

Ventura County Grand Jury 2015 - 2016



Final Report City of San Buenaventura Freedom of Information

May 3, 2016

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City of San Buenaventura Freedom of Information

Summary

The Freedom of Information Act, established in 1967, is a law that gives every citizen the right to obtain information from the federal government. This law allows for the full or partial disclosure of information from the federal government. The California Public Record Act extends the public’s right to obtain records from state and local agencies. The 2004-2005 Ventura County Grand Jury reported on the implementation of the California Public Record Act within Ventura County. Eleven years later the 2015-2016 Ventura County Grand Jury, acting on complaints from the public about the City of San Buenaventura’s (Ventura) refusal to comply with the law, looked into the processes, procedures, and execution of the California Public Record Act.

The Grand Jury found that Ventura has outsourced the infrastructure to a third party allowing state of the art tracking and distribution of requests. The process for requests for information has been extended to the internet via a customer portal allowing for requests to be made from virtually anywhere. Although Ventura’s goal is to attain 100% compliance with the California Public Records Act, the Grand Jury found that its execution had been low at first, but improved over-time to currently 92%. The Grand Jury found that not all requests for information are tracked through the Ventura’s electronic system allowing for a margin of error in the actual performance report provided.

The Grand Jury made a series of recommendations for policy enhancements that would: capture all requests without regard to origin; make statistics more accurate; develop a process to better capture ongoing correspondence between the requester and city officials; and time/date stamp policy reviews and changes on Ventura’s online portals.

Background

The Freedom of Information Act (FOIA), established in 1967, is a law that gives every citizen the right to obtain information from the federal Government. This law allows for the full or partial disclosure of information, unless it falls under exemptions that protect personal privacy, national security, and law enforcement. FOIA does not cover state or local government agencies. All states have a series of laws under the guideline of FOIA to guarantee the public has a right to access the public records of governmental bodies.

Established in 1968, the California Public Record Act (CPRA) further defines “Public Record” and is intended to safeguard the accountability of State government to the public. The generally accepted term “Public Information” is defined as information already collected, assembled and/or warehoused by a governmental body. The CPRA does not require the production of new documents nor the interpretation of existing documents. Every state, similar to the federal Government, has exemptions protecting confidential information, trade secrets, or proprietary financial documents.

In June of 2014, CPRA was approved by 61.8% of voters to become incorporated as an amendment to the California State Constitution.

The 2003-2004 Ventura County Grand Jury received a complaint regarding government’s noncompliance with/adherence to FOIA which resulted in an extensive report, “Public Records Act Implementation”.

Eleven years later, the 2015-2016 Ventura County Grand Jury (Grand Jury) received several complaints from residents of Ventura regarding Ventura’s adherence to FOIA/CPRA. From these complaints, it became apparent that confusion exists surrounding the entitlement guaranteed through FOIA and its local application. The Grand Jury believes that a study of the Ventura process will help clarify the issue to the community.

The Grand Jury believes that the substantial information provided from the 2003-2004 Grand Jury report need not be replicated here and urges the reader to access the report online at www.ventura.org.

Methodology

The Grand Jury conducted this investigation by:

- Researching federal law regarding the FOIA
- Researching State law regarding the CPRA
- Reviewing the 2003-2004 Ventura County Grand Jury report “Implementation of FOIA within Ventura County”
- Reviewing information contained within websites for both Ventura County (County) and cities within the County
- Interviewing individuals involved in the life cycle of a request for information and public records from Ventura
- Interviewing various departments and officials within the County

Facts

FA-01. The FOIA 5 U.S.C. § 552 of 1967 provides for the public’s right to request access to records from federal agencies. However, the act does not pertain to Congress, courts, or State and local agencies. Congress established nine categories of information exempt from FOIA requirements. These exemptions apply to private organizations and businesses or information submitted by private entities to the federal government. If the information is deemed not to be trade secrets, confidential business information, or protected by exemptions under provisions for law enforcement and Homeland Security, it may be released to the public. (Ref-01, Ref-02, Ref-03, Ref-06)

FA-02. Under the CPRA, when a request for release of public records is received, a response must be provided to the requestor within 10 days of receipt. Only under special circumstances may the response time be extended up to 14 days. (Ref-04, Ref-05, Ref-06)

FA-03. The CPRA allows agencies an array of discretionary exemptions that may be the basis for withholding records from disclosure, including:

- Intimate personnel information; e.g., medical or similar records
- Investigative records and intelligence information
- Pending claims and litigations
- Attorney-client privilege and attorney work product covering research, analysis, impressions, and conclusions of an attorney
- Securities and financial institutions; utility, market, and crop reports; testing information; appraisals and feasibility reports; gubernatorial correspondence; legislative counsel records; personal financial data used to establish a license applicant’s personal qualifications; home addresses and election petitions
- Material made confidential by State or federal statutes
- Whenever the public interest in nondisclosure clearly outweighs the public interest in disclosure
- The “Deliberative process privilege” exempts disclosures of the recommendations and general discussions with advisors; it does not protect the facts from disclosure, but protects the process by which policy decisions are made.

(Ref-04, Ref-05, Ref-06)

- FA-04.** The CPRA allows the requester to seek remediation for unjustified withholding of public records through the issuance of a court order. Prevailing plaintiffs are awarded court costs and attorney fees. (Ref-04, Ref-05, Ref-06)
- FA-05.** The 2003-2004 Ventura County Grand Jury Final Report titled “Public Records Act Implementation”, stated that a questionnaire went to 30 Ventura County government offices, 10 cities, and 21 special districts. According to the report, 5 of the 10 cities required written requests but only 4 had a standard form, and only 6 maintained a request log. (Ref-06).
- FA-06.** Ventura’s website, VenturaAccess.com (aka: My Ventura Access), links to COMCATE, a hosted software system that provides an application for requesting information and/or records and tracks each request. (Ref-07)
- FA-07.** Ventura publishes its “Administrative Policies and Procedures Manual” on the internet through “municode”, a web hosting, codification, and service company acting as an online publisher. (Ref-08)
- FA-08.** Ventura’s Public Records Requests Policy (VPRRP) (Section 8.5; item 9.A.3) contains the following options for receiving public records requests:
- Ventura’s website, “My Ventura Access” (MVA), is the location that accepts online requests for information. This website connects the online user directly to COMCATE.
 - Requests at the counter can be made verbally or by filling out a Public Records Request form.

- U.S. mail, overnight deliveries, emails, and fax requests are also accepted. The receiving department staff must enter the request into the MVA system.
- Item C (under section 8.5 of the VPRRP) states that requests from reporters, attorneys, and advocacy groups are processed in the same manner as all other requests. Additionally, the City Manager’s Office and City Attorney’s Office are informed of these requests.
- There is no requirement that subsequent communications between the requester and responder be entered into the MVA system.

(Ref-08)

- FA-09.** If requests for information and/or requests for public records are made involving two or more departments within Ventura, the City Clerk’s Office monitors and tracks these requests and responses for compliance.
- FA-10.** In addition to Ventura, other cities also use COMCATE’s “Public Records Manager” software to record and track requests for public records. (Ref-09)
- FA-11.** Ventura’s “Performance Measurement Report” is produced through the COMCATE system and shows that Ventura improved its timely response to records requests from 85% in fiscal year 2014 to 92% by fiscal year 2015. [Note: Any requests not entered in COMCATE will not be reflected in this Performance Measurement Report.] (Att-01, Att-02, Att-03)
- FA-12.** The VPRRP has a scheduled review/update frequency of every two years. (Ref-08)
- FA-13.** The last recorded VPRRP review/update was September 6, 2012. (Ref-08)
- FA-14.** The Ventura policy document, “Protocols for Issuing, Amending & Deleting Administrative Policies & Procedures”, has a date of issue, January 9, 2002. This Policy is required to be reviewed every two years. (Ref-08)

Findings

- FI-01.** The Grand Jury found that the Ventura administrative policy for public records complies with CPRA and is a system that serves the community well. (FA-02, FA-03, FA-06, FA-08, FA-11)
- FI-02.** The Grand Jury found the request for information taken orally or sent by email to a department or individual is not always recorded into the COMCATE system. Therefore, performance statistics are not accurate. (FA-08, FA-09, FA-11)
- FI-03.** The Grand Jury found that, subsequent to an initial request and response, communication between the requester and representatives of Ventura may not be transcribed or recorded within the COMCATE system. (FA-06, FA-08)
- FI-04.** Ventura’s Administrative Policy & Procedures documents posted online do not indicate the date of current or previous revisions nor the expiration

date. Therefore, it is not possible to determine if the city of Ventura complies with its Public Record Request Policy in Section No.8.5. (FA-08, FA-12, FA-13, FA-14)

- FI-05.** The Grand Jury found that because Policy 1.1 (“Protocols for Issuing, Amending & Deleting Administrative Policies & Procedures”) has a last revision date of April 30, 2002, the policy is not in compliance with itself. (FA-07, FA-08, FA-14)

Recommendations

- R-01.** The Grand Jury recommends that the Ventura City Council direct the City Manager to revise Policy 1.1 to ensure that online policy publications have no blank fields and are clearly date/time stamped with “Date Issued” and “Expiration Date”. In addition, replace the “Date of this Revision” field with “Date Last Reviewed”. (FI-04, FI-05)
- R-02.** The Grand Jury recommends that the Ventura City Council work with the City Manager to update and post revision dates for the Public Request Policy and any other policies that omit a “last reviewed” date. (FI-04, FI-05)
- R-03.** The Grand Jury recommends that the Ventura City Council revise Ventura’s Administrative Policy & Procedure Manual so that all communications associated with a request for public records and information be entered into the COMCATE system. (FI-02, FI-03, FI-04)
- R-04.** The Grand Jury recommends that the Ventura City Council conduct a regularly scheduled audit to review all policies for compliance with policy 1.1. (FI-05)

Responses

Responses Required From:

City Council of San Buenaventura (FI-01, FI-02, FI-03, FI-04, FI-05) (R-01, R-02, R-03, R-04)

Responses Requested From:

City Manager of San Buenaventura (FI-01, FI-02, FI-03, FI-04, FI-05) (R-01, R-02, R-03, R-04)

References

- Ref-01.** United States Department of Justice FOIA, <http://www.foia.gov/> (accessed 12/3/2015).
- Ref-02.** “Your Right to Federal Records Question and Answers on the Freedom of [Information Act and the Privacy Act, 1992](https://www.epic.org/open_gov/rights.html)” https://www.epic.org/open_gov/rights.html (accessed 11/18/2015).
- Ref-03.** The Freedom of Information Act, 5 U.S.C. § 552, As Amended By Public Law No. 1110-175, 121 Stat. 2524, and Public Law No. 111-83, § Stat. 2142, 2184

<http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/amended-foia-redlined-2010.pdf> (accessed 1/7/2016).

- Ref-04.** California Government Code Section 6250-6270 aka "California Public Records Act", <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=06001-07000&file=6250-6270> (accessed 11/18/2015).
- Ref-05.** Summary of the California Public Records Act 2004, California Attorney General's Office, http://ag.ca.gov/publications/summary_public_records_act.pdf (accessed 4/5/2016).
- Ref-06.** Ventura County 2003-2004 Grand Jury report "Public Records Act", https://www.municode.com/library/ca/san_buenaventura/codes/administrative_policies?nodeId=CISABUCAADPOPRMA_NO.8.5PURERE (accessed 11/18/2015).
- Ref-07.** My Ventura, <http://www.cityofventura.net/cm/city-clerk> (accessed 11/18/2015).
- Ref-08.** San Buenaventura Administrative Policies and Procedures Manual, https://www.municode.com/library/ca/san_buenaventura/codes/administrative_policies?nodeId=ADPOPRMA (accessed 11/18/2015).
- Ref-09.** COMCATE Systems, www.comcate.com (accessed 4/6/2016).

Attachments

- Att-01.** Performance Measures
- Att-02.** Public Records Request by Types
- Att-03.** Public Records by Department

Glossary

TERM

DEFINITION

Codification

The process of consolidating general and permanent legislation and organizing it into a code of ordinances

COMCATE

1. A company providing online solutions for the adherence to CPRA and FOIA to its clients
2. The City of San Buenaventura’s computer system used for requesting and tracking public records requests

CPRA

California Public Records Act

Deliberative Process Privilege

If a record exists that contains both facts and deliberative material, the deliberative material can be redacted. Where the facts and the deliberative material are inextricably intertwined, a determination must be made as to whether the public interest in maintaining the deliberative process privilege outweighs the public interest in disclosure of the requested information.

FOIA

Freedom Of Information Act

Infrastructure

Underlying foundation or basic framework (as of a system or organization)

MVA

My Ventura Access

Recodification

The updating of existing code with all subsequent general and permanent legislation

State

California

VPRRP

Ventura [San Buenaventura] Public Records Request Policy

Work Product

The documents created through the attorney/client work process

Attachment 01
Performance Measures

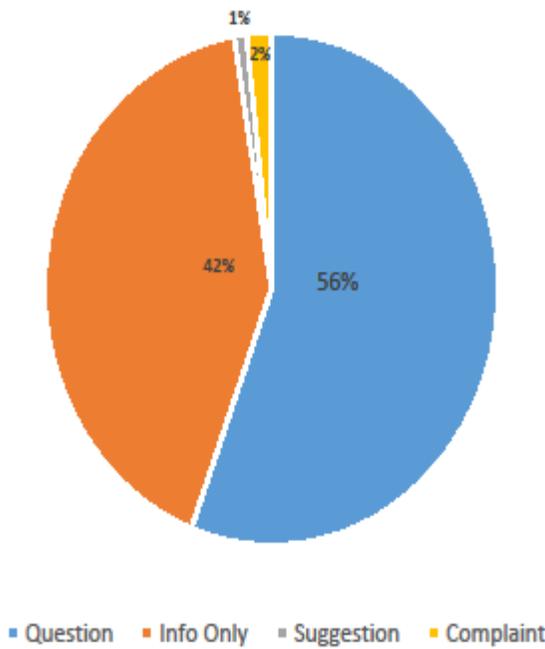
PERFORMANCE MEASURES
Public Records Request
FY 14-15
CITYWIDE GOAL: 100%

	1st Qtr: Jul - Sep 2014	2nd Qtr: Oct - Dec 2014	3rd Qtr: Jan - Mar 2015	4th Qtr: Apr - Jun 2015	FY 14-15 Totals
# PRR	47	47	62	51	207
# Late PRR	7	3	6	1	17
% PRR on Time	85%	94%	90%	98%	92%

Attachment 02
Public Records Request by Types

Public Records Request by Types

Time Frame	2015 Count	Types				Late	On Time
		Question	Info Only	Suggestion	Complaint		
Jan-March 2015 Res Date	62	41	19	1	1	6	90.32%
Apr-June 2015 Res Date	51	22	28	0	1	1	98.04%
Total	113	63	47	1	2	7	93.81%
		56%	42%	1%	2%	6%	

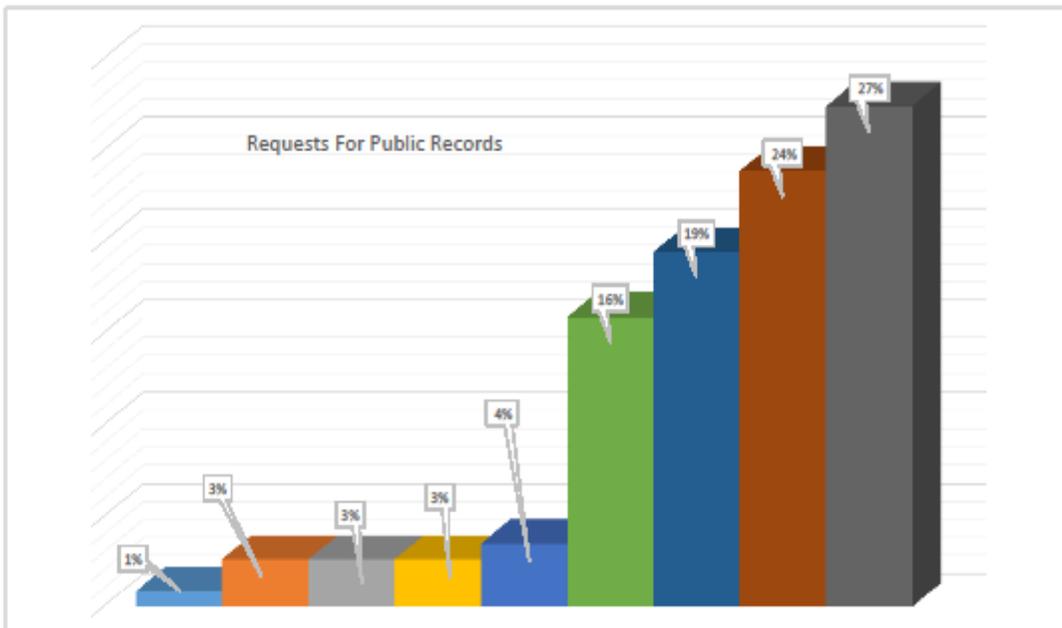


Ventura Public Records

Attachment 03
Public Records by Department

Public Records by Department

Time Frame	2015	Departments									Count
	HR	PRCPPW	PD	FIN	CCO	CAO	PW	Water	CD	FD	
Jan-March 2015 Res Date	0	0	2	2	2	1	10	16	9	20	62
Apr-June 2015 Res Date	1	1	1	1	1	3	8	6	18	11	51
Totals	1	1	3	3	3	4	18	22	27	31	113
		1%	3%	3%	3%	4%	16%	19%	24%	27%	100%



- FD = Fire Department
- CD = Community Development
- Water = Ventura Water
- PW = Public Works
- CAO = City Attorney's Office
- CCO = City Clerk's Office
- FIN = Finance
- PD = Police Department
- PRCPPW = Parks, Recreation and Community Partnerships / Public Works

Ventura Public Records