

## MEMORANDUM

To: Kevin Reed, Vice President and General Counsel

From: Lisa Thornton, Public Records Officer

Date: January 2, 2020

Re: Annual Report - Office of Public Records, FY 2019

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 2019, the Office of Public Records processed four hundred ninety four public records requests, a fourteen percent increase from the four hundred twenty eight requests processed in Fiscal Year (FY) 2018 (Figure 1). Four hundred sixty nine of the requests received were closed by the end of the fiscal year. Of the closed requests, the average completion time was six days.<sup>1</sup> Ninety two percent of requests were completed in fifteen business days or less. The remaining eight percent of requests were completed in over fifteen business days. However, these requests remained in compliance with the public records law, as the office worked with requestors and provided reasonably estimated dates of completion to those requestors.

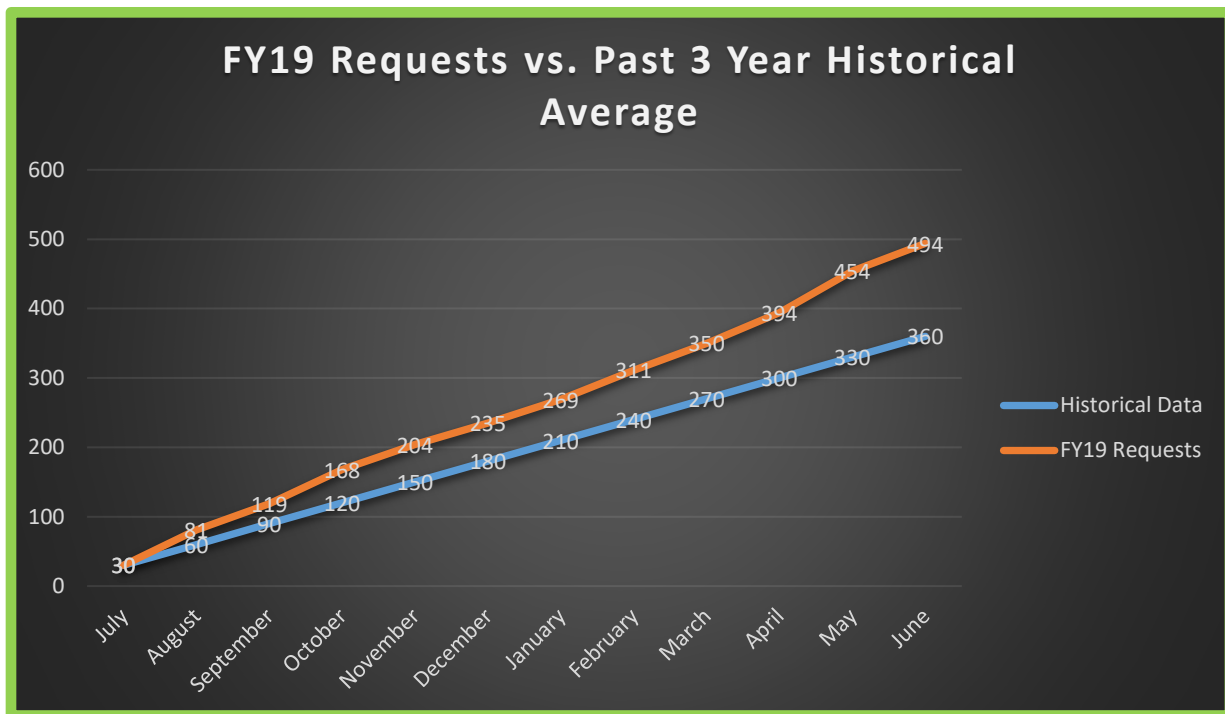


Figure 1

<sup>1</sup> SB 481, now codified at Oregon Revised Statutes 192.329, established a completion deadline of fifteen business days (absent an exception).

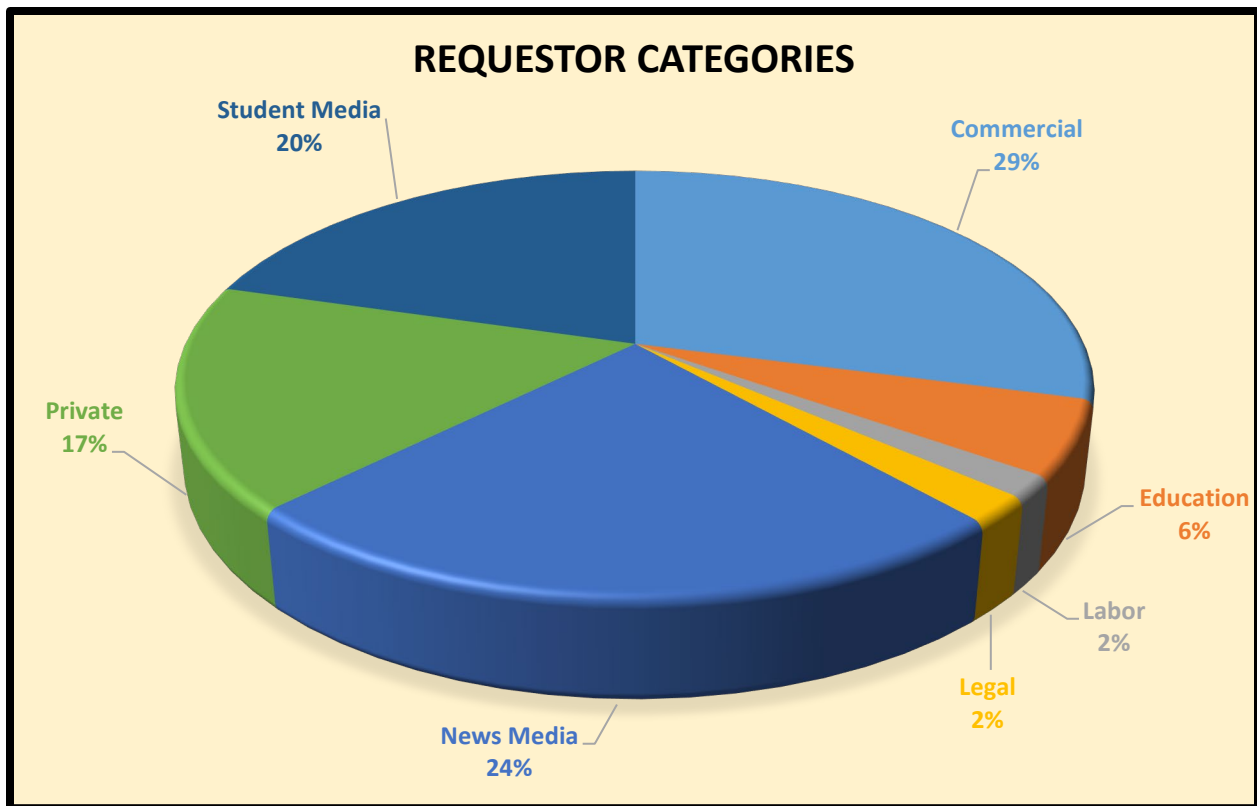


Figure 2

As usual, the top three categories of requestors were Media organizations (forty-four percent), commercial entities (twenty-nine percent) and unaffiliated (private) requestors (seventeen percent).

Commercial entities' requests largely sought competitor responses to Requests for Quotes or Requests for Proposals, contracts, or student directory information.

Requests from media groups were more varied, though both focused heavily on contracts and correspondence.

Though it is difficult to discern a pattern in requests made by private requestors, some groupings of requests occurred around contracts, financial data, and correspondence.

As in years past, the office uses a four-category rating system<sup>2</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. Seventy eight percent of FY19 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 FY19 remain consistent with these complexity ratings.

<sup>2</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

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.”* Eighty percent of the requests received in FY19 (394 out of 494) were fulfilled at no cost to the requestor under this practice.

When the office receives a request that does not qualify for the simple request fee waiver, the office makes an effort to work with requestors to narrow requests when appropriate. Doing so reduces the cost of fulfilling a request to both the institution and the requestor. The office also continued its practice of granting a twenty percent fee waiver to members of the institutionalized and student media, in acknowledgement of the inherent public interest in the work they do. This practice allows the office to do its best to remove any barrier to access that a fee may cause while remaining mindful of the fact that the majority of the University’s budget is comprised of student tuition dollars.

Though charges are not common, the requestor category that was most likely to be charged for requests was the media. Twenty-five percent of requests made by news media, and eight percent of requests made by the student media, received a charge to respond. The average estimate was \$307.97, though half of the estimates provided were under \$200.00

The commercial category was the next most likely to be charged, with twenty-four percent of requests resulting in a charge for the response. The average cost of responding to these requests was \$126.46. The office would generally expect to find that commercial requestors would be the most likely to be charged, as they are not eligible for the ‘simple request’ fee waiver. However, the office found that twenty-nine percent of the requests sought documents that had previously been provided to a prior requestor, twenty-three percent of requests were closed immediately as no records were available, and two percent of requests were abandoned before a cost estimate could be provided.

Nineteen percent of private requestors received estimates to respond to their requests, one of which was ultimately pursued. The remaining eighty-one percent of requests were fulfilled at no cost to the requestor.

The office processed forty requests that took more than fifteen days to complete. Of these requests, sixteen were made by the media, ten by commercial entities, six by education-related entities, five by private individuals, and three by law firms. A fee was charged for twelve of these requests, with an average payment of \$610.39. Five of these fee-related requests were from members of the media, two were from commercial entities, two were from educational entities, two were from law firms, and one was from a private individual.

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 5). During FY19, the longest time from payment received to records produced was one hundred eighty one days.

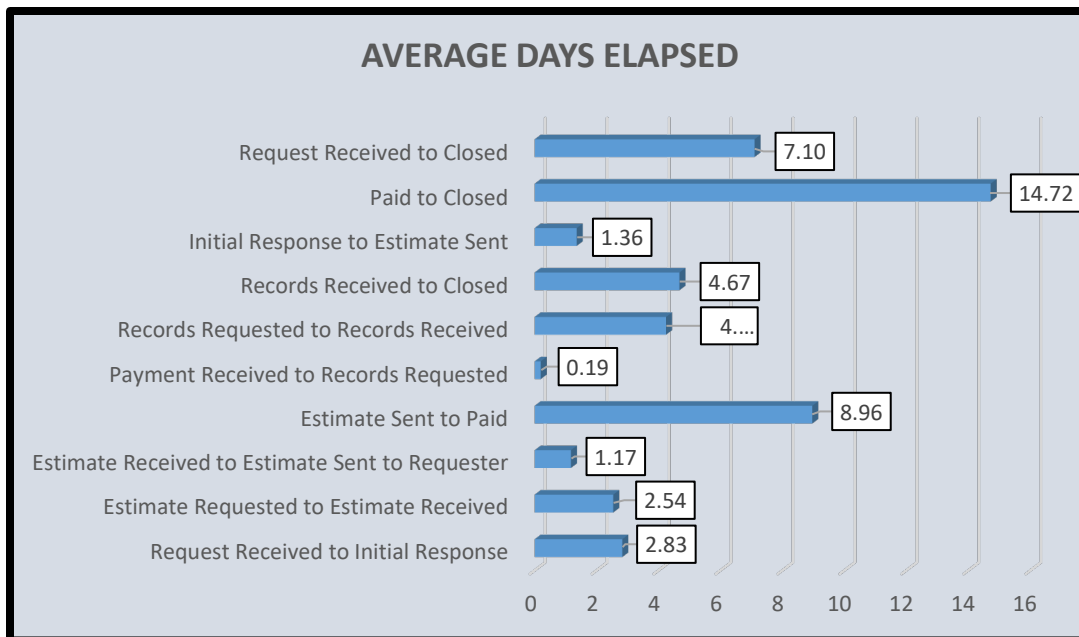


Figure 3

This outlier request, from a commercial requestor, took an extraordinary amount of time due, in part, to its extremely broad scope, covering over eighteen thousand pages. The office also lost its 1.0 FTE temporary staffing that it had funded for FY18, reducing the number of staff available to process requests by one third. The loss of staff, as well as a marked increase in requests received, translated to the longest one-time delay in production of records in the nine-year history of the office.

The office strives to balance transparency with the need to protect certain types of information submitted to public bodies, including student records, private information, personnel records, faculty research, and trade secrets. In FY19, fifty-six percent of requests had records provided to requestors without redactions, twenty-two percent were provided with some redactions, eleven percent had no responsive records, and only ten percent requests were denied in full.

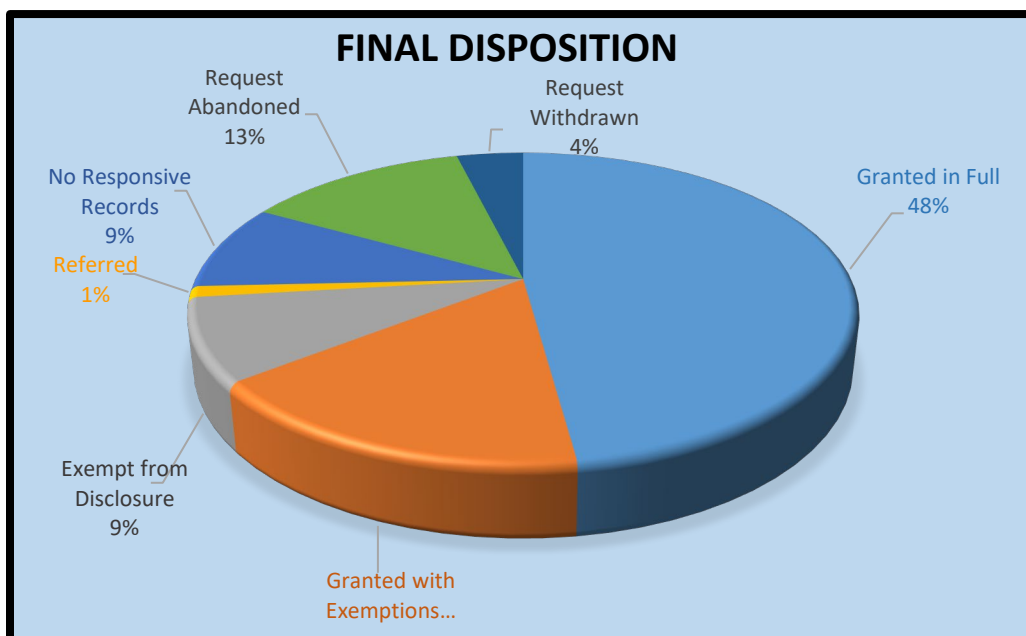


Figure 4

Twenty-two percent (or 50 of 494 requests) had partial redactions. Of those requests, thirty-nine were redacted for personal privacy, fifteen were redacted for trade secrets, and nine were redacted in part under the federal law exemption in order to comply with the Family Education Rights and Privacy Act (FERPA). Some records were redacted under more than one applicable exemption.

Only 14 of the 494 requests were denied in full. Of those requests, one was for personal faculty records, which are not public records under Oregon law. Six requests were for documents relating to incomplete RFP/RFQ processes, which are exempt under Oregon law. Four requests were for student information exempt under FERPA or the student email addresses exemption, and the remaining three requests were denied in full for privacy or confidentiality reasons, such as the personal privacy exemption and attorney-client privilege.

#### Additional Progress:

The office hosted the second annual Public Records Roundtable in August. Public Records and Records Management professionals from the cities of Eugene and Portland, Central Oregon Community College, Lane Community College, Oregon Health and Sciences University, Oregon Institute of Technology, Oregon State University, Portland Community College, Portland State University, and Southern Oregon University, joined the University of Oregon's Public Records Office for a two-day discussion of industry best practices and the challenges faced by our offices. Topics included a presentation from the Public Records Advocate for the State of Oregon, a discussion of the ethics of assisting requestors in narrowing their request, and a user perspective on the public records process, with a guest speaker from the Society of Professional Journalists. The event was well received, and the office looks forward to hosting a third roundtable next summer.

#### Challenges:

Consistent with past trends, the Athletics Department received the majority of public records requests, with eighteen percent of the total. Three other departments on campus also received a high concentration of requests: PCS received nine percent, the Office of the General Counsel received six percent, and Capital Construction received five percent.

The remaining requests were distributed evenly across the University, with concentrations in the Business Affairs Office, the Office of the Registrar, Institutional Research, the Office of the President, Safety and Risk Services, and the University of Oregon Police Department.

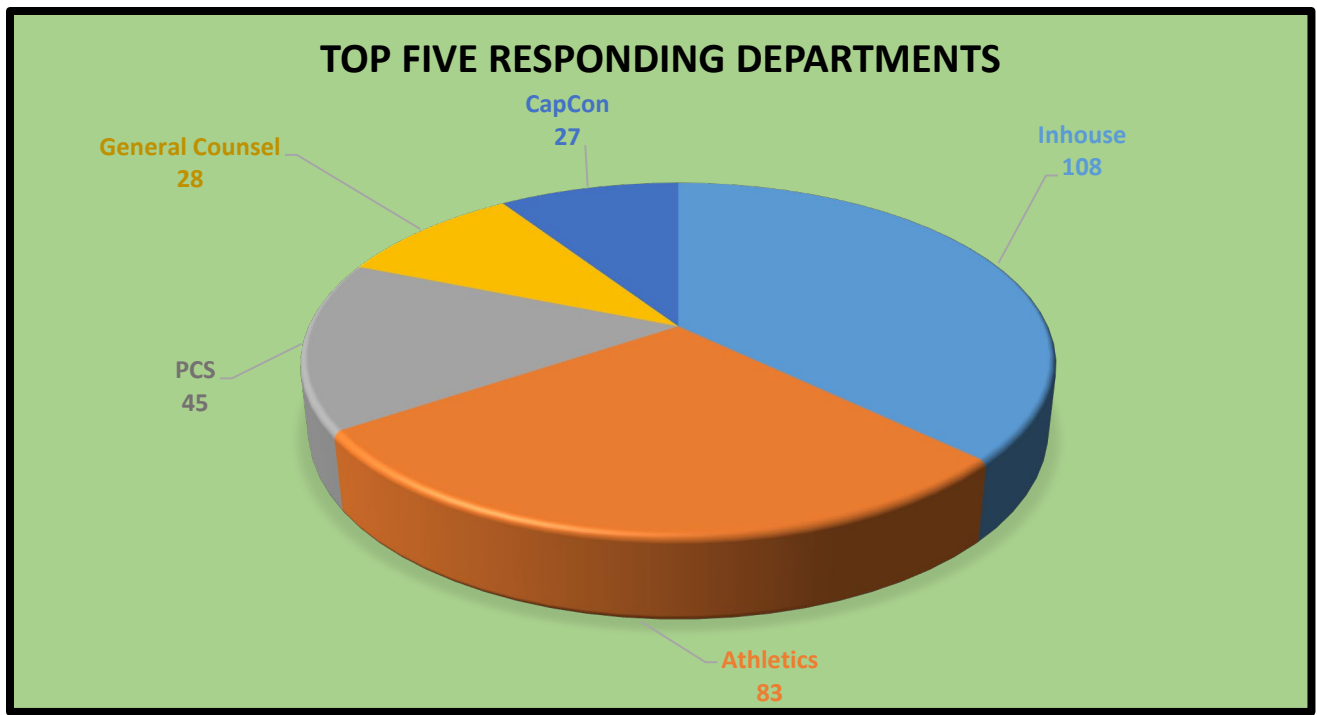


Figure 5

While requests received and processed by the office have increased nearly eighty-eight percent since the inception of the office in 2010, staffing levels have remained the same. While during the first part of the year, the office was able to retain a temporary 1.0 FTE employee for a short time, that position is no longer available. It will be a significant challenge in the coming fiscal year to continue to meet the statutory deadlines with this reduction in staff and the absence of this additional assistance has resulted in the office turning away requests for assistance from colleagues around the campus who have historically relied upon the office for help in processing documents being released by those offices. The office is in the process of identifying whether or not permanent funding for a third position could become available.

Future Endeavors:

The office looks forward to hosting a third annual Public Records Roundtable this summer. Staff will also continue with their professional development by attending the Council on Governmental Ethics Laws.