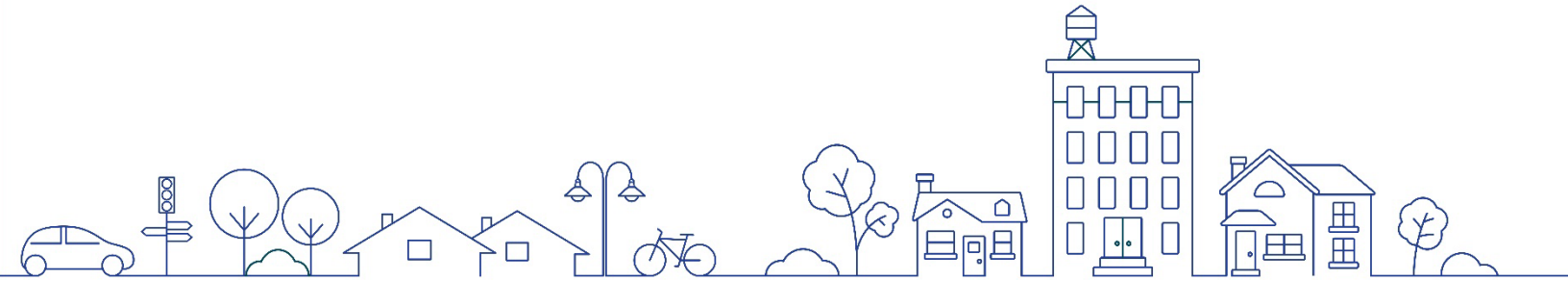
Oregon Municipal Handbook

CHAPTER 14:

PUBLIC RECORDS



League of Oregon Cities

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Chapter 14: Public Records

Oregon law protects the public's right to information regarding the business of public bodies such as cities. Under these laws, the records of a public body's business are available for review by any person regardless of the person's identity, motive, or need. All public records are subject to disclosure unless an exemption to disclosure under the Oregon Public Records Law applies. Through the Archives division of the Oregon Secretary of State's office, the state provides guidelines for records management. Public bodies must follow the records management and disclosure laws in order to appropriately manage records, maintain records, and respond to requests for disclosure. This chapter of the handbook will provide an overview of Oregon Public Records Law, public records management, public records requests, and sample forms. This chapter is not intended to be a substitute for legal advice. LOC members with additional questions about public records are encouraged to contact their city attorney. Please note that this chapter is based extensively on materials in the Oregon Attorney General's Public Records and Meetings Manual (2019). LOC strongly recommends that cities purchase the print version of this manual, which is updated every two years. A free online version is available at: https://www.doj.state.or.us/oregon-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual. Finally, note that the Oregon Department of Justice (ODOJ) reserves its legal advice for the state of Oregon and its agencies; as such, cities with specific questions on the Oregon Public Records Law again should consult their legal counsel.

The Basics

Entities Subject to Oregon Public Records Law

Oregon Public Records Law applies to any "public body" within the state. "Public body" is defined under the Oregon Public Records Law as "every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state."[1] Essentially, all public officials and employees are subject to the public records law.

Private entities may also be subject to the Oregon Public Records Law depending on the "character of [the] entity and the nature and attributes of [the] entity's relationship with government and governmental decision-making."[2] The Oregon Supreme Court has articulated the following six-part test to determine whether a private entity is a public body for the purposes of the public records law:

- The entity's origin (Is the entity created by government?).

[1] ORS 192.311(4).
[2] *Marks v. McKenzie High School Fact-Finding Team*, 319 Or 451, 463 (1994).

- The nature of the function assigned to and performed by the entity (Does the entity perform a traditional governmental function?).

- The scope of the authority granted to and exercised by the entity (Is the entity authorized to make decisions that bind a governmental entity or does it only serve an advisory function?).

- The nature and level of governmental financial involvement with the entity (Does the entity receive governmental funds?).

- The nature and scope of government control over the entity's operation (How much discretion does the entity have on operations?).

- The status of the entity's officers and employees (Are the officers and employees government officials or employees?).[3]

Determining Public Status:

- Origin
- Function
- Authority
- Funding
- Control
- Officer/Employee Status

These factors are not exclusive but are helpful in determining whether a private entity is subject to Oregon Public Records Law provisions.

Records Covered by Oregon Public Records Law

Oregon Public Records Law defines a public record as "any writing that contains information relating to the conduct of the public's business * * * regardless of physical form or characteristics."[4] The term "writing" is defined to mean "handwriting, typewriting, printing, photographing and every means of records, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings."[5] This means that written documents, audio or visual recordings, or electronically stored communications, including emails, text messages or social media posts, are public records.

Content not Format

The question is whether the record relates to the business of the public—not the format of the record.

Public Records Include:

- Emails
- Text messages
- Social media posts

…regardless of where they are created or stored:

Only the content—a relationship to the public's business—matters.

Public records are not limited to those prepared by the public body. Public records may include records that were prepared outside government but contain "information relating to the public's business," so long as the record was "owned, used or retained" by the public body. The Oregon Attorney General has concluded that while a record need not be in a public body's possession to be a public record, "a document prepared by a private entity does not

[3] *Marks*, 319 Or at 463-64.
[4] ORS 192.311(5)(a). Compare with the definition of "public record" for retention purposes under ORS 192.005(5) which excludes the following from the definition of "public record": records of the Legislative Assembly; library and museum materials; records or information concerning the location of archeological sites or objects; duplicate copies; a stock of publications; and voicemail messages.
[5] ORS 192.311(7).

become a public record merely because a public official reviews the document in the course of official business so long as the official neither uses nor retains the document." [6]

What does this mean? Any record that relates to the public's business is a public record regardless of where it was created or stored. Many public body staff may not realize that emails or other records created on their personal electronic devices may be subject to the Oregon Public Records Law. Furthermore, the treatment of social media content under the Oregon Public Records Law is can be confusing. It is important for public bodies to inform and adequately train their staff to avoid the unintentional creation of public records. The Oregon Secretary of State has published guidance for Oregon government agencies on the Oregon Public Records Law and social media. The guide is proved herein in the appendix.

Resource:

Oregon Secretary of State, Archives Division's
Email Policy Manual for Local Government

Records Management – Storage, Retention and Disposition

Public bodies are required to store, retain, and dispose of their public records in accordance with state law.[7] Public bodies are responsible for the public records in their custody, wherever deposited.[8] Public bodies "must ensure access to all public records * * * for the entire length of the retention schedule."[9] It is important to note that the term "public record" is defined differently for retention purposes than as defined for disclosure purposes.

For the purposes of public records retention, a "public record" is defined as "any information that: [i]s prepared, owned, used or retained by a state agency or political subdivision[10]; [r]elates to an activity, transaction or function of a state agency or political subdivision; and [i]s necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision."[11] For the purposes of retention, public records do not include: library and museum materials that are acquired and preserved solely for library or museum purposes; records concerning the location of archaeological sites or objects; duplicate copies of records; a stock of publications; and voicemail messages.[12] Thus, while considered public records under the Public Records Law – and potentially subject to disclosure – public bodies are not required to retain records specifically exempt from retention. Voicemail messages are a common example of a public record exempt from retention. Voicemail messages relating to the public's business are public records under the Public Records Law. Because the public body is not required to retain those messages, public bodies are free to delete their voicemail

Resource:

Oregon Secretary of State, Archives Division's
Oregon Public Records Law and Social Media Guide

[6] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 8 (2019). *See also* Attorney General Public Records Order, December 11, 1992, Smith (concluding a contract giving the public body ownership of everything created by a contractor was a public record, even though the record was never in the public body's possession).
[7] ORS 192.005.
[8] OAR 166-020-0010(2).
[9] OAR 166-017-0005.
[10] For the purposes of the public records law, a city is a political subdivision of the State.
[11] ORS 192.005(5)(a).
[12] ORS 192.005(5)(b).

messages as they deem fit. However, if a public body saves a voicemail message and the content of that message is subject to a public records request, the message could be subject to disclosure.

The Importance of Proper Records Management

Proper storage and retention allows a public body to access and retrieve public records when necessary. The Archives division of Oregon Secretary of State's office has issued records retention schedules. Following the applicable retention schedules allows a public body to dispose of records that are no longer useful. The critical nature of proper record management is highlighted by law. It is a crime to unlawfully tamper, alter, or destroy a public record.[13] Penalties include up to one year in prison and up to $6,250 in fines.[14] Public bodies are encouraged to provide information and training to their officials and employees on the proper storage, retention, and disposition of public records.

Retention and Disposition

Resource:

Oregon Secretary of State, Archives Division's **Retention Schedule for Cities**

Retention schedules assist with records management and allow for the disposition of records after they pass their usefulness. The Archives division has created a general records retention schedule applicable to cities. The retention schedule "prescribes minimum retention periods for public records created and maintained by the cities of Oregon."[15] The retention schedule addresses accounting records, building records, procurement records, personnel records, public safety records, public works, and others. For example, the retention schedule provides that cities must retain copies of budget preparation records for a minimum of two years.[16] The copy of the adopted budget must be maintained permanently.[17] Duplicate copies do not need to be retained.[18]

Records must be retained ***regardless of the records' format***. Written notes related to public business must also be properly retained. Unless the note is a duplicate copy of another record, it must be retained according to the proper retention schedule. Except as otherwise specified by the applicable retention schedule, public bodies may destroy public records which have met the terms and conditions of their retention period.[19] A helpful flowchart created by the Archives division of the Oregon Secretary of State's office outlining whether a record must be properly retained is included in the appendix at the end of this chapter.

It is important that city employees and elected officials keep their records custodian informed of the location of all public records in their possession. Equally important is the ability of the records custodian to quickly and easily access all public records. In the event that a city receives

[13] ORS 162.305.
[14] ORS 161.615, 161.635.
[15] OAR 166-200-0200.
[16] OAR 166-200-0245(2).
[17] OAR 166-200-0245(1).
[18] "Retention periods apply to the ***record copy*** of all public record, regardless of medium or physical format[.]" OAR 166-200-0200 (emphasis added); "'Public record' * * * [d]oes not include: * * * [e]xtra copies of a document, preserved only for convenience of reference." ORS 192.005(5)(b)(D).
[19] OAR 166-030-0027(2).

a public records request, the records custodian may not be aware of the existence of records stored on an employee's personal email or computer. As a result, the records custodian may not be providing the requester with all the public records subject to the request. In such a case, the city may have unintentionally violated the public records law.

Storage

The Archives division of the Oregon Secretary of State's office has adopted administrative rules on the proper storage of records.[20] "Public records should be stored in secure, fire-resistant structures in areas in which the temperature and humidity are maintained at levels required to ensure optimum longevity of the paper, film or medium on which they are recorded."[21] The storage area should have "[a]dequate ventilation and protection against insect or mold invasion."[22] Electronic records are highly susceptible to accidental destruction or tampering. The Archives division recommends a separate set of standards for the maintenance and storage of electronic records.[23]

Resource:

Oregon Secretary of State, Archives Division's **Guidelines for Electronic Records**

Inspection and Public Records Requests

Members of the public may inspect public records by means of making a public records request. A public body is not required to allow a free-for-all inspection wherever and whenever a requester desires. Public bodies may establish rules and guidelines on how public records requests may be made. "The custodian of the records may adopt reasonable rules necessary for the protection of the records and to prevent interference with the regular discharge of duties of the custodian."[24]

The protective rules must be reasonable and "[a] rule designed solely to make public access to records more difficult is not valid, while a rule carefully designed to prevent destruction of public records or to expedite staff identification of the requested records is lawful."[25] Examples of reasonable protective rules include requiring that public records requests must be made in writing and identify specific records or subject matter of the records being sought.[26] The Oregon Attorney General recommends that when public bodies establish protective rules, that they do so with notice and the opportunity for public comment. Notice and the opportunity for public comment avoids the appearance of arbitrary action.[27] While not legally required, it is highly recommended that protective rules are adopted at a public city council meeting.

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[20] See OAR 166, divisions 17, 20 & 25. The Secretary of State maintains an up-to-date record of all OARs. A copy of the OARs specifically mentioned in this chapter and all others may be accessed online by visiting: http://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx.
[21] OAR 166-020-0015(1).
[22] *Id.*
[23] OAR 166, division 17.
[24] ORS 192.318(2).
[25] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 19 (2019).
[26] Attorney General Public Records Order, July 7, 1989, Baker.
[27] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 19 (2019).

Making a Request

A public body must make available a written procedure for making public records requests.[28] The procedure must include the name of the individual or individuals to whom a request may be sent, and the amounts and manner in which the city calculates and charges fees for responding. Public bodies may choose to utilize a public records request form. Requests may be directed to individual council members or other officials. However, it is advisable that the records custodian be notified of all requests, however received, in order to properly record and track all requests. A model public records request form is included in the appendix.

Clarifying the Request

A public body may request additional information or clarification from the requester in order to expedite the public body's response to the request. Requests for clarification may also serve to narrow requests and to pinpoint what specifically the requester is seeking. Once a public body makes a request for additional information or clarification, its obligation to complete its response to the request is suspended until the requester provides the information, clarification or affirmatively declines to provide additional information or clarification. If the requester fails to respond to the public body's request for additional information or clarification within 60 days, the public body may close the request.

Identifying Exempt Records

Prior to responding to a records request, a public body must review the records for exempt materials – those records that are not subject to disclosure. Often a record will contain both exempt and nonexempt material. A public body may redact or otherwise separate records that are exempt. A public body should notify the requester when it exempts information. The various exemptions available under the Oregon Public Records Law are discussed in more detail below.

Responding to a Public Records Request

A response to a public records request is deemed completed when the public body:

- Provides access to or copies of the requested records that are within the public body's possession or custody;

- Asserts any exemptions from disclosure that the public body believes applies to the requested records, and identifies the applicable federal or state law in which the exemption is asserted;

- Separates any exempt material from nonexempt material and makes all nonexempt material available;

[28] ORS 192.324(7).

- If the public body is not the custodian of the records requested, provides a written statement to that effect;

- To the extent that any state or federal law prohibits the public body from acknowledging whether any of the requested records exist or acknowledging whether the requested record exists would result in the loss of federal benefits or imposition of another sanction, the public body must provide a written statement to that effect, citing the applicable state or federal law; and

- Includes a statement that the requester may seek review of the public body's determination that one of more requested records are exempt from disclosure, by petitioning the district attorney of the county in which the city is located, or by instituting a proceeding for injunctive or declaratory relief in the appropriate circuit court if the records request is for records in custody of an elected official.[29]

A public body shall provide the records requested in the form requested. If the records are not available in the requested form, the city must provide the records in the form in which they are maintained by the public body. Otherwise converting the records to a different from than one in which they are stored, creates a new record. Requests to create a new record are not a public records request and public bodies are not obligated under the Oregon Public Records Law to create new records where none exists in order to respond to requests for information.

Timelines

A public body must acknowledge receipt of the request or provide a copy of the requested record within five business days of the public body's receipt of the request.[30] An acknowledgment must confirm that the public body is the custodian of the requested record or notify the requester that the public body is not the custodian of the record. A sample acknowledgement letter is attached.

Within 10 business days after the date by which a public body is required to acknowledge receipt of a public records request, the public body must either complete its response to the request, or provide a written statement that the public body is still processing the request and provide an estimated date by which the public body expects to complete its response.[31] The timeframes established to acknowledge and respond to a request do not apply to a public body if compliance would be impracticable due to staffing unavailability, the public body's ability to perform other necessary services, or the volume of other public records requests being simultaneously processed. A public body who cannot comply with the established timeframes must complete the public records request as soon as practicable and without unreasonable delay.

Important Public Records Request Timelines

5 business days after receipt - Acknowledge the request

10 business days after the date acknowledgment is due - Provide records or status update

[29] ORS 192.329.
[30] ORS 192.324(2).
[31] ORS 192.329(5).

Exemptions from Disclosure

Oregon Public Records Law provides exemptions to disclosure. Records that are exempt from disclosure are not necessarily confidential. Rather, the exemptions allow the public body to withhold the exempt record from disclosure in response to a public records request. The Public Records Law separates exemptions into two general categories: conditional and unconditional. For helpful information on how to apply each exemption listed below, cities should review the Attorney General's Public Records and Meetings Manual (2019) and seek the advice of their city attorney.

Conditional Exemptions

Application of the conditional exemptions found in ORS 192.345 depend on whether the public interest requires disclosure.

> [T]he policy [underlying the conditional exemption statutes] is that disclosure decisions should be based on balancing those public interests that favor disclosure of governmental records against those public interests that favor governmental confidentiality, with the presumption always being in favor of disclosure.[32]

A public body's decision to apply a conditional exemption must show why the need for confidentiality outweighs the public interest in disclosure. The Oregon Court of Appeals has characterized the public interest in disclosure as "the right of the citizens to monitor what elected and appointed officials are doing on the job."[33]

ORS 192.345 provides for 40 conditional exemptions. They are:

- Public records pertaining to litigation;
- Criminal investigatory material;
- Business records required to be submitted;
- Employee representation cards;
- Unfair labor practice complaints;
- Archaeological site information;
- Information about threatened or endangered species;
- Computer programs for the use of public bodies;
- Unsafe workplace investigation materials;
- Telecommunications utility audits;
- Housing authority and urban renewal agency records;
- Security measures;
- Trade secrets;
- Tests and examination material;
- Real estate appraisal information;
- Civil rights investigation material;
- Debt consolidating agency investigation records;
- Personnel disciplinary actions;
- Faculty research;
- Agricultural producer indebtedness mediation data;
- Public safety plans;
- Residence address of an elector;
- Records that would allow interference with property or services;
- OHSU and OUS donation records;

[32] *Turner v. Reed*, 22 Or App 177, 187 (1975).
[33] *Jensen v. Schiffman,* 24 Or App 11, 17 (1976).

- OUS donation records not held by OUS officials;
- Financial transfer information;
- OHSU and OUS student email addresses;
- Personal information of public safety officers appearing in certain records;
- Land management plans;
- Public safety officer investigations;
- Ongoing audits of public bodies;
- Personal information of civil code enforcement officers; and
- Commodity commission filers;
- Social security numbers in particular court records;
- OHSU medical researcher records;
- Personal information of certain government attorneys;[34]
- SAIF corporation business records;
- Medical examiner records;
- Personally-identifiable information collected as part of an electronic fare collection system;
- Audio and video records from law enforcement officer body cams.

In addition to the conditional exemptions listed under ORS 192.345, ORS 192.355(1)-(6) contains six additional exemptions that require a separate balancing of the public interest in disclosure:

- Internal advisory communications;
- Personal privacy;
- Public employee and volunteer addresses, social security numbers, birth dates and telephone numbers;
- Confidential submissions;
- Corrections and parole board records; and
- Lending institution records.

The Personal Privacy Exemption

ORS 192.355(2)(a) exempts:
"Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy."

Each exemption under ORS 192.355(1)-(6) provides its own separate factors to consider when balancing the public interest in disclosure. Further, HB 4031 (2024 session) added a local governments to divulge information related to particulars of a tax return.[35]

Unconditional Exemptions

In contrast, application of the remaining 36 unconditional exemptions found in ORS 192.355(7)-(42) do not require the balancing of the public interest in disclosure. The applicability of the

[34] The personal information of certain government attorneys exemption under ORS 192.345(32) only conditionally exempts personal information of a city attorney or deputy city attorney who engages in the prosecution of criminal matters. Thus, the exemption would not apply to a city attorney or deputy city attorney who does not engage in criminal prosecution matters.
[35] ORS 314.835; *see also* HB 4031 (2024 – effective March 27, 2024).

following exemptions is presumed, and the burden is on the requester to show that disclosure of the otherwise exempt material is in the public interest:

- Presentence and probation reports;
- Federal Law prohibition;
- Other Oregon Law exemptions;
- Transferred records;
- Security programs for the transportation of radioactive material;
- PERS nonfinancial information about members;
- Records relating to the State Treasurer or Oregon Investment Council publicly traded investments;
- Records relating to the State Treasurer or Oregon Investment Council investment in private fund or asset;
- Public Employees Retirement Fund and Industrial Accident Fund monthly reports;
- Abandoned property records;
- Economic development information;
- Transient lodging tax records;
- Information for obtaining court-appointed counsel;
- Workers' compensation claim records;
- OHSU sensitive business records;
- OHSU candidates for university president;
- Library records;
- Housing and community services department records;
- Forestland GIS databases;
- Public sale or purchase of electric power;
- Klamath Cogeneration Project records;
- Public utility customer information;
- Alternative transportation addresses;
- Oregon Corrections Enterprises records;
- Confidential submission to DCBS;
- County elections security plans;
- Security programs;
- Paternity or support judgments or judicial orders;
- SAIF Corporation employer account records;
- SAIF Corporation claimant records;
- Military discharge records;
- Domestic violence service or resource center records;
- Prescription drug monitoring records;
- Email address lists;
- Personal information of DPSST licensees; and
- Personally identifiable and contact information of veterans and service members.

Application of Other Protective Laws

ORS 192.355(8) and (9)(a) incorporates other state and federal confidentiality and disclosure provisions into the Oregon Public Records Law. For example, ORS 40.225 protects communications between a public body and its legal counsel.[36] ORS 279B.060(6) protects

[36] The attorney-client privilege is subject to additional special treatment under ORS 192.355(9)(b). Otherwise privileged attorney-client information is not exempt from disclosure if: (1) the factual information is not otherwise prohibited from disclosure; (2) "[t]he factual information was not compiled by or at the direction of an attorney as part of an investigation * * * in response to information of possible wrongdoing by the public body; (3) "[t]he factual information was not compiled in preparation of litigation, arbitration or an administrative proceeding that was reasonable likely to * * * or that has been initiated by or against the public body;" and (4) the holder of the

competitive sealed proposals until after the notice of intent to award a contract is issued by the public body. Records that contain "protected health information" under the HIPAA "Privacy Rule" are exempt from disclosure under ORS 192.558(1) and ORS 192.355(9)(a).[37] ORS 192.650(2) protects materials contained in the minutes of a meeting held in executive session if "disclosure of certain material is inconsistent with the purpose for which a[n] [executive session] is authorized to be held".

Resource:

The Oregon Attorney General has published an online catalog of Oregon statutory exemptions found outside of the Public Records Law.

Records More than 25 Years Old

The exemptions to disclosure provided in ORS 192.345 and 192.355 do not apply to records more than 25 years old.[38] However, the following older records remain subject to possible exemption from disclosure:

- Records less than 75 years old which contain information about the physical or mental health or psychiatric care or treatment of a living individual, if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy.

- Records less than 75 years old which were sealed in compliance with statute or by court order. Such records may be disclosed upon order of a court of competent jurisdiction or as otherwise provided by law.

- Records of a person who is or has been in the custody or under the lawful supervision of a state agency, a court or a unit of local government, are exempt from disclosure for a period of 25 years after termination of such custody or supervision to the extent that disclosure thereof would interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure. Nothing in this subsection, however, shall be construed as prohibiting disclosure of the fact that a person is in custody.

- Student records required by state or federal law to be exempt from disclosure.[39]

Separation of Exempt and Nonexempt Material

Once exempt materials are identified, they must be separated in order to make the nonexempt material available for disclosure. The most common method is to redact the exempt materials, as it is often interlaced with nonexempt material. A public body should notify the requester when

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privileged * * * has made or authorized a public statement characterizing or partially disclosing the factual information compiled by or at the attorney's direction." ORS 192.355(9)(b).

[37] *OSHU v. Oregonian Publishing Co., LLC*, 362 Or 68, 80 (2017).

[38] ORS 192.390.

[39] ORS 192.398.

material is being withheld and the applicable exemptions that have been relied upon. When there are large quantities of material being withheld, it may be helpful to create an exemption log that identifies the material being withheld and the statutory authority relied upon.

Voluntary Disclosure of Exempt Materials

Public bodies may voluntarily disclose records that are exempt under the public records law, so long as disclosure is not otherwise prohibited by law. However, public bodies must use caution when doing so in order to avoid an unintended blanket waiver of the applicable exemption. While the Oregon Attorney General has concluded, "where limited disclosure of a public record does not thwart the policy supporting the exemption, the public body does not thereby waive its prerogative not to disclose the record to others[,]" the Oregon Court of Appeals "has determined that public disclosure of information from exempt records can operate as waiver of the exemption for the records themselves."[40] As a safeguard, cities are encouraged to limit who has authority to voluntarily disclose otherwise exempt records. The League strongly encourages members to consult with their city attorney prior to disclosing otherwise exempt material.

Fees

The public body may assess reasonable fees required to reimburse the public body for its actual cost of making the requested records available to the requester.[41] Fees may include reimbursement for any of the following:

- The actual cost of making the public records available;
- Actual costs incurred by the public body in separating exempt and nonexempt material;
- Costs to reimburse staff's time in locating the requested records, regardless if the requested records are located;
- Costs incurred for summarizing the public records;
- Costs incurred for compiling the public records;
- Costs incurred for tailoring the public records to the request that was made;
- Costs incurred by a person responsible for supervising a person's inspection of original documents (so the originals are protected from damage, destruction, or theft);
- Costs incurred for certifying public records as true copies of the original documents;

[40] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 35 (2019) (citing AG Letter of Advice, dated March 29, 1988, to W.T. Lemman, Executive Vice Chancellor (OP-6217) at 4-5); page 120 (citing *Oregonian Publishing Company v. Portland School Dist.*, 152 Or App 135, 142 (1998)).
[41] ORS 192.324(4)(a).

- Costs incurred in sending requested records by special methods like FedEx; and/or

- Costs incurred for the city attorney's time in reviewing the public records, redacting material from the records, or segregating the public records into exempt and nonexempt records.[42]

Limitations on Fees

If the public body wishes to charge a fee greater than $25, the public body must notify the requester in writing of the estimated amount of the fee. While not mandatory, it is recommended that the fee estimate be provided as part of the public body's 5-day acknowledgment letter. The requester must then confirm in writing that it wishes the public body to proceed. The public body may require the requester to provide prepayment of the fees. If the requester fails to pay the fee within 60 days from the date on which the public body informed the requester of the fee, the public body shall close the request. If the actual costs incurred by a public body are less than what is prepaid, the public body must promptly refund any overpayment.[43]

While public bodies may recover costs incurred for attorney time in reviewing the public records, redacting materials and segregating the records, public bodies are prohibited from assessing fees that attempt to reimburse the public body for its attorney's time spent determining the applicability of the public records law. Federal law prohibits public bodies from assessing fees for costs incurred to provide public records in a format to persons with vison or hearing impairments.[44]

Fee Waivers

A public body may "furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public."[45] The Oregon Department of Administrative Services (DAS) has issued a statewide policy addressing public records request fees.[46] While not applicable to cities, the policy serves as a helpful guide when making a determination of whether a fee waiver or reduction is in the public interest. The criteria include:

- Whether the disclosure of the records directly impact, affect, or serve an identified interest of the general public;

- Whether the requested information would advance the welfare or well-being of the general public;

[42] ORS 192.324(4)(b); 39 Op Atty Gen 61, 68 (1978).
[43] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 20 (2019).
[44] 42 U.S.C. § 12131.
[45] ORS 192.324(5).
[46] DAS Statewide Policy 107-001-030.

- Whether the requester will be able to meaningfully disseminate the requested information;

- Whether the public benefit is greater than the individual benefit derived from disclosure;

- Whether there is a specifically identified purpose for which the public records are being sought that is wholly unrelated to:

    - Commercial purposes; or

    - Actual or possible use in connection with administrative, judicial or legal proceedings;

- Whether the request is targeted at a specifically identified matter;

- Whether the city can grant a waiver or reduce fees without causing an unreasonable burden on city resources; and

- Whether the public interest served by disclosure is greater than the burden on the city such as the amount of staff time diverted to fulfilling a request and the costs of subsidization.

The public body's obligation to complete its response to the public records request is suspended until the requester pays the requested fee or the fee is waived. If the requester fails to respond to a notice of fees or fails to pay the requested fees within 60 days, the public body may close the request.

Appeals

When a public body refuses to disclose requested records, the requester may appeal the public body's denial. How the appeal is handled depends on whether the public records request was denied by a public body or an elected official. Review of a local public body's decision to deny disclosure of a public record is done either by petitioning the district attorney for the county in which the public body is located, the Marion County Circuit Court, or the circuit court for the county in which the public body is located.

Appeals of Public Records Requests Denied by Public Bodies

Appeals of a local public body's denial of a public records request may be made by petitioning the district attorney in the county in which the public body is located for an order compelling disclosure of the responsive records.[47,48] The petition must include:

[47] ORS 192.415(1).
[48] Except for decisions made by state agencies, which are appealed to the Attorney General.

- The identity of the requester;
- The public body that has the records being sought;
- The records that are sought;
- A statement that inspection was requested; and
- A statement that the request was denied including the person denying the request and the date of the denial, if known.[49]

Upon receipt of a petition, the district attorney must promptly notify the public body.[50] The public body must transmit the requested records, or the nature or substance of the records if appropriate, for review by the district attorney and provide a statement of its reasons to believe the public record should not be disclosed.[51] The district attorney must grant or deny the petition in whole or in part within seven days of receipt.[52] If the district attorney orders disclosure if the records, the public body has seven days to comply or give notice that it intends to seek review in circuit court.[53] Copies of the public body's notice must be delivered to the district attorney and sent by certified mail to the requester. If any part of a petition for disclosure is denied by the district attorney, the requester may seek review in Marion County Circuit Court or the circuit court of the county in which the public body is located.[54]

Appeals of Public Records Requests Denied by Elected Officials

When an elected official denies a public records request, review of that denial is sought by petitioning the Marion County Circuit court or the circuit court in which the elected official is located.[55] Review by the court is also available once the district attorney issues an order on a petition for review of a city's denial of a public records request. The court does not review the order of the district attorney but rather reviews the decision of the public body or elected official de novo – meaning "anew". During review by the court, "[t]he public body carries the burden to sustain its denial of a records request.[.]"[56]

If the requester prevails in full, the public body is required to compensate the requester for the cost of the litigation at trial and on appeal, including costs and attorney fees.[57] If the request prevails only in part, an award of costs and attorney fees is discretionary.[58]

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[49] ORS 192.422(1)); ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 41 (2019).
[50] ORS 192.422(2).
[51] *Id.*
[52] ORS 192.418(1).
[53] ORS 192.411(2); 192.415.
[54] *Id.*
[55] ORS 192.427.
[56] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 49 (2019); ORS 192.431(1).
[57] ORS 192.431(3).
[58] *Id.*

Office of the Public Records Advocate

> **Resource:**
>
> Office of the Public Records Advocate
>
> Website

Created in 2017 by Senate Bill 106, the Office of the Public Records Advocate provides dispute resolution services to assist disputes relating to public records disclosure.[59] Either the requester or the city may request assistance, but only if both parties agree to have the advocate facilitate resolution of the dispute and the advocate consents.[60] Facilitated dispute resolution will be available by submitting a written request and the facilitated dispute resolution process shall be conducted and completed within 21 days following the advocate's receipt of the request for services.[61] If the dispute resolution process results in an agreement between the requester and the city, the advocate will prepare a written document memorializing the agreement and the agreement shall control the resolution of the public records request.[62] In addition to dispute resolution services, the public records advocate provides public records request training.[63] Further information on the Office of the Public Records Advocate may be found on its website: https://www.oregon.gov/pra/Pages/advocate.aspx.

[59] ORS 192.464(1)(b).
[60] ORS 192.464(6)
[61] ORS 192.464(7).
[62] ORS 192.464(8).
[63] ORS 192.475.

Frequently Asked Questions

May the public inspect original records?

The public may inspect original records to the extent the public body does not need to separate the records into exempt and nonexempt materials, where the public body does not place restrictions in order to safeguard the original record, or where inspection would not interfere with the public body's work. Where original records are unavailable, the public body must provide copies.

Are public bodies required to provide a requester with transcripts of audio recordings?

No. Public bodies are not required to create records in response to a public records request. However, persons who require an audio or video recording in an alternative format due to a disability, may be entitled to the record in an alternative format under the Americans with Disabilities Act.

Are notes and memos subject to retention and disclosure?

Yes. Notes taken by public employees and officials that relate to the public body's business are subject to proper retention and disclosure.

Are draft records subject to retention and disclosure?

Yes. The fact that a document is in draft form does not by itself warrant a basis to withhold from disclosure.

Is a public body required to make public records available to inspection or copying on periodic basis, or as records come into the possession of the public body, in response to a "continuing request" for records?

No. The Oregon Attorney General has concluded:

> A public body is only required to make nonexempt records that are in the public body's possession at the time the request is made. Persons seeking to inspect or to obtain copies of records of a public body on a continuing basis may be required to make successive requests for records.[64]

Is the public body obligated to disclose the personal addresses, or personal telephone numbers of public employees?

No. ORS 192.355(3) exempts public employee and volunteer residential addresses, residential and personal telephone numbers, personal email addresses, driver license numbers, employer-issued identification card numbers, emergency contact information, Social Security numbers, and

[64] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL Appendix A-1 (2019).

dates of birth. The exemption does not apply to certain elected officials, substitute teachers, or in cases where the requester shows by a clear and convincing evidence that the public interest requires disclosure.

Are job candidate records subject to disclosure?

Probably not. The personal privacy exemption under ORS 192.355(2) exempts:

> Information of a personal nature such as but not limited to that kept in a personal medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance.[65]

"The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy."[66] A public body must show that disclosure would unreasonably invade the personal privacy of the job candidate(s). Once the public body has met that threshold, the burden is placed on the requester. The Oregon Attorney General has concluded that the names of non-finalist candidates for high-profile management positions were exempt under the personal privacy exemption because disclosure "may unreasonably threaten the person's current employment relationship and professional standing."[67] The Attorney General has also concluded that release of such information would harm the public interest by prompting "many qualified applicants to refrain from applying" and "unduly interfere with the work of appropriate selection committee."[68]

Are records discussed during executive session protected from disclosure?

Yes, so long as the records are consistent with the purposes for which the executive session was authorized to be held. Discussion during executive session does not automatically exempt a record from disclosure. The Public Records Law, not the Public Meetings Law, governs the disclosure of records. Unless the records are protected under a separate exemption, they remain subject to disclosure. However, ORS 192.650(2), as incorporated into the Public Records Law by ORS 192.355(9), protects material contained within the minutes of the executive session from disclosure to the extent disclosure would be inconsistent with the purposes for which the executive session was authorized to be held.

[65] ORS 192.355(2).
[66] *Id.*
[67] Attorney General Public Records Order, August 12, 1988, Dean.
[68] *Id.*

APPENDIX A

MODEL RESOLUTION ADOPTING RECORDS MANAGEMENT POLICY

CITY OF [Insert name of City], **OREGON**
[Insert name of city], **CITY COUNCIL**

RESOLUTION NUMBER: [Insert appropriate number]

A resolution of the [Insert name of city] City Council adopting a citywide public records management policy.

WHEREAS, the State Archivist grants authorization to cities for the retention and disposition of public records in their custody; and

WHEREAS, the City Council wishes to adopt a city-wide public records management policy to ensure public records are managed and maintained appropriately within the City of [Insert city name].

NOW, THEREFORE, BE IT RESOLVED by the [Insert name of city] City Council approval of the following public records management policy:

SECTION 1: GENERAL INFORMATION. The goal of this Policy is to ensure public records are managed and maintained appropriately within the City of [Insert name of city]. This City of [Insert name of city] Public Records Management Policy addresses the following components:

- Public Records Maintenance
- Roles and Responsibilities
- Education and Training
- Access and Ownership
- Integrity
- Retention Generally
- Storage and Retrieval
- Disposition and Destruction
- Public Records Requests

The City shall develop and implement internal processes and procedures that support compliance, deter abuse and detect violations of this Policy.

SECTION 2. Definitions.

2.1 "**CITY**" refers to the City of [Insert name of city] and all employees, appointees and elected officials associated therewith.

2.2 "**CLOUD-COMPUTING**" has the same meaning as defined in the National Institute of Standards and Technology (NIST) Special Publication 800-145.

2.3 "**CUSTODIAN**" refers to the City of [Insert name of city] or its designee mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include the City of [Insert name of city] or its designee that has custody of a public record as an agent of another public body that is the custodian, unless the public record is not otherwise available.

2.4 "**INSTANT MESSAGING**" refers to real-time text communications between or among computers or mobile devices over the Internet or a functionally similar communications network.

2.5 "**METADATA**" is data that provides information about other data. Metadata assists in resource discovery by allowing resources to be found by relevant criteria, identifying resources, bringing similar resources together, distinguishing dissimilar resources, and giving location information.

2.6 "**PUBLIC RECORD**" has the meaning established in ORS 192.005. In general, it refers to information that is prepared, owned, used or retained by the City; related to an activity, transaction or function of the City; and is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the City.

2.7 "**SOCIAL MEDIA**" refers to web-based and mobile communication technologies that allow the creation and exchange of user-generated content such as comments or responsive postings. Examples of "social media" as of the time this Policy is adopted include but are not limited to Twitter, Flickr, blogging sites, Facebook, YouTube and Instagram.

2.8 "**TEXT MESSAGING**" refers to messages exchanged between fixed-line phones or mobile phones and fixed or portable devices over a network. Excluded from the definition of "text messages" are electronic mail ("email") communications whether such messages are exchanged among or between official City email accounts or email accounts maintained by private entities.

SECTION 3. Public Records Maintenance. Public records shall be maintained and managed in a manner that protects the integrity of the records within the City without regard to the technology or medium used to create or communicate the record, from the time of creation of a public record to the time of final disposition of the public record as determined by their authorized records retention schedule.

SECTION 4. Roles and Responsibilities. The City will ensure public records are managed in accordance with their authorized records retention schedules, from the time of

creation to final disposition, by assigning designated staff/positions with the following responsibilities:

4.1 Records Officer. The City Recorder is hereby designated as the records officer for the City. The records officer will serve as primary liaison with the State Archivist and receive training from the State Archivist in performing their duties.

4.2 Custodian. The City Recorder shall be the custodian of all permanent records of the City.

4.3 All Other Elected Officials, Appointees and Employees. All other elected officials, appointees and employees shall be responsible for maintaining all records in accordance with this Policy and shall seek the assistance and direction of the City Recorder if needed.

SECTION 5. Education and Training. Basic public records training will be completed as a component of the City new employee orientation training; and incorporated as part of regular employee training, completed once a biennium.

SECTION 6. Access and Ownership. Without regard to how public records are being stored, the City will have custody and control over public records. Through on-going review of technological advances, the City shall ensure all public records are maintained and accessible for as long as required by applicable retention schedules, or litigation holds that may require that the City retain records longer than otherwise required.

Disaster mitigation processes are addressed in the city's disaster preparedness and recovery plan and incorporated by reference here.

SECTION 7. Integrity. The City will ensure appropriate access and version controls are applied to all electronically stored records from record creation to final disposition. The authenticity of each record can be demonstrated either by certified copy of paper records or via accompanying metadata for all electronic records.

SECTION 8. Retention Generally. The City will preserve and classify public records in accordance with ORS chapter 192 and OAR chapter 166-200.

8.1 Cloud-Computing. If cloud-computing is utilized, the City practices and procedures with respect to public records management in the Cloud will ensure compliance with OAR chapter 166.

8.2 Email

8.2.1 Official Email Accounts. In most circumstances, email sent to or from City-provided elected official, appointee and employee email accounts will meet the definition of a public record. It is therefore the City's policy that virtually all email messages composed or sent using City-provided official equipment and/or official e-mail addresses be for primarily business purposes.

When the City receives a public records request, all official email accounts and systems used for official City business are subject to search and production.

8.2.2 Personal Email Accounts. If private email accounts must be used to conduct City business, it is City policy that elected officials, appointees and employees copy their City-provided email account (if separate) on all such outgoing communications, and forward any received messages on which their official e-mail accounts are not copied immediately or as soon as practicably possible.

8.3 Instant Messaging

The City policy regarding Instant Messages shall be the same as that recited below regarding Text Messaging.

8.4 Social Media

Any content placed on any Social Media platform by the City shall be an accurate copy of an official record that is retained elsewhere by the City per the authorized records retention schedules.

8.5 Text Messaging. City elected officials, appointees and employees may use text messaging to communicate factual and logistical information that: is not part of or relating to conducting official city business, unless that information has been documented elsewhere; or will be documented and retained as a separate public record according to OAR chapter 166-200.

In absence of separate documentation, city elected officials, appointees and employees are not to use text messages for official purposes other than for routine communications that do not meet the definition of a "public record."

City employees' personal electronic devices should not be used to transmit text messages related to city business. Personal devices are subject to search if used to transmit text messages regarding official city business and/or information related to the employee's work that rises to the level of creating a public record.

8.5.1 Examples of Acceptable Uses:

- Scheduling
- Requesting a call or email on a matter, without substantive discussion;
- Requesting or offering logistical assistance ("Can you help me get these boxes to the courthouse?");
- Forwarding any person's contact information;
- Explaining your current whereabouts, or inquiring about someone else's (We're at the meeting discussing this morning's announcement. Are you around?");
- Describing facts or events that do not relate to the substance of the City's work ("Spilled coffee all over myself right before the meeting!"), or that have been or necessarily will be separately recorded ("Mr. Jones just testified to the committee that the bill would cost taxpayers $2 million."); and/or
- Inquiring about events like those in the previous bullet ("Has Mr. Jones testified in committee yet?").

8.5.2 Unacceptable Use. City employees must avoid communicating official city business or engaging in discussions regarding the primary business of employee's work over text message.
As noted above, relevant facts pertaining to official city business may be reported only if they are already documented in separate public records or they necessarily will be documented in a separate public record.

If a text message is used to communicate information (not otherwise documented) relating to official city business or primary business of the employee's work, such discussion is to be immediately converted and saved in a separate public record format (e.g. by forwarding the relevant text messages to an employee's official email).

Because the City requires that no text message-based public records be created – or if they are created, that they be converted and saved in an alternate form, which would serve as the official copy of the record – the City will not retain text messages.

8.6 Voicemail

Unless otherwise required, the City will not retain messages on voicemail. In the event email transcriptions of voicemails are made, the transcriptions will be retained in accordance with authorized retention schedules and may be subject to public disclosure upon request.

SECTION 9. Storage and Retrieval

9.1 Paper Records. The City will maintain a filing system of the city's paper records based on authorized retention schedules. The filing system will include the location of records retention periods and procedures for retrieval to ensure accessibility of agency records.

9.2 Electronic Records. The City will maintain a filing system and naming conventions for all city records stored in electronic format based on the city's authorized retention schedules. The filing system and naming conventions will include the location of records in city directories, retention periods, access controls and privacy conditions to support management of the city's inventory of electronic records.

SECTION 10. Destruction of Records. City records covered by this Policy shall be destroyed according to the retention schedule established by the State Archivist. In general, records shall not be retained beyond the prescribed retention period.

SECTION 11. Public Records Requests. The City will respond to all official requests for public records under the following timeframes:

11.1 **Within 5 business days after receipt of request.** The City will acknowledge the request in writing and confirm that the City is the custodian of the requested record or notify the requester that the City is not the custodian.

11.2 **Within 10 business days after the date in which the city was required to acknowledge receipt.** The City will either complete its response to the request or provide a written statement that the City is still processing the request and provide an estimated date by which the City expects to complete its response.

11.3 If the City cannot comply with the above timeframes, the City must complete the public records request as timely as possible, consistent with the proper exercise of judgment relating to the City's other duties, staffing ability, volume of other public records requests being simultaneously processed, and in accordance with Oregon law.

11.4 Additional policies and procedures related to requests for public records are subject to separate city policies and statewide protocols, processes and procedures.

SECTION 12: This Resolution is effective immediately upon passage.

PASSED: This [ ] day of [Month, Year]

APPENDIX B

MODEL RESOLUTION ADOPTING PUBLIC RECORDS REQUEST POLICY

CITY OF [Insert name of city], **OREGON**
[Insert name of city], **CITY COUNCIL**

RESOLUTION NUMBER: [Insert appropriate number]

A resolution of the [Insert name of city] City Council adopting a citywide public records request policy.

WHEREAS, Oregon Public Records Law (ORS 192.311 to 192.478) requires that a public records policy be in place; and

WHEREAS, the [Insert name of city] City Council wishes to adopt a city-wide public records request policy; and

WHEREAS, Oregon Public Records Law allows the city to establish fees reasonably calculated to reimburse the city for its actual cost of making public records available;

NOW, THEREFORE, BE IT RESOLVED by the [Insert name of city] City Council approval of the following Public Records Request Policy:

SECTION 1: General Information. Oregon Public Records Law (ORS 192.311-192.478) gives members of the public the right to inspect and copy public records that are not otherwise exempt from public disclosure. It is the policy of the City of [Insert name of city] to respond to public records requests in an orderly, consistent and reasonable manner in accordance with the Oregon Public Records Law. The purpose of this Policy is to:

- Establish an orderly and consistent procedure for responding to public records requests;
- Establish the basis for a fee schedule designed to reimburse the City for the actual costs incurred in responding to public records requests; and
- Inform individual staff and officials of the procedures and guidelines that apply to public records requests.

This City of [Insert name of city] Public Records Request Policy addresses the following components:

- Roles and Responsibilities; and
- Public Records Requests

The City shall develop and implement internal processes and procedures that support compliance, deter abuse and detect violations of this Policy.

SECTION 2: Definitions.

2.1 "**City**" refers to the City of [Insert name of city] and all employees, appointees and elected officials associated therewith.

2.2 **"Custodian"** refers to the City Recorder or his or her designee mandated, directly or indirectly, to create, maintain, care for or control a public record.

2.3 "**Public Record**" has the meaning established in ORS 192.311(4). In general, it refers to any writing containing information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics. A record may be handwritten, typed, photocopied, printed, microfilmed, or exist in an electronic form such as email or a word processing document, or other types of electronic recordings.

SECTION 3: Procedures.

3.1.1 Public Records Request.
All public records requests must identify the public records requested and be submitted in writing and directed to:

City of [Insert name of city]
Attention: Public Record Custodian
Public Records Request
123 Main Street
City, OR 97000

Note: Requests to create a new record are not public records requests. The City is not obligated under the Oregon Public Records Law to create new public records where none exist in order to respond to requests for information.

3.2 **Initial Response to Public Records Request**. After receiving a request for a public record, the City will reply to the requester within five business days with one or more of the following responses:

- A statement that the City does or does not have custody of the requested public record(s);
- Copies of all requested public records for which the City does not claim an exemption from disclosure under ORS 192.311 to 192.478;
- A statement that the City is the custodian of some responsive records, an estimate of time in which copies will be provided or inspection will be available, and an estimate of the fees the

requester must pay prior to receiving the records;

- A statement that the City is uncertain whether it possesses any requested records and that it will search for the requested records and respond as soon as practicable; or

- A statement that state or federal law prohibits the City from acknowledging whether the record exists and a citation to the relevant state or federal law.

3.3 **Clarification of Request**. If the City receives an unusual request, or the scope of the request is unclear, the City may request additional clarification before responding to the request. Once the City makes a request for additional information or clarification, its obligation to complete its response to the request is suspended until the requester provides the information or clarification or affirmatively declines to provide additional information or clarification. If the requester does not respond to the City's request for clarification or additional information within 60 days, the City will close the request.

3.4 **Completed Response Deadline.** Within 10 business days after the date by which the City is required to acknowledge receipt of a public records request, the city will either complete its response to the request, or provide a written statement that the City is still processing the request and provide an estimated date by which the City expects to complete its response. The timeframes established to acknowledge and respond to a request do not apply if compliance would be impracticable due to staffing unavailability, the City's ability to perform other necessary services, or the volume of other public records requests being simultaneously processed. If the City cannot comply with the five-business day acknowledgement or 10-business day response deadlines, the City must complete the public records request as soon as practicable and without unreasonable delay.

SECTION 4: Fees. The Oregon Public Records Law allows the City to recover its actual costs in fulfilling a public records request. If the estimated fee is greater than $25, the City will provide the requester with written notice of the estimated amount of the fee and request written confirmation. In such instances, the City will not fulfill the public records request until the requester makes a deposit in an amount of the estimated fee. If a requester fails to provide written confirmation of the estimated fees within 60 days of the City's estimate, the city will close the request.

4.1 Fee Schedule. The fees listed below are reasonably calculated to reimburse the City for its actual costs in making the records available, and may include:

- Charges for the time spent by City staff to locate the requested public records, to review the records in order to determine whether any requested records are exempt from disclosure, to segregate exempt records, to supervise the requester's inspection of original records, to copy records, to certify records as true copies and to send records by special or overnight methods such as express mail or overnight delivery;
- Charges for the time spent by the city attorney reviewing, redacting and segregating records at the City's request;
- A per-page charge for photocopies of requested records; and
- A per-item charge for providing CDs, DVDs, audiotapes, or other electronic copies of requested records.

The City's public records fee schedule is as follows:

Copies	8.5x11 Black and white	0.25 cents/page
	8.5x11 Color	0.50 cents/page
	11x17 Black and white	0.50 cents/page
	11x17 Color	$1.00/page
	Nonstandard documents	Actual costs incurred by the City to reproduce them
	CD or DVD	$5.00 each
	Audio tape	$7.50 for the first tape and $5.00 for each additional tape
Research Fees	Up to 30 minutes	Copy cost only
	30 minutes to 2 hours	Copy cost plus $25/hour
	Over 2 hours	Employee cost plus overhead
Delivery	The actual cost for delivery of records such as postage and courier fees	
True Copy Certification	$5.00	
Attorney Review	Actual attorney fees charged to the City for the cost of the time spent by an attorney in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records.	

4.2 Application of Fees. All time for public records requests will be recorded in 10-minute increments. If the requester was required to make a deposit, fees will be debited against that deposit. If the fees are less than the deposit, the City will provide the records along with a refund of the deposit, less the fee. If the deposit is insufficient to cover the entire costs of completing the public records request, or the requester was not required to pay a deposit, the City will generate an invoice for the unpaid costs of completing the public records request. The requester must pay the amount owing before the City will deliver the requested records or make them available for viewing.

SECTION 5: Fee Waivers. Requests for fee waiver or reduced fees may be made in writing to the City's contact address listed above. The City may decide whether to furnish copies without charge or at a substantially reduced fee if providing the records for free or at a reduced cost is of the public's interest.

SECTION 6: This Resolution is effective immediately upon passage.

PASSED: This [ ] day of [Month, Year]

APPENDIX C

SAMPLE Public Records Request Form

Requester information

Name: _____
Organization: _____
Address: _____
Email: _____
Telephone: _____

**** PLEASE READ ****

Have you already contacted someone within the city about this request? ☐ Yes ☐ No

Name:_____

Dept:_____

Details of request

Date of request: _____

Detailed description of documents requests:

(*Please be as specific as possible. Clearly provide the type of record(s) requested, subject matter, approximate date(s), and names of businesses and/or people involved. Attach additional sheet if necessary.)*

_____
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How would you like the requested records to be delivered?

☐ By Mail ☐ Electronically (if available) ☐ Onsite inspection

Send completed form by email, mail, or fax:
Email: publicrecords@yourcity.gov
Address: Your City Office, 123 Main St, Your City, OR 12345
Fax: (555) 555-5555

Fees

Per ORS 192.324(4), the City may establish fees reasonably calculated to reimburse the city for its actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records to meet the person's request. The City may require prepayment of estimated fees before taking further action on a request.

Copies:

8.5x11 Black and white……..	0.25 cents/page
8.5x11 Color…….....	0.50 cents/page
11x17 Black and white……	0.50 cents/page
11x17 Color……..	$1.00/page
Nonstandard documents……	Actual costs incurred by the City to reproduce them
CD or DVD……	$5.00 each
Audio tape…….	$7.50 for the first tape and $5.00 for each additional tape

Research Fees: If the request for records requires City personnel to spend more than 30 minutes searching or reviewing records prior to their review or copying, the fee will be as follows:

Up to 30 minutes……...	Copy cost only
30 minutes to 2 hours……..	Copy cost plus $25/hour
Over 2 hours……..	Employee cost plus overhead.

Delivery: The actual cost for delivery of records such as postage and courier fees.

True copy certification: $5.00

Attorney review: Actual attorney fees charged to the City for the cost of the time spent by an attorney in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records.

APPENDIX D

SAMPLE five-day response acknowledging public records request

To: [Requester]

This letter is to acknowledge our receipt of your public records request dated [date] and received by our office on [date]. You have requested the following records: [describe records requested]

Having reviewed your request, we are able to inform you that:

_ Copies of all requested public records for which the City does not claim an exemption from disclosure under ORS 192.311 to 192.478 are enclosed.

_ The City [does not possess/is not the custodian of] the requested record(s).

_ The City is uncertain whether we possess the requested record(s). We will search for the record and make an appropriate response as soon as practicable.

_ The City is the custodian of at least some of the requested public records. We estimate that it will require [estimated time] before the public records may be inspected or copies of the records will be provided.

_ We estimate that the fee for making the records available is $_____, which you must pay as a condition of receiving the records. Please confirm in writing that you wish for us to proceed.

_ The City is the custodian of at least some of the requested public records. We will provide an estimate of the time and fees for disclosure of the public records within a reasonable time.

_ [State/federal] law prohibits the City from acknowledging whether the requested record(s) exist(s). [Cite relevant state or federal law.]

_ The City is unable to acknowledge whether the requested record(s) exist(s) because that acknowledgment would result in the [loss of federal benefits/other sanction]. [Cite relevant state or federal law.]

APPENDIX E

SAMPLE Public Records Request Response Checklist

Within five business days of receipt:

- ☐ Confirm whether the requester previously contacted an employee or other city official.
- ☐ Confirm whether the City is the custodian of some or all of the requested records.
  - If not, who is the custodian?
- ☐ If the request is ambiguous, overly broad or misdirected, contact the requester for clarification.
  - If the requester does not respond to a request for clarification within 60 days, close the request.
- ☐ Estimate fees.
  - Provide fee estimate with the acknowledgement letter.
  - If estimated fees are greater than $25, request requester confirm in writing that they wish to proceed.
  - If requester does not respond to the fee estimate within 60 days, close the request.
- ☐ Send acknowledgment letter.
  - Confirm that the City has received the request and that the City:
    - is the custodian of the records,
    - is not the custodian of the records, or
    - is not sure if the City is the custodian of the records.
  - Provide fee estimate,
  - Provide estimate of when records will be delivered, if available.

Within 10 business days* of the date by which the City is required to acknowledge receipt of the request:

- ☐ Review records and identify possible exempt materials.
- ☐ Separate and redact exempt materials.
  - Provide to City Attorney for review, if necessary.
  - Create privilege log if redactions are voluminous.
- ☐ Finalize nonexempt records and provide to requester.
- ☐ Calculate actual cost of completed response.
  - Send invoice for additional fees, or
  - Refund any outstanding prepaid fees.

*If it is impracticable to complete a response within 10 business days due to the nature of the request, staffing schedules or other concerns, provide requester with an estimate of when a response can be expected.

APPENDIX F

SAMPLE – Public Records Log Sheet

Date Received	**Name of Requestor**	**Description**	**Person in Charge of Request**	**Acknowledgment Due (**5 business days from receipt**)**	**Response Due (**10 business days from date acknowledgement due**)**	**Date of Completed Response**	**Form of Response**	**Pages Provided**	**Fee**
11/2/2020	John Smith	All contracts regarding street maintenance from July 6, 2017 to Present	Sally Jones	11/9/2020	11/16/2020	11/22/2020	PDF via email	30	$25.00

APPENDIX G

Secretary of State Social Media Guide

APPENDIX H

Secretary of State's Public Record Flowchart