

To: Sunshine Reform Task Force Members
From: Bert Robinson, Chair, Public Records Subcommittee
Date: August 10, 2007
Subject: Recommendations on Process for Disclosure

Motion

Approve the recommendations of the Public Records Subcommittee on the process for disclosure of public records.

Discussion

The Public Records Subcommittee is comprised of Bert Robinson, Chair, Dan Pulcrano, Co-Chair, Bobbie Fischler, Karl Hoffower, Virginia Holtz and Brenda Otey. The Subcommittee met on June 21, July 3, July 19 and August 1, 2007.

The Subcommittee is pleased to offer a first set of recommendations to the Sunshine Reform Task Force about the process to disclose public records. Two topics – (1) the creation of an index to records; and (2) the appropriate fees for duplicating audio and video on either a DVD or VHS tape – have not been discussed thoroughly by the Subcommittee; we will make recommendations about these items as soon as possible. Moreover, as the Subcommittee makes further recommendations on the topic of Public Records, it may determine that it should propose minor modifications to some of these procedures to achieve consistency.

One of the weak points in the California Public Records Act is its lack of clarity as to how, and how quickly, requested records should be made public. One of our opportunities as a task force is to clarify process and expectations for the citizens of San Jose, so that public records are easy to seek and easy to receive.

Our recommendations seek to do several things:

1. Establish a clear internal procedure for the city as to how to respond to requests, removing the guesswork for city officials and the public.
2. Insure that requesters receive records as promptly as possible. Most records would be provided by the close of business on the day following the request.
3. Prevent public records requests from being cost-prohibitive, by creating a fee structure and clarifying when fees may and may not be charged. All copying fees would be waived for requests totaling less than 100 pages.
4. Clarify some difficult issues relating to electronic records.

By working closely with city staff, we are hopeful we have achieved these improvements without creating a process that is too cumbersome or burdensome. We hope you will agree.

Public Records

Section 2. Process for Disclosure

2.1 Immediacy of Response

- A. The deadlines listed in this section are appropriate for extensive or demanding requests but should not be used to delay fulfilling simple or routine requests.
- B. If a request for any public information is presented to a City employee who is not responsible for responding to the request, it must be forwarded, by the end of the business day on which it was received, to the City employee responsible for responding to the request or to the employee's supervisor if that employee is out of the office that day.
- C. By the end of the business day on which the City employee responsible for responding to the request receives it, he or she must acknowledge receipt of the request to the requestor.
- D. For simple or routine requests, by the end of the next business day after the date the City employee responsible for responding to the request acknowledges receipt of the request to the requestor, the City employee responsible for responding to the request must provide a response and the requested public information.
- E. For extensive or demanding requests, no later than 3 business days from the date the City employee responsible for responding to the request acknowledges receipt of the request to the requestor, the City employee responsible for responding to the request must provide a response, which will include either the requested public information or an estimate as to when the requested public information will be available. The requested information must be provided within 10 calendar days of the date the City employee responsible for responding to the request acknowledges receipt of the request to the requestor. This deadline may be extended by mutual agreement between the City and the requestor.
- F. If the City believes that the requested public information or a portion of the requested public information is exempt, the City employee responsible for responding to the request must so determine and report to the requestor within 10 calendar days from the date the City employee responsible for responding to the request acknowledges receipt of the request to the requestor. The response must also include the public information, if any, that the City believes is not exempt. This deadline may be extended by mutual agreement between the City and the requestor.

G. In unusual circumstances, the City employee responsible for responding to the request may notify the requestor in writing that an extension of the 10-day period for an additional period no longer than 14 calendar days is necessary. The City employee responsible for responding to the request who seeks an extension must notify the requestor as soon as possible but no later than 10 calendar days from the date the City employee responsible for responding to the request acknowledges receipt of the request to the requestor. This deadline may be extended by mutual agreement between the City and the requestor. "Unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

1. The need to search for and collect the requested records from storage facilities that are separate from the office processing the request.
2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
3. The need for consultation, which must be conducted with all practicable speed, with another agency having substantial interest in the determination of the request.
4. The need to write programming language or extract data that would not otherwise be extracted.

H. In order to comply promptly with requests that involve multiple documents, the City employee responsible for responding to the request will, upon request, identify groupings of documents that can be made available on an incremental or "rolling" basis, where such an approach is both practical and pertinent. This section is intended to prohibit the unnecessary withholding of public information that are responsive to a public records request until all potentially responsive documents have been reviewed and collected.

2.2 Justification of Withholding

If the City believes that the requested public information or a portion of the requested public information is exempt, the City employee responsible for responding to the request must explain, in writing, when responding to the request, the basis for withholding the information by citing the specific statutory or case authority.

2.3 Withholding Kept to a Minimum

A. Information that is exempt from disclosure must be redacted or otherwise segregated so that the nonexempt portion of requested public information may be made available. The reason for redaction or segregation must be explained.

- B. The work of responding to a request for public information and making public information available must be considered part of the regular work duties of the City employee and no fee will be charged to the requestor to cover the personnel costs of responding to a request for public information.
- C. To the extent that it is technologically and economically possible, forms and computer systems used by the City relating to the conduct of the public's business should be designed to ensure convenient, efficient, and economical access to public information, including making public information easily accessible over public networks such as the Internet. Specifically, forms and computer systems should be designed to:
 - 1. Segregate exempt information from non-exempt information.
 - 2. Reproduce electronic copies of public information in a format that is generally recognized as an industry standard format.

2.4 Fees for Duplication

- A. The fee for copying any public information in response to any request to the City is .10 per page, except that the fee will be waived when the response to the request for public information is 100 pages or less.
- B. A fee of \$__ per hour will be charged for responding to any request for public information that either (1) is produced only at otherwise regularly scheduled intervals, if the interim production of the report cannot be achieved without a substantial burden on City staff; or (2) requires the City to write programming language or extract data that would not otherwise be extracted. For purposes of computing charges under Section 2.4 (B), any limitations contained in Section 2.3 (B) do not apply.