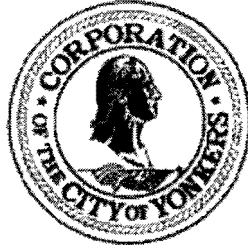


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TO: Chuck Lesnick, City Council President
All City Council Members

CC: Philip A. Amicone, Mayor
Mark Blanchard, Acting Corporation Counsel

FROM: Dan Schorr, Inspector General *DS*

SUBJECT: City of Yonkers Freedom of Information Law (FOIL) Process

DATE: March 30, 2010

This report is issued in response to City Council Resolution No. 139-2009, which directed the Inspector General "to undertake a review of the City of Yonkers Freedom of Information Law (FOIL) requests to determine if Yonkers is in compliance with the timely release of information, consistent with FOIL requirements."

Summary of Findings and Recommendations

While most FOIL requests are followed by timely responses from the City, there are too many requests that remain open for lengthy periods of time without the required response. City departments and the City FOIL officer should better facilitate the timely production of FOIL documents. Standard policies and procedures are needed in order to ensure compliance with relevant law and provide more government transparency for the citizens of Yonkers.

Relevant Law

Responses to Freedom of Information Law requests are governed by the Yonkers Freedom of Information Code, which was adopted pursuant to the New York State Freedom of Information Law, Public Officers Law § 84 et seq.

The Code states that the FOIL officer "within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it,

deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date...when such request will be granted or denied..." (§ 6-7C).

If the response is not fully completed within 20 business days from the date of the acknowledgement letter, "the public information officer shall state, in writing, both the reason for the inability to grant the request within 20 business days and a date certain with a reasonable period, depending on the circumstances, when the request will be granted in whole or in part" (§ 6-7D).

Background

The New York State Freedom of Information Law (§ 84) states, "The people's right to know the process of government decision-making and to review the documents and statistics leading to determinations is basic to our society...The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article." The Yonkers Freedom of Information Code was adopted pursuant to this law in order to give citizens access to Yonkers government records and further the goal of a transparent and open government.

FOIL requests are directed to Eric Arena, the City FOIL officer, who is employed in the Law Department. Mr. Arena is responsible for responding to requests and facilitating the production of documents from appropriate City departments and agencies. Once the documents have been identified, Mr. Arena generally informs the requesting parties that they may either inspect the documents or have a copy provided to them at a cost of up to twenty-five cents per page, as allowed by law.

The Yonkers City Council adopted Resolution 139-2009, which directed the Inspector General to review the City's compliance with FOIL requirements. The objectives of our review were to:

1. Assess how the City's FOIL responsiveness conforms with State and City law
2. Analyze timeliness of answers to FOIL requests
3. Review record-keeping procedures for FOIL requests
4. Provide suggestions for improvement of the City FOIL response process

In 2009, there were 246 FOIL requests spanning most City departments. We selected fourteen files (approximately 6%) for a detailed review and analyzed the 2009 FOIL summary activity log, which lists information for all requests. Additionally, our office interviewed Mr. Arena and three individuals who recently made FOIL requests and expressed concerns about the process, including Council Member Joan Gronowski.

Discussion

Our review of the fourteen individual files revealed that five requests are still open, all of which have been pending for approximately one year. Eight requests were completed (four completed in approximately two months, three completed in one month, and one completed in two weeks). One request was rejected because it involved an on-going police matter. We also reviewed the 2009 FOIL summary activity log and found that many of the other requests were also listed as open. In addition,

although all information required by law was listed on the log, the inclusion of additional facts would result in a more effective FOIL request monitoring system.

Upon receiving a request, the FOIL officer is required by law to send a letter within five business days that provides access to the requested documents, denies the request, or acknowledges the request and sets forth an approximate date for a full response. If the request is to be granted in whole or in part, the law requires that, unless a longer period is specified in the five-day letter, within an additional twenty business days the FOIL officer send the appropriate documents or a letter stating the reason for the delay and a date certain for the documents to be provided.

When the five-day letter is sent to a requestor, the FOIL officer generally sends a memo to the relevant department in the City which states, "This office is in receipt of a FOIL request for a copy of the aforementioned records...Please provide this office with copies of the requested records. If no such documents exist, please provide a statement that No Records Exist." Our audit revealed that in many cases the individual department did not promptly provide the requested documents and that there is insufficient follow-up from the FOIL officer in responding to the request.

Although the FOIL officer has regular contacts in each city department who assist in responding to requests, the responsibility is generally informal and at times lends itself to unresponsiveness and a lack of accountability. Each department should designate an existing employee as a "FOIL liaison" who will be instructed to interact with the FOIL officer and ensure that all requests sent to that department are appropriately addressed. Designated FOIL liaisons will allow the FOIL officer to ensure that there is not a diffusion of responsibility when a response is required.

Furthermore, the memo from the FOIL officer to the FOIL liaison that is sent at the time of the five-day letter should provide a specific deadline by which a response is expected. We suggest that these memos ask for a response within fifteen business days of the memo date, so that the FOIL officer can fully comply with the twenty-day letter requirement mentioned above, unless a longer time period is specified in the five-day letter. In addition to advising the department of the details of the request, the memo should state that the FOIL liaison must respond within fifteen business days to the FOIL officer with 1) the granted documents, 2) an acknowledgement that the documents were sent out, with a copy of the cover letter and any related payment, 3) a statement that a search was completed and that no relevant documents exist, or 4) a date certain by which the request will be fully addressed. A standard form should be created for the FOIL liaison to complete when responding to the request and this form should be placed in the FOIL officer's file.

Our review shows that the five-day letter is usually, but not always, sent to the requestor when required. Of the 246 FOIL requests on record for 2009, sixty-seven (27%) did not have a five-day letter noted on the FOIL officer's summary activity log, even though they were not completed within a five-day period (forty-six of the sixty-seven were marked "completed" on the log after a five-day period). Of the fourteen files reviewed by our office, four (29%) did not have a copy of a timely five-day letter inside. The five-day letter is important, not only in order to comply with Yonkers and New York State law, but to make sure that those seeking documents are provided with a prompt acknowledgement that their request was received and is being addressed. Unless compliance is established within the five-day period, it is essential that all requests result in a five-day letter of

acknowledgement, that a copy of the letter is kept in the City's file for that request, and that the date of the five-day letter and/or FOIL completion letter is noted on the FOIL officer's summary activity log.

If the response will not be completed within twenty business days of the five-day letter, the FOIL officer is required by law to send a twenty-day letter to the requestor explaining the reason for the delay and giving a date certain by which the request will be fully addressed, unless this date certain has been previously provided. However, this legally required twenty-day letter is rarely, if ever, provided. In fact, numerous FOILs remain open for periods of as long as a year without a twenty-day letter being sent. In our review of the 246 FOILs from 2009, 211 (86%) were ultimately completed but thirty-five (14%) were still open as of March 2010 according to the summary activity log. The FOIL officer explained that in many of these cases, documents were still being awaited from relevant departments. Such delay undermines the transparency of government in Yonkers and opens the City to legal and financial exposure. More diligent follow-up is needed by the FOIL officer, and more responsiveness is needed by the departments in order to make the job of the FOIL officer more manageable. Inefficient coordination and record keeping hinders effective compliance with FOIL requirements and leads to delays in providing documents, if they are provided at all.

We have also learned that there are times that the individual departments comply with requests without notifying the FOIL officer, which leaves his records incomplete, and in some cases results in confusion as to whether or not a request has been addressed. If a department chooses to send documents directly to a requestor, the FOIL liaison should notify the FOIL officer and provide him with a copy of the cover letter sent to the requestor and any payment received.

Additionally, the FOIL officer should keep more detailed records of responses. Files should have copies of all letters and memos, and the summary activity log should provide more than just the date on which a response was sent. More information is needed in order for this log to be meaningful. When a response is given, details should be noted in addition to the date, such as "documents provided," "denial" with an explanation, or "waiting for requestor to pay." The current log provided to our office contained missing and incomplete information that made it difficult to fully ascertain the status of current FOIL requests. Although the law does not require additional information on the log, providing it will improve the City's effectiveness in appropriately responding to requests.

Finally, we urge the City to expand its utilization of email for FOIL requests and responses. The FOIL officer currently can receive requests via email, and we encourage that responsive documents be scanned and emailed to requestors whenever possible. Such a practice will save money and time for the City and its citizens. It will also allow documents that have been requested and provided to be easily accessed and produced for subsequent requests. Furthermore, if more documents are scanned and posted on the City web site, FOIL requests may be reduced.

We suggest that the recommendations outlined in this report and other current practices of the FOIL officer be codified in a written policies and procedures document that is provided to and utilized by all departments as they comply with FOIL requests. This guide would aid the City in providing a more transparent government by expeditiously and effectively responding to requests.

Conclusions and Recommendations

Our analysis of City FOIL requests leads us to conclude that while the majority of the FOIL responses comply with State and City law, there is room for improvement in order to create a more accessible, open, and transparent government. There is too much diffusion of responsibility between the FOIL officer and City departments and consequently there are often significant delays in providing information to the public.

We make the following specific recommendations:

- A five-day letter should be sent in all cases in which a full response is not provided within five days, a copy retained in the FOIL officer's file, and its creation noted on the FOIL summary activity log.
- Each City department should designate an existing employee as a FOIL liaison who will be responsible for coordinating with the FOIL officer to provide documents effectively and efficiently.
- Each department must notify the FOIL officer if it provides documents pursuant to a FOIL request and provide the FOIL officer with the relevant cover letter and payment.
- The FOIL officer should inform the appropriate FOIL liaison, in writing, of new requests and require a response within fifteen business days, unless a longer time period was specified in the five-day letter to the requestor.
- FOIL liaisons should respond to the FOIL officer promptly using a standard form.
- If the requested documents cannot be provided within the statutory time period, the FOIL officer must provide the requesting party with the legally-required 20-day letter regarding the reason for delay and a date certain for compliance.
- The FOIL officer's summary activity log should be kept up-to-date and include additional relevant and useful information, such as "documents provided," "denial" with an explanation, or "waiting for requestor to pay."
- The FOIL officer should expand the utilization of email to respond to FOIL requests and more documents should be available on the City website.
- A document of policies and procedures should be created to guide the City in its responses to FOIL requests.