Open Government Commission

DATE: November 19, 2026

TO: Open Government Commission

FROM: Samuel Harvey, Deputy City Attorney/Commission Secretary

SUBJECT: 2025 ANNUAL REPORT (BMC SECTION 2.06.190.C)

Introduction

The Open Government Ordinance ("OGO" or the "Ordinance") (Berkeley Municipal Code ("BMC") Chapter 2.06) requires that the City Manager prepare an annual report to the Open Government Commission that contains 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 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.)

The City Attorney's Office has been designated to fulfill the City Manager's PRA obligations. This report covers the 2025 calendar year. The topics specified in Berkeley Municipal Code section 2.06.190.C are addressed below.

I. The Number of Public Records Act Requests Received by the City; the Average Length of Time Taken to Respond to Public Records Act Requests; and the Approximate Number of Pages Produced in Response to Public Records Act Requests

Currently, there are over 50 designated staff in 17 departments that use the City's NextRequest online portal system to track and respond to PRA requests. For each request, staff must track the date of the initial response, provide all responsive documents, and post the results of the request to the NextRequest system. The City adopted the NextRequest system in 2020.

Under the PRA, the City must respond to a request within 10 calendar days. (Cal. Gov. Code § 7922.535.) The City may assert a 14-day extension for a number of reasons, including where the request seeks a voluminous amount of records, requires inter-agency coordination, seeks records maintained in off-site storage, or requires elaborate technological/IT work to fulfill. (Id.) A request submitted on a weekend, holiday or after City business hours is deemed received the next business day. (Cal. Civ. Code § 10.) If the 10-day (or 14-day) response deadline falls on a weekend or City holiday, the response is due on the next business day. (Cal. Civ. Code § 11; Cal. Gov. Code § 6704; BMC § 1.040.080.)

When providing the initial response, City staff must either provide the responsive records, inform the requestor that no responsive records exist, or provide an estimated time for production of the records. The PRA does not provide concrete deadlines for records production, but requires that records be provided "promptly." (Cal. Gov. Code § 7922.530(a).) Processing a request typically requires staff to manually search for and gather all potentially responsive records and then review each record for disclosability and any applicable exemptions, privileges or redactions. Estimated production timelines may reflect the City's reasonable assessment of the time needed to locate, compile, review and produce responsive records, taking into account the nature and scope of the request, available staffing and resources, and the City's overall volume of public records requests. (See *Voice of San Diego v. San Diego Unified School District* (2026) 120 Cal.App.5th 923, 946-48.)

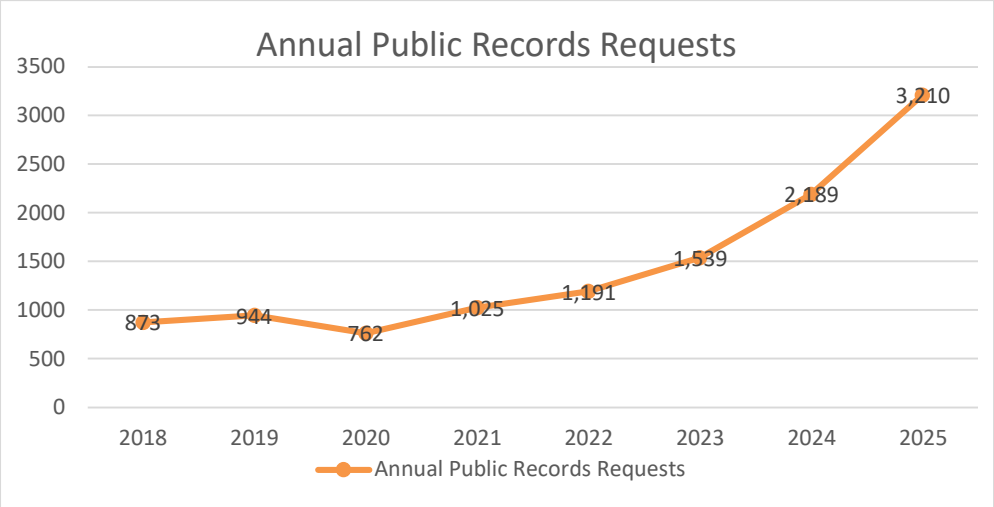
The City received 3,210 PRA requests from January 1, 2025 to December 31, 2025, a 47% increase over the number received in 2024 (2,189).

The 3,210 requests break down by department as follows: City Attorney (423), City Auditor (4), City Clerk (56), City Council (25), City Manager (77), Mayor's Office (8) Finance (107), Fire Department (309), Health, Housing & Community Services (51), Human Resources (24), Information Technology (21), Library (19), Parks (49), Planning (746), Police Accountability Board (2), Police Department (899), Public Works (142), Rent Board (123), Multi-Department (211).

54% of PRA requests received were fulfilled and closed within the initial 10-day response period. The average number of days to fulfill all requests was 31.

As the charts below demonstrate, there has been a substantial increase in the number of PRA requests received by the City in recent years, with the volume of requests more than doubling from 2023 to 2025.

Year	*Number of Requests*
2018	873
2019	944
2020	762
2021	1,025
2022	1,191
2023	1,539
2024	2,189
2025	3,210



Staff have noted an increase in records requests which appear to be AI-generated, suggesting that increased access to AI tools is enabling members of the public to more readily draft and submit requests.

Attached to this report as Attachment 1 is a report generated by the City's NexRequest system for the period January 1, 2025 to December 31, 2025.

The data in this report is generated from automated features within the City's NextRequest PRA software. For a number of reasons, this software appears to over-report the number of missed deadlines.

For example, if a staff member has responded to a request and provided all responsive records but does not close out the request in the NextRequest program until a later

date, the request's closure date will be erroneously reported as late. This could occur where a staff member wishes to leave a request "open" to ensure all records have been provided or otherwise review the City's response to the request, or where a staff member fails to timely mark the request as "closed" after producing records.

Additionally, the City will often respond to voluminous requests on a "rolling basis," where staff will provide sets of records as they are able to compile, review and produce them. Oftentimes, staff will manage a rolling production by adjusting the deadlines in the program to reflect the next estimated date of production. Failure by staff to meet a self-imposed estimated date for a rolling production entered into the NextRequest system is not itself a violation of the PRA. Nonetheless, the system may be marking these requests as "overdue."

Finally, it is not clear that the NextRequest system accurately accounts for weekends or holidays. Therefore, a request submitted after business hours or on a weekend or holiday may be counted as received on the date of submission rather than the next business day. It also appears that some requests are being marked as due on City holidays, meaning that even when staff timely respond on the next business day, the request is marked as overdue.

Staff estimate that most of this reported increase is due to the above-noted discrepancies between the response dates as reported by the NextRequest program and the actual timeliness of staff's response. However, the increased sensitivity of the NextRequest program may also be identifying a larger number of actually late responses.

II. The Number and Resolution of all Written Complaints Received by the City Concerning its Compliance with the Public Records Act, the Brown Act, and the Open Government Ordinance

The City received the following relevant complaints in 2025:

1. OGC Complaints from Donna DeDiemar and Dean Metzger

On July 2nd and 3rd, 2025, OGC staff received two complaints alleging that the City Council violated the Brown Act when it voted to adopt the Middle Housing zoning ordinance amendments and complementary General Plan amendments at its June 26, 2025 special meeting. Specifically, the Complaint alleged that a councilmember's Supplemental Package was a "major change to the zoning proposal" and that the City Council adopted a uniform dwelling unit per acre density standard without giving adequate notice. OGC staff investigated the matter and reported that the introduction of the supplemental materials did not violate the Brown Act. The Commission dismissed the matter at its September 18, 2026 meeting.

2. OGC Complaint from Niloofar Shambayati

On June 16, 2026, the Commission received a complaint alleging that a "procedural irregularity" occurred at the City Council's April 28, 2025 Special Meeting in which the Council considered adopting a resolution regarding the conflict in Gaza. The Complaint alleged that the Clerk violated the City Council's Rules of Procedure and Order when he continued to solicit votes on a motion to adopt a resolution even though the Mayor had made a motion to adjourn in the middle of the roll call. After investigating and reviewing, staff advised that (1) the Complaint was not properly submitted; (2) even if it were, the subject of the Complaint did not fall within the OGC's jurisdiction; and (3) even if the OGC did have jurisdiction to consider the Complaint, the video recording of the meeting showed that the City's procedures were properly followed and the subject resolution was properly adopted. The Commission dismissed the complaint at its November 20, 2025 meeting.

3. OGC Complaint from Kelly Hammargren

On September 10, 2026, the OGC received a complaint raising concerns regarding the availability to the public of remote access to City board and commission meetings. Staff reviewed the complaint and advised the Commission that the complaint did not allege a violation of the Open Government Ordinance. At its November 20, 2025 meeting, the Commission voted to dismiss the complaint. The Commission has subsequently addressed a number of the topics which were the subject of the complaint as policy items.

III. Any Other Information the City Manager Deems Appropriate that Relates to the City's Compliance with the OGO, the Brown Act or the Public Records Act

Public Records Act

The City Attorney's Office conducts regular trainings for City staff on the requirements of the California Public Records Act and how to properly respond to those requests. These trainings started in 2014 and are conducted on an as-needed basis. The trainings are helpful for 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.

Attachment
A: NextRequest Data Summary

City of Berkeley Performance Report

January 1, 2025 - December 31, 2025 All departments

General Overview: Requests received, opened, and closed in this period.

3210 request(s) received
Total number of new requests received during this reporting period.

6046 total request(s)
Total number of requests in the portal at the beginning of the reporting period.

3022 request(s) closed
Total number of requests closed during this reporting period.

421 request(s) open
Total number of open requests by the end of this reporting period.

409 request(s) overdue
Total number of requests that became overdue in this reporting period.

157 request(s) paused
Total number of requests that were paused by the end of this reporting period.

Response and Fulfillment: How fast your agency responds to and fulfills requests

6 day(s) to respond
Median response time in days in this reporting period.

7 day(s) to respond
Average response time in days in this reporting period.

1277 fulfilled outside 10 days
Number of requests closed beyond 10 days of request submission during this reporting period.

1736 fulfilled within 10 days
Total number of requests closed within 10 days of request submission during this reporting period.

9 day(s) to fulfillment
Median number of days taken to fulfill all requests in this reporting period.

31 day(s) to fulfillment
Average number of days taken to fulfill all requests in this reporting period.

Requests by Department

This table breaks down how many requests were received and closed by each department, as well as median fulfillment speed for each department in this reporting period.

Department	New	Closed	Median	Av
City Attorney	423	257	25	91
City Auditor Office	4	4	39	44
City Clerk	56	57	1	5
City Council	25	23	46	106
City Manager's Office	77	71	27	131
City Mayor's Office	8	10	121	223
Finance	107	105	10	14
Fire - Emergency Medical Services	6	5	0	3
Fire - Fire Prevention	197	191	4	13
Fire - General	90	107	10	49
Fire - Office of Emergency Services	2	2	3	3
Fire - Operations	4	4	7	11
Fire - Special Programs & Projects	2	2	27	27
Fire - Training	0	1	978	978
Fire - Wildland Division (WUI)	8	8	6	8
Health, Housing and Community Services – Affordable Housing/Homeless Services	16	13	12	15
Health, Housing, and Community Services – Aging Services	0	0	0	0
Health, Housing, and Community Services – Environmental Health	20	21	10	13
Health, Housing, and Community Services – Mental Health	0	0	0	0
Health, Housing, and Community Services – Public Health	3	2	10	10

Health, Housing & Community Services	28	23	15	91
Human Resources	24	29	12	75
Information Technology	21	20	25	99
Library	19	16	10	16
Multi-Department	211	234	39	147
Parks, Recreation and Waterfront	49	35	21	33
Planning - Administration	78	81	11	11
Planning and Development	153	154	10	12
Planning - Building & Safety	230	230	10	10
Planning – Housing Code Enforcement	90	84	8	9
Planning - Land Use	51	50	6	7
Planning - Toxics	144	147	3	4
Police Accountability Board	2	3	12	192
Police Department	899	890	2	13
Public Works	89	85	10	24
Public Works - Engineering	28	26	10	19
Public Works - Operations	3	2	34	34
Public Works - Transportation	18	19	10	23
Public Works - Zero Waste	4	5	8	15
Rent Board	123	124	6	11
SET (do not use)	0	0	0	0
Not Assigned	0	0	0	0

This table includes all message templates used within this reporting period

Message Template	Times
Anonymous Requests	1
Architectural Plans	6
BPD-Denial-Juvenile(s) Involved	3
BPD- No Records to Produce	4
BPD - Ready for Pick Up	1
BPD - Redacted Records Released	12
BPD-Request Report Template	1
BPD-Under Investigation/Pending Criminal Litigation-Denial	1
BWC Denial	38
Collision Report Requests	72
Duplicate Request	51
Narrow your search	1
Pending Case	59
PRA response - [10-day, anticipated production]	128
PRA response - [14-day]	630
PRA response - [basic produced]	1271
PRA Response - [basic + Toxics hard copies]	5
PRA Response - [Fire Investigations]	2
PRA response - [long response time, request to narrow]	35
PRA Response - [No Records & No Obligation to Create a Record]	79
PRA response - [no records to produce]	330
PRA response - [Partial production now, additional production forthcoming]	574

PRA Response - (Partial + Toxics Hard Copies)	2
PRA response - [Produced with Exemptions]	265

Closure Response Report

This table includes all closure responses and totals used in this reporting period.

Closure Response	Times Us
Attorney Client Privilege or Attorney Work Product	3
BPD-Denial-Elder Abuse Case	2
BPD-Records request process sent to the requestor.	107
City Manager's Office	1
Denied. Investigative Records	174
Duplicate Request	274
Fulfilled	1719
Fulfilled with info	155
No obligation to create new records	48
No Records: Does Not Exist	174
No Records: Other Agency	82
No Response from Requester	38
No responsive records	194
Not a Request	68
Physical files only	5
Records Request Granted in its Entirety and Records Disclosed	9
Request Withdrawn	26

Tag Report

This table includes the tags applied to requests opened in this reporting period.

Tag Name	Times Used
Alta Bates	1
BPD Accident and Incident Roll-up	9
CA's Office	1
Flock Request	12
ICE/Immigration	3
Needs Legal Review	2
OIS	4
OIS 04/13/2025 University 2025-16638	3
Tesla Incidents 2025	1

Key Assumptions

Requests Overdue
For requests that were closed prior to October 28, 2018 requests are counted as overdue only if they were overdue at the time the request was closed.

Response and Fulfillment Speed
Response time is tracked using the first external message sent through the NextRequest portal. This metric assumes that the message sent includes either a "request for clarification" or a time estimate.

Fulfillment time is calculated based on the time from when the request was created to the first date the request was closed (if there are multiple closed dates, only the first one is used).

Median days to close and average days to close are calculated based on the number of requests that have a closed date within the reporting period.

Staff Time
Staff time only accounts for time logged in NextRequest. This metric assumes that staff members regularly log all staff time in the portal and that the hourly rates are accurate and up-to-date.

Staff Cost
Staff cost only accounts for costs logged in NextRequest. This metric assumes that staff members regularly log costs in the portal.

Message Templates Report

The message templates report tracks message template usage from February 25, 2018 onwards.