

**Practical Public Records Law
for City Attorneys**

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General Principles

“ if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails ”

Colby v. Gunson, 224 Or App 666, 676 (2008)

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Responding to Request – Public Interest

You may not deny a request just because there is no public interest in the records, even if true.

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Things that aren't exempt
(even though you really want them to be...)

- Drafts
- Meeting notes
- Training materials
- Voicemail

If you don't want to turn it over, then don't write it down in the first place.

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Cell Phones

Work-related call logs, voicemail, and text messages on your personal device ARE PUBLIC RECORDS.

Do not delete work-related communications unless you are certain they are not subject to retention.

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Common Issues / Scenarios

- Personnel Discipline (192.345(12))
 - Union issues
 - Pending investigations
- Personal Information (192.355(2))
- Agency has ignored request (192.329 & .407)

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Personal Privacy Exemption

- ORS 192.355(2)(a) exempts “information of a personal nature the disclosure of which would constitute an unreasonable invasion of privacy.”
- This has been interpreted to be a very high bar.

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Process

- ✓ Receive, acknowledge/provide estimate, track, respond
- ✓ Template for response
- ✓ Establish point of contact for each department
- ✓ How to analyze public interest

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Importance of Relationships

- Build trust with public, media, staff, elected officials
- Understand the request
- Identify and review records

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District Attorney Appeals

Does the DA have jurisdiction?

- Elected official records ORS 192.427
 - Claims the right to withhold
 - In the custody of

Formal vs. Informal involvement

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Fee Issues

- Challenge to calculation of fee
 - no authority to review
 - *Petition of Mayes, Att’y Gen. PRO (3/29/2000)*
- Appropriateness of waiver decision
 - abuse of discretion review
 - *Petition of Sarich, MCDA PRO 19-40 (2019)*

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Fee Issues, continued

- How good is your fee policy?
 - Are the right people doing the work?
 - Are the costs clear to requestors?
 - Will your local DA or a court understand it?
- Where does your policy live and how are the fees authorized?
 - Does your fee policy square with how your entity charges for fees generally?

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Litigation considerations

Who are you really suing?
- "City sues [fill in the blank] over records."

It's your case to make, regardless of who initiates in circuit court: the public body has the burden of sustaining its action (ORS 192.431)

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Litigation considerations, continued

Are you ready, and is it worth it?

- expedited trial de novo (ORS 192.431)
- exposure to costs and attorney fees at trial and on appeal (also ORS 192.431)
- other considerations: staff time, impact on operations

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Litigation considerations, continued

Who is your client?

- City Recorder or City Clerk?
- A City department?
- Elected officials?

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Further Questions

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