

## MEMORANDUM

To: Kevin Reed, Vice President and General Counsel

From: Lisa Thornton, Public Records Officer

Date: November 18, 2020

### Re: Annual Report - Office of Public Records, FY 2020

Created in 2010, the Office of Public Records responds to requests from members of the public for university records. The office believes the primary purpose of the Oregon Public Records Law is to provide transparency in the workings of public entities. To that end, this annual report will look at the details of records production, challenges faced by the office, and future goals of the office.

#### Public Record Production:

In Fiscal Year 2020, the Office of Public Records processed 447 public records requests, a 9.5 percent decrease from the 494 requests processed in Fiscal Year (FY) 2019 (*figure 1*). While the number of requests received was lower than FY9, it was still seven percent above the office's historic rolling three year average (*figure 2*). Four hundred forty-four of the requests received were closed by the end of the fiscal year. Of the closed requests, the average completion time was five business days.



Figure 1

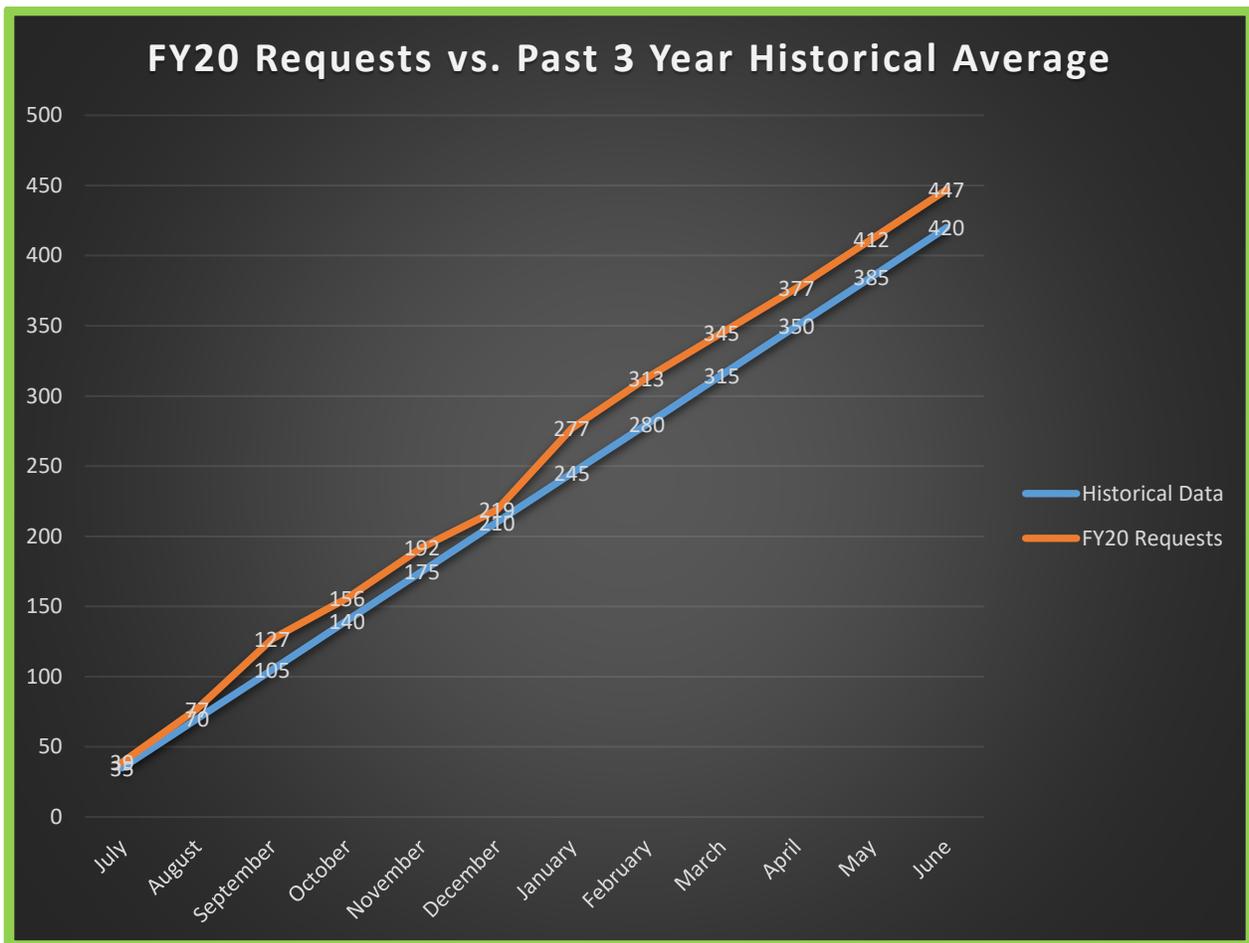


Figure 2

As in years past, the office uses a four-category rating system<sup>1</sup> to measure and track the complexity of the requests, with a rating of (1) being the simplest request and (4) the most complex. This rating system evaluates the state of the documents, the number of locations from which they must be gathered, and the complexity of the required redactions. Eighty-three percent of FY20 requests fall into the first and second categories, in which the office already possessed the records, or records could be gathered from one or two campus locations and with minimal required redactions. Response times in FY20 remain consistent with these complexity ratings.

As in the past, the Media is the largest category of requestors, making nearly 50 percent of requests received by the office (*figure 3*). The office breaks the Media into two sub-categories, the news Media and Student Media. Requests made by both groups were nearly equal, with the News Media making 25 percent of the total requests received by the office, and the Student Media making 23 percent.

Nearly a third of the total requests received came from Commercial requestors. Commercial requestors largely represented groups seeking to do business with the University through the RFP/RFQ process, or businesses seeking student directory information.

<sup>1</sup> Category 1: Office has responsive records prepared to deliver

Category 2: Office can easily and quickly collect records from one or two campus locations; responsive records require minimal redaction

Category 3: Responsive records require redaction and/or the Office of the General Counsel's advice

Category 4: Office collects records from multiple sources; responsive records are difficult to locate or require forensic reproduction; documents require complex processing and/or redaction; advice required from the Office of the General Counsel

Private requestors, seeking records for personal use, made up 14 percent of the requests, with the education, labor and legal categories making up 11 percent of the total requests received by the office.

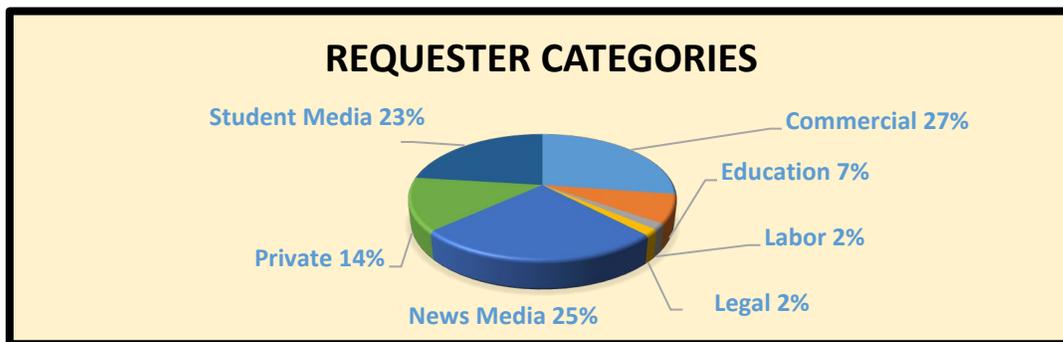


Figure 3

### Fees

The office continues its practice of waiving costs to respond to simple requests, defined as “requests made by non-Commercial entities that clearly require less than one hour of university staff time to fulfill.” Under this practice, the office fulfilled 77 percent of the requests received in FY20 at no cost to the requestor (figure 4).

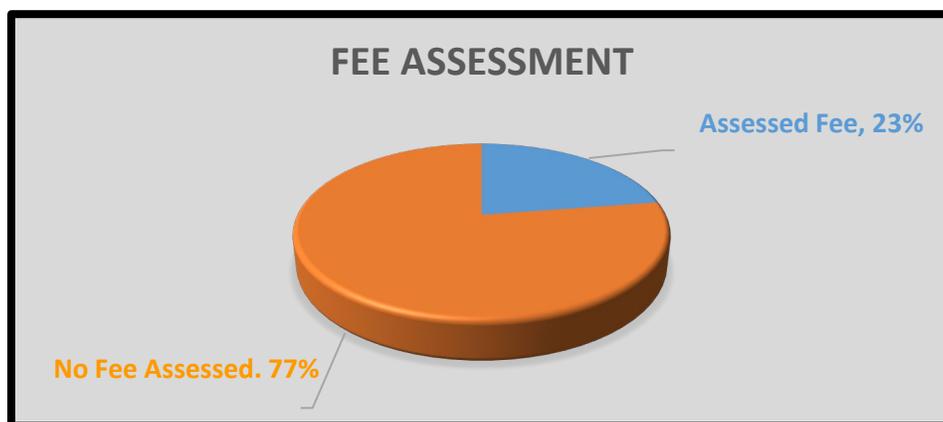


Figure 4

The requestor category that was most likely to be charged for requests was the Commercial category, with 43 requests resulting in a charge for the response. The fee was paid by 54 percent of the requestors assessed; the average amount paid for these requests was \$95.41.

The Media were the next group most likely to be charged. For statistical purposes, the office breaks the Media into two sub categories: the news Media and Student Media. The News Media received a cost estimate for 24 of the 114 requests, nine of which were pursued. The average payment for a News Media request was \$301.79.

For the Student Media, 12 of the 103 requests resulted in a cost estimate; none of which were pursued. In all, 17 requests were either abandoned or withdrawn by Student Media. The remaining 86 requests by Student Media were completed at no cost to the requestors.

Ten Private requestors received estimates to respond to their requests, one of which was ultimately pursued. In all, 15 requests were either abandoned or withdrawn by Private requestors. The remaining 45 requests from Private requestors were fulfilled at no cost to the requestor.

Of the 447 requests received in FY20, the office processed 18 requests beyond the default statutory completion deadline (15 days). Five of these requests were made by Commercial organizations, six by the news Media, three by Student Media, one by a legal group and three by Private entities. A fee was charged for 11 of these requests, with an average payment of \$333.41; three of these requests were from Commercial organizations, the remainder were from members of the News Media. In all these cases, a reasonable estimated date was provided to the requester, and thus the office finished the year with 100 percent compliance with the deadlines imposed by the Oregon Public Records Law.

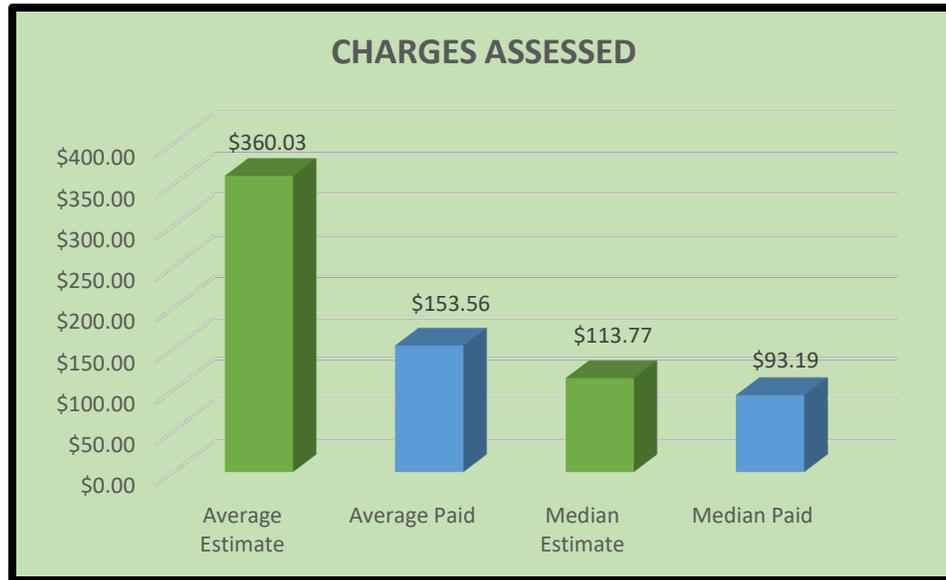


Figure 5

### Timeliness

The metric tracked most closely is the time between receiving a request (or a clarification of that request), or the time from when requested payment is made, until the day the requested records are transmitted (*figure 6*). During FY20, the longest time from payment received to records produced was 64 days. This request was for responses to Request for Qualifications (RFQ) for investment consulting services since 2013. Given the time frame, an usually large number of records were responsive. The Office also spent considerable time communicating with the responding firms regarding trade secrets contained in the records.

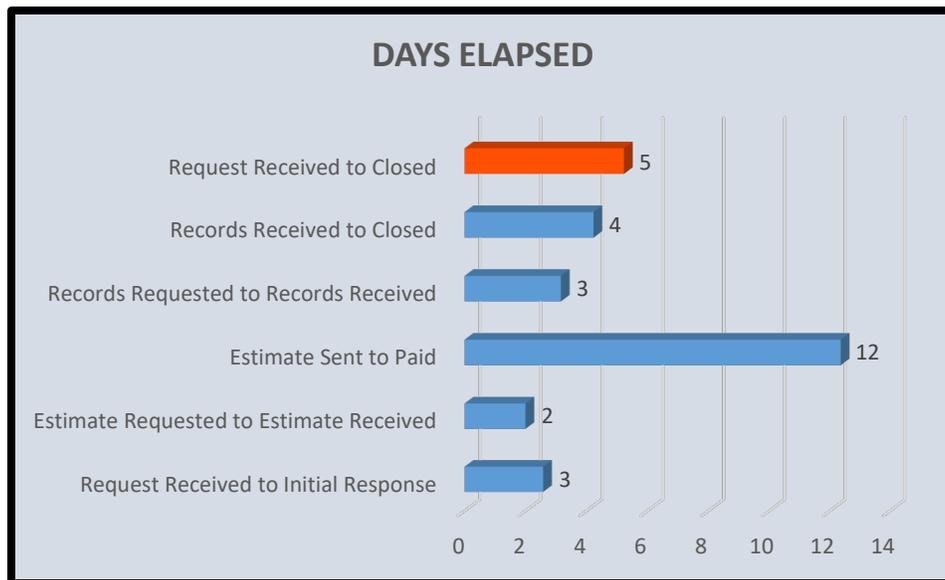
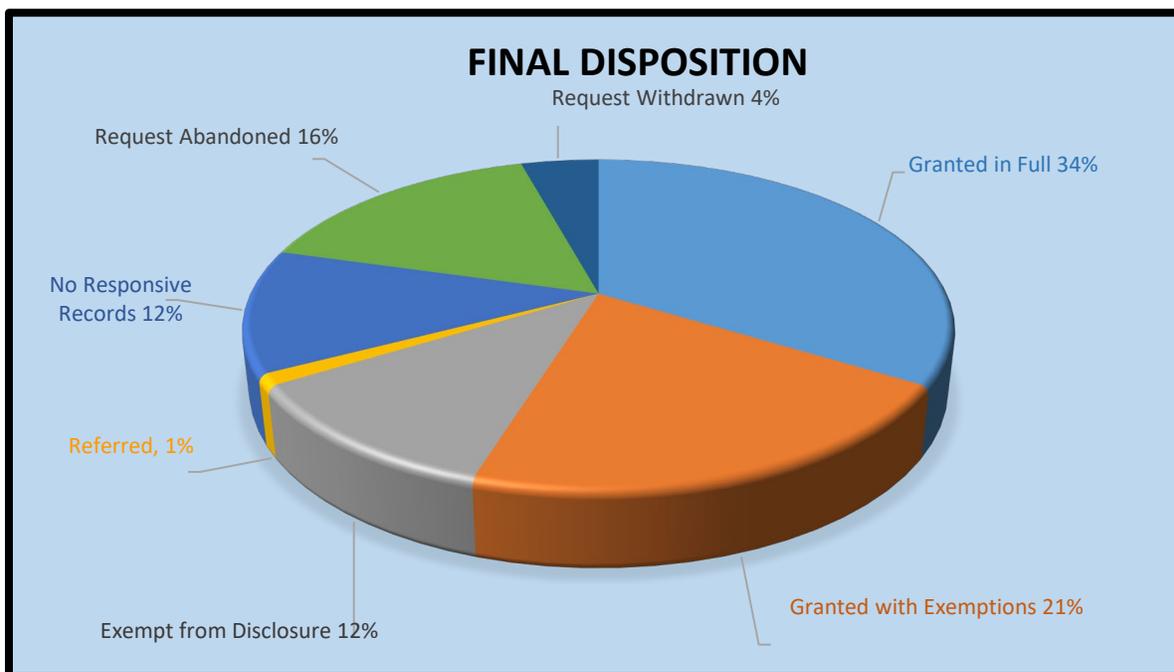


Figure 6

## Transparency

The office believes the primary purpose of the Oregon Public Records Law is to provide transparency in the workings of public entities. The office strives to balance this transparency with the need to protect certain types of information submitted to public bodies, including student records, private personal information, personnel records, faculty research, and trade secrets.

In FY20, 151 requests resulted in all records provided to requestors without redactions, 94 requests resulted in some redactions, and 51 requests were denied in full.



Of the 94 requests that were partially redacted, 24 were redacted in part under the federal law exemption in order to comply with the Family Educational Rights and Privacy Act (FERPA). Four requests had portions that related to safety measures redacted, 31 were redacted to remove

Private information, 16 were redacted under the state law exemption to ensure attorney-client privilege, and 19 were redacted for trade secrets.

Of the 51 requests denied in full, 35 requests were for documents relating to incomplete RFP/RFQ processes, which are exempt under Oregon law and University policy. Four requests were for personal faculty records, which are not public records under Oregon law. Records for one request were exempt under attorney-client privilege, two requests were exempted entirely to protect the personal privacy of the individual involved, and nine were exempt in their entirety under the federal law exemption in order to comply with FERPA.

The office also referred five requestors to other campus departments, 19 requests were withdrawn by the requester, 54 had no responsive records, and 73 requests were abandoned. Under Oregon Public Records Law, a request is considered abandoned if the requestor does not respond to a request for clarification or payment for sixty days.

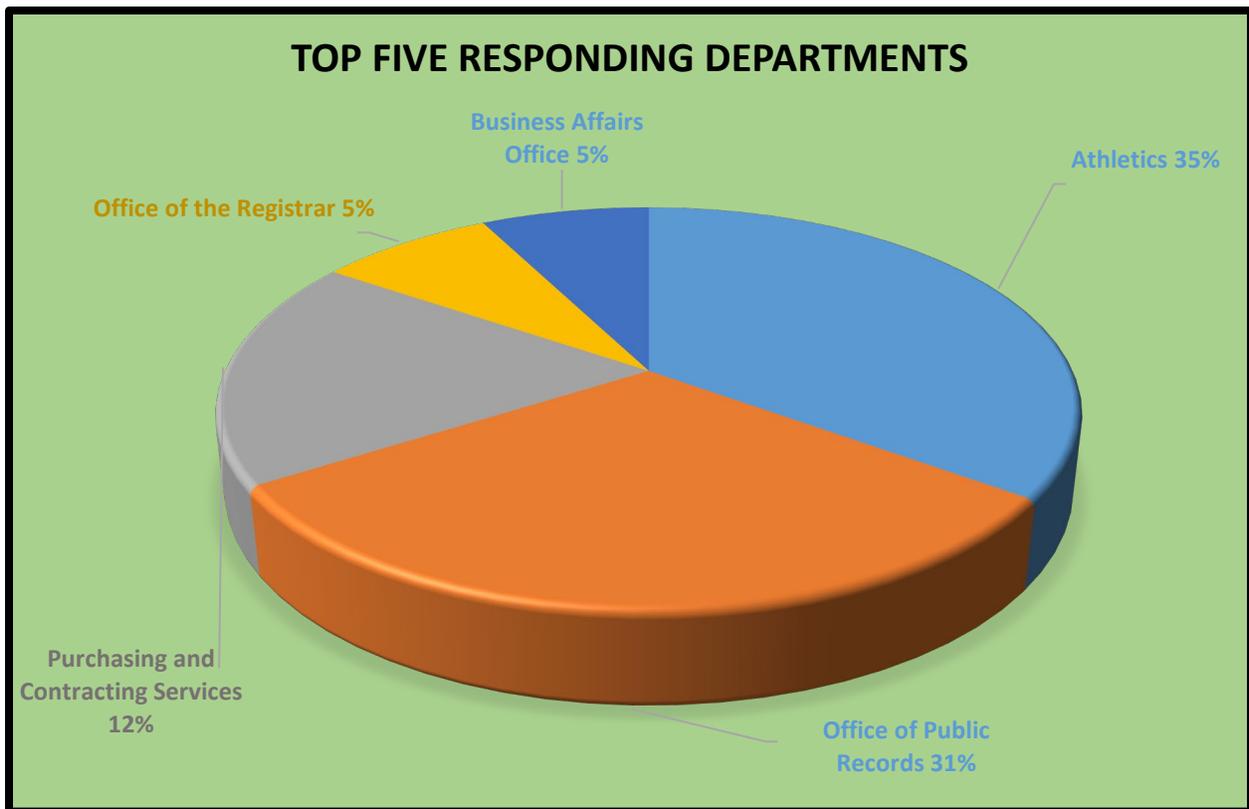
#### Additional Progress:

The office hosted a virtual version of the third annual Public Records Roundtable in June. This was the mostly widely attended roundtable to date, with Public Records and Records Management professionals from: the cities of Eugene, Springfield, and Portland, as well as community colleges and universities from across Oregon and Washington, joining the University of Oregon's Public Records Office for discussion of industry best practices and the many challenges faced by our offices. Topics included a presentation from the State of Oregon's Public Records Advocate, a discussion of privacy concerns for departments responding to public records requests related to COVID-19 from Lane County Public Health, and a discussion of common issues among our offices. The event was well received, and the office looks forward to hosting a fourth roundtable next summer.

#### Responding Departments:

Consistent with past trends, the Athletics Department received the plurality of public records requests, with 23 percent of the total. Three other departments on campus also received a high concentration of requests: Purchasing and Contracting Services received 12 percent, and the Office of the Registrar and Business Affairs Office each received five percent of the total public records requests.

The remaining requests were distributed relatively evenly across the University, with concentrations in the Office of the General Counsel, Office of the President, Associate Students of the University of Oregon, Board of Trustees, Dean of Students and Human Resources.



#### Challenges:

This report would be incomplete without an acknowledgment of the effects of COVID19 on the University as a whole, and the office specifically. With very little notice, the University shifted its operations from fully in-person to fully remote. Campus partners did an excellent job of maintaining access to as many services as possible during this time, and response to public records requests was no different.

Prior to the transition to fully remote on March 16, the office received 335 public records requests. The average response time was five business days, and 14 requests received reasonable estimated dates of completion.

Between March 16, and the end of the fiscal year, the office received 112 public records requests. The office's average response time was five and a quarter business days, with three requests requiring more than 15 business days to complete.

Looking to prior fiscal years, the office received 80 requests between March 16 and June 30 in FY17, 111 requests in FY18 and 161 requests in FY19 during that same period. All told, the 112 requests received March 16 through July 30 is on track with the office's historical three-year average.

In the interest of accurately comparing the office's performance pre- and post-transition to remote operation, the office chose at random 112 public records requests, received between August 27 and November 18, 2019. For this period, the average response time was four business days, with only one request that required more than 15 business days to complete.

While the pandemic is likely not fully responsible for the change in response times, comparing response times before and after March 16 shows the impact of COVID19 on the University's ability to respond to public records requests. In this instance, it added about a business day to the

office's average response time. The office expects this to even out as work returns to campus, but given the reality that many, if not most, employees will work from home under difficult circumstances it is likely that this trend will continue into fiscal year 2021.

The topics of requests also shifted after the pandemic. As stated above, prior to March 16, the top responding departments were Athletics, Purchasing and Contracting Services, the Office of the Registrar and the Business Affairs Office. After March 16, Athletics went from receiving 21 percent of the total requests, to 28 percent of requests. These request largely focused on the rapidly changing plans for athletic competition and student athlete COVID positivity. Similar, Purchasing and Contracting received 12 percent of the total requests received prior to March 16, and 13 percent after. There was no change for the Office of the Registrar, and a one percent decrease for the Business Affairs Office. Interestingly, Human Resources received 4 percent of the requests made after March 16, vs. one percent of the total made prior to that date.

#### Future Endeavors:

The office looks forward to hosting a fourth annual Public Records Roundtable in the summer of 2021. The office also intends to focus its efforts on producing online training content for faculty and staff, as well as update the Public Records webpage. Staff will also continue with their professional development by attending the Council on Governmental Ethics Laws.