Improving Your Access to Public Records

By City Attorney Mara W. Elliott

Every year, people request and receive records from the City of San Diego on anything from department staffing levels to City policies. Residents may want to know about crimes in their neighborhood, or police calls to a specific property. They may want to know which pesticides are used at their community park, or when power lines on their street will be undergrounded. People seek everything from contracts to traffic surveys to landscape maintenance plans. In a recent two-year period, City employees responded to more than 11,000 public record requests.

Access to public records is a right protected by state law and our Constitution. A public record is defined by law as "any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics." Record requests can be made in writing, by phone, or in person. The City's website portal -- sandiego.nextrequest.com – is also a helpful tool. Once the requestor enters a request into the portal, the requestor will receive status updates by email.

A small team under the mayor oversees the process by determining which departments have or may have the requested records and coordinating the City's response. Every department – including police, fire, streets, libraries, and parks and recreation – has staff assigned to assist this team. Providing a complete and accurate response to each request can take minutes or months depending on the scope of the request. Older City records may be housed off-site, or in files that have been closed out. Often, numerous departments have responsive records.

My Office trains City employees on applicable laws and advises departments when they have questions about their responsibilities under the law. In rare cases when an attorney sues, my Office defends the City and its taxpayers.

San Diego was sued nine times over public record requests in a two-year period -- suggesting a rate of less than 1 alleged error per 10,000 requests. Although this is admirable, our goal is to timely provide complete responses with no errors at all. To achieve that goal, I have again suggested the creation of a Transparency Office with a devoted and expanded public records team. By centralizing this important work, the City can provide the public with a single point of contact and ensure a properly trained staff provides timely responses that are coordinated across all departments.

Spreading the responsibility among departments may have made sense years ago, when the City received just a few hundred requests a year, but the increasing demand requires a new approach. What we've seen in litigation is that unless the City's response is flawless, a lawyer can sue and win attorney fees, even if the error was inadvertent or minor.

A recent case concerned a request for the 911 call about a specific incident. No 911 call was made, however, so no records existed. Unfortunately, City staff mistakenly informed the requestor that it had a record of the call, but that the record was exempt from disclosure under state law. City staff was right about the exemption, but wrong that it had a record. The City was sued and a judge ordered it to pay $27,661 in attorney's fees to the requester's lawyer -- all over a record that never existed.

The typical requester isn't looking for a payout, but for information about the condition of a Little League field, or about the number of traffic accidents that occur near their kid's school. That's why the public record law was created – as a tool for citizens to get quick and easy access to public information. Our City would further the intent of the law and better serve its citizens if it created a Transparency Office. This investment would benefit all of us.

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