



OFFICE OF THE COUNTY COUNSEL

MEMORANDUM

DATE: February 2, 2023
TO: Mendocino County Board of Supervisors
FROM: Christian M. Curtis, County Counsel *CMC*
SUBJECT: PRA Fee Update

This Board previously directed staff to report back at six (6) and twelve (12) months on the implementation of Ordinance No. 4507 regarding fees for Public Records Act Requests. As it has now been six months since the ordinance went into effect, some preliminary information is now available. Data, however, is still limited at this time because of the relatively short amount of time that the ordinance has been in place, and the amount of time needed to complete requests seeking high volumes of responsive materials.

I. BACKGROUND

Under the California Public Records Act (“CPRA”), the County of Mendocino is required to provide copies of public records to any person who requests them and to provide certain assistance in locating and identifying those records.¹ The CPRA, however, contains no mechanism for funding this mandate. In 2014, the California Constitution was amended to remove state funding for local government transparency mandates, including the CPRA. The Legislative Analysts Office opined at the time that this would shift costs, “**potentially in the tens of millions of dollars annually . . .**” from the state to local governments.² As a result, the CPRA imposes on local governments a potentially limitless fiscal obligation, outside of regular budgetary controls, with no tool by which to raise revenues.³



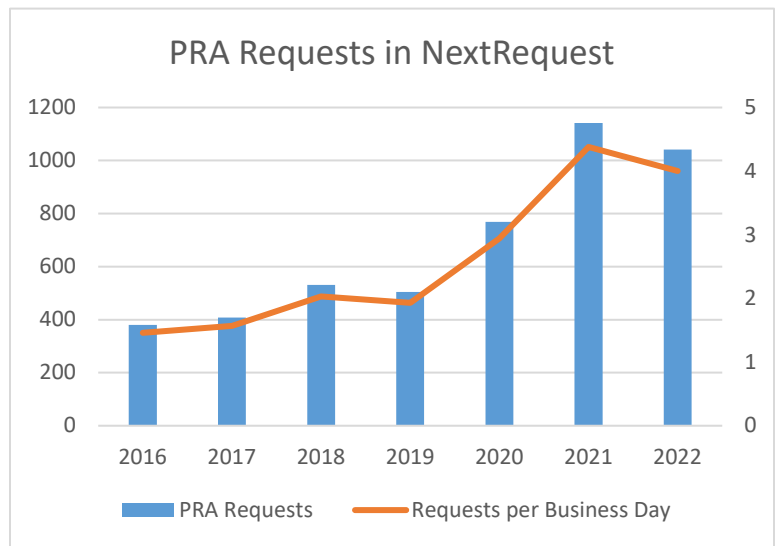
Figure 1 – Mendocino CPRA Requests by Location (Continental USA Only)

¹ See former Gov. Code §§ 6250 et seq.; Gov. Code § 6253.1; now Gov. Code §§ 7920.000 et seq.

² See <https://lao.ca.gov/ballot/2014/prop-42-062014.aspx>. (bolding in the original)

³ The CPRA was originally adopted in 1968, before Prop. 13 constrained the ability of local governments to generate revenue through taxes.

Mendocino, like many other counties, has seen this financial burden rise dramatically in recent years. In the first four (4) years of the NextRequest portal, Mendocino received an average of 1.5 to 2 CPRA requests per business day. In 2021 and 2022, that number has increased to 4.4 and 4 respectively. Although actual costs have not been historically tracked, staff reports that this doubling of requests has multiplied an already significant burden. At the same time, the scope and complexity of requests appears to have also increased, with a substantial number of requesters making voluminous or difficult requests. This has been particularly pronounced in requests for email or text messages, in which a large amount of manual searching, review or retrieval is required.



In 2022, the Mendocino County Board of Supervisors enacted Ordinance No. 4507 charging fees for certain public records act requests. Counties, and only counties, are statutorily authorized to implement fees for public records up to the actual cost of the service provided.⁴ Ordinance No. 4507 created such a fee structure, charging for staff time spent locating and retrieving documents as well as time needed for redacting reasonably segregable exempt information. These roughly correlate to the same two categories of fees charged under the Federal Freedom of Information Act (“FOIA”). Fees were structured to be near but below the actual cost of providing records. The ordinance imposed no fees for the first hour of time each month, no fees for retrieval of readily identifiable records, and no fees for requests made pursuant to other statutory authority (e.g., union requests under the MMBA, Grand Jury requests, etc.).

The Board also directed staff to prepare a program to subsidize CPRA request for media requesters, in order to reduce adverse impacts to governmental transparency. The County Executive Office, working with County Counsel, developed a plan to provide approximately two hundred thousand dollars (\$200,000.00) worth of staff time per year to respond to CPRA requests from media requesters. The program uses the same definition of “media” the FOIA uses for media-related fee waivers.

II. DISCUSSION

The Board directed staff to report back a six (6) and twelve (12) months with updates on the implementation of Ordinance No. 4507. The Board is invited to review the attached memorandum from the Executive Office dated October 5, 2022 outlining the current fee process to the departments. Data on the effect of the ordinance at this time is still somewhat limited, as the ordinance did not go into effect until August 2022 and high volume requests (which the ordinance is directed to) often take several months before full resolution. At this time, however, early indications are that the ordinance may be having some effect on the amount of County burden

⁴ Gov. Code § 54985; 85 Ops. Cal. Atty. Gen. 225.

experienced for high volume requests, while still allowing a substantial amount of public records to be released.

From the ordinance's effective date in August of 2022 to December 31 of that year, Mendocino County received approximately 328 CPRA requests in the Next Request portal, for an average of 3.5 requests per business day. Although substantially higher than the rate of requests in 2016 through 2020, this 3.5 rate was lower than the 4.5 requests per business day experienced for the first part of 2022. This suggests the possibility that the fee ordinance is having a modest deterrent effect on requests, but the available data is too small to draw reliable inferences at this time.

County Counsel has reached out to the departments for information on any fees charged during this same time period. Of the 328 requests made during this time, five (5) received formal fee estimate letters. This number excludes any high-volume requests that were narrowed by the requester after initial discussions with County staff. A couple of these requests came from media requesters shortly after implementation of the fee ordinance and were unusually broad for those requesters. This suggests the possibility that the requests might have been crafted, in part, to test the operation of the new fee ordinance. No fees were collected, but media requesters were informed of the ability to obtain records without charge.

Impact to County resources is still difficult to quantify at this time. There are still twelve (12) active requests from before the ordinance's effective date which County staff are responding to. Another ninety-one (91) from this time period are in the "waiting for requester" status, indicating that they have likely been abandoned. Nevertheless, some of the preliminary results suggest that the ordinance is effective in mitigating costs related to abusive and commercial requests. It is expected that additional information will provide a clearer picture in another six (6) months.

CMC/jc