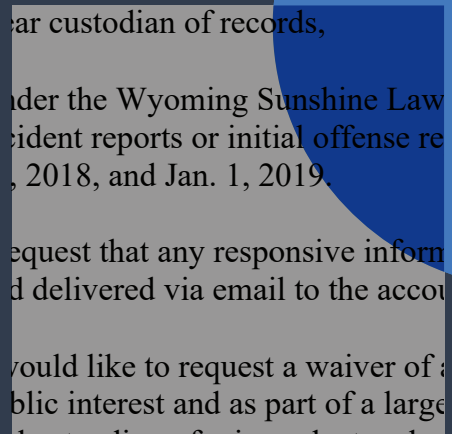


# PROBING THE PEOPLE'S RIGHT TO KNOW: A 10-State Audit of Freedom of Information Laws



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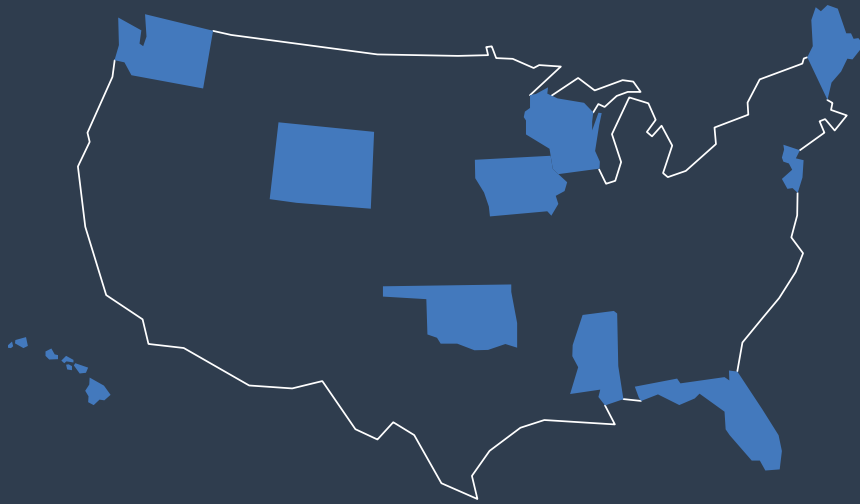
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**[A]ll political power is inherent in the people... the people are vested with the inherent right to know and be fully informed by their government.**

—OKLAHOMA OPEN  
RECORDS ACT

# Executive Summary



**1,014** Records Requests

**10** States

**338** Counties

## REQUESTS

### Sheriff's Offices:

"all incident reports or initial offense reports produced by the county sheriff's office for the dates Dec. 31, 2018, and Jan. 1, 2019."

### Road Departments:

"all civilian complaints filed with your office mentioning 'pot holes' or 'potholes' for the calendar years 2016, 2017 and 2018"

### County Administration Departments:

"all collective bargaining agreements signed into effect by the county between Jan. 1, 2019, and June 1, 2019"

## POSITIVE OUTCOMES

### Best States:

Florida, Hawaii, Iowa, New Jersey, Washington, Wisconsin (all 100%)

### Worst States:

Oklahoma (90%), Mississippi (92%)

### Best Office:

County Admin (99%)

### Worst Office:

Sheriff (94%)

**97%**

All

## TIME TO COMPLETION (AVERAGE)

**Best State:**  
Maine (9 days)

**Worst State:**  
Mississippi (28 days)

**Best Office:**  
County Admin (12 days)

**Worst Office:**  
Sheriff (21 days)

**17**  
DAYS

All

## MET DEADLINE

**Best State:**  
Maine (67%)

**Worst State:**  
Hawaii (33%)

**51%**

All

## Introduction

Freedom of information laws were created to provide citizens the right to access information on government actors and activities. Typically, these laws are viewed as democratic imperatives, a necessary element in realizing shared governance. Courts and legislatures across the country, from federal to municipal, have identified freedom of information laws, or public records laws, as a primary method for individuals to learn about their government; or in the words of famed First Amendment theorist Alexander Meiklejohn, public records laws are civilians' best system for understanding "the paradoxical relation between free men and their legislative agents." State statutes often codify these transparency mechanisms with high-flown language, underscoring the state's commitment to conducting accountable and transparent governance.

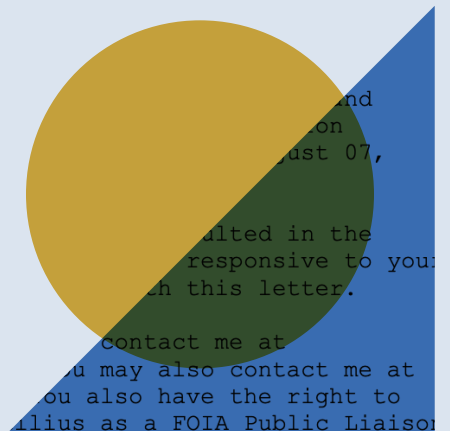
The objective of the audit is to assess the functions of state freedom of information laws. The audit attempts to do so through a controlled process of more than 1,000 coordinated public records requests in 338 counties across 10 states. These requests were submitted to a range of offices and departments in each state, including offices headed by elected officials and departments led by appointed individuals. The 10 sample states represent not only differing geographic, demographic and psychographic profiles but different freedom of information laws with varied statutory requirements and expectations.

Audits are carried out in an effort to move beyond study of statutory language and legal opinions. They eschew abstract analysis in favor of assessing the everyday operation of freedom of information laws. This audit is dedicated to an examination of the baseline operations of public records laws. All requested records were chosen due to their presumed availability, and as a result this audit examines not office or department willingness to produce disputed information but the ability to disseminate readily available, easy-to-locate, noncontroversial files. The study is less interested in determining what information is available to the public and instead focused on determining whether offices and departments are able to respond in a timely manner, to meet response deadlines and provide records in the requested

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**Opening government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest.**

—HAWAII UNIFORM  
INFORMATION PRACTICES ACT



format. The audit also collected information on whether office and department contact information was available online, whether fees were imposed and also accounted for the number of contacts needed to confirm receipt of and complete the request. While all requested records are ostensibly publicly available, some county bodies were unable or unwilling to complete requests, and these are also documented.

What follows are the descriptive findings of the audit. Future work will more closely analyze these findings, but the author hopes the report proves valuable in making general observations about the operations of freedom of information laws. Though the study endeavored to create uniform methods, for a number of reasons, there exists some light variation in procedures from one state to the next (detailed below). However, state comparisons are appropriate and perhaps the most interesting observation available.

Democracies are manifestations of shared governance, and the principles of shared governance are founded on the relationship between the public and their elected and appointed servants. This audit seeks to measure this relationship in a simple, controlled study.

## Methods

### **AUDIT PROCESS**

In total, 1,014 requests were submitted as part of the audit. These occurred during two time periods. The majority of these requests—798—were submitted across nine states, beginning on June 3. These requests were submitted and pursued by the author and four graduate assistants. The last request was completed on Dec. 4, though some requests remain incomplete and were marked “failed.” The other phase consisted of 216 requests to public bodies in Wisconsin. These were submitted on Feb. 11, and the last was completed on July 10. Students in a graduate class in Marquette University’s College of Communication played an integral role in finding contact information and submitting the Wisconsin requests.

With both phases of the audit, there were coordinated follow-up communications in instances where there was no evidence of progress or a date of delivery provided. Three weeks after the request was submitted, a follow-up email was sent. Two weeks later, another email was sent. The second round of emails included a search for additional county personnel that may be able to aid in filling the request (e.g., district attorneys, county clerks, etc.). Two weeks after that, a phone call was made. Two weeks after that, another phone call was made. Every two weeks thereafter, email and phone communications were alternated.

## **SAMPLE STATES**

The states were chosen to reflect mixed geographies and varied freedom of information laws, with a special interest in statutory deadlines. The U.S. Census Bureau designates four regions and nine divisions in the county, and there are at least two sample states in each of the four regions and at least one in each division. The focus on geographic diversity was intended to ensure a heterogenous sample of counties, and within Census-designated regions and divisions, the characteristics of the state law were considered in determining sample states. In Hawaii, Maine, New Jersey, Washington, Wisconsin and Wyoming, all counties were included in the study. In Florida, Iowa, Mississippi and Oklahoma, half of the counties (or half-plus-one in states with an odd number of counties) were included. In these states, the counties were sorted by population, and every other county was selected. Hawaii has five counties but only four distinct county-level governments. For this reason, Kalawao County was not included in this study. There are other instances in the study where a small county has outsourced a government activity to a larger neighboring county (e.g., Shawano County, Wisconsin, performs Menominee County's judicial responsibilities). In these situations, the county performing the function will maintain custody of the records, and as such requests were submitted to the larger county.

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**The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.**

—WASHINGTON PUBLIC RECORDS ACT

## COUNTY REQUESTS

In all 10 states, a request was submitted to the county sheriff's office for "all incident reports or initial offense reports produced by the county sheriff's office for the dates Dec. 31, 2018, and Jan. 1, 2019." In Hawaii, county and city law enforcement is centralized in a single office, and requests were submitted to these offices.

In all sample states except for Maine and Oklahoma, a request for "all civilian complaints filed with your office mentioning 'pot holes' or 'potholes' for the calendar years 2016, 2017 and 2018" was submitted to a county department responsible for road maintenance. These departments took on a wide range of names, including departments of roads, public works, transportation, road & bridge, secondary roads and highway. In Oklahoma where counties maintain some responsibility for road maintenance, but no dedicated department exists, the same pothole request was submitted to the county commissioners. In Maine, where road maintenance is the purview of the state, a request was submitted to the county Emergency Management Agency for "the county's most recent Hazard Mitigation Plan," a document required to be produced by state law.

In all sample states except for Wisconsin, a request for "all collective bargaining agreements signed into effect by the county between Jan. 1, 2019, and June 1, 2019" were submitted to the highest ranking official or body in the county. These offices and officeholders were variously called county administrator, county executive, county board, county commissioners, county clerk and chancery clerk. In Wisconsin, a request was submitted to each county's district attorney for "the district attorney office's biennial budget request for the years 2010, 2012, 2014, 2016 and 2018."

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**[I]t is declared to be the public policy of this state that all persons are entitled to the greatest possible information.**

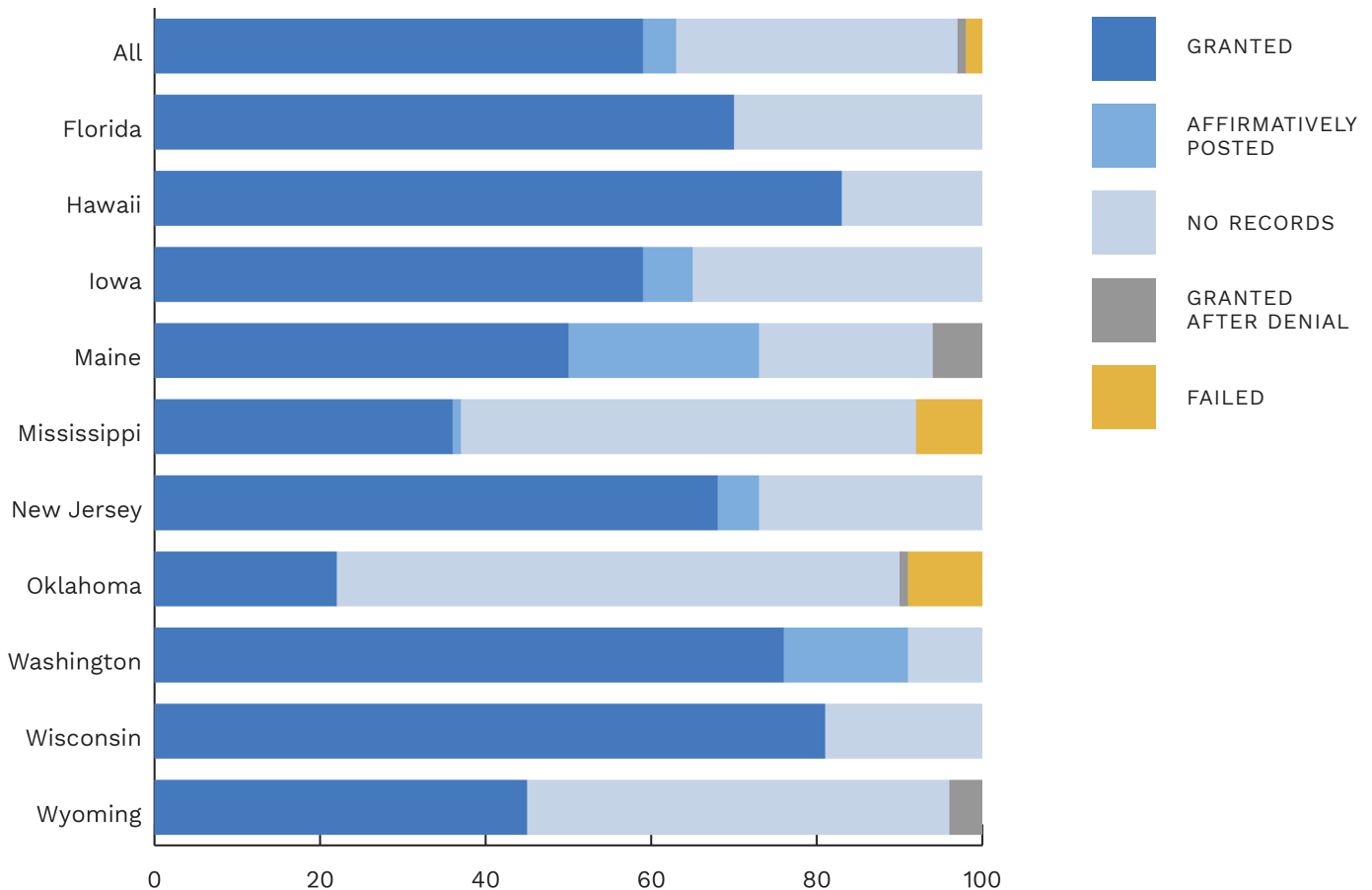
—WISCONSIN OPEN  
RECORDS LAW



## Results

**OUTCOME:** All requests were recorded as one of five designed outcomes. “Granted” represents those offices and departments that provided the requested records. The term was applied inclusively and makes no distinction between partial grants and full grants. If the office or department produced records of or related to what was sought, the request was marked Granted. “No Records” are requests where the office or department claimed to not have records responsive to the request. In the vast majority of these instances, the public body’s reply was presumed to be in good faith. “Affirmatively Posted” means the sought records were already posted online by the office or department and were readily available to the public prior to the request. “Granted after Denial” represents a range of outcomes where the public body ultimately produced the requested information after an initial adverse outcome. For example, a sheriff’s office denied a request under a misapplied exemption. In contesting the use of the exemption, the office released the information. “Failed” are requests that were never satisfactorily completed. The reasons for these include administrative incompetence, a sustained disinterest in fulfilling the request and, in Oklahoma, through a disputed interpretation of the law, refusing to deliver the records through the post office or email.

### OUTCOMES BY STATE

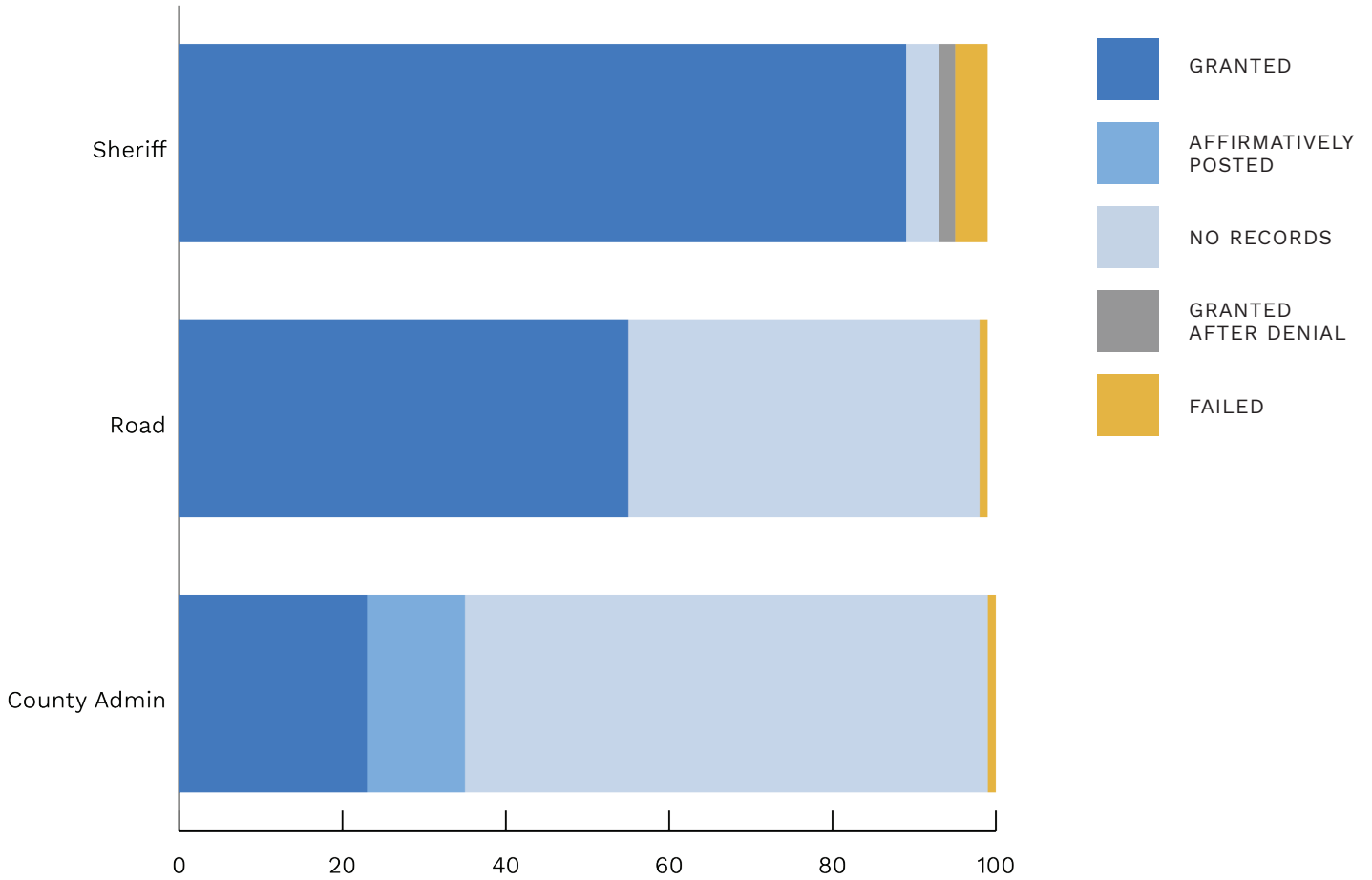


SEE APPENDIX, PAGE 20 FOR DATA TABLE



# Results

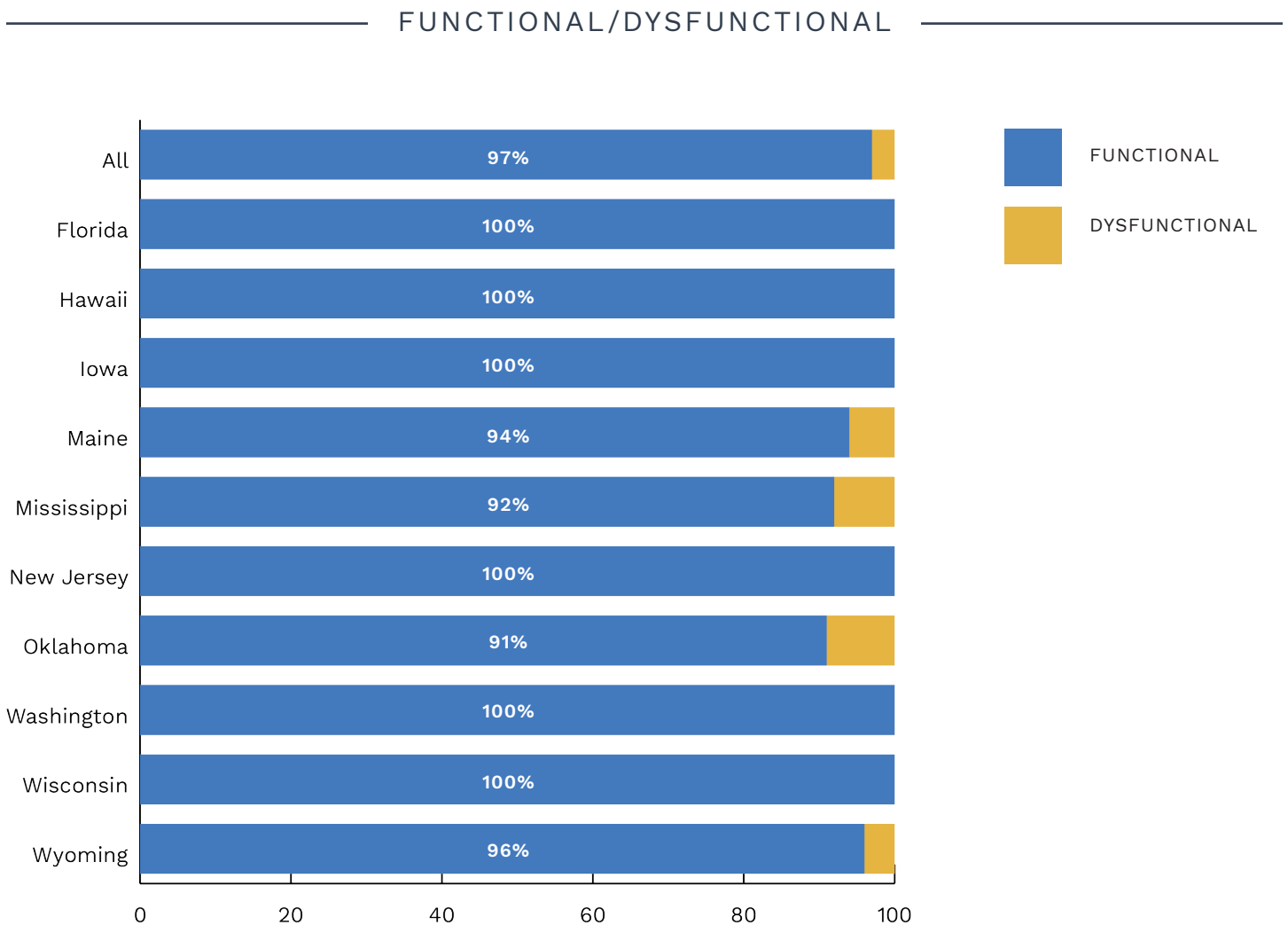
## OUTCOMES BY AGENCY



SEE APPENDIX, PAGE 20 FOR DATA TABLE

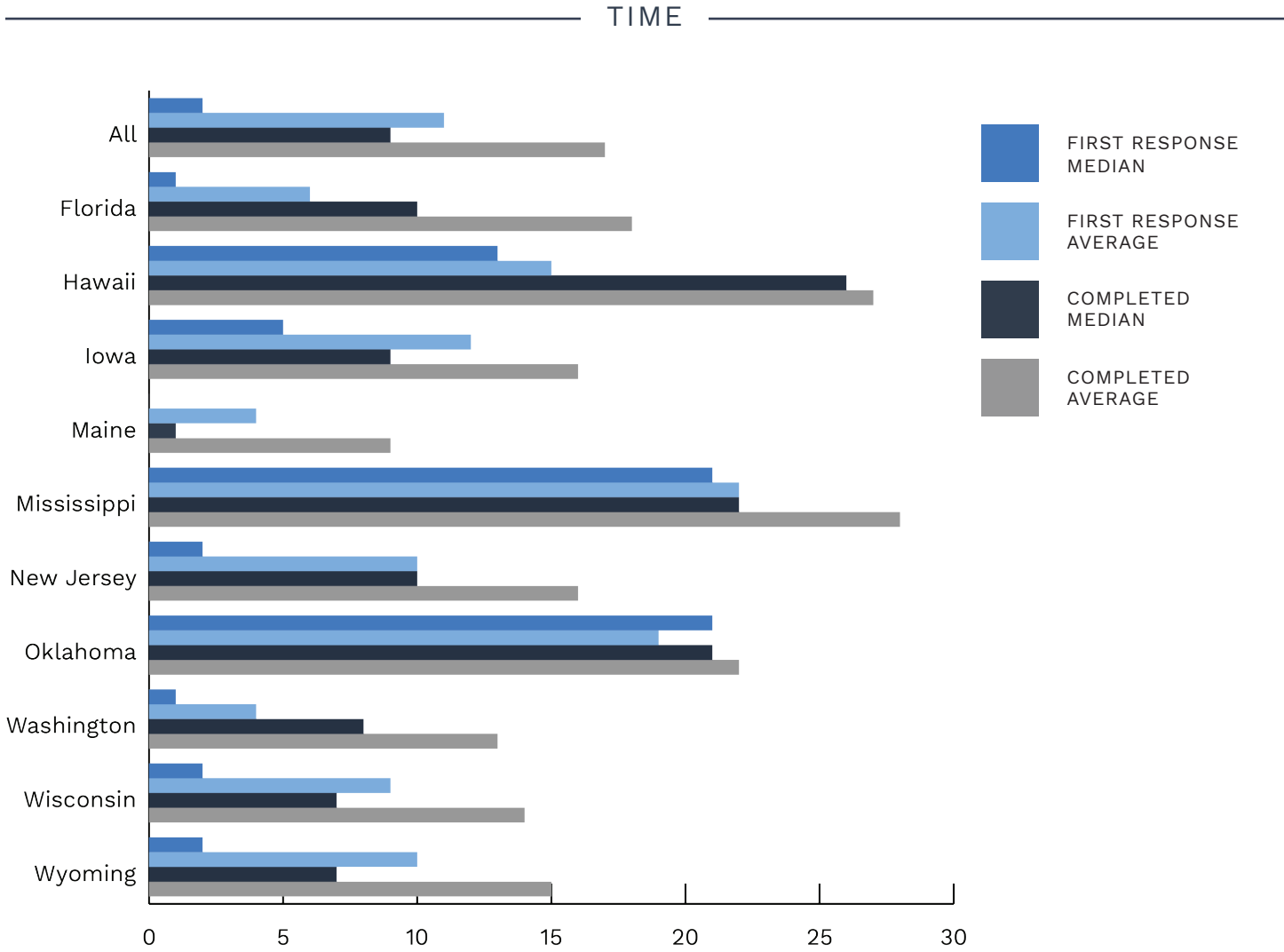
## Results

**DYSFUNCTIONAL:** Those requests marked dysfunctional represent instances where despite the requesters' sustained efforts, the office or department was unable or uninterested in fulfilling the request. A second assessment of the same outcomes collapsed the categories Granted, No Records and Affirmatively Posted into "Functional." "Dysfunctional" is a variable collecting both Granted after Denial and Failed.



# Results

**TIME:** “First Response” accounts for the amount of time, in days, to get any response—email, mail or phone call—regarding the request. “Completed” is the number of days from submission to reach an outcome with the public body.



SEE APPENDIX, PAGE 20 FOR DATA TABLE

	FIRST RESPONSE TOTAL	FIRST RESPONSE AVERAGE	COMPLETED TOTAL	COMPLETED AVERAGE
Sheriff	338	13	325	21
Road	283	11	279	18
County Admin	266	10	263	12

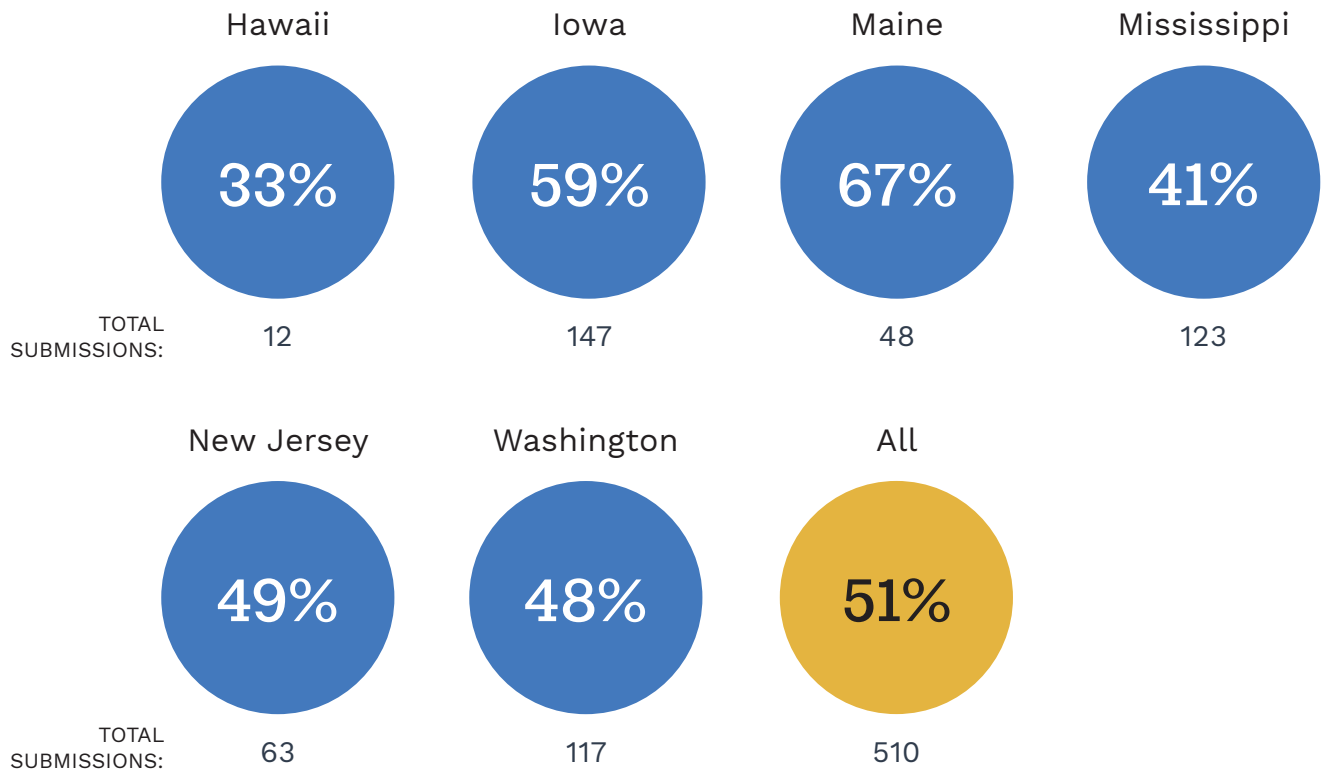
## Results

**MET DEADLINE:** Some states require freedom of information requests be completed by a specified deadline. “Met Deadline” tracks whether the public bodies met the state-specific deadline.

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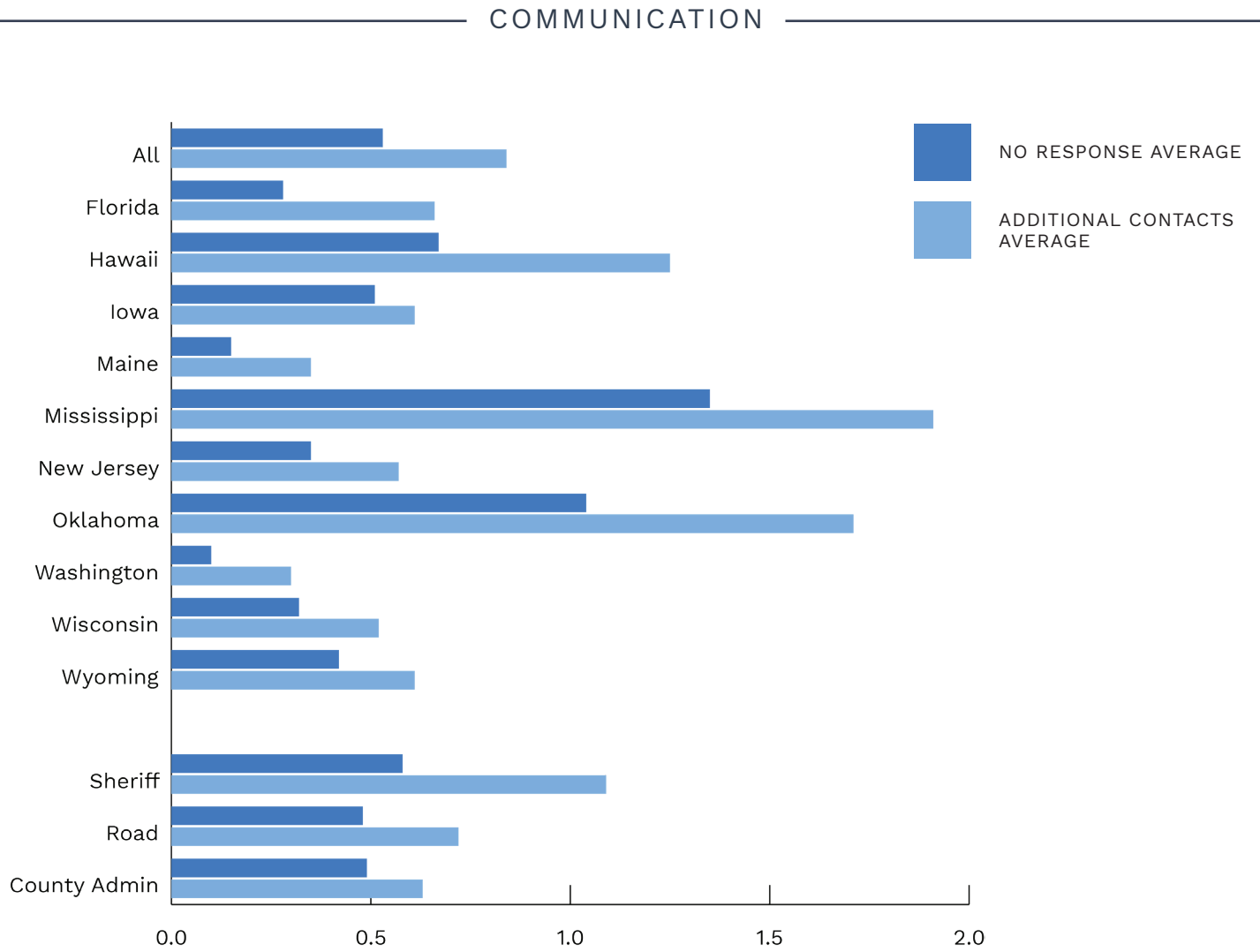
### MET DEADLINE

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## Results

**COMMUNICATION:** The audit also tracked the number of times the requesters reached out to each office or department. “Additional Contacts” is an aggregate of all attempts by the requesters to contact the office or department, be that email message, phone call, physical mail or fax. As all follow-up communications were on coordinated dates, if the office had not responded to the request or confirmed receipt of the request by a set date, a “No Response” was tallied. These No Responses accumulated with each successive attempt to communicate with the office or department. The numbers provided make no distinction between types of communication.

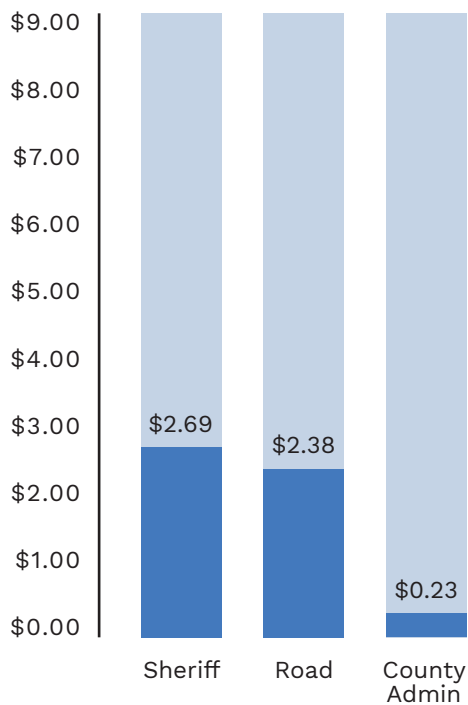
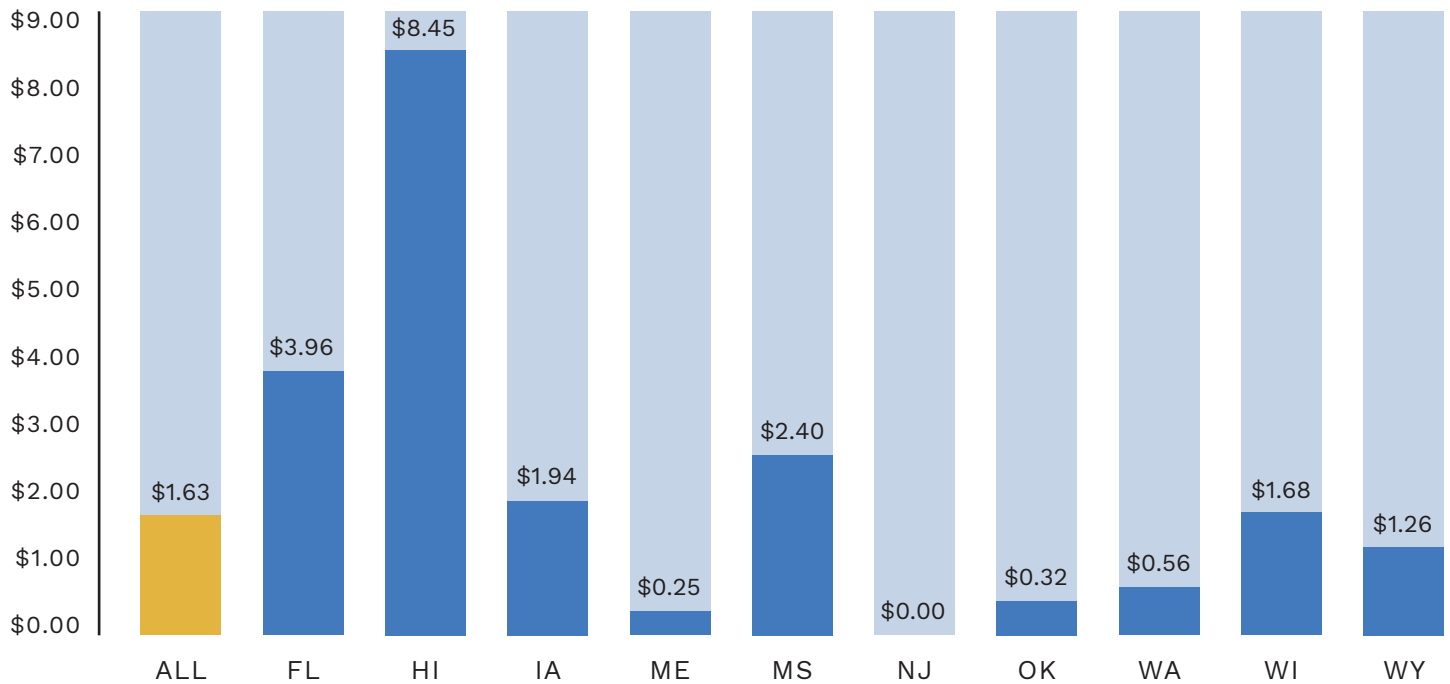


SEE APPENDIX, PAGE 21 FOR DATA TABLE

## Results

**FEES:** All sample states have a statutory right to charge the requester a fee. The audit accounts for all fees incurred.

### FEES/COMPLETED REQUEST



## Results

**FORMAT:** All requests sought the records in a digital format delivered via email, and the audit documents whether offices or departments were able to provide the records in the sought format. "Fax/Mail" represents counties that required communication be conducted via mail or fax. "Hard Copies" represents physical copies of the records delivered in the mail. "CD/USB" are records that were delivered via the mail as either a compact disc or USB or jump drive.

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### FORMAT

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	FAX/MAIL	CD/USB*	HARD COPIES*
All	1.5%	1.1%	2.4%
Florida	0%	2.9%	2.0%
Hawaii	8.3%	0%	8.3%
Iowa	0%	0%	0%
Maine	0%	0%	0%
Mississippi	7.3%	0%	6.2%
New Jersey	0%	0%	0.0%
Oklahoma	3.4%	0%	6.5%
Washington	0%	3.4%	0.0%
Wisconsin	0.5%	1.9%	2.8%
Wyoming	0%	0%	1.5%
Sheriff	3.9%	2.2%	6.5%
Road	0.7%	1.1%	0.7%
County Admin	0%	0%	0%

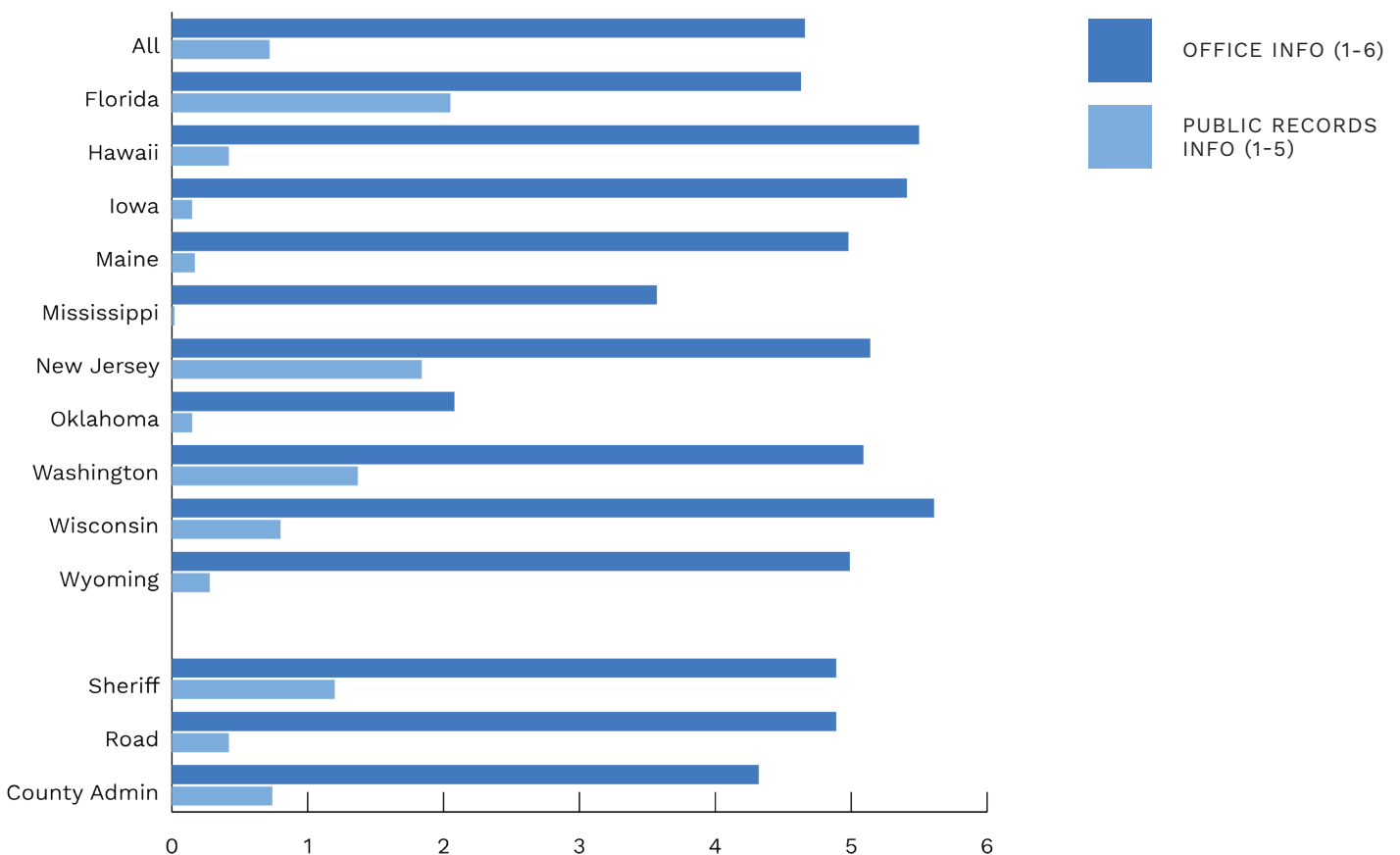
\*INCOMPLETE RESULTS REMOVED

## Results

**POSTED INFORMATION:** Some statutes require offices and departments maintain a website and post certain information for public use. The study has broken the types of information often provided on these pages into Office Information, Email and Public Records Information. Office Information was scored on a 0-6 scale for each type of information provided. One point was given for each piece of information: name of department head, office mailing address, office phone number, office fax number, description of office duties and whether the department maintains a functioning government website. Public Records Information was scored on a 0-5 scale. One point was aggregated for each piece of information: name of records custodian, public records contact, methods for submitting a public records request, costs associated with public records requests and whether the department maintains a separate public records page.

In finding the government website, a Google search of the county and the office or department name was conducted. The first two pages of the search results were scanned for the sought website. Department or office Facebook pages were not counted, nor were non-government aggregation sites. In searching for the individual pieces of office and public records information, if it could not be found within three clicks of the main office or department website, it was marked as non-existent.

### POSTED INFORMATION



SEE APPENDIX, PAGE 21 FOR DATA TABLE



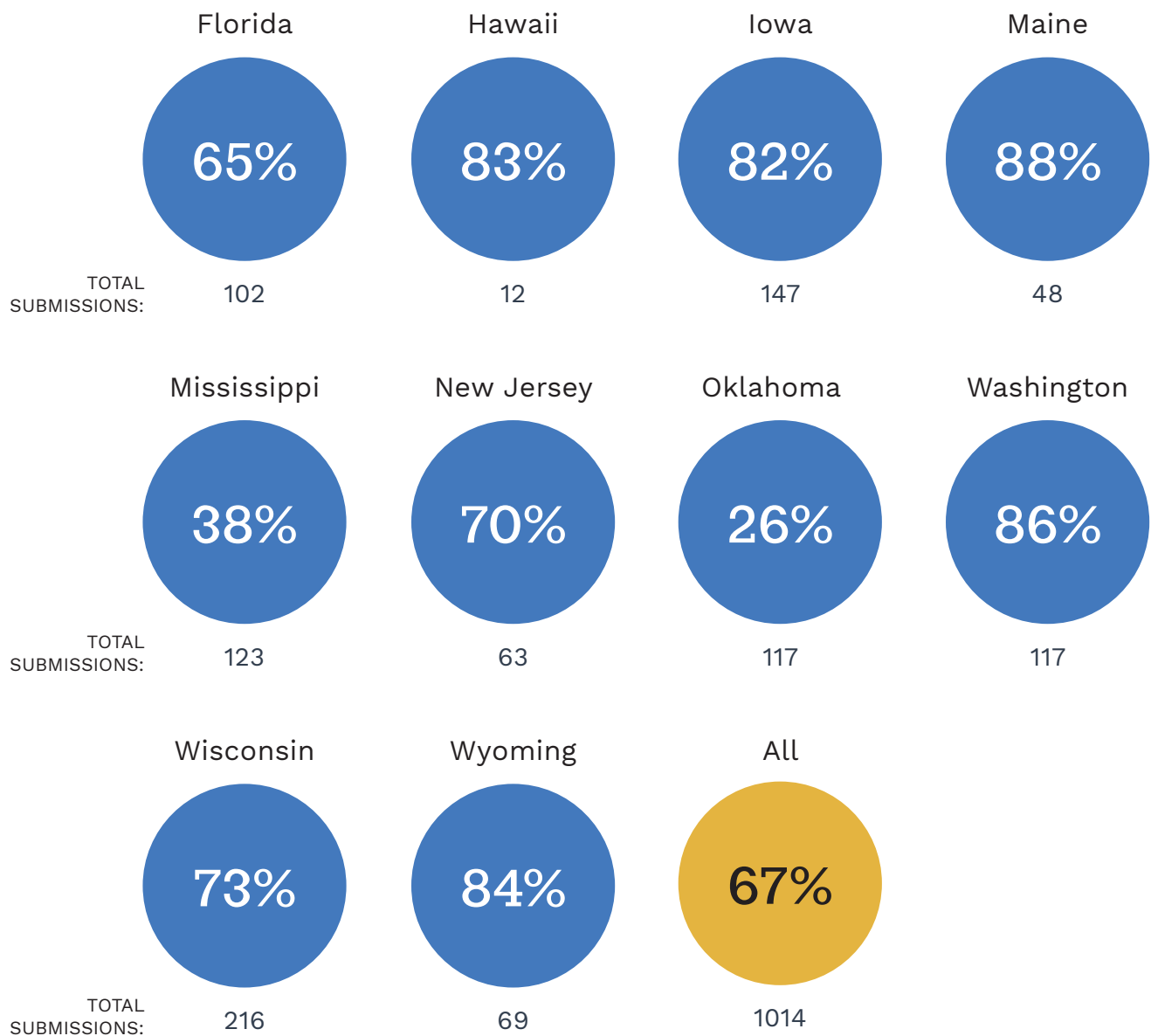
## Results

**POSTED EMAIL ADDRESS:** Email is scored on binary 0-1 scale of whether they provided an email address or not. Individual and general office addresses were counted, as were any communication portal or prompt. The percentage below references the percentage of offices and departments that posted an email address (or portal) for public use.

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### POSTED EMAIL ADDRESS

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## Analysis

An initial verdict suggests public records laws across the 10 sample states are by and large effective and in working order. Approximately 37 of every 38 requests ultimately returned a satisfactory outcome. And this speaks to the many hard-working, well-intentioned individuals in county offices and departments across the country. More than half of the time, the request was closed by the state-mandated deadline. Though the audit incurred more than \$1,600 in fees, on a per request basis the cost of the records was reasonable. These are laudable results.

However, the audit also documented the difficulty in communicating with public bodies, and often reminders were needed to ensure the request was being processed. That only two-thirds of sample bodies provided an email address is unsatisfactory. Fourteen percent of the sample bodies did not even have websites. These were predominantly in Oklahoma and Mississippi, where requests were more likely to have been ignored than processed on first submission. When no contact information is provided, the request process can become prohibitively difficult.

A considerable number of requests received no response whatsoever, and more often than not additional communication was necessary to ensure public bodies were processing the simple requests. In Mississippi, on average, requests required just under two follow-up communications to spur the office or department into completing the request.

Communication became even more difficult when the office or department insisted on conducting correspondence via postal mail or fax. Some offices and departments stated they would only accept requests submitted via these methods. Though patently wrong and illegal, requesters complied with this demand rather than attempting to sue. In total, only 1.5% of requests required fax or physical mail, but in some states—Hawaii, Mississippi and Oklahoma—it was much more common. Sheriff's offices made up the vast majority of these demands when analyzing by office.

Fees, a considerable problem in freedom of information law, were rarely an issue. On a few occasions, counties provided exorbitant

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**The people insist on remaining informed so that they may maintain control over the instruments that they have created.**

—WASHINGTON PUBLIC RECORDS ACT


fee estimates. In all cases, offices and departments were willing to drop the fee or adjust the parameters of the request to make the cost affordable.

The quantitative nature of the study also fails to capture the interpersonal interactions. The overwhelming majority of these were positive, but it was also not uncommon to experience hostility and personal insults. Requesters were instructed to be courteous in all communications and remain focused on the legal process at all times. However, intimidation occurred with some frequency.

**Mississippi and Oklahoma proved to be the most challenging states.** Completing requests in these states proved problematic from beginning-to-end. Finding contact information was difficult, making mere submission of the request troublesome. Both states required more follow-up communications than other sample states, and hostility was common in Oklahoma, and disinterest was frequent in Mississippi. Recourse proved ineffective in both states as well. Discussions with the Mississippi Ethics Commission, responsible for oversight of the state Public Records Act, proved fruitless for the purposes of this study. In Oklahoma, there is no such oversight board, and communication with other authorities in the state, including district attorneys and the Office of the Attorney General, returned no relief. Many of the failed requests in the state were the result of Oklahoma sheriffs' offices refusing to deliver responsive records in the mail or email. They contend they are not legally required to do so, and the matter is now before a county court.

**When sorting by subject of the request, sheriff's offices proved to be the most difficult.** It is difficult to parse whether the nature of the requested information played a role in adverse outcomes, but the aggregate data bears out the difficulty experienced. The bailiwick of the sheriff includes distributing legal information to the public, ranging from disseminating crash reports or processing routine judicial records. As a result, they often have dedicated staff, or at the very least familiarity in working with public records. Nonetheless, sheriffs' offices were the least likely to respond, required the most follow-up communication, cost the most on a per request basis, were most likely to deliver hard copies and took the longest to complete the requests.

**Most government personnel are interested and willing to aid a requester in their search for information, and many went above and beyond.**



e Washington Public Records Act  
n complaints filed with your off  
6, 2017 and 2018.

that any responsive information  
ered via email to the account fro

ike to request a waiver of all fee  
terest and as part of a larger proj  
nding of road conditions and ma

**Washington was exemplary, and Wisconsin and Iowa distinguished themselves as prompt and compliant.** In Washington, information on county bodies was easy to locate, and submission of requests was simple and straight-forward. Nearly all requests in the state were routed through a portal for request tracking, and delivery dates were provided upon receipt. If an office or department was going to miss a delivery date, more often than not the office or department would proactively communicate alternative delivery dates. To the individual, records custodians in the state were courteous and professional. Maine was another responsive state. There was suspicion regarding requester intent and questionable use of exemptions, but in working with the public access ombudsman, all requests were ultimately completed.

## Conclusion

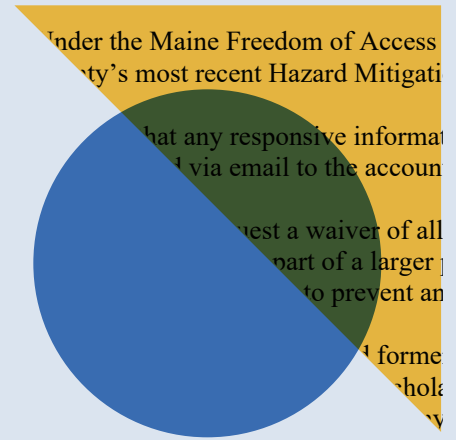
It bears noting that the results of this study represent a rather sanguine depiction of public records laws. All requests were submitted by individuals with knowledge of county governance and familiarity with the public records process. The requests were designed to be simple and easy to fulfill. The requesters were organized, informed and assertive. The audit encountered a small set of reoccurring issues, though most problems were surmountable with diligence and knowledge of the law. However, successful public records laws should not require five phone calls or referring the custodian to an attorney general opinion.

And while there are problematic states and offices, the concluding impression of the audit is largely a positive one. The most common request resulted in the records being provided (or the requester was informed the office or department did not have the records), generally in a relatively short order and at less than \$2 per request. Most government personnel are interested and willing to aid a requester in their search for information, and many went above and beyond.

Application of any law is never without issues, and the failures identified by the study may seem trivial to some, but it is imperative they be addressed. The statutory construction of the laws seem sound, but enforcement remains problematic.

**Improved performance in processing freedom of information requests will only occur when government transparency is made a priority and evading responsibilities is not an option.**

**Improved performance in processing freedom of information requests will only occur when government transparency is made a priority and evading responsibilities is not an option.** This starts with the owners of the government, the people, insisting on improved performance. Governors making clear statements in support of effective public records law, in addition to their offices demonstrating best practices, could prove valuable as well. There is much to be gained if all were reminded of their civic duties and rights. Shared governance necessitates active participation by the public and their servants. It will not work otherwise.



## Acknowledgements

The audit was generously supported by grants from the Journal Foundation/ Walter Jay and Clara Charlotte Damm Fund and Marquette University's Office of Research and Sponsored Programs. The audit would not have been possible without the aid of a spring graduate class in Marquette University's Diederich College of Communication. Four members of that class— Elizabeth Castellano, Kayla Gonzalez, Christina Mazzeo and Molly O'Brien—were crucial to the project as summer research assistants. Their research assistance was invaluable, and I am incredibly grateful for their support.

## Appendix

### OUTCOMES BY STATE

	GRANTED	AFFIRMATIVELY POSTED	NO RECORDS	GRANTED AFTER DENIAL	FAILED
All	59%	4%	34%	1%	2%
Florida	70%	0%	30%	0%	0%
Hawaii	83%	0%	17%	0%	0%
Iowa	59%	6%	35%	0%	0%
Maine	50%	23%	21%	6%	0%
Mississippi	36%	1%	55%	0%	8%
New Jersey	68%	5%	27%	0%	0%
Oklahoma	23%	0%	68%	1%	9%
Washington	77%	15%	9%	0%	0%
Wisconsin	81%	0%	19%	0%	0%
Wyoming	45%	0%	51%	4%	0%

### OUTCOMES BY AGENCY

	N	GRANTED	AFFIRMATIVELY POSTED	NO RECORDS	GRANTED AFTER DENIAL	FAILED
Sheriff	338	89%	0%	4%	2%	4%
Road	283	55%	0%	43%	0%	1%
County Admin	266	23%	12%	64%	0%	1%

### TIME

	FIRST RESPONSE MEDIAN	FIRST RESPONSE AVERAGE	COMPLETED MEDIAN	COMPLETED AVERAGE
All	2	11	9	17
Florida	1	6	10	18
Hawaii	13	15	26	27
Iowa	5	12	9	16
Maine	0	4	1	9
Mississippi	21	22	22	28
New Jersey	2	10	10	16
Oklahoma	21	19	21	22
Washington	1	4	8	13
Wisconsin	2	9	7	14
Wyoming	2	10	7	15

## Appendix

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### COMMUNICATION

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	NO RESPONSE AVERAGE	ADDITIONAL CONTACTS AVERAGE
All	0.53	0.84
Florida	0.28	0.66
Hawaii	0.67	1.25
Iowa	0.51	0.61
Maine	0.15	0.35
Mississippi	1.35	1.91
New Jersey	0.35	0.57
Oklahoma	1.04	1.71
Washington	0.10	0.30
Wisconsin	0.32	0.52
Wyoming	0.42	0.61
Sheriff	0.58	1.09
Road	0.48	0.72
County Admin	0.49	0.63

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### POSTED INFORMATION

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	OFFICE INFO (1-6)	PUBLIC RECORDS INFO (1-5)
All	4.66	0.72
Florida	4.63	2.05
Hawaii	5.5	0.42
Iowa	5.41	0.15
Maine	4.98	0.17
Mississippi	3.57	0.02
New Jersey	5.14	1.84
Oklahoma	2.08	0.15
Washington	5.09	1.37
Wisconsin	5.61	0.8
Wyoming	4.99	0.28
Sheriff	4.89	1.2
Road	4.89	0.42
County Admin	4.32	0.74