



MEMORANDUM

To: Kevin Reed, Vice President and General Counsel

From: Lisa Thornton, Public Records Officer

Date: July 13, 2018

Re: Annual Report - Office of Public Records, FY 2018

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 2018, the Office of Public Records processed four hundred twenty eight requests, a twenty-two percent increase from the three hundred thirty four requests processed in Fiscal Year (FY) 2017. Four hundred sixteen of the requests received were closed by the end of the fiscal year. Of the closed requests, the average completion time was three days, an improvement over FY17.

As in years past, the office uses a four-category rating system¹ 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,

¹ 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 number of locations from which they must be gathered, and the complexity of the required redactions. Eighty percent of FY18 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 FY18 remain consistent with these complexity ratings.

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 two percent of the requests received in FY18 were fulfilled at no cost to the requestor under this practice. The requestor category that was most likely to be charged for requests was the commercial category, with thirty-six requests resulting in a charge for the response. The average cost of responding to these requests was \$100.35.

With twenty-six requests, the media were the next group most likely to be charged, with nineteen of requests being made by news media, and seven by the student media. The average payment received was \$159.18. Seven of the sixty-one requests by Student Media resulted in an estimated cost to respond; the remaining fifty-four requests by Student Media were completed at no cost to the requestor.

Twenty Private requestors received estimates to respond to their requests, four of which were ultimately pursued. The remaining one hundred twelve requests from Private requestors were fulfilled at no cost to the requestor.

Senate Bill (SB) 481 went into effect on January 1, 2018. One of the major impacts of this legislation was to establish deadlines by which a public body must acknowledge receipt of a request (five business days) and complete a response (ten business days). There are some exceptions in the law that allow for a longer response time, though the office strives to respond to each request within fifteen business days. (For more information on the new law, see [here](#) and [here](#).) To that end, the office will address requests that took more than fifteen business days to fulfill, rather than the previous standard of thirty days. Consistent with SB 481, this timeframe excludes wait times for clarification or payment from the requestor.

The office processed fifty-seven requests that took more than fifteen days to complete, five of which were received after January 1, 2018 and, therefore, were subject to the deadlines imposed by SB 481. Twenty-three of these requests were made by commercial organizations, twenty-four by the media, three by education-related entities, and seven by private entities. A fee was charged for sixteen of these requests, with an average payment of \$101.20; ten of these requests were from commercial organizations; the remainder were from members of the media.

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. During FY18, the longest time from payment received to records produced was one hundred twenty seven days. This exceptionally long response time was due almost entirely to the fact that all of the personnel essential to a response were on leave. The request was resolved within two weeks of the last employee's return from scheduled leave.

The majority of cases exceeding the office's goal of completing a request within fifteen business days were requests for bids submitted by companies in response to Requests for Proposals (RFPs) and Requests for Qualifications (RFQs). To address this challenge, the Office of Public Records has worked with colleagues in Purchasing and Contracting Services (PCS), as well as Athletics, to streamline current practices and expedite response times. Historically, the office practice was to work with companies who submitted responses to RFP/RFQ to allow for additional time to, for example, identify trade secrets after the office received a request. This was a time consuming process that often required weeks, if not months, of back and forth between the office and responding companies, resulting in protracted delays. To remedy this, PCS and Athletics now require that each response to an RFP/RFQ response contain a version of the response that has all trade secret information specifically marked and ready for review and redaction. This change has allowed the office to respond to requests for responses to RFP/RFQs within the fifteen business day statutory timeline.

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 information, personnel records, faculty research, and trade secrets. In FY18, one hundred forty six requests had records provided to requestors without redactions, one hundred twenty seven were provided with some redactions, twenty-nine requests were denied in full, and one hundred twelve were closed for other reasons, mostly due to being withdrawn by the requester.

Of the one hundred twenty seven requests that were partially redacted, forty-eight were redacted in part under the federal law exemption in order to comply with the Family Education Rights and Privacy Act (FERPA), seventy-four were redacted for personal privacy, and forty-two were redacted for trade secrets.

Of the twenty-nine requests denied in full, six were for personal faculty records, which are not public records under Oregon law. One record was exempted under the faculty research exemption, one was exempt under the email addresses exemption, and four were exempt in order to comply with FERPA. Eight requests were for documents relating to incomplete RFP/RFQ processes, which are exempt under Oregon law and University policy. The remaining requests were denied in full because the University did not possess responsive records.

Additional Progress:

The office achieved a long held goal by hosting the first annual “University of Oregon Public Records Roundtable” in mid-June. Public Records and Records Management professionals from Eastern Oregon University, Lane Community College, Oregon Health and Sciences University, Oregon Institute of Technology, Oregon State University, Portland State University, Southern Oregon University, the University of Washington, and Washington State University, joined the University of Oregon’s Public Records Office for a two-day discussion of industry best practices and the many challenges faced by our offices. This roundtable offered a rare networking opportunity. Attendees were excited and engaged in the topics, and all look forward to meeting in 2019.

As discussed previously, SB 481 made several changes to the Oregon Public Records Law, including establishing a reduced timeline for the completion of requests. Under this new Law, public bodies are required to acknowledge receipt

of a public records request within five business days, and must respond to requests within ten business days after the initial response, excluding the time the office waited for clarification or payment from the requestor, with additional specific exceptions. Since January 1, ninety-three percent of public records requests were completed within the fifteen business day time period mandated by SB 481.

A good deal of the credit for this improved response time is due to enhanced cooperation with the offices that gathers and provides records. Last fall, the office met with the departments who received the majority of public records requests in recent years. The offices discussed the coming implementation of SB 481, and together identified ways to ensure compliance. As discussed earlier, the most impactful decisions related to improved communications with vendors competing in the university's RFP and RFQ processes.

The office has benefited from having an additional staff member for much of the time since SB 481 has been in force. The Public Records Officer was out on leave from late October until March, leaving the Program Associate and a contract employee to staff the office, with the assistance of the Office of the General Counsel. Despite receiving one hundred sixty requests during this time, the two Program Associates met the fifteen business day response time for eighty-five percent of requests, without once invoking available exceptions to the statute permitting extra due to, among other things, unavailability of necessary staff. Once the Public Records Officer returned, the office saw an eight percent increase in closure of requests within fifteen business days. In addition to improving response time, additional staffing has allowed the office to complete major projects that were deferred due to the ever increasing volume of requests. Efficiencies have been identified for internal tracking mechanisms, historical documents have been merged with working documents to assist with management of the office's public records files, especially in terms of retention and destruction, and the office is working with the University's Records Manager to pilot a program to inventory its files.

Challenges:

As in years past, and like many other agencies, the office struggles with responding to complex public records requests in as timely a manner as it would prefer. The decentralized nature of the university, along with varied record management practices, continues to hinder the record-gathering process. The office acknowledges that it has little control over this portion of the process, yet recognizes that a slow response from one or more custodial offices can seriously delay the production of records. In FY18, the office waited an average of four days before receiving an estimate or responsive documents from responding departments.

Consistent with past trends, the Athletics Department received the majority of public records requests, with twenty four percent of the total. Two other departments on campus also received a high concentration of requests: PCS received nine percent, while Capital Construction received five percent. The remaining requests were fairly evenly distributed across the University, with concentrations in the Office of the General Counsel, the Office of the Registrar, the Office of Civil Rights Compliance (formerly the Office of the Title IX Coordinator and Office of Affirmative Action and Equal Opportunity), Human Resources, and the Office of the President.

Of the fifty-seven requests that took more than fifteen days to fulfill, five had a complexity rating of 4, fourteen had a complexity rating of 3, and thirty-eight had a complexity rating of 2. With category 2 requests, the office found that response times were slowed either because the office was waiting to hear from responding offices or assistance was required from third parties. The office anticipates that this will change next year, based upon the new requirement to identify trade secret information when responding to RFP/RFQs. The office found that less complex requests were held up when they were received in conjunction with more complex requests that the office needed to respond to first. The office is hopeful this can be resolved through improved staffing and better communication with requestors when it appears responding will be extraordinarily time consuming.

Future Endeavors:

In Fiscal Year 2019, the office looks forward to collaborating with the University Records Manager in a pilot project to inventory departmental records. Staff will continue with their professional development by attending the Council on Governmental Ethics Laws, and the office has begun preliminary plans for an expanded and more inclusive second annual Public Records Roundtable.