

Response from Cabinet Agencies



STATE OF WASHINGTON

April 22, 2008

The Honorable Brian Sonntag
State Auditor
P.O. Box 40021
Olympia, WA 98504-0021

Dear Auditor Sonntag:

Thank you for the opportunity to provide this coordinated response for the eight Governor's Cabinet agencies involved in the performance audit on open public records.

As noted in your report, Governor Gregoire has made accountability to the people a priority. In a memo to state agencies in February 2006, Governor Gregoire reiterated the importance of the Public Records Act in establishing public confidence. She directed all agencies to renew their commitment to openness and the effective implementation of the act. In 2007, Governor Gregoire put resources in place to increase the availability of electronic copies of public records.

The positive results of this audit demonstrate the commitment of state agencies to the principles of openness and accountability. We also were very pleased with the number of best practices found in and practiced by the state agencies. In addition, we continually strive for improvement and are evaluating the suggestions in the report.

On behalf of the Cabinet agencies involved in the audit, I have attached our joint response to the report. Actions to further strengthen openness and efficiency have been under way for some time. Many improvements were made in the year between the end of audit fieldwork and the issuance of the report. As part of our coordinated response, we have included a table of our action steps. Progress on this action plan will be tracked by agencies.

Washington State government was recently recognized by the Pew Center on the States as one of the top three states for sharing information. We are proud of this achievement and are committed to becoming even better at providing public access to timely, accurate information.

Sincerely,

A handwritten signature in black ink, appearing to read "V.A. Moore".

Victor A. Moore, Director
Office of Financial Management

Enclosure



cc: Cindy Zehnder, Chief of Staff, Office of the Governor
Joyce Turner, Deputy Chief of Staff, Office of the Governor
Larisa Benson, Director, Government Management Accountability and Performance
Eldon Vail, Secretary, Department of Corrections
Linda Bremer, Director, Department of General Administration
Judy Schurke, Director, Department of Labor and Industries
Christopher Liu, Director, Washington State Lottery
Joe Dear, Executive Director, Washington State Investment Board
John Batiste, Chief, Washington State Patrol
Cindy Holmstrom, Director, Department of Revenue
Robin Arnold-Williams, Secretary, Department of Social and Health Services

**Official State Cabinet Agency Response to the 2008 Performance Audit Report
“Accessibility and Responsiveness of Public Agencies to Public Records Requests”
April 2008**

The following Governor’s Cabinet agencies prepared this coordinated management response for the audit report received on Friday, April 18, 2008: Department of Corrections, Office of Financial Management, Department of General Administration, Department of Labor and Industries, Washington State Lottery, Washington State Patrol, Department of Revenue, and Department of Social and Health Services.

Finding 1: Thirty-one of 300 unannounced public records requests (10 percent) were considered non-responsive (response not received by requestor). An additional seven responses (2 percent) were either non-conforming or incomplete.

RESPONSE: We value and embrace transparency and openness, and strive to provide records to the public for review as quickly as possible. As noted in our cover letter, Governor Gregoire has high expectations for agencies to follow not only the letter – but also the spirit – of the Public Records Act.

We believe that state agencies exhibit a high standard for responding to public records requests, and that there is always room for improvement. We have examined the responses that did not meet the Auditor’s criteria, in an attempt to identify where we can improve.

Walk-in requests. Overall, Cabinet agencies averaged 7.5 minutes in responding to public records requests made in person. However, two exceptions were noted in the report. Given the rapid response time of the majority of requests, we believe the exceptions were anomalies.

- At the Washington State Lottery headquarters building, the request was made to a non-state employee who provides security for the building. This third-party contractor attempted to assist the requestors, but had not experienced a walk-in public records request previously.
- In the other instance, an employee at the Department of Labor & Industries also tried to help the requestors. The employee followed the Model Rules and asked the requestors to write down their request. Based on the information provided, the employee believed the requestors were looking for information from a separate state entity, and directed them to the place the employee felt could best answer the request. Although the requestors did not receive what they were looking for from the agency, the employee acted in good faith to provide them with the information they wanted.

Although walk-in requests are extremely rare, the agencies evaluated the results and took steps to strengthen their customer service for walk-in requests in the future. In the case of non-employees, the Lottery provided instruction cards for contract security personnel to refer to in the event they receive another walk-in public records request.

Email. Cabinet agencies averaged slightly over two days in responding to the public records email request. The report noted two exceptions related to email. In one instance, the agency responded back to the requestor via email, and asked for clarification of the request. The response was not received by the requestor. The agency provided a copy of its email response to the auditors when asked about the response. The agency acted in good faith to provide the

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 April 2008**

information, and neither the agency nor the auditors could determine why the requestor did not receive the response.

The other exception related to an email filter used by an agency to protect its information technology systems. Our more detailed response to the use of email filters is contained in the response to Finding #2.

Missing page. Out of the numerous pages that Cabinet agencies provided in response to the requests, one page was missing. An agency numbered the pages of its response documents and sent them via email attachment to the requestor. One page of the response was inadvertently omitted from the attachment. In the best practices section, the auditors commend the agency for numbering the pages of its response. It was through this best practice that the auditors were able to determine that a page was missing. When the agency was contacted about the omission, it promptly sent the missing page.

We believe these instances are truly exceptions, and do not adequately reflect or detract from the excellent customer service provided to requestors of public records.

Action Steps:

- Training to third-party security personnel regarding walk-in public records requests at the noted agency has been completed.
- Agencies will continue to provide multiple avenues for submitting public records requests and contacting agency public records officers, to ensure that requests are received and processed appropriately.
- Agencies have already established policies consistent with the Public Records Act, and will consider incorporating the advisory Model Rules if they have not been already done so.
- Agencies will evaluate the identified best practices to determine which may be applied.

Finding 2: Some entities do not accommodate one or more means of communicating public records requests and therefore do not provide the public with the fullest assistance.

RESPONSE: The eight Cabinet agencies in this report accommodate all forms of public records requests, and provide the public with the fullest assistance in accordance with the Model Rules of the Public Records Act and state public records law (RCW 42.56).

Agency	Written (Letter, fax, email)	*Verbal (Walk-In, telephone)	Web site
Dept. of Corrections	Yes	Yes	http://www.doc.wa.gov/contact.asp
Office of Financial Management	Yes	Yes	http://www.ofm.wa.gov/contact/default.asp

**Official State Cabinet Agency Response to the 2008 Performance Audit Report
 “Accessibility and Responsiveness of Public Agencies to Public Records Requests”
 April 2008**

Dept. of General Administration	Yes	Yes	http://www.ga.wa.gov/public-record.htm
Dept. of Labor & Industries	Yes	Yes	http://www.lni.wa.gov/Main/AboutLNI/PublicDisclosure/
Washington State Lottery	Yes	Yes	http://www.walottery.com/sections/AboutUs/Default.aspx?Page=Legal
Washington State Patrol	Yes	Yes in person, no over the phone*	http://www.wsp.wa.gov/reports/pubdiscl.htm
Dept. of Revenue	Yes	Yes	https://fortress.wa.gov/dor/efile/content/contactus/email/brd.aspx
Dept. of Social and Health Services	Yes	Yes	http://www.dshs.wa.gov/pubdis.shtml

*The Model Rules encourage requestors to provide written records requests. The rules also require Public Records Officers to document requests received in person or on the telephone. (WAC 44-14-030, section 4.)

Email filters: The finding cited only one instance where an email request was not received by a state agency. We consider the one instance as atypical, and not an example of a widespread problem with email. However, we are very concerned about the possible ramifications of implementing the recommendation to “select and set email filters at a level that will not block public records requests.”

The law requires agencies to adhere to the policies and standards issued by the state Information Services Board to secure state information technology systems and their data. Agencies must balance the need for access to information with the need for maintaining the integrity of such information. For example, agencies are required to screen emails for known viruses and disallow those emails that cannot be examined.

We strive to provide excellent customer service by providing email addresses for requests. However, it would be impossible for us to eliminate from our spam filters all of the potential criteria that might cause a public records request email to be labeled as “spam” without defeating the purpose of having protective filters. Reducing the level of protection around information technology systems is dangerous and ill-advised.

Individually, state agencies receive thousands of spam emails each day. For example, in one recent 30-day period the Office of Financial Management, which is a relatively small state agency, received nearly 3 million spam messages, or 90 percent of all incoming email. Reviewing all messages blocked by a spam filter for possible records requests would be inefficient and consume significant taxpayer dollars. We believe a better solution is for agencies to provide multiple avenues of communication for how a citizen can make a request.

**Official State Cabinet Agency Response to the 2008 Performance Audit Report
“Accessibility and Responsiveness of Public Agencies to Public Records Requests”
April 2008**

Submitting forms via web site: We agree that providing for the submittal of a public records request form through a web site is a best practice. However, stating that three state agencies do not allow public records request forms to be submitted through their web sites is misleading at best. These agencies provide forms on their web site that can be emailed, and an email address that can be used to submit the request as well. These same agencies are also listed under “Best Practices” as having a user-friendly web site, so it seems inconsistent that they are called out as being deficient.

Telephone requests: The Model Rules issued by the Attorney General’s Office note that any “one-size-fits-all” approach may not be best for requestors or agencies. The rules also encourage requestors to provide written records requests, and require Public Records Officers to document requests received in person or on the telephone (WAC 44-14-030, section 4).

The Washington State Patrol made an intentional decision not to accept public records requests via telephone for two reasons:

- 1) The high probability of the requestor’s intent not being captured accurately.
- 2) Written public disclosure requests clearly define the material expected. If a dispute arises regarding a verbal request, there is no record or documentation from the requestor detailing what he or she was originally seeking. Written requests resolve potential misunderstandings, reduce potential litigation, and provide better customer service.

Action Steps:

- Agencies have already established policies consistent with the Public Records Act, and will consider incorporating the advisory Model Rules if they have not been already done so.
- Each agency in the audit currently makes training on the Public Records Act available to its staff. For example, DSHS trained 18,000 individuals on the basic elements of public records disclosure in 2006-2007. Some agencies offer on-line or web-based training. Many Public Records Officers also regularly receive and provide training that counts as continuing legal education (CLE) credits.
- Agencies will continue to accommodate multiple modes of requesting public records. Several agencies are evaluating a change to their web sites to allow web forms to be submitted directly through the site.
- Agencies that receive large numbers of requests have already developed information that outlines how public records requests can be made, and that information is readily available to the public.

Finding 3: Some entities did not provide complete and satisfactory explanations for redactions of public records and some records were improperly redacted.

RESPONSE: We are pleased that the records provided by state agencies were appropriately redacted. Two responses did not cite the specific legal exemption for the redaction. Since the

**Official State Cabinet Agency Response to the 2008 Performance Audit Report
“Accessibility and Responsiveness of Public Agencies to Public Records Requests”
April 2008**

other redacted responses provided by these agencies did include the statutory reason, we believe the two responses were an oversight and not an indication of a systemic problem. Nevertheless, once alerted to the oversight, both agencies took steps to ensure the explanation of redactions in future records request responses.

Action Steps:

- These agencies provide comprehensive training and resource materials on legal exemptions to staff who respond to records requests. They also make training on the Public Records Act available to their staff, and offer regular on-line or web-based training.
- The agencies mentioned have already taken steps to ensure the specific exemption that applies to each redaction is provided to the requestor.

Finding 4: Some entities provided the requested public records in a less timely manner than their peers.

RESPONSE: State agencies value government openness and strive to provide the best customer service possible. As noted in the overall audit conclusion, agencies performed very well, and did even better when measured against the existing legal standard for customer service and efficiency.

The law sets a standard for measuring customer service and efficiency in providing public records. Agencies are required by law to send a response within five days of receipt of the request. A prompt response is defined as either sending the actual records, or providing a reasonable estimate of when the request can be fulfilled. With the exception of a few clerical oversights that have been corrected, agencies responded within the required five days – or sooner – in every case.

The audit methodology includes factors outside of the agencies’ control. The charts in the report characterize “response time” as the number of days it took from the moment a request was made or sent to the time a response with all records requested was received. Starting the count when a request was sent to an agency versus when it was received by the agency adds time to the results, and includes circumstances outside the control of the agencies. Similarly, ending the count when a response was received by the requestor versus when it was sent by the agency inflates the response time with circumstances not controlled by agencies.

We recognize that using an average by definition means that some agencies ended up below the average amount of time. We believe this form of measurement gives an artificial and somewhat inaccurate picture of agency performance. The five-day response law is used as a measurement of customer service and efficiency because it holds agencies accountable for those factors within their control. An agency controls what happens to a request once it is received by the agency. It does not control, for example, how long it takes the U.S. Postal Service to deliver a request to the agency, or how long it takes the response to reach the recipient once it is sent.

**Official State Cabinet Agency Response to the 2008 Performance Audit Report
“Accessibility and Responsiveness of Public Agencies to Public Records Requests”
April 2008**

State agencies provided good communication with the requestors. Agencies communicated with the requestors about how much time it would take to provide records, and in nearly every case were able to provide the records within the estimated timeframe. According to the law, agencies must give a reasonable estimate of when a request can be fulfilled. Most of the responses in the chart included many pages, and required appropriate redactions of confidential information (e.g., VISA card numbers). These responses take longer to fulfill, as noted by the auditors in the “Cause” section of the finding.

Agencies appropriately handled requests requiring copying fees. The report states that three agencies “withheld records pending payment of the copy fees.” We feel this characterization is misleading. The agencies listed in the report provide sufficient notification of their policies on copy fees. In addition, the Model Rules state that a requestor who wishes to have copies of records made (instead of simply inspecting them), should make arrangement to pay for copies of the records or a deposit.

State agencies are experiencing an increasing number of records requests. For example, the table below illustrates the number of requests received by three of the state agencies in the audit:

Agency	Approximate Number of Public Records Requests in 2007
Department of Corrections	6,700 73% from incarcerated offenders
Washington State Patrol	10,000
Department of Social and Health Services	24,000

Collecting copy fees can affect the speed in which requestors receive their documents. However, these fees help agencies to recover the costs of providing hundreds of thousands of pages of documents.

Action Steps:

- In 2007, the Governor directed agencies to undertake a significant effort to explore opportunities for providing records electronically. Funding requested for this effort was not allocated in the 2008 legislative session. Nonetheless, a multi-agency task force has already been formed to assist agencies in sharing best practices and addressing the challenges presented by electronic document requests.
- In 2007, the Office of Financial Management implemented a public records request list service especially for large, complex, or electronic document requests. The goal is to encourage communication among agency records officers and to ensure full compliance with the law, avoid costly errors by improving timeliness, and provide full, consistent approaches to responses.

**Official State Cabinet Agency Response to the 2008 Performance Audit Report
“Accessibility and Responsiveness of Public Agencies to Public Records Requests”
April 2008**

- The Risk Management Division of the Office of Financial Management is holding training forums for agency public records officers. The first forum was held in March 2008. Two more forums are currently planned, including one in eastern Washington.
- Each agency in the audit currently makes training on the Public Records Act available to its staff. For example, DSHS trained 18,000 individuals on the basic elements of public records disclosure in 2006-2007. Some agencies offer on-line or web-based training. Many Public Records Officers also regularly receive and provide training that counts as continuing legal education (CLE) credits.
- The Department of Corrections is working with the public and the Attorney General’s Office to develop new rules for electronic disclosure of its public records.
- Agencies that receive large volumes of public records requests will evaluate the proposed gains in efficiency and also effectiveness of changing to a method of prioritizing incoming requests versus continuing to process requests with a “first in, first out” approach.
- Agencies will continue to use email to respond to public records requests whenever possible.
- Agencies will continue to provide large records requests in installments when appropriate.
- Agencies will continue to provide requestors with estimates of how long it will take to fulfill public records requests, when extending more than five days.