



**A Report to the
Audit Committee**

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Metropolitan
Nashville
Office of
Internal Audit

Audit of the Public Records Request Process

November 21, 2022

EXECUTIVE SUMMARY

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Why We Did This Audit

The audit was performed due to the importance of public records accessibility.

What We Recommend

- Develop consistent requirements for training of all public records coordinators.
- Ensure public records request documentation is maintained for appropriate time periods.
- Ensure the Public Records Commission adheres to meeting requirements and maintaining minutes.

Audit of the Public Records Request Process

BACKGROUND

Transparency is a core tenet and value when operating in a governmental environment. Access to public records and documents enhances transparency and provides assurance that governmental services and resources are being deployed in an effective and efficient manner. Tennessee Code Annotated 10-7-503(a)(2)(B) requires governments to provide access to public records to Tennessee citizens. Related sections also require local government's to have Public Records Commissions to oversee the open records process as well provide guidance on records retention standards.

The Metropolitan Clerk's Office tracks 36 of the 52 Metropolitan Nashville Government's departments public records requests. The remaining 16 departments receive and respond to requests independently of the Metropolitan Clerk's Office.

OBJECTIVES AND SCOPE

The overall objective of the audit is to determine if controls are in place to ensure open records requests are processed in accordance with *Tennessee Code Annotated §10-7-503(a)(2)(B)*. Within this objective were the following sub-objectives to determine if:

- Public records requests are properly recorded, tracked, and processed within seven days of receipt.
- Public records requests are reviewed to ensure information provided is complete and accurate and any exempt information is excluded from being released.
- Staff are properly trained on how to process open records requests.

The scope of this audit includes public records requests received during the period of January 1, 2020, to December 31, 2021.

WHAT WE FOUND

Open records requests were generally processed and released within seven business days of receipt. Information provided conformed to the open records requests and excluded confidential information.

Governance and oversight are fragmented and could be improved. Requests are fulfilled, but applicable document retention is not consistent. Training across departments was informal and inconsistent.

GOVERNANCE

Tennessee Code Annotated §10-7-401 thru 402 set up the Metropolitan Public Records Commission and its meetings. The Metropolitan Public Records Commission oversees the maintenance and access to public records. The Metropolitan Public Records Commission is composed of at least six members. *Metropolitan Nashville Code of Laws § 2.140.010* parallels the state law but increases the membership to seven. The seventh member being the Director of the Information Technology Services department. Three members are appointed by the Mayor and confirmed by the Metropolitan Council. The three appointees must be a member of the Metropolitan Council, a judge, and a genealogist. The County Clerk and County Register, or designees, and the County Historian, and Information Technology Services director are ex officio members.

Tennessee Code Annotated 10-7-503(h)(7) requires that the correspondence regarding a public records request must be maintained for at least twelve months. The public record is subject to its applicable record retention.

BACKGROUND

The Metropolitan Public Records Commission created the *Public Records Policy and Procedures for the Metropolitan Government of Nashville and Davidson County*. The policy applies only to the 36 departments who route requests through the Metropolitan Clerk's Office. The policy designates the Metropolitan Clerk as the Public Records Coordinator. The remaining 16 departments who opted out of the Metropolitan Clerk's process are required to generate their own policies and procedures. See Appendix C for a summarization of departments who use the centralized process through the Metropolitan Clerk and the 16 departments who have their own tracking process.

The Metropolitan Clerk's website communicates general information on the public records process and how a citizen may submit an open records request related to any department. The Metropolitan Clerk's Office utilizes a software application, HubNashville, which is a central location for Metropolitan Government services. Salesforce, within HubNashville, is used to track all public records requests related to departments under its purview. The public can submit a request online through Salesforce. The public may also submit requests by email, phone call, or mail, all of which are then manually entered into Salesforce.

Upon receipt of a public records request, the Metropolitan Clerk's Office requests Tennessee citizen identification and forwards the request to the applicable departments. On many requests, the Information Technology Services department supports the requested department by fulfilling email and file requests.

The applicable department completes the request and updates Salesforce that the request has been completed. The responding department is responsible for the information provided. The Metropolitan Clerk's Office does not review the documentation released. The Metropolitan Clerk's Office monitors all requests of its departments to ensure requests are completed within the required seven days

The 16 departments not utilizing the Metropolitan Clerk's Office have individual policies and procedures for public records requests. The policies and procedures generally mirror the Metropolitan Clerk's Office procedures. Departments leverage the Department of Law for questions about public records requests as needed or have attorneys on staff.

The scope of the transactional testing included all departments served by the Metropolitan Clerk's process and three additional departments not utilizing the Metropolitan Clerk. The three departments were the Metropolitan Public Health Department, Metropolitan Nashville Police Department, and

Metropolitan Nashville Public Schools. The three departments were judgementally selected based on the confidential nature of information provided or the likely higher volume of requests received. Exhibit 1 shows the number of public records requests received by the departments within the scope of the audit.

Exhibit 1 – Open Records Requests from January 1, 2020, to December 31, 2021

Department	Requests
Metropolitan Nashville Police	45,721
Metropolitan Clerk	2,129
Metropolitan Health Department	537
MNPS	242
Total	48,629

Source: Information provided by the Metropolitan Nashville Police Department, the Metropolitan Clerk’s Office, the Metropolitan Health Department and the Metropolitan Nashville Public Schools

OBJECTIVES AND CONCLUSIONS

Are controls in place to ensure open records requests are processed in accordance with *Tennessee Code Annotated §10-7-503(a)(2)(B)*?

Generally yes. Responses to public records requests are generally completed within the required seven days. However, retention of documentation related to requests was inconsistent making it difficult to ascertain if all the requested information was released. Governance related to ensuring compliance with applicable laws and regulations could be improved. (See Observation A.)

Supporting Objectives and Conclusions

- a. *Are public records requests initially recorded, tracked, and processed within seven days of receipt?*

Yes. Generally, public records requests were recorded, tracked, and responded to initially within the required seven days. A sample of 112 open records requests revealed only 2 requests (2 percent) were not processed within 7 days of receipt.

- b. *Are public records requests reviewed to ensure information provided is complete and accurate and exempt information is excluded from being released?*

Generally, yes. Of the documentation received, information provided for public records requests was complete and accurate with confidential information redacted. Most requests were related to financial information or other generally public events and statistical information. However, supporting documentation on the information released was inconsistent and sometimes incomplete. Of the 140 open records requests selected, 35 requests (24 percent) did not retain any supporting documentation to ascertain what information was provided. (See observation B.)

- c. *Are staff properly trained on how to process open record requests?*

Generally, no. Training is inconsistent and could be improved. A survey of various department heads and public records coordinators revealed some had attended State of Tennessee trainings related to public records laws. Some departments rely on attorneys within their office or the Department of Law if questions related to a request arise. No methodical approach to training employees responsible for processing open records requests exists. (See Observation C.)

AUDIT OBSERVATION

Internal control helps entities achieve important objectives to sustain and improve performance. The Committee of Sponsoring Organizations of the Treadway Commission (COSO), Internal Control – Integrated Framework, enables organizations to effectively and efficiently develop systems of internal control that adapt to changing business and operating environment, mitigate risks to acceptable levels, and support sound decision-making and governance of the organization. See **Appendix B** for a description of the observation *Assessed Risk Rating*.

Observation A – Decentralized Governance

Governance of the public records requests is decentralized and could be improved. *Metropolitan Nashville Code of Laws § 2.140.00* requires the Metropolitan Public Records Commission to oversee the maintenance and access to public records. There is limited oversight from the Metropolitan Public Records Commission. Governance is primarily the responsibility of the various department heads. The delegated governance has resulted in a diminished ability to centrally and consistently monitor compliance with applicable laws and regulations. Decentralized governance has also resulted in inconsistent policies, training, and record retention practices among the various departments.

Tennessee Code Annotated 10-7-402 requires the Metropolitan Public Records Commission to meet twice a year. The Metropolitan Public Records Commission met twice in 2020 but did not retain minutes of the meetings. No meetings were held in 2021. The Metropolitan Public Records Commission does not monitor reports from various departments related to their public record request activity, such as number of requests received, completed, trainings of applicable staff, updates to any policies and procedures etc.

Public Records Policy and Procedures for the Metropolitan Government of Nashville and Davidson County sets procedures for departments utilizing the Metropolitan Clerk’s Office to process public records requests. Remaining departments must develop and comply with their own separate policies.

Business reasons exist for departments to have individual procedures. However, a central governing body monitoring critical elements of the process, such as reviewing the adequacy of individual department policies and procedures, reduces the risk of public records requests not being processed in accordance with applicable laws. Fragmented governance also enhances the risks of diminished public transparency or the release of exempt information.

Criteria:

- *COSO, Control Activities – Principal 10* – The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels.
- *Tennessee Code Annotated §10-7-402* also requires the Metropolitan Public Records Commission to meet at least twice annually and to keep and preserve minutes of all its proceedings and transactions.

Assessed Risk Rating:

High

Recommendation for the Metropolitan Public Records Commission:

Enhance the existing governance structure including the review and approval of all policies and procedures, the establishment of a reporting mechanism on public records requests activity, a process for the public to report if a department has not fulfilled requests sufficiently, and minimum training requirements for applicable staff.

Observation B – Document Retention

Documentation related to public records requests is inconsistent among the various departments. *Tennessee Code Annotated 10-7-503(h)(7)* requires documentation around requests be maintained for 12 months. The nature of the documentation reviewed and the time retained varied significantly. Departments utilizing the Metropolitan Clerk’s Office utilized the Salesforce software to log all requests. The remaining departments utilized their own individual systems. The 12 months applies to the documentation around the request. The actual items requested should be retained per the individual required document retention policies. The individual retention policies were not reviewed in the audit.

A sample of 140 public records requests was made to determine if responses were provided within 7 business days of receipt, documents provided conformed to the request, and documents excluded exempt information. Open records requests were generally processed within the time frame. However, of the sample reviewed, 35 requests (24 percent) of the 140 open records requests did not retain all supporting documentation to ascertain what information was provided. Some documentation could not be provided due to system changes and employee turnover. No exceptions were noted on releasing confidential information but the ability to test was diminished due to an inability to review all of the information provided in the open records requests.

Tennessee Code Annotated 10-7-503(h)(7) became effective during the latter months of the audit period. However, the departments did not mention it as a reason for not maintaining complete documentation.

Ensuring consistent documentation retention standards enhances transparency and reduces the risk information requested is incomplete or includes exempt information.

Criteria:

- *COSO, Control Activities – Principal 10* – The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels.
- *Tennessee Code Annotated 10-7-503(h)(7)* - requires public records be provided and that the documentation around the request be maintained for 12 months.

Assessed Risk Rating:

Medium

Recommendation for Metropolitan Public Records Commission to:

Define and communicate documentaton retention requirements related to open records requests to Public Records Coordinators.

Observation C – Training

Training regarding open records laws, record retention policies and other matters are not consistent or formally required. Exceptions to public records are updated often, usually annually. Identifying the distinction between public and confidential information can be a complex process.

Public Records Coordinators were asked to submit their policies, procedures, and relevant trainings. Surveys were sent to all Public Record Coordinators. Responses were received from 39 (76 percent) coordinators. Public Records Coordinators in 17 responding departments (44 percent) had not attended any formal training. Public Records Coordinators in 22 responding departments (56 percent) had attended at least some training on public records with the State of Tennessee or had a person with a legal background in the department who was familiar with applicable state law and reviewed all requests. Public Records Coordinators in all 39 responses (100 percent) stated they would consult the

Department of Law before releasing information if there was uncertainty. However, there is no formal policy directing departments to seek legal advice for any level of uncertainty.

Without proper training, risks are enhanced of a request not being fulfilled according to what a citizen has requested, as well as a risk of confidential information being improperly released. If a request is not fulfilled according to what a citizen has requested, there are compensating controls such as the requester making repeated requests, contacting the applicable department head, or filing a lawsuit. Risk of improper release of confidential information also exists and is increased when a public records request involves multiple departments. If confidential information is improperly released, various consequences can arise, especially if the information is personal information.

Assessed Risk Rating:

Medium

Criteria:

- COSO, Control Activities – Principal 10 – The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels.

Recommendation for the Metropolitan Public Records Commission to:

Develop and implement a methodical training program for all parties involved in the open records request process.

GOVERNMENT AUDITING STANDARDS COMPLIANCE

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 observations and conclusions based on our audit objectives.

METHODOLOGY

To accomplish our audit objectives, we performed the following steps:

- Interviewed key personnel within the Metropolitan Clerk’s office and other departments.
- Reviewed state laws, Metropolitan Code, and departmental policies and procedures.
- Tested samples of public records requests.
- Considered risk of fraud, waste, and abuse.

AUDIT TEAM

Mary Cole, CPA, CFE, CISA, Audit Incharge

Bill Walker, CPA, CIA, CFE, CCFO, Audit Manager

Lauren Riley, CPA, CIA, CFE, ACDA, CMFO, Metropolitan Auditor

APPENDIX A – MANAGEMENT RESPONSE AND ACTION PLAN

We believe that operational management is in a unique position to best understand their operations and may be able to identify more innovative and effective approaches, and we encourage them to do so when providing their response to our recommendations.

	Recommendation	Concurrence and Corrective Action Plan	Proposed Completion Date
<i>Risk</i>	<i>Recommendations for the Metropolitan Public Records Commission to:</i>		
H	A1. Enhance the existing governance structure. This should include the review and approval of all policies and procedures, the establishment of a reporting mechanism on public record request activity, a citizen complaint process, and minimum training requirements for applicable staff.	Accept	12/31/2023
M	A2. Define and communicate documentaton retention requirements related to open records requests to Public Records Cordinators.	Accept	12/31/2023
M	A3. Develop and implement a methodical, systematic training program for all parties involved in the open records request process.	Accept	12/31/2023

APPENDIX B – MANAGEMENT RESPONSE AND CORRECTIVE ACTION PLAN

Observations identified during the audit are assigned a risk rating, as outlined in the table below. The risk rating is based on the financial, operational, compliance or reputational impact the issue identified has on the Metropolitan Nashville Government. Items deemed “Low Risk” will be considered “Emerging Issues” in the final report and do not require a management response and corrective action plan.

Rating	Financial	Internal Controls	Compliance	Public
HIGH	Large financial impact >\$25,000 Remiss in responsibilities of being a custodian of the public trust	Missing, or inadequate key internal controls	Noncompliance with applicable Federal, state, and local laws, or Metro Nashville Government policies	High probability for negative public trust perception
MEDIUM	Moderate financial impact \$25,000 to \$10,000	Partial controls Not adequate to identify noncompliance or misappropriation timely	Inconsistent compliance with Federal, state, and local laws, or Metro Nashville Government policies	The potential for negative public trust perception
LOW/ Emerging Issues	Low financial impact <\$10,000	Internal controls in place but not consistently efficient or effective Implementing / enhancing controls could prevent future problems	Generally complies with Federal, state, and local laws, or Metro Nashville Government policies, but some minor discrepancies exist	Low probability for negative public trust perception
Efficiency Opportunity	An efficiency opportunity is where controls are functioning as intended; however, a modification would make the process more efficient			

APPENDIX C – DEPARTMENTAL SYSTEM FOR PROCESSING OPEN RECORDS REQUESTS

Departments Utilizing the Metropolitan Clerk's System	
Agriculture Extension Service	Metro Action Commision
Assesor of Property	Metropolitan Clerk
Beer Board	Metropolitan Council
Codes Administration	Metropolitan Sports Authority
Community Oversight Board	Municipal Auditorium
Criminal Justice Planning	Nashville Career Advancement Center
Election Commission	Nashville Community Education
Farmers Market	Office of Arts and Culture
Fire Department	Office of Family Safety
General Services	Parks and Recreation
General Sessions Court	Planning Department
Historical Commission	Public Library
Human Relations Commision	Public Works
Human Resources	Social Services
Information Technology Services	State Trial Court
Internal Audit	The Fairgrounds Nashville
Department of Law	Trustee
Mayor's Office	Water Services

Departments Utilizing Their Own Open Records Process	
Circuit Court Clerk	Health and Education Facilities Board
Clerk and Master	Justice Integration Systems
County Clerk	Juvenile Court Clerk
Davidson County Sheriff's Office	Metropolitan Board of Education
Department of Finance	Metropolitan Nashville Police Department
Department of Health	Public Defender's Office
District Attorney's Office	Office of the Criminal Courts
Office of Emmergency Communications	Register of Deeds