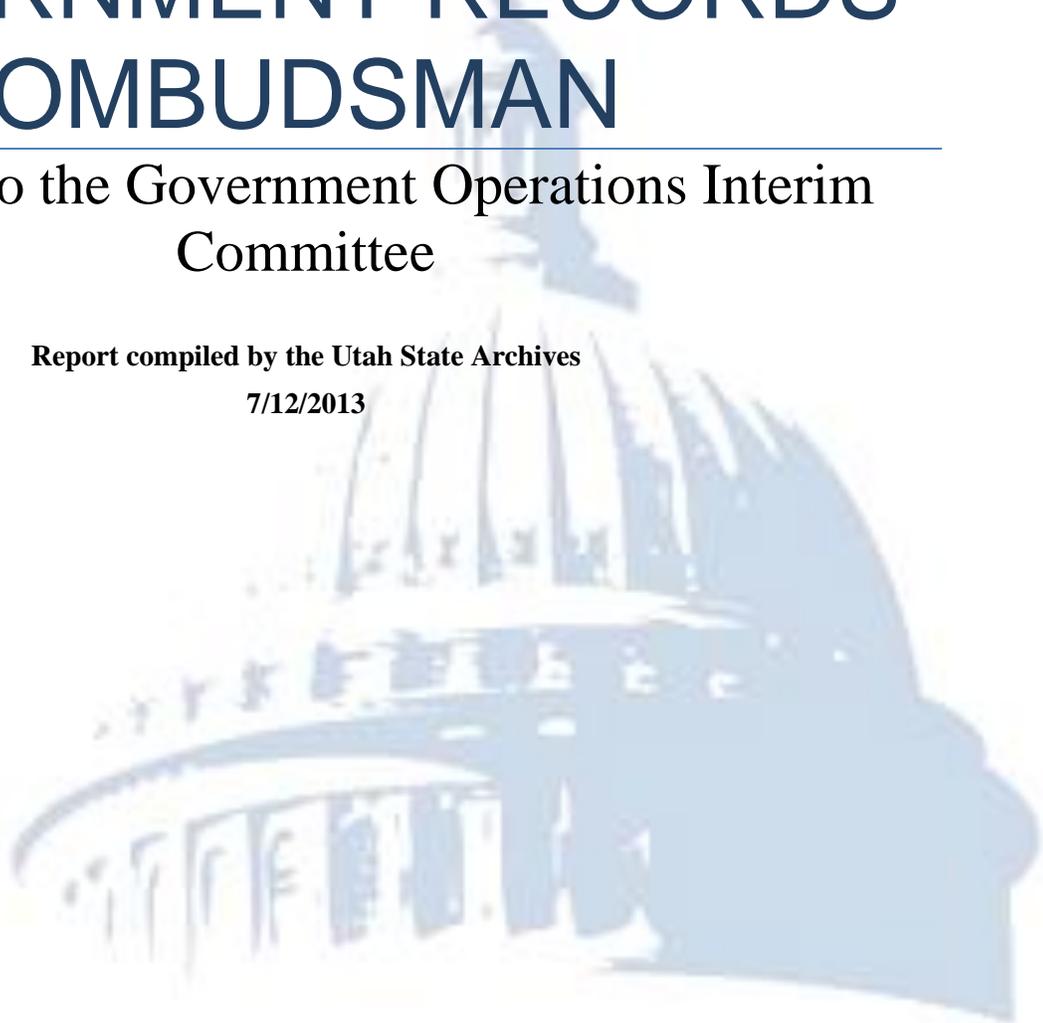


GOVERNMENT RECORDS OMBUDSMAN

Presented to the Government Operations Interim
Committee

Report compiled by the Utah State Archives

7/12/2013



This report is required by Utah Code 63A-12-111, Public Records Management Act, Government Records Ombudsman.



Government Records Ombudsman

Department of Administrative Services

Utah State Archives

July 12, 2013

The Legislature created a government records ombudsman during the 2012 General Legislative Session to act as a resource to the public in making records requests and in filing appeals associated with records requests and to assist government employees in responding to records requests or dealing with related appeals. It authorized the records ombudsman to mediate disputes between requesters and responders upon request. Funding for the records ombudsman position was provided during the 2013 General Legislative Session.

The records ombudsman's responsibilities are defined in Utah Code 63A-12-111:

63A-12-111. Government records ombudsman.

- (1) (a) The director of the division shall appoint a government records ombudsman.
- (b) The government records ombudsman may not be a member of the records committee.
- (2) The government records ombudsman shall:
 - (a) be familiar with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act;
 - (b) serve as a resource for a person who is making or responding to a records request or filing an appeal relating to a records request;
 - (c) upon request, attempt to mediate disputes between requestors and responders; and
 - (d) on an annual basis, report to the Government Operations Interim Committee on the work performed by the government records ombudsman during the previous year.
- (3) The government records ombudsman may not testify, or be compelled to testify, before the records committee, another administrative body, or a court regarding a matter that the government records ombudsman provided services in relation to under this section.

The Legislature anticipated that a records ombudsman, familiar with the law and available to assist both the public and government employees in understanding and complying with the law, would be a valuable resource to the state. In addition to improved compliance with GRAMA (Title 63G, Chapter 2, Government Records Access and Management Act), Legislators expected this office to improve both efficiency and transparency in government and foster good will between government and citizens by facilitating better communication.

Activities and services

The records ombudsman has kept records of contacts/requests and mediations since the time of appointment. This report includes work completed in the FY 2012-2013 (July 1, 2012, to June 30, 2013).¹

During the fiscal year, the records ombudsman provided 1,100 consultations, including in-person, telephone, and email assistance. Of these, 585 involved records requesters (the public) and 515 involved records responders (governmental entities).

As more people have become familiar with the services provided by the records ombudsman, the number of questions about GRAMA has increased. There were 49 instances in which consultations with requesters also involved the records ombudsman's involvement with the government. Examples of these instances include complaints from requesters about noncompliant responses; declined invitations to participate in mediation; questions about the existence or nature of records; situations in which parties requested the records ombudsman's opinion to help resolve an issue; and situations in which antagonism between involved parties prevented effective communication.

The Utah State Archives has added a [GRAMA and Open Government](#) resource to the State Archives' homepage, and thereunder a link to the [Records Ombudsman](#) page. Currently, this page features links to records laws and ordinances, including links to records ordinances and policies adopted by local governmental entities and posted or reported to the State Archives (as required by Utah Code [63G-2-701](#)(1)(e)). The page also provides links to a sample GRAMA request form and other, additional forms to facilitate the GRAMA request and appeal process. The forms have been designed to facilitate convenience and compliance. The records ombudsman intends to further develop this website to include answers to frequently asked questions and an archive of case law related to records access issues.

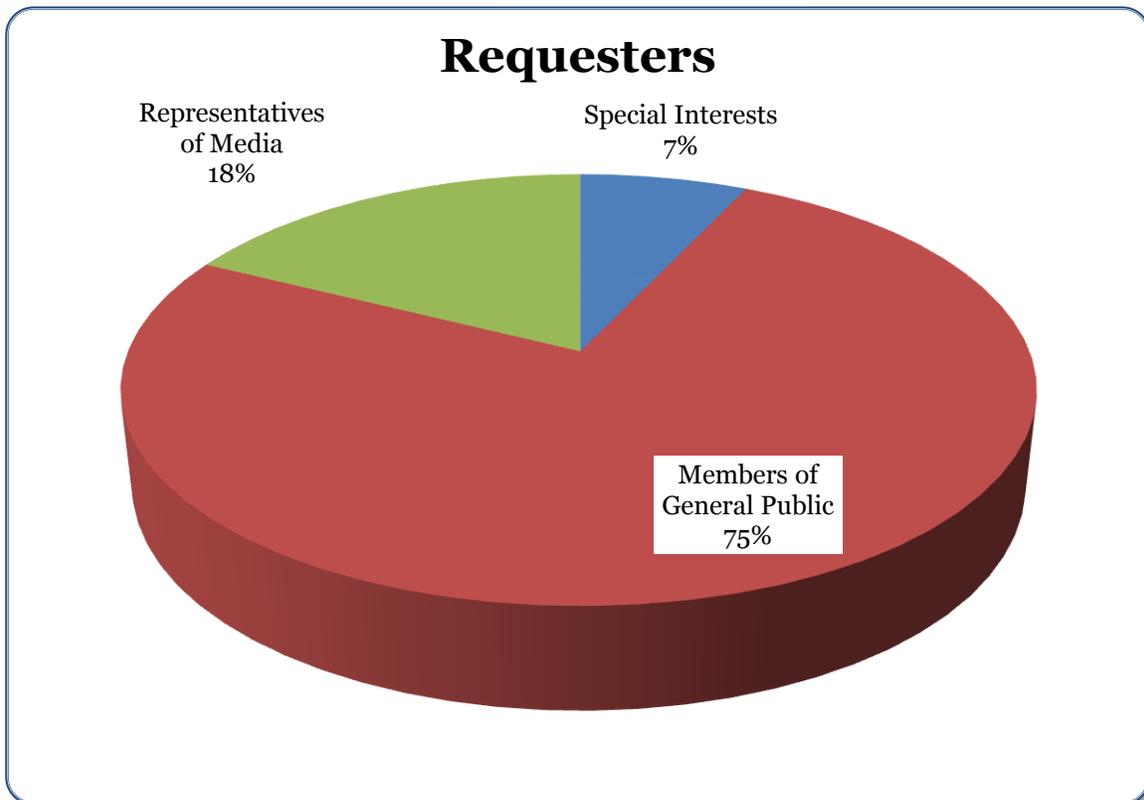
The records ombudsman provided presentations at the annual conferences of the Utah Prosecution Council and Utah Association of Municipal Attorneys. In conjunction with these conferences and the Archives' records management blog, the records ombudsman compiled [What GRAMA Says About Fees for Records Requests](#) and developed a matrix to help law enforcement agencies with classification decisions.

The services of the records ombudsman increase government efficiency by reducing the number of hearings that go before the State Records Committee. During recent calendar years the State Records Committee heard 23 appeals in 2010, 15 appeals in 2011, and 26 appeals in 2012. During the first six months of 2013, only four appeals have come before the Committee, whereas seven requests for hearings were withdrawn because the issues were resolved through mediation with the records ombudsman.

¹ Because the 2012 report included data from April to August 2012, there is some duplication in the data used to provide the first and second records ombudsman reports. Future reports will continue to report fiscal year data.

Requesters²

During the FY 2012-13, the records ombudsman provided 585 consultations with records requesters. Of these, 441 were members of the public, 103 were representatives of the media, and 41 represented corporations, non-profits, or out of state governments (special interests). The majority of requests for assistance come from the public, at 75 percent. Requests from the media account for 18 percent³ of requests, and special interest groups comprise 7 percent.

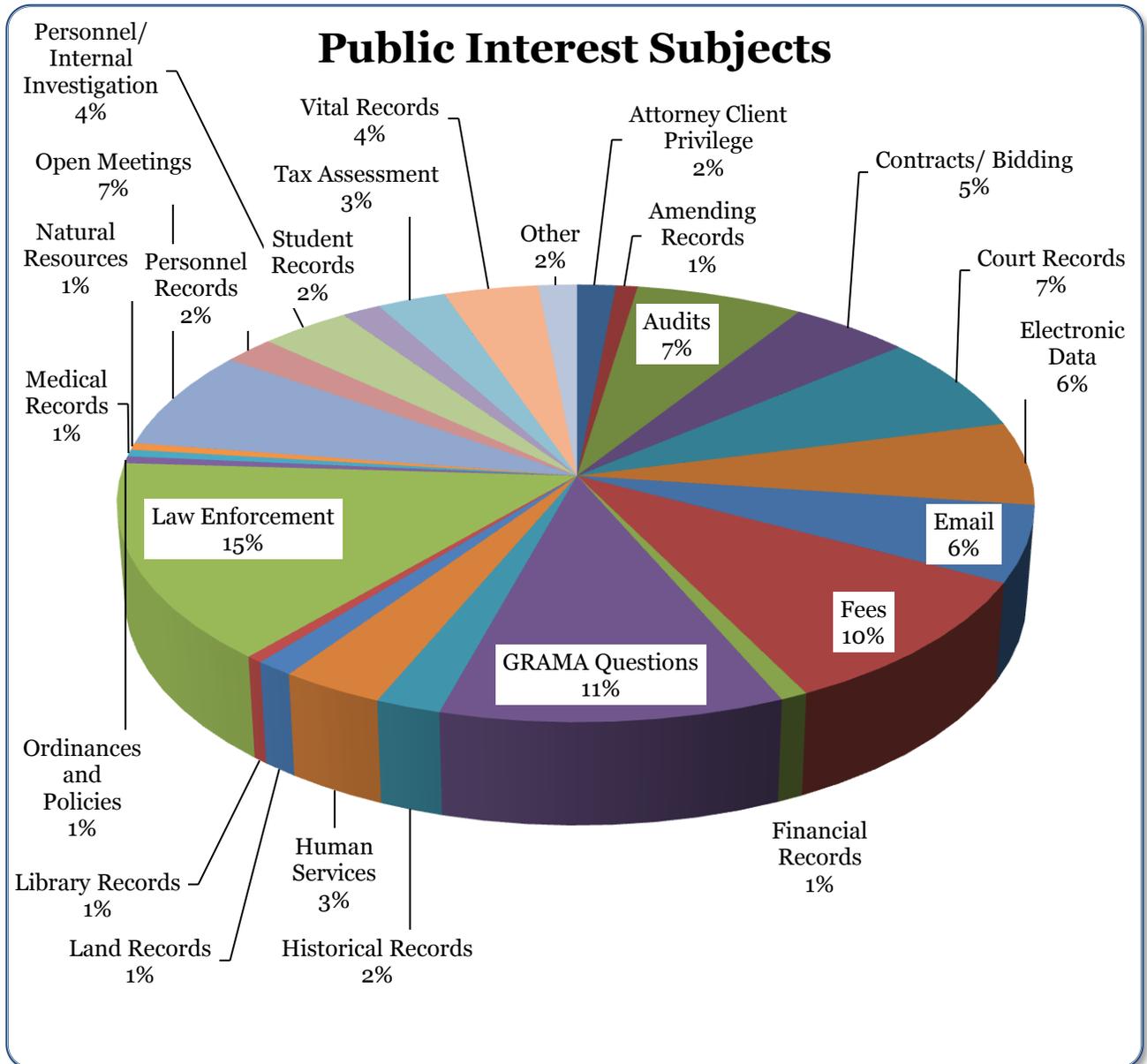


² All graph numbers are rounded up; percentages may not be exact. Refer to Appendix for complete compilations.

³ Public requests were 68 percent and media, 24 percent in the last records ombudsman report.

Types of records

Requesters were interested in a wide variety of records and issues. Questions about law enforcement were at the top of the list at 15 percent, followed by questions about GRAMA (11 percent) and about fees (10 percent) for records requests. There was also considerable interest in open meetings, court records, electronic data, email, and government contracts. Collectively, requests identified by electronic format (email and other electronic data) accounted for 12 percent.

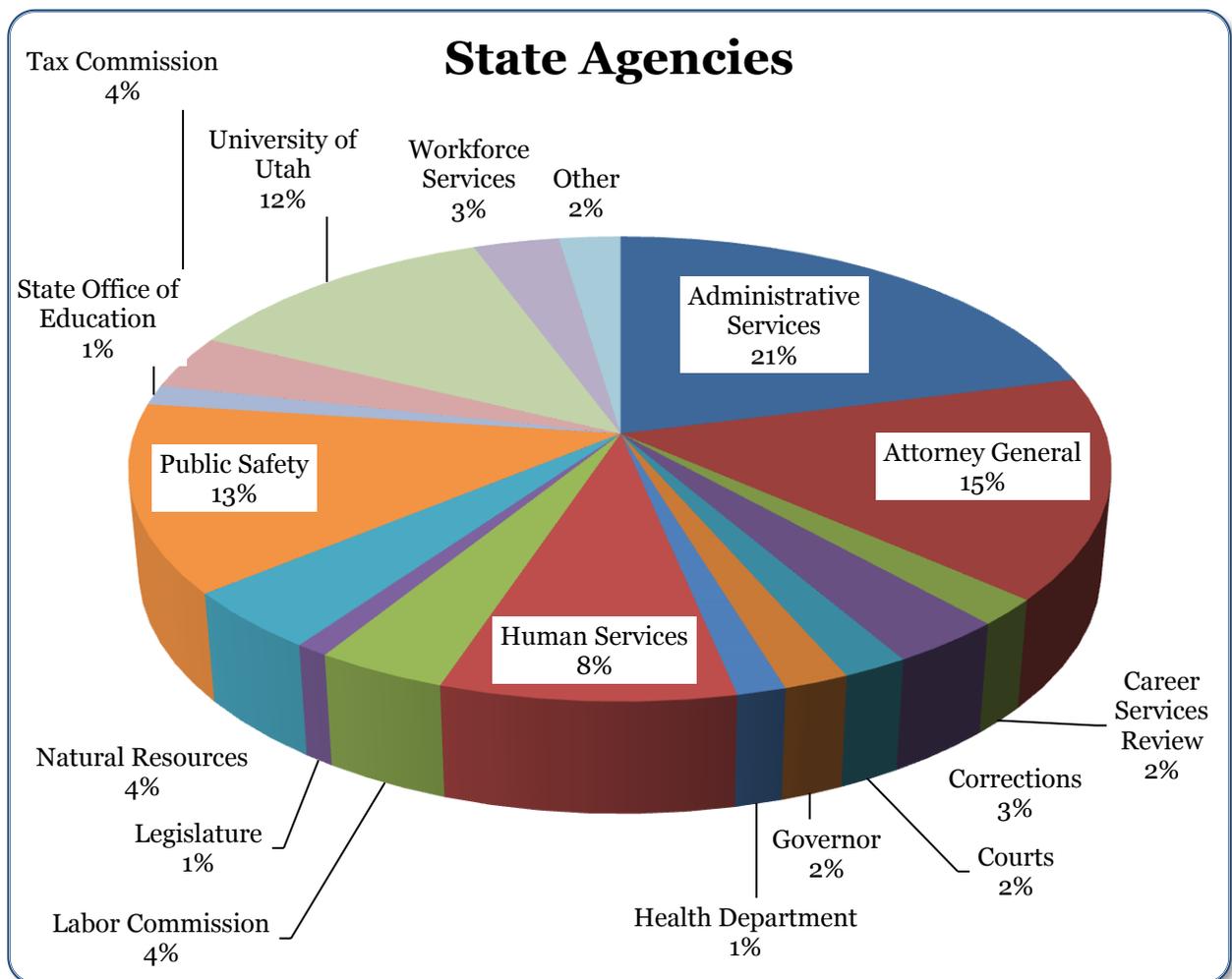


Responders

The records ombudsman provided 515 consultations with government employees responding to records requests. Of these, 214 represented state government (42 percent) and 301 represented local governmental entities (58 percent).

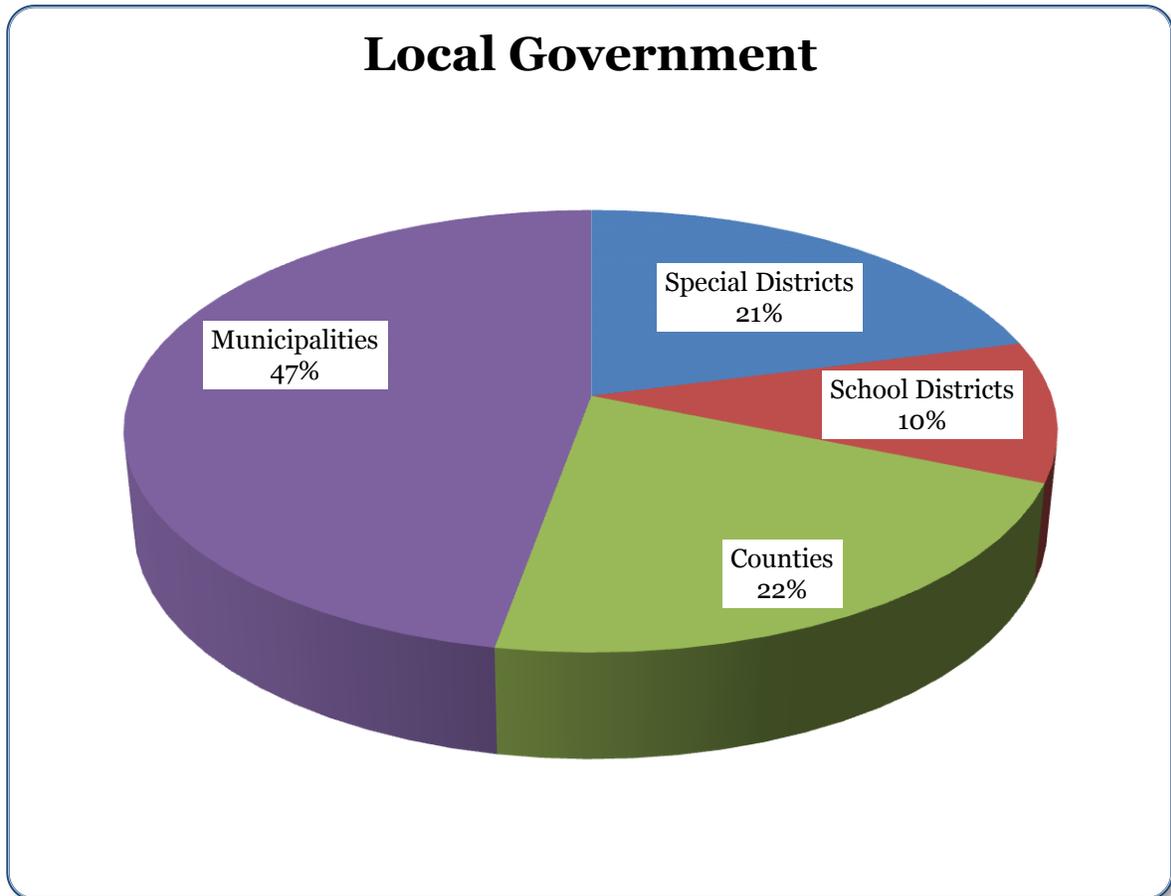
State Agency Responders

Within state government, the Department of Administrative Services (21 percent), the Attorney General's Office (15 percent), and Public Safety (13 percent) were the most frequent consultations.



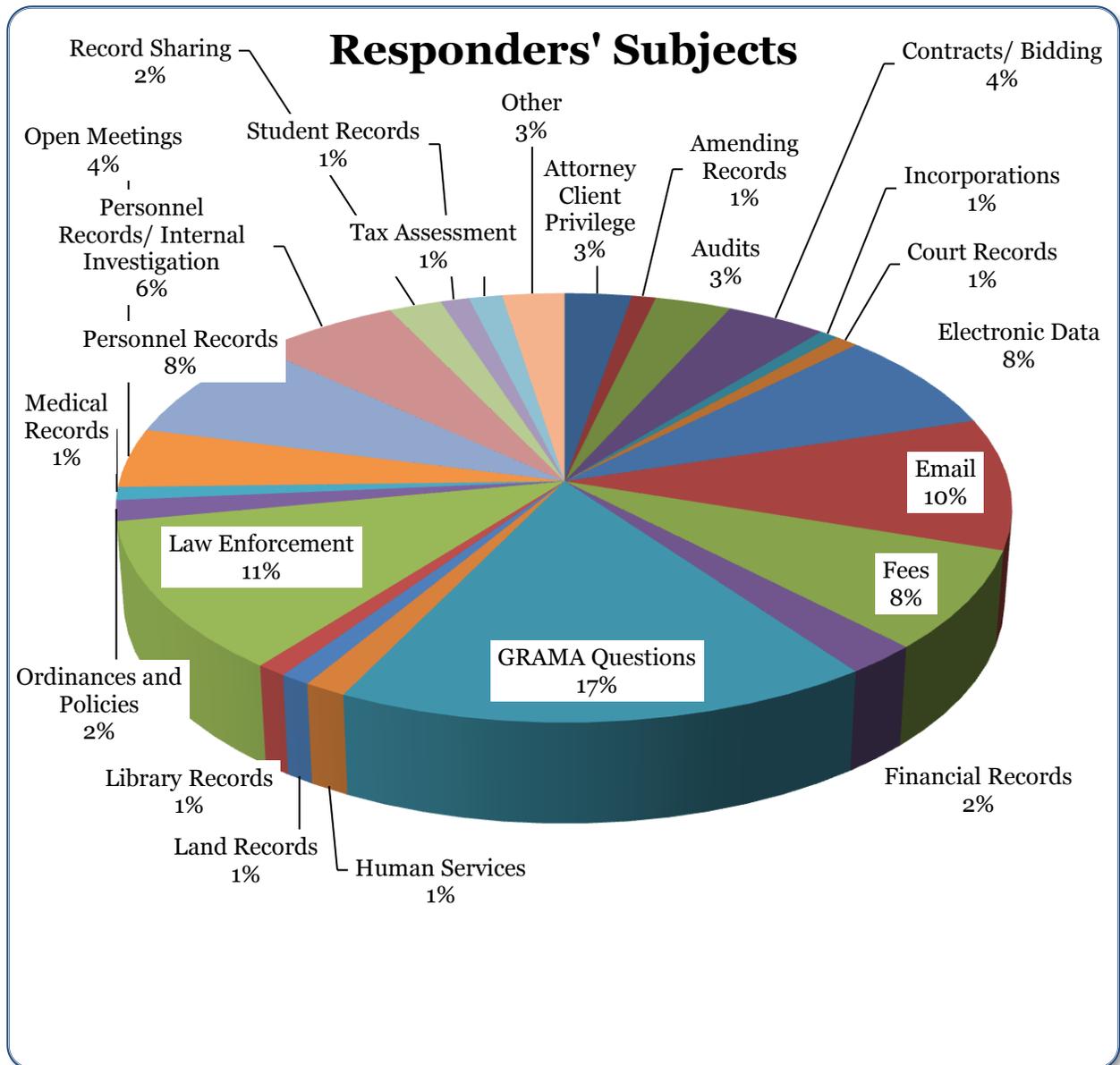
Local Government

Of consultations with local governments, 142 represented municipalities (47 percent), 65 represented counties (22 percent), 63 represented special districts (21 percent), and 31 represented school districts (10 percent).



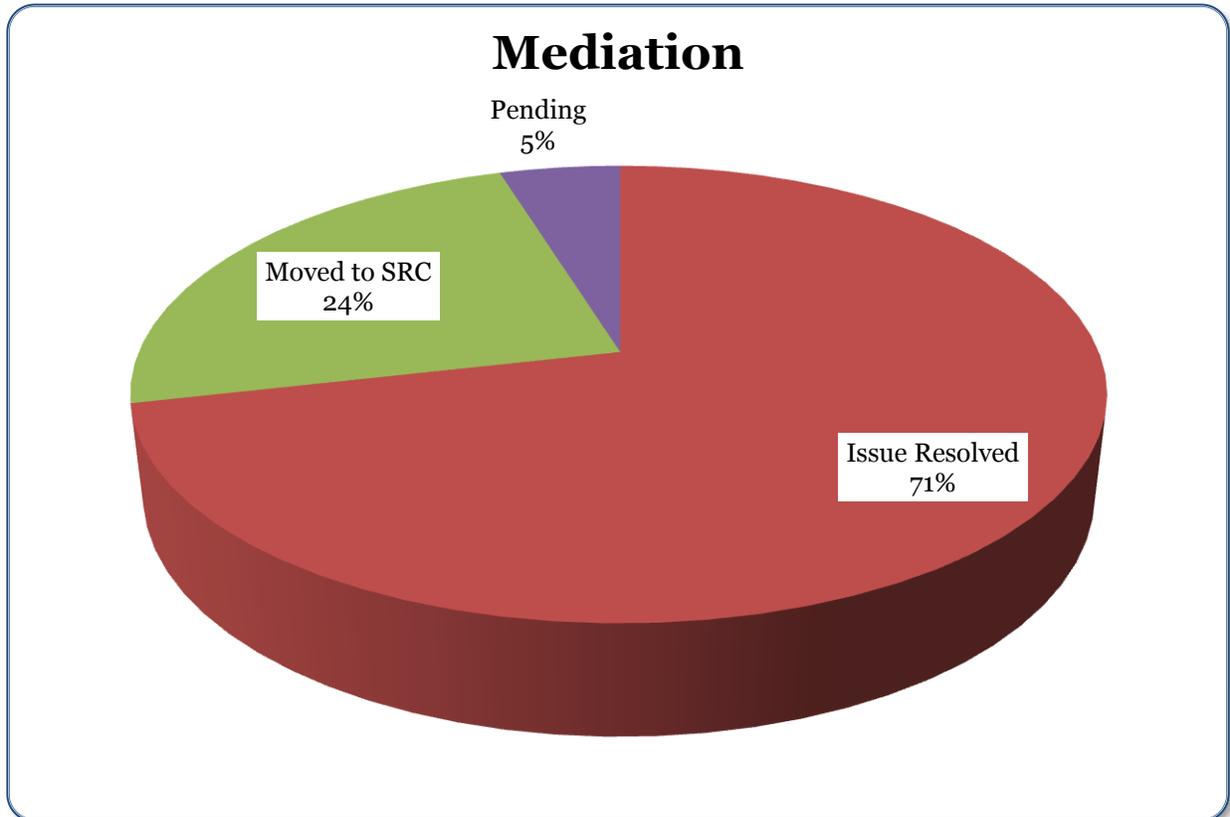
Types of records

In most cases, responders were interested in the same kinds of records and issues as requesters. However, questions about the Government Records Access and Management Act (GRAMA) topped responders' list of discussion issues by a substantial margin (17 percent). Next in importance were law enforcement records, personnel records, email, electronic data, and fees. Collectively, issues relating to electronic records (email and other electronic data) were 18 percent.

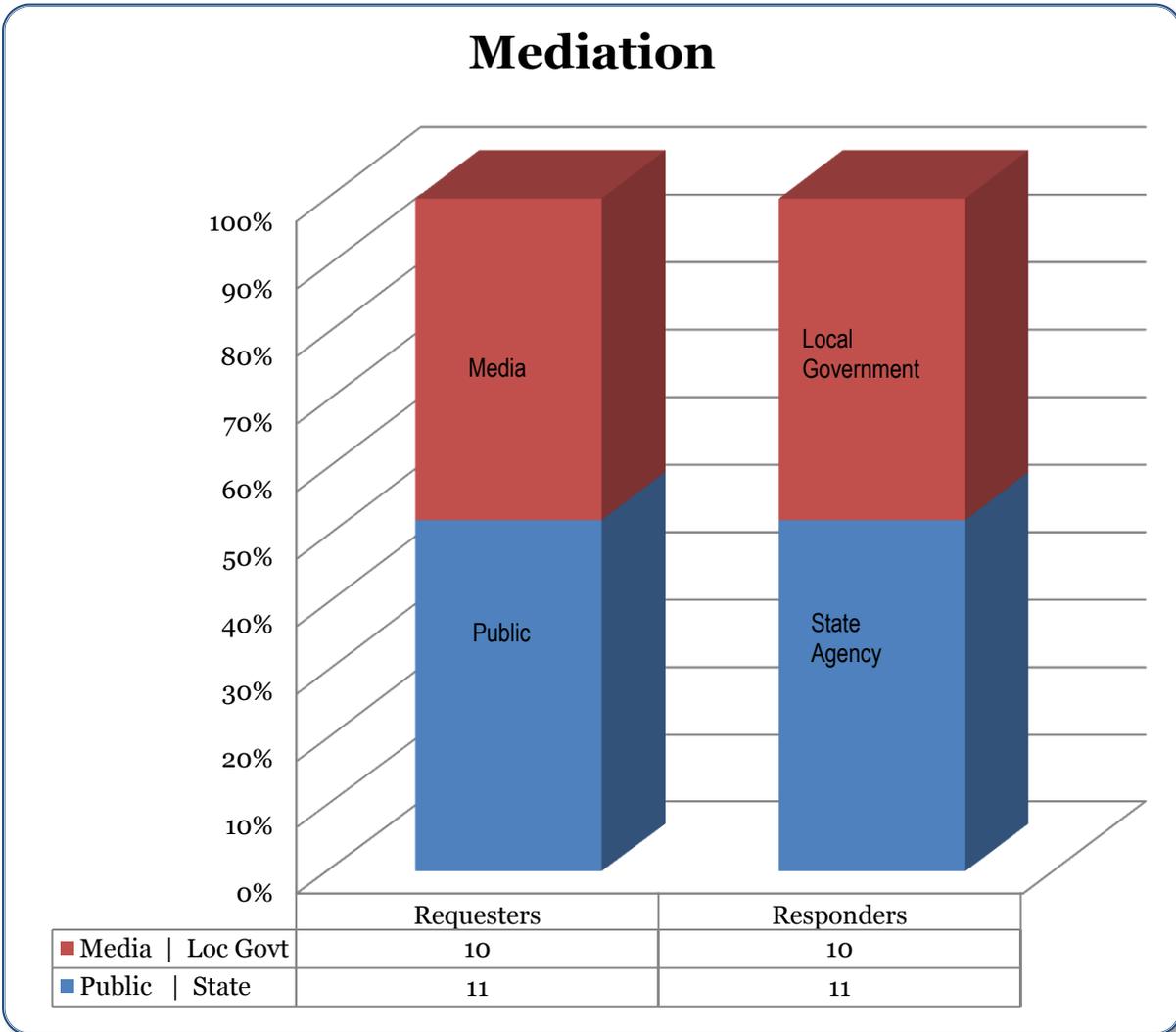


Mediation

In twenty-one instances, the records ombudsman facilitated formal mediation between parties, usually involving in-person meetings of both parties with the records ombudsman. In fifteen cases (71 percent), the issue was resolved through mediation. Five cases (24 percent) required a hearing before the State Records Committee after mediation, and in one case the outcome is not yet determined.



Though the majority of requesters involved the public as requesters (at 52 percent), the media was a close second (at 48 percent). Local government and state government responders involved in mediation were equally closely aligned, also at 52 percent and 48 percent respectively.



Appendix:

Compilation of statistical information

Requester Contacts

	Public	Media	Special Interests	Total
Attorney client privilege	9			9
Amending records	5			5
Audits	39			39
Consumer protection	1			1
Contracts/bidding	6	9	13	28
Incorporations	2			2
Court records	39	2	1	42
Electronic data	14	22		36
Email	33			33
Fees	53	3	2	58
Financial records	5			5
GRAMA questions	38	15	10	63
Historical records	10	2		12
Human services	14	5		19
Land records	6		1	7
Library records	3			3
Licensing	1			1
Law enforcement	58	22	6	86
Ordinances and policies	3			3
Medical records	3			3
Natural resources	3			3
Open meetings	39		4	43
Oaths of office	2			2
Personnel records	7	5		12
Personnel/internal investigation	2	18	1	21
Record sharing	2			2
Student records	8		1	9
Tax assessment	14		2	16
Vital records	22			22
	441	103	41	585

Responder Contacts

	County	Municipality	Special District	School District	State Agency	Total
Attorney client privilege	1	12			1	14
Amending records		3			2	5
Audits					16	16
Building permits		1				1
Copyright	1					1
Contracts/bidding			6		15	21
Incorporations		2	1		1	4
Court records	2				3	5
Electronic data	1	9	20		9	39
Email	3	8	1	1	38	51
Fees	9	11	4		15	39
Financial records		1		7	4	12
GRAMA questions	11	26	11	5	36	89
Home addresses	1	1				2
Historical records					2	2
Human services					7	7
Land records	3	1			1	5
Library records					5	5
Law enforcement	15	24	6	1	13	59
Ordinances and policies	1		4		3	8
Medical records					5	5
Natural resources					2	2
Open meetings	10	9	2	1	1	23
Oaths of office					1	1
Personnel records	2	22	8	3	5	40
Personnel records/internal investigation	2			8	21	31
Public works	1	1				2
Record sharing		5			6	11
Student records				5	1	6
Tax assessment	2	5				7
Vital records		1			1	2
Total contacts	65	142	63	31	214	515

Mediation

Entities	Issue	Outcome
Municipal/public	Law enforcement records	Resolved in mediation
School district/media	Personnel/internal investigation	Moved to SRC/SRC upheld appeal
State Gov./media	Personnel/internal investigation	Moved to SRC after two mediation sessions/SRC partially upheld appeal
State Gov./media	Electronic data – crime statistics	Resolved in mediation
Special district/media	Electronic data – crime statistics	Moved to SRC/upheld appeal/decision appealed in district court
County/media	Law enforcement records	Resolved in mediation
State Gov./media	Personnel/internal investigation	Resolved in mediation
State Gov./media	Electronic data – disciplinary actions	Resolved in mediation
Special district/media	Personnel records	Resolved in mediation
State Gov./public	Law enforcement records	Resolved in mediation
State Gov./public	Audit records	Moved to SRC/SRC upheld appeal/decision appealed in district court
State Gov./public	Library records	Resolved in mediation
Special district/public	Contact reports	Moved to SRC/SRC upheld appeal
State Gov./media	Requests for information	Pending
County/public	Fees	Resolved in mediation
Municipal/public	Email/attorney-client privilege	Resolved in mediation
State Gov./public	Email about audit	Determination pending
School district/public	Budget records	Resolved in mediation
School district/media	Personnel/internal investigation	Post SRC mediation and resolution
Municipal/public	Personnel records	Resolved in mediation
State Gov./public	DCFS records	Resolved in mediation