

FOLLOW-UP REPORT

Multi-Agency
Open Records Request Process
NOVEMBER 2021



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DENVER AUDITOR

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City and County of Denver



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AUDITOR'S LETTER

November 4, 2021

In keeping with generally accepted government auditing standards and Auditor's Office policy, as authorized by city ordinance, the Audit Services Division has a responsibility to monitor and follow up on audit recommendations to ensure city agencies address audit findings through appropriate corrective action and to aid us in planning future audits.

In our follow-up effort for the "Open Records Request Process" audit report issued in May 2020, we determined the Mayor's Office fully or partially implemented eight of the nine recommendations it agreed to in the original audit report but did so 10 months late as we performed this audit follow-up. Despite the Mayor's Office's efforts, auditors determined some important risks associated with the audit team's initial findings about insufficient transparency and guidance for the public have not been fully mitigated. As a result, the Audit Services Division may revisit these risk areas in future audits to ensure the city takes appropriate corrective action.

The Highlights page in this report provides background and summary information about the original audit and the completed follow-up effort. Following the Highlights page is a detailed implementation status update for each recommendation. We did not update the status of the five recommendations the Mayor's Office disagreed with, as the Mayor's Office presumably would not have acted toward implementing those. However, we include these recommendations in the status update section as a reference.

I would like to express our sincere appreciation to the personnel at the Mayor's Office who assisted us throughout the audit and the follow-up process. For any questions, please feel free to contact me at 720-913-5000.

Denver Auditor's Office

A handwritten signature in black ink, appearing to read "Timothy M. O'Brien".

Timothy M. O'Brien, CPA
Auditor



Open Records Request Process

NOVEMBER 2021

Objective

The audit had three objectives:

- To determine the degree to which city policies and procedures ensured consistency and compliance with requirements in addressing open records requests.
- To determine the extent to which the city tracked open records requests and resolutions.
- To determine the degree to which the city made the open records process accessible and transparent.

Background

Enacted in 1968, the Colorado Open Records Act is meant to increase citizens' access to public records. The law requires most government records be available for inspection by anyone in a "reasonable" amount of time unless prohibited by law or contrary to public interest.

Under normal circumstances, the law specifies that a "reasonable time" is a maximum of three working days.

ORIGINAL REPORT HIGHLIGHTS

The City's Open Records Request Process Did Not Provide Sufficient Guidance and Transparency to the Public

The city did not provide as much information or guidance on its website as other Colorado cities and counties do about how the public can request records.

The City Did Not Know the Amount of Effort It Was Spending on Open Records Requests

The city did not know how many open records requests it received citywide, how much time was spent on them, or how much it charged in fees for those requests.

The City Was Inconsistent and Sometimes Late in Responding to Open Records Requests

- Fees and fee waivers were not consistent across reviewed agencies.
- The city was not consistently notifying requesters when their records requests took longer than the time allowed by law.
- The city was not always fully addressing open records requests.
- Agencies were not retaining sufficient supporting documentation of records requests.

WHY THIS MATTERS

The City and County of Denver should comply with the requirements of the Colorado Open Records Act, so all city agencies can continue to build public trust by providing effective, efficient, transparent, and equitable ways to obtain information.



2

FULLY IMPLEMENTED



6

PARTIALLY IMPLEMENTED



1

NOT IMPLEMENTED



5

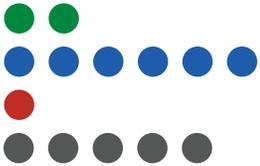
DISAGREED; NO FOLLOW-UP

Nov. 4, 2021

Action Since Audit Report

Open Records Request Process

14 recommendations proposed in May 2020



**FULLY
IMPLEMENTED**

2



**PARTIALLY
IMPLEMENTED**

6



**NOT
IMPLEMENTED**

1



**DISAGREED;
NO FOLLOW-UP**

5

The Mayor's Office fully implemented two recommendations made in the original audit report, but 12 others have yet to be fully implemented or acted upon.

While the Mayor's Office provided a template to help agencies implement an online form, it fell short in helping agencies increase information online. Additionally, the office disagreed with monitoring open records request information annually and sharing the results publicly. Without clear rules, guidelines, monitoring, or a section for frequently asked questions, the public may continue to struggle with submitting open records requests. This could lead to increased public mistrust of local government and the continued lack of transparency on the effectiveness of open records requests citywide.

The office also said it would continue to update and provide written guidelines and training sessions to agencies. Although the office implemented most of the recommendations related to providing policies and procedures, it did not provide such guidance until our follow-up work was well underway — about 10 months after the agreed-upon implementation dates. The Mayor's Office's lateness resulted in the office issuing the guidance piecemeal, under different formats, and at different times. Not having guidance readily available in one, combined document may hinder consistency, the timeliness of responses to records requests, and cross-training of agency communications directors.

With up-to-date policies and procedures, city agencies can continue building public trust by providing effective, efficient, transparent, and equitable ways to obtain information. These policies and procedures also help agencies more easily comply with the state's open records act.

FINDING 1 | The City's Open Records Request Process Does Not Provide Sufficient Guidance and Transparency to the Public

Recommendation 1.1



**NOT
IMPLEMENTED**

INCREASE INFORMATION ONLINE – The Mayor's Office should increase the amount of information on the city's website about the open records request process. This should include, at a minimum, city rules and guidelines and frequently asked questions or similar guidance for making a successful record request.

AGENCY ACTION

Original target date for completion: Sept. 29, 2020

The Mayor's Office took no action to increase information online. Based on evidence collected at the time of our follow-up, the Mayor's Office did not update its open records website to include frequently asked questions or similar guidance for making successful records requests, as we recommended. Additionally, the information on the website is the same as that of the information we gathered from it during the initial audit.

Without clear rules, guidelines, or a section for frequently asked questions, the public may continue to struggle with submitting open records requests. This could lead to increased public mistrust of local government.

We conclude the Mayor's Office has not implemented the recommendation.

Recommendation 1.2



**PARTIALLY
IMPLEMENTED**

CREATE OPEN RECORDS DIRECTORY – The Mayor's Office should create a more robust directory on the city's open records webpage. This directory should include at a minimum, a list of records custodians and their contact information as well as types of commonly requested documents each agency is the custodian of. This information should be updated at least quarterly or more often.

AGENCY ACTION

Original target date for completion: Sept. 29, 2020

The Mayor's Office worked with agencies to create a directory on the open records website. This directory includes a list of records custodians and their

report was issued in May 2020:

The Mayor's Office does not need to be a repository of agency or department CORA data. This data should remain with the individual departments to track and maintain and can be provided to the Mayor's Office as necessary.

For the original report, we wrote the following addendum rebutting the office's response:

We agree the individual agencies should be responsible for tracking and maintaining their high-level records request data. However, as the owner of the open records request process for most city agencies, the Mayor's Office should require agencies to report the data to the Mayor's Office annually.

As stated in the report on page 12 [of the May 2020 "Open Records Request Process" audit report], having the data compiled at an organizational level (i.e., collected by the Mayor's Office) means the data can be used for informing policy decisions — such as knowing how well an organization is performing and complying with state law — and for identifying areas of improvement. Furthermore, this data-gathering would allow the Mayor's Office to be more transparent and accountable to the public, as proposed in Recommendation 2.3.

Recommendation 2.3

COMPILE CITYWIDE DATA – The Mayor's Office should compile agencies' open records request data and report it yearly to the public via the city's website or in the mayor's budget.



DISAGREED

AGENCY ACTION

No action was taken to implement this recommendation because the Mayor's Office disagreed with the recommendation made in our original report.

This was the office's response to the recommendation when the original report was issued in May 2020:

The Mayor's Office does not need to be a repository of agency or department CORA data. This should remain with the individual departments to track, maintain and report as necessary.

For the original report, we wrote the following addendum rebutting the office's response:

The Mayor's Office's reporting of the high-level records request data to the public would allow for transparency about the impact of open records requests on the city. As stated in the addendum for Recommendation 2.2, the Mayor's Office annually gathering the data city agencies will already be tracking is necessary for this transparency and should not require a large amount of effort to gather and report out.

FINDING 3 | The City Is Inconsistent and Sometimes Late in Responding to Open Records Requests

Recommendation 3.1

ENHANCE GUIDANCE – The Mayor’s Office should enhance guidance given to agencies to improve the consistency in how the city applies and treats open records request fees. Specifically, the Mayor’s Office should address the following inconsistencies:

- Treatment of fees for duplicate requests.
- The timing of when agencies begin work on a request after payment is received.
- Fee waivers and fee accounting practices.

Any changes to the guidance should be communicated to the agencies and updated in the open records training the City Attorney’s Office gives to agencies, as necessary.



**PARTIALLY
IMPLEMENTED**

AGENCY ACTION

Original target date for completion: Sept. 29, 2020

Ten months after the original agreed-upon implementation date – and during our follow-up review – the Mayor’s Office issued updated written guidance for open records on July 27, 2021, to all agencies under the office’s purview. This release coincided with a presentation the office gave the city’s public information officers, as well as an email sent by the Mayor’s Office’s communications administrator.

The email addressed all elements included in the recommendation. It required agencies under the Mayor’s Office to not assess fees on duplicate records requests; rather, fees should be collected only on the first of such requests. For example, if one news organization requests the same information as another news organization, fees should not be collected from the second organization. In addition, the email said fee collection should start after the first hour of fulfilling a request and it should not be waived. Agencies are required to charge a consistent rate of \$33 per hour after the first free hour.

We conclude the city partially implemented the recommendation. The Mayor’s Office is still communicating policy and procedure in separate documents, emails, presentations, and templates. Therefore, those responsible for fulfilling requests continue to not have a sole source to reference. Because of the late implementation by the office, auditors were also unable to verify whether the new policy is effective in mitigating the risk identified during the audit.

Recommendation 3.2



DISAGREED

UPDATE POLICIES AND PROCEDURES – The Mayor’s Office should recommend the Clerk and Recorder’s Office update its policies and procedures to match the city’s current hourly rate for open records request fees.

AGENCY ACTION

No action was taken to implement this recommendation because the Mayor’s Office disagreed with the recommendation made in our original report.

This was the office’s response to the recommendation when the original report was issued in May 2020:

The Clerk and Recorder’s Office is overseen by an independently elected official, it is incumbent upon that official to ensure that their offices are following the CORA statute regarding fees.

For the original report, we wrote the following addendum rebutting the office’s response:

We acknowledge the Clerk and Recorder’s Office is an independent city agency responsible for establishing its own policy for complying with the Colorado Open Records Act. However, as the owner of the open records process for most city agencies, the Mayor’s Office is in a unique position to promote uniformity and fairness of the process throughout the city. Therefore, the Mayor’s Office should still invite independent agencies to keep their open records fee policies up to date.

Recommendation 3.3



DISAGREED

UPDATE POLICIES AND PROCEDURES – The Mayor’s Office should recommend the Denver City Council update its policies and procedures to match the city’s current hourly rate for open records request fees.

AGENCY ACTION

No action was taken to implement this recommendation because the Mayor’s Office disagreed with the recommendation made in our original report.

This was the office’s response to the recommendation when the original report was issued in May 2020:

Denver City Council is overseen by independently elected

officials, it is incumbent upon those officials to ensure that their offices are following the CORA statute regarding fees.

For the original report, we wrote the following addendum rebutting the office's response:

We acknowledge the Denver City Council is an independent city agency responsible for establishing its own policy for complying with the Colorado Open Records Act. However, as the owner of the open records process for most city agencies, the Mayor's Office is in a unique position to promote uniformity and fairness of the process throughout the city. Therefore, the Mayor's Office should still invite independent agencies to keep their open records fee policies up to date.

Recommendation 3.4

ENHANCE GUIDANCE ON EXTENUATING CIRCUMSTANCES – The Mayor's Office, in consultation with the City Attorney's Office, should provide enhanced guidance and training to agencies on extenuating circumstances. These enhancements should emphasize that agencies must notify requesters in writing if they cannot meet the initial three-day deadline and a seven-day extension is needed to fulfill a request because of extenuating circumstances.



**PARTIALLY
IMPLEMENTED**

AGENCY ACTION

Original target date for completion: Sept. 29, 2020

Ten months after the original agreed-upon implementation date – and during our follow-up review – the Mayor's Office issued updated written guidance for open records on July 27, 2021, to all agencies under the office's purview. This release coincided with a presentation the office gave the city's public information officers, as well as an email sent by the Mayor's Office's communications administrator.

The additional written policy required agencies to notify the person making the records request when their request falls under the Colorado Open Records Act's provision for extenuating circumstances and that the agency will take the additional seven business days allowed by law. The additional updated policy says this notification must be done by the third day after a city agency receives the request and payment to fulfill it.

We conclude the city partially implemented the recommendation. The Mayor's Office is still communicating policy and procedure in separate documents, emails, presentations, and templates. Therefore, those responsible for fulfilling requests continue to not have a sole source to reference. Because of the late implementation by the office, auditors were also unable to verify

whether the new policy is effective in mitigating the risk identified during the audit.

Recommendation 3.5

STANDARDIZE POLICY FOR REQUESTS TAKING LONGER THAN 10 DAYS

– The Mayor’s Office, in consultation with the City Attorney’s Office, should include in the citywide guidance and training to agencies a policy for communicating in writing with requesters if they will be unable to fulfill a request within the maximum time allowed (10 business days) and request to set a future date to provide the records.



**PARTIALLY
IMPLEMENTED**

AGENCY ACTION

Original target date for completion: Sept. 29, 2020

Ten months after the original agreed-upon implementation date – and during our follow-up review – the Mayor’s Office issued updated written guidance for open records on July 27, 2021, to all agencies under the office’s purview. This release coincided with a presentation the office gave the city’s public information officers, as well as an email sent by the Mayor’s Office’s communications administrator.

The email instructed agencies to apprise requesters on the status of their requests when fulfillment will take longer than 10 business days. However, the instruction is silent on setting new agreed-upon deadlines as stated in our audit recommendation, and that is also not formalized in the updated written policy.

Because not all elements included in the recommendation were addressed – either in the presentation, the email, or the updated policy – we conclude the city has only partially implemented the recommendation. In addition, because of the late implementation by the office, auditors were also unable to verify whether the new policy is effective in mitigating the risk identified during the audit.

Without a unified policy specifying that agencies must proactively agree to delivery dates with requesters when the requested information cannot be provided in 10 business days, some agencies may not be consistently responsive to open records requests. This can damage the city’s reputation by not fulfilling requests in a timely manner.

Recommendation 3.6



**PARTIALLY
IMPLEMENTED**

ADD LANGUAGE ON UNAVAILABLE DOCUMENTATION – The Mayor’s Office should give additional guidance to city agencies to add language in responses to open records requests to explain why not all requested documents could be provided if the agency cannot completely fulfill all aspects of a request.

AGENCY ACTION

Original target date for completion: Sept. 29, 2020

Ten months after the original agreed-upon implementation date – and during our follow-up review – the Mayor’s Office issued updated written guidance for open records on July 27, 2021, to all agencies under the office’s purview. This release coincided with a presentation the office gave the city’s public information officers, as well as an email sent by the Mayor’s Office’s communications administrator.

The email instructed agencies to apprise records requesters by explaining why not all requested documents could be provided in the event an agency cannot fulfill all aspects of a request. The updated guidance also specifies that the agency’s designee must communicate in writing that a request cannot be fulfilled.

Additionally, the City Attorney’s Office prepared template language for agencies’ records custodians to use under different scenarios. For example, the templates included response language for when an agency did not identify any records responsive to the request. Another template contained language to explain that the agency conducted a good faith search for the records requested, that responsive records were attached, and that certain records within the scope of the request were unavailable for public inspection.

We conclude the city partially implemented the recommendation. The Mayor’s Office is still communicating policy and procedure in separate documents, emails, presentations, and templates. Therefore, those responsible for fulfilling requests continue to not have a sole source to reference. Because of the late implementation by the office, auditors were also unable to verify whether the new policy is effective in mitigating the risk identified during the audit.

Recommendation 3.7



**FULLY
IMPLEMENTED**

ENHANCE GUIDANCE ON SUPPORTING DOCUMENTATION RETENTION –

The Mayor’s Office, in consultation with the City Attorney’s Office, should give specific guidance and training to city agencies on what types of open records documentation to retain — such as the request itself and supporting documentation relating to the response or denial of the request — in accordance with the city’s records retention schedule.

AGENCY ACTION

Original target date for completion: Sept. 29, 2020

Ten months after the original agreed-upon implementation date — and during our follow-up review — the Mayor’s Office issued updated written guidance for open records on July 27, 2021, to all agencies under the office’s purview. This release coincided with a presentation the office gave the city’s public information officers, as well as an email sent by the Mayor’s Office’s communications administrator.

The email instructed agencies to retain documentation related to open records requests for at least one year. This guidance was also included in the updated policy, which requires that documentation be kept for one year from the date of the response — including the response itself, the responsive records provided, and any documents withheld as allowed by law.

We found this policy to be consistent with the city’s records management retention schedule, which was updated in January 2021 with the same requirements.

We conclude the city fully implemented the recommendation, although it did so during our follow-up process. However, the Mayor’s Office is still communicating policy and procedure in separate documents, emails, presentations, and templates. Therefore, those responsible for fulfilling requests continue to not have a sole source to reference.

Office of the Auditor

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