James
Crosbie
Myers
Gray
Blues
Beard
Henson
Feigel
Lawless
Martin

INTER-GOVERNMENTAL COMMITTEE

November 9, 2010
1:00 P.M.

AGENDA

1. **State Auditor Procurement Fraud Investigation Recommendations** - Gorton (1-25)

2. **Open Standards/Open Source Data Policies** – Martin (26-35)

3. **Update on Committee Items** (36-37)

"Inter-Governmental Committee, to which should be referred matters relating to wages and classification, personnel, government organization, employee relations, government buildings and property maintenance."

Council Rules & Procedures, Section 2.102(2)

CRIT LUALLEN
AUDITOR OF PUBLIC ACCOUNTS

October 4, 2010

The Honorable Jim Newberry, Mayor
Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507

RE: Examination of Allegations of Potential Fraud and Other Related Issues Regarding Procurement Practices of Lexington-Fayette Urban County Government (LFUCG)

Dear Mayor Newberry:

The enclosed report, *Examination of Allegations of Potential Fraud and Other Related Issues Regarding Procurement Practices of Lexington-Fayette Urban County Government*, contains our observations, analysis, findings, and recommendations related to the fraud allegations made public in May 2010. The report offers specific recommendations to improve and strengthen: the communication of allegations of fraud to the Internal Audit Board, LFUCG, and the Council; the processes to maintain confidential complaints; the oversight, bylaws, and structure of the Internal Audit Board; and the consistency and transparency of procurement policies.

This examination included procedures to determine whether: evidence of fraud or improper activities existed related to the procurement of LFUCG insurance; the review by the external and internal auditors of allegations was appropriate; and the insurance procurement process complied with required policies. Our examination procedures included interviews of over 40 individuals and reviews of thousands of documents including emails, policies, auditing standards, board minutes, and state law.

The Auditor of Public Accounts requests a response from LFUCG on the implementation of audit recommendations within 60 days of the issuance of the final report. If you wish to discuss this report further, please contact Brian Lykins, Executive Director of the Office of Technology and Special Audits, or me.

We greatly appreciate the courtesies and cooperation extended to our staff during the audit.

Respectfully submitted,

Crit Luallen
Auditor of Public Accounts

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Frankfort, KY 40601-1817
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Recommendations

Pg 57	LFUCG should develop procedures as to when and how information provided in a confidential manner to the external or internal auditors should be reported and to which entities and persons.
Pg 59	LFUCG should develop procedures to inform the Council of confidential issues brought to the attention of the external auditors.
Pg 59	A procedure should be established for possible fraud allegations to be communicated to the Office of Internal Audit for disclosure to the Internal Audit Board
Pg 62	The full Audit Board should be informed in a closed session of allegations that come to the attention of Internal Audit
Pg 62	The Audit Board should obtain independent legal counsel when dealing with matters that may create a conflict on interest for employees within the Department of Law
Pg 62	A confidentiality statement be signed by all Audit Board members to ensure confidentiality when needed to allow for full disclosure to the Board members
Pg 64	LFUCG should amend 63-2002 to expand the number of Internal Audit Board members by increasing the number of members from the community at large with as goal that a majority be constituted by community at large members
Pg 64	The amended ordinance should limit the number of consecutive terms that voting Board members and the Chair can serve, as well as, criteria under which a Board member can be removed
Pg 64	The amended ordinance should specify that the Board select the Chair from the community at large members

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Recommendations (continued)

Pg 64	The LFUCG Internal Audit Board should adopt bylaws and rules that reflect Ord 63-2202
Pg 64	Bylaws should address confidentially issues, conflicts of interest, criteria for entering into a closed session, and action necessary to consistently "supervise, coordinate, evaluate, monitor, and implement the internal audit function."
Pg 64	The bylaws and rules should be presented for Council approval.
Pg 64	The bylaws should require the Internal Auditor to periodically report audit findings and other issues to the Council's Budget & Finance Committee, or other committee as desired by the full Council
Pg 67	LFUCG should implement a process to receive, distribute, investigate, and resolve anonymous concerns from its employees and citizens
Pg 68	The Office of Internal Audit should develop policies, rules, or procedures to address concerns, issues, or potential fraud allegations reported by external auditors, anonymous complaints, and others.
Pg 68	A process should be developed to ensure appropriate communication to the Internal Audit Board and to protect a complainant's confidentiality, unless otherwise required by law to disclose this information
Pg 68	All the policies, rules, or procedures should be submitted to the Council for review and approval as required by the Charter of the Office of Internal Audit

Finding 1: The Senior Advisor for Management was not required to inform an employee that he was the subject of a preliminary investigation for possible fraud allegations.

The Senior Advisor for Management informed the Commissioner of Law about a preliminary review conducted by the Office of Internal Audit even though there was no requirement to do so. The Commissioner of Law then filed an Open Records request with the Director of Internal Audit to inspect and make copies of any and all documents relating to this investigation. The Director of Internal Audit was instructed by a LFUCG staff attorney that, pursuant to KRS 61.878(3), he must provide the documentation and that no names should be redacted. Even though state law allows this documentation to be provided once requested, there was no requirement or procedure established that the subject of a preliminary review conducted by the Office of Internal Audit should be notified. In addition, it is questionable whether the identity of the LFUCG employee should have been redacted due to the confidentiality promised to the employee by the external and internal auditors when the FRA questionnaire was submitted to them.

During the FY 2009 financial audit, the acting Commissioner of Finance and Administration met with the Senior Advisor for Management to inform him about a report from the external auditors that possible fraud allegations were brought to their attention. The Director of Internal Audit attended the meeting and informed the Senior Advisor for Management that he was doing a preliminary review of the issue and that he would let him know if any problems were found.

The Director of Internal Audit informed the Senior Advisor for Management that his investigation was over and no evidence of fraud was found. In a written memorandum dated September 22, 2009, the Director of Internal Audit notified the Director of Risk Management that Internal Audit's preliminary review had found no credible evidence that fraud had or was occurring. On September 23, 2009, the Commissioner of Law filed a request pursuant to the Open Records Law with the Director of Internal Audit "to inspect and to make copies of any and all documents relating in any way to any investigation by your office or by LFUCG's financial auditors of LFUCG's placement of insurance in 2008 and 2009."

While the FRA questionnaire is not considered an open record according to state law, KRS 61.878(3) allows a public agency employee "to inspect and to copy any record including preliminary and other supporting documentation that relates to him." The statute's only limitation is that the public agency employee "shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency." In this situation, the Open Records request was submitted the day after the investigation was complete, so it was no longer an on-going investigation.

The Director of Internal Audit had never been involved in this type of request, so he consulted with a staff attorney in the Department of Law. The attorney informed him that even though the FRA questionnaire was a preliminary document, the Director of Internal Audit would have to provide it pursuant to KRS 61.878(3). His support for this conclusion was that it "relates to" the Commissioner of Law, who is a "public agency employee." He did advise that the portions of the document that do not relate to the Commissioner of Law should be redacted.

The Director of Internal Audit also asked the attorney if the name in the documentation identifying the LFUCG employee making the fraud allegation could be redacted to protect confidentiality. The attorney responded "[n]o. Though I understand the reasoning (in this and other situations)." Therefore, the Director of Internal Audit understood that he was required by state law to provide this information without redacting the identity of the employee. The Commissioner of Law received a redacted FY 2009 FRA questionnaire and the September 22, 2009 memo sent to the Director of Risk Management from the Director of Internal Audit. These documents can be seen at Exhibits 6 and 7.

As for the decision not to redact the name of the LFUCG employee who made the fraud allegations in the FY 2009 FRA questionnaire, the decision was made on the advice of LFUCG legal counsel based on a series of Attorney General's Open Records Opinions stating that a "public agency employee" requesting records pursuant to KRS 61.878(3) relating to the employee enjoys a broader right of access to records relating to the employee than a member of the general public (05-ORD-118). In addition, 03-ORD-068 states that a "public agency employee" requesting records relating to the employee is generally entitled to inspect and copy such records in their entirety. OAG 07-ORD-199, however, states that "the identity of a complainant can be withheld under KRS 61.878(1)(a) where the complainant's privacy interest outweighs the public's interest in disclosure . . .," and that "the names and contact information of the complainants and witnesses may be withheld" in circumstances "where the complainant requests anonymity or could reasonably expect confidentiality." Therefore, it appears to be an open legal question whether the right of a "public agency employee" to records related to the employee includes the right to have disclosed to him or her the name of the individual creating a record relating to the "public agency employee" when the individual creating the record that makes allegations of fraud against the "public agency employee" has been promised confidentiality and who has a reasonable expectation of privacy that the employee's name will not be disclosed.

Through interviews with the Director of Internal Audit, it was asked why the Director of Risk Management was not notified about the Open Records request. The Director of Internal Audit's response was that this request was "new territory" and he was not required to notify the employee. In regards to the request from the Director of Risk Management during Internal Audit's preliminary review that he be notified before disclosure to another individual or party, the Director of Internal Audit considered that this request was secondary to state law because the employee's permission was not needed or required. During the preliminary review, the Director of Internal Audit did honor this request from the Director of Risk Management and sent an email to the Director of Risk Management asking for permission to share the FRA questionnaire with the Deputy Director of Internal Audit. The Director of Risk Management gave his permission and stated that he "would like to concur with the sharing of this information with anyone outside your office." The Director of Internal Audit considered this request as pertaining to the preliminary review and not applicable when state Open Records law required its disclosure.

While state Open Records law allowed the Commissioner of Law to inspect those portions of the FRA questionnaire that related to him, the law does not state that public agency employees are required to be notified of all records related to them. According to the Senior Advisor for Management's interview with the Special Investigative Committee on August 20, 2010, under an LFUCG ordinance the subject of a complaint was required to be notified within 10 days of the receipt of the complaint. He stated that he knew this issue had been investigated twice by the external auditors and once by the Office of Internal Audit and he did not think an individual should be able to make illegitimate claims without being held accountable. After three reviews, he felt that it appeared that the employee was making false allegations.

While there is a LFUCG ordinance that requires the subject of a complaint to be notified within 10 days of the receipt of the complaint, this ordinance relates to a complaint provided to the LFUCG Ethics Commission. According to LFUCG Code of Ordinances Section 25-23, the "ethics commission shall acknowledge receipt of a complaint to the complainant within ten (10) working days from the date of receipt. The commission shall forward within ten (10) working days to each officer or employee who is the subject of the complaint a copy of the complaint and a general statement of the applicable provisions of this chapter."

The FRA questionnaire was not a complaint issued to the Ethics Commission. This ordinance did not apply to information submitted to the LFUCG external auditors in confidentiality and there were no requirements that it should have been reported to the subject of the allegations.

Recommendations We recommend LFUCG develop procedures as to when and how information provided in a confidential manner to the external or internal auditors should be reported, and to which entities and persons. Confidential allegations found not to be credible, should not be reported to the individual against whom the allegations were made so that the issue of retaliation never arises. When responding to an Open Records request from a "public agency employee" for records related to him or her, further legal analysis should be conducted before deciding whether the names and identifying information of the persons making documented allegations of fraud who are promised confidentiality and who may have a reasonable expectation of privacy should be redacted from the documentation provided.

To address communications of fraud allegations from external auditors, the LFUCG audit contact person should inform the external auditors that any fraud allegations go directly to the Director of Internal Audit without any additional information being provided to the contact. Documentation should be maintained of the issues received by Internal Audit. Under this method, information will be reported to the Internal Audit Board that is made up of individuals from LFUCG senior management and Council members. See Finding 4. This will allow members from management and its legislative oversight entity to be involved in the investigation and conclusion. Voting and ex-officio members of the Internal Audit Board should sign confidentiality statements before serving in this capacity. Information reported to the Internal Audit Board should not be reported to other members of management or Council even if it relates to that individual.

Finding 2: The external auditors released the Director of Internal Audit's conclusion memo to a Council member without redacting the name of the LFUCG employee.

Due to an information request from a LFUCG Council member, the external auditors provided the September 22, 2009, preliminary review conclusion memo that was written by the Director of Internal Audit to the Director of Risk Management. The release of this memo publicly identified that an employee brought issues of fraud to the external auditors and provided the name and position of the employee. By providing this memo to be inspected by a Council member, this issue was then discussed in open Council meetings because it was no longer considered confidential. The release of this memo also led to critical comments regarding the Office of Internal Audit during a public meeting.

At a Budget and Finance Committee meeting on April 27, 2010, the LFUCG external auditors presented the FY 2009 financial audit. A Council member asked about the process involved if an employee brings issues to their attention during the audit. Specifically, the Council member wanted to know how many of these requests have there been over the past three years and where the external auditors sent them after their review was complete. The Council member expressed concern that employee issues would only be reported to LFUCG management, not the Council. The external auditors responded that they thought this kind of information could be provided to the Council member, if requested.

On April 28, 2010, the aide to the Council member sent an email request to the external auditors for information as to the number of complaints/reports of possible fraud, the external auditor's recommendations for each complaint/report, the person in LFUCG that had reviewed the complaint/report, and any additional background information that would explain the complaints/report. The external auditors responded with a letter on May 11, 2010, stating that, for the past three financial audits, inquiries with LFUCG management and employees about their knowledge of fraud had been made and "only two instances of possible fraud were communicated to us via these inquiries. A LFUCG employee in the Division of Risk Management communicated the same instance of possible fraud to us in 2008 and 2009." The letter explained that for FY 2008, the matter was reported to the Commissioner of Finance and Administration and the FY 2009 instance was reported to the acting Commissioner of Finance and Administration and the Director of Internal Audit. Attached to this letter was a copy of the September 22, 2009 memo prepared by the LFUCG Director of Internal Audit that describes the Director's conclusion from his preliminary review.

The release of this memo not only identified the LFUCG employee, but also resulted in critical comments regarding the Office of Internal Audit. At a May 25, 2010 Council Committee of the Whole, the Council member in receipt of the September 22, 2009 memo announced that issues of fraud had been brought up by the Director of Risk Management. The Council member went on to say that the Internal Auditor knew there was fraud and did not interview the employee or investigate further. The memo clearly states, "In conducting our preliminary review… there is no credible evidence that a fraudulent act has occurred, is occurring, and/or will occur."

The cover letter has also caused confusion by stating that "only two instances of possible fraud were communicated to us via these inquiries." Based on information provided by the external auditors at the request of the APA, there were other employees that responded to the FRA questionnaire with concerns. However, the two responses from the Director of Risk Management were the only instances that resulted in additional testing. The external auditor received 18 FRA questionnaire responses during the FY 2008 financial audit and 16 were returned during the FY 2009 audit. These responses contained issues that had to be evaluated to determine the proper audit testing requirements.

No explanation has been provided as to why this memo was provided or why the employee's name and position were not redacted. It was sent without the knowledge or consent of the LFUCG Director of Internal Audit. This memo was only provided to the external auditors as documentation to be included in their working papers. On May 21, 2010, the Director of Internal Audit communicated to the external auditors that providing this memo was "a significant breach of professional courtesy." He stated that, "[e]ven assuming this document would have been subject to open records laws (and this has not been officially established as such by the LFUCG Dept. of Law)," the "name should have been redacted to protect his confidentiality, consistent with" the external auditors' "own representation of confidentiality made to him regarding his answers" to the FRA questionnaires.

Recommendations LFUCG should develop procedures to inform the Council of confidential issues brought to the attention of the external auditors through closed meetings as appropriate so that private or critical information that could result in an employee disciplinary action is not discussed publicly. A procedure should be established for possible fraud allegations to be communicated to the Office of Internal Audit for disclosure to the Internal Audit Board.

Finding 3: The Internal Audit Board was advised that closed meetings could not be conducted to discuss confidential issues.

Based on legal advice from a staff attorney in the LFUCG Department of Law, the LFUCG Internal Audit Board was advised that it cannot go into a closed meeting, which has led to the lack of discussion by the full Board of confidential allegations made by an employee in a FRA questionnaire. To address confidentiality issues, the October 7, 2003 Internal Audit Board meeting minutes document that it was decided the Director of Internal Audit would consult only the Board Chair to "keep it confidential from the individuals involved in the audits." According to interviews with former Board members, this practice was developed because the Board did not feel at liberty to discuss, in an open meeting, allegations that could "defame" an LFUCG employee. Because the preliminary review of the FRA questionnaire was found not to substantiate the allegations of fraud, the issue was not brought to the attention of the full Board at an open meeting. The Office of Internal Audit's inability to provide full disclosure and discuss confidential issues with the Board should be addressed so that the Board can be aware of issues affecting LFUCG.

The issue of confidential allegations is not addressed within the Office of Internal Audit Policies and Procedures Manual. The only documentation for the handling of confidential issues is the Board meeting minutes. During the Board meeting on October 7, 2003, a Board member representing the Council stated there was a need for a temporary process for bringing issues involving the administration, Mayor, or Council to the Internal Audit Board. He said that the process was needed to address those kinds of issues without information getting back to those areas of government before a review can be done. He suggested that "these items could be referred to the Chair for delegation, since the Chair is an outside individual" and "this would keep it confidential from the individuals involved in the audits." While this practice may have been understood and accepted by the Internal Audit Board members serving at that time, it was not documented in policy for future Board members' knowledge or discussion.

The decision to not go to the full Board was also influenced by advice from a staff attorney within LFUCG's Department of Law. On September 3, 2009, the Director of Internal Audit sent an email to the staff attorney seeking his agreement that the Board could go into a closed meeting when discussing a possible fraud allegation. Specifically, the Director of Internal Audit stated the following:

> It seems very clear to me that if the Internal Audit Board must discuss preliminary information regarding a fraud allegation in which specific individuals have been named, or in which it can be easily determined who the potential perpetrator is, this should be a closed session under this exception. Obviously, if the fraud allegation proves true, disciplinary action would ensue as a direct result of the Board's discussion about the fraud and the investigation the Board instructed Internal Audit to conduct.

The staff attorney replied that the exception related to discussing the discipline of employees, KRS 61.810(1)(f), did not apply because the Board has no employees. He stated that it is the findings and reports of Internal Audit that lead to the discipline of an employee, not the Board's discussions. He also advised that when discussing these matters, the Board should avoid using names of employees. The staff attorney ended his response by stating that he would not seek an opinion from the Attorney General unless directed to do so by the Commissioner of Law.

In March 10, 2009, a new Board member representing the Council asked how special requests were handled. The Director of Internal Audit explained the existing process and how it places significant responsibility on the Director and the Board Chair to decide whether to honor a special request for an audit and when to conduct it. It was noted in the minutes that the special request approval process needs to be formalized in writing, and the responsibility to decide whether to honor or deny requests should shift from the Chair to the full Board. The Director of Internal Audit then provided the following proposal to the Board to document the special request process:

> In the event the Director of Internal Audit receives a special request from members of the Administration, Council, or LFUCG employee(s) for an audit not included in the Annual Audit Plan approved by the Internal Audit Board, the Director of Internal Audit shall inform the Board Chair of the special request. Upon approval by the Board Chair, the Director of Internal Audit shall conduct a preliminary assessment of available information and evidence to determine if an audit is warranted. The Director of Internal Audit shall present this information and evidence, along with his opinion as to the merits of the request, to the Board for consideration and a vote whether to honor the request and where to insert it in the Audit Plan. The Director of Internal Audit shall then inform the requestor

> in writing of the Board's decision. If the request is denied, the requestor will be informed that they may directly appeal the decision to the Board.

A motion was made to approve the proposed special request process, and it was approved 4-0. Therefore, the Office of Internal Audit Policies and Procedures Manual does include the procedures to be followed when the Director of Internal Audit receives a special request.

The Director of Internal Audit stated that he did not go to the full Internal Audit Board with the issues raised by the external auditors concerning the allegations made in the FRA questionnaire because he did not consider this a special request. The external auditors told the Internal Auditor that they did not find any evidence of fraud but wanted to report it to satisfy the requirements of financial auditing standards on identifying the risks of fraud.

The Director of Internal Audit contacted the Board Chair, and together, they attended a meeting with the external auditors. The broad issues raised in the questionnaire were discussed and it was decided that a preliminary assessment would be conducted before the issue was brought before the full Board in an open meeting. The Board Chair did not want to share information that might be perceived as detrimental to an individual's reputation, in order to protect LFUCG from a potential lawsuit.

From our research and discussions with the Office of the Attorney General, OAG 01-OMD-18 appears to support the argument that the Internal Audit Board could claim an exception under the provisions of KRS 61.810(1)(f). This exception reads as follows:

> Discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student without restricting that employee's, member's, or student's right to a public hearing if requested. This exception shall not be interpreted to permit discussion of general personnel matters in secret;

OAG 01-OMD-18 supports the proposition that a public agency board, like the Internal Audit Board of LFUCG, may discuss, in closed session, issues related to allegations of fraud perpetrated by an LFUCG employee because substantiated allegations could lead to the discipline of the perpetrator/employee. While the Internal Audit Board is not responsible for taking disciplinary action against employees, its duty is to supervise and implement the internal audit function, which has the responsibility of assessing and making recommendations for improving LFUCG governance. In order to carry out this responsibility, the Office of Internal Audit must communicate risk and control information to the Internal Audit Board, senior management, and the Council. While the Office of Internal Audit is not responsible for determining what constitutes appropriate disciplinary action, discussing its audit work and findings with the Internal Audit Board could lead to the discipline of an LFUCG employee by responsible management or the Division of Human Resources.

OAG 01-OMD-18 also provides an example that a city council can go into a closed meeting to discuss specific matters of personnel involving any municipal employee, not just city council members. This opinion points out that the exception provided by KRS 61.810(1)(f) was meant to protect the privacy of all municipal employees and not just the direct members of the city council. Based on this logic, the Internal Audit Board members should be able to go into closed meetings to protect the privacy of any LFUCG employee involved in fraud allegations.

The Office of Internal Audit is authorized by its charter to obtain full and unrestricted access to LFUCG systems, records, personnel, and physical properties necessary to fulfill its purposes. The charter requires that personnel will respect confidentiality, value, and ownership of information they receive and will not disclose information without appropriate authority unless there is a legal or professional obligation to do so. This seems to require the Office of Internal Audit to report to the Internal Audit Board any confidential information related to LFUCG employees in a closed session of the Board.

Recommendations

Based on the reasoning in OAG 01-OMD-18 and in consultation with the Office of the Attorney General, we recommend the full Internal Audit Board be informed in a closed session of allegations that come to the attention of Internal Audit, provided that the discussions might lead to disciplinary measures being taken against an LFUCG employee. In addition, we recommend the Board obtain independent legal counsel when dealing with matters that may create a conflict of interest for employees within the Department of Law. In conjunction with the recommendations for Finding 4, we recommend that a confidentiality statement be signed by all members to ensure confidentiality when needed to allow for full disclosure to the Board members.

Finding 4: The Office of Internal Audit is organizationally independent within LFUCG but the Internal Audit Board has not established operating procedures.

The placement of the Office of Internal Audit meets the Institute of Internal Auditor's standard for organizational independence. However, its governing body, the Internal Audit Board, has not established bylaws under which to operate that are subject to Council approval. Even if changes are made to the membership of the Internal Audit Board, the organizational placement should not change.

According to the Institute of Internal Auditors' Organization Independence Standard, the chief audit executive must report to a level within the organization that allows the internal audit activity to fulfill its responsibilities. The internal audit activity must be free from interference in determining the scope of internal auditing, performing work, and communicating results.

At LFUCG, the Director of Internal Audit reports to the Internal Audit Board that was established by the Council to supervise, evaluate, monitor, and implement the internal audit function of LFUCG. The seven-member Board includes five voting and two non-voting members. The voting members are to include:

- Two members from the community at large with accounting/auditing certifications. One is recommended by the Council, appointed by the LFUCG Mayor, and approved by the Council. The other is appointed by the LFUCG Mayor, and approved by the Council.
- Two LFUCG Council members.
- The LFUCG Mayor or his designee.

The other two non-voting members are the Council Administrator and the Chief Administrator Officer. This makeup of members allows the Office of Internal Audit to have a connection with the executive and legislative branches of LFUCG, as well as community members.

The Director of Internal Audit currently reports for administrative purposes to the Senior Advisor for Management. This arrangement ensures that the internal audit function is not isolated from the Administration and its department heads. The Senior Advisor for Management is responsible for signing the Director's timesheets and leave requests, but the Director manages the Office of Internal Audit's budget that is approved by the Internal Audit Board for presentation to the Council.

The LFUCG Council approved Ordinance No. 63-2002 creating the Internal Audit Board in March 2002. According to the ordinance, "the board shall determine its own bylaws, rules and order of business and shall provide for keeping a record of its proceedings. Such bylaws shall be subject to approval by the urban county council." However, the Internal Audit Board has not created any bylaws or rules under which to operate.

In order for the Internal Audit Board to go forward with several of the recommendations in this report, bylaws and rules are needed to address the issues for the Board to be fully effective in its responsibility to "supervise, coordinate, evaluate, monitor, and implement the internal audit function." Developing such bylaws and rules that are then presented to the Council for approval as required by the Board Charter should improve the understanding and confidence in the processes followed by the Board and Internal Audit in performing their function.

Recommendations

We recommend that LFUCG consider amending Ordinance No. 63-2002 to expand the number of Internal Audit Board members by increasing the number of members from the community at large, with the goal that a majority be constituted by the community at large members. This will also assist in achieving a quorum at Board meetings and will allow for more independence. If the ordinance is amended as recommended, the majority of the members will be from the community at large, yet there will still be direct input from Council and administration members. One approach could be for the number of additional Board members to be equally initiated by the Mayor and the Council. Qualified potential candidates should be selected from accounting, auditing, or legal professional associations to serve as the additional Board members. The amended ordinance could address the process to follow if the Mayor does not appoint a Council recommendation to the Internal Audit Board. This process could allow for the Council to approve the appointment by a two-thirds majority vote. We recommend the amended ordinance limit the number of consecutive terms that voting Board members and the Board Chair can serve, as well as, criteria under which a Board member can be removed. In addition, we recommend the amended ordinance specify that the Board select the Chair from the community at large members.

The LFUCG Internal Audit Board should adopt bylaws and rules that reflect Ordinance No. 63-2002 or any amendments. Bylaws should also address confidentiality issues, conflicts of interest, criteria for entering into a closed session, and any action necessary to consistently "supervise, coordinate, evaluate, monitor, and implement the internal audit function." To ensure the Council's knowledge and acceptance and to comply with Ordinance No. 63-2002, the bylaws and rules should be presented for Council approval. The bylaws should also require the Internal Auditor to periodically report audit findings and other issues to the Council's Budget and Finance Committee, or other committee as desired by the full Council.

Finding 5: LFUCG has no established method for employees and citizens to anonymously report issues of concern.

LFUCG has a very detailed Ethics Act that addresses complaints and retaliation, but it does not provide a process for employees or citizens to report anonymous complaints without fear of retaliation. KRS 61.102 provides for public agency employees to bring forward reports or complaints without fear of retaliation or reprisal. During the FY 2009 financial audit, the external auditors noted the lack of a process for filing anonymous complaints and suggested that a process be established. Louisville Metro Government has developed the Louisville Metro Ethics Tipline to allow employees and citizens a method to confidentially report concerns. LFUCG has not acted to develop this or another process for an employee or other person to report complaints or concerns in a confidential manner that addresses the issue of retaliation.

LFUCG's only policy for reporting complaints is located in their Code of Ordinance under Chapter 25, which is cited as the LFUCG Ethics Act. The stated purpose of the Ethics Act is as follows:

> It is the purpose of this chapter to provide a method of assuring that standards of ethical conduct and financial disclosure requirements for officers and employees shall be clearly established, uniform in their application, and enforceable, and to provide the officers and employees with advice and information concerning potential conflicts of interest which might arise in the conduct of their duties.

The Ethics Act contains requirements that include conflicts of interest, receipts of gifts, use of public property, post-employment restrictions, and nepotism. Section 25-23 provides the method for filing complaints related to provisions of the Ethics Act. The following are the paraphrased process steps documented in this section.

1. All complaints must be in writing and signed by the complainant under penalty of perjury. The ethics commission must acknowledge receipt of a complaint to the complainant within 10 working days from the date of receipt. The commission must forward within 10 working days to each officer or employee who is the subject of the complaint a copy of the complaint.
2. Within 30 days of the receipt of a proper complaint, the ethics commission must conduct a preliminary inquiry concerning the allegations in the complaint. The subject of the complaint will be given the opportunity to respond and be represented by counsel.
3. All proceedings and records related to the preliminary inquiry must be confidential until a final determination is made.
4. If the preliminary review determines that the complaint is outside its jurisdiction, frivolous, or without factual basis, the inquiry is terminated. This conclusion is documented in writing and sent to the complainant and all officers and employees against whom the complaint was filed.
5. If the preliminary review determines that the complaint is within the commission's jurisdiction and appears to be based on factual information, a hearing will be initiated.

Section 25-29 of the Ethics Act provides protection to the complainant. It states that no officer or employee will subject the complainant to reprisal or use any official authority to discourage, restrain, or discriminate against an officer or employee who brings a complaint in good faith. This section also protects any officer or employee that supports, aids, or substantiates a complaint. It does not prohibit disciplinary or punitive action if an officer or employee discloses information that he knows to be false, exempted from required disclosure, or confidential under law.

While the Ethics Act provides a very detailed transparent process to address ethical violations of this Act, it does not address anonymous reports or a method for private citizens to report financial or other potential issues or concerns. Section 25-29 provides protection to complainants that file a report with the Ethics Commission but it does not address confidential issues reported to the Office of Internal Audit.

As discussed in Finding 1, the Senior Advisor for Management informed the Commissioner of Law that the Commissioner was the subject of an allegation. This was only required if a complainant filed a report with the Ethics Commission.

At the conclusion of the FY 2009 financial audit, the external auditors issued a Management Letter that summarizes comments and suggestions regarding internal controls and operating efficiency. One of their comments in this document was that LFUCG's current policies do not provide for the filing of anonymous complaints. The external auditors recommended that LFUCG establish a policy and process that allow concerns to be brought to their attention, including anonymous concerns. The policy should include reporting procedures and management's responsibility to address the issues reported.

There are various methods to implement an anonymous reporting mechanism. One method for accomplishing anonymous reporting of concerns or other issues used by Louisville Metro Government is the Louisville Metro Ethics Tipline, which provides Metro Government employees and citizens a resource to confidentially report concerns of alleged unethical or illegal actions. It is intended to be a mechanism to anonymously report concerns without fear of retaliation. Louisville Metro contracted with an independent provider for the tipline services. The contract is administered by their Office of Internal Audit. The Ethics Tipline reports are sent to designated Louisville Metro departments based on the type of incident reported while the Office of Internal Audit receives copies of all reports. When the investigation is closed, the report is subject to public disclosure under Kentucky Open Records laws. If the complainant reveals their identity, it may be disclosed publicly, but anonymous reports will not be identified. Other methods that could be used include advertising on the LFUCG and Internal Audit web pages an address or email account where concerns can be sent, and an internal tipline number operated by internal auditors.

Recommendations

LFUCG should implement a process to receive, distribute, investigate, and resolve anonymous concerns from its employees and citizens. The reporting method used to accomplish this reporting could be a third party vendor, tipline, email, or a mailing address. This function should be assigned to a specific entity within LFUCG to administer and distribute concerns for investigations. The Internal Audit Board should be informed of complaints received, how they were reviewed, recommendation as to whether a full investigation should be initiated, and the final resolution of each complaint. Documentation should be maintained representative of each complaint received, the date it was shared with the Board, and the resolution of the complaint. This method would ensure that the Internal Audit Board would be knowledgeable of the complaints and would expedite a vote on which issues to investigate further.

Finding 6: The Office of Internal Audit did not establish policies or procedures regarding employee complaints or concerns unless provided in the form of a "special request."

As discussed in Finding 3, the Office of Internal Audit Policies and Procedures Manual did include procedures for actions to be taken by the Director of Internal Audit when receiving a special audit request. However, audit requests come in many forms and it was not clear in the procedures what exactly constitutes a special request for audit. In addition, this procedure did not address who should receive confidential reports from the external auditors and the process that should be followed to address requests or information from external auditors. Also, it appears that the Administration, Council, or LFUCG employees may not be aware of the process outlined in the Internal Audit Policies and Procedures Manual to request special internal audit services.

The following is the portion of the Office of Internal Audit Policies and Procedures Manual that discusses special requests.

> In the event the Director of Internal Audit receives a special request from members of the Administration, Council, or LFUCG employee(s) for an audit not included in the Annual Audit Plan approved by the Internal Audit Board, the Director of Internal Audit shall inform the Board Chair of the special request. Upon approval by the Board Chair, the Director of Internal Audit shall conduct a preliminary assessment of available information and evidence to determine if an audit is warranted. The Director of Internal Audit shall present this information and evidence, along with his opinion as to the merits of the request, to the Board for consideration and a vote whether to honor the request and where to insert it in the Audit Plan. The Director of Internal Audit shall then inform the requestor in writing of the Board's decision. If the request is denied, the requestor will be informed that they may directly appeal the decision to the Board.

> Special requests by individuals or groups outside of the LFUCG will be forwarded to the Citizens' Advocate as approved by the Internal Audit Board. If the Citizens' Advocate then requests assistance from the Office of Internal Audit, that request will be addressed in the same manner as an Administration or Council request described above.

This policy was strengthened on March 10, 2009, to involve the full Internal Audit Board in the process. However, the Policies and Procedures Manual does not define the term "special request" nor does it discuss confidentiality issues or the method in which these requests can be provided to the Office of Internal Audit.

In the case of confidential reports from external auditors about possible fraud allegations, it is not clear if these should be handled in the same manner as a special request. If so, then the full Internal Audit Board should have been presented with the allegation and evidence in order to vote on whether to investigate further.

It is also not evident that the option of a special request has been clearly or routinely communicated to the Administration, Council, or LFUCG employees. In the Internal Audit Board meeting minutes from March 10, 2009, the Director of Internal Audit asks the Board members that are also Council members to emphasize the special request process, but it is not known if this occurred.

As discussed in Chapter 2, the Director of Internal Audit thought the Director of Risk Management was satisfied with the investigation because he did not make a special request for an audit. However, there is no evidence that this option was provided to the employee.

Recommendations

The Office of Internal Audit should develop policies, rules, or procedures to address concerns, issues, or potential fraud allegations reported by external auditors, anonymous complaints, and others. To ensure all parties have a clear understanding, policies should clearly define what constitutes a special request for audit services and provide procedures detailing how those requests will be communicated and reviewed. A process should be developed to ensure appropriate communication to the Internal Audit Board and to protect a complainant's confidentiality, unless otherwise required by law to disclose this information. Any potential limitations of confidentiality should be explained to the complainant. For anonymous concerns, a method to receive and track complainants in order to obtain additional information should be included in the procedures.

All the policies, rules, or procedures should be submitted to the Council for review and approval as required by the Charter of the Office of Internal Audit. Approved procedures for submitting complaints or concerns to the Office of Internal Audit should be communicated to the Administration, Council, and LFUCG employees. These procedures should include the specific method(s) to make a complaint, i.e. email, phone, meeting, or other.

Lexington-Fayette Urban County Government
OFFICE OF THE MAYOR

Jim Newberry
Mayor

October 1, 2010

The Honorable Crit Luallen
Auditor of Public Accounts
209 St. Clair Street
Frankfort, KY 40601-1817

RE: Examination of Allegations of Potential Fraud and Other Related Issues Regarding Procurement Practices of Lexington-Fayette Urban County Government

Dear Ms. Luallen:

Thank you for sharing a draft of the report on the examination referenced above. Although we had great confidence in the conclusions reached by both our internal and external auditors relative to the fraud allegations, I requested your examination in light of the serious allegations made on May 25, 2010 by a member of the Urban County Council against the Director of Internal Audit. We appreciate the efforts which your staff has taken to evaluate our internal and external auditors' findings that there was no evidence of fraud, and we are pleased that your staff reached the same conclusion as our auditors.

In addition, we are grateful for your recommendations about steps to improve and strengthen various aspects of our procurement process. The procurement policies at issue were initially adopted in 1983, 1991 and 1996, and as a result, it is helpful to have your assessment of those policies so that we can make changes to improve both the effectiveness and the efficiency of our purchasing operations.

We also appreciate your recommendations relating to the Internal Audit Board. As your report correctly notes, the Board was created in 2002 with a goal of making the internal audit function independent of both the mayor and the council. Consequently, most of your recommendations relating to the Board are more appropriately evaluated by the Board, but we stand ready to assist the Board as it moves to address the report's recommendations.

We appreciate the opportunity to respond to your findings and recommendations, and to that end, we offer the following responses on each chapter, observation, question, finding and recommendation.

Chapter 1 – Introduction and Background

We believe that Chapter 1 accurately describes Lexington-Fayette Urban County Government and accurately portrays the circumstances surrounding both the Division of Risk Management and the Self Insurance Fund.

Chapter 2 – Observations and Questions

As we understand, on June 10, 2010, the APA staff requested that the Director of Risk Management document and submit to the APA staff the specific actions he believed constituted fraudulent activity. We commend

Ms. Crit Luallen
Page Two
October 1, 2010

your staff for making this request at the earliest stages of your examination because it gave the Director the unfettered opportunity to specify whatever fraudulent activity he believed occurred. To the extent the external audit process inhibited his ability to allege fraudulent activity, your June 10 request eliminated those inhibitions. As a result, various issues arose beyond the issues set forth in the 2008 and 2009 Fraud Risk Assessment Questionnaires (FRAQs). We offer the following responses to each of the "Observations" submitted by the Director.

Observation 1 – We agree with your conclusions that: (a) the selection of an excess insurance carrier for coverage for the period from October 1, 2007 through October 1, 2008 reflected no indication of fraudulent activity, (b) the September 11, 2007 presentation to the Council does not indicate any intent to circumvent the selection process, (c) the September 11, 2007 presentation to the Council by the Commissioner of Law provided a choice between two vendors rather than a single vendor as had historically been provided, and (d) the January 23, 2008 email from the Director of Risk Management reflected that he understood at that time that loss control hours were not being used to benefit KLC employees.

Observation 2 – We agree with your conclusion that there was no indication of misrepresentation or concealment of material facts in this situation.

Observation 3 – We agree with your conclusions that: (a) there was no evidence that the Commissioner of Law was informed of the alleged conflict of interest between KLC and the TPA vendor, and (b) there was no evidence to suggest a misrepresentation or concealment of material facts by the Commissioner of Law or any other LFUCG personnel.

Observation 4 – We agree with your conclusion that there was no evidence to indicate that any material facts were misrepresented or concealed in relation to this observation.

Observation 5 – We agree with your conclusion that there was no indication that there was intent to conceal material facts from compliance officials or employees.

Observation 6 – We agree with your conclusion that there was no evidence to support that a material misrepresentation of fact occurred through the issuance of the June 19, 2009 memorandum to the Mayor and Council.

Observation 7 – We agree with your conclusion that there was no evidence to suggest intent to conceal the safety grant from the Division of Community Development.

Observation 8 – We agree with your conclusion that the documentation does not support the observation by the Director of Risk Management that a competitor was given inside information pertaining to the incumbent's quote.

Observation 9 – We agree with your conclusion that there was no indication of fraud or wrong doing, but rather a management decision made as a part of the budget process.

Observation 10 – We agree with your conclusions that there was no evidence of: (a) any intent by KLC or anyone else to conceal available pricing alternatives and (b) fraud or wrongdoing relative to the use of loss control hours.

Observation 11 – We agree with your conclusions that: (a) there was no evidence to suggest concealment of critical data that may reveal trends in excess expenditures for claims, (b) the decision not to include the financial information in the claims and risk management information system was not a matter of intentionally preventing

Ms. Crit Luallen
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any one person from viewing the information or inhibiting Risk Management from providing accurate information through its reporting, and (c) LFUCG was still receiving regular financial reports from KLC during this time.

Question 1 - We agree with your conclusion that it is not possible for the APA to determine if the decision to purchase insurance through KLC was a better decision than to continue insurance with the previous insurance vendors.

Question 2 – Because of a lack of "circumstances that would lead a reasonable, professionally trained, and prudent individual to believe a frau as occurred, is occurring or will occur," we agree with your conclusion that the approach taken by the Director and Deputy Director of Internal Audit was sufficient to lead them to a reasonable conclusion to not proceed into a full fraud examination in accordance with standards adopted by the Association of Certified Fraud Examiners.

Question 3 – We take no exception to your assessment of who had custody of the FRAQs.

Question 4 – We take no exception to your assessment of how the identity of the employee making the allegations of potential fraud were made known to LFUCG management, internal audit and Council. However, we found it enlightening that on May 6, 2010, approximately one month prior to the creation of the Special Investigative Committee, a Council member who served on the Special Investigative Committee met with your staff and provided a copy of the 2008 and 2009 FRAQs. We also found it troubling and incredible that when your staff asked that Council member after June 3, 2010 to identify the source of the document, the Council member could no longer locate the copies, did not know the source of the documents, did not realize that these documents were the documents that were being requested by the Special Investigative Committee and must not have realized the significance of the documents.

<u>Chapter 3 – Findings and Recommendations</u>

For ease of reference, we have numbered each of your recommendations with a two digit number. The first digit corresponds with the number of the finding with which the recommendation is associated. The second digit corresponds to the paragraph of the recommendations section in which the recommendation is found.

Finding 1 – We agree with your finding. We also note there is no prohibition against informing an employee that he was the subject of a preliminary investigation for possible fraud allegations.

Recommendation 1.1 – We agree with your recommendation.

Recommendation 1.2 – We agree with your recommendation.

Finding 2 – We agree with your finding.

Recommendation 2.1 – While we support the goal of informing the Council with confidential issues brought to the attention of the external auditors, we believe this recommendation may be in conflict with provisions of the Open Meetings Act insofar as it proposes closed Council meetings. We look forward to further discussions with your staff to clarify our understanding of this aspect of your recommendation. Otherwise, we agree with your recommendation.

Finding 3 – We agree with your finding.

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Recommendation 3.1 – We agree with your recommendation. However, we believe these aspects of the Open Meetings Act merits legislative clarification, and we will pursue such a change at the next legislative session.

Finding 4 – We agree with your finding.

Recommendation 4.1 – We agree with your recommendation.

Recommendation 4.2 – We agree with your recommendation, but we defer to the Board's action on the adoption of bylaws and rules.

Finding 5 – We agree with your finding.

Recommendation 5.1 – We agree with your recommendation.

Finding 6 – We agree with your finding.

Recommendation 6.1 – We agree with your recommendation, but we defer to the Board's action on this matter.

Recommendation 6.2 – We agree with your recommendation, but we defer to the Board's action on this matter.

Finding 7 – We generally agree with your findings that there is a lack of clear hierarchy and occasional conflict. We also agree that there is no evidence the 1996 CAO policy was approved by the Council. While we agree that no evidence of Council approval of the 1983 Procurement Regulations and the 1991 Central Purchasing Policies and Procedures Manual has been found thus far, we remain uncertain whether those two documents were approved by the Council. We will continue to evaluate Council records to assess whether those documents were approved by Council. However, we do note that under current processes, the Council approves all contracts, including contracts for purchases of goods and services, other than personal service contracts for amounts less than $50,000.

Recommendation 7.1 – We agree with your recommendation.

Recommendation 7.2 – We agree with your recommendation.

Recommendation 7.3 – We agree with your recommendation.

Finding 7 – We agree with your finding.

Recommendation 7.1 – We agree with your recommendation.

Finding 8 – We agree with your finding.

Recommendation 8.1 – We agree with your recommendation.

Finding 9 – We agree with your finding.

Recommendation 9.1 – We agree with your recommendation.

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Ms. Crit Luallen
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We appreciate the opportunity to provide this response to your examination. Your report has done much to clarify the facts giving rise to unfounded allegations of fraud, to enhance the highly desirable independence of the Internal Audit Board and to improve our procurement processes. We look forward to continue to working with your staff as we move toward the implementation of the recommendations.

Sincerely yours,

Jim Newberry

Jim Newberry
Mayor

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Lexington-Fayette Urban County Government
OFFICE OF INTERNAL AUDIT

September 30, 2010

Hon. Crit Luallen
Auditor of Public Accounts
209 St. Clair Street
Frankfort, Kentucky 40601-1817

RE: LFUCG Potential Fraud and Procurement Practices Examination Report

Dear Ms. Luallen:

Please accept this letter as the response of the Lexington-Fayette Urban County Government (LFUCG) Internal Audit Board and Office of Internal Audit relative to your draft examination dated September 27, 2010 of Allegations of Potential Fraud and Other Related Issues Regarding Procurement Practices of Lexington-Fayette Urban County Government.

On behalf of the Internal Audit Board and the Office of Internal Audit, I wish to express our appreciation for the efforts of your staff concerning their comprehensive examination of matters related to these issues. The audit report provides an excellent summation of the issues and offers sound recommendations pertaining to related findings.

We are pleased that the results of your examination have concluded, as did the Office of Internal Audit and the Special Investigative Committee, that no evidence of fraud exists. We are also pleased that the results of your examination have concluded that the preliminary review process used by the Office of Internal Audit to examine the fraud allegations was sufficient to lead the Director and Deputy Director of the Office of Internal Audit to a reasonable conclusion to not proceed into a full fraud examination.

We concur with the findings and recommendations as they pertain to the Internal Audit Board and the Office of Internal Audit. The Office of the Mayor has provided a separate response to findings and recommendations that are separate from the Internal Audit Board and the Office of Internal Audit.

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The Internal Audit Board and the Office of Internal Audit will clearly value and take into advisement the recommendations related to their duties and functions as set forth in the audit report. Given the exhaustive nature of the audit report, the Internal Audit Board reserves the option to review and provide more specific responses to the findings should it later be deemed appropriate or necessary.

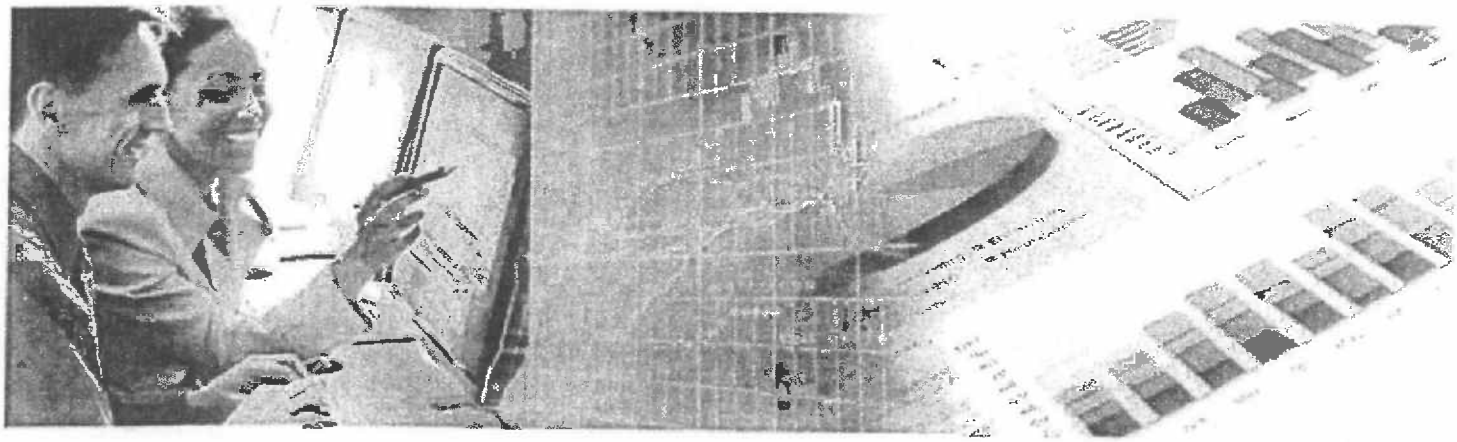
In conclusion, it is our expectation that the consideration and implementation of recommended action plans contained in your audit report will further enhance the quality of internal audit services the Internal Audit Board and the Office of Internal Audit provides to the Lexington-Fayette Urban County Government and the citizens of Lexington and Fayette County.

Sincerely,

Jennifer F. Burke

Jennifer F. Burke
Acting Chair-LFUCG Internal Audit Board

NASCIO
Representing Chief Information Officers of the States



A Call to Action for State Government:

Guidance for Opening the Doors to State Data

Transparency initiatives and websites are proliferating across government and industry globally. One aspect of the transparency trend is broader access to government data. The federal government is actively developing its data portal—www.data.gov—with robust objectives regarding the number of available datasets. The full universe of outcomes is not fully understood, but it is certainly anticipated that the availability of government datasets will lead to more citizen engagement, the potential to spawn new economic opportunities, efficiencies in the creation and use of data, and greater accountability on the part of government.

These are unprecedented times regarding openness in government. President Obama has a made a commitment to open government that is unparalleled. One demonstration of this commitment is the launching of the Open Government Initiative. This initiative is founded on three principles:[1]

- Transparency – to enable greater accountability, efficiency, and economic opportunity by making government data and operations more open.
- Participation – to create early and effective opportunities to drive greater and more diverse expertise into government decision making.
- Collaboration – to generate new ideas for solving problems by fostering cooperation across government departments, across levels of government, and with the public.

"My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government."[2] *President Barack Obama*

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NASCIO represents state chief information officers and information technology executives and managers from state governments across the United States. For more information visit www.nascio.org.

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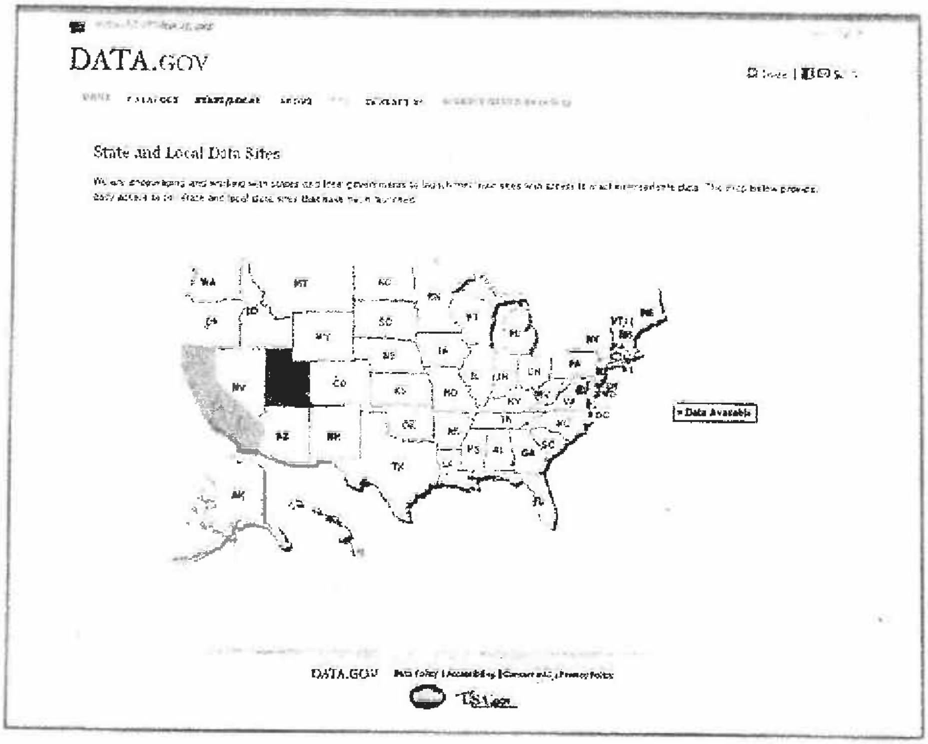


www.data.gov/statedatasites

State governments have been leaders in the establishment of state transparency and accountability portals and are now considering including high priority datasets in the mix.[3] The next phase in this open government transformation is the democratization of data as evidenced by the federal government's creation of www.data.gov. With vast data resources, States are in a similar position to create a new kind of relationship with their citizens. NASCIO encourages states to follow suit in the steps of the District of Columbia, the State of Utah, the State of California and several local governments.[4] The difference now is the availability and provision of raw, machine-readable data, structured to allow manipulation and analysis electronically. This allows the combining of multiple public datasets using mashups to create new information, data and services.[5] Data within the context of these discussions is unabridged data; data that has not been aggregated, summarized or interpreted.

Democratization of data doesn't stop at the states. Local governments are also pursuing open government initiatives and creating data.gov sites. The District of Columbia is the forerunner; however, San Francisco and New York City are two other models.[6] With the launching of DataSF.org, San Francisco Mayor Newsom is hopeful that the availability of this data will lead to new economic opportunities.

Collaborate for Success

Successful planning and execution of such an initiative will require the collaboration of multiple state agencies and programs that serve as custodians or stewards of state data. These include state CIOs, chief enterprise architects, archivists, records managers, data architects, agency data stewards, librarians, portal developers, and the program management office. These roles bring with them an enterprise view relative to state data and that is the perspective that must be maintained in launching a data.gov initiative.

"Whatever else, the raw data should be made available as soon as possible. Preferably, it should be put up as Linked Data." *Sir Tim Berners-Lee*[7]

The Value of Government Data

The full list of benefits and risks associated with making state government data available in easy to find and usable formats will become more evident in the future as government and the public gain experience with this resource. State government has always been a source or supplier of public data, however it has often been difficult to discover and not available in a raw format to be consumed and reused. "Democratization of data" is often used to describe the process of making government data more available. This is now being accomplished through federal, state and local "data.gov" portals. The anticipated outcomes include:[8,9,10]

- Greater government accountability, credibility and integrity – because the public has easier access to government reports and the underlying data.

  Government should anticipate additional checks and balances being demanded by citizens as they scrutinize past and current legislation, and the "real" benefactors of that legislation.[11]

- More productive government staff—because of the potential for citizens to find the data they need without the assistance of government agency staff.

- More productive and effective government staff—because data is more accessible and available to government decision makers, analysts and researchers. The increased availability of data can lead to more analytical decision making versus strictly intuitive decision making. This can lead to more effective decision making with a proper balance of analytics and intuition.

- A more informed public—because the public has easier access to raw data. Evaluation of this data will lead to conclusions regarding all aspects of society and the physical environment. Citizens will become more fact based and "evidence" oriented.

  With the availability of data, policy makers, decision makers, and citizens may become more oriented and accustomed to data analysis. This means more emphasis on facts and less emphasis on intuition. This more informed public may become less accustomed to accepting the inferences of others. There may be more demand for citations of data sources. There may be more "checking up" on statements, generalities and trite comments made by public officials and others.

- More participation in government by citizens—because a data.gov portal increases the ability of the public to easily find, download, and use datasets that are generated and held by state government.

- Stimulation of innovation and new business ventures through secondary use and repurposing of data by private firms. Access to government datasets can lead to new services that harvest added value from this data.

- More and better ideas generated for improving government effectiveness—because the citizens can access government easily, they can evaluate circumstances and potentially generate ideas for solving problems and exploiting opportunities.

- More confidence in government—because citizens can see the value that government delivers.

- Higher detection of fraud and abuse—because there are more people looking for signs of it.

- Potentially new correlations and understanding that can lead to the identification of opportunities for government, business, academia and non-profits. This can be accomplished through mashups.

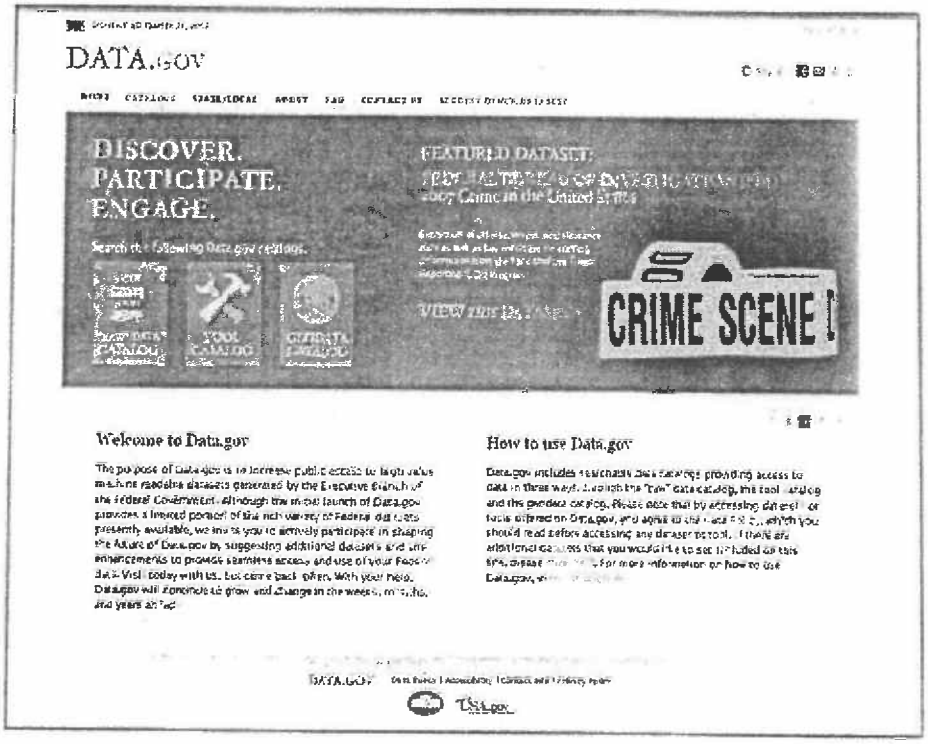
- Surfacing of previously unidentified, but emerging issues. This can result in more predictive analytics which can lead to a better prepared government and society.

- Identification of new opportunities for exploitation of data for good *and for bad*. Access to government datasets can lead to new value added services that harvest value from this data. The criminal element will also be looking at this data—to find ways to exploit and do harm.

- Validation or obsolescence of previous assumptions regarding *cause and effect*. And this can happen in any number of areas of interest.

- A more informed media and advocacy groups. The media may harvest this available data for substantiating issues, proposing solutions, challenging policy, or promoting a platform.

Once the data gates are open, it may never be possible to close them again. It should be anticipated that society will not only expect access to data and information, but will demand it from now on.



Federal Data.gov Site – www.data.gov

"From the performance of a local school to the most recent statistics on crime we need to make sure that people have the facts they need to make informed choices and hold public services to account." *Tessa Jowell MP, Minister for the Cabinet Office, United Kingdom*[12]

Tools of the Trade

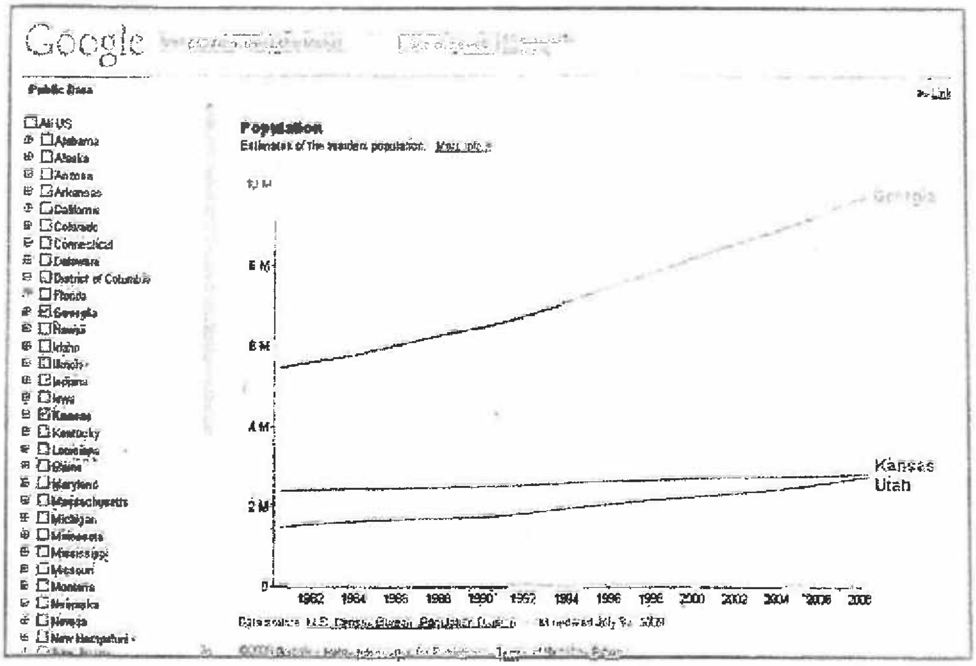
With the advent of data accessibility, it is quite conceivable that there will be a growing demand for capabilities for harvesting, analyzing, visualizing and presenting government data and information, and authoritative data services. These tools include the understanding and application of descriptive and inferential statistics, business intelligence, business analytics, geospatial visualization, and other visual analytics.[13]

Visual Analytics is the science of analytical reasoning facilitated by interactive visual interfaces.[14]

For some time much of government data has been available, but one needed to know *where* to look for it. With the launching of data.gov, the federal government is paving the path so that it is easier to access federal government data. There is only one place one needs to look—data.gov. Further, given the robust objectives of the data.gov initiative, more and more data will be accessible through this door.[15] The state of Utah has "surfaced" multiple datasets that were already available for public consumption but are now easy to find. Utah has also enhanced the state's data.gov site with tools for analyzing and presenting data—and not only data pertaining to the state of Utah. The state data portal also presents publicly available data from other states such as unemployment data. In this way, data can be compared and evaluated.

Making government data more available is simply good business. It will build a stronger relationship between government and its constituents.

There is a growing capacity and sophistication on the part of citizens and organizations to develop web applications including mashups. This sophistication will increasingly put pressure on government accountability and reporting. Demands on government for custom reports—such as mashups of



From the State of Utah data portal
(this page can be accessed from the federal data.gov site by selecting the state of Utah under STATE/LOCAL)

bills and campaign donations – is quickly becoming impossible to meet. However, by providing the raw data to constituents, particularly through linked data, government can share this burden. The raw data can be made available, and additional value-add compilations can be achieved through mass collaboration approaches.[16] Government can't support all those specialized functions and needs, but it can facilitate their development by providing the content that makes them possible.

"It is simply unacceptable at this point in history that a citizen can use Web services to track the movies he is renting, the weather around his house, and the books he's recently purchased but cannot as easily monitor data regarding the quality of his drinking water, legislation, or regulations that will directly impact his work or personal life, what contracts are currently available to bid on for his state, or what crimes have recently occurred on his street."
Jim Willis, Director of eGovernment, the State of Rhode Island, from "Wikinomics: How Mass Collaboration Changes Everything"[17]

Principles for Open Government

In 2007, a working group was convened to establish "Principles for Open Government." The conveners included O'Reilly Media, Public.Resource.Org with the support of the Sunlight Foundation, Google, and Yahoo.[18]

This working group developed 8 Open Government Data Principles which can form the basis for state government data.gov initiatives. These principles are presented here as candidate foundational principles that should be considered for adoption and enhancement by state government.

1. **Complete**
   All public data are made available. Public data are data that are not subject to valid privacy, security or privilege limitations.

2. **Primary**
   Data are collected at the source, with the finest possible level of granularity, not in aggregate or modified forms.

3. **Timely**
   Data are made available as quickly as necessary to preserve the value of the data.

4. **Accessible**
Data are available to the widest range of users for the widest range of purposes.

5. **Machine processable**
Data are reasonably structured to allow automated processing.

6. **Non-discriminatory**
Data are available to anyone, with no requirement of registration.

7. **Non-proprietary**
Data are available in a format over which no entity has exclusive control.

8. **License-free**
Data are not subject to any copyright, patent, trademark or trade secret regulation. Reasonable privacy, security and privilege restrictions may be allowed.

Additional Examples of Principles to be Considered for Democratization of Data

The following are additional candidate principles that state government should evaluate and enhance as an early step in its development of a data.gov portal. These principles are grouped into major categories.

REGULATION

- State data is a state asset and as such must be made readily available within the restrictions of applicable federal and state regulation and statutory requirements.[19]

CIVIC ENGAGEMENT

- State datasets must be treated as state government assets and managed appropriately to protect national security. As state government moves beyond currently available datasets, more scrutiny should be applied to evaluate the appropriateness of publicizing state government datasets.

- Secondary use of state government data should not include controls over its use.[20]

- Government data will not be used for harm to the state government, the public or any other entity.

- State government data availability will encourage and enhance public participation in the processes of government.

- State government data should be made available real time – or as close to real time as possible.[21,22]

QUALITY AND SECURITY

- State government data must be protected from unauthorized modification.

- State government data must be up to date, accurate, credible, reliable, appropriate, secure and complete. That is, the quality of data presented on a state data.gov portal will be assured.

- Privacy of individuals must be respected and maintained.

- Data cannot be attested to upon secondary usage. That is, once data is downloaded, it is no longer the responsibility of state government to attest to its quality.

TECHNOLOGY

- Data should be made available digitally in structured open formats that are re-useable. Proprietary formats should be avoided.[23]

- State government data made available through a state government data.gov portal will have previously been classified as publicly available data.

- Technology barriers should not exist for access to government data. There should be as little technical restrictions as possible.

- State government data should be made publicly available without impacting the systems of records that produce and maintain that data.

- State government data will be managed using a common standardized metadata model in order to assure an established minimum information about datasets. Examples of metadata include:
  - Ownership
  - Effective date
  - Period of Coverage
  - Geographic Scope
  - Source
  - Description
  - File Format
  - Preferred Citation[24]

We believe that this "need for openness" occurs once you understand e.g. the connection between an open society and lack of corruption. OECD statistics show that countries with a pronounced legislation on openness have the lowest degree of corruption.
The Open Sweden Campaign[25]

Metadata Model

Datasets that are made available should include additional information about the dataset in order to present the context for the data. This pedigree information includes information such as:

- the identity of the content owner and steward
- assurance that the data does not have security or privacy concerns
- date released
- format
- assurance that the dataset is in compliance with applicable privacy, confidentiality, and other relevant statutory requirements
- assurance that the data is in compliance with the information quality guidelines of the content owner / steward

A comprehensive, common standard meta model will provide the following benefits as state government moves forward with a state data.gov initiative.

- Contextual basis for interpreting datasets
- Ability to attest to the quality of the data
- Ability to trace the data back to its source
- Ability to compare data from multiple sources
- Ability to evaluate datasets for secondary use
- Consistency in quality across the states

NASCIO recommends states adopt the metadata model presented in Appendix III. This model was adapted from the federal data.gov metamodel and enhanced with additional reference to the Dublin Core Initiative.[26]

What Data to Share

The democratization of data is indeed an evolutionary process. It should be understood as an *iterative process*. Early iterations of state government data.gov initiatives should present data that is already created for public consumption, and can be anticipated as interesting and useful to the public, government, nonprofits and industry. States should not put up any data for which there are statutory privacy or security concerns.

Candidate datasets can be identified through multiple means such as:

- Collaboration with state agencies
  - What data is uniquely collected by that state agency
  - What data availability would enhance the mission of the agency
  - Identify what data is in high demand
- Search analysis on the STATE NAME.gov domain
  - This may be done using a web crawler to find publicly available datasets. HTML scraping extracts HTML code and transforms it into a more automated format that is reusable such as XML or RDF.[27]
- Common sense based on known interest and usability factors
- Implement a "suggestion box" as a means for identifying candidate data

Data.gov sites will grow in volume and sophistication over time. A first launch should not be expected to be perfect. Simply make the data available and expect future iterations to continually improve. A metamodel is important for providing important context, traceability, ownership, and quality. It has to be determined what minimum of information should be considered mandatory. It is recommended that states establish a very short list of required metadata. Pursuing a "less is more" approach will help to ensure the metamodel doesn't become a barrier to continual growth of government data transparency. In some instances very little information is really necessary to provide the best benefit to data consumers. Use of a common metamodel across the states provides a great utility for finding comparative data.

"The internet...has now surpassed all other media except television as an outlet for national and international news....For the first time in a Pew survey, more people say they rely mostly on the internet for news than cite newspapers."
Pew Research Center, December 2008[28]

Linked Data

Government datasets can be made accessible through a variety of means including the development of a separate public data warehouse as was done in the District of Columbia. Another approach is to enable access to state government datasets through *linked data techniques*.[29] Using this approach, a state data.gov site would point to existing, publicly available datasets.

Sir Tim Berners-Lee presents the following advantages of Linked Data Techniques:

Openness:
Linked Data is accessible through an unlimited variety of applications because it is expressed in open, non-proprietary formats.

Modularity:
Linked Data can be combined (mashed-up) with any other piece of Linked Data. For example, government data on health care expenditures for a given geographical area can be combined with other data about the characteristics of the population of that region in order to assess effectiveness of the government programs. No advance planning is required to integrate these data sources as long as they both use Linked Data standards.

Scalabilty:
It's easy to add more Linked Data to what's already there, even when the terms and definitions that are used change over time.

Guidance and Recommendations

1. State CIOs should be the champion and evangelist for promoting the concept of a state data.gov portal. State CIOs should partner with agency executives, records managers, librarians, archivists, data architects and others to create appropriate leadership, visioning, and governance. Transparency must be understood as a state enterprise initiative that is enabled by state agencies in partnership with the state CIO, and the Governor.

2. State government is encouraged to develop and release data in a structured, flexible and searchable manner—as quickly as feasible.

3. Start simple by providing data that is already public. Quickly adopt governance and architecture principles and standards in order to properly plan, implement and sustain the initiative.

4. Create an inventory of currently available datasets in partnership with state agencies, archivists, librarians, and records managers. Identify high priority datasets.

5. Establish basic data categories then continue to identify data sources that fit these categories. Expand the list of categories over time.
   - Financial
   - Employment
   - Environmental
   - Health
   - Energy
   - Economics
   - Education
   - Population

6. Establish ongoing service level agreement with authoritative data owners and custodians to provide consistent and ongoing data to the portal.

7. Leverage linked data approaches to present state datasets. This simplifies the process and avoids redundant data storage.

8. Leverage work that has been done relative to creating and managing other data portals, such as a state geodata portal.

9. Develop a common metadata model that will assure consistency across the states for state government datasets.
   - Established metadata will help to ensure the quality of the data
   - Employed as part of the dataset submission process
   - Drives population of data catalogs
   - Drives search engines and other means for discovery
   - Establishes minimum requirements for the "fitness for use" of datasets
   - Adopt the metadata model presented in Appendix III of this report. Determine what elements of this data model are appropriate for the various dataset types. There may be a lighter version for certain datasets.
   - Associated metadata should be made available for consumers of datasets.

10. Collaborate with other states on what works and what doesn't.

11. Plan for ongoing marketing and awareness building related to democratization of data.

12. Plan and design feedback processes, performance metrics, and measurements of demand. Engage citizens actively to learn what data and functionality they desire in a data.gov portal. Create the necessary functionality to capture and publicize success stories from citizens, non-profits, and businesses that demonstrate the value of this new available government data. Capture, publish

and promote new business ventures that were initiated and the successes they've been able to achieve; citizens and non-profit use of government data to impact government performance and delivery of services.

13. **Plan and design notification processes that use RSS feeds and other approaches to notify end users that new data is available. Provide *subscribe and notify* features.**

14. Establish policy and technical governance. A policy and strategy governance organization should be initiated and sustained which includes representation from state agencies as owners and stewards of data. A technical governance organization will establish technical standards for vetting and managing datasets, dynamic links, and the design and maintenance of the portal.

15. Establish a mechanism for creating and sustaining *subject area / practice area* communities of interest.

16. Maintain compliance with existing state government standards.
    - Business
    - Process
    - Data
    - Technology
    - Accessibility
    - Security and Privacy

17. Establish and maintain an enterprise perspective. Data.gov sites will provide a comprehensive view of the state enterprise. Present this data as enterprise data with a common look and feel and functionality.

18. As state data.gov sites evolve and continue to improve, anticipate the following enhancements and issues.
    - New demands for data
    - Demand for analytical tools
    - Notification
    - Challenges in data discovery
    - Data services that are dynamic, extensible, and customizable by data consumers

19. Collaborate with state archivists, state librarians, data architects, enterprise architects and state GIS specialists in developing the strategies and plans for implementing and sustaining a state data.gov site.

20. Develop methods and procedures in cooperation with state agencies for ongoing data identification.
    - Anticipate innovative ideas from agencies and the public
    - Anticipate both structured and unstructured data
        - Documents
        - Images
        - Video
        - Audio
    - Develop methods and procedures for maintaining links
        - Detection and repair

21. Identify methods and procedures for ongoing performance metrics
    - Access frequency
    - Establish data stewardship roles
        - Data stewards will be responsible for ensuring data quality

22. Determine what data formats will be supported including:
    - Comma Separated Value (CSV)
    - Extensible Markup Language (XML)
    - Keyhole Markup Language (KML)
    - Resource Description Framework (RDF)

23. Monitor the emerging formats and presentation approaches related to data and data services.

24. Investigate innovative business models, sourcing and private sector services that enable government transparency.

Next Steps

There are a whole host of questions and issues that will eventually need to be addressed. As government moves into this new level of transparency and secondary use of government data, new issues will emerge, and numerous questions and issues will eventually need to be addressed. Expect surprises. Currently identified issues include:

- Preservation and version control.
- New modes of providing information to the public may obsolete traditional methods for receiving and responding to requests for information.
- The importance of "context" for information. How much context should be provided?
- How to validate or verify the accuracy of the content in secondary sites? It will be an issue in litigation at some point.

- Dynamic access to data. Update frequency versus dynamic links through application program interfaces. How close to real time should be expected or will be demanded by the public?
- Availability of data may be the beginning of an increase in citizen engagement to a level that is difficult to anticipate. Be prepared for new issues and challenges to state government's capacity to respond. Balancing this challenge is the anticipated increase in citizens' ability for self service.
- What tools for analyzing data will be requested or even demanded by citizens?
- With the proliferation of data, what collisions will occur as more sophisticated analysis methods emerge? What new correlations and multi-variant analysis may actually pierce the privacy and security barriers?
- Early utilization of state government data may begin with a relatively limited market. Anticipate utilization will grow. What capacity issues will emerge as utilization grows?
- Availability of data will provide the basis for comparative analysis across state governments including demographics, crime statistics, environmental quality, economic development, etc. What new behaviors and disciplines will emerge related to competition, and fact based decision making in government and industry?
- As government and society mature in their use of data, anticipate new needs and requirements that will require enhancements to the metadata model, vetting process and governance.
- Anticipate future demand for dynamic data service provisioning tools for data presentation, data analysis, and metadata searching. Increasingly, data consumers will be searching for and demanding online data services versus static, point-in-time datasets. These types of capabilities are currently available on geodata.gov.
- Understand the real personal impact on citizens and the economic impact on business that has come about, or has been enabled by this new available government data resource.
- Continue to actively engage citizens, non-profits and business through collaborative means for ongoing learning, adaptation and transformation regarding state and even national government data transparency.

Conclusions

Open government and the democratization of data is here to stay. Over time the demand for data can be expected to increase. State government should embrace this trend and enable it. The state CIO is in the unique position of viewing these resources at the enterprise level and crafting an architectural strategy and implementation plan to facilitate and enable the growth in the democratization of data. State CIOs should anticipate that making currently available datasets more available through a convenient single door is an important first step. In the near future, the state CIO can act as a champion as well as a significant promoter and visionary for new capabilities for citizens to become proactive participants in the processes of government. This can lead to the identification and development of value added tools that will assist citizens, government workers and businesses in the use of government data. The ultimate outcome is better, more engaging government, citizen partnering and ownership of their government, and realization of this great vision:

"—that this nation, under God, shall have a new birth of freedom—and that government *of the people, by the people, for the people,* shall not perish from the earth."[30] *Abraham Lincoln*

Now technology is making this vision more possible than at any time in history. Citizens will be able to engage more effectively and easily. State government is at the brink of a new era in data democratization. This is a step in the right direction. Get ready. This adventure is just starting—and the state CIO is a key enabler.

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Intergovernmental Committee Items-Pending

Nov. 1, 10

Item	Referred By	Date Referred	Status
State Auditor of Public Accounts Procurement Fraud Investigation Recommendations	**Gorton**	**10-5-10**	
Lobbyist Registration Amendment to Ethics Act	Lawless	9-21-10	
Adoption of Prevailing Open Standards for Documents, Maps & Other Data Formats	**Martin**	**7-6-10**	
Board/Commission Term Limits	James	7-6-10	
Local Preference	Gorton	6-29-10	Referred to Purchasing Sub Committee
Minority & Woman Business Recruitment	Stinnett	6-29-10	
Lay Off Policies	Lawless	6-8-10	
Timeliness of Former LFUCG Employees Working for Others	Crosbie	4-13-10	
Exit Interviews	Myers	3-9-10	Sub Committee
Purchasing, Procurement & Professional Service Selection Process	Crosbie	3-9-10	Sub Committee

Item (cont)	Referred By	Date Referred	Status
Council Rules: Option to Speak Regarding Items Not on the Agenda	Crosbie	12-8-09	Requested Law Memo Clarifying Councilmember/Mayor Training
E911 Call Center Management	Lawless	12-1-09	Referred to Internal Audit Board
Groups that Make Board/Commission Nominations	Crosbie	8-11-09	Fall 2010
Grievance Procedures	James	4-8-08	Sub Committee
Citizens' Advocate Office Draft Policy & Procedures Manual	Myers/ Ellinger	2-5-08	Sub Committee
Boards & Commissions That Adhere to Ethics Act Financial Disclosure	Myers	8-14-07	Fall 2010
Boards/Commissions Reporting	Myers	8-14-07	Fall 2010
Council Standing Committees	Myers	1/16/07	COW Discussion
High Risk Pay Supplement	Gorton	2/14/06	Unknown
Proposed New Compensation System	Gorton	1/15/05	Delayed-Finance & HR

PAS