AUDIT REPORT
Open Records Request Process
Multi-Agency
May 2020

Office of the Auditor
Audit Services Division
City and County of Denver
Timothy M. O’Brien, CPA
Denver Auditor
Audit Team

Cody Schulte, CPA, CIA, Audit Supervisor
Anna Hansen, Lead Auditor
Brandon Stolba, Senior Auditor
Taylor Younger, Associate Auditor
John-Michael Steiner, Audit Intern

Audit Management

Timothy M. O’Brien, CPA, Auditor
Valerie Walling, CPA, Deputy Auditor
Dawn Wiseman, CRMA, Audit Director

Audit Committee

Timothy M. O’Brien, CPA, Chairman
Rudolfo Payan, Vice Chairman
Jack Blumenthal
Leslie Mitchell
Florine Nath
Charles Scheibe
Ed Scholz

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Office of the Auditor
201 West Colfax Avenue, #705
Denver CO, 80202
(720) 913-5000 • Fax (720) 913-5253

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Cover photo illustration by Denver Auditor’s Office staff.
The objective of our audit of the city's open records process was to determine the degree to which the policies and procedures of selected mayoral and independent agencies ensured consistency and compliance with the Colorado Open Records Act and how these agencies track open records requests. We also sought to determine the degree to which the city makes the records request process accessible and transparent. I am pleased to present the results of this audit.

Our audit revealed the city's records request process is not as accessible or transparent as other Colorado governments. The city does not track overall records requests or how requests impact its operations. Nor is the city consistent in how it fulfills records requests. These deficiencies hinder the public's ability to confidently submit open records requests, and they hinder the city's ability to comply with state law.

Through stronger policies, guidance to agencies, and transparency, the city will be better equipped to make the open records process more efficient, effective, and transparent. Further, the city will be able to strengthen open records law compliance. Our report lists several related recommendations.

I am disappointed the Mayor's Office has chosen to disagree with recommendations that would clearly improve the open records request process for the public. Further explanation is in the Auditor's Addenda included in the Recommendations section of the report on pages 23-27.

This performance audit is authorized pursuant to the City and County of Denver Charter, Article V, Part 2, Section 1, “General Powers and Duties of Auditor,” and was conducted in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We extend our appreciation to personnel in the departments of Parks and Recreation, Transportation & Infrastructure, and Community Planning and Development; the Mayor’s Office; the City Attorney's Office; the Clerk and Recorder's Office; Denver Economic Development & Opportunity; the City Council; and the Denver Public Library — who assisted and cooperated with us during the audit. For any questions, please feel free to contact me at 720-913-5000.

Denver Auditor’s Office

Timothy M. O’Brien, CPA
Auditor
Open Records Request Process
May 2020

Objective
The audit had three objectives:

1. To determine the degree to which city policies and procedures ensure consistency and compliance with requirements in addressing open records requests;
2. To determine the extent to which the city tracks open records requests and resolutions; and
3. To determine the degree to which the city makes 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. Under certain extenuating circumstances, which are narrowly framed by the law, the records custodian can claim an additional seven-day extension. The state law also allows agencies to charge a fee for research and retrieval.

Highlights from Audit
The City’s Open Records Request Process Does Not Provide Sufficient Guidance and Transparency to the Public
The city does 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 Does Not Know the Amount of Effort It Is Spending on Open Records Requests
The city does not know how many open records requests it receives citywide, how much time is spent on them, or how much it charges in fees for those requests.

The City Is Inconsistent and Sometimes Late in Responding to Open Records Requests
- Fees and fee waivers are not consistent across reviewed agencies.
- The city is not consistently notifying requesters when their records requests take longer than the time allowed by law.
- The city is not always fully addressing open records requests.
- Agencies are not retaining sufficient supporting documentation of records requests.
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BACKGROUND

The federal Freedom of Information Act was passed in 1966 to increase citizens’ access to public records at the federal level. Following the enactment of the federal law, all states passed their own freedom of information laws.¹

The Colorado Open Records Act was enacted in 1968. Before the enactment of the law, records custodians had discretion to approve or deny information requests.² The purpose of the Colorado Open Records Act is to require all government agencies in Colorado to provide access to public documents in a timely manner.³

Most states, including Colorado, presume that a government document is “public” unless specifically exempted by law.⁴ In general, “public records” include all documents produced, maintained, or stored by the state or any agency or organization authorized to use public funds. Public documents can include a wide range of communications such as emails, traditional mail, audio and video recordings, photographs, spreadsheets, data, and other items considered to be public records.⁵

Overview of the Law

The Colorado Open Records Act requires most government records be available for inspection by anyone within a “reasonable time” unless prohibited by law or if release of the records would be contrary to public interest.⁶ Under normal circumstances, the law specifies that a “reasonable time” is a maximum of three working days.⁷ Under certain extenuating circumstances, the custodian can claim an additional seven-day extension.⁸ Extenuating circumstances apply when:

• A request is too broad and lacks specificity to allow the custodian reasonable time to prepare the records within the three-day period; or
• A request is so broad it requires the agency to divert most of its

³ Colo. Rev. Stat. § 24-72-203
⁸ Ibid.
resources; or

- A request involves such a large volume of records that the custodian cannot reasonably prepare the records within the three-day period.⁹

If a circumstance qualifies as extenuating, the custodian must notify the requester of the delay in writing within the initial three-day period.¹⁰

**Recent Amendments to Law** – The Colorado Open Records Act has been frequently amended over the years. In 1997, the law was updated to include government employee emails as a form of public record.¹¹ Additionally in 2017, Colorado lawmakers repealed the portion of the law that made willful violations a misdemeanor offense.¹² By decriminalizing violations, all records disputes are now handled through mediation or civil suits in state court.¹³

**Research and Retrieval Fee** – The Colorado Open Records Act allows government entities to charge a fee for research and retrieval or waive such fee.¹⁴ To bill for research, the entity must have published a written policy prior to receiving an information request.¹⁵ After the first hour — which must be provided free of charge — the law permits the entity to bill a maximum fee of $30 per hour, which is subject to consumer price index increases every five years beginning July 2019.¹⁶

As of July 1, 2019, Colorado lawmakers increased the maximum fee to $33.58 per hour based on the percentage change in the price index. To simplify pricing, the city decided to set its fee at $33 per hour starting July 2019.¹⁷ State law also allows custodians to charge an additional fee of up to 25 cents per page for paper copies of any public record.¹⁸

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¹⁵ Ibid.
Public information about open records requests for Denver can be found on the city’s website, denvergov.org. The website directs visitors to submit a request directly to the agency that keeps the records. Requesters are then provided a link to an online directory of all city agencies. Each agency has its own instructions on how to submit an open records request, and requesters are directed to address specific agencies directly with any questions.

Decentralized Oversight – The responsibility for fulfilling open records requests is largely decentralized among city agencies. However, the Mayor’s Office and the City Attorney’s Office provide training and guidance to each agency. Each agency must have an open records representative who coordinates responses to records requests and functions as the document custodian. In conjunction with the City Attorney’s Office, the Mayor’s Office released a citywide memo in July 2019 providing guidelines for open records compliance. Furthermore, the City Attorney’s Office aims to provide training to each agency’s open records representatives every six months.

Because of the varying sizes and missions of each agency, individual agencies are permitted to develop specific policies under the guidance of the City Attorney’s Office. The mandatory requirements outlined in the memo are that:

- Each agency must have a records request representative who will coordinate responses and function as the document custodian.
- The representative must process, track, and maintain records for all requests and responses. Documents related to open records requests must be kept for one year.
- The representative must respond in writing to any records request.
- The Colorado Open Records Act does not require a specific format for requests; however, agencies may choose to require information requests in writing.
- Most requests for documents are open records requests; however, agencies do not have to answer questions. The custodian is required only to provide any relevant information pertaining to the request.
- Agencies are required to respond to records requests within three business days of receipt — not counting the day the request was received.
- Agencies may claim a seven-day extension when (1) a request is so broad it cannot be produced in three days or (2) the agency would need to devote most of its resources to meet the deadline.
Figure 1 provides a visual representation of the open records process within the City and County of Denver.

**FIGURE 1. Denver’s Open Records Process**

START

- Requester submits Colorado Open Records Act (CORA) request for document(s) to a city agency

Agency does not have document(s)

- Takes LESS than an hour to fulfill request

Agency informs requester; request has been addressed**

Agency has document(s)

- Takes MORE than an hour to fulfill request

Agency provides document(s)* to requester for free

Agency sends time and cost estimate to requester ($33/hour)

Agency believes it would take an extraordinary amount of time to provide or finds request unclear

- Works with requester to modify request to be more concise

Requester approves search and sends payment

Requester approves search and sends payment

WITHIN 3 BUSINESS DAYS OF REQUEST RECEIPT

Agency collects and provides document(s)* to requester

Agency collects and provides document(s)* to requester

WITHIN 3 BUSINESS DAYS AFTER PAYMENT RECEIPT

Agency provides document(s)* to requester for free

Agency sends time and cost estimate to requester ($33/hour)

Agency believes it would take an extraordinary amount of time to provide or finds request unclear

- Works with requester to modify request to be more concise

Requester approves search and sends payment

Requester approves search and sends payment

WITHIN 7 BUSINESS DAYS

Agency collects and provides document(s)* to requester

Agency collects and provides document(s)* to requester

*Requested documents may be unavailable to requester because they are privileged or confidential by law, and/or documents provided may have confidential, privileged portions redacted. There could be a fee for hard copies.

**If the agency does not have the documents requested, the agency may refer requester to agency that does have the documents.

Source: Auditor’s Office analysis of the City and County of Denver’s open records process.
FINDING 1

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

The Colorado Open Records Act’s goal is transparency in government, and it was enacted to allow all public records to be open for inspection by any person in a reasonable time. One of the tenets for transparency is building trust within the community by making more information publicly available.

The City and County of Denver’s open records webpage states that the city is committed to making city government open, accountable, and accessible to the public. However, when compared to the amount of information other cities provide the public on their open records request processes, the city falls short. Specifically, unlike other cities, we found that the city does not have a centralized request intake process, electronic request form, or provide a direct link to its open records webpages. Lack of transparency and accessibility to open records can hurt public trust.

By the city not providing more information to the public, open records requests could go to the wrong agency and result in rerouted requests. These rerouted requests indicate the city could do a better job directing requesters to the correct agency. Additionally, we obtained evidence showing that city officials, in the past, discussed among themselves some of the same methods our audit recommends to increase transparency and improve guidance related to the open records request process. However, city officials took no action to make those improvements.

Compared to other municipalities, Denver’s open records webpage does not provide adequate guidance to the public on how to submit an open records request. For example, the city’s homepage does not provide a direct link to the city’s open records request webpage. Instead, requesters must manually search for it. Further, the open records webpage does not clearly explain what the Colorado Open Records Act is or how it works. Instead, it only provides limited information on open records request fees, a reference to the state law, and a small section titled “Common Records Requested” with links to five agencies that typically handle a high volume of requests.

In contrast, we found that most other municipalities we evaluated link to their open records webpages from their city’s homepage. These municipalities are:

19 Colo. Rev. Stat. § 24-72-201


• Arapahoe County;
• El Paso County;
• Jefferson County;
• Larimer County;
• City of Aurora;
• City of Colorado Springs; and
• City of Fort Collins.

Additionally, the peer municipalities provide more thorough information that better informs requesters on how to submit an open records request. For example, on their records request webpages, some municipalities post a centralized online request form, a public-facing policy, frequently asked questions, and an agency directory specific to open records.

Table 1 below displays in more detail how the city compares to other Colorado municipalities in providing easier access to information and educating the public on open records requests.

In addition to the practices these benchmark municipalities implement, we also found the National Freedom of Information Coalition — a national, nonpartisan, nonprofit organization that promotes openness and

<table>
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<th>Colorado Cities and Counties Evaluated</th>
<th>Is the open records website directly accessible?</th>
<th>Does the site include a dedicated public records webpage?</th>
<th>Is there an online records request form?</th>
<th>Is there a public-facing records policy?</th>
<th>Does the webpage list the records custodian’s contact information?</th>
<th>Is there a Frequently Asked Questions section?</th>
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<tr>
<td>Arapahoe County</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
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<td>El Paso County</td>
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<tr>
<td>City of Colorado Springs</td>
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<tr>
<td>City of Fort Collins</td>
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<td>Y</td>
<td>N</td>
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</tr>
<tr>
<td>City and County of Denver</td>
<td>N</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
</tbody>
</table>

Source: Auditor’s Office analysis of surrounding cities’ and counties’ websites.

Note: All peer municipalities have a direct link to public records webpages on their main websites, while Denver does not.
transparency in government — encourages governments to provide easy access to open records information by publishing open records policies online along with custodian contact information. The coalition notes a majority of the 50 most populous U.S. metro areas use some form of an online records request portal. Further, the coalition encourages the use of an online records request portal to improve timeliness, efficiency, and responsiveness.

**Rerouted Records Requests** – We conducted an analysis of how many open records requests initially went to the wrong agency and were consequently rerouted to a new agency.

We found an overall trend where requesters routinely sent open records requests to the incorrect city agency. While we recognize that agencies may not be able to completely eliminate rerouted requests no matter how much guidance is given, the percentage of rerouted requests we found suggests that people who submitted records requests may have had trouble locating the correct agency. As Table 2 displays, the agencies with the highest percentage of rerouted requests included the Clerk and Recorder’s Office, the Department of Parks and Recreation, and Denver Economic Development & Opportunity.

**TABLE 2. Open Records Requests Rerouted, 2018-2019**

<table>
<thead>
<tr>
<th>Agency</th>
<th>Number of Requests</th>
<th>Number of Reroutes</th>
<th>Percentage Rerouted</th>
</tr>
</thead>
<tbody>
<tr>
<td>311 Call Center</td>
<td>436</td>
<td>11</td>
<td>2.5%</td>
</tr>
<tr>
<td>City Attorney’s Office</td>
<td>200</td>
<td>8</td>
<td>4.0%</td>
</tr>
<tr>
<td>Denver Economic Development &amp; Opportunity</td>
<td>43</td>
<td>4</td>
<td>9.3%</td>
</tr>
<tr>
<td>Department of Transportation &amp; Infrastructure</td>
<td>291</td>
<td>14</td>
<td>4.8%</td>
</tr>
<tr>
<td>Office of the Clerk and Recorder</td>
<td>115</td>
<td>43</td>
<td>37.4%</td>
</tr>
<tr>
<td>Department of Parks and Recreation</td>
<td>64</td>
<td>13</td>
<td>20.3%</td>
</tr>
<tr>
<td>Mayor’s Office</td>
<td>38</td>
<td>2</td>
<td>5.3%</td>
</tr>
</tbody>
</table>

**Source:** Auditor’s Office analysis of agency rerouted requests.

**Note:** Figures reported in this table are based on open records request populations agencies provided to the audit team.

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The City Does Not Provide Enough Guidance for Submitting Open Records Requests

Based on our analysis of peer cities’ practices, the National Freedom of Information Coalition’s best practices, and the city’s rerouted requests, the city lacks publicly available information about its open records process because of three main areas:

• First, the city does not have a public-facing open records policy to explain what the Colorado Open Records Act is or how the records request process works.

• Second, the city provides limited help to requesters for determining the correct agency to send their request to. The city’s website only provides a small section titled “Common Records Requested” with links to five agencies that typically handle a high volume of requests. Otherwise, the public can only access a large and complex directory that does not provide any information on what types of documents each agency maintains.

• Finally, the city does not have a standardized records request intake process. Instead, each agency is responsible for designing its own process requesters must navigate.

Efficiency of the city’s open records request process can be improved through a new or existing workflow software system. According to the city’s Technology Services agency, the city already has some platforms for existing systems such as Salesforce and Sharepoint. In addition, Colorado Springs uses Accela for its request intake process, which is a program Denver already uses for other applications.

Without better guidance, the public may continue struggling to submit open records requests. Additionally, the open records process may continue to be affected by inefficiencies such as repeated follow-up communication between agencies and requesters and requests that reach the incorrect agency. Without providing much guidance on its open records process, the city leaves the requester largely on their own, with limited options.

Because of frustration created by rerouted requests, some members of the public may abandon open records requests and not obtain access to the information they seek. Continued issues with records request responses could result in reputational damage to the city or individual agencies. This could create the perception among the public the city is not being transparent or open, which is in direct contrast with the stated goal of the Colorado Open Records Act.
RECOMMENDATION 1.1

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 records request.

Agency Response: Agree, Implementation Date – Sept. 29, 2020

RECOMMENDATION 1.2

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 Response: Agree, Implementation Date – Sept. 29, 2020

RECOMMENDATION 1.3

Determine Feasibility of Standardized Intake Process – The Mayor’s Office should conduct a cost-benefit analysis for creating a standardized intake process for receiving open records requests in writing and promptly forwarding them to the appropriate records custodian or agency as determined by the requester. The Mayor’s Office should formally document the analysis regardless of outcome.

Agency Response: Disagree

Auditor’s Addendum: See pages 23-24 under Recommendation 1.3

RECOMMENDATION 1.4

Implement Online Form – Depending on the outcome of the cost-benefit analysis conducted in Recommendation 1.3, the Mayor’s Office should create and use an online form that is automatically forwarded to the selected agency. The implementation of an online form could be facilitated by an existing or new workflow system that allows for automated forwarding. The Mayor’s Office should document a formal plan and timeline for implementation of the online form.

Agency Response: Agree, Implementation Date – Sept. 29, 2020
FINDING 2

The City Does Not Know the Amount of Effort It Is Spending on Open Records Requests

The city does not know what impact the Colorado Open Records Act has on city operations and cannot be transparent with the public about open records data. Specifically, the city does not know how many open records requests it processes, how much time is spent on them, or the amounts it has charged in fees to requesters.

Most city agencies we evaluated already independently track their open records requests using spreadsheets. However, the city does not combine this data citywide. We looked at six city agencies and how they track their open records requests:

- City Attorney’s Office;
- Clerk and Recorder’s Office;
- Denver Economic Development & Opportunity;
- Department of Parks and Recreation;
- Department of Transportation & Infrastructure; and
- Mayor’s Office.

We found that all but one — the Mayor’s Office — were using spreadsheets to individually track their open records requests. Of the five agencies that tracked their open records requests, none analyzed their data to identify trends in how many requests they receive, how much time they spend fulfilling requests, or how much money they recover. Further, no city agency combines this information to measure the overall impact open records requests have on the city.

Inconsistencies in Tracking Open Records Request Data – The city is unable to measure the impact of open records requests, because city agencies are not consistent in how they track requests. These inconsistencies range from what types and how many data fields agencies track to how long agencies have been tracking requests.

For example, Denver Economic Development & Opportunity and the Department of Transportation & Infrastructure record open records request fees in their tracking spreadsheets, but the Mayor’s Office and the Clerk and Recorder’s Office do not. Also, the City Attorney’s Office tracks 10 different data fields, including the date the request was received, the date a response was due, and who sent the request, while the Mayor’s Office does not track any data fields nor does it use a spreadsheet to track open records requests.
Additionally, no agency specifically tracks how much time it spends fulfilling open records requests.

Neither the Mayor’s Office nor the City Attorney’s Office provides specific, standardized guidance to city agencies telling them what data to track and how to track it. City guidelines state only that “every agency must track the (open records) requests and responses.” Mayor’s Office personnel indicated that measuring the impact of open records requests is not a priority for the city and that the Colorado Open Records Act does not require cities to track data.

Also, Mayor’s Office personnel told the audit team that tracking additional data would require additional resources beyond what is already available. However, most agencies are already tracking much of the basic data needed, such as the number of records requests received and the amount of fees charged.

**Comparisons with Other Municipalities** – The audit team identified some best practices for tracking open records requests from cities and counties inside and outside Colorado. For example, the state of Washington mandates municipalities track 15 different metrics on public records request data. Some of these metrics include:

- How many requests an agency received;
- How much staff time was spent to fulfill requests;
- How much it cost the agency to fulfill requests;
- How long it took to respond to requests; and
- How much money the agency charged requesters.\(^{23}\)

Because of these metrics, cities such as Seattle have valuable data on which to base decisions and identify areas of weakness. In 2018, Seattle found it had fulfilled 14,352 public records requests and spent an estimated 119,494 staff hours fulfilling those requests at a cost to the city of an estimated $7.5 million.\(^{24}\)

Locally, Larimer County in Colorado publishes an online database of all open records requests it receives and which documents it provides or cannot provide in response to those requests. This database provides transparency by allowing the public to see how many and what types of requests the county received as well as what documents it provided. By doing this, members of the public can proactively retrieve data from previous requests and learn from the requests of others.

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\(^{23}\) Revised Code of Washington, § 40.14.026

Although it is not required by the Colorado Open Records Act, tracking and reporting on data at an organizational level is important for informing policy decisions, knowing how well an organization is performing, and for identifying areas of improvement. In 2016, Congress established the U.S. Commission on Evidence-Based Policymaking to evaluate how the government could use data to make better decisions. The commission’s final report said access to data gave policymakers important information for improving programs. The commission said that before informed decisions can occur, though, the data must first exist and be collected.

As a result of the city not collecting open records request data, the Mayor’s Office does not know how well the city is complying with the Colorado Open Records Act, what impact records requests may have on city agencies, or how well the city’s process works.

Without citywide data, the Mayor’s Office also does not have foundational information that could be used to improve effectiveness and efficiency and to allow for informed decision-making. Further, the Mayor’s Office cannot be transparent with the public about how open records requests impact the city and how much the city charges in records request fees. Disclosing this information could increase city transparency and allow the public to understand more about the city’s open records process.

**RECOMMENDATION 2.1**

**Track High-Level Data** – The Mayor’s Office should add guidance requiring agencies to track high-level records request data including the number of open records requests an agency receives, an estimate of how many hours staff spend on open records requests, and how much the agency charged in fees.

**Agency Response: Agree, Implementation Date – Sept. 29, 2020**

**RECOMMENDATION 2.2**

**Report Data to Mayor’s Office** – The Mayor’s Office should require agencies to report the high-level data points mentioned in Recommendation 2.1 to the Mayor’s Office annually.

**Agency Response: Disagree**

**Auditor’s Addendum: See pages 24-25 under Recommendation 2.2**

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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.

Agency Response: Disagree

Auditor’s Addendum: See page 25 under Recommendation 2.3
FINDING 3
The City Is Inconsistent and Sometimes Late in Responding to Open Records Requests

The public's experience with and perception of the city is shaped by each encounter people have with city agencies. A good experience is built on the perception that the public's needs are treated with consistency and care.27

We found the city is not consistent in how its agencies process open records requests and is not always following Colorado Open Records Act requirements. Specifically, some city agencies do not:

- Assess fees consistently;
- Notify requesters if their requests are taking longer than required;
- Fully address each request; and
- Retain the required supporting documentation.

As a result, members of the public may not have a coherent experience when submitting open records requests to the city. By improving compliance, consistency, and timeliness, the city can foster trust with the public, decrease confusion, and mitigate reputational risk.

Fees and Fee Waivers Are Not Consistent across Agencies

We found that city agencies do not apply open records request fees consistently. Specifically, we compared the policies and practices of eight different city agencies and found five areas where records request fees were handled inconsistently:

1. Agencies are inconsistently charging for duplicate requests. A duplicate request is a request for the same documents that has already been fulfilled within the past calendar year. One agency's

policy is to charge the same fee for each duplicate request, while other agencies will fulfill duplicate requests free of charge, since the documents are readily available.

2. Agencies do not consistently collect fees before beginning work. One agency allows work to begin on a request and can even provide documents to a requester before receiving full payment.

3. Agencies do not account for open records request fee revenue in the same way. We found that most agencies account for records request fee revenue in a miscellaneous account and cannot easily run reports to confirm how much they receive in fees. Only two agencies account for records request fees in a separate revenue account.

4. Agencies do not grant records request fee waivers consistently. Some agencies have a policy to never grant fee waivers, while other agencies grant fee waivers on a case-by-case basis.

5. Agencies do not consistently charge the same hourly rate. One agency charged more than the allowable open records fee by charging $35 per hour for a records request in 2018 when the maximum rate was $30 per hour. Additionally, the Clerk and Recorder’s Office and City Council do not have updated policies reflecting the current open records request fee increase and still list the $30 hourly rate as current.28

In each of these five issues, the Colorado Open Records Act does not have any general requirements, other than that agencies may not charge more than the current hourly fee rate of $33.58 set forth in the law. As city management, the Mayor’s Office has not created any standardized city policies for how fees should be applied other than the citywide fee limit of $33.

The U.S. Government Accountability Office states management is responsible for designing effective policies and procedures that fit an organization’s circumstances and address objectives and risks.29 As a result of having nonstandard open records policies and practices, the city is not responding to records requests equitably. Therefore, the public can have different experiences depending on the agency they request information from. These varying experiences can have a negative impact on how the public perceives the city’s fairness, transparency, and efficiency. Additionally, varied experiences can lead to mistrust and misunderstanding and hurt the city’s reputation.

28 The Clerk and Recorder’s Office and the City Council are headed by elected officials, independent of the Mayor’s Office.

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The Colorado Open Records Act dictates records be provided to the requester within a “reasonable time” that is presumed to be three business days. This time period may be extended to an additional seven business days if extenuating circumstances exist and are communicated to the requester in writing. We found, in Denver, when a request is taking longer than the three-day requirement, most of the city agencies we evaluated did not explain to the requester why the request was taking longer nor did they invoke the extenuating circumstances provision of the law.

For this audit, we conducted “secret shopper” testing in which we submitted open records requests using aliases to get a firsthand view of how agencies handle requests from the public. This test and its results, along with the open records compliance analyses we performed on actual records requests in 2018 and 2019, are further detailed in Appendix A.

Although we did not find any major compliance issues in these tests, we found agencies were not properly explaining to requesters when more time was needed to complete a request by invoking extenuating circumstances. For example, through our secret shopper procedure, we found that out of the 14 requests we submitted, four responses came after the three-day deadline. Specifically, in one instance, although the agency estimated one hour to complete the request, we did not receive responsive records until eight days later.

In another example, we did not receive the requested records until 12 business days after we had mailed the payment. The agency did not invoke the extenuating circumstances provision in writing, which would have justified the delay. We followed up with the agency regarding the lateness of the response, and agency representatives explained that the delay was because of the unexpectedly longer time needed to review and redact the responsive documents. They were not aware of the legal requirement to invoke the extenuating circumstances provision in writing.

Although the Mayor’s Office has stated in its open records guidance that extenuating circumstances can be cited, we found the office does not specify that the extenuating circumstances provision must be invoked in writing to the requester, as the Colorado Open Records Act requires.

As the City Attorney’s Office assisted the Mayor’s Office with the creation of its open records guidance, we asked the City Attorney’s Office why this

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additional explanation was excluded from the guidance. Officials explained it was left out because they intended for agencies to contact the City Attorney’s Office if they wanted to cite extenuating circumstances on a case-by-case basis.

The open records guidance indicates that extenuating circumstances should not be relied upon to extend deadlines regularly. However, our “secret shopper” testing demonstrated multiple occasions where agencies were extending the timeline without adequate communication to the requester, thus ignoring the law and this guidance.

While the city lacks specific guidance for citing extenuating circumstances, we found that one of the cities we used for comparative purposes during this audit allows extra leeway in this area. Specifically, Fort Collins has an online, public-facing policy that explains that, if it is not possible to provide the documents after the three-day time frame, extenuating circumstances may be cited upon written notice to the requester for an extension of an additional seven days.

If it is still not possible for the request to be addressed even after the extension, Fort Collins’ policy allows the records custodian to work with the requester to set a future date to provide the records. This additional explanation enables custodians to standardize their procedures for invoking extenuating circumstances and addressing situations when requests take longer than the allowable extensions for extenuating circumstances.

In 2001, the Colorado attorney general issued a formal opinion answering frequently asked questions about the Colorado Open Records Act. One of these questions asked, “What if I have a large request that contains many documents?”

In this opinion, the attorney general did not release a custodian from providing records within the maximum 10 business days. However, they spoke to the need to communicate with the requester that a delay was imminent and that the two parties needed to establish communication
and an understanding of when the records could realistically be provided. Because we found these situations to exist in Denver, the Mayor’s Office and the City Attorney’s Office could consider this as an option for additional guidance to records custodians.

Failing to communicate in writing that a request is taking longer than the maximum three-day deadline could give the impression the city is not being responsive. Additionally, there is also a risk of civil litigation if a requester were to sue the city over delays in getting documentation. Providing further guidance for extenuating circumstances may improve custodians’ compliance with open records requirements.

**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.

**Agency Response: Agree, Implementation Date – Sept. 29, 2020**

**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.

**Agency Response: Agree, Implementation Date – Sept. 29, 2020**

The City Is Not Always Fully Addressing Open Records Requests

In addition to the timeliness issues previously identified, we also found that some open records requests were incomplete as the city did not provide all the records requested. Specifically, from our secret shopper experience, we found that out of the 14 requests submitted, four were incomplete.

For example, in one instance, the audit team sent a request to the Denver City Council asking for a former city employee’s email correspondence and work history records, including titles, dates of employment, and salaries.

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A QUESTIONABLE REJECTION

In 2019, the Department of Transportation & Infrastructure did not fulfill an open records request according to requirements under state law.

Specifically, a person submitted a records request, and the department did not respond. After the requester wrote to the department asking the agency to acknowledge the request, the department stated that it did not believe the request was an open records request. Only once the requester included terminology that cited the Colorado Open Records Act did the department acknowledge the request and fulfill it almost one month after it was submitted.

The Colorado Open Records Act does not require requesters to cite the law, and the City Attorney's Office says that the law does not specify any required format to submit a request other than that it must be for documents. As a result, the department’s failure to recognize an open records request led to a late fulfillment of the request and a violation of the Colorado Open Records Act.

After back-and-forth communication with the records custodian to refine the request, the agency provided the email correspondence but not the work history of the employee.

As open records requesters, we were expecting the agency to address every aspect of our request. When we did not receive all the records, we followed up with agency officials. Their explanation was that they thought by not addressing the work history aspect of the request, this implied that the agency did not have such documents. State law requires records custodians to notify requesters if they are not the custodian of the requested records, but in our case, we did not receive such notification.

In another instance, we requested two records from the Clerk and Recorder’s Office. One was for the cost of a ballot drop-off box, and the other was for the installation of the box. When the agency provided the documents, the cost of the box itself was addressed but not the installation. Upon follow-up, the agency also explained that by not addressing the cost of installation, it implied that no records existed.

The International City/County Management Association encourages governments to communicate openly and transparently with the public. In addition, taking the initiative to be open and proactively communicate with the public increases trust, empowers the public with knowledge, increases engagement from the community, and enables a city to better understand the public’s needs and expectations, the association says.

Failure to explain to a requester that an agency does not have responsive documents could result in the public questioning the city’s transparency. By adding an upfront and simple explanation about any outstanding items

requested, the agency can help answer questions without having the requester contact the agency or wonder what happened to the rest of their request.

In addition, by proactively adding information and informing the public, the city can better manage expectations and relieve possible frustration caused by misunderstanding.

RECOMMENDATION 3.6

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 Response: Agree, Implementation Date – Sept. 29, 2020

Some Agencies Are Not Retaining Sufficient Documentation of Open Records Requests

During our testing, we found that not all city agencies are retaining the required supporting documentation for their open records requests. The city’s records retention schedule requires all city agencies to keep requests, as well as supporting documentation relating to the response or denial of the request, for one year after a request is completed.

The audit team evaluated supporting documentation for 30 open records requests from the public. Of the five requests the audit team evaluated from the Mayor’s Office, three did not contain all the required supporting documentation. In these three requests, the Mayor’s Office did not have documentation that showed how it responded to and fulfilled the requests.

Additionally, the audit team found one request from the Department of Parks and Recreation and one from Denver Economic Development & Opportunity that did not have enough supporting documentation. Specifically, Parks and Recreation was missing documentation that showed how a request was amended and resulted in lesser fees being charged, and Denver Economic Development & Opportunity did not have documentation showing which documents it provided in response to a request.

The open records request guidelines created by the Mayor’s Office and City Attorney's Office do not specifically explain what types of documents the retention schedule requires agencies to keep. Therefore, city agencies may not be clear on what documents they are required to keep.

Because some agencies do not keep enough supporting documentation for their records requests, they may be unable to prove their compliance

34 The audit team evaluated five requests from six city agencies. For further information, reference Appendix A.
with the law. Further, agencies may duplicate efforts and waste time and resources fulfilling repeat requests if supporting documentation is missing from the original request.

**RECOMMENDATION 3.7**

**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 Response: Agree, Implementation Date – Sept. 29, 2020**
RECOMMENDATIONS

The agency narratives below are reprinted verbatim from the agency’s response letter, shown in the next section of this report.

1.1 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 records request.

Agency Response: Agree, Implementation Date – Sept. 29, 2020

Agency Narrative: The Mayor’s Office, in consultation with the City Attorney’s Office, will add “frequently asked questions or similar guidance” for making records requests to the website. The Mayor’s Office, in consultation with the City Attorney’s Office, respectfully disagrees with the recommendation to add “city rules and guidelines” to the city’s website about open records requests, because state statute governs open records requests. The Mayor’s Office and City Attorney’s Office will continue to update and provide written guidelines and training sessions to agencies.

1.2 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 Response: Agree, Implementation Date – Sept. 29, 2020

Agency Narrative: The Mayor’s Office agrees with this recommendation and will work with the departments under the purview of the Mayor to include this information on the city’s website.

1.3 Determine Feasibility of Standardized Intake Process – The Mayor’s Office should conduct a cost-benefit analysis for creating a standardized intake process for receiving open records requests in writing and promptly forwarding them to the appropriate records custodian or agency as determined by the requester. The Mayor’s Office should formally document the analysis regardless of outcome.

Agency Response: Disagree

Agency Narrative: A cost-benefit analysis is unnecessary to reach the desired outcome of this recommendation. Please see narrative for Recommendation 1.4 for additional reasoning.

Auditor’s Addendum: While officials in the Mayor's Office said they “disagree” with this recommendation, their narrative indicates they agree with the need for a standardized intake process itself — which is the underlying purpose of the recommendation. However, they said in their
response to Recommendation 1.4 that they will take a different approach by bypassing a cost-benefit analysis to get started on the implementation of this project. We consider this acceptable as it ultimately results in the standardization of the open records request process.

1.4 **Implement Online Form** – Depending on the outcome of the cost-benefit analysis conducted in Recommendation 1.3, the Mayor’s Office should create and use an online form that is automatically forwarded to the selected agency. The implementation of an online form could be facilitated by an existing or new workflow system that allows for automated forwarding. The Mayor’s Office should document a formal plan and timeline for implementation of the online form.

**Agency Response: Agree, Implementation Date – Sept. 29, 2020**

Agency Narrative: The Mayor’s Office will instruct the city’s website managers to create online forms through which individuals can submit Colorado Open Records Requests to city agencies on individual city agencies pages for ease of submission of such requests.

2.1 **Track High-Level Data** – The Mayor’s Office should add guidance requiring agencies to track high-level records request data including the number of open records requests an agency receives, an estimate of how many hours staff spend on open records requests, and how much the agency charged in fees.

**Agency Response: Agree, Implementation Date – Sept. 29, 2020**

Agency Narrative: The Mayor’s Office will provide guidance to all departments under the purview of the Mayor regarding tracking high-level records request data including the number of open records requests an agency receives, an estimate of how many hours staff spent on open records requests, and how much the agency charged in fees.

2.2 **Report Data to Mayor’s Office** – The Mayor’s Office should require agencies to report the high-level data points mentioned in Recommendation 2.1 to the Mayor’s Office annually.

**Agency Response: Disagree**

Agency Narrative: 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.

**Auditor’s Addendum:** 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, 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.

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.

**Agency Response: Disagree**

*Agency Narrative: 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.*

**Auditor’s Addendum:** 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.

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.

**Agency Response: Agree, Implementation Date – Sept. 29, 2020**

*Agency Narrative: The Mayor’s Office will provide guidance to all departments under the purview of the Mayor regarding improving the consistency in how the city applies and treats open records request fees.*

3.2 **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 Response: Disagree**

*Agency Narrative: 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.

**Auditor’s Addendum:** 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.

3.3 **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 Response: Disagree**

**Agency Narrative:** 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.

**Auditor’s Addendum:** 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.

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.

**Agency Response: Agree, Implementation Date – Sept. 29, 2020**

**Agency Narrative:** The Mayor’s Office, in consultation with the City Attorney’s Office, will provide enhanced guidance and training to agencies on extenuating circumstances.

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.

**Agency Response: Agree, Implementation Date – Sept. 29, 2020**
Agency Narrative: The Mayor’s Office, in consultation with the City Attorney’s Office, will 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 record.

3.6 **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 Response: Agree, Implementation Date – Sept. 29, 2020**

Agency Narrative: The Mayor’s Office, in consultation with the City Attorney’s Office, already provides this guidance, but will place additional emphasis on the issue in future updates to written guidelines and trainings for agencies.

3.7 **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 Response: Agree, Implementation Date – Sept. 29, 2020**

Agency Narrative: The Mayor’s Office, in consultation with the City Attorney's Office, will 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.
May 7, 2020

Auditor Timothy M. O’Brien, CPA
Office of the Auditor
City and County of Denver
201 West Colfax Avenue, Dept. 705
Denver, Colorado 80202

Dear Mr. O’Brien,

The Office of the Auditor has conducted a performance audit of “Open Records Request Process, Multi-Agency, May 2020.”

This memorandum provides a written response for each reportable condition noted in the Auditor’s Report final draft that was sent to us on April 23, 2020. This response complies with Section 20-276 (c) of the Denver Revised Municipal Code (D.R.M.C.).

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

RECOMMENDATION 1.1
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 records request.

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<td>Agree</td>
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<td>Theresa Marchetta 720-865-9035</td>
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Narrative for Recommendation 1.1
The Mayor’s Office, in consultation with the City Attorney’s Office, will add “frequently asked questions or similar guidance” for making records requests to the website. The Mayor’s Office, in consultation with the City Attorney’s Office, respectfully disagrees with the recommendation to add “city rules and guidelines” to the city’s website about open records requests, because state statute governs open records requests. The Mayor’s Office and City Attorney’s Office will continue to update and provide written guidelines and training sessions to agencies.

RECOMMENDATION 1.2
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.

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Narrative for Recommendation 1.2
The Mayor’s Office agrees with this recommendation and will work with the departments under the purview of the Mayor to include this information on the city’s website.

RECOMMENDATION 1.3
Determine Feasibility of Standardized Intake Process – The Mayor’s Office should conduct a cost-benefit analysis for creating a standardized intake process for receiving open records requests in writing and promptly forwarding them to the appropriate records custodian or agency as determined by the requester. The Mayor’s Office should formally document the analysis regardless of outcome.

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Narrative for Recommendation 1.3
A cost-benefit analysis is unnecessary to reach the desired outcome of this recommendation. Please see narrative for Recommendation 1.4 for additional reasoning.

RECOMMENDATION 1.4
Implement Online Form – Depending on the outcome of the cost-benefit analysis conducted in Recommendation 1.3, the Mayor’s Office should create and use an online form that is automatically forwarded to the selected agency. The implementation of an online form could be facilitated by an existing or new workflow system that allows for automated forwarding. The Mayor’s Office should document a formal plan and timeline for implementation of the online form.

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Narrative for Recommendation 1.4
The Mayor’s Office will instruct the city’s website managers to create online forms through which individuals can submit Colorado Open Records Requests to city agencies on individual city agencies pages for ease of submission of such requests.

AUDIT FINDING 2
The City Does Not Know the Amount of Effort It is Spending on Open Records Requests

RECOMMENDATION 2.1
Track High-Level Data – The Mayor’s Office should add guidance requiring agencies to track high-level records request data including the number of open records requests an agency receives, an estimate of how many hours staff spend on open records requests, and how much the agency charged in fees.

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<td>Agree</td>
<td>Tuesday, September 29, 2020</td>
<td>Theresa Marchetta 720-865-9035</td>
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Narrative for Recommendation 2.1
The Mayor’s Office will provide guidance to all departments under the purview of the Mayor regarding tracking high-level records request data including the number of open records requests an agency receives, an estimate of how many hours staff spent on open records requests, and how much the agency charged in fees.

RECOMMENDATION 2.2
Report Data to Mayor’s Office – The Mayor’s Office should require agencies to report the high-level data points mentioned in Recommendation 2.1 to the Mayor’s Office annually.

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<td>Disagree</td>
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Narrative for Recommendation 2.2
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.

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.

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**Narrative for Recommendation 2.3**
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.

**AUDIT 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.

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**Narrative for Recommendation 3.1**
The Mayor’s Office will provide guidance to all departments under the purview of the Mayor regarding improving the consistency in how the city applies and treats open records request fees.

**RECOMMENDATION 3.2**
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.
Agree or Disagree with Recommendation | Target date to complete implementation activities (Generally expected within 60 to 90 days) | Name and phone number of specific point of contact for implementation
--- | --- | ---
Disagree | Not applicable | Not applicable

Narrative for Recommendation 3.2
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.

RECOMMENDATION 3.3
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.

Agree or Disagree with Recommendation | Target date to complete implementation activities (Generally expected within 60 to 90 days) | Name and phone number of specific point of contact for implementation
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Disagree | Not applicable | Not applicable

Narrative for Recommendation 3.3
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.

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.

Agree or Disagree with Recommendation | Target date to complete implementation activities (Generally expected within 60 to 90 days) | Name and phone number of specific point of contact for implementation
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Agree | Tuesday, September 29, 2020 | Theresa Marchetta 720-865-9035

Narrative for Recommendation 3.4
The Mayor’s Office, in consultation with the City Attorney’s Office, will provide enhanced guidance and training to agencies on extenuating circumstances.

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.

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Narrative for Recommendation 3.5
The Mayor’s Office, in consultation with the City Attorney’s Office, will 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.

RECOMMENDATION 3.6
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.

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Narrative for Recommendation 3.6
The Mayor’s Office, in consultation with the City Attorney’s Office, already provides this guidance, but will place additional emphasis on the issue in future updates to written guidelines and trainings for agencies.

RECOMMENDATION 3.7
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.

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Narrative for Recommendation 3.7
The Mayor’s Office, in consultation with the City Attorney’s Office, will 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.

Please contact myself at 720-865-9035 with any questions.

Sincerely,

Theresa Marchetta
Director of Strategic Communications and Media Policy

cc: Valerie Walling, CPA, Deputy Auditor
    Dawn Wiseman, CRMA, Audit Director
    Cody Schulte, Audit Supervisor
    Kristin Bronson, City Attorney
OBJECTIVE

The audit had three objectives:

1. To determine the degree to which city policies and procedures ensure consistency and compliance with requirements in addressing open records requests
2. To determine the extent to which the city tracks open records requests and resolutions
3. To determine the degree to which the city makes the open records process accessible and transparent

SCOPE

The audit’s scope included reviewing open records requests submitted during 2018 and 2019 to ensure compliance with Colorado Open Records Act requirements. Specifically, we examined records requests submitted to the Mayor’s Office, the City Attorney’s Office, the departments of Parks and Recreation and Transportation & Infrastructure (formerly the Department of Public Works), Denver Economic Development & Opportunity, and the Office of the Clerk and Recorder.

METHODOLOGY

We applied multiple methodologies to gather and analyze information pertinent to the audit objectives. The methodologies included but were not limited to:

- Interviewing the following individuals:
  - Representatives from the Mayor’s Office
  - Representatives from the City Attorney’s Office
  - Open records representatives from these selected agencies:
    - City Attorney’s Office;
    - Denver Economic Development & Opportunity;
    - Department of Parks and Recreation;
    - Department of Transportation & Infrastructure;
    - Mayor’s Office; and
    - Office of the Clerk and Recorder.
- Reviewing the Colorado Open Records Act
- Reviewing internal citywide open records request guidelines
- Reviewing citywide open records request training materials
• Conducting a gap analysis to compare city guidelines to those in the Colorado Open Records Act
• Reviewing open records policies from other Colorado cities, including Colorado Springs, Aurora, and Fort Collins, to perform a comparative analysis
• Performing “secret shopper” testing to evaluate how well agencies were complying with timeliness, accuracy, and completeness in responding to records requests
• Gathering a population of open records requests from the selected agencies and judgmentally selecting five requests from each agency to evaluate compliance with timeliness, cost, and duplication of requests
APPENDICES

Appendix A – Audit Methodology

Compliance Testing

The audit team conducted two tests to evaluate the city’s compliance with the Colorado Open Records Act: a judgmental sample test to evaluate past open records requests from six city agencies and a secret shopper test to determine compliance in the open records processes of seven agencies.

Judgmental Sample Test to Evaluate Past Open Records Requests – To build a population from which to sample and test open records requests, the audit team identified six city agencies that the audit team understood to receive a large volume of requests and/or elevated levels of media attention. We then asked these agencies to provide all open records requests they received in 2018 and 2019. The agencies were:

- The City Attorney’s Office;
- Denver Economic Development & Opportunity;
- The Department of Parks and Recreation;
- The Department of Transportation & Infrastructure (formerly the Department of Public Works);
- The Mayor’s Office; and
- The Office of the Clerk and Recorder.

In total, the six agencies provided 774 open records requests.35 Next, the audit team used a risk-based approach to judgmentally select 30 requests — five request records from each agency — for testing. The team identified high-risk requests based on one of or a combination of the following four attributes:

1. Potential duplicate requests;
2. The amount of fees charged;
3. Response time longer than the required three days; and
4. Internal staff notes that indicated irregularities.

Next, the team tested each records request for three attributes: (1) whether the agency fulfilled the request in time, (2) whether the agency charged for duplicate requests, and (3) whether the agency charged the appropriate fee for the given year.

Test results showed:

- The Mayor’s Office did not complete three of the five requests in time and did not retain enough supporting documentation for full testing of three requests;

---

35 The audit team could not validate the completeness and accuracy of the population, because there is no centralized database and no centralized oversight of open records requests.
• The City Attorney’s Office did not complete one of the five requests in time and did not retain enough supporting documentation for full testing of one request;
• The Department of Transportation & Infrastructure did not complete three of five requests in time;
• Denver Economic Development & Opportunity did not complete four of the five requests in time and did not retain enough supporting documentation for full testing of one request;
• The Clerk and Recorder’s Office did not complete one of the five requests in time and did not charge the correct fee for one request; and
• The Department of Parks and Recreation did not complete three of the five requests in time.

The audit team followed up with agencies that had failed attributes to determine their cause. For further discussion of this testing, reference Finding 3.

**Secret Shopper Test** – The audit team submitted its own open records requests to seven agencies. The audit team selected these seven city agencies based on the audit team’s understanding of the volume of records requests the agencies receive and/or the agencies’ elevated levels of media attention and to ensure a mix of mayoral and independent agencies. The team sent requests to the following four mayoral agencies:

• The Department of Community Planning and Development;
• The Department of Parks and Recreation;
• The Department of Transportation & Infrastructure; and
• Denver Economic Development & Opportunity;

And the following three independent agencies:

• The Denver Public Library;
• The Denver City Council; and
• The Office of the Clerk and Recorder.

The audit team excluded the City Attorney’s Office and the Mayor’s Office because of their familiarity with the audit. To maintain anonymity with the other agencies, the team used aliases to appear as if we were members of the public making the requests.

The audit team designed the 14 open records requests to be a mix of straightforward and difficult requests based on the types of documents each agency retains. The audit team sent one to three requests to each agency based on auditors’ judgment of the volume of requests an agency receives, current events, complaints that the Auditor’s Office received, and/or the agencies’ elevated media attention.

After the agencies completed the requests, the audit team tested each of the 14 requests for three attributes: (1) whether the agency initially responded in time, (2) whether the agency completed the request in time, and (3) whether the agency completely and accurately fulfilled the request. The purpose of this test was to gauge the current state of the open records request process and compliance in these seven city agencies from the public’s viewpoint.

The audit team determined:

• The City Council did not complete one request in time and did not completely or accurately address
another request;

• The Department of Parks and Recreation did not complete one request in time;
• The Denver Public Library did not complete one request in time and did not completely explain what appeared to be missing documentation for another request;
• The Department of Transportation & Infrastructure did not complete one request in time; and
• The Clerk and Recorder’s Office did not appear to completely address one request.

Additionally, the audit team determined the Department of Transportation & Infrastructure possibly did not completely or accurately address one additional request. The audit team was not able to make a complete determination because of insufficient supporting documentation.

The audit team followed up with agencies that had failed attributes to determine their cause. For further discussion of this testing, reference Finding 3.

**Gap Analysis**

The audit team compared the city’s internal open records process guidelines to the Colorado Open Records Act to determine how thoroughly the city’s guidelines address the state law’s requirements. The audit team followed up with the Mayor’s Office and the City Attorney’s Office to discuss areas where city guidelines do not address legal requirements. For a discussion of these results, reference Finding 3.

**Fee Application Consistency Analysis**

The audit team selected eight city agencies and compared their policies for applying open records request fees to determine how consistently they apply fees. The audit team selected the eight agencies based on the volume of records requests the agencies receive and the availability of information from other audit work the team completed. The agencies were:

• The City Attorney's Office;
• The Denver City Council;
• Denver Economic Development & Opportunity;
• The Department of Parks and Recreation;
• The Department of Transportation & Infrastructure;
• The Mayor’s Office;
• The Office of the Clerk and Recorder; and
• The Technology Services agency.

The audit team compared the policies of these eight agencies across 12 attributes:

1. Do agencies provide the first hour of research and retrieval for free?
2. Do agencies provide fee estimates?
3. Do agencies begin work on a request before or after payment is received?
4. Do agencies charge the correct hourly fee?
5. Do agencies charge 25 cents per page for physical copies?
6. Do agencies charge for providing records via email?
7. Do agencies charge for providing records on CDs or USB flash drives?
8. Do agencies charge for providing video footage?
9. Do agencies grant records request fee waivers?
10. Do agencies provide records request fee refunds if the estimate exceeded the actual cost of fulfillment?
11. How do agencies account for records request fee revenue?
12. Do agencies charge for duplicate requests?

For a discussion on the results of this analysis, reference Finding 3.

**Comparison of Cities and Counties**

The audit team selected seven Colorado cities and counties and compared their open records websites to the City and County of Denver’s open records website to determine whether they provided similar information to the public about their open records processes. These cities and counties were:

- Arapahoe County
- The City of Aurora
- The City of Colorado Springs
- The City of Fort Collins
- El Paso County
- Jefferson County
- Larimer County

The audit team selected these cities and counties based on proximity to Denver, population size, and the objective to include both cities and counties in the analysis. The audit team used professional judgment to gauge the level of information these municipalities provide to the public compared to the City and County of Denver.

For a discussion of this analysis, reference Findings 1-3.

**Analysis of Rerouted Open Records Requests**

The audit team evaluated open records requests from six agencies plus data from the Denver 311 contact center to determine how many requests within these agencies were rerouted to other agencies.
For this analysis, a rerouted request is a request that a member of the public initially sent to the wrong agency and was subsequently rerouted to a second agency. The purpose of this analysis was to gain anecdotal information about the number of records requests that initially go to the wrong agency. The audit team selected six city agencies based on the audit team’s understanding of agencies that regularly receive a large volume of requests and/or elevated levels of media attention. Those agencies were:

- The City Attorney’s Office;
- Denver Economic Development & Opportunity;
- The Department of Parks and Recreation;
- The Department of Transportation & Infrastructure;
- The Mayor’s Office; and
- The Office of the Clerk and Recorder.

The audit team asked the six agencies for all open records requests they received from 2018 through 2019. The agencies each provided the audit team with a list of open records requests. The audit team compiled the lists of records requests to create a population of 774 requests. The audit team could not validate the completeness and accuracy of the population, because there is no centralized database and no centralized oversight of open records requests. Therefore, the audit team looked through each records request and judgmentally determined how many of them were rerouted requests.

Additionally, the audit team used computer-aided audit tools to search the 311 contact center database for communication relating to the Colorado Open Records Act. This search resulted in 789 individual results spanning 2017-2019. Excluding results from 2017, the audit team went through each result to judgmentally determine whether it was a rerouted open records request.

For results and further discussion on this analysis, reference Finding 1.
Appendix B – Excerpts of the Colorado Open Records Act

Excerpts of the Colorado Open Records Act are reprinted below to allow readers to refer directly to the statute.


As used in this part 2, unless the context otherwise requires:

(1) "Correspondence" means a communication that is sent to or received by one or more specifically identified individuals and that is or can be produced in written form, including, without limitation:

   (a) Communications sent via U.S. mail;

   (b) Communications sent via private courier;

   (c) Communications sent via electronic mail.

(1.1) "Custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(1.2) "Electronic mail" means an electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. "Electronic mail" includes electronic messages that are transmitted through a local, regional, or global computer network.

(1.3) "Executive position" means any nonelective employment position with a state agency, institution, or political subdivision, except employment positions in the state personnel system or employment positions in a classified system or civil service system of an institution or political subdivision.

(1.5) "Institution" includes but is not limited to every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof. In particular, the term includes the university of Colorado, the regents thereof, and any other state institution of higher education or governing board referred to by the provisions of section 5 of article VIII of the state constitution.

(1.6) "Institutionally related foundation" means a nonprofit corporation, foundation, institute, or similar entity that is organized for the benefit of one or more institutions and that has as its principal purpose receiving or using private donations to be held or used for the benefit of an institution. An institutionally related foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

(1.7) "Institutionally related health care foundation" means a nonprofit corporation, foundation, institute, or similar entity that is organized for the benefit of one or more institutions and that has as its principal purpose receiving or using private donations to be held or used for medical or health care related programs or services at an institution. An institutionally related health care foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

(1.8) "Institutionally related real estate foundation" means a nonprofit corporation, foundation, institute,
or similar entity that is organized for the benefit of one or more institutions and that has as its principal purpose receiving or using private donations to be held or used for the acquisition, development, financing, leasing, or disposition of real property for the benefit of an institution. An institutionally related real estate foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

(1.9) "Local government-financed entity" shall have the same meaning as provided in section 29-1-901 (1), C.R.S.

(2) "Official custodian" means and includes any officer or employee of the state, of any agency, institution, or political subdivision of the state, of any institutionally related foundation, of any institutionally related health care foundation, of any institutionally related real estate foundation, or of any local government-financed entity, who is responsible for the maintenance, care, and keeping of public records, regardless of whether the records are in his or her actual personal custody and control.

(3) "Person" means and includes any natural person, including any public employee and any elected or appointed public official acting in an official or personal capacity, and any corporation, limited liability company, partnership, firm, or association.

(4) "Person in interest" means and includes the person who is the subject of a record or any representative designated by said person; except that, if the subject of the record is under legal disability, "person in interest" means and includes his parent or duly appointed legal representative.

(4.5) "Personnel files" means and includes home addresses, telephone numbers, financial information, and other information maintained because of the employer-employee relationship, and other documents specifically exempt from disclosure under this part 2 or any other provision of law. "Personnel files" does not include applications of past or current employees, employment agreements, any amount paid or benefit provided incident to termination of employment, performance ratings, final sabbatical reports required under section 23-5-123, C.R.S., or any compensation, including expense allowances and benefits, paid to employees by the state, its agencies, institutions, or political subdivisions.

(5) "Political subdivision" means and includes every county, city and county, city, town, school district, special district, public highway authority, regional transportation authority, and housing authority within this state.

(6) (a) (I) "Public records" means and includes all writings made, maintained, or kept by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121 (2), C.R.S., or political subdivision of the state, or that are described in section 29-1-902, C.R.S., and held by any local-government-financed entity for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

(II) "Public records" includes the correspondence of elected officials, except to the extent that such correspondence is:

(A) Work product;

(B) Without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds;

(C) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or that is communicated for the purpose
of requesting that the elected official render assistance or information relating to a personal and private matter that is not publicly known affecting the constituent or a communication from the elected official in response to such a communication from a constituent; or

(D) Subject to nondisclosure as required in section 24-72-204 (1).

(III) The acceptance by a public official or employee of compensation for services rendered, or the use by such official or employee of publicly owned equipment or supplies, shall not be construed to convert a writing that is not otherwise a "public record" into a "public record".

(IV) "Public records" means, except as provided in subparagraphs (VIII) and (IX) of paragraph (b) of this subsection (6), for an institutionally related foundation, an institutionally related health care foundation, or an institutionally related real estate foundation, all writings relating to the requests for disbursement or expenditure of funds, the approval or denial of requests for disbursement or expenditure of funds, by the institutionally related foundation, the institutionally related health care foundation, or the institutionally related real estate foundation, to, on behalf of, or for the benefit of the institution or any employee of the institution. For purposes of this subparagraph (IV), "expenditure" shall be defined in accordance with generally accepted accounting principles.

24-72-203. Public records open to inspection.

(1) (a) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.

(b) Where public records are kept only in miniaturized or digital form, whether on magnetic or optical disks, tapes, microfilm, microfiche, or otherwise, the official custodian shall:

(I) Adopt a policy regarding the retention, archiving, and destruction of such records; and

(II) Take such measures as are necessary to assist the public in locating any specific public records sought and to ensure public access to the public records without unreasonable delay or unreasonable cost. Such measures may include, without limitation, the availability of viewing stations for public records kept on microfiche; the provision of portable disk copies of computer files; or direct electronic access via online bulletin boards or other means.

(2) (a) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification, the person shall state in detail to the best of the person's knowledge and belief the reason for the absence of the records from the person's custody or control, the location of the records, and what person then has custody or control of the records.

(b) If an official custodian has custody of correspondence sent by or received by an elected official, the official custodian shall consult with the elected official prior to allowing inspection of the correspondence for the purpose of determining whether the correspondence is a public record.
(3) (a) If the public records requested are in the custody and control of the person to whom application is made but are in active use, in storage, or otherwise not readily available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour at which time the records will be available for inspection.

(b) The date and hour set for the inspection of records not readily available at the time of the request shall be within a reasonable time after the request. As used in this subsection (3), a "reasonable time" shall be presumed to be three working days or less. Such period may be extended if extenuating circumstances exist. However, such period of extension shall not exceed seven working days. A finding that extenuating circumstances exist shall be made in writing by the custodian and shall be provided to the person making the request within the three-day period. Extenuating circumstances shall apply only when:

(I) A broadly stated request is made that encompasses all or substantially all of a large category of records and the request is without sufficient specificity to allow the custodian reasonably to prepare or gather the records within the three-day period; or

(II) A broadly stated request is made that encompasses all or substantially all of a large category of records and the agency is unable to prepare or gather the records within the three-day period because:

(A) The agency needs to devote all or substantially all of its resources to meeting an impending deadline or period of peak demand that is either unique or not predicted to recur more frequently than once a month; or

(B) In the case of the general assembly or its staff or service agencies, the general assembly is in session; or

(III) A request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the three-day period without substantially interfering with the custodian's obligation to perform his or her other public service responsibilities.

(c) In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.

24-72-205. Copy, printout, or photograph of a public record - imposition of research and retrieval fee.

(1) (a) In all cases in which a person has the right to inspect a public record, the person may request a copy, printout, or photograph of the record. The custodian shall furnish a copy, printout, or photograph and may charge a fee determined in accordance with subsection (5) of this section; except that, when the custodian is the secretary of state, fees shall be determined and collected pursuant to section 24-21-104 (3), and when the custodian is the executive director of the department of personnel, fees shall be determined and collected pursuant to section 24-80-102 (10). Where the fee for a certified copy or other copy, printout, or photograph of a record is specifically prescribed by law, the specific fee shall apply.

(b) Upon request for records transmission by a person seeking a copy of any public record, the custodian shall transmit a copy of the record by United States mail, other delivery service, facsimile, or
electronic mail. No transmission fees may be charged to the record requester for transmitting public records via electronic mail. Within the period specified in section 24-72-203 (3)(a), the custodian shall notify the record requester that a copy of the record is available but will only be sent to the requester once the custodian either receives payment or makes arrangements for receiving payment for all costs associated with records transmission and for all other fees lawfully allowed, unless recovery of all or any portion of such costs or fees has been waived by the custodian. Upon either receiving such payment or making arrangements to receive such payment at a later date, the custodian shall send the record to the requester as soon as practicable but no more than three business days after receipt of, or making arrangements to receive, such payment.

(2) If the custodian does not have facilities for making a copy, printout, or photograph of a record that a person has the right to inspect, the person shall be granted access to the record for the purpose of making a copy, printout, or photograph. The copy, printout, or photograph shall be made while the record is in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of the custodian. When practical, the copy, printout, or photograph shall be made in the place where the record is kept, but if it is impractical to do so, the custodian may allow arrangements to be made for the copy, printout, or photograph to be made at other facilities. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the record. The custodian may establish a reasonable schedule of times for making a copy, printout, or photograph and may charge the same fee for the services rendered in supervising the copying, printing out, or photographing as the custodian may charge for furnishing a copy, printout, or photograph under subsection (5) of this section.

(3) If, in response to a specific request, the state or any of its agencies, institutions, or political subdivisions has performed a manipulation of data so as to generate a record in a form not used by the state or by said agency, institution, or political subdivision, a reasonable fee may be charged to the person making the request. Such fee shall not exceed the actual cost of manipulating the said data and generating the said record in accordance with the request. Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.

(4) If the public record is a result of computer output other than word processing, the fee for a copy, printout, or photograph thereof may be based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system. Such fee may be reduced or waived by the custodian if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

(5) (a) A custodian may charge a fee not to exceed twenty-five cents per standard page for a copy of a public record or a fee not to exceed the actual cost of providing a copy, printout, or photograph of a public record in a format other than a standard page.

(b) Notwithstanding paragraph (a) of this subsection (5), an institution, as defined in section 24-72-202 (1.5), that is the custodian of scholastic achievement data on an individual person may charge a reasonable fee for a certified transcript of the data.

(6) (a) A custodian may impose a fee in response to a request for the research and retrieval of public records only if the custodian has, prior to the date of receiving the request, either posted on the custodian's website or otherwise published a written policy that specifies the applicable conditions concerning the research and retrieval of public records by the custodian, including the amount of any current fee. Under any such policy, the custodian shall not impose a charge for the first hour of time
expended in connection with the research and retrieval of public records. After the first hour of time has been expended, the custodian may charge a fee for the research and retrieval of public records that shall not exceed thirty dollars per hour.

(b) On July 1, 2019, and by July 1 of every five-year period thereafter, the director of research of the legislative council appointed pursuant to section 2-3-304 (1), C.R.S., shall adjust the maximum hourly fee specified in paragraph (a) of this subsection (6) in accordance with the percentage change over the period in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley, all items, all urban consumers, or its successor index. The director of research shall post the adjusted maximum hourly fee on the website of the general assembly.
Appendix C – Memo from the Mayor’s Office and City Attorney’s Office Regarding Open Records Request Guidelines for City Agencies

The responsibility for fulfilling open records requests is largely decentralized among city agencies. However, the Mayor’s Office and the City Attorney’s Office provide training and guidance to each agency. In conjunction with the City Attorney’s Office, the Mayor’s Office released a citywide memo in July 2019 providing guidelines for open records compliance.

Because of the varying sizes and missions of each agency, individual agencies are permitted to develop specific policies under the guidance of the City Attorney’s Office. The following is the citywide guidance memo for open records requests:
MEMORANDUM

TO: City and County of Denver
FROM: Office of the Mayor
       City Attorney’s Office
DATE: July 24, 2019
SUBJECT: Guidelines for agency compliance with CORA

The City and County of Denver is committed to making city government open, accountable and accessible to the public. The City’s approach to the Colorado Open Records Act (“CORA”) is an important part of the City’s pledge for transparency, which contributes to building trust between the City and its residents. These Guidelines are intended to help City agencies, departments, and units (“agencies”) provide the public with efficient access to documents and records pursuant to CORA.

CORA applies to all City agencies. CORA requires that agencies make available for public inspection “public records” in their custody and control. This memorandum provides some basic procedural guidelines and best practices for agencies to help them comply with CORA. However, given the wide variety in size and scope of City agencies, agencies may develop their own policies or protocols for responding to CORA requests. Please consult with your agency’s lawyer in the City Attorney’s Office if your agency would like to develop a separate policy or protocol.

The City has created a CORA web page that provides resources to the public regarding making a request, costs, and document format. It also contains a link to the City Directory online, so the public can more easily locate the appropriate department or agency to make the request. Each department or agency should have clear instructions on its Contact Us page or on a CORA page so the public can locate contact information. The web page is located at: https://www.denvergov.org/content/denvergov/en/city-of-denver-home/cora.html.

AGENCY CORA REPRESENTATIVES

Each agency must have a CORA representative (“ACR”) to serve as the agency’s document

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1 The Colorado Criminal Justice Records Act (“CCJRA”) applies to criminal justice records, primarily in the custody of the Denver Police Department, Denver Sheriff Department, City Attorney’s Office’s Prosecution and Code Enforcement Section, and other similar City agencies.
custodian for CORA purposes and to work directly with agency leadership and staff on CORA responses. Each agency must notify the City Attorney of the name and title of the ACR and provide updates as necessary so that the ACRs and designees can be included in any trainings or legal updates from CAO. The ACR should report directly to an executive level employee in the agency department regarding CORAs.

The ACR may designate other employees to process requests on a routine basis but should be prepared to handle requests or address non-routine requests. Each agency must designate division and group leaders responsible for working with and providing all responsive records located within their divisions and groups to the ACR.

The ACR or designee(s) receives requests sent to the agency and is responsible for processing, tracking and keeping records regarding the requests and responses. The City’s General Records Retention Schedule for documents requires that agencies keep CORA requests and documents related to the response for one (1) year from the date of the response. Accordingly, every agency must track the CORA requests and responses.

Staff should be instructed that any CORA request received by someone in the agency other than the ACR or other designated recipient must be immediately forwarded to the ACR or designee so that it can be processed for a timely response.

REQUESTS

Almost any request for documents is a CORA request.² The statute does not require a specific form or format except that the agency may require a request to be in writing. Agencies may provide a form, e-mail address, or other method to simplify requests for the requestor and to help the agency efficiently receive and process the request. Agencies may also make certain documents available for purchase directly from their website in lieu of requiring a CORA request, such as those recorded documents available from the Clerk and Recorder’s website. Agencies may specify one or more people to receive CORA requests directly or may create an e-mail address for requests (e.g., cao.corarequest@denvergov.org, used by the City Attorney’s Office). Agencies should ensure that the request recipients have backup or requests are sent to more than one individual so that responses are not delayed when the recipient is on vacation or otherwise out of the office.

CORA does not require a government agency to answer questions or compile information, though the agency may do that outside of CORA. CORA only requires that the agency provide any responsive, non-protected or non-privileged documents in its custody.

RECEIPT AND PROCESSING

Upon receipt of a request – whether it is emailed, mailed, hand delivered, or faxed – the

² The definition of records subject to CORA includes all “books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics,” including “digitally stored data including without limitation electronic mail messages” that are “made, maintained or kept” by the agency. C.R.S. § 24-72-202(6)(a)(I) and (7).
ACR or designee must first determine whether CORA applies: *i.e.*, that it is a request for records for which CORA requires a response, rather than questions requiring a narrative response or requests for information or records to which CORA does not apply.

Once confirmed as a CORA request, the ACR logs the request and determines the presumptive date on which a response is due. CORA requires responses to be provided within three business days after receipt, not including the date of receipt. The City has established a policy that CORA requests received after 3:00 p.m. on a day the City is open shall be considered received on the next business day. This is reflected on the CORA request page.

CORA permits an extension of this time up to seven additional days in the following extenuating circumstances: (1) when the request is so broad that it cannot be gathered within three days or (2) the agency would need to devote all or substantially all of its resources to meeting the deadline, thereby interfering with the custodian’s ability to perform his or her other public duties. Exceptional circumstances are just that, exceptional, and this should not be relied upon to extend deadlines regularly. Under CORA, a request for a single document can never be an exceptional circumstance. ACRs can consult with their agency’s attorney as necessary to determine whether such an extension is appropriate.

If a CORA request is overly broad or vague about what records are being requested so that the exceptional circumstances might apply, the ACR can respond to the requestor asking for a more specific request. The ACR also can respond with a time and cost estimate to ensure that the requestor is prepared to pay for and wait for the documents requested. If the requestor submits a revised request, the response process and deadline start over again upon receipt of the revised request.

The ACR or designee will coordinate with the specific staff, divisions, or groups within the agency that could reasonably be expected to have records within the scope of the request. The ACR coordinates with the leadership of the divisions and groups to obtain all records they have within the scope of the request. The division or group leaders are responsible for ensuring that the employees are searching and producing records of their division or group within the scope of the request and:

- notifying the ACR that their division or group has not located any records and notifying the ACR where records are or might be located; or
- providing all responsive records to the ACR and providing any information about the confidentiality/privileged nature of the records; or
- providing an estimate of time to research and retrieve the responsive records (only if it will take more than one hour to research and retrieve the responsive records), review them for privilege, and if necessary redact privileged information from such records; or
- a combination of the above responses itemized to correspond to the specific requests in the CORA request at issue.

3 CORA does not specify how a search for records must be conducted or set a standard for what constitutes an adequate search. An agency search for its records should be reasonably calculated to uncover all records in the custody and control of the agency within the scope of the request.
RESPONSE FORMATS AND COSTS

CORA requires the City to produce documents in their native format, if possible. A document that must be redacted can be converted to a pdf or other redactable format. Documents like databases or spreadsheets that can be sorted or searched must be produced in a form that can be sorted or searched, if possible. A custodian does not need to produce the documents in a sortable or searchable format if doing so requires providing software or would violate the terms of any agreement or rights held by a third party, such as licensing agreements or copyrights.

CORA permits the City to recover the cost of researching, retrieving, and reviewing documents after the first hour. CORA permits the City to, and the City’s policy is to, charge $33 per hour after the first hour for research, retrieval, and review. The City has a CORA Fee Policy, which is on the City’s CORA page. Agencies generally should follow this policy. CORA also permits the City to charge $0.25 per page for regular paper copies or up to the actual cost of unusual paper sizes. The City cannot charge a transmission fee to send documents by e-mail.

Agencies can provide the requester with a time and cost estimate as their three-day response and should do so if necessary. In addition, the agency does not need to begin collecting and producing documents until the charges are paid. If the agency sends a time/cost estimate and receives pre-payment, it should track the time to respond and refund any amount not expended. Once payment is received, a new three-day response period commences.

RESPONSE

The ACR or designee should respond in writing to a CORA request. As discussed above, the response should be one or a combination of:

- deny the request by stating that the request is not a CORA and no documents will be provided;
- provide the requested records or make them available for inspection;
- provide the requested records with portions redacted;
- state that all responsive documents are privileged;
- advise the requestor that the requested records are not in the agency’s custody or control and, if the agency CORA representative has reason to believe other Denver agencies may have such records, indicate what other Denver agency or agencies may have the records and indicate the requestor can submit a request directly to the other agency or agencies; or
- some combination of the above responses, depending on the request and records in question.

Agencies may use form responses as appropriate.

The CAO serves as the legal advisor for all City agencies. The ACR can consult with the agency’s CAO attorney(s) as necessary to determine if any records must or may be withheld or redacted in response to the CORA request. What records must or may be withheld or redacted is beyond the scope of this memorandum. Assigned CAO attorneys can provide guidance and CAO
will provide trainings periodically on CORA issues to which ACRs and their designees will be invited.
Office of the Auditor

The Auditor of the City and County of Denver is independently elected by the citizens of Denver. He is responsible for examining and evaluating the operations of City agencies and contractors for the purpose of ensuring the proper and efficient use of City resources. He also provides other audit services and information to City Council, the Mayor, and the public to improve all aspects of Denver's government.

The Audit Committee is chaired by the Auditor and consists of seven members. The Audit Committee assists the Auditor in his oversight responsibilities regarding the integrity of the City's finances and operations, including the reliability of the City's financial statements. The Audit Committee is structured in a manner that ensures the independent oversight of City operations, thereby enhancing citizen confidence and avoiding any appearance of a conflict of interest.

Our Mission

We deliver independent, transparent, and professional oversight in order to safeguard and improve the public's investment in the City of Denver. Our work is performed on behalf of everyone who cares about the City, including its residents, workers, and decision-makers.