Washington State Auditor's Office

Government that works for citizens

Performance Audit

The Effect of Public Records Requests on State and Local Governments

August 29, 2016

Washington's Public Records Act (PRA) guarantees the public broad access to information about government conduct to foster sound governance. Our interactions with state and local governments during this project showed their commitment to the principles of open, accessible and accountable government.

However, a changing public records environment and a PRA that has not kept pace with present-day issues pose challenges to large and small governments alike. Such challenges, if not addressed, may undermine the original intent of public records laws and the provision of essential government services. The state and local governments that responded to our statewide survey reported spending more than $60 million to fulfill over 285,000 public records requests in the most recent year alone. Because requesters pay only a small portion of the costs involved in fulfilling their requests, governments — and ultimately all taxpayers — bear the costs of the requests.

Providing access to government information in a manner that does not limit the public's access to records or unduly affect government's core services is challenging. Our research shows that a combination of statewide policy and better information management and disclosure practices is needed to keep pace with changing times. We identified polices the Legislature can consider to address public records issues in Washington. We also found practical solutions that can help state and local governments in their continuous efforts to improve their public records management and disclosure processes.

Report Number: 1017396

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Executive Summary

Transparency and accountability are essential components of good government. Washington's Public Records Act (PRA) helps foster these principles by giving people broad access to government information. Our interactions with state and local governments during this project revealed their commitment to the principles of open, accessible and accountable government. However, a changing public records environment and a PRA that has not kept pace with present-day issues pose challenges to large and small governments alike. Such challenges, if not addressed, may undermine the original intent of public records laws and the provision of essential government services.

Legislators face complex policy decisions as they consider balancing access to government records without compromising the efficiency of government operations. To inform policy deliberations, the Legislature asked the State Auditor's Office (in Engrossed Substitute Senate Bill 6052) to conduct a study on the cost of responding to public records requests.

Our report identifies information about the nature and volume of public records requests governments receive and the costs they incur fulfilling them. The report also identifies challenges governments face with public records requests, statewide policies other states have adopted to address similar issues, and practices governments can use to effectively manage and disclose public records.

To identify information on the volume, nature and cost to fulfill public records requests, we surveyed Washington's state and local governments. To identify leading practices, we conducted focus groups with governments in Washington, researched and interviewed governments in other states, and reviewed literature on the topic.

Fulfilling public records requests cost state and local governments more than $60 million in the most recent year

Providing broad access to government records does not come without costs. People today make more and increasingly complex requests for records, which absorb a significant amount of government resources. A wide variety of governments responded to our statewide survey, ranging from small cities and special purpose districts to large state agencies, cities, counties and universities. Respondents reported spending more than $60 million to fulfill more than 285,000 public records requests in the most recent year alone. Their greatest expense – more than 90 percent of costs – is the staff time needed to locate, review, redact and prepare public records for release.

About our calculation of $60 million...

This amount:

- **Is for one year only.**
- **Represents costs reported by 541 of the 923 governments responding to our survey.** Not all governments track costs and some were able to provide cost information only for one department, not the entire organization.
- **Includes some but not all staff costs.** Governments that track costs do so mainly for employees they designate to respond to records requests, not for every employee who collects information to satisfy a request.

The tables below show:

- The total costs incurred by government type, and the average (mean) and maximum costs by individual governments
- The number of requests received by government type, and the average (mean) and maximum number received by individual governments

Washington's governments' costs to fulfill public records requests vary significantly

Most recent year results for the 541 survey respondents that provided cost data

Government type as grouped for analysis	Costs incurred by government type	Costs incurred by individual government	
	Total	Maximum	Average (mean)
State agency, commission, or board	$22,058,165	$6,746,268	$373,867
City/Town	$16,772,830	$1,397,343	$137,482
County	$11,213,530	$2,161,123	$200,242
Special districts	$4,232,504	$438,188	$23,912
School district/ESD	$2,871,610	$367,103	$39,883
Other governments	$2,089,128	$334,380	$49,741
Post-secondary education institution	$1,752,489	$921,721	$134,807

Source: Auditor analysis of survey results.

Note: Most recent year may be calendar or fiscal year, and not necessarily the same year for all governments surveyed. Costs include actuals and estimates. Governments that track costs provided actual cost data. Those that do not track, but had necessary information to estimate, provided estimated costs.

The number of requests governments receive also varies significantly

Most recent year results for the 794 survey respondents that provided data on requests received

Government type as grouped for analysis	Requests received by government type	Requests received by individual government	
	Total	Maximum	Average (mean)
City/Town	114,973	16,157	639
State agency, commission, or Board	74,354	12,366	1,019
County	64,319	7,648	731
Other governments	16,814	9,022	290
Special districts	9,246	977	35
Post-secondary education institution	2,935	1,000	133
School district/ESD	2,541	558	23

Source: Auditor analysis of survey results.

Note: Most recent year may be calendar or fiscal year, and not necessarily the same year for all governments surveyed. Numbers include actuals and estimates. Governments that track requests received provided actual numbers. Those that do not track, but had necessary information to estimate, provided estimated numbers.

The workload and expense of responding to requests affects governments of all types and sizes. Eighty-one percent of survey respondents said they received records requests, from a wide variety of requesters: individuals, law firms, insurers, media, incarcerated persons, current or former employees, governments, and for-profit and nonprofit organizations. Small governments may struggle with responding to requests, even if they receive few of them, because they have limited staff and technological capabilities to complete them. Some larger governments also struggle because they receive a larger volume of requests, many of which require considerable coordination between offices and staff, drawing heavily on resources.

Washington's governments can only recover a small fraction of their costs

Existing public records laws do not permit governments to charge requesters for staff time, which we found was their greatest expense. In the most recent year, respondents to our survey said they recovered less than 1 percent (or $350,000) of the $60 million in costs they incurred fulfilling requests for public records.

Because requesters pay only a small portion of the costs involved in fulfilling their requests, governments – and ultimately all taxpayers – bear the costs of the requests.

Governments' management and disclosure of public records is complicated by the exponential growth of information and changing, complex public records laws

Advances in technology have transformed the way governments conduct their business and increased the amount of digital information they must manage. Citizens' expectations to readily access this information have also changed. Maintaining records today requires investments in information technology to organize, store, secure, search and inventory records, and trained employees to manage them. Many governments told us they do not have sufficient resources to conduct these activities. Reducing inefficiencies in the records management process through technology and better practices could help streamline the records disclosure process to everyone's benefit: governments, requesters and taxpayers.

Changing and complex public records laws have cost implications and add to the workload governments face when responding to requests. Washington's PRA definition of a public record is very broad; it does not specify which information is not disclosable. Instead, hundreds of exemptions generated by state law and case law narrowly define information that is exempt from public disclosure.

As of 2016, there were more than 400 public records exemptions established by state law; the number of additional exemptions set by case law and the federal government is unknown. Understanding and applying exemption laws is difficult for employees without a legal background. Moreover, exemption laws change frequently, making it difficult for employees to keep up-to-date with requirements.

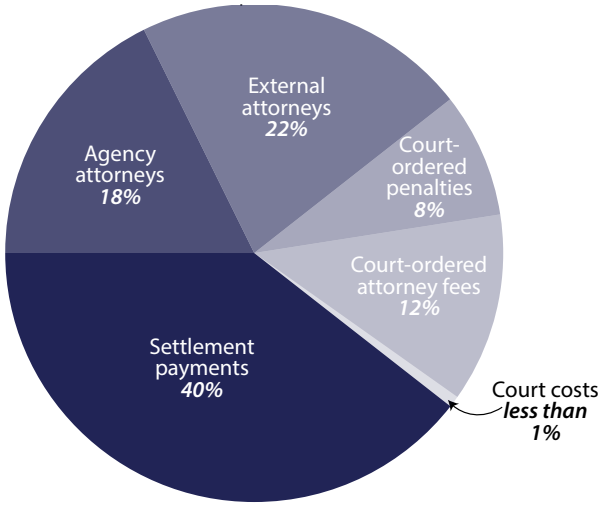
Focus group participants told us they have to rely on the help of expensive, yet necessary, legal counsel to ensure they do not release exempted or protected information or redact information that should be disclosed, and to provide all records that satisfy the request. They fear litigation if they make a mistake, yet this preventive effort – in addition to its high cost – risks delaying responses to requesters.

Public records litigation affects governmental costs and ultimately transparency

Public records litigation can have a severe impact on the financial position of some governments, especially those with small operating budgets. Seventeen percent of the governments responding to our survey – large and small – reported they were involved in public records litigation in the past five years, and spent more than $10 million in the most recent year alone. As the chart shows, typical litigation expenses incurred include settlement payments, legal review and counsel, and court ordered fees and penalties.

The effect of public records litigation extends beyond monetary costs. As we previously explained, legal review may delay responses to requesters. Moreover, some governments told us they avoid using emerging technologies and approaches to managing information, despite the potential for cost savings and efficiencies. They expressed concerns about the upfront costs in purchasing and implementing such approaches and technologies. Some also said that they fear using them could complicate the disclosure process and expose them to litigation.

Settlement payments and attorney costs account for nearly 80% of litigation expenses



Source: Auditor analysis of survey results.

Statewide policy and practical solutions could benefit the changing public records environment and the records management and disclosure process

Other states we talked to have also faced the challenges posed by the changing landscape of public records and requests. Some made policy changes to promote the original intent of public records laws without compromising core government operations. We identified policies that states have implemented and which the Legislature can consider to address public records issues in Washington.

Governments in Washington and in other states have also realized that increased efficiency is needed in the management and disclosure of records to better meet the needs of the public. We identified practical solutions that can help state and local governments in their continuous efforts to improve their records management and disclosure processes.

Statewide policies to address the changing public records environment

- Differentiate requesters and requests by their purpose
- Recover material and staff costs associated with disclosing public records
- Develop a statewide alternative dispute resolution program
- Address complexities in public records laws

Leading practices to aid public records management and disclosure

- Communicate with requesters thoughtfully and as needed
- Manage request fulfillment to maximize benefits to requesters and minimize disruptions to critical services
- Disclose information before it is asked for
- Develop a coordinated, agency-wide strategy and institutional culture around records management
- Collect and retain only necessary records
- Organize records for easy search and retrieval
- Adopt strategies and organization-wide policies to accommodate complexity of public records laws
- Reduce the potential for litigation and mitigate its impact

Glossary

Term	Definition
Alternative dispute resolution	Using mediation or arbitration, instead of the courts, to resolve a public records dispute.
Cloud-based service	Data storage and processing services made available to users on demand via the internet from a third-party provider's computer servers instead of using the organization's own on-premises servers. Examples include Dropbox, Google Drive, OneDrive and Box.
Complex requests	Records requests that meet any of the following characteristics: they are broad or vague; involve a large number of records; involve records that are not easily identifiable, located, or accessible; require coordination among multiple departments; require legal review; result in significant redaction or withholding of records; require special tools or significant staff resources to fulfill.
Essential government function	Government services that affect the health, safety and general welfare of residents, such as police, fire, emergency medical services, water, sewer and roads.
File Transfer Protocol (FTP) site	File Transfer Protocol is a standard network protocol used to transfer computer files between two users, using an intermediary server on a computer network.
Fulfilling public records requests	The disclosure of requested records, resulting in the closure of a public records request. A request can also be considered 'fulfilled' if the request is withdrawn or abandoned by the requester.
Local government (organization)	For the purpose of this report, "local government" or "local government organization" includes such units of government as cities, counties, school districts and other special purpose districts (see entry below for definition of special purpose districts).
Metadata	A set of data which describes and gives basic information about other data.
Model Rules	Non-binding guidance developed by the Washington State's Office of the Attorney General. The guidance provides advisable records disclosure practices for requesters and governments.
Open government advocates	Individuals and organizations who support citizens' rights to access documents and proceedings of governments to allow for effective public oversight.
Physical media device	A data storage device, such as a CD, DVD or flash drive, used to store information.
Public record	Under the PRA (RCW 42.56.010 (3)): "Any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics…"

Term	Definition
Public records dispute	A disagreement between a public records requester and a government organization, usually regarding the validity of an exemption or time estimate given to respond to a public records request.
Public records exemption	Information that is exempt from release to the public due to confidentiality or privacy concerns. As of 2016, Washington had established more than 400 public records exemptions through state law.
Public Records Officer	A government employee, usually with the following responsibilities: to serve as a point of contact for people requesting public records and to oversee that government's compliance with the Public Records Act's records disclosure requirements.
Records custodian	An individual, government, division or department that is responsible for the creation, management, retention, disclosure and destruction of public records.
Requester	Any individual, public, private or governmental organization, or "any other organization or group of persons, however organized," that requests public records from the government.
Special purpose districts	In Washington, special purpose districts provide an array of services. Types of special purpose districts include, but are not limited to, conservation, air pollution control, fire, transportation, health, public utilities, water, sewer, library, ports, cemetery and mosquito control.
State government	For the purpose of this report, "state government" includes every state agency, office, department, division, bureau, board or commission, as well as state universities and community colleges.

Introduction

Transparency and accountability are essential components of good government. Washington's Public Records Act (PRA) helps foster these principles and so bolsters public confidence in government, by providing people with broad access to government records. Access to public records allows people to know how governments are performing, thereby holding them accountable for their actions and protecting the public interest.

Our interactions with state and local governments during this project revealed their commitment to the principles of open, accessible and accountable government. But over the years, many of them have expressed concerns with the challenges posed by a changing public records environment and a PRA that has not evolved to address present-day issues.

The PRA was established in 1972, when government records were kept in paper format and before the proliferation of the internet and modern technology such as email, cell phones and video cameras. These advances have led to prolific growth in electronic records. They have also led to the use of technology that allows requesters to submit records requests with minimal effort, consequently increasing the volume and complexity of requests and the costs to fulfill them.

The PRA limits the expenses governments can recover from those making requests for records: the law passes the bulk of costs on to government and, ultimately, all taxpayers. Moreover, the broad parameters of the PRA lack safeguards to deter those requests that compromise the efficiency of government operations. With limited resources and legal protections, some focus group participants told us their governments struggle to provide other essential services to the public while efficiently meeting increasing requests for records.

The Legislature asked the State Auditor's Office to help gather information to inform discussions about the PRA

Local and state governments have brought their concerns to the Legislature, prompting various attempts to amend the PRA. Among the ideas proposed are establishing cost recovery mechanisms for electronic records and records sought for commercial purposes, and permitting governments to limit the time devoted to public records requests to prevent excessive interference with the delivery of other essential government services.

Some open government advocates oppose such changes, asserting that they will limit access to public records and impair government transparency. Indeed, some believe the solution to public records requests challenges will be found not just in changes that affect requesters, but in encouraging governments to adopt practices that can help them manage and disclose public records more efficiently.

Legislators face complex policy decisions as they consider balancing access to public records with efficient government operations. To inform policy deliberations, the Legislature asked the State Auditor's Office (in Engrossed Substitute Senate Bill 6052) to "develop a methodology and conduct a study to establish an accurate cost estimate for providing paper and electronic copies of records in response to requests under the Public Records Act."

During our audit planning efforts, we learned that governments generally do not track public records request data in a way that would allow us to estimate the cost of providing public records requests in paper versus electronic format or to calculate cost per page or megabyte. They do not separate the costs associated with paper versus digital request fulfillment, nor do they track the volume of pages and megabytes produced for each request they fulfill. Given these limitations, we designed this audit to identify:

1. The nature and volume of public records requests Washington's state and local governments receive, and the overall costs of responding to them, regardless of form
2. Policies other states have adopted to address public records requests issues and recover costs associated with fulfilling requests
3. Practices state and local governments can use to effectively manage public records, respond to requests, and make public records more accessible

Despite the high percentage of governments that responded to our survey, we did not attempt to extrapolate our results statewide, because we do not know whether the costs, volume and nature of requests at non-responding governments are similar to those of survey respondents. However, the information we gathered can help:

- Inform policy deliberations as the Legislature considers changes to the PRA
- Stakeholders understand challenges posed by the changing public records landscape
- State and local governments in their continuous efforts to improve their records management and disclosure processes

Background

Washington's Public Records Act

The Public Records Act (PRA) was established in 1972. Its purpose is to ensure the disclosure of government information for the benefit of an informed public. To accomplish this mission, the PRA requires that most records maintained by state and local governments be made available to anyone who requests them. To further promote this policy and protect the public interest, the Legislature determined that the PRA should be liberally construed and its exemptions narrowly interpreted to allow the widest possible access to records. Governments are prohibited from denying requests or discriminating based on the identity of requesters or purpose of requests. Generally, anyone can request access to an array of government records without disclosing who they are or why they want the information.

Local governments (such as cities, counties and school districts) and state governments (including agencies, commissions, boards and universities) must fully comply with PRA records disclosure requirements. They may recover the cost of photocopies made in response to requests; photocopy charges cannot exceed $0.15 a page if the organization has not determined the actual per-page copying cost. The PRA does not specifically allow governments to charge requesters for copies of electronic records delivered through certain electronic media, such as email or online (although they may charge for the cost of a CD, DVD or flash drive). Nor can they recover the cost of staff time spent searching, reviewing, redacting and preparing records for release.

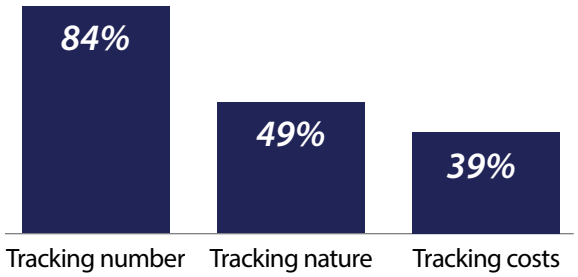
The PRA requirements do not fully apply to the Legislature and the courts. For example, House and Senate emails are not specifically listed as public records under the PRA. Access to court records is governed by court rules and common law, not the PRA, and the courts are now allowed to charge those requesting court administrative records the cost of research and preparation services required to fulfill requests.

Public records management and disclosure processes are decentralized and vary widely

Although state and local governments must comply with the PRA's requirements, the PRA does not specify a standard process to respond to public records requests, nor does it provide for a unified system to manage public records and track requests. Processes for fulfilling public records requests vary between governments, as do the systems they use for managing records and tracking requests.

While the PRA does not require governments to track data on the number and nature of requests they receive or the cost to fulfill requests, some do so. For example, 818 survey respondents reported receiving public records requests in the last five years. **Exhibit 1** shows the percentage of the 818 that said they track the number of requests received, the nature of requests and the cost to fulfill requests.

Exhibit 1 – Percentage of survey respondents tracking number, nature and cost of requests



Source: Auditor analysis of survey results.

Note: 816 survey respondents said they track data for the number of requests, 781 for the nature and 781 for costs.

In the absence of a statewide standard records disclosure process, the Legislature directed the Attorney General's Office to adopt advisory "Model Rules" in 2005. These non-binding rules are intended to establish a culture of compliance among government organizations and a culture of cooperation among requesters by standardizing records disclosure practices throughout the state.

A person can initiate a request for public records in many ways, such as in person, by mail, email, fax or phone. Governments must explain how their records disclosure processes work and offer to help people if they need it. To ensure timely provision of public records, the PRA requires governments to respond to requesters within five business days of receiving a request.

The response to the requester must perform at least one of these actions:

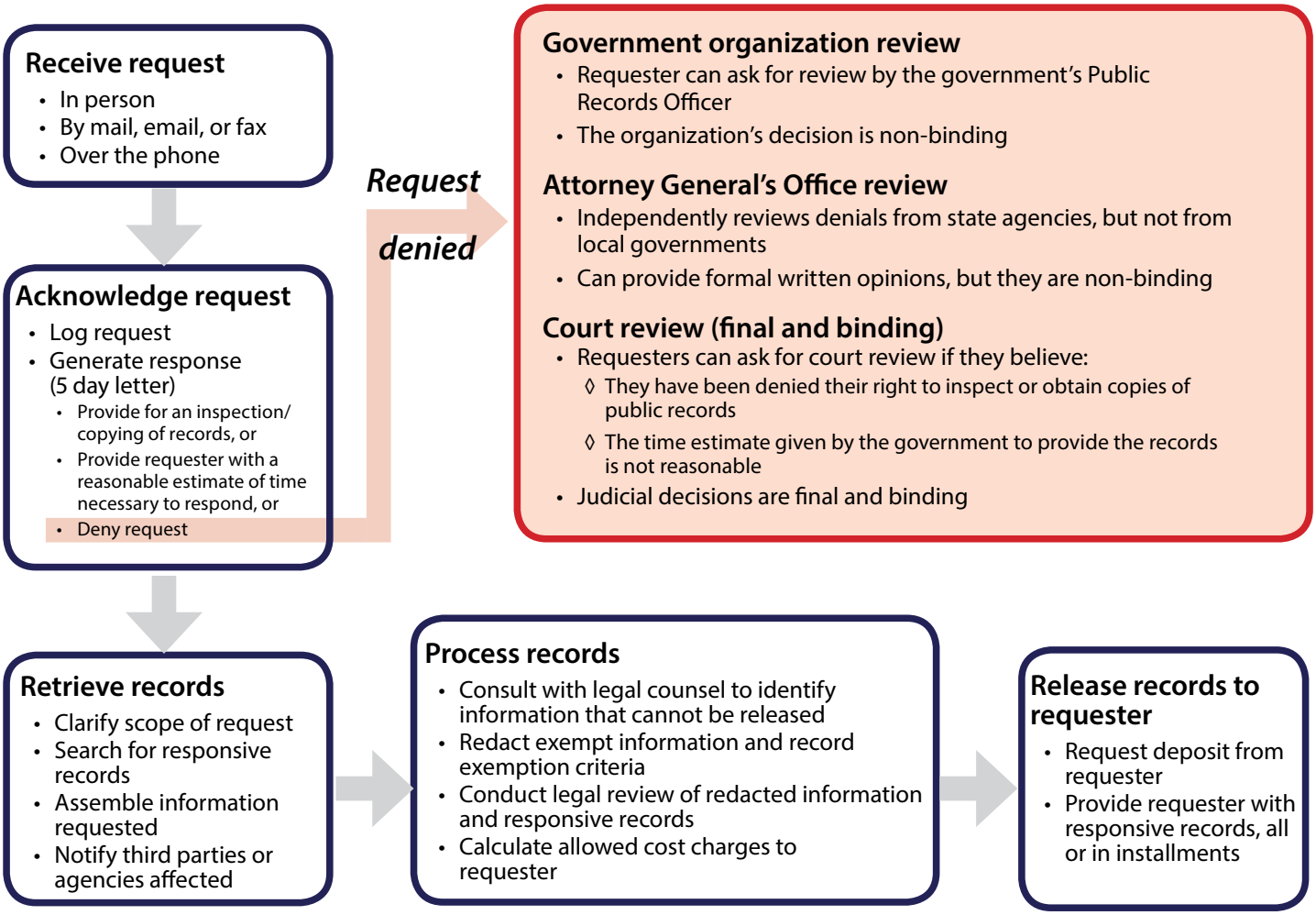
1. Provide for inspection and/or copying of the record.
2. Provide an internet address and link on the organization's website to the specific records requested. If the requester does not have internet access, then the agency must provide copies or allow the requester to view the records using an agency computer.
3. Acknowledge receipt of the request and provide a reasonable estimate of the time necessary to respond.
4. Deny the request. If the request is denied, a written statement detailing the specific reasons must accompany the denial.

Exhibit 2 is a simplified view of key steps governments take to respond to public records requests.

The PRA grants government additional time to respond to a public records request to:

- Clarify the intent of the request
- Locate and assemble the information requested
- Notify third parties or agencies affected by the request
- Determine whether any of the information is exempt and all or part of the request should be denied.

Exhibit 2 – Key steps in responding to public records requests



Source: Auditor analysis of focus groups, interviews with government organizations and research.

Public records exemptions

Governments must provide public records upon request, unless a law exempts or prohibits disclosure of specific information or records. These laws are called "exemptions" and are intended to protect individuals' privacy rights, investigative functions of law enforcement and other agencies and the legitimate business interests of citizens. As of 2016, there were more than 400 public records exemptions established by state law. The number of additional exemptions set by case law and other statutes is unknown. Many court cases create and interpret public records exemptions and the Legislature creates and modifies exemptions almost every year. Washington's Public Records Exemptions Accountability Committee (Sunshine Committee) is charged with reviewing exemptions in state law and making recommendations to the Legislature to repeal or amend exemptions.

Enforcement of the PRA

The PRA allows requesters to ask for a court review of their public records request case if they believe they have been denied their right to inspect or obtain copies of public records, or when they believe the time estimate given by the government organization to provide the records is not reasonable. Governments have the burden of proving a requested record is exempt from disclosure or that their time estimate to provide a full response is reasonable. The PRA further encourages disclosure of records by awarding a requester reasonable attorney's fees, costs and a daily penalty of up to $100 per record if the government fails to meet its burden of proof.

The PRA does not establish alternative dispute resolution mechanisms. However, requesters and governments alike are encouraged to resolve public records disputes without litigation. The Attorney General's Office is authorized to review a state agency's decision to deny a public records request and provide a written opinion, but only the courts can make a final decision on a public records dispute. The Attorney General's Office is not allowed to formally review denials of requests by local governments; however, it may provide information and technical assistance.

Scope & Methodology

We designed this audit to identify:

1. The nature and volume of public records requests Washington's state and local governments receive, and the costs they incur when responding to them
2. Policies other states have adopted to address issues around public records requests and recover costs associated with fulfilling requests
3. Practices state and local governments can use to effectively manage public records, respond to records requests, and make public records more accessible

Identifying the volume and nature of public records requests and the costs to fulfill them

We surveyed Washington's state and local governments to identify the volume and nature of public records requests they receive and how much it costs them to fulfill those requests. We contacted 2,363 state and local governments and 923 responded to the survey, providing an overall response rate of 39 percent. Because we received responses from many large governments, we captured public records request data from a much larger percentage of the state's total population than the response rate might suggest. For example, cities and towns that responded to the survey represent 79 percent of Washington's city and town residents, while responding counties represent 98 percent of Washington's total population.

Given the magnitude and complexity of this survey effort, we contracted with BERK Consulting, Inc., to help us design and administer the survey, and analyze survey results. BERK partnered with the Municipal Research and Services Center to design the survey and provide consultative support.

To facilitate analysis and reporting of survey results, we grouped governments by type in the following categories: state agencies, boards, commissions; cities/towns; counties; post-secondary education institutions; school districts; other special purpose districts; other. **Figure 1** in **Appendix B** list the types of governments included in each category.

It is important to note that this was the first comprehensive effort in Washington dedicated to collecting this type of data from all state and local governments. Participation in the survey was voluntary; survey data is self-reported and cannot be verified because there are no external sources of the data available for comparison. However, we performed data validity checks to ensure that the information which forms the basis of the analysis in this report is sufficiently reliable and provides appropriate evidence to support results and conclusions.

Identifying practices for managing and disclosing public records and recovering costs

To identify practices for managing and disclosing public records and cost recovery methods, we conducted focus groups with entities in Washington, researched and interviewed governments in other states and reviewed relevant literature.

- ***Focus groups:*** We held five focus group meetings with a variety of state and local governments to identify practices they use to manage public records and fulfill public records requests. We asked how they manage records, respond to requests, provide access to records, and recover their costs. We chose participants based on characteristics such as government type, budget size and geographic location. We also invited some governments that stakeholders knew employed good public records management and disclosure practices.

We met with representatives of 42 governments from across the state

Focus group	Type of government and size	# of governments participating	Participant location
1	Local, Large	8	Northern Puget Sound
2	State agencies, Varying sizes	12	Olympia, WA
3	Local, Medium	10	Southwest/Coastal WA
4	Local, Small	4	Central/Eastern WA
5	Local, Extra small	8	Central/Eastern WA

- ***Practices in other states:*** We reviewed public records laws and interviewed public records professionals at governments in eight states to identify practices, policies and tools they use for managing and disclosing public records and for recovering costs associated with fulfilling them. We selected states based on any or a combination of the following criteria: recognized as leaders in government transparency, have recently changed their public records laws or have statutory provisions for electronic records. Appendix C contains profiles of the states we researched and interviewed.
- ***Literature review*** We also reviewed literature on public records management and disclosure to broaden our understanding of leading practices.

We conducted out-of-state interviews with:

- Florida
- Illinois
- Massachusetts
- Minnesota
- Oregon
- Pennsylvania
- Utah
- Vermont

Audit performed to standards

We conducted this performance audit under the authority of state law (RCW 43.09.470), approved as Initiative 900 by Washington voters in 2005, and in accordance with Generally Accepted Government Auditing standards (December 2011 revision) issued by the U.S. Government Accountability Office. Those standards require that 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. **Appendix A** addresses the I-900 areas covered in the audit. **Appendix B** contains more information about our methodology.

Next steps

Our performance audits of state programs and services are reviewed by the Joint Legislative Audit and Review Committee (JLARC) and/or by other legislative committees whose members wish to consider findings and recommendations on specific topics. Representatives of the State Auditor's Office will review this audit with JLARC's Initiative 900 Subcommittee in Olympia. The public will have the opportunity to comment at this hearing. Please check the JLARC website for the exact date, time, and location (**www.leg.wa.gov/JLARC**). The State Auditor's Office conducts periodic follow-up evaluations to assess the status of recommendations and may conduct follow-up audits at its discretion.

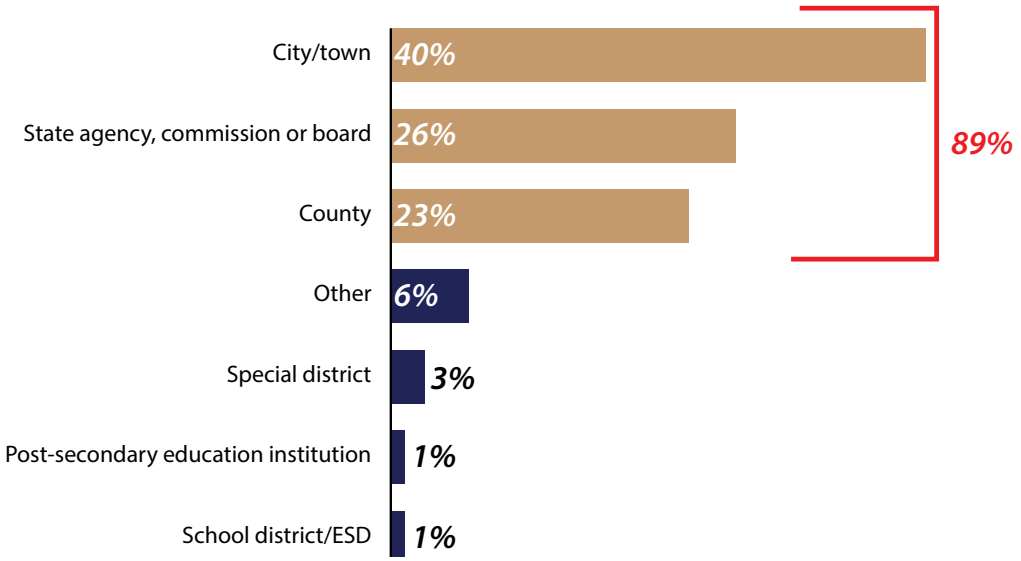
Governments of all types and sizes receive public records requests, from a variety of requesters

Most state and local governments, regardless of their size, receive public records requests. A wide variety of governments responded to our survey, ranging from small cities and special purpose districts with few employees to large state agencies, cities, counties and universities with million-dollar budgets. Combined, those that responded received more than 285,000 public records requests in their most recent calendar or fiscal year. As **Exhibit 3** shows, three types of governments received the majority (89 percent) of requests: cities and towns, state agencies and counties. (To view the number of survey responses that supplied data for the analyses in this section of the report in one table, see Figure 3 in Appendix B.)

81%

Of survey respondents said they received public records requests in the last five years

Exhibit 3 – Three types of governments received 89% of the 285,000 public records requests in the most recent year



Source: Auditor analysis of survey results.

Note: Most recent year may be calendar or fiscal year, and not the same year for all survey respondents. 794 survey respondents supplied data for this analysis.

The types of records requested from governments depend on the services they provide, as the list below illustrates.

Typical public records requests

- Agendas and meeting minutes
- Emails
- Police reports and 911 service records
- Video footage
- Purchase orders
- Licensed individuals
- Land development, real estate plots
- Planning and building annexations
- Offender records
- Municipal codes and ordinances
- Employee job titles and salaries
- Budgets and contracts
- Property assessments and taxes
- Litigation
- Water management
- Pesticide use practices
- Subscriber or customer consumption
- Tenant records
- Environmental property
- Public utilities and parks

Exhibit 4 illustrates the great range in the number of requests received by Washington's governments, grouped as we categorized them for analysis and reporting purposes. It shows the total requests for each category, as well as the maximum and average (mean) number received by individual governments. These numbers are for one year only and represent requests received by 794 of the 923 survey respondents. Not all governments track requests, and some were able to provide request information only for one department, not the entire organization.

Exhibit 4 – The number of public records requests Washington's governments receive varies significantly

Most recent year results for the 794 survey respondents that provided data on requests received

Government type as grouped for analysis	Requests received by government type	Requests received by individual government	
	Total	Maximum	Average (mean)
City/Town	114,973	16,157	639
State agency, commission, or board	74,354	12,366	1,019
County	64,319	7,648	731
Other governments	16,814	9,022	290
Special districts	9,246	977	35
Post-secondary education institution	2,935	1,000	133
School district/ESD	2,541	558	23

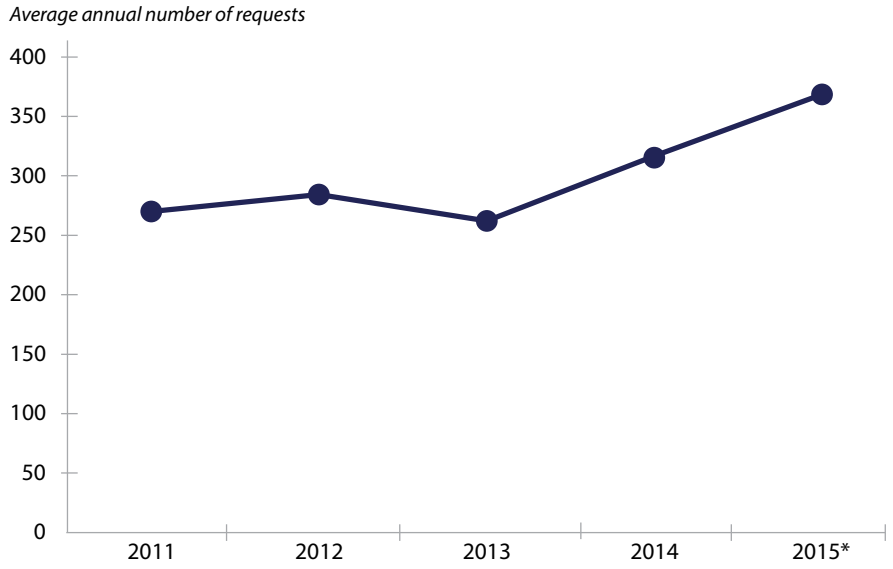
Source: Auditor analysis of survey results.

Note: Most recent year may be calendar or fiscal year, and not the same year for all survey respondents. Numbers include actuals and estimates. Governments that track requests received provided actual numbers. Those that do not track, but had the information necessary to estimate, provided estimates.

Requests have increased in number and complexity

People make many more requests for public records than ever before. From 2011 to 2015, the average (mean) number of requests state and local governments received increased by 36 percent (**Exhibit 5**), with the greatest growth in the last two years.

Exhibit 5 – The average number of public records requests increased by 36% from 2011 through mid-2015



Source: Auditor analysis of survey results.

*Notes: * 2015 was a partial year. Data shown is only for those governments that had data for all five years.*

434 survey respondents supplied data for this analysis.

Beyond quantity, most governments (81 percent) also reported receiving increasingly complex requests, such as those asking for "any and/or all records" on a topic, without a timeframe, or involving records that are not easily identified, located or accessed. The examples below illustrate such requests.

Examples of complex requests that took a substantial amount of time to fulfill

In 2015, the City of Kirkland received requests for:

1. All records that related to a City Council member without a limit, no matter the location or device containing the record. It took the city 160 business days to complete this request.
2. All written material produced by all volunteers working for the city from January 1, 2013, to the present. The request specifically asked for the records to be provided in electronic format with original metadata. As of July 2016, the city had already spent 285 business days fulfilling this request and more work remains to fully satisfy it.

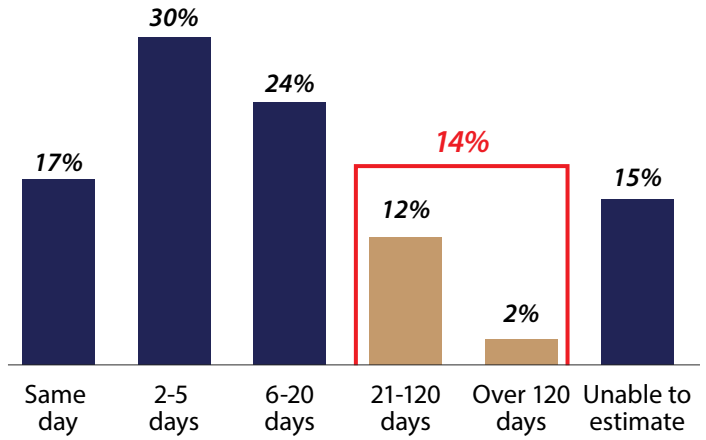
In 2014, the Washington State Patrol received a request for:

- All dash camera videos not involved in litigation. The requester asked that the Patrol upload the videos to YouTube. The Patrol has estimated this request would take 563 years to fulfill.

Complex requests take a substantial amount of staff time to fulfill and the costs are correspondingly higher. The broad and/or vague nature of complex requests requires governments to coordinate among multiple departments and staff to identify, retrieve and redact information exempt from disclosure. These efforts contribute to longer response time. While governments indicated they delivered almost 45 percent of requests within five business days, it took them more than 21 business days to respond to 14 percent of the requests they received in the most recent year (**Exhibit 6**).

Exhibit 6 – 14% of public records requests took 21 or more business days to fulfill

Percent of requests fulfilled by duration, most recent year results



Source: Auditor analysis of survey results.

Notes: *"Most recent year" may be calendar or fiscal year, and not the same year for all survey respondents.*

738 survey respondents supplied data for this analysis.

Public records requests can be denied if they do not meet PRA requirements

Under existing public records laws, requesters can make requests that do not meet PRA requirements. In these situations, the government must make its case that the request is unfulfillable.

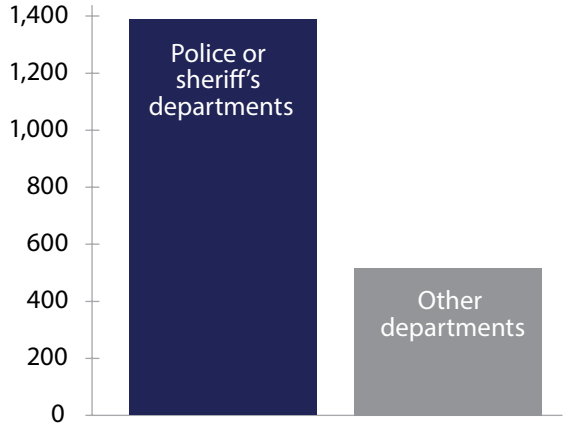
- In 2015, a requester asked the University of Washington for all university records dating back to "the formation of the Earth 4.54 billion years ago." In its response, the university concluded that the request did not qualify as a proper public records request because it did not ask for specific identifiable records.
- In 2015, a requester asked about 65 state agencies for "all emails with meta-data in the .MSG file format." The requester asked that the agencies provide the records through an FTP server, cloud storage service or agency website at no charge.
  The State Attorney General's Office could not estimate the time needed to fulfill the request, but did estimate it would involve obtaining about 600 million emails. These emails would have to be reviewed to determine whether redaction was required.
  In its response, the Attorney General's Office concluded that the state is under no obligation to respond because the request did not meet two criteria: it was not a request under the PRA and it did not satisfy the PRA's "identifiable record" requirement.

The workload and expense of responding to requests affects governments of all types and sizes

Small governments tend to struggle with fulfilling records requests, even if they receive few of them, because they have limited staff resources and technological capabilities. It is not uncommon for small organizations to depend on the same employee for providing critical services while also handling public records requests. Our survey analysis found that some organizations with few employees receive a high volume of requests and incur high costs in responding to them. Police and sheriff's departments are examples of units of government that due to the nature of their operations receive a large number of requests (**Exhibit 7**).

Exhibit 7 – Police and sheriff's departments received more than twice the number of requests compared with other departments

Average annual number of requests in the most recent year, for cities/towns and counties



Source: Auditor analysis of survey results.

Note: "Most recent year" may be calendar or fiscal year, and not the same year for all survey respondents.

272 survey respondents supplied data for this analysis.

Some larger governments also find request fulfillment challenging because they receive far more requests. Two percent (20) of the state and local governments responding to our survey accounted for more than half of all requests received and costs incurred in the most recent year. They included many of the largest governments in Washington.

For governments without dedicated staff and resources to automate searches for data and to review and redact information, complex requests can unduly interfere with providing other essential government functions, as employees are pulled away from other duties to help search for, review, redact or copy documents. The larger the volume and the more complex the requests, the more challenging it becomes for governments to provide essential services to the public while meeting requests for records.

Typical records requested from police or sheriff's departments:

- DUI reports
- Accident reports
- Incident reports
- Internal affairs investigations
- Video and audio tapes

19%

of survey respondents said responding to public records requests results in "excessive interference with other essential functions of the agency"

Abandoned requests accounted for 8 percent of all requests

Governments reported that about 8 percent of the requests they received in the most recent year were abandoned by requesters at different points during the response process. For instance, some requesters:

- Withdrew their request before it was completed
- Did not respond when government asked them to clarify the request
- Did not inspect the requested records
- Did not collect the copies of requested records
- Did not pay the required deposit or final payment for requested records

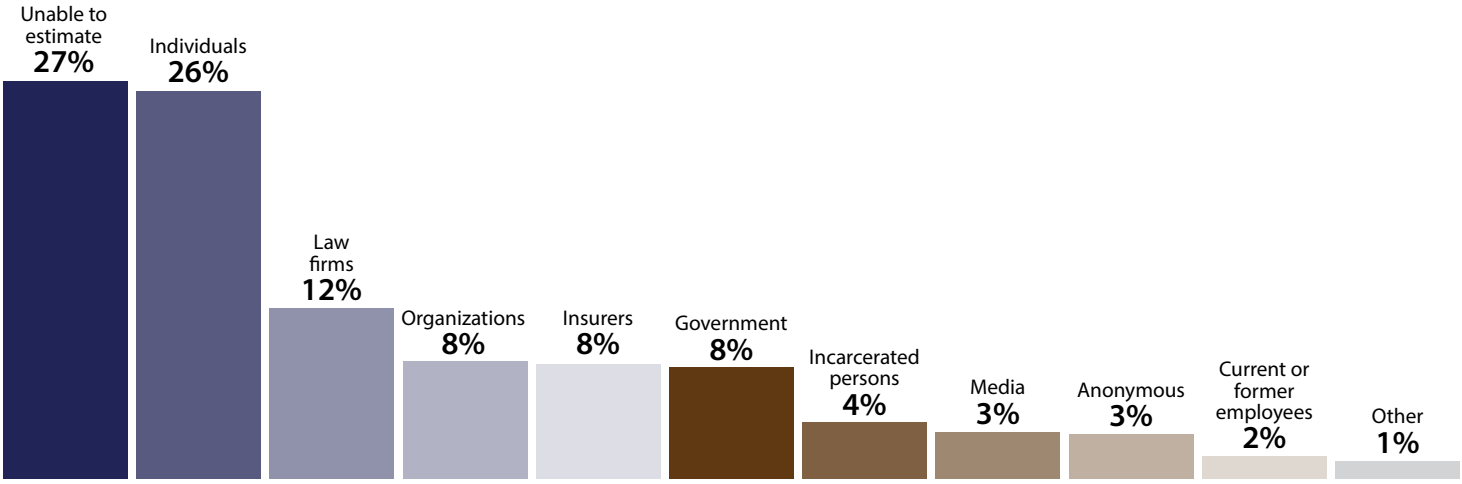
The people requesting public records are as diverse as the governments that serve them

State and local governments receive requests from a variety of requesters. While the PRA generally does not require requesters to identify themselves or say why they want public records, some requesters voluntarily provide this information. Some governments told us they can occasionally identify requesters based on the nature of information they ask for or through face-to-face interactions during inspection of records.

Exhibit 8 illustrates the diversity of requesters: individuals, law firms, governments, insurers, incarcerated persons, media, current or former employees, and for-profit and nonprofit organizations. Survey respondents said they could not draw any conclusions about the identity of around 27 percent of requesters; 3 percent intentionally identified themselves as "anonymous."

Exhibit 8 – Public records requests come from a variety of requesters

Percent of requests by requester in the most recent year



Source: Auditor analysis of survey results.

Note: The 'Organizations' category includes political groups, labor unions, research and advocacy groups, and businesses. "Most recent year" may be calendar or fiscal year, and not the same year for all survey respondents. 781 survey respondents supplied data for this analysis.

Individuals, law firms, and for-profit and nonprofit organizations made nearly half of the total requests in the most recent year. Governments reported that only about 10 percent of requests originate outside Washington.

Contrary to the popular belief that news media make more requests for public records, our analysis found that other groups, such as insurers and people in prison, make more requests than journalists.

Fulfilling public records requests cost Washington's state and local governments more than $60 million in the most recent year

Government transparency and the activities related to providing access to public records does not come without cost: Washington's state and local governments spend millions of dollars annually. Together, governments that responded to our survey reported spending more than $60 million in the most recent year alone.

Exhibit 9 illustrates the great variability in costs incurred; in addition to totals by government type, it shows the maximum and mean average costs incurred by individual governments. They represent costs incurred by 541 of the 923 survey respondents. Not all governments track costs, and some were able to provide cost information only for one department, not the entire organization.

State agencies, cities/towns, and counties combined accounted for 82 percent of

Exhibit 9 – The cost of fulfilling records requests also varies significantly

Most recent year results for the 541 survey respondents that provided cost data

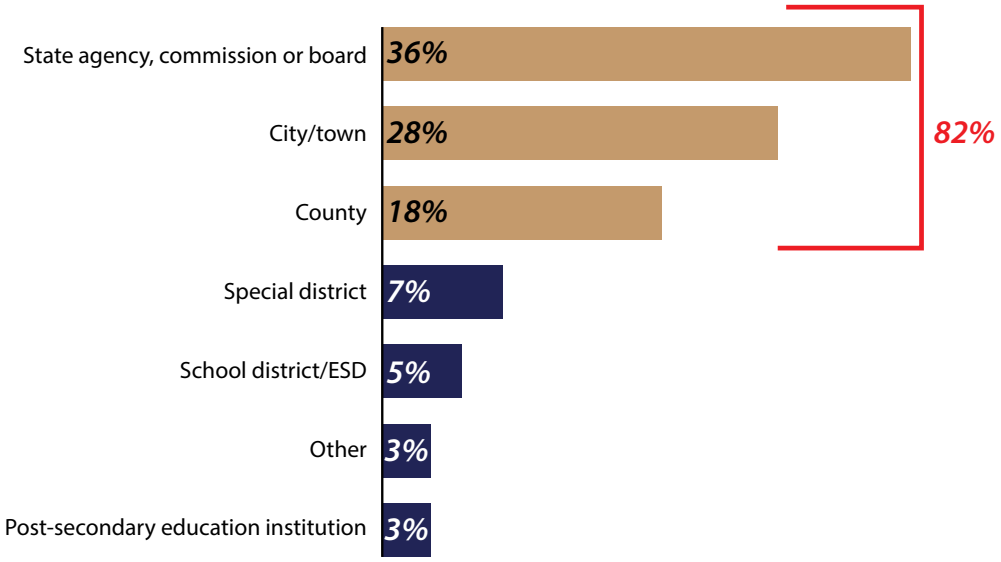
Government type as grouped for analysis	Costs incurred by government type	Costs incurred by individual government	
	Total	Maximum	Average (mean)
State agency, commission, or board	$22,058,165	$6,746,268	$373,867
City/Town	$16,772,830	$1,397,343	$137,482
County	$11,213,530	$2,161,123	$200,242
Special districts	$4,232,504	$438,188	$23,912
School district/ESD	$2,871,610	$367,103	$39,883
Other governments	$2,089,128	$334,380	$49,741
Post-secondary education institution	$1,752,489	$921,721	$134,807

Source: Auditor analysis of survey results.

Note: "Most recent year" may be calendar or fiscal year, and not the same year for all survey respondents. Cost figures include actuals and estimates. Governments that track costs provided actual cost data. Those that don't track, but had necessary information to estimate, provided estimated costs.

the total spending (**Exhibit 10**).

Exhibit 10 – Three types of governments spent 82% of the $60 million in costs incurred



Source: Auditor analysis of survey results.

Notes: "Most recent year" may be calendar or fiscal year, and not the same year for all survey respondents.

541 survey respondents supplied data for this analysis.

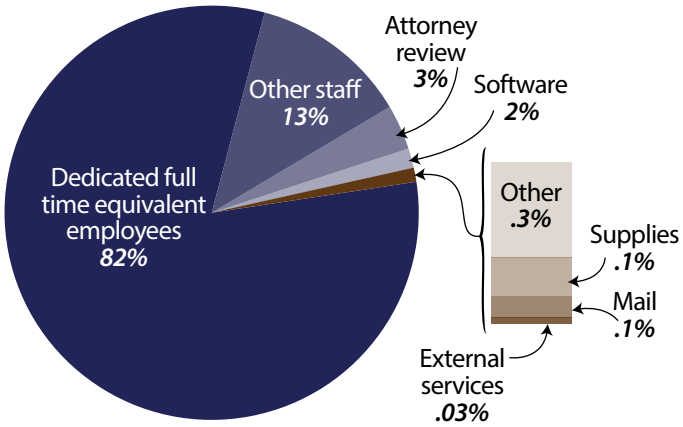
Staff time is the largest cost incurred in fulfilling public records requests

Survey analysis showed that staff time needed to locate, review, redact and prepare public records for release to requestors makes up 98 percent of the expense incurred in responding to requests (**Exhibit 11**). The remaining miscellaneous costs include software licenses, mail, supplies and external services.

Despite the availability of software and practices that aid in the disclosure of public records, critical aspects of the process cannot be automated. A prime example of an essential step that cannot be automated is the review and redaction of information exempt or prohibited from release to the public, such as social security numbers, medical records or student records. No software can automatically identify exempt or protected information in a paper or electric record. Without the thorough review conducted by staff and/or legal counsel, there is a greater possibility of releasing protected information, which could place individuals at risk for identify theft and governments at risk for cyber-security attacks or lawsuits.

Exhibit 11 – Employee time is the greatest expense in fulfilling records requests

Most recent year results



Source: Auditor analysis of survey results.

Notes: Governments that track costs do so mainly for employees they designate to respond to records requests, not for every employee who collects information to satisfy a request. Reporting most recent year results.

"Most recent year" may be calendar or fiscal year, and not the same year for all survey respondents.

493 survey respondents supplied data for this analysis.

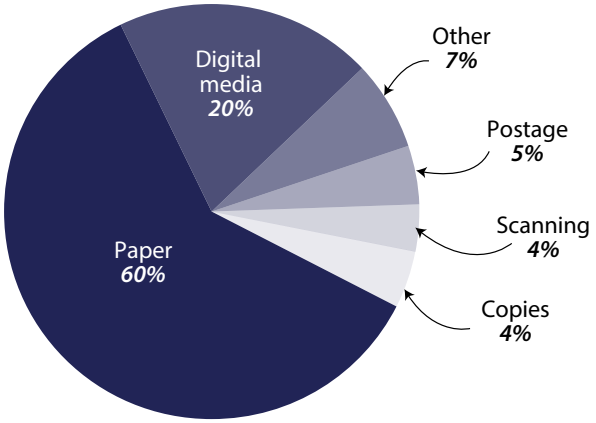
The distinction between human effort and the remaining expenses is important because the PRA limits the nature and dollar amount of recoverable costs.

Governments can only recover a small fraction of the costs they incur

Existing law does not permit governments to charge requesters for staff time, the greatest expense in providing public records. In the most recent year, survey respondents said they recovered less than 1 percent (or $350,000) of the $60 million in costs they incurred. Paper makes up the largest share of recovered costs; **Exhibit 12** shows the proportion of other costs recovered, including physical media devices (such as CDs, DVDs and flash drives), postage, copies and scanning.

Exhibit 12 – Paper makes up 60% of recovered costs

Most recent year results



Source: Auditor analysis of survey results.

Notes: "Most recent year" may be calendar or fiscal year, and not the same year for all survey respondents.

47 survey respondents supplied data for this analysis.

The greater cost of public records request fulfillment is ultimately borne by governments and taxpayers

Because the PRA does not make those who request public records responsible for most of the costs involved in fulfilling their requests, governments, and ultimately all taxpayers, bear the costs of public records requests.

Most governments surveyed said they try to recover some or all costs allowable under the PRA. But some said they do not pursue cost recovery under certain circumstances: the request takes little time to fulfill, it involves a small number of records, or the cost is minimal (for example, under a self-imposed threshold such as less than $20).

Participants in focus groups offered insights into cost recovery. Some participants said that for simple requests, the expense of processing a payment is often higher than the amount the PRA allows them to recover. The expense to them outweighs the benefit of recovering costs. However, others believe recovering expenses is worthwhile because it motivates requesters to make reasonable requests; it also alleviates some of the costs on government, especially when responding to labor-intensive requests.

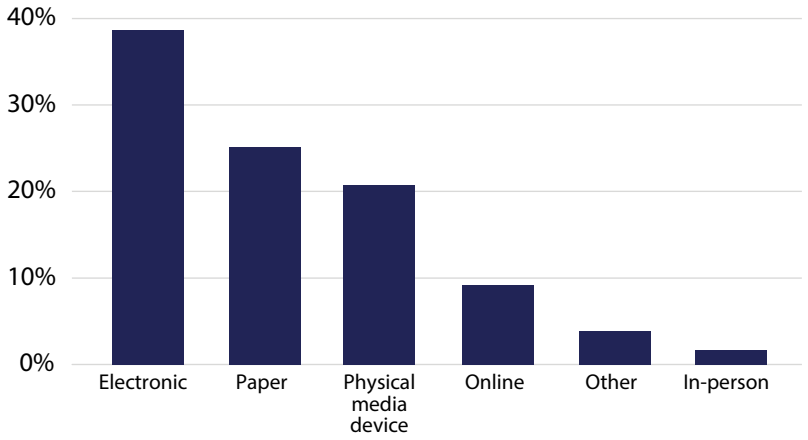
Electronic records: fulfillment, expense and cost recovery

Just as the number of electronic records has increased, the percentage of requests fulfilled through electronic media has also grown. Survey analysis showed governments now fulfill about half of the requests they receive by email or online through their own file transfer protocol (FTP) sites or cloud services like Box and Dropbox (**Exhibit 13**).

The medium of delivery matters because the PRA refers to charges for copies and photocopies. Many governments have interpreted this language as not permitting cost recovery for electronic records provided through email or online, and only allowing recovery for the cost of physical media devices the document is copied on to such as a CD, DVD or flash drive.

Exhibit 13 – Electronic records fulfillment has surpassed paper

Percentage of requests fulfilled by each delivery method, most recent year results



Source: Auditor analysis of survey results.

Note: *"Most recent year" may be calendar or fiscal year, and not the same year for all survey respondents. 715-718 survey respondents supplied data for this analysis.*

The PRA does not establish a uniform definition of what constitutes "an electronic record." Some governments told us they consider as electronic records "those converted to digital format," such as scanned paper documents. Others consider as electronic records materials "born digital," including video, audio, databases, word processing documents, spreadsheets, web content, social media and text messages.

Very few of the governments responding to the survey said they track the cost of providing records electronically separately from providing them on paper or other formats. The expense of delivering electronic records does not differ significantly from other formats. Similar to requests fulfilled in paper format, governments report that the primary cost is the staff time needed to locate, review and redact the electronic records. Other costs include software and hardware to store, retrieve, search, redact and convert records to electronic format, and online delivery services.

The cost of fulfilling public records requests continues to rise

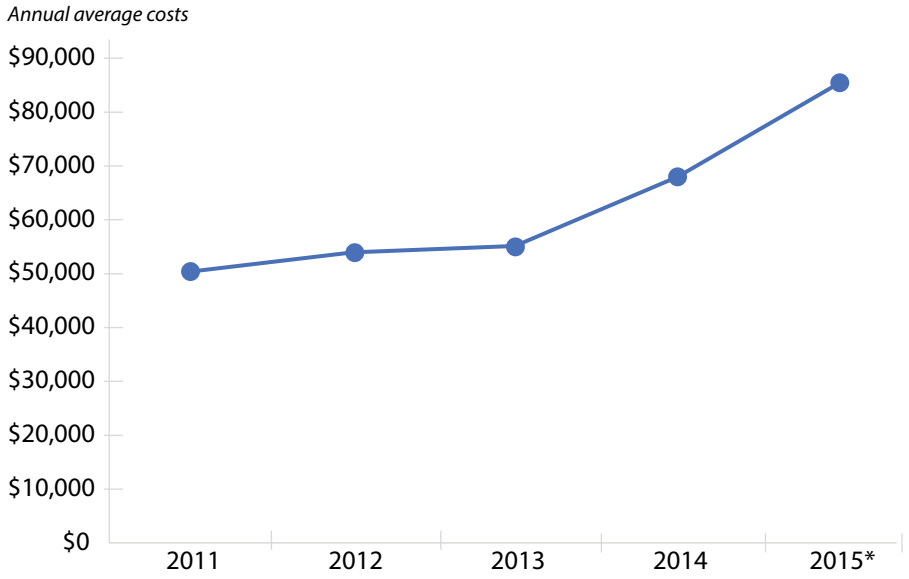
After analyzing the data provided by survey respondents, we found the cost to fulfill public records requests has risen in the last five years, most sharply between 2013 and 2015. Overall, annual average (mean) costs increased by 70 percent in the last five years (**Exhibit 14**).

Several factors contribute to the increase in spending, including:

- The public is making more requests
- Requests are more complex, requiring additional staff to fulfill
- Governments are investing in technology that facilitates records management and disclosure

Governments without the resources to invest in IT solutions that facilitate records management and disclosure may devote more personnel time to organize, search and redact records. Although IT solutions may require an initial investment, some governments find that they can help speed up the search, retrieval and redaction of records, consequently expediting the response to requesters.

Exhibit 14 – The average (mean) cost to fulfill public records requests increased by 70% from 2011 to 2015



Source: Auditor analysis of survey results.

*Note: * 2015 was a partial year. Data shown is only for those governments that had data for all five years. 89 survey respondents supplied data for this analysis.*

Governments' management and disclosure of public records is complicated by the exponential growth of information and changing, complex public records laws

The volume of information has grown more rapidly than governments' capacity to manage it

Advances in technology – such as email, dashboard cameras, cellphones, complex databases and sophisticated software – have transformed the way government conducts its business. Today's governments must maintain far more material than their counterparts of two generations ago, when the PRA was being formulated. As digitally stored information multiplies and becomes more interconnected (for example, an email containing a link to a document in a network folder and an embedded URL to an agency website), information management, processing, storage, security and disclosure become increasingly complex.

As Washington's state and local governments accumulate data in all its myriad forms, they face commensurate challenges managing it. Unlike the days of paper stored in filing cabinets and marked for destruction in archival boxes, maintaining records today requires investing in personnel and technology for storing and securing digital files and using centralized data management systems and software to search and inventory records. However, many governments cited a lack of sufficient resources to conduct activities that could help the records management and disclosure process be more efficient, such as:

- Providing training
- Setting up centralized databases of records
- Organizing records using an indexing system
- Acquiring technology for searching, retrieving and redacting records

Without the resources, practices and tools that help reduce inefficiencies in the records management process, governments, requesters and taxpayers are all subject to a less efficient and more expensive records disclosure process.

Changing and complex public records laws add to the challenges governments face when responding to requests

Records management and disclosure has been further complicated by changes in case law, driven by court decisions that establish legal precedent regarding what information can and cannot be disclosed. This complexity has cost implications and adds to the workload that governments face when responding to requests.

The Legislature determined that the PRA should be liberally construed and its exemptions narrowly interpreted to allow the widest possible access to records. As a result, the PRA's definition of a public record is very broad; it does not specify which information is not disclosable. Instead, hundreds of exemptions, generated by state law and case law, set boundaries around and narrowly define information that is exempt or prohibited from release to the public.

Changes to public records laws surrounding exemptions are frequent and often piecemeal, requiring that governments stay well-informed. However, keeping up-to-date on these requirements is a challenge. Focus group participants told us many exemptions are narrowly focused, which makes it challenging to apply them and for an employee without a legal background to identify what information can be shared publicly.

This complexity creates legal risks because confidential information may be released exposing the public to harm and the organization to litigation. These risks make governments more hesitant to post information online proactively, fearing the consequences of misinterpreting the scope or applicability of exemptions, which could include litigation and fines.

Government employees often turn to legal counsel to ensure they:

- Provide all responsive records to requesters
- Do not release exempt or protected information
- Do not redact information that should be disclosed

However, this preventive effort often carries the disadvantages of increasing the cost of fulfilling records requests and delaying responses to requesters. Organizations such as the Municipal Research and Services Center (MRSC) offer some guidance and information about exemptions. But governments report they still find the list of exemptions and their applicability to specific situations a challenge as well as a source of legal risk.

Public records exemptions

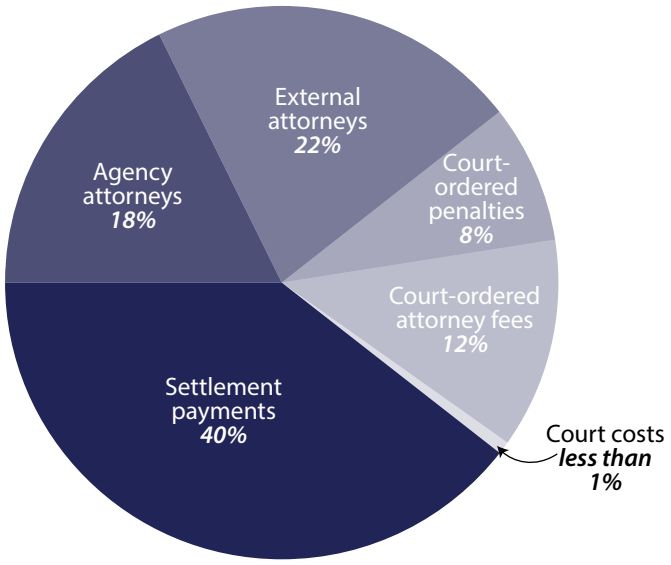
As of 2016, there were more than 400 public records exemptions established by state law. The total number of exemptions set by case law and other statutes is unknown.

Public records litigation affects governmental costs and transparency

Litigation costs can have a severe impact on the financial position of some organizations, especially those with small operating budgets. Seventeen percent of survey respondents – large and small – indicated they were involved in public records litigation over the past five years, and spent more than $10 million in the most recent year alone. Typical litigation expenses incurred include settlement payments, legal review, legal counsel, and court-ordered fees and penalties. Attorney costs (both in-house and external counsel) and settlement payments together account for nearly 80 percent of litigation expenses (**Exhibit 15**).

Exhibit 15 – Settlement payments and attorney costs account for nearly 80% of litigation expenses

Results for most recent year



Source: Auditor analysis of survey results.

Note: Percentages show a breakdown, by expense type, of the $10 million in litigation costs governments incurred in the most recent year. "Most recent year" may be calendar or fiscal year, and not the same year for all survey respondents.

130 survey respondents supplied data for this analysis.

Examples of the effect litigation has on governmental budgets

- In 2016, the City of Prosser settled a public records lawsuit for $175,000. The suit was filed by a Prosser resident who contended the city delayed, ignored or improperly handled 41 of 213 public records requests made in 2006. The City reports it spends an average of 4 percent of its general funds – about $160,000 annually – to process requests from the same person. The City's attorney said the case was settled because it could have taken years to complete a court trial, which would likely have cost more than $500,000.
- In 2016, Clallam County negotiated a settlement for $550,000 with a couple who sued for public records in 2014. The *Peninsula Daily News* reported that the settlement came about after officials discovered thousands of documents in a basement that should have been provided earlier.

The effect of public records litigation extends beyond monetary costs. For example, risk of litigation tends to make governments more cautious in their dealings with the public, inadvertently slowing down the records disclosure process. They may spend more time conferring with legal counsel to ensure they do not release information exempt or protected from disclosure or withhold information that should be released. Such caution is expensive and the delays may further expose governments to legal risk as some requesters may accuse the government of an unreasonable response time.

We also found that the fear of litigation discourages some governments from implementing innovative technology and approaches, despite the potential for cost savings and efficiencies. For example, governments in some states will share software for records management and the associated costs. However, some of Washington's governments said they avoid this practice to prevent unintentionally withholding public records from other agencies that they have been in contact with and which should be provided to requesters. They also expressed concerns about the shared responsibility for review and litigation costs arising from requests.

Some focus group participants and survey respondents said they have discontinued or not adopted innovations that would seem reasonable but which they perceived as exposing them to greater risk. Some technologies would create new records subject to disclosure, such as body, dashboard and video cameras; text and instant messaging; and social media like Twitter and Facebook. Others touch on records management, including data sharing agreements; still others relate to online web portals and records delivery services. Cities and towns were the most likely to report having discontinued or not adopted technology due to the perceived risks associated with producing and retaining new types of public records and using these technologies.

Other states have developed or revised statewide policies to address the changing public records landscape

Washington is not alone in considering changes to its public records laws. Other states have found that because the nature and volume of requests has changed dramatically over recent years, changes in statewide policy are necessary to promote the original intent of open government and public records laws while also ensuring that core government operations are not compromised. Other states have addressed challenges associated with an increasing volume of broad and complex requests through policies that:

1. Differentiate requesters and requests by their purpose
2. Recover material and personnel costs associated with disclosing records
3. Develop a statewide alternative dispute resolution program
4. Address complexities in public records laws

Many of these policies are worthy of consideration as Washington policy makers, in consultation with other stakeholders, explore amendments to the PRA. We mention a few examples of policies already in place in Washington, these are mainly to illustrate alternative approaches and/or to show where Washington has already acted on a leading policy. **Appendix C** contains profiles of the states we researched and interviewed.

1. Differentiate requesters and requests by their purpose

We found that some states have policies that permit a nuanced consideration of the nature of the request and the requester: these policies distinguish between private citizens and commercial, business or high-volume requests. For example, Illinois has developed a tiered approach that identifies four categories of requests: voluminous, commercial, recurrent and "unduly burdensome." The law allows governments to recover costs for voluminous records requests based on the actual size of the request, ranging from $20 for requests larger than 20 megabytes to no more than $100 for requests over 100 megabytes. The same law grants governments additional time to respond to requests from recurrent requesters – people that submit several requests within a set span of time.

Other states explicitly permit governments to recover costs associated with requests that are commercial in nature, reasoning that using government data to advertise or sell products or services has a weaker link to public interest or benefit than do other requests. Two of the states we examined, Illinois and Massachusetts, as well as the federal government, allow government organizations to recover personnel costs related to commercial requests, sometimes after a certain number of hours have been spent fulfilling the request.

2. Recover material and staff costs associated with disclosing records

A common approach to providing relief to governments is to authorize them to recover costs associated with disclosing records. Doing so permits governments to focus on core functions while being able to add personnel for the disclosure process or tools that can improve efficiency. We found that states differ in the policies they use to allow cost recovery, but the most common areas of recovery are related to the number of pages in a request, the cost of materials and postage, and personnel time used to fulfill a request.

Florida allows governments to recover personnel costs after 15 minutes of extensive use of clerical resources, inspection, or information technology used to fulfill a request.

Most states that we studied permit governments to recover the costs associated with personnel time based on a variety of methods. For example: Utah, Massachusetts and Florida allow cost recovery for the hourly rate of the lowest paid employee that can fulfill the request. Others charge for personnel costs based on the type of work being completed – often a higher cost for more complex tasks such as database extraction. Vermont, for instance, allows government organizations to charge personnel time for the following categories:

- **Record duplication**: $0.33 a minute after the first 30 minutes
- **Data extraction** conducted by senior-level staff and IT specialists: $0.57 a minute after the first 30 minutes
- **Creating a new public record**: $0.57 a minute after the first 30 minutes

Most of those states have instituted parameters for when personnel time can be charged. For instance, a Florida court decision determined that if a request requires more than 15 minutes to process, governments can recover personnel costs. The U.S. State Department charges between $21 an hour and $76 an hour for the time it takes to search and duplicate records after the first two hours of search time or after the first 100 pages of duplication.

Washington has already determined that, in certain circumstances, it can be acceptable to pass government expenditure back to requesters. As of January 2016, all courts and judicial agencies in Washington are allowed to recover personnel costs at a fee not to exceed $30 an hour after the first hour of research and preparation services required to fulfill a request. This change to General Court Rule is intended to allow access to court administrative records without unduly affecting the business of the judiciary.

Policy considerations for changes related to charging fees

The approaches previously mentioned, while allowing governments to recover costs and limiting unduly burdensome requests, have policy implications that may affect the public's access to information. The following are policies other states have adopted to prevent limiting access to public records.

Discretion for fee waivers

Many requests for information are easy to fulfill. Giving governments the discretion to waive fees allows the disclosure processes to remain efficient and cost effective because it is typically easier for entities to provide records without charging a fee for small, simple requests.

Fee thresholds

Public records laws in other states often have fee thresholds that limit fees for requests under a certain dollar amount, time limit or page number. For instance, the federal government allows fees to accrue only after two hours of searching and charges by page only after 100 pages of records. In Florida, governments can recover costs only after the first 15 minutes of work towards fulfilling a request.

Differentiate requesters

To advance accessibility to public information, several states have policies that prevent entities from recovering costs from select requesters such as members of the news media and academic organizations.

3. Develop a statewide alternative dispute resolution program

Mediation and alternative dispute resolution options are generally less expensive and more expedient than going to court. Demonstrating willingness to negotiate has the added benefit of improving trust between governments and requesters. Many states offer alternative dispute resolution programs, either voluntary or mandatory, for those who want to appeal a decision about a request for public records. For example, Florida instituted a voluntary mediation program within the Attorney General's Office to mediate disputes; Illinois established a Public Access Counselor that mediates disputes and issues binding and final opinions under administrative law.

The Public Access Counselor in the Office of the Illinois Attorney General has jurisdiction to resolve and mediate public records disputes.

Some states, as well as the federal government, use an administrative appeal process rather than directing requesters to petition a court review of their public records case.

Pennsylvania uses administrative appeals to resolve public records disputes.

Florida uses an informal voluntary mediation process to resolve public records disputes.

4. Address complexities in public records laws

Some states we researched have made efforts to address problems with changing and complex public records laws. Similar to Washington, Vermont's Legislature developed a subcommittee to review and streamline exemptions. Additionally, Vermont's subcommittee compiles exemptions under one section of law. Vermont's Secretary of State also works with and encourages lawmakers to flag records exemptions while creating exemptions through rule, allowing governments to quickly locate and categorize them. Moreover, Vermont's Secretary of State works directly with legislators while exemptions are being created to add time limits on exemptions.

To make it easier for governments to find exemptions applicable to different kinds of information, Vermont's Secretary of State created an online database of exemptions that can be easily searched by different categories of information. Washington employs a similar approach. For instance, Washington's Office of the Code Reviser creates a Word document with a list of exemptions established by state law. This word document is posted on the Sunshine Committee webpage.

Oregon is currently making reforms to better streamline the state's public records laws and exemptions.

Practices that improve records management and disclosure complement statewide policy

Policy decisions guide the state's overall path regarding public records requests and warrant careful consideration and evaluation. In addition to these policies, the changing records environment necessitates increased efficiency and effectiveness in the way that records are managed and provided to requesters. We identified practical actions state and local governments can consider taking to efficiently manage and provide public records without compromising their core business. They include:

1. Communicate with requesters thoughtfully and as needed
2. Manage request fulfillment to maximize benefits to requesters and minimize disruptions to critical services
3. Disclose information before it is asked for
4. Develop a coordinated, agency-wide strategy and institutional culture around records management
5. Collect and retain only necessary records
6. Organize records for easy search and retrieval
7. Adopt strategies and organization-wide policies to accommodate the complexity of public records laws
8. Reduce the potential for litigation and mitigate its impact

It is important to mention that implementing some of these practices may require policy changes and some governments will need funding and other resources. While some of the governments we talked to already use some of these practices, many cited a lack of sufficient resources to put them into practice, even if they would add efficiencies.

1. Communicate with requesters thoughtfully and as needed

A simple and inexpensive way to address challenges associated with complex and broad requests is to clarify the request by communicating directly with requesters. Many focus group participants said they already use this strategy. Clarifying the scope of a request helps the requester receive the records they intended to get – no more, no less – and narrows the search the organization must conduct to find and prepare records. Leading practices also recommend governments give the requester relevant updates throughout the process, either directly or through a website or portal service.

By publically communicating the type of information a government maintains, requesters can make more informed decisions about the records they request. Governments might want to consider additional topics for communications with requesters:

- How the request was interpreted by the organization
- Status of the request
- How the search is being conducted
- Scope of the request
- Anticipated response times
- Any fees or procedural requirements

Good communication practices can generally improve the requester's experience, reduce unnecessary delays, and potentially avoid disputes and unnecessary costs.

Washington's public records laws allow governments to close requests if requesters do not respond to their request for clarification. Vermont recently passed similar legislation to allow governments to better help requesters by refining the scope of requests.

2. Manage request fulfillment to maximize benefits to requesters and minimize disruptions to critical services

Broad, complex requests can exhaust human resources and hamper an organization's ability to fulfill other, simpler requests. People in our focus groups and in other states suggest making an effort to expedite fulfillment of simple requests – without requiring requesters to fill out forms. Making the process simpler and more efficient benefits both the requester and government. However, expediting fulfillment of simpler requests may require policy changes.

We found broad consensus among federal guidelines, other states and focus group participants for the practice of providing records as they are processed, in installments, rather than waiting to assemble everything needed for a large request. The benefits include more timely disclosure, increased usefulness of the records to the requester, and improved resource allocation for governments, as they can budget time for fulfilling requests while delivering core services.

Governments in Washington use a variety of tools to help search for records and/or manage requests including: GovQA, Enterprise Content Management (ECM), e-discovery, Access databases and Excel workbooks.

Washington's public records laws allow governments to produce records in installments and close the remainder of a request if an installment is not claimed or reviewed by the requester.

3. Disclose information before it is asked for

Leading practices suggest that governments have a public service obligation to promptly disclose records that would be of public interest, without waiting for a records request. By identifying particular records that may be of interest to the public – or that they know from experience will be frequently requested – and posting them online, governments might reduce entire streams of records requests. During a highly publicized controversy, for example, Oregon's governor released over 94,000 emails at once, rather than responding to individual requests for emails as they arrived. These emails are now searchable by subject, date, sender and recipient.

Actively sharing public records, based on frequently requested information or current events, may help lower costs by reducing time personnel spend answering multiple requests for the same information.

An emerging tool for sharing information is the public records portal. Many state and local governments across the country have established websites, or open records portals, to publish the records requests they receive and the responses to those requests, among many other things. Survey respondents and focus group participants said they found software such as GovQA and Next Request especially helpful; these tools have public-facing features that allow people to search for information without the need for a formal request.

Leading practices recommend that proactively disclosing records should not be a one-time effort. Governments should develop an ongoing process for identifying records of public interest and suitable for publication and posting them online regularly. The guidelines recommend that decisions to identify records appropriate for online posting be made by a team of people that include records professionals, IT personnel, and program specialists. Although proactively disclosing information online has its costs, actively sharing public records, based on frequently requested information or current events may help lower costs in the long run by reducing the time employees spend answering multiple requests for the same information.

Several governments in Washington, such as Clark County and City of Kirkland, have a public records portal where information seekers can search public records, submit requests, and view past published requests.

Utah has a statewide, centralized open records portal where record seekers can view information released as a result of public records requests.

4. Develop a coordinated, agency-wide strategy and institutional culture around records management

Our conversations with other states and research on leading practices suggest that taking a strategic approach to records management is a key step to better disclosure of government information.

Garner buy-in and support from executive leadership

Governments we spoke with and literature we reviewed describe the importance of support, collaboration and buy-in from executive leadership and others throughout the agency. Coordinated efforts help ensure that the records management and records disclosure process is made a priority across the organization.

Establish a cross-division steering committee for records management

Successfully implementing a records management program requires a coordinated effort with the right individuals across organizational departments, including business professionals, managers and executive leadership and technology professionals. Some leading practices recommend assembling a cross-division executive steering committee comprised of senior management, the organization's records management officer and other records management staff, IT professionals, legal staff, and records custodians. Committees can be tasked with the following:

- Staying abreast of changes in public records laws
- Updating policies, templates, guidelines, and procedures for public records requests including how records are organized, preserved, and disposed of
- Ensuring that staff receive needed guidance, training and tools for effectively handling file management, records requests, and related duties

King County Executive Branch reported that to foster an institutional culture around records management, it holds periodic file-a-thons where records custodians manage their records.

Actively collaborate with technology professionals

In this electronic age, one of the most important internal partners in establishing a records management strategy is the organization's IT department. Actively collaborating with technology professionals is vital to maintaining electronic records: they create and maintain the infrastructure within which records reside. IT professionals can also help identify available tools that can be used to better manage the types of records an organization generates and easily search for information in the event of a records request.

Coordination between different parts of the government can help set clear expectations for what is needed in technology tools. It enables both records managers and technology professionals to understand their role in the records disclosure process, including proper use and support for IT solutions.

For easier coordination of request response efforts, Minnesota manages requests by having main points of contact for each division in an agency and makes an inventory of data available.

5. Collect and retain only necessary information

Strategically collect only necessary information

Gathering only that information which is necessary to conduct agency business reduces the later need and cost for redaction when records are requested. One focus group participant told us her organization regularly reviews all forms to ensure staff do not collect confidential or sensitive information. The organization purposely excludes social security numbers from personnel files to reduce the need for redaction if a requester asks for personnel records.

If it is necessary to gather confidential or sensitive information, federal guidelines recommend separating releasable data from exempt data in order to make the disclosure process easier.

Systematically retain only necessary records

Formalized records destruction practices and policies help organizations locate and retrieve documents for requests and legal discovery, control the costs of information storage, and make it easier to dispose of records at the end of their business life or retention period. A significant number of documents and emails are transitory in nature and could be disposed of early, eliminating the need for search and review in the event of a request.

Some governments in Washington use:

- Records retention checklists
- Software systems that have integrated records retention schedules

Records retention schedules are set in state law. Leading practices advise, when possible, applying a single records retention schedule supported by records management policies and procedures, and implementing it consistently across departments. They also suggest integrating retention schedules into file and email management processes as well. Several governments we spoke with use formal records retention schedules that apply across divisions and functions to ensure records are kept only as long as legally required and operationally necessary.

6. Organize records for easy search and retrieval

Managing electronic files can be overwhelming without an organized method for naming and storing files. Once a government decides what to keep and puts policies in place to implement records management, it must organize the data and documents so they can be quickly and easily found if requested – and destroyed on the schedule that applies to each.

Utah's Davis County inventories records with their title, purpose, type, and retention period to better manage and locate records.

Literature suggests governments can improve their access to and retrieval of records by cataloging or indexing their records using electronic filing systems, or making use of each file's embedded metadata. Leading practices suggest that records custodians can make it easier to locate and identify records if they carefully apply filing processes and tools. Governments manage and organize their records using a variety of tools, such as databases that catalog their records, systematic filing, email archiving systems, electronic filing systems with integrated records retention schedules, and software programs that can search an entire network of information.

Similar to other states, Washington requires governments to index records.

Exhibit 16 sets out four areas of records management and IT solutions for governments that were mentioned in focus groups.

Exhibit 16 – Examples of IT solutions that facilitate public records management and disclosure

Task needed	What the software does	Product examples
Requests management	Organizes records, tracks and responds to public records requests	GovQA, WebQA, Next Request
Records management	Consolidates emails and builds automated records retention schedules into email folders. It also archives emails in the cloud.	Vault, Smarsh
	Help capture, manage, store, preserve, and deliver information.	ECM Solutions
Email searching	Speeds complex email searches	Discovery Accelerator
Document redaction	After review by a person, efficiently redacts information exempt from disclosure from documents requested by requesters	Adobe Acrobat Pro

Source: Auditor analysis of focus group results.

Systematic filing

Electronic filing practices, such as indexing records, developing consistent naming conventions and considering file formats, help ensure that files can be retrieved quickly. Selecting formats that are common, open-sourced, easily convertible and that include documentation about the content, context, and/or structure of the record, reduces the likelihood someone must convert files into a different format for requesters.

Yakima Regional Clean Air Agency said it organizes files in an Access database it developed. Entries have hyperlinks to any associated files on a network server.

7. Adopt strategies and organization-wide policies to accommodate complexity of public records laws

Washington governments employ some strategies to address the changing nature and complexity of public records laws by creating summary lists that simplify and clarify exemptions applicable to the records the specific agency manages and providing training to staff on applicable laws.

Governments in other states, such as the City of Philadelphia, allow police departments to handle their own public records requests to accommodate the differences in exemptions and non-disclosable information, the types of records they generate and the business practices they follow.

8. Reduce the potential for litigation and mitigate its impact

Many of the practices and policies mentioned throughout this report can help reduce the potential for litigation. However, lawsuits may not always be preventable. This section discusses some approaches governments have taken to mitigate the impact of litigation.

Provide a user-friendly dispute process

Providing a user-friendly process for disputing government decisions on records requests can help address requesters' concerns that might otherwise result in costly litigation. Leading practices recommend that governments provide an accessible dispute resolution process in both regulations and other communication. Allowing requesters to submit appeals by email or on a website may be faster, cheaper and more convenient for both requesters and the agency processing the appeals.

Illinois' Attorney General's Office developed a structured legal advice hotline for governments and requesters. The hotline is staffed with several attorneys and has many phone lines to provide greater accessibility. While the hotline does not offer formal legal advice, it provides general information about public records laws and how to apply laws in similar situations.

In Washington, the Open Government Ombudsman at the Attorney General's Office provides similar assistance to governments and requesters.

Document decisions, rationale and search processes

Make it clear to requesters why certain information was not released, as required by the PRA. Governments reported documenting search processes, using exemptions logs, and other tools that track information to help prove the adequacy of search processes and avoid litigation. Logs contain the nature of material withheld or redacted from a public record and cite the exemption and the rationale for its applicability. Focus group participants said they provide a copy of the exemption log to the requester when the request is fulfilled, as required by the PRA. They also suggest carefully documenting correspondence with requesters and maintaining organized records of responses to avoid future lawsuits.

Rely on legal counsel when necessary

Engaging legal expertise to determine if a record is releasable can reassure governments that the decisions they make regarding disclosure are legally sound. However, there are tradeoffs with involving legal counsel: increased costs and the time added to the records disclosure process.

Conclusion

Washington's PRA guarantees the public broad access to information about government conduct to foster sound governance. Our interactions with state and local governments showed their commitment to foster an open, accessible and accountable government. However, government transparency does not come without cost. A changing public records environment and a broad PRA that has not kept pace with present-day issues has contributed to a government that is more expensive, overburdened and ultimately less accessible.

Unlike other states we studied, Washington's public records laws do not distinguish between types of requesters, do not limit the number of records or requests a person can make, and lack boundaries to prevent requesters from compromising the efficiency of government operations. This liberal access contributes to an increasing volume of broad and complex requests that absorb more staff time to fulfill, consequently interfering with other essential government functions and increasing costs to taxpayers. Insufficient resources and limited ability to recover costs, coupled with a fear of potential litigation, means governments find it more challenging to fulfill increasingly complex requests, thereby slowing the disclosure process for all requesters. Amid the deluge of requests and insufficient resources, governments may be hesitant or unable to adopt innovative practices and tools that could make the disclosure process more efficient.

But even governments with limited resources have opportunities to incorporate efficient information management and disclosure practices. We found several strategies that can help, noted in the report and appendices. Even so, other states have found that practices and tools alone are limited in their effectiveness to address public records challenges. They have implemented statutory or regulatory changes to promote the original intent of public records laws while also ensuring that core government operations are not compromised.

Providing access to government records in a manner that does not limit the public's access to information or unduly affect government operations is challenging. The responsibility to find this balance is shared among the Legislature, governments and the public. Our research shows that a combination of statewide policy changes and better information management and disclosure practices are needed to keep pace with changing times.

This report can help inform the Legislature and stakeholders about the existing state of Washington's public records environment and how other states are managing similar challenges. It also provides information on practices and tools that governments can consider as they continue to improve their records management and disclosure processes.

Appendix A: Initiative 900

Initiative 900, approved by Washington voters in 2005 and enacted into state law in 2006, authorized the State Auditor's Office to conduct independent, comprehensive performance audits of state and local governments. Specifically, the law directs the Auditor's Office to "review and analyze the economy, efficiency, and effectiveness of the policies, management, fiscal affairs, and operations of state and local governments, agencies, programs, and accounts." Performance audits are to be conducted according to U.S. Government Accountability Office government auditing standards.

In addition, the law identifies nine elements that are to be considered within the scope of each performance audit. The State Auditor's Office evaluates the relevance of all nine elements to each audit. The table below indicates which elements are addressed in the audit. Specific issues are discussed in the Audit Results section of this report.

I-900 element	Addressed in the audit
1. Identify cost savings	**No.** The objectives did not include identification of cost savings. However, we identified the costs state and local governments incur to respond to public records requests and practices for recovering such costs. We also found practices for effectively managing and disclosing public records that may help governments recover costs and achieve efficiencies that result in cost savings.
2. Identify services that can be reduced or eliminated	**No.** Washington's public records laws promote government transparency by providing the public with access to government records. Therefore, we did not consider a reduction or elimination of this service.
3. Identify programs or services that can be transferred to the private sector	**No.** The objectives did not include examining whether any of the processes or services involved in the management and disclosure of public records could be transferred to the private sector.
4. Analyze gaps or overlaps in programs or services and provide recommendations to correct them	**No.** The objectives did not include an analysis of gaps or overlaps in the processes, programs, or services involved in the management and disclosure of public records.
5. Assess feasibility of pooling information technology systems within the department	**No.** The objectives did not assess the feasibility of pooling information technology systems within governments or departments.
6. Analyze departmental roles and functions, and provide recommendations to change or eliminate them	**No.** The objectives did not include analyzing department roles or functions.
7. Provide recommendations for statutory or regulatory changes that may be necessary for the department to properly carry out its functions	**No.** We did not make specific recommendations, but implementation of the practices we identified to recover costs associated with responding to public records requests and to address other public records issues will likely require statutory or regulatory changes.
8. Analyze departmental performance, data performance measures, and self-assessment systems	**No.** The objectives did not include analyzing department roles or functions.
9. Identify relevant best practices	**Yes.** We identified policies for addressing issues associated with responding to public records requests; we also identified practices for managing records, responding to public records requests and making information more accessible to the public.

Appendix B: Methodology

Survey of Washington's state and local governments

We surveyed Washington's state and local governments to collect relevant Public Records Act (PRA) requests information, including, but not limited to:

- The volume and nature of public records requests governments receive
- The costs they incur in fulfilling those requests
- Practices, policies and tools they use to manage public records and respond to requests

Given the magnitude and complexity of this survey effort, we contracted with BERK Consulting, Inc., to help us design and administer the survey, and analyze survey results. BERK partnered with the Municipal Research and Services Center (MRSC) to design the survey and provide consultative support. BERK's consultants have expertise in data collection, cost studies, survey design, administration and analysis. MRSC's staff have expertise in matters around the PRA, public records request issues and local governments.

Survey population

We wanted to survey all state and local governments that are subject to the PRA and for which we could obtain contact information. We asked the Washington Association of Public Records Officers (WAPRO) and several local government associations to help us find those contacts not already in our internal database, and verified that we had correct information with the governments themselves. We were able to obtain contacts for and send the survey to 2,363 governments across the state. **Figure 1** shows the types of governments we surveyed, grouped as they were for our analysis.

Figure 1 – The types of governments we surveyed, grouped by category

Category	Type of entities included in category	
Agency, commission or board	State agencies, commissions or boards	
City/Town	Cities and towns	
School district/ESD	School districts, Educational Service Districts (ESD)	
County	Counties	
Post-secondary education institution	Universities and four-year colleges Community and technical colleges	
Special districts	Air Pollution District Cemetery District Conservation District Diking/Drainage District Fire Protection District Flood Control District Health District Hospital District Irrigation and Reclamation District Library District	Mosquito/Pest/Weed District Park and Recreation District Port/Airport District Public Facilities District Public Utility District (PUD) TV Reception District Transportation Benefit District Water/Sewer District
Other governments	Economic/Industrial Development Authority Emergency Management Service Government Association Housing Authority Insurance Pool/Risk Management	Local/Regional Trauma Care Councils Public Development Authority Regional Planning Council Regional Support/Community Network Transportation Authority Water Conservancy Board

Survey development

We spoke to a variety of stakeholders to hear their perspectives as we assembled possible survey questions, and convened an expert panel of public records officers from various state and local governments to review and discuss the draft survey. Finally, we asked several people from a mix of governments to test the survey and accompanying cost estimation tool. This group gave us feedback on question clarity, phrasing, the amount of time needed to respond to the survey, and the likelihood that survey respondents would be able to provide certain types of information. If you would like to view survey questions, you can download a PDF copy of the 48-page survey on our website (**www.sao.wa.gov**).

Survey promotion

To raise awareness about the survey and encourage participation before launching it, we:

- Sent governments pre-survey notices explaining the survey's intent, topics and anticipated delivery date
- Collaborated with WAPRO and local government associations to encourage participation
- Gave an overview of our objectives and approach to the House Local Government Committee and to more than 400 public records officers at the 2015 annual WAPRO conference
- Created a page on the State Auditor's Office website to keep people informed about our progress

Survey administration

The survey was administered through Survey Monkey. We sent the survey to the public records officer or specific staff that each government organization designated as the appropriate person to respond. The survey was officially open from November 2 through December 15, 2015. During the survey administration period, we sent reminders to those who had not responded, hosted a webinar to answer questions about the survey, and offered technical assistance via a dedicated email address and telephone number.

Survey responses

Of the 2,363 unique governments contacted, 923 responded to the survey, providing an overall response rate of 39 percent (see **Figure 2** for response rate by government type). Respondents ranged from small special purpose districts to large state agencies, from counties to universities. The 39 percent response rate understates the breadth of data we received because the response rate was significantly higher for governments that represent a large percentage of the state's total population. For example,

- 58 percent of cities and towns responded to the survey; they represent 79 percent of Washington's city and town residents
- 82 percent of counties provided at least one departmental response; they represent 98 percent of Washington's total population

Despite the high level of representation in the survey, we did not attempt to extrapolate our results statewide, because we do not know how similar non-responding governments are to survey respondents.

Figure 2: Survey response rate by government type

Type of government	Contacted	Responded	Rate
State government (state agency, commission or board)	141	80	**57%**
Local governments (all)	2,222	842	**38%**
County	39	32	**82%**
Post-secondary education institution	37	22	**59%**
City/Town	283	165	**58%**
School district/ESD	283	115	**41%**
Special district	1,311	431	**33%**
Other governments	269	78	**29%**
Total state and local governments	**2,363**	**923**	**39%**

Although 923 governments responded to the survey, we received 1,016 survey responses because some decentralized governments provided separate responses from distinct departments. **Figure 3** shows the number of responses to survey questions used as the basis for exhibits in this report. The number of responses for each question varied for several reasons, including:

- Respondents were not expected to answer every survey question. The survey employed skip logic to ensure they were asked only relevant questions
- Not all governments track the data we asked for. For example, 818 survey respondents reported receiving public records requests in the last five years. While 84 percent said they tracked the number of requests received, only 49 percent of them collected information on the nature of requests received, and only 39 percent tracked data on the costs they incurred fulfilling requests.

Governments that track information on the number, nature and costs to fulfill public records requests provided actual data. Those that do not track, but had the necessary information to estimate, provided estimates. Analyses in this report include both actual and estimated data.

Figure 3: Number of survey responses for select analyses in report

Exhibit number	Exhibit title	Number of responses
1	Percentage of survey respondents tracking information on number and nature of requests received and cost to fulfill them	Number = 816 Nature = 781 Cost = 781
3	Three types of government received 89% of the total 285,000 public records requests in the most recent year	794
4	The number of public records requests Washington's governments receive varies significantly	794
5	The average number of public records requests increased by 36% from 2011 through mid-2015	434
6	14% of public records requests took 21 or more business days to fulfill	738
7	Police and sheriff's departments receive a large share of requests compared to other departments	272
8	Public records requests come from a variety of requesters	781
9	The cost of fulfilling records requests also varies significantly	541
10	Three types of governments spent 82% of the $60 million in costs incurred	541
11	Employee time is the greatest expense in fulfilling records requests	493
12	Paper makes up 60% of cost recovered	47
13	Electronic records fulfillment has surpassed paper	715-718
14	Cost to fulfill public records requests increased by 70% from 2011-2015	89
15	Settlement payments and attorney costs account for nearly 80% of litigation expenses	130

Survey analysis

We conducted qualitative and quantitative analyses. Quantitative responses were analyzed using descriptive statistics, such as frequency distribution, averages, medians, minimums and maximums. Participation in the survey was voluntary.

Given the self-reported nature of the data, we conducted validity testing to ensure that the information which forms the basis of the analysis in this report is sufficiently reliable and provides appropriate evidence to support results and conclusions. For example, we reviewed the data for outliers and internal consistency to ensure that answers did not contradict one another, and followed up with additional questions for clarification when necessary. Other data validation tests conducted included looking for duplicates, missing data, incorrect values, and significant increases and decreases in values from year to year.

Appendix C: State Profiles

The following summaries of public records laws in eight states and the federal government illustrate the variety of ways other states have developed or updated their laws to address the challenges associated with providing access to public records to ensure a transparent yet efficient government.

FLORIDA 43

ILLINOIS 44

MASSACHUSETTS 46

MINNESOTA 48

OREGON 49

PENNSYLVANIA 50

UTAH 51

VERMONT 52

FEDERAL 53

A snapshot of other states' public records laws

Feature addressed	WA	FL	IL	MA	MN	OR	PA	UT	VT	Federal
Recoverable costs										
Copies, materials and other	$0.15 / page	$0.15/page one-sided, $0.20/page double-sided copies	$0.15/page after 50 pages	$0.20/ page, $0.50/ computer printout	$0.25/page	Yes	Up to $0.25/page	Yes	Yes	$0.03 - $0.25 / page
Personnel and labor **(May include searching, inspecting, reviewing, redacting, or copying)**	No	hourly rate of lowest paid capable employee	Yes	hourly rate of lowest paid capable employee	after 100 pages	Yes	No	hourly rate of lowest paid capable employee	Yes, if time >30m; if new record generated	after 100 pages
Provisions specific to electronic information	No	Yes	Yes	No	Yes	No	Yes	No	No	No
Extra charges for commercial purposes	No	No	Yes	Yes	Yes	No	No	No	No	Yes
Requesters and disputes										
Limits certain requesters	No	No	Recurrent requesters	No	No	No	Legal residents of United States	No	No	No
Restricts purpose or use	No	No	No	No	No	No	No	Yes	No	No
Dispute resolution	Attorney General's Office	Mediation with Attorney General's Office	Mediation with Attorney General's Office	Sec. of State	Commr. of Admin.; Admin. appeal	Attorney General's Office	Open records office; Admin. appeal	Head of agency; Records Committee	Head of agency	FOIA Liaison; Mediation Services; Advisory Opinions
Branches of governments subject to public records laws										
Covers all branches of government	No (not legis/ judicial)	Yes	No (not judicial)	No (not legis)	No (not legis/ judicial)	No (not legis/ judicial)	Yes	Yes	Yes	No (not legis/ judicial)
Non-governmental entities supported by public funds	Not stated	Yes	Yes	Not stated	Yes	Yes	Yes	Yes	Not stated	No

FLORIDA

Florida's public records laws allow any person to inspect and copy records at reasonable times and under reasonable conditions. Laws do not differentiate between different types of requests by their purpose (such as between commercial and noncommercial). Requesters are entitled to view the records of all state, county or municipal governments, as well as any other public or private organization acting on behalf of one of these governments.

Recoverable costs

Governments may charge requesters for certain costs and require them to pay the charge in full before duplicating requested documents.

Copies, materials and other costs

Government may charge $0.15 per page for one-sided copies, $0.20 for two-sided copies and $1.00 for certified copies. They may also charge for the actual cost of duplication – including physical materials and supplies given to the requester (such as disks, tapes or CDs).

Personnel costs

Governments may charge requesters a special service fee for inspecting public records when the nature or volume of those records require "extensive" use of IT resources or clerical or supervisory assistance. Charges must be based on the actual labor (including both salary and benefits of an employee) or computer costs the government incurred. "Extensive" has been defined by Florida's courts as material that takes more than 15 minutes to locate, review, copy and refile.

Electronic records

Governments can give requesters remote access to public records and charge them a fee for this access, which may include direct and indirect costs.

Dispute resolution

The Florida Legislature has created a voluntary mediation program within the Attorney General's Office to mediate disputes involving access to public records. The Attorney General's Office is required to:

- Employ mediators to resolve public records disputes
- Recommend legislation regarding access to public records, and
- Assist the Department of State in preparing training seminars on access to public records

Proposals to limit attorney fees

In 2016, Florida's House and Senate proposed – but did not pass – legislation that would have eliminated the award of attorney fees to requesters when governments wrongfully denied access to public records.

ILLINOIS

The Illinois Freedom of Information Act gives any person, including corporations, firms, associations, partnerships and other organizations, the right to request public records. Requesters are not required to tell governments the purpose of their request, except to clarify if the request is for commercial purposes or to obtain a fee waiver. Public records laws apply to all legislative, executive and administrative or advisory bodies of the state. Application to the legislative branch is limited and does not include drafts, notes, recommendations, memoranda, and other records in which opinions are expressed, or policies or actions are formulated by the Legislature. The Act does not apply to the judiciary branch, as determined by case law and an opinion of the Attorney General.

Recoverable costs

Illinois' public records laws give governments the flexibility to impose, reduce or waive fees, but they must provide requesters with an accounting of all fees, costs and personnel hours in connection with a request. Governments must also give requesters an estimate of fees to be charged and may require that requesters pay in full before duplicating requested documents.

Copies, materials and other costs

The only costs that are recoverable are those related to physical materials given to the requester (copies, disks, tapes or CDs). The first 50 pages of a request fulfilled with paper copies are free. Governments can charge $0.15 page for requests exceeding 50 pages, but they have the option to charge less.

Personnel costs

Public records laws allow governments to recover personnel costs for commercial requests. They may recover up to $10 per hour for search, review and redaction of records. Commercial requests are defined as those used for sale, resale, solicitation or advertisement.

Electronic records

Laws enacted in 2014 allow governments to charge requesters by the volume of records they receive. The voluminous records provision of the law sets out a fee schedule by megabyte as illustrated in **Figure 4**. Governments may charge the fee even if the requester fails to accept or collect records. The provision does not apply to the following requesters: members of the news media and non-profit, scientific, or academic organizations.

Notable changes in public records laws

In 2014, Illinois' General Assembly instituted several revisions to public records laws. It declared that the public policy of Illinois is to promote the transparency and accountability of public bodies partly by providing all persons with full and complete information about government affairs. This principle, coupled with ensuring that requests do not unduly burden public resources or disrupt the work of public bodies, led the state to establish provisions in public records laws to give governments authority to recover costs from requests that are considered "unduly burdensome." The Illinois Freedom of Information Act now distinguishes different types of requests including: commercial requests, repeat requests, and voluminous requests as shown in **Figure 4** on the following page.

While these provisions give Illinois' governments greater protection, they have also come under criticism. Opponents of these laws state that while it is unlikely that governments are trying to hide information, these protections are a disincentive for governments to provide user-friendly records that could benefit the public.

Figure 4 – Brief summary of 2014 changes to Illinois public records laws

<table>
<tr><th>Request type</th><th>Definition</th><th>How the law addresses bottlenecks</th></tr>
<tr><td>Voluminous</td><td>• Five or more requests for five or more different categories of records
• Requests for five or more categories in 20 business days
• A compilation of 500 or more pages
• Charges do not apply to requests made by the news media, nonprofit, scientific, or academic organizations</td><td>• Governments receive an additional five days to respond to requests.
• Fees are charged by megabyte (MB) for electronic records
<table>
<tr><th>PDF document</th><th>Non-PDF</th><th>Maximum charge</th></tr>
<tr><td>Under 80 mb</td><td>Under 2 mb</td><td>$20</td></tr>
<tr><td>80-160 mb</td><td>2-4 mb</td><td>$40</td></tr>
<tr><td>Over 160 mb</td><td>Over 4 mb</td><td>$100</td></tr>
</table></td></tr>
<tr><td>Recurrent</td><td>A recurrent requester is a person who submits any of these:
• 50 requests in a year
• 15 requests in 30 days, or
• 7 requests in 7 days</td><td>Governments receive additional time to respond to requests (21 business days)</td></tr>
<tr><td>Commercial</td><td>Requests used for sale, resale, solicitation or advertisement</td><td>• Requesters must disclose any commercial purpose
• Entities receive additional time to respond to requests (total of 21 business days)
• Entities can recover up to $10/hour for search, review, and redactions</td></tr>
<tr><td>Unduly Burdensome</td><td>Repeated requests asking for records that are unchanged or identical to records previously provided or denied</td><td>Before denying the request, governments must inform requesters and give them an opportunity to adjust the request. Governments have the option to require that requesters pay an estimate of fees to be charged before fulfilling the request.</td></tr>
</table>

Dispute Resolution

The Public Access Counselor established in the Office of the Illinois Attorney General has jurisdiction to resolve and mediate public records disputes and may issue binding opinions, which are considered final decisions under administrative law. Alternatively, any person denied access to records may file suit in circuit courts.

MASSACHUSETTS

Massachusetts' public records laws allow any person to request government records and does not discriminate based on the purpose of the request. Requesters can inspect the public records of any Commonwealth agency, executive office, department, board, commission, bureau, division or authority, any of their political subdivisions, and any authority established by the general court to serve a public purpose. However, the Public Records Law does not apply to the Massachusetts State Legislature and its committees or to the state courts.

The cost recovery mechanisms listed below were in place during the period of our research.

Recoverable costs

For any request expected to cost more than $10.00, the records custodian is required to provide an estimate of the anticipated cost. Governments may waive fees where disclosure would benefit the public interest.

Copies, materials and other costs

Governments can charge $0.20 per page for photocopies, $0.25 per page for microfilm copies, and $0.50 per page for computer printouts. Records custodians may also charge the actual cost of reproducing a copy of a record that is not susceptible to ordinary means of reproduction, such as large computer records or over-sized plans.

Personnel costs

Governments may charge a fee for the time spent searching, redacting, photocopying and refiling a record. The hourly rate may not be greater than the prorated hourly wage of the lowest paid employee capable of performing the task.

Dispute resolution

Requesters can petition denied requests with the Supervisor of Records in the Secretary of State's Office which handles public records appeals for the state and can hold hearings on the appeal. If the government fails to comply with decisions made in an administrative order, an appeal may be filed in Superior Court or with the Supreme Judicial Court.

Notable changes in public records law

During the 2016 legislative session, Massachusetts lawmakers enacted a bill to overhaul the state's public records process. When the legislation takes effect on January 1, 2017, it will:

- Provide free educational materials and guides to government entities
- Provide guidance on communicating and working with requesters to modify the scope of requests
- Require governments to track and document requests, including the time to fulfill the request, fees charged, appeals and final adjudication of any court proceedings
- Extend response time for "frivolous" requests made with the intent to intimidate or harass

The changes establish and further define the state's cost recovery structure as noted below.

Recoverable costs

Copies, materials and other costs

In order to better reflect the actual cost of reproducing documents with current technology, lawmakers reduced the price of copies to $0.05 a page.

Other costs

If the request has a commercial purpose (sale or resale of any portion of the record or use of information to advance business interests), entities may charge no more than $25 per hour for segregating or redacting information.

Personnel costs

Agencies can charge employee time to search for, compile, segregate, redact or copy records:

- After four hours for state agencies
- After two hours for municipalities with a population of more than 20,000 people
- For the lowest paid employee who has the necessary skill required to complete the request
- At no more than $25 an hour

Dispute resolution

The new legislation allows the Superior Court to award attorney fees and punitive damages against the defending government of between $1,000 and $5,000.

MINNESOTA

Minnesota's Government Data Practices Act allows anyone to request access to public records, including any individual, partnership, corporation, association, business trust, or a legal representative of an organization. Requesters are not required to state the purpose for their requests.

The Act applies to information created and maintained by state and local governments. It does not apply to the legislature or the courts, but other laws make certain records from these public bodies available for disclosure. Non-governmental bodies are subject to public records laws if they qualify for public funds or if they perform services under contract for the government.

Recoverable costs

Governments can charge fees to recover costs for providing public data. Requesters are required to pay the actual costs of searching and retrieving government data, unless the requester is the subject of the data. Governments may also charge an additional "reasonable fee" if the requested data "has commercial value and is a substantial and discrete portion of or an entire formula, pattern, compilation, program, device, method, technique, process, database, or system developed with a significant expenditure of public funds by the government entity."

Copies, materials and other costs

Governments may charge no more than $0.25 a page if the request is for 100 or more pages of black and white, letter or legal size paper. Other recoverable costs include:

- Cost of media (CD ROMs, DVDs, etc.)
- Mailing costs
- Costs of reproduction that the government cannot do such as photographs

Personnel costs

Governments can recover personnel costs. These are calculated based on the wages and benefits of the lowest-paid employee who could complete the task. Recoverable activities include searching, retrieving and copying records.

Electronic records costs

Governments may charge a reasonable fee based on actual costs for remote access to data where either the data or the access is enhanced at the request of the person seeking access. However, governments we researched said they find it difficult to define the actual costs.

Dispute resolution

Requesters who believe they were wrongly denied access to data may ask the Commissioner of Administration to issue an opinion with respect to the nature of the data sought. These opinions are not binding on a public agency, but must be given deference during court proceedings regarding the data. Requesters and governments may also seek a hearing with the Office of Administrative Hearings.

Minnesota governments encouraged to publish information online

Minnesota's Information Policy Analysis Division (IPAD) encourages governments to upload commonly requested information online as a means to preemptively address requests. IPAD also recommends that governments prioritize requests based on size, volume and complexity.

OREGON

Oregon's Public Records Law states that every person has a right to inspect any public record not expressly exempt from disclosure, regardless of purpose. Public records laws broadly apply to state and local governments and the courts. The state Legislative Assembly is not subject to the Public Records Law.

The court established a six-part test to determine if non-governmental organizations which are supported by public funds are subject to the Public Records Law. This test examines factors such as:

- Did government create the organization?
- Does the organization performs traditionally governmental or private functions?
- Does the organization make binding resolutions or merely recommendations?

Recoverable costs

State and local governments can charge fees for the actual costs of providing records. But they must demonstrate and support the reasonableness of the charges. They must also provide an estimate of fees to requesters prior to proceeding with fulfilling the request if fees exceed $25.

Copies, materials and other costs

Governments may independently establish charges for copies of public records, but the charge must reasonably reflect the actual cost.

Personnel costs

Governments may charge for copies including the employee time spent locating, reviewing, compiling, separating exempt material, summarizing, tailoring and copying the record and administrative overhead.

They may also charge for attorney time in redacting and segregating exempt and non-exempt records, but they may not charge for any attorney time spent to determine the applicability of exemptions.

Notable changes in public records law

In 2016, a task force led by the Oregon Attorney General's Office began reviewing current laws to recommend improvements to Oregon's Public Records Act. Some changes being considered include:

- Establishing a time frame in which governments are required to respond to requests
- Establishing an independent third-party position to mediate public records disputes
- Reducing the number of exemptions in the law

Dispute resolution

Any person denied access to inspect or receive copies of public records may ask the Attorney General for a review of their case. If records are still withheld, or if the Attorney General's decision is unsatisfactory, the government or the requester can seek relief in relevant circuit courts.

Lake Oswego's Cost Sharing

The Lake Oswego Police Department (LOPD) partnered with neighboring law enforcement departments and used cost sharing to purchase a records management system called Versaterm, saving money for all participants.

PENNSYLVANIA

Pennsylvania's Right-To-Know Law allows legal residents of the United States to access public information. Public records laws apply to all commonwealth, local, state, executive, legislative and judicial governments. Laws also apply to any non-governmental organization that performs or is intended to perform an essential government function.

Recoverable costs

Governments may be able to charge reasonable fees that cover the costs of duplication, postage, and certification.

Copies, materials and other costs

Governments can charge reasonable fees based on prevailing costs for comparable copying services provided by local businesses. The Office of Open Records establishes fees for copying records belonging to local and commonwealth governments. Postage fees cannot exceed the actual cost of mailing records.

Electronic records

Governments may charge fees for "enhanced electronic access." Fees may be a flat rate, a subscription fee for a period of time, a per-transaction fee, based on the cumulative time of system access, or any other reasonable method. User fees for enhanced electronic access must be reasonable and pre-approved by the Office of Open Records.

Dispute resolution

If government denies a written request for access to public records, the requester may file an appeal with the Office of Open Records or appeals officer of the judicial, legislative or other body. The Office of Open Records employs attorneys to serve as appeals officers to review appeals and assigns appeals officers to review decisions.

City of Philadelphia Provides All Records Electronically

The City of Philadelphia developed a policy to scan and digitize any requested information that is not already electronic.

UTAH

Utah's Government Records Access and Management Act provides "every person the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours". However, requesters cannot remain anonymous and must provide their name, mailing address and telephone number.

The Act generally covers all executive, legislative and judicial branches government, except in the following circumstances:

- Deliberative process within the Office of the Governor
- Political parties, groups, caucuses, rules or committees of the Legislature

The Act does not explicitly cover all nongovernmental bodies that receive public funds or benefits. However, certain records which private organizations create or maintain regarding contracts with governments may be subject to disclosure.

Utah's public records laws require inventories

Utah's public records laws require that governments inventory their records. Four years ago, Davis County conducted an extensive inventory effort to better manage their records. Records custodians reviewed and identified the following areas for categorizing records:

1. Title of the record
2. Purpose of the record
3. Retention requirements for the record
4. The classification or type of record

While developing this inventory, custodians also removed any sensitive information that would require redaction before disclosure.

Recoverable costs

Utah's public records laws state that fees must be "reasonable" and only sufficient to cover the "actual cost of providing a record."

Copies, materials and other costs

Utah's public records laws allow governments to charge for the "actual cost of providing a record." But they may not charge a fee for inspecting a record.

Personnel costs

Governments may charge an hourly labor rate that does not exceed the salary of the lowest paid employee who has the necessary skill and training to fulfill the request. But they may not charge for the first quarter hour of staff time. Governments may charge for:

- Searching for and retrieving information
- Formatting, compiling and tailoring records
- Any other direct administrative costs incurred in complying with the request

Dispute resolution

If government denies a request for records, the requester may appeal to the Chief Administrative Officer of a government or local board records committee. The requester can also ask for a judicial review. Additionally, the state's Ombudsman can informally mediate disagreements between the government and the requester.

Utah's Statewide Records Portal

In 2015, Utah instituted a statewide online portal to help governments be more efficient at managing requests. The portal has a centralized platform which allows requesters to submit records requests to governments. The portal also identifies the individual responsible for responding to the request.

VERMONT

Vermont's public records law allows any person to request public records and does not discriminate based on purpose or use. The law applies to all branches, departments, agencies and subdivisions of the state. However, the courts adopt their own rules regarding open records practices. The law specifically excludes records or materials prepared for deliberations of any government organization acting in a judicial or quasi-judicial capacity and does not explicitly cover organizations receiving or spending public funds, multi-state, regional bodies, boards or commissions.

Recoverable costs

Copies, materials and other costs

Vermont's public records law establishes the actual cost for the following items:

- Photocopies ($0.05 for a single-sided page, $0.09 per double-sided page, $1.00 per single-sided color photocopies)
- Computer-generated paper copies ($0.02 per page)
- Computer diskette ($0.28 per diskette)
- CD ($0.86 for writeable, $2.31 for re-writeable)
- DVD ($2.00 for writeable, $4.00 for rewriteable)
- Audio tapes ($0.81)
- Video tapes ($1.69)

Personnel costs

Governments may charge for the cost of staff time associated with fulfilling a request for public records if: 1) the time directly involved in complying with the request exceeds 30 minutes, 2) the agency agrees to create a public record, or 3) the agency agrees to provide the record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes. The following rates apply:

- Staff time involved in physically duplicating a record ($0.33 per minute after first 30 minutes)
- Senior-level staff and IT specialist time spent extracting data from databases ($0.57 per minute)
- Creating a new public record ($0.57 per minute)
- Other staff time allowed under the law ($0.45 per minute)

Notable changes in law

Recent concerns regarding governments' responses to requests, denied access to records and excessive charges prompted the Legislature to institute the following changes to statute:

- Executive branch bodies must report request turnaround time, information about withholding records, charges, and information that is made public in Vermont's Data Portal
- The Office of the Legislative Council must compile a list of all public records exemptions found in statute

Dispute resolution

Requesters may appeal a government's denial of access to public records to the head of the agency. If they have exhausted other options, the requester may appeal to Superior Court.

FEDERAL

The Federal Freedom of Information Act (FOIA) allows any person to make a request for public records. FOIA applies to the executive branch of government, including: military departments, government and government controlled corporations, and any independent regulatory agency. However, the FOIA does not cover Congress, the judiciary, or all organizations that receive federal funding.

Recoverable costs

The FOIA outlines fees that can be charged in response to: search, review and duplication of public records. FOIA outlines the following categories of requesters and types of fees that can be charged to them:

	Search fees	Duplication fees	Review fees
Commercial requesters	Yes	Yes	Yes
Educational institutions		Yes	
All other requesters	Yes	Yes	

Copies, materials and other costs

There is usually no charge for the first 100 pages of duplication. After the first 100 pages, copying costs are generally between $0.03 and $0.25 a page.

Personnel costs

There is usually no charge for the first two hours of search time. Search fees are based on the salary and benefits of the employee conducting the work and generally range from $11 to $28 an hour.

The FOIA allows agencies to waive or reduce fees if disclosing information is in the public interest. It considers public interest to be "likely contributing to public understanding of the operations or activities of the government and not primarily in the commercial interest of the requester."

Dispute resolution

Each agency has a FOIA Public Liaison who helps resolve disputes between the requester and the agency. As an alternative to litigation, the Office of Government Information Services offers mediation services to resolve disputes. If mediation does not resolve the dispute, the office may issue advisory opinions.

Appendix D: Records Management and Disclosure Tools

This appendix list records management and disclosure tools we identified in our literature review and in discussions with governments in Washington and other states.

Multi-function, integrated tools

GovQA and WebQA offer a range of options to facilitate records management and respond to requests such as automated emails, web-facing customer portals and more.

http://govqa.com/oursolutions/foia-and-open-records-management/

http://webqa.com/index.php/oursolutions/custom-contact-center-software/

Spillman Ally is designed primarily for law enforcement applications. It offers useful features that allow for records management as well as collecting data about usage and performance.

https://www.spillman.com/products/ally/

Managing Records

Effective records management makes it easier for entities to find sought-after information, and to retain documents for the period required. The following tools help users organize, store, search for and dispose of records.

Enterprise Content Management Solutions

Enterprise content management (ECM) solutions can help organizations to effectively and efficiently capture, manage, store, preserve and deliver information. Washington's Department of Enterprise Services recently signed a master contract with several ECM vendors, including OPENTEXT, EMC2, Lexmark and Laserfiche. State and local governments can now use the master contracts to purchase products and services directly from these vendors.

http://www.opentext.com/what-we-do

http://www.emc.com/en-us/products-solutions/index

http://www.lexmark.com/en_us/products/software.html

https://www.laserfiche.com/products/

Search software

Smarsh offers a range of search and archiving capabilities, as well as text message and social media retrieval.

http://www.smarsh.com/archiving-and-compliance/

Exterro helps with project management for e-discovery processes, data mapping, automating legal hold process, and data management.

http://www.exterro.com/resources/foia-public-records-response/

Discovery Accelerator can help search, store and review email and other electronic information.

https://www.veritas.com/support/en_US/article.HOWTO77131

Archiving and storage

Archiving applications can provide more efficient email storage, enhanced electronic search capability for subpoenas, public records requests, e-discovery requests, and back-up and disaster recovery features. These systems can be customized to incorporate records retention schedules and can be applied to various folders and sub-folders as needed. Governments have found the archiving and storage tools below helpful.

Google Vault offers email archiving features.

https://apps.google.com/products/vault/

Enterprise Vault offers email archiving features.

https://www.veritas.com/product/information-governance/enterprise-vault

Airwatch is a mobile management solutions software for filing and archiving text messages on work phones

http://www.air-watch.com/solutions/mobile-device-management/

AV CaptureAll can be used for storing meeting proceedings

http://www.avcaptureall.net/

Responding to Requests

The following tools (such as tracking systems and redaction) facilitate processes for responding to requests.

Tracking systems – logs, trackers, and integrated online systems

RecordTrac is a centralized, user-friendly site with public platform to view and request records.

http://records.oaklandnet.com/

Next Request is a free tool with request tracking capabilities and public interface features.

https://www.nextrequest.com/

Redaction tools

The following tools redact information from documents. However, people are needed to review documents and choose what information the software will redact.

OpenText Redact-It offers automated document redaction features.

http://www.opentext.com/what-we-do/products/enterprise-content-management/content-centric-applications/opentext-redact-it

Adobe Acrobat Pro offers automated document redaction features.

https://helpx.adobe.com/acrobat/using/removing-sensitive-content-pdfs.html

Providing access to information

FTP sites and similar open-data portals allow governments to send or provide records online, eliminating the need to make paper copies or use portable storage devices such as CDs and DVDs.

Online portal, FTP sites

OneDrive is helpful for large requests; it offers a single location where multiple users can place requested files for pick up by the requester.

https://onedrive.live.com/about/en-GB/

DropBox offers online cloud-based options for storing and tracking records.

https://www.dropbox.com/home

Liquidfiles allows read receipts for documents once the requester has downloaded them.

http://www.liquidfiles.net/

Box is a web-based platform that helps store, manage and share records.

https://www.box.com/business/