



City of Independence

Review of City Clerk's Public Records Request Process

City Of Independence, Missouri

**Report to the Mayor and City Council
By the Management Analyst
June 19th, 2015
Report No. 14-04**

City of Independence

City Council Office



June 19th, 2015

Honorable Mayor and Members of the City Council:

This report was assigned by the Audit and Finance Committee in September 2014 and was initiated by the City Management Analyst pursuant to Chapter 1, Article 43 of the City Code of Ordinances. The report reviews the process by which the Independence City Clerk responds to public records requests.

The report found that the City Clerk is complying with the Missouri Sunshine Law's provisions regarding making records available and providing timely responses to these requests. The report makes two recommendations about how the response process can be further enhanced to provide additional efficiencies in responding to records requests.

Staff from the City Clerk's Office reviewed a draft of this report. The draft report was also reviewed by the City Manager and City Counselor, and a response from the City Counselor is appended. Finally, members of the Audit and Finance Committee reviewed this report before it was finalized. The cooperation and courtesy of all who provided assistance is greatly appreciated.

Respectfully,

A handwritten signature in cursive script that reads "Zachary Walker".

Zachary Walker
City Management Analyst

Table of Contents

Introduction.....	4
Audit Objectives.....	4
Scope and Methodology.....	4
Background.....	4
Legal Authority.....	5
Missouri State Statutes.....	5
Case Law.....	8
Administrative Policies.....	9
Summary of Findings	9
Findings	9
Response Times to Public Records Requests Meet Timeframes Established by Missouri State Law; Opportunities Exist to Further Enhance Response Times.....	9
Recommendations.....	10
Appendix A: City Attorney’s Response	11
Appendix B: City of Independence Schedule of Fees.....	13

Introduction

Audit Objectives

This analysis of the public records request process administered by the City Clerk has been conducted pursuant to Chapter 1, Article 43 of the City Code of the City of Independence, which outlines the duties of the City Management Analyst. This report has been designed to answer the following questions:

- How many public records requests are received annually by the City Clerk?
- How long do public records requests received by the City Clerk typically take to fulfill?
- What steps are required to access public records?
- What are the costs associated with obtaining public records, and how are costs determined?
- Do opportunities exist to increase efficiency by which public records requests are fulfilled?

Scope and Methodology

The audit was conducted in accordance with generally accepted government auditing standards as well as the City's audit policies and procedures. Audit methods included:

- Reviewing Missouri State Statutes regarding the requirements of the Missouri Sunshine Law.
- Conducting interviews with staff from the City Clerk's Office.
- Assessing the current practices and fees associated with records requests for the City of Independence.

No information was omitted from this report because it was deemed privileged or confidential.

Background

The City Clerk is the official custodian of records for the City of Independence. City records are accessible by the public according to Missouri State Law and City policy. A critical component of this process is ensuring that requests for access to public records are met with a timely and efficient response. Records requests can be submitted directly to any City department or to the City Clerk. Though the scope of this audit is limited to the formal records requests process overseen by the City Clerk, nearly every City department receives public records requests. A majority of these requests are directed to the Police Department and include incident reports, vehicle dashboard camera videos, 911 recordings, and detention center videos. In 2014, the Police department received 6,789 records requests from citizens and an additional 11,674 requests from attorneys, subpoenas, and the media.

To make a records request through the City Clerk, members of the public are asked to complete and submit an official records request form to the City Clerk's Office.¹ This form is available on the City's website and at the City Clerk's Office. Once the request has been received, the City must respond within three days per Missouri State Statutes. If the information requested will take longer than three days to provide, the City must notify the requestor. Upon receiving the request, the City provides the requestor with estimated costs that may be assessed as part of accommodating the request. These fees are calculated using the estimated department staff time for research and duplication services. Fees for these services have been set by the City Fee Schedule. A copy of the City's Schedule of Fees for research and duplication service has been included as Appendix A to this report.

Several changes have been implemented to the records request process since a new City Clerk was hired by the City Council in February 2015. Previous to February 2015, the Clerk's Office was charging \$0.10 a page for electronic records. It is the interpretation of the new City Clerk that the fee of \$0.10 per page was to recoup for any actual paper used in a document request. Therefore, this practice has been suspended and the \$0.10 per page fee is only being charged for paper documents. Under the schedule of fees, \$6.35 is charged for a compact disc if the electronic records are requested in that format. It should also be noted that if a request is small enough so that the related search/duplication time is less than 20 minutes, no charges are applied. These requests are logged as well.

Tracking of records requests has also been improved. In 2014, a records request log was created by the previous City Clerk. Starting in 2015, the records request log has been kept up to date to reflect every request received by the Clerk's Office and what stage it is in the process. The log helps the office clearly track all requests and locate relevant information for inquiries.

While the number and type of records requests vary from year-to-year, requests have been trending upward in the last several years. In 2011, there were 69 requests submitted to the City Clerk's Office, in 2012 there were 77 requests submitted to the City Clerk's Office, and in 2013 there were 78 requests submitted to the City Clerk's Office. However, in 2014, there were 125 requests submitted to the City Clerk's Office. As of May 5th, 2015, the City Clerk had received 57 requests in the year-to-date, which puts the City Clerk's Office on pace to receive approximately 140 requests in 2015.

Legal Authority

Missouri State Statutes

Public records requests in the State of Missouri are governed by the Missouri Sunshine Law. This law was introduced and adopted by the Missouri General Assembly in 1973. Missouri's commitment to openness in government is clearly stated in Section 610.011, RSMo, of the Sunshine Law: "It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be

¹ While the City Clerk is designated as the official custodian of records for the City of Independence, it is the Municipal Court Clerk who is designated as the custodian of municipal court records.

liberally construed and their exceptions strictly construed to promote this public policy.” The law sets out the specific instances when a meeting, record, or vote may be closed, while stressing these exceptions are to be strictly interpreted to promote the public policy of openness.²

According to Section 610.010, a public record is defined as

“any record, whether written or electronically stored, retained by or of any public governmental body including an report, survey, memorandum, or other document or study prepared for the public governmental body by a consultant or other professional service paid for in whole or part by public funds, including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body...The term ‘public record’ shall not include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are retained by the public governmental body or presented at a public meeting. Any document or study prepared for a public governmental body by a consultant or other professional service as described in this subdivision shall be retained by the public governmental body in the same manner as any other public record.”

Section 610.021 identifies the circumstances under which a public governmental body is authorized to close meetings, records and votes. Of specific relevance to the City is:

- Preparation, including any discussion or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups;
- Software codes for electronic data processing and documentation thereof;
- Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid;
- Sealed bids and related documents, until the bids are opened; and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected;
- Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries, and lengths of service of officers and employees of public agencies once they are employed as such...;
- Records which are protected from disclosure by law;
- Records relating to municipal hotlines established for the reporting of abuse and wrongdoing;

² *Inside the Sunshine Law*. Office of Missouri Attorney General Chris Koster. August 28, 2014.

- Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product; however, all final audit reports issued by the auditor are to be considered open records;
- Operational guidelines, policies and specific response plans developed, adopted, or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to or preventing any critical incident which is or appears to be terrorist in nature and which has the potential to endanger individual or public safety or health. Financial records related to the procurement of or expenditures relating to operational guidelines, policies or plans purchased with public funds shall be open. When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair the public governmental body's ability to protect the security or safety of persons or real property, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records;
- Existing or proposed security systems and structural plans of real property owned or leased by a public governmental body, and information that is voluntarily submitted by a nonpublic entity owning or operating an infrastructure to any public governmental body for use by that body to devise plans for protection of that infrastructure, the public disclosure of which would threaten public safety: (a) Records related to the procurement of or expenditures relating to security systems purchased with public funds shall be open; (b) When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair the public governmental body's ability to protect the security or safety of persons or real property, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records; (c) Records that are voluntarily submitted by a nonpublic entity shall be reviewed by the receiving agency within ninety days of submission to determine if retention of the document is necessary in furtherance of a state security interest. If retention is not necessary, the documents shall be returned to the nonpublic governmental body or destroyed;
- The portion of a record that identifies security systems or access codes or authorization codes for security systems of real property;
- Records that identify the configuration of components or the operation of a computer, computer system, computer network, or telecommunications network, and would allow unauthorized access to or unlawful disruption of a computer, computer system, computer network, or telecommunications network of a public governmental body. This exception shall not be used to limit or deny access to otherwise public records in a file, document, data file or database containing public records. Records related to the procurement of or expenditures relating to such computer, computer system, computer network, or telecommunications network, including the amount of moneys paid by, or on behalf of, a public governmental body for such computer, computer system, computer network, or telecommunications network shall be open; and

- Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between a public governmental body and a person or entity doing business with a public governmental body. Nothing in this section shall be deemed to close the record of a person or entity using a credit card held in the name of a public governmental body or any record of a transaction made by a person using a credit card or other method of payment for which reimbursement is made by a public governmental body.

According to Section 610.022, public records shall be presumed to be open unless otherwise exempt pursuant to the provisions of this chapter. Section 610.023 outlines the procedure for responding to requests, specifying that each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body. If records are requested in a certain format, the public body shall provide the records in the requested format, if such format is available. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. The period for document production may exceed three days for reasonable cause.

Section 610.26 limits the fees that may be charged for copying public records to no more than ten cents per page for a paper copy that is no larger than nine by fourteen inches. The hourly fee for duplicating time may not exceed the average hourly rate of pay for clerical staff of the public governmental body. Research time required for fulfilling records requests may be charged at the actual cost of research time. This section also requires that copies are to be produced using employees of the body that result in the lowest amount of charges for search, research, and duplication time. Documents may be provided without charged or at a reduced charge when the public governmental body determines that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body and is not primarily in the commercial interest of the requester.

Section 610.26 further holds that fees for all paper copies larger than nine by fourteen inches and other types of records shall include only the cost of copies, staff time (which shall not exceed the average hourly rate of pay for staff of the public governmental body required for making copies and programming), and the cost of the tape, disk, or other medium used for duplication. Payments for copying fees may be requested prior to making the copies.

Case Law

A significant amount of case law has been developed that guides the records request process. According to the Missouri Attorney General's Office, the following rulings have been made regarding Missouri's Sunshine Law:

- Jones v. Jackson County Circuit Court (Missouri Appellate Western Division 2005): The Sunshine Law does not require a government body to create a new record upon request, but only to provide access to existing records held or maintained by the public governmental body.
- Anderson v. Village of Jacksonville (Missouri Appellate Western Division 2003): Anyone seeking access to public records must communicate a request in language that a reasonably competent custodian of the records would understand.
- Opinion No. 235-2000: The board of alderman may review a city employee's personnel file if it is necessary to care, manage, or control the city.
- Opinion No. 153-98: A request for a public record to be provided in a format other than paper must be honored if the public governmental body is able to reproduce the record in that format. *Note: Section 610.023.3 RSMo, has since been amended to require that if records are requested in a certain format, and that format is available, the public body shall provide the records in the requested format.*
- Opinion No. 82-97: If a city council member is absent from a meeting that is closed pursuant to Section 610.021 (3), RSMo, the council member should have access to the minutes from the closed portion.

Administrative Policies

There is one Administrative Policy addressing city meetings and records. AP 96-01 states the City's policy of complying with all aspects of the Missouri State law governing public meetings and records. Specifically, this Administrative Policy provides a procedure for all City departments and agencies to follow in scheduling meetings of any City Board, Commission, or Committee.

Summary of Findings

The City Clerk's Office is fully complying with all legal requirements pertaining to the Missouri Sunshine Law. The report contained one finding and made two recommendations designed to further enhance the efficiency and convenience associated with the public records request process:

Findings

Response Times to Public Records Requests Meet Timeframes Established by Missouri State Law; Opportunities Exist to Further Enhance Response Times

The response times for public records requests meet the timeframes established by Missouri State Law. According to information provided by the City Clerk's Office, the average time for a first response to public records requests that were submitted to the City Clerk through May 2015 was 1.29 days. By Missouri State Statute, first response is required within 3 days of receipt of the request. Through May 2015, the average time for final response to requests submitted to the City Clerk was 5.48 days. Of the

52 requests completed by the City Clerk in 2015, 32 were closed within 7 calendar days (62%). These efficiencies are critical both in terms of providing a prompt response to the requestor as well as in minimizing fees for services that are assessed as part of the request.

Though the response times for public records requests meet Missouri State Statutes, opportunities exist to further improve these response times, thereby expediting the time to respond to a request and contain associated fees for research and duplication services. One such method would be the enhanced use of Laserfiche for document management services across all City departments. Laserfiche is a document management software that the City Clerk's office uses to store records electronically. Laserfiche allows the City Clerk's Office to search for records in a timely manner. For example, the Clerk's Office must keep the original paper copies of resolutions and ordinances, but when they are scanned into Laserfiche, the Clerk's Office can easily conduct a keyword search and find any ordinance or resolution that has been passed by the City Council since the 1950's. To that end, Management should explore the financial costs and technical abilities to provide Laserfiche to all City Departments.

In addition to expanding the use of Laserfiche, opportunities also existing to further leverage capabilities of the Laserfiche software that are not currently being utilized, including online forms. In short, these online forms would allow the public to use the City's webpage to complete and submit public records requests online. Presently, the Clerk's Office accepts paper requests and scanned/emailed requests. Having this online form would allow greater access to public records and help other Departments better serve the public who request records directly from them. Moreover, online forms would provide greater accountability in tracking records requests and allow enhanced efficiencies in receiving and responding to these requests. Management should explore the possibility of having Technology Services develop such a feature for future use.

Recommendations

1. Evaluate financial costs and technical capabilities of adding Laserfiche software for document management services to all City Departments.
2. Work with Technology Services Department to develop Laserfiche forms to allow public records requests to be made through the City's website.

Appendix A: City Attorney's Response

City of Independence

MEMORANDUM

DATE: June 2, 2015

Law Department

TO: **Zach Walker, Management Analyst**

FROM: Dayla Bishop Schwartz, City Counselor *DBS*



**SUBJECT: Report No. 14-04
Public Records Requests**

I have reviewed the draft report for Report No. 14-04, Public Records Requests. I am of the opinion that there is nothing contained within the draft report that would expose the City to a lawsuit. Furthermore, it is my opinion that the draft report would not qualify for an executive session discussion before either the Council Audit and Finance Committee or the City Council.

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Appendix B: City of Independence Schedule of Fees

Fees are subject to applicable sales tax.

I. Copies

Fees for photocopy service (Single copy charge): (If research is required, then in addition to the following fees, the City may charge for services based on the labor rate identified in section III.)

A. Photocopy

1. 8-1/2" x 11"	0.10
2. 8-1/2" x 14"	0.10
3. 24" x 36"	2.40
4. 30" x 36"	3.00
5. 32" x 36"	3.20
6. 36" x 36"	3.60
7. 60" x 36"	6.00
8. 75" x 36"	(large wall map size) 7.50
9. Other Sizes	1.20 per linear foot

B. Microfilm Print

1. 10" x 12"	0.25
2. 12" x 18"	0.25
3. 18" x 24"	0.50

C. Computer Plotting (Community Development Department) 1. Color Copies / Plain Paper (per page)

a. 8-1/2" x 11"	2.00
b. 11" x 17"	3.80
c. 24" x 36"	6.20
d. 36" x 48"	12.30

2. Color Copies / Glossy Paper (per page)

a. 8-1/2" x 11"	3.50
b. 11" x 17"	5.30
c. 24" x 36"	7.80
d. 36" x 48"	14.40

II. Documents

Fees for documents. (If research is required, then in addition to the following fees, the City may charge for services based on the labor rate identified in section III.)

A. City Charter	0.10/page
B. City Code	0.10/page
C. City Code Supplements	40.00
D. City Code Chapters.....	0.10/page
E. Individual Code pages or parts of Code Chapters printed by Copies.....	0.10/page
F. Personnel Policies and Procedures	0.10/page
G. City Budget.....	0.10/page
H. City Budget Supplements (Line Item Supplement, Revenue Manual).....	0.10/page
I. Financial Report.....	0.10/page

J. Capital Improvement Program	0.10/page
K. Parade Permit.....	1.00
L. Police Report	0.10/page
M. Photographic proof sheet	15.00
N. Photographs, 8" x 10" (Police Reports) Color.....	15.00
O. Minor's Pool Permit	0.10/page
P. Health Department Reports to include, Food Poisoning, Animal Control,	

Code Enforcement Records, Swimming Pool, Lab and Miscellaneous Items (unless copies are to the benefit of the Health Department)	0.10/page
Q. Medical Records (with patient release) other than to patient or health agencies (who will be provided records at no cost)	0.10/page
R. Uniform Fire Incident Report	0.10/page
S. Fire Department Investigation Report	0.10/page
T. Mailing and handling fee for bulk items, add.....	3.00
U. Municipal Court Records.....	0.10/page
V. Fingerprinting:	
1. w/o Background Check.....	5.00
2. w/Background Check.....	25.00

III. Services of Employee Labor

A. Reimbursement for Employee time spent providing records searches (rate per hour)	
1. Clerical.....	22.04 per hour
2. Administrative or Supervisory.....	50.57 per hour
B. Employee time spent duplicating records (rate per hour).....	22.04 per hour
C. Notarization of signature and proper recording.....	2.00
D. Certification of facsimile of document	2.00
E. Court appearance at employee's hourly rate times 1.30, plus the City's current mileage reimbursement rate	

IV. Electronic Records

Electronic Records. (If research is required or special preparation is necessary, then in addition to the following fee, the City may charge for services based on the labor rate identified in section III.):

A. City information distributed on CD.....	6.35/disk
B. Video Cassette of Meetings and Events	Cost of Cassette