



Office of the City Manager

INFORMATION CALENDAR

July 9, 2019

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Emmanuelle Soichet, Secretary, Open Government Commission
 Subject: Annual Report – Open Government Commission

INTRODUCTION

The Open Government Ordinance (“OGO”), Berkeley Municipal Code (“BMC”) Chapter 2.06, requires that the City Manager prepare an annual report to the Open Government Commission that contains at least the following information:

1. The number of Public Records Act (“PRA”) requests received by the City;
2. The average length of time taken to respond to those requests;
3. The approximate number of pages produced in response to those requests;
4. The number and resolution of all written complaints received by the City concerning its compliance with the PRA with respect to such requests;
5. The number and resolution of all complaints received by the City concerning its compliance with the Brown Act; and
6. Any other information the City Manager deems appropriate that relates to the City’s compliance with this Ordinance, the Brown Act, the PRA, or open and effective government in Berkeley.

BMC §2.06.190.C.

CURRENT SITUATION AND ITS EFFECTS

The annual report was presented to the Open Government Commission on May 16, 2019, at which time the Commission took the following action:

Motion to approve document and send it to Council (M/S/C: Smith/Tsui; Ayes: Blome, Ching, McLean, Metzger, O’Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence)).

The annual report, as accepted by the Commission, is provided to the Council for its information.

BACKGROUND

This is the eighth report to the Commission. This report represents data from January 1, 2018 through December 31, 2018.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

None.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

CONTACT PERSON

Farimah Brown, City Attorney, (510) 981-6998

Emmanuelle Soichet, Deputy City Attorney, (510) 981-6998

Attachment:

1. Report to Open Government Commission



Office of the City Manager

DATE: May 9, 2019

TO: OPEN GOVERNMENT COMMISSION

FROM: DEE WILLIAMS-RIDLEY, City Manager
FARIMAH F. BROWN, City Attorney
EMMANUELLE SOICHET, Commission Secretary

SUBJECT: 2018 ANNUAL REPORT UNDER BMC SECTION 2.06.190.C

Introduction

The Open Government Ordinance (“OGO”) (Berkeley Municipal Code (“BMC”) Chapter 2.06) requires that the City Manager prepare an annual report to the Open Government Commission that contains at least the following information:

1. The number of Public Records Act requests received by the City;
2. The average length of time taken to respond to those requests;
3. The approximate number of pages produced in response to those requests;
4. The number and resolution of all written complaints received by the City concerning its compliance with the Public Records Act with respect to such requests;
5. The number and resolution of all complaints received by the City concerning its compliance with the Brown Act; and
6. Any other information the City Manager deems appropriate that relates to the City’s compliance with this Ordinance, the Brown Act, the Public Records Act, or open and effective government in Berkeley.

(BMC §2.06.190.C.) This is the eighth annual report and covers the 2018 calendar year. Each topic specified in Berkeley Municipal Code section 2.06.190.C is addressed below.

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As with past reports, in order to enable staff to capture and present the information required by Section 2.06.190.C, staff used the City's Customer Relations Management ("CRM") module software for PRA requests. Currently, there are 54 designated staff in 17 departments that use CRM to track PRA requests. For each entry, staff must complete 15 data fields, and update the entry several times based on the status of the request, including the date of the initial response, any documents obtained and paid for, as well as uploading the request or response letter when appropriate. This annual report is generated using the information inputted by these 54 City staff members.

1. Number of Public Records Act Requests Received by the City

The City received 5,526 PRA requests from January 1, 2018 to December 31, 2018. The 5,526 requests break down by department as follows: City Attorney (33), City Auditor (0), City Clerk (41), City Manager (16), Finance (50), Fire Department (16), Health, Housing & Community Services (6), Human Resources (12), Information Technology (14), Library (0), Parks (7), Planning (253), Police (4,721), Police Review Commission (0), Public Works (196), Rent Board (61), Multi-Department (100).¹

2. Average Length of Time Taken to Respond to Public Records Act Requests

Of the 5,526 requests received, approximately 98.91 percent were fulfilled within the required time period (either 10 days or, with an extension, 24 days). Sixty (60) requests, or 1.09 percent, were fulfilled outside the required time frame. The average length of time taken to respond to the requesting party was 1.5 days.

The primary recipient of PRA requests was the Police Department, which received 85.4 percent of the City's PRA requests. Excluding the Police Department, all other City departments received 805 PRA requests in 2018, of which thirty (30) requests, or 3.73 percent were fulfilled outside the required time frame. Attached to this report as **Attachment A** is a list of the past due responses.

As detailed in Attachment A, the late responses break down by department as follows: City Attorney (0), City Auditor (0), City Clerk (0), City Manager (0), Finance (10), Fire Department (4), Health, Housing & Community Services (1), Human Resources (2), Information Technology (0), Library (0), Parks (2), Planning (6), Police (30), Police Review Commission (0), Public Works (2), Rent Board (0), Multi-Department (3). The majority of requests with late responses did not have enough case details to determine the contributing factors for why they were late. Other late responses were due to

¹ These totals reflect the department where a PRA request originated or was initially assigned. Sometimes, however, a PRA request is reallocated to another department more appropriately suited to respond to the request. The breakdown of late responses (*infra*) does accurately reflect the final departments where requests were allocated, as City Attorney staff reviewed each of those database entries to compile this annual report.

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failures in determining the appropriate responding department, and failures in promptly creating cases in the CRM software.

On March 21, 2019, the Commission requested that staff consider providing a further break down, by department, of PRA requests that were responded to on the same day as the requests were made, and those that were responded to the following day or later. **Attachment B** is a table that presents this requested information. The Commission sought this information as a means of identifying (and removing from the statistical analysis) over-the-counter requests for reports from the Police Department, which are typically uploaded into the CRM in batches for convenience. The table in Attachment B shows why segregating by same-day responses is not a perfect means of achieving this goal, given that a number of City departments other than the Police Department responded to PRA requests on the same day. An alternative approach to segregating this data is to identify which PRA requests were “batch” uploads into the CRM and which PRA requests were individually entered into the system. Two departments uploaded PRAs into the CRM in batches – Police and Planning. The table in Attachment B provides this additional information.

As with past reports, the PRA numbers from the prior year are provided as a point of reference. The City received 5,783 PRA requests from January 1, 2017 to December 31, 2017. The 5,783 requests break down by department as follows: City Attorney (13), City Auditor (1), City Clerk (66), City Manager (16), Finance (50), Fire Department (63), Health, Housing & Community Services (8), Human Resources (22), Information Technology (4), Library (3), Parks (16), Planning (173), Police (4,933), Police Review Commission (1), Public Works (278), Rent Board (51), and Multi-Department (85).

Of the 5,783 requests received in 2017, approximately 98.73 percent were fulfilled within the required time period (either 10 days or, with an extension, 24 days). Seventy-three (73) requests, or 1.26 percent, were fulfilled outside the required time frame. Excluding PRA requests made to the Police Department, forty-six (46) requests, or 5.41 percent of requests to other City departments, were fulfilled outside the required time frame.

3. Approximate Number of Pages Produced in Response to Public Records Act Requests

Approximately 67,318 pages of documents were produced in paper and electronic form. The City received \$16,663.80 in reimbursement during this period, primarily from charges of \$0.10 per page for printed copies. The City does not receive reimbursement for the many responsive documents provided in electronic format, as well as documents made available for review for which copies were not requested.

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4. Number and Resolution of all Written Complaints Received by the City Concerning its Compliance with the Public Records Act

No complaints were filed in 2018.

5. Number and Resolution of all Written Complaints Received by the City Concerning its Compliance with the Brown Act

No complaints were filed in 2018.

6. Number and Resolution of all Written Complaints Received by the City Concerning its Compliance with the Open Government Ordinance

No complaints were filed in 2018.

7. Any Other Information the City Manager Deems Appropriate that Relates to the City's Compliance with the Open Government Ordinance, the Brown Act, or the Public Records Act

Agenda Process

The agenda timelines required by the OGO have become standard procedure and are fully implemented and effective.

Council Meetings

The City Council scheduled 24 regular meetings, enough to meet the minimum number required in the OGO.

Consent Items Rules. On April 3, 2018, the City Council updated its Rules of Procedure and Order relating to items on the Council consent calendar. Previously, if a consent item had three or more public speakers, the item was automatically moved to the action calendar. At the April meeting, Council removed this limit on public speakers for consent items. As a result, consent items now can be moved to the action calendar only at the request of a Councilmember. The staff report on this Council item is available at:

https://www.cityofberkeley.info/Clerk/City_Council/2018/04_Apr/Documents/2018-04-03_Item_19_Amending_the_Council_Rules_of_Procedure.aspx.

New Meeting Location. Beginning with the meeting on December 4, 2018, City Council meetings have permanently moved to the Berkeley Unified School District's board room at 1231 Addison Street. The new venue handles crowds double the size of the Council's previous meeting space in Old City Hall, while offering increased seismic safety and easier access for those with limited mobility. Zoning Adjustments Board meetings have also moved to the new location.

Policy Committees. On December 11, 2018, the City Council adopted a new "policy

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committee structure,” creating six standing committees to develop and review proposed legislation before it is considered by the full Council. Each policy committee is composed of three Councilmembers, must comply with the Brown Act, and is staffed by City departments. The committees are: Agenda; Budget and Finance; Facilities, Infrastructure, Transportation, Environment and Sustainability; Health, Life Enrichment, Equity, and Community; Land Use, Housing, and Economic Development; and Public Safety. The staff report on this Council item is available at:

https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-11_Item_C_Structure_for_City_Council.aspx.

OGC Referrals

Lobbyist Registration and Revolving Door Ordinances. On May 30, 2017, the City Council made a referral to the Open Government Commission regarding proposed amendments to modify the existing Revolving Door Restrictions in BMC 2.07.020, 2.07.030, 2.07.040, and 2.07.050 and language to add a Lobbyist Registration and Regulation ordinance as BMC Chapter 2.09. The Commission formed a subcommittee to examine this issue and present a report to the full Commission. At the January 18, 2018 meeting, the subcommittee presented a report to the Commission and the Commission discussed additional changes. At the June 21, 2018 meeting, the subcommittee presented a revised report to the Commission, which adopted the report with additional revisions. The Commission’s report was adopted by City Council with amendments on October 2, 2018.

Timely Posting of Minutes. At its September 21, 2017 meeting, the Commission received a complaint that the Loan Administration Board had not posted draft meeting minutes after its January meeting. At the Commission’s November 16, 2017 meeting, the Commission moved to make a recommendation to City Council regarding the timely posting of minutes. On April 22, 2018, Chair Metzger submitted a copy of the City Council item to the Commission Secretary. The City Council approved the recommendation at its July 24, 2018 meeting. (The change was also reflected in the updated Commissioners’ Manual approved in June 2018.)

Supplemental/Revised Materials for Commission Meetings. At its January 18, 2018 meeting, the Commission moved to propose changes to City processes to increase transparency around the late submission of agenda materials by commissioners. At its February 15, March 21, August 16, and September 20, 2018, meetings, the Commission discussed and refined possible recommendations to Council to adopt a resolution revising the Commissioners’ Manual. At its March 21, 2019, the Commission moved to adopt a report that make the recommendation that commissioners and board members be subject to the same requirements as members of the public when distributing written materials for City commission meetings. The Council report was submitted on May 7, 2019 for the June 11, 2019 Council meeting.

Recommendation Regarding 2017 Annual Report. On July 19, 2018, the Commission

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accepted and forwarded the 2017 Annual Report to City Council (M/S/C: Saver/Harper; Ayes: Smith, Metzger, Harper, O'Donnell, Saver, Soichet; Noes: None; Abstain: None; Absent: McLean (excused), Tsui (excused)). Council received and filed the report on September 25, 2018.

Public Records

All information required to be posted to the web pursuant to 2.06.140 has been posted and is regularly updated. The OGO web page was created as a single source of information for all the records and information required to be posted to the web under the OGO. It contains links to all the items required to be posted, communications to outside agencies, and the OGC Complaint Form. The Large document index is posted on the OGO web page and all items in the index have been catalogued at the Main Library.

The City Attorney's Office conducts trainings for City staff on the requirements of the California Public Records Act and how to properly respond to PRA requests. These trainings started in 2014 and are conducted on an as-needed basis. There were two trainings in 2018. The trainings are aimed at helping staff to properly identify a request for public records, fulfill the request in a legal and timely manner, and to track the requests in the City database.

	Department	Receipt Date	Due Date	14 Day Ext.	Pri Fulfill Date	Sec Fulfill Date	Number of Days Late	Comments	
1	Finance	1/22/2018	02/01/18	No	2/8/2018		7	Response sent 2/8/18.	
2	Finance	3/5/2018	03/15/18	No	3/23/2018		8	Response sent 3/23/18.	
3	Finance	3/12/2018	03/22/18	No			365+	Case is still open as of 4/22/19.	
4	Finance	4/5/2018	04/15/18	No	4/19/2018		4	Response sent 4/19/18.	
5	Finance	4/17/2018	04/27/18	No	4/30/2018		3	Response sent 4/30/18.	
6	Finance	5/18/2018	05/28/18	No	5/30/2018		2	Response sent 5/30/18.	
7	Finance	5/30/2018	06/11/18	No	7/5/2018		24	Response sent 7/5/18	
8	Finance	10/29/2018	11/08/18	No	11/13/2018		5	Request sent 11/13/18.	
9	Finance	12/4/2018	12/14/18	No	12/17/2018		3	Response sent 12/17/18.	
10	Finance	12/13/2018	12/24/18	No			119+	Case is still open as of 4/22/19.	
11	Fire Department	7/17/2018	07/27/18	No	8/21/2018		25	Response sent on 8/21/18.	
12	Fire Department	8/17/2018	08/27/18	No	9/11/2018		15	Response sent 9/11/18.	
13	Fire Department	11/2/2018	11/12/18	No	12/10/2018		28	Response sent 12/10/18.	
14	Fire Department	11/21/2018	12/02/18	No	12/7/2018		5	Response sent 12/7/18.	
15	Health, Housing & Community Services	4/25/2018	05/06/18	No	5/11/2018		5	Response sent 5/11/18.	
16	Human Resources	9/14/2018	09/24/18	No	9/28/2018		4	Response sent 9/28/18.	
17	Human Resources	4/23/2018	05/03/18	No	5/4/2018		1	Response sent 5/4/18.	
18	Parks	6/12/2018	06/25/18	No	6/26/2018		1	Response sent 6/26/18.	
19	Parks	8/31/2018	09/10/18	No	9/13/2018		3	Response sent 9/13/18.	
20	Planning	4/23/2018	05/03/18	No	5/16/2018		13	Response sent 5/16/18.	
21	Planning	9/5/2018	09/17/18	No	9/18/2018		1	Response sent 9/18/18.	
22	Planning	11/12/2018	11/22/18	No	12/3/2018		11	Response sent 12/3/18.	
23	Planning	12/19/2018	12/31/18	No	1/2/2019	2/5/2019	2	Response sent 1/2/19.	
24	Planning	12/11/2018	12/21/18	No	12/27/2018	1/16/2019	6	Response sent 12/27/18.	
25	Planning	5/25/2018	06/03/18	No	6/5/2018		2	Response sent 6/5/18.	
26	Police	2/1/2018	02/13/18	No	2/22/2018		9	Response sent 2/22/18.	
27	Police	2/5/2018	02/15/18	No	2/21/2018		6	Response sent 2/21/18.	
28	Police	2/5/2018	02/15/18	No	2/21/2018		6	Response sent 2/21/18.	
29	Police	2/5/2018	02/15/18	No	2/21/2018		6	Response sent 2/21/18.	
30	Police	2/5/2018	02/15/18	No	2/22/2018		7	Response sent 2/22/18.	
31	Police	2/5/2018	02/15/18	No	2/22/2018		7	Response sent 2/22/18.	
32	Police	2/5/2018	02/15/18	No	2/22/2018		7	Response sent 2/22/18.	
33	Police	2/5/2018	02/15/18	No	2/22/2018		7	Response sent 2/22/18.	
34	Police	2/27/2018	03/09/18	No	3/23/2018		14	Response sent 3/23/18.	
35	Police	3/5/2018	03/29/18	Yes	4/18/2018		20	Response sent 4/18/18.	
36	Police	3/21/2018	04/02/18	No	4/24/2018		22	Response sent 4/24/18.	
37	Police	3/28/2018	04/09/18	No	4/12/2018		3	Response sent 4/12/18.	
38	Police	4/6/2018	04/16/18	No	4/24/2018		8	Response sent 4/24/18.	
39	Police	4/6/2018	04/16/18	No	7/12/2018		87	Awaited response from Department Head.	
40	Police	5/7/2018	05/19/18	No	7/12/2018		54	No response confirmed.	
41	Police	5/15/2018	05/25/18	No	8/6/2018		73	Response sent 8/6/18.	
42	Police	5/30/2018	06/11/18	No	7/25/2018		44	Response sent 7/25/18.	
43	Police	6/6/2018	06/18/18	No	6/20/2018		2	Response sent 6/20/18.	
44	Police	6/21/2018	07/02/18	No	7/12/2018		10	Response sent 7/12/18.	
45	Police	7/18/2018	07/30/18	No	8/6/2018		7	Response sent 8/6/18.	
46	Police	7/24/2018	08/03/18	No	8/9/2018		6	Response sent 8/9/18.	
47	Police	7/25/2018	08/06/18	No	8/9/2018		3	Response sent 8/9/18.	
48	Police	8/9/2018	08/20/18	No	9/11/2018		22	Response sent 9/11/18.	
49	Police	8/9/2018	08/20/18	No	8/24/2018		4	Response sent 8/24/18.	
50	Police	10/19/2018	10/29/18	No	11/2/2018		4	Response sent 11/2/18.	
51	Police	10/29/2018	11/08/18	No	11/9/2018		1	Response sent 12/14/18.	

	Department	Receipt Date	Due Date	14 Day Ext.	Pri Fulfill Date	Sec Fulfill Date	Number of Days Late	Comments	
52	Police	10/26/2018	11/05/18	No	11/9/2018		4	Response sent 11/9/18.	
53	Police	11/16/2018	11/26/18	No	12/3/2018		7	Response sent 12/3/18.	
54	Police	11/19/2018	11/29/18	No	12/3/2018		4	Response sent 12/3/18.	
55	Police	11/20/2018	11/30/18	No	12/10/2018		10	Response sent 12/10/18.	
56	Public Works	1/11/2018	01/22/18	No	6/14/2018		143	Delay in reallocating to department queue.	
57	Public Works	11/6/2018	11/16/18	No	11/27/2018		11	Response sent 11/27/18.	
58	Multi-Department	4/9/2018	07/09/18	No	7/11/2018		2	Staff was delayed in creating case in Lagan and/or forwarding to liaison.	
59	Multi-Department	8/10/2018	08/20/18	Yes	9/4/2018		15	Staff was delayed in creating case in Lagan and/or forwarding to liaison.	
60	Multi-Department	12/6/2018	12/16/18	No	12/18/2018	12/19/2018	2	Response sent 12/18/18.	

Public Record Act (PRA) Requests in 2018 by Department

	Two or more Days						Non-Batch PRAs				
	Total Number of Requests	Number of Same Day Responses	Number of Non-Same Day Responses	# of Late Responses	% of Late Responses	Median # of Days Late	Number of Batch Responses	Number of Non-Batch Responses	# of Late Responses	% of Late Responses	Median # of Days Late
TOTAL	5,526	4,910	616	60	9.74%	6	4,828	698	60	8.60%	6
City Attorney	33	8	25	0	0%	0	0	33	0	0%	0
City Auditor	0	0	0	0	0%	0	0	0	0	0%	0
City Clerk	41	7	34	0	0%	0	0	41	0	0%	0
City Manager	16	0	16	0	0%	0	0	16	0	0%	0
Finance	50	4	46	10	21.74%	6	0	50	10	20%	6
Fire Department	16	1	15	4	26.67%	20	0	16	4	25%	20
Health Housing & Comm. Services	6	1	5	1	20%	5	0	6	1	16.67%	5
Human Resources	12	0	12	2	16.67%	3	0	12	2	16.67%	3
Information Technology	14	1	13	0	0%	0	0	14	0	0%	0
Library	0	0	0	0	0%	0	0	0	0	0%	0
Parks	7	0	7	2	28.57%	2	0	7	2	28.57%	2
Planning	253	201	52	6	11.54%	4	196	57	6	10.53%	4
Police	4721	4641	80	30	37.50%	7	4632	89	30	33.71%	7
Police Review Commission	0	0	0	0	0%	0	0	0	0	0%	0
Public Works	196	39	157	2	1.27%	77	0	196	2	1.02%	77
Rent Board	61	2	59	0	0%	0	0	61	0	0%	0
Multi-Department	100	5	95	3	3.16%	2	0	100	3	3%	2

Source: Customer Relations Management module software.

