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April 13, 2018

Keenan Konopaski, Legislative Auditor
Joint Legislative Audit and Review Committee
P.O. Box 40910
Olympia, WA 98504-0910

Dear Mr. Konopaski:

As you know, the 2017 Legislature approved Engrossed Substitute House Bill 1594, which directs certain agencies to report to the Joint Legislative Audit and Review Committee (JLARC) annually on 17 different metrics related to fulfilling public records requests. We appreciate your work with state and local agencies to standardize the metrics and develop guidance to assist agencies in fulfilling that reporting requirement through a robust process with the advisory committee your office established for this purpose.

We recognize that finding consensus among very diverse governmental entities was challenging. The Governor's Policy Office and the Office of Financial Management worked with other state agencies to outline the concerns below to JLARC throughout the advisory committee process. However, we understand that much has not changed with the final guidance JLARC published on April 4, 2018. This may be due, in part, to issues with the metrics themselves.

The guidance provided on the majority of the metrics is clear and easy to apply; however, there remains a handful of metrics that will be difficult or next to impossible to implement in a meaningful way. The following metrics are particularly problematic for cabinet agencies:

- *Metric 1: An identification of leading practices and processes for records management and retention, including technological upgrades, and what percentage of those leading practices and processes were implemented by the agency.* This metric is unclear and unhelpful. There is no agreed-upon or objective list of "leading practices and processes," and different practices and processes may be appropriate for different agencies. The guidance developed thus far by JLARC on this question is based on good input from the Secretary of State's office, but essentially outlines requirements that are already standard practices or required by law.
- *Metric 2: The average time taken to respond to a public records request.* The law requires a five-day reply. Agencies are not more compliant if they answer in two days rather than five. The purpose of the metric is unclear, and requires a highly time-consuming level of detailed tracking and number crunching to come up with an "average" time that is not meaningful in the context of the Public Records Act.
- *Metric 4: Average number of calendar days from receipt of request to final disposition of request.* While this metric is not required by statute, JLARC staff did note that this calculation would be needed in order to determine Metric 5. In fact, Metric 5 would require calculation of a much smaller data set (only those requests where a time estimate for full disclosure was made, as opposed to *all*



requests in Metric 4), and is itself flawed for the reasons stated below. Moreover, collecting data for this metric would be highly time-consuming. For example, several state agencies receive thousands of public records requests each year and these calculations would need to be made for each one. Not all agencies have a software solution to automatically calculate this metric, and we believe the significant amount of staff time to calculate outweighs any benefit.

- *Metric 5: Average time estimate provided for full disclosure as compared to average actual time to provide full disclosure.* This metric does not account for the fact that agencies rarely estimate the time of “full disclosure” because large requests often require multiple installments over months or years. This metric also is not meaningful in the context of the Public Records Act.
- *Metric 12: Average estimated staff time spent on each public records request.* This metric essentially mandates that agencies implement onerous and ad hoc timekeeping, without any resources to do so. Agencies have recently revised their rules because, in another statutory change, agencies are no longer allowed to simply rely on a statutory fee schedule, but must calculate and charge actual costs to requesters unless they give a specific reason in rule why that would be unduly burdensome. Many agencies in their revised rules rely on the lack of resources as the reason calculating actual costs (which is mainly staff time) would be unduly burdensome. It is similarly unduly burdensome for agencies to estimate staff time under this metric without additional resources to do so.
- *Metric 13: Estimated total costs incurred by the agency in fulfilling records requests, including staff compensation and legal review and average cost per request.* As with Metric 12, this metric creates a burdensome requirement without any accompanying resources.
- *Metric 16: Total costs incurred by the agency with managing and retaining records, including staff compensation and purchases of equipment, hardware, software, and services to manage and retain public records or otherwise assist in the fulfillment of public records requests.* As with Metrics 12 and 13, agencies do not have the resources to do such a calculation with any accuracy.
- *Metric 18: Measures of requester satisfaction with agency responses, communication, and process relating to the fulfillment of public records requests.* As with Metric 1, there is no agreed-upon or objective measure of requester satisfaction, nor is it a term that appears in the Public Records Act (PRA). This metric implies that agencies must satisfy requesters. In fact, agencies must comply with the PRA. Requester satisfaction and compliance with the PRA are not always the same thing. This is another metric that is not meaningful in the context of the PRA.

Again, we highlight these metrics because we believe there is little, if anything, that can be done to fix them, and we will seek the support of the Legislature next session to narrow the metrics down to those with which agencies can meaningfully comply. We greatly appreciate the opportunity to offer feedback on the guidance. If you have any questions, please contact Sheri Sawyer, Senior Policy Advisor to the Governor, at (360) 902-4113.

Sincerely,



David Schumacher
Director

Mr. Keenan Konopaski

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cc: JLARC Members

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