



City of San Antonio

Agenda Memorandum

File Number: 17-4866

Agenda Item Number: 3.

Agenda Date: 11/1/2017

In Control: Governance Committee

DEPARTMENT: Government and Public Affairs

DEPARTMENT HEAD: Jeff Coyle

COUNCIL DISTRICTS IMPACTED: City Wide

SUBJECT: Open Records Process

SUMMARY: A briefing of the review of the City's Open Records Requests process and recommendation for improvements.

BACKGROUND INFORMATION:

Today, the City of San Antonio receives more than 40,000 Open Record Requests (ORR) annually and endeavors to fulfill each request as timely as possible in compliance with the Texas Public Information Act (TPIA). The Government and Public Affairs (GPA) Department manages the City's ORR process, in coordination with the City Attorney's Office (CAO) and City departments.

The Texas Public Information Act states: **All governmental bodies responding to information requests have the responsibility to -**

- *Treat all requestors equally*
- *Complete open records training as required by law*
- *Be informed of open records laws and educate employees on the requirements of those laws*
- *Inform the requestor of cost estimates and any changes in the estimates*
- *Confirm the requestor agrees to pay the costs before incurring the costs*
- *Provide requested information promptly*
- *Inform the requestor if the information will not be provided within ten business days and give an estimated date on which it will be provided*
- *Cooperate with the requestor to schedule reasonable times for inspecting or copying information*
- *Follow attorney general rules on charges; do not overcharge on any items; do not bill for items that must be provided without charge*
- *Inform third parties if their proprietary information is being requested from the governmental body*

- *Inform the requestor when the Office of the Attorney General (OAG) has been asked to rule on whether information may or must be withheld*
- *Copy the requestor on written comments submitted to the OAG stating the reasons why the stated exceptions apply*
- *Comply with any OAG ruling on whether an exception applies or file suit against the OAG within 30 days*
- *Respond in writing to all written communications from the OAG regarding complaints about violations of the Act*

In March of 2011, GPA became responsible for the City's ORR process and implemented a centralized electronic cloud-based data management system, *WebQA (FOIA)*, to facilitate the processing of requests received organization-wide. The requests for documents received by the City have steadily increased from a total of 6,716 ORR received in FY 2012 to 45,220 received in FY 2017.

The *FOIA* system allows the City to efficiently manage the 500 to 1,000 daily ORR received across all departments. Through the system, found on the front page of the City's website under the *Transparency in Government* section, a requestor may open an account and submit their request for information directly to a City department. The GPA ORR Division ensures the request is submitted to the responsive department through ongoing monitoring and review of ORR received on a daily basis.

Each of the City's 38 departments assigns a trained ORR Liaison to work in coordination with GPA's ORR Division to respond to a request for information from the public. The CAO works independently from GPA to assist City departments in determining whether to seek an Opinion from the OAG and what documents need redactions, as needed.

All correspondence with the requestor, by the responsible City department, is conducted and archived through the on-line *FOIA* system from day one through completion. A requestor is provided the responsive documents by the respective City department liaison by the means chosen, including in-person inspection or electronically through the City's *FOIA* system.

The majority of the Open Record Request received are San Antonio Police Department-related. In FY 2015, national online distributors of police reports, such as LexisNexis, began to request hundreds of accident reports from the City, resulting in an increase of 31,184 ORR in the following fiscal year. Online distributors of vehicle accident reports continue to request thousands of ORR from the police department, annually.

The ORR Division and the City Attorney's Office provide City department liaisons training on a yearly basis and one-on-one department training, as needed. Daily, the ORR Division and CAO provide support to City department liaisons on matters pertaining to the implementation of the TPIA.

The table below is a summary of ORR received by the City from FY 2011 to FY 2017:

Fiscal Year	Number of ORR Received - Includes vehicle accident ORR	Number of ORR Received - Does not include vehicle accident ORR	Number of ORR Closed - Includes vehicle accident ORR	Average Number of ORR Days to Close ORR	Number of ORR Sent to OAG	Percentage of ORR sent to OAG - Does not include vehicle accident ORR
2012	6,716	6,680	6,716	24	582	8.8%
2013	7,922	7,887	7,922	32	647	8.2%
2014	14,206	14,160	14,206	15	686	4.9%

2015	**45,390	23,095	45,390	23	1,054	4.6%
2016	**42,200	22,441	42,187	11	1,081	4.9%
2017	**45,220	23,014	44,249	8	1,440	6.3%

**** Increase in ORR for the San Antonio Police Department, due to vehicle accident reports submitted by national online distributors of police reports, like LexisNexis. These ORR are not sent to the OAG for an Opinion.**

ORR IMPROVEMENTS:

The Government and Public Affairs Department has decreased the average number of days to close an open record request, from 24 days in FY 2012 to 8 days in FY 2017. The Department has also worked with the City Attorney's Office to decrease the overall percentage of ORR sent to the Attorney General from 8.8% in FY 2012 to 6.3% in FY 2017. However, the CAO is required to send 911 incident detail reports to the OAG, in order to ask to withhold 911 caller information. This has resulted in an increase of ORR sent to the Attorney General in FY 2017. In order to address this stipulation in the TPIA, and to lower the amount of ORR sent to the OAG, the ORR Division in collaboration with the City Attorney's Office added an option to the *FOIA* system asking a requestor to exempt the 911 caller information from a submitted ORR.

Additionally, GPA has made improvements to the City's ORR process by adding an Open Record Request Library of archived documents to the City's on-line *FOIA* system, providing the public easy access to frequently requested documents, such as Code Compliance violations.

In 2016, GPA in coordination with the Information Technology Services Department (ITSD) began the process to identify software capable of searching City emails by a single word. The Information Technology Services Department selected the *eDiscovery Solution* for this purpose and is in the process of procuring the software through savings identified in the department's FY 2017 *Technology Portfolio*. An *eDiscovery Solution* work plan is being developed by ITSD that includes a timeline for installation, training and implementation of the project in FY 2018.

The *eDiscovery Solution* will provide the City with the capability of conducting a multi-keyword search, redact and protect privileged information. This software will assist in making the document retrieval process more efficient for the requestor. The GPA ORR Division will conduct the keyword search for all departments.

LARGE TEXAS CITIES:

The municipalities of Austin, Dallas, El Paso, Fort Worth and Laredo use the *WebQA (FOIA)* system, like the City of San Antonio. The following is an overview of the lead ORR intake department and the estimated number of ORR processed on an annual basis by other large cities in Texas:

<i>Municipality</i>	<i>ORR Intake</i>	<i>Approximate Number of ORR Received Annually</i>	<i>ORR Database Management System</i>	<i>eDiscovery</i>
Austin	City Attorney/ Police Department	36,000	* <i>WebQA</i>	Will utilize
Corpus Christi	City Attorney	4,800	None	Utilizes similar solution
Dallas	Public Information Office	40,000	<i>WebQA</i>	Utilizes
El Paso	City Attorney/ Police Department	15,800	<i>WebQA</i>	N/A
Fort Worth	City Secretary	9,000	<i>WebQA</i>	N/A
Houston	City Departments	N/A	** <i>WebQA</i>	Utilizes
Laredo	City Attorney	1,700	<i>WebQA</i>	Does not utilize
San Antonio	Government & Public Affairs	44,268	<i>WebQA</i>	Will utilize FY 2018

*Austin's City Council approved *WebQA* as an ORR management system in August 2017.
**Houston's police department is considering contracting with *WebQA* in the future.

THIRD PARTY MANAGEMENT:

Councilman Brockhouse requested an evaluation of a third-party review process. Staff research indicated there are no cities in Texas utilizing a third party to manage an open record process. The Office of the Attorney General states there is no prohibition to having a third party manage a municipality's open record process and concurs with staff's research. The OAG also states a third-party may only charge the costs authorized by state law, and cautions that the hiring would not remove liability or responsibility of the City to follow state law and to oversee the work of the contractor.

The ability of the City to withhold records from a requestor is largely mandated by the Office of the Attorney General, through properly submitted requests by the City. The Office of the Attorney General is effectively the third-party in the open record process. An outside third-party manager would require additional costs to the City, would be an agent of the City not independent of the City, and their work product would be subject to all of the mandatory and discretionary exceptions to disclosure. Those include the protection of social security numbers, city official and employee's personal family information, home addresses and telephone numbers, draft documents, attorney work product, and attorney/client communications. All legal implications or penalties assessable against the individual whose records are being requested and produced would remain in place. That is, if a Council member, City employee, or City Official has possession of a requested record, and it is not timely produced or not produced at all, that Council member, employee, or City Official is subject to criminal penalties under the law. To date, no penalties have been assessed against the City or a City official by the OAG.

ISSUE:

The City strives to achieve transparency for residents of San Antonio through consistent improvement to the City's process of responding to requests for public records.

ALTERNATIVES:

City Council could elect to Purchase *eDiscovery Solution*, which is an email key-word and document search software tool to respond to City ORR or City Council could elect not purchase *eDiscovery* and maintain the current ORR email search process.

FISCAL IMPACT:

FY 2017 -

- *eDiscovery Solution* (includes initial licensing cost): \$288,000.00 (200 custodians)

Total - \$288,000.00

FY 2019 -

- *eDiscovery Solution*: \$47,000.00 (200 custodians)

Total - \$47,000.00

RECOMMENDATION:

The staff recommends purchasing *eDiscovery Solution*, an email key-word and document search software tool, to respond to City ORR. Staff also recommends review of the ORR staff support structure City-wide.