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MEMORANDUM

To: Charlie Bishop, County Administrator

From: Lori Stephens, Inspector General *Lori Stephens*

Date: September 14, 2023

Subject: Public Records Request Process Review Project

The Division of Inspector General (IG) has completed a project to review the process for responding to public records requests. The project was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing*, issued by the Institute of Internal Auditors.

Background

Article I, Section 24 of the Florida Constitution and Chapter 119 of the Florida Statutes (Public Records Act) allow for public access to records created or received for the official business of Manatee County and its employees. Chapter 119 also specifies the exemptions from public records and provides for retention requirements. In addition, County Administrative Procedure 301.003 establishes the procedures for county staff to respond to public records requests and to comply with the Florida Statutes.

The county's Records Management Division (Records Management) oversees the management of all papers and electronic records created by the county. Therefore, this division is the one primarily responsible for handling all public records requests by responding directly to requestors, as well as coordinating responses from other county departments. A records request can be submitted to the county through an online form, email, letter, telephone call, or in person. The requests, as well as any subsequent communication and records provided, are documented in Comcate, the county's public records case management system. Records Management has also developed written procedures to provide guidance to staff when performing public records request activities.

Prior to October 2021, Records Management staff performed the searches for requested emails and Jabber messages using Microsoft's eDiscovery software. However, in mid-October 2021, this responsibility was transferred to the Information Technology Services Department (ITS). For this revised process, Records Management submitted a work order to ITS detailing the search parameters needed to obtain relevant email and/or Jabber (instant message) records, as determined from the public records request received. ITS ran the search in eDiscovery, downloaded the data results, and sent the unaltered results to Records Management for review and dissemination to the requestor. In late June 2023, subsequent to our testing, the responsibility for performing these searches reverted back to Records Management.

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Objectives

The objectives of this project were to determine the efficiency and effectiveness of the public records request process. This included, but was not limited to:

- Verifying the completeness of responsive documents found and remitted to the requestor
- Determining the timeliness of responding to and fulfilling public records requests
- Verifying compliance with Florida laws and statutes

Scope

The scope of the project included examining the public records request process for the period June 1, 2021, through May 31, 2022.

Methodology

To meet the objectives of the project, we obtained an understanding of the public records request process by reviewing related policies and procedures, interviewing Records Management and ITS staff, and obtaining reports and examples from the systems used. Various sampling techniques were used to perform the detailed testing of the public records requests; relevant documentation was obtained and reviewed for the requests tested. Employee email records regarding records requests were also obtained and reviewed, and a survey of the county departments was conducted.

Project Results

During the project test period, the public records request process was as follows:

- Records Management receives a request from the public. If the request is not made using the online system, Comcate, Records Management enters the request into Comcate on behalf of the requestor.
- Comcate assigns a case number to the request.
- Comcate sends an automated response to the requestor to acknowledge receipt of the request.
- Records Management staff evaluate the request to determine where to obtain the records. If the request requires clarification, Records Management reaches out to the requestor and documents the communication in Comcate.
 - Requests for email, Jabber, calendar, and phone records are sent to ITS, who retrieves the records from the respective system and sends them to Records Management.
 - Requests for text messages are sent to the respective employees, who provide the records to Records Management.
 - Requests for records maintained by a county department are sent to the respective department's director and designated contact, who retrieves the records and sends them to Records Management.
 - Requests for building records are obtained directly by Records Management staff from the appropriate system (Accela, OnBase, microfilm).

- Records Management determines if any charges are necessary for retrieving and providing the requested records. Generally, requests estimated to take less than 30 minutes of staff time do not result in charges. For those requiring a payment, Records Management sends a cost estimate to the requestor. If accepted, the requestor must provide payment before the records will be released; the payment information is documented in Comcate.
- Records Management reviews the records to check for any confidential or exempt information. With the assistance of the County Attorney's Office and/or Human Resources, protected information is redacted.
- Records Management sends the records electronically to the requestor through Comcate. A requestor can pick up records in person; however, the records provided are still documented in Comcate.

For the year ended May 31, 2022, there were 6,161 public records request cases documented in Comcate. Using statistical and judgmental sampling, 143 cases were selected to test whether responsive records were properly maintained, all responsive records were remitted to the requestors, the requests were acknowledged and handled timely, confidential and/or exempt information was properly redacted and cited, and any applicable fees were assessed and paid.

Overall, the process for handling public records requests was generally found to be adequate. However, test work did identify several areas where improvements can be made, as detailed below:

Incomplete or Incorrect Responsive Records

For 18 (or 12.6%) of the 143 cases tested, it appears that incorrect and/or incomplete responsive records were provided to the requestor, as detailed below:

- Email records were not always provided as requested, due to the following:
 - emails were overlooked in the search results
 - emails were not produced in the search results due to the search parameters being too narrow or incorrect
 - staff incorrectly believed the emails had already been provided in previous requests

It was noted that when ITS initially began performing the email searches, they used search methods which were different than those previously used by Records Management, resulting in instances where search results were incomplete. For example, searching an employee's mailbox for emails to or from specific individuals can be done by entering the employee names in fields identified as "to," "from," "recipient," or "participant." Each of these produce different search results, and only when a name is entered as the "recipient" and/or "participant" will CC (copied) and BCC (blind copied) emails be produced. Records Management and ITS staff worked together to improve the searches so that the maximum number of email records would be produced.

- Building and Code Enforcement records were not always provided as requested. We were unable to determine the reason incomplete/incorrect records were provided. However, it was noted that in several instances the requests were made verbally, and the request details were input into Comcate by Records Management staff. There may have been a miscommunication with the requestor, or a mistake made when inputting the request into Comcate.

During the project, IG staff also received a complaint regarding potentially missing email records related to a public records request. We examined the related request and found that as per the process, ITS performed the email search, which produced 889 records. Records Management reviewed the search results and provided 300 responsive emails. We performed an independent review of the records produced in the search and the responsive records provided, and found that two additional responsive emails produced were not provided. This appears to have been an oversight.

Management Action Plan

Management is planning to hire a consultant to perform a deeper review of the issues identified and to help determine best practices. In addition, management will provide training on obtaining and defining the search criteria for the staff involved with the email records searches.

Microsoft eDiscovery Tool for Email Records

Microsoft eDiscovery is used to search for, and obtain, email records of county employees. During the project, issues were noted regarding the inability to access some email content, email records which cannot be produced, and inconsistent email search results.

According to Records Management, there has been an ongoing issue with the ability to access email content within the email search results when certain emails will not open. However, re-performing the records search generally appears to correct the problem. There did not appear to be any consistent pattern for the emails that would not open, as the affected mailboxes ranged significantly in size, and there was not one particular mailbox folder or employee account in which it occurred.

As part of testing compliance with procedures for handling records requests received outside of Comcate, ITS was asked to perform an email records search for all employees, current and former, from June 1, 2021, through May 31, 2022, for the keywords "public records request," "records request," "per your request," and "requested documents." The original search was performed on June 21, 2022 and produced 140,314 records for 1,874 employees. However, a review of these records identified an irregularity in the Records Management Division Manager's (Records Manager) mailbox, which included more than 5,200 emails in "Discovery Holds," but nothing in "Deleted Items," "Inbox," or "Sent Items." ITS re-ran a search of the mailbox using the same parameters, but only three (3) emails appeared in the results, all of which were in the "Inbox," which had been empty in the original search. On December 9, 2022, ITS used eDiscovery to pull the Records Manager's entire email mailbox and archives, and most of the emails from the original June 2022 search did not appear in the results. It could not be determined why the emails were not included in the results. However, if the emails no longer exist, this could violate State of Florida record retention requirements.

Due to the discrepancies noted in the Records Manager's emails, ITS re-performed the search for all employees several times, and different results were produced each time.

- Original search June 21, 2022 - item count of 140,314
- Re-run search December 29, 2022 - item count of 132,112
- Re-run search January 11, 2023 - item count of 132,135
- Re-run search January 20, 2023 - item count of 132,155

When comparing the original search results to the results from the most recent re-run on January 20, 2023, we found that 24 employees were in one of the search results, but not the other. In addition, 274 employees' mailboxes had record counts that had either increased or decreased, with the largest variance being for the Records Manager. This is likely due to the substantial volume of email activity in this employee's account.

ITS initially could not explain the discrepancies and reached out to Microsoft Support for guidance. Regarding the search result discrepancies, Microsoft identified one glitch, which they corrected, and pointed out that eDiscovery has output limits that when exceeded, can corrupt the data. For all of the employee email records searches performed by ITS for the project, the output size exceeded Microsoft's limit of 50 gigabytes. Regarding the un-retrievable emails, Microsoft stated that it was an isolated incident on their side, which Microsoft feels has not jeopardized the overall integrity of the county's eDiscovery environment. However, because of the incident, eDiscovery will not be able to pull the email records for the Records Manager for that time frame. Microsoft recommended submitting a service ticket with their Premier Team, and/or upgrading to a higher level of eDiscovery, both of which would incur a significant expense.

Management Action Plan

ITS management found that most of the issues with the email request results were due to the search results exceeding Microsoft's file size limitation. Management will have staff break up the larger searches into smaller sections to ensure consistent search results.

Regarding the un-retrievable emails, ITS management has determined that upgrading to the higher level of eDiscovery would be cost prohibitive. Additional work will need to be done by ITS to determine how best to recover the emails and support future records requests.

Confidential and Exempt Records

Florida Statute §119.01(2)(a) states that "each agency ... must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law." In addition, 119.07(1)(e) states that "if the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute." The Records Management procedures also require staff to review records for confidential and exempt information and to cite the statute when records are redacted.

Six (6) of the 143 cases tested involved confidential and/or exempt information. We reviewed these records and noted the following:

- For one (1) case, not all confidential information was properly redacted. The records provided to the requestor had instances in which the last few digits of an employee's social security number were visible. While Human Resources performed the initial redaction, Records Management staff was responsible for checking the records before sending them out.
- For three (3) cases, Records Management properly redacted confidential and/or exempt information, but did not state the basis of the applicable exemption, or include the statutory citation, as required by statute.

Management Action Plan

Management has counseled the employee responsible for reviewing confidential and exempt records, and providing the statutory citation in the response to the requestor. In addition, management performs daily spot checks of cases to ensure any required citations have been properly included.

Comcate Documentation

During testing, it was noted that records requests from walk-in customers have not always been recorded in Comcate. If a customer makes a request for which staff provides the records via email, the request is documented in Comcate. However, if the records are provided while the customer waits, the request is not recorded. As a result, an unknown number of records requests have not been documented in Comcate.

It was also noted that conversations, supplemental information obtained, and/or email exchanges with requestors have not been consistently documented in Comcate. Therefore, it is not always clear whether the requestors were satisfied with the records received, or if additional follow-up was necessary.

Approximately 15,050 email records were produced for Records Management staff for the year ended May 31, 2022, from a search using the keywords "public records request," "records request," "per your request," and "requested documents." We reviewed these emails and noted the following:

- 70 instances where Records Management staff did not document relevant information or correspondence with the requestor in Comcate;
- 12 instances where Records Management staff did not document the records request in Comcate; one of these led to a delay in providing records to the customer.

Management Action Plan

Management has informed staff that all records requests from walk-in customers must be documented in Comcate. This requirement will be added to Records Management's written policies and procedures.

Management has reached out to Comcate support about automatically capturing email exchanges routed through a Comcate case. In addition, management has informed Records Management staff that all communication for a public records case must be documented in Comcate; this requirement will be added to Records Management's written policies and procedures.

County Staff Training

A survey of 14 county departments, which included 69 divisions, was conducted regarding the departments' understanding of, and participation in, the public records request process; 13 departments responded. From those survey responses, it appears that most departments/divisions are aware that records requests are to be directed to Records Management; however, almost half of the respondents stated they have not had any training for handling records requests. Several departments/divisions were not aware that all requests should go to Records Management; this was primarily due to having never received a public records request. In addition, some were not familiar with the county's administrative procedure for public records requests (#301.003).

While many of the departments responded that they do route records requests to Records Management, a review of emails indicates otherwise. All employees' emails for the year ended May, 31, 2022, were searched for the keywords "public records request," "records request," "per your request," and "requested documents;" this produced 1,874 employee mailboxes containing 140,314 records. We reviewed these email records, and noted the following:

- 118 instances in which staff from various departments, and a commissioner, handled a public records request without involving Records Management.
- 4 instances in which there was a delay in getting records to the requestor due to other county staff not providing information to Records Management timely.

Management Action Plan

County Administration will add the county's process and expectations for handling public records requests to the onboarding information provided to new hires. In addition, management will conduct an annual refresher training on the public records request process for all county staff.

Payment for Public Records Requests

Florida Statute §119.07(4) allows counties to charge for duplication fees for providing public records, and "the labor cost of the personnel providing the service" when a public records request requires an "extensive use" of time. County Administrative Procedure 301.003 defines "extensive use" of time as more than 30 minutes of staff time. The Administrative Procedure also allows for complimentary copies when the fee is less than \$3.

Of the 143 public records request cases reviewed, only 12 required a payment from the requestor. For these 12, the following was noted:

- Invoice and receipt documentation was not consistently maintained in Comcate. For 10 (or 83.3%) of the cases, one or both of these documents were not found in Comcate. Records Management was subsequently able to produce all of the missing receipts.
- The records request fees were posted to an incorrect account key. According to the Financial Management Department (FMD), the fees should be recorded in account key 001-0000000-341101 (General Fund - Certify, Copy, Record Search object code). However, the Development Services Department cashiers, who process the fees, had been posting them to 107-0000000-369002 (Unincorporated Services Fund - Maps and Publication Sales object code), as verified in ONESolution.

Management Action Plan

Management has informed staff that payment invoices and receipts must be maintained in the Comcate case. This requirement will be included in Records Management's written policies and procedures.

FMD management has communicated with Development Services to ensure that the payments are posted to the correct account (001-0000000-341101). Any payments that have already been posted for the current fiscal year will be corrected by a journal entry.

Record Retention

During testing it was noted that numerous documents for residential building permits are being maintained beyond the required record retention period. According to the General Records Schedule GS1-SL from the State of Florida's Division of Library and Information Services, most residential building documents, such as permits, plans, and certificates of occupancy are only required to be maintained for ten anniversary years from the issuance of the certificate of occupancy. The county has been maintaining the records for residential permits as far back as 1980. Keeping records beyond the required retention period creates potential risks including, but not limited to, increased costs and time related to storing, locating, and producing the records.

Management Action Plan

Management has begun the process of purging the old records that are on microfilm. In addition, management is working on implementing the records management module in OnBase, which will automatically purge the records maintained in that system that have met the defined retention period.

We appreciate the cooperation of the Records Management and ITS management and staff throughout this engagement, and commend them for their efforts and timeliness in addressing the issues identified.

LJS/BJW/MEG

cc: Angelina "Angel" Colonnese, Clerk of the Circuit Court and Comptroller
Board of County Commissioners
Courtney DePol, Deputy County Administrator
William Clague, County Attorney
Drew Richardson, Information Technology Services Department Director
Lacy Pritchard, Interim Records Management Division Manager
Sheila McLean, Chief Financial Officer