

San Diego City Attorney Mara W. Elliott

Remarks delivered to the

Rules Committee, March 20, 2024

Since 2019, my Office has recommended establishing a public information office to centralize the City's response to requests for public records and to restructure the City's intake and response processes.

In 2021, we assigned Chief Deputy City Attorney Karen Li, who is with us today, to study this issue. The proposal we're discussing today is based on her review and resulting recommendations.

We support the public's right to expeditiously access the records they request. Most are seeking information about crime, or development on their street, or a nuisance property located near their child's school, or whether a neighborhood business has registered with the City. They do not want to wait months to get this information, nor should they.

And they also want to know that the records we produce are comprehensive and accurate. If we withhold records from production, they want to understand why.

Our proposal is intended to address these issues with the goal of expediting the City's response, increasing transparency, reducing litigation, and building the public's trust in its government.

The California Public Records Act, which is based on the federal Freedom of Information Act, and our State's Constitution, provide that the public has a right to access public records.

Local government agencies like ours may withhold certain categories of records from disclosure. Exemptions include attorney-client privileged information or trade secrets.

The law leans towards disclosure. Government is required to assist requestors with their requests. The requestor does not have to provide more specificity if we do not understand the request, nor does the law require government and the requestor to

meet and confer over the request. The law doesn't care if the City's efforts were helpful and sincere.

Failure to comply with the PRA can be costly. Between 2019 to 2023, my office handled 36 PRA cases resulting in \$483,168.20 in payouts either through settlement or attorney fee awards.

In 2010, the City received and responded to 639 requests for records. Last year, it was 7,340. As of March 9, the City has received 1,759 requests for records. We're on track to process up to 10,000 PRAs by the end of this calendar year.

Our City's biggest challenge is its lack of a coordinated response process because it can and does lead to inconsistent responses among responding departments.

- For instance, City departments do not coordinate when a PRA request implicates several City departments, which can lead to inconsistent IT searches, redactions, and applications of exemptions.
- One department may respond with no records, another may indicate there are records, but they are exempt in whole or in part, while another may release the same records.
- Any inconsistency is potentially grounds for litigation by a requester receiving fewer or different records than another requester, leading to accusations of disparate treatment and a lack of transparency.

To further complicate matters, City staff who are not lawyers interpret exemptions to the law, and they often do so differently.

Not all departments use NextRequest, which is the City's PRA request and response system. The Mayor's Office, Council Offices, and Independent Offices respond to requests independent of this system.

Mistakes make the City look incompetent and secretive, which can undermine the City's credibility, thwart progress, and deteriorate public trust and confidence in the City.

Turnover in personnel, whether due to attrition or rotation, contributes to inconsistent PRA responses. Most Department Liaisons are inexperienced and in the position for only 3 to 6 months.

While the guiding Administrative Regulation 95.21 empowers individual departments to apply exemptions and provide responses, many staff feel ill-equipped to do so.

Limited resources also constrain the City's ability to provide meaningful, on-going training to those handling these requests.

The general attitude among City employees toward handling PRA requests is negative. The job is thankless, unrewarding, overwhelming, and often seen as punishment.

The lack of resources, the volume of requests, and the public scrutiny make it difficult to recruit and retain Department Liaisons.

Many City employees who are not members of the PRA Administration Office work on PRA requests in addition to the assigned duties of their position. Consequently, PRA requests are not always a priority but are instead simply added work.

Litigious requesters are targeting the inefficiencies in the City's PRA coordination by making multiple, overlapping, and/or duplicative requests that are likely to result in inconsistent responses.

Unfortunately, IT searches may be imperfect, and the City may run identical searches on different days and get different results.

The number of PRA requests seeking records on personal devices has increased. We must rely on each individual employee to search their personal devices. If one party to a text conversation produces that record and another does not, the City could be sued.

Without communication and coordination within the City, those inconsistencies may go unaddressed, putting the City at a disadvantage in litigation.

Our proposal

We propose creating a new office that would receive, assign, and respond to City PRA requests. For purposes of this proposal, we're referring to the department as the Transparency Office.

The function could also be placed within an existing department. Our proposal suggested the Compliance Department.

The Transparency Office should be staffed with employees whose duties and responsibilities are dedicated to responding to PRA requests and related obligations.

Each City department would assign staff – a liaison - to the Transparency Office.

Departments that have a high volume of PRA requests would either assign or fund a liaison whose job is to search for responsive records and submit them to the Transparency Office for review and production.

All requests for emails would go through the Department of IT; IT must have access to emails of all City employees, including the Council, Independent Offices, and Mayor's Office.

All City departments would use NextRequest, follow the same protocols, and utilize the Transparency Office.

If a PRA request does not originate in NextRequest – like we said, it can be verbal - it would be forwarded to the Transparency Office to log into NextRequest.

The Transparency Office, as the lead office, would assign one of its staff members to the request. That person would:

- contact departments that may have responsive records; and
- seek assistance as needed from the advisory attorney, Director, Assistant or Deputy Director to determine which departments to contact for responsive records.

Each department liaison would compile potentially responsive records and send them to the assigned staff in the Transparency Office, for review, determination of applicable exemptions, and redactions.

Attorneys from my office would be available to assist the Transparency Office with their review of applicable exemptions and redactions. My office would assist staff with high-risk requests and review potentially responsive records compiled by the Councilmember Offices.

City departments that do not have a liaison assigned to the Transparency Office must have a designated person within their office to help address requests assigned to their department, office, division, or section.

The Transparency Office would:

- Ensure its staff receive consistent and periodic training to keep apprised of PRA law;
- Train liaisons quarterly or more frequently;
- Provide training and updates at staff meetings;
- provide mandatory NextRequest training for City staff who access the NextRequest portal;
- provide mandatory annual compliance training to the City through SuccessFactors;
- develop higher level trainings accessible through SuccessFactors on specific PRA topics and problematic requests; and
- draft protocols and guidelines for common records requests and exemption analyses for efficiency and consistency

We request that the Rules Committee direct the Mayor's Office to work with the City Attorney to prepare a draft ordinance to add a transparency office to the San Diego Municipal Code for the Council's consideration at a future meeting.

###