

# Performance Audit Report

## Open Public Records Practices at 30 Government Entities

Report No. 1000011



May 19, 2008



**Washington State Auditor Brian Sonntag, CGFM**

[www.sao.wa.gov](http://www.sao.wa.gov)



# A letter from State Auditor Brian Sonntag



**Brian Sonntag, CGFM**  
**Washington State Auditor**

## To the Citizens of Washington:

This report contains the results of our audit of 30 government agencies' performance in responding to public records requests. This audit measures the state's, cities' and counties' commitment to open government. Open government is essential to accountability and transparency.

We undertook this audit as a response to citizens, and with the aim of finding out what leads to successful responses to public records requests. As you will see in the audit report, tone at the top and a commitment to good customer service are big factors in that success. We make many other constructive suggestions as well.

We also would like to congratulate entities that demonstrated that top-notch customer service in responding to requests.

We also appreciate the responses of other entities that plan to use this report as a road map to improve operations. In my mind, that is the best outcome an audit can produce.



A handwritten signature in black ink, which appears to read "Brian Sonntag". The signature is fluid and stylized, with the first and last names being the most prominent.

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### ***Mission Statement***

*The State Auditor's Office independently serves the citizens of Washington by promoting accountability, fiscal integrity and openness in state and local government. Working with these governments and with citizens, we strive to ensure the efficient and effective use of public resources.*

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# Objective and scope

## 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?

We measured entities' performance against the following benchmarks and best practices:

- The Public Records Act.
- The Washington Attorney General's model rules on public records practices.
- The audited entities' performance compared to their peers.

In addition, I-900 requires the State Auditor's Office to address the following elements:

1. Identification of cost savings.
2. Identification of services that can be reduced or eliminated.
3. Identification of programs or services that can be transferred to the private sector.
4. Analysis of gaps or overlaps in programs or services and recommendations to correct them.
5. Feasibility of pooling the entity's information technology systems.
6. Analysis of the roles and functions of the entity and recommendations to change or eliminate roles or functions.
7. Recommendations for statutory or regulatory changes that may be necessary for the entity to properly carry out its functions.
8. Analysis of the entity's performance data, performance measures and self-assessment systems.
9. Identification of best practices.

## Scope

We conducted the work from November 2006 through March 2008 in accordance with Generally Accepted Government Auditing Standards prescribed by the U.S. Government Accountability Office. The audited agencies were:

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

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*We provided a copy of this performance audit report to:*

- *The audited entities*
    - *City councils*
    - *County councils*
  - *Boards of County Commissioners*
  - *State Legislature*
-



## Our audit authority

*The complete text of Initiative 900 is available at [www.sao.wa.gov/PerformanceAudit/PDFDocuments/i900.pdf](http://www.sao.wa.gov/PerformanceAudit/PDFDocuments/i900.pdf).*

**W**ashington voters approved Initiative 900 in November 2005, giving the State Auditor's Office the authority to conduct independent performance audits of state and local government entities on behalf of citizens to promote accountability and cost-effective uses of public resources.

The State Auditor's Office conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. 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. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## After the performance audit

*Visit [www.sao.wa.gov/PerformanceAudit/audit\\_reports.htm](http://www.sao.wa.gov/PerformanceAudit/audit_reports.htm) for:*

- *Full report*
- *Audited agencies' responses, action plans*
- *Notices of public hearings*
- *Archives of past public hearings*

**T**he release of this audit report triggers a series of actions by the Legislature and the legislative bodies of the cities and counties included in the audit. The following actions must occur in accordance with Initiative 900:

### State government agencies

- The Legislature must hold at least one public hearing within 30 days of this report's publication to consider the audit findings and receive public testimony.
- The findings and recommendations contained in this report must be considered during the appropriations process.
- The Joint Legislative Audit and Review Committee will issue a report by July 1 each year detailing the Legislature's progress in responding to the State Auditor's recommendations. The report must justify any recommendations the Legislature did not respond to and detail additional corrective measures taken.

### Local government entities

Within 30 days of this report's issue, the legislative bodies for the cities and counties in this report must hold at least one public hearing to consider the findings of the audit and to receive comments from the public.

The corresponding legislative body must consider this report in connection with its spending practices. An report must be submitted by the legislative body by July 1 each year detailing the status of the legislative implementation of the State Auditor's recommendations. Justification must be provided for recommendations not implemented. Details of other corrective action must be provided as well.

The state Legislature's Joint Legislative Audit and Review Committee (JLARC) will:

- Summarize any statewide issues that require action from JLARC.
- Notify the appropriate fiscal and policy committees of public hearing agendas.

### Follow-up performance audits

Follow-up performance audits on any state and local government entity may be conducted when determined necessary by the State Auditor. Initiative 900 requires state and local governments to provide justification for recommendations not followed. Those justifications may be subject to follow-up performance audits.

# Why did we conduct this audit?

Listening to citizens is a cornerstone of the State Auditor's Office performance audit program. In the spring of 2006, we sought thoughts and ideas from citizens about the direction of the new program. We conducted another round of citizen outreach in the fall of 2007. In all, we have engaged more than 1,000 citizens in our outreach efforts.

At each outreach forum, citizens have ranked government accountability as their most important measure of government performance, followed by efficiency and effectiveness. Random samples of registered voters around the state consistently echo that ranking.

In discussions at our outreach engagements, citizens expressed frustration that they can't know whether government is accountable without openness, which many feel is generally lacking at all levels of government, from

cities to counties to state agencies.

The results of our citizen outreach – the things citizens tell us they want to know about government – factor into each and every performance audit we undertake. Access to public records is a fundamental right of every citizen, regardless of whether that citizen is an “average” citizen or an elected official, a retiree, a business owner, or a student. Conversely, providing access to public records is a fundamental obligation of government entities, from the smallest special-purpose district to the largest state agency to private-public partnerships, such as public development authorities.

The State Auditor's Office chose this audit based on all of those factors. We chose this performance audit because it is a basic measure of government accountability and transparency.

## Audit results

### Overarching Conclusion

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

We identified best practices that the audited entities should consider in order to improve their performance. Those best practices are contained in this report on page 33 and are:

- The Washington Public Records Act
- The Washington Attorney General's model rules for paper and electronic records.
- Entities' performance

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 possible from the best practices in this report and the Washington Attorney General's model rules regarding paper and electronic records.
- The Washington Attorney General's Office should create standard, formal training curriculum, which may or may not include a credential, for all public records officers in the state based on the model rules. The Washington Legislature should provide funding to the Attorney General's Office to establish and maintain this training curriculum. The State and each local government will be responsible for arranging the training for its public records officer(s) and ensuring new public records officers receive the training.
- We recommend entities consider tracking costs associated with responding to requests as a tool that management can use to determine appropriate levels of staffing and resources.

# Findings and Recommendations

Audit Findings	Audit Recommendations
<p>1. Thirty-one of 300 unannounced public records requests (10 percent) were considered nonresponsive. An additional seven responses (2 percent) were either nonconforming or incomplete.</p>	<p>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:</p> <ul style="list-style-type: none"> <li>• Establish and follow processes to ensure that all requests are received.</li> <li>• Evaluate processes and controls around incoming mail to ensure records requests are found and properly routed.</li> <li>• Refrain from redirecting requestors to another department within the same entity or requiring requestors to initiate a "new" request within the same entity.</li> <li>• Avoid the use of e-mail filters that result in the entity rejecting or overlooking public records requests. See related Finding No. 2.</li> <li>• Review responses and communicate with requestors to ensure the records to be provided are consistent with the request.</li> </ul>
<p>2. Some entities do not accommodate a variety of public records requests and therefore do not provide the public with the fullest assistance.</p>	<p>We recommend that entities:</p> <ul style="list-style-type: none"> <li>• Establish policies that are consistent with the Public Records Act, using the Attorney General's model rules as a guide.</li> <li>• Conduct broad staff training on the Public Records Act</li> <li>• Accommodate as many modes of requesting public records as is practically possible.</li> <li>• Select and set e-mail filters at a level that will not block public records requests.</li> <li>• Consider receiving records requests online.</li> <li>• Develop a policy that clearly outlines how public records requests can be accepted and make that policy readily available to the public.</li> </ul>
<p>3. Some entities did not provide complete and satisfactory explanations for redactions of public records and some records were improperly redacted.</p>	<p>We recommend that entities:</p> <ul style="list-style-type: none"> <li>• Provide comprehensive training and resource materials on legal exemptions to staff who respond to records requests.</li> <li>• Describe the specific exemption that applies to each redaction when the records are provided to requestors.</li> <li>• 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.</li> <li>• Seek guidance when determining whether redactions are legal.</li> </ul>
<p>4. Some entities provided the requested public records in a less timely manner than their peers.</p>	<p>We recommend entities review their public records requests processes to identify and eliminate those elements that may delay providing records. Specifically, we recommend entities:</p> <ul style="list-style-type: none"> <li>• Prioritize incoming records requests to identify those that require review and/or redaction versus more straightforward requests that can be fulfilled more quickly.</li> <li>• Use e-mail to respond to public records requests whenever possible.</li> <li>• Explore opportunities for providing records electronically.</li> <li>• Provide training for staff on processing public records requests.</li> <li>• Provide cross-training to other staff to prepare them for acknowledging and responding to requests.</li> <li>• Provide records in installments.</li> <li>• Consider waiving copying charges for small records requests.</li> <li>• Engage in ongoing communication with the requestor about priorities and timelines when a request is identified that may take some time to fill.</li> </ul>

## Cost Savings

Although we identified opportunities for cost savings, we did not calculate cost savings that results from avoiding litigation. Our specific recommendations to achieve potential cost savings in processing public records requests are:

- Re-evaluate existing policies or practices that may prohibit providing records to requestors electronically.
- Reassess policies regarding archiving and retrieving electronic public records.
- Compare internal policies with the Washington

Attorney General's Office model rules on public records to identify opportunities for more efficient and effective responses to records requests.

- Consider redaction capabilities when evaluating or developing new software applications and systems.
- Re-evaluate policies on copying charges. Identify instances in which the entity can recover copying costs and instances in which waiving a copying charge may be more cost-effective.
- Provide large public records requests in installments.

## Initiative 900 Cross-Reference

The following table shows where each of the nine elements outlined in Initiative 900 is addressed in this report.

Initiative 900 Elements	Finding 1	Finding 2	Finding 3	Finding 4
1. Identification of cost savings.	‡	‡	‡	‡
2. Identification of services that can be reduced or eliminated.				√
3. Identification of programs or services that can be transferred to the private sector.	Disclosure of records is a responsibility of all government agencies. The Act was established under public initiative and written into state law; therefore the responsibilities set forth cannot be deferred to an outside third-party.			
4. Analysis of gaps or overlaps in programs or services and recommendations to correct gaps or overlaps.	√	√		
5. Feasibility of pooling information technology systems.	This element was examined and no clear and convincing advantage was observed in the application of information technology systems in monitoring public records requests, as the function of response is driven by an individual taking responsibility for a request to ensure it is responded to in a timely manner.			
6. Analysis of the roles and functions at the entities and recommendations to change or eliminate roles or functions.			√	√
7. Recommendations for statutory or regulatory changes that may be necessary for the entities to properly carry out its functions.			√	
8. Analysis of the entities' performance data, performance measures and self-assessment systems.	√			√
9. Identification of best practices.	Outlined after Finding 4, before Appendices.			

Notes:

√ This finding was relevant to the I-900 element.

‡ Cost savings are likely associated with this finding but are impossible to estimate.

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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 the Attorney General of the State of Washington's Web site: <http://www.atg.wa.gov/page.aspx?id=11668>

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:

"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.

## **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 said it could not electronically redact the requested records and offered to provide paper copies at a cost of \$8,900. A Thurston County judge ruled in this case that the Public Records Act does not require agencies to provide records in



an electronic format. However, the agency ultimately provided the records electronically to the requestor.

- 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 and disagreed with DOC regarding the documents withheld and the time it took to provide the records requested. The Thurston County Superior Court order supported the position of the Department and, on appeal, that decision was supported by the Washington Court of Appeals. After a favorable decision from the two lower courts, the Supreme Court reversed their decisions and ordered the documents to be released. DOC was ordered to pay statutory penalties, attorney fees and costs incurred over the 7 years it took for the case to pass through the appellate process. The case involved issues over exemptions in the Public Records Act.
- 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.

### **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.

# About the Audit

## 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.

During our audit planning and throughout the audit, we identified a number studies and audits of the public records processes conducted throughout the United States in recent years. Additionally, we identified a number of significant lawsuits involving public records requests in our state. We also identified internet sites of organizations and blogs dedicated to government accountability and transparency as well as newspaper articles and editorials concerning public records requests. This information assisted us in developing our audit objectives, criteria, methodology and assisted in our analysis of the audit evidence gathered and conclusions reached.

## Scope

We conducted our work from November 2006 through March 2008 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 (Counties), B (Cities) and C (State agencies).

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 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. 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.

The following are the 10 requests and the methods we used to make them:

Request Mode	Description
In-Person Request	Copy of the entity's sexual harassment policy. These requests occurred between February 9 and February 16, 2007.
Certified Letter Request	Copies of the 2005 year-end W-2s or equivalent records for the top five highest 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.

Request Mode	Description
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.

### Measuring Each Entity's Performance

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

- Sufficient responses (conforming records). 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:
  - 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**

An entity's responsiveness was measured by its performance in providing the requested records in response to the first request. Entities were evaluated on how quickly they provided the records. Entities were also evaluated based on how they responded. If an entity provided records or indicated no records existed, they were considered responsive.

Entities were considered 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; or
- The entity's response was not received by the requestor.

We still considered entities responsive even if the records were incomplete or not consistent with the request, but noted the errors observed.

### **Timeliness**

To evaluate how quickly entities responded with records, 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. The letter from the Thurston County Commissioners denying our ability to interview the public records officer without oversight is contained in Appendix A.

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.

## Audit results

### Overarching Conclusion

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

We identified best practices that the audited entities should consider in order to improve their performance. Those best practices are contained in this report on page 33 and are:

- The Washington Public Records Act
- The Washington Attorney General's model rules for paper and electronic records.
- Entities' performance

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 possible from the best practices in this report and the Washington Attorney General's model rules regarding paper and electronic records.
- The Washington Attorney General's Office should create standard, formal training curriculum, which may or may not include a credential, for all public records officers in the state based on the model rules. The Washington Legislature should provide funding to the Attorney General's Office to establish and maintain this training curriculum. The State and each local government will be responsible for arranging the training for its public records officer(s) and ensuring new public records officers receive the training.
- We recommend entities consider tracking costs associated with responding to requests as a tool that management can use to determine appropriate levels of staffing and resources.

## Audit Results Table

The information presented in this table is discussed in more detail in Findings 1, 2, 3, 4 and Appendices A (counties), B (cities) and C (state agencies).

Entity Name	# of Requests Quicker Than Average*	# of Requests out of 10 that Provided Conforming Records
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	3	8
* Each entity's response time was compared against the average for its entity type; i.e., Spokane County was compared to all other counties' response times.		

## Finding 1

**Thirty-one of 300 unannounced public records requests (10 percent) were considered nonresponsive (response or records not received by requestor). 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 or office within the same entity.
- 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 the entity responsive however the records were incomplete or inconsistent with the request. For example:

- 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 31 (10 percent) of our 300 public records requests.

#### Summary of Nonresponsive Requests (does not include the seven incomplete records)

Non-Response Rate by Request Method			
Request Method	Number of Requests	Nonresponsive (response or records not received by requestor)	Percent Nonresponsive
Certified Mail	120	10	8.3%
Standard Mail	120	12 <sup>1</sup>	10.0%
E-mail	30	8	26.7%
In Person	30	1	6.7%
<b>Totals</b>	<b>300</b>	<b>31</b>	<b>6.7%</b>

<sup>1</sup> The Public Records Officers at two entities did not have a record of receiving three of these requests. Two of the requests were submitted to Kitsap County and one request was submitted to City of Everett. We could not determine the reason the requests were not received.



### Condition by Entity

Entity	Requests not received Public Records Officer	Entity directed requestor to resubmit request to another office within entity	Entity response drafted or issued, but not received by requestor	Entity did not correctly process the request; no response received	Entity did not accept format of the request	Entity provided incomplete or insufficient records
City of Seattle		7			1	
Yakima County			4			1
Dept. of Corrections			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
<b>Totals</b>	<b>3</b>	<b>10</b>	<b>9</b>	<b>5</b>	<b>4</b>	<b>6</b>

## Description of the nonresponsive 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: Ten of our requests (almost 3 percent) were redirected. The request was received by the entity but the requestor was directed to resubmit the request to another department, division or office within the entity. In these circumstances, we consider the entity to be nonresponsive to our original request. This occurred at:
  - King County – One instance
  - City of Seattle – Seven instances
  - 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 or office 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 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 A.

- Responses not received by requestor: In nine instances (3 percent), we did not receive responses to the initial request from the entities for reasons we were unable to determine. We noted two instances in which the entities provided documents showing 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 did not have the actual response to the requestor on file showing it had been drafted and mailed. Whatcom County had a copy of the e-mail request with a handwritten note indicating it had been sent, but record of the e-mail transmission was not available.
  - Yakima County provided correspondence to auditors during follow-up procedures 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 during our follow-up procedures. The reason the e-mails did not reach the requestor could not be determined.
- Request not correctly processed, no response received by requestor: 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.
    - 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 mailed a response to the requestor using an incorrect address due to a clerical error. We submitted a second, follow-up 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. Police Department personnel told us they sought guidance from the City Attorney but did not follow up with the attorney. 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 and a response was drafted indicating that the information was available on the Board's Web site. However, the e-mail response was not sent to the requestor.
  - 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 the 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](mailto:hstansb@co.pierce.wa.us)
  - City of Seattle: [clerk@seattle.gov](mailto:clerk@seattle.gov)
  - Washington State Lottery: [Director's\\_Office@walottery.com](mailto: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 provided a Web address that did not produce the records or link to the records, but rather provided links to other City policies, which included a Business Expense Policy. 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 a certified mail requesting the entity's five highest-paid employees for 2005. The Board responded to our request via e-mail by providing a Web site link to the State of Washington's Office of Financial Management "2005 Personnel Detail Report." However, the general salary information listed in the report contained the December 2004 compensation and compensation rates. When we 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 over incoming mail to ensure records requests are found and properly routed.
- Refrain from redirecting requestors to another department or office within the same entity or requiring requestors to initiate a "new" request within the same entity.
- 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 that records provided are consistent with the request.

## **Criteria**

See Appendix K

## **Entities' Responses**

See Appendix A, B and C

## Finding 2

**Some entities do not accommodate one or more means of communicating public records requests and therefore do not provide the public with the fullest assistance.**

### Condition

During our audit interviews, we were informed of the following:

- 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<sup>1</sup>
  - 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 SpokaneDespite 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 sent by SAO to e-mail addresses provided on their Web sites as a means 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
- Some entities use various types of available technology for the public to submit requests through their Web sites.

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

- Spokane County
- Pierce County
- Whatcom County

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<sup>1</sup> The City of Kent will accept other written forms provided they include all of the following, per City Code, KCC 1.05.060:

- The date of the request;
- The name of the requester;
- The full address of the requester;
- The telephone number of the requester;
- A complete description of the requested record;
- The title and date of the requested record, if known;
- The location of the requested record, if known; and
- Whether the requester intends to review the records or to obtain a copy of the records.

- City of Vancouver
  - City of Bellevue
  - City of Everett
  - City of Spokane Valley
  - City of Federal Way
  - Department of Labor and Industries
  - Washington State Patrol
  - Department of Social and Health Services
- 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

The following entities employ a best practice of facilitating online public records request submittal through their Web sites:

- Kitsap County
- Department of Revenue
- Department of Corrections
- City of Kent
- City of Tacoma

The remaining entities did not have Web sites that provided public records request forms that could be downloaded or submitted through their Web site.

## **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.

## **Recommendations**

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.

The entities listed in the last paragraph of the Condition (page 17) are cited as employing a best practice for online records requests.

## **Entities' Responses**

See Appendix A, B and C



## 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 shall 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.
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.

## 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. As described in Finding 1, 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**

The causes for the 11 instances of unexplained redactions as well as the one instance of overredaction were twofold:

- Entities did not review the records prior to their release to ensure redactions were explained.
- Entities were concerned about releasing “private” information about employees but may not have verified that the redactions were allowed under state law.

Our study of state laws and administrative codes, media coverage of public records issues, communications to agencies from the Governor and interviews with public records staff at the 30 entities identified causes that may contribute to entities not fully disclosing records:

### **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.
- 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.

## **Recommendations**

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.

## **Criteria**

See Appendix K

## **Entities' Responses**

See Appendix A, B and C

## Finding 4

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

#### **Background**

Within five business 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.
- 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<sup>1</sup> 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.

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<sup>1</sup> “Slowest” was defined using the average time for each request by each entity type. To be considered for inclusion, a threshold was developed that listed all responses that took longer than 10 business days and were 5 business days or more than average.

Entity	Request	Actual Response Time*	Average Days Response Time for entity type*§	Reasons‡
<b>Counties</b>				
Pierce County	Travel vouchers	19 <i>(Pierce County produced an e-mail dated 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.)</i>	10	Copies were provided after requestor paid copying fees. The County sent 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.
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. The County miscalculated the cost of the copies and adjusted charges. The requestor provided payment for an unrelated incorrect amount. These errors by the County and requestor delayed the response by 14 business days. The records were received four business days after correct payment was mailed.
		<b>* Business days</b>	<b>§ Average days a response took for cities, counties or state agencies</b>	<b>‡ Reasons given by the entity or observed by auditors</b>

Entity	Request	Actual Response Time*	Average Days Response Time for entity type*§	Reasons‡
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	County apologized for being "late" with the response without providing an explanation.
Spokane County	Employee recognition awards	15	8	The County did not provide a reason for the length of time to respond. The entity provided a large number of documents (32 pages with redactions).
Kitsap County	Out-of-state travel	29	16	County said the response was delayed because it was "misdirected through the County mail system" when it was transferred to the Sheriff's Office. The Office received the request six business days after it was mailed. The County took an additional 23 business days to provide 21 redacted documents.
Yakima County	2005 top five highest-paid employees	14	6	The County did not provide a reason for the length of time to respond.
Thurston County	Travel vouchers	15	10	The County called the requestor to apologize for delay, caused by staff taking emergency leave.
<b>Cities</b>				
Spokane	Travel vouchers	16	9	The City anticipated delays in providing the records due to short staffing during the holidays.
		<b>* Business days</b>	<b>§ Average days a response took for cities, counties or state agencies</b>	<b>‡ Reasons given by the entity or observed by auditors</b>

Entity	Request	Actual Response Time*	Average Days Response Time for entity type*§	Reasons‡
Tacoma	Out-of-state travel	40	16	City told requestor response was delayed due to weather and staff issues.
Vancouver	Cell phone invoice	13	7	In its acknowledgement, the City said it "will need approximately 15 business days to assemble the requested documents and review them for release."
Bellevue	Out-of-state travel	21	16	The City provided the status of request during processing. The City provided 105 pages of records, which took 14 business days.
Federal Way	Travel vouchers	19	9	Records were received two business days after the requestor mailed payment for copying. The City did not provide a reason for the length of time to respond.
Federal Way	Out-of-state travel	35	16	City provided records five business days after requestor mailed copy payment but did not explain the response time.
Kent	2005 top five highest-paid employees	20	7	City estimated response in 21 calendar days but did not explain.
Kent	Information Technology Director job description	13	5	City estimated response in 21 calendar days but did not explain.
<b>State Agencies</b>				
Department of Revenue	2005 Top 5 highest-paid employees	26	10	Entity e-mailed requestor with clarification request. E-mails sent by the requestor were denied by the entity's e-mail system. Requestor provided information by mail, which slowed the process.
		<b>* Business days</b>	<b>§ Average days a response took for cities, counties or state agencies</b>	<b>‡ Reasons given by the entity or observed by auditors</b>



Entity	Request	Actual Response Time*	Average Days Response Time for entity type*§	Reasons‡
Office of the Insurance Commissioner	Travel policy	13	4	The Office apologized to the requestor for the delay in providing the records and attributed the delay to equipment problems.
Department of Social and Health Services	2005 top five highest-paid employees	17	12	Department informed the requestor more time was needed to provide employees named in the request time to seek a court injunction to block the release of the records, consistent with its procedures.
Department of Social and Health Services	Vacation records	14	9	The Department's acknowledgement said it "estimate(d) 20 business days... to locate, review, and copy the records you requested."
Department of Social and Health Services	Out-of-state travel	19	8	The Department's acknowledgement said it "estimate(d) 20 business days... to locate, review, and prepare the information you requested."
<p><i>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.</i></p>				
Department of Labor and Industries	Entity phone directory	14	6	The Department did not provide a reason for the length of time to respond.
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 the length of time to respond.
		<b>* Business days</b>	<b>§ Average days a response took for cities, counties or state agencies</b>	<b>‡ Reasons given by the entity or observed by auditors</b>

Entity	Request	Actual Response Time*	Average Days Response Time for entity type*§	Reasons‡
Washington State Patrol	Cell phone invoice	13	8	Did not provide a reason for the length of time to respond.
Washington State Patrol	Out-of-state travel	24	8	Records were received four business days after the requestor mailed copying fees. Patrol did not provide a reason for the response time, but provided 57 redacted pages.
Washington State Patrol	Employee recognition awards	15	8	Did not provide a reason for the length of time to respond.
Department of Corrections	2005 Top 5 highest-paid employees	17	12	Department informed the requestor the request would require staff to manually sort W-2s for more than 16,000 employees to find the information. Records were received eight business days following acknowledgement.
Department of Corrections	Travel vouchers	21	13	Department apologized for response timeline, citing "weather and other events" for the delay.
Department of Corrections	Cell phone invoice	14	8	Records were received nine business days after the requestor mailed payment for copying
Department of Corrections	Vacation records	19	9	Department 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 five business days after the requestor mailed payment for copying fees.
		<b>* Business days</b>	<b>§ Average days a response took for cities, counties or state agencies</b>	<b>‡ Reasons given by the entity or observed by auditors</b>

Entity	Request	Actual Response Time*	Average Days Response Time for entity type*§	Reasons‡
Department of Corrections	Information Technology Director job description	20	7	Records were received 12 business days after the requestor mailed payment for copying fees.
Department of Corrections	Phone Directory	14	6	Records were received six business days after the requestor mailed payment for copying.
Washington State Investment Board	Travel vouchers	19	13	The Board stated 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 Board did not provide a reason for the length of time to respond.
		* Business days	§ Average days a response took for cities, counties or state agencies	‡ Reasons given by the entity or observed by auditors

## 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 D)

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.

### 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 without providing a reason why the length of time it took to respond was necessary. We noted at least two 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 effect 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:

- 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 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, offices, or 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 or office, the timeliness of the response can be significantly delayed. One entity told us that rather than referring the request internally to the appropriate department or office for the requestor, they help the requestor identify the appropriate department or office 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 approximately three 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.

However, we also recognize that the use of e-mail comes with challenges as filters are applied by requestor to their e-mail accounts which can impair the effectiveness of the communication by entities. Requestors should be aware, when requesting and receiving records using e-mail of the risks of non-receipt and entities should be aware they can occur and consider using follow-up phone calls to indicate a response has been provided.

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 D).

### **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. 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 copies of 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 – one request withheld; three 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.
- 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. 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

### **Entities' Responses**

See Appendix A, B and C

## Best practices identified during the audit

We observed during the audit that 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.

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'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** 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 business 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 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 or office 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."
- **Monitoring e-mail blocked by e-mail filters.** Effective monitoring of incoming e-mails ensures e-mails of a legitimate business nature are identified and provides improved assurance the entity will be responsive to records requests.
- **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, offices, or divisions have separately designated public records officers and elected officials who field and process requests specific to their offices.

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, office or division. The entity should avoid redirecting the requestor to another department, office 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 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 Tacoma
  - 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. We observed entity responses which exceeded the intent of the request. We identified these as best practices. In summary, requestor expectations are exceeded when the entity provides additional information identified during gathering which may help the requestor, or provide detailed communication to ensure the requestor is informed throughout the process.
- **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
- 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](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.

- **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.

- 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.

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

<b>Best Practice Description</b>	<b>Counties that demonstrated best practices identified (number of occurrences observed)</b>	<b>Cities that demonstrated best practices identified (number of occurrences observed)</b>	<b>State agencies that demonstrated best practices identified (number of occurrences observed)</b>
Acknowledgement and response were concurrent	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)	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)	Dept. of Revenue (8) Office of the Insurance Commissioner (6) Dept. of Social and Health Services (6) 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.	King County (1) Pierce County (6) Snohomish County (4) Thurston County (2) Whatcom County (6) Benton County (1)	City of Tacoma (1) City of Federal Way (3)	
Copy fees were explicitly waived in the response.	King County (2) Spokane County (2) Thurston County (1) Whatcom County (1)	City of Yakima (3)	Dept. of Social and Health Services (2) Washington State Investment Board (1)
Entity met estimated time frame provided in their initial response for providing records	King County (2) Snohomish County (4) Spokane County (2) Clark County (1) Kitsap County (1) Whatcom County (6) Benton County (2)	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)	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)
Entity responded with a web page referral instead of copied documents.	King County (2) Snohomish County (1)	City of Seattle (2) City of Spokane (1) City of Bellevue (1) City of Spokane Valley (2) City of Federal Way (1)	Dept. of Revenue (1) Dept. of Social and Health Services (2) Dept. of Corrections (1) Office of Financial Management (2)

<b>Best Practice Description</b>	<b>Counties that demonstrated best practices identified (number of occurrences observed)</b>	<b>Cities that demonstrated best practices identified (number of occurrences observed)</b>	<b>State agencies that demonstrated best practices identified (number of occurrences observed)</b>
Response Exceeded Expectations	King County (3) Pierce County (1) Spokane County (2) Kitsap County (1) Thurston County (1) Benton County (3)	City of Spokane (1) City of Tacoma (1) City of Vancouver (1) City of Bellevue (1)	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	King County (1)	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	King County (1) Snohomish County (3) Spokane County (1) Yakima County (1) Thurston County (1) Benton County (1)	City of Spokane (1) City of Tacoma (1) City of Spokane Valley (1) City of Yakima (1)	Dept. of Corrections (1)
Receipt was provided to show payment of copy fees was received.	King County (1) Pierce County (2) Snohomish County (1) Kitsap County (2) Whatcom County (1)	City of Tacoma (1) 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.	Kitsap County (1)		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.	Thurston County	City of Kent	Dept. of Revenue
Entity uses a touch screen in lobby to direct the public to where to obtain public records	Kitsap County		

<b>Best Practice Description</b>	<b>Counties that demonstrated best practices identified (number of occurrences observed)</b>	<b>Cities that demonstrated best practices identified (number of occurrences observed)</b>	<b>State agencies that demonstrated best practices identified (number of occurrences observed)</b>
Entity provided requestor options in the format of the records to be provided.	Whatcom County (1)	City of Bellevue (3) City of Federal Way (1)	Dept. of Social and Health Services (1) Washington State Lottery (1)
Entity provided copy of original request with response.	Pierce County (3) Snohomish County (1) Spokane County (1) Clark County (7) Kitsap County (1) Thurston County (1) Benton County (3)	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)	Office of the Insurance Commissioner (1) Dept. of Social and Health Services (4) 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.	King County (1) Spokane County (3)	City of Vancouver (1) City of Federal Way (2) City of Yakima (1)	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.	Pierce County (1)	City of Bellevue (1) City of Spokane Valley (1)	Washington State Patrol (1)
Explanation provides entity's rationale describing how the response provided is consistent with the letter of the request.	King County (4) Pierce County (2) Snohomish County (2) Spokane County (2) Clark County (2) Yakima County (1) Thurston County (2) Benton County (1)	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)	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.	King County (2) Pierce County (1) Spokane County (1) Kitsap County (1) Whatcom County (1)	City of Everett (1)	Dept. of Revenue (1) Dept. of General Administration (1) Washington State Investment Board (1)



<b>Best Practice Description</b>	<b>Counties that demonstrated best practices identified (number of occurrences observed)</b>	<b>Cities that demonstrated best practices identified (number of occurrences observed)</b>	<b>State agencies that demonstrated best practices identified (number of occurrences observed)</b>
Entity restates the letter of the request in their response.	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)	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)	Dept. of Revenue (8) Office of the Insurance Commissioner (4) Dept. of Social and Health Services (9) 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)
Signed affidavit from the Requestor acknowledging the documents provided will not be used for commercial purposes.		City of Kent (1)	Washington State Patrol (2)
Entity numbered the pages provided to ensure all pages were provided in response.			Dept of Corrections (1)
Entity included reason for redactions directly on the copies where each redaction was applied.		City of Yakima (2)	



## Appendix A – Results by County and Responses

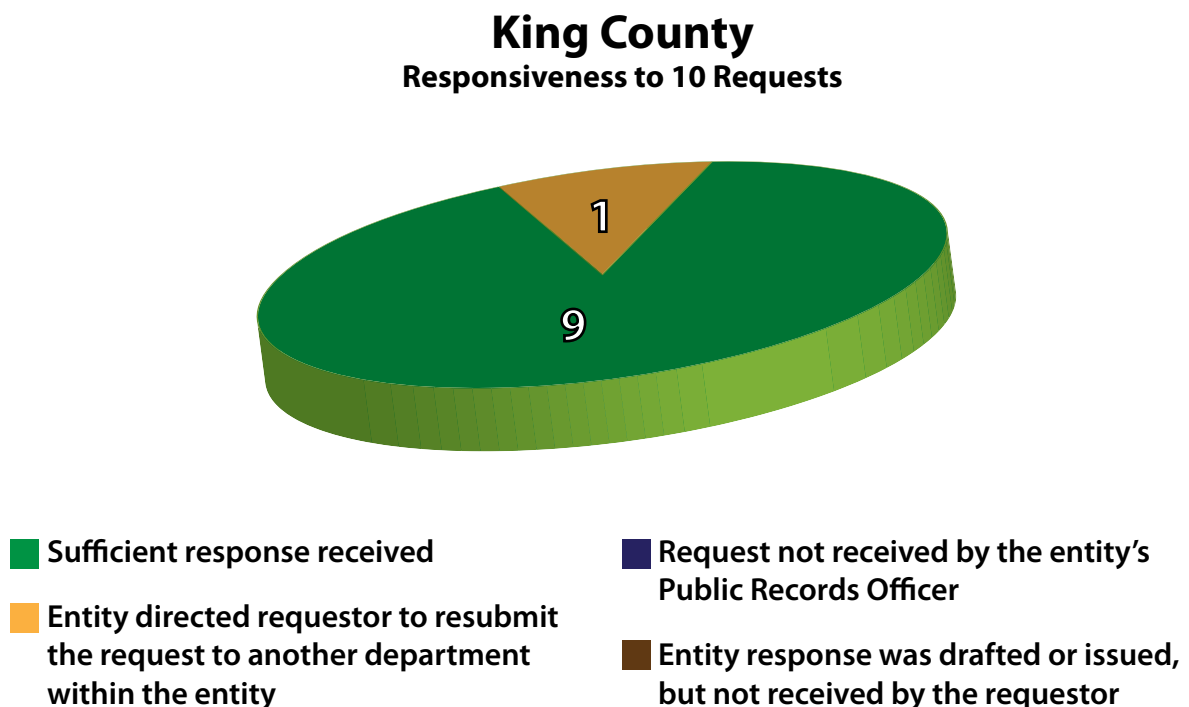
### About King County

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.

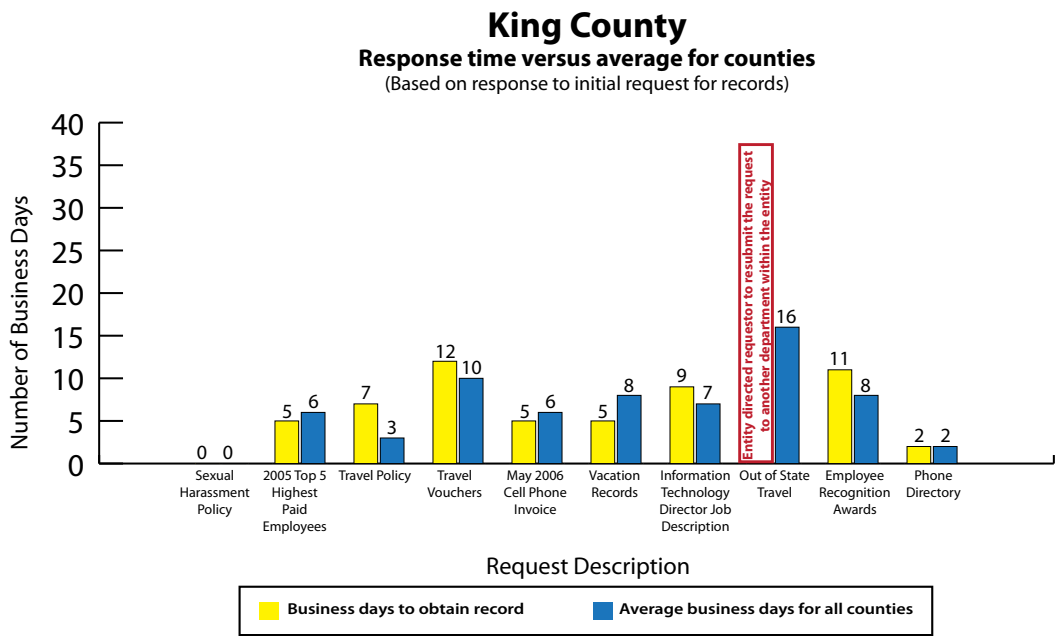
The County's public records process is decentralized. The County has at least one public records officer for each department. The County relies on individual departments to process and respond to their own requests. The following departments or offices were included in our audit:

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

### Conforming responses to the initial request – 9 out of 10 Requests



Responsiveness – 10 Requests - Compared to Average for Counties



## King County's Response



### King County

**Ron Sims**

King County Executive

701 Fifth Avenue, Suite 3210  
Seattle, WA 98104

**206-296-4040** Fax 206-296-0194

TTY Relay: 711

[www.kingcounty.gov](http://www.kingcounty.gov)

April 22, 2008

Brian Sonntag, State Auditor  
Washington State Auditor's Office  
Sunset Bldg., 3200 Capitol Bldg.  
P. O. Box 40031  
Olympia, WA 98504-0031

RE: King County response to Performance Audit of Public Records Requests

Dear Mr. Sonntag:

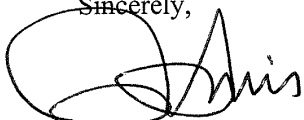
Thank you for the opportunity to review your draft audit report on performance in providing public records to citizens. I would like to thank you and your staff for taking the time to examine this issue with so many local governments in Washington State. King County is fully committed to transparency in government and we have worked extremely hard on our public disclosure program during the past several years. The Attorney General's Model Rules on public disclosure have been applied almost in their entirety to King County's public disclosure response protocol. Thank you for acknowledging our accomplishments in the Best Practices portion of your draft report.

We noted on page 46 of your report that King County is not listed among the entities using a centralized monitoring system. Although not all of King County's separately elected offices have adopted the executive branch centralized tracking system (the Public Disclosure Tracker), this system is currently being used by both the executive branch and District Court. King County Labor Relations has also adopted the tracker for monitoring records requests filed under RCW 41.56, *Collective Bargaining*. Furthermore, King County's Public Disclosure Tracker has proved so successful that both the Washington Attorney General and the Port of Tacoma have signed licensing agreements and King County has provided the tracker to these agencies for their own use free of charge.

Brian Sonntag  
April 22, 2008  
Page 2

Attached are responses to each of the findings and recommendations addressed to King County. If you have questions about the responses please contact Paula Adams, County Public Disclosure Officer, at 206-296-4223, or Internal Audit Manager David Lawson, at 206-205-0780.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Sims", with a large, stylized initial "R" and "S".

Ron Sims  
King County Executive

Attachment: Responses to Finding and Recommendations

cc: King County Council Members  
King County Elected Officials  
King County Department Directors  
Kurt Triplet, Chief of Staff, Office of the King County Executive  
Cheryle Broom, King County Auditor  
Paula Adams, King County Public Disclosure Officer, Department of Executive Services  
David Lawson, Manager, Executive Audit Services

**King County's**  
**Response to State Auditor Findings and Recommendations**  
**Entities Performance in Providing Public Records to Citizens**

**Finding 1:** Thirty-two of 300 unannounced public records requests (11 percent) were considered non-responsive. An additional seven responses (2 percent) were either nonconforming or incomplete. King County directed one requestor to another branch of county government

**Recommendation:** Refrain from redirecting requestors to another department within the same entity or requiring requestors to initiate a new request within the same entity.

**County Response:** King County government consists of six separate elected offices. Although these offices communicate effectively about public disclosure requests involving more than one separately-elected office, the Executive cannot direct other elected officials on matters of their administrative operations. However, procedures have been established to coordinate responses to request for records. When a King County agency responds to a records request involving more than one separately-elected office, it informs the requestor in writing that it is responding on behalf of its branch of government. Agencies also notify the requestor in writing if other separately-elected offices could have responsive records and provide appropriate staff contact information to assist requestors in obtaining information. We also notify the affected separately-elected office so that they can anticipate the request.

**Finding 4:** Some entities provided the requested public records in a less timely manner than their peers. 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 payments from the requestor. Entities that required payment before sending out the records did have the records available for inspection prior to release to the requestor. Nine entities, including one King County response, withheld records pending payment of the copy fees.

**Recommendation:** Entities review their public records request process to identify and eliminate those elements that may delay providing records. Specifically, that entities consider waiving copy charges for small records requests.

**County Response:** King County routinely requires payment for records prior to releasing them to the custody of the requestor. This is authorized under RCW 42.56. However, King County always gives the requestor the further option of reviewing the records free of charge within a county facility as required in 42.56. We are committed to quality customer service in the context of public disclosure. While the no-cost alternative is required by statute, we also feel it is important from a customer service standpoint.

Requiring payment prior to physically releasing the records can be important to governments when responding to requests that are extremely large and/or voluminous. Although governments can no longer deny a request for being overly broad, the Attorney General's Model Rules permit governments to respond in batches and secure payment for any given batch before producing subsequent batches. This enables governments to efficiently utilize staff resources assigned to public disclosure, and also guards against a minority of requests designed to harass or abuse government staff.

King County often waives copying fees for records productions that constitute only a few pages of material.

## About Pierce County

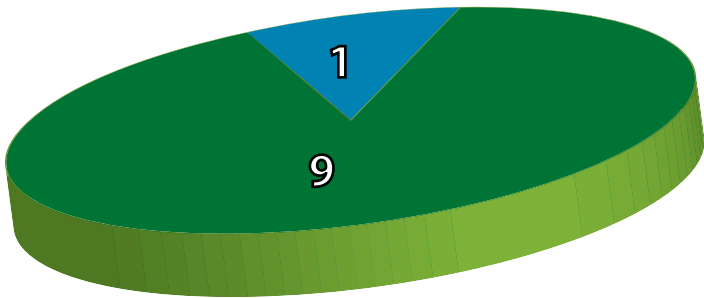
Pierce County serves approximately 790,500 residents. The elected, seven-member County Council is the policy-setting legislative body of the County.








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 or offices were included in our audit:

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

### Conforming responses to the initial request – 9 out of 10 Requests

**Pierce County**  
Responsiveness to 10 Requests



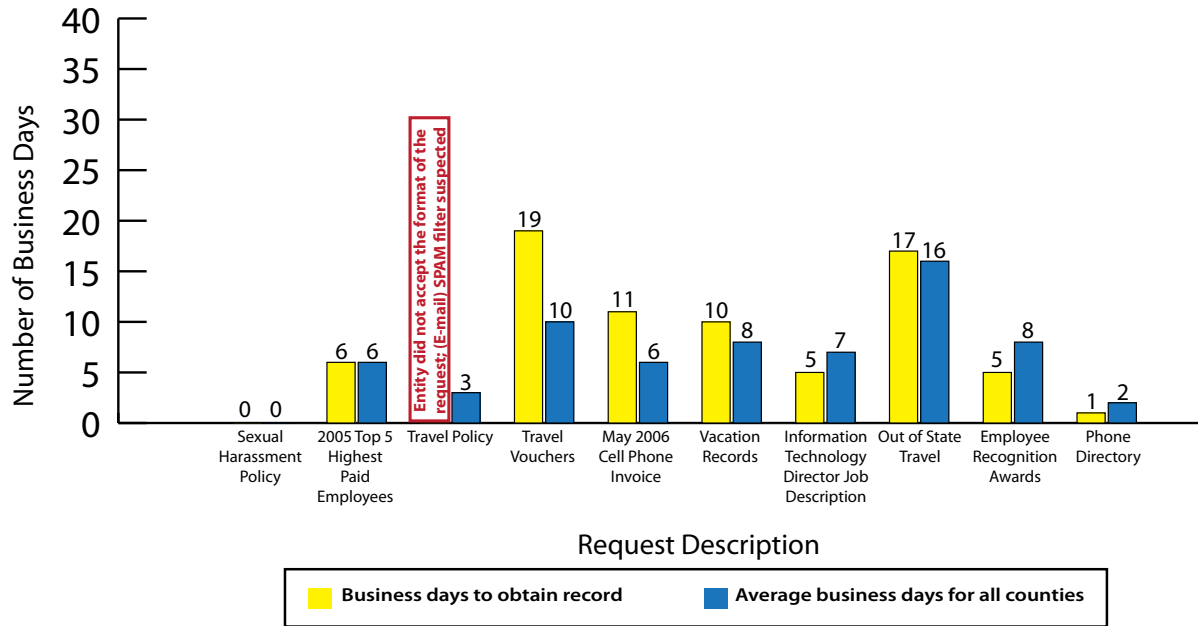
- |   |  |
|---|--|
|  Sufficient response received  |  Request not received by the entity's Public Records Officer              |
|  Entity directed requestor to resubmit the request to another department within the entity |  Entity response was drafted or issued, but not received by the requestor |
|  Entity did not correctly process the request, no response received                        |  Entity responded with incomplete or insufficient records                 |
|  Entity did not accept the format of the request   |  |

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

### Pierce County

#### Response time versus average for counties

(Based on response to initial request for records)



## Pierce County's Response



Pierce County

Budget and Finance Department

615 South 9th Street, Suite 100  
Tacoma, Washington 98405-4673  
(253) 798-7450 • FAX (253) 798-6699

**PATRICK KENNEY**  
Director

April 29, 2008

Nestor Newman, Audit Manager  
Washington State Auditor's Office Performance Audit  
1616 Cornwall Avenue, Suite 107  
Bellingham, WA 98225

SENT VIA EMAIL & US POSTAL SERVICE

Dear Mr. Newman:

Thank you for the opportunity to respond to the Performance Audit Draft Report regarding public records requests. Pierce County's response to the findings and supplemental information is as follows:

*Page 19 - The table titled Conditions by Entity identifies Pierce County as an entity that did not accept the format of a request (e-mail). Page 22 - Requests not accepted due to format of submittal.*

Comment:

Pierce County departments regularly receive and process public records requests via e-mail. It is incorrect and misleading to state that Pierce County does not accept requests in this format. As noted in the audit report, it could not be determined why the e-mail request was not received from the auditors.

*Page 27 - Condition states... "entities e-mail filters prevented them from receiving the records request sent by SAO.....".*

Comment:

As previously noted, the auditors and the County were unable to determine why the e-mail request was not received. Pierce County departments regularly receive and process public records requests via e-mail. The County does accommodate a variety of request formats and provides the public with the fullest assistance.

*Page 31 - Note 1 states "Pierce County produced an e-mail sent on 1/11/2007 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."*

Comment:

The email in question was sent to the requestor to communicate the cost and availability of records. For unknown reasons, the email response was not received by the requestor.

Throughout the draft report there is an emphasis encouraging the use of e-mail in processing records. As a standard practice, Pierce County accepts and responds to records requests received via e-mail. In Finding 1, the report concludes the County

Accounting • Budget  
Revenue • General Services  
Purchasing • Fleet



Printed on recycled paper



was non-responsive to an e-mail request sent by the auditors. In Finding 4, the auditors apparently did not receive an e-mail reply sent by the County and that is also treated as non-responsive in the audit report.

*Page 140 of the report (Appendix J – Overall Results) describes a walk-in request made to Pierce County Human Resources Department.*

Comment:

The report states the request took an hour to fulfill and implies that the requestor was interacting with Human Resources staff for this length of time. The report also states “the entity’s staff asked several questions bordering on contentious before agreeing to provide the record.”

Based on information supplied by SAO, the requestor initially went to the office of another department in a different building to make the request. Apparently the requestor had difficulty locating the Human Resources Department offices but the entire elapsed period is used in the calculation of length of time required to obtain the record. In fact, according to Human Resources Department staff, the auditor/requestor was actually in their office for 15 minutes or less.

The individual making the walk-in request to Human Resources did not use specific terminology such as public records request or public disclosure. The department staff handling the request has explained that she was trying to determine whether or not the requestor was an employee of Pierce County and may be in need of further assistance beyond the policy document itself. If the requestor was an employee dealing with a harassment situation, the staff person would have advised the individual of several options, i.e., contact with a professional staff person in the Human Resource office, referral to the EAP program, etc.

The stated objective of the Public Records Performance Audit is to determine how effective each entity is at responding to requests in a prompt and cooperative manner. The draft audit report emphasizes customer service in the statements of findings, conditions, and best practices. The situation described above does not represent an effort to withhold or obstruct access to public records. Rather the situation reflects a collision of policies and good intentions to provide the best possible customer service in all circumstances whether a public records request or service to an employee in need.

Thank you again for the opportunity to provide a response to the draft report. If you have any questions or wish to discuss these comments, please contact me at (253) 798-7580 or via e-mail at [kkeatin@co.pierce.wa.us](mailto:kkeatin@co.pierce.wa.us).

Sincerely,



Kathryn A. Keating, CPA  
Accounting Manager

cc: John Ladenburg, Pierce County Executive  
Lyle Quasim, Chief of Staff

Terry Lee, Chair, Pierce County Council  
Shawn Bunney, Pierce County Council  
Calvin Goings, Pierce County Council  
Roger Bush, Pierce County Council  
Timothy Farrell, Pierce County Council  
Barbara Gelman, Pierce County Council  
Dick Muri, Pierce County Council  
Patrick Kenney, Budget and Finance Director  
Brian Ziegler, Public Works Director

Betsy Sawyers, Human Resources Director  
Paul Pastor, Pierce County Sheriff  
Skip Stansbury, Special Assistant to the County Executive  
Tony Tipton, Public Works Support Services Manager  
Audrey Houston, Public Works Records Specialist  
Rob Willis, Public Works Administrative Services Manager  
Sue Wahlberg, Human Resources Administrative Assistant  
Craig Adams, Pierce County Sheriff Legal Counsel  
Matt Temmel, Performance Audit Office  
William Vetter, Performance Audit Office  
Joe Simmons, SAO  
Mark Rapozo, SAO  
Tom Bernard, SAO

## About Snohomish County

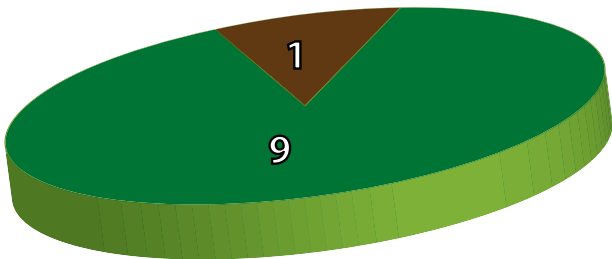
Snohomish County has a population of approximately 686,300. County voters elect a five-member County Council and a County Executive.

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. The following departments or offices were included in our audit:

- Centralized Information Desk (Clerk's Office)
- Sheriff's Office

### Conforming responses to the initial request – 9 out of 10 Requests

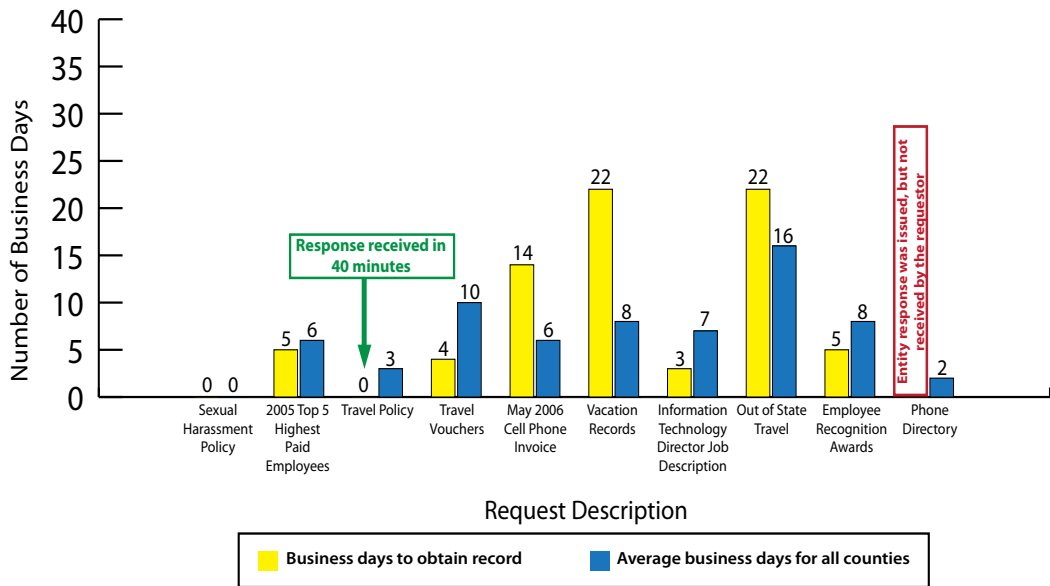
**Snohomish County**  
Responsiveness to 10 Requests



- Sufficient response received
- Entity directed requestor to resubmit the request to another department within the entity
- Request not received by the entity's Public Records Officer
- Entity response was drafted or issued, but not received by the requestor

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

**Snohomish County**  
Response time versus average for counties  
(Based on response to initial request for records)



## Snohomish County's Response



**Aaron Reardon**  
County Executive

M/S #709  
3000 Rockefeller Avenue  
Everett, WA 98201-4046

(425) 388-3349  
FAX (425) 388-3999

April 21, 2008

Mr. Nestor Newman  
Mr. Thomas Bernard  
State Auditor's Office  
1616 Cornwall Avenue  
Suite 107  
Bellingham, WA 98225

Re: Public Disclosure Performance Audit

Gentlemen:

Thank you for the opportunity to participate in this Performance Audit study. Snohomish County believes strongly in the values of government transparency, accountability and responsiveness, and we view the results of the study as a chance to examine and improve our public disclosure processes.

We would like to provide the following additional information on specific issues on which Snohomish County was scored, and address some concerns we have with particular areas of the audit:

- The first issue relates to the records request received via U.S. Mail, which indicated response by either U.S. Mail or e-mail was acceptable. We responded by e-mail, but the requestor did not receive our response. Nothing could be identified on our end that would have prevented the e-mail being sent or received. In July 2007, when asked by Audit Staff about the subject request, we provided a copy of our e-mailed response sent January 9, 2007 to [bbrmelton@aol.com](mailto:bbrmelton@aol.com). We suspect the e-mail may have been blocked at the requestor's end.

This issue is significant because it affects the most visually prominent area of scoring in the report, Appendix A, creating an overly negative picture of our responsiveness. Although we responded appropriately to the request, factors over which we have no control prevented the e-mail from being received.



Mr. Nestor Newman  
Mr. Thomas Bernard  
State Auditor's Office

Public Disclosure Performance Audit  
April 21, 2008

- The second issue relates to our untimely response to the request for Financial Officer Vacation Records. We acknowledge it did take too long to produce the responsive materials, likely due to confusion over copy fees. We have typically held responsive documents until copy fees have been received; however, Snohomish County is currently conducting an analysis of the public disclosure request process in each department with one goal being standardization, including developing a consistent billing policy for responsive documents. The billing policy will include waiving charges for a minimal number of paper copies, as recommended in the best practices section of the audit.
- The third issue relates to the request for Executive Cell Phone Records. After further review it appears that the redaction was a simple misunderstanding on the part of the individual who prepared the records, and not an intentional attempt to avoid explaining the redacted information. The part of the record that was redacted did not relate to the records request as it was outside of the dates requested. The records were produced in a timely manner.

We view the public disclosure process as crucial to our accountability. Since the audit, we continue to make great progress developing tools to help ensure we provide transparency that citizens must have for effective government.

Our most significant new element is a centralized software tool to ensure all public disclosure requests are recorded and monitored. The technical specifications for this software application have been completed, and design is underway. We anticipate full implementation of this system before the end of this year.

We continue to conduct monthly meetings of our Public Disclosure Committee that includes participants from the offices of all elected officials as well as appointed department directors. These meetings include updates on legislation and court decisions, discussion of case studies, guest speakers, instruction and a forum for Snohomish County's Public Records Officer to remind our Public Records Specialists of our primary goal – transparent, accountable and responsive government.

Sincerely,



Larry Calter  
Director/Public Records Officer

cc: Roger Neumaier, Finance Director

## About Spokane County

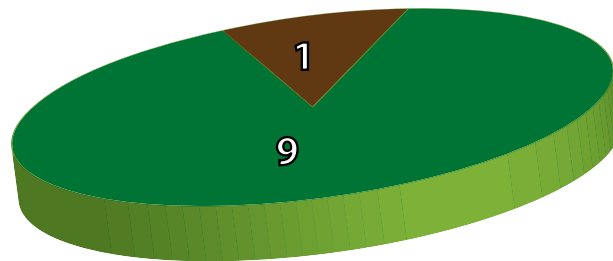
Spokane County is the fourth most populous county in the state, with an estimated 451,200 residents. The County's executive, legislative and policy-making body is the elected, three-member Board of Commissioners.

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. The following departments or offices were included in our audit:

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

### Conforming responses to the initial request – 9 out of 10 Requests

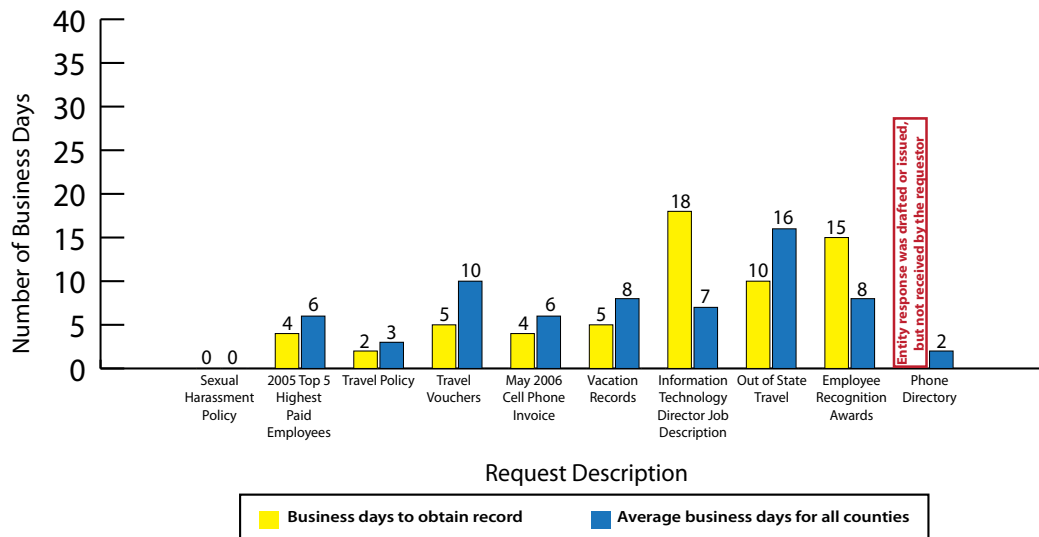
#### Spokane County Responsiveness to 10 Requests



- Sufficient response received
- Request not received by the entity's Public Records Officer
- Entity directed requestor to resubmit the request to another department within the entity
- Entity response was drafted or issued, but not received by the requestor

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

#### Spokane County Response time versus average for counties (Based on response to initial request for records)



## Spokane County's Response



OFFICE OF COUNTY COMMISSIONERS

TODD MIELKE, 1ST DISTRICT • MARK RICHARD, 2ND DISTRICT • BONNIE MAGER, 3RD DISTRICT

RECEIVED  
STATE AUDITOR

April 15, 2008

'08 APR 18 A8:54

**Honorable Brian Sonntag**  
**Washington State Auditor**  
**Insurance Building**  
**P.O. Box 40021**  
**Olympia, Washington 98504-0021**

RE: *Spokane County's Response to Recommendations Within "30 Entities' Performance In Providing Public Records To Citizens March 19, 2008"*

Honorable Brian Sonntag:

This correspondence is in response to your letter of March 19, 2008. In that letter, you provided Spokane County with a draft of the above referenced report ("Report"). You also invited Spokane County to provide responses to the recommendations accompanying each of the four (4) findings in the Report.

Initially, Spokane County would like to state that we are extremely pleased with the positive audit outcome samples conducted in Spokane County as identified in the Report. Spokane County has been and will continue to provide timely and thorough responses to public record requests consistent with the provisions of chapter 42.56 RCW and Spokane County's Public Record Policy. We acknowledge the "Best Practices" identified in the Report and will make adjustments in our present practices where deemed appropriate.

In light of the positive results which Spokane County received in the Report, we do not believe it is necessary to address the recommendations accompanying each of your four (4) findings. However, we do believe it is appropriate to point out several topics not addressed in the Report.

First, the Report does not address the distinction between a public record request and a request for information/service. For example, many members of the public use public record requests as a vehicle to ask questions as opposed to view or obtain copies of public records. This misunderstanding as to the purpose of a public record request creates frustration on the part of public and substantial County resources to address the request for information/service.

Second, the Report does not address the level of staffing necessary to accommodate public record requests or the responsibility of the legislature to provide financial resources to public agencies to meet staffing needs. It is our experience that responding to public record requests entails substantial time in code Counties of not only elected officials, but also legal staff and appropriate support staff such as paralegals. Although the legislature has clothed public agencies

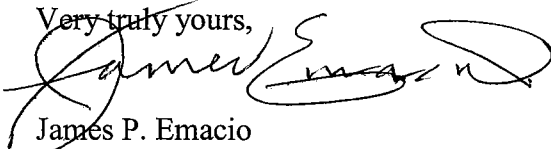
**Honorable Brian Sonntag**  
**Washington State Auditor**  
**April 15, 2008**  
**Page 2**

with the very important responsibility of responding to public record requests, it has not provided necessary financial resources to accompany such responsibilities. The Washington State Attorney General has provided guidance to public agencies in meeting their responsibilities under the Public Records Act. However, the legislature has not provided any financial resources. To ensure public agencies can adequately meet the dictates of the Public Records Act, the State Auditors Office and Attorney General should support local governments in seeking legislative funding.

Finally, the Report recommends that public agencies "...Avoid the use of e-mail filters that result in the entity rejecting or overlooking public records requests." Unfortunately, this recommendation simplifies the very complex process which information systems departments use to maintain the integrity of their e-mail systems. It has been Spokane County's experience that relaxing e-mail filters facilitates enumerable unwanted e-mails. These unwanted e-mails for the most part are not public record requests, but are requests for responses to questions or unwanted e-mails.

We thank you very much for an opportunity to provide input to the Report.

Very truly yours,



James P. Emacio  
Public Records Officer

cc: Board of County Commissioners  
Vicky M. Dalton, Auditor  
Bill Fiedler, Director ISD

### About Clark County

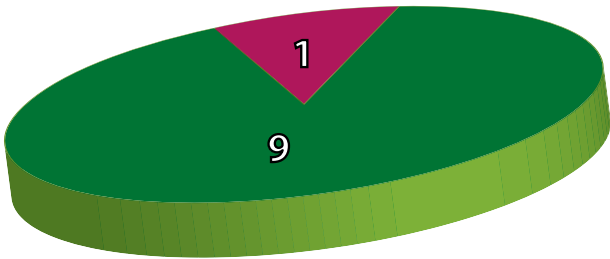
Clark County's population is approximately 415,000. The County is administered by an elected, three-member Board of Commissioners.

The County's public records process is centralized. The County's Public Records Officer is the County Administrator located in the Commissioner'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. The following departments or offices were included in our audit:

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

### Conforming responses to the initial request – 9 out of 10 Requests

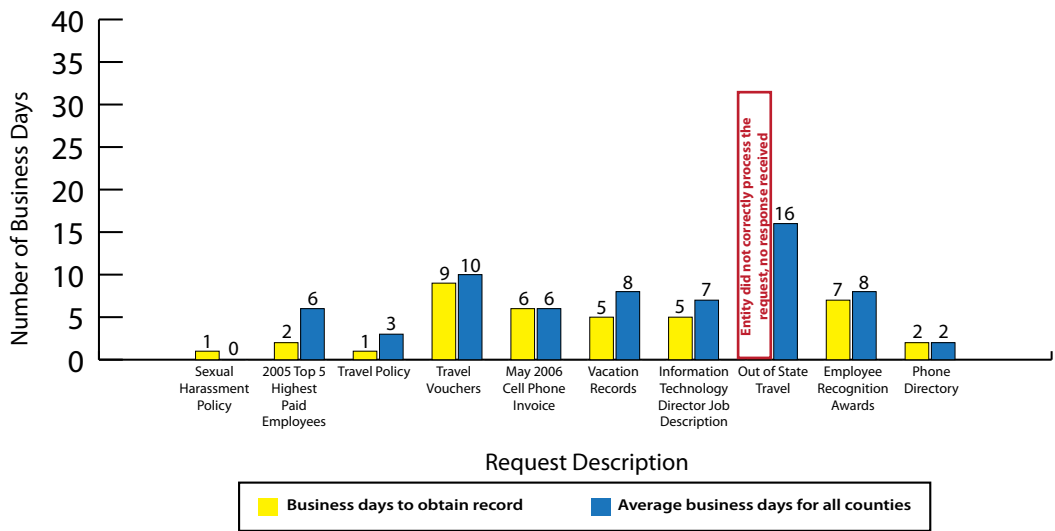
**Clark County**  
Responsiveness to 10 Requests



- Sufficient response received
- Entity directed requestor to resubmit the request to another department within the entity
- Entity did not correctly process the request, no response received
- Request not received by the entity's Public Records Officer
- Entity response was drafted or issued, but not received by the requestor
- Entity responded with incomplete or insufficient records

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

**Clark County**  
Response time versus average for counties  
(Based on response to initial request for records)





## Clark County's Response



proud past, promising future

CLARK COUNTY  
WASHINGTON

BOARD OF CLARK COUNTY COMMISSIONERS

Betty Sue Morris • Marc Boldt • Steve Smart

March 31, 2008

Nestor Newman, Performance Audit Manager  
Thomas Bernard, Assistant Performance Audit Manager  
Washington State Auditor's Office  
Insurance Building  
P.O. Box 40021  
Olympia, Washington 98504-0021

Gentlemen:

We have received and reviewed your draft report, 30 Entities Performance in Providing Public Records to Citizens, sent on March 19, 2008. We have two technical corrections for your consideration.

This draft report includes Clark County in Finding #1. One of our ten responses was not received the first time that it was requested. Our staff sent our prepared response to the wrong address. However, the county did obtain the requested materials, prepared a response, and attempted to send it to the proper requestor in a timely manner. Therefore the report mischaracterizes (on page 17) the county's actions under the caption "Request not processed, response not issued."

The draft report does not tell the reader that the county subsequently sent a second response, including a follow-up telephone call to verify receipt of the materials with the requestor, once it was known that the original response had been misdirected.

The current category in Finding #1 (Request not processed, response not issued) includes examples where the jurisdictions did not prepare a response or send one out. Clark County was in fact responsive. A response was prepared and logged in. Unfortunately it was mailed to the address of another requesting party.

We would suggest that the county finding may be better included in the captioned sub-heading "Responses Not Received by our Office" under Finding #1, since our response was prepared and sent, but not actually received by the correct party.

In the alternative, we would offer your consideration of possibly placing this instance into Finding #4 related to the timing of the response. Examples in this finding area include everything from no explanation to staff shortages and weather related issues. A clerical error may be better placed in this timeliness section rather than in the non-responsiveness section.

Secondly, on page 63, in discussing Clark County, the report indicates that the Public Records Officer is in the Prosecuting Attorney's Office. Our Public Records Officer is the County Administrator located in the Commissioner's Office. (Also, on this page of the report, if the "non-responsive/untimely response is re-categorized, the pie chart graphic would also need to be amended.)

Thank you for providing this opportunity to comment on the draft report. Please feel free to contact me by telephone at (360) 397-2232, or by email at [Bill.Barron@Clark.wa.gov](mailto:Bill.Barron@Clark.wa.gov), if you have any questions or comments based on our technical response.

I should note the high level of professionalism exhibited by your staff and the significant courtesies they extended to Clark County during the field work.

Sincerely,



Bill Barron  
County Administrator

cc: Clark County Board of Commissioners  
Greg Kimsey, County Auditor  
Denny Hunter, Prosecuting Attorney's Office

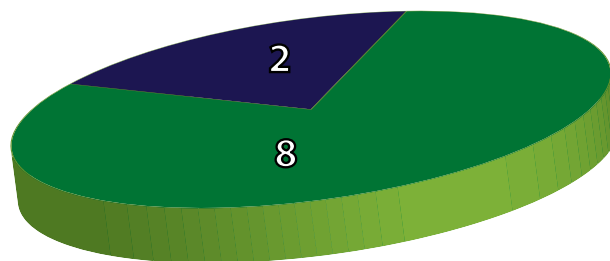
## About Kitsap County

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 de-centralized. The Public Records Officer is located in the County's Department of Administration Office. Each department has 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. We directed our requests to the County Commissioner's Office.

### Conforming responses to the initial request – 8 out of 10 Requests

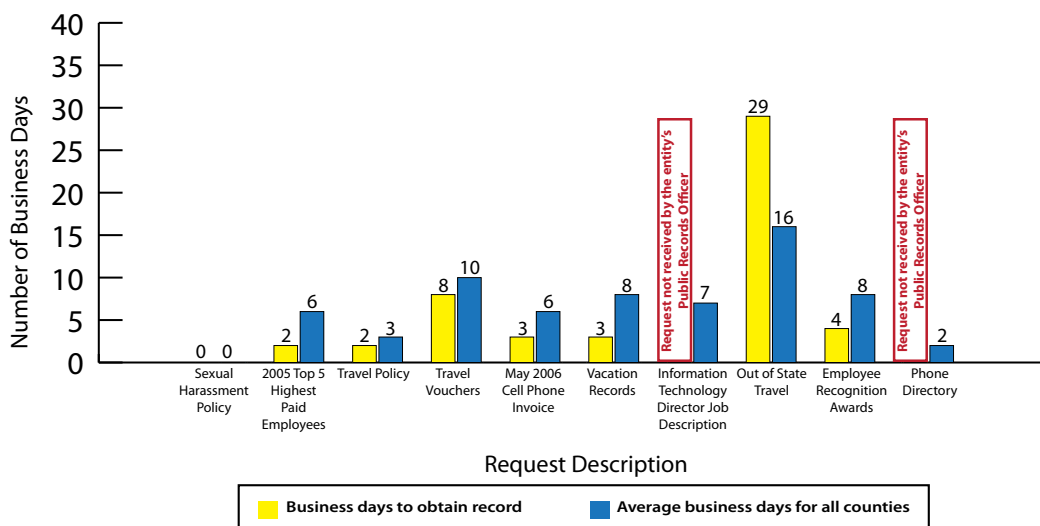
**Kitsap County**  
Responsiveness to 10 Requests



- Sufficient response received
- Entity directed requestor to resubmit the request to another department within the entity
- Entity did not correctly process the request, no response received
- Request not received by the entity's Public Records Officer
- Entity response was drafted or issued, but not received by the requestor
- Entity responded with incomplete or insufficient records

### Responsiveness – 10 Requests – Compared to Average for Counties

**Kitsap County**  
Response time versus average for counties  
(Based on response to initial request for records)



## Kitsap County's Response

05/01/2008 THU 9:40 FAX

002/002



**Department of Administrative Services  
Kitsap County Courthouse**

614 Division Street, MS-7, Port Orchard, Washington 98366-4676  
Phone (360) 337-7150 • Fax (360) 337-7052

Benjamin A. Holland  
Director

April 29, 2008

Nestor E. Newman  
State Auditor's Office  
1616 Cornwall Avenue, Suite 107  
Bellingham, WA 98225-4087

RE: Performance Audit "Public Records" Response

Dear Mr. Newman:

Kitsap County received two (2) findings during their performance audit of Public Records Requests. The first, Two (2) out of the ten (10) requests were not received by the Public Records Officer and the second, was a delay in a response to a request.

A new information system will be implemented that will automate the reception and response of requests for information directed towards Kitsap County departments.

The objective is to improve the counties ability to respond to requests for information. In addition the data gathered through this application will provide a data source for the implementation of analysis activities involving report, response analysis and process effectiveness studies conducted by administrative staff.

The platform that will be used to implement this system is Microsoft's Citizens Relationship Management, (CRM). This is a project that will fit in with the deployment of the County's Open Line that is intended to scale up to a 311 system. We have completed the requirements gathering phase and are currently in the design phase.

Please feel free to contact us at any time with additional questions concerning this program. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "R'Lene Orr", is written over a large, stylized circular flourish.

R'Lene Orr  
Purchasing & Records Manager

cc: Ben Holland, Administrative Services Director

## About Yakima County

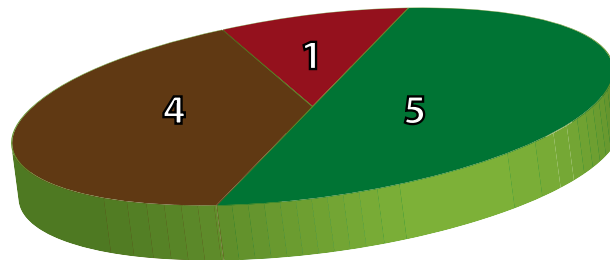
Yakima County's population is approximately 234,200 residents. The County is administered by an elected, three-member Board of Commissioners.

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 or offices were included in our audit:

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

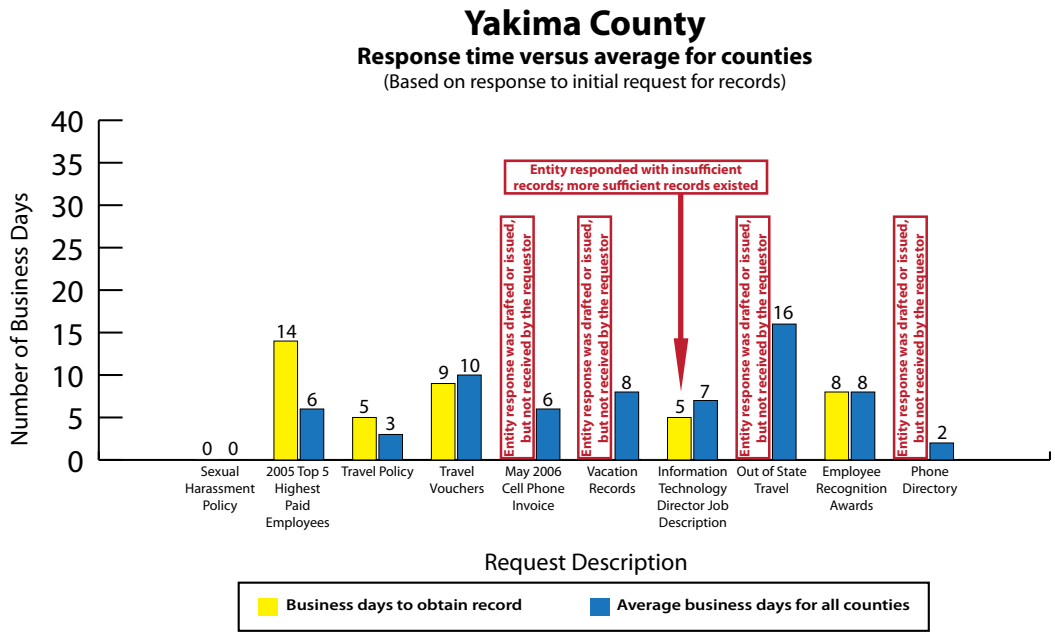
### Conforming responses to the initial request – 5 out of 10 Requests

**Yakima County**  
Responsiveness to 10 Requests

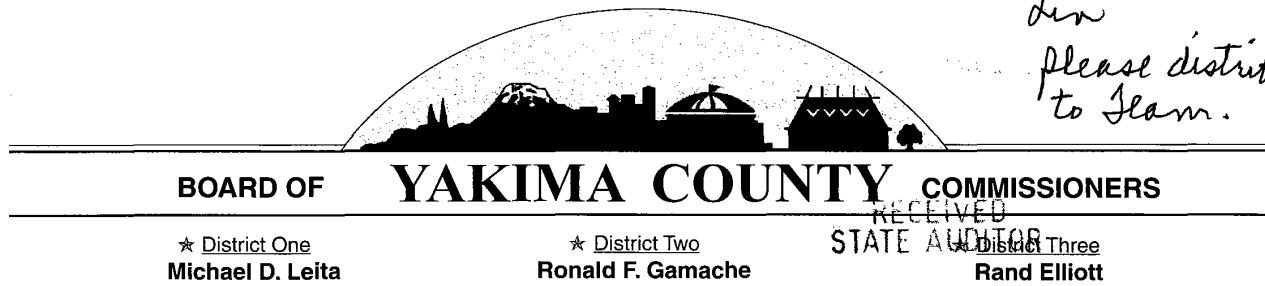


- |   |  |
|---|--|
| Sufficient response received  | Request not received by the entity's Public Records Officer              |
| Entity directed requestor to resubmit the request to another department within the entity | Entity response was drafted or issued, but not received by the requestor |
| Entity did not correctly process the request, no response received                        | Entity responded with incomplete or insufficient records                 |
| Entity did not accept the format of the request   |  |

Responsiveness – 10 Requests - Compared to Average for Counties



## Yakima County's Response



April 15, 2008

Brian Sonntag, Washington State Auditor  
Insurance Building  
P.O. Box 40021  
Olympia, WA 98504-0021

Dear Brian:

Please accept the following information as Yakima County's official response to the public records performance audit:

Yakima County provided complete and timely responses to all of the public records requests made by agents of the Washington State Auditor's Office. Copies of detailed documentation answering these public records requests in a timely manner, were provided to the on-site auditors during the interview phase of the performance audit and again as an attachment to a letter dated March 12, 2008 to the State Auditor's Office. It is improbable that only these four records requests were mishandled in the County mail system that correctly processes hundreds of thousands of pieces of mail per year. Unfortunately, a thorough review of the mail handling procedures of the Washington State Auditor's Office and Yakima County were not part of this performance review.

Yakima County will review its overall processes and procedures for handling public records requests and consider implementation of all practices that will provide the best service to our citizens at the least cost.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Ronald F. Gamache  
Chairman, Board of Yakima County Commissioners

Cc: Craig Warner, Budget Director  
Audit Committee  
File

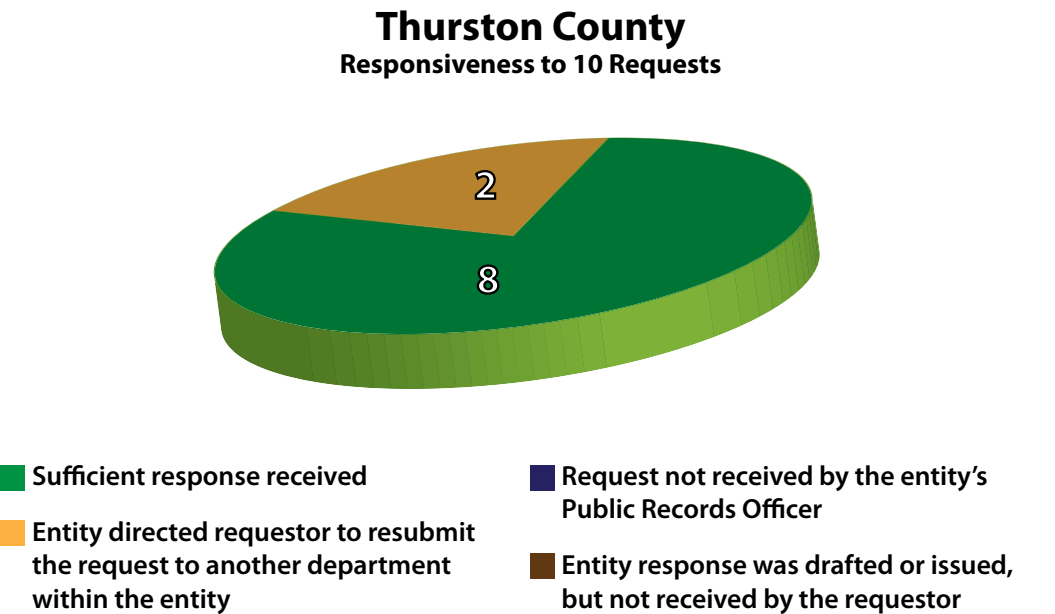
About Thurston County

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

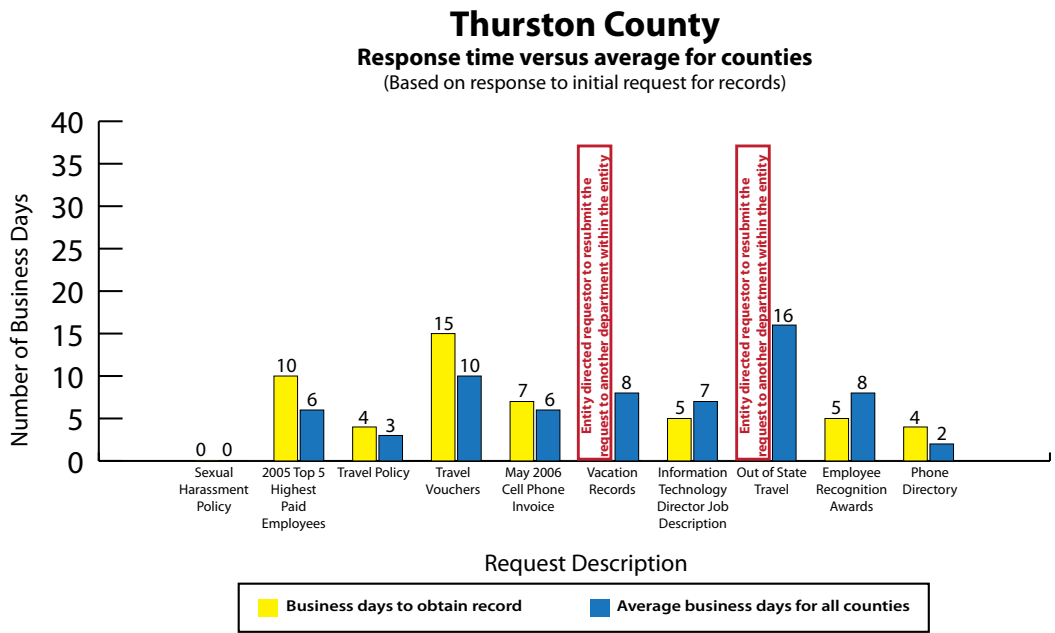
The County's public records process is decentralized. The County has at least one public records officer for each elected officials' office and relies on individual offices to process and respond to requests. These offices establish their own policies and procedures. The following offices were included in our audit:

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

Conforming responses to the initial request – 8 out of 10 Requests



Responsiveness – 10 Requests - Compared to Average for Counties





## Correspondence – Thurston County Commissioners

07/18/2007 WED 13:36 FAX

0002/003



THURSTON COUNTY  
WASHINGTON  
SINCE 1852

*Tom Bernard*

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*  
Diane Oberquell, Chairman

*Robert N. Macleod*  
Robert N. Macleod, Vice-Chair

*Cathy Wolfe*  
Cathy Wolfe, Commissioner

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



Recycled Paper



COUNTY COMMISSIONERS  
Cathy Wolfe  
District One  
Diane Oberquell  
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 40031  
Olympia, WA 98504

Dear Ms. Aga:

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":

**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.

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.

**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.

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



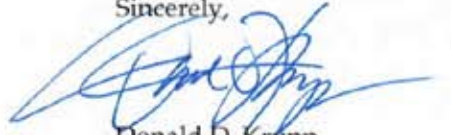
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SAC REPORT COMMENTS  
JANUARY 22, 2008  
PAGE 2 OF 3

**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. Krupp  
Chief Administrative Officer

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



ROBIN L. HUNT, CPA  
TREASURER

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

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



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

### BOARD OF COUNTY COMMISSIONERS

April 17, 2008

The Honorable Brian Sonntag  
Washington State Auditor  
PO Box 40021  
Olympia, Washington 98504-0021

**Subject: Official Response: Public Records Performance Audit**

Dear Auditor Sonntag:

This letter serves as Thurston County's official formal response to the final draft version of the above referenced performance audit.

Page 20 of the final draft audit continues to describe two of Thurston County's responses to requested records as "non-responsive." We believe this to be an inaccurate and erroneous description that needs to be corrected in the final report.

Thurston County did respond legally and appropriately to both of the specific requests in question. I have attached a copy of each of our responses to these requests. In addition to correcting the report, I ask that final audit report include this letter and attachments.

Thank you for providing an opportunity to comment on final draft report.

Sincerely,

  
Donald D. Krupp  
Chief Administrative Officer

cc: Nestor Newman  
Tracy Aga

Attachments



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

---

BOARD OF COUNTY COMMISSIONERS

---

December 29, 2006

Ms. Camille Rodd  
3229 Horse Haven Street SE  
Olympia, Washington 98501

Dear Ms. Rodd:

On behalf of the Thurston County Board of Commissioners your request for public records dated December 28, 2006 was received in our office on December 29, 2006.

Our office does not possess any of the records you are seeking with regard to vacation for the Deputy Auditor of Finance. We recommend you redirect your request to the Thurston County Auditor's office.

Thank you for your interest.

Sincerely,

Robin A. Courts  
Public Records Coordinator



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

---

BOARD OF COUNTY COMMISSIONERS

---

January 4, 2007

Mr. Creon Nims  
644 Strander Blvd., Box 162  
Seattle, Washington 98188

Dear Mr. Nims:

On behalf of the Thurston County Board of Commissioners, your request for public records dated December 29, 2006 was received in our office on January 3, 2007.

The Thurston County Commissioner's office does not possess any vouchers or out-of-state travel costs for July 2005 through June 2006 for former Sheriff Gary Edwards. You may wish to redirect your request to the Thurston County Sheriff's office.

Thank you for your interest.

Sincerely,

Robin A. Courts  
Public Records Coordinator

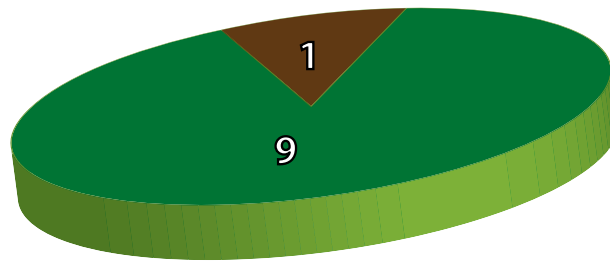
## About Whatcom County

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 Administrative Services' Department. 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.

### Conforming responses to the initial request – 9 out of 10 Requests

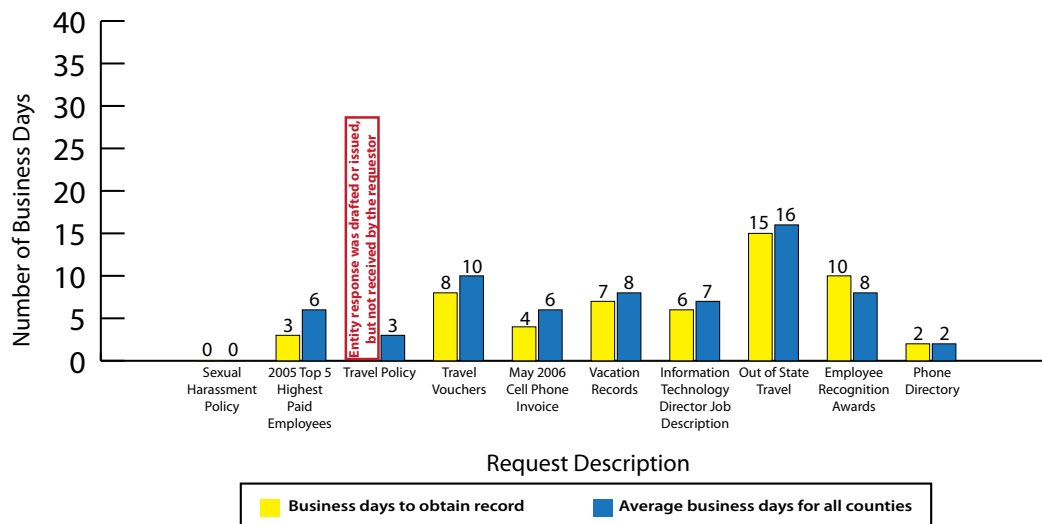
**Whatcom County**  
Responsiveness to 10 Requests



- Sufficient response received
- Entity directed requestor to resubmit the request to another department within the entity
- Request not received by the entity's Public Records Officer
- Entity response was drafted or issued, but not received by the requestor

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

**Whatcom County**  
Response time versus average for counties  
(Based on response to initial request for records)



## Whatcom County's Response

04/29/2008 13:35 3607157466

PUBLIC DISCLOSURE

PAGE 01/02

### WHATCOM COUNTY ADMINISTRATIVE SERVICES

Whatcom County Courthouse  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225-4038  
ddesler@co.whatcom.wa.us

**DEWEY G. DESLER**  
Director



### SECURITY & COMMUNICATIONS

Public Safety Building  
311 Grand Avenue  
Bellingham, WA 98225-4038  
greid@co.whatcom.wa.us

**GEORGE REID**  
Manager

Mr. Nestor Newman  
Washington State Auditor's Office  
1616 Cornwall Avenue, Suite 107  
Bellingham, WA. 98225

April 28, 2008

Mr. Newman:

Thank you for meeting with Whatcom County on April 16, 2008, regarding the recent Public Records performance audit exit interview. As referenced in the exit interview, Whatcom County is pleased to be identified as a "Best Practice County" in the area of Public Records policies and processes.

Following are Whatcom County's comments relating to each finding addressed in the audit:

#### **Finding 1:**

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

We agree with the recommendations made by the Washington State Auditor's Office. Whatcom County did respond to the request for a copy of the Travel Policy by sending an electronic link to the document, however, the requestor did not receive the response sent by the County. Whatcom County has been archiving Public Disclosure related e-mail requests and replies since January 2007 so proof of response can be retrieved when/if necessary.

#### **Finding 2:**

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

We agree with the recommendations made by the Washington State Auditor's Office. Whatcom County has published a public records request form on our web site. To enhance our efforts we are working with our Information Technology Division to allow the return of a completed request form through the web site.

Estimated completion date: July 1, 2008

Administration  
(360) 676-6717  
Fax (360) 676-6775

Security & Communication  
(360) 676-7694  
Fax (360) 676-6886

County Residents  
(360) 398-1310  
TTY (360) 738-4555



04/29/2008 13:35 3607157466

PUBLIC DISCLOSURE

PAGE 02/02

**Finding 3:**

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

We agree with the recommendations made by the Washington State Auditor's Office. Training and resource materials have been provided during the training processes. Changes in the training processes will be made to emphasize the redaction and exemptions area of the Act.

**Finding 4:**

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

We agree with the recommendations made by the Washington State Auditor's Office. Whatcom County has no findings in this area. Whatcom County is committed to enhancing our procedures and processes in our continued effort to improve our performance in providing public records.

Sincerely,



George A. Reid, Jr.  
Public Records Officer  
Whatcom County  
(360) 676-7694

cc: Pete Kremen, County Executive  
Dewey Desler, Administrative Services Director  
Brad Bennett, Finance Manager

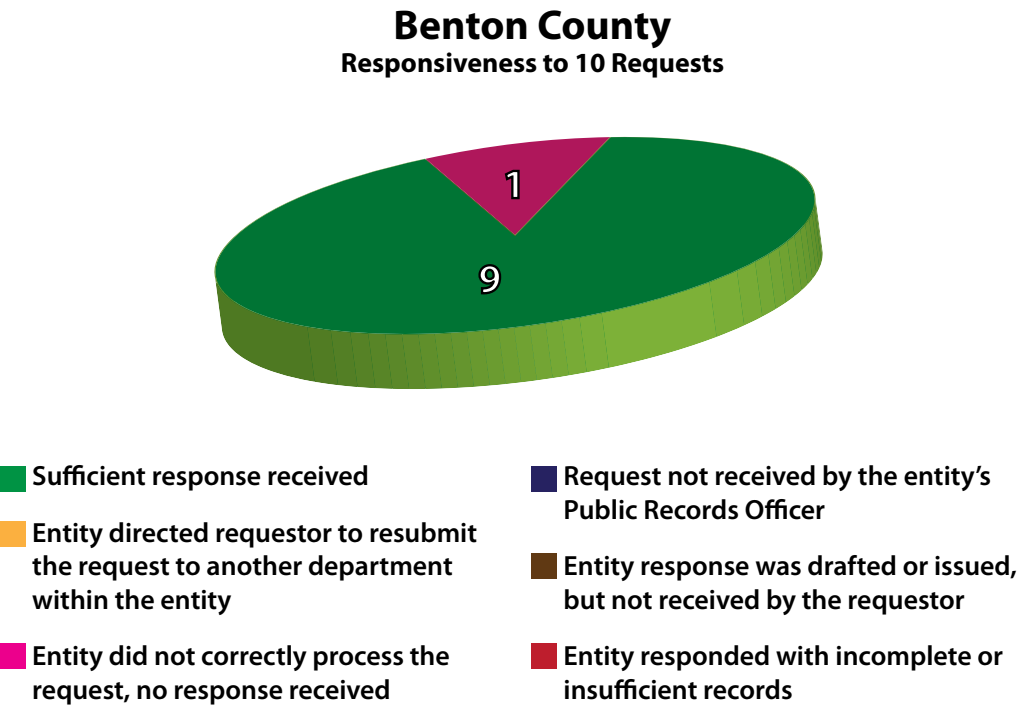
### About Benton County

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

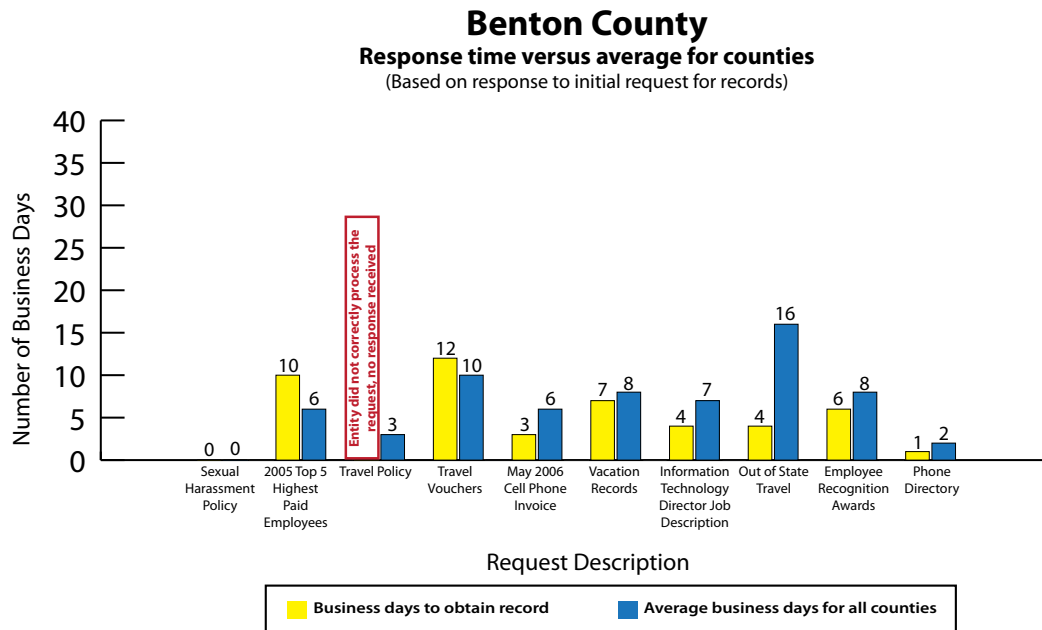
The County’s public records process is decentralized. The County has at least one public records officer for each department. The County relies on individual departments to process and respond to requests. The following departments or offices were included in our audit:

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

### Conforming responses to the initial request – 9 out of 10 Requests



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



## Benton County's Response

04/17/2008 THU 13:33 FAX

002/003

Leo Bowman  
District 1  
Max Benitz, Jr.  
District 2  
Claude Oliver  
District 3

### Board of County Commissioners BENTON COUNTY

David Sparks  
County Administrator

Loretta Smith Kelty  
Deputy County Administrator

RECEIVED  
STATE AUDITOR

'08 APR 16 A8:17

April 14, 2008

Brian Sonntag, Honorable State Auditor  
Insurance Building  
PO Box 40021  
Olympia, WA 98504-0021

Re: Public Records Performance Audit Report - Response

Dear Mr. Sonntag:

We appreciate the opportunity to comment on the draft Public Records Performance Audit recently provided to Benton County. Please consider this letter as Benton County's comment, which you requested in your March 19th letter.

There are several items or statements in your draft report that warrant response by Benton County. These are outlined below.

**Redirecting Requests/Responsibility for Requests to Elected Officials.** Your report does not cite any problem or criticism of Benton County on this topic. However, we would like to take this opportunity to state that we wholeheartedly concur with the sentiments of the Thurston County Board of Commissioners and Thurston County Treasurer reflected in their letters to your office that are included on pages 72-74 of your draft report. RCW 42.17.020(2) defines local agency to include any office of every county. Just as each state agency is an independent entity as far as its legal responsibility to respond under the Public Records Act, we believe the legislature should and has afforded locally elected officials the same independence. This interpretation is consistent with the reality that locally elected officials have no oversight or control over other locally elected officials for the same county. Although Benton County elected officials cooperate very effectively on this issue and your report did not criticize Benton County in this aspect, for the above reasons we believe your report erroneously criticizes other local agencies.

**Failure to Respond to Request for Travel Policy.** Your report correctly notes that Benton County did not correctly process one of the ten requests made to it during this performance audit. That request was made by email to the Benton County Board of Commissioners for a copy of the County's travel policy. For reasons we have not been able to fully determine, the County did not respond to that request as your report states. We have followed up with staff to ensure they are aware of their responsibilities in this area. Also, in order to help prevent similar mistakes in the future, the County

---

P.O. Box 190, Prosser, WA 99350-0190; Phone (509) 786-5600 or (509) 736-3080, Fax (509) 786-5625  
commissioners@co.benton.wa.us

04/17/2008 THU 13:33 FAX

003/003

Brian Sonntag  
April 14, 2008  
Page Two

Commissioners' Office has prepared and implemented a written internal policy outlining the procedures for responding to such requests. Additionally, when such emails are received, such email requests are now being forwarded to a second person in the office as a safeguard. We would also like to point out that this situation highlights the concerns we have about the appropriateness of allowing records requests via email. Our office receives dozens if not hundreds of emails per day, most of which have nothing to do with requests for public records. Moreover, such emails are generally sent to an IP address monitored by only one employee. That employee may or may not be in the office that day, week or even month. The combination of these facts warrants consideration of whether the Act should be amended to preclude records requests by email.

**Notification of Basis for Redactions.** Your draft report correctly notes on page 27 that Benton County failed to cite the specific legal exemption for the redactions of certain personal information that was set forth on the documents reflecting the five highest paid employees of the county. It appears that the manager handling this response simply made a mistake in not including that citation in her response letter. She has been informed of this error, and our office will be taking further steps to ensure that each member of its staff understand this requirement and its importance.

**Accommodating Telephonic Requests.** On page 23 of the draft report there is a general statement that three offices or departments within Benton County government do not accommodate telephonic records requests. Without further detail, it is difficult for us to provide comment. Please be aware, however, that the staff within the Commissioner's Office and the Planning and Building Department have been advised of the need to and in fact do accommodate telephonic requests if insisted upon. It is true that these staff members may suggest to the requestor that a written request is preferable and may even be in the requestor's best interest, but a written request is generally not required if the requestor is not amenable to completing our form for requesting public records.

Again, we appreciate the opportunity to submit our comments to your draft report.

Sincerely,

BOARD OF COUNTY COMMISSIONERS



David Sparks, County Administrator

cc: Commissioners  
Deputy County Administrator  
Prosecuting Attorney

# Appendix B – Results by City and Responses

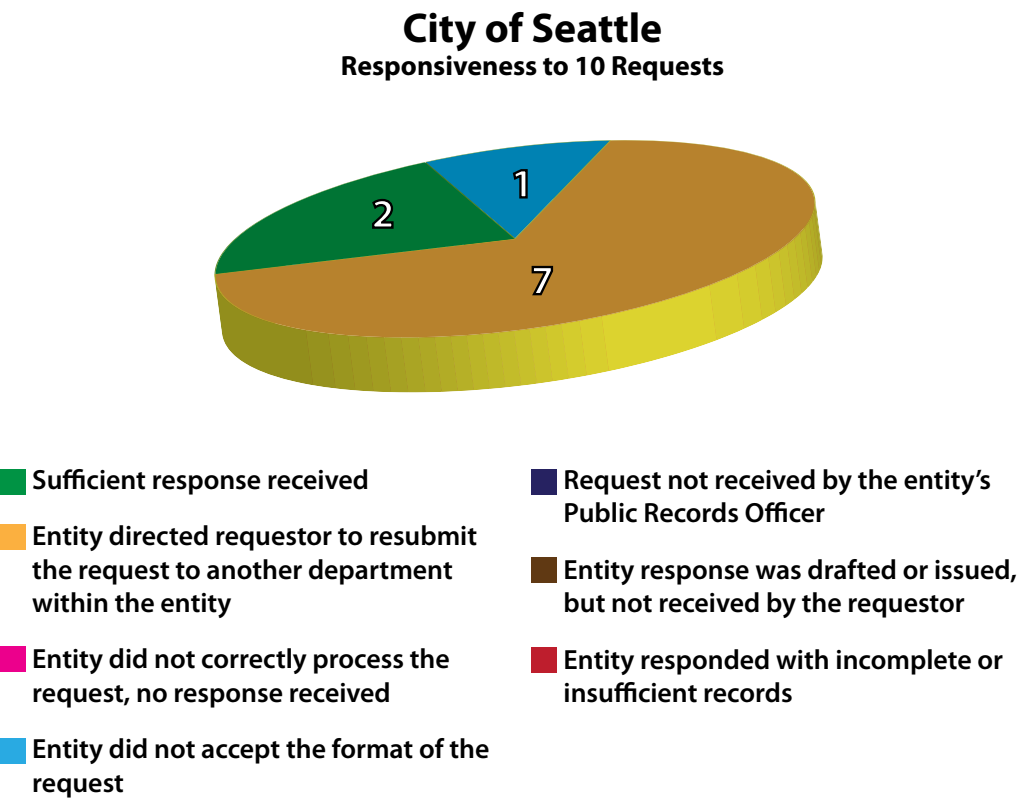
## About City of Seattle

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.

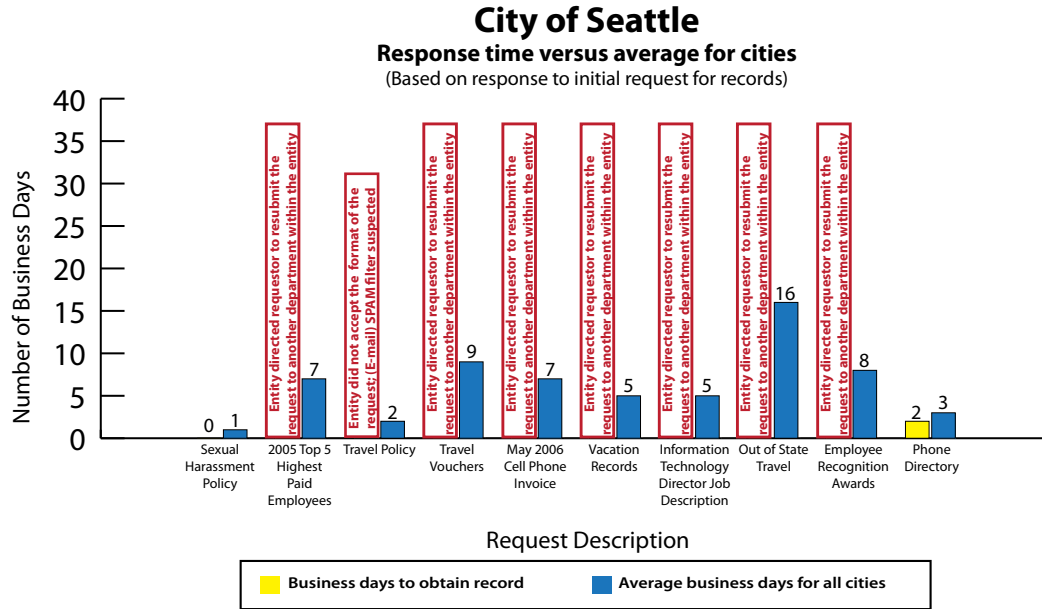
The City's public records process is decentralized. The City has at least one public records officer for each department. The City relies on individual departments to process and respond to requests. The following departments or offices were included in our audit:

- 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

### Conforming responses to the initial request – 2 out of 10 Requests



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



## City of Seattle's letter of March 31, 2008



Gregory J. Nickels  
Mayor of Seattle

March 31, 2008

Brian Sonntag, CGFM  
Washington State Auditor  
Insurance Building, P.O. Box 40021  
Olympia, WA 98504-0021

### **RE: Public Records Performance Audit Draft Report**

Thank you for the opportunity to provide technical comments on the performance of the city of Seattle's executive branch during the public records audit conducted in 2007. We were happy to see that the overarching conclusion is that good customer service is being provided state wide in response to public records requests. I am also personally pleased with our performance in response to the eight requests that were directed to the executive branch out of Seattle's total 5,528 received in 2007. However, I am disturbed that your audit's conclusion about Seattle's performance and compliance with the Public Records Act is at odds with the data collected from the ten anonymous requests made to the city.

#### **The Audit Does Not Support the Findings**

The supporting documents clearly do not support the findings. This draft audit depicts the city of Seattle as non compliant with the Public Records Act (PRA) and consequently at risk for thousands of dollars of penalties. We assert that the audit is generally flawed and its findings incorrect because they are based upon faulty methodology unsupported by law or the evidence contained in the report itself.

The most grievous inaccuracies are based upon the foregone conclusion, developed mid-audit, that a central point of contact and internal referral is the only method for handling requests.

As a result, the city's actual responses were discarded. For example, on page two of the draft audit, a chart lists the city of Seattle as providing conforming records to only 20% of the requests. However, other than one email request that was returned to you as undeliverable, your own supporting documentation shows that the city of Seattle was actually 100% responsive; every request we received had a response within five days and received the requested records.



This same chart states that the city of Seattle only responded to 20% of the requests quicker than city averages.

Once again, documents reveal that once the appropriate agency received the request, many of the city's responses were actually quicker than other much smaller cities. By examining the actual evidence, which the audit ignored, it is clear that Seattle was responsive.

- On January 26<sup>th</sup> the Department of Finance received your request for the vacation records of the Finance Director. On February 1<sup>st</sup> the records were in the mail – 4 business days. **Your audit lists this response as non conforming and slower than average.**
- On January 24<sup>th</sup> the Department of Information and Technology received your USPO request for a job description of the CTO. On January 26<sup>th</sup> the description was emailed to the requestor – 2 business days. **Your audit lists this response as non conforming and slower than average.**
- On January 29<sup>th</sup> the Mayor's Office received a request for cell phone records of the Deputy Mayor. On February 2<sup>nd</sup> they were in the mail - 4 business days. **Your audit lists this response as non conforming and slower than average.**
- During the end of year processing two requests to Personnel for a list of the top five highest paid employees and employee recognition awards took 18 and 27 days respectively. In both cases, the requestor received a response within five days of their request which provided an estimate of when the records would be available and an explanation for the delay. Both responses were made available as requested. **Your audit lists this response as non conforming and unresponsive.**

In every case, the original request received a response within the five days required by the Act. In every case this response included the specific contact name and department. Even including the five days involved in the re-direct – the city's responses were well within the average response times.

#### **The Fundamental Premise is Flawed**

The audit labeled Seattle's performance as non conforming based on the premise that entities must have single point of access. This premise is not supported by the data and findings within the report itself because there is **no correlation between whether a local government's public records process is centralized and its performance.**

The chart on page 12 of the draft report purports to rank entities by their performance. While Spokane County, the top-rated county, is centralized, so is Yakima County, the lowest-rated county. Benton County, which is decentralized, performed as well as the other two counties among the top-rated three.

Results for the cities are similar. The city of Spokane Valley, the top-rated city, is centralized. But if one removes the city of Seattle, whose actual performance was not measured, the city of Kent, which is centralized, is the lowest-rated city. Centralization is not the key to good performance.

### **Centralized Access is Not Always a Best Practice**

At numerous points the draft states that the legislative intent of the act is to provide requestors with a single point of contact in submitting and processing requests within an entity. This is not true. The legislative intent is to provide the fullest assistance. The City of Seattle's employs 53 Public Disclosure Officers (PDO) and two lawyers to prevent the bottleneck and resulting paralysis that one central contact would incur. Information on submitting a request, as well as a list of agency PDOs, is posted on both the home page for both the Mayor and the Council.

The 10 requests submitted in your audit were simple and straightforward. And yes, requests for simple identifiable records residing in a single department could and are easily referred internally by City of Seattle agencies. However, many of our requests are not so simple and a centralized system would add expense, delay and unnecessary bureaucracy.

It is not uncommon to receive a request asking for all records related to an issue or even a geographical area such South Lake Union. If the city were to enforce the one size fits all approach you have incorrectly defined as a "conforming" response, then the first person to get the request would merely forward it to the six or more different departments that might have records; Parks, City Light, Seattle Public Utilities, Transportation, Fleets and Facilities, the Council, etc. and a very confusing 'clarification' process would ensue.

In our experience, most requestors would actually prefer to speak with someone who can help them understand what kinds of records exist. That is why we choose to first provide a response with a comprehensive list of departments and public disclosure officers that might have responsive records. Clarifying broad requests is not a one-step or simple process and is always best accomplished by records custodians, and not another middle man. We ask that you change this in your final report as neither our extended experience nor your findings support this.

### **The Audit Unfairly Compares Local Governments**

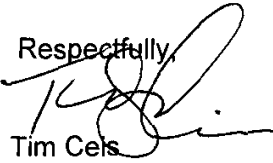
Your benchmarks are also questionable. The City of Seattle is compared to a city which incorporated in 2003 (City of Spokane Valley). Entities are arbitrarily grouped by city, state, or county. Size, number of annual requests, and the complexity of governmental services would provide more useful comparisons.

The City of Seattle successfully handled 5528 public disclosure request in 2007. This is an increase of 1425 since 2004. Incorporated in 1869, the city fields requests for 25 departments, 50 boards and commissions, a separately elected nine-member council, legal department and municipal court.

We have a citizen base of 578,000 and 10,000+ employees. And yet, as your audit discovered but failed to show, at least 50% of the requests received by the city were responded to quicker than the averages for much smaller cities.

The PRA requires an agency to provide a prompt and accurate response to a public records request not that a city provide a centralized requests process. The audit doesn't portray how the city of Seattle actually responded to eight of the requests. Rather, by basing its findings on whether the city conformed to a "best practice" not required by the PRA or supported by the evidence, it creates the false impression that the city of Seattle is not complying with the PRA. We ask that the State Auditor's Office change the audit to align with the facts.

Respectfully,

A handwritten signature in black ink, appearing to read 'Tim Cels', written over the word 'Respectfully'.

Tim Cels  
Deputy Mayor

## City of Seattle's Response



Gregory J. Nickels  
Mayor of Seattle

April 21, 2008

Chris Cortines, CPA  
Washington State Auditor  
Insurance Building, P.O. Box 40021  
Olympia, WA 98504-0021  
[cortinec@sao.wa.gov](mailto:cortinec@sao.wa.gov)

Dear Mr. Cortines,

### **RE: Public Records Performance Audit Draft Report – Comments on Final Draft**

As we discussed in our earlier technical comments as well as our exit interview last week we feel the audit presents an incorrect and unfair portrayal of the city's practices. The city of Seattle takes our public disclosure responsibilities very seriously and although you curiously chose not to note this in the audit, it is reflected in our performance.

In finding one, entities were considered non-responsive if the requestor was directed to another department to submit their request. According to this standard, Seattle was cited as completely non-responsive in 7 out of 10 requests. The audit itself does not explain the rationale for considering this practice as non-responsive, but during the exit interview your office explained that you decided mid-audit that internal as opposed to external redirects were considered to be better customer service for the average requestor. This one-size-fits-all approach does not work for our entity. Just as requests differ, so do the methods for providing fullest assistance.

The audit charts the city of Seattle's performance according to the number of business days it took to respond to each request (page 88). In the cases where the auditor received a response that included the contact name for the appropriate department, the audit does not include the actual city response. In fact it inaccurately shows the city as non-responsive.

As we communicated during the exit interview, the City redirected the requests in order to provide the records more rapidly. We have attached a chart that shows the actual results for 10 requests you submitted to the city. We have included the average days it took cities to respond and the actual business days it took the city of Seattle to respond once the request reached the right agency. We ask that this chart be included in the Final Audit Report in order to accurately reflect that the City of Seattle responded to the redirected requests.

We appreciate the opportunity this audit has provided to examine our procedures for responding to records requests. We believe that it was appropriate to redirect the audit's requests by sending the contact name of the appropriate public disclosure officer. However, we realize this could have been achieved more expeditiously by a phone call or an email to the requestor right away rather than a formal post office letter mailed after 5 days. This is a more typical practice in line with normal city procedures and will be included more specifically in our trainings and policies as a result of the audit.

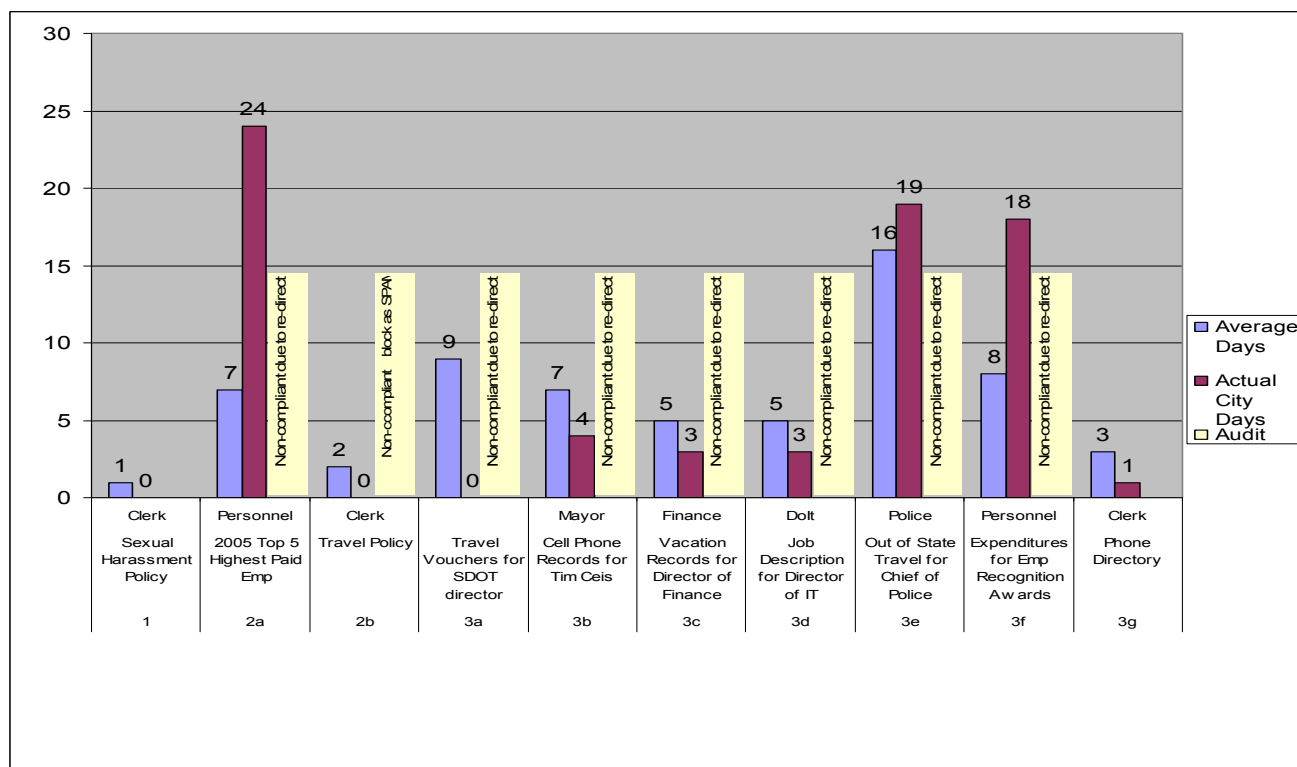
Attached is the corrected chart of city response to the ten anonymous requests as well as a copy of the technical comments we submitted on March 31<sup>st</sup>. We would like to see both included in the final audit.

Respectfully,

Nancy Craver, Strategic Advisor  
Mayor's Office  
nancy.craver@seattle.gov

Cc: Nestor Newman, CPA, Washington State Auditor's Office  
Tom Bernard, CPA, Washington State Auditor's Office

## City of Seattle – Review of Final Performance Audit on Public Records



1	Sexual Harassment Policy	Clerk	Walk-in request handled by Clerk's Office. They took requestor's name and replied the same day.
2a	Five Highest Paid Emp	Personnel	Request was <u>internally forwarded</u> by clerk to Personnel who acknowledged and sent estimate in 2 days.
2b	Travel Policy	Clerk	This request was never received by the city. Email request sent back as undeliverable.*
3a	Travel Vouchers for SDOT director		At this point, auditor had changed methodology and did not re-send the request to the department given to them in the response.
3b	Cell Phone Records for Tim Ceis	Mayor	Mayor's office received request on Monday and sent records on Friday.
3c	Vacation Records for Director of Finance	Finance	Finance office received request on Monday and sent records Thursday.
3d	Job Description for Director of DoIT	DoIT	DoIT received request on Tuesday and sent records on Friday.
3e	Out of State Travel for Chief of Police	Police	City provided records within the estimated time frame.
3f	Expenditures for Emp Recognition Awards	Personnel	City provided records within the estimated time frame.
3g	Phone Directory	Clerk	Clerk received request on Monday, sent records on Tuesday.

\* Of more than 5M messages that were addressed to domains managed by the City, only 2.2 M of these were addressed to valid addresses. Of that number, 14% were delivered, 76.5% were blocked as SPAM, and 9.5% were quarantined.



**Richard Conlin**  
Seattle City Council President

April 17, 2008

Brian Sonntag, CGFM  
Washington State Auditor  
Insurance Building  
PO Box 40021  
Olympia, WA 98504-0021

**RE: Public Records Performance Audit Draft Report**

Thank you for providing us the opportunity to respond to your recent audit of public disclosure requests presented to the City of Seattle. Please be assured that the City will thoroughly review the auditors' report and make changes to our process as necessary to meet both the letter and the spirit of the laws related to public records.

Please feel free to contact my staff directly if you have any questions or concerns.

Sincerely,

Richard Conlin  
Council President

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City Hall 600 Fourth Avenue, Floor 2, PO Box 34025, Seattle, WA 98124-4025

(206) 684-8805, Fax: (206) 684-8587, TTY: (206) 233-0025

E-Mail Address: [richard.conlin@seattle.gov](mailto:richard.conlin@seattle.gov)

Internet Address: <http://www.cityofseattle.net/council/conlin/>

An EEO employer. Accommodations for people with disabilities provided upon request.

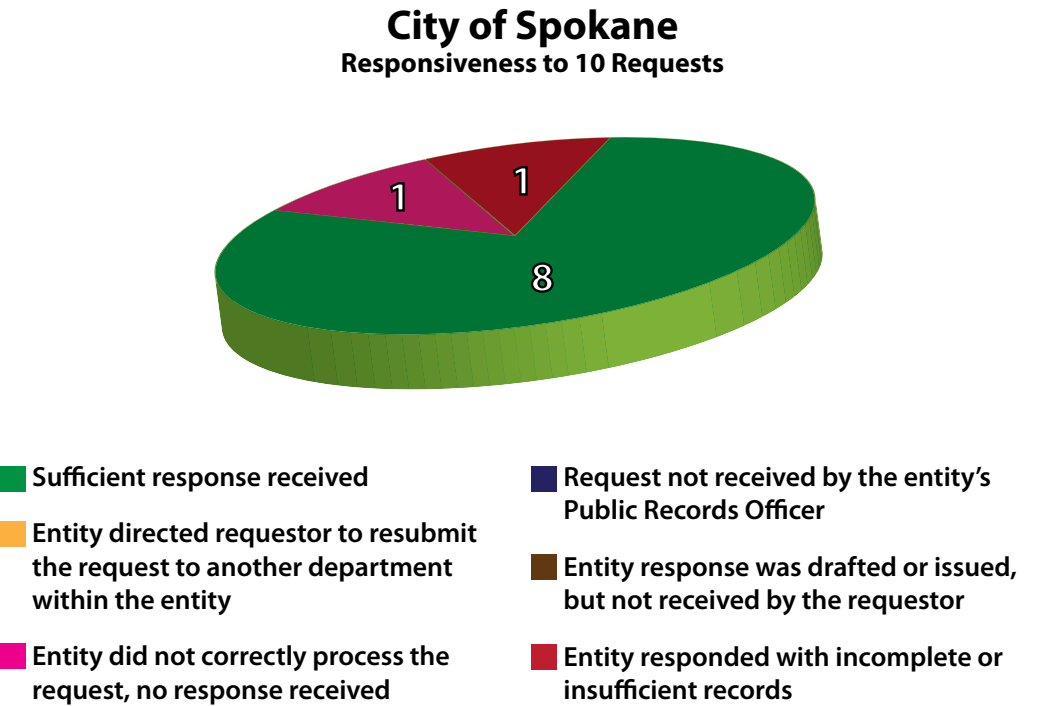
### About City of Spokane

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.

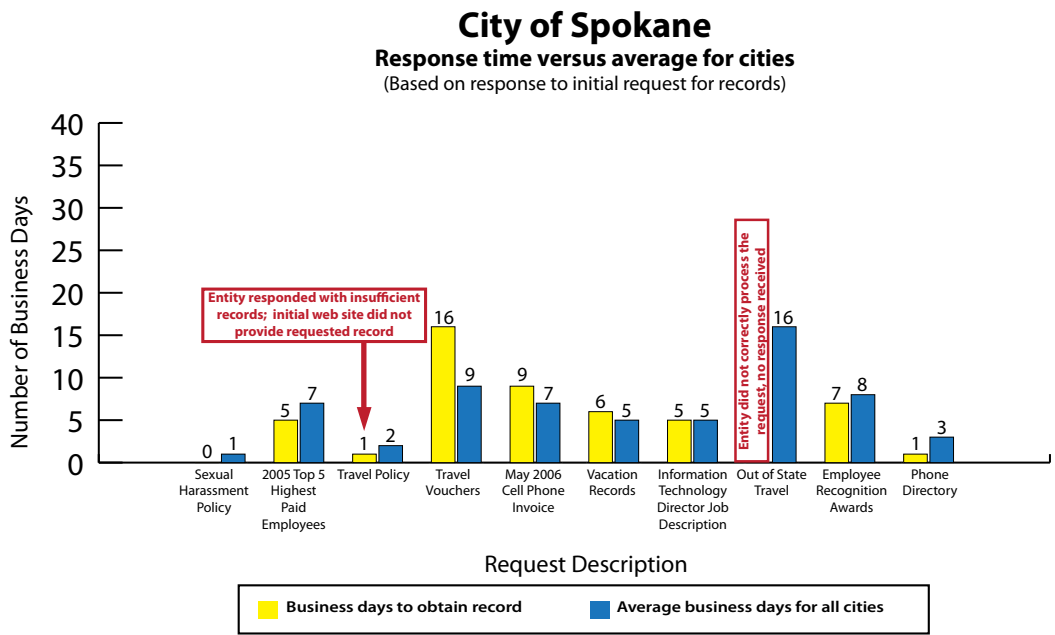
The City's public records process is decentralized as the City has three public records officers at the City Clerk's Office, the Police Department and the Municipal Court. The City Clerk relies on individual departments to gather records in response to requests. The following departments or offices were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

- City Clerk's Office
- Police Department

### Conforming responses to the initial request – 8 out of 10 Requests



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





## City of Spokane's Response



SPOKANE CITY COUNCIL  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201-3335  
(509) 625-6255

To: Nestor Newman  
Audit Manager  
Washington State Auditor's Office

RE: Public Records Audit Response

Dear Mr. Newman:

The City of Spokane supports open public government and our state's Public Records Act and recognizes that the Public Disclosure Act is one of the primary ways the public keeps informed about government.

Participation in the Citizen's Initiative 900 and the State Auditor's Office objective analysis will assist the City in improving program performance and operations. Administrative policy and procedures for public records requests are currently under review by the agency and will be updated mindful of the recent developments in public records management, the Public Records Act and the Washington Attorney General's model rules for paper and electronic records.

The State Auditor's work identified 21 best practices in 19 content areas for how the City processes public records requests. This information, as well as the comparative best practices of other agencies, is welcomed as a tool for improvement.

As more public records have become available electronically the City has recognized the opportunity to work with people who request electronic copies of public records. Electronic copies of records are made available in electronic format when possible.

The City's Management Information Systems Department has invested resources of nearly 1 million dollars, excluding staff time, on a document imaging system for the Police Department and City Clerk's Office. This system was implemented in mid 2003 and has been continuously maintained and improved with an ongoing investment. This system is mainly used for the storage of City Clerk documents and is available to the public in a searchable format on the City's website. The value of this investment is reflected in this report which notes that the website was easy to use in the State Auditor's audit planning.

In the first quarter of 2008 an Enterprise Vault was set up as an email archiving solution that allows for more productive email storage and recovery of our email system. This archiving enables the capability to search and locate email content and documents to meet both legal and regulatory compliance requirements.

The Spokane Municipal Code provides for one designated public records officer, the City Clerk, although part of the requests are filled in the departments of Police and Municipal Court, which is the result of the specific information requirements and the volume of requests. Effective as of May 5, 2008, the City will have filled a new Deputy Clerk position in the City Clerk's Office. This new position will provide additional resources where there have been constraints in staffing in the past.

The citizens of Spokane are engaged in city affairs. The City believes that the Public Records Act is good and positive for all governments to follow. The City agrees that improving accountability and transparency while engaging citizens leads to better government.

In unannounced public records requests, the City did not meet the State Auditor's criteria to be considered a sufficient response in two of the ten public records requests:

1. Request not correctly processed, no response received by the requestor;

The City received a certified mail request for the Police Department's out of state travel. The staff member processing the request had a break down in communication while seeking guidance from another department which led to a non response.

2. Request was considered nonconforming;

The City received an e-mail request for the travel policy of the agency. However, the City provided the requestor with the web address for the agency's business expense policy. When the requestor followed up the travel policy was provided as previously requested. The business expense policy was originally provided in a good faith effort to respond to the request, although this response is considered non conforming to the State Auditor's performance audit criteria and the responsiveness to Citizens. This request was in compliance with the Attorney General's model rules for public records which recommends that the parties work together to fulfill the request WAC 44-14-04003(2).

This analysis will assist the City in improving performance and operations in the area of public records. All identified attributes will be considered, and to the extent possible will also be implemented, as new staffing resources are allocated to positively impact how public records requests are processed.

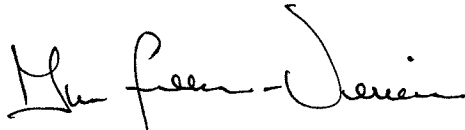
When the City received an in-person request for a copy of the sexual harassment policy, the report indicated that the requestor was not required to fill out a public records request. The request for the agency's sexual harassment policy is considered the type of information which is regularly provided. This information is already publicly available on the website. Therefore, part of the City's "ordinary business practices" does not require a form to be filled out to be received. This procedure is consistent with the Administrative policy currently in place.

The City believes that the State Auditor's Public Records Audit Report is both fair and balanced and citizen input as part of this audit process should prove to be especially helpful in assisting the City in its continuous improvement efforts.

Best Regards,



Nancy McLaughlin  
Council President Pro Tem



Gwen Fuller-Vernier, CPA, MBA  
Spokane City Auditor

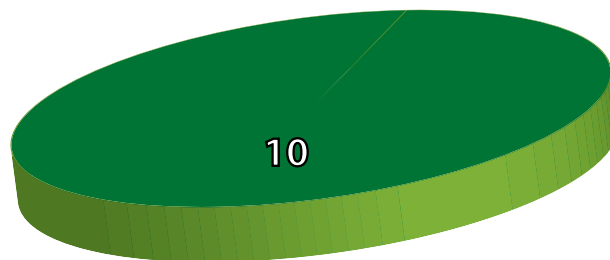
## About City of Tacoma

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 Council Members, including the Mayor. The Council Members elect a 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. We directed our records requests to the Public Records Officer in the City Clerk's Department.

### Conforming responses to the initial request – 10 out of 10 Requests

**City of Tacoma**  
Responsiveness to 10 Requests

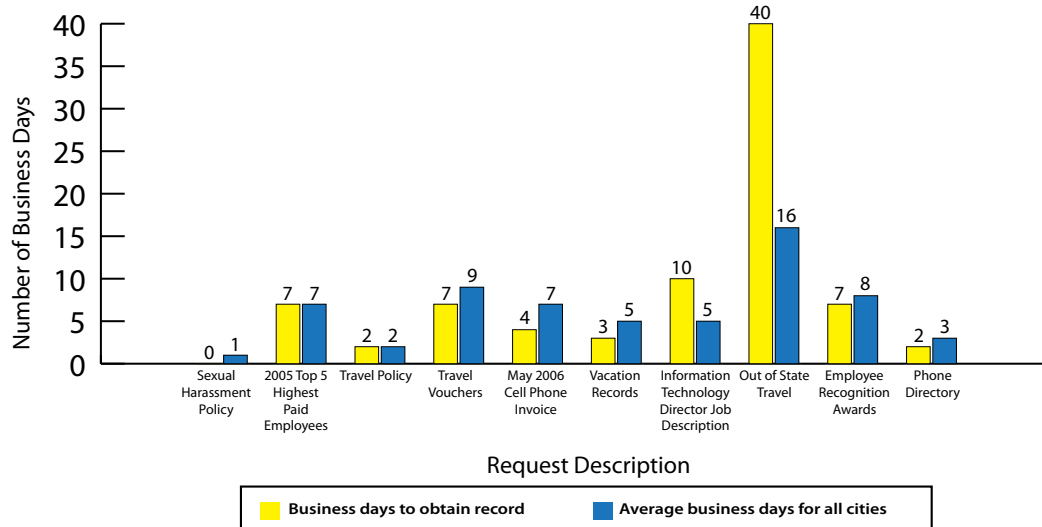


■ Sufficient response received

■ Request not received by the entity's Public Records Officer

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

**City of Tacoma**  
Response time versus average for cities  
(Based on response to initial request for records)



## City of Tacoma's Response



City of Tacoma  
City Manager

April 23, 2008

Brian Sonntag, State Auditor  
P.O. Box 40021  
Olympia, WA 98504-0021

Dear Mr. Sonntag:

We would like to thank your office for conducting the Public Records Performance Audit and for the opportunity to respond to this audit. We are pleased to see how well our program compared with other cities and to receive feedback about ways to improve our process.

Our responses to the audit findings are listed below.

**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.

*The City of Tacoma was in compliance with all 10 requests. This finding does not relate to the City of Tacoma.*

**Finding 2:**

Some entities do not accommodate one or more means of communicating public records requests and, therefore, do not provide the public with the fullest assistance.

*The City of Tacoma accommodates requests in various manners: telephone, email, postal mail, online request form through the City's website, and in person.*

**Finding 3:**

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

*The City of Tacoma was in compliance - this finding does not relate to the City of Tacoma.*

Public Records Disclosure Audit  
April 23, 2008  
Page Two

**Finding 4:**

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

*City of Tacoma Response and Planned Corrective Actions:*  
*Compared to the other cities audited, the City of Tacoma provided responses quicker on six out of ten requests. Overall, the City of Tacoma strives to provide records responsive to all requests in a timely, cooperative and efficient manner. As noted in your report, the challenges of managing records, both electronic and paper, continues to be increasingly difficult, thus creating obstacles in responding to public disclosure requests. It is common knowledge that requests continue to increase every year as awareness grows. However, as the City of Tacoma continues to enhance our program, we anticipate adding additional staff to facilitate the processing of public records requests and to continue training employees on the importance and the timely processing of public disclosure requests. Additionally, an electronic content management system is currently being contemplated by the City, which will greatly enhance our ability to manage public records and compile documents efficiently.*

We were pleased with the audit outcome and look forward to completing the audit reporting process when we conduct our public hearing in the future.

Sincerely,



Eric Anderson

cc: City Council Members

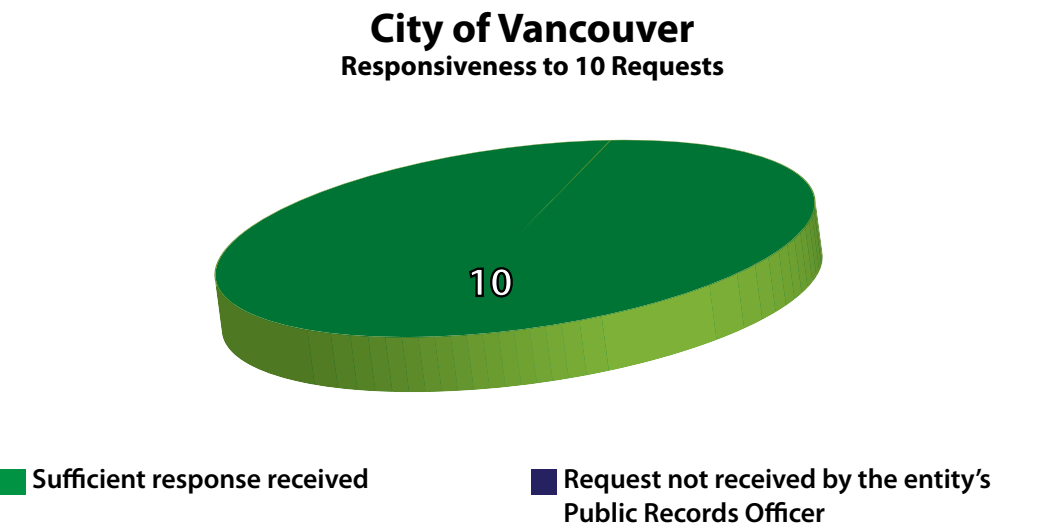
Linda Long, Director of Performance Audit  
Christopher Cortines, Deputy Director Performance Audit  
Tom Bernard, Performance Audit Team  
Nestor Newman, Performance Audit Team  
JoAnne Klein, Assistant Audit Manager – Tacoma  
Scottie Nix, Internal Auditor  
Tansy Hayward, Assistant to the City Manager  
Rey Arellano, Assistant City Manager/CIO  
Elizabeth Pauli, City Attorney  
Doris Sorum, City Clerk  
Yvonne Yaskus, Records Manager

About City of Vancouver

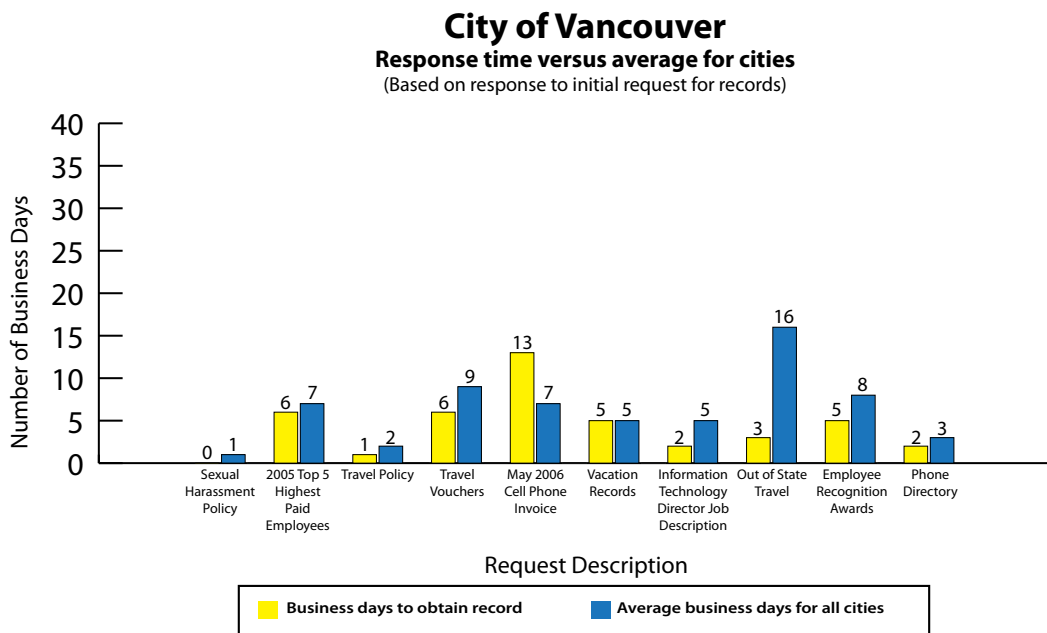
The City of Vancouver's population is more than 160,800 people in Clark County. The City is administered by a mayor-council form of government with a council-appointed City Manager.

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.

Conforming responses to the initial request – 10 out of 10 Requests



Responsiveness – 10 Requests - Compared to Average for Cities



## City of Vancouver's Response

P.O. Box 1995  
Vancouver, WA 98668-1995



[www.ci.vancouver.wa.us](http://www.ci.vancouver.wa.us)

April 22, 2008

Brian Sonntag  
State Auditor  
P. O. Box 40021  
Olympia, Washington 98504-0021

RE: PUBLIC RECORDS PERFORMANCE AUDIT REPORT

Dear Mr. Sonntag:

The City of Vancouver would like to thank the State Auditor's Office for the time and energy invested in conducting this audit and drafting the performance report. The City of Vancouver is committed to providing prompt and cooperative responses to all public records requests.

As your report indicates, one of the primary objectives of the audit was to focus on customer service. The City of Vancouver is committed to providing outstanding customer service - it's at the heart of all we do as a City. We treat our citizens as we would like to be treated: responsively, timely, respectfully, fairly and pleasantly.

The City's aim is to offer solutions and outcomes which exceed our customers' expectations. As such, we are committed to carefully reviewing the recommendations made in the audit report and incorporating those which will enhance our responsiveness to public records requests. The City will continue to emphasize training and effective communication among our staff as it relates to the Public Records Act (the Act). We will continue to review our procedures to accommodate best practices and any changes to the Act. We believe this will aid us in providing outstanding customer service as well as complying with applicable laws and regulations.

The City of Vancouver is proud of its performance in this audit. We believe that our commitment to high standards, both in terms of customer service and compliance, is represented in our exemplary performance. The City is performing in a manner which is consistent with many of the best practices noted in the report. For example, we believe the City has established a "culture of compliance" and a "culture of cooperation" with requestors. The City has established appropriate training, and prioritizes, tracks, and monitors requests that are received. The City utilizes a central point of contact for public records which has resulted in enhanced responsiveness to requests. The City offers a user-friendly website to provide relevant information and even provides an optional public records request form for requestors. In addition, the City was mentioned as demonstrating "best practices" in a number of specific areas detailed in the report.

Again, we would like to extend our appreciation to your audit staff for opportunity to have worked through this process in a cooperative manner. Thank you for the opportunity to respond to this report.

Sincerely,

A handwritten signature in cursive script that reads "Pat McDonnell/bw".

Pat McDonnell

City of Vancouver, *City Manager*

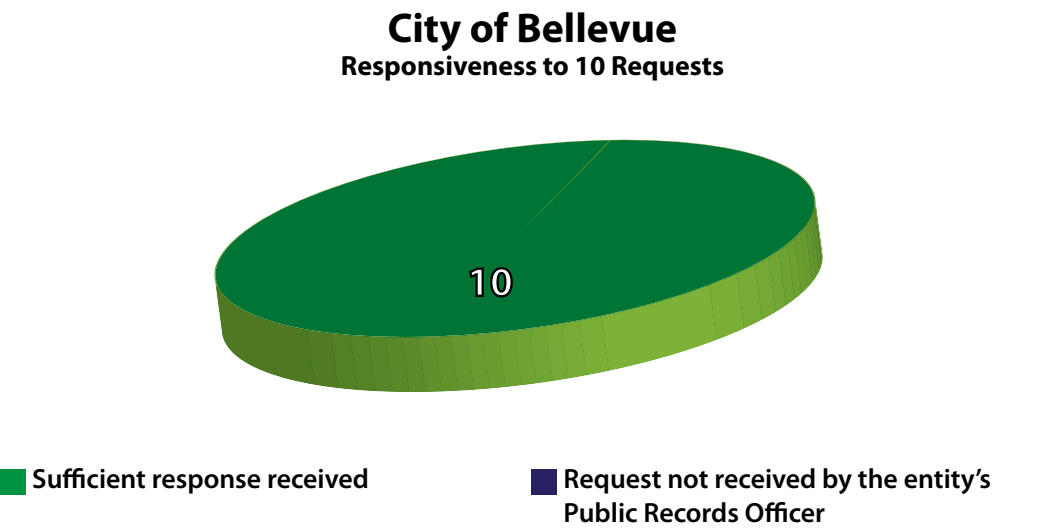


About City of Bellevue

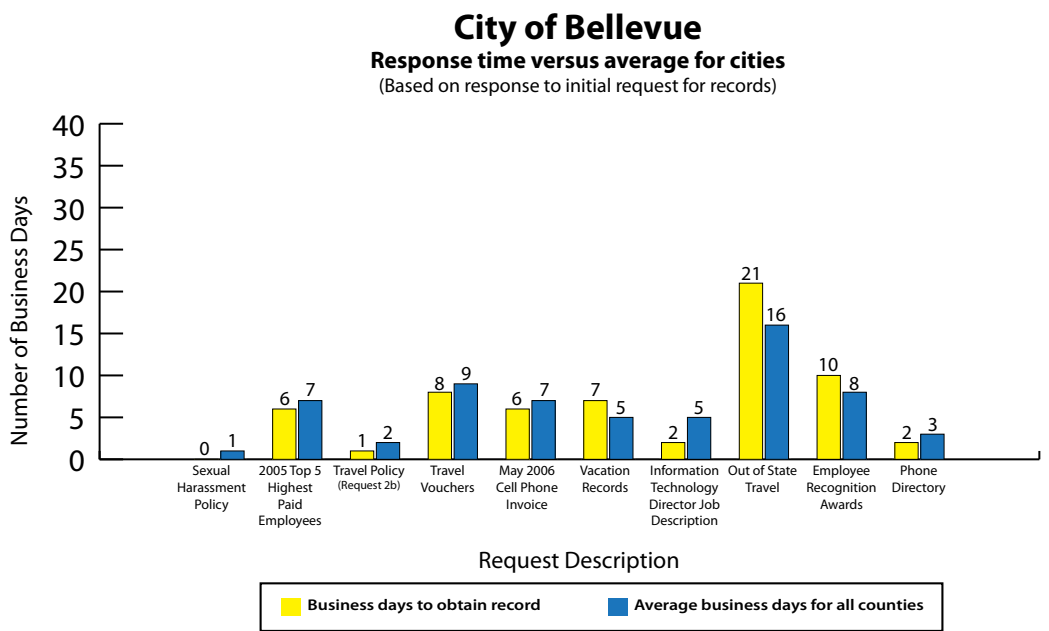
The City of Bellevue's population is approximately 118,100 people in King County. The City operates under a council-manager form of government with seven elected Council Members, one of whom is selected by the Council to serve as Mayor for a two-year term.

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.

Conforming responses to the initial request – 10 out of 10 Requests



Responsiveness – 10 Requests - Compared to Average for Cities



## City of Bellevue's Response

### 2007-2008 SAO Performance Audit Exit Items with City of Bellevue Response April 22, 2008

**Finding 2: Some entities do not accommodate a variety of public records requests and therefore do not provide the public with fullest assistance....**

**The following entities *[list included Bellevue]* provide records request forms on their Web sites, but do not allow those forms to be submitted through their Web sites.**

**Response:** We are in the process of implementing an Electronic Content Management System (ECM), and a future phase planned for early 2008 will include the opportunity for requestors to submit a variety of different types of electronic documents and/or forms, including public disclosure requests, to the City via our web site. Requestors currently have the ability to download our form and return it to the City in a variety of ways including: FAX, Pdf (scanned and sent via email), regular mail, and drop in. We also accept public disclosure requests in person, by email, and over the telephone, and send the requestor a confirming letter or email documenting the request.

**Finding 3: Some entities did not provide complete and satisfactory explanations for redactions of public records and some records were improperly redacted.... We received 43 records with acceptable redactions, 11 of which did not cite the specific legal exemption for the redactions, as required by the Act. *[list of 11 entities that did not cite the exemption included Bellevue]***

**Response:** As a result of this performance audit comment, we have placed a focus on providing appropriate explanations for redactions of public records in our internal training for handling non-routine requests. In addition to our Public Records Officer's oversight of the public disclosure process, we are now utilizing a 75% temporary employee dedicated to coordinating all administrative aspects of our process to provide greater quality control and consistency in handling/documenting responses to requests, including performing redactions.

**Finding 4: Some entities provided the requested public records in a less timely manner than their peers....**

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 Bellevue	Out-of-state travel	21	16	The entity provided the status of the 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.

...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.

**Response:** As noted on page 12 of the draft performance audit report, the City responded “quicker than average” on seven of the ten audit requests. The specific request that is reflected in this Audit comment called for travel vouchers for the City’s Police Chief over a twelve month period spanning two calendar years (the “Methodology” section on page 9 of the Audit Report suggests that records were sought for only six months). When the request was received, six months worth of these records had already been sent to off-site storage.

The following table documents communications between the City’s Records Officer and the requestor:

December 29, 2006	Request sent
January 3, 2007	Request received by City
January 4	City’s initial response by email that records would be made available on or before January 31
January 18	City’s response by voicemail offering opportunity to view records when assembly/processing completed
January 19	Email received from requestor asking that records be mailed to him
January 19	City’s response by return email indicating records would be available approximately January 24
January 25	City’s email response that records were now available and documenting copying/ mailing costs
January 31	Receipt by City of payment for copying/ mailing costs
January 31	Records mailed to requestor

The records required considerable Police Department staff time to assemble, Legal review to approve exemptions/redactions, considerable time to execute redaction of City credit card and personal information, and significant “transit” time via regular mail.

The Attorney General’s Model Rules recognize that while providing public records is an essential function of an agency, it is not required to abandon its other essential functions in order to fulfill public records requests. Agencies are encouraged to be flexible and process as many requests as possible even if they are addressed out of order. As identified above, the City spent significant time responding to this request and communicated regularly with the requestor on the status of his request. The request was completed within the estimated timeframe.

Also noted previously, the City has invested in an ECM system that is being integrated with our Finance/HR system, which should significantly reduce the amount of time required in future to assemble records that are responsive to this type of request.

#### Best Practices identified during the Audit...

- **Visible signage.** Entities where visible signage was observed by those who submitted our walk-in requests were: (list of 2 Counties, 2 cities, and DGA; Bellevue not listed)

**Response:** At all public entrances to City Hall, prominent electronic signage and a floor plan identify the Public Records Center located on the first floor of City Hall (the City’s website also directs requestors to the Records Center). Visible signage is provided both on the counter of the Records Center as well as in the Center’s “Public Reading Room” where public disclosure responses are made available for viewing by requestors. Auditor’s Office representatives made their request for the City’s sexual harassment policy at the Service First counter, which is a few steps away from the Records Center.

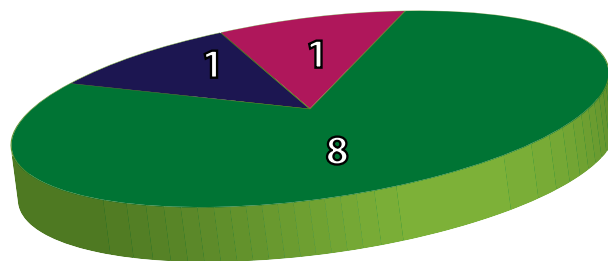
## About City of Everett

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.

### Conforming responses to the initial request – 8 out of 10 Requests

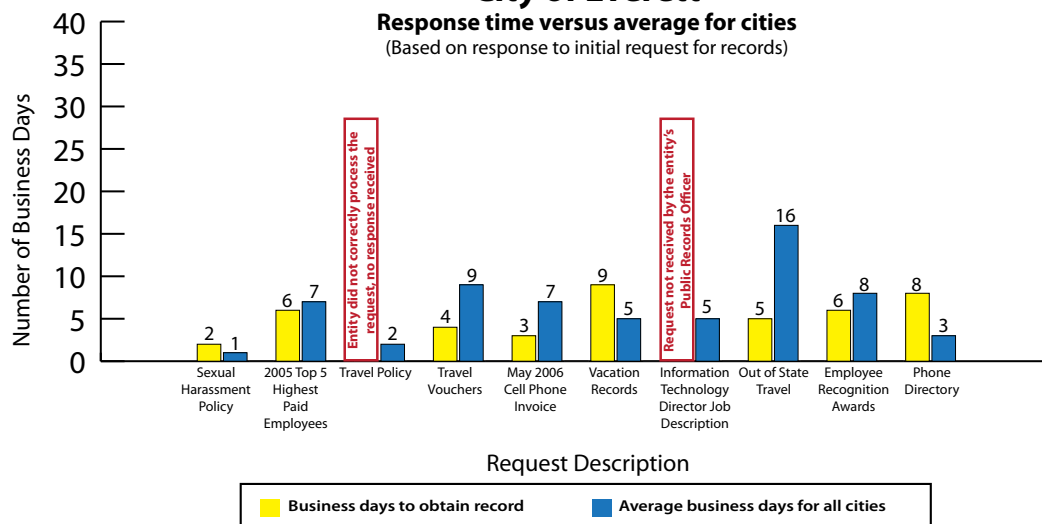
**City of Everett**  
Responsiveness to 10 Requests



- Sufficient response received
- Entity directed requestor to resubmit the request to another department within the entity
- Entity did not correctly process the request, no response received
- Request not received by the entity's Public Records Officer
- Entity response was drafted or issued, but not received by the requestor
- Entity responded with incomplete or insufficient records

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

#### City of Everett



## City of Everett's Response

Dear Tom,

Thank you for the performance audit report regarding public disclosure.

We have implemented the following changes in the way we process public disclosure requests based upon points brought forth in your report.

- We are responding to the requestor that we have received his/her request immediately upon receipt of the request, even if we will be filling that request within the five day timeframe.
- We are collecting fees prior to the release of records.
- We will not be collecting fees for the minimum amounts per your report.

It is noted that one redaction was missing an explanation. It is not our normal practice to omit the explanation for redaction, but in this case it was a credit card account number and the explanation wasn't verbalized. We continue to try to educate all employees of the city regarding requests for records via our employee toolkit class and one on one supervision.

We will look forward to seeing you tomorrow.

Sincerely,  
CITY OF EVERETT

Sharon Marks  
City Clerk

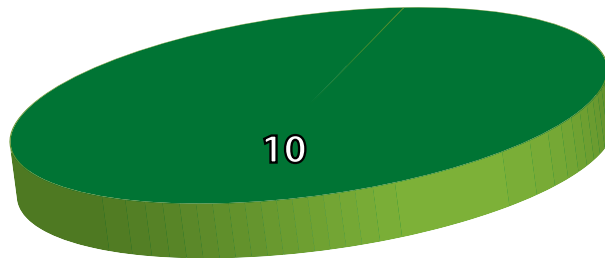
## About City of Spokane Valley

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.

### Conforming responses to the initial request – 10 out of 10 Requests

#### City of Spokane Valley Responsiveness to 10 Requests

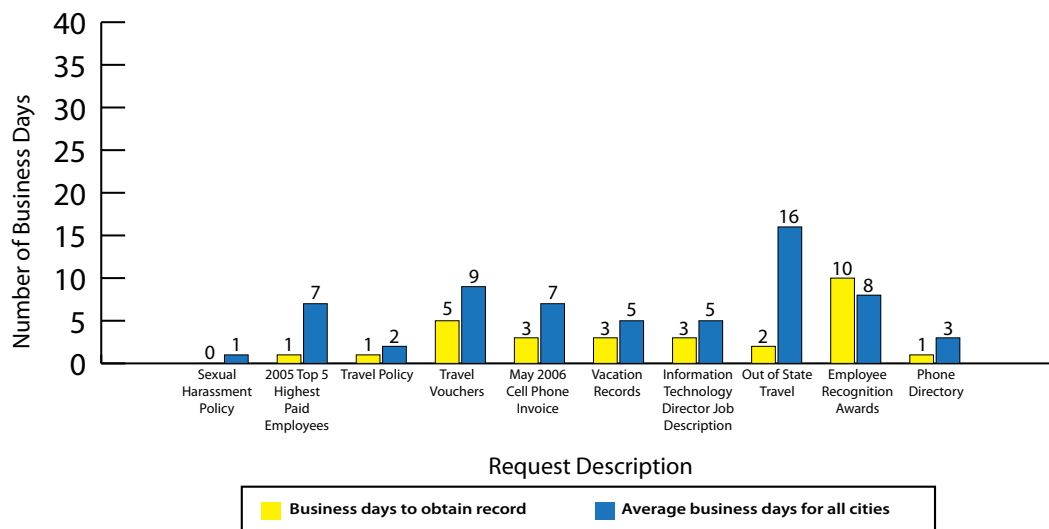


■ Sufficient response received

■ Request not received by the entity's Public Records Officer

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

#### City of Spokane Valley Response time versus average for cities (Based on response to initial request for records)



## **City of Spokane Valley's Response**

The City of Spokane Valley opted to not submit a response to the audit.



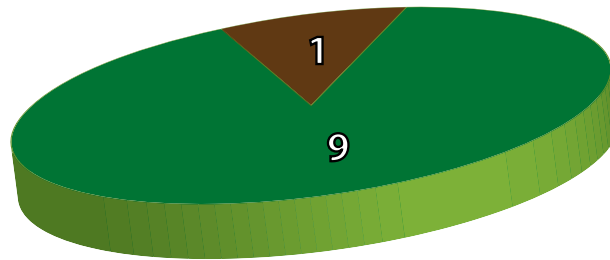
## About City of Federal Way

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.

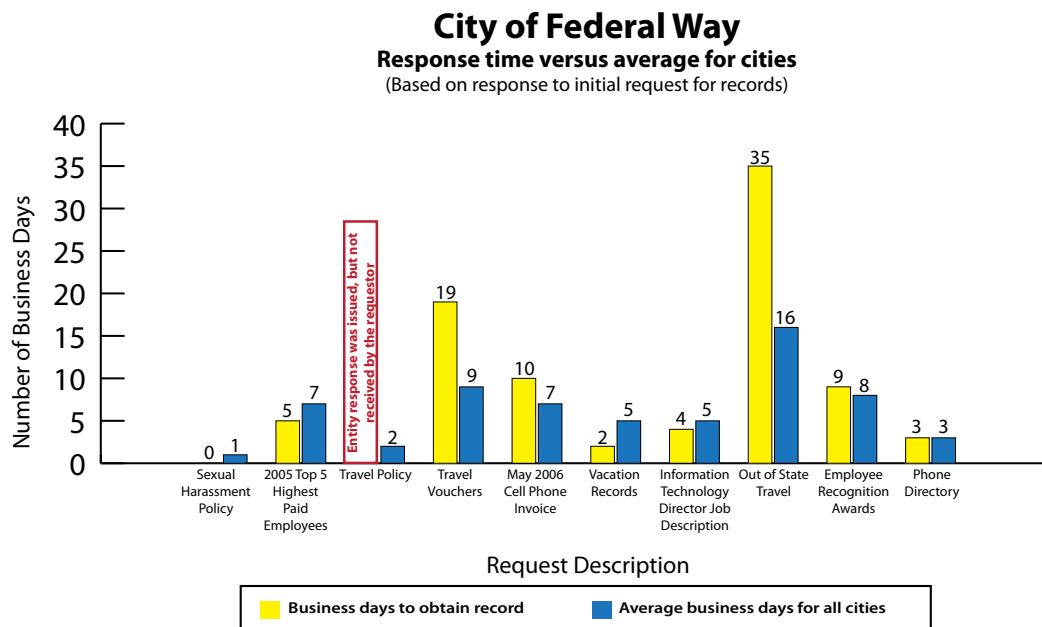
### Conforming responses to the initial request – 9 out of 10 Requests

**City of Federal Way**  
Responsiveness to 10 Requests



- Sufficient response received
- Entity directed requestor to resubmit the request to another department within the entity
- Request not received by the entity's Public Records Officer
- Entity response was drafted or issued, but not received by the requestor

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



## City of Federal Way's Response



Tom Bernard, Assistant Audit Manager  
360-676-2165, ext 109  
[bernardt@sao.wa.gov](mailto:bernardt@sao.wa.gov)

Nestor Newman, Audit Manager  
360-676-2165, ext 108  
[newmann@sao.wa.gov](mailto:newmann@sao.wa.gov)

April 18, 2008

Subject: PDA Audit - Response to Final Draft, City of Federal Way – Entity #18

Thank you for meeting with us today to discuss the Performance Audit Findings for the City of Federal Way. We appreciate the opportunity to respond to the final draft and have our responses included in the final report.

As we discussed in the exit conference, the City requests that the term “non-responsive” be changed for the one request that was not received by the requestor. The City would like the chart to show that all requests were responded to. We request different terminology be used.

Page 26 of your final draft report states the City of Federal Way requires all requestors to use a Public Records Request Form and does not accommodate other forms of requests.

By the State’s own admission, a Public Record Request was submitted via email and the city responded by email with the requested documentation attached. That particular request was the one “undetermined” response. However, the fact that we responded to the email request with an email response and attachment clearly shows that the City does not require public record requests to be in a certain form.

Page 49 of the report suggests the City provide a bill for copy fees versus waiting to receive payment. The City of Federal Way has, in the past, had numerous requests for public records that were never paid for when a bill was provided along with the records. Therefore, City policy is to have the requestor pay for records up front.

Page 52 of the final draft finds that the City does not have a centralized monitoring system. As we discussed earlier today, the City Clerk’s office has for the past three years maintained an excel spreadsheet which records all requests received. Pertinent information is contained on the spreadsheet including when it must be responded to, the department/division assigned, and the outcome. Copies of this spreadsheet were

submitted to the Auditor's Office at your request at the time of the initial audit interview. All public records requests (with the exception of the Police Department and Municipal Court who have their own systems) come through the City Clerk's Office for entry on this system prior to assignment.

There were two instances where the City took longer than the average to provide the requested records: The out of state travel request (35 days) and the travel voucher request (19 days). In both instances a "5-day" letter was sent to the requester stating additional time was needed to fulfill the request. The City attributes both these delays to limited staff resources. We have also made sure that the reason for any anticipated delay is included in our extension letters.

The City of Federal Way agrees with the auditors report that our system should be upgraded to allow a requestor to not only print out a request form from our website but to also submit the request through our website.

As we stated in our initial response on January 10, 2008, the City acknowledges the following:

1. Inquires of the Requestor:

The City's policy is not to ask the requestor why they want the records. However, the City also has a policy to provide policy documents free of charge if the requesting party is an employee, a government agency, or a vender/service provider who has business relations with the city and who needs the policy in order to comply with city requirements. It is for this reason the counter staff needs to inquire whether the requestors are "employees" or from "an agency" specifically.

2. Waiver of Minimum Copy Charges:

The City allows staff discretion in waiving copy charges for copies of ten pages or less. However, depending on the type of information requested, and to discourage a requestor from dividing larger requests into smaller installments (which takes more staff time to fulfill), staff may decide not to waive such charges. For instance, travel expense sheets and cell phone invoices are records that have been requested numerous times, separately, from the same requestor. These records would have been more efficient to research if they had been combined. If the records requests are "split up" or submitted individually, the copy fee for each request may fall just short of the \$4 threshold your office suggests, but the combined request far exceeds the threshold. The copy fee only covers a small portion of the cost associated with fulfilling records requests. The costs to retrieve records from archival storage, staff time to research the requests, etc. are not recoverable. Therefore, the City will continue to collect the single fee provided for under state law.

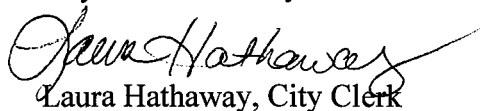
The City of Federal Way strives to be accountable, cordial and efficient to our customers and will continue to do so. In most incidences the City provides requested documents within a few business days or immediately if possible. We also make public records available on our website in order to make access to our public records easy for our customers.

There are occasions when the request will take more time and the City strives to be very responsive and give our best estimate on how long it will take to fulfill the request. We will continue to periodically conduct training with employees to ensure that employees are aware of all PDA provisions/policies.

Please do not hesitate to contact me should you have any questions or need any additional information regarding the above.

Sincerely,

City of Federal Way



Laura Hathaway, City Clerk

c: City Council  
City Manager Neal Beets  
Assistant City Manager Iwen Wang  
Pat Richardson, City Attorney  
File

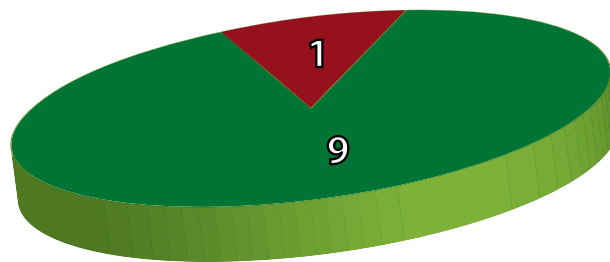
## About City of Kent

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.

### Conforming responses to the initial request – 9 out of 10 Requests

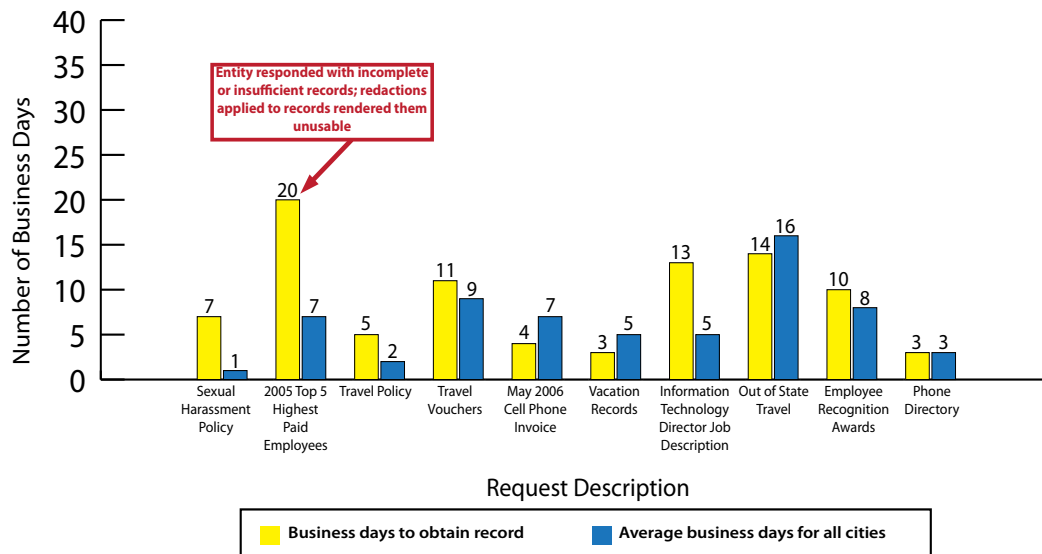
**City of Kent**  
Responsiveness to 10 Requests



- Sufficient response received
- Entity directed requestor to resubmit the request to another department within the entity
- Entity did not correctly process the request, no response received
- Request not received by the entity's Public Records Officer
- Entity response was drafted or issued, but not received by the requestor
- Entity responded with incomplete or insufficient records

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

**City of Kent**  
Response time versus average for cities  
(Based on response to initial request for records)



## City of Kent's Response



April 21, 2008

**CITY CLERK**

Brenda Jacober, CMC  
City Clerk  
220 4th Avenue South  
Kent, WA 98032  
Fax: 253-856-6725

**PHONE: 253-856-5725**

Mr. Brian Sonntag, CGFM  
Washington State Auditor  
Insurance Building  
P.O. Box 40021  
Olympia, WA 98504-0021

RE: City of Kent's Response to the Draft Public Records Performance Audit  
of the Washington State Auditor's Office

Dear Mr. Sonntag:

Thank you for giving the City of Kent the opportunity to review and respond to the State Auditor's Office draft report of its Public Records Performance Audit. We, at the City of Kent, strive to provide a high level of customer service to anyone requesting a record. We all have the same goal: ensuring that the final report correctly and fairly reflects the results of the performance audit. However, the City of Kent was somewhat surprised to see a number of factual errors in the draft report regarding our City. In addition, the draft report appears to sometimes make generalizations or draw conclusions without providing specific factual support for these comments. Finally, there were certain items not previously communicated to the City in January 2008 through the "draft results."

The important thing is that we collectively have an opportunity to make sure that the report is correct. Please note that this document is intended to be the City's official response for inclusion in the audit report.

**Specific Areas of Concern:**

**Audit Finding 1:**

On page 18 of the draft report you have a table detailing the 32 non-responsive answers that you received during the course of your audit. On page 19 you have a table in which the first five columns to the right of the entity name detail the areas of non-response by entity. The sixth column entitled "Entity responded with incomplete or insufficient records" includes responses which are considered responsive by the audit but are included in the table detailing the non-responsive concerns by entity. We would ask for this column to be appropriately labeled "Entity responsive but responded with incomplete or insufficient records" or eliminate the column as it related back to the previous page but does not contain the same information.

www.ci.kent.wa.us

● MAYOR SUZETTE COOKE

City of Kent Administration  
John Hodgson, CAO

Mr. Brian Sonntag, CGFM  
Washington State Auditor  
April 21, 2008  
Page: 2

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We have a similar concern related to page 23 of the draft report where a bulleted subheading of the overall page 20 heading of "Description of Non-responsive Requests" is titled "Nonconforming records received". Again, per your definition these responses are considered responsive but are again included as a part of non-responsive receipts. We would ask that the bullet indentation be deleted and the section be titled "Responsive but incomplete or inconsistent records received"

### **Audit Finding 2:**

On page 26 of the draft audit you state under "Condition", "During our audit interviews, we were informed of the following:"

- *The following entities' policies or practices require all requestors to use a public records request form, and do not accommodate other forms of requests.*

The inclusion of the City of Kent under this bullet is not factually correct. The City of Kent does not require all requestors to use only a public records request form, nor does the City fail to accommodate other forms of requests. Section 1.05.060(B) of the Kent City Code states:

*KCC 1.05.060. Form and manner of request for public records.*

*B. The city will provide a public records request form that may be used by those requesting public records. The public records request may be submitted on the form provided by the city, or in another written format that contains the following information:*

- 1. The date of the request;*
- 2. The name of the requester;*
- 3. The full address of the requester;*
- 4. The telephone number of the requester;*
- 5. A complete description of the requested record;*
- 6. The title and date of the requested record, if known;*
- 7. The location of the requested record, if known; and*
- 8. Whether the requester intends to review the records or to obtain a copy of the records.*

As already noted, requestors may use the online public records request form or any other type of written communication. The City does ask customers who request records that will involve a large number of pages or items that will have to be received from multiple departments to fill out a form so that both parties know exactly what records are being asked for to eliminate any confusion when the records are provided. For small requests, such as a copy of an ordinance or similar type of easily retrieved



Mr. Brian Sonntag, CGFM  
Washington State Auditor  
April 21, 2008  
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record, the request is filled immediately and no written form is used. We believe that our actions in this regard comply with both the letter and spirit of WAC44-14-03006. The third bulleted item states "*The following entities policies or practices do not accommodate public records requests submitted by e-mail. . . Despite their stated policies, these entities accepted and responded to our unannounced e-mailed requests.*" This statement is not factually correct. The City of Kent, as a matter of official policy (See, ch. 1.05 of the Kent City Code above), accept requests through the internet. That is why the City accepted internet requests in your case. Internet requests are viewed as a "writing" both in terms of the City's policy and state law. If, somehow, the auditor draws a distinction between access to receive, fill out, and submit a request form via the City's internet webpage and access to download and submit a form via email, that distinction (which appears to be a distinction without a difference) should be explained.

On page 27 of the draft audit report, you state, "*During our audit, we observed these entities had adopted a web form allowing requestors to submit requests through the entity's web site.*" The implication of your statement is that the City of Kent has created this ability within the last several months. The City of Kent has allowed public records requests to be submitted through the City's website ([www.ci.kent.wa.us](http://www.ci.kent.wa.us)) for at least 10 years. In fact, of the 785 public records requests received by the City in 2007, 402 (51%) were received electronically.

### **Audit Finding 3:**

On page 33 of the draft report, there is a section labeled "Attitude:". It goes on to say:

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

The draft report does detail a legislative position of the City of Spokane referring to the public records act as an unfunded mandate. That is the only reference to an unfunded mandate. There is no support in the report for the statement on embarrassment by any of the entities reviewed. The City of Kent does not support the statements listed under "attitude" and takes issue with the use of "Some Entities..." which impugns not only the City but all of the 30 entities reviewed. We would request that if such statements are supported by audit evidence, those entities who have those opinions be disclosed and that your agency not color all of the other entities under review with this broad brush.

### **Audit Finding 4:**

In the background section of this finding (page 35 of the draft) you include the requirements to respond to the requestor of a public record within five days. The three elements cited are that within that five day period the entity is required to:

Mr. Brian Sonntag, CGFM  
Washington State Auditor  
April 21, 2008  
Page: 4

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

The City of Kent faithfully complies with these requirements. We were surprised to see ourselves included twice (page 41) on the list of the "slowest requests by entity" but were even more surprised to see in the column labeled "Reason" the statement "Entity estimated a response within 21 calendar days or less, but did not explain why". We acknowledge the response time but do not understand the additional requirement to explain the rationale for the estimated response. The requirement to explain the "reasonable estimate of the time required to fill the request" is not included in the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), or the requirements listed in your audit. We would ask that the phrase "but did not explain why" be deleted from the table on page 41 as it relates to the City of Kent. Again, we acknowledge to time that it took us to respond to the request compared to the average time from all entities, we do not acknowledge the expansion of the five day requirement adding an explanation of what we considered a reasonable estimate of the time required to fill the request.

Additionally, on page 47 of the draft report in the section "Communications with the requestor" the report states: "Some entities provided records without providing a reason why the length of time it took to respond was necessary." This statement, as in the above paragraph, seems to be an expansion of the requirement of the requirements to respond within five days. The City of Kent tries to provide good customer service to persons who request public records, but does have significant concerns already complying with the desire to provide the requested records along with reviewing and complying with the over 300 exemptions specified in the RCW's. For example, state law specifically states that home addresses of public safety employees are not disclosable. If a requested record includes the address of a public safety employee do we redact the entire address, the home address number by leave in the street, or redact everything but the city and zip code. The Washington courts have not ruled on the issue so we must review the records and try to balance the exemption with the desire to provide the record. We object to adding additional requirements into a process that already is long enough.

**Additional Area of Concern:**

On page 103 of the draft audit, in the section detailing information on cities, specifically on the City of Kent, there is a pie chart titled "General Overall Responsiveness to the Initial Request". In the case of the City of Kent it notes that we were responsive to the initial request in 9 of 10 cases. We believe that this is in error. On pages 13 and 17 as well as in the discussion in Audit Finding 1, there is a discussion of the criteria for considering replies as either responsive or non-responsive. Consistently, it states that a response was considered to be responsive even if the

Mr. Brian Sonntag, CGFM  
Washington State Auditor  
April 21, 2008  
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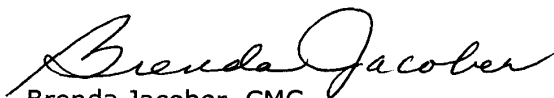
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response contained incomplete or inconsistent records. Under your definition the City should be listed as responsive to 10 of 10 requests. The City has acknowledged to you what we believe to be, upon reflection, an improper redaction of the employee name from your request related to W-2's. We have acknowledged it and have taken steps to insure that it will not be repeated. That does not change the fact that the draft audit report is inconsistent with itself in the definition of and display of information on responsiveness. We would ask that the chart be amended and, as stated in the definition of page 13, note the errors observed.

Thank you for your consideration of the City of Kent's concerns to the State Auditor's Office draft public records performance audit report.

If you require any further information, you may reach me at (253) 856-5728.

Sincerely,



Brenda Jacober, CMC  
City Clerk

cc: Robert Nachlinger, Kent Finance Director  
Robert Goehring, CPA, CFE, Kent Audit Manager  
Tom Brubaker, Kent City Attorney  
Thomas Guilfoil, Kent Assistant City Attorney

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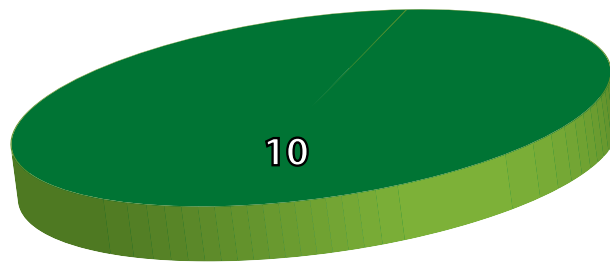
## About City of Yakima

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.

### Conforming responses to the initial request – 10 out of 10 Requests

**City of Yakima**  
Responsiveness to 10 Requests

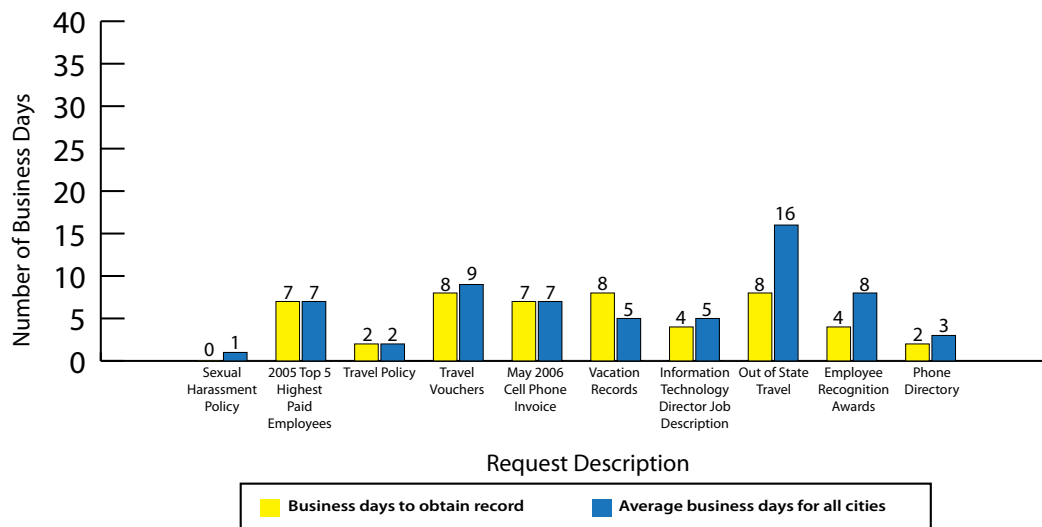


■ Sufficient response received

■ Request not received by the entity's Public Records Officer

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

**City of Yakima**  
Response time versus average for cities  
(Based on response to initial request for records)



## City of Yakima's Response



*OFFICE OF THE CITY MANAGER  
129 North Second Street  
CITY HALL, Yakima, Washington 98901  
Phone (509) 575-6040*

May 1, 2008

VIA Email

Thomas Bernard, CPA  
Auditor of Washington State  
1616 Comwall Avenue, Suite 107  
Bellingham, WA 98225

Nestor Newman, CPA, CGFM  
Auditor of Washington State  
1616 Cowmall Avenue, Suite 107  
Bellingham, WA 98225

Dear Thomas and Nestor:

The City of Yakima appreciated the opportunity to be included in the State Auditor's public records performance audit of 30 entities. We received high marks on our general overall responsiveness to 10 out of 10 requests and would like to congratulate our employees for their role in this accomplishment. The City approaches public records requests with a customer service ethic. Our performance during the State Auditor's Office audit is reflective of the commitment our staff working in this area maintains on a daily basis.

Since issuance of the performance audit draft report, the City of Yakima has taken additional steps to ensure consistency with the Attorney General's Model Rules and the recommendations by the State Auditors Office.

Sincerely,

Dave Zabell  
Assistant City Manager



## Appendix C – Results by State Agency and Responses

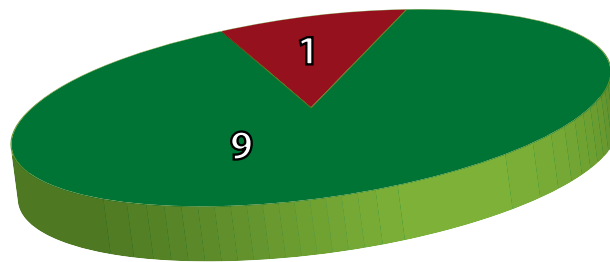
### About Office of Insurance Commissioner

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 Office employs approximately 200 people in Tumwater, Seattle, Spokane and Olympia.

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

### Conforming responses to the initial request – 9 out of 10 Requests

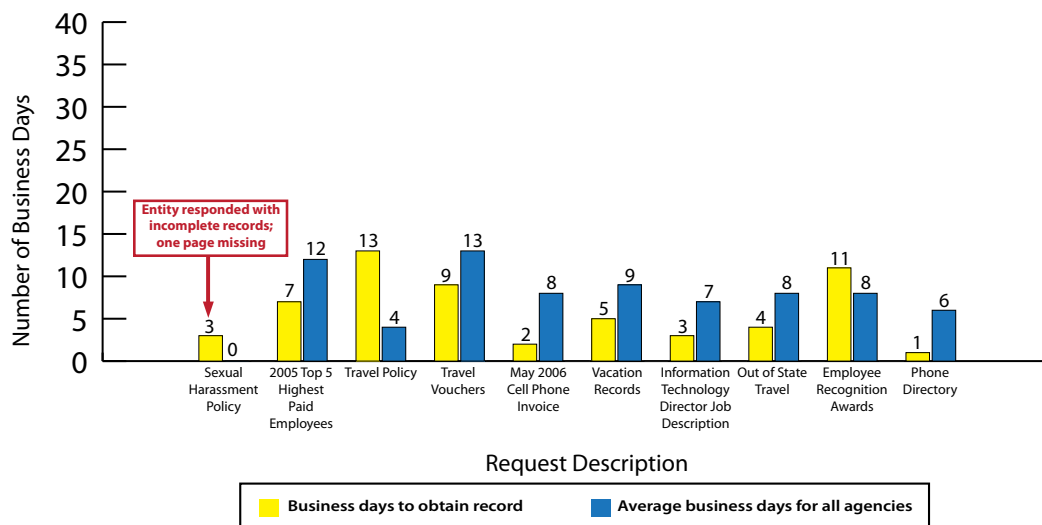
#### Office of Insurance Commissioner Responsiveness to 10 Requests



- Sufficient response received
- Entity directed requestor to resubmit the request to another department within the entity
- Entity did not correctly process the request, no response received
- Request not received by the entity's Public Records Officer
- Entity response was drafted or issued, but not received by the requestor
- Entity responded with incomplete or insufficient records

### Responsiveness – 10 Requests - Compared to Average for State

#### Office of Insurance Commissioner Response time versus average for other state agencies (Based on response to initial request for records)



## Office of Insurance Commissioner's Response

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



OFFICE OF  
INSURANCE COMMISSIONER

Phone (360) 725-7000  
[www.insurance.wa.gov](http://www.insurance.wa.gov)

RECEIVED  
STATE AUDITOR

April 21, 2008

'08 APR 21 P4:18

The Honorable Brian Sonntag  
Washington State Auditor  
P.O. Box 40021  
Olympia, WA 98504-0021

Dear Mr. Sonntag:

Thank you for the opportunity to respond to the Public Records Performance Audit Report. I agree that the costs associated with noncompliance with the Public Records Act are extremely serious and the trust of our citizenry is put in jeopardy if this occurs.

My agency worked closely with the Auditor's Office staff throughout the audit process, and we appreciated their courtesy and professionalism. The enclosed response provides insight into two findings where my office is noted for not meeting expectations. I also have provided a list of the best practices we plan to implement to help us streamline our public records processes and improve customer service.

I am pleased that the Insurance Commissioner's Office (OIC) was recognized for adhering to certain best practices and the easy usage of our Internet site. We are proud of our success in using technology to provide electronic access to public information. We now have a searchable database that provides direct access to filings from insurance companies requesting approval for policy language and rates. The number of public disclosure requests has decreased by approximately 40 percent, which we attribute to improved access and customer service. This database is available through our agency website ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

Again, we appreciate the efforts of your staff, and we look forward to working together in the future to provide accountability and efficiency in providing accesses to the OIC's public records.

Sincerely,

Mike Kreidler  
Insurance Commissioner

Enclosure

cc: Vernon Stoner, Chief Deputy Commissioner  
Deb McCurley, Deputy Commissioner for Operations  
Eric Mark, Public Records Manager

Mailing Address: P. O. Box 40257 • Olympia, WA 98504-0257  
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501





Official Response to Public Disclosure Audit from the  
Office of the Insurance Commissioner  
April 21, 2008

**Finding 1: Thirty-two of 300 unannounced public records requests were considered nonresponsive. An additional seven responses were either nonconforming or incomplete.**

The Office of the Insurance Commissioner had one request that was incomplete.  
(Request for the Office's sexual harassment policy – Request 1)

This response was counted as “nonresponsive” due to a missing page and appears to have been an oversight due to human error. While our staff monitor all public disclosure requests, this finding reinforces the importance of scrutinizing responses prior to production. The Public Records Manager has implemented a process change and staff now cross check work to ensure that all requests are complete.

**Finding 4: Some entities provided the requested public records in a less timely manner than their peers.**

The Office of the Insurance Commissioner had one request that was significantly less timely than our peers (Request for Travel Policy - request 2B)

Our office would like to address the timeliness of our response to this request. Approximately 60% of our agency requests for public records are for filings from insurance companies requesting approval for policy language and rates. When the request for a “travel policy” was received, the employee understandably thought the request was for travel insurance policies filed by insurance companies. The filings typically include policies submitted for individuals who want coverage for travel costs and/or medical expenses while traveling. Once clarification was provided by the requester, our office attempted to respond electronically, as requested. In doing so, our staff encountered an equipment problem involving the scanner used for public disclosure requests.

**Our Plan to Implement Best Practices Identified During the Audit**

**Training**

The Public Records Manager has incorporated Public Disclosure and Records Management Training into our agency's core training requirements. Training will be provided to all agency personnel by June 2008.

**Visible Signage**

Signage for walk-in requesters will be created and posted by June 2008.



#### **Using the Installment Method for Large Public Records Requests**

Our office has been using this as a best practice, when applicable. We will include language to reflect this practice in the next revision to our public disclosure policy.

#### **Communicating the Appeals Process for Records Denials**

Although this information is in our agency rules for public disclosure, our staff is working on updating the website to include this process. Full implementation is expected in May 2008.

#### **Incorporating the Attorney General's Model Rules into WAC 284-03**

As many of the best practices identified are associated with these model rules, we are currently considering incorporating the rules into the Washington Administrative Code on public disclosure. A decision about this will be made by July 2008.

#### **Customer Service**

We will incorporate customer follow-up into our process and have begun work on a customer feedback tool regarding the level of our service. We expect implementation by August 2008.

#### **Public Disclosure Requests by Phone**

The Public Records Manager is developing a form and process to document requests that are received by phone. Since the intent is a benefit to the customer, we are exploring "lessons learned" from the entities who currently accept requests by phone so that our process ensures an accurate understanding of what's being requested.

#### **User-Friendly Web Site**

The Insurance Commissioner's Office was recognized for having a user-friendly website. In November 2007, we implemented a searchable database that provides direct access to a majority of the filings submitted by insurance companies seeking approval for policy language and rates. The number of public disclosure requests has decreased by approximately 40 percent, which we attribute to improved access and customer service.

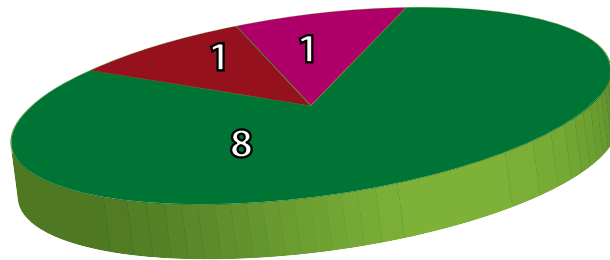
## About Washington State Investment Board

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 office, who was our primary point of contact.

### Conforming responses to the initial request – 8 out of 10 Requests

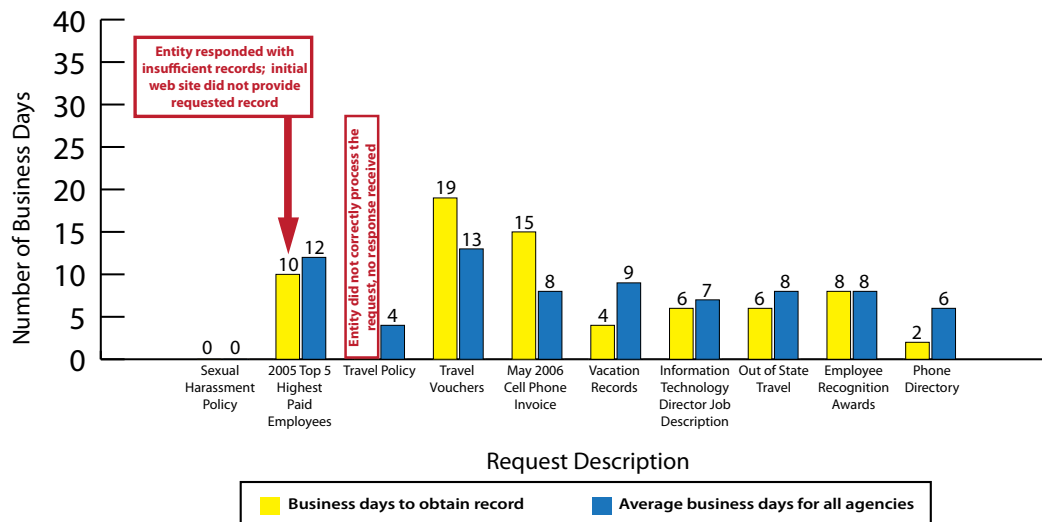
#### Washington State Investment Board Responsiveness to 10 Requests



- Sufficient response received
- Entity directed requestor to resubmit the request to another department within the entity
- Entity did not correctly process the request, no response received
- Request not received by the entity's Public Records Officer
- Entity response was drafted or issued, but not received by the requestor
- Entity responded with incomplete or insufficient records

### Responsiveness – 10 Requests - Compared to Average for State

#### Washington State Investment Board Response time versus average for other state agencies (Based on response to initial request for records)



## Washington State Investment Board's Response



STATE OF WASHINGTON  
STATE INVESTMENT BOARD

2100 Evergreen Park Drive SW • P.O. Box 40916 • Olympia, Washington • 98504-0916  
(360) 956-4600 • FAX (360) 956-4785 • [www.sib.wa.gov](http://www.sib.wa.gov)

April 21, 2008

The Honorable Brian Sonntag  
State Auditor  
Office of the State Auditor  
Post Office Box 40021  
Olympia, WA 98504-0021

Dear Auditor Sonntag:

Thank you for the opportunity to formally respond to the performance audit of the Washington State Investment Board (WSIB) and 29 other entities on providing public records to citizens. We are pleased with the overall finding that the majority of entities audited, including the WSIB, are doing an excellent job in providing good customer service in responding to public records requests.

The WSIB is strongly committed to transparency and accountability and we firmly believe that performance audits offer excellent opportunities to identify best practices and where there is room for improvement. The WSIB is also strongly committed to ensuring that its public records response process is open, timely, and completely accurate in accordance with the full spirit of the law.

I assure you the WSIB is taking the findings of this audit very seriously and has already developed and implemented steps to make improvements and other changes based on your suggestions and recommendations.

We look forward to working with the Legislature as it evaluates the results of this audit and in helping to achieve the maximum benefit possible in incorporating and using best practices throughout state government in responding to requests for information.

Sincerely,

Joseph A. Dear  
Executive Director

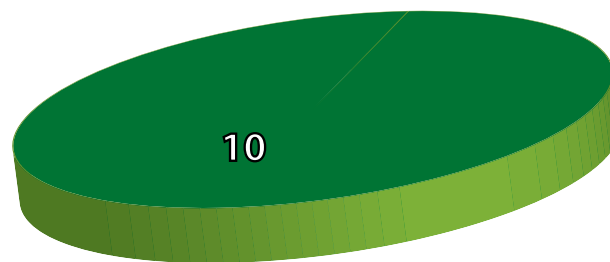
## About Department of Revenue<sup>1</sup>

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.

### Conforming responses to the initial request – 10 out of 10 Requests

#### Department of Revenue Responsiveness to 10 Requests

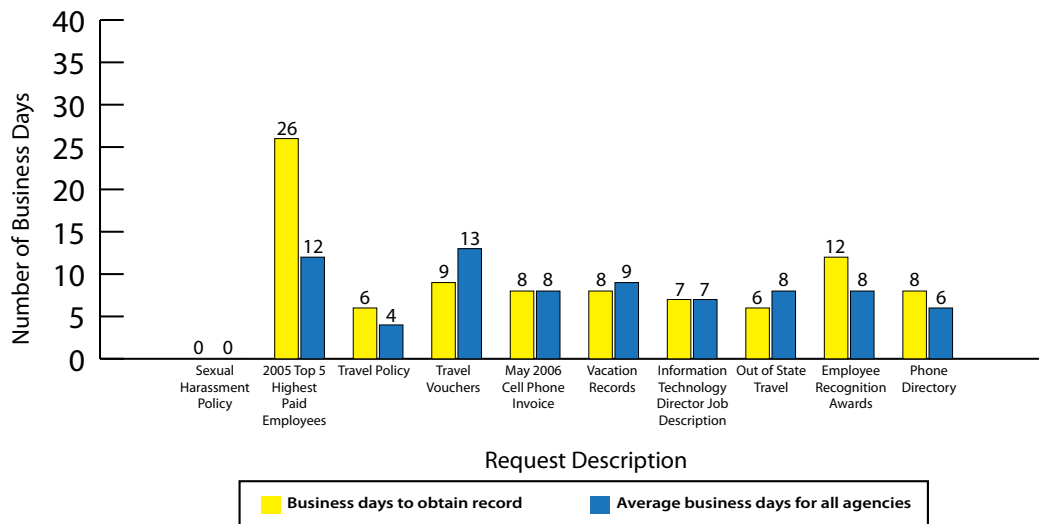


■ Sufficient response received

■ Request not received by the entity's Public Records Officer

### Responsiveness – 10 Requests - Compared to Average for State

#### Department of Revenue Response time versus average for other state agencies (Based on response to initial request for records)



<sup>1</sup> The response for all state agencies under the purview of the Governor is contained at the end of this chapter.

About Department of Social and Health Services

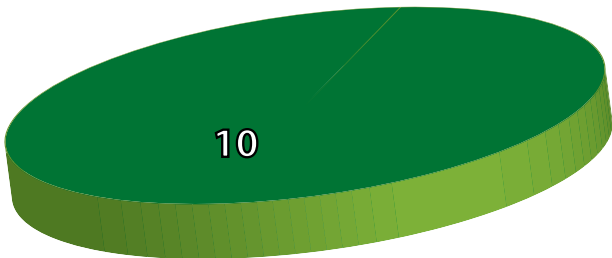
The Department is divided into five administrations: Health and Recovery Services, Economic Services, Aging and Disability Services, Juvenile Rehabilitation Services and Children's Services. The Health and Recovery Services Administration, which includes the Medicaid Program, which accounts for more 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 coordinates the efforts of close to 300 persons involved in public records disclosure across all programs and field offices, with about 36 employees who are primarily dedicated to this function and over 250 who are regularly involved as part of their assigned duties. The Public Records Officer was our primary point of contact.

Conforming responses to the initial request – 10 out of 10 Requests

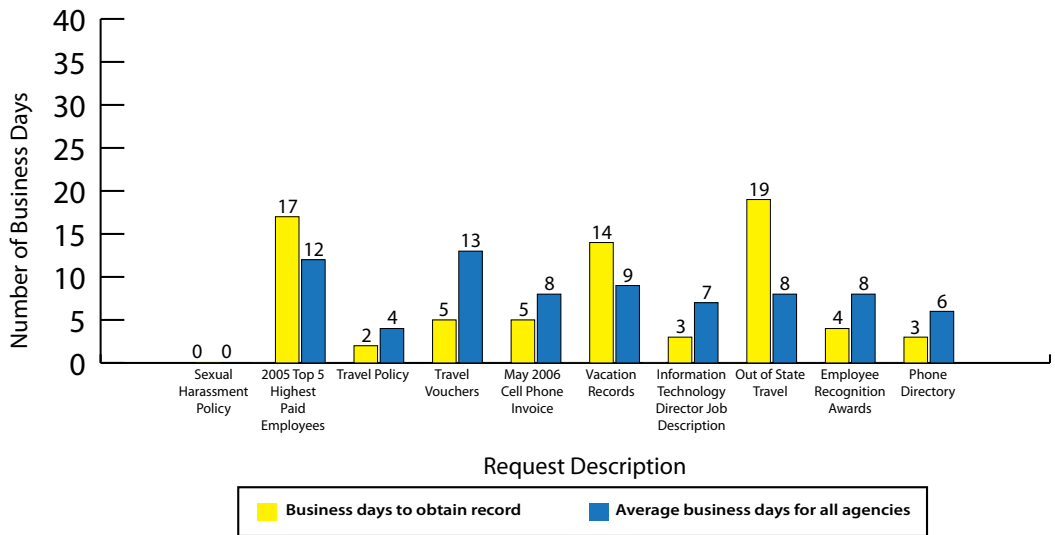
Department of Social & Health Services  
Responsiveness to 10 Requests



- Sufficient response received
- Request not received by the entity's Public Records Officer

Responsiveness – 10 Requests - Compared to Average for State

Department of Social & Health Services  
Response time versus average for other state agencies  
(Based on response to initial request for records)



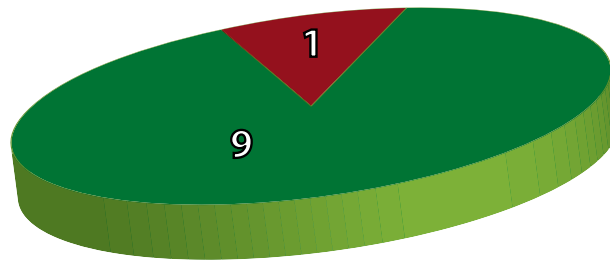
## About Department of Labor and Industries

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.

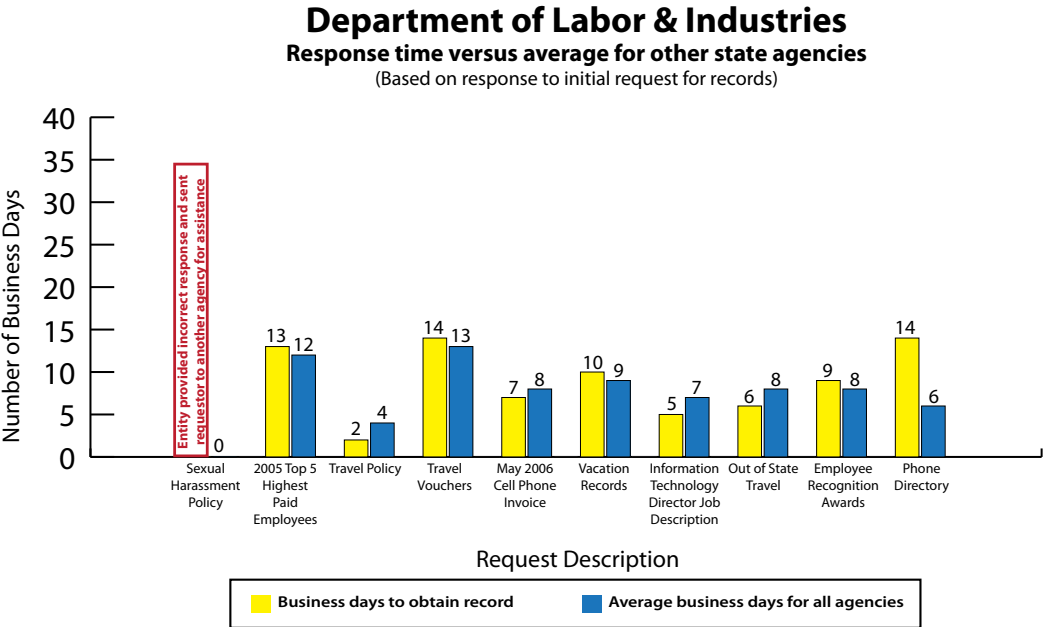
### Conforming responses to the initial request – 9 out of 10 Requests

**Department of Labor & Industries**  
Responsiveness to 10 Requests



- |   |  |
|---|--|
| ■ Sufficient response received  | ■ Request not received by the entity's Public Records Officer              |
| ■ Entity directed requestor to resubmit the request to another department within the entity | ■ Entity response was drafted or issued, but not received by the requestor |
| ■ Entity did not correctly process the request, no response received                        | ■ Entity responded with incomplete or insufficient records                 |

Responsiveness – 10 Requests - Compared to Average for State



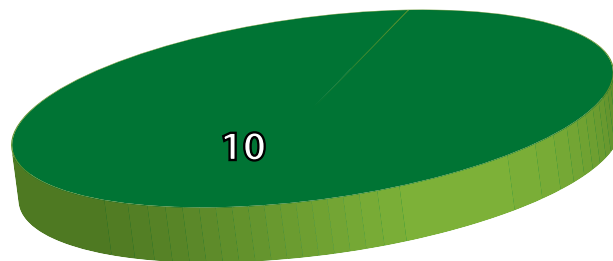
## About Washington State Patrol

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.

### Conforming responses to the initial request – 10 out of 10 Requests

#### Washington State Patrol Responsiveness to 10 Requests

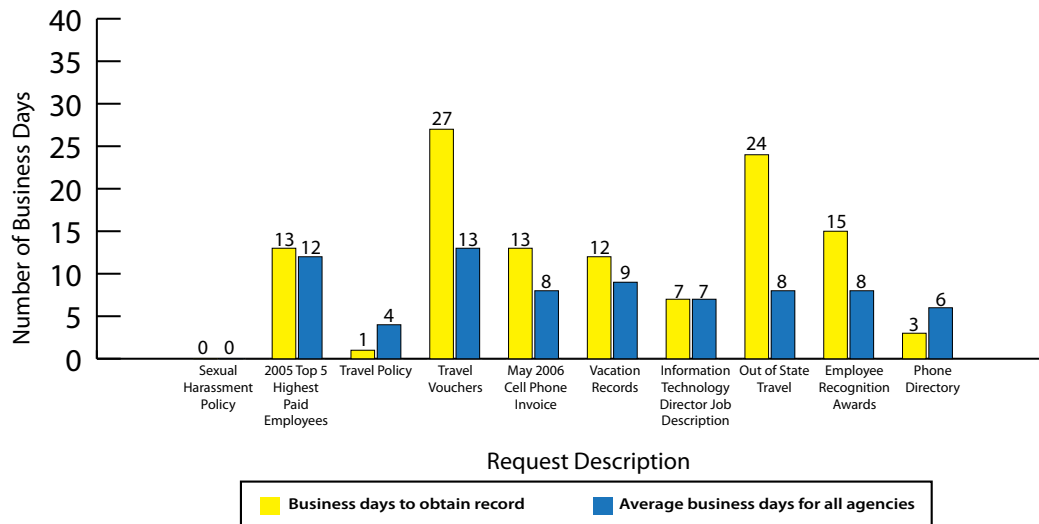


■ Sufficient response received

■ Request not received by the entity's Public Records Officer

### Responsiveness – 10 Requests - Compared to Average for State

#### Washington State Patrol Response time versus average for other state agencies (Based on response to initial request for records)



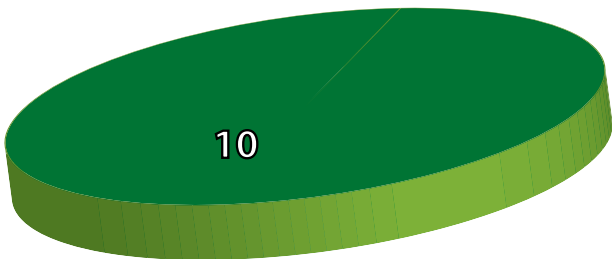


### About Department of General Administration

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 one Public Records Officer within its executive management. On a part-time basis, this officer and another executive communications office member manage the bulk of requests the department receives. However, the public records process is decentralized for certain routine volume requests, primarily related to bidding and procurement documents. Eleven other designated disclosure coordinators process requests received in the divisions' programs on a part-time basis. We directed our records requests to the Public Records Officer position within the executive management.

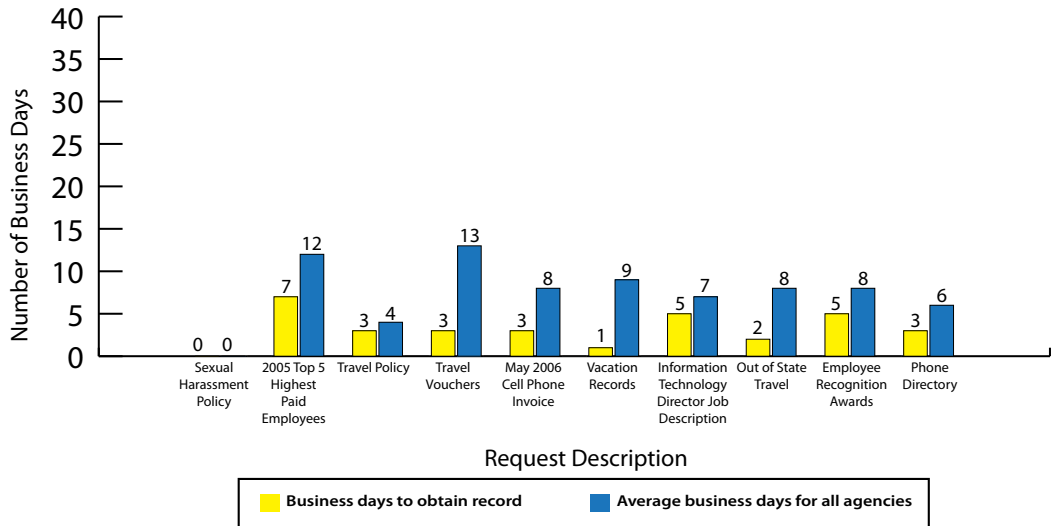
### Conforming responses to the initial request – 10 out of 10 Requests Department of General Administration Responsiveness to 10 Requests



■ Sufficient response received      ■ Request not received by the entity's Public Records Officer

### Responsiveness – 10 Requests - Compared to Average for State

Department of General Administration  
Response time versus average for other state agencies  
(Based on response to initial request for records)



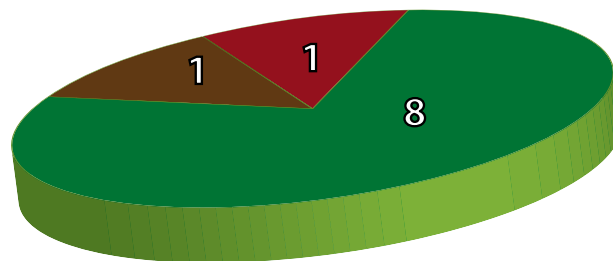
## About Department of Corrections

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 eight 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.

### Conforming responses to the initial request – 8 out of 10 Requests

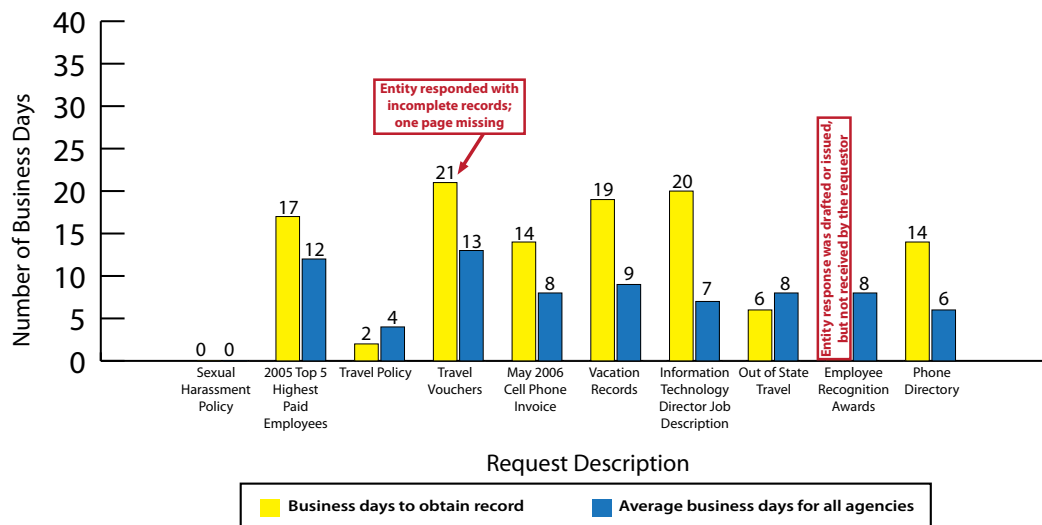
**Department of Corrections**  
Responsiveness to 10 Requests



- Sufficient response received
- Entity response was drafted or issued, but not received by the requestor
- Entity responded with incomplete or insufficient records

### Responsiveness – 10 Requests - Compared to Average for State

**Department of Corrections**  
Response time versus average for other state agencies  
(Based on response to initial request for records)

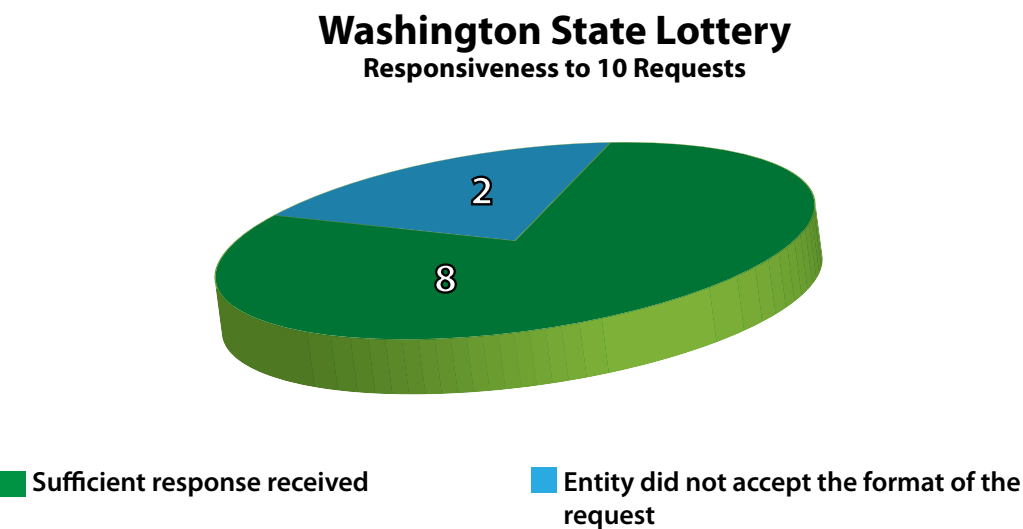


## About Washington State Lottery

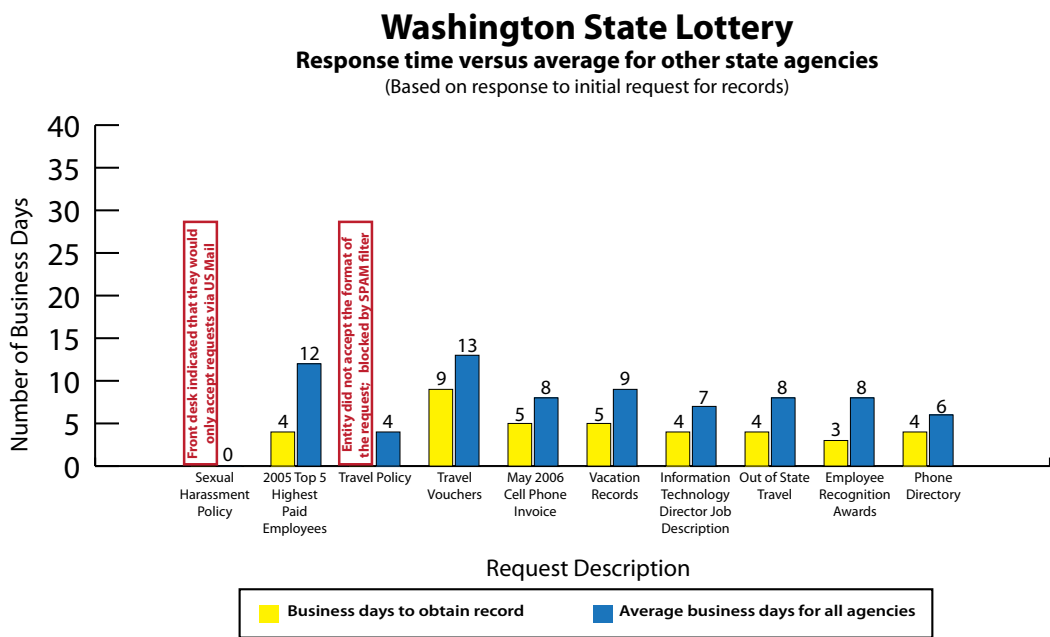
Washington's Lottery was created by the state Legislature in July 1982. The agency operates a state lottery and sells several types of gaming tickets to adults in the general public, in order that such lottery produce the maximum revenue for the state consonant with the dignity of the state and general welfare of the people.

The Lottery's public records process is centralized. It has one Public Records Officer and one Public Records Coordinator who process responses on all public records requests. The Officer operates out of the agency's Legal Services Department. The Public Records Officer at the Legal Services department was our primary point of contact.

### Conforming responses to the initial request – 8 out of 10 Requests



### Responsiveness – 10 Requests - Compared to Average for State



## About Office of Financial Management

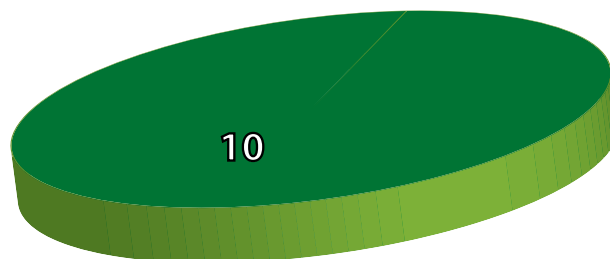
The Office of Financial Management provides assistance to the Governor, the Legislature and state agencies in several areas including:

- 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.

### Conforming responses to the initial request – 10 out of 10 Requests

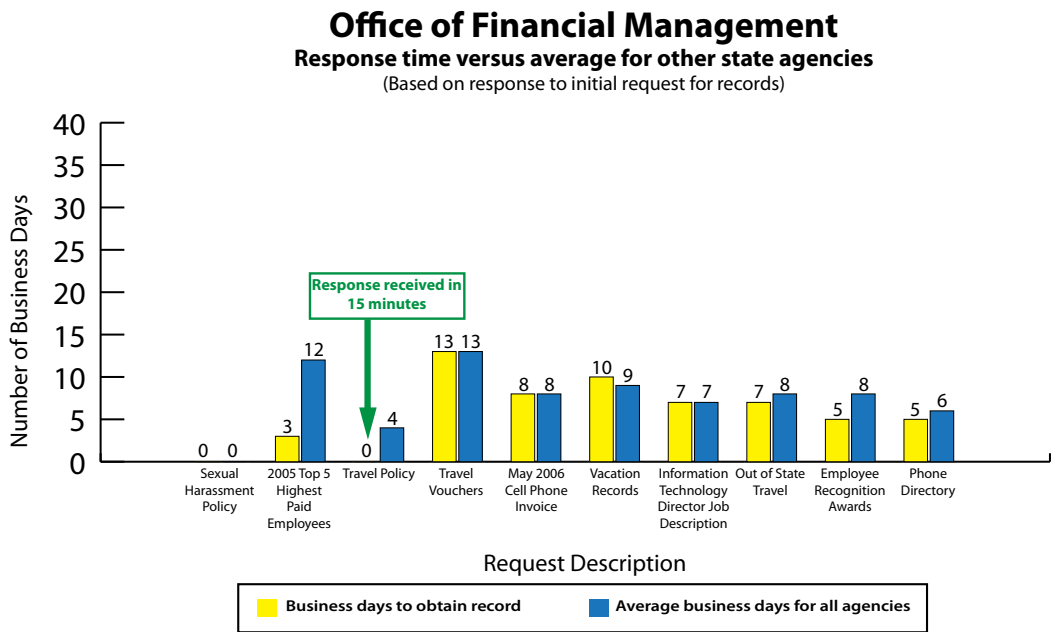
#### Office of Financial Management Responsiveness to 10 Requests



■ Sufficient response received

■ Request not received by the entity's  
Public Records Officer

Responsiveness – 10 Requests - Compared to Average for State



## Response from Cabinet Agencies



### STATE OF WASHINGTON

April 22, 2008

The Honorable Brian Sonntag  
State Auditor  
P.O. Box 40021  
Olympia, WA 98504-0021

Dear Auditor Sonntag:

Thank you for the opportunity to provide this coordinated response for the eight Governor's Cabinet agencies involved in the performance audit on open public records.

As noted in your report, Governor Gregoire has made accountability to the people a priority. In a memo to state agencies in February 2006, Governor Gregoire reiterated the importance of the Public Records Act in establishing public confidence. She directed all agencies to renew their commitment to openness and the effective implementation of the act. In 2007, Governor Gregoire put resources in place to increase the availability of electronic copies of public records.

The positive results of this audit demonstrate the commitment of state agencies to the principles of openness and accountability. We also were very pleased with the number of best practices found in and practiced by the state agencies. In addition, we continually strive for improvement and are evaluating the suggestions in the report.

On behalf of the Cabinet agencies involved in the audit, I have attached our joint response to the report. Actions to further strengthen openness and efficiency have been under way for some time. Many improvements were made in the year between the end of audit fieldwork and the issuance of the report. As part of our coordinated response, we have included a table of our action steps. Progress on this action plan will be tracked by agencies.

Washington State government was recently recognized by the Pew Center on the States as one of the top three states for sharing information. We are proud of this achievement and are committed to becoming even better at providing public access to timely, accurate information.

Sincerely,

A handwritten signature in dark ink, appearing to read "V. A. Moore".

Victor A. Moore, Director  
Office of Financial Management

Enclosure



cc: Cindy Zehnder, Chief of Staff, Office of the Governor  
Joyce Turner, Deputy Chief of Staff, Office of the Governor  
Larisa Benson, Director, Government Management Accountability and Performance  
Eldon Vail, Secretary, Department of Corrections  
Linda Bremer, Director, Department of General Administration  
Judy Schurke, Director, Department of Labor and Industries  
Christopher Liu, Director, Washington State Lottery  
Joe Dear, Executive Director, Washington State Investment Board  
John Batiste, Chief, Washington State Patrol  
Cindy Holmstrom, Director, Department of Revenue  
Robin Arnold-Williams, Secretary, Department of Social and Health Services

**Official State Cabinet Agency Response to the 2008 Performance Audit Report  
“Accessibility and Responsiveness of Public Agencies to Public Records Requests”  
April 2008**

The following Governor’s Cabinet agencies prepared this coordinated management response for the audit report received on Friday, April 18, 2008: Department of Corrections, Office of Financial Management, Department of General Administration, Department of Labor and Industries, Washington State Lottery, Washington State Patrol, Department of Revenue, and Department of Social and Health Services.

**Finding 1: Thirty-one of 300 unannounced public records requests (10 percent) were considered non-responsive (response not received by requestor). An additional seven responses (2 percent) were either non-conforming or incomplete.**

**RESPONSE:** We value and embrace transparency and openness, and strive to provide records to the public for review as quickly as possible. As noted in our cover letter, Governor Gregoire has high expectations for agencies to follow not only the letter – but also the spirit – of the Public Records Act.

We believe that state agencies exhibit a high standard for responding to public records requests, and that there is always room for improvement. We have examined the responses that did not meet the Auditor’s criteria, in an attempt to identify where we can improve.

**Walk-in requests.** Overall, Cabinet agencies averaged 7.5 minutes in responding to public records requests made in person. However, two exceptions were noted in the report. Given the rapid response time of the majority of requests, we believe the exceptions were anomalies.

- At the Washington State Lottery headquarters building, the request was made to a non-state employee who provides security for the building. This third-party contractor attempted to assist the requestors, but had not experienced a walk-in public records request previously.
- In the other instance, an employee at the Department of Labor & Industries also tried to help the requestors. The employee followed the Model Rules and asked the requestors to write down their request. Based on the information provided, the employee believed the requestors were looking for information from a separate state entity, and directed them to the place the employee felt could best answer the request. Although the requestors did not receive what they were looking for from the agency, the employee acted in good faith to provide them with the information they wanted.

Although walk-in requests are extremely rare, the agencies evaluated the results and took steps to strengthen their customer service for walk-in requests in the future. In the case of non-employees, the Lottery provided instruction cards for contract security personnel to refer to in the event they receive another walk-in public records request.

**Email.** Cabinet agencies averaged slightly over two days in responding to the public records email request. The report noted two exceptions related to email. In one instance, the agency responded back to the requestor via email, and asked for clarification of the request. The response was not received by the requestor. The agency provided a copy of its email response to the auditors when asked about the response. The agency acted in good faith to provide the



**Official State Cabinet Agency Response to the 2008 Performance Audit Report  
“Accessibility and Responsiveness of Public Agencies to Public Records Requests”  
April 2008**

information, and neither the agency nor the auditors could determine why the requestor did not receive the response.

The other exception related to an email filter used by an agency to protect its information technology systems. Our more detailed response to the use of email filters is contained in the response to Finding #2.

**Missing page.** Out of the numerous pages that Cabinet agencies provided in response to the requests, one page was missing. An agency numbered the pages of its response documents and sent them via email attachment to the requestor. One page of the response was inadvertently omitted from the attachment. In the best practices section, the auditors commend the agency for numbering the pages of its response. It was through this best practice that the auditors were able to determine that a page was missing. When the agency was contacted about the omission, it promptly sent the missing page.

We believe these instances are truly exceptions, and do not adequately reflect or detract from the excellent customer service provided to requestors of public records.

**Action Steps:**

- Training to third-party security personnel regarding walk-in public records requests at the noted agency has been completed.
- Agencies will continue to provide multiple avenues for submitting public records requests and contacting agency public records officers, to ensure that requests are received and processed appropriately.
- Agencies have already established policies consistent with the Public Records Act, and will consider incorporating the advisory Model Rules if they have not been already done so.
- Agencies will evaluate the identified best practices to determine which may be applied.

**Finding 2: Some entities do not accommodate one or more means of communicating public records requests and therefore do not provide the public with the fullest assistance.**

RESPONSE: The eight Cabinet agencies in this report accommodate all forms of public records requests, and provide the public with the fullest assistance in accordance with the Model Rules of the Public Records Act and state public records law (RCW 42.56).

Agency	Written (Letter, fax, email)	*Verbal (Walk-In, telephone)	Web site
Dept. of Corrections	Yes	Yes	<a href="http://www.doc.wa.gov/contact.asp">http://www.doc.wa.gov/contact.asp</a>
Office of Financial Management	Yes	Yes	<a href="http://www.ofm.wa.gov/contact/default.asp">http://www.ofm.wa.gov/contact/default.asp</a>

**Official State Cabinet Agency Response to the 2008 Performance Audit Report  
“Accessibility and Responsiveness of Public Agencies to Public Records Requests”  
April 2008**

Dept. of General Administration	Yes	Yes	<a href="http://www.ga.wa.gov/public-record.htm">http://www.ga.wa.gov/public-record.htm</a>
Dept. of Labor & Industries	Yes	Yes	<a href="http://www.lni.wa.gov/Main/AboutLNI/PublicDisclosure/">http://www.lni.wa.gov/Main/AboutLNI/PublicDisclosure/</a>
Washington State Lottery	Yes	Yes	<a href="http://www.walottery.com/sections/AboutUs/Default.aspx?Page=Legal">http://www.walottery.com/sections/AboutUs/Default.aspx?Page=Legal</a>
Washington State Patrol	Yes	Yes in person, no over the phone*	<a href="http://www.wsp.wa.gov/reports/pubdiscl.htm">http://www.wsp.wa.gov/reports/pubdiscl.htm</a>
Dept. of Revenue	Yes	Yes	<a href="https://fortress.wa.gov/dor/efile/content/contactus/email/brd.aspx">https://fortress.wa.gov/dor/efile/content/contactus/email/brd.aspx</a>
Dept. of Social and Health Services	Yes	Yes	<a href="http://www.dshs.wa.gov/pubdis.shtml">http://www.dshs.wa.gov/pubdis.shtml</a>

\*The Model Rules encourage requestors to provide written records requests. The rules also require Public Records Officers to document requests received in person or on the telephone. (WAC 44-14-030, section 4.)

**Email filters:** The finding cited only one instance where an email request was not received by a state agency. We consider the one instance as atypical, and not an example of a widespread problem with email. However, we are very concerned about the possible ramifications of implementing the recommendation to “select and set email filters at a level that will not block public records requests.”

The law requires agencies to adhere to the policies and standards issued by the state Information Services Board to secure state information technology systems and their data. Agencies must balance the need for access to information with the need for maintaining the integrity of such information. For example, agencies are required to screen emails for known viruses and disallow those emails that cannot be examined.

We strive to provide excellent customer service by providing email addresses for requests. However, it would be impossible for us to eliminate from our spam filters all of the potential criteria that might cause a public records request email to be labeled as “spam” without defeating the purpose of having protective filters. Reducing the level of protection around information technology systems is dangerous and ill-advised.

Individually, state agencies receive thousands of spam emails each day. For example, in one recent 30-day period the Office of Financial Management, which is a relatively small state agency, received nearly 3 million spam messages, or 90 percent of all incoming email. Reviewing all messages blocked by a spam filter for possible records requests would be inefficient and consume significant taxpayer dollars. We believe a better solution is for agencies to provide multiple avenues of communication for how a citizen can make a request.

**Official State Cabinet Agency Response to the 2008 Performance Audit Report  
“Accessibility and Responsiveness of Public Agencies to Public Records Requests”  
April 2008**

**Submitting forms via web site:** We agree that providing for the submittal of a public records request form through a web site is a best practice. However, stating that three state agencies do not allow public records request forms to be submitted through their web sites is misleading at best. These agencies provide forms on their web site that can be emailed, and an email address that can be used to submit the request as well. These same agencies are also listed under “Best Practices” as having a user-friendly web site, so it seems inconsistent that they are called out as being deficient.

**Telephone requests:** The Model Rules issued by the Attorney General’s Office note that any “one-size-fits-all” approach may not be best for requestors or agencies. The rules also encourage requestors to provide written records requests, and require Public Records Officers to document requests received in person or on the telephone (WAC 44-14-030, section 4).

The Washington State Patrol made an intentional decision not to accept public records requests via telephone for two reasons:

- 1) The high probability of the requestor’s intent not being captured accurately.
- 2) Written public disclosure requests clearly define the material expected. If a dispute arises regarding a verbal request, there is no record or documentation from the requestor detailing what he or she was originally seeking. Written requests resolve potential misunderstandings, reduce potential litigation, and provide better customer service.

**Action Steps:**

- Agencies have already established policies consistent with the Public Records Act, and will consider incorporating the advisory Model Rules if they have not been already done so.
- Each agency in the audit currently makes training on the Public Records Act available to its staff. For example, DSHS trained 18,000 individuals on the basic elements of public records disclosure in 2006-2007. Some agencies offer on-line or web-based training. Many Public Records Officers also regularly receive and provide training that counts as continuing legal education (CLE) credits.
- Agencies will continue to accommodate multiple modes of requesting public records. Several agencies are evaluating a change to their web sites to allow web forms to be submitted directly through the site.
- Agencies that receive large numbers of requests have already developed information that outlines how public records requests can be made, and that information is readily available to the public.

**Finding 3: Some entities did not provide complete and satisfactory explanations for redactions of public records and some records were improperly redacted.**

RESPONSE: We are pleased that the records provided by state agencies were appropriately redacted. Two responses did not cite the specific legal exemption for the redaction. Since the

**Official State Cabinet Agency Response to the 2008 Performance Audit Report  
“Accessibility and Responsiveness of Public Agencies to Public Records Requests”  
April 2008**

other redacted responses provided by these agencies did include the statutory reason, we believe the two responses were an oversight and not an indication of a systemic problem. Nevertheless, once alerted to the oversight, both agencies took steps to ensure the explanation of redactions in future records request responses.

**Action Steps:**

- These agencies provide comprehensive training and resource materials on legal exemptions to staff who respond to records requests. They also make training on the Public Records Act available to their staff, and offer regular on-line or web-based training.
- The agencies mentioned have already taken steps to ensure the specific exemption that applies to each redaction is provided to the requestor.

**Finding 4: Some entities provided the requested public records in a less timely manner than their peers.**

RESPONSE: State agencies value government openness and strive to provide the best customer service possible. As noted in the overall audit conclusion, agencies performed very well, and did even better when measured against the existing legal standard for customer service and efficiency.

**The law sets a standard for measuring customer service and efficiency in providing public records.** Agencies are required by law to send a response within five days of receipt of the request. A prompt response is defined as either sending the actual records, or providing a reasonable estimate of when the request can be fulfilled. With the exception of a few clerical oversights that have been corrected, agencies responded within the required five days – or sooner – in every case.

**The audit methodology includes factors outside of the agencies’ control.** The charts in the report characterize “response time” as the number of days it took from the moment a request was made or sent to the time a response with all records requested was received. Starting the count when a request was sent to an agency versus when it was received by the agency adds time to the results, and includes circumstances outside the control of the agencies. Similarly, ending the count when a response was received by the requestor versus when it was sent by the agency inflates the response time with circumstances not controlled by agencies.

We recognize that using an average by definition means that some agencies ended up below the average amount of time. We believe this form of measurement gives an artificial and somewhat inaccurate picture of agency performance. The five-day response law is used as a measurement of customer service and efficiency because it holds agencies accountable for those factors within their control. An agency controls what happens to a request once it is received by the agency. It does not control, for example, how long it takes the U.S. Postal Service to deliver a request to the agency, or how long it takes the response to reach the recipient once it is sent.

**Official State Cabinet Agency Response to the 2008 Performance Audit Report  
“Accessibility and Responsiveness of Public Agencies to Public Records Requests”  
April 2008**

**State agencies provided good communication with the requestors.** Agencies communicated with the requestors about how much time it would take to provide records, and in nearly every case were able to provide the records within the estimated timeframe. According to the law, agencies must give a reasonable estimate of when a request can be fulfilled. Most of the responses in the chart included many pages, and required appropriate redactions of confidential information (e.g., VISA card numbers). These responses take longer to fulfill, as noted by the auditors in the “Cause” section of the finding.

**Agencies appropriately handled requests requiring copying fees.** The report states that three agencies “withheld records pending payment of the copy fees.” We feel this characterization is misleading. The agencies listed in the report provide sufficient notification of their policies on copy fees. In addition, the Model Rules state that a requestor who wishes to have copies of records made (instead of simply inspecting them), should make arrangement to pay for copies of the records or a deposit.

State agencies are experiencing an increasing number of records requests. For example, the table below illustrates the number of requests received by three of the state agencies in the audit:

<b>Agency</b>	<b>Approximate Number of Public Records Requests in 2007</b>
Department of Corrections	6,700 73% from incarcerated offenders
Washington State Patrol	10,000
Department of Social and Health Services	24,000

Collecting copy fees can affect the speed in which requestors receive their documents. However, these fees help agencies to recover the costs of providing hundreds of thousands of pages of documents.

**Action Steps:**

- In 2007, the Governor directed agencies to undertake a significant effort to explore opportunities for providing records electronically. Funding requested for this effort was not allocated in the 2008 legislative session. Nonetheless, a multi-agency task force has already been formed to assist agencies in sharing best practices and addressing the challenges presented by electronic document requests.
- In 2007, the Office of Financial Management implemented a public records request list service especially for large, complex, or electronic document requests. The goal is to encourage communication among agency records officers and to ensure full compliance with the law, avoid costly errors by improving timeliness, and provide full, consistent approaches to responses.

**Official State Cabinet Agency Response to the 2008 Performance Audit Report  
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April 2008**

- The Risk Management Division of the Office of Financial Management is holding training forums for agency public records officers. The first forum was held in March 2008. Two more forums are currently planned, including one in eastern Washington.
- Each agency in the audit currently makes training on the Public Records Act available to its staff. For example, DSHS trained 18,000 individuals on the basic elements of public records disclosure in 2006-2007. Some agencies offer on-line or web-based training. Many Public Records Officers also regularly receive and provide training that counts as continuing legal education (CLE) credits.
- The Department of Corrections is working with the public and the Attorney General's Office to develop new rules for electronic disclosure of its public records.
- Agencies that receive large volumes of public records requests will evaluate the proposed gains in efficiency and also effectiveness of changing to a method of prioritizing incoming requests versus continuing to process requests with a “first in, first out” approach.
- Agencies will continue to use email to respond to public records requests whenever possible.
- Agencies will continue to provide large records requests in installments when appropriate.
- Agencies will continue to provide requestors with estimates of how long it will take to fulfill public records requests, when extending more than five days.

## 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:

- “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**

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 business 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 nationwide study of public records processes. Those areas are as follows:



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

During our interviews, four 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 Labor and Industries
- Washington State Patrol

For example, the Washington State Patrol told us significant resources are spent providing accident reports to attorneys as laws allow commercial use of collision reports obtained from a public records request. 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

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 agreements with employee unions require the 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.

### **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.

## 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](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](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/>

## 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 hold 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](http://www.openwashtington.com))*

## Appendix G – Communications from the Governor on the Public Records Act



**STATE OF WASHINGTON**

### **OFFICE OF THE GOVERNOR**

*P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • [www.governor.wa.gov](http://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

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.

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](http://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.



## Appendix H – Recent Developments in Public Records Management

### **Recently amended Attorney General's Model Rules addressing electronic records**

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 2009 or thereafter.

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.



## 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](mailto:J2fields@hotmail.com)

## Appendix J – Overall Results

Our 300 unannounced public records requests achieved the following results:

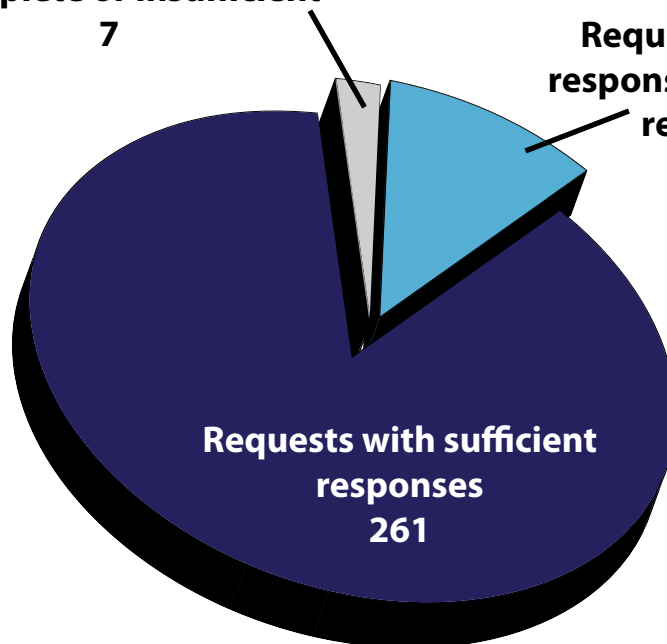
### Public Records Request Results

Responses received were  
incomplete or insufficient

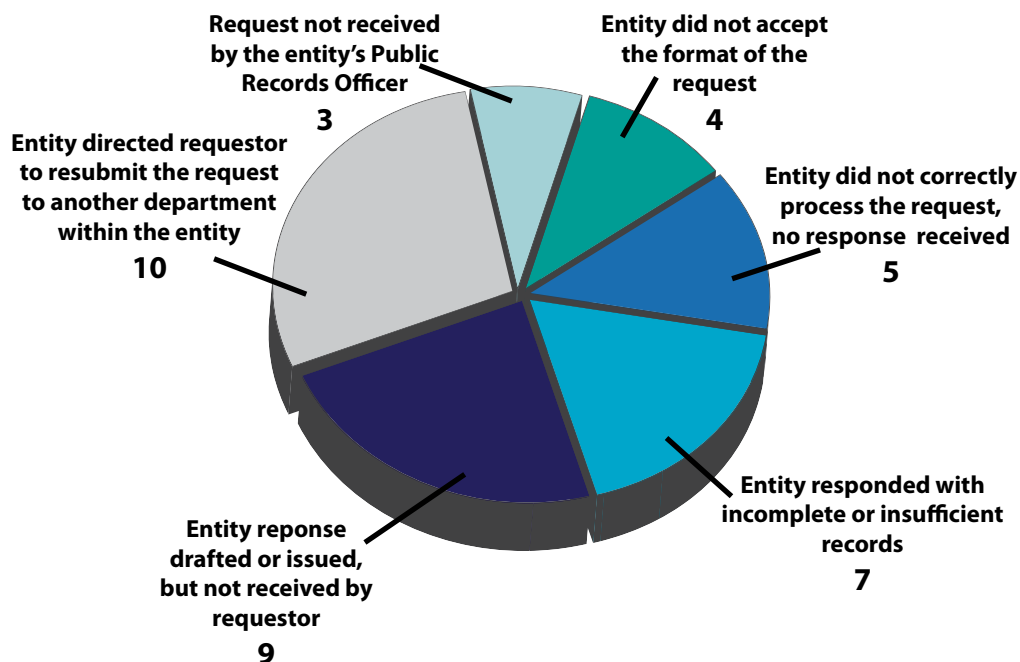
7

Requests with no  
response received by  
requestor

32



### Types of Incomplete Responses



Based upon our follow-up with the entities:

- Two entities' Public Records Officers asserted they had no record of receiving

- three (1 percent) of our requests.
- Seven responses (3 percent) did not fulfill our 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.
- 10 (3 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**

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.

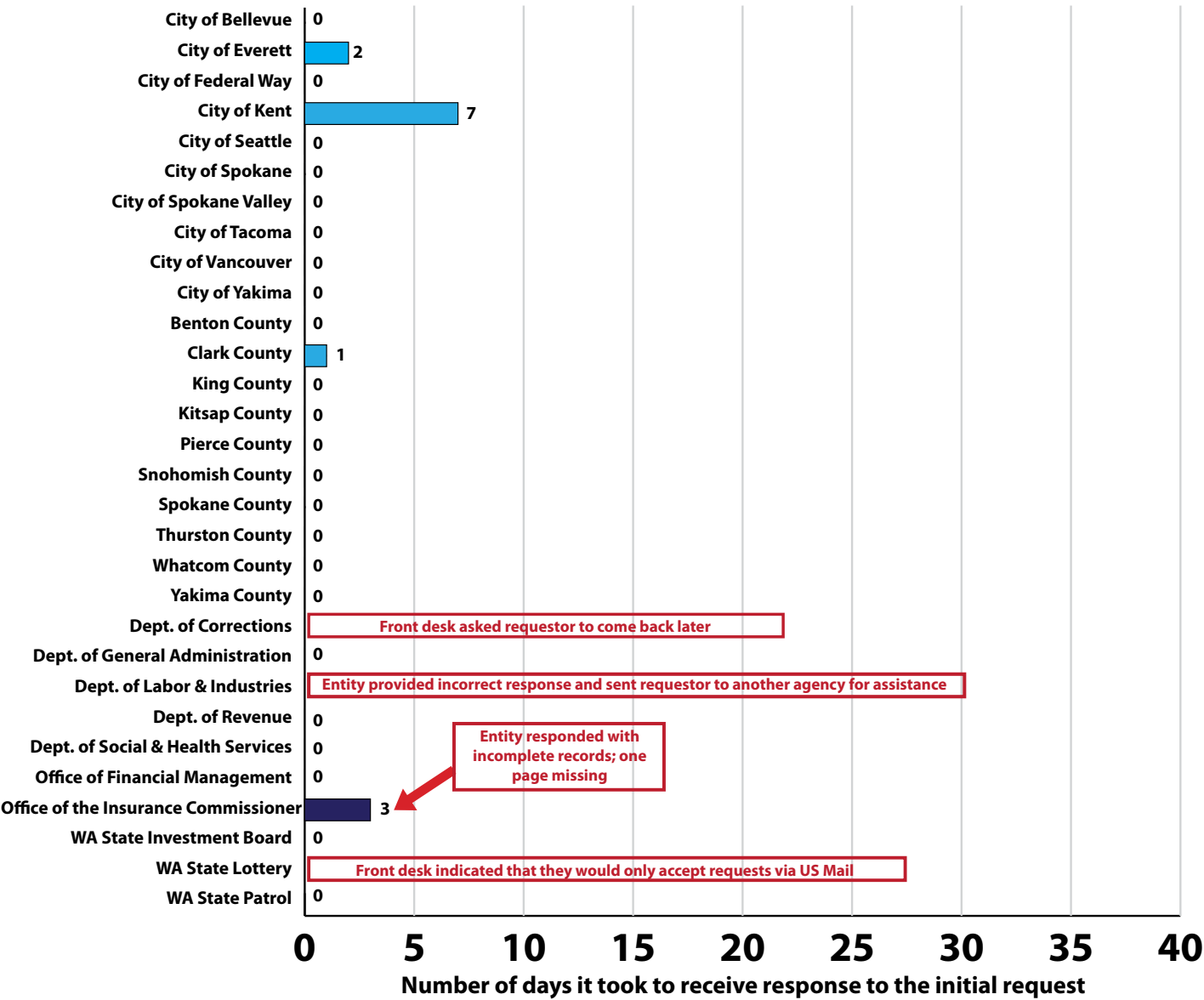
<b>Average Time Spent by Requestor in Submitting Walk-in Requests (by Entity type)</b>	
Entity Type	Average Minutes Invested
Counties	18 minutes
Cities	12 minutes
State Agencies	8 minutes

<b>Walk-in Request: Time invested in submitting the request</b>	
Entity	Minutes
Counties	
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
Cities	
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	
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 9 and February 16, 2007.

Results from walk-in requests for sexual harassment policy



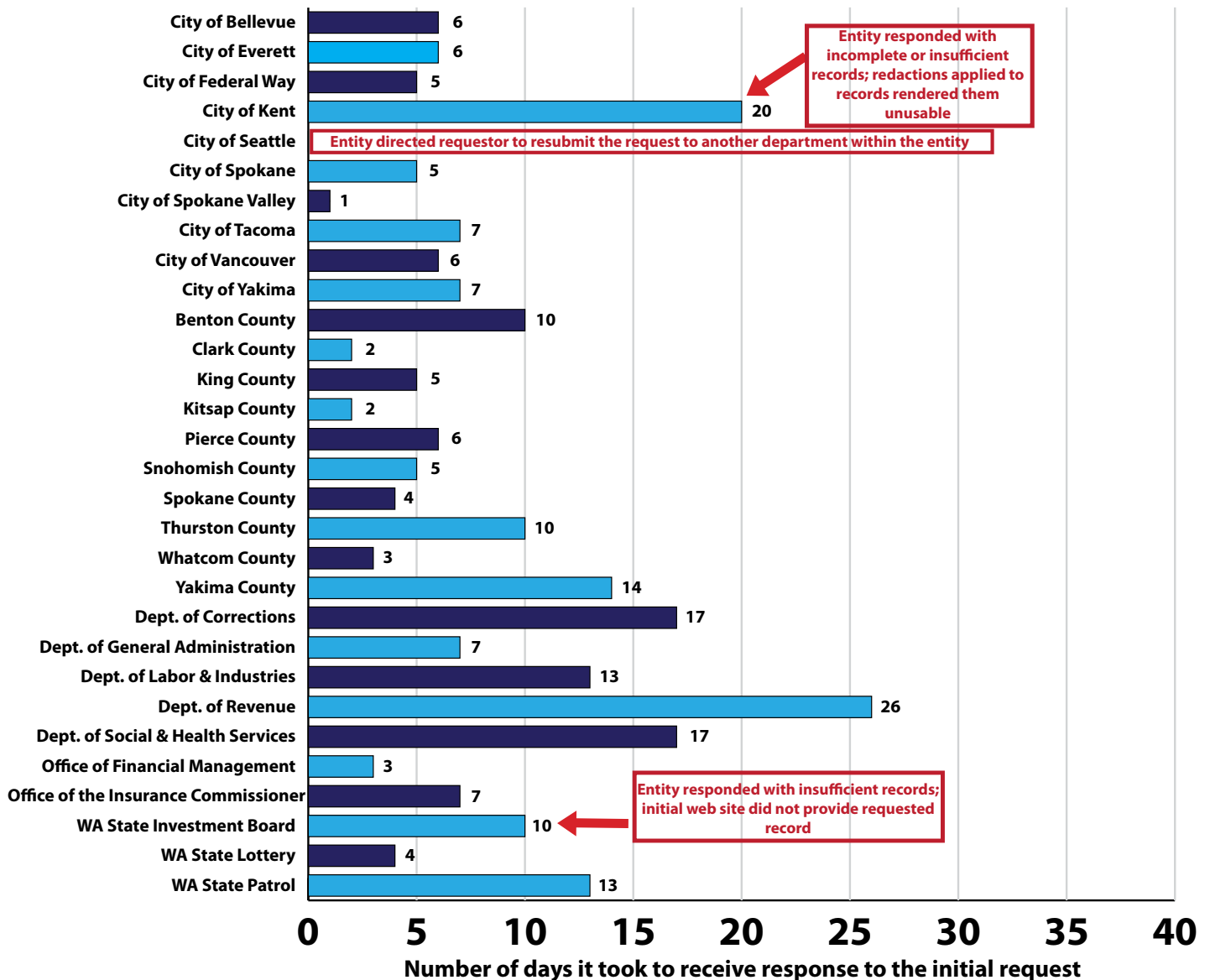
Mail-In Requests:

Averages for Each Request Mode	
Request Mode	Average Days to Respond
Certified Mail	10
Standard Mail	7
E-mail	3

## 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.

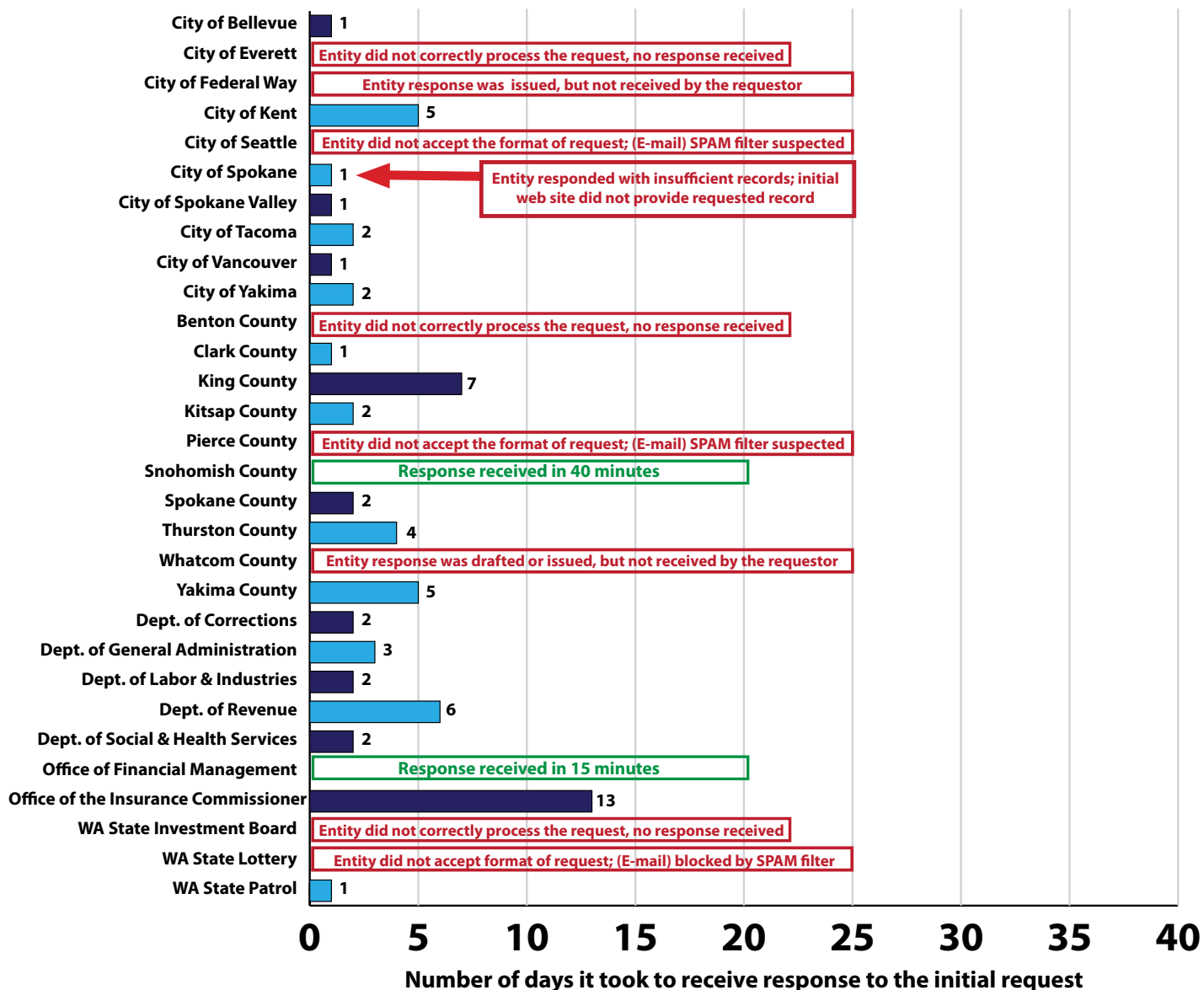
### Results of certified mail request for salaries of the 5 highest paid employees



## E-mail request for entity travel policy

This was the only request sent using e-mail. These requests were sent on December 14, 2006.

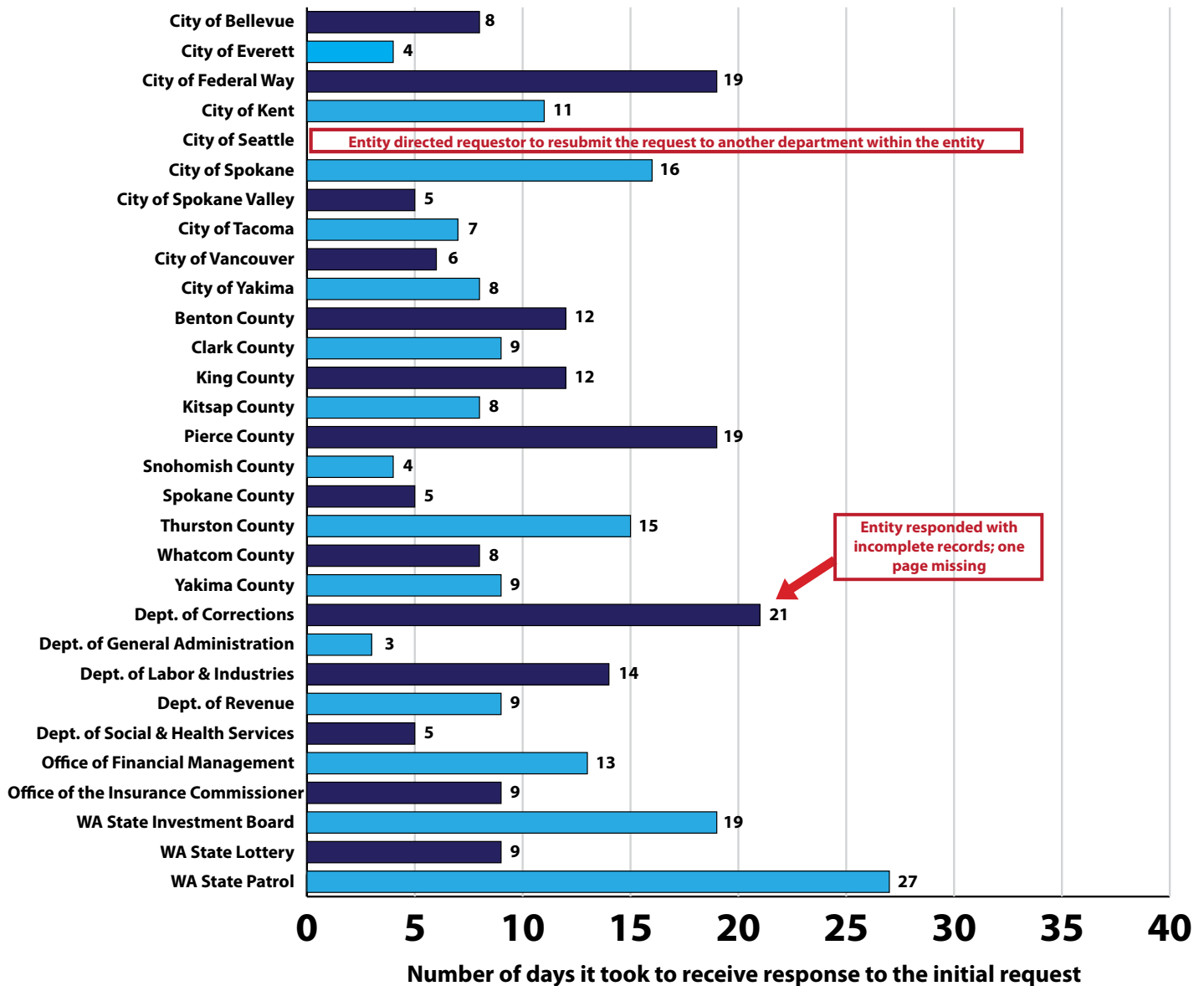
### Results from e-mail request for entity travel policy



## 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.

### Results from certified mail request for travel vouchers

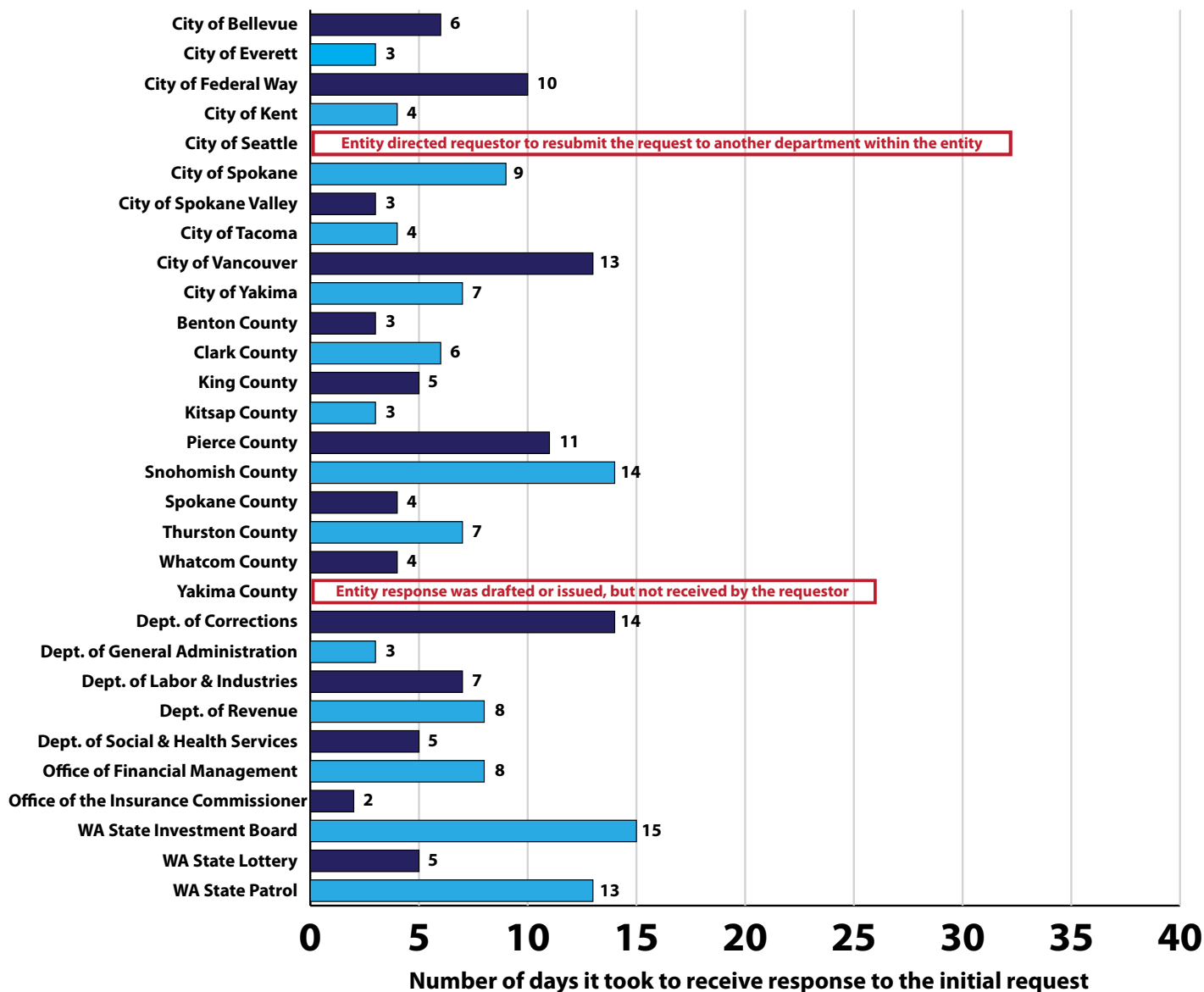




## Certified mail request for cell phone records

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.

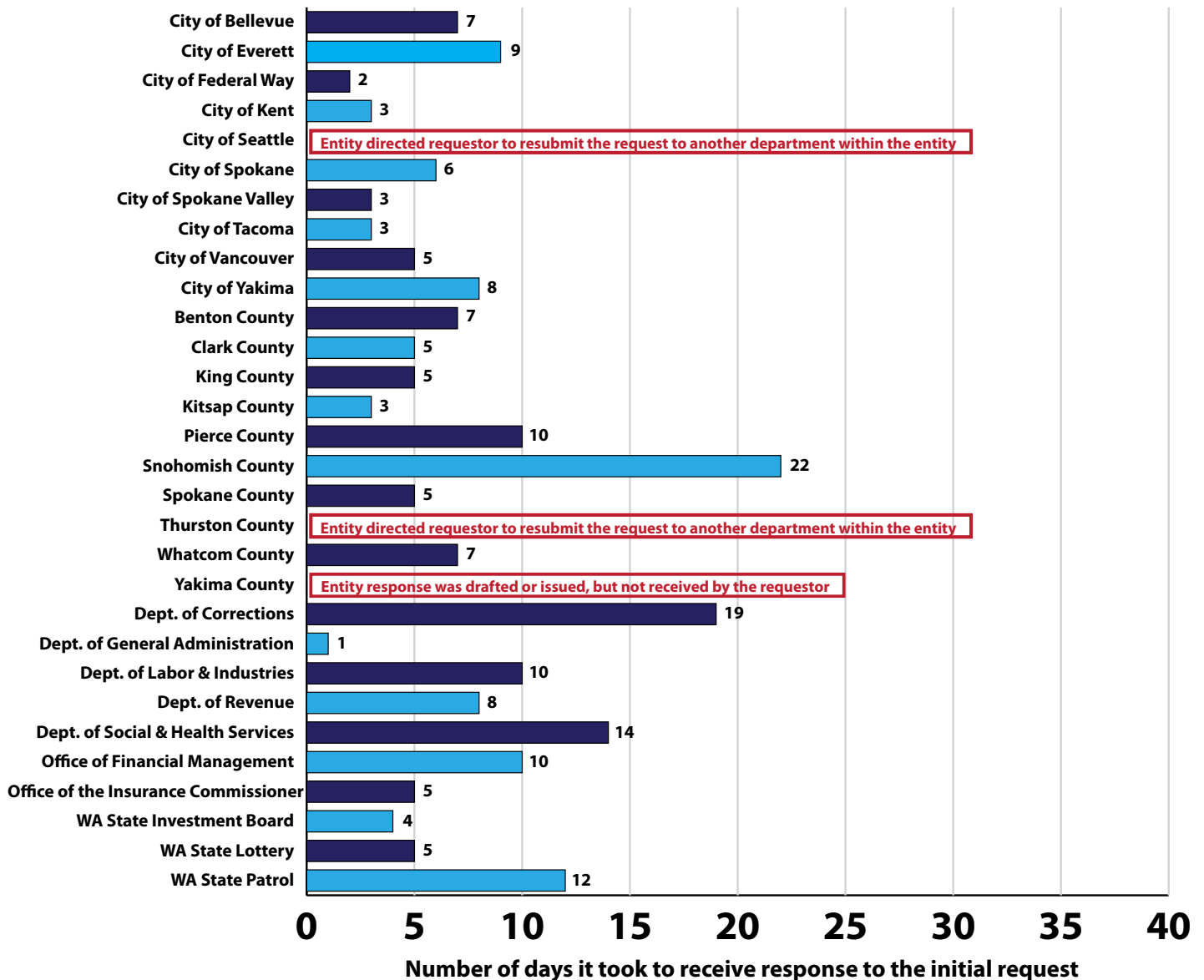
### Results from certified mail request for cell phone records



## 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.

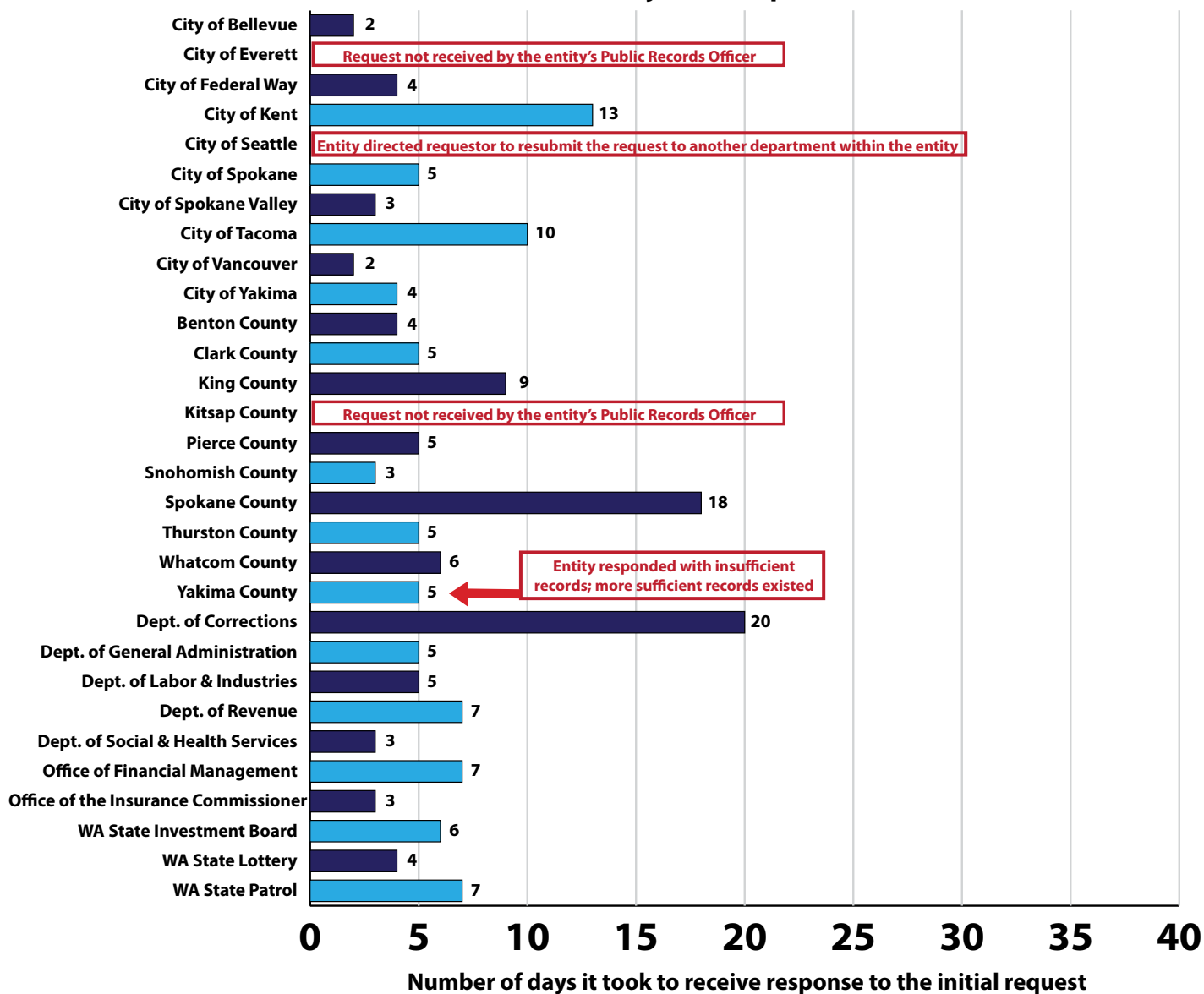
### Results from standard mail request for vacation records



## Standard mail request for Information Technology Director job description

The request was sent via standard mail on December 28, 2006.

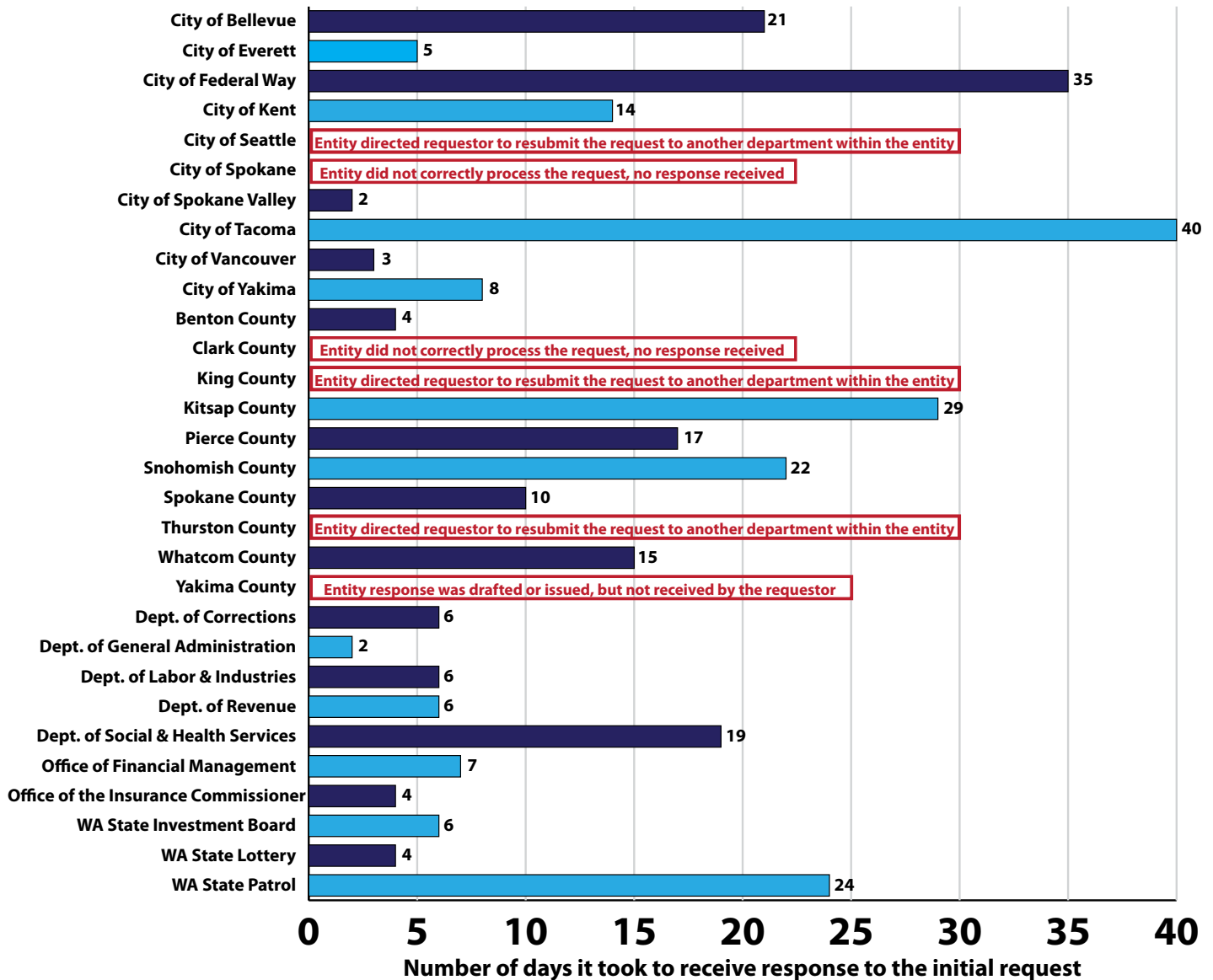
### Results for standard mail request for Information Technology Director job description



## Certified mail request for 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.

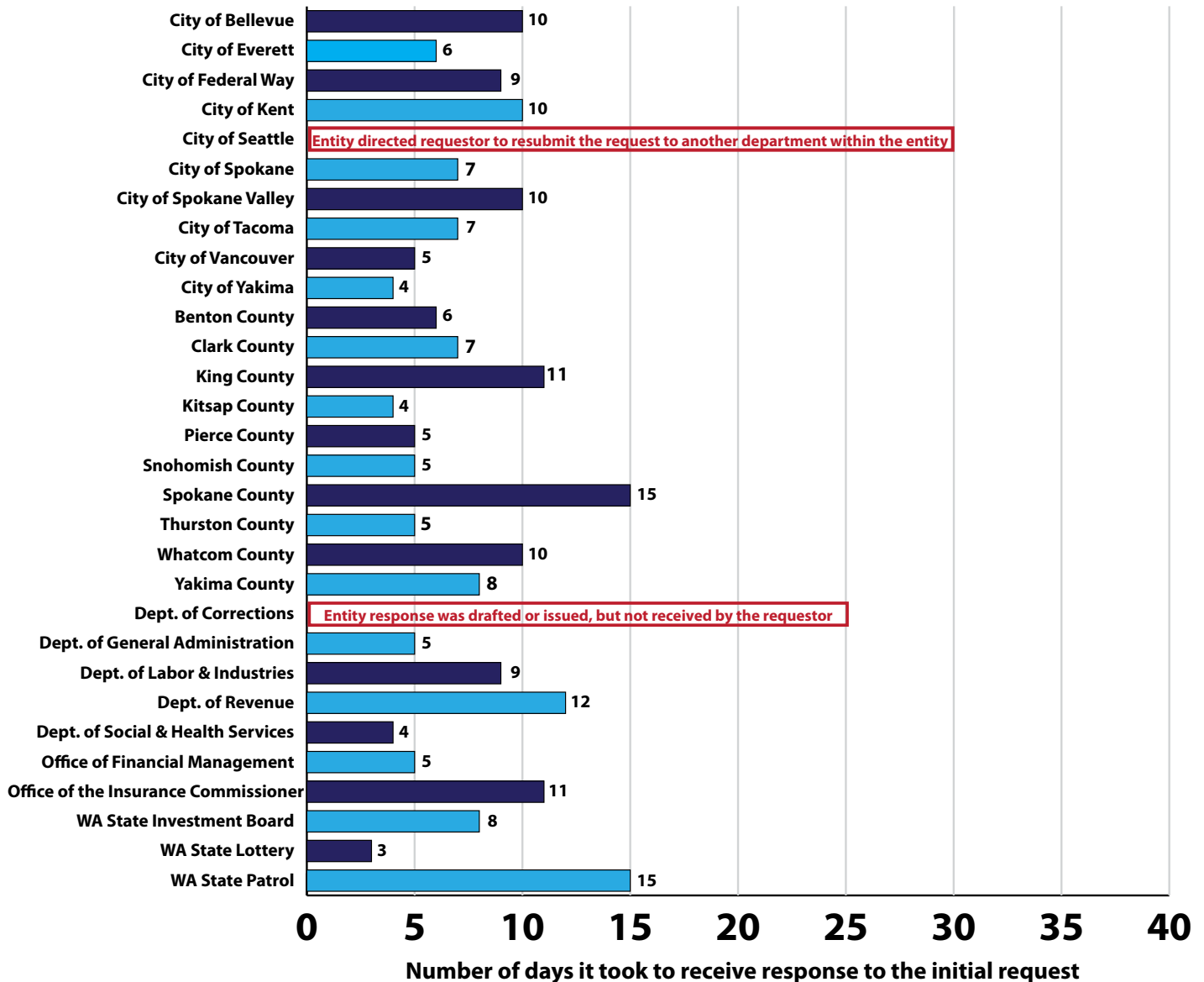
### Results for certified mail request for out-of-state travel expenditures



## 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.

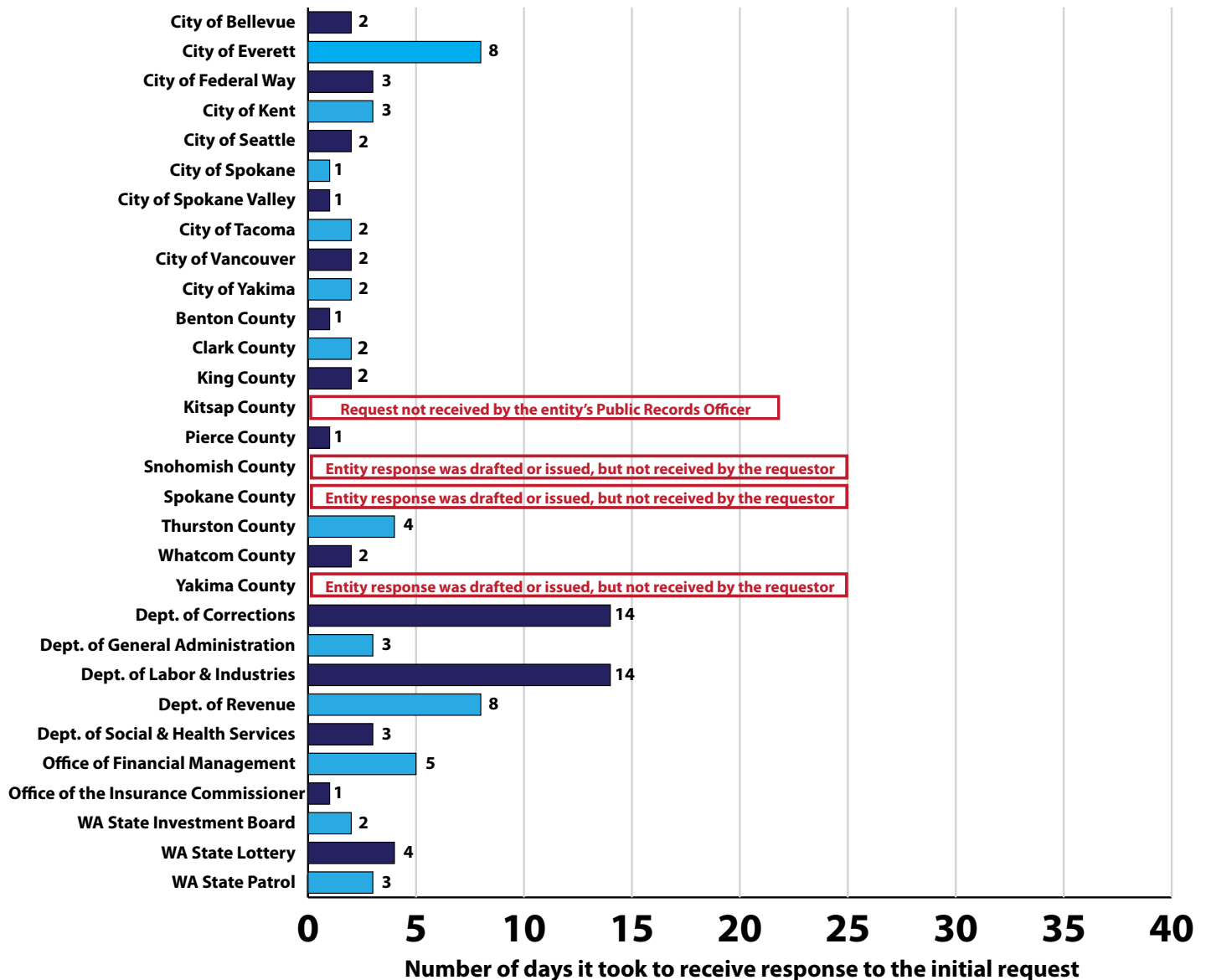
### Results for standard mail request for employee recognition award expenditures



## 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.

### Results for standard mail request for entity phone directory



## 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 Appendix J, "Overall 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. The citations made below are either in whole or in part as they relate to the subject matter of the finding. Emphasis, as indicated by underline or bold font, has been added.

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 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. The citations made below are either in whole or in part as they relate to the subject matter of the finding. Emphasis, as indicated by underline or bold font, has been added.

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.

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 states in part:

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.

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.

### **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.

The citations made below are either in whole or in part as they relate to the subject matter of the finding. Emphasis, as indicated by underline or bold font, has been added.

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:

(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 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](http://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.]

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 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](http://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 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 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 a 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 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; 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. 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 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.

The citations made below are either in whole or in part as they relate to the subject matter of the finding. Emphasis, as indicated by underline or bold font, has been added.

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 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.



