



October 29, 2014

**Performance Audit**

# Inspection of Public Records Act

Citywide

**Report No. 14-101**



**CITY OF ALBUQUERQUE  
OFFICE OF INTERNAL AUDIT**

PERFORMANCE AUDIT REPORT  
INSPECTION OF PUBLIC RECORDS ACT  
CITYWIDE  
REPORT NO. 14-101

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## Executive Summary

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### **Background**

The New Mexico State Legislature wanted to ensure that everyone has access to the greatest possible information regarding the affairs of government and created an Inspection of Public Records Act (IPRA). The City of Albuquerque (City) is subject to IPRA and must respond to public records requests in compliance with State Statute. The audit was requested by the Administration and included in the approved fiscal year (FY) 2014 audit plan.

The City Clerk is the City's Chief Records Custodian and is responsible for the coordination of Public Records requests, and overseeing IPRA compliance by Departmental Record Custodians (Custodians). Responding to IPRA requests requires research, review, and redaction of City records, which takes City employees away from their primary duties. In accordance with IPRA, the City cannot charge actual resource costs related to determining if a record is subject to disclosure; however, the City may charge a requester for certain allowed resource costs associated with record reproduction.

The audit evaluated the City's process and resource impact for fulfilling IPRA requests. The audit is the first comprehensive analysis of the impact of IPRA on municipalities in New Mexico. As New Mexico's largest municipality, Albuquerque is experiencing the greatest impact related to IPRA compliance.

### **Findings**

During the 18-month audit period, IPRA compliance cost the City an estimated \$1.5 million to respond to an estimated 8,814 requests. The actual number of requests may be significantly different because the City does not have a consistent citywide system for tracking requests. Currently, City departments use various methods for tracking requests, resulting in incomplete and inconsistent data. To improve compliance, the City should implement a citywide tracking system to capture information about IPRA requests.

Capturing accurate and complete IPRA request data will not only provide accurate information on the impact of responding to IPRA requests, but will also allow the City to perform analyses to identify ways to decrease the number of IPRA requests and increase efficiency. For example, frequently requested information can be made available to the public through the City's Open Data Portal. Direct access to public information will reduce City staff time to retrieve and duplicate records, and increase responsiveness to the public.

The City should develop a current and consistent process to reduce the risk of violating IPRA regulations. City procedures do not incorporate regulatory revisions, and required training sessions to ensure the consistent application of IPRA processes are not held. Updates to all City regulations and training materials, along with on-demand training, will allow the City to communicate the requirements for processing IPRA requests to City Custodians.

The City ultimately completed 97 percent of the requests for records tested in a random sample; however, some IPRA requirements including timeliness were not met. The City Clerk should ensure that requests are completed in accordance with IPRA regulations.

The future impact to the City for responding to IPRA requests is unpredictable as the number and complexity of the requests determines the ultimate impact. However, it is unlikely that the number of IPRA requests and associated impacts will decrease in the near future.

**Recommendation and management responses are included within the audit report.**



# City of Albuquerque

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## *Office of Internal Audit*

October 29, 2014

Accountability in Government Oversight Committee  
P.O. Box 1293  
Albuquerque, New Mexico 87103

Audit: Performance  
Citywide - Inspection of Public Records Act  
Audit No. 14-101

**FINAL**

## INTRODUCTION

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The Office of Internal Audit (OIA) conducted a performance audit of citywide processes and the resource impact for the completion of Inspection of Public Records Act (IPRA) requests. The audit was requested by the Administration and included in the approved fiscal year (FY) 2014 audit plan. The audit objectives, scope and methodology information can be found in **Appendix A**.

The New Mexico State Legislature enacted Chapter 14, Article 2 NMSA 1978, to create IPRA. The legislation states that “a representative government is dependent upon an informed electorate...” The Legislature wanted to ensure access by citizens to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.

Compliance with IPRA is an unfunded mandate in the State of New Mexico. According to the State Statute, the City of Albuquerque (City) cannot charge a fee for determining if a record is subject to disclosure. However, the City can recover certain allowed resource costs associated with record reproduction.

Consider the following hypothetical IPRA request:

- A requester asks for four contracts totaling 240 pages.
- One half of the 240 pages require some type of information redaction, to be completed by a paralegal. Proper redaction requires copying the original contract and blacking out the information on the copy. The pages must be recopied to ensure the information is unreadable, before the requester can review them.

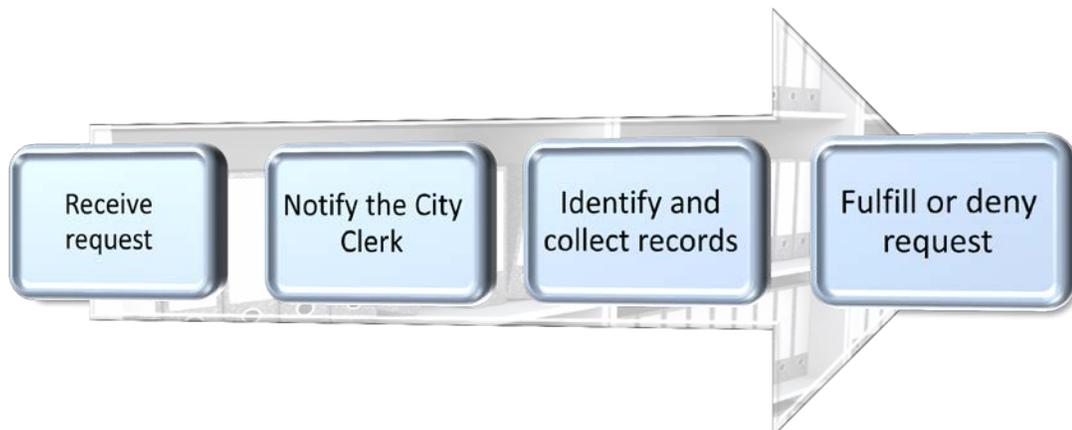
- An administrative assistant will research and gather the contracts, make copies, and be available during the time the requester is reviewing the information. The lowest hourly wage for an administrative assistant is \$15.11.
- A paralegal will review the contracts and will determine what information requires redaction. The lowest hourly wage for a paralegal is \$19.20.
- The copy cost to the City for each page is \$0.50.
- The charge to the requester for each page taken is also \$0.50.

The cost to fulfill the hypothetical IPRA request is as follows:

Task	City Resource Cost	Cost Recovery	Deficit
1.5 hours to gather, and copy the contracts	\$ 22.67	\$ 0.00	\$ (22.67)
240 pages copied	\$ 120.00	\$ 0.00	\$ (120.00)
4 hours to review and redact information	\$ 76.80	\$ 0.00	\$ (76.80)
0.5 hours to recopy the redacted pages	\$ 7.56	\$ 0.00	\$ (7.56)
120 pages recopied for redaction	\$ 60.00	\$ 0.00	\$ (60.00)
1 hour to be present during requester review	\$ 15.11	\$ 0.00	\$ (15.11)
Requester takes 40 pages of information	\$ 0.00	\$ 20.00	\$ 20.00
<b>Total:</b>	<b>\$ 302.14</b>	<b>\$ 20.00</b>	<b>\$ (282.14)</b>

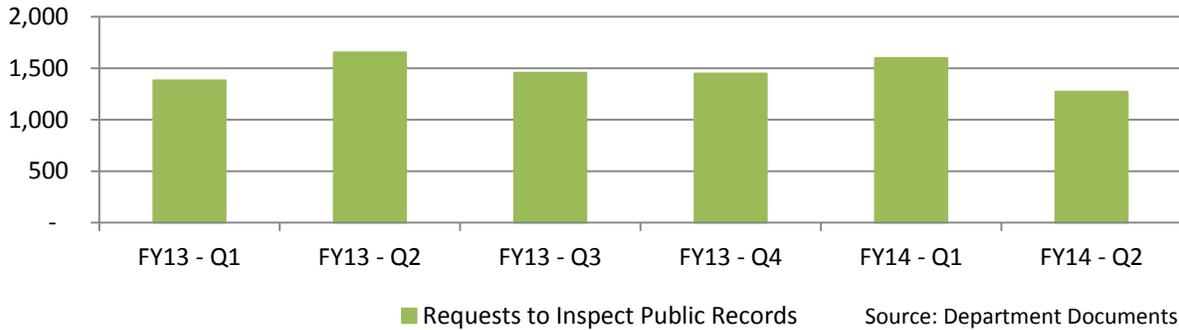
If the requester were to take all 240 pages, the City’s cost recovery would be \$120, or 40 percent of the actual resource cost to provide the required information. Frequently, requesters do not take any copies or only one or two pages. In some cases, information is researched and copied but the requester does not come in to review the information. This creates storage issues because IPRA does not specify how long information should be made available to requesters.

As the City’s designated Chief Records Custodian, the City Clerk is responsible for ensuring compliance with IPRA. The City Clerk is the central contact for all IPRA requests, yet any city employee can receive a request. Each employee has the duty to inform the City Clerk of the request and provide records he or she maintains. The graphic below is a simplified understanding of the IPRA request process.



According to information provided by City departments, a total of 8,814 IPRA requests were tracked and processed in the 18-month audit period from July 1, 2012 through December 31, 2013. The graph below illustrates the number of requests received during each quarter.

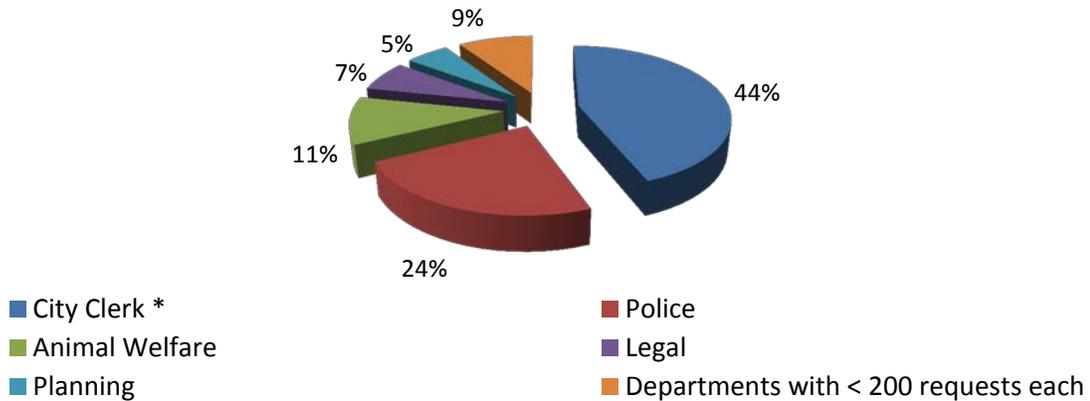
### Requests to Inspect Public Records



Some City departments receive and respond to more requests than others. According to the Administration, IPRA requests appear to come from three categories of requesters: the media, the general public, and attorneys and law firms.

The chart below shows the percentage of requests processed by department. The two largest volume departments were the Office of the City Clerk and the Albuquerque Police Department (APD) with a combined 68 percent of the total requests tracked and processed during the 18-month audit period. Animal Welfare was the next largest with 11 percent of the total requests.

### Number of IPRA Requests by Department



\* Some requests to the City Clerk may be duplicates because other departments are required to report IPRA requests to the City Clerk.  
 Source: Department Documents

## FINDINGS

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*The following findings concern areas that OIA believes could be improved by the implementation of the related recommendations.*

1. THE CITY SHOULD DEVELOP A CONSISTENT CITYWIDE SYSTEM TO CAPTURE THE IMPACT OF IPRA COMPLIANCE.

The direct and indirect impacts of IPRA compliance have significant cost and operational effects on the City, which are minimally recoverable. Direct impacts include City time to research, gather, review and redact each request, and associated materials needed to respond to IPRA requests. Indirect impacts include legal costs, and decreases in productivity for City employees who must transition between their primary duties and processing IPRA requests. Direct and indirect costs associated with IPRA compliance for the 18-month audit period are estimated to be \$1.5 million.

The following report subsections provide details for direct and indirect IPRA response costs and impacts on the City, the recovery of costs by the City, and additional concerns expressed by the City's Administration.

### **A. Direct Impacts**

IPRA requests involve research, preparation, review, redaction of information, and materials to provide the response to the requester. A total of 8,814 requests were identified for the 18-month audit period. The City does not have a process or system to capture citywide cost data for IPRA requests, so a range was developed to estimate costs. The range consists of three categories: simple, typical, and complex. The City Administration provided percentages for each category.

- **Simple Requests**

- Estimated time to fulfill request – 15 minutes
- Estimated cost to fulfill request – \$7
- Request description – The simplest request noted, was a recurring request, which involved the record custodian running a query and attaching the report to an email.
- According to the City's Administration, approximately 53 percent of IPRA requests are "simple" requests. Using that percentage, the City received approximately 4,671 simple requests at an estimated cost of \$32,697 during the 18-month audit period.

- **Typical Requests**

- Average time to fulfill request – 2.5 hours
- Average cost to fulfill request – \$67
- Request description – Typical requests usually involve one or two departments and the information does not require significant review and redaction. The average time and cost were calculated by analyzing a statistical random sample and using a conservative estimate that only captured the associated Custodians’ time and compensation costs. The actual costs could be significantly higher.
- According to the City’s Administration, approximately 38 percent of IPRA request are “typical” requests. Using that percentage, the City received approximately 3,349 typical requests at an estimated cost of \$224,383 during the 18-month audit period.

- **Complex Requests**

- Average time to fulfill request – 32 hours
- Average cost to fulfill request – \$1,295
- Request description – Complex requests generally involve multiple departments and legal review. Three complex requests involving different departments were traced to determine the average resource demands for complex IPRA requests. The table below illustrates the number of departments, employees, hours, and total costs for the completion of each complex request.

**Complex IPRA Requests Data**

<b>Request Department and Description</b>	<b>Number of Departments Involved</b>	<b>Number of Employees Involved</b>	<b>Total Hours to Complete</b>	<b>Total Cost</b>	<b>Cost Recovery</b>
Police – Lapel and surveillance videos *	4	9	17.67	\$ 645.65	\$ 6.75
Planning – Structure documents	4	17	20.71	\$ 945.00	\$ 0.00
Purchasing – RFP documents	1	4	57.40	\$ 2,294.43	\$ 5.00
<b>Totals:</b>			<b>95.78</b>	<b>\$ 3,885.08</b>	<b>\$ 11.75</b>
<b>Averages:</b>			<b>31.93</b>	<b>\$ 1,295.03</b>	<b>\$ 3.92</b>

\* A flowchart illustrating the IPRA process for the Police lapel and surveillance video is included as **Appendix B**.

- According to the City’s Administration, approximately 9 percent of IPRA requests are “complex” requests. Using that percentage, the City received approximately 794 complex requests at an estimated cost of \$1,028,230 during the 18-month audit period.

## **B. Indirect Impacts**

- **Legal Costs**

The City must defend IPRA related lawsuits and may incur monetary penalties for noncompliance with IPRA. Litigation typically results from a requester being dissatisfied with the City’s response time to IPRA requests. In most cases, the City Legal Department staff is used for City litigation. However, the City may be required to hire outside counsel if Legal Department resources are scarce or there is a perceived conflict of interest.

Since 2011, the City has incurred approximately \$237,000 for IPRA litigation preparation, defense, and penalty costs. This total does not include other IPRA related litigation costs that may be a component of other lawsuits. Ultimately, the taxpayers bear the cost for IPRA related lawsuits.

- **Opportunity Costs**

Although IPRA compliance is the City’s responsibility, essential day-to-day operations are impacted when employees must dedicate time and effort to respond to these requests. When City employees are working on IPRA requests they are not performing their primary job duties. When the City receives a complex request that involves multiple levels of review, high-ranking administrative resources may also be dedicated to ensure IPRA compliance.

## **C. Recovery of Costs**

New Mexico State Statute prohibits government agencies from charging actual direct costs, or recovering litigation costs for IPRA lawsuits for noncompliance regardless of the outcome. Government agencies can only recover costs for the materials taken by the requester. An agency may not charge a fee to determine whether a record is subject to disclosure. In accordance with State Statute, the City has established the following materials charges:

- \$0.50 per page for black and white copies on paper up to 8.5 x 14 inches,
- \$1.00 per page for color copies on paper up to 8.5 x 14 inches,

- \$2.75 for audio cassettes, and
- \$6.75 per CD or DVD.

Other states allow for additional cost recovery of items such as research costs and duplicating time. Missouri allows charges for research time and copying (*Missouri State Statute Chapter 610.026*). Arizona breaks out requests by type. Research costs can be recovered for commercial requests, but not for non-commercial requests (*Arizona Revised Statutes 39-121.03*). Oklahoma acknowledges that some requests clearly cause a disruption of the essential functions of the public body and allows reasonable fees to recover the direct costs of searching and copying (*Oklahoma Statutes 51 O.S. 24A.5.*). However, unless the current New Mexico State Statute is amended, the City cannot recover direct or indirect costs for IPRA compliance.

#### **D. Additional Administration Concerns**

The City's Administration has additional concerns in the following areas that may impact City resources.

- **Potential Misuse of IPRA Requests**  
The City's Administration stated there has been an increase in IPRA requests received from private attorneys as a supplement to legal discovery. The timeframe for an IPRA response is 15 days, while the timeframe for responses under discovery is 30 days. Using IPRA as a supplement for discovery creates an artificial urgency for the City's response, and increases the number of IPRA requests. Additionally, City efforts may be duplicated during the discovery phase of legal proceedings when documents are requested through both the discovery process and IPRA.
- **Obligations of Continuing Duty to Supplement Responses to IPRA Requests**  
The City has received requests for documents or reports that do not yet exist at the time of the request. It is the City's position that the response is limited to documents in existence at the time of the request. The IPRA statute does not address the issue of continuing duty.
- **Wasted Resources**  
Responses to some requests require generation of a substantial number of paper copies, which are not taken by the requester. In some cases, the requesters do not come in to review the records when notified that the records are available.

- **IPRA Use for Business Generation**  
Attorneys and other businesses make broad IPRA requests as a means of identifying potential new clients.

The future impact to the City for responding to IPRA requests is unpredictable as the number and complexity of the requests received determines the ultimate impact. However, it is unlikely that the number of IPRA requests will decrease in the near future. To minimize the impact of IPRA requests the City must find ways to make information available to the public through methods that limit the need for direct employee involvement.

#### RECOMMENDATIONS

The City Clerk should:

- Create a standard process to capture and document the impact that IPRA compliance has on the City by:
  - Requiring that Custodians track all IPRA requests.
  - Requiring that Custodians track all costs associated with processing IPRA requests, including the unrecoverable costs.
- Annually report to the City Administration and City Council on the impact of IPRA compliance.

#### RESPONSE FROM THE CITY CLERK

*"The Office of the City Clerk agrees that we need a more streamlined system to track all IPRA requests to ensure that they are in compliance with the IPRA Act and to track the citywide direct and indirect impact of all requests. The Office of the City Clerk, ITSD and Legal departments are currently performing a needs assessment with the goal of purchasing an automated records tracking system to ensure the City of Albuquerque will be in compliance for all IPRA requests in the future. We will also be requiring quarterly reports from each custodian so we can track all costs associated with IPRA requests. We will be working with the vendor on system functionality and processes for tracking all costs associated with IPRA requests."*

#### ESTIMATED COMPLETION DATE

*"July 2015."*

2. THE CITY SHOULD DEVELOP CAPABILITIES TO ANALYZE AND INCREASE THE EFFICIENCY OF IPRA ACTIVITIES.

An analysis of IPRA requests and trends could identify ways to decrease the number of requests and increase the City’s efficiency in responding to requests. However, to provide an accurate analysis of IPRA activities, requests must be consistently tracked citywide. Currently, City departments track requests using varying methods. The information captured for requests is not consistent or complete.

Analysis of IPRA activities could identify resource requirements, additional datasets that could be opened to the public, and problem areas requiring attention. Tracking requests would allow the City to identify requests sent to multiple departments, eliminating duplication of effort. IPRA requests could be published in a searchable database to decrease the time required to respond to multiple requests for the same or similar information. A consistent manual tracking system should be implemented until an automated solution is in place. Additional considerations in tracking IPRA requests are identified in **Appendix C**.

The City has an Open Data Portal available to the public on the City’s website. Raw datasets are linked to the Open Data Portal. According to the City’s website “anyone can use these data sets in creative and innovative ways to improve the lives of citizens and encourage governmental efficiency. Doing this means that the City becomes more accessible, transparent, and accountable.”

An analysis of the information frequently requested could identify additional datasets the City should publish to the Open Data Portal. For example, the Animal Welfare Department has a recurring request for animal intake information. Publishing this query as open data would allow requesters to access the information at their convenience and reduce the distractions to Animal Welfare personnel. For additional information on open datasets and types of data that is available in other cities see **Appendix D**.

When City employees respond to IPRA requests, they are taken away from their primary responsibilities, which can have a negative impact on efficiency and service to the public. It is in the best interest of the City and the taxpayers to minimize the impact of IPRA requests on City resources.

A survey of regional cities was conducted to benchmark the City’s IPRA process. Responses about the use of software; inefficiencies in other cities’ processes; the number of requests received per month; and the estimated time to process a request are detailed by each responding city in **Appendix E**.

## RECOMMENDATIONS

The City Clerk should:

- Implement a system to track IPRA requests received by the City. The system should capture at a minimum:
  - The method used to request information, i.e. verbal, written, email, telephonic;
  - Name of the requester;
  - The date, time, and information requested;
  - The City employee receiving the request;
  - All employees who work on the request and the length of time each spends;
  - All communications sent to the requester, including the date and time;
  - How the request is fulfilled, i.e. via paper, electronic media, etc.;
  - The number of records mailed, emailed, viewed, copies provided vs. pages pulled.
  - The required deadlines for each request;
  - The cost of all resources used to complete the request, and any cost recoveries.
- Work with City departments to determine types of data the City could proactively publish to the City’s website to assist in decreasing the number of IPRA requests by directing requesters to a website for frequently requested items. Explore the possibility of installing terminals in customer service areas to allow public access to public information.
- Publish IPRA requests and responsive records in a format that is searchable by both City employees and the public.

## RESPONSE FROM THE CITY CLERK

*“The Office of the City Clerk agrees with the recommendations. The City Clerk and staff will update IPRA procedures and develop an interim tracking mechanism that includes the requirements listed. The interim system will remain in place until the automated software system is purchased and installed. Training will be conducted for all records custodians, backup custodians, and their Division Heads will create consistent processes and allow the IPRA process to run smoothly and efficiently.”*

*“The City Clerk with work with ITSD and City departments to review IPRA requests with the goal of publishing data frequently requested on the City website and via open data to reduce the number of IPRA requests.”*

ESTIMATED COMPLETION DATE

*“April 2015”*

3. THE CITY SHOULD DEVELOP A CURRENT AND CONSISTENT IPRA PROCESS AND PROVIDE TRAINING TO CUSTODIANS.

The City Clerk's *Regulations and Procedures on Requests to Inspect Public Records* (IPRA Procedures) do not incorporate recent regulatory revisions. Required training sessions to ensure the consistent application of IPRA processes were not held in FY2013 and FY2014. As a result, methods for completing IPRA requests vary among City departments, increasing the risk of violating IPRA regulations. A flowchart of the City's IPRA request process is included as **Appendix F**.

**Chief Records Custodian**

Administrative Instruction (AI) 1-7 designates the City Clerk as the Chief Records Custodian for the City. This position is responsible for ensuring the City complies with IPRA regulations and coordinates all IPRA requests. AI 1-7 states, “For the purpose of records requests, the City Clerk is deemed the immediate supervisor of any employee tasked with responding to a request under the Act.”

The Chief Records Custodian has the duty to provide Department Records Custodians (Custodians) with updated procedures and training. The intent of the IPRA Procedures is to establish a standard process for all City employees regarding receiving, researching, and responding to IPRA requests.

The IPRA Procedures and training are out-of-date and do not include revisions to City regulations. According to AI 1-7, Custodians must attend training with the City Clerk after becoming Custodians. Training was last provided to Custodians in March 2012. Custodians change throughout the year. To ensure that training is available whenever there is turnover the City could provide an automated training process through the City's Public Service University. Custodians could be certified, with recertification required on an annual or other basis.

The table below illustrates the effect of having outdated IPRA Procedures and not having training.

Issue	Effect	Criteria
IPRA Procedures are out-of-date.	The City is at risk of violating IPRA if the IPRA Procedures are not consistent with current Law and City policies.	<u>AI 1-7, §4(A)</u> : The City Clerk should ensure the IPRA Procedures are up-to-date and compliant with the law.
Annual IPRA training has not been held.	Without annual training, Custodians may be unaware of important updates to IPRA Procedures and laws.	<u>AI 1-7 §4(C)</u> : The City Clerk is required to provide annual training.

**Department Directors**

The City’s Open Records Ordinance states that each Department Director is responsible for appointing one or more Custodians and providing the Chief Records Custodian with the Custodian’s contact information. Department Directors are not consistently notifying the Chief Records Custodian when the Custodians change, and are not promptly providing contact information for Custodians. Most departments do not have a designated backup Custodian. Without succession planning or a backup Custodian, departments may have untrained Custodians responding to IPRA requests. Untrained Custodians are more likely to erroneously process requests, improperly redact information, deny requests, or fail to recognize an IPRA request.

Department Directors should determine if the appropriate position has been designated as the department Custodian. Large departments should also consider appointing a Custodian for each division, with a main department Custodian to coordinate responses to IPRA requests. Backup Custodians should be identified to cover for Custodians during vacations and other absences.

**Custodians**

AI 1-7 states that department Custodians are responsible for providing records requested through IPRA. The Custodians must notify the Chief Records Custodian of any direct requests they receive. However, the Custodians do not consistently send requests to the Chief Records Custodian or communicate the status of the requests and pending responses. Failure to notify the Chief Records Custodian limits his or her ability to ensure the City complies with IPRA.

IPRA Procedures require all Custodians to keep all records, documentation of responses provided, and documentation of the records that were inspected and/or copied. Custodians do

not consistently maintain supporting documentation showing responses provided to requestors. Many Custodians rely on the City email system for maintaining supporting documentation.

The Open Records Ordinance states that when a record is determined to meet an exemption that allows the City to deny the request, the Custodians must forward their determination to the City Attorney. However, Custodians do not consistently send records to the City Attorney for verification of the exemption. Some denial letters sent by Custodians do not meet the requirements set by State Statute.

An IPRA/Codification Specialist position was created and filled by the Office of the City Clerk in October 2014. According to the City Clerk, the duties of the Chief Records Custodian are assigned to the IPRA/Codification Specialist. This change requires a number of updates and modifications, including:

1. The City's Open Records Ordinance should be updated to reflect the new position, and references to the City Clerk should be reviewed and corrected.
2. AI 1-7 should be reviewed and changes made to reflect the new position and ensure there are no conflicts between the AI and the Ordinance.
3. The IPRA Procedures and other training materials should be reviewed and revised to ensure they are consistent with the Ordinance and AI 1-7.
4. Periodic training should be provided to current and new Custodians.

Additional improvements that could be implemented citywide to increase IPRA compliance include:

- Using standardized templates for acknowledgement letters, requests for additional time, and denial letters. The New Mexico Attorney General recommends the use of templates and provides examples in the *Inspection of Public Records Act Compliance Guide*.
- Assigning responsibility for sending letters to requesters, and determining who should be notified in addition to the requester when communications are sent.
- Assigning the responsibility for determining if a request is burdensome or broad and requires additional time.
- Assigning responsibility for processing a denial and ensuring the notification letter follows the requirements set by State Statute.

### RECOMMENDATIONS

The City Clerk should:

- Work with the IPRA/Codification Specialist to:

- Recommend updates to the Ordinance and AI 1-7.
- Update IPRA Procedures.
- Provide training as soon as possible and ensure Custodians are given a copy of the updated IPRA Procedures.
- Request that all Directors evaluate their current and back-up Custodians and provide changes if needed.
- Develop and require the use of standard templates for the required letters.
- Develop an automated training and certification process for Custodians.

#### RESPONSE FROM THE CITY CLERK

*"The Office of the City Clerk agrees to create a consistent IPRA process to deliver to the Records Custodians, backup Records Custodians, Division Heads, and Directors to ensure that they are all following the proper City Clerk Procedures. The Clerks Office will evaluate each Records Custodians on their performance towards compliance along with tracking of IPRA's and their costs.*

*"The IPRA Specialist will provide templates from the IPRA Compliance Guide to the Records Custodians via email and/or training. This training will be conducted on an annual basis, beginning December 2014."*

#### ESTIMATED COMPLETION DATE

*"April 2015"*

#### 4. THE CITY CLERK SHOULD ENSURE DEPARTMENT RECORDS CUSTODIANS COMPLY WITH IPRA REGULATIONS.

The City fulfilled 97 percent of submitted requests for records maintained by the City. A statistical random sample of 48 requests was tested. While 97 percent of the requests were ultimately completed, compliance exceptions were noted for 16 of the 48 requests. The 16 exceptions fell under the following areas of noncompliance: required deadlines were not met timely, denial letters were missing required components, and supporting documentation was not retained.

Custodians must acknowledge requests promptly. If they are unable to provide the records for inspection within three days, they must notify the requester in writing, indicating the date

when the records will be available, but no later than fifteen calendar days after they receive the request. If requests are broad or burdensome, the Custodian must notify the requester in writing, within 15 days, that additional time is necessary to respond.

The table below indicates the number of instances the response to a request did not comply with an IPRA requirement. Some requests are included more than once because they did not meet multiple requirements.

Requirement	Requests	Did not comply	Percentage
Was the request completed timely?	48	11	23%
Was a 3 day acknowledgement letter sent?	34	9	26%
Was a 15 day letter sent requesting additional time?	11	6	55%
Was information properly redacted?	15	6	40%
Did the denial letter have the required components?	9	3	33%

Custodians have not had recent training on IPRA requirements. Recurring training reinforces IPRA requirements and decreases the chance that exceptions will occur. In FY2013, the City’s Information Technology Services Division asked users to clean up old emails due to space limitations; some Custodians were not aware of the requirement to retain supporting documentation as stated in the IPRA Procedures and deleted support for IPRA requests.

The table below outlines the general issues identified and related effects for noncompliance with the associated IPRA requirements.

Issue	Effect	Criteria
Custodians are not retaining supporting documentation for IPRA requests.	It is in the City’s best interest to retain all support showing compliance with a request. Disposal increases the burden on the City if called on to prove compliance.	<u>1.15.3.708 NMAC</u> : the record of a denied request must be maintained for one year after the date denied. <u>City’s IPRA Procedures</u> : Custodians are required to keep documentation of all responses provided to inspection requests; they are also required to record what was inspected.

Issue	Effect	Criteria
Custodians are not following required IPRA timelines. Requests exceeded the 15 day deadline from 1 to 46 days.	Not following prescribed deadlines exposes the City to enforcement actions including fines. Requesters may deem their requests denied after 15 days and request enforcement by the New Mexico Attorney General’s Office.	§14-2-8 (D) NMSA 1978: provide records within 15 days. If more than 3 days are needed, notify requester in writing, within 15 days, of date records will be available. §14-2-10 NMSA 1978: notify the requester in writing within 15 days for a request that is excessively burdensome or broad, and provide a reasonable date for completion.
Custodians are not including all required information in denial letters.	Incomplete information in a denial letter exposes the City to enforcement actions under IPRA, and potential monetary damages. Courts can award damages if they determine that the City is not providing a timely explanation for the denial. Noncompliance subjects the City to enforcement actions including fines up to \$100 per day.	§ 14-2-11 NMSA 1978: a denied request requires written notification. It must list records requested, name and title of each person responsible for the denial, and be delivered or mailed to the requester within 15 days of receiving the request. Fines accrue from the first day of noncompliance and must be paid by the public body.

RECOMMENDATIONS

The City Clerk should:

- Update the IPRA Procedures to include a retention period and a list of items that must be retained including:
  - The original request, preferably date stamped,
  - A copy of the dated acknowledgement letter sent to the requester,
  - If needed, a copy of the dated three day letter,
  - If needed, a copy of the dated request for additional time for items that have been determined to be excessively broad or burdensome,
  - If denied, the City Attorney’s letter to the requester stating the reason for the denial, and the names and positions of all individuals responsible for the denial, and
  - A copy of the records provided (can be electronic).
- Develop a checklist for Custodians to complete to determine if a request should be denied. Require the checklist be maintained with other supporting documents.

RESPONSE FROM THE CITY CLERK

*'The Office of the City Clerk agrees that failure to follow compliance of IPRA will result in consequences that will cost the City and tax payers more money. As noted above, updated processes and procedures will be presented to all Directors, Division Heads, Records Custodians and backup Records Custodians, which will address the bulleted items in Recommendation #4. The IPRA Specialist will create a checklist of exceptions for Records Custodians to follow before denying a request.'*

ESTIMATED COMPLETION DATE

*“Training will take place on December 5, 2014.*

*“The checklist will be created by December 5, 2014 to be provided in the training.”*

CONCLUSION

IPRA requests have a significant impact on the City. The total estimated cost for the City to process an estimated 8,814 requests during the 18-month audit period was approximately \$1.5 million.

The City needs to identify cost effective solutions to process IPRA requests. A system that will track the requests and related quantifiable data will allow for an accurate analysis of the information. This analysis will enable the City to identify areas of information that could be made available on the City's website.

A current and consistent process is needed to manage requests. Updating the IPRA Procedures, providing training and having succession plans in place will work to ensure that there is a current and consistent process, and will improve the City Clerk's control. Improving the City Clerk's control will ultimately reduce the risk of an IPRA violation.

We greatly appreciate the assistance and cooperation of the Acting City Clerk, Department Records Custodians and regional cities that took the time to respond to our surveys.

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Principal Auditor

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Internal Audit Manager

REVIEWED and APPROVED:

APPROVED FOR PUBLICATION:

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Debra Yoshimura, CPA, CIA, CGAP, CICA  
Director, Office of Internal Audit

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Chairperson, Accountability in  
Government Oversight Committee

## APPENDIX A

### OBJECTIVES

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The objectives of the audit were to determine:

- What is the resource impact on the City to comply with IPRA requests?
- Is the City complying with the basic requirements of the Inspection of Public Records Act (IPRA)?
- Does the City have a coherent and efficient process for handling public records requests pursuant to the IPRA Statute?

### SCOPE

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The audit used two distinct populations. Review of initial information supported splitting the population to allow separate testing to be performed. The populations were split to have the requests processed by the Albuquerque Police Department (APD) as one population and the remaining City departments (other departments) as the other population. Our scope was limited to the objectives above for the 18-month audit period between July 1, 2012 and December 31, 2013, which encompasses all of fiscal year 2013 and the first six months of fiscal year 2014.

This report and its conclusions are based on information taken from a sample of transactions from two populations and do not represent an examination of all related transactions and activities. The audit report is based on our examination of activities through the completion of fieldwork on September 26, 2014 and does not reflect events or accounting entries after that date.

We conducted this performance audit in accordance with generally accepted government auditing standards. 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.

### METHODOLOGY

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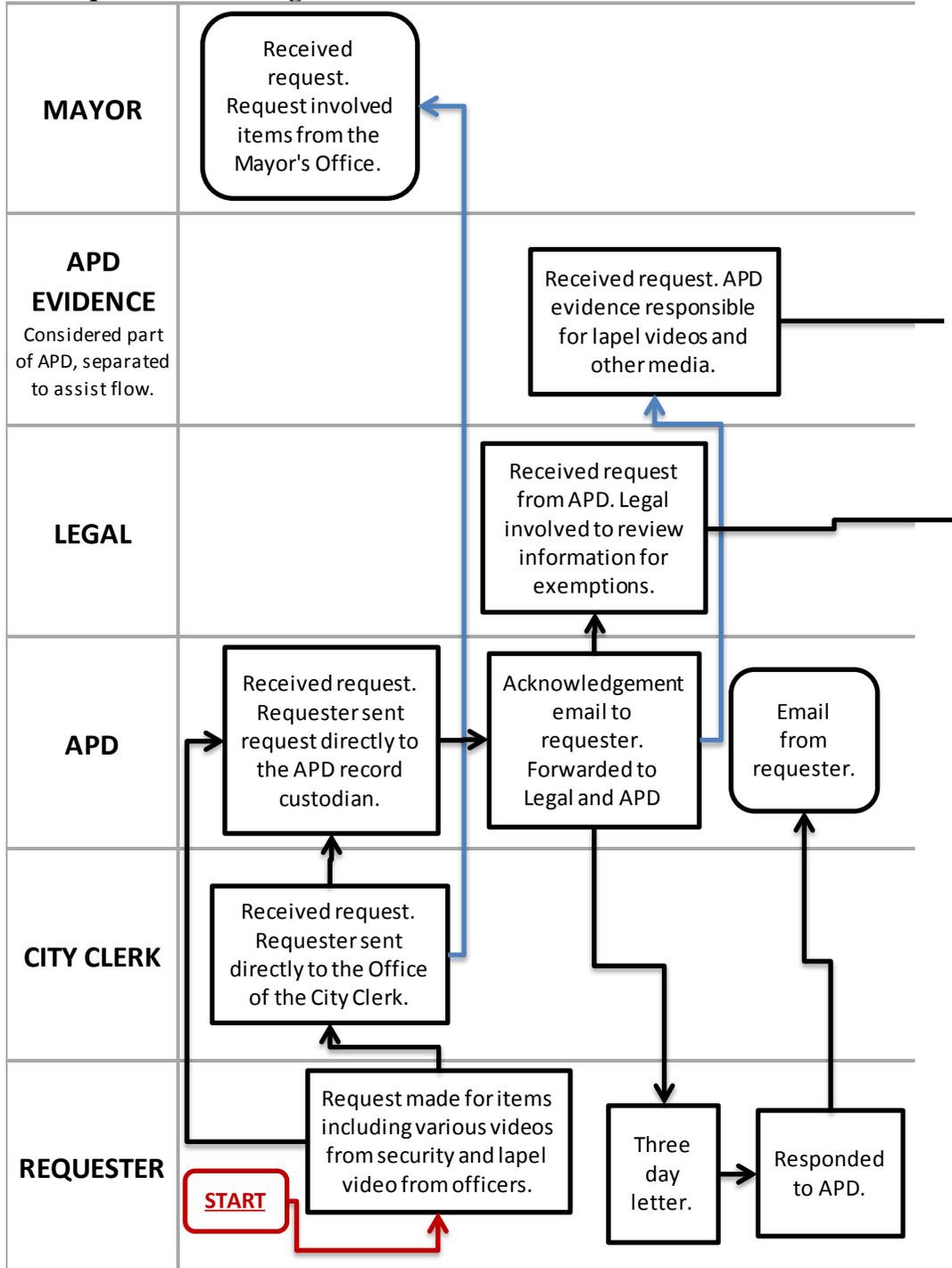
Methodologies used to accomplish the audit objectives include but are not limited to the following.

- Reviewing State Statutes, State Administrative Codes, City Ordinances, City Administrative Instructions, IPRA Procedures, and other standards applicable to IPRA requests,
- Interviewing key personnel to gain a better understanding of how IPRA requests are processed,
- Conducting surveys of Cities both in the State of New Mexico and in states around New Mexico to identify common and best practice information for public information inspection operations,
- Conducting testwork to determine City compliance with IPRA and associated resource demands,
- Identifying any internal controls for processing IPRA requests, and
- Reviewing any identified internal controls to ensure compliance with IPRA Statute.

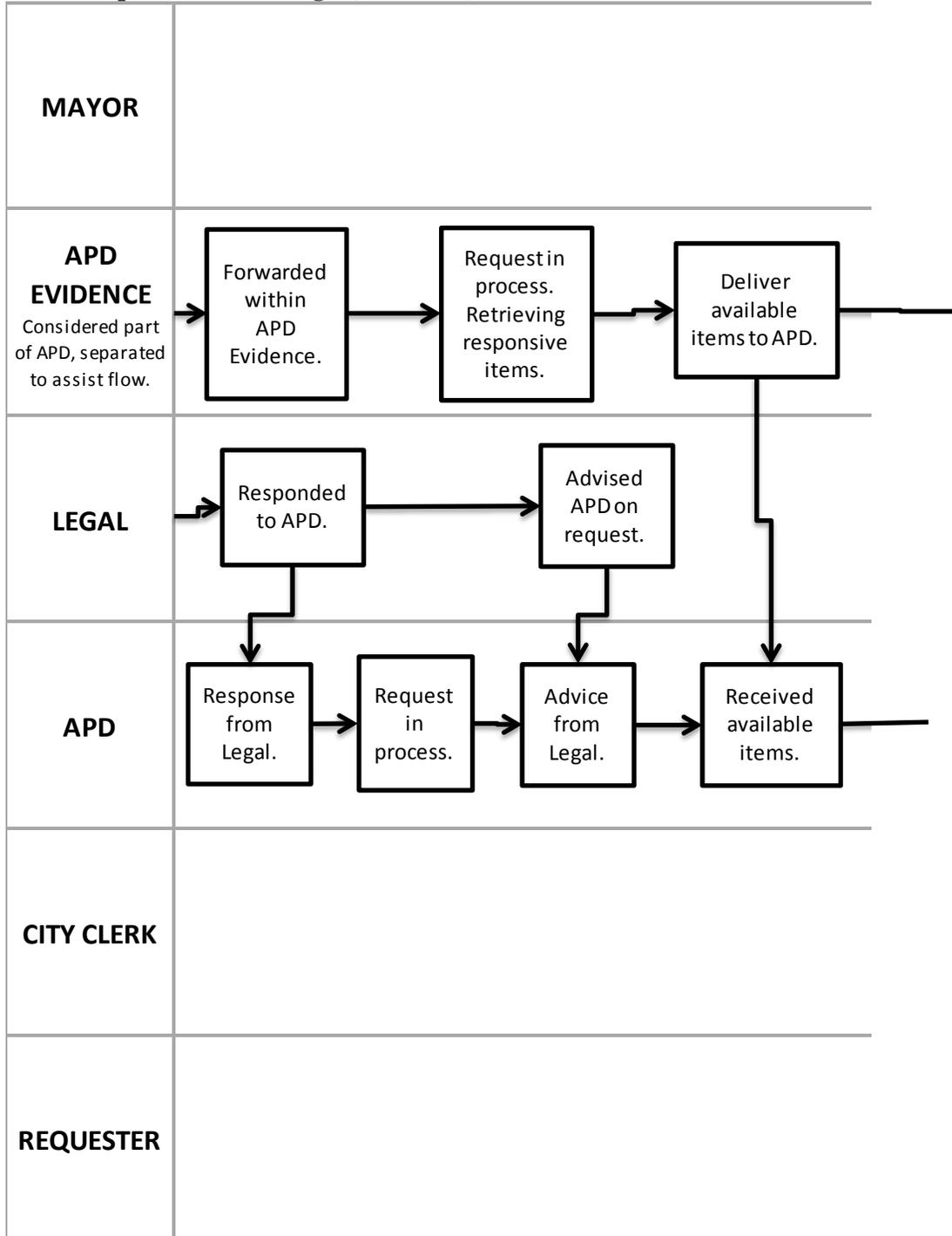
Audit sampling software was used to generate statistical and random attribute test samples to accomplish audit objectives. Population data was derived from departmental records of IPRA requests, for both APD and the remainder of the City.

**APD IPRA Request Walkthrough**

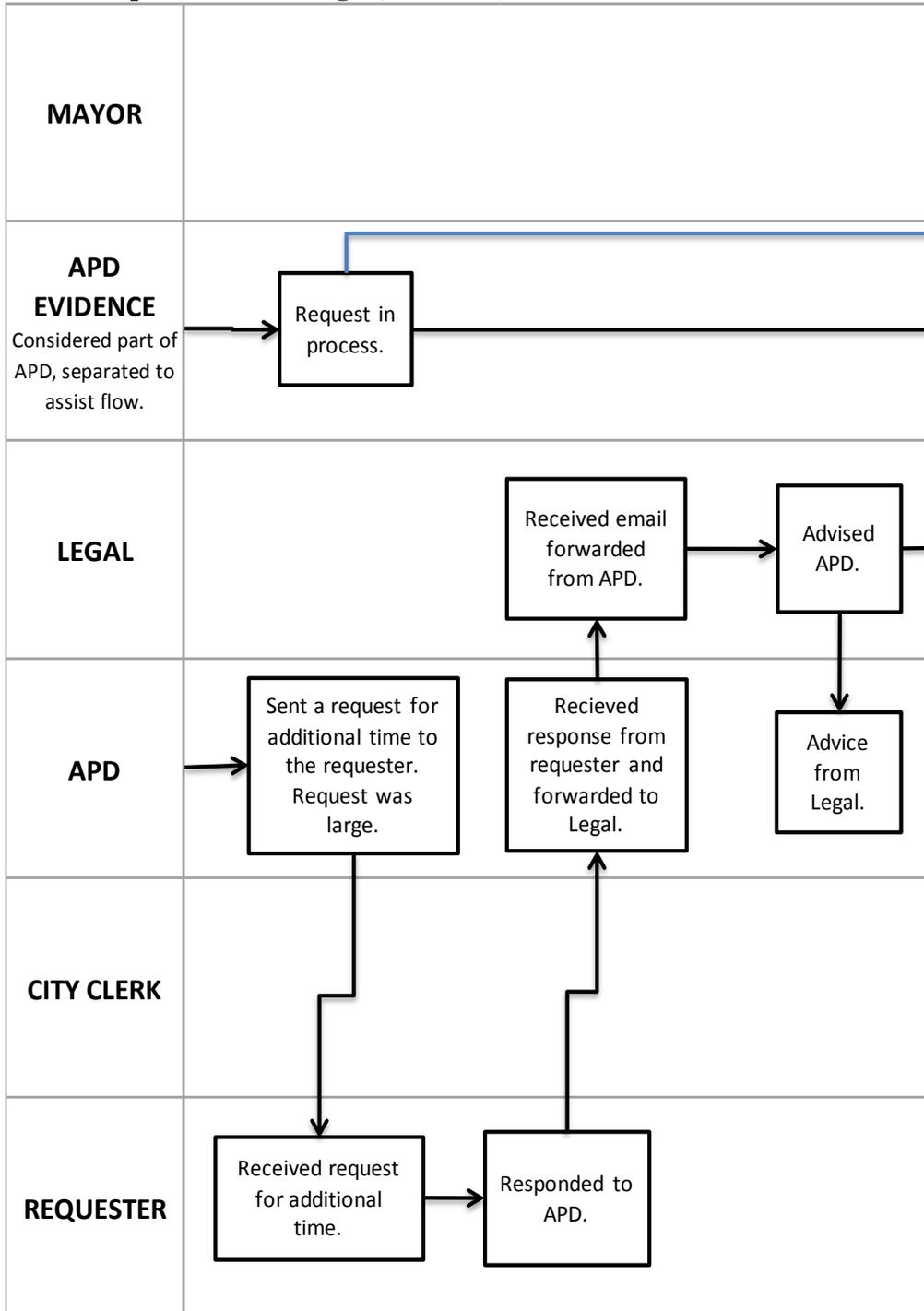
**APPENDIX B**



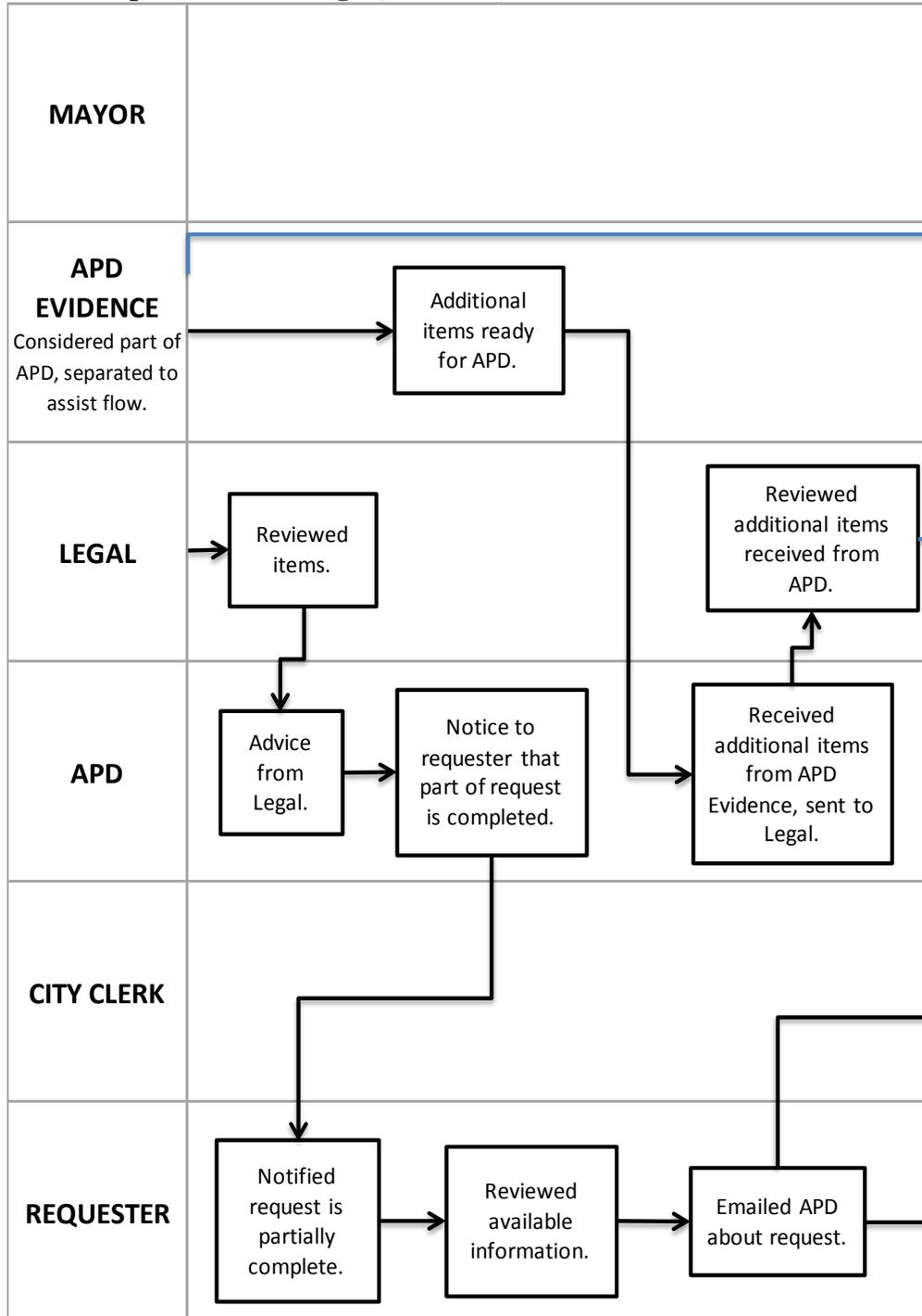
**APD IPRA Request Walkthrough (continued)**



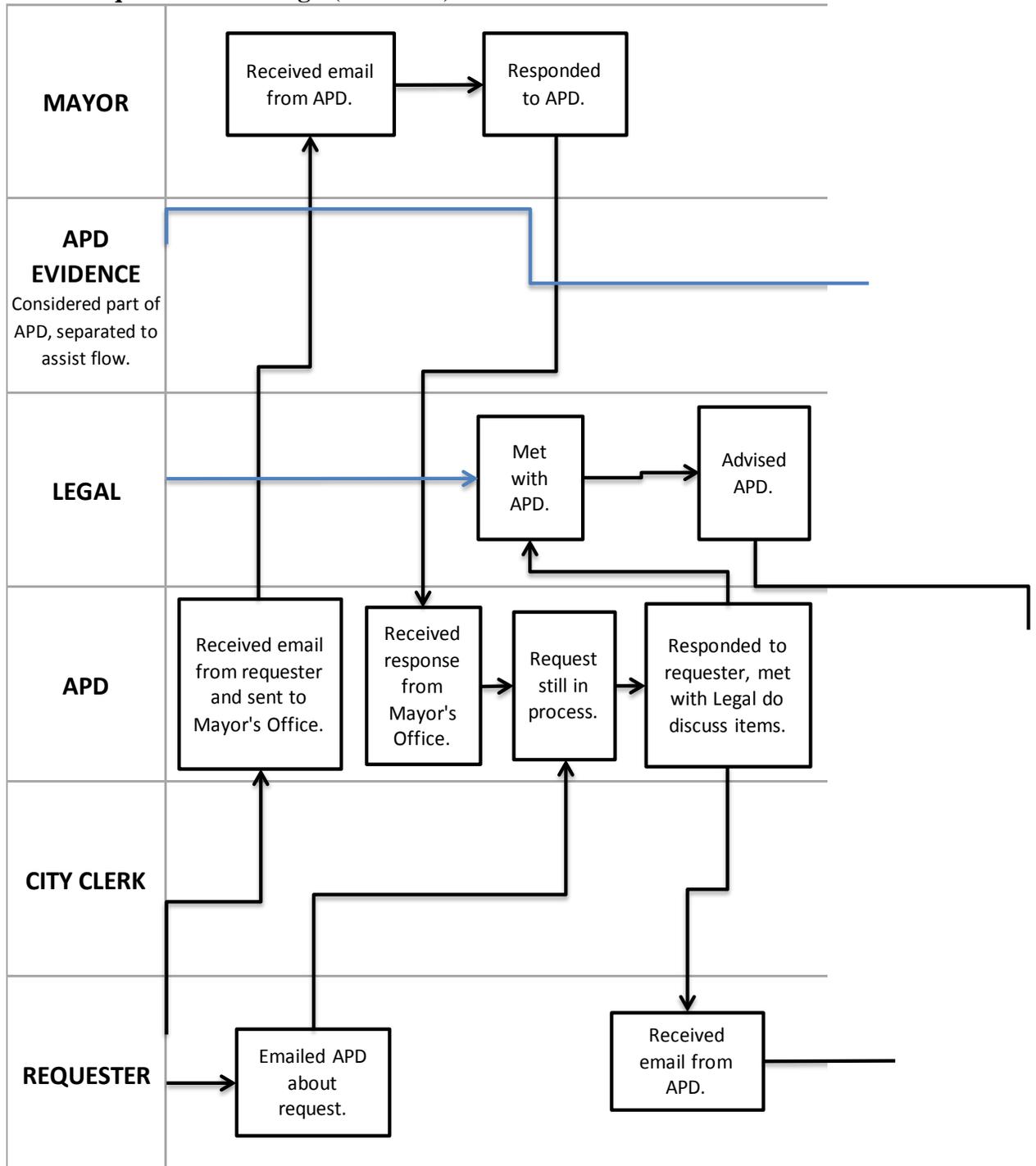
**APD IPRA Request Walkthrough (continued)**



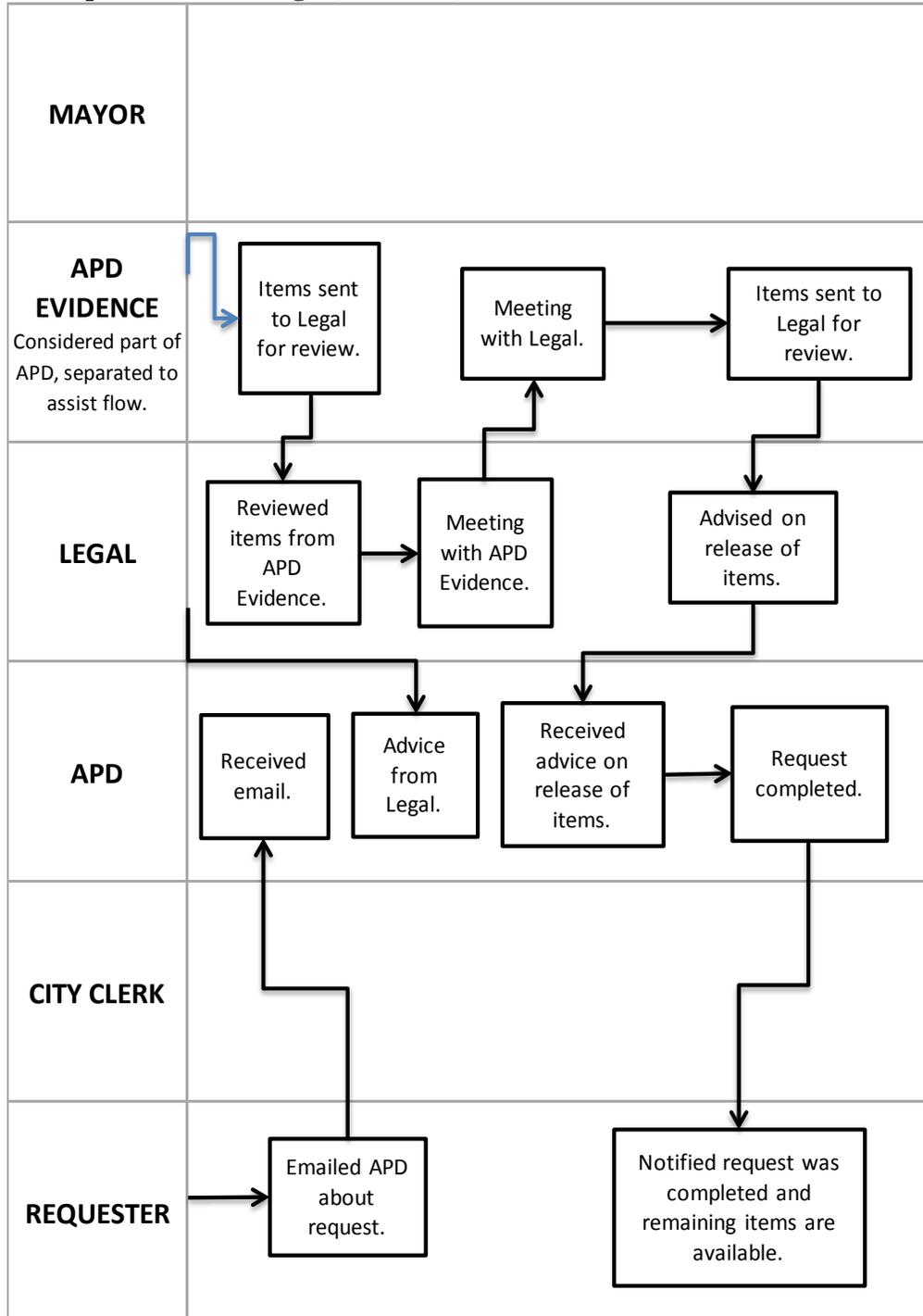
**APD IPRA Request Walkthrough (continued)**



**APD IPRA Request Walkthrough (continued)**



**APD IPRA Request Walkthrough (continued)**



## APPENDIX C

### **Benefits of Tracking Requests**

Tracking requests can allow the City to analyze the information being requested. That information can then be used to increase the efficiency of the City.

Things to track for each request:

- How a request was submitted to the City.
- The type of requester, are they from the media, an attorney or an individual.
- The information requested.
- The employee receiving the request and when the request was received.
- All of the employees working on the request, and for how long.
- When and what type of communications were sent
- How the request was fulfilled.
- The total time to complete the request.
- The cost of all materials used to create the request.
- How the requester received the information, through the mail, came in to review, or information was emailed to the requester.
- The number of pages paid for compared to total number of pages pulled, recoveries.

Benefits of Tracking Software:

- The ability to oversee the entire process from anywhere.
- Elimination of the requirement that Custodians notify the City Clerk of every request. A Custodian would only have to enter the request into the software and the City Clerk would be able to track the status.
- Custodians would quickly be able to capture requests they receive through any source.
- Automatic population of templates for notifications using predefined guidelines.
- Documents scanned into the system can be electronically redacted and saved. Providing these documents through email can speed up response times and reduce paper costs.
- The City Clerk, Custodians, and (if set up to allow it) the requester, could track the status of a request.
- The City Clerk, Custodians, and (if set up to allow it) the requester, could search prior requests.
- Requests could be prioritized based on ease of retrieving information.
- The request process is documented and items are stored electronically.
- Can publish information in a user-friendly manner on the City website.

## APPENDIX D

### **Additional Information on Open Data**

The City of Albuquerque was selected as a recipient of a 2015 Code for America Fellowship. Code for America Fellowships have enabled other Cities to make the public data already being collected more valuable.

#### **Identified best practices from Code for America:**

- Prioritize datasets by identifying key items.
- Start with identified goals.
- Look for the easiest datasets to release.
- Look for current demand, review website traffic, and public records requests.
- Look at what other cities are doing.
- Ask the public.
- Publish the data.

#### **Examples of how datasets currently available from other entities are being used by citizens:**

Increases in public safety, economic development, and internal cost savings, among others have been identified through the use of applications designed around open data information.

- San Francisco, CA – has an application that allows users to use an interactive map of crimes in San Francisco.
- Oakland, CA – worked with Code for America to create RecordTrac, which allowed the City of Oakland to publish requests. The application was designed to notify requesters if they are looking for records that are not maintained by the City. Also has integrated the Public Works Service request data with SeeClickFix. The Police department can send out neighborhood specific crime alerts.
- Chicago, IL – started with public record request logs in 2010. Now has over 800 datasets available including building permits, potholes patched in the last seven days, active business licenses, and food inspections to name a few.
- Seattle, WA – has traffic signal locations, neighborhood boundaries, a listing of all arts organizations, and property owned or managed by the City. Seattle has 223 datasets identified.
- Louisville, KY – has information on crime, restaurant inspections, animal services, construction permits, and park locations.
- Baltimore, MD – has a listing of licensed street vendors, food vendor locations, crime and safety data, and land use conditions; a total of 312 datasets have been identified.

**APPENDIX E**

**IPRA Request Processes and Inefficiencies by City**

<b>City</b>	<b>How Are IPRA Requests Processed</b>	<b>Primary Reason for Current IPRA Request Process</b>	<b>Average Number of Requests per Month</b>
Albuquerque, NM	Decentralized, with centralized coordination	City Ordinance	400 to 500 requests
Mesa, AZ	Decentralized	Cost Effective	<i>unanswered</i>
Austin, TX	Decentralized	Efficient	<i>unanswered</i>
Salt Lake City, UT	Centralized contact then delegation	Efficient, Cost effective, State Mandate	50 to 100 requests
Kansas City, MO	Decentralized, with centralized coordination	Efficient	<i>unanswered</i>
Oklahoma City, OK	Centralized	Efficient	200 to 300 requests
Colorado Springs, CO	Centralized	Efficient	50 to 100 requests
San Antonio, TX	Decentralized	Requirements for redactions vary	750 to 1,000 requests
Farmington, NM	Mostly Centralized	State Mandate	100 to 200 requests
Roswell, NM	Decentralized	"way it has always been done"	50 to 100 requests
Santa Fe, NM	Centralized	State Mandate	50 to 100 requests
Rio Rancho, NM	Centralized	Efficient, Cost effective, State Mandate	100 to 200 requests

Source: OIA Surveys

Centralized - requests are coordinated by one individual who is responsible for ensuring completion.

Decentralized - individual departments process requests, no entity-wide coordination.

**IPRA Request Processes and Inefficiencies by City (continued)**

<b>City</b>	<b>Inefficiencies Noted in Processing IPRA Requests</b>	<b>Estimated time to complete a request</b>	<b>Use of specialized software</b>
Albuquerque, NM	Need a good way to track and follow-up	More than two hours	No
Mesa, AZ	<i>unanswered</i>	<i>unanswered</i>	No
Austin, TX	<i>unanswered</i>	<i>unanswered</i>	Yes, PIRTS
Salt Lake City, UT	New process shows all requests.	less than 15 minutes	Yes, Web Q&A
Kansas City, MO	<i>unanswered</i>	<i>unanswered</i>	Not sure
Oklahoma City, OK	Need more information online	8 hours to more than a day	Yes, Sharepoint
Colorado Springs, CO	<i>unanswered</i>	30 minutes to 1 hour	No
San Antonio, TX	<i>unanswered</i>	Varies by department, some are lengthy	Yes, Web Q&A
Farmington, NM	Need coordination with IT & a good system for responding	15 minutes to 30 minutes	No
Roswell, NM	Need dedicated staff & centralized process	15 minutes to 30 minutes	No
Santa Fe, NM	Need departmental custodians, too much for one person	Sometimes 3 days or more	Not sure
Rio Rancho, NM	<i>unanswered</i>	Substantial research required	No

Source: OIA Surveys

**APPENDIX F**

Flowchart of the IPRA request process:

