Fees, delays, can slow flow of records

By Lauryn Schroeder

MARCH 19, 2016, 4:00 PM

The Mountain Empire Unified School District in Pine Valley received eight requests to release public records last year.

Getting a list of them was not easy.

The San Diego Union-Tribune sought a log of such requests from January 2015 to the present as part of a region-wide effort to assess open government practices.

The district said no such listing exists, then agreed to release records of the requests themselves — for $5,860. That's 100 hours of “programming and duplication,” at $48.60 an hour, plus supplies.

In the end, Mountain Empire produced a list at no charge, a handful of requests involving charter schools, concussions for athletes and a state-mandated form filed by an administrator.

U-T Watchdog requested a roster of records requests from 107 local agencies to mark Sunshine Week, a nationwide effort to raise awareness of the federal Freedom of Information Act and state laws allowing the people access to government records.

The result was a database of more than 11,000 requests, from January 2015 to the present, about everything from unpaid parking citations at the University of California San Diego to sprinkler plans at the City of Poway and dam inspections at the Rainbow Water District.

Public records database

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<th>Agency Name</th>
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<td>Bonsall Union School District</td>
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<tr>
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Search
The U-T’s project showed that public records laws are not just for journalists. Requests filed for legal purposes, usually by attorneys, are the most frequent. Environmental consultants, citizens — and even other governments — put in hundreds of requests as well.

The agency that handles the most requests in the region, among those that provided data, is the city of San Diego, which handled 2,213 requests. The Port of San Diego was next, with 785.

The Union-Tribune filed more requests than any other news organization in the database, with 187 requests, not including the 107 filed for this story.

But that didn’t make the U-T the most prolific organization in the region for records requests. The No. 1 slot goes to the Center for Contract Compliance, a labor-friendly advocacy organization that monitors public projects to ensure that laws and contract provisions such as wage requirements are upheld.

Contract Compliance clerk Doris Johnson sent 119 public record requests to at least 28 different agencies, more than any other individual. She’s followed by Contract Compliance investigator Jamie Roberts, who filed 80 requests to 11 agencies.

Roberts said filing such a large number of requests, and keeping track of the progress, is a tedious and often frustrating process that almost always requires follow-up emails to make sure requests are fulfilled.

The California Public Records Act requires documents to be disclosed promptly, but gives 10 days for more complex responses that require a legal determination. U-T Watchdog’s survey found that more than 25 percent of the 107 agencies contacted missed deadlines, some missing more than one if multiple requests had to be filed.

“Honestly, I hate to say it, but it’s kind of a pain,” Roberts said. “You have to follow-up consistently...nobody really replies within 10 days.”

U-T Watchdog had to send follow-up emails as well, often multiple times.

The San Diego Rural Fire District did not respond to the U-T’s request for 16 days, and said the documents would be ready in an additional four to five. Six days later, the Watchdog followed up, and employee Akilah Cunningham-Harris said she would “start working on it now.”

Another five days later, Cunningham-Harris sent a completed log. The document listed three records requests, including the one from the U-T.

About 7,800 requests in the records database had enough information to determine how long they took to fulfill. Among these requests, the average duration was 9.52 days, with more than a quarter taking longer than 10 days.

The slowest agency to respond was the Mountain Empire School District, which clocked an average 66 days to complete requests. Southwestern Community College District falls in second, with an average of 35 days, followed by Palomar Community College District at 34.

Mountain Empire Superintendent Kathy Granger said the district “typically makes an initial response within 10 days...either requesting clarification from the requestor or indicating the time-frame necessary to fully respond to the request.”

On the speedier end, the Julian Union School District, Lakeside Fire Protection District and the San Diego County Board of Supervisors all had average response times less than four days. The Port of San Diego’s average was 4.2 days.

Port Clerk Timothy Deuel said responding to requests is one of the clerk’s main responsibilities and it’s important the job is done well. He said there’s usually no reason to delay, and employees are encouraged to respond quickly rather than waiting until deadline to comply.
“It’s not hard,” Deuel said. “Just find the record, click and email. It’s that simple.”

According to Jodi Cleesattle, a California government attorney on the Society of Professional Journalists Freedom of Information Committee, it’s not that simple for all agencies, and there’s a misconception among the public that all records are readily available at all times.

“People tend to think that you can press a button and the record you want immediately comes up,” Cleesattle said. “That’s not how most agencies’ computer systems work.”

Agencies often need a good amount of time to locate records, especially if they’re in paper form, Cleesattle said. Then they need time to review the records and redact information that’s exempt from disclosure.

The law requires most government records to be available for inspection by the public during normal business hours — a right exercised frequently by people who show up at a government clerk’s office.

The 10-day response deadline is for less routine matters, and that time limit may be causing delays itself, according to David Cuillier, an associate professor of journalism at the University of Arizona and former chairman of the Society of Professional Journalist’s Freedom of Information Committee.

“Folks are always going to procrastinate,” Cuillier said. “So instead of just sending something over right away, they’ll wait until the deadline.”

Even denials can take a fair amount of time. Records show San Diego agencies waited an average 9.5 days to deny some 500 requests for reasons including “no responsive documents” or “documents exempt from disclosure.”

Ten public entities — including Tri-City Health Care District, San Ysidro School District, San Marcos School District and the San Diego Airport Authority — have yet to comply with the Union-Tribune’s records requests, which have been pending for more than three weeks.

Lakeside Union School District has also not complied with the request. Superintendent David Lorden initially said the district was working to estimate a cost. After 12 days, Lorden’s executive assistant, Lisa DeRosier, said the district would need an additional two weeks to compile the responsive documents.

“That’s why records requests can take months, or even years to process,” Cuillier said. “There’s no teeth in the laws. An agency can blow you off, and pretty much get away with it.”

Joey Senat, an associate journalism professor at Oklahoma State University, said agencies often have a “sue me” mindset and use excessive fees or misinterpreted exemptions in the law to avoid compliance.

“Theyir salary is already paid for by taxpayers,” Senat said. “And it’s ludicrous to come around and charge taxpayers again for information.”

According to the public record log obtained from San Diego State University, attorney Daniel Scholz requested records relating to chiller plant repairs in December 2015. The university requested that Scholz pay $3,642 for the records.

Scholz’s request is still pending, records show, after he declined to pay that amount.

*Aila Ismay contributed to this report*