

Records



FAQ: Assessing Fees for the Production of Public Records

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Frequently Asked Questions: Assessing Fees for the Production of Public Records

The LOC's member cities are comfortable with, and understand, the general principles of Oregon's public records law. Public officials understand that emails, ordinances, notes, and virtually any record produced or maintained by a city are public records that must be retained according to the public records law and the Secretary of State's rules. City officials recognize that most, but not all, public records are subject to disclosure upon request. Nonetheless, the LOC consistently receives questions from its members about their ability to charge fees when they respond to public records requests.

This FAQ answers basic questions about a city's ability to assess fees for responding to public record requests. This FAQ is not intended to be a substitute for legal advice. LOC members with further questions about public records law or fee assessment regarding responding to a request for public records are encouraged to contact their city attorney.

1. Can a City Impose Fees for Responding to Public Records Requests?

Yes, ORS 192.324(4)(a) allows a city to impose a fee for responding to a public records request, but the fee must be one that is "reasonably calculated" to reimburse the city for its actual cost of making the public records available to the requestor.

2. What Types of Activities can the City Cover with its Fee?

A city's fee, according to ORS 192.324(4)(a)(b), may include reimbursement for any of the following:

- The actual cost of making the public records available;
- Costs to reimburse staff's time in locating the requested records;
- 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;
- Cost 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;
- 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.

3. Are There Any Activities a City is Specifically Prohibited from Including in its Fees?

ORS 192.324(4)(b) prohibits a city from imposing a fee that attempts to reimburse a city for the city attorney's time spent determining the applicability of the public records law. Federal law, specifically 42 U.S.C. § 12131, prohibits cities from assessing fees for costs it incurs to provide public records in a format to persons with vision or hearing impairments.

4. Does the Law Place any Limitations on the Dollar Amount of the Fee Assessed?

ORS 192.324(4)(c) prohibits a city from assessing a fee which is greater than \$25 unless the city first provides the requestor with a written notification of the estimated amount of the fee, and the requestor then confirms that it still wishes the city to proceed in making the requested records available.

5. Can a City Require a Requestor to Pay the Fee Before Providing the Requestor the Desired Public Records?

ORS 192.329(3)(a)(b) provides that if the city has informed the requester of the applicable fee, the city's obligation to complete its response to the requester for the records is suspended until the requester pays the fee or the fee has been waived. If the requester fails to pay the applicable fee within 60 days of being advised of the fee, the city can close the request.

6. Can a City Charge a Fee for Looking for Records it Does Not Locate?

Yes, the Oregon Attorney General determined that cities are permitted to charge fees for time spent by employees searching for records that they are unable to locate or that no longer exist.¹

7. Can a City Charge a Fee for Time Spent Locating Records that End Up Being Exempt from Disclosure?

Yes, the Oregon Attorney General decided that cities can charge a fee for the time an employee spent looking for a public record even if that record ends up being exempt from disclosure and is not ultimately released to the requestor.²

8. Can a City Charge a Per-page Fee for Paper Copies of Requested Documents?

Yes, cities can charge a per-page fee for public records. These fees are permitted to include the reasonably calculated cost of routine searches for the requested documents. However, if the search cost is included in the per-page fee, it cannot then be assessed separately.

9. Is There a Specific Process Cities Must Follow to Assess Fees for Responding to Requests for Public Records?

¹ 39 Op Atty Gen 61, 68 (1978).

² *Id.*

Fees must be established by the city’s governing body and should be made available to the public in a manner that explains how the fees are calculated. The Oregon Attorney General recommends that cities establish their public record fees after providing the public notice and giving them an opportunity for public comment. ORS 192.324(7)(b) requires cities to provide a written procedure for how a person may make a request for public records. These written procedures are required to include the amount and manner of calculating fees imposed by the city for responding to requests for public records.

10. Is a City Allowed to Provide Reduced Fees for Certain Record Requests?

ORS 192.324(5)(6) allows a city to produce documents pursuant to a public records request at no charge, or at a reduced fee, if the city “determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.”

The Oregon Court of Appeals determined that the public interest test outlined in ORS 192.324(5) is satisfied “when the furnishing of the record has utility – indeed, its greatest utility – to the community or society as a whole.”³ Note that a person who believes that a city has unreasonably denied a fee waiver or reduction is authorized to petition the attorney general or the district attorney for redress.

³ *In Defense of Animals v. Oregon Health Sciences University*, 199 Or App 160, 189 (2005).