MANAGING PUBLIC RECORDS COMPLIANCE:

A 2015 SURVEY OF FCCMA MEMBER AGENCIES

NOVEMBER 11, 2015

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Abstract

This report summarizes a recent survey of city and county governments in the State of Florida. In light of recent policy concerns, the survey addressed several key topics associated with the receipt and fulfillment of public records requests, including policies and procedures, employee training, trends in the volume of requests, administrative burden, and the use of emerging technologies to disseminate public information. The survey and analysis was conducted by researchers from the University of South Florida's School of Public Affairs in cooperation with the Florida City and County Management Association (FCCMA). This report includes a brief introduction to Florida's public records laws, along with an accompanying discussion of recent policy concerns; a summary of the survey and its findings; as well as a brief discussion of opportunities for improving public management in the area of public records compliance.

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Introduction

The State of Florida has a long and robust history of open government, boasting some of the nations' oldest and most extensive public records laws[1]. Specifically, Chapter 119 of the Florida Statutes (hereafter referred to as "The Public Records Law") makes it state policy that "all state, county, and municipal records are open for personal inspection and copying by any person"[2]. The law places the burden of responsibility for maintaining and furnishing public records on each individual agency and prescribes specific penalties for non-compliance[3]. Furthermore, a recent amendment to The Public Records Law enacted in 2013 expanded the law's scope to include all private individuals and entities that have been contracted to provide services on behalf of a government agency[4]. Under this amendment, private contractors are required to keep and maintain any records that would normally be required of the public agency if it were providing the service in question, and to furnish them upon request in accordance with the requirements of The Public Records Law.

There is no disagreement that these safeguards on transparency and accountability to the public are essential for effective and democratic governance. However, local governments and private contractors in Florida have faced emerging challenges over recent years with regard to the implementation of The Public Records Law and its provisions. Many contractors and municipalities have become embroiled in costly legal proceedings over technical and obscure violations of the state's Public Records Law. Others have found themselves overwhelmed by an excessive volume of persistent and at times "harassing"[5] requests made by a select few individuals and organizations[6].

For example, over the course of 2014, one public records seeking organization alone filed more than 140 public records related lawsuits in 27 counties[7]. In many cases, the technical violations for which they sued were the result of public records requests made to front-line city employees or initiated through obscure email addresses, which were often misinterpreted as spam[8]. Despite the questionable tactics used to generate these lawsuits, many local governments and private contractors have opted to pay lump sum settlements out of court in order to avoid the risk of even higher litigation costs. In several instances the lawsuits were brought against nonprofit organizations that had been contracted to provide government

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[1] Petersen et al. (2009);

[2] Florida Statutes, Chapter 119

[3] Florida Statutes, Chapter 119.10

[4] Florida Statutes, Chapter 119.0701

[5] Florida League of Cities (2015)

[6] Korten and Aaronson (2014); Rizzardi (2015)

[7] Korten and Aaronson (2014)

[8] Brassfield (2015)

services and were seemingly unfamiliar with their legal obligations under the 2013 amendment to The Public Records Law. Among the list of targeted agencies were organizations such as River of Life (a small social services agency located in Miami), a Catholic charity in Sarasota County, and ChildNet (a nonprofit organization located in Broward County, dedicated to the protection of abused and neglected children)[9].

In other instances, cities and counties have been overwhelmed by an excessive volume of public records requests, which has adversely impacted their ability to carry out essential government functions. For example, one small coastal town, with a population of less than 1,000 people[10], received over 1,100 public records requests in the span of a year, with over 900 coming from only two individuals/organizations[11]. In another case, a small city in Broward County received more than 600 public records requests from the same individual over the course of one year. The result was a significant expenditure of government resources and manpower, including extensive investments of time on the part of the city-manager, city-attorney, and city-clerk[12].

While The Public Records Law guarantees open access to government records for all individuals, these recent activities appear to exploit the letter of the law while violating its spirit, namely the protection of citizen' interests and the successful, transparent functioning of local governments. If left unchecked, these trends pose significant concerns for local agencies, their contracted service providers, and the citizens that they represent. For example:

- To date, legal proceedings and out of court settlements are estimated to have cost millions in taxpayer dollars[13], which can translate into diminished service provision and/or increases in tax rates for local citizens.

- The requirement to fulfill excessive public records requests in a timely manner can overburden local agencies, thereby slowing down other essential functions and increasing the cost of doing business for local governments. In some cases, overburdened cities have been required to hire additional personnel for the sole purpose of fulfilling public records requests[14].

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[9] Korten and Aaronson (2014)
[10] City of Gulf Stream, FL: http://www.gulf-stream.org/
[11] Rizzardi (2015)
[12] Florida League of Cities (2015)
[13] Vandler Velde (2013)
[14] Rizzardi (2015)

- The cost and quality of government services may also be impacted if these trends deter would-be service providers from engaging in government contracts or discourage capable professionals from seeking careers in the public sector[15].

While these practices have garnered statewide attention over recent years, amendments designed to address potential abuses of The Public Records Law were not enacted during the most recent legislative session[16]. For local governments and their contracted service providers, this means that the threat of costly lawsuits and workflow disruptions still remains very real, emphasizing the need for continued vigilance and enhanced awareness.

To that end, this report summarizes the results of a recent survey conducted by researchers at the University of South Florida's School of Public Affairs on behalf of the Florida City and County Management Association (FCCMA). The survey asked for feedback from FCCMA's member agencies on a number of issues, particularly:

1. Current trends in the volume of public records requests being received;
2. The impact of current request volumes on workflow and administrative functions;
3. Agency-level policies and procedures for handling public record requests;
4. Employee training in the area of public records policies and procedures;
5. The use of emerging technologies to disseminate public records.

The purpose of this report is to provide FCCMA and its member agencies with specific data to improve their understanding of recent trends across the state, and to identify areas of opportunity for the refinement and improvement of procedures, training, and technology usage. After a brief explanation of methodology, the report summarizes survey responses in each of the primary areas identified above, followed by some brief analysis and concluding recommendations.

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[15] Rizzardi (2015)
[16] See Florida SB 224

Survey Methodology

In collaboration with FCCMA, the USF research team conducted a web-based survey of FCCMA member agencies, using a *tailored design survey methodology*[17], including multiple contacts (i.e. pre-notice, survey delivery, and personalized follow-ups) in order to increase response rates. The sample included all city and county governments in the State of Florida with either a manager or assistant manager currently registered as an active FCCMA member. The survey was delivered to 26 counties and 180 cities, for a total sample size of 206. The survey instructions and verification of responses assured that only one response was recorded for each agency. Completed responses were received from 105 agencies, for a total response rate of 51%. The completed responses included 11 county agencies (42% response rate) and 94 city/town agencies (52% response rate). Due to the small number of counties included in the final responses, city-county comparisons are excluded from the analysis below. The figures included below reflect the number of valid responses to each question and do not include cases with missing data. A copy of the full survey instrument is available upon request from the authors.

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[17] Dillman (2007)

Survey Results

1. Volume and Burden

Survey respondents were asked a number of questions about their current volume of public records requests. Responses to these questions are discussed below. The first question asked participants to describe their agency's current volume of requests (Figure 1). The responses were evenly distributed, with most agencies reporting that the volume was "moderate" (41%), and nearly one-third (31%) reporting a "high" or "very high" volume of requests.

Figure 1: Current Volume of Public Record Requests (n=104)

Very High	High	Moderate	Low	Very Low
10%	21%	41%	21%	7%
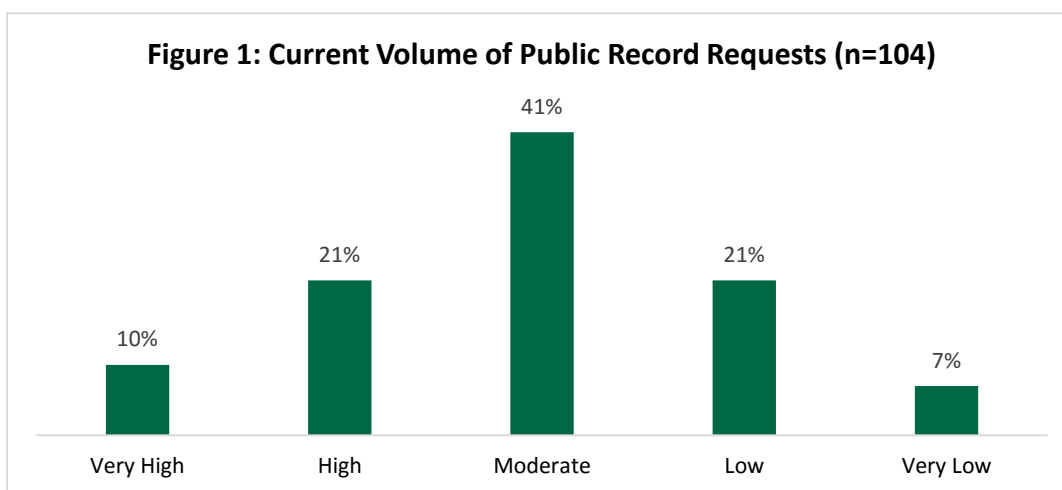
Source: 2015 FCCMA Public Records Survey

Participants were also asked how their current volume of public records requests impacts organizational capacity and workflow. The responses are provided in Table 1 below. As the data show, most respondents indicated that the current volume of public records requests does not negatively impact workflow or exceed their organizational capacity to fulfill them. However, one-third (33%) of respondents did indicate some level of agreement that the current volume is negatively impacting their employees' ability to fulfill other job functions.

| Table 1: Organizational Capacity and Workflow					
The number of public record requests that we receive…	**Strongly Agree**	**Agree**	**Neither Agree nor Disagree**	**Disagree**	**Strongly Disagree**
Negatively impacts our employees' ability to fulfill other job functions (n=103)	14%	19%	31%	32%	4%
Is larger than our capacity to fulfill them in a timely manner (n=102)	6%	8%	28%	44%	14%
Has been increasing over recent years (n=104)	30%	40%	20%	9%	1%

Source: 2015 FCCMA Public Records Survey

While most of the responding agencies indicated that handling the current volume of public records requests is not a major concern given their organizational capacity, it is worth reemphasizing that one-third of respondents (33%) indicated some level of agreement that the current volume of requests does negatively impact their employees' ability to fulfill other job functions. These numbers are consistent with the targeted nature of the recent trends discussed above, but they may also raise significant concerns for other agencies going forward. As shown in Table 1 (above), 70% of responding agencies indicated that the volume of requests has been increasing over recent years. If these trends continue, it is possible that an even greater number of local agencies may begin to feel the weight of administrative burden associated with excessive public records requests.
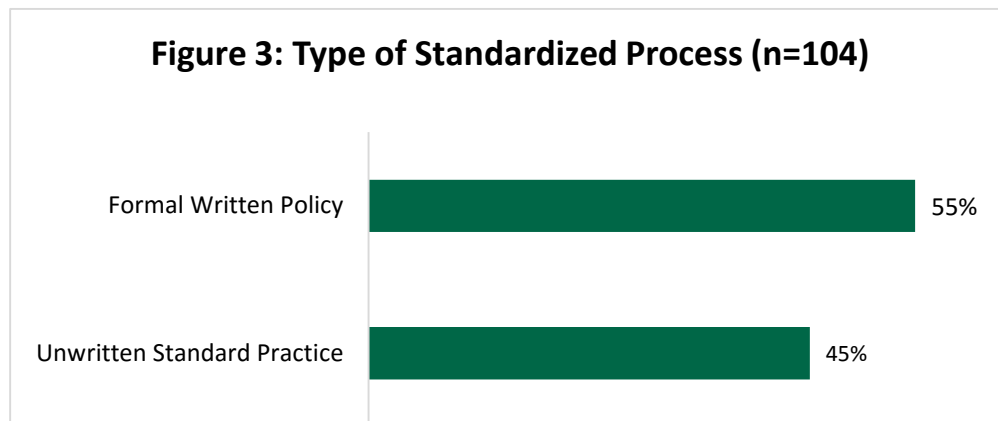
2. Policies and Procedures

The next section of the survey addressed agency-level policies and procedures for handling public records requests. Respondents were asked whether their agency had a standardized process in place for handling requests, as well as what form that process took. In total, 96% of respondents indicated that their city/county had a "standardized process" in place (Figure 2).

Figure 2: Standardized Processes for Handling Public Records Requests (n=104)

4%

■ Yes
■ No

96%
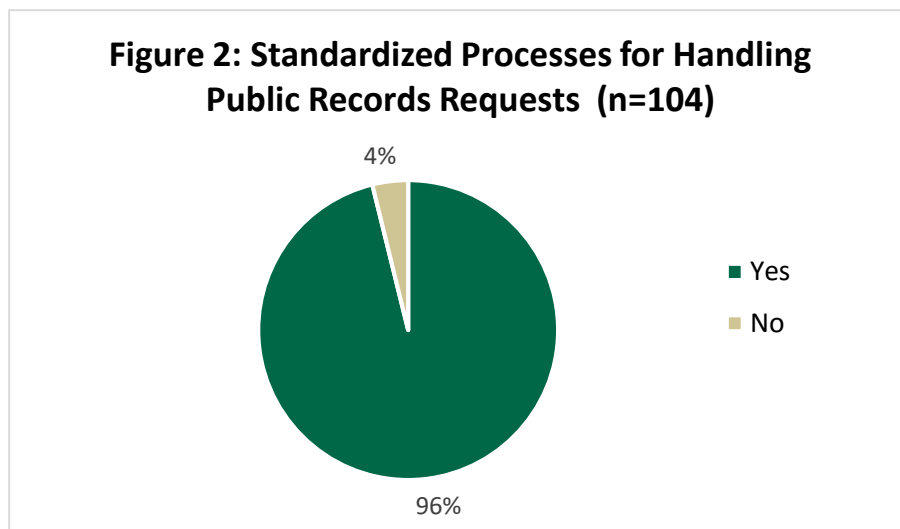
Source: 2015 FCCMA Public Records Survey

However, as Figure 3 shows below, only 55% of the responding cities and counties have codified their process as a "formal written policy" at this point in time. Although The Public Records Law requires agencies to maintain open public records, it does not mandate that agencies have specific, organizational-level policies and procedures for carrying out this responsibility. Given the recent trends discussed above, wherein many Florida municipalities have been sued for improper handling of requests, a greater emphasis on codifying standardized processes may help protect cities and counties from unnecessary legal action. This may also provide clearer guidance for employees in determining how to respond when presented with a public records request, as well as what items are exempt from The Public Records Law, including anything regarding "competitive solicitation," or an open bid.

Figure 3: Type of Standardized Process (n=104)

Category	Percent
Formal Written Policy	55%
Unwritten Standard Practice	45%

Source: 2015 FCCMA Public Records Survey

When asked for a more detailed description of their policies and procedures, the vast majority of agencies (76%) indicated that responses are either directly handled or coordinated by a member of the city/county clerk's office. This is not surprising, as the city/county clerk acts as the primary custodian of records for many Florida municipalities. The results did not identify any statistically significant relationships between the type of standardized process and reported challenges in workflow and capacity, though it should be noted that these results may be attenuated by necessarily small sample sizes in many instances.

Table 2: Common Practices for Handling Public Records Requests		
Which of the following best describes your city/county's current process for handling public records requests…	**Count**	**Percent**
By the city/county clerk's (or equivalent) office	41	39%
By one person, not a member of the city/county clerk's office	3	3%
By the relevant department(s)	5	5%
By the relevant department(s) with coordination by the city/county clerks' office	38	37%
By the relevant department(s) with coordination by one person, not a member of the city/county clerks' office	7	7%
Other	10	10%

Source: 2015 FCCMA Public Records Survey

3. Training

Knowledge of The Public Records Law as well as of agency-level implementation procedures is essential for Florida's public employees. This reality has been underscored by recent lawsuits, many of which resulted from improperly handled requests that were originally made to front-line employees. Given this concern, the survey examined prevailing practices for training employees in the handling and fulfillment of public records requests. These questions were particularly relevant to recent legislative efforts, as proposed amendments to The Public Records Law, which failed to pass in the most recent legislative session, would have required more comprehensive training of agency employees in the handling and fulfilment of public records requests. While these proposed changes have not yet been reintroduced by the legislature, it is still possible that similar provisions will arise in future legislation.

Given the importance of this issue, respondents were asked about the extent to which employees receive training related to the handling and fulfillment of public records requests, as well as which methods of training most frequently are employed. As shown in Figure 4 below, over half of the survey respondents (56%) indicated that all employees receive some form of training on public records requests, while 44% indicated that not all employees are trained.

Figure 4: Do All Employees Receive Public Records Training (n=102)

Yes	56%
No	44%
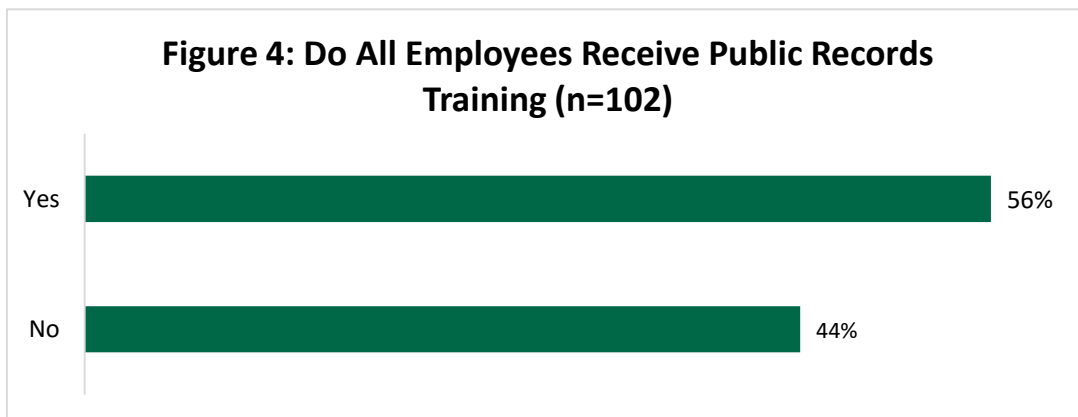
Source: 2015 FCCMA Public Records Survey

Respondents were also asked to indicate the ways in which employees are made aware of the process for handling public records requests. As shown in Table 3 below, the most common form of training reported by survey respondents was informal coaching, with 51% of respondents indicating that their agency employs this type of training. Informal coaching is considered to be casual, conversational, impromptu guidance given one-on-one, or in a group. A significant number (40%) indicated that employees receive formal, in person training. Formal

training is considered to be an organized, structured, and documented process used to train employees on the proper way to handle public records requests. According to the survey results, the least commonly utilized method for training employees is computer based training, with only 5% of survey respondents indicating that they utilize this technique.

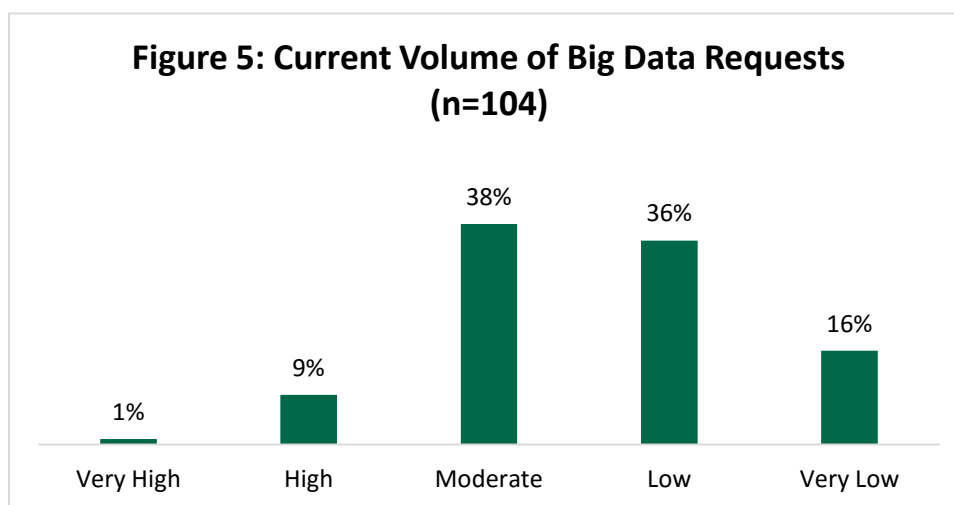| Table 3: Methods of Training		
How are employees made aware of the process for handling public record requests…	Count	Percent*
Formal, in-person training	42	40%
Informal coaching	54	51%
Computer based training	5	5%
Provided with written or electronic copies of the process	36	34%
The process is posted publically in municipal workplaces	6	6%
Percentages to do not add up to 100% because many agencies utilize multiple forms of training, and respondents were able to select all options that apply.		

Source: 2015 FCCMA Public Records Survey

In its current form, The Public Records Law does not require all public employees to receive training on agency-specific procedures for processing and handling public records requests or on the general statute itself. Indeed, specific comments provided by survey respondents indicated that in many instances only designated public records custodians receive significant training. However, it should be noted that many of the public records requests resulting in legal action against government agencies over recent years were targeted at front-line employees. This suggests that enhanced employee training may be a critical step toward protecting agencies from costly legal actions, especially as the nature of public records requests becomes more complex. While informal coaching is the most commonly utilized method of training among respondents, agencies may want to consider a more formal approach to training for all employees in order to help protect themselves from legal exposure due to unintended violations of The Public Records Law.

4. Big Data

Another trend of significant concern among local agencies has been increases in requests for "Big Data". In the context of this survey, Big Data was defined as *"requests for large amounts of public information that may come from multiple sources, files, etc., and may require reorganization and manipulation in order to be analyzed"*. Big Data allows for wider critical reflection and greater examination of emerging trends, but for local agencies these data requests often require considerable time and effort on the part of city employees, raising potential concerns over administrative burden and workflow. Some examples of Big Data requests include requests for large amounts of utility usage data by address or requests for detailed budgetary data over a multi-year period.

In order to measure the prevalence of these requests, as well as policies and procedures for handling them, respondents were asked several questions about the volume and processing of Big Data requests in their agencies. As shown in Figure 5, most respondents indicate that the current volume of Big Data requests ranges from "moderate" to "very low", while only 10% of respondents indicate that the volume is either "high" or "very high".

Figure 5: Current Volume of Big Data Requests (n=104)

Category	Percentage
Very High	1%
High	9%
Moderate	38%
Low	36%
Very Low	16%

Source: 2015 FCCMA Public Records Survey

As with general public records requests, respondents were asked to indicate how the current volume of Big Data requests impacts organizational capacity and workflow (Table 4). Despite the majority of respondents indicating that current levels of Big Data requests are moderate to low, 42% indicated that the current volume negatively impacts their employees' ability to fulfill other job functions. This gives an idea of how time-consuming and labor intensive these requests can be, even when their volume is low.

Table 4: Impact of Big Data Requests on Organizational Capacity and Workflow					
The number of big data requests that we receive…	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
Negatively impacts our employee's ability to fulfill other job functions (n=103)	12%	30%	30%	24%	4%
Is larger than our capacity to fulfill them in a timely manner (n=103)	6%	14%	36%	35%	10%

Source: 2015 FCCMA Public Records Survey

When asked about the volume of Big Data requests over recent years, more than half of respondents (52%) indicated that they have been "increasing" or "significantly increasing" (Figure 6). From these results, it can be summarized that while many agencies are doing an adequate job of adapting to increases in Big Data requests, others are finding it difficult to fulfill these requests in a timely and efficient manner. As the volume of these requests continues to rise, these challenges may become more widespread. The "Open Data" options discussed in the next section may provide local agencies with one means of alleviating these administrative burdens.

Figure 6: Trends in Big Data Requests Over Recent Years (n=102)

| Significantly Increasing	Increasing	Neither Increasing nor Decreasing	Decreasing	Significantly Decreasing
10%	42%	47%	1%	0%
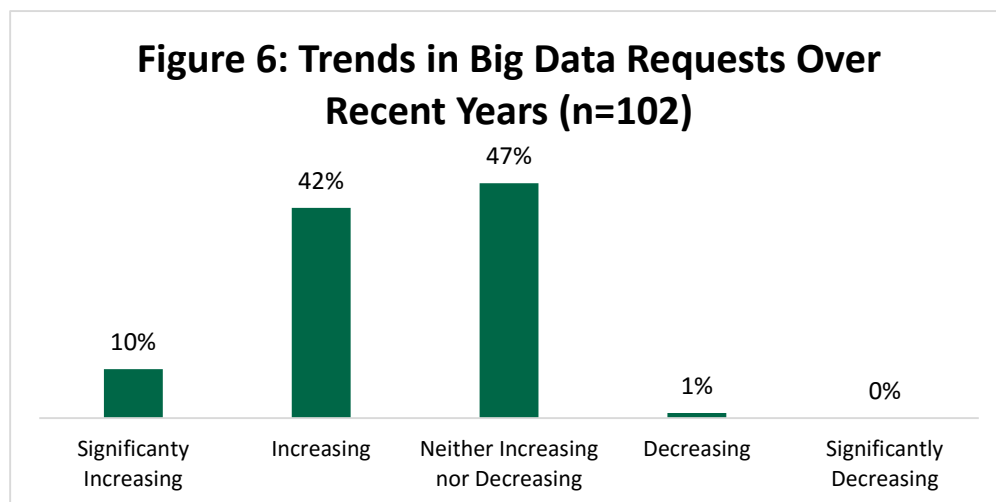
Source: 2015 FCCMA Public Records Survey

5. Open Data

One way that Florida's local governments can attempt to expediently fulfill public record requests while eliminating administrative burden and workflow disruptions is through the use of "Open Data" portals. In the context of this survey, Open Data refers to *"data and information that are made proactively available through the agency's webpage or other easily accessible application, and which can be easily searched, retrieved, downloaded, and sorted for analysis"*. By making commonly requested data proactively available in online formats, public administrators can quickly fulfil electronic requests for information by directing requestors to the relevant information online. This form of data availability also promotes greater transparency among public agencies.

In the final section of the survey, respondents were asked whether their agency is currently providing public information through Open Data applications, as well as what forms of data they currently provide through these means. Figure 7 shows that a large majority of respondents (77%) are making use of Open Data platforms to at least some degree.

Figure 7: Agencies Currently Providing Proactively Available Open Data (n=102)

Yes — 77%

No — 23%
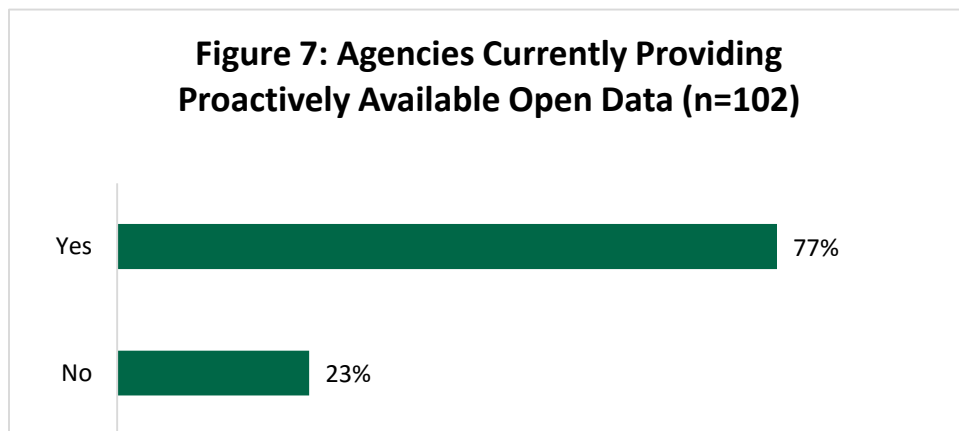
Source: 2015 FCCMA Public Records Survey

As Table 5 shows, the most common form of Open Data is budgetary summaries with approximately 73% of respondents stating they make these readily available to the public online. However, less than a one-third of respondents reported providing any other type of information in an Open Data format, suggesting that there are significant areas for expanding the use of Open Data among Florida municipalities.

Table 5: Commonly Provided Open Data		
Which forms of data does your city/county currently provide in an open data format?	**Count**	**Percentage***
Budgetary Summaries	77	73%
Detailed Expenditure Data	32	30%
Educational Data	26	25%
Policing Data	24	23%
Utility Usage	9	9%
Other	29	28%
*Percentages to do not total 100% because respondents were able to select all options that apply.		

Source: 2015 FCCMA Public Records Survey

As shown in Figure 8 below, the majority of Open Data applications are currently managed by either the City/County Clerk's office (35%) or the Information Technology Department (28%). The use of external service providers to manage Open Data applications is rare among Florida's local governments, with only 1% of agencies indicating the use of an outside contractor for these purposes.

Figure 8: Primary Responsibility for Managing Open Data Portals (n=79)

Category	Percentage
City/County Clerk's Office	35%
Information Technology	28%
Each Department Independently	22%
Outside Contractor	1%
Other	14%
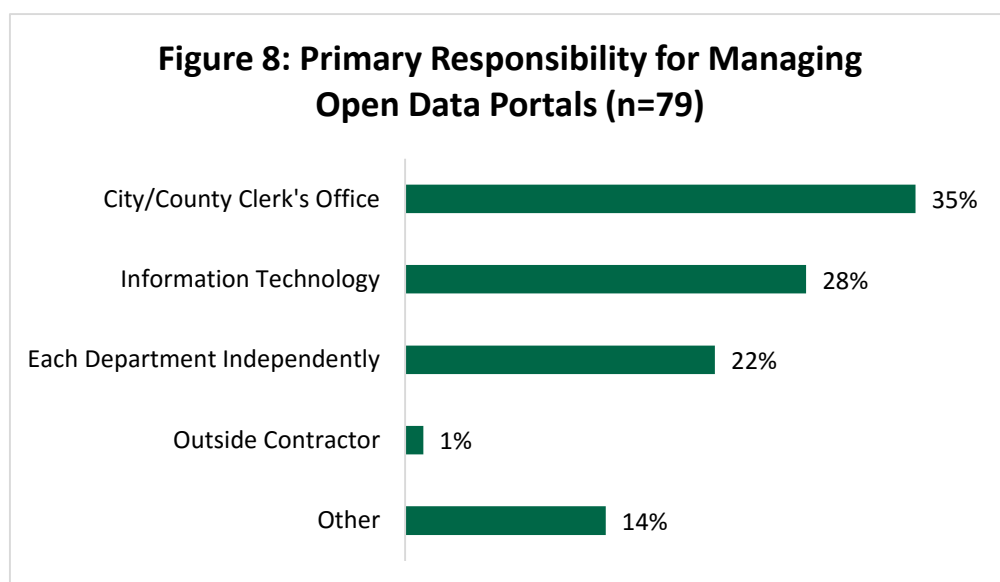
Source: 2015 FCCMA Public Records Survey

Analysis and Conclusions

Compliance with provisions of The Public Records Law and issues of enforcement generated several recent policy concerns for local Florida municipalities. This study was conducted in order to determine current trends in the volume of public records requests, how they impact organizational management and workflow, what policies and procedures are currently in place for handling public records requests, how employees are trained, and the extent to which local governments are utilizing technology to proactively disseminate public information. The results identify several key areas where public agencies may remain vulnerable to threats of workflow disruption or even costly litigation due to excessive public records requests and technical non-compliance with The Public Records Law.

- With regard to volume and organizational capacity, nearly one-third of respondents (31%) indicated some level of workflow disruption due to the current volume of public records requests in general, and a slightly larger number (42%) indicated the same with regard to Big Data requests in particular.

- A large majority of respondents (70%) indicated that the volume of public records requests they receive has been increasing over recent years, with a small majority (52%) indicating the same in regard to Big Data requests.

- Collectively, the results suggest that requests for public information are increasing in general, and that complex requests for Big Data comprise a significant portion of these queries.

Given these findings, the management of public records compliance should be an increasingly important concern for local governments in Florida. While many agencies did not report current workflow disruptions, these trends suggest that now may be the time to reexamine organizational approaches to managing public records compliance in order to mitigate the impact of further increases in the volume and complexity of public records requests. Three particular areas where public administrators can seek to improve the management of public records compliance is through the codification of formal, agency-level policies and procedures, through enhanced training of employees in public records compliance, and through expanded use of Open Data tools to disseminate public information and fulfill public records requests.

- While a large majority of survey respondents (96%) indicated that their agency did have a standardized process in place for handling public records requests, nearly half (45%) indicated that the procedure was an unwritten, standard practice, and not formally codified in writing.

Working to develop and disseminate formally codified policies at the agency-level may help to provide clarity and guidance for employees with regard to the proper handling of public records requests. Structured guidelines may help to reduce reflexive, individual responses to requests, thereby limiting the threat of potential lawsuits for non-compliance. Formal guidelines may also help to promote greater understanding for the agency's contracted service providers regarding their responsibilities under The Public Records Law.

- In the area of training, 44% of respondents indicated that not all employees receive training in public records compliance.

- The most common form of training utilized among all respondents was "informal coaching" (51%). Less than half of respondents indicated the use of formal, in-person training (40%), and only 5% reported the use of computer-based training modules.

While many agencies reported that only designated records custodians received training on public records compliance, many of the lawsuits generated over technical violations of The Public Records Law in recent years have resulted from requests made directly to front-line employees. Given these trends, we recommend a more comprehensive approach to employee training, one which would promote a culture of understanding throughout the agency/organization with regard to The Public Records Law in general as well as specific, agency-level policies and procedures. In particular we recommend an increased use of computer-based training modules. While the costs and time associated with training all employees in public records compliance can be prohibitive, research has demonstrated that online instruction can help to alleviate the workload associated with training and mitigate the costs of providing instruction to all employees[18].

- A Majority of respondents (77%) reported some form of online data dissemination, though the use of Open Data applications appears to be limited in scope.

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[18] Kimball (2011)

- The only type of data made available by a majority of respondents was budgetary summaries (73%). Less than one-third of responding agencies reported providing any other specific form of data online.

As the volume and complexity of public records requests increases, Open Data applications represent a powerful opportunity for local governments to provide public information in a comprehensive and efficient manner. In the long-run, an increased use of Open Data platforms could reduce the administrative burden associated with fulfilling public records requests, protect local agencies from costly litigation, and provide greater value for citizens and community stakeholders through easier access to public information.

In conclusion, based on these findings we believe that a renewed focus on public records compliance is both warranted and essential in order for local agencies to mitigate organizational risks and ensure optimal governance for the citizens that they serve. We recommend an increased focus on codifying agency-level policies and procedures, a more formal and comprehensive approach to training employees in public records compliance, and an expanded use of Open Data technologies to streamline the fulfillment of public records requests while mitigating administrative burdens. These steps toward improved public management will not only help to improve government workflow, but may also help to protect local agencies from unnecessary legal costs going forward.

<u>Recommendations</u>

General recommendations for improving public management based on the results of this study include the following:

1. Develop a renewed focus on public records compliance in order to ensure that organizational culture and implementation procedures account for recent changes and trends in the policy environment.

2. Establish clear, agency-level guidelines and procedures for implementation of The Public Records Law in order to prevent ambiguity and eliminate non-compliant responses to public records requests.

3. Provide updated training for all public employees, with a focus on proper handling and fulfillment of public records requests.

4. Develop a greater reliance on Open Data platforms in order to optimize the use of technological and web-based options for disseminating public information.

5. Charge reasonable fees, as defined by The Public Records Law, particularly in the case of large scale and/or multiple requests.

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