STATE AUDITOR'S OFFICE'S STUDY ON PUBLIC RECORDS ACT REQUESTS: PUBLIC RECORDS ACT REQUEST DATA COLLECTION

November 9, 2015 Public Records Request Webinar Q&A, and Additional Questions Received to Date

GENERAL QUESTIONS

Questions about the study

Q1: What will the report be used for and when?

A: The report will be presented to the Legislature in 2016 to inform deliberations about the Public Records Act.

Q2: How will this report inform the Legislature if it will not be completed until July?

A: This study is being conducted at the request of the Legislature. The report will be presented to the Legislature in 2016 to inform deliberations about the Public Records Act. The timeframe for completing this study is driven by the research and information we need to gather to provide relevant and accurate information to the Legislature and other stakeholders.

Q3: Will you include raw study data in the report?

A: No, the study results will be analyzed and reported in the aggregate by government type and size.

Q4: Do I have to respond to the survey?

A: We strongly encourage all public entities in Washington to complete this survey. By responding to the survey your entity will help the State Auditor's Office provide relevant information to the Legislature about public records requests and the impact on public entities across Washington.

Questions about participating in the survey

Q5: I cannot find the link to the survey, but I would like to respond.

A: If you cannot find the link to the survey, please contact us at PRRStudy@berkconsulting.com. We will create a custom web link for you in Survey Monkey and send it to your email along with the content of the survey notice.

Q6: What is the due date for completing the survey?

A: The due date for completing the survey is December 8, 2015.

Q7: Would it be possible to extend the time to complete the survey to the end of January, 2016? We want to respond accurately, and it is taking a significant amount of time to compile the information.

A: We are giving a month to complete the survey. This timeframe aligns with the typical response time provided for surveys of similar nature. This timeframe also exceeds the maximum estimated completion time provided by entities that tested the survey and it takes into consideration the type of information we are requesting and the varying types and sizes of entities surveyed. The time it takes to complete the survey will vary depending on the size and complexity of your entity. Some entities are able to complete the survey within hours while others need several days and multiple people to complete it. To minimize survey completion time some large and decentralized entities have opted to have each department collect information and then consolidate the responses into one before responding to the survey. Or, if each of your departments completes the survey independently, we will consolidate responses into one for your entity when we analyze the results.

Q8: My entity has not received any public records requests in the last several years. Do I have to complete the survey?

A: We strongly encourage all public entities in the state of Washington to respond to this survey. Question A7 in the survey will ask whether your entity had any requests within the last 5 years. If your answer is "no," you will be able to skip over a number of sections of the survey that do not apply.

Q9: Can we work on the survey online in Survey Monkey, save our responses, and come back to it to keep working?

A: Yes. The survey is linked to your email address and the survey allows you to enter information, leave, and return to saved answers, as long as you use the link in the original Survey Monkey email. However, **and this is very important**, once you click "Done" at the end of the survey you cannot make changes. As an alternative, you can also print a PDF of the survey, collect all the answers, and then enter information into the online survey.

Q10: Once the survey has been submitted, is it possible to revise the earlier responses provided?

A: Once you click "Done" at the end of the survey, it is not possible to revise answers unless you contact us at PRRStudy@berkconsulting.com. If necessary, we can delete your previous response and send you a new link to create a new response. Please contact us at PRRStudy@berkconsulting.com if you have further questions about your particular situation.

Q11: Can I access a copy of my answers? I need it for internal review before submitting.

A: If absolutely necessary, we could provide a PDF copy of your answers; however, with such a large number of respondents we would prefer not to go through this manual process. In addition, the PDF record that you have not finalized, if created, would be subject to public records request. If you need your answers for internal review, we suggest first completing the PDF version of the survey, reviewing it, and then completing the online version.

Q12: I cannot access the estimation worksheet in the PDF version of the survey. Will this worksheet be available outside of the PDF?

A: The worksheet is linked in the online version of the survey. If you cannot access the link, please email PRRStudy@berkconsulting.com and we can send you the worksheet directly.

Q13: How long does it take to complete the survey?

A: The time it will take to complete the survey will vary depending on the size and complexity of the responding entity. Some entities may be able to complete the survey in 20 minutes, while others may take several hours or days, especially if the responses require coordination with other departments.

Q14: Will you be meeting with individual agencies to interview staff or request documents during the study?

A: During this study, SAO staff will meet with a few state agencies and local governments to gain insights into the practices and tools they are using to manage public records and respond to requests, as well as cost recovery methods. If the SAO decides to do a second phase to the current study or a separate study on public records requests, we will inform entities of the new scope, objectives, and approach.

Q15: We are decentralized. I am getting pushback/questions from others I need to coordinate with for responses. What can we do?

A: We would prefer to receive one response per entity. Most entities have stated that this would be their preference as well. If you are able to coordinate responses for all departments in your entity, please do so and enter the information in the online survey for your entire entity. If not, you can respond on behalf of your subpart. In this case, please also send us the list of Public Records Officers for each department and we will directly send them the link to take the survey. We will consolidate responses into one for your entity when we analyze the results. Either way, we would appreciate your help in making sure we get as complete of a picture from your entity as possible.

Q16: Our agency is very large. Departments within my agency collect records in response to public records requests. Some departments have specific people to collect the records, others do not. It would take my institution many months to collect information regarding the time and costs of collecting these records across departments. For such an institution, will you follow-up with a future survey?

A: The time it takes to complete the survey will vary depending on the size and complexity of your entity. We may follow up with a few state agencies and local governments to gain insights into the practices and tools they are using to manage public records and respond to requests, as well as cost recovery methods. If the SAO decides to proceed with a second phase of this study, we may do additional follow-up. We encourage all entities to answer the survey to the best of their abilities within the given timeframe. To minimize survey completion time some large and decentralized entities have opted to have each department collect information and then consolidate the responses into one before responding to the survey. Or, if each of your departments completes the survey independently, we will consolidate responses into one for your entity when we analyze the results.

Q17: Do you intend to conduct an identical survey in the future? If so, it would be helpful if we can start tracking the information now in the way you intend to use it rather than going backward and attempting to estimate/provide the information later.

A: We do not know if we will do an identical survey in the future; this is not the current intention. The survey has a question about interest in participating in a future time study, but we do not know yet if we will do this. If the SAO decides to do a second phase to the current study or a separate additional study on public records requests, we will inform entities of the new scope, objectives, and approach.

Q18: Can I ask questions after I have had a chance to review the survey?

A: Yes, you can email us at PRRstudy@berkconsulting.com or contact us by phone. Please review this Q&A document before asking questions.

Questions about what types of records should be included for this survey

Q19: We provide records under other RCWs and WACs. Should these requests be excluded from this study?

A: The purpose of this survey is to collect information on public records requests made under the Public Records Act (PRA). As provided for in the survey, it could be that different agencies have different definitions for what they regard as a request under the PRA, recognizing that not all PRA requesters specifically designate their request as a PRA request. That said, for the purposes of this survey, please exclude requests for records that your agency has specifically designated as a non-PRA request. For example, if a requester requests records and explicitly indicates via the request that the records are being requested under statutory or other authority *other than the PRA*, and the agency is required by such non-PRA authority to provide the records, that type of request would be excluded from the survey.

Q20: We receive requests where the requester cites chapter 42.56 RCW (the Public Records Act), but the request actually falls under another law (such as FERPA student records). Do we count it on the survey since we have to send a 5 day response?

A: Yes, because, presumably, your agency considers such a request to be a PRA request, given that the five day response is a PRA requirement. More broadly, if your agency regards a request as a PRA request, then include it in your agency's count for the purposes of the survey.

Questions about police department and other records related to law enforcement

Q21: Should requests related to police case reports and incident reports be included in the survey?

A: As explained in the two answers directly above (Q19 and Q20), if your agency regards a request as a PRA request, then include it in your agency's count for the purposes of the survey. If the records at issue are being provided by your agency pursuant to a PRA request, include information related to that request and those records as part of this survey.

Q22: Our agency contracts with a 911 communications center to provide our dispatch services, as well as to assist with the preparation and management of our police case reports and incident reports. Most of the PRA requests for the records related to our agency are submitted by requesters directly to that 911 communications center, although some are submitted to our agency directly. How should we count such requests for this survey?

A: As described in the answers to the three questions directly above, if your agency regards the request as *your agency's PRA request*, then include it in your agency's count for the purposes of the survey. If the records at issue are being provided by your agency pursuant to a PRA request, include information related to that request and those records as part of this survey. It may be that not all agencies take the same approach to the processing of such requests, so the answer to this question will depend on which requests your agency regards as *your agency's PRA requests*. If you would like further clarification, please contact us at PRRStudy@berkconsulting.com to discuss your particular situation.

Q23: Regarding police case reports, we often have people request any/all information on a subject which might include police reports. Are these types of requests included?

A: Similar to the answers to the four questions directly above, if your agency regards the request as a PRA request, then include it in your agency's responses for the purposes of the survey. If the records at issue are being provided by your agency pursuant to a PRA request, include information related to that request and those records as part of this survey. Please see the answers to the four questions directly above for more detail.

Q24: If our police department doesn't track things separately, such that all of our PRA are tracked together, how do we respond to the survey?

A: The survey accounts for different methods used by different agencies. If your agency tracks all PRA requests together, including requests processed by your police department, then include the police department's PRA requests as *part of your agency's count* of PRA requests. It is important for each agency or subpart of the agency to coordinate survey responses to prevent any duplicative results.

SECTION A: IDENTIFICATION

General Questions

Q25: If we receive one request that requires multiple installments – should it be counted as one request?

A: Yes, please count this as one request.

Q26: If we receive one request that is revised multiple times – should it be counted as one request?

A: It will depend on how your agency tracks PRA requests and whether what is at issue is simply a revision or a request for additional records. If your agency would regard this type of request as one request, then you would count it as one request for the survey. However, it may be that your agency would regard this type of request as multiple requests (if, for example, some or all of the revisions to the initial request constitute requests for additional records). Please use your judgment as to whether a request has changed in scope so as to constitute an additional request.

Question A2

Q27: Our City Clerk's Office tracks all requests for the City except for Police Department requests. Our Police Department processes their own requests, but they do not track all the same items as our City Clerk's office.

A: In this case, we would prefer to get two separate surveys, one from the City Clerk's Office and one from the Police Department. If the Police Department does not have a link to take the survey, please do not forward your link. Ask the Police Department to contact us at PRRStudy@berkconsulting.com and we will provide them a link to the survey.

Q28: We contract with King County Sheriff for police services and Eastside Fire & Rescue for fire services. Would they be considered part of our agency or not?

A: It depends on the situation. Please see the answer above related to a similar situation involving an agency that contracts with a 911 communications center. If you would like further clarification, please contact us at PRRStudy@berkconsulting.com to discuss your particular situation.

Question A3i

Q29: What does "subpart" mean?

A: In this survey, the term "subpart" means a part of an entity such as a department, division, office, or unit that is not the entire entity. Because there are so many different types of government entities in Washington

State, and because many entities use different terms to refer to parts of the entity, we did not want to cause confusion by using terms like departments, offices, units, divisions, etc.

Q30: I know of an Office that might be considered a subpart of my entity. What do I do?

A: To the extent possible, we would like to receive one response per entity. If it is feasible for you to coordinate and roll-in their responses into the overall response for your entity, please do so. If not, please contact us at PRRStudy@berkconsulting.com with their contact information so we can follow-up with them separately.

Question A4

Q31: The agency annual operating budget is requested. I am the only public records officer for my county. Are you looking for the annual operating budget and number of employees for the entire county or just the public records department?

A: We are asking about the operating budget and FTEs for the entire county. However, if you are responding only for a specific department within the county, please provide the annual operating budget and FTE only for the department.

Q32: Do you want all funds included, or only state funds?

A: Please include all funds – the entire operating budget of your entity.

Q33: Should we provide our annual operating budget or total budget (including capital and debt)?

A: Provide only the operating budget (exclude capital expenditures and debt service).

Question A5

Q34: Does "FTE currently employed" mean FTE allotment, average number of staff, budgeted number of FTEs, or staff employed currently whether allotted or not?

A: Staff currently employed or average staff would be fine. The purpose of this question (along with the operating budget question) is to help us understand the size of your entity, so precision is not needed here. We are looking for scale.

Question A6

Q35: If we choose 9/1/14-8/31/15 as the timeframe for the most recent full year, is that the timeframe for the data we are including in Question B2 for 2015? Then the same time range immediately prior should go in Question B2 for 2014?

A: Yes, we ask you to use the same timeframes throughout. For questions such as B2 that list four-digit years as prompts, we are asking for information from the same timeframe chosen in A6 ending in that four-digit year.

SECTION B: PUBLIC REQUESTS VOLUME

General Questions

Q36: Why are you asking only about the number of requests? That is a small part of the volume picture. The bigger part is the number of GB and pages that we are reviewing and analyzing in order to release or withhold records. Will you follow-up survey cover this other portion of the volume issue?

A: Per the Legislature's directive for this survey effort, the focus of the study is on the costs of responding to PRA requests. We debated whether to include this type of question in the survey and decided not to include it, given that the majority of entities likely do not track this information and would not be able to estimate it. If the SAO decides to proceed with a second phase or second study on public records requests, we may explore this issue further. The costs associated with fulfilling large volumes of requests will be reflected in your answers to the costs section of this survey (Section D). Additionally, questions related to capital expenditures (Section E), practices (Section G), and trends (Section H) may be relevant places to describe the impact of increasing volumes of responsive records.

Q37: Will you want information about the backlog of requests and volume of records that have not been completed within the year? This speaks to the FTE deficit the agency has in its public records staffing. For instance, we expect to have a backlog of nearly 3 million pages of records at the end of 2015 because volumes of responsive records have risen and staffing has not kept pace.

A: We understand that this is an issue for some entities. However, we are not asking about backlogs in this survey directly. By answering Question C2 in the survey, you will help us gain some understanding of the backlog situation (we will be able to infer what percent of requests are unable to be fulfilled within the given timeframes). If we end up proceeding with a second phase or second study on public records requests, we may explore this issue further.

Questions B1 and B2

Q38: When looking at volume, do you want requests actually received for a period of time rather than those completed during that same time period? Some requests take a considerable time to complete.

A: Please provide information about number of records <u>received</u>.

Q39: Do you want us to count any requests that are still being processed due to volume? For example, a request in 2012 that required several installments is still being processed in 2015 and into 2016. Do you want us to count it in the overall for the current year?

A: In this section of the survey, please count it in the year it was received (2012 in this example). Installments for the same request should be counted as one request. However, later in the survey we ask about costs, which could go beyond costs associated with requests received this year as you could still be processing requests from past years.

Q40: Should we include records that are provided under other statutory requirements (e.g., redactions based on FERPA)?

A: As described above in questions 19 and 20, it could be that different agencies have different definitions for what they regard as a request under the PRA, recognizing that not all PRA requesters specifically designate their request as a PRA request. That said, for the purposes of this survey, please exclude requests for records that your agency has specifically designated as a non-PRA request. For example, if a requester requests records and explicitly indicates via the request that the records are being requested under statutory or other authority *other than the PRA*, and the agency is required by such non-PRA authority to provide the records, that type of request would be excluded from the survey. **However**, *regarding redactions*, if the request is regarded by your agency as a PRA request, and redactions are required by some other statutory authority, the work on such a request by your agency would still be considered a PRA request.

Question B4

Q41: What do you mean by "Insurance Requests?"

A: We included reference to “insurance requests” because we heard from agencies that they receive certain requests from insurance companies/providers and some agencies do not consider such requests as PRA requests. If your agency considers such a request as a PRA request, then count it as part of the survey; if not, then do not include it.

Q42: Ambulance Billing: Insurance companies request a copy of the EMT response report. Would this type of request be considered a PRA request?

A: This is a good example of an “Insurance Request” as described directly above. If your agency considers such a request as a PRA request, then count it as part of the survey; if not, then do not include it.

Q43: In FAQs it would be helpful if you broke out things like insurance company requests for incident reports, cross-agency requests, etc. for those police reports and incident reports issues. This would be helpful to many, especially as we may need to break out some of our police department logs.

A: We recognize that different agencies have different definitions for what they regard as a request under the PRA. This question in the survey (B4) is meant to allow your agency to identify types of requests that your agency does not regard as PRA requests, as well as other types of requests that your agency otherwise excludes from the data your agency collects regarding the total number of PRA requests received.

Question B5

Q44: Would you prefer that we go back and research the data you are requesting on abandoned requests (rather than estimate)?

A: For all questions, we would prefer that you provide actual data, if available. If you are able to research and find the requested information within the timeframe of the survey, that would be great. If you do not track the information we are requesting, please provide your best estimate.

Q45: If three installments are paid for and delivered, but the requester does not pay for the fourth and final installment, is that considered an abandoned request?

A: Yes. For the purposes of the survey, the definition of an “abandoned request” encompasses those that were abandoned at any point in the process, including those that were abandoned due to the requester’s failure to pay the final payment for requested copies.

SECTION C: NATURE OF PUBLIC RECORDS REQUESTS

Question C2

Q46: There is no place to record requests that take one business day because they are not fulfilled the same day. Are these tracked as 2 to 5 business days?

A: If your agency fulfilled a request in one business day, and that day is the same day the request was received by your agency, please include it under "same day." If your agency took one business day across two days to fulfill a request, include that request under "2-5 business days."

Q47: Doesn't the WAC states that the day a request is received does not count. So, if you fulfilled the request in two days, would it be counted as one?

A: The issue of how to count the days for the purposes of the PRA is a legal question that is best answered for you by your agency's legal counsel. For the purposes of the survey and question C2, the day the request is received would count as day one, which is the "same day" option under C2. The other options relate to business days, based on day one as being the day the agency received the request.

Question C3

Q48: How much research should we do? We don't track who is requesting public records.

A: If you do not track the information we are requesting, please estimate to the best of your ability. You can select "unable to estimate" if you do not have the information and are unable to make a reasonable estimate.

Q49: Some of these types of requesters we cannot estimate. For instance, people who email us their requests do not tell us where they are from. We can provide information only on some of these categories.

A: If you do not track the information we are requesting, please estimate to the best of your ability. You can enter the percentage of your records for which you cannot identify the requesters under "Anonymous or requester not identifiable" category. You may also choose to allocate the remaining percentage to "Unable to estimate."

Q50: Will the study include considerations of how commercial entities are using the Public Records Act for financial gain? For example, developers doing land research, purchasing companies requesting financial data sets, etc.

A: In this question (C3), we are trying to get a sense of who is requesting records. The question has several categories, including some that include commercial entities, and one that specifically references other for-profit organizations. If we end up proceeding with a second phase or second study on public records requests, we may explore this issue further.

SECTION D: COSTS ASSOCIATED WITH PUBLIC RECORDS REQUESTS

Question D0

Q51: What if you have some costs but not others? Which track should be taken?

A: Please select "yes" to follow track D and then provide more detail in the last question (D13) about which numbers were actual and which were estimates.

Question D5

Q52: If the employee's job description does not specifically include responding to public records requests, should I include them?

A: If the employee at issue spends a significant amount of time responding to public records requests, they should be included. We understand that in many agencies there are many staff members in addition to the Public Records Officer who spend a lot of time on records requests, though that might not specifically be in their job description. Our intent is to distinguish between two groups: (1) those primarily and regularly responsible for responding to PRA requests – survey questions D4-D6, and (2) staff who become involved for particular requests occasionally – survey question D8. For example, it may be that the clerk is primarily responsible for responding to PRA requests in general, but that clerk may need to coordinate with the Public Works Department for a number of PRA requests. We are looking for the cost of the clerk's time in D4-D6, and the cost of applicable Public Works Department staff time in D8.

Q53: As a large agency, many employees are involved in responding to PRA requests. While we have a dedicated coordinator, much of the work is distributed to the specific departments. Should we try to include those employees?

A: Yes. The estimation tool (worksheet) provided in the online survey is intended to help you in incorporating the time and associated costs that applicable employees devote to responding to public records requests. Please contact us at PRRStudy@berkconsulting.com if you have questions about using the estimation tool.

Q54: Several of our employees help process requests, but it is not specifically in their job description. Do I account for this in question D5?

A: Yes, this would be a good place to record this information if you can quantify it.

Question D6 and /or D8 (or DA6/DA7)

Q55: Requests that are sent to every employee to search are difficult to estimate. How would you suggest that we go about estimating for such a large number of employees (1000+)?

A: Please focus on those employees who regularly spend all or a bulk of their time on public records requests (enter them in survey Questions D5 and D6/DA6). It would be helpful if you can estimate the cost related to those employees who get involved only occasionally (survey Question D8/DA7); however, we understand that it may not be possible. Please review the estimation worksheet (link provided in the online survey) for methodology on how to think about costs. In the estimation worksheet, you may make a calculation based on hours contributed by departments, rather than wages of individual employees. This might be a more efficient way to estimate the contribution of non-designated staff. Please contact us at PRRStudy@berkconsulting.com if you have questions about using the estimation tool.

If your agency is decentralized, it is probably better to have separate departments fill out the information. Please contact us and we can send survey links to individual departments.

Q56: Do we include the cost of employees who are paid at hourly rates?

A: Yes, the survey is asking for total wages of staff responding to public records requests, regardless of whether they are paid a salary or hourly rate.

Q57: Should we include staff who help fulfill requests? For example, IT staff run a query from a database to fulfill a request – should they be included?

A: Yes, please include such costs if possible. Please review the estimation worksheet for a methodology to estimate this cost. For example, a reasonable estimate may be that IT department staff spent 5% of their time on public records requests or that they spent approximately 100 hours in the last full year.

Question D9

Q58: We had several very large and costly requests in 2012-2013. Should I provide information only based on the timeframe I selected in A6?

A: Survey question D9 asks specifically about total costs from past years to identify trends, so your cost information from 2012-2013 would be included in the answer to that question.

SECTION E: CAPITAL OR ONE-TIME EXPENDITURES

Question E2

Q59: Some software products have ongoing costs. Do we include them here?

A: Please include this cost in Question D8.

Q60: What about records retention?

A: This survey relates specifically to costs associated with compliance with the PRA. Records retention requirements are based on different statutory provisions, so costs associated specifically with records retention requirements are outside the scope of this survey. As explained on the survey for Questions E1 and E2, please only include expenditures that are related specifically to PRA compliance.

Q61: Once produced, do records have to be retained longer than the usual and customary retention?

A: This question is beyond the scope of this study. Please consult with your agency's legal counsel.

SECTION F: COSTS OF LITIGATION

Question F2

Q62: Should we include involvement in court proceedings that follow a third party notice?

A: Please only include costs incurred related to PRA lawsuits and/or legal settlements. If, by third party notice, you are referring to such notice as provided for pursuant to the PRA, and the involvement in court proceedings to which you refer relates to PRA related litigation, then, yes, that cost would be included on the survey.

Q63: Would subpoenas be separate?

A: It depends. If the subpoena relates to a PRA lawsuit and/or legal settlement, the cost of the subpoena would be included on the survey.

SECTION G: PRACTICES FOR MANAGING AND RESPONDING TO PUBLIC RECORDS REQUESTS

Question G2

Q64: Does budgeting include position budgeting?

A: Yes, please include costs for budgeted staff positions involved with responding to public records requests.

SECTION I: CLOSING

Question I.1

Q65: Please describe the "follow-up effort" involving interviews and/or detailed data requests in the spring of 2016. Is this information for the July 2016 report or a report from a separate study?

A: If the SAO decides to proceed with a second phase to the current study or a separate study on public records requests, we will inform entities of the new scope, objectives, and approach.