A Delicate Balance between Knowledge and Power: Government Transparency and the Public's Right to Know

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ISSUE

The California Public Records Act requires that inspection or disclosure of governmental records be available to the public upon request. How do the cities in San Mateo County meet the requirements of this Act?

SUMMARY

The California Public Records Act (PRA) is an essential tool for the public to find out what their government agencies are doing. It's one of the freedom of information laws enacted in every state in the Union to ensure that the public can witness the actions of their governments. The PRA's purpose is to promote government transparency in California.

Fifteen years ago, the 2006-2007 San Mateo County Civil Grand Jury's report, "Electronic Communication Among City Officials: A Valuable Tool in Need of Careful Guidance," addressed the rise in local governments' use of electronic forms of communication between elected and appointed officials.[1] As it observed, these valuable and efficient tools can quickly disseminate information, and they can constitute public documents subject to public disclosure. Reviewing that Grand Jury's report alerted the 2021-2022 San Mateo County Civil Grand Jury to the potential that cities may be facing increased complexity and potential burdens in the processing of requests for public records.

The Grand Jury sought to understand how San Mateo County's 20 cities respond to PRA requests, including:

- Cities' policies and procedures for handling requests;
- The types of records requests they receive;
- The training of key employees, elected officials, and appointed officials about PRA-related matters; and
- How legal changes may impact cities with regard to fulfilling PRA requests.

While the PRA does not require cities to adopt a formal policy, the Grand Jury sought to identify the cities that have written policy or procedure documents and the methods cities use to process the public's requests. It also wanted to learn how key staff keep up to date with changes in PRA law. Failing to comply with these laws can subject a city to litigation and, more importantly, lead to erosion of the public's trust.

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[1] 2006-2007 San Mateo County Civil Grand Jury, Electronic Communication Among City Officials: A Valuable Tool in Need of Careful Guidance https://sanmateocourt.org/documents/grand_jury/2006/ElectronicCommunicationfinal.pdf, retrieved June 9, 2022.

The Grand Jury recommends that city councils of the subject cities should:

1. Consider directing staff to create a written PRA procedures document for circulation to all relevant staff.

2. Consider directing staff to perform a cost/benefit analysis regarding the purchase of commercially available public records request software.

3. Consider directing staff to place information about how to access public records on the home page of their official website.

4. Consider directing staff to create a submittable online PRA request form.

5. Consider directing staff to review and consider adopting a records management practice analogous to the City of San Mateo's "Records Cleanup Day."

BACKGROUND

Two centuries ago, James Madison wrote these words:

> "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."[2]

He further asserted, "Knowledge [is] the only Guardian of true liberty."[3]

John Moss, a California member of the U.S. House of Representatives, used Madison's quote to generate support for a bill he was introducing in Congress. In 1967, after a 12-year struggle, he was finally successful in passing the Federal Freedom of Information Act (FOIA). It served as the model for California's similar Public Records Act enacted one year later.

The California Public Records Act was signed into law by Governor Ronald Reagan in 1968 and acknowledges one simple concept – that secrecy is contrary to a democratic system of "government of the people, by the people, and for the people". Specifically, the PRA declares that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state".[4]

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[2] Letter from James Madison to W.T. Barry (August 4, 1822), in The Writings of James Madison (Gaillard Hunt ed.).

[3] Letter from James Madison to George Thomson (June 30, 1825) (on file with The James Madison Papers at The Library of Congress).

[4] California Government Code, Section 6250 (2021).

Every state has some form of freedom of information law that governs public access to state and local government documents.[5] In addition, every state has some form of a "Sunshine Law" or "Open Meetings" law that requires public access to meetings of public legislative bodies. California's Ralph M. Brown Act is such a Sunshine Law.[6] Passed in 1953, it guarantees the public's right to attend and participate in meetings of local legislative bodies. The PRA and the Brown Act are California's primary laws intended to promote government transparency.

What are Public Records?

The PRA defines the term "public records" as any "writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by a state or local agency regardless of physical form or characteristics."[7] Thus, a "writing" is not simply a hand-written or printed document; writings include an ever-broadening range of communications including audio and video recordings, emails, photos, drawings, computer data, and more.[8]

The agencies that hold these public records, and are subject to the PRA, include every county, city, town, school district, special district, police and fire department, commission, and board in California.[9] Certain private entities that carry out public functions using funding from a local agency may also be subject to the PRA. The PRA applies to nearly every public agency one can imagine except for the Legislature and the courts.[10]

A public record refers to information that has been recorded or maintained by a public agency. Typical examples of records that the public might request include:

- Property records,
- Building permits,
- Business registrations
- Employee compensation information
- Financial documents
- Code enforcement records
- Public works documents, and
- Police records.

Merely addressing a question to a local agency official or employee is not sufficient to constitute a public records request under the PRA. "What time do the lights go off at the neighborhood park?" Or "Why are there so many potholes on my street?" are not public records requests. However, a request to see the contract for the vendor who installed the lights or paved the street would be a public records request.

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[5] FOIA Advocates, State Public Records Laws. http://www.foiadvocates.com/records.html Retrieved May 11, 2022
[6] CA Govt Code § 54950 et seq.
[7] CA Govt Code § 6252(e).
[8] CA Govt Code § 6252(g).
[9] CA Govt Code § 6252(f). Excluded from the definition of state agency are those agencies provided for in article IV (except section 20(k)) and article VI of the Cal. Constitution.
[10] The Legislature has its own sunshine law, Gov. Code, § 1070. Most court records are disclosable under a number of legal decisions and the First Amendment of the U.S. Constitution.

The Form of PRA Request

The PRA ensures that all persons must receive equal access to public records. "Persons" can be corporations, partnerships, homeowners' associations, and the media.[11] Simply put, every person has the right to inspect public records, and no one type of person has a greater right of access to public records than any other person.[12]

Because the intent of the law is to enable easy access to public records, it is expansive in the available ways requests may be made. The request can be made in writing or orally, by physical or electronic means, remotely or in person. Persons making a PRA request are not required to explain the reason for the request.[13]

Public records are to be open for inspection during office hours at the local agency. To preserve the orderly function of their offices, agencies may establish reasonable policies for the inspection and copying of records. If the request asks for copies of documents, the agency is required to respond within ten days to determine whether they have disclosable records in their possession and to notify the person making the request of that determination. The agency must then make the records "promptly" available.[14]

An agency may extend the normal ten-day requirement for responding whether it has any disclosable documents for up to 14 additional days under certain circumstances.[15] For example, if the agency needs to search through and collect a voluminous number of records or to consult with another agency with an interest in the requested records, such an extension is available.

The agency is required to assist the requester who is having difficulty making a focused and effective PRA request.[16] And while the request may be burdensome, that burden alone is not sufficient to justify noncompliance. However, the agency is also not required to perform a "needle in a haystack" search for records.[17] Additionally, a PRA request only applies to records that exist at the time of the request, not for records to be created in the future.

Widespread Use of Electronic Communications

The public's business increasingly relies on electronic communications. Email, social media postings, video and audio recordings, and the use of personal devices have created enormous volumes of public records for cities. In a case with broad consequences related to PRA requests, City of San Jose v. Superior Court of Santa Clara County (2017), the California Supreme Court

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[11] CA Govt Code § 6252(c); Connell v. Superior Court (Intersource, Inc.) (1997) 56 Cal.App.4th 601.
[12] CA Govt Code § 6252.5; Los Angeles Unified School Dist. v. Superior Court (2007) 151 Cal.App.4th 759; Dixon v. Superior Court (2009) 170 Cal.App.4th 1271, 1279.
[13] CA Govt Code § 6250; California. Constitution, Article. I, Section 3.
[14] CA Govt Code § 6253(c).
[15] CA Govt Code § 6253(c)(1-4).
[16] CA Govt Code § 6253.1.
[17] Cal. First Amend Coalition v. Superior Court (1998) 67 Cal. App. 4th 159, 166.

ruled that communications carried out using a personal account or device were disclosable if the communication was related to the conduct of public business.[18]

For example, such a PRA request might be for all communications between city officials and a vendor that was granted a city-awarded contract. The search for responsive records could include reviewing all the emails, voice mails, and texts between the parties for relevant material, including on officials' personal devices. This can be problematic since this communication, especially if voluminous, could require attorneys to determine what might be non-disclosable for reasons of privacy or privilege. In Getz v County of El Dorado (2021), a California appeals court ruled that El Dorado County's unsubstantiated claim that a PRA request was overly broad and burdensome was not a valid reason for denial of records. The court explained that establishing that a request is overly burdensome requires more than the vague prospect of having to review lots of records. The County was ultimately compelled to produce over 40,000 email records.[19]

Law Enforcement Records

In recent years the most publicized form of an electronic record has been police body-cam footage. Landmark legislation has broadened PRA access to law enforcement records, including a limited subset of these audio and video recordings. On January 1, 2019, SB 1421 became law. Called the Peace Officers: Release of Records bill, it requires law enforcement agencies to make records (including body-cam footage) related to certain serious officer use of force incidents, sexual assault, and acts of dishonesty available under the PRA.[20] Police unions have filed multiple challenges to the law asserting concerns about officers' privacy, retroactivity of the law, and the cost of producing records.[21] These challenges have been consistently denied by courts.[22] And in January 2022, SB 16, became effective. This new law now requires additional police disciplinary records, involving allegations of discrimination, unlawful arrest, and cover-ups of excessive force by fellow officers, to be made available under the PRA.[23]

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[18] Latham & Watkins, Client Alert Commentary, https://www.lw.com/thoughtLeadership/california-supreme-court-government-communications-on-private-accounts-are-public, retrieved May 11, 2022.

[19] Getz v. The Superior Court, 72 Cal.App.5th 637, 287 Cal. Rptr. 3d 722 (Cal. Ct. App. 2021) https://law.justia.com/cases/california/court-of-appeal/2021/c091337.html, retrieved June 1, 2022.

[20] CA Penal Code § 832.7 and § 832.8.

[21] Voice of San Diego, A Brief History of Police Challenges. https://voiceofsandiego.org/2019/06/10/brief-history-of-police-challenges-and-losses-sb-1421/, retrieved March 18, 2022.

[22] JD Supra, Another SB1421 Decision Against Law Enforcement. https://www.jdsupra.com/legalnews/another-sb-1421-decision-against-law-45114/, retrieved March 18, 2022.

[23] BBK Attorneys at Law, SB 16 Compliance Expanded Public Access. https://www.bbklaw.com/News-Events/Insights/2021/Legal-Alerts/12/SB-16-Compliance-Expanded-Public-Access-to-Law-Enf, retrieved March 18, 2022.

Methods of Handling Requests

The PRA does not mandate any specific method for agency handling of records requests. Some local agencies simply monitor the process manually using an internally created document. Many other agencies now use commercially available software that links to information on their public websites. Often marketed to city clerks through professional organizations, such as the City Clerks Association of California, these software applications offer solutions to manage large portions of the PRA request process.

These applications can:

- Manage intake of requests through a public portal;
- Provide an automated response of receipt to the person making a request;
- Alert agency staff to deadlines;
- Promote coordination across departments;
- Gather records and track their production to person making a request;
- Provide tools to redact information; and
- Display and store responsive records.

The software enables anyone making a PRA request to see the status of their request through a portal. It also enables cities to make both the request and the records responsive to the request visible to the public.

Fees

An agency may charge a fee for costs of complying with the PRA, but only for the direct costs of making copies of responsive records – typically a nominal fee per page of paper copies. Since today most records are produced and delivered to the requester electronically, many responsive records are cost-free to the requesting party.

In National Lawyers Guild v. City of Hayward (2019), the California Supreme Court held that an effort by the city to charge $3,000 for labor related to redacting requested bodycam footage was not permissible as a "data extraction" cost.[24] With this decision, the Court reaffirmed that local agencies may not charge for ancillary costs such as the labor required to retrieve documents or the inspection and handling of files.[25]

Voter-approved Propositions Affecting the PRA

In 2004, voters overwhelmingly passed Proposition 59, the "Public Records, Open Meetings Legislative Constitutional Amendment." It essentially adds a "sunshine" amendment to the Declaration of Rights section of the California Constitution (similar to the U.S. Constitution's

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[24] Reporters Committee, National Lawyers Guild v City of Hayward. https://www.rcfp.org/briefs-comments/national-lawyers-guild-v-hayward-california-supreme-court, retrieved June 14, 2022.

[25] BBK Attorneys at Law, California Public Records Act Update. https://www.bbklaw.com/news-events/insights/2021/legal-alerts/01/california-public-records-act-update, retrieved March 16, 2022.

Bill of Rights) stating, "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."[26]

Proposition 42, the "Public Records. Open Meetings. State Reimbursement to Local Agencies. Legislative Constitutional Amendment" was approved by voters in 2014. It was the result of a dispute over a controversial bill that would stop local governments from being required to follow key provisions of the PRA. The State legislature had considered the bill to be a budget move, since at that time it was required to reimburse local governments for complying with some aspects of records requests. The backlash over the signing of this bill caused the legislature to rescind it and put the matter before the voters as a constitutional amendment. When it passed, by a 62% yes vote, it required local governments to comply with the PRA without being reimbursed by the State for the cost of public access to records."[27] The full financial burden of compliance with the PRA now falls entirely on local governments.

Exemptions

While the PRA states that "the people" have the right to know what their government is doing, clearly circumstances arise where a balance must be achieved between the public interest and individual privacy rights. The PRA contains at least 76 express exemptions, for matters as diverse as library circulation records, copyright protected building plans, and medical and personnel records.[28] In some instances a public document may not be considered exempt but may contain private information such as social security numbers and home addresses. Those specific portions will be redacted before release to the public.

Government Code section 6254 specifies a large number of exemptions under the PRA. Several of the more notable exemptions are listed below:

- **Records Not in Existence**
  The agency is under no obligation to create records where none exist; agencies are not required to provide records that may be produced in the future relevant to the original request.

- **Disclosure of records exempted by Federal or other State law**

  Records shielded from disclosure by existing state or federal law, such as individual health records, are not accessible using the PRA.

- **Public Interest Test and Deliberative Process Privilege**
  Agencies may withhold certain records if they can demonstrate that the public interest served by not disclosing the record clearly outweighs the public interest served by its disclosure.

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[26] Cal. Const., Art I, § 3, subd. (b)(1)
[27] Cal. Const., Art. I, § 3, subd. (b)(7)
[28] CA Govt Code § 6254

- **Preliminary Drafts**
Preliminary drafts, notes, or memos not normally preserved in the course of business are exempt.

- **Attorney Client Communications**
Confidential communications between lawyers and clients, and attorney work product, are exempt from disclosure.

- **Pending Litigation**
Records pertaining to pending litigation or claims to which a public agency is a party until the litigation or claim has been finally adjudicated or otherwise settled.

- **Personal Information**
This exemption is intended to protect the confidentiality of personnel, medical or other similar files which would constitute an unwarranted invasion of personal privacy.

- **Trade Secrets**
Businesses engaged in public contracts are not required to disclose their trade secrets in response to a PRA request.

Recourse When Responsive Documents Are Not Produced

If a local agency has unlawfully refused to disclose a public record, a person may ask a judge to enforce their rights under the PRA. This enforcement is primarily through a special, expedited civil judicial process.[29] The PRA provides specific relief in the form of court costs and attorneys' fees when an agency unlawfully denies access or copies of public records.

Conversely, a local agency cannot bring an action for relief to determine its obligation to disclose records.[30] That would require the person requesting documents to defend a civil action and discourage them from requesting records in the first place. It would frustrate the central purpose of the act and the constitutional amendments specifically designed to provide access to information.

The PRA is an indispensable tool for the responsible exercise of democracy in California. Government transparency, accountability and effectiveness depend on how our local agencies handle the information they create and are entrusted with maintaining. A changing legal framework, the ubiquity of electronic records, new communications technologies and the treatment of their related records, and the public's demonstrated desire for "open government" present significant challenges to the efficient handling of PRA requests for the cities in our county.

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[29] CA Govt Code § 6258 and 6259.

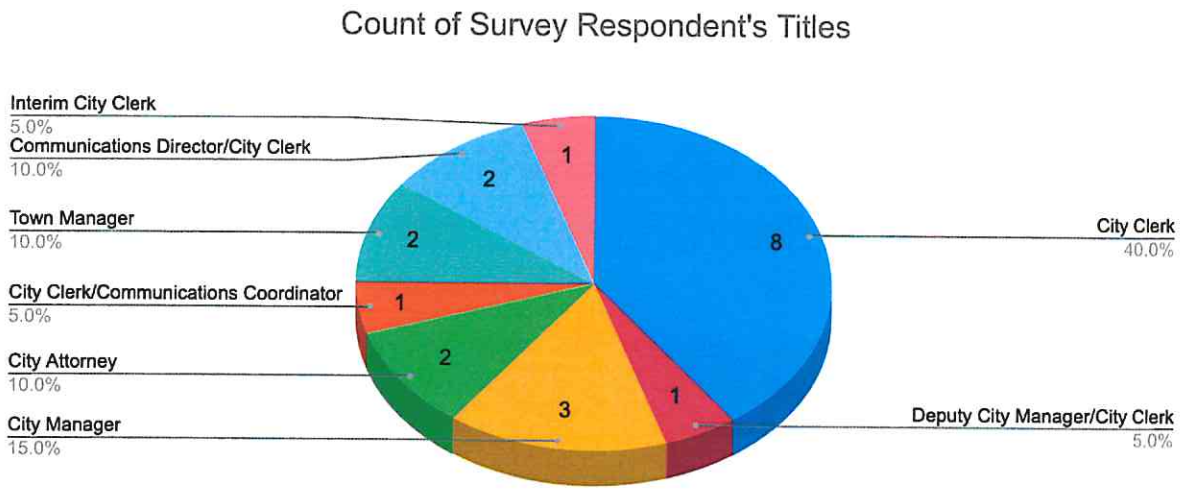
[30] Filarsky v. Superior Court (2002) 28 Cal.4th 419, 426.

DISCUSSION

As stated above, the PRA applies to all of the public agencies in San Mateo County. To narrow the focus of our investigation, the Grand Jury opted to concentrate on the 20 cities, including their police and other departments, and the committees and commissions formed by those cities.

Survey Respondents

The Grand Jury began by sending a survey to the 20 city managers in the County (a copy of the survey appears in Appendix A). It asked six questions related to the processing of public records requests, policies and procedures used, and the PRA training of staff and officials. In most cases (13 of 20) the responses came from city clerks who are responsible for maintaining a city's public records. Some of the clerks perform multiple roles for their cities, reflected in some cases (15%) by an additional job title. The following graphic illustrates the various job titles of survey respondents.



In two cities, the city clerk position is determined by public election; in the remainder of the cities, clerks are appointed by the city manager. Our investigation found that the city clerk is typically the official primarily responsible for the acknowledging receipt of a PRA request, tracking it through the city's internal processes, and delivering correspondence and responsive records to the person submitting the request.[31]

The Grand Jury conducted follow-up interviews with representatives of all 20 cities, confirming their survey responses and gathering additional information. We asked the cities to provide written documentation of their PRA policies and procedures, if any exist. Fourteen cities replied that they had existing policies or procedures and supplied them to the Grand Jury. We also conducted in-depth interviews with five selected cities.[32] These cities were chosen to give us a cross section sample based on city population, method of tracking, and volume of requests. The

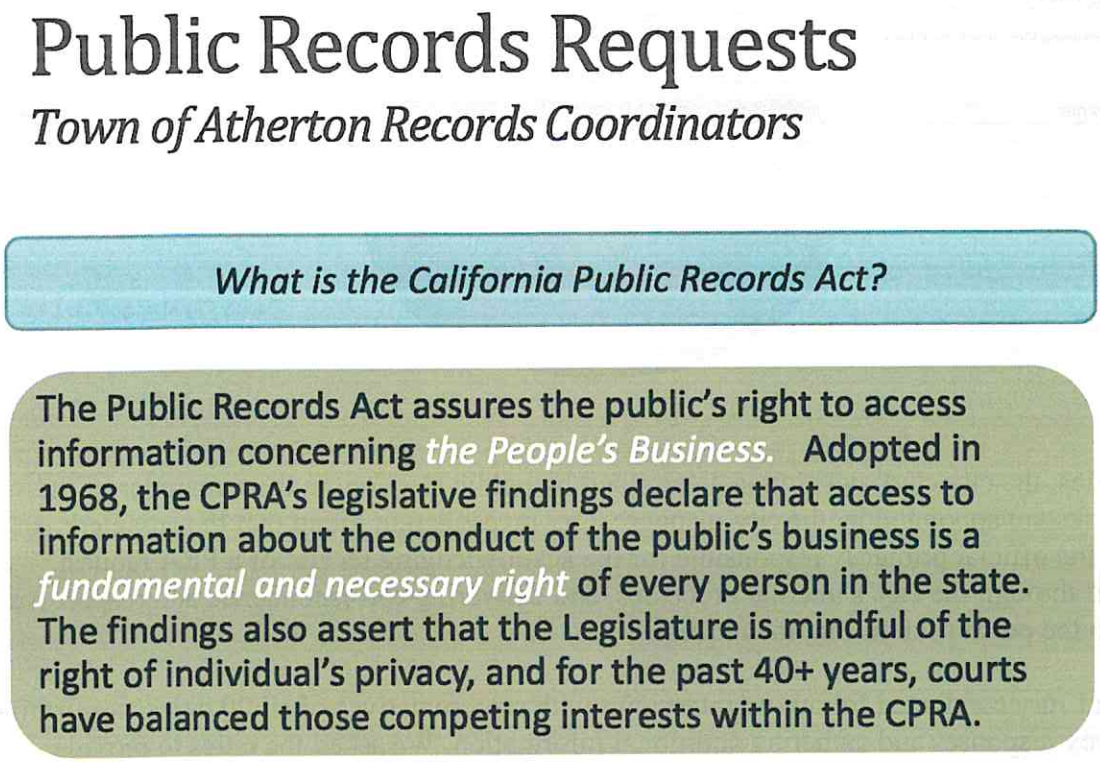
[31] In one city, the city attorney assumed most of this role, but even there the city clerk was involved in the process.
[32] Belmont, Daly City, San Bruno, San Mateo, and South San Francisco

Grand Jury notes that respondents from all 20 cities were entirely cooperative and knowledgeable about their city's PRA request procedures.

Documentation of PRA Policies and Procedures

The PRA does not require local agencies to create policies or documentation of how they receive, route, track, and fulfill records requests. When the Grand Jury asked respondents and interviewees to provide documentation describing how they handled PRA requests, we learned that six cities had no such documentation.[33] In some cases, the documentation received from the remaining 14 cities was simply a description of the PRA's requirements (perhaps supplied to staff for training for information). The Grand Jury also received documents such as the city's internal procedures, as well as some that were formal policies signed and dated by the city manager. In interviews, all respondents could describe their processes.

The documentation received and reviewed by the Grand Jury varied widely. Atherton's document is a colorful presentation defining the PRA and describing what is and isn't a public record.



33 Grand Jury survey (December 2021) Belmont, Daly City, Half Moon Bay, Hillsborough, Menlo Park, and Woodside.

It generally outlines city staff's role in responding to a request. In contrast, Redwood City's document is an administrative policy detailing the purpose and scope of how they respond to PRA requests. It notes specific types of records such as political reform act records and requests for electronic communications. It also specifies that the document will be reviewed every two years. Copies of the PRA documentation provided by Atherton and Redwood City can be found in Appendix B.

The Grand Jury noted that some cities relied on an individual staff member (city clerk or city attorney) to respond to records requests. In the event of illness, vacation, resignation or other interruption of service, no documentation exists to guide replacement personnel.

Written PRA policies or procedures provided to the Grand Jury typically covered subjects such as:

- The purpose of the PRA;
- Resources for PRA training;
- The steps in processing a request; and
- Specific staff responsibilities.

Website Portals

The Grand Jury found that while cities do receive PRA requests in various ways - submitted in-person at city offices, by telephone, and postal mail - they are most frequently submitted via email. We found that 16 of the 20 city websites included a portal containing a submittable form for the filing of a PRA request and four cities had no such form.[34]

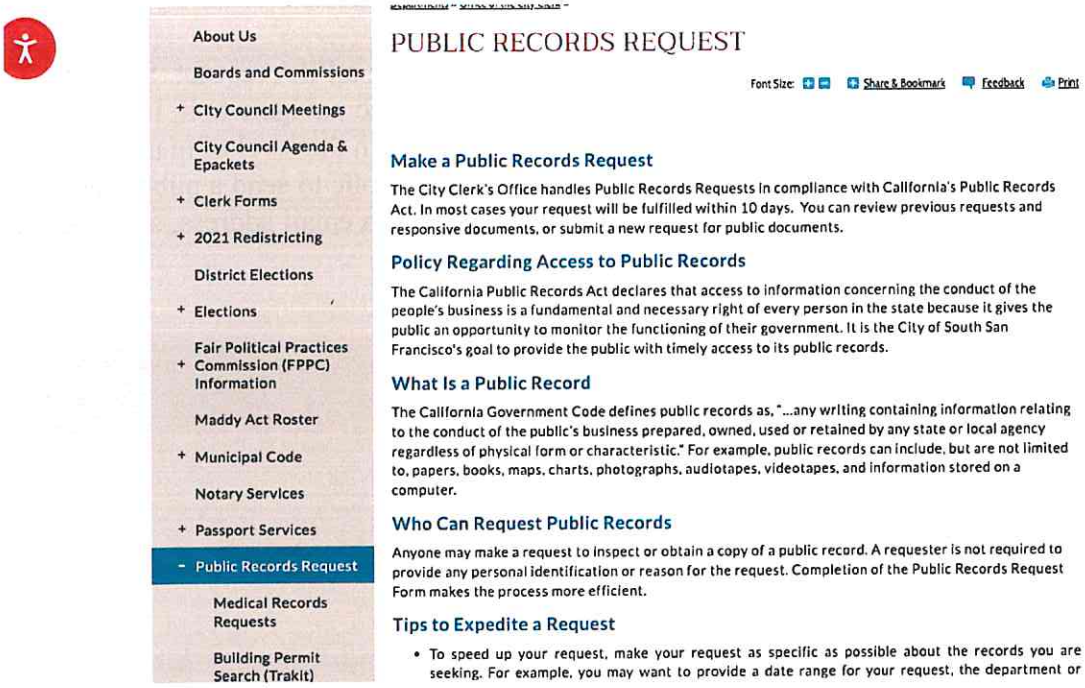
Every city website somewhere provides instructions on how to make a PRA request. Some have links to those instructions on the home page, but most require steps to navigate to it. In some cases, the Grand Jury found broken links indicating inconsistencies in the level of maintenance of the PRA related pages. Some city websites simply instruct the public to send a public records request to the city clerk and provide contact information including an email address, a phone number, or a physical address at which to file.

[34] Belmont, Brisbane, Hillsborough, and Portola Valley.

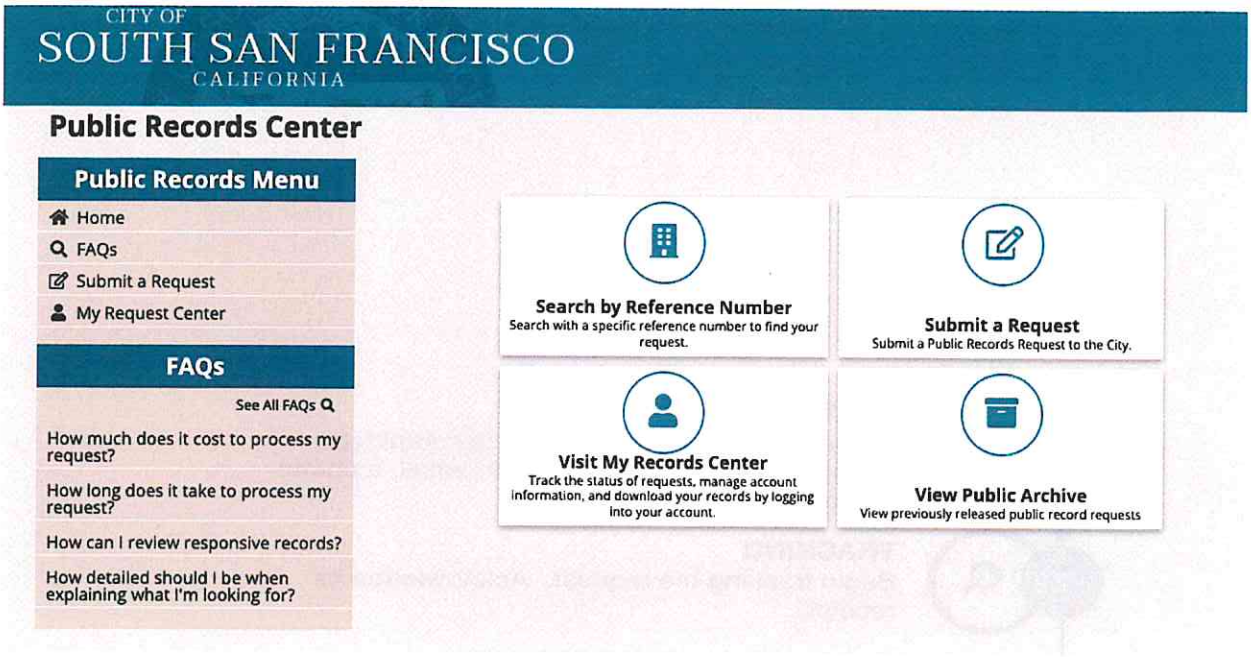
Example of Easy and Accessible PRA-Information on a City Website

The website for the City of South San Francisco provides easily accessible information regarding PRA requests. The home page includes a "Public Records Request" link.

Clicking on the link brings up a page full of useful titles including how to make a request, the city's PRA policy, who can make a request, and tips to expedite requests.

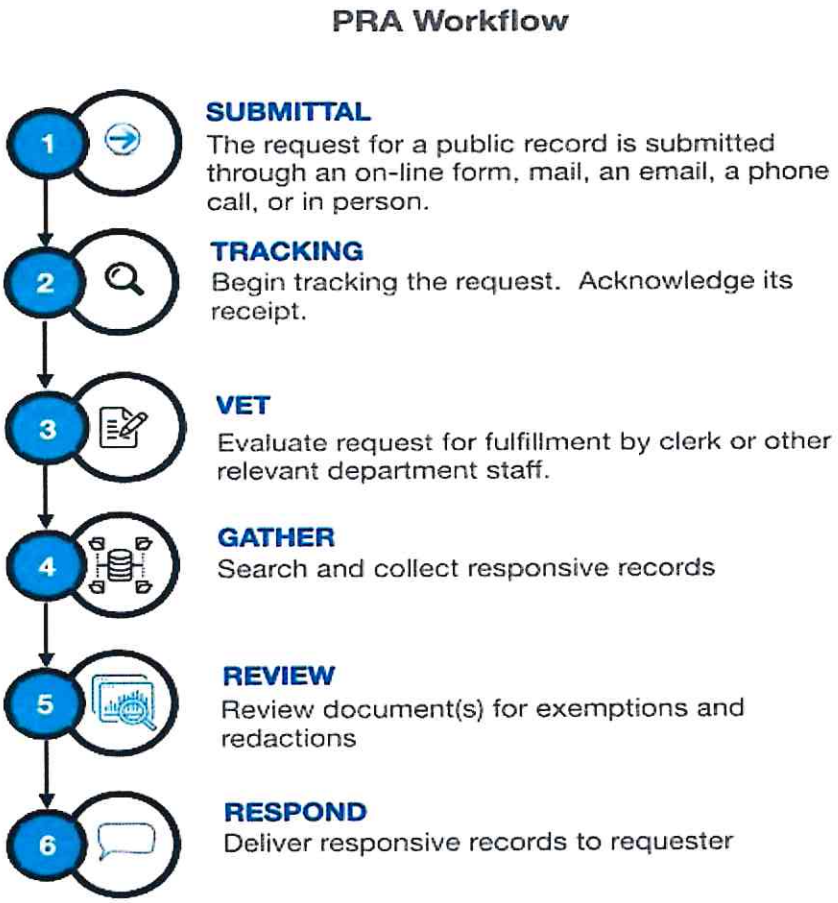


Clicking on "Public Records Request" takes the user to a third-party public records web application where they can search by request reference number, track the status of a previous request, view a public archive, and submit a new request.



Tracking a Public Records Request

Since the PRA mandates specific deadlines for public agencies to respond to a public records request, the ability to track submissions is vital in order to ensure legal compliance.[35] All cities informed the Grand Jury that they track PRA requests, utilizing a variety of methods to do so. Regardless of the specific method used by a city, the workflow is generally as follows.



[35] CA Govt Code § 6253(c).

Ten cities, which were generally smaller and field fewer requests, reported that they track PRA requests manually using an Excel spreadsheet or similar internal document.[36] These documents require manual data entry and maintenance by staff. For example, see San Bruno's spreadsheet at Appendix C. While these cities indicated general satisfaction with their current methods of tracking, one city was actively seeking proposals from commercial software vendors and others were considering doing so. Appendix D shows such a vendor's proposal.

The ten other cities, including most of the larger ones, use third-party software that automates the handling of PRA requests.[37] These cities use one of two software applications.[38] In interviews, staff generally expressed satisfaction with both products, citing their effectiveness and efficiency. Pricing of these applications will vary based on the configuration and storage options selected. One city indicated a desire to purchase software but cited the city's budget constraints. Another city noted that the cost was prohibitive for a city of their size and volume of requests.

Volume of Requests

Thirteen cities reported receiving more than 100 PRA requests in the past year. Two cities reported receiving fewer than 50 requests, while one city indicated that it received more than 1,600 requests for records. Another city noted a 500% increase from the previous year. All cities reported significant increases in the volume of requests received since the outset of the Covid pandemic.

Subjects of Requested Records

All 20 cities reported that the majority of the PRA requests they received were for routine records such as property-related documents, police records, public works documents, and business registrations. For example, in San Mateo, the City Clerk's office recorded 1,695 PRA requests in the fiscal year ended June 30, 2021. The largest percentage (46%) were directed to the Community Development Department and typically asked for property records of some kind, including planning applications, building permits, blueprints, inspections, and code violations. Requests for police records (35%) were the next most frequently requested type of record. The clerk's office noted that the police department directly receives substantially more requests than come to the clerk through their PRA request software.

Time-Consuming Requests

The Grand Jury learned that a relatively small number of records requests are disproportionately time-consuming to fulfill. In particular, requests for communications records may fall into this category. The request may require a broad search of all relevant communications created and

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[36] Atherton, Brisbane, Burlingame, Colma, Daly City, East Palo Alto, Hillsborough, Portola Valley, San Bruno, and Woodside as of May 16, 2022.

[37] Foster City, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Redwood City, San Carlos, San Mateo, and South San Francisco as of May 16, 2022.

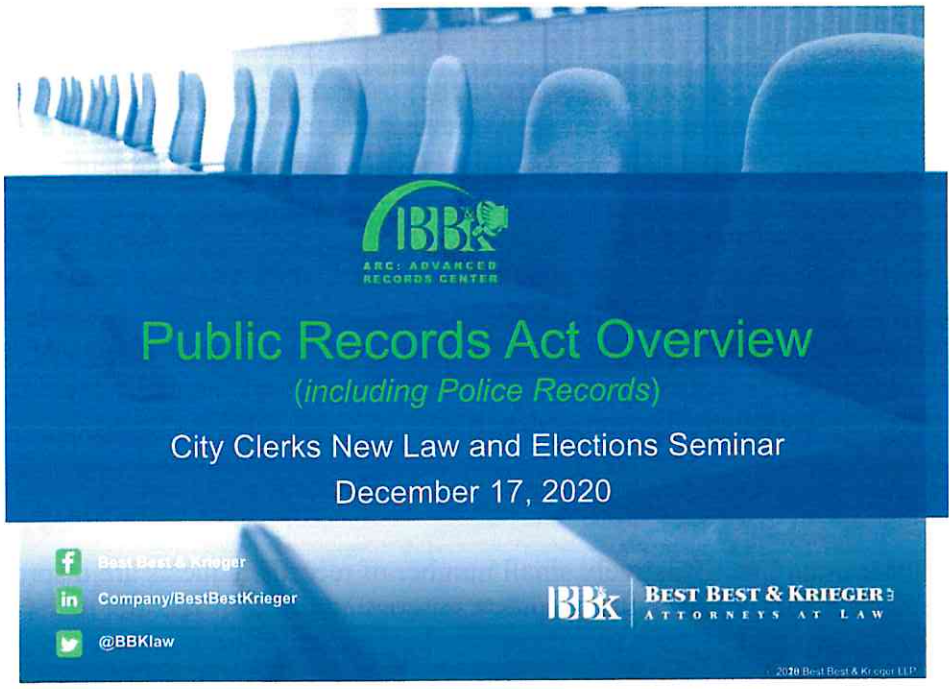
[38] GovQA, If You Have a Public Records Problem. https://www.govqa.com/solutions/public-records-software/ Retrieved May 16, 2022, and NextRequest, The All-In-One Open Records Request Platform. https://www.nextrequest.com/, retrieved May 16, 2022.

stored on electronic devices, including employees' cell phones and laptops. Recently, Portola Valley received what was characterized as a "massive" PRA request for "all town communications regarding the housing element since July 1, 2021, including communications among elected officials, staff, consultants or members of the committee, like emails and text messages, including on personal devices."[39] The request was the result of a potential change to the town's zoning laws to allow for more dense housing in one residential neighborhood.

Several cities reported to the Grand Jury that on rare occasions a disgruntled citizen or ex-employee has intentionally crafted a detailed records request intending to be time-consuming and annoying for the city. One respondent reported that the search and review of electronics communications in response to one request took months to complete, due to the number of responsive records and the broad search of multiple devices.

Training

State law does not mandate training for those implementing its provisions. City clerks often attend training through annual City Clerks Association of California conferences and other professional associations.



[39] Angela Swartz, "'Massive' public records request escalates battle over Portola Valley's housing element," *Almanac,* March 21, 2022. https://www.almanacnews.com/news/2022/03/21/massive-public-records-request-escalates-battle-over-portola-valleys-housing-element, retrieved June 9, 2022.

Half of the cities interviewed by the Grand Jury mandate formal PRA training for their key employees. Others offer training but do not mandate it, while some cities have no formal arrangements for PRA training at all.[40] Training, if offered, is conducted by the city attorney. In our investigation, respondents agreed that formal training for key city employees would make the handling of records requests more efficient and consistent.

Twelve cities informed the Grand Jury that they provide PRA training for their appointed and elected officials. This training is also typically provided by the city attorney, sometimes with the assistance of the city clerk. Eight cities reported that they do not offer specific PRA training to such officials, but some noted that their training in Brown Act compliance includes PRA training content.[41]

While the PRA does not include criminal penalties for noncompliance with its provisions, civil actions, as described earlier, may be filed and cities can be liable for court costs and attorneys' fees.

Increasing Efficiency in Records Request Processing

Some cities have demonstrated how commonly requested records can be made available to the public without formal PRA requests.

Making public records available online is a convenient and efficient mechanism for both the requester and the municipality. Cities generally do this for many common records, such as meeting agendas for public meetings (which are legally required to be posted publicly).[42] At the time of this investigation, some cities, such as San Carlos, also posted many records online.

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[40] Burlingame, Portola Valley, and Woodside.

[41] BBK, Attorneys at Law, Summary of the Major Provisions and Requirements of the Ralph M. Brown Act. https://www.bbklaw.com/bbk/media/library/pdf/major-provisions-and-requirements-of-the-brown-act.pdf, retrieved June 9, 2022.

[42] CA Govt Code § 54954.2.

Using the search term "public records" on the San Carlos city website brings up "Records Available Online for Your Easy Access," which connects to records such as budgets, building permits, and public works documents.

Submit a Public Records Request

If you are unable to locate the records you want online, please submit a Public Records Request via our NextRequest portal:

Request Records

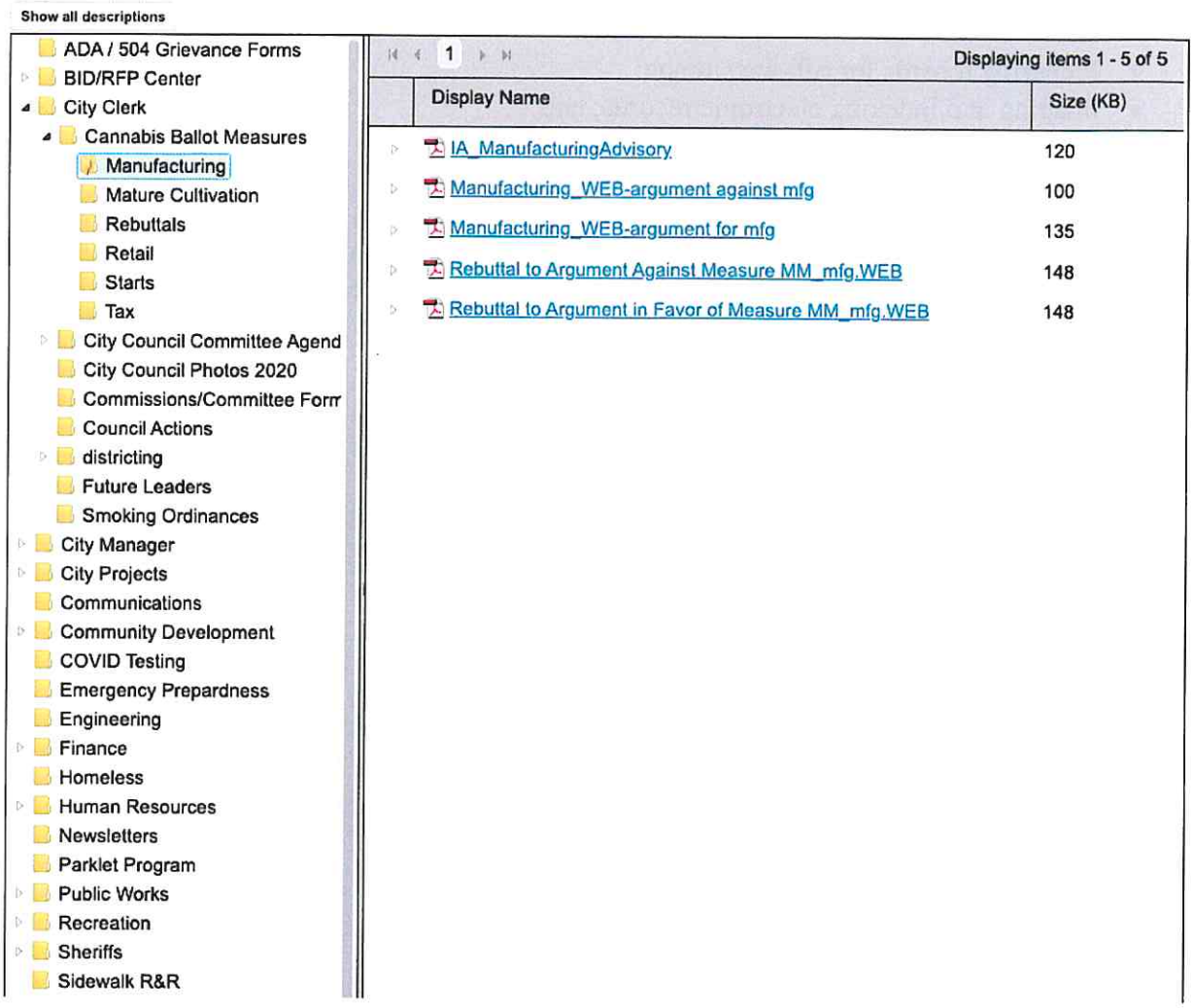
Our goal is to provide you with timely access to the City's public records. All requests for documents will be reviewed and responded to within ten (10) days, in compliance with the California Public Records Act. Fees are charged according to our fee schedule, however, there is no charge to review records in person at City Hall.

- Master fee schedule

Records Available Online for Your Easy Access

- Accounts payable cash disbursements journal
- Active business registrations
- Budgets
- Building Permits
- City Council and Commission agendas, minutes and videos
- City Municipal Code
- Citywide Reports
- Financial Reports and Documents
- Ordinances and Resolutions
- Various Public Works Documents, including documents pertaining to sewers, streets, traffic, etc.

The Half Moon Bay website offered a "Document Center" containing more than 2,000 city documents going back a decade.



Several cities noted that they often receive requests for the same records repeatedly. For example, this can occur when a sought-after property is offered for sale and brokers, architects, attorneys, and potential buyers are doing their due diligence. Cities using commercially provided software applications, or that post public records as do San Carlos and Half Moon Bay, can reduce the number of such duplicative PRA requests.

Records Management

Proper records management policies and practices facilitate effective compliance with the PRA. Having better control of these records makes their timely and appropriate production more accurate and efficient. All cities in the County reported having records retention schedules that determine what documents must be retained and for how long. For example, in South San Francisco, leases for city owned properties must be kept in hard copy for the current year plus two-years. Board and commission resolutions must be kept permanently (a copy of the records retention schedule for South San Francisco is at Appendix E).

The City of San Mateo reported a unique method for encouraging city staff in one element of the effective management of public records. There, the city clerk held a "Records Clean Up Day" (related materials are contained in Appendix F). During this event employees are tasked with:

- Reducing the number of duplicate records;
- Preparing records for off-site storage;
- Imaging and indexing electronic records; and
- Identifying electronic records eligible for destruction.

The retention life cycle of various records determined how different categories of documents are handled. The program was designed to create an enjoyable environment around these tedious tasks by employing a food truck, encouraging casual dress, creating contests with prizes, and printing T-shirts commemorating the day. The program included an on-site shred truck, and the city attorney was available for consultation.

In an email to the Grand Jury, a city staffer wrote, "In addition to elevating the employee understanding that these public records are an asset of the city (just like the vac truck, fleet, and streets) …we have a duty to manage and maintain them well; reinforce the policy and procedures we have adopted; and let's face it, maintaining records can become back burner in the flurry of day-to-day needs and requests. Setting aside time to honor the need, accomplish an objective and then celebrate it – keeps it more in the forefront of the mind and honors the importance of the public's records." [43]

[43] Grand Jury correspondence April 26, 2022.

Law Enforcement Records

Some cities reported receiving significant numbers of requests for police records. All such requests were forwarded directly to city police departments or the County Sheriff's Office (for those cities contracting for police services).[44] Law enforcement agencies typically employ a records manager tasked with responding to public records requests. In some cities the disposition of these requests was reported back to the city clerk for inclusion in their tracking systems; in others, the city clerk had no knowledge of the status of a police records request. The Grand Jury did not investigate how these requests for law enforcement records were handled in compliance with the PRA. It is of note that most law enforcement records are exempted from the Public Records Act pursuant to Government Code Section 6254(f).

FINDINGS

F1. The city has no written documentation of its PRA policy and internal procedures, making it more likely that requests could be handled inconsistently.
F2. The city uses a commercially available software application that includes a web portal enabling the public to easily request records and track their disposition.
F3. Information about how to access public records requires multiple clicks to find on the city's website, which hinders the public's access to public records.
F4. The City of San Mateo implements a Records Cleanup Day with the purpose of increasing employee understanding of the need to effectively maintain public records, thereby improving PRA request responsiveness.
F5. The city has no PRA request form online, making public access to public records less efficient.

RECOMMENDATIONS

R1. The city council should direct city staff to consider and report back by June 30, 2023, on the creation of a written PRA policy or procedures document for circulation to all relevant staff.
R2. The city council should direct city staff to consider performing a cost/benefit analysis and report back by September 1, 2023, on the purchase of commercially available public records request software.
R3. By June 30, 2023, the city council should consider directing city staff to place information about how to access public records on the home page of the city's official website.
R4. By June 30, 2023, the city council should direct city staff to review and consider adopting a records management practice analogous to the City of San Mateo's "Records Cleanup Day."
R5. By June 30, 2023, the city council should direct city staff to create, on the city clerk's page of its website, a submittable PRA request form.

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44 Contracting cities are Half Moon Bay, Millbrae, San Carlos, Woodside, and Portola Valley.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the selected city and town councils as follows (x):

City	F1	F2	F3	F4	F5	R1	R2	R3	R4	R5
Atherton			x		x		x	x	x	
Belmont	x		x		x	x	x	x	x	x
Brisbane			x		x		x	x	x	x
Burlingame							x		x	
Colma							x		x	
Daly City	x	x				x			x	
East Palo Alto							x		x	
Foster City		x							x	
Half Moon Bay	x	x				x		x	x	
Hillsborough	x		x		x	x	x		x	x
Menlo Park	x	x				x		x	x	
Millbrae		x							x	
Pacifica		x							x	
Portola Valley			x		x		x	x	x	x
Redwood City		x						x	x	
San Bruno			x		x		x	x	x	
San Carlos		x							x	
San Mateo		x		x						
South San Francisco		x							x	
Woodside	x				x	x	x		x	

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

RESPONSE REQUIREMENTS

California Penal Code Section 933.05, provides (emphasis added):

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall report one of the following:

(1) The respondent **agrees** with the finding.

(2) The respondent **disagrees** wholly or partially with the finding; in which case the response shall **specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor**.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, **with a summary regarding the implemented action**.

(2) The recommendation has not yet been implemented, but will be implemented in the future, **with a timeframe for implementation**.

(3) The recommendation requires further analysis, **with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.**

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, **with an explanation therefor.**

METHODOLOGY

Through examination of surveys, interviews, the documentation provided by the cities, a demonstration of third-party software, and a site visit, the Grand Jury studied how cities respond to public records requests, and how they keep up with changes in the law.

Survey

- The Grand Jury developed an online survey consisting of six questions and a request for copies of their PRA policies and procedures.
- The survey was sent to all 20 city managers in the County and various respondents completed the survey.
- We then followed up with a brief phone interview to confirm the responses received from those completing the survey, and to request written policy and procedures documents and records retention policies.

Documents

The Grand Jury reviewed:

- Policy and procedure documents from all cities that indicated having them.
- Records retention policies from several cities.
- Proposals and contracts for third-party software received from various vendors
- Marketing material of third-party software vendors
- Research on best practices in records management

Site Tour

- GJ conducted a site visit to the San Bruno City Attorney's office.
- San Mateo conducted a virtual demonstration of their third-party software.

Interviews

- The Grand Jury conducted further interviews with city attorneys, city clerks and city managers based on those with written policies or procedures documents, training of key employees and elected and appointed officials (advisory bodies), number of public records requests received per year, and those with an elected city clerk.

Web Sites

- The official websites of the 20 cities in the County were reviewed to assess the ease in locating information relating to public records, the methods of submission of a public records request, as well as users' direct access to commonly requested public records.

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LIST OF APPENDICES

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Appendix B – PRA Policies and Procedures: Atherton and Redwood City

Appendix C – San Bruno PRA Request Log

Appendix D – GovQA Proposal for Services

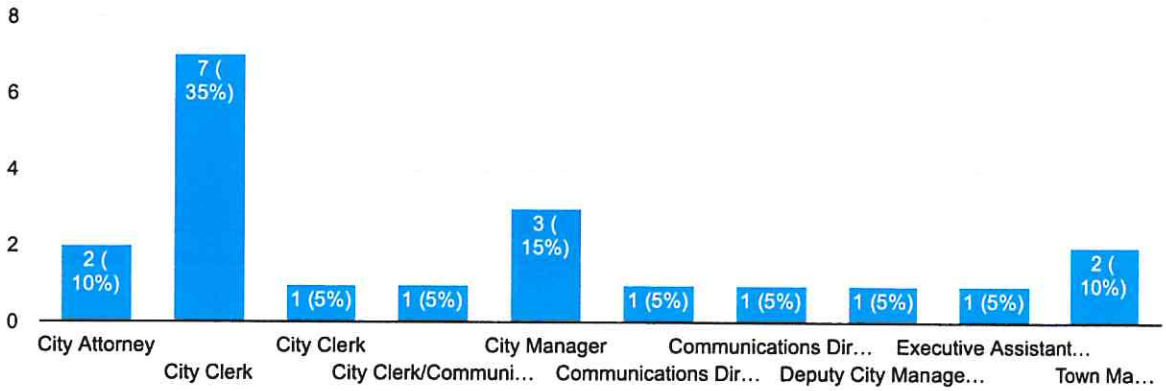
Appendix E – South San Francisco Retention Schedule

Appendix F – City of San Mateo's Clean-Up Day Staff Plan and Flyer

APPENDIX A
The Grand Jury Survey Results

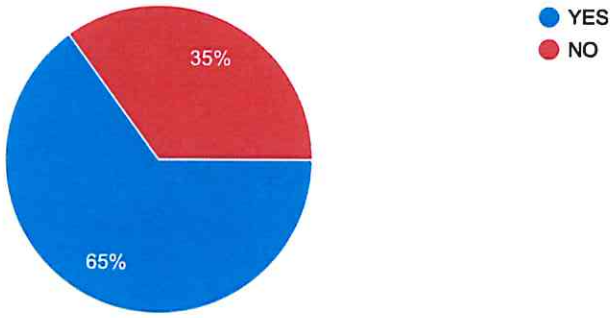
What is your job title?

20 responses

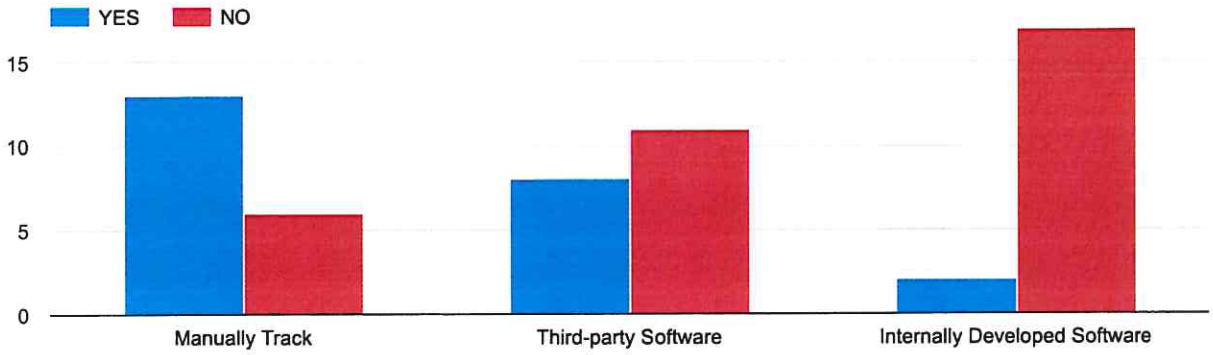


2. Have you established internal written procedures, or policies, for handling Public Records Act requests? If YES, please provide documentation to: rweiss@smcivilgrandjury.org.

20 responses

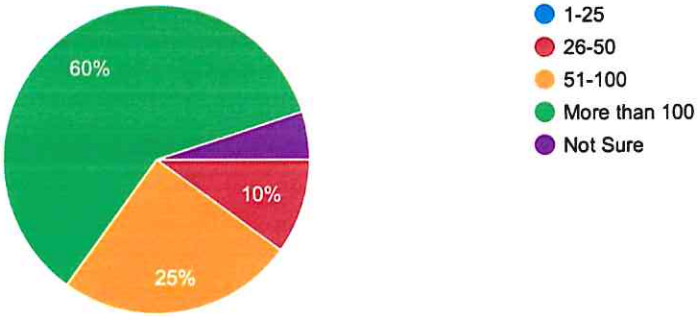


3. Please indicate if you use any of the following to track the status of each Public Records Act request.



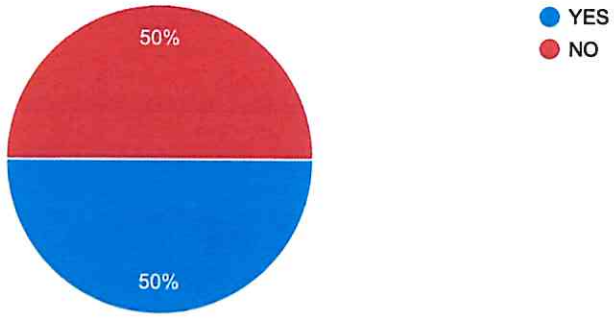
4. How many requests do you receive per year?

20 responses

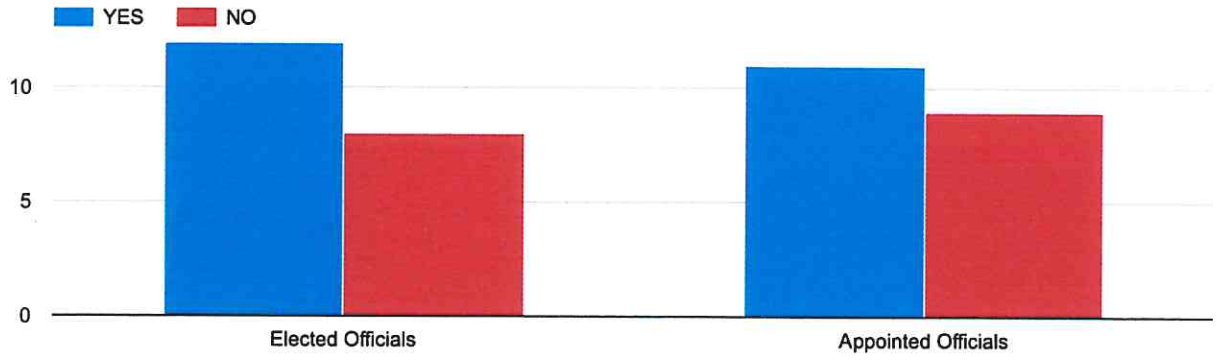


5. Does your city mandate formal Public Records Act training for key employees?

20 responses

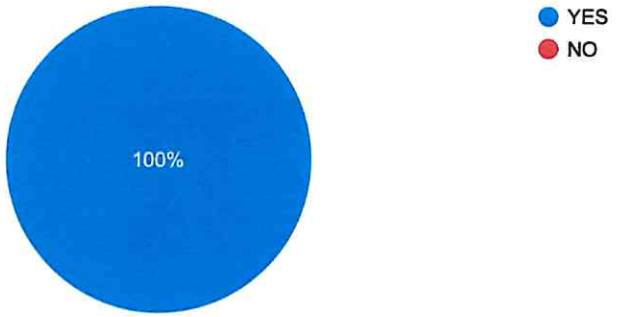


6. Does your city offer Public Records Act training for elected and appointed officials (i.e. advisory boards, commissions, committees)?



7. Have you adopted a written document retention policy?

20 responses



APPENDIX B

PRA Policies and Procedures: Atherton and Redwood City

Atherton: https://www.sanmateocourt.org/documents/grand_jury/2021/Appendix B - PRA PAP Atherton.pdf

Redwood City: https://www.sanmateocourt.org/documents/grand_jury/2021/Appendix B - PRA PAP Redwood City.pdf

APPENDIX C
San Bruno PRA Request Log
(sample page with requester names removed)

#	PRA	Sbpna	Date of request	Date Received	Requester Name	Description of Record(s)	Dept(s)	Response Due Date	Acknowledgment Letter Out	Records Provided
1	X		07/01/21	07/01/21		June 2021 Building permits	CD	07/12/21	Emailed rsps on 07/08/21	07/08/21
2	X		07/01/21	07/01/21		Docs re CPUC approval of purchase of streetlights from	PW	07/12/21	Emailed rsps on 07/08/21	7/8/2021
3	X		07/07/21	07/07/21		Records involving code enforcement, utility shut offs, and fire damaged properties	CD/CE/FD/ Finance	07/19/21 08/18/21	req 30 day ext - now due 08/18/21. Emailed rsps on 08/18/21	08/18/21
4	X		07/08/21	07/08/21		June 2021 Business licenses	Finance	07/19/21	Emailed report on 07/19/21	07/19/21
5	X		07/13/21	7/13/2021		June 2021 Building permits	CD	07/23/21	Emailed rsps on 07/13/21	7/13/2021
6	X		07/13/21	07/13/21		Records involving code enforcement, utility shut offs, and fire damaged properties	CD/CE/FD/ Finance	7/23/2021 08/23/21	07/23/21 req 30 day ext - now due 08/23/21. Emailed rsps on 08/18/21.	08/18/21
7		X				Subpoena for records involving 692 Green Ave	CE/CD/ PW	07/19/21	Emailed rcds on 07/23/21	07/23/21
8	X		07/14/21	07/15/21		Oldest current standing houses in SB	CD??	07/26/21	Emailed rsps on 07/23/21	X
9	X		07/15/21	07/15/21		Private tows from 04/01/21 thru 06/30/21	PD	07/26/21	Emailed report on 07/26/21	07/26/21
10	X		07/17/21	07/19/21		Electronic copy of all payment transactions for fiscal year 2020	Finance	07/29/21	Emailed link to agenda packets on 07/29/21	7/29/2021
11	X		07/20/21	07/20/21		2020 Pension Benefit/Payout Report	Finance	07/30/21	Request was meant for City of Concord - withdrawn on 07/31/21	Withdrawn
12	X		07/19/21	07/20/21		Uncashed checks	Finance	07/30/21	Emailoed link to website on 07/29/21	7/29/2021
13	X		07/22/21	07/22/21		Building & FD rcds for 787 E SB Ave	CD/FD	08/02/21	Emailed rcds on 08/02/21	8/2/2021
14	X		07/09/21	07/09/21		Firearm & Ammunition arrests & relaled demographic	PD	7/19/2021 08/18/21	req 30 day ext - now due 08/18/21. Emailed rsps on 08/18/21	8/18/2021

APPENDIX D
GovQA Proposal for Services

GRANICUS

Order Form

PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

One-Time Fees			
Solution	**Billing Frequency**	**Quantity/Unit**	**One-Time Fee**
FOIA Platform Onboarding	Up Front	1 Each	$0.00
Online Training – Administrator	Up Front	1 Each	$0.00
Online Training – Users	Up Front	1 Each	$0.00
		SUBTOTAL:	**$0.00**

New Subscription Fees			
Solution	**Billing Frequency**	**Quantity/Unit**	**Annual Fee**
Essentials Package 3	Annual	1 Each	$10,500.00
PST Email Extractor	Annual	1 Each	$1,500.00
Payments Module	Annual	1 Each	$0.00
Hosted Data Storage (TB)	Annual	1 Each	$0.00
Invoicing Module	Annual	1 Each	$0.00
FOIA Module for Enterprise Sales	Annual	1 Each	$0.00
Redaction License (per named user)	Annual	3 Each	$0.00
ADFS/Single Sign-on Module	Annual	1 Each	$0.00
Advanced Email Tracking	Annual	1 Each	$0.00
		SUBTOTAL:	**$12,000.00**

GRANICUS
FUTURE YEAR PRICING

Solution(s)	Period of Performance	
	Year 2	Year 3
Essentials Package 3	$11,235.00	$12,021.45
PST Email Extractor	$1,605.00	$1,717.35
Payments Module	$0.00	$0.00
Hosted Data Storage (TB)	$0.00	$0.00
Invoicing Module	$0.00	$0.00
FOIA Module for Enterprise Sales	$0.00	$0.00
Redaction License (per named user)	$0.00	$0.00
ADFS/Single Sign-on Module	$0.00	$0.00
Advanced Email Tracking	$0.00	$0.00
SUBTOTAL:	**$12,840.00**	**$13,738.80**

APPENDIX E
South San Francisco Records Retention Schedule 2016

https://www.sanmateocourt.org/documents/grand_jury/2021/Appendix E - SSF Retention Schedule 2016.pdf

APPENDIX F
City of San Mateo's Clean-Up Day Staff Plan and Flyer

San Mateo Records Clean-Up Day Staff Plan

Department/Location/Division:_____

Your Name: _____

Date of Clean-Up: May 05, 2022 Cinco De Mayo

This Form Due To Your Dept. Record Coordinator 4/28/22

Goal(s) for clean-up day (*select all that apply*)

- ☐ Prepare paper records for destruction
- ☐ Dispose of duplicate records
- ☐ Prepare records for off-site storage
- ☐ Sort through off-site storage records
- ☐ File paper files
- ☐ Develop file inventory
- ☐ Email clean-up (delete unnecessary emails. Move attachments that are records to the correct records repository e.g., One Drive, SharePoint, Laserfiche)
- ☐ Identify electronic records that are eligible for destruction
- ☐ Focus on imaging, indexing electronic records
- ☐ Ensure website content is accurate and up-to-date (Remove old/outdated documents and/ or pages from website)
- ☐ Other: _____

Key Activities and Strategies: What will you do to accomplish these goals? Be as specific as possible.

Welcome Back San Mateo

ANNUAL CINCO DE MAYO RECORDS CLEAN-UP DAY PICNIC

Let's Celebrate being together in person again with a picnic of specialty tacos in our backyard with your colleagues!

How to join the fun (and yes, records clean-up is fun!)

1. Ask your Department's Records Coordinator for a records clean-up commitment form.
2. Choose from a list of clean-up activities or create your own
3. Sign the form and provide it to your Records Coordinator by **April 28, 2022** - this is your RSVP for the luncheon. Sorry: No form - no tacos.
4. On or before 5/5/22 clean-up, purge, & organize those records!

Questions? Talk to your Records Coordinator or Alesha Boyd in the City Clerk's Office

Join us here!

Join us for Tacos in City Hall Backyard
11:00 am - 12:30 pm
Courtesy of the Clerks for anyone who committed to Records Cleon-up

- Salad
- Tacos - Grilled Chicken, Steak, Carnitas

- Veggie Spanish Rice and Veggie Beans
- Grilled Veggies
- Guacamole, sour cream and cheese fixins

- Corn tortillas
- Chips and Salsa
- Churros for dessert! Yum!