of when the records will be provided is also critical. One challenge identified in our interviews result from instances when the entity seeks clarification from the requestor to ensure the specific elements of the request are being addressed. Entities expressed concern about balancing the need for clarification while avoiding asking the requestors “why” they are making the request.

 - **User-friendly Web site.** When entities provide guidance and information to the public for making public records request on its Web site, this communicates a culture of openness to the public and reinforces the entity's commitment to accountability and transparency. Conversely, when an entity does not provide this kind of information on its Web site, potential requestors may become frustrated and question the entity's commitment to openness, accountability and transparency. Our audit discovered a number of entities that use Web sites to provide assistance in making an effective public records request. One of the best examples we found was Whatcom County's Web site (<http://www.whatcomcounty.us/publicrecords/>), which provides a direct link to the county's Public Records Officer under a heading of “Hot Topics”. The county's “Public Disclosure Information” page provides extensive information to assist the public in submitting a public records request; For example:
 - Public Records Officer's name, address, phone number, fax number and e-mail address.
 - Electronic public records request form.
 - Link to the County's public records policy
 - Link to the Public Records Act
 - Link to a listing of exempt records
 - Link to other laws that define exempt records
 - List of online sources of public records
 - Cost for copying public records
 - Role of the Public Records Officer
 - Summary of key elements of the County's public record's policy
-
- Other entities whose Web sites were easy to use during our initial planning included:
- City of Bellevue
 - City of Everett
 - City of Federal Way

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- City of Kent
- City of Seattle
- City of Spokane
- City of Spokane Valley
- City of Tacoma
- City of Vancouver
- Clark County
- King County
- Kitsap County
- Snohomish County
- Spokane County
- Whatcom County
- Department of Revenue
- Department of Corrections
- Department of Labor and Industries*
- Office of the Insurance Commissioner
- Washington State Patrol

*We noted the Department of Labor and Industries Web site received national recognition in winning the 2005 "People's Voice" Webby award for Insurance related sites (See http://www.webbyawards.com/webbys/winners-2005.php#webby_entry_government)

- **Records management and information technology.** The use of information technology can assist entities in being more responsive to records requests and demonstrates transparency and accountability. Specifically, providing commonly requested public records on Web sites is in our opinion, a best practice based on the results of our unannounced records requests.

Public Records Officers and Coordinators told us that they want their entities to convert more records to electronic form, which would facilitate retrieval and expedite the process of providing records to the public. We believe this was verified by the results of our unannounced requests, in which a number of entities provided the requested records to us in a timely manner using the e-mail addresses we provided in our requests.

During our audit, 23 percent of the requests we made via e-mail were nonresponsive. While the Open Public Records Act does not specifically address e-mail requests, public entities are to provide the fullest assistance to requestors and take the most timely possible action in responding to requests. Entities that do not accept public records requests electronically may want to reassess this position, as it appears to conflict with the spirit of the Act and Attorney General's Office's model rules. Public entities should consider establishing an e-mail address dedicated to public records requests and provide that address on their Web sites. During our audit, we noted some entities are using filters to trap unwanted e-mails. One way to avoid issues with e-mail being filtered is the use of a Web form to be used for making records requests. See Finding 2 for additional discussion of this element.

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- **Copying charges.** For entities with established policies on charges for copies of public records should consider establishing a de minimis copy policy, which states that if it costs more to charge requestors for records than it costs to reproduce the records, the entity will waive copying charges. We estimate the cost of processing copy fee payments by an entity at approximately \$4 just for labor. This estimate is based on the assumption that it takes approximately 20 minutes for an employee, averaging an hourly pay rate of approximately \$12 - \$14, to make copies. Therefore charging for copies for amounts totaling less than the \$4, would be less costly to the entity if the copying fees were waived, based on these assumptions. Entities are encouraged to assess their costs in processing payments and develop their own thresholds as costs and time can differ from one entity to another.

We prepared a simple analysis for determining when it is more cost effective to waive copying charges for small records requests.

RCW 42.56.120 permits an agency to charge a maximum of 15 cents per page unless that agency has established and published the actual costs of copying. In the event the agency determines its own fee rate, the law stipulates that it may not include amounts for "locating public documents and making them available for copying."

Nineteen of the 30 entities charged for records in at least one instance. Because 15 of these 19 (79 percent) charged the standard 15 cents per page, we opted to use this rate for our analysis.

We estimate it takes roughly 20 minutes of employee time to prepare and mail an invoice and to receipt and record the subsequent payment. Developing a conservative estimate, we used an hourly rate of \$12.63 determined by averaging the middle ranges (steps F and G) for an Office Assistant 1 (\$11.91 and \$12.18, respectively) and a Fiscal Technician 1 (\$13.06 and \$13.36, respectively) as shown on the state's Department of Personnel website.

The break-even calculation is shown as follows:

Break-even based on the number of pages provided (at \$0.15 per copy):

$$\begin{aligned} \$0.15x &= \$12.63 \times (20 \text{ minutes} \div 60 \text{ minutes}) \\ x &\approx 28 \text{ pages} \end{aligned}$$

Determining the costs associates with processing payment for copies charged by entities in establishing a "break-even" point:

$$\begin{aligned} x &= \$12.63 \times (20 \text{ minutes} \div 60 \text{ minutes}) \\ x &= \$4.21 \end{aligned}$$

Conclusion: This analysis implies that it is inefficient to charge requestors for requests of fewer than 28 pages when using the standard 15 cents per page. Further, if total fees sought are less than \$4.21, the costs associated with processing the payment alone will likely not be recovered by the fees collected.

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- **Using the installment method for large public records requests.** The intent of the installment method is to allow an entity to respond to requests without adversely impacting its operations.

In 2005, the Legislature authorized agencies to ask requestors to pay deposits on copying charges and to respond to records requests in installments. For large records requests, a public entity may require a deposit of not more than 10 percent of the estimated cost of providing copies. If a public entity makes a request available in installments, the entity may charge for each part of the request as it is provided. If an installment is not claimed or reviewed, the public entity is not obligated to fulfill the balance of the request. When considering using the installment method, the entity should seek clarification from the requestor because the information the requestor is seeking may not require the volume of records originally requested. However, in any event, the entity should provide the records in the most timely possible manner.

- **Communicate the appeals process for records denials.** If a public records request is denied or the requestor believes records were improperly redacted, it is important the entity provide the requestor information about the appeal process available that would allow for an independent assessment of the denial. From our analysis of the responses to our unannounced records requests and in our interviews, we noted that some entities, as a matter of policy, do not inform the requestor of their rights to appeal if a request is denied. The table below details those entities who communicated the appeals process to the requestor in their response.
- **Documenting the request process.** It is important for entities to set up a system to create a record of the request. In the event a denied request is litigated, documenting the process provides a paper trail of what happened with the request. See finding 1 for the entities who told us they sent information but did not keep a record of the communication.

In our opinion, entities that receive a large volume of public records requests are beginning to use many of the practices found in the Attorney General's Office model rules to address the public's perception of accountability and transparency.

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Other best practices observed at the entities during the audit are presented below:

Best Practice Description	Counties who demonstrated the Best Practices identified (number of occurrences observed)	Cities who demonstrated the Best Practices identified (number of occurrences observed)	State Agencies who demonstrated the Best Practices identified (number of occurrences observed)
Acknowledgement and response were concurrent	<ul style="list-style-type: none"> • King County (7) • Pierce County (1) • Snohomish County (3) • Spokane County (6) • Clark County (7) • Kitsap County (6) • Yakima County (5) • Thurston County (5) • Whatcom County (1) • Benton County (6) 	<ul style="list-style-type: none"> • City of Seattle (1) • City of Spokane (6) • City of Tacoma (3) • City of Vancouver (6) • City of Bellevue (5) • City of Everett (6) • City of Spokane Valley (5) • City of Federal Way (3) • City of Kent (1) • City of Yakima (5) 	<ul style="list-style-type: none"> • Dept. of Revenue (8) • Office of the Insurance Commissioner (6) • Dept of Social and Health Services (5) • Dept of Labor and Industries (2) • Washington State Patrol (4) • Dept of General Administration (6) • Dept. of Corrections (3) • Washington State Lottery (7) • Office of Financial Management (4) • Washington State Investment Board (5)
Acknowledgement informed requestor request was being forwarded for further action.	<ul style="list-style-type: none"> • King County (1) • Pierce County (6) • Snohomish County (4) • Thurston County (2) • Whatcom County (6) • Benton County (1) 	<ul style="list-style-type: none"> • City of Tacoma (1) • City of Federal Way (3) 	
Copy fees were explicitly waived in the response.	<ul style="list-style-type: none"> • King County (2) • Spokane County (2) • Thurston County (1) • Whatcom County (1) 	<ul style="list-style-type: none"> • City of Yakima (3) 	<ul style="list-style-type: none"> • Dept of Social and Health Services (2) • Washington State Investment Board (1)
Entity met estimated time frame for communicating response	<ul style="list-style-type: none"> • King County (2) • Snohomish County (4) • Spokane County (2) • Clark County (1) • Kitsap County (1) • Whatcom County (6) • Benton County (2) 	<ul style="list-style-type: none"> • City of Spokane (1) • City of Tacoma (1) • City of Vancouver (4) • City of Bellevue (4) • City of Everett (1) • City of Federal Way (3) • City of Kent (7) • City of Yakima (2) 	<ul style="list-style-type: none"> • Office of the Insurance Commissioner (3) • Dept. of Social and Health Services (3) • Dept of Labor and Industries (5) • Washington State Patrol (5) • Office of Financial Management (5) • Washington State Investment Board (3)

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Web site referral provided requested information	<ul style="list-style-type: none"> • King County (2) • Snohomish County (1) 	<ul style="list-style-type: none"> • City of Seattle (2) • City of Spokane (1) • City of Bellevue (1) • City of Spokane Valley (2) • City of Federal Way (1) 	<ul style="list-style-type: none"> • Dept of Revenue (1) • Dept of Social and Health Services (2) • Dept of Corrections (1) • Office of Financial Management (2)
Response Exceeded Expectations	<ul style="list-style-type: none"> • King County (3) • Pierce County (1) • Spokane County (2) • Kitsap County (1) • Thurston County (1) • Benton County (3) 	<ul style="list-style-type: none"> • City of Spokane (1) • City of Tacoma (1) • City of Vancouver (1) • City of Bellevue (1) 	<ul style="list-style-type: none"> • Dept of Revenue (2) • Dept of Social and Health Services (1) • Dept of Labor and Industries (2) • Dept of General Administration (1) • Office of Financial Management (1) • Washington State Investment Board (1)
Customer Service – Follow-up explicitly to ensure records previously provided or records proposed to be provided are acceptable to the requestor	<ul style="list-style-type: none"> • King County (1) 	<ul style="list-style-type: none"> • City of Spokane Valley (1) 	
Correspondence provided excellent detail of the status of the request to assure requestor the request was being given the highest priority	<ul style="list-style-type: none"> • King County (1) • Snohomish County (3) • Spokane County (1) • Yakima County (1) • Thurston County (1) • Benton County (1) 	<ul style="list-style-type: none"> • City of Spokane (1) • City of Tacoma (1) • City of Spokane Valley (1) • City of Yakima (1) 	<ul style="list-style-type: none"> • Dept of Corrections (1)
Receipt was provided to show payment of copy fees was received.	<ul style="list-style-type: none"> • King County (1) • Pierce County (2) • Snohomish County (1) • Kitsap County (2) • Whatcom County (1) 	<ul style="list-style-type: none"> • City of Spokane (1) • City of Bellevue (1) • City of Spokane Valley (1) • City of Federal Way (2) • City of Kent (1) 	
Response provided process for appealing redactions in the records provided.	<ul style="list-style-type: none"> • Kitsap County (1) 		<ul style="list-style-type: none"> • Dept of Social and Health Services (2) • Dept of Labor and Industries (1) • Dept of Corrections (1)
Entity uses an On-Line Form for requestors to use to submit requests on-line.	<ul style="list-style-type: none"> • Thurston County 		<ul style="list-style-type: none"> • Dept of Revenue

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Entity uses a touch screen in lobby to direct the public to where to obtain public records	<ul style="list-style-type: none"> • Kitsap County 		
Entity provided requestor options in the format of the records to be provided.	<ul style="list-style-type: none"> • Whatcom County (1) 	<ul style="list-style-type: none"> • City of Bellevue (3) • City of Federal Way (1) 	<ul style="list-style-type: none"> • Dept of Social and Health Services (1) • Washington State Lottery (1)
Entity provided copy of original request with response.	<ul style="list-style-type: none"> • Pierce County (3) • Snohomish County (1) • Spokane County (1) • Clark County (7) • Kitsap County (1) • Thurston County (1) • Benton County (3) 	<ul style="list-style-type: none"> • City of Spokane (2) • City of Tacoma (2) • City of Vancouver (2) • City of Bellevue (1) • City of Everett (2) • City of Spokane Valley (1) • City of Federal Way (1) • City of Yakima (2) 	<ul style="list-style-type: none"> • Office of the Insurance Commissioner (1) • Dept of Social and Health Services (3) • Dept of Labor and Industries (1) • Dept of General Administration (3) • Dept of Corrections (1)
Entity provided detailed summary of the documents provided in response.	<ul style="list-style-type: none"> • King County (1) • Spokane County (3) 	<ul style="list-style-type: none"> • City of Vancouver (1) • City of Federal Way (2) • City of Yakima (1) 	<ul style="list-style-type: none"> • Dept of Revenue (4) • Dept of Labor and Industries (1) • Washington State Investment Board (1)
Entity provided options of different records available to ensure the requestor obtains exactly what they are looking for.	<ul style="list-style-type: none"> • Pierce County (1) 	<ul style="list-style-type: none"> • City of Bellevue (1) • City of Spokane Valley (1) 	<ul style="list-style-type: none"> • Washington State Patrol (1)
Explanation provides entity's rationale describing how the response provided is consistent with the letter of the request.	<ul style="list-style-type: none"> • King County (4) • Pierce County (2) • Snohomish County (2) • Spokane County (2) • Clark County (2) • Yakima County (1) • Thurston County (2) • Benton County (1) 	<ul style="list-style-type: none"> • City of Spokane (3) • City of Tacoma (6) • City of Vancouver (4) • City of Bellevue (2) • City of Everett (1) • City of Spokane Valley (3) • City of Federal Way (1) • City of Yakima (1) 	<ul style="list-style-type: none"> • Dept of Revenue (6) • Dept of Labor and Industries (1) • Dept of General Administration (5) • Washington State Lottery (1) • Washington State Investment Board (2)
Response provides detail of entity's program to inform the requestor and establish a basis for expectation of the records provided.	<ul style="list-style-type: none"> • King County (2) • Pierce County (1) • Spokane County (1) • Kitsap County (1) • Whatcom County (1) 	<ul style="list-style-type: none"> • City of Everett (1) 	<ul style="list-style-type: none"> • Dept of Revenue (1) • Dept of General Administration (1) • Washington State Investment Board (1)

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<p>Entity restates the letter of the request in their response.</p>	<ul style="list-style-type: none"> • King County (7) • Pierce County (8) • Snohomish County (8) • Spokane County (5) • Kitsap County (5) • Yakima County (2) • Thurston County (2) • Whatcom County (3) • Benton County (5) 	<ul style="list-style-type: none"> • City of Seattle (7) • City of Spokane (5) • City of Tacoma (6) • City of Vancouver (8) • City of Bellevue (8) • City of Everett (5) • City of Spokane Valley (6) • City of Federal Way (6) • City of Kent (7) • City of Yakima (3) 	<ul style="list-style-type: none"> • Dept. of Revenue (8) • Office of the Insurance Commissioner (4) • Dept of Social and Health Services (8) • Dept of Labor and Industries (7) • Washington State Patrol (9) • Dept of General Administration (8) • Dept. of Corrections (6) • Washington State Lottery (6) • Office of Financial Management (1) • Washington State Investment Board (8)
<p>Signed affidavit from the Requestor acknowledging the documents provided will not be used for commercial purposes.</p>		<ul style="list-style-type: none"> • City of Kent (1) 	<ul style="list-style-type: none"> • Washington State Patrol (2)
<p>Entity numbered the pages provided to ensure all pages were provided in response.</p>			<ul style="list-style-type: none"> • Dept of Corrections (1)
<p>Areas where redactions were applied included reason directly on the document</p>		<ul style="list-style-type: none"> • City of Yakima (2) 	

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Appendix A Results by County

About King County

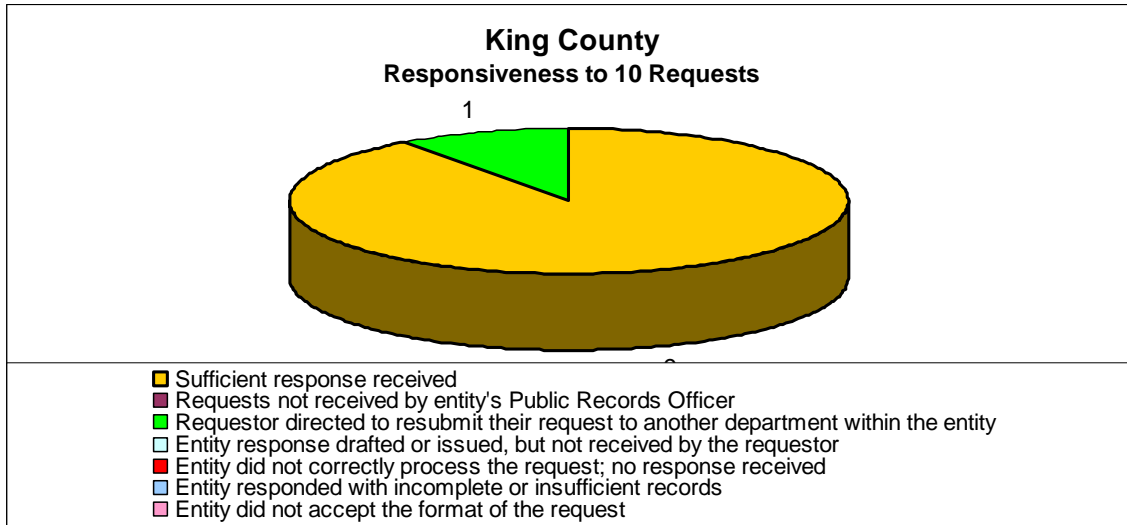
With a population of more than 1.8 million people, King County is the most populous county in Washington and the 12th most populous in the United States. The County Council is the policy making body of the County. The Council has nine elected members who serve full time.

The County's public records process is decentralized. The County has at least one public records officer for each department. The County relies on individual departments to process and respond to their own requests. These departments were involved in processing our unannounced requests:

- Human Resources Department
- County Executive's Office
- Department of Transportation
- Finance and Business Operations
- Sheriff's Department
- Office of Business Relations and Economic Development

❖ King County

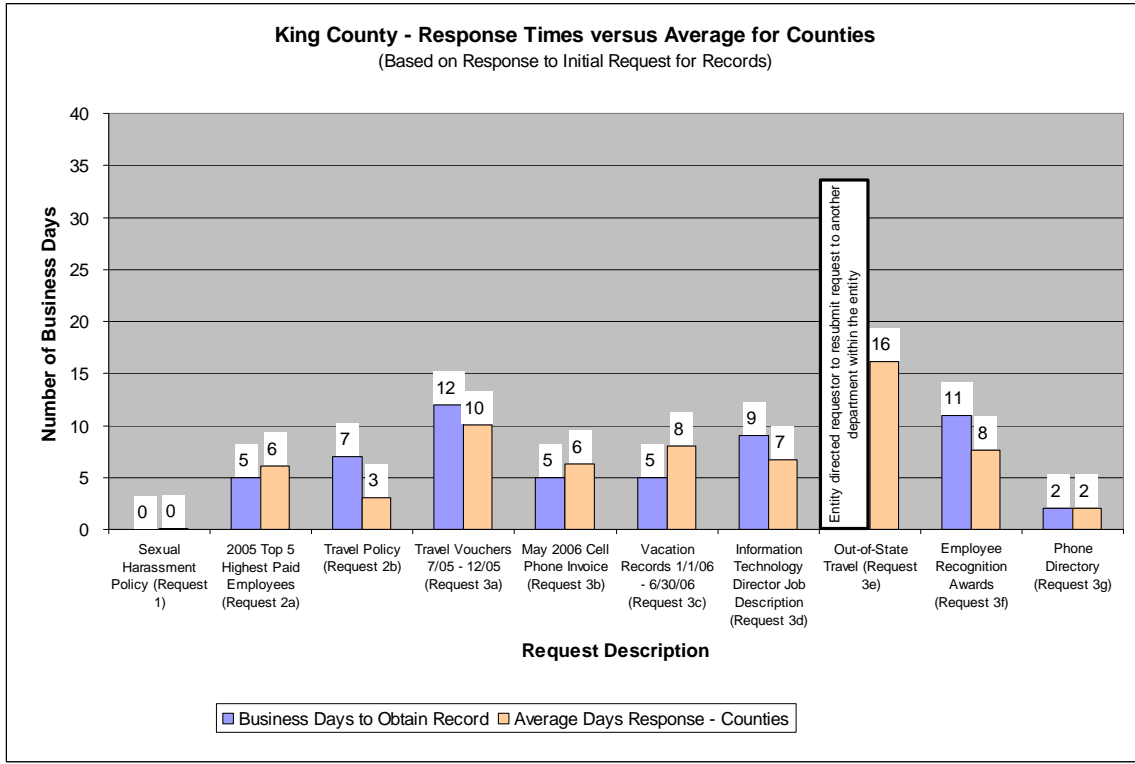
- **General Overall Responsiveness – 9 out of 10 Requests**



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- Responsiveness – 10 Requests - Compared to Average for Counties



King County's Response

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About Pierce County

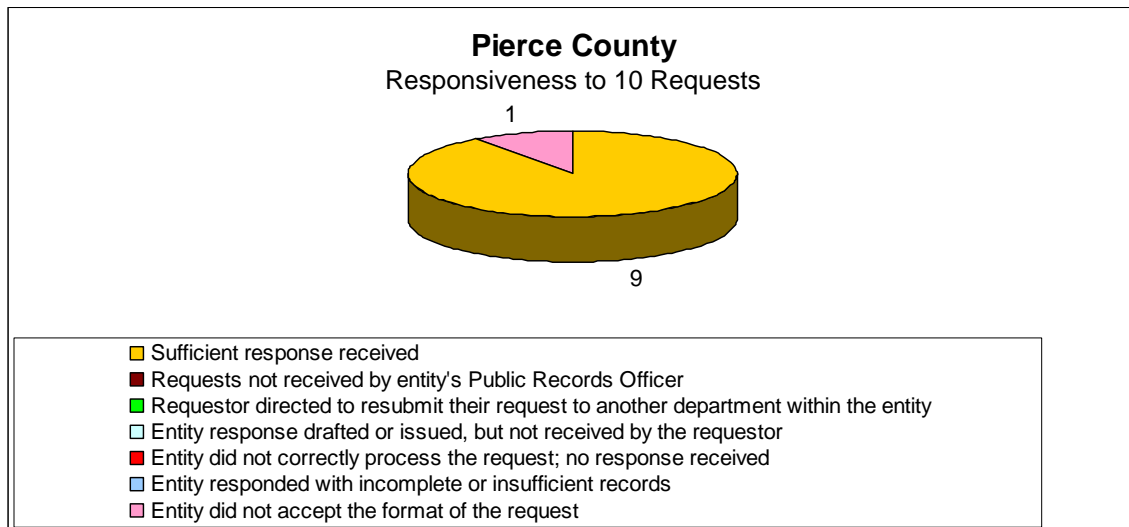
Pierce County serves approximately 790,500 residents. The elected, seven-member County Council is the policy-setting legislative body of the County.

The County's public records process is decentralized. The County has at least one public records officer for each department. The County relies on the individual departments to process and respond to requests received. The following departments were involved in processing our unannounced requests:

- Public Works – Transportation Services
- Human Resources Department
- Budget and Finance Department
- County Executive's Office
- Sheriff's Department

❖ Pierce County

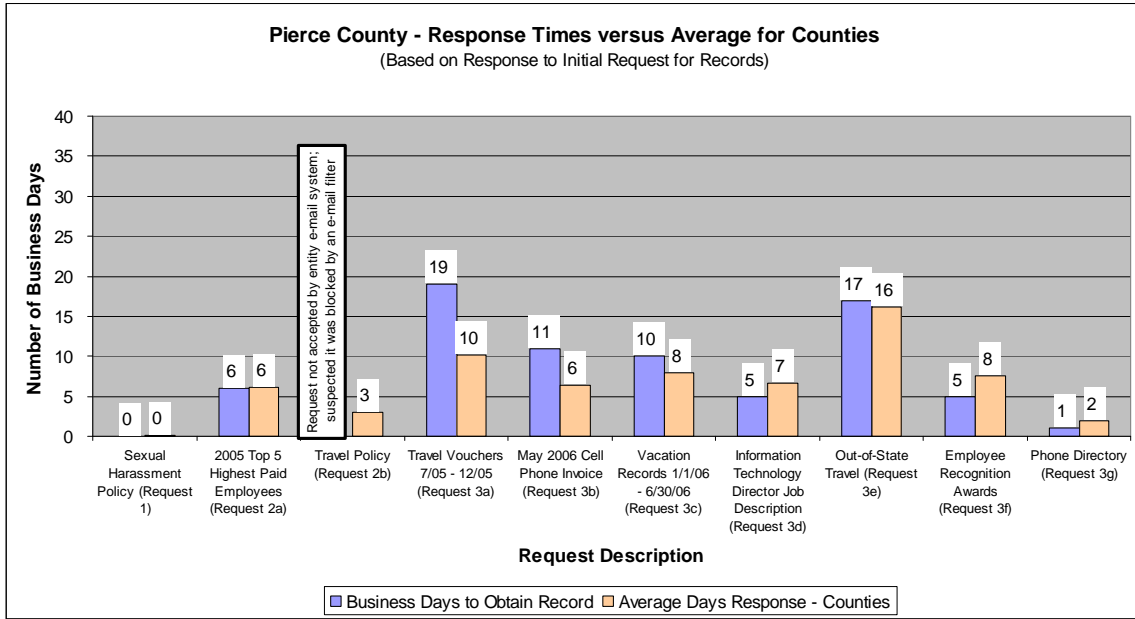
- **General Overall Responsiveness – 9 out of 10 Requests**



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- Responsiveness – 10 Requests - Compared to Average for Counties



Pierce County's Response

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About Snohomish County

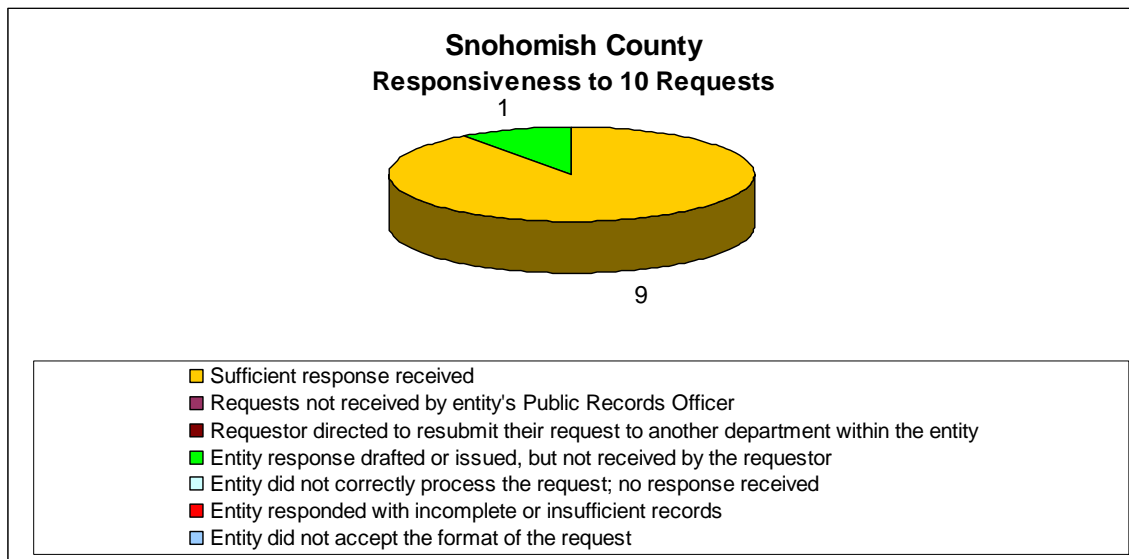
Snohomish County has a population of approximately 686,300. County voters elect a five-member County Council and a County Executive.

The County's public records process is centralized. The County's Public Records Officer is located in the Department of Information Services/Technology Department. County departments have at least one public records designee or coordinator. The County relies on department coordinators to process and respond to requests. These departments were involved in processing our unannounced requests:

- ❖ Information Resources/Technology Department
- ❖ Sheriff's Department

❖ Snohomish County

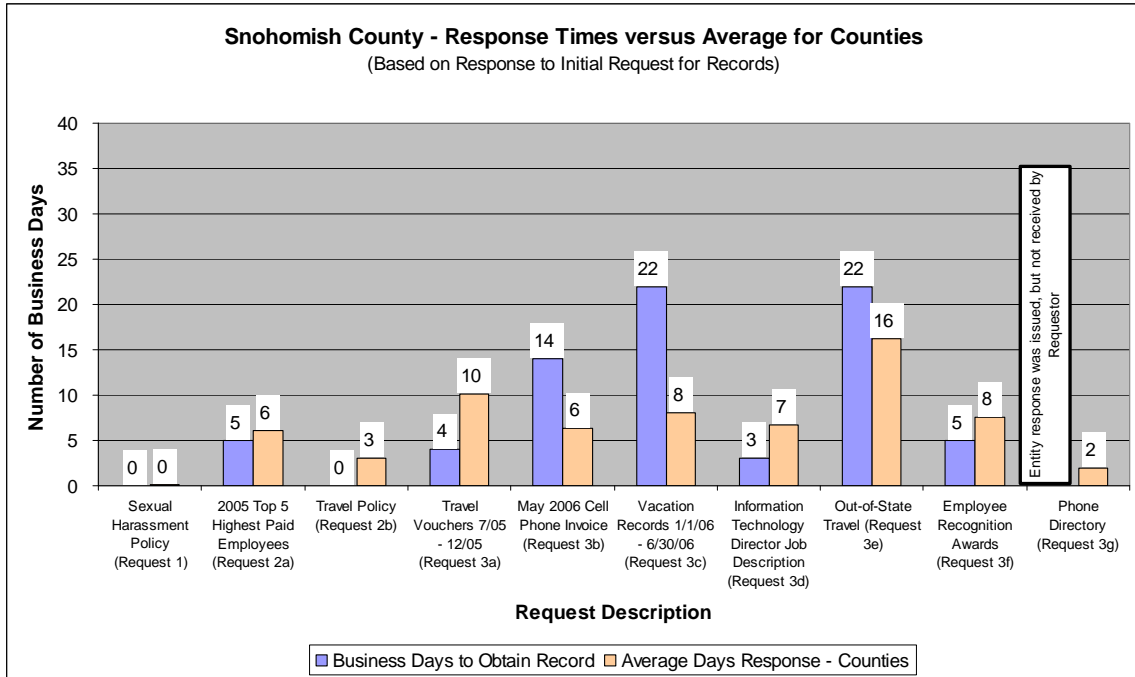
- **General Overall Responsiveness – 9 out of 10 Requests**



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- Responsiveness – 10 Requests - Compared to Average for Counties



Snohomish County's Response

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About Spokane County

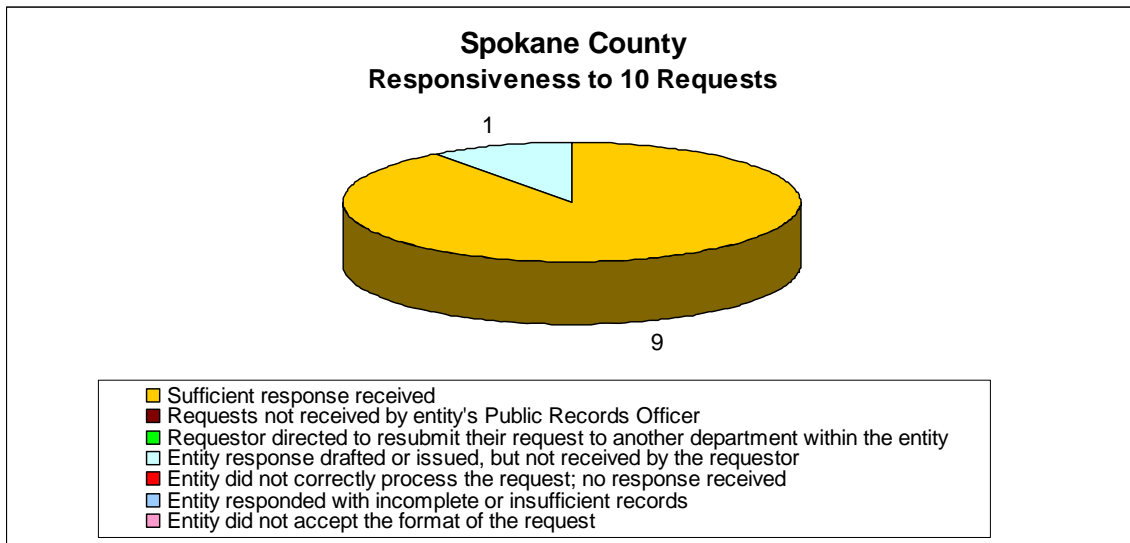
Spokane County is the fourth most populous county in the state, with an estimated 451,200 residents. The County's executive, legislative and policy-making body is the elected, three-member Board of Commissioners.

The County's public records process is centralized. The County's Public Records Officer is located in the County's Prosecuting Attorney's Office. Each department has at least one public records coordinator. The County relies on individual departments to process and respond to requests. These departments were involved in processing our unannounced requests:

- Public Records Officer – Prosecuting Attorney's Office
- Human Resources Department
- County Auditor's Office
- Sheriff's Department

❖ Spokane County

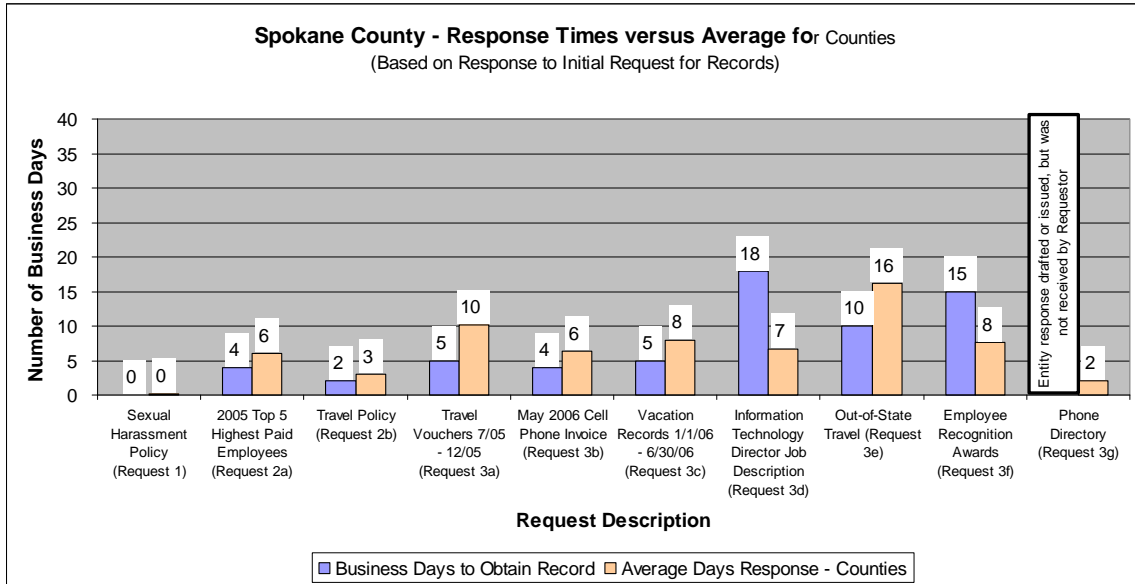
- **General Overall Responsiveness – 9 out of 10 Requests**



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- Responsiveness – 10 Requests - Compared to Average for Counties



Spokane County's Response

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About Clark County

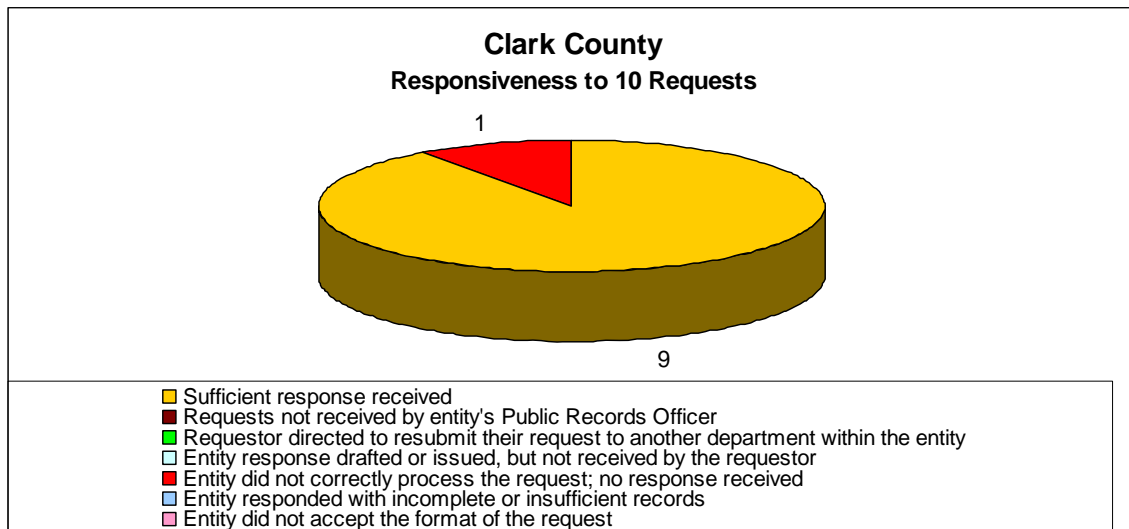
Clark County's population is approximately 415,000. The County is administered by an elected, three-member Board of Commissioners.

The County's public records process is centralized. The County's Public Records Officer is located in the County's Prosecuting Attorney's Office. Departments have at least one public records coordinator, for a total of 27 coordinators. The County relies on department coordinators to process and respond to requests. These departments were involved in processing our unannounced requests:

- County Commissioner's Office
- County Auditor's Office

❖ Clark County

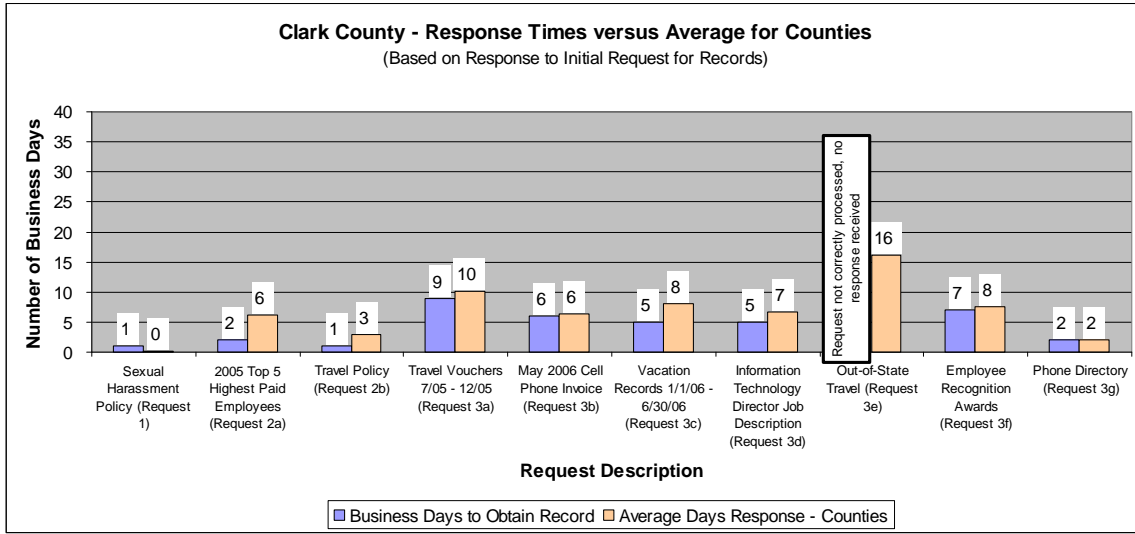
- **General Overall Responsiveness – 9 out of 10 Requests**



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- Responsiveness – 10 Requests - Compared to Average for Counties



Clark County's Response

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Washington State Auditor's Office

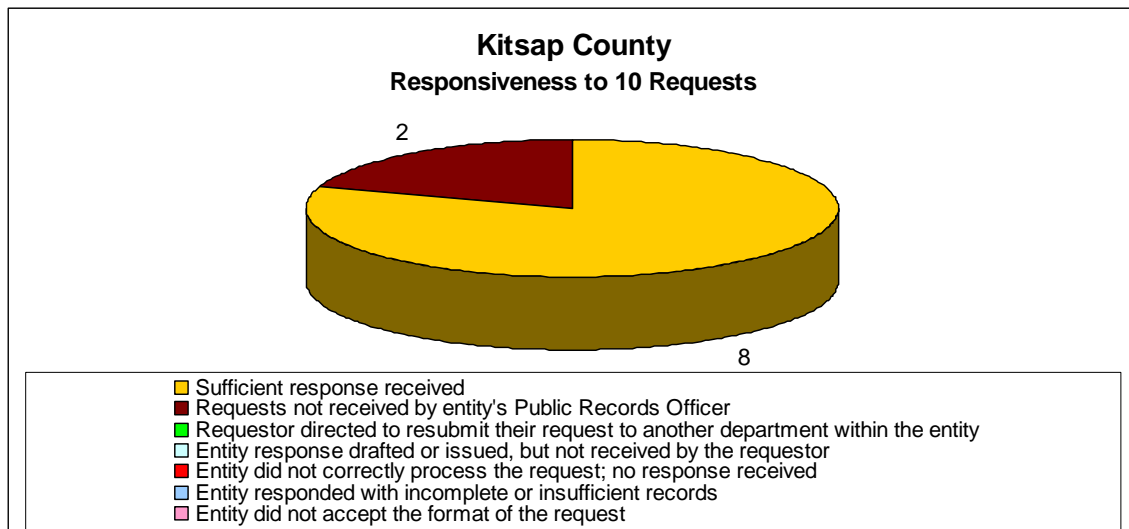
About Kitsap County

Kitsap County's population is approximately 244,800. The County is governed by an elected, three-member Board of Commissioners.

The County's public records process is centralized. The Public Records Officer is located in the County's Prosecuting Attorney's Office. Departments have at least one public records coordinator. The County relies on the individual departments to assist the Public Records Officer in gathering information related to requests. Only the County Commissioner's Office was included in our audit scope as it provided centralized monitoring of the unannounced requests submitted.

❖ Kitsap County

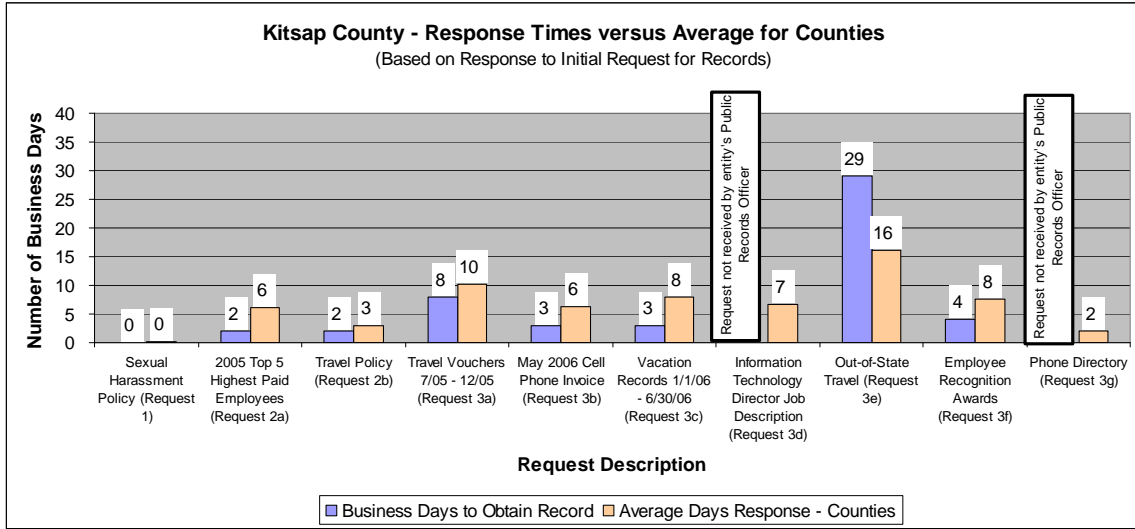
- **General Overall Responsiveness – 8 out of 10 Requests**



- **Responsiveness – 10 Requests - Compared to Average for Counties**

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Kitsap County's Response

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Washington State Auditor's Office

About Yakima County

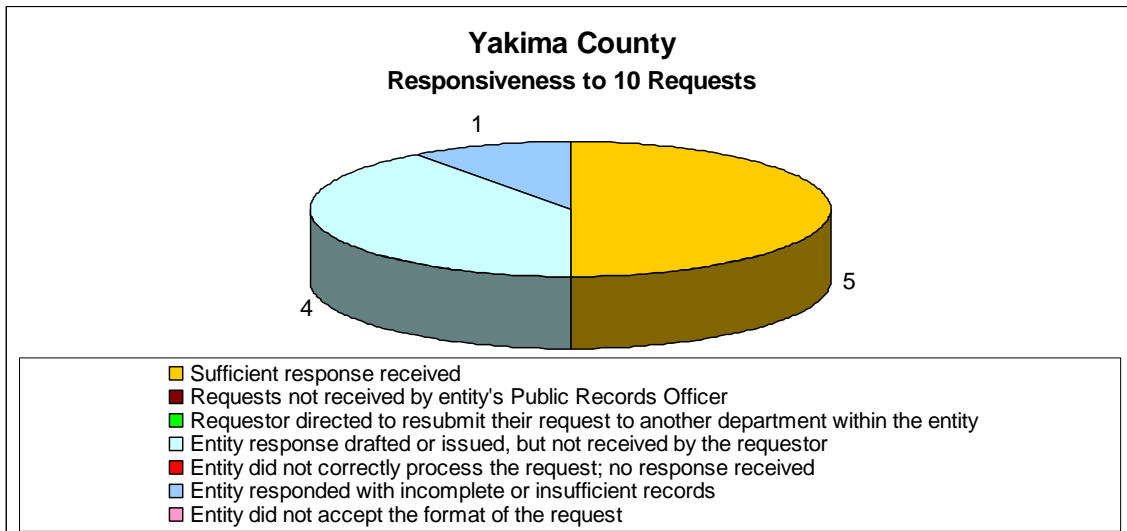
Yakima County's population is approximately 234,200 residents. The County is administered by an elected, three-member Board of Commissioners.

The County's public records process is centralized. The County's Public Records Officer is located in the County's Prosecuting Attorney's Office. Departments have at least one public records coordinator. The County relies on individual departments to gather records in response to requests. The following departments were involved in processing our unannounced requests:

- Public Records Officer – Prosecuting Attorney's Office
- Human Resources Department
- County Commissioner's Office
- Sheriff's Department

❖ Yakima County

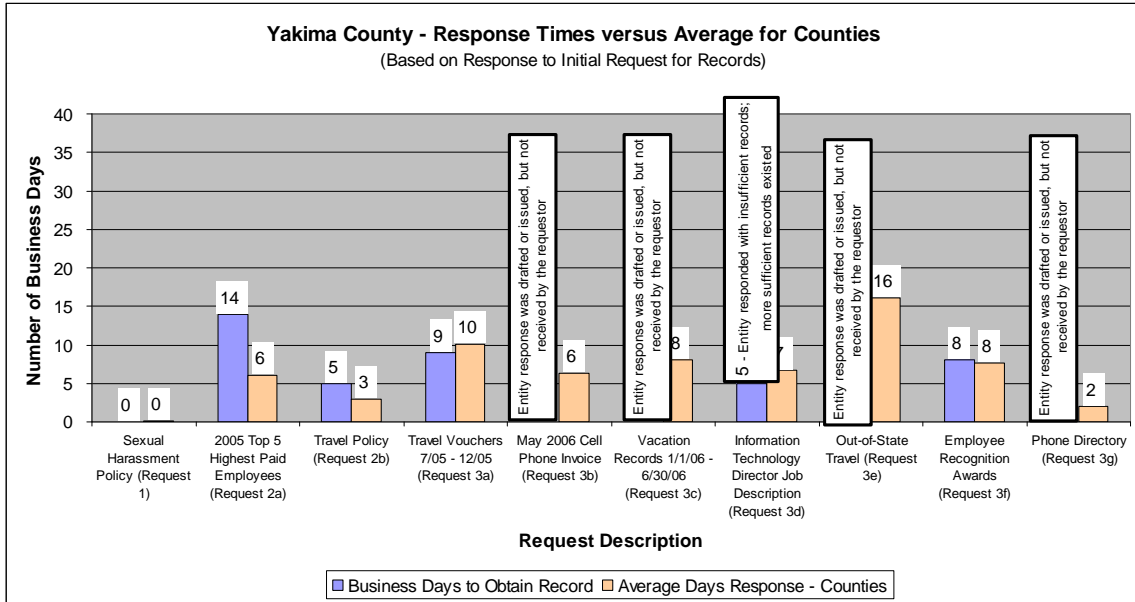
- **General Overall Responsiveness – 5 out of 10 Requests**



CONFIDENTIAL DRAFT

Washington State Auditor's Office

- Responsiveness – 10 Requests - Compared to Average for Counties



Yakima County's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

About Thurston County

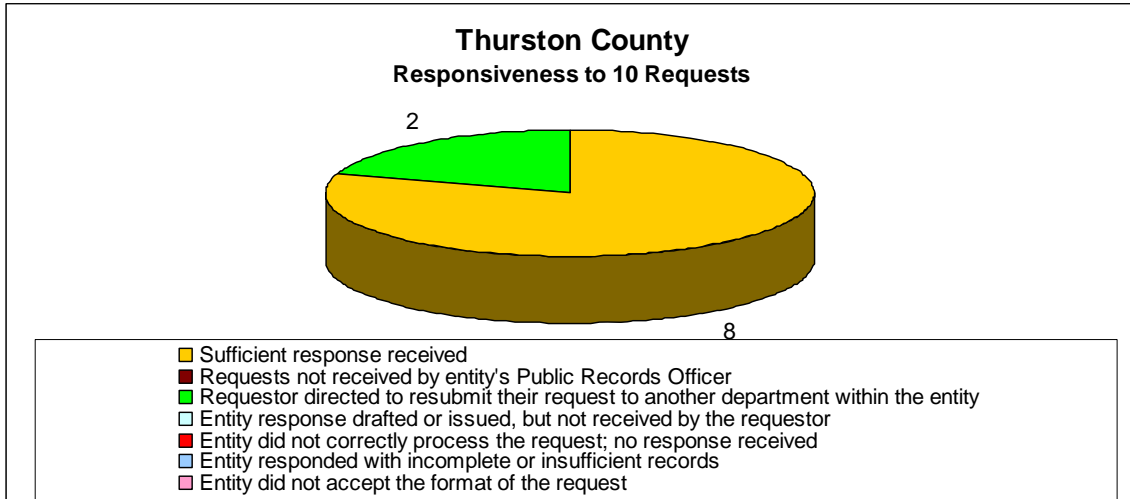
Thurston County's population is approximately 238,000 residents and is administered by an elected, three-member Board of Commissioners.

The County's public records process is decentralized. The County has at least one public records officer for each department and relies on individual departments to process and respond to requests. These departments establish their own policies and procedures. These departments were involved in processing our unannounced requests:

- County Commissioner's Office
- County Auditor's Office
- Sheriff's Department

❖ Thurston County

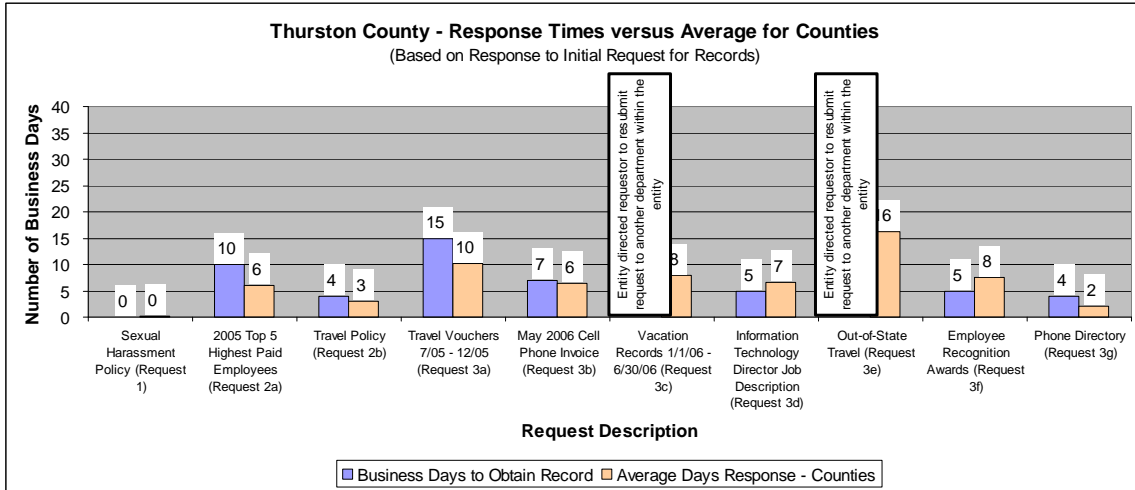
- **General Overall Responsiveness – 8 out of 10 Requests**



CONFIDENTIAL DRAFT

Washington State Auditor's Office

- Responsiveness – 10 Requests - Compared to Average for Counties



Correspondence – Thurston County Commissioners

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Washington State Auditor's Office



COUNTY COMMISSIONERS
Cathy Wolfe
District One
Diane Oberquell
District Two
Robert N. Macleod
District Three

BOARD OF COUNTY COMMISSIONERS

July 10, 2007

Mr. Chris Cortines, Audit Coordinator
WA State Auditor's Office
PO Box 40031
Olympia, Washington 98504-0031

Dear Mr. Cortines:

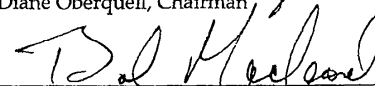
We are writing in response to your request to have a member of your performance evaluation audit team interview our Public Records Coordinator, Robin Courts in a one-on-one setting.

The open government policy we follow countywide does not support an interview of this type. It is a priority for us to protect the rights of our employees and we place a high value on the integrity of our workforce. We believe your requirement of conducting an interview in this manner is unreasonable and would compromise the model of our business operations. It is also in conflict with the commitment to a cooperative spirit made by Auditor Sonntag for this process. Therefore, we respectfully decline your request.

We would be happy to consent to an interview involving Ms. Courts and another representative from our office such as Commissioner Oberquell; Cynthia Stewart, Assistant Chief Administrative Officer; or Elizabeth Petrich, Deputy Prosecuting Attorney with a member of your team. Please contact our office (360) 786-5440 if this would be acceptable to you.

Sincerely,


Diane Oberquell, Chairman


Robert N. Macleod, Vice-Chair




Cathy Wolfe, Commissioner

Building #1, Room 269, 2000 Lakeridge Drive SW, Olympia, Washington 98502-6045 (360) 786-5440
T.D.D. (360) 754-2933



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Washington State Auditor's Office

 THURSTON COUNTY <small>WASHINGTON STATE</small> <small>SINCE 1852</small>	COUNTY COMMISSIONERS Gale Wolfe District One Diane Cherequell District Two Robert N. Macleod District Three
BOARD OF COUNTY COMMISSIONERS	
January 22, 2008	
Ms. Tracy Aga, Assistant State Auditor Washington State Auditor's Office Sunset Building PO Box 40381 Olympia, WA 98504	
Dear Ms. Aga:	
<p>Thank you for providing us with the draft report on your Public Records Performance Audit of Thurston County and the opportunity to comment. We understand the potential benefit of performance audits and support the general intent. Following is our response to the initial draft citing "conditions noted":</p>	
<p>Redirecting the request to the requestor: Your draft contends that two public records requests were improperly returned to the requestor. These two specific requests were for information from the County Sheriff and the County Auditor's offices, both independently elected officials for which the County Commissioners have no direct authority.</p>	
<p>We do not believe the Board of County Commissioners can, or should be responsible for coordinating public records requests for other Elected Officials such as the Sheriff or Auditor. Consequently, we believe our timely written responses to these two requests should be regarded as responsive. Additionally, not only did the County respond, but also forwarded the requests and a copy of our response letter on to the Sheriff and Auditor's offices as a courtesy. We believe this is the appropriate practice for a county government that has 21 independently elected officials, each of whom is independently accountable to the public.</p>	
<p>Accommodating audit procedures: The draft report raises a concern that the Board of County Commissioners insisted our Public Records Coordinator be accompanied by an observer during an audit interview. Thurston County does not believe this issue is appropriate for identification in the report. The State Auditor's Office has no legal authority to require confidential interviews for its performance audits and there is no evidence presented that having an observer present affected the interview responses. More importantly, an insistence upon having a confidential interview is inconsistent with assurances made by the State Auditor's Office that this specific performance audit was not intended to measure compliance, but rather to identify best practices to improve the effectiveness and efficiency of public records disclosure practices. In spite of our objections to the manner in which this performance audit was handled, the County did fully cooperate.</p>	
Building #1, Room 269, 2000 Lakeridge Drive SW, Olympia, Washington 98502-6015 (360) 786-5440 T.D.D. (360) 754-2933	
 Recycled Paper	

CONFIDENTIAL DRAFT

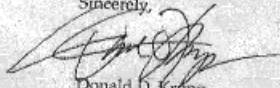
Washington State Auditor's Office

SAC REPORT COMMENTS
JANUARY 22, 2008
PAGE 2 OF 3

Application of the redactions to documents provided to response: We believe this is an appropriate comment and acknowledge the information was not redacted. We have followed up with the involved staff to ensure they are aware that specific information needs to be redacted for public record requests.

Again, we appreciate the opportunity to respectfully submit our comments to the State Auditor's Office draft report.

Sincerely,



Donald D. Krüpp
Chief Administrative Officer

cc: Thurston County Board of Commissioners
Jack Bryant, Internal Auditor

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Washington State Auditor's Office

02/06/2008 WED 14:53 FAX 360 753 0646 WA STATE AUDITOR'S

0002/002



2000 Lakeridge Drive SW, Olympia, Washington 98502-6080 • 360-786-5550 • FAX 360-754-4683

ROBIN L. HUNT, CPA
TREASURER

February 5, 2008

Brian Sonntag, State Auditor
PO BOX 40021
Olympia, WA 98504-0021

RECEIVED
STATE AUDITOR

'08 FEB -6 P2:16

Dear Brian:

I recently received copies of the preliminary results of the statewide performance audit on public records. I am writing to share my concerns about the conclusions and directions of the report. I had voiced these same concerns at a meeting with your staff at the "entrance" conference they held on public records. They appear to have limited practical knowledge or understanding of statutory governance structure.

As an independently elected official, I don't report to the County Commissioners. Nor is the treasurer's operation a "department" of the County. I don't rely on the Commissioner's staff to ensure that I meet my statutory responsibilities including complying with the Public Records Act. I don't expect them to adequately understand/have the ability to implement the specific policies I have adopted in this area.

To write general reports that imply that the county must have a single person in the Commissioner's office to deal with all public records request is odd. I am not aware that we hold SPI accountable for providing public records from DNR - both agencies headed by independently elected officials under the umbrella of the state.

I would expect a former local elected official to understand this basic organizational and legal structure and would hope that knowledge was useful throughout your staff. Instead it appears you are releasing a document that reflects the individual biases of the examiners who were here. Those biases are obvious from how the audit question was constructed and what information you chose to exclude as well as from their non-understanding dismissal of our inquiries at the entrance conference.

I don't see how the public is best served by this type of reporting.

Sincerely,

Robin L. Hunt, CPA
Thurston County Treasurer

Thurston County's Response

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Washington State Auditor's Office

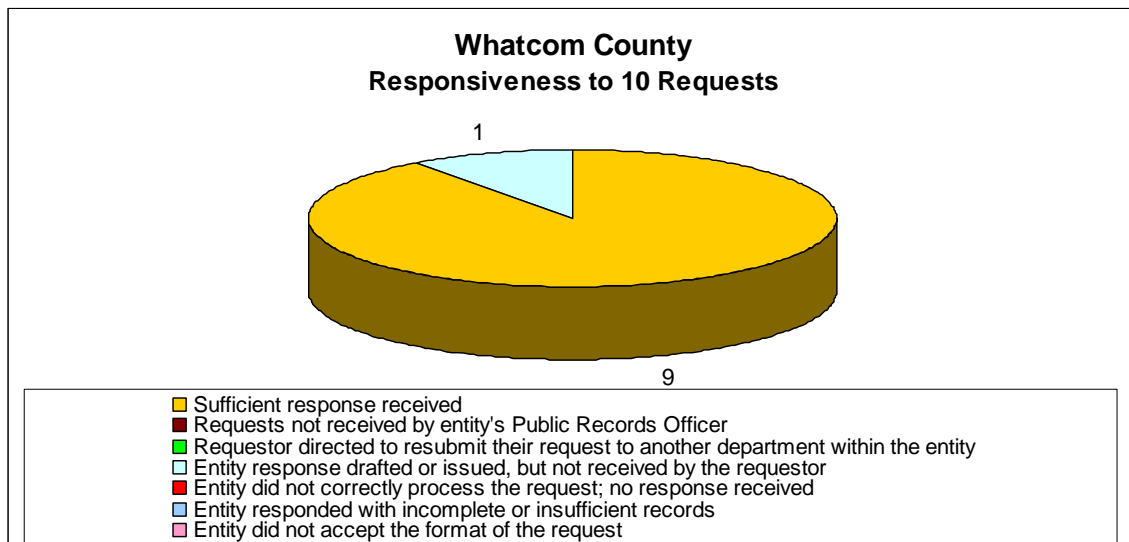
About Whatcom County

Whatcom County's population is approximately 188,300 residents. The County is governed by a seven-member, elected County Council.

The County's public records process is centralized. The County's Public Records Officer is located in the County's Prosecuting Attorney's Office. Departments have at least one public records coordinator. The County relies on individual departments to gather records in response to requests. The County's only Public Records Officer position was our primary point of contact during our audit.

❖ Whatcom County

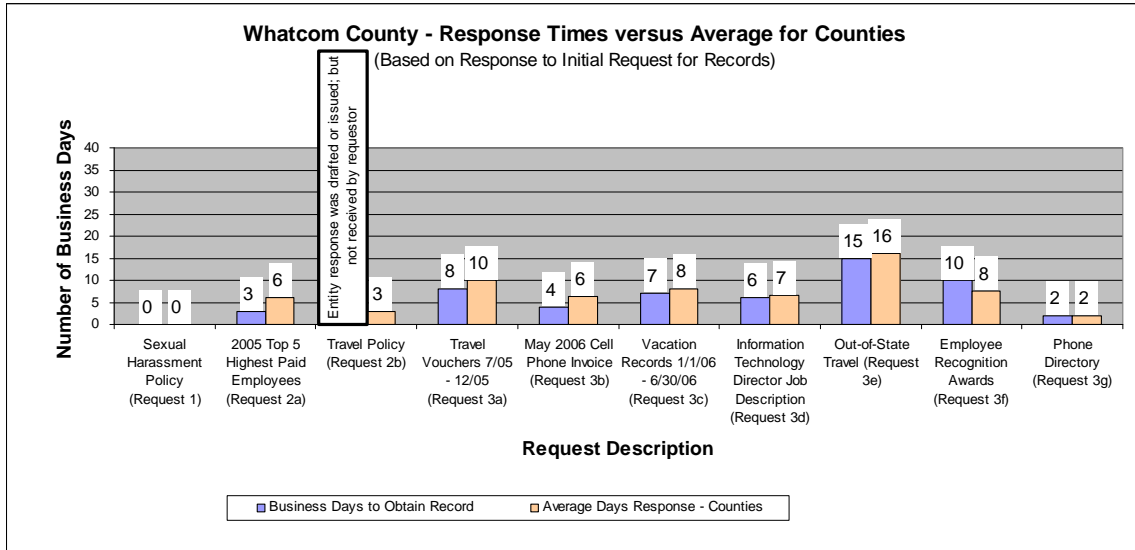
- **General Overall Responsiveness – 9 out of 10 Requests**



CONFIDENTIAL DRAFT

Washington State Auditor's Office

- Responsiveness – 10 Requests - Compared to Average for Counties



Whatcom County's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

About Benton County

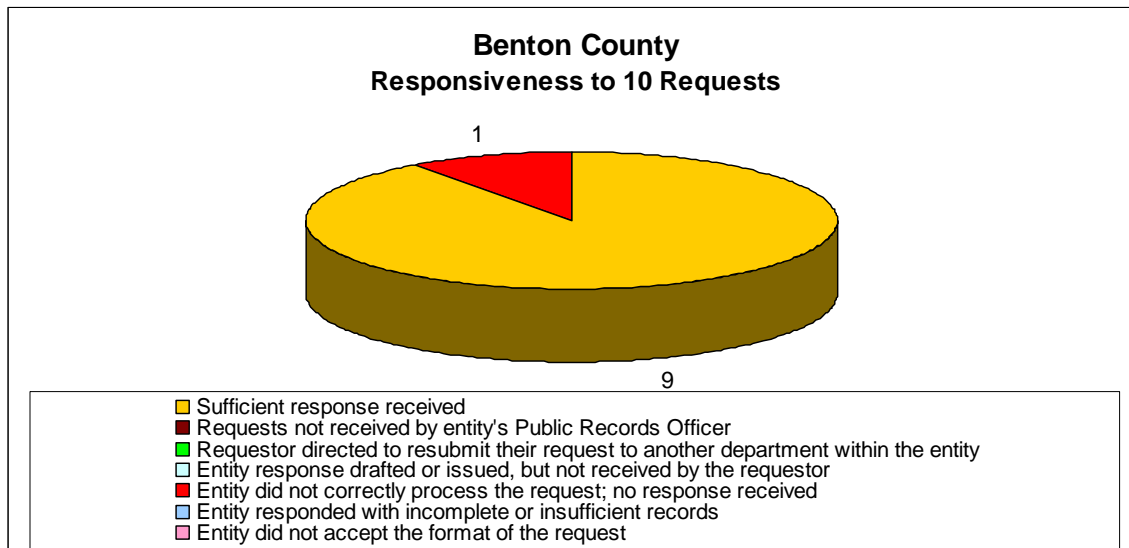
Benton County's population is approximately 162,900. Three elected commissioners administer the County.

The County's public records process is decentralized. The County has at least one public records officer for each department. The County relies on individual departments to process and respond to requests. These departments were involved in processing our unannounced requests:

- County Commissioner's Office
- County Personnel Resources Department
- Public Works Department
- Planning and Building Department
- Sheriff's Department

❖ Benton County

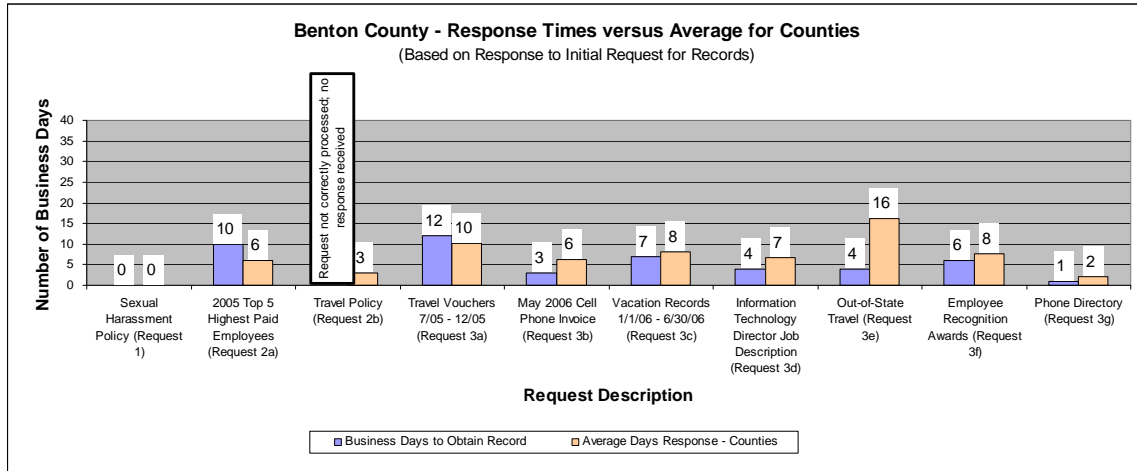
- **General Overall Responsiveness – 9 out of 10 Requests**



- **Responsiveness – 10 Requests - Compared to Average for Counties**

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Washington State Auditor's Office



Benton County's Response

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Washington State Auditor's Office

Appendix B Summary Results by City

About City of Seattle

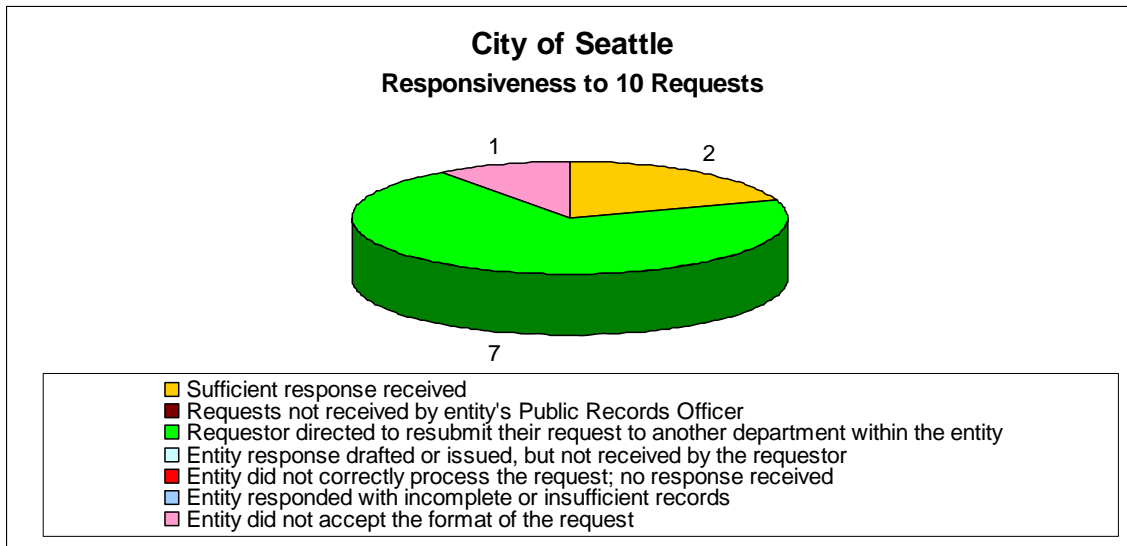
The City of Seattle is the largest city in Washington, with a population of approximately 586,200. It has a mayor-council form of government with nine elected Council Members, an elected Mayor and an elected City Attorney.

The City's public records process is decentralized. The City has at least one public records officer for each department. The City relies on individual departments to process and respond to requests. These departments were involved in processing of our unannounced requests:

- City Clerk's Office (oversight of Officers on the Legislative Branch)
- Mayor's Office (oversight of Officers on the Executive Branch)
- Police Department
- Personnel Department
- Information Technology Department

❖ City of Seattle

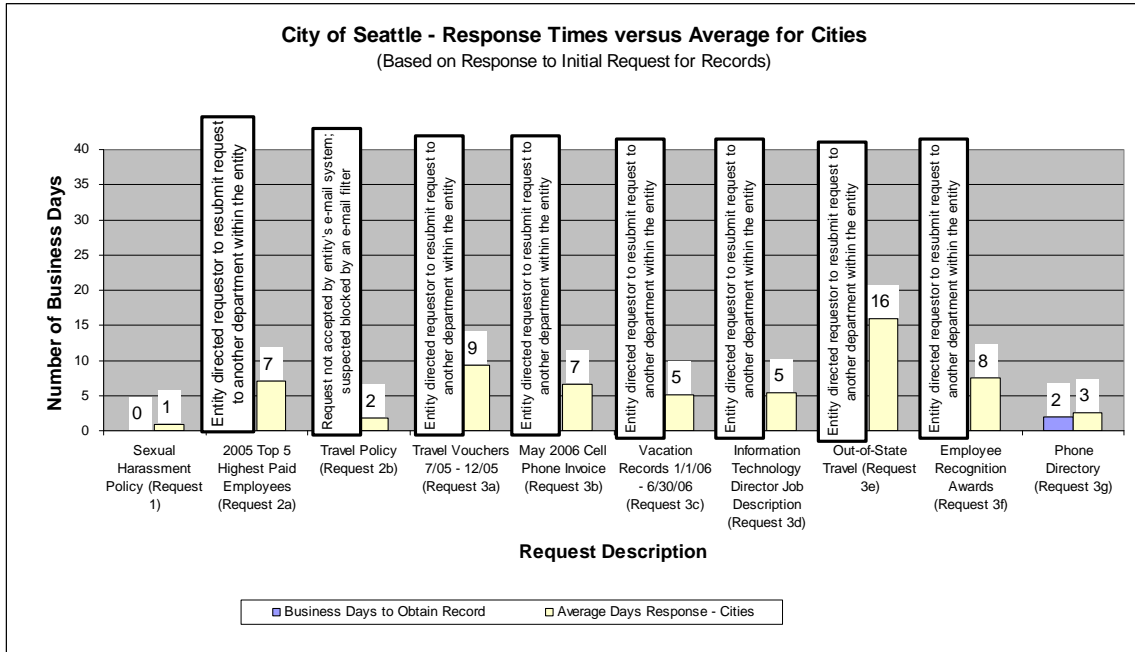
- **General Overall Responsiveness – 2 out of 10 Requests**



CONFIDENTIAL DRAFT

Washington State Auditor's Office

- Responsiveness – 10 Requests - Compared to Average for Cities



City of Seattle's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

About City of Spokane

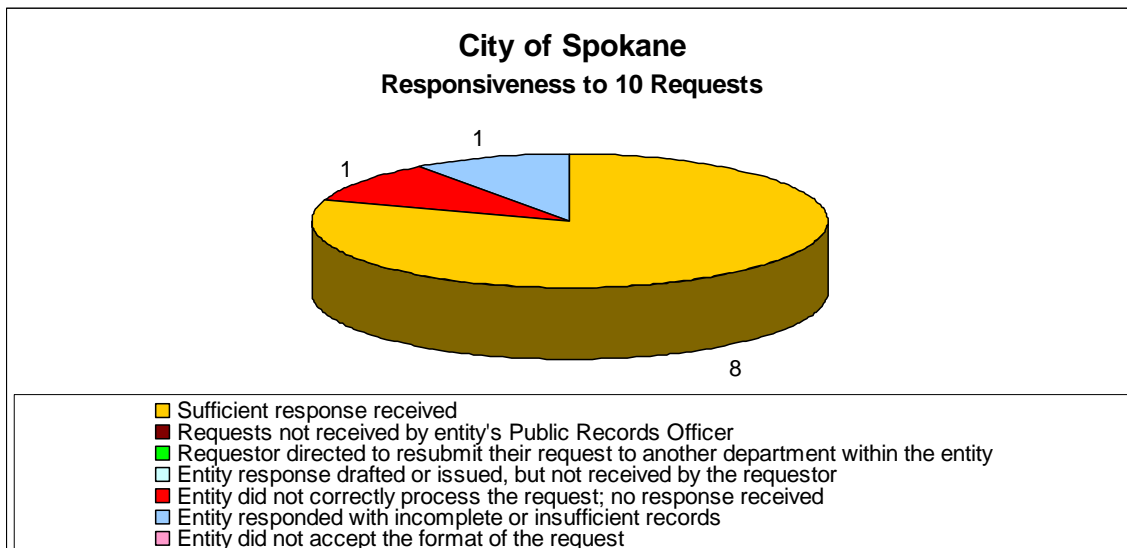
The City of Spokane is the second largest city in the state with a population of approximately 202,900. Voters elect a Mayor and a seven-member City Council.

The City's public records process is decentralized as the City has three public records officers at the City Clerk's Office, the Police Department and the Municipal Court. The City Clerk relies on individual departments to gather records in response to requests. These departments were involved in processing our unannounced requests:

- City Clerk's Office
- Police Department

❖ City of Spokane

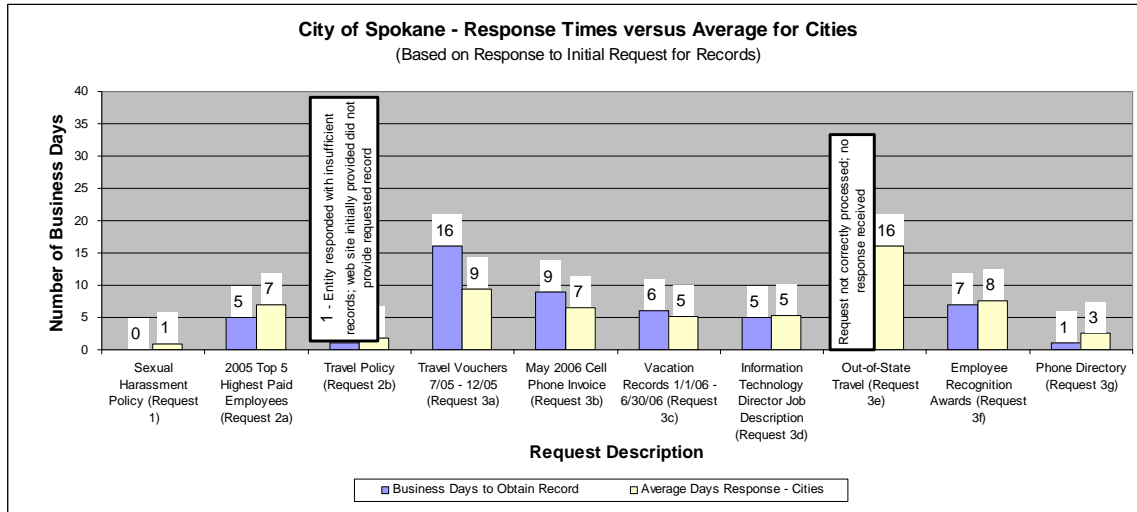
- **General Overall Responsiveness – 8 out of 10 Requests**



- **Responsiveness – 10 Requests - Compared to Average for Cities**

CONFIDENTIAL DRAFT

Washington State Auditor's Office



City of Spokane's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

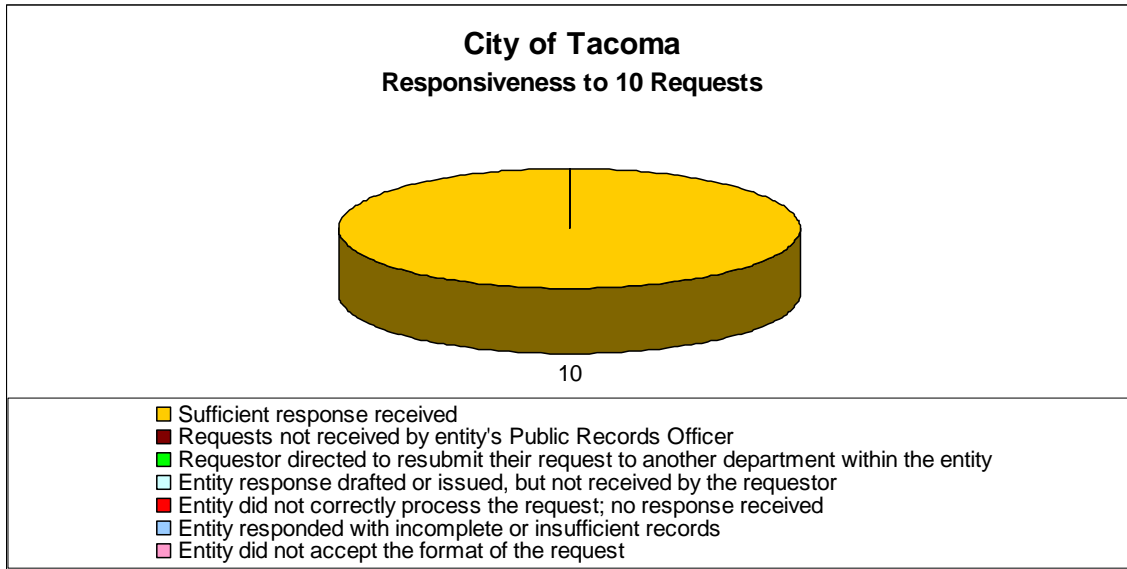
About City of Tacoma

The City of Tacoma's population is approximately 201,700 people in Pierce County. The City operates under a council-manager form of government with nine independently elected, part-time Council Members including the Mayor. The Council Members elect a part-time Deputy Mayor. The City Manager is appointed by the City Council and is responsible for day-to-day operations of the City.

The City's public records process is decentralized. The City has two public records officers, one for general government and the other for utilities. The City Clerk relies on individual departments to gather records in response to requests. Our audit scope was limited to examination of the Public Records Officer in the City Clerk's Department as it because it was the central point of contact for all 10 of our unannounced requests.

❖ City of Tacoma

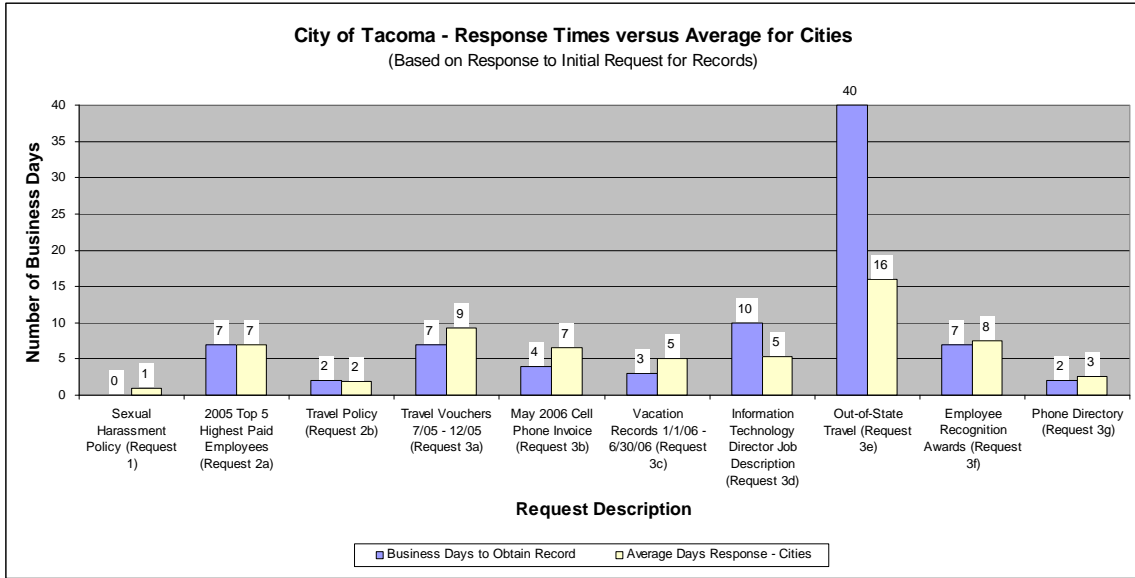
- **General Overall Responsiveness – 10 out of 10 Requests**



CONFIDENTIAL DRAFT

Washington State Auditor's Office

- Responsiveness – 10 Requests - Compared to Average for Cities



City of Tacoma's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

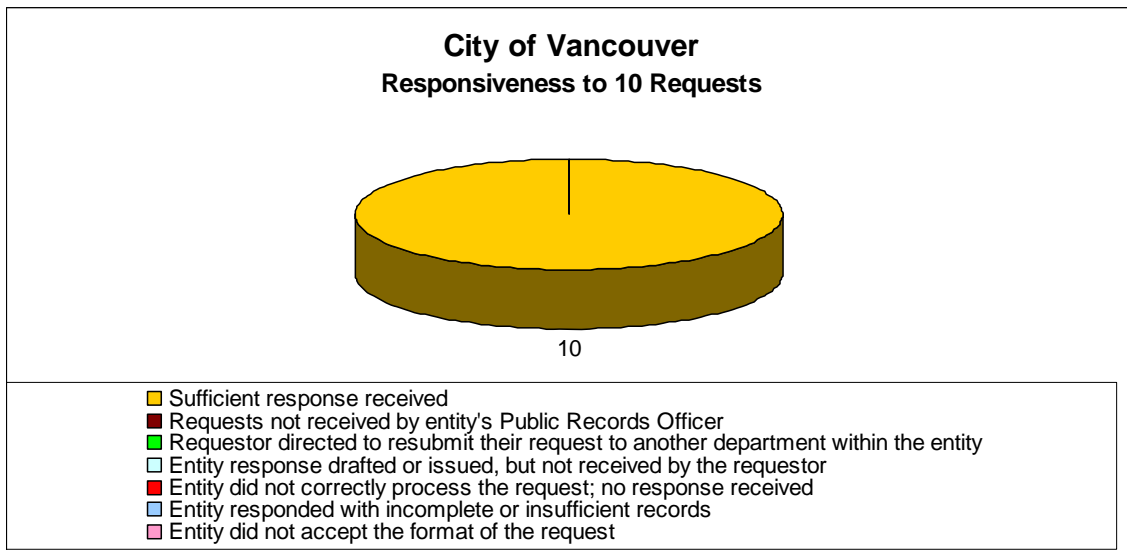
About City of Vancouver

The City of Vancouver's population is more than 160,800 people in Clark County. The City is administered by a mayor-council form of government with a council-appointed City Manager.

The City's public records process is centralized. The City's Public Records Officer is located in the City's Central Records Department. The Officer relies on individual departments to gather records in response to requests. Our primary point of contact was the Public Records Officer.

❖ City of Vancouver

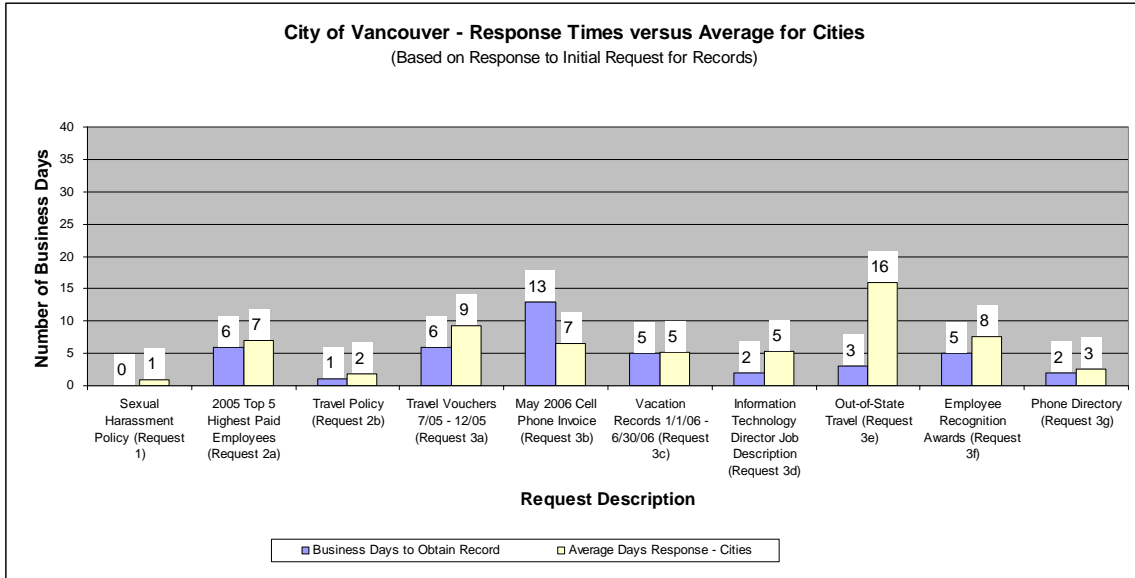
- **General Overall Responsiveness – 10 out of 10 Requests**



CONFIDENTIAL DRAFT

Washington State Auditor's Office

- Responsiveness – 10 Requests - Compared to Average for Cities



City of Vancouver's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

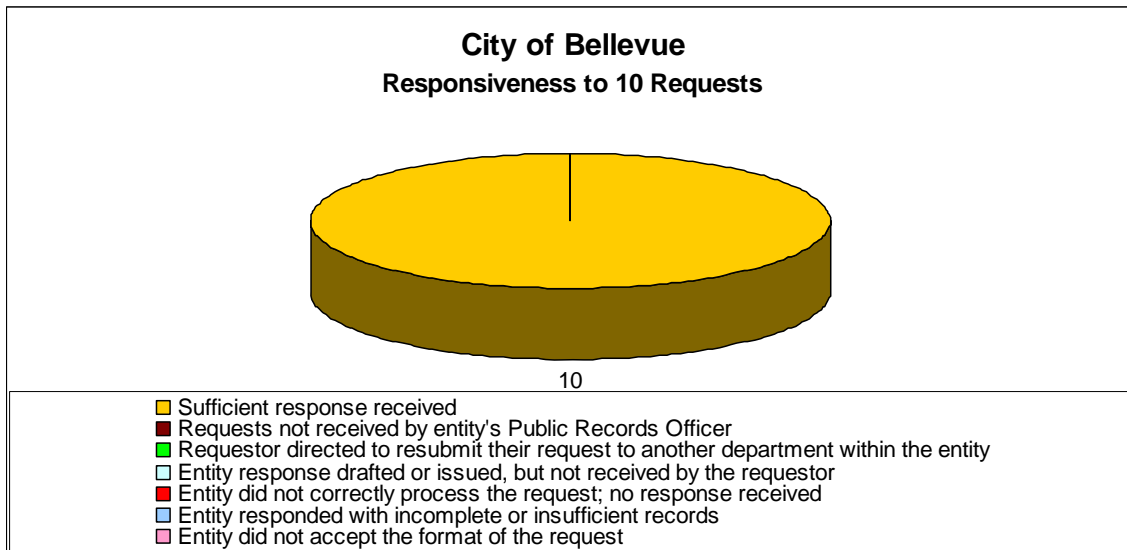
About City of Bellevue

The City of Bellevue's population is approximately 118,100 people in King County. The City operates under a council-manager form of government with seven elected Council Members, one of whom is selected by the Council to serve as Mayor for a two-year term.

The City's public records process is centralized. The City's Public Records Officer is located in the City Clerk's Department. The Officer relies on individual departments to gather records in response to requests. Our audit scope was limited to the Public Records Officer position as it is the central point of contact.

❖ City of Bellevue

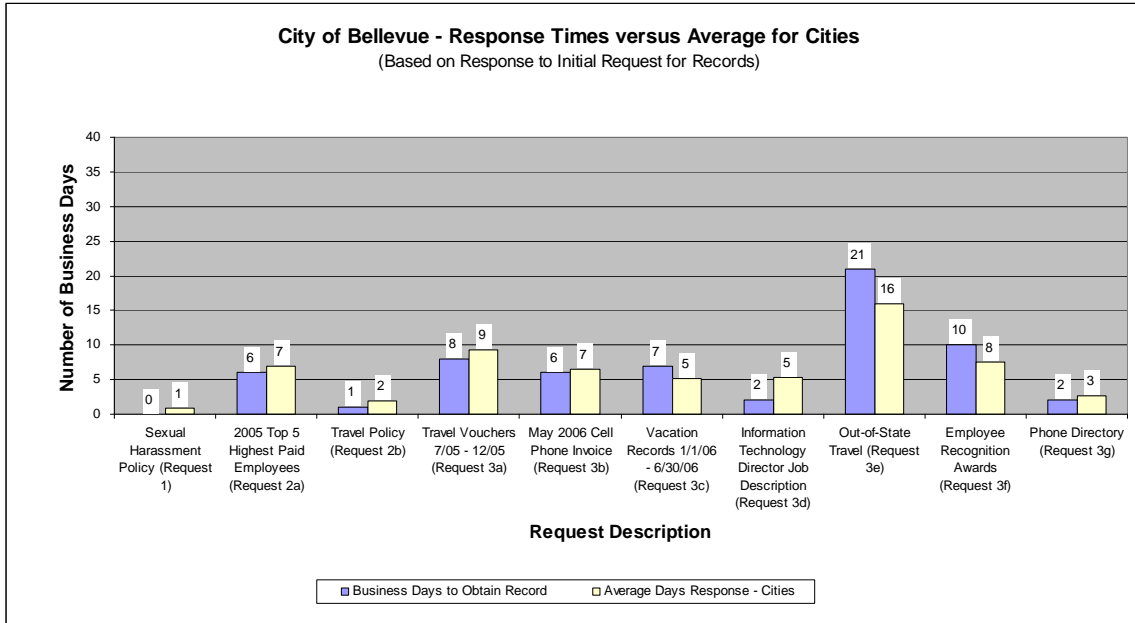
- **General Overall Responsiveness – 10 out of 10 Requests**



CONFIDENTIAL DRAFT

Washington State Auditor's Office

- Responsiveness – 10 Requests - Compared to Average for Cities



City of Bellevue's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

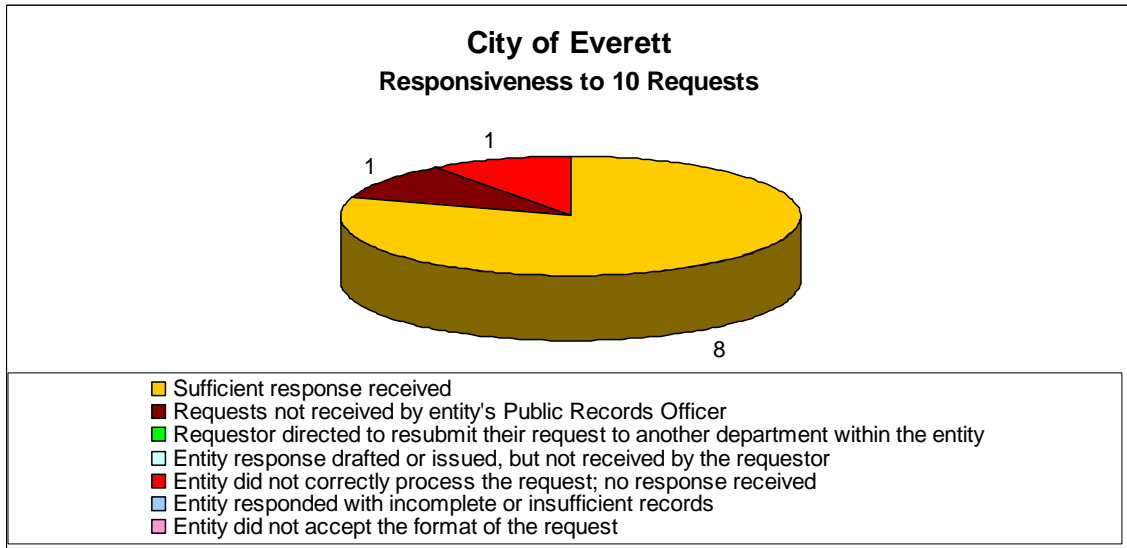
About City of Everett

The City of Everett's population is approximately 101,800 citizens in Snohomish County. The City is administered by a mayor-council form of government with seven, elected Council Members and an independently elected Mayor.

The City's public records process is centralized. The City's Public Records Officer is located in the City Clerk's Department. The Officer relies on the individual departments to gather records in response to requests. The Public Records Officer was our primary point of contact.

❖ City of Everett

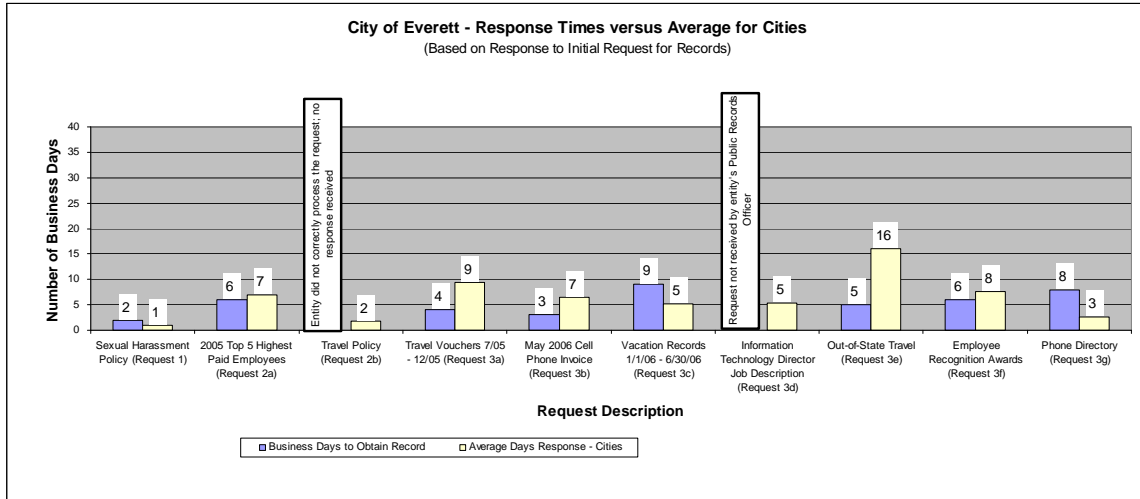
- **General Overall Responsiveness – 8 out of 10 Requests**



- **Responsiveness – 10 Requests - Compared to Average for Cities**

CONFIDENTIAL DRAFT

Washington State Auditor's Office



City of Everett's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

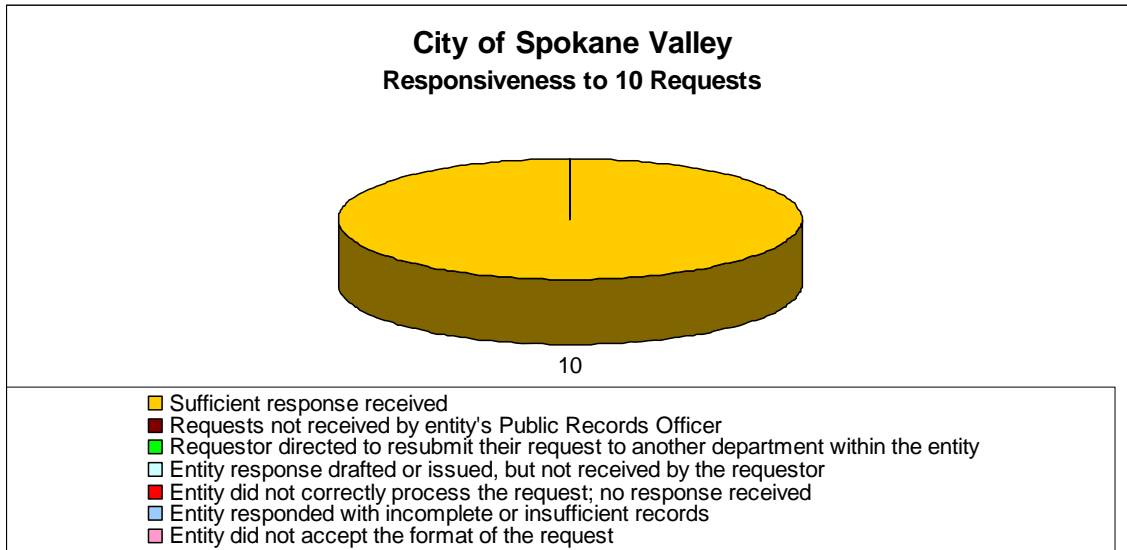
About City of Spokane Valley

The City of Spokane Valley's population is approximately 88,280 in Spokane County. The City operates under a council-manager form of government. Voters elect a seven-member City Council, which then appoints one member as Mayor and another member as Deputy Mayor.

The City's public records process is centralized. The Public Records Officer is located in the City Clerk's Department. The Officer relies on the individual departments to gather records in response to requests. The Public Records Officer was our primary point of contact.

❖ City of Spokane Valley

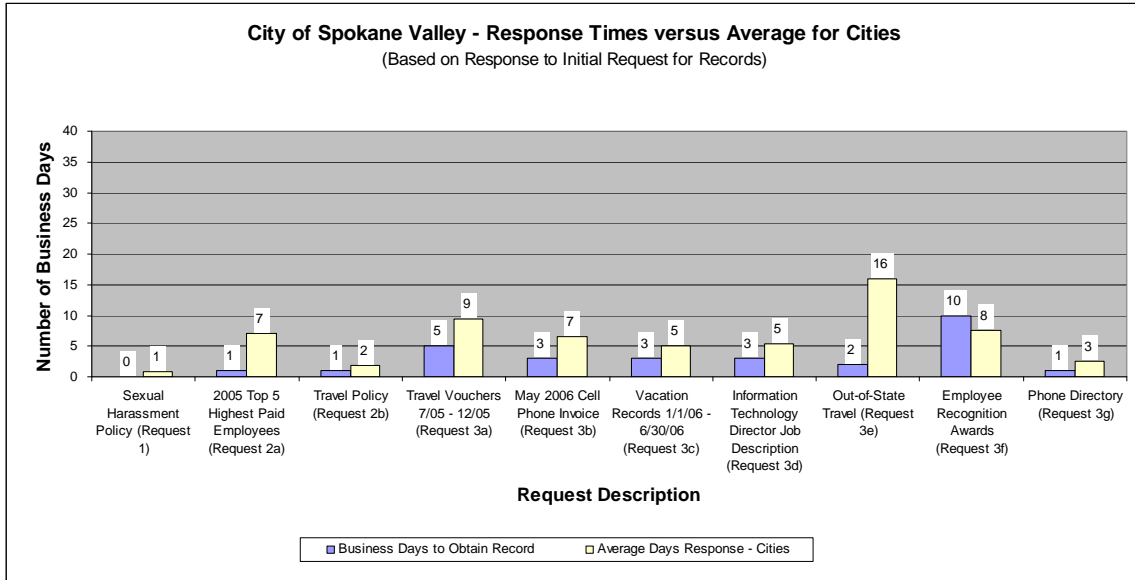
- **General Overall Responsiveness – 10 out of 10 Requests**



CONFIDENTIAL DRAFT

Washington State Auditor's Office

- Responsiveness – 10 Requests - Compared to Average for Cities



City of Spokane Valley's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

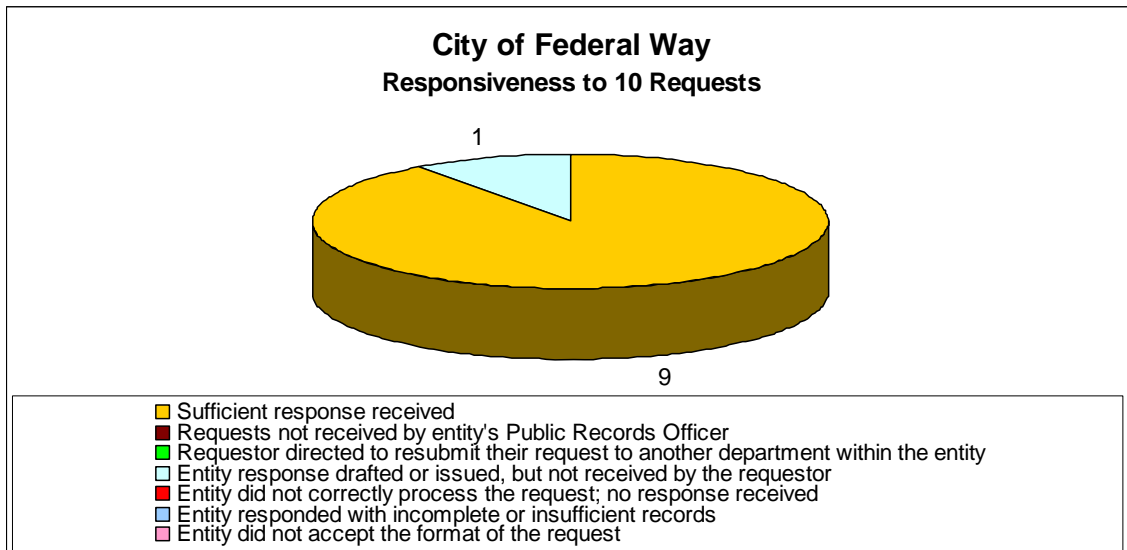
About City of Federal Way

The City of Federal Way's population is approximately 87,390 citizens in King County and operates under a council-manager form of government with seven elected Council Members. The Council elects one member each to serve as Mayor and Deputy Mayor for two-year terms. The City Manager is appointed by the Council and is responsible for day-to-day operations of the City.

The City's public records process is centralized as the City's Public Records Officer is located in the City Clerk's Department. The Officer relies on individual departments to gather records in response to requests. The Public Records Officer was our primary point of contact.

❖ City of Federal Way

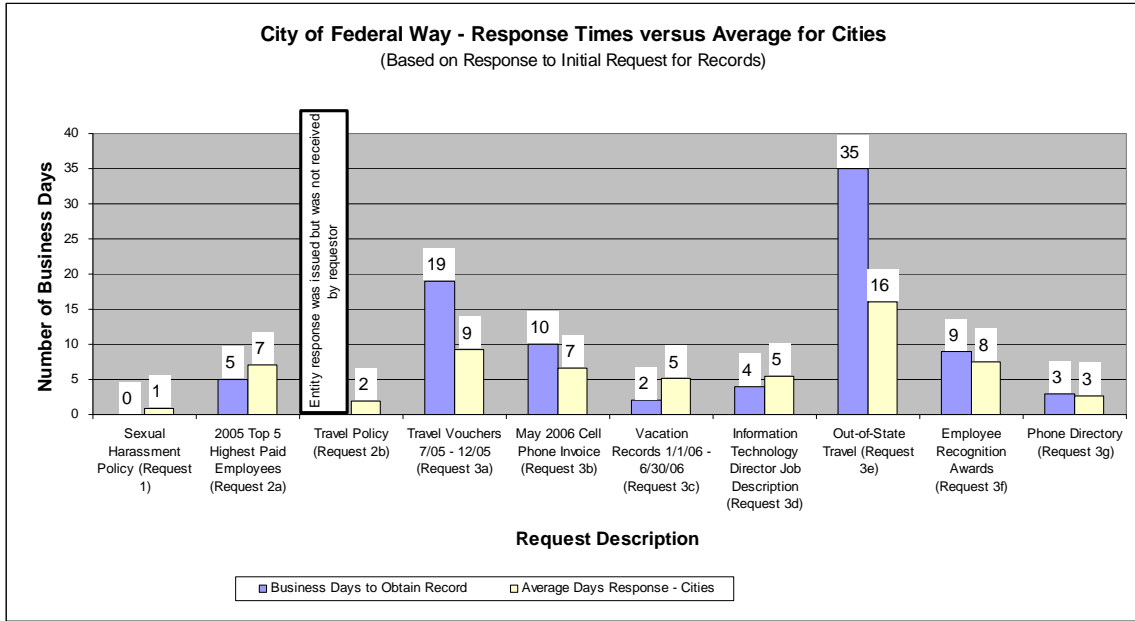
- **General Overall Responsiveness – 9 out of 10 Requests**



CONFIDENTIAL DRAFT

Washington State Auditor's Office

- Responsiveness – 10 Requests - Compared to Average for Cities



City of Federal Way's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

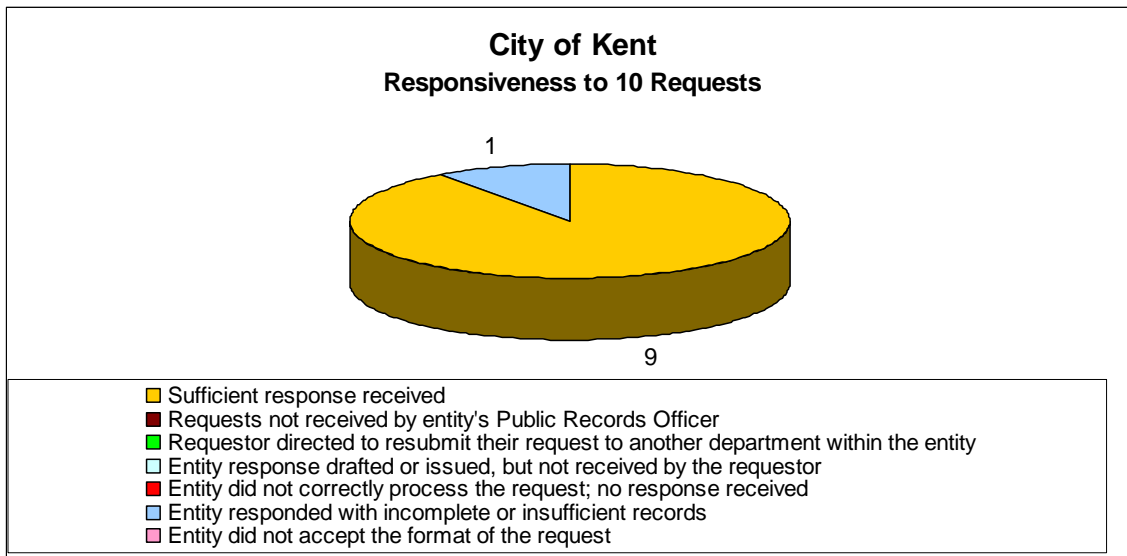
About City of Kent

The City of Kent's population is approximately 86,660 people in King County. An independently elected Mayor and seven elected Council Members administer the City.

The City's public records process is centralized. The City's Public Records Officer is located in the City Clerk's Department and relies on individual departments to gather records in response to requests. The Public Records Officer was our primary point of contact.

❖ City of Kent

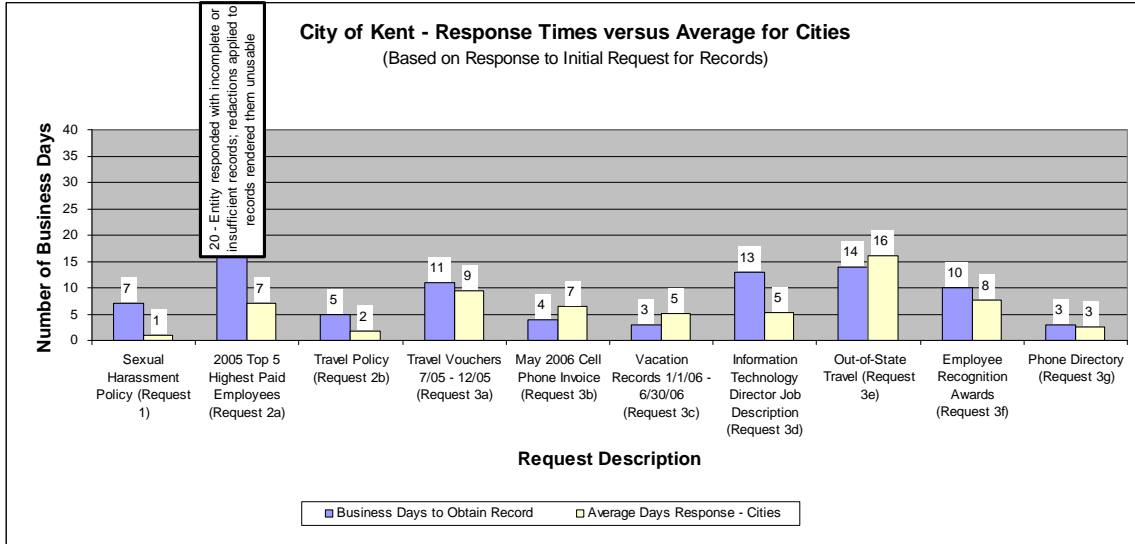
- **General Overall Responsiveness – 9 out of 10 Requests**



- **Responsiveness – 10 Requests - Compared to Average for Cities**

CONFIDENTIAL DRAFT

Washington State Auditor's Office



City of Kent's Response

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Washington State Auditor's Office

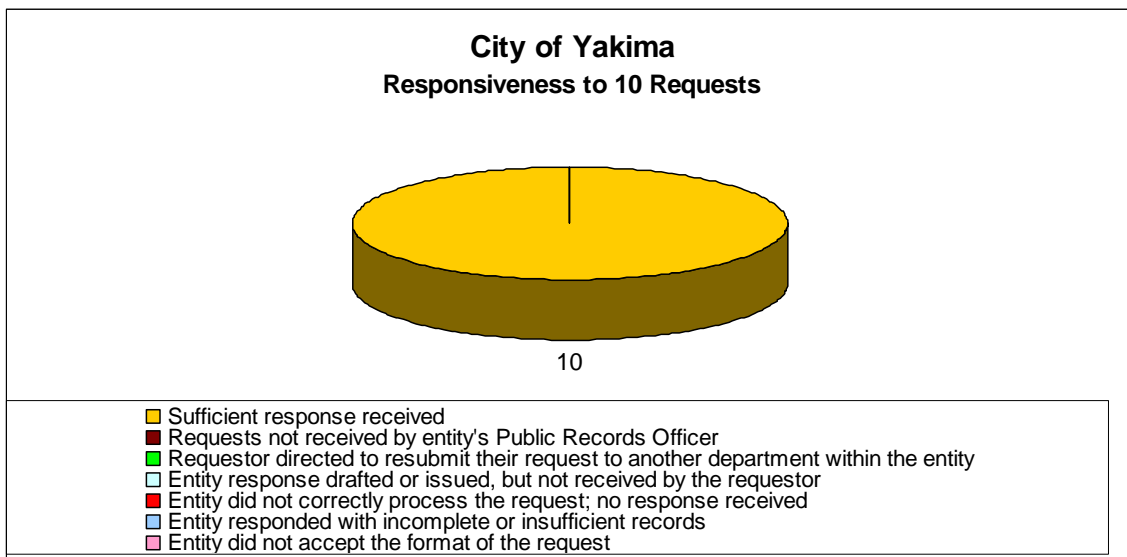
About City of Yakima

The City of Yakima has a population of approximately 82,940 in Yakima County. The City Council consists of seven elected Council Members. The Council chooses the Mayor every two years from within its own membership.

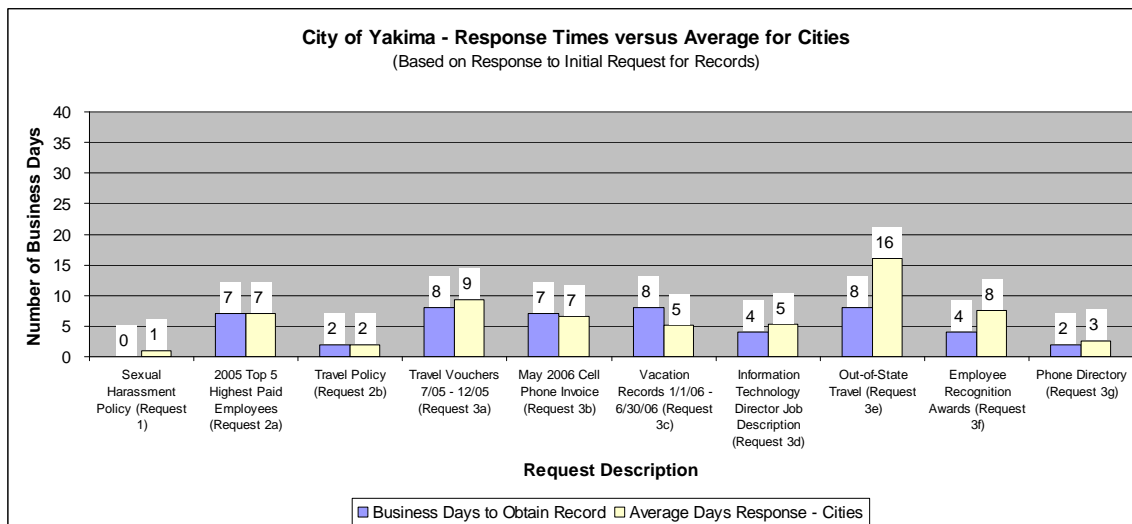
The City's public records process is centralized. The City's Public Records Officer is located in the City Clerk's Department. The Officer relies on the individual departments to gather records in response to requests. The Public Records Officer was our primary point of contact.

❖ City of Yakima

- **General Overall Responsiveness – 10 out of 10 Requests**



- **Responsiveness – 10 Requests - Compared to Average for Cities**



CONFIDENTIAL DRAFT
Washington State Auditor's Office
City of Yakima's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

Appendix C Summary Results by State Agency

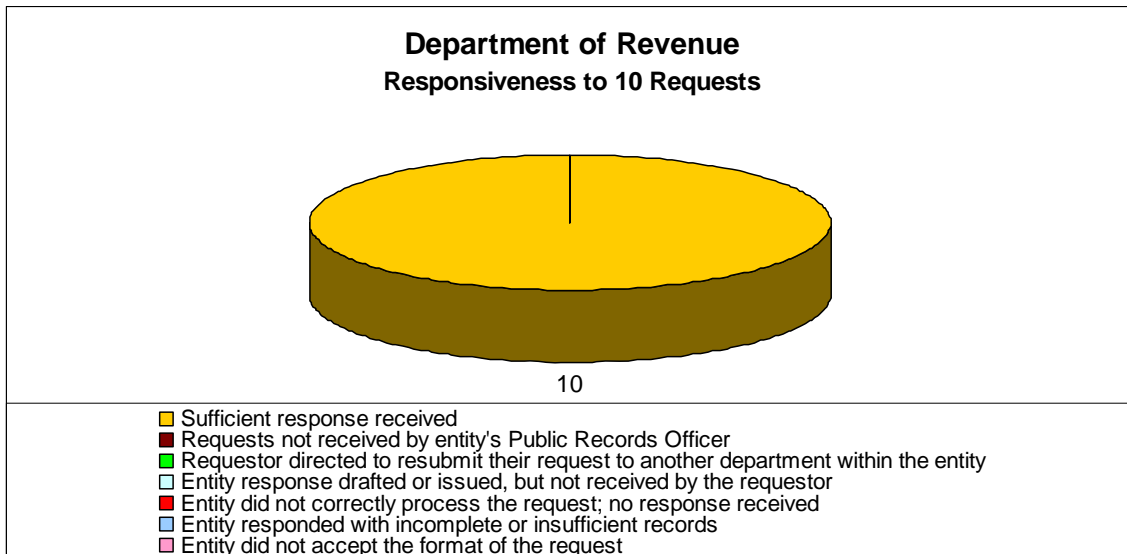
About Department of Revenue

The Department of Revenue collects taxes, administers programs to fund public services and develops tax policy in conjunction. The Agency collects approximately \$14.2 billion in state taxes and \$2.4 billion in local taxes each year from more than 460,000 registered businesses.

The Agency's public records process is centralized. The Public Records Officer is located in the Taxpayer Services Division and relies on individual divisions to gather records in response to requests. The Public Records Officer was our primary point of contact.

❖ Department of Revenue

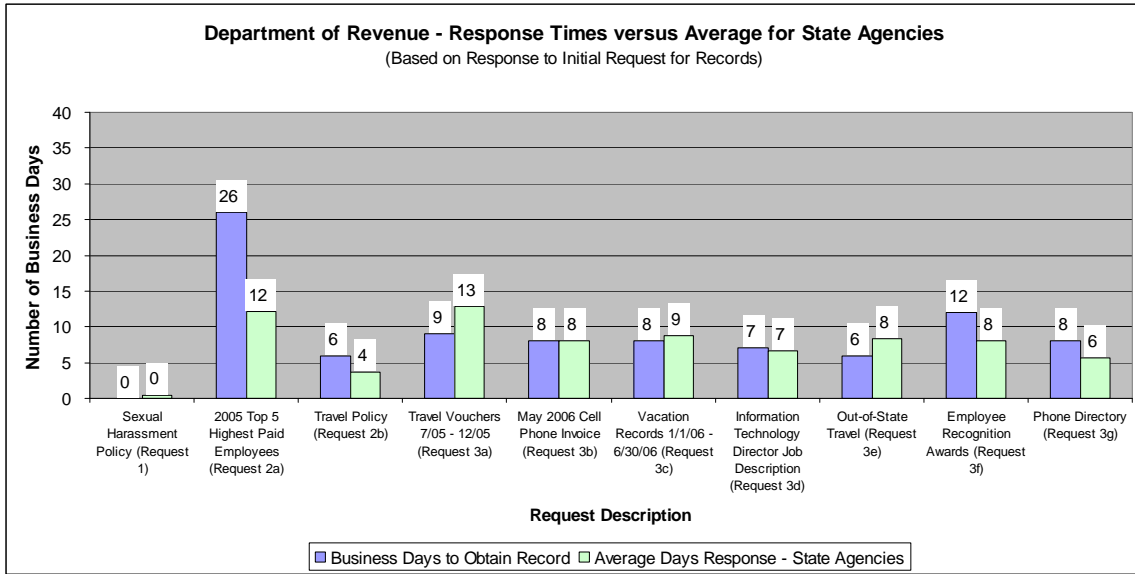
- **General Overall Responsiveness – 10 out of 10 Requests**



CONFIDENTIAL DRAFT

Washington State Auditor's Office

- **Responsiveness – 10 Requests - Compared to Average for State Agencies**



Department of Revenue's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

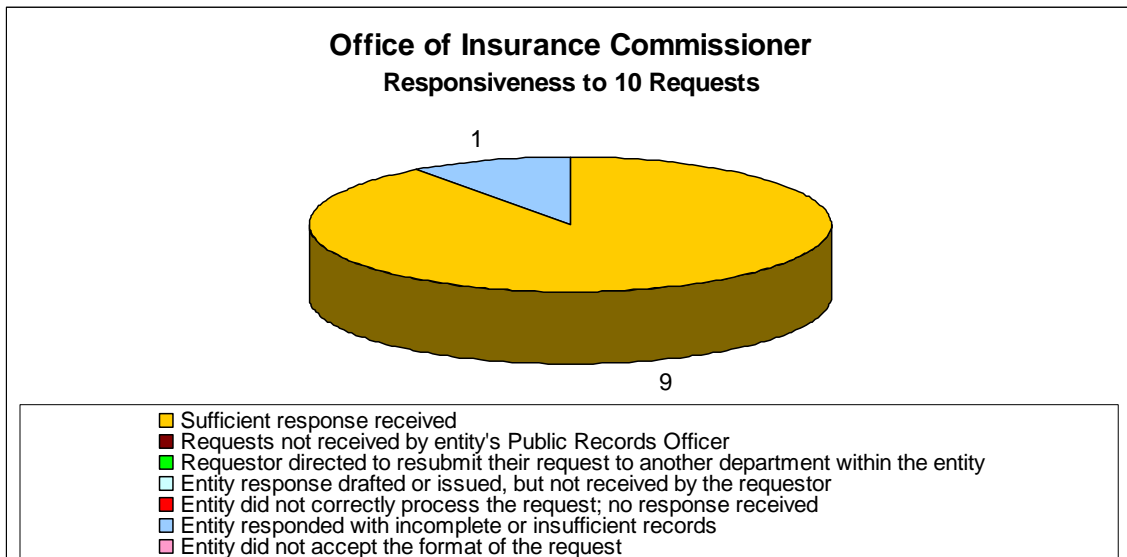
About Office of Insurance Commissioner

The Office of the Insurance Commissioner is responsible for regulating the insurance business in Washington. The Insurance Commissioner is elected by voters to four-year terms. The Agency employs approximately 200 people in Tumwater, Seattle, Spokane and Olympia.

The public records process is centralized with one Public Records Officer. The Officer relies on division coordinators to assist in gathering records in response to requests. The Public Records Officer was our primary point of contact.

❖ Office of Insurance Commissioner

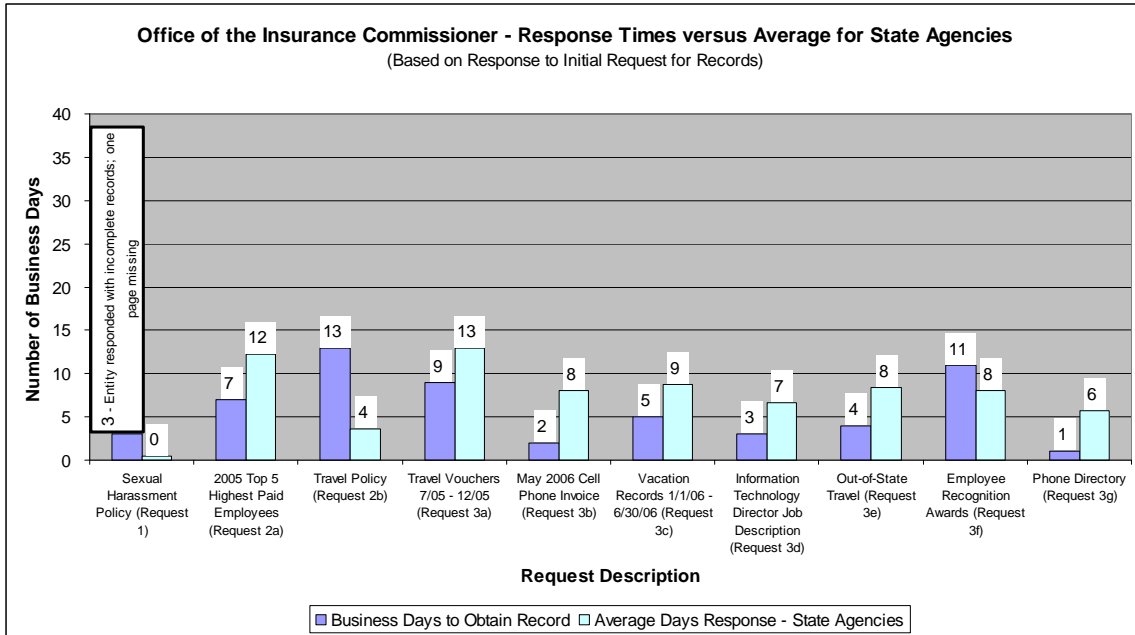
- **General Overall Responsiveness – 9 out of 10 Requests**



CONFIDENTIAL DRAFT

Washington State Auditor's Office

- **Responsiveness – 10 Requests - Compared to Average for State Agencies**



Office of Insurance Commissioner's Response

CONFIDENTIAL DRAFT

Washington State Auditor's Office

About Department of Social and Health Services

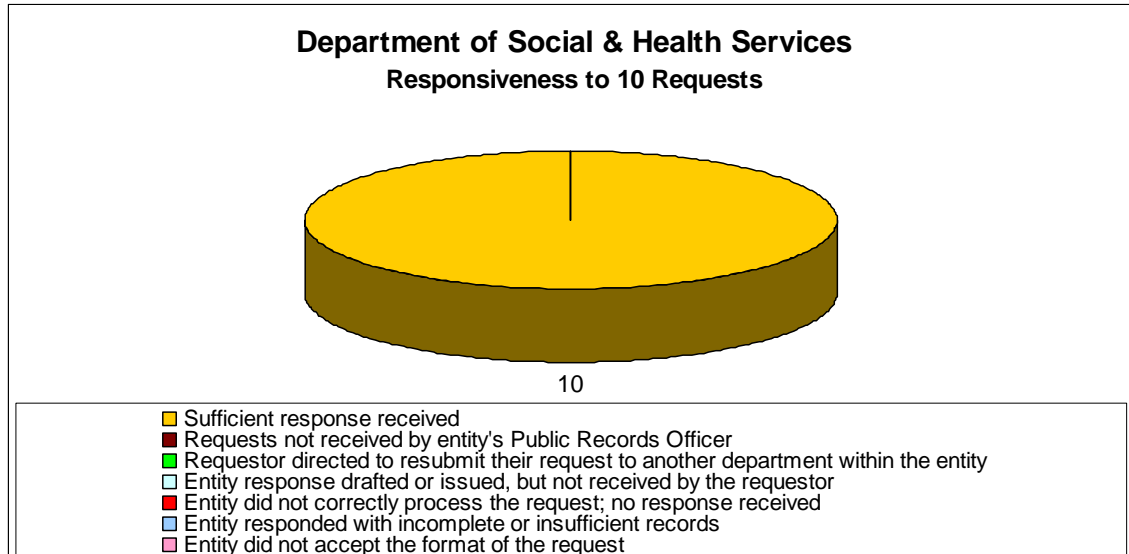
The Department is divided into five administrations: Health and Recovery Services, Economic Services, Aging and Disability Services, Juvenile Rehabilitation Services and Children's Services. The Health and Recovery Services Administration, which includes the Medicaid Program, which accounts for more than half of the Department's total budget.

The Department spends approximately \$9 billion a year, about one-third of the state budget.

The public records process is centralized. The Agency has one Public Records Officer who relies on approximately 300 coordinators located in field offices across the state to assist in gathering records in response to requests. The Public Records Officer was our primary point of contact.

❖ Department of Social and Health Services

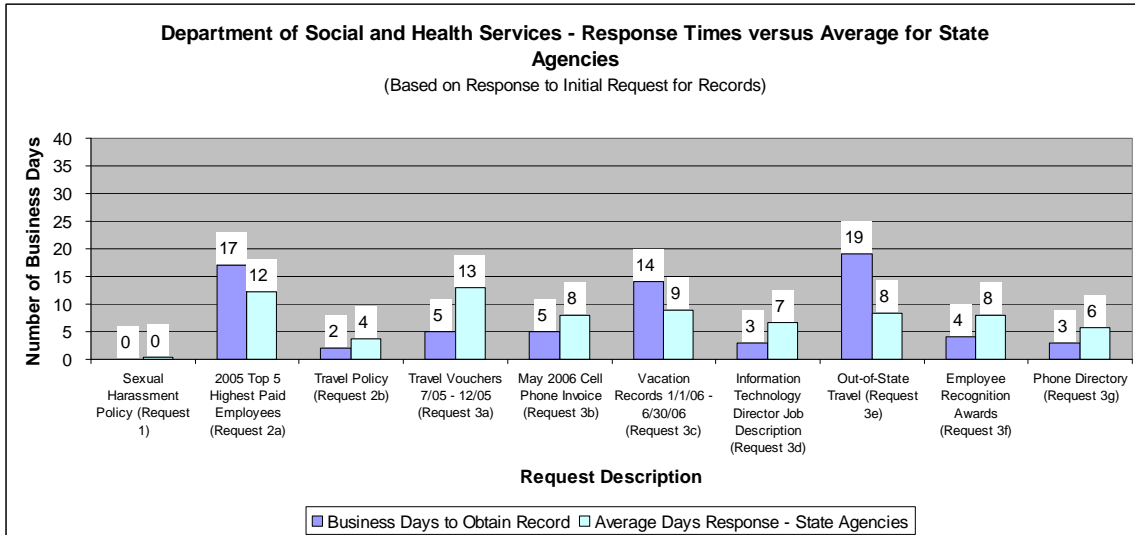
- **General Overall Responsiveness – 10 out of 10 Requests**



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Washington State Auditor's Office

- **Responsiveness – 10 Requests - Compared to Average for State Agencies**



Department of Social and Health Services' Response

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Washington State Auditor's Office

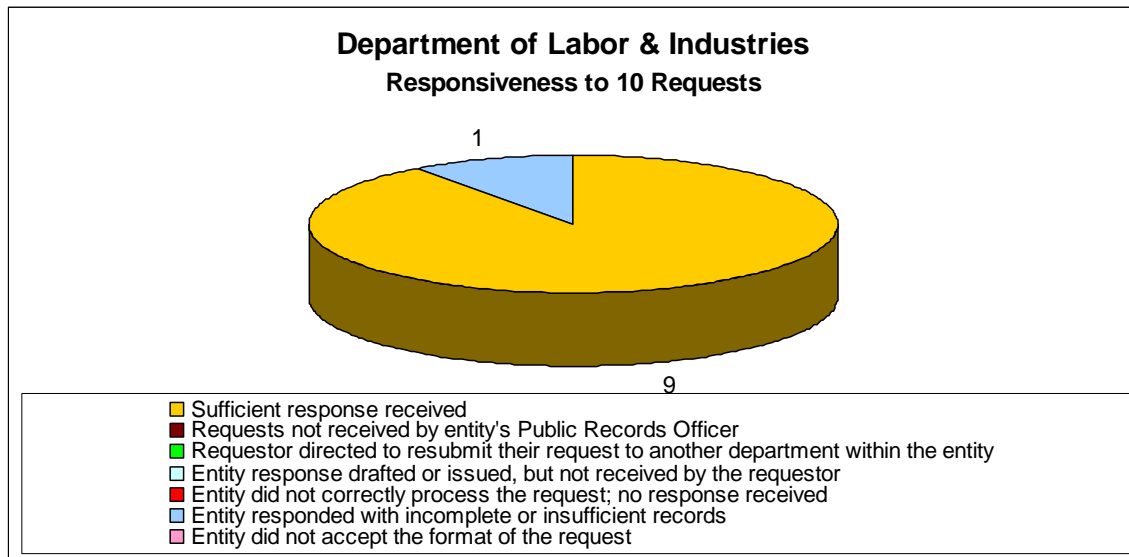
About Department of Labor and Industries

The Department of Labor and Industries works to help employers meet safety and health standards and inspects workplaces for hazards. The Department administers the state's Workers' Compensation System, which provides medical and limited wage replacement coverage to workers with job-related injuries and illness. The Department also regulates self-insured employers, provides financial and medical help to victims of violent crime, conducts electrical elevator and boiler inspections, registers construction contractors, issues licenses and enforces prevailing wage regulations.

The Department's public records process is centralized. It has one Public Records Officer who relies on the efforts of a Public Records Manager, a Legal Services Program Manager and five Forms and Records Analysis workers to compile and review records in response to requests. The Department has numerous points of contact, but the Public Records Officer was our primary point of contact.

❖ Department of Labor and Industries

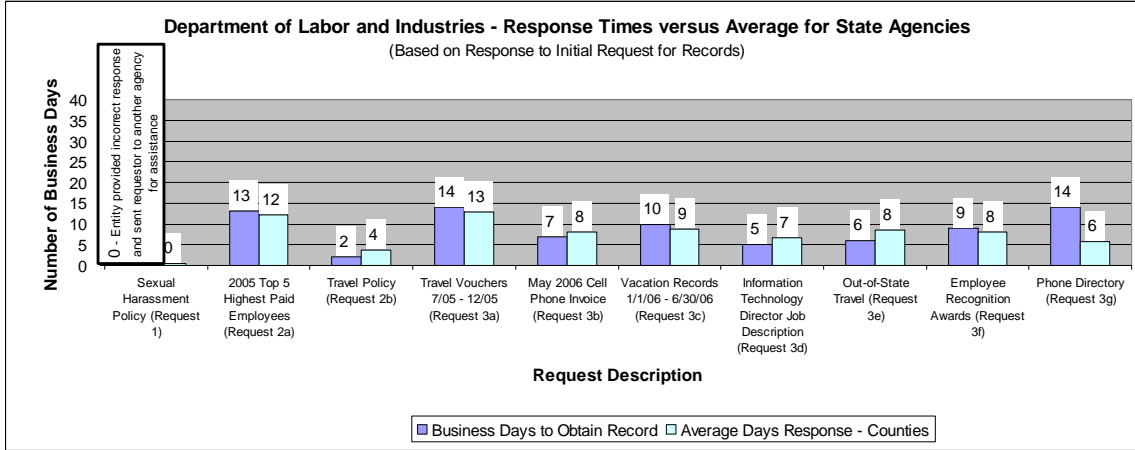
- **General Overall Responsiveness – 9 out of 10 Requests**



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- **Responsiveness – 10 Requests - Compared to Average for State Agencies**



Department of Labor and Industries' Response

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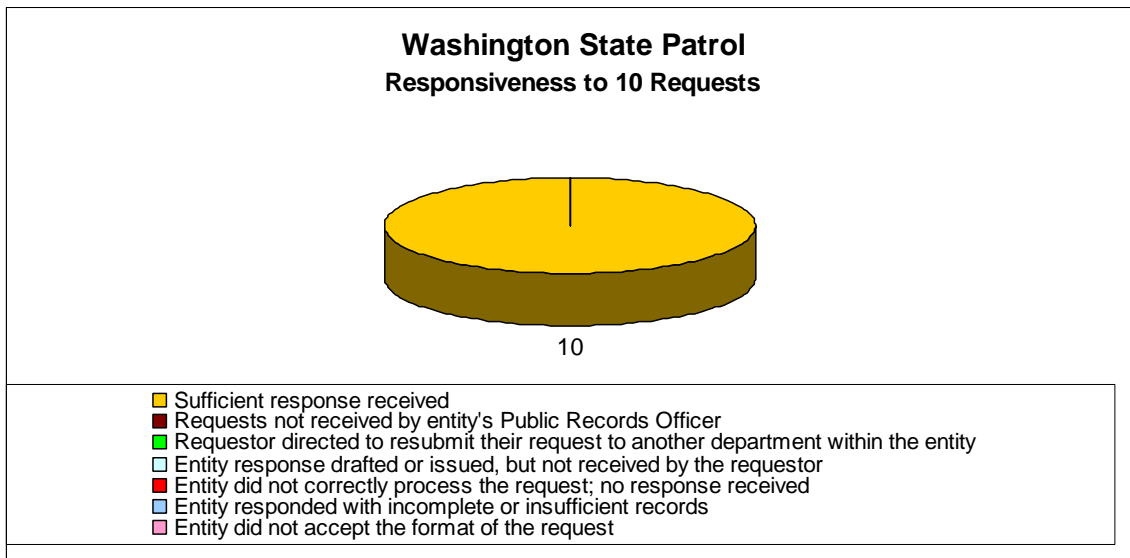
About Washington State Patrol

The Washington State Patrol provides public safety services, including highway patrols, forensic laboratories, security on the Washington State ferries and drug enforcement.

The Agency has eight Public Records Officers, one in each district office. They help coordinate the compilation of records in response to requests. The Public Records Officer in the Olympia district office was our primary point of contact.

❖ Washington State Patrol

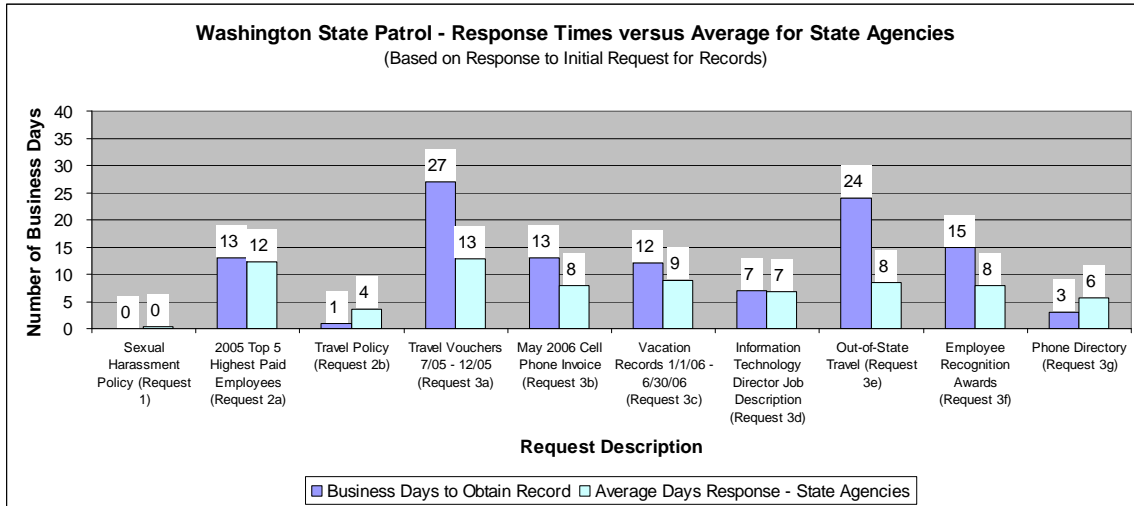
- **General Overall Responsiveness – 10 out of 10 Requests**



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Washington State Auditor's Office

- **Responsiveness – 10 Requests - Compared to Average for State Agencies**



Washington State Patrol's Response

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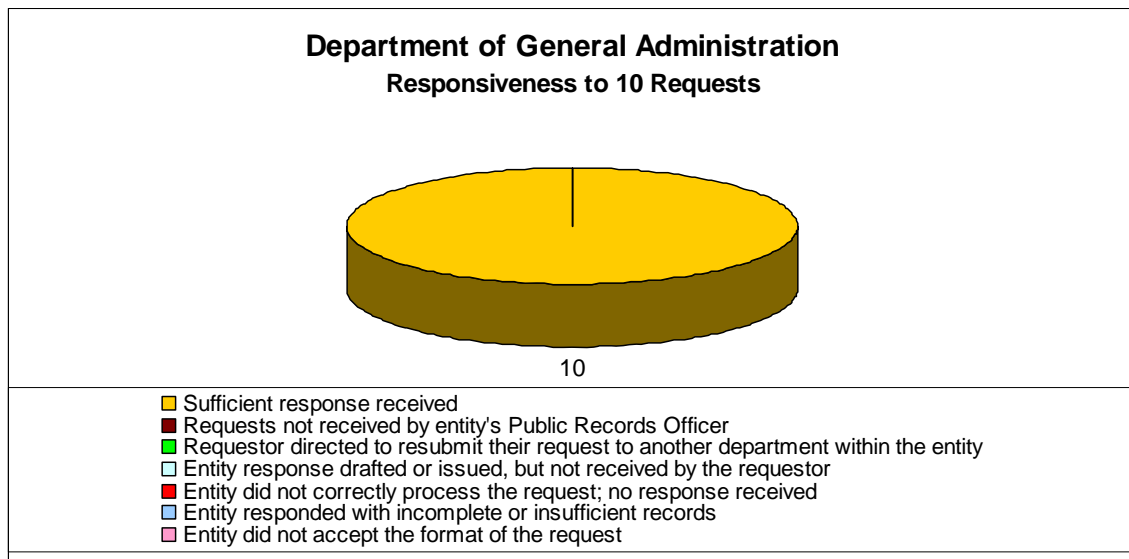
About Department of General Administration

The Department of General Administration provides expertise in essential support services to other agencies. The Department's primary customers are state agencies, although services are also offered to municipalities across the state. The general public also receives direct benefit from the Department's management of the Capitol Campus buildings, grounds, and parks. The Department has three divisions: facilities, services and administration.

The Department's public records process is centralized for non-routine, high risk and low volume requests and has only one Public Records Officer within its executive management. However, the process is decentralized for certain routine volume requests, primarily related to bidding and procurement documents. Our audit scope was limited to the Public Records Officer position in the Administrative Services Division as it served all of the unannounced requests submitted as part of our testing.

❖ Department of General Administration

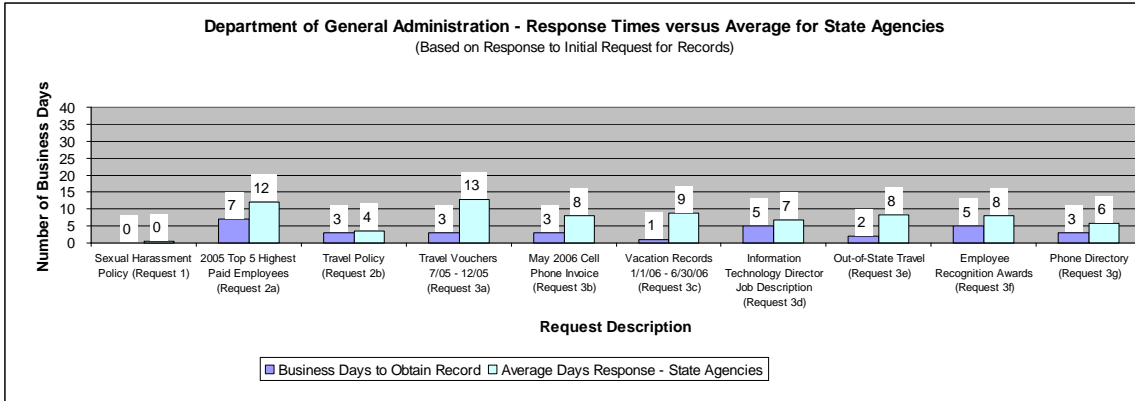
- **General Overall Responsiveness – 10 out of 10 Requests**



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- **Responsiveness – 10 Requests - Compared to Average for State Agencies**



Department of General Administration's Response

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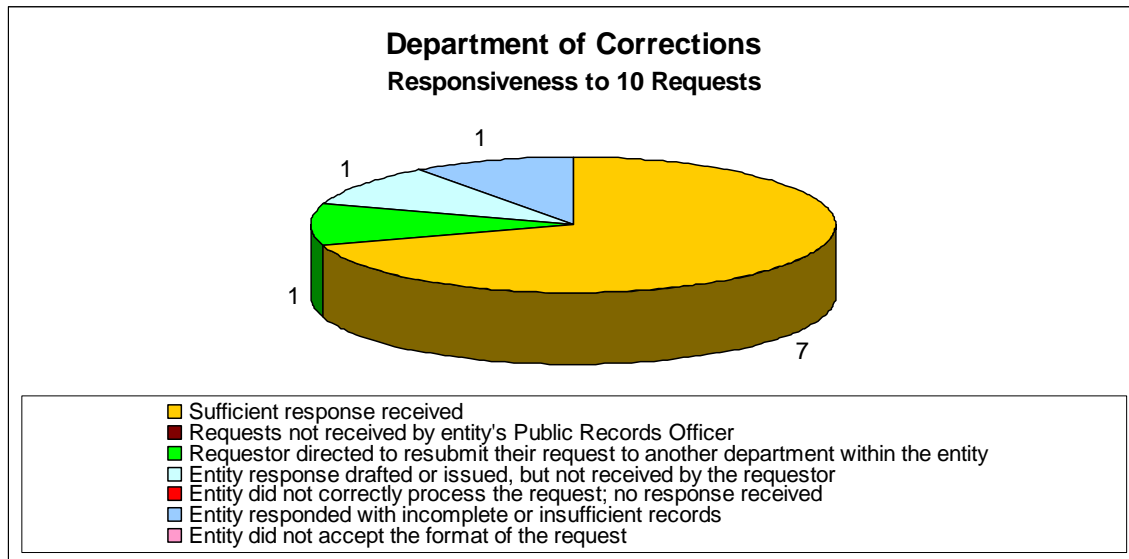
About Department of Corrections

The Department of Corrections consists of the Office of the Secretary and three divisions, each headed by a Deputy Secretary: the Prisons Division, the Community Corrections Division and the Administrative Services Division.

Corrections' public records process is centralized. It has one Public Records Officer who relies on a staff of four full-time employees and 25 coordinators who compile and review records in response to requests. The Headquarters staff processed and responded to our unannounced requests.

❖ Department of Corrections

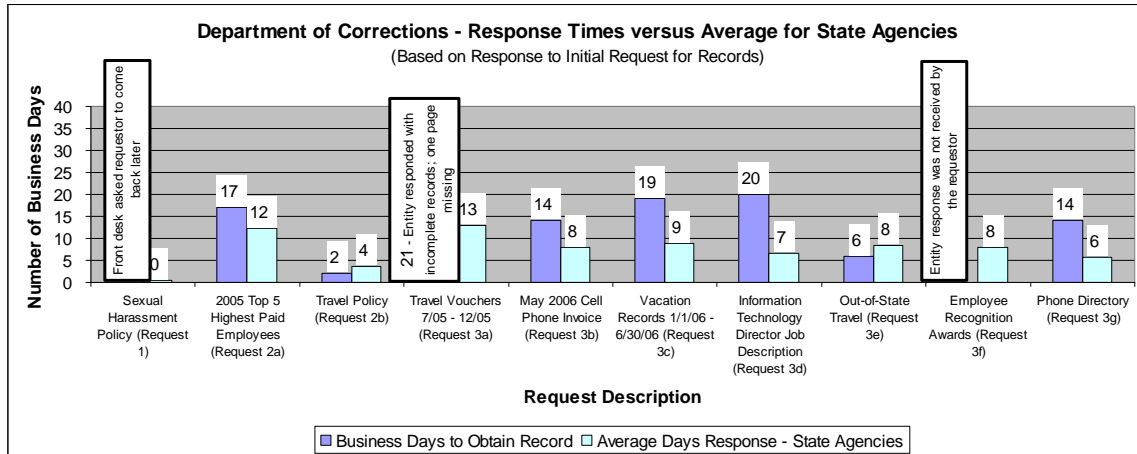
- **General Overall Responsiveness – 7 out of 10 Requests**



- **Responsiveness – 10 Requests - Compared to Average for State Agencies**

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Department of Corrections' Response

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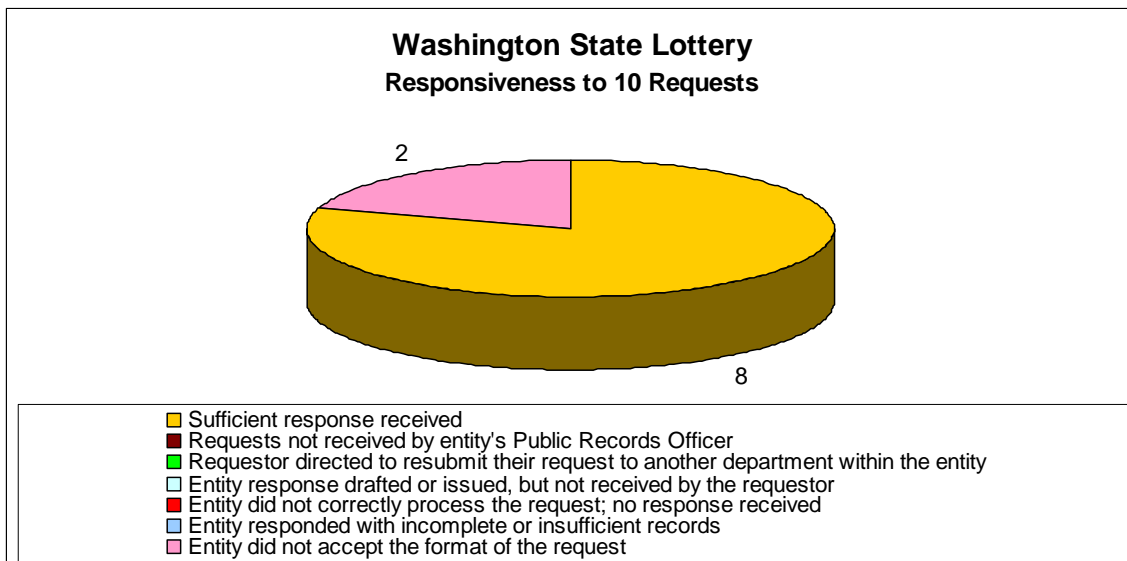
Washington State Auditor's Office

About Washington State Lottery

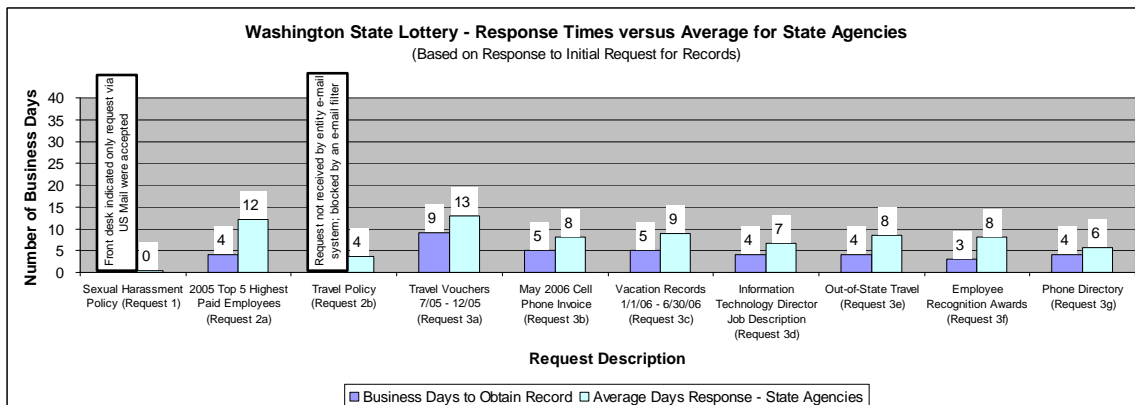
Washington's Lottery was created by the state Legislature in July 1982. The Commission sells operates and sells several types of gaming tickets to adults in the general public.

The Lottery's public records process is decentralized. It has two Public Records Officers who assist in the records request process. The Officers operate out of the agency's Legal Services Department. The Public Records Officers at the Legal Services department were our primary points of contact.

- **Washington State Lottery**
- **General Overall Responsiveness – 8 out of 10 Requests**



- **Responsiveness – 10 Requests - Compared to Average for State Agencies**



Washington State Lottery Response

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About Office of Financial Management

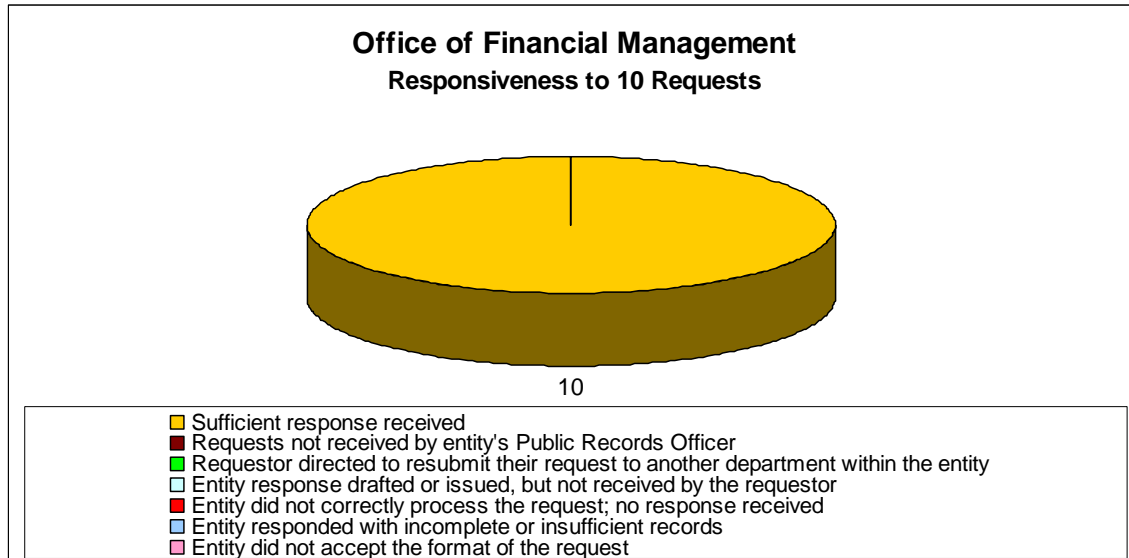
The Office of Financial Management provides assistance to the Governor, the Legislature and state agencies in several areas including:

- Budget planning and monitoring and financial administration for executive branch agencies.
- Preparing the Governor's budget proposals and legislation for presentation to the Legislature.
- Developing, supervising and maintaining the statewide accounting systems and the central chart of accounts.
- Providing accounting services to small agencies and overseeing statewide personal service contracts.
- Forecasting estimates of state and local population, projecting the state's revenue and monitoring changes in the state economy and labor force.

The Office's public records process is centralized. The agency has one Public Records Officer who relies on five to six coordinators assigned to the Agency's divisions to compile and review records in response to requests. The Public Records Officer was our primary point of contact.

❖ Office of Financial Management

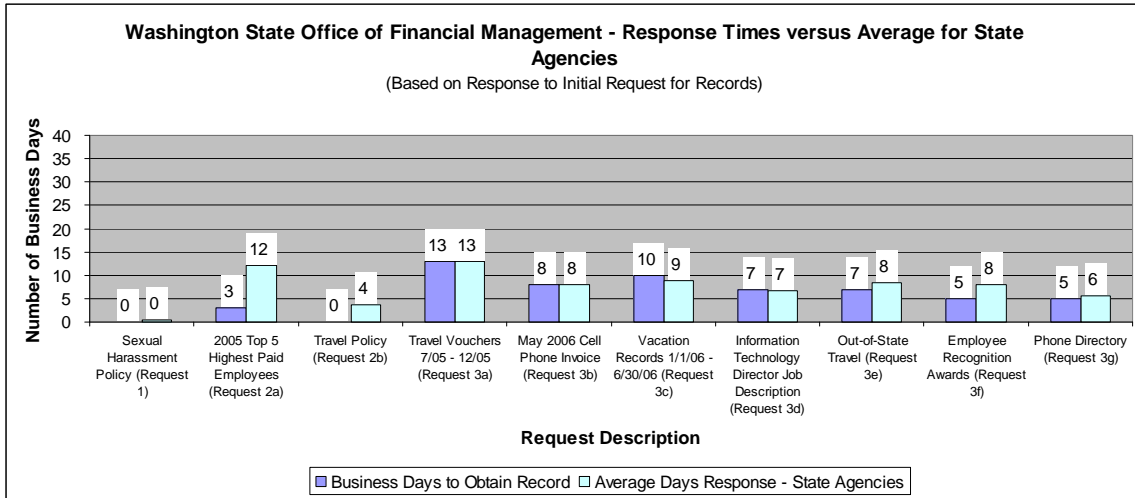
- **General Overall Responsiveness – 10 out of 10 Requests**



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Washington State Auditor's Office

- **Responsiveness – 10 Requests - Compared to Average for State Agencies**



Office of Financial Management's Response

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Washington State Auditor's Office

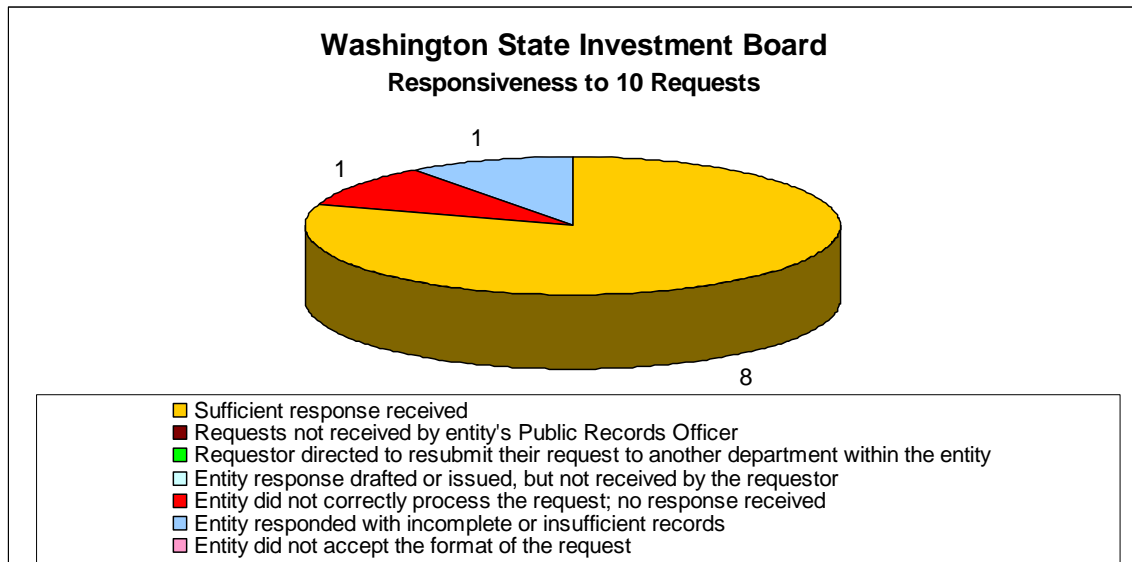
About Washington State Investment Board

The Washington State Investment Board was created in 1981 to establish investment policies and procedures designed to maximize return on the state's investments at a prudent level of risk. The Board manages investments for 14 retirement funds for public employees, teachers, school employees, law enforcement officers, firefighters and judges. The Board also manages investments for 19 other public funds that support or benefit industrial insurance, colleges and universities, developmental disabilities and wildlife protection.

The public records process is centralized. The Agency has one Public Records Officer in the Public Affairs department. The Public Records Officer was our primary point of contact.

❖ Washington State Investment Board

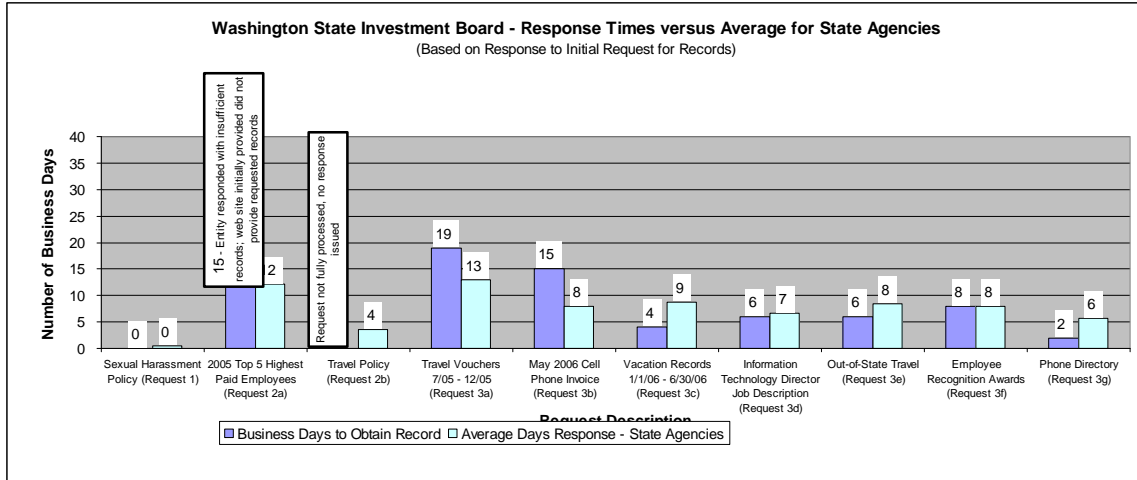
- **General Overall Responsiveness – 8 out of 10 Requests**



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- **Responsiveness – 10 Requests - Compared to Average for State Agencies**



Washington State Investment Board's Response

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Appendix D

Summary Observations from Entity Interviews

We sought comments from the staff who responded to our requests as to their general perception of their entity's current processes and practices in responding to public records requests with the following interview questions:

“What attributes in your system accommodates timely and efficient responses to public records requests?”

- **Attitude**
More than half of the interviewees stated that attitude and customer service are a critical attribute to successfully responding to public records requests.
- **Training**
Fifty percent of the interviewees stated that training is a critical factor in successfully responding to public records requests.
- **Request Tracking**
More than half of the interviewees stated that tracking public records requests is a critical attribute to successfully responding to public records requests.
- **Electronic Documents**
More than half of the interviewees stated that converting public documents to electronic form will improve the accessibility and retrieval of public records.
- **Centralization**
Twenty percent of the interviewees considered centralization of the public records process as a critical factor to successfully respond to public records requests.
- **Assistance by Public Records Officers**
Nearly 25 percent of the interviewees considered assistance from the entity's public records officer to be a critical factor in successfully responding to public records requests.
- **Monitoring & Accountability**
Nearly 25 percent of the interviewees considered a system of monitoring and accountability to be a critical factor in successfully responding to public records requests.

We sought comments from the staff who responded to our requests about challenges in responding to requests and in the processes they have in place:

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“What are the major attributes/impediments that impair the entity’s ability to respond timely and efficiently to public records requests?”

“What would you change, if anything, regarding the processes you currently have in place?”

- **Staff & Resources**

Nearly 50 percent of the interviewees stated that a lack of staffing and resources allocated to public records requests is challenging to meet the public expectations. In most cases, public records requests are an ancillary duty assigned to staff who find that fulfilling public records requests impacts their ability to fulfill their primary assigned duties and functions.

- **Need for Better Guidance**

Approximately 20 percent of the interviewees stated that they would like better guidance on how to process and administer public records requests.

- **Large Requests**

Almost 20 percent of the interviewees stated that a challenge in fulfilling public records requests were that some requests involved a large number of records and the associated challenges in locating and compiling those records.

- **Nuisance (Malicious) Requests**

Nearly 20 percent of the interviewees noted malicious, disingenuous or insincere requests are submitted because of bad feeling or conflict the requestor may be having with their entity or the desire to delay or block a potential action by the entity using valuable time and resources to fulfill.

- **Increasing Volume of Requests**

Nearly 20 percent of the interviewees stated that the volume of public records requests is significantly increasing at an increasing rate.

- **Locating Records**

Approximately 20 percent of the interviewees stated that that locating the requested records is at times difficult.

- **Costs & Funding**

Approximately 15 percent of interviewees stated that the time dedicated to responding to public records requests presented a challenge given the costs associated with the activity and the lack of dedicated funding for this activity by their entity.

- **Vague Requests**

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Nearly 20 percent of interviewees stated that one of the challenges in fulfilling public records requests is identifying what specific records the requestor is seeking. They feel constrained because they are aware they can't ask the requestors "why" they are making the request but would like to do so to provide greater clarity to the requests.

- **Five-Day Rule**

Nearly 20 percent of interviewees stated that they felt significant pressure to respond to the requestors in the statutorily required five days. There appears to be some confusion and misunderstanding by the interviewees application of the law. The law requires the entity to acknowledge it has received the request in five business days. If the record can't be provided, entities are afforded the ability to provide a reasonable estimate of when the records would be provided and provide them when they are assembled and available for inspection. In any event, entities should provide the requested records in the most timely possible manner.

We communicated with each audited entity many times during the audit. Additionally, information came to our attention critiquing the Public Records Act from public officials, public entities, newspaper editorials, public records blogs and a national. Those areas are as follows:

- **Public Records Requests Submitted for Commercial Use**

During our interviews, five entities expressed concerns regarding the time required to fill records requests that are, in their view, used for commercial purposes:

- King County
- Yakima County
- Department of Social and Health Services
- Department of Labor and Industries
- Washington State Patrol

For example, the Washington State Patrol told us significant resources are spent providing accident reports to attorneys. Despite the law forbidding requestors from using information obtained from a public records request for commercial purposes, entities assert this is occurring and rarely challenged. The entities believe the time spent on these requests is costly and uses resources that could be applied to day-to-day operations.

Five entities interviewed stated they receive requests from private attorneys they believe are for commercial use:

- King County
- Yakima County
- City of Seattle
- Department of Labor and Industries
- Washington State Patrol

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We observed from our request for entities' phone directories containing names and contact information that the City of Kent required the requestor to sign an affidavit attesting that the information provided would not be used for commercial purposes. The Washington State Patrol also provided a signature line for the requestors to certify they understood the records provided were not to be used for commercial purposes.

- **Public Requests Submitted in Lieu of Attorney Discovery Process**

King County and the City of Seattle stated they were receiving an increasing number of requests from attorneys using the Public Records Act to gather public documents prior to filing litigation. The entities believe that these types of public records requests shift the costs previously borne by the attorneys in the discovery process to the public entities that must provide the records under the Public Records Act. We observed the Washington State Patrol provided a signature line for the requestor to sign, certifying they understood the records provided were not to be used for commercial purposes.

- **Privacy Restrictions Imposed by Collective Bargaining Agreements**

During our evaluation of the contributing factors resulting in an entity being less timely in providing records, the Department of Social and Health Services advised us that records requests directed at specific individuals were delayed because the entity's collective bargaining agreement with one union requires Department employees to be notified of public records requests to allow them the opportunity to seek a court order preventing disclosure of the requested records or elements of the records. The information sought in our unannounced requests specifically avoided requesting information that was exempt from disclosure.

- **Records Requests from Incarcerated Prisoners**

Faced with what Washington State Attorney General Rob McKenna calls a "cottage industry" of prison inmates filing requests for large numbers of government records in hopes of collecting penalties for slip-ups, state lawmakers are considering changing the rules. The proposal calls for paying any penalties into the state's victim-compensation fund, rather than to the inmate. According to the Attorney General's Office:

- Since 2002, one inmate has filed 494 requests totaling 19,000 pages of government records, plus audio tapes and CDs.
- Another inmate filed 788 records requests in the last five months of 2005.

The Department of Corrections determined that approximately 73 percent of the records requests received in 2007 were received from inmates.

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Appendix E

Sources of information about the Public Records Act

- **Public Records Act (RCW 42.56)**

<http://apps.leg.wa.gov/RCW/default.aspx?cite=42.56>

- **Washington Attorney General's Model Rules:**

The Attorney General's Office developed model rules regarding paper and electronic public records that have been adopted and published in the Washington Administrative Code. The model rules are non-binding best practices to assist records requestors and agencies.

- **2006 Model Rules (Paper Records) -**
http://www.atg.wa.gov/uploadedFiles/Another/About_the_Office/Open_Government/Final%20Model%20Rules%20WACs.pdf
 - **2007 Model Rules (Electronic Records) -**
http://www.atg.wa.gov/uploadedFiles/Another/About_the_Office/Open_Government/Model%20Rules%20Electronic%20Records.pdf
 - **Public Records and Open Public Meetings -**
<http://www.atg.wa.gov/PublicRecords/default.aspx>
 - **"Obtaining Public Records" -** <http://www.atg.wa.gov/Records.aspx>
The Attorney General's Office has a Web page dedicated to guide public records requestors on how to request records and what records are available for inspection. -
 - **"Open Government Internet Manual" -**
<http://www.atg.wa.gov/OpenGovernment/InternetManual.aspx>
 - **Sunshine Committee:**
<http://www.atg.wa.gov/opengovernment/sunshine.aspx>
- **Other Resources:**
 - **Municipal Research Service Center -**
<http://www.mrsc.org/subjects/legal/prd/prd.aspx>
 - **Washington Coalition for Open Government -**
<http://www.washingtoncog.org/>

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Appendix F

Tips for Obtaining Public Records

- **Be precise.** Make your request as specific as you can and be willing to be flexible in working with the entity to narrow your request. Provide, ideally in writing, a reasonable description that will enable the agency locate the record. Also, because many governments are large and decentralized, try to determine which office or department may holds the record(s) you are requesting.
- **Be pleasant.** Entity staff will be more inclined to assist you locate a record if you approach them professionally. If the entity staff appears unable to assist you, ask to be referred to the entity's Public Records Officer for guidance and assistance.
- **Be persistent.** Assume the record you are requesting is a public record and if need be, state that you are making a "public records request." It is the responsibility of the entity to determine if a record or portions of a record are exempt. If the entity tells you a record is exempt and denies your request, it should also provide you with the specific legal citation of the exemption.

Source: Compiled from - "*Tips make record gathering easier*" – Adam Lynn, Spokesman-Review (www.openwashtington.com)

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Appendix G

Communication from the Governor on the Public Records Act

CHRISTINE O. GREGOIRE
Governor



STATE OF WASHINGTON

OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

September 18, 2007

TO: State Agency Directors
FROM: Governor Chris Gregoire *Chris*
SUBJECT: Open Records/Public Records Act

I know you share my support for open government and our state's Public Records Act (Act). As more public records are available electronically, state agencies have an opportunity to work with people who request electronic copies of public records and, when possible, make electronic copies of non-exempt public records available in electronic format.

Numerous writers, scholars and lawyers have expressed views on the topic of production of electronic records. Very few states have addressed any aspect of this issue in their state public records laws. At least one court has ruled that Washington's Public Records Act does not require the production of electronic copies of non-exempt public records. Today, regardless of the technical requirements of the Act, I am asking all state agency public records officers to work with people who request electronic copies of non-exempt public records and, whenever possible, to satisfy these requests.

I know this will be new work and, in some cases, a new challenge for state agencies. To provide support, I am asking that the Department of Information Services designate a team to serve as a resource for state agency records officers and information technology departments, as they work to respond to these requests in the coming year.



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STATE OF WASHINGTON

OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

February 7, 2006

TO: All Agency Directors

FROM: Christine O. Gregoire
Governor

SUBJECT: Washington Public Disclosure Act

I am writing about a subject that is very important to this administration and the people of Washington. Voters passed our Public Disclosure Act as an Initiative in 1972. The purpose of this memorandum is to emphasize my expectation that this administration will live up to the spirit of this very important law.

We all share the goal of increasing the credibility of state government. The Public Disclosure Act is a vital tool in helping us achieve that goal. The concept behind the Public Disclosure Act is simple. An informed public is essential to our form of government. The public must retain control of government and the only way it can do that is to be informed about what government is doing.

Here is how drafters of the Public Disclosure Act put it: "The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created."

Others point out that the more informed people are, the better they will be governed and that government performs best when it is open and accountable.

The Public Disclosure Act is one of the primary ways the public keeps informed about government. I therefore direct all agencies to renew their commitment to openness, to the underlying principles of the act, and to its effective implementation. Each agency must take a fresh look at its implementation of Chapter 42.17 RCW, reduce any backlog on disclosure requests, and foster an appreciation of the importance of public disclosure among its employees. It is the expectation of this administration that we will look for

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ways to comply with the letter and spirit of the Public Disclosure Act rather than look for ways to withhold disclosure.

Our goal should be to establish a public confidence that each individual has the ability to access the records needed to help him or her understand state government's decisions and how they are made. To do that, we must be committed to openness and practice it on a daily basis by enhancing public access and ensuring records are released in a timely, respectful way.

There is no question that release of some records can be time consuming, difficult, and sometimes even embarrassing. But we must always remember we are accountable to the people and that means we have to operate with an openness that allows them to have input on what we do, understand our decision making, and ultimately sit in judgment of our work. We must all work to build full public confidence that state government is open and accountable.

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Appendix H

Recent Developments in Public Records Management

- **Recently amended Attorney General's Model Rules addressing electronic records (See Appendix I).**

The Attorney General's Office recently amended its model rules to provide guidance to public entities on how to provide access to and copies of electronic public records.

- **Secretary of State - State Archivist's *Digital Archiving Project***

In 2005, the Secretary of State's Office State Archivist purchased a software system to convert state and local government documents to make them available electronically throughout the state. The Digital Archiving system also will help preserve the state's historical records while simplifying citizen access to those records.

- **Department of Information Services, Washington State Electronic Records Vault (WaServ)**

The state's Department of Information Services is putting in place WaServ, a new e-mail retention and discovery system for use by all state agencies. The Department plans to have the new service ready for use in 2008.

Many state agencies now store e-mail in a format that often is not searchable. This requires the agency to conduct a time-consuming search of individually stored e-mails when a public disclosure request is received. WaServ is designed to create a standard archiving method and is aligned with the Secretary of State's Digital Archiving Project. With the new system, state agencies will be able to respond faster to public records requests, complete comprehensive searches and make records retention practices uniform.

The Department states WaServ will result in reduced data storage costs because storage will be shared with other state agencies.

Internet Search Engines and Electronic Public Records

An Internet search engine provides free consulting and software to several states in an effort to make it easier for users to search for government information on the Internet. The records that will show up in search-engine queries already are available online but many are hard to find. Many state agency Web sites and electronic records haven't been indexed by popular search engines.

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APPENDIX I

Sample public records request

This letter is an example of a public records request. We sent this letter as one of our public records requests.

December 21 2006

Whatcom County
Attn: Public Records Officer
311 Grand Avenue
Bellingham, WA 98225

Dear Public Records Officer,

I am interested in obtaining specific documents for a six month period in 2005. I would like a copy of all travel vouchers and documentation supporting those vouchers for July through December 2005 for Jeffery Monsen, Public Works Director. If Jeffery Monsen was not in this position between July and December 2005, please provide the requested records for the individual that held the position during that period of time.

Please send these records to my address below.

Joan Fields

Please feel free to contact me with any questions/clarifications.

Sincerely yours,



Joan Fields

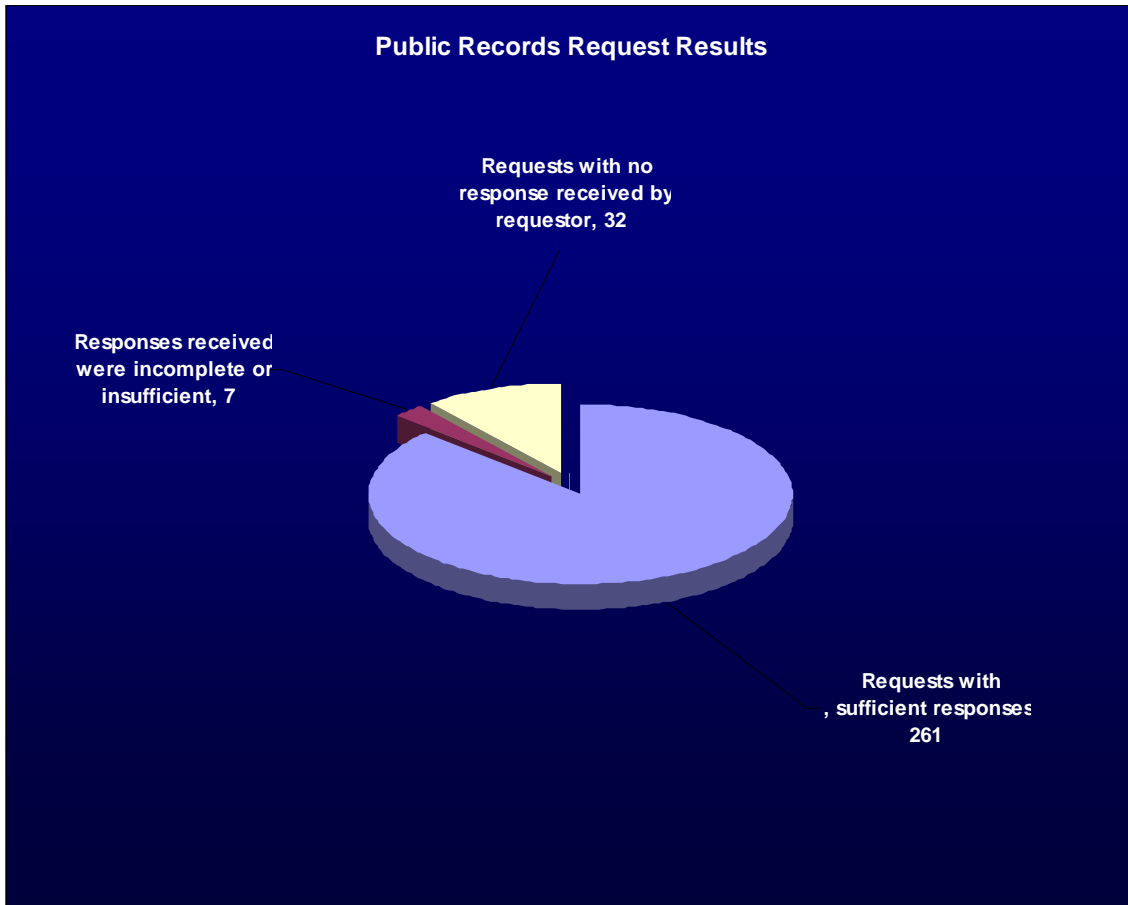
(509) 979-2119
J2fields@hotmail.com

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APPENDIX J Overall Results

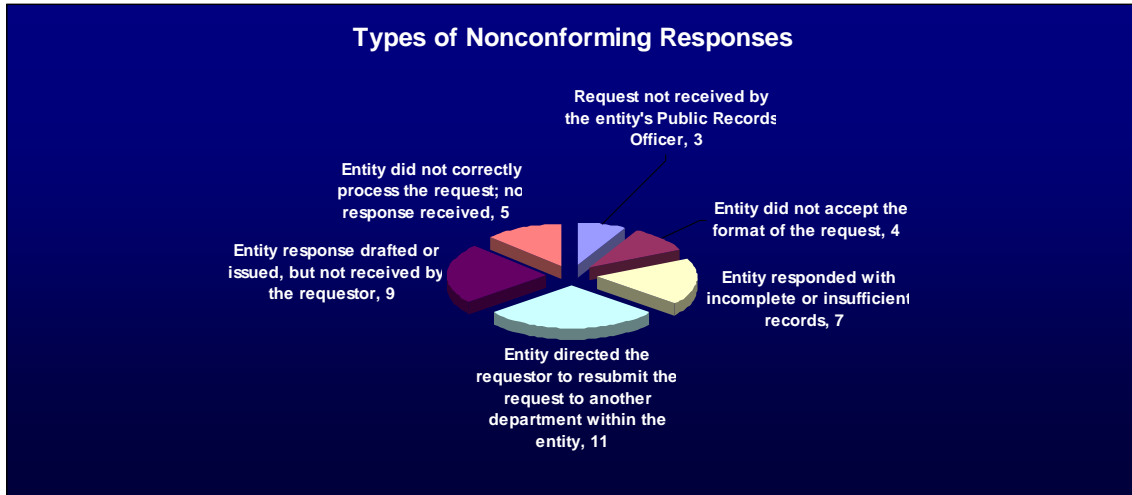
Our 300 unannounced public records requests achieved the following results:



- We received 261 (87 percent) conforming responses to our requests.
- Seven (3 percent) responses that did not conform to our requests.

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Based upon our follow-up at the entities, the entities asserted that

- Two entities' Public Records Officers asserted they had no record of receiving three (1 percent) of our requests.
- Seven (3 percent) responses did not fulfill four requests.

Two entities' public records officers stated

- Four requests were rejected because the entity did not accept the method of delivery.
 - In one instance, requestors were told only requests submitted via U.S. Mail would be accepted when they attempted to submit a verbal, in-person request.
 - Three requests that were submitted by e-mail were not responded to. One entity was able to verify the request was blocked by an e-mail filter. In the other two cases, the entities suspected the e-mails were blocked by an e-mail filter, but were unable to ascertain that.
- Eleven (almost 4 percent) of our requests were received by the entity, but we were directed to resubmit the request to another department or division. In these circumstances, we consider the entity to be nonresponsive to the original request.
- Nine (3 percent) requests were responded to by the entity but never received by our Office. We noted seven instances in which the entity could document that records were prepared or sent, but we never received them. In one instance, the entity sent a request for clarification that we never received.
- Five requests were not fulfilled because entity staff did not process the requests.

Walk-In requests for entity sexual harassment policy

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The results of our walk-in requests varied based on the complexity of the facility and availability of instructions such as signage on where to go to file a request, and the number of times the requestor was directed to another department to place the request.

Our audit expectation was entity staff would not ask about the purpose of the request unless it was clearly to aid in the identification of the records. This expectation is consistent with the spirit of the Public Disclosure Act. In the case described below, we found the inquiry regarding the reason the policy was being sought as barrier to obtaining the records.

Our walk-in request at Pierce County took an hour – at least double the amount of time the other requests took -- and required a significant effort on the part of the requestor because the entity's staff asked several questions bordering on contentious before agreeing to provide the record. An excerpt of the auditors' experience when making the request follows:

“During our walk-in request for the County’s sexual harassment policy, requestors were asked why they were interested in the policy by the front desk staff at the Clerk’s Office, and the Human Resources front desk staff and manager. The manager asked additional questions before the policy was provided; where the requestors went to school and what branch of the school they attended. Requestors asked why these questions were being asked and were informed the manager needed to know where the policy was going before she could provide it to them. After answering all of the questions, the manager provided the policy several minutes later.”

The following charts present the number of minutes it took requestors to enter the facility, place the request and leave the facility.

Average Time Spent by Requestor in Submitting Walk-in Requests

(by Entity type)

<u>Entity Type</u>	<u>Average Minutes Invested</u>
Counties	18 minutes
Cities	12 minutes
State Agencies	8 minutes

Walk-in Request: Time invested in submitting the request

<u>Counties</u>	
<u>Entity</u>	<u>Minutes</u>
Clark County	5
Spokane County	9
Kitsap County	10
Thurston County	10
Snohomish County	15
Yakima County	15
Whatcom County	15
Benton County	20
King County	25
Pierce County	60

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Cities

<u>Entity</u>	<u>Minutes</u>
City of Vancouver	5
City of Everett	5
City of Kent	5
City of Spokane Valley	10
City of Federal Way	10
City of Yakima	10
City of Spokane	12
City of Seattle	15
City of Bellevue	15
City of Tacoma	30

State Agencies

<u>Entity</u>	<u>Minutes</u>
Washington State Patrol	3
Dept. of Social & Health Services	5
Dept. of General Administration	5
WA State Office of Financial Mgmt	5
Office of Insurance Commissioner	7
Dept. of Labor and Industries	7
Washington State Lottery	7
Dept. of Corrections	8
WA St. Investment Board	10
Department of Revenue	20

We then measured the number of business days it took to obtain the records once the request was submitted. Entities are not required to provide the record upon demand; rather, they are required to accept our request and forward it to the appropriate person for processing. Entities that show a zero ("0") are entities that provided the records at the time of the visit. These requests occurred between February 9th and February 16th 2007.



Mail-In Requests:

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Averages for Each Request Mode

<u>Request Mode</u>	<u>Average Days Responsivity</u>
Certified Mail	10
Standard Mail	7
E-Mail	3

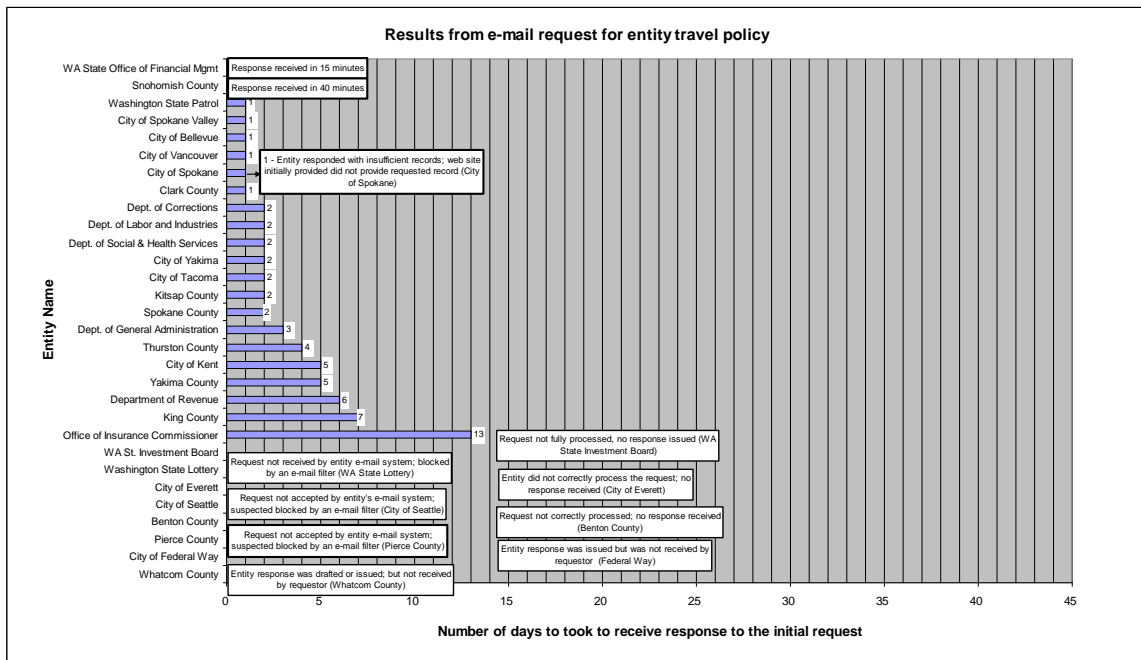
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Certified letter request for 5 highest paid employees: Our first request asked the entity to provide records that showed the names, job titles and compensation amounts for the entity's five highest-paid employees for calendar year 2005. The requests were sent by certified mail on November 22, 2006.



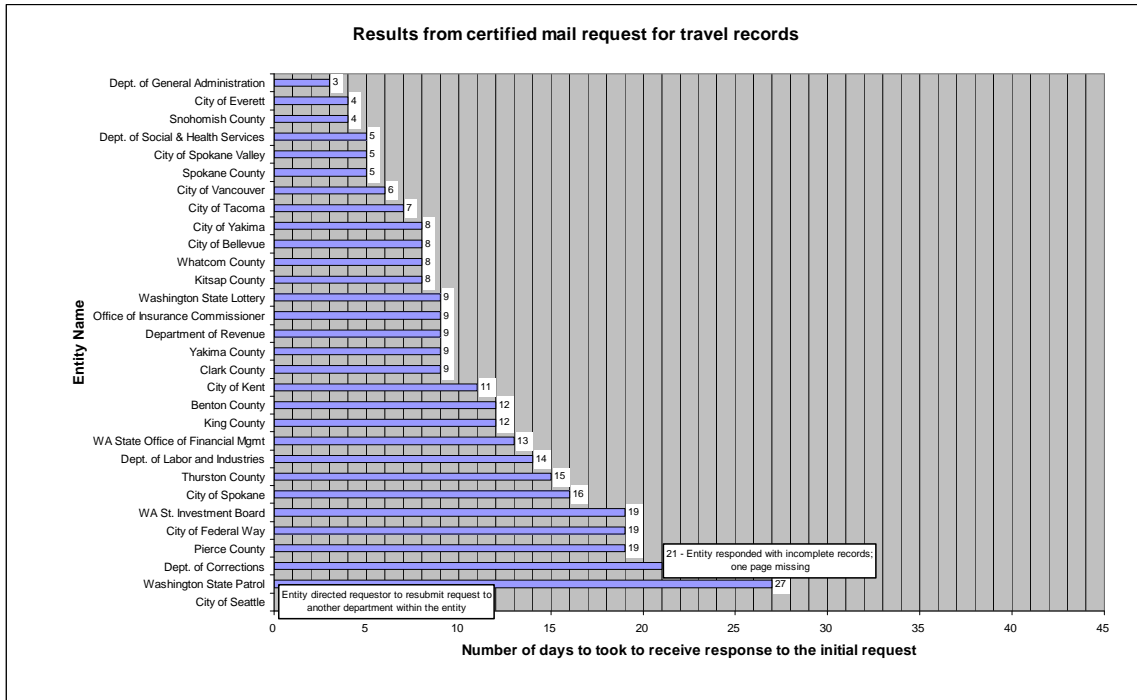
E-mail request for entity travel policy: This was the only request sent using e-mail. These requests were sent on December 14, 2006.



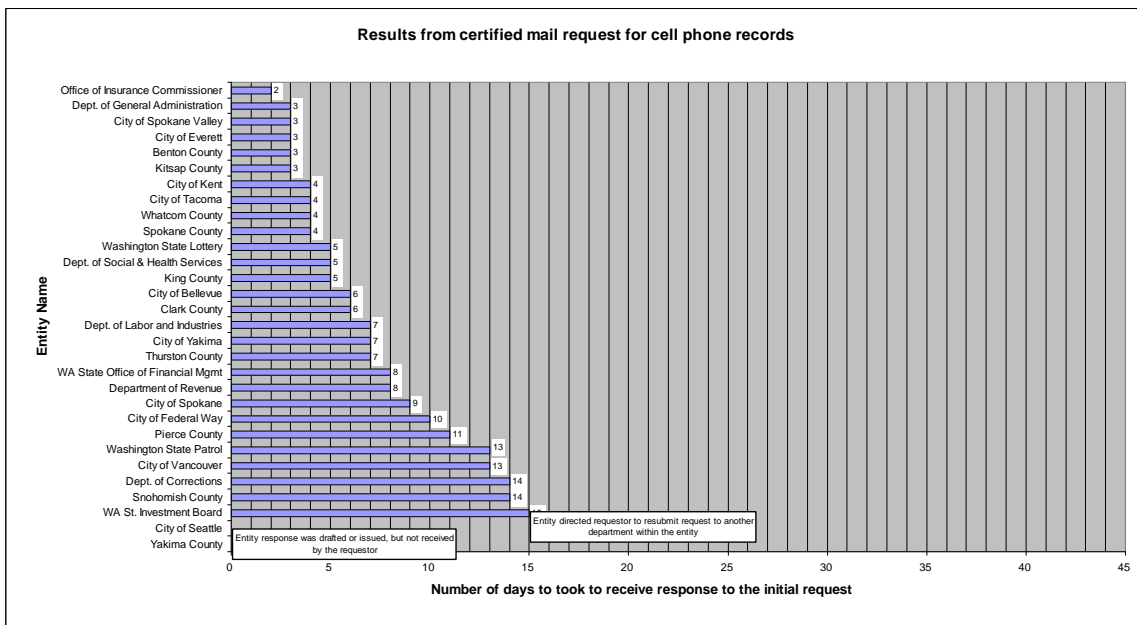
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Certified letter request for travel records: We asked the entity for copies of travel voucher(s) for specified entity staff for July through December 2005. The request was sent via certified mail on December 21, 2006.



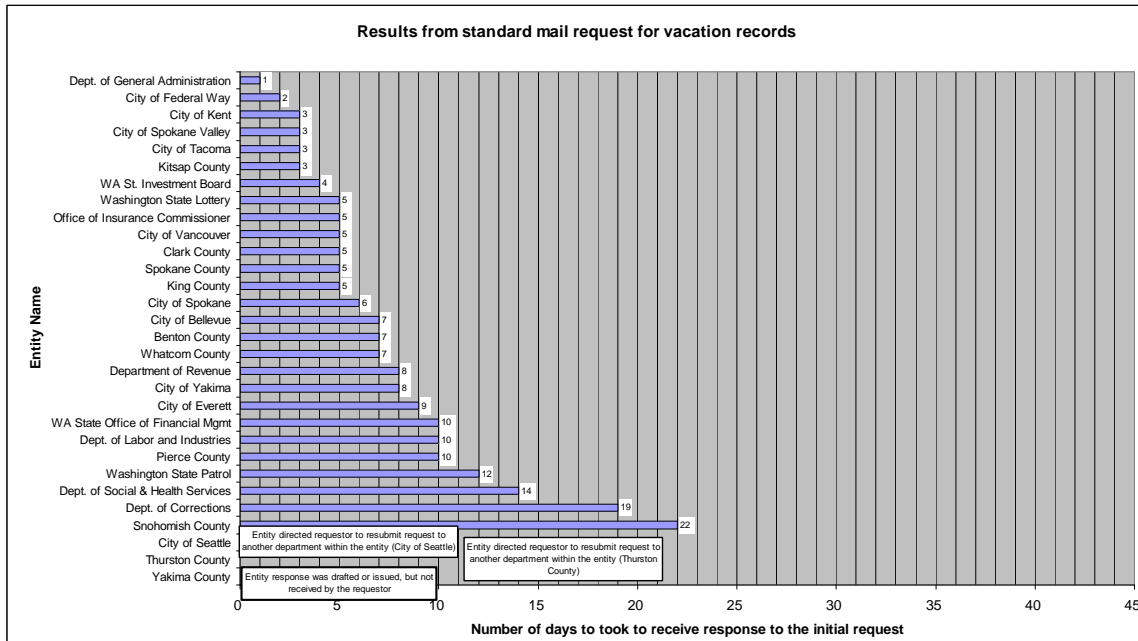
Certified mail request for cell phone records: We asked the entity for the May 2006 entity-owned cell phone record for the entity's top non-elected official or chief agency official. The request was sent via certified mail on December 28, 2006.



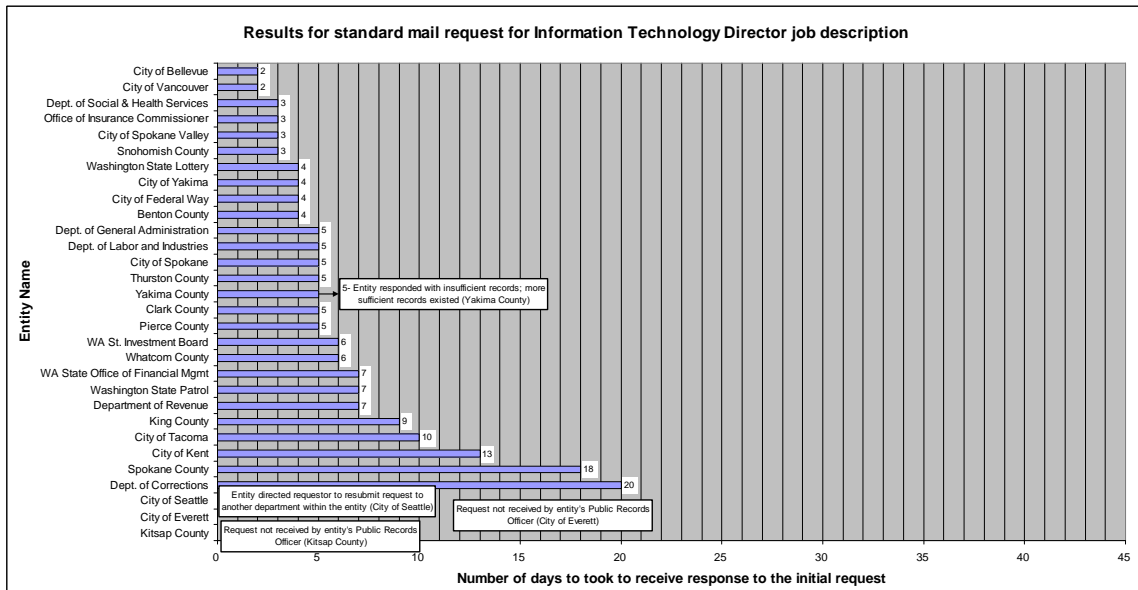
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Standard mail request for vacation records: We asked the entity for the vacation records of the entity's top, non-elected financial officer for January through June 2006. The request was sent via standard mail on December 28, 2006.



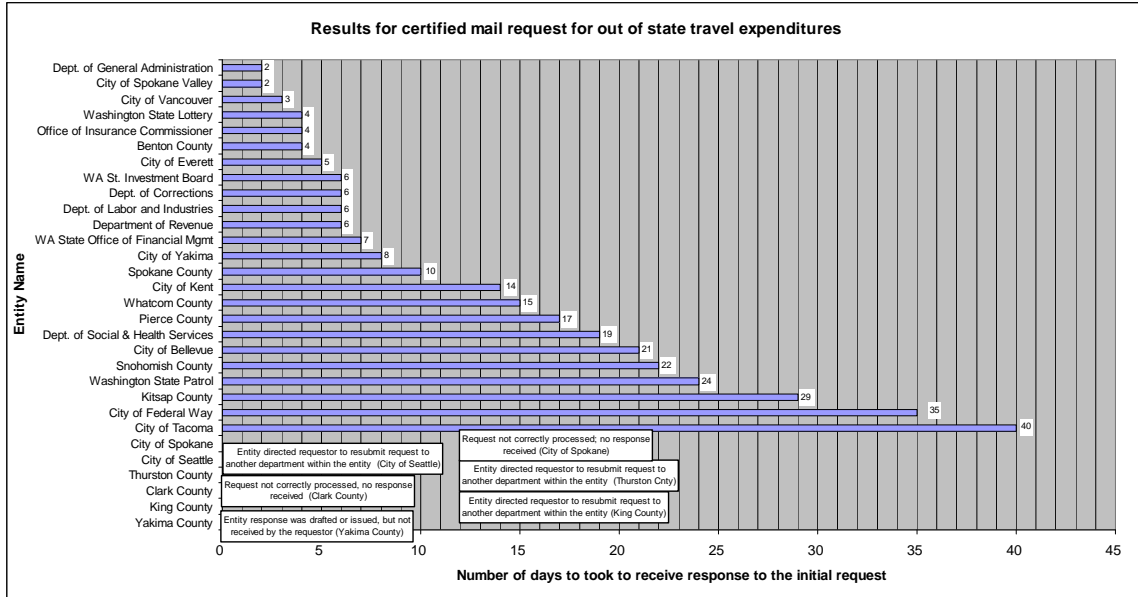
Standard mail request for Information Technology Director job description: The request was sent via standard mail on December 28, 2006.



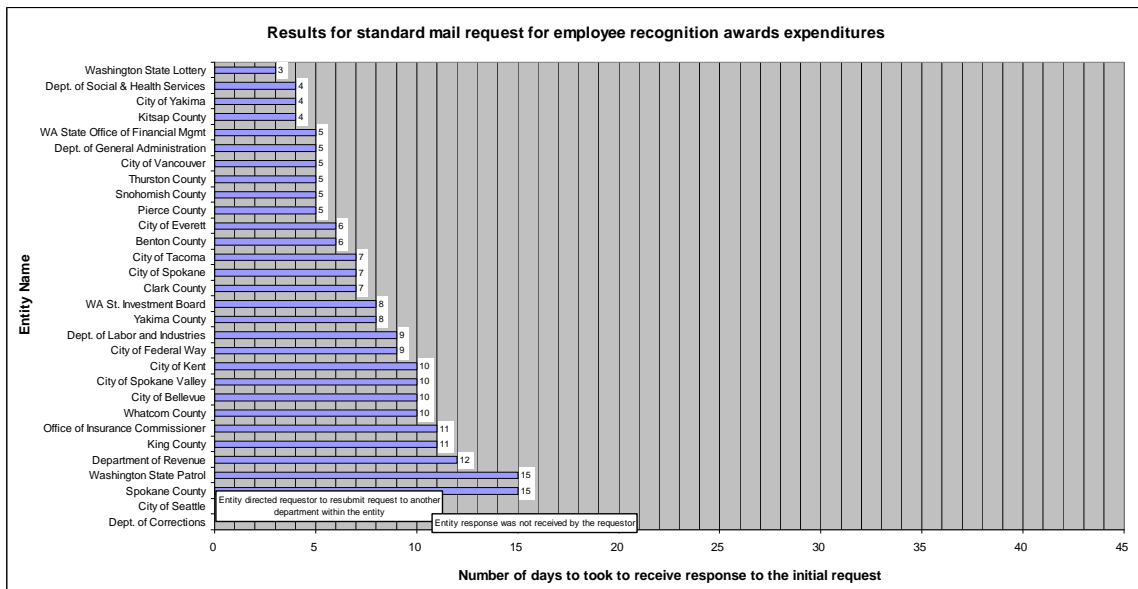
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Certified mail request for entity out of state travel records: We asked for all records and vouchers showing out-of-state travel reimbursements or travel costs for July 2005 through June 2006. One individual was selected from each entity. For counties and cities, the top law enforcement officer was selected. The request was sent via certified mail on December 29, 2006.



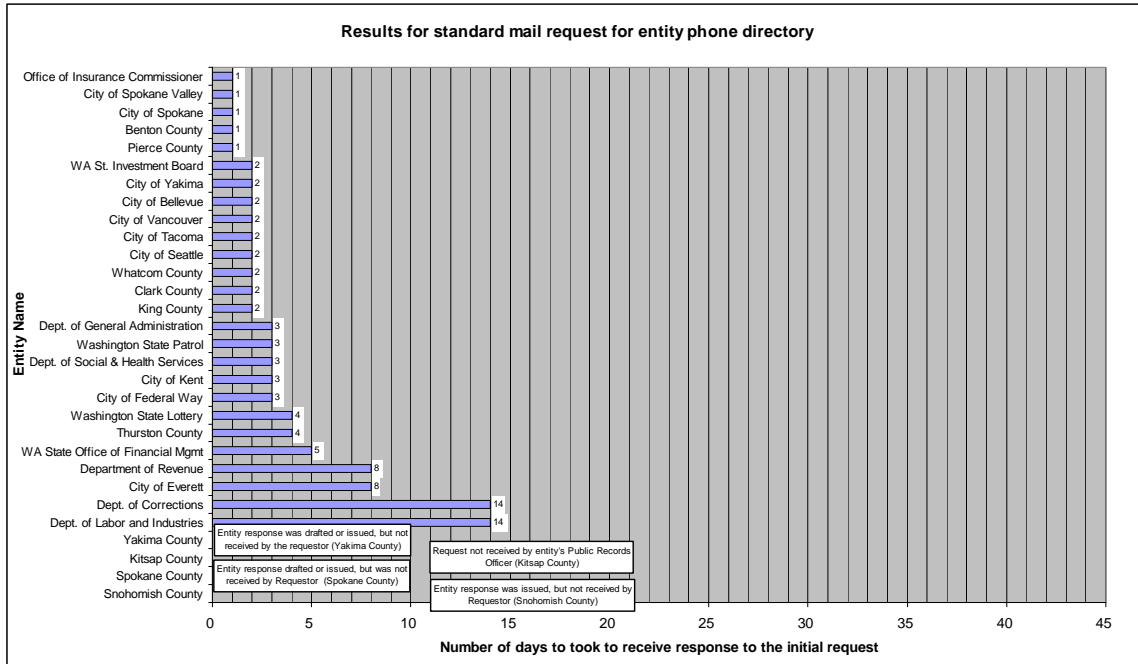
Standard mail request for employee recognition award expenditures: We asked for all records or vouchers showing expenditures for employee awards and/or recognition in December 2005 and January 2006 for selected entity departments. The request was sent via standard mail on January 3, 2007.



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Standard mail request for entity phone directory: In cases where we believed the entire directory would be too large, we requested a directory for one department within the entity. The request was sent via standard mail on January 5, 2007.



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APPENDIX K Criteria

General Performance Criteria:
RCW 42.56.030 states:

"The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments they have created. The public records subdivision of this chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern."

Initiative 276, passed in 1972, contained a similar public policy statement:

"It is hereby declared by the sovereign people to be the public policy of the state of Washington: . . . (11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society."

CRITERIA – Finding 1

We identified the top-performing entities based on the unannounced requests. Practices used by the top performers became our performance criteria. A list of the top performers is in the Overview of Audit Results section of this report. Top performing entities provided all requested records and those records were complete and consistent with those that were requested. Top performing entities did not redirect the requestor to submit his or her request a second time to a different department within the state agency or local government.

The legal criteria presented below is provided for context, as this audit was not focused on compliance with the Public Records Act but on the effectiveness and efficiency of state agencies' and local governments responses to records requests.

WAC 44-14-04004 - Responsibilities of agency in providing records states in part:

(1) **General.** An agency may simply provide the records or make them available within the five-business day period of the initial response. When

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it does so, an agency should also provide the requestor a written cover letter or e-mail briefly describing the records provided and informing the requestor that the request has been closed. This assists the agency in later proving that it provided the specified records on a certain date and told the requestor that the request had been closed. However, a cover letter or e-mail might not be practical in some circumstances, such as when the agency provides a small number of records or fulfills routine requests.

An agency can, of course, provide the records sooner than five business days. Providing the "fullest assistance" to a requestor would mean providing a readily available record as soon as possible. For example, an agency might routinely prepare a premeeting packet of documents three days in advance of a city council meeting. The packet is readily available so the agency should provide it to a requestor on the same day of the request so he or she can have it for the council meeting.

(4) **Failure to provide records.** A "denial" of a request can occur when an agency:

- Does not have the record;
- Fails to respond to a request;
- Claims an exemption of the entire record or a portion of it; or
- Without justification, fails to provide the record after the reasonable estimate expires.

CRITERIA – Finding 2

We identified the top-performing entities based on our unannounced requests as performance criteria. Those top performers can be found in the Overview of Audit Results section of this report. Top performers include those that accept public records requests in multiple forms that include in person, by e-mail, in writing, by fax, and by phone. Top performers do not filter or block public records requests submitted by e-mail to public records officers. Top performers do not require requestors to complete public records request forms. However, top performers allow requestors the option of using on-line request forms for requesting records and submitting those requests electronically.

The legal criteria below is provided for context, as this audit was not focused on compliance with the Public Records Act but on the effectiveness and efficiency of state agencies' and local governments responses to records requests.

RCW 42.56.100 - Protection of public records--Public access.

Agencies shall adopt and enforce reasonable rules and regulations, and the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with

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legislative sessions, consonant with the intent of this chapter 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, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives. Such rules and regulations shall provide for the **fullest assistance** to inquirers and the **most timely possible action** on requests for information. Nothing in this section shall relieve agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives from honoring requests received by mail for copies of identifiable public records.

WAC 44-14-030 Availability of public records. (4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the (name of agency) should make the request in writing on the (name of agency's) request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to section (insert section), standard photocopies will be provided at (amount) cents per page.

(c) A form is available for use by requestors at the office of the public records officer and on-line at (web site address).

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

WAC 44-14-03006 - Form of requests. There is no statutorily required format for a valid public records request. A request can be sent in by mail. RCW 42.17.290/42.56.100. A request can also be made by e-mail, fax, or orally. A request should be made to the agency's public records officer. An agency may prescribe means of requests in its rules. RCW 42.17.250/42.56.040 and 42.17.260(1)/42.56.070(1); RCW 34.05.220 (state agencies). An agency is encouraged to make its public records request form available on its web site.

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A number of agencies accept oral, in-person public records requests (for example, asking to look at a building permit). Some agencies find oral requests to be the best way to provide certain kinds of records. However, for larger requests, oral requests may be problematic. An oral request does not provide a record of what was requested and therefore prevents a requestor or agency from later proving what was included in the request. Furthermore, as described in WAC 44-14-04002(1), a requestor must provide the agency with reasonable notice that the request is for the disclosure of public records; oral requests, especially to agency staff other than the public records officer or designee, may not provide the agency with the required reasonable notice. Therefore, requestors are strongly encouraged to make written requests. If an agency receives an oral request, the agency staff person receiving it should immediately reduce it to writing and then verify in writing with the requestor that it correctly describes the request.

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CRITERIA – Finding 3

We identified the top-performing entities, based upon our unannounced requests as performance criteria. Those top performers can be found in the Overview of Audit Results section of this report. Top performing entities did not redact records or limited their redactions to those allowed or required by state law and explained the purpose of the redactions to the requestor.

The legal criteria presented below is provided for context, as this audit was not focused on compliance with the Public Records Act but on the effectiveness and efficiency of state agencies' and local governments responses to records requests.

RCW 42.56.060 - Disclaimer of public liability. No public agency, public official, public employee, or custodian **shall** be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record **if** the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter.

RCW 42.56.210 - Certain personal and other records exempt.

(1) Except for information described in RCW 42.56.230(3)(a) and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(2) Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(3) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

The Attorney General's "Model Rules" provides advisory guidance on redactions. Specifically, WAC 44-14-04004, "Responsibilities of agency in providing records" states in part:

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(4) **Failure to provide records.** A "denial" of a request can occur when an agency:

- Does not have the record;
- Fails to respond to a request;
- Claims an exemption of the entire record or a portion of it; or
- Without justification, fails to provide the record after the reasonable estimate expires.

(b) **Claiming exemptions.**

(i) **Redactions.** If a portion of a record is exempt from disclosure, but the remainder is not, an agency generally is required to redact (black out) the exempt portion and then provide the remainder. RCW 42.17.310(2)/42.56.210(1). There are a few exceptions. Withholding an entire record where only a portion of it is exempt violates the act. Some records are almost entirely exempt but small portions remain nonexempt. For example, information revealing the identity of a crime victim is exempt from disclosure. RCW 42.17.310 (1)(e)/42.56.240(2). If a requestor requested a police report in a case in which charges have been filed, the agency must redact the victim's identifying information but provide the rest of the report.

Statistical information "not descriptive of any readily identifiable person or persons" is generally not subject to redaction or withholding. RCW 42.17.310(2)/42.56.210(1). For example, if a statute exempted the identity of a person who had been assessed a particular kind of penalty, and an agency record showed the amount of penalties assessed against various persons, the agency **must** provide the record with the names of the persons redacted but with the penalty amounts remaining.

Originals should not be redacted. For paper records, an agency should redact materials by first copying the record and then either using a black marker on the copy or covering the exempt portions with copying tape, and then making a copy. It is often a good practice to keep the initial copies which were redacted in case there is a need to make additional copies for disclosure or to show what was redacted. For electronic records such as data bases, an agency can sometimes redact a field of exempt information by excluding it from the set of fields to be copied. However, in some instances electronic redaction might not be feasible and a paper copy of the record with traditional redaction might be the only way to provide the redacted record. If a record is redacted electronically, by deleting a field of data or in any other way, the agency must identify the redaction and state the basis for the claimed exemption as required by RCW 42.56.210(3). See (b)(ii) of this subsection.

(ii) **Brief explanation of withholding.** When an agency claims an exemption for an entire record or portion of one, it must inform the

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requestor of the statutory exemption and provide a brief explanation of how the exemption applies to the record or portion withheld. RCW 42.17.310(4)/42.56.210(3). The brief explanation should cite the statute the agency claims grants an exemption from disclosure. The brief explanation should provide enough information for a requestor to make a threshold determination of whether the claimed exemption is proper. Nonspecific claims of exemption such as "proprietary" or "privacy" are insufficient.

One way to properly provide a brief explanation of the withheld record or redaction is for the agency to provide a withholding index. It identifies the type of record, its date and number of pages, and the author or recipient of the record (unless their identity is exempt). The withholding index need not be elaborate but should allow a requestor to make a threshold determination of whether the agency has properly invoked the exemption.

The Attorney General's "Model Rules" provides advisory guidance on exemptions. Specifically:

WAC 44-14-060 - Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by (name of agency) for inspection and copying:

- (2) The (agency) is prohibited by statute from disclosing lists of individuals for commercial purposes.

[Statutory Authority: 2005 c 483 § 4, RCW 42.17.348. 06-04-079, § 44-14-060, filed 1/31/06, effective 3/3/06.]

WAC 44-14-06001 - Agency must publish list of applicable exemptions. An agency must publish and maintain a list of the "other statute" exemptions from disclosure (that is, those exemptions found outside the Public Records Act) that it believes potentially exempt records it holds from disclosure. RCW 42.17.260(2)/42.56.070(2). The list is "for informational purposes" only and an agency's failure to list an exemption "shall not affect the efficacy of any exemption." RCW 42.17.260(2)/42.56.070(2). A list of possible "other statute" exemptions is posted on the web site of the Municipal Research Service Center at www.mrsc.org/Publications/prdpub04.pdf (scroll to Appendix C).

[Statutory Authority: 2005 c 483 § 4, RCW 42.17.348. 06-04-079, § 44-14-06001, filed 1/31/06, effective 3/3/06.]

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WAC 44-14-06002 - Summary of exemptions. (1) **General.** The act and other statutes contain hundreds of exemptions from disclosure and dozens of court cases interpret them. A full treatment of all exemptions is beyond the scope of the model rules. Instead, these comments to the model rules provide general guidance on exemptions and summarize a few of the most frequently invoked exemptions. However, the scope of exemptions is determined exclusively by statute and case law; the comments to the model rules merely provide guidance on a few of the most common issues.

An exemption from disclosure will be narrowly construed in favor of disclosure. RCW 42.17.251/42.56.030. An exemption from disclosure must specifically exempt a record or portion of a record from disclosure. RCW 42.17.260(1)/42.56.070(1). An exemption will not be inferred.

An agency cannot define the scope of a statutory exemption through rule making or policy. An agency agreement or promise not to disclose a record cannot make a disclosable record exempt from disclosure. RCW 42.17.260(1)/42.56.070(1). Any agency contract regarding the disclosure of records should recite that the act controls.

An agency must describe why each withheld record or redacted portion of a record is exempt from disclosure. RCW 42.17.310(4)/42.56.210(4). One way to describe why a record was withheld or redacted is by using a withholding index.

After invoking an exemption in its response, an agency may revise its original claim of exemption in a response to a motion to show cause.

Exemptions are "permissive rather than mandatory." Op. Att'y Gen. 1 (1980), at 5. Therefore, an agency has the discretion to provide an exempt record. However, in contrast to a waivable "exemption," an agency cannot provide a record when a statute makes it "confidential" or otherwise prohibits disclosure. For example, the Health Care Information Act generally prohibits the disclosure of medical information without the patient's consent. RCW 70.02.020(1). If a statute classifies information as "confidential" or otherwise prohibits disclosure, an agency has no discretion to release a record or the confidential portion of it. Some statutes provide civil and criminal penalties for the release of particular "confidential" records. See RCW 82.32.330(5) (release of certain state tax information a misdemeanor).

(2) **"Privacy" exemption.** There is no general "privacy" exemption. Op. Att'y Gen. 12 (1988). However, a few specific exemptions incorporate privacy as one of the elements of the exemption. For example, personal

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information in agency employee files is exempt to the extent that disclosure would violate the employee's right to "privacy." RCW 42.17.310 (1)(b)/42.56.210 (1)(b). "Privacy" is then one of the elements, in addition to the others in RCW 42.17.310 (1)(b)/42.56.210 (1)(b), that an agency or a third party resisting disclosure must prove.

"Privacy" is defined in RCW 42.17.255/42.56.050 as the disclosure of information that "(1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public." This is a two-part test requiring the party seeking to prevent disclosure to prove both elements.

Because "privacy" is not a stand-alone exemption, an agency cannot claim RCW 42.17.255/42.56.050 as an exemption.

(3) **Attorney-client privilege.** The attorney-client privilege statute, RCW 5.60.060 (2)(a), is an "other statute" exemption from disclosure. In addition, RCW 42.17.310 (1)(j)/42.56.210 (1)(j) exempts attorney work-product involving a "controversy," which means completed, existing, or reasonably anticipated litigation involving the agency. The exact boundaries of the attorney-client privilege and work-product doctrine is beyond the scope of these comments. However, in general, the attorney-client privilege covers records reflecting communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties and an attorney serving in the capacity of legal advisor for the purpose of rendering or obtaining legal advice, and records prepared by the attorney in furtherance of the rendition of legal advice. The attorney-client privilege does not exempt records merely because they reflect communications in meetings where legal counsel was present or because a record or copy of a record was provided to legal counsel if the other elements of the privilege are not met. A guidance document prepared by the attorney general's office on the attorney-client privilege and work-product doctrine is available at www.atg.wa.gov/records/modelrules.

(4) **Deliberative process exemption.** RCW 42.17.310 (1)(i)/42.56.210 (1)(i) exempts "Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended" except if the record is cited by the agency.

In order to rely on this exemption, an agency **must** show that the records contain predecisional opinions or recommendations of subordinates expressed as part of a deliberative process; that disclosure would be injurious to the deliberative or consultative function of the process; that disclosure would inhibit the flow of recommendations, observations, and opinions; and finally, that the materials covered by the exemption reflect policy recommendations and opinions and not the raw factual data on

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which a decision is based. Courts have held that this exemption is "severely limited" by its purpose, which is to protect the free flow of opinions by policy makers. It applies only to those portions of a record containing recommendations, opinions, and proposed policies; it does not apply to factual data contained in the record. The exemption does not apply to records or portions of records concerning the implementation of policy or the factual basis for the policy. The exemption does not apply merely because a record is called a "draft" or stamped "draft." Recommendations that are actually implemented lose their protection from disclosure after they have been adopted by the agency.

(5) **"Overbroad" exemption.** There is no "overbroad" exemption. RCW 42.17.270/42.56.080. See WAC 44-14-04002(3).

(6) **Commercial use exemption.** The act does not allow an agency to provide access to "lists of individuals requested for commercial purposes." RCW 42.17.260(9)/42.56.070(9). An agency may require a requestor to sign a declaration that he or she will not put a list of individuals in the record to use for a commercial purpose. This authority is limited to a list of individuals, not a list of companies. A requestor who signs a declaration promising not to use a list of individuals for a commercial purpose, but who then violates this declaration, could arguably be charged with the crime of false swearing. RCW 9A.72.040.

(7) **Trade secrets.** Many agencies hold sensitive proprietary information of businesses they regulate. For example, an agency might require an applicant for a regulatory approval to submit designs for a product it produces. A record is exempt from disclosure if it constitutes a "trade secret" under the Uniform Trade Secrets Act, chapter 19.108 RCW. However, the definition of a "trade secret" can be very complex and often the facts showing why the record is or is not a trade secret are only known by the potential holder of the trade secret who submitted the record in question.

When an agency receives a request for a record that might be a trade secret, often it does not have enough information to determine whether the record arguably qualifies as a "trade secret." An agency is allowed additional time under the act to determine if an exemption might apply. RCW 42.17.320/42.56.520.

When an agency cannot determine whether a requested record contains a "trade secret," usually it should communicate with the requestor that the agency is providing the potential holder of the trade secret an opportunity to object to the disclosure. The agency should then contact the potential holder of the trade secret in question and state that the record will be released in a certain amount of time unless the holder files a court action

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seeking an injunction prohibiting the agency from disclosing the record under RCW 42.17.330/42.56.540. Alternatively, the agency can ask the potential holder of the trade secret for an explanation of why it contends the record is a trade secret, and state that if the record is not a trade secret or otherwise exempt from disclosure that the agency intends to release it. The agency should inform the potential holder of a trade secret that its explanation will be shared with the requestor. The explanation can assist the agency in determining whether it will claim the trade secret exemption. If the agency concludes that the record is arguably not exempt, it should provide a notice of intent to disclose unless the potential holder of the trade secret obtains an injunction preventing disclosure under RCW 42.17.330/42.56.540.

As a general matter, many agencies do not assert the trade secret exemption on behalf of the potential holder of the trade secret but rather allow the potential holder to seek an injunction.

All entity records are available for review by the public unless state law specifically exempts them from disclosure. If no exemption applies, the requested record must be disclosed. Further, public entities are not relieved of their obligations to respond to requests for public records because a portion of the document is exempt. Public entities have a duty to redact specific information covered by an exemption and disclose the remainder of the document. The Public Records Act provides that exemptions are to be narrowly construed.

A good faith response by a public agency in releasing a public record absolves the agency or any public official or employee from liability arising from the disclosure. For example, an individual named in a public record may not hold a public agency liable for a good faith release of that record on the grounds that disclosure violates the individual's "right to privacy." Agencies that release records with possible privacy implications may wish to contact the individual.

(Source: MRSC)

Washington courts have not defined specifically which records, if released, could violate a right of privacy; however, for example, residential addresses and telephone numbers for state employees are specifically exempt under state law.

The Public Records Act (RCW 42.56) lists 34 categories of public records that are exempt from disclosure. These are exemptions, not prohibitions; an agency may waive an exemption if it chooses to do so. (AGO 1980 No.1)

Other state laws specifically prohibit the release of some information. And many documents contain some information that is exempt along with other information that is not exempt.

It is estimated that more than 300 exemptions are contained in state law. To address whether these exemptions are still necessary, the 2007 Legislature created a Sunshine Committee to recommend whether each one should be

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continued without modification, modified, scheduled for sunset review at a future date, or terminated. Additional information about the Sunshine Committee can be found at: <http://www.atg.wa.gov/opengovernment/sunshine.aspx>

CRITERIA – Finding 4

We calculated the average response time for each entity type and for each request within that entity type. Using the average response time, we identified entity responses that were less timely than their peers. Once identified, the correspondence was examined to determine if the entity was aware the request was delayed and if the reason(s) was provided to the requestor. We then sought to identify the specific causes associated with each less timely response.

We identified the top-performing entities, based upon our unannounced requests as performance criteria. Those “top” performers can be found in the Overview of Audit Results section of this report. Top performing entities provided requested records more quickly than other counties, cities and agencies included in this audit.

Legal Criteria addressing “fullest assistance” and “most timely possible action”:

RCW 42.56.100 - Protection of public records--Public access.

Agencies shall adopt and enforce reasonable rules and regulations, and the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions, consonant with the intent of this chapter 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, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives from honoring requests received by mail for copies of identifiable public records.

RCW 42.56.520 - Prompt responses required. Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of

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representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or (3) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.

RCW 42.56.050 - Invasion of privacy, when. A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

RCW 42.56.550 – Judicial review of agency actions - states in part:
(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not less than five dollars and not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.