



# MIAMIBEACH

OPBI DEPARTMENT  
Internal Audit Division

## INTERNAL AUDIT REPORT

TO: Kathie G. Brooks, Interim City Manager  
FROM: James J. Sutter, Internal Auditor

DATE: July 9, 2012

AUDIT: City Clerk Operations – Public Requests, Record Retention, and Lobbyist Registration.

PERIOD: October 1, 2009 through July 31, 2011

This report is the result of a regularly scheduled audit to verify compliance to State regulation, as well as City ordinances and policies and procedures governing public records requests, records management and disposal, as well as lobbyist registration.

### INTRODUCTION

The Office of the City Clerk is dedicated to providing customer service while making public information easily accessible to all users. They also perform numerous responsibilities, which are derived from the City Charter, City Code, or administratively. Functions performed by City Clerk's administration and staff include, but may not be limited to:

- Performing as secretary to the City Commission and Redevelopment Agency including
  - Scheduling Meetings for the City Commission and RDA, Participating in the Agenda preparation, and after action reporting
  - Processing resolutions, ordinances, and agreements and following up on their status of completion if applicable.
  - Audio recording meetings using Business Information System software (B.I.S.).
  - Processing City Board and Committee applications, appointments
  - Compiling advertising and posting weekly meeting notices
- Coordinating and updating of the City Code of Ordinances
- Maintaining and updating the text-based Folio Search Database and the City's document imaging system (Laser Fiche).
- Processing of public records requests
- Oversight of public record retention requirements
- Processing lobbyist registration.
- Processing Domestic Partnership Registrations.
- Handling Financial disclosures required by code.
- Processing general and special elections.
- Processing passport applications and renewals.
- Answering and responding call from 604-City (functioning as a call center).

In addition, they have oversight over the Central Services Division and the Special Master administrative responsibilities.

Considering the numerous activities and responsibilities of the Office of the City Clerk, internal audits of their operations have been broken down in different engagements taking into account the risks and exposure to the City with respect to their operations and functions. For example, an audit of the Central Service's operations was completed in Fiscal Year 2009, while an audit of the Special Master Operations was later concluded in Fiscal Year 2010. Both divisions report administratively to the City Clerk Office, as previously stated.

Under this premise, this audit engagement has been focused on three areas of responsibility under the Office of the City Clerk. Those areas were: processing of public records requests, compliance to public record retention requirements, and compliance to lobbyist registration requirements. However, due to their uniqueness and separate record retention requirements, this audit did not consider and/or included any procedures with respect to Police and Fire records since they are handled by their respective departments.

To evaluate and assess established processes and related controls and requirements, Internal Audit reviewed the Florida Public Records Act, represented on Chapter 119 of the Florida Statutes, as well as governing administrative code rules relating to archives and records management. These administrative rules can be found mainly on chapter's 1B-11, 1B-24, and 1B-26 of the Florida Administrative Code. In addition, Ordinance No. 2010-3689, as codified on Chapter 2, Article VII, Division 3, Sections 2-482 and 2-485 of the City Code, were reviewed with respect to Lobbyist registration and requirements. Finally, departmental policies and procedures were also examined in order to identify risks and related controls in order to verify their adequacy to reduce, remove, or mitigate the respective risks.

## **OVERALL OPINION**

The Office of the City Clerk has performed their responsibilities regarding the management and disposal of City public records adequately and in compliance to state requirements promulgated under chapter 119 of the Florida Statutes and the Florida Administrative Code. In addition, they have materially complied with City requirements with respect to lobbyist registration and reporting. However, during our audit, we were able to identify areas in need of corrective action, additional compliance and possible improvements with respect to citywide operations regarding the management and disposal of public records and the enforcement of certain provisions of the City code as follows:

1. Documentation for costs associated with the research and processing of Public Requests needs improvement.
2. Late filing fines associated with the late filing of lobbyist expenditure or fee disclosure reports, as established under Section 2-485(d) of the City Code were not consistently assessed and collected.
3. Public Records Request arrival date and time are not always being accurately recorded upon arrival in contradiction to stipulated policies and procedures.
4. No Citywide policies and procedures are currently implemented and consistently followed by all City Departments with respect to the retention and destruction of public record information.
5. Departmental records custodians have not been identified and frequently updated by each and every city department and/or division with the City Clerk Office showing poor collaboration and teamwork.
6. Efficiencies and initiatives should be considered that could lead to greater streamlining processes, faster responses, better services and lower costs regarding records management and public records request processing.

Additional details regarding these areas in need of corrective action and/or improvements can be found on the “Finding, Recommendations, and Responses” section on this report.

## **PURPOSE**

The purpose of this audit is to verify compliance to State regulation, as well as City ordinances and policies and procedures governing public records requests and records management and disposal. To verify that adequate controls are in place to reasonably ensure the integrity, reliability, and accuracy of records pertaining to record destruction and lobbyist registration while eliminating, reducing, or mitigating risks associated with the same.

## **SCOPE**

1. Confirm that detailed policies and procedures exist and are documented and consistently followed by the City Clerk, as well as incumbent departments and/or incumbents.
2. Ensure that sufficient controls exist and that accurate and reliable records exist to be provided in a timely manner upon request from any user.
3. Verify compliance to Sunshine Law and State Statutes regarding these areas.
4. Verify that sufficient documentation and approvals exist to document records destruction.
5. Confirm that the process for Registration for Lobbyist is handled in accordance to City ordinances and other governing legislation.

## **FINDINGS, RECOMMENDATIONS, AND MANAGEMENT RESPONSES**

1. Finding – *Documentation for costs associated with the research and processing of Public Requests needs improvement.*

Chapter 119, §119.07(d) states in reference to public records requests that “*If the nature or volume of public records requested to be inspected or copied is such as to require extensive use of information technology resources or extensive clerical, or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred*”. This language has also been incorporated in the City Clerk’s policies and procedures for further reference and to be consistently followed. In addition, the Office of the City Clerk has defined and/or established through policies and procedures that any request that requires half an hour of labor or more is considered “extensive” and should be subjected to a charge equal to the rate of the employee (fringe benefits not included) whose normal scope of duties include performing the function.

Results from our testing and inquiries showed that records regarding the use of resources in resolving and responding to public requests (including time allocations, individuals involved, hourly rates, number of pages copied, etc.) are not kept by the City Clerk’s office, nor by any City department involve in responding to the requests. Out of a total of twenty (20) public records requests reviewed in our audit, only two (2) reflected possible fees (Request #s 5840 and 6044). However, no documentation substantiating the calculation was documented and kept in file. The amounts estimated under these two requests were \$21.00 under records request number 5840 for copies of an employee file, and an estimated \$5,912.80 under records request number 6044 for a large volume of documents, including e-mails, documents, letters and/or electronic documents exchanged with

determined individuals and companies respectively.

Recommendation(s)

In order to improve documentation of resources utilized in researching and/or responding to public records requests, the City Clerk should create a standard printable electronic form to be used by the City Clerk and incumbent departments when responding to a public records request. This form should include a section to reflect time spent by personnel and/or supervisory time and payroll charge rate used in resolving and/or responding to the request. In addition, it should account for number of copies, identifying whether single or double sided, and the applicable photocopy rate. Other fields (CD or type of media used) should be included as necessary to ensure that all resources utilized and costs incurred are accounted for in the form.

This form should be maintained on-line and used when responding to all public records requests in order to document, substantiate, and serve as audit trail for resources employed in providing public records request responses and/or resolutions. Procedures should be updated and training provided to all departmental records custodian liaisons in order to understand, familiarize, and use the form consistently.

Management's Response(s)

The City Clerk's Office will design a standard form ("Cost of Labor Form"). The form will be available on the Internet. The form will be submitted with every Public Record Request entered and submitted to the department handling the request. If the labor is less than 30 minutes, the form will not be necessary. The City Clerk's Office will check with IT to be sure this form can be made part of the new public record request database, therefore automatically e-mailed with the public record request to the department responsible for handling it. The Cost of Labor Form must reference the public records request number and the MCR number. The MCR must reference the public records request number. A draft of the Cost of Labor Form will be submitted to Internal Audit for their approval.

2. Finding – *Late filing fines associated with the late filing of lobbyist expenditure or fee disclosure reports, as established under Section 2-485(d) of the City Code were not consistently assessed and collected.*

As per section 2-485 of the City Code, all lobbyists subject to lobbyist registration requirements shall submit to the City Clerk a signed statement under oath, as provided in the same section, listing all lobbying expenditures, as well as compensation received for the preceding calendar year with regard to the specific issue on which the lobbyist has been engaged to lobby. A statement shall be filed even if there have been no expenditures or compensation during the reporting period. Additional details regarding this requirement can be found in the above mentioned section of the City Code.

However, Chapter 2, Article VII, Division 3, § 2-485(d) of the City Code expressly states that *"the City Clerk shall notify any lobbyist (or principal) who fails to timely file the expenditure or fee disclosure reports referenced in sections 2-485 (a) and (b). In addition to any other penalties which may be imposed, as provided in section 2-485.1, a fine of \$50.00 per day shall be assessed for reports filed after the due date. Any lobbyist who fails to file the required expenditure report by April 30 shall be automatically suspended from lobbying until all fines are paid, unless the fine is appealed to the Miami-Dade County Ethics Commission"*.

Fourteen lobbyist files out of 181 files as of August 23, 2011 were randomly selected in order to verify compliance to requirements overall. Out of the fourteen files, three instances within our audit period were noted in which revenue/expenditure reports were filed late. However, corresponding late filing fines totaling \$750.00 for the three instances were not assessed and/or collected. Later inquiries with personnel suggested that no late fines with respect to the requirements of Section 2-485(d) have been assessed or pursued under any circumstance.

Recommendation(s)

The City Clerk should consider whether it is appropriate to review past instances in which applicable late filing fines were not assessed, as required by City Code and retroactively assess them and collect them. At a minimum, going forward, late filing fines should be assessed in accordance to City Code requirements. Should any challenges exist or should the assessment of such fines or filing requirements be deemed impractical by the department, then a revision to the ordinance should be considered. In such case, a legal opinion should be sought to ensure that proper steps are taken, including whether or not a referendum would be required to reduce such existing requirements.

Management's Response(s)

The City Clerk's Office implemented this recommendation with the 2012 Lobbyists Expenditure filing. We sent letters for fines of \$50 per day per issue to all lobbyists that filed late. The list was submitted to the Miami-Dade Commission on Ethics. Fines were appealed by the lobbyist, and after the hearing, the fines were either waved or drastically reduced by the Miami-Dade Commission on Ethics. We will not be able to implement retroactively.

3. Finding – *Public Records Request arrival date and time are not always being accurately recorded upon arrival in contradiction to stipulated policies and procedures.*

According to staff from the City Clerk Office, public records requests are usually received by the department through different means including e-mails, letters, in person, over the phone, etcetera. However, no matter which means are used, current documented policies and procedures require that a "Request Research" form is filled upon receipt of the public records request. This form will reflect the request number, date and time received, contact information of the individual and/or entity placing the request, a description of the request criterion, and the name of the City employee first contacted regarding the request. This form is not only used as supporting document and tracking tool for the request, but is also used as a primary source document when tracking the time it takes to resolve and respond to the request, information required and measured under the department's performance score card.

Results from our testing showed that out of twenty sampled public records request, one was observed as being resolved in one minute. The request involved creating an audio copy of a Special Master case hearing, which would most likely than not involve more than one minute from the time the request is received, to the time in which a response and the audio copy can be provided to the requestor. As a result of this finding, Internal Audit inquired regarding the possible causes and was explained that it is possible that because the individual receiving the request did not anticipate investing too much time in gathering the requested data, it was very possible that the research was conducted prior to filling the "Research Request" form and that the request had been opened and close thereafter.

Although results from our testing did not identify this incident as a common practice, not creating the "Research Request" form immediately upon receipt of the request directly contradicts with established policies and procedures and is not considered best practices. In addition it undermines the reliability and accuracy of data reported under the department's performance score card.

Recommendation(s)

A "Research Request" form should be filled immediately upon receipt of a public records request. The form can be found in the City's website and can be filed electronically or in hard copy, depending on the requestor's preference. In addition, the Office of the City Clerk could consider providing a refresher training session to ensure that all policies and procedures are fully understood and consistently followed by all applicable personnel.

Management's Response(s)

The City Clerk's Office will inform staff to complete a Research Request Form on every request received by telephone or in person immediately upon receipt and before entering in the log/computer. As the issue raised by this finding is predominantly found in the City Clerk's Office, staff will receive refresher training on the proper procedures to be followed.

4. Finding – *No Citywide policies and procedures are currently implemented and consistently followed by all City Departments with respect to the retention and destruction of public record information.*

The management, retention and/or disposal of municipal public records are predominantly governed by procedures and regulations established by the State through Statutes and Administrative rules. These requirements and regulations can be found on Chapter 119 of the Florida Statutes and on Chapters 1B-11, 1B-24, and 1B-26 of the Florida Administrative Code. Procedures stipulated under these governing rules and regulations require optimal organization and record management practices including how to file and group together documents and records for storage and subsequent destruction upon eligibility.

Results from our inquiries showed that currently there are no citywide policies and procedures to be consistently followed by City Departments. In addition, no evidence regarding annual follow ups and record destructions was available from the majority of the City Departments. This finding represents an area of concern given that one of two possible scenarios could be continuously occurring. On one hand departments and divisions could be destroying records without following state requirements or on the other, best practices for records management are not followed resulting in an excessive accumulation of records eligible for destruction and thus contributing to higher storage costs incurred by the City.

Despite this finding, a review of seven (7) records destructions requests, representing 100% of the requests during our audit period, showed that the City Clerk did follow proper procedures in reviewing them and ensuring that proper signatures, descriptions and approvals were reflected prior to destroying any records and in compliance to state requirements. Record destruction eligibility was also properly verified by the City Clerk Staff.

Recommendation(s)

Citywide Policies and Procedures referencing State requirements and regulations should be created and distributed to each department director for immediate implementation and

consistent following. In addition, the City Clerk could consider organizing a training session with all City department's Records Custodians to ensure their understanding of the requirements and the importance of adhering to them in a continuous basis.

Management's Response(s)

On or about May 2, 2012, the City entered into a Professional Services Agreement with SML, Inc. to develop a comprehensive citywide records retention and management plan. Work on this project commences on June 25, 2012. It is anticipated that this partnership with SML will ensure that departments and divisions only destroy records pursuant to state requirements, and thereby reduce storage costs of both physical and electronic records.

5. Finding – *Departmental records custodians have not been identified and frequently updated by each and every city department and/or division with the City Clerk Office showing poor collaboration and teamwork.*

Identifying and training records custodians in each of the City's departments and/or divisions is an imperative task to ensure proper communication and compliance with State, County, and City regulations and requirements. However, during our audit, Internal Audit learned that accomplishing this task has proven to be a challenging task to City Clerk Staff.

Documented efforts by the City Clerk Staff in obtaining updated names and contact information from all departments regarding their corresponding records custodian showed that only four (4) departments/divisions had responded to inquiries made on May and June of 2008. Responding Departments and/or divisions included the Information Technology Department (I.T.), the Mayor and Commission Office, Police, and the Office of Budget and Performance Improvement (OBPI). No other responses were received.

Recommendation(s)

Identification of all departmental and/or divisional records custodial liaison is an imperative step in order to improve communication between the City Clerk and the Departments with respect to governing regulation and procedures to be followed with respect to the management and disposition of City Records. In addition, it is an essential piece in achieving additional efficiencies and cost reduction, as well as faster responses to public records requests; therefore resulting in an increase customer satisfaction. In order to achieve this, the City Clerk should issue communications to all Department and Division Directors, as well as their corresponding Assistant City Managers (A.C.M.s) for faster resolution. A reminder regarding the importance of keeping the contact information up to date should be stressed, as well as any training requirements, to facilitate a more efficient process and enhanced compliance.

Management's Response(s)

On or about May 2, 2012, the City entered into a Professional Services Agreement with SML, Inc. to develop a comprehensive citywide records retention and management plan. Work on this project commences on June 25, 2012. SML will identify and meet with all departmental and/or division records custodians, to ensure that departments and divisions are following the appropriate records retention schedule, and understand and adhere to the comprehensive citywide records retention scheduled once developed.

During the week of June 25, 2012, SML will meet with the City Clerk, the IT Director and senior management staff to give a brief overview of the project and to answer any questions staff may have. After that initial meeting, SML will meet again with the City Clerk

and IT Director separately to obtain information that is more specific. Thereafter, meetings will be scheduled with the various departments/division as time and opportunities present.

6. Finding – *Efficiencies and initiatives should be considered that could lead to greater efficiencies, faster responses, better services and lower costs regarding records management and public records request processing.*

Areas were identified in which some technological improvement could lead to greater efficiencies, better resource allocations, and cost saving over the long run. These areas or initiatives are as follows:

- a) Overall the City Clerk and City Departments and Divisions should consider moving towards electronic storage of City records and documents instead of renting storage space for boxes upon boxes of documents. Diligent steps should be taken in the transition in order to ensure compliance to State records retention and regulations in general. This initiative could result in cost reductions considering that not only cyber capacity and storage memory is increasingly inexpensive, but records could be more effectively managed without the need to pay retrieval and/or re-storage fees (handling fees). During our audit period alone (October 1, 2009 through July 31, 2011) a total of \$175,885.50 was paid by the City to International Data Depository (IDD) for the storage and management of stored City Records. As further reference, the following table helps to illustrate amounts paid for storage during the last three Fiscal Years:

Fiscal Year	FY 2008	FY 2009	FY 2010	10 Months of FY 2011 <small>(Oct. 1, 2010 - Jul. 31, 2011)</small>	Total
<b>Amounts Paid</b>	\$106,205	\$81,567	\$98,148	\$77,738	<b>\$363,657</b>

- b) The City Clerk should consider the implementation of a more sophisticated tracking system. Currently, once a public records request is received, the request is forwarded through e-mail to the appropriate department for resolution and response. Then the City Clerk is subjected to a number of follow up e-mails and calls to verify whether the request has been responded by the department and on what day and time. For example, during our audit we learned that there are a total of thirty-three (33) pending public records requests with one dating back to May 24, 2011, three (3) dating back to June 14, 20 and 27 respectively, and the rest were more recent in July and August of 2011. Although most of these requests were assigned to be resolved by the appropriate departments, no status on progress or whether the request should have been closed was documented.

Instead, an effective tracking system could log in the request, and assign it as a task through the same system to the identified department's and/or division's records custodial liaison where progress could be tracked automatically through a percentage of completion indicators. Status regarding progress or percentage complete would be the responsibility of the individual (s) involved in the research or gathering of records for the response. Once the request is fully processed and responded, no additional follow ups, either by the City Clerk or Status call by the Department would be necessary. Currently there are systems in the market that could accomplish these tasks in a more effective and efficient manner.

- c) In order to facilitate access to public records, the Office of the City Clerk could consider

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the implementation of Kiosk machines, as a data center for the general public on premises, and at the same time strengthen the research capabilities and public records access to the existing “City Archives – WebLink”, available on the City Clerks website. This way, individuals could access most public information and records by their own more effectively and faster, while resources could be allocated to more complex and larger requests. Applicable charges for number of copies etc. could be assessed prior to processing a print request directly from the kiosk. Furthermore, additional promotional and educational functions regarding these and existing sources of information on the City’s website should be considered. For example, customers could be directed to available sources of information like the City’s website or any other available resource for smaller requests involving commission meeting minutes, or meeting schedules etc. instead of expending research time locating the specific day or time, meeting, or topic.

Recommendation(s)

The City Clerk should research, consider, and/or implement the above suggestions in order to improve current processes and efficiencies. Other feasible alternatives could also be considered.

Management’s Response(s)

On or about May 2, 2012, the City entered into a Professional Services Agreement with SML, Inc. to develop a comprehensive citywide records retention and management plan. Work on this project commences on June 25, 2012.

SML will provide recommendations as to the feasibility and savings, if any, in moving towards electronic storage of City records and documents instead of renting storage space for boxes of documents. It is uncertain at this time, if such an initiative could result in cost reductions, as one of the impetus for retaining SML was to develop an automated method of deleting electronic records, which comply with Florida’s records retention schedule, as electronic storage memory costs for the City continues to increase.

IT, in partnership with the City Clerk’s Office, has development a more sophisticated web based tracking system for public records request, which automates the tracking of pending public records request. After logging the request, the new program assigns it as a task through the same system to the identified department and/or division’s records custodial liaison where progress is tracked automatically. Once the request is fully processed and responded, no additional follow-ups, either by the City Clerk or status call by the department, will be necessary. The City Clerk’s Office has recently commenced using the new system, and is working with IT to correct problems that have been identified.

In order to facilitate access to public records, the Office of the City Clerk will consider the implementation of terminals, as a data center for the public on premises, as part of the FY-2013/2014 budget cycle. Furthermore, additional promotional and educational functions regarding the existing sources of information on the City’s website will be made during the Employee and Leadership academies. Note that customers are currently directed to available sources of information like the City’s website or any other available resource for smaller requests involving commission meeting minutes, or meeting schedules etc.

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## **EXIT CONFERENCE**

An initial exit meeting was held on January 6, 2012 to discuss the audit report and to solicit management responses noted above. Attendees were Robert Parcher, Former City Clerk, Maria Martinez, Assistant City Clerk, James Sutter, Internal Auditor and Fidel Miranda, Auditor. Subsequent, a second meeting was held on May 7<sup>th</sup>, 2012 to discuss the audit report with Rafael, Granado, the new appointed City Clerk and solicit any input regarding Management Responses and previous meeting discussions. Management responses were received shortly thereafter. All were in agreement with the contents of this report.

Audit performed by Fidel Miranda, Auditor

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cc: Dolores M. Mejia, Special Projects Administrator  
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