



WYOMING LEGISLATIVE SERVICE OFFICE

ISSUE BRIEF

The Wyoming Public Records Act *2018 Numbers and Challenges*

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by

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PURPOSE

The purpose of this issue brief is to summarize the results of a survey conducted by the Joint Judiciary Committee relating to the number and nature of requests made under the Wyoming Public Records Act, including challenges in complying with the Act.

INTRODUCTION

The survey sent out by the Joint Judiciary Committee, via the Legislative Service Office, was intended to provide the Committee with information on the number and size of public record requests, the time and resources put into responding to those requests, and any challenges public entities experienced in complying with the Wyoming Public Records Act.¹ While the survey requested for both 2017

and 2018, the 2017 numbers largely mirrored the 2018 numbers. As such, only the 2018 numbers are included in this issue brief.

A total of 177 entities completed the survey – ranging from some of the largest State agencies to some of the smallest special districts.² To appropriately analyze similarly sized and situated public entities, this brief is broken into eight sections: State Agencies and Departments; State Boards and Commissions; Higher Education Institutions; School Districts; Counties; Conservation Districts; Weed and Pest Districts; and Other Special Districts and Joint Powers Boards.

Within each section, the analysis focuses on the number and size of the requests received, the estimated number of staff hours spent responding to the requests, procedural issues

¹ See **Attachment A** for the original survey sent out by the LSO. See also **Attachment B** for the complete list of responses regarding challenges faced by the entities in complying with the Public records Act.

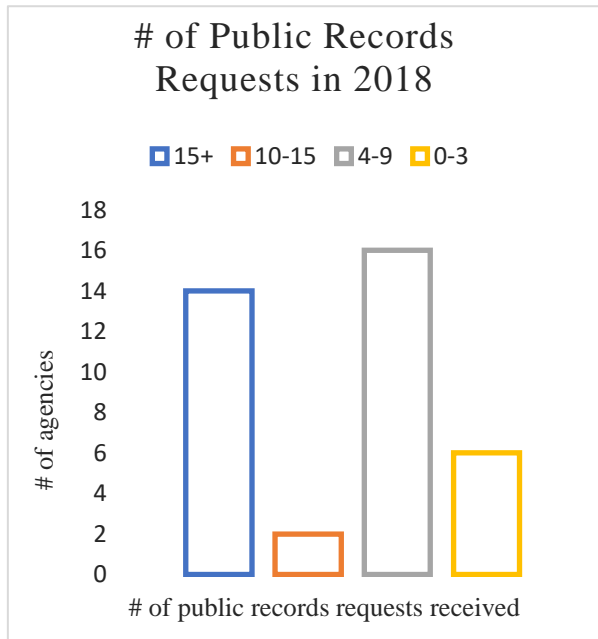
² For an analysis of all the responses, please see the figures in **Attachment C**.

including legal review, and whether fees were charged.

STATE AGENCIES AND DEPARTMENTS

Thirty-eight State agencies, or departments within agencies, completed the survey. The results were split between some agencies that received more than fifteen requests and others that received less than ten. Some agencies indicated they received far more than fifteen requests:

- Department of Health: 69
- Department of Environmental Quality: 764



Other agencies likely received a high number of requests based on the number of hours they estimated staff spent on responding to public records requests. One agency, for instance, has a full-time position dedicated to fulfilling public records requests. In 2018, the mean number of staff hours spent on public records requests for agencies receiving over fifteen requests was 431.

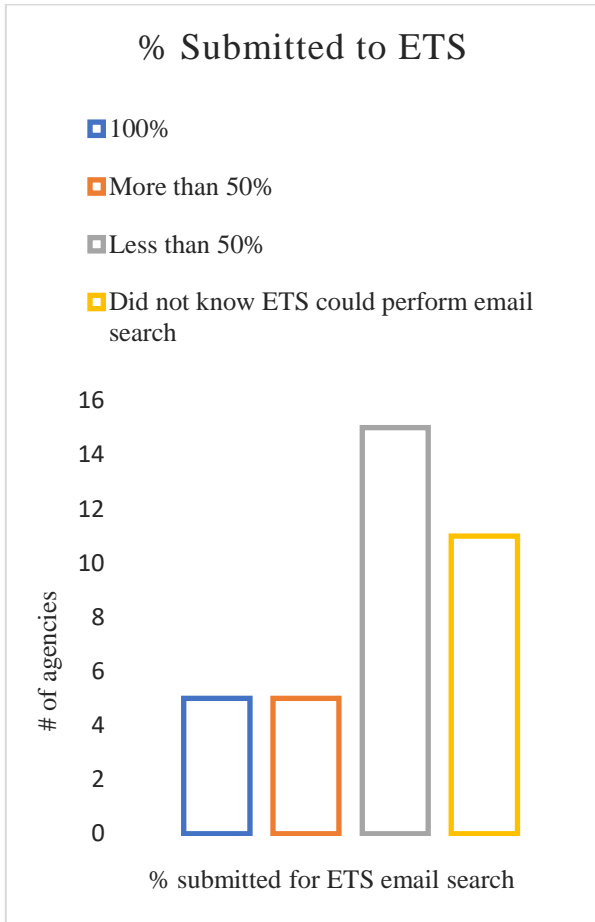
In comparison, sixteen agencies or departments received no more than three public records requests in 2018. A handful of those received zero. Of the agencies that received a minimal number of requests, the average amount of staff time spent responding to requests in 2018 was twenty-three hours. For the remaining agencies that fell somewhere in the middle in terms of the number of requests received, the average number of staff hours spent was twenty-nine. The majority of the agencies, seventy-eight percent, had a designated person, sometimes the Director, respond to public records requests.

ETS E-Mail Search

The survey also tracked whether State agencies used the Department of Enterprise Technology Services (ETS) to compile responsive documents. This is important to consider as ETS can easily perform across-agency email searches for correspondence responsive to public records requests. The downside of utilizing an ETS search is that the search will often return a much larger number of documents, many of which will not be responsive to the request. This increases staff review time to weed out the non-responsive documents.

Of the thirty-six agencies or departments that appropriately responded to the question, only fourteen percent always used ETS to search for relevant documents. Another fourteen percent of respondents used an ETS search for more than fifty percent of its requests. Forty percent of agencies used an ETS search less than fifty percent of the time. Finally, thirty percent of agencies responding did not know that ETS

could perform an email word search to locate relevant documents.



ETS indicated that in 2018 it responded to over fifteen requests from agencies to locate relevant documents and spent over 300 hours performing email word searches to locate relevant documents.

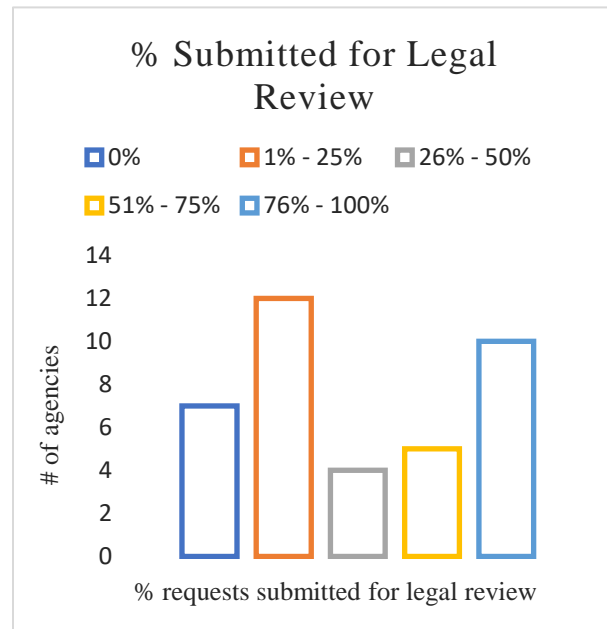
Legal Review of Documents

The survey also tracked whether agencies had the Attorney General’s Office review public records requests prior to releasing documents. Because the Wyoming Public Records Act has discretionary and mandatory exemptions, including a mandatory exemption for documents otherwise confidential by law, agencies often request that their attorney review the responsive documents to ensure

compliance with the Act and other provisions of law.

Agencies varied quite a bit in the percentage of public records requests they submitted for legal review. The number of requests needing attorney review is significant because it creates an additional step before responsive documents may be released under a public records request.

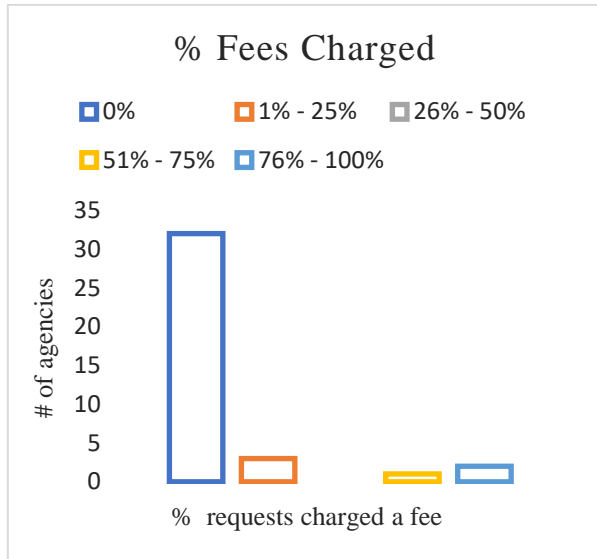
The Attorney General’s Office estimated that



for 2018 it spent 718 attorney hours assisting agencies with public records requests. The Office does not track the number of support staff hours used for reviewing and assisting with public records requests.

Public Records Requests Fees

The majority of responding agencies, eighty-two percent, did not charge for public records requests in 2018.



The Wyoming Legislature amended the Public Records Act in 2014 requiring the Department of Administration and Information (A&I) to adopt uniform rules establishing procedures, fees, costs and charges for inspection, copies and production of public records for all State agencies to use. A&I completed its Uniform fee rules in September of 2016. Since then, State agencies have been slowly adopting the Uniform fee rules. As a result, the percentage of agencies charging fees for public records requests may increase moving forward. For example, the Department of Environmental Quality's Uniform fee rules were not finalized until December of 2018. Beginning in 2019, the Department will be able to charge fees for large public records requests.

Challenges

The challenges reported by State agencies when complying with the Public Records Act can be summarized into five categories: 1) legal review; 2) staff time; 3) difficulties

coordinating and compiling the records; 4) receiving large, vague, and very general requests; and 5) meeting timelines.³ Legal review and assuring the appropriate documents were withheld from public records requests was cited as the biggest challenge for agencies. Many agencies deal with sensitive and confidential information, including protected health information, third party proprietary information, and parolee and prisoner records. Redacting and completing a legal review often requires additional time to complete the request.

A challenge especially highlighted by State agencies and departments was the size and vague nature of the requests received. Several agencies commented on having difficulty narrowing the scope of public records requests. If the requestor chose not to narrow the scope of the requests, agencies then faced challenges in compiling the large number of requested documents. Often the older documents have been archived and are no longer physically located within the agencies. In other circumstances, the documents requested are scattered across the state at various regional offices. Finally, with ETS maintaining emails indefinitely, a request for correspondence on a subject can quickly return large volumes of emails to review and release.

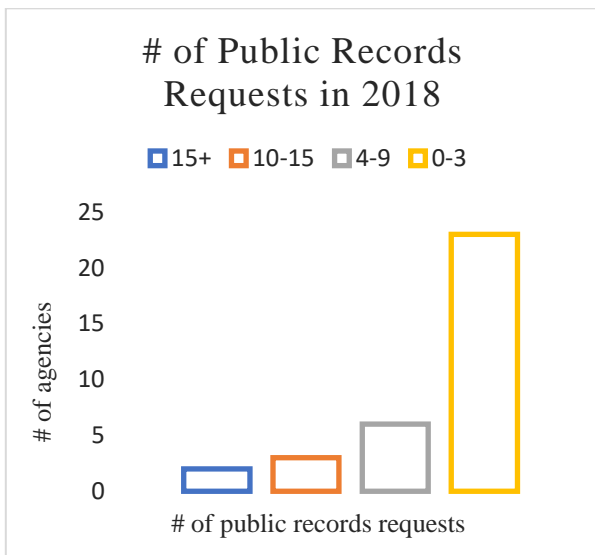
The challenges noted above also created issues for agencies in terms of having available staff and the ability to meet reasonable timelines. A few agencies noted they had technical scientists and engineers spending a considerable amount of time reviewing

³ See Attachment B-1 for a complete list of challenges.

documents for public records requests. Another provided an example of how a large request could lead to a lengthy review process simply due to the size and nature of the requested documents.

STATE BOARDS AND COMMISSIONS

Thirty-four State boards and commissions responded to the survey, with the majority of those being licensing boards. The boards and commissions overwhelmingly received very few public records requests.



Only the Board of Examiners of Speech-Language Pathology and Audiology and the Mental Health Professions Licensing Board received over fifteen requests in 2018. Most of those requests, however, were requests for the roster of licensed professionals which do not take much time to produce.

Because the number of requests were low for boards, similarly the number of hours required by staff to fulfill the requests were low. The average number of staff hours was thirteen.

One board was a bit of an outlier in that it received between zero and three public records requests but spent an estimated eighty hours of staff time in fulfilling those requests. The only other board that estimated eighty staff hours in 2018 was the Mental Health Professions Licensing Board which received over fifteen requests. Seventy-six percent of the boards and commissions had a designated person handle responding to public records requests, often that person was the executive director. Many of the boards and commissions that responded have their executive director services performed by the Department of Administration and Information.

The primary challenge expressed by the State boards and commissions was the ability to compile large requests during short timeframes simply due to the typically small staff size of the offices. Many boards only have one or two staff members but will typically receive the same generic public records requests send to all State agencies.⁴

HIGHER EDUCATION INSTITUTIONS

Three institutes of higher education completed the survey: two community colleges, and the University of Wyoming.

University of Wyoming

The University of Wyoming received more than fifteen public records requests in 2018 and spent an estimated staff time of over 200 hours responding to those requests. Requests most frequently required staff to review less than 500 documents or emails. The University had close to one-hundred percent of its requests

⁴ See Attachment B-2 for a complete list of challenges.

reviewed by its legal team prior to releasing documents. The University charged for less than a quarter of the requests it received.

Challenges the University cited in complying with the Public Records Act included the ability to review and respond to large volumes of public records requests. The difficulty in responding was largely due to the need to prioritize work within the University's legal office and a lack of personnel. Because of the nature of the records sought, requests often required attorney review and redaction of sensitive information to comply with various state and federal regulations governing the University. Finally, public records requests often sought documents housed in several Departments requiring coordination.⁵

Community Colleges

The two community colleges were split in their responses. One community college received between zero and three requests in 2018 and spent an estimated ten staff hours responding to the requests. Most requests required staff to review less than 500 documents or emails. This college rarely submitted responsive documents for legal review and had a designated person handle all public records requests.

By contrast, another community college received between four and nine requests in 2018 and spent an estimated 150 staff hours responding to those requests. The 2017 numbers were half of the 2018 numbers. The college most frequently had requests that required staff to review between 500 and 1000 documents or emails. The college also

submitted over half of its requests for legal review and did not have a designated person handle all requests.

Both community colleges cited time and expense as challenges to complying with the Public Records Act. The community college that submits more of its requests for legal review also cited legal review as a challenge when complying with the Act.⁶

SCHOOL DISTRICTS

Seventeen school districts completed the survey. Close to sixty percent of the districts received less than three public records requests. The remaining forty percent received no more than nine public records requests in 2018. On average, the districts spent twenty hours responding to the public records requests. Many districts reported the most common request being for discrete documents. However, four districts reported that their most frequently received requests required staff to review more than 1000 documents or emails.

Most districts had a designated person or a uniform policy for responding to public records requests. Close to seventy-five percent of the districts never sent their requests for legal review or sent less than twenty-five percent of the requests received for legal review. A little over half of the districts also never charged fees for public records requests.

The biggest challenge school districts reported when complying with the Public Records Act was having limited staff available to respond to requests in a timely manner. Another challenge cited by most of the districts was receiving

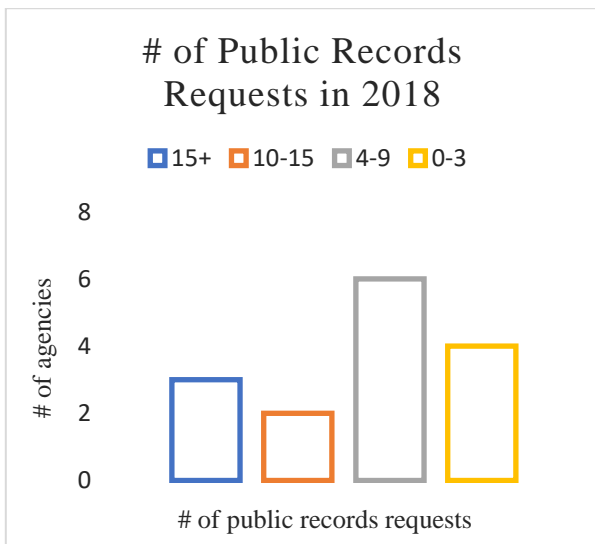
⁵ See Attachment B-3 for a complete list of challenges.

⁶ See Attachment B-3 for a complete list of challenges.

vague requests for large numbers of documents and having to compile information from various sources into the requester’s specified format. One district felt requesters should be required to view documents onsite. Another challenge mentioned included the need for legal review and being unsure about what can be disclosed.⁷

COUNTIES

Fifteen counties completed the survey.⁸ Two-thirds of the counties responding received less than ten public records requests. The average number of staff hours to respond to the requests for those counties was thirteen. Three counties received more than fifteen requests and on average spent 453 staff hours responding to public records requests.



Most counties typically received requests that required staff to review less than 500

documents or emails or received requests for discrete documents. Over half of the counties had a designated person handle all requests or had a policy in place for a uniform response to public records requests. Only one-third of the counties submitted their public records requests for legal review more than fifty-percent of the time. Another third never submitted requests for legal review. Only thirteen percent of counties charged fees for more than a quarter of the requests received in 2018.

Overwhelmingly, the largest challenge faced by counties in complying with the Public Records Act was their ability to compile all of the information requested into the format specified by the requester. Often the documents were in paper copy or in archives and the requester specified electronic or excel documents. A complicating factor noted as a challenge by several counties was the volume of the requests and their broad/generic nature. The counties overall had some issue with staff and legal review, but less than other survey respondent groups. This is likely due to many counties having access to legal counsel and a staff with a mission of document management.⁹

CONSERVATION DISTRICTS

business. While most counties submitted only one response, a few counties had the various departments complete the survey. LSO aggregated these responses.

⁷ See Attachment B-4 for a complete list of challenges.

⁸ Because most of a county’s documents are public, a few counties noted they had difficulty determining which requests should be included in this survey. In those cases, the county did not include day-to-day

⁹ See Attachment B-5 for a complete list of challenges.

Nineteen conservation districts completed the survey. Of those, fifteen received between zero and three public records requests in 2018. The remaining four received between four and nine public records requests. On average, the districts spent eight hours of staff time responding to public records requests, with the maximum being forty hours and the minimum fifteen minutes. All districts except one stated that its most frequent size of requests were small or requests for discrete documents. One district noted it frequently received requests that typically require staff to review 500-1000 documents or emails.

Seventy-nine percent of the conservation districts responding did not charge for public records requests in the last two years. Eight-nine percent did not submit public records requests for legal review. Most districts had either a designated staff person, in some cases the lone staff person, or a uniform policy for responding to requests.

The top three challenges expressed by most of the districts were: 1) staff time or lack of staff; 2) difficulty understanding what could be disclosed or what documents required redaction; and 3) the statutory timelines for responses. Many of the districts noted they were the only staff member or had a staff of less than two people. The districts noted that the availability or lack of staff often factored into the districts' ability to respond in a timely fashion. Similarly, the lack of staff often made it difficult to compile the information, or meant that records for some services, such as accounting records, were not housed within the

organization. The other major challenge cited was the ability of the districts to interpret and understand the mandatory and discretionary exemptions in the Public Records Act. The districts often work with landowners and so must review documents under the agricultural exemption found in the Act.¹⁰

WEED AND PEST DISTRICTS

Seventeen weed and pest districts responded to the survey. Thirteen districts received three or less requests in 2018. The remaining four districts received between four and nine requests in 2018. On average, districts spent six hours responding to public records requests. The most a district spent was thirty-two hours and some districts only spent an hour. Only one district charged fees for public records requests in the last two years, and even then, it only charged a fee for less than fifty percent of the requests. The districts were split in terms of the number of requests they submitted for legal review with over half never submitting requests. Most of the districts had either a designated staff person or a uniform policy to respond to public records requests.

The weed and pest districts cited many of the same challenges as the conservation districts in complying with the Public Records Act. The issue of staff time and the ability to respond to requests in a timely fashion was more specific to the districts' busy season, typically May through September, when staff were often needed in the fields for spraying.

A challenge most weed and pest districts expressed was the difficulty in compiling the

¹⁰ See Attachment B-6 for a complete list of challenges.

requests. Several stated they received requests from the same out-of-state entity for information in a specific electronic format. Those districts noted that because they typically keep hard copies of documents or keep the information in up to twenty different spreadsheets they spent a significant amount of time compiling the requested information into the specified format. Because the Public Records Act explicitly does not require entities to compile data and create new records, some districts chose to not compile the data and instead offered the requestor the actual records housed within the districts.¹¹

OTHER SPECIAL DISTRICTS

An additional twenty-six special districts completed the survey. All but two of the respondents received less than nine public records requests in 2018, with the majority receiving less than three. Likewise, the estimated number of hours to respond to the requests were low, with the average being eleven hours. Most requests received by the districts were either small or requests for discrete documents. A joint powers board was the outlier in that it received over fifteen requests in 2018 and spent an estimated 500 hours responding to those requests.

Only two of the responding districts charged fees for over seventy-five percent of the requests received. Most districts charged nothing and a few charged fees for up to twenty-five percent of its requests. Similarly, only a few districts submitted requests for legal review. Approximately half of the districts

indicated they had a designated person to respond to requests or had a policy for a uniform response.¹²

If you have any further questions, please do not hesitate to contact LSO Research at 777-7881.

¹¹ See Attachment B-7 for a complete list of challenges.

¹² See Attachment B-8 for a complete list of challenges.