

## Sunshine Laws and StaRS Frequently Asked Questions

These questions are organized with the public office FAQs from Bulletin 2019-003 as Q&A 1-7 and the remainder of the Q&A pertaining to auditor questions.

### Public Office FAQs

#### **Q1: How do I register for online Sunshine Laws training?**

A1: Use either of the following links to register for online training:  
<https://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws/Online-Sunshine-Laws-Training> or  
<https://www.ohioauditor.gov/trainings/publicrecords.html>

#### **Q2: Do I need to participate in the StaRS initiative?**

A2: Public offices are required to be compliant with all applicable Sunshine laws. However, a public office is not required to meet the best practices portion that will recognize achievements in open government beyond what the law requires. However, the highest number of stars are awarded based on compliance with the mandatory portion of the rating system and the discretionary portion of the rating system.

#### **Q3: I am a county prosecutor; will my StaRS rating be for only my office or the entire county?**

A3: The StaRS rating will be for each public entity (i.e., city, county, etc.). Ratings will not be provided for separate elected offices. Testing of separate elected offices will affect the overall StaRS rating for the public entity.

#### **Q4: Will I be penalized for not having an online presence?**

A4: Because it is a suggested best practice, having an online presence is an opportunity to earn more stars. But because it is not statutorily required, if your entity *does not* have an online presence, it will not receive an audit comment.

#### **Q5: I am a county auditor fulfilling a request for a copy of a map. I am providing a copy at the time the request is made and I am not making any redactions. Am I required to log this request and keep a copy?**

A5: Maintaining a log of public record requests is not required under the law. However, if the public office would like to be awarded an additional star for complying with a best practice, the public office must log the request and, if a copy of the record is provided in writing (i.e., by mail, email, or fax), the public office should retain a copy of the response sent to the requester.

#### **Q6: I am a treasurer for a very large school district. Do the Auditor's recommended best practices require that my school hire an additional employee to handle all public records requests and maintain the log?**

A6: No, the best practices recommended by the Auditor do not require the hiring of an additional employee to handle public records requests and to maintain a log of public records requests. The Public Records Act requires public offices to designate a records custodian or manager to be responsible for maintaining public records; however, depending on the size of the public office and how its records are maintained, it may make sense for a public office to permit employees other than the records custodian

to gather records responsive to a request and to respond to requests each public office handles its responsibilities under the Act a little bit differently. Some entities do employ a separate public records officer to coordinate and respond to all public records requests. Other entities have several employees, often one in each department/division, that respond to public records requests in addition to their other job duties. How to use staff and resources is a management decision to be made by each entity. If the school district maintains a log of public records requests, the board of education or the district's records custodian may want to assign a point of contact in each building to handle public records requests and maintain a method of tracking requests.

**Q7: I run a city building department. Do I need to log requests for applications for a permit and information submitted as part of that application? Do I need to log when I issue a permit?**

A7: No, the recommendation for a log in AOS Technical Bulletin 2019-003 is to log requests made under the Public Records Law to inspect or to receive copies of public records as those requests are made to the office and responded by the office. Issuing original permits as part of the performance of the official duties of a city building department does not trigger the Public Records Law's requirements to permit inspection of or to make copies of public records.

## **Auditor FAQs**

**Q8: I am testing a county (city, village, township, etc.) and as required we are also testing separate departments, agencies, elected officials, and oversight boards with separate public records policies/practices within the county for compliance. There were no issues with compliance for the county commissioners, however one of the other departments, agencies, elected officials, or oversight boards within the county was not in compliance with at least one of the sunshine laws tested. How does this affect our StaRS testing?**

A8: If one of the separate departments, agencies, elected officials, or oversight boards in the county is not compliant, then the county, etc., as a whole would be considered not compliant. Therefore, StaRS best practices will not be tested for the entity or any of the separate departments, agencies, elected officials, or oversight boards being tested for compliance. When writing up the non-compliance citation, it will be important to identify which department, agency, elected official, or oversight board was not compliant with the sunshine laws.

**Q9: Compliance procedure 2 requires auditors to determine whether public record requests were fulfilled within a "reasonable" period of time. What should auditors consider "reasonable"?**

A9: The legal standard for determining whether response time was reasonable is dependent on a number of factors unique to the particular request, including but not limited to the totality of any of the following: the need to obtain clarification of the request; the time it takes to retrieve the records based on the volume of records or where they are retained; the time to conduct a review of the records for permissible/necessary redactions (including the time to consult with legal counsel); the time to make copies or provide the records in the medium selected by the requester; and the time to deliver the copies or await payment for copies. Auditors should consult with their AOS regional assistant legal counsel (IPAs contact the Regional Chief Auditor) to determine whether requests were fulfilled within a reasonable time.

**Q10: StaRS best practice 1 is the consideration of a public office's method to track public record requests. The procedure asks the auditor to determine whether the public office tracks requests and what method is used by selecting a number of requests throughout the year. What if the public office we are testing had no public requests in the period under audit; do we still evaluate whether the best practice was implemented?**

A10: Yes. We would consider the best practice even though there were no requests. If the client has established a tracking method, we should determine whether the method satisfies the requirements of the best practice. If the method does satisfy the requirements of the best practice, then auditors should consider the best practice as met.

**Q11: StaRS best practice 3 has the auditor determine whether the public office provides an acknowledgment to the requestor, when the request is received, that is consistent with the manner in which it was made. To make this determination, auditors are asked to select a number of requests throughout the year for evidence the acknowledgment was provided. What if the public office we are testing had no public requests in the period under audit; do we still evaluate whether the best practice was implemented?**

A.11: See the answer in Q&A 10 above, as the same reasoning would apply.

**Q12: StaRS best practice 3 has the auditor determine whether the public office provides an acknowledgment to the requestor, when the request is received, within a reasonable period of time. To make this determination, the auditor is asked to select a number of requests throughout the year to determine whether the acknowledgment was provided within a reasonable period of time. What should the auditor consider a reasonable period of time to provide the acknowledgment?**

A.12: If the acknowledgment was sent more than 5 business days after receiving the request, Auditors should inquire with the public office about the reason for the delay. If in the judgment of the auditor that reason makes sense, then the time is reasonable. However, if the public office has a policy requiring acknowledgment of the request within a certain period, absent extenuating circumstances, acknowledging receipt outside of that time frame is unreasonable.