



# Washington State Auditor's Office

## Performance Audit

Government that works for citizens

## The Effect of Public Records Requests on State and Local Governments

Washington's Public Records Act (PRA) helps foster transparency and accountability by giving people broad access to government records. Our interactions with state and local governments during this project revealed their commitment to the principles of open, accessible and accountable government. However, a changing public records environment and a PRA that has not kept pace with present-day issues pose challenges to large and small governments alike. Such challenges, if not addressed, may undermine the original intent of public records laws and the provision of other essential government services.

Legislators face complex policy decisions as they consider balancing access to government records without compromising the efficiency of government operations. To inform policy deliberations, the Legislature asked the State Auditor's Office to conduct a study on the cost of responding to public records requests.

### Fulfilling public records requests cost Washington's state and local governments more than \$60 million in the most recent year

Providing broad access to government records does not come without costs. Today's public makes more and increasingly complex requests for records, which absorb a significant amount of government resources. A subset or sample of the governments responding to our statewide survey reported spending more than \$60 million to fulfill more than 285,000 public records requests in the most recent year alone. Their greatest expense – more than 90 percent of costs – is the staff time needed to locate, review, redact and prepare public records for release.

### Washington's governments can only recover a small fraction of their costs

Existing public records laws do not permit governments to charge requesters for staff time, which we found was their greatest expense.

In the most recent year, survey respondents said they recovered less than 1 percent (or \$350,000) of the \$60 million in costs they incurred fulfilling requests for public records. Because requesters pay only a small portion of the costs involved in fulfilling their requests, governments – and ultimately all taxpayers – bear the costs of public record requests.

The number of public records requests Washington's governments receive and the cost to fulfill them vary widely

*Most recent year results by government type as grouped for analysis*

Government type	Total cost incurred	Total requests received
State agency, commission or board	\$22,058,165	74,354
City/Town	\$16,772,830	114,973
County	\$11,213,530	64,319
Other special district	\$4,232,504	9,246
School district/ESD	\$2,871,610	2,541
Other	\$2,089,128	16,814
Post-secondary education institution	\$1,752,489	2,935

Source: Auditor analysis of survey results.

Note: "Most recent year" may be calendar or fiscal year, and not necessarily the same year for all governments surveyed.

## **Governments' management and disclosure of public records is complicated by the exponential growth of information and changing, complex public records laws**

Advances in technology have transformed the way governments conduct their business and increased the amount of digital information they must manage. Maintaining records today requires investments in information technology to organize, store, secure, search and inventory records, and trained employees to manage them. However, many governments told us they do not have sufficient resources to conduct these activities, which could aid the records management and disclosure process.

Changing and complex public records laws have cost implications and add to the workload governments face when responding to requests. Understanding and applying exemption laws can be hard for employees without a legal background. Moreover, exemption laws change frequently, making it difficult for them to keep up-to-date with requirements. Governments said they rely on the help of expensive, yet necessary, legal counsel to ensure they do not release exempt or protected information, or redact information that should be disclosed. However, this preventive effort – in addition to its high cost – risks delaying responses to requesters.

## **Litigation affects government's costs and ultimately transparency**

Public records litigation can have a severe impact on the financial position of some governments, especially those with small operating budgets. Seventeen percent of the governments responding to our survey – large and small – reported they were involved in public records litigation in the past five years, and spent more than \$10 million in the most recent year alone.

The effect of public records litigation extends beyond monetary costs. Legal review to prevent litigation may delay responses to requesters. Moreover, some governments said they avoid using emerging technologies and approaches to managing information, despite the potential for cost savings and efficiencies. They fear their use could complicate the disclosure process and expose them to litigation.

## **Statewide policy and practical solutions could benefit the changing public records environment and the records management and disclosure process**

Providing access to government records in a manner that does not limit the public's access to information or unduly affect government operations is challenging. Our research shows that a combination of statewide policy changes and better information management and disclosure practices are needed to keep pace with changing times. We identified policies other states have implemented and which the Legislature can consider to address public records issues in Washington. We also identified practical solutions that can help state and local governments in their continuous efforts to improve their records management and disclosure processes.

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### **Statewide policies to address the changing public records environment:**

- Differentiate requesters and requests by their purpose
- Recover costs associated with disclosing records: material and personnel time
- Develop a statewide alternative dispute resolution program
- Address complexities in public records laws

### **Leading practices to aid public records management and disclosure:**

- Communicate with requesters thoughtfully and as needed
  - Manage request fulfillment to maximize benefits to requesters and minimize disruptions to critical services
  - Disclose information before it is asked for
  - Develop a coordinated, agency-wide strategy and institutional culture around records management
  - Collect and retain only necessary records
  - Organize records for easy search and retrieval
  - Adopt strategies and organization-wide policies to accommodate complexity of public records laws
  - Reduce the potential for litigation and mitigate its impact
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