

Public Records Requests

(1) The bureau will make available any **public** record requested by any person pursuant to ORS 192.420, *[provided that]* **under the following conditions:**

(a) [i]The bureau may require the request [is]to be in writing. The bureau's written procedure for making public record requests is available on the bureau's website (<http://egov.oregon.gov/BOLI/>) or may be obtained from the bureau's Custodian of Records. Forms for making public record requests may be obtained from the bureau's website or the bureau's Custodian of Records;[.] and

(b) [i]The record requested is not exempt from disclosure under the provisions of ORS Chapter 192 or other applicable law.

(2) Upon receipt of a written request for public records, as soon as practicable and without unreasonable delay, bureau staff will send a written response to the requester that acknowledges receipt of the request and states one of the following:

(a) More information is needed to fill the request;

(b) The bureau does not possess, or is not the custodian of, the public record;

(c) The bureau is uncertain whether it possesses the public record and that the bureau will search for the public record and make an appropriate response as soon as practicable;

(d) The bureau is the custodian of at least some of the requested public records, the form in which the records are available, and that those not exempt from disclosure under ORS 192.410 to 192.505 will be provided; or

(e) State or federal law prohibits the bureau from acknowledging whether the record exists or that acknowledging whether the record exists would result in the loss of federal benefits or other sanction, together with a citation to the state or federal law relied upon.

(3) When the bureau determines it is the custodian of a requested public record under subsection (2)(d) of this rule, the bureau's written response will also include:

(a) An estimate of the time the bureau requires before the records may be inspected or copies will be provided and an estimate of the fees the requester must pay under this rule as a condition of receiving the records, along with the manner of calculating the fees; or

(b) A statement that an estimate of the time and fees for disclosure of the records, along with the manner of calculating the fees, will be provided within a reasonable time.

(4) The bureau may take a reasonable period of time to locate and retrieve the requested information.

[(2)](5) The bureau may charge a fee reasonably calculated to reimburse the bureau for **the actual** costs of providing and conveying copies of public records. [*When the fee is estimated to exceed \$25.00 per public records request, the bureau will provide the requestor with written notice of the estimated amount of the fee and require written confirmation that the requestor intends to proceed with the request.*] **After providing a written estimate of the fees the requester must pay as a condition of receiving the records, the bureau may require written confirmation that the requester wants the bureau to proceed with making the public record available and the form in which the requester wants the record to be made available. The bureau may require that the fees be paid before the bureau provides the records.**

[(3)](6) As used in these rules:

(a) "Page" refers to paper either 8 1/2 x 11 inches or 8 1/2 x 14 inches. Staff will not reduce size, or otherwise manipulate records to fit additional records on a page, unless staff concludes that it will be the most effective use of their time. A double-sided copy is charged as two pages. Because of the increased staff time involved in double-sided copying, there is no reduction in the per-page fee;

(b) "Normal and reasonable" staff time is 10 minutes or less per request.

[(4)](7) Unless otherwise specified in OAR chapter 839 the bureau will charge a minimum fee of \$5.00 per request for records located in the bureau's office facilities, or \$15.00 per request for records located offsite, plus \$.20 per page, as reimbursement for requests requiring normal and reasonable staff time.

[(5)](8) If the time required exceeds normal and reasonable staff time, the actual costs of staff or supervisor time necessary for locating, reviewing, separating, photocopying, certifying and preparing records for mailing or other delivery will be charged for each hour or fraction thereof as follows:

(a) Supervisor or administrator time: \$39.00 per hour;

(b) Investigator, compliance specialist or consultant time: \$32.00 per hour;

(c) Clerical time: \$23.00 per hour.

[(6)](9) In addition to staff time, the bureau will charge for supplies and use of equipment for producing records as follows:

(a) Twenty cents per page for photocopies.

(b) Actual cost for postage or other delivery costs.

(c) Fifty cents per page for copies by facsimile (fax) machine with a limit of 20 pages.

[(7)](10) The bureau will charge \$41.00 per hour, with a \$12.00 minimum, for public record requests that require electronic reproduction. Charges include but are not limited to staff time spent locating, downloading, formatting, copying and transferring records to media, and any charges by a third party vendor.

[(8)](11) The bureau will provide blank reproduction media at the following rates:

(a) Diskettes, 3 1/2-inch: \$1.00 each. (Due to possibility of computer viruses, the bureau will not permit requestors to provide diskettes);

(b) Video cassettes, 2 hours: \$3.00 each;

(c) Audio cassettes: \$2.00 each;

(d) Compact [*discs*]**disks** 1 1/2 hours: \$1.50 each (Due to possibility of computer viruses, the bureau will not permit requestors to provide compact [*discs*]**disks**).

(12) Charges for responding to a public records request for the Civil Rights Division's closed investigative files are calculated as follows:

(a) For copying, a fee based on the weight of the file;

(b) For viewing, a fee of \$23.00.

[(9)](13) The costs of any necessary Attorney General review of requested public records will be charged to the [*requestor*]**requester** at the rate billed by the Department of Justice to the bureau.

[(10)](14) The bureau may require that all fees assessed pursuant to this rule be paid in cash, in exact change, prior to furnishing any copies, material or information.

[(11)](15) When a request is made to inspect records, the bureau may impose restrictions regarding the location where the requested information will be made available for inspection. When the bureau allows the person requesting the information to search or inspect bureau records, the bureau may, as it deems necessary for the protection of the records, assign an employee to supervise the search. The charge for this service will be in accordance with section (5) of this rule.

[(12)](16) The bureau may enter into agreements to provide routine, periodic reports in a consistent format for a negotiated price.

[(13)](17) The commissioner may waive the requirements to pay [*the charges*]**part or all of the fees** described in this rule[, *or any part thereof, after determining*]**if the commissioner determines** that the waiver **or fee reduction** is in the public interest because making the record available primarily benefits the general public.

(a) The commissioner may require that a request for a fee waiver **or reduction** be submitted in writing.

(b) In determining whether making the record available primarily benefits the general public, relevant factors include, but are not limited to:

(A) The [*requestor's*]**requester's** identity;

(B) The intended use of the information;

(C) The character of the information;

(D) Whether the requested information is already in the public domain;

(E) Whether the [*requestor*]**requester** can demonstrate the ability to disseminate the information to the public;

(F) The [*requestor's*]**requester's** inability to pay, although this alone is not sufficient basis to waive a fee.

(c) Even if the commissioner determines that making the record available primarily benefits the general public, the commissioner has discretion whether to grant a fee waiver **or reduction**. **With respect to a particular records request,** [*F*]factors relevant to that discretion include, but are not limited to [*with respect to a particular records request*]:

(A) Financial hardship on the agency;

(B) Impact on the operations of the agency including but not limited to use of staff time, equipment and supplies;

(C) Extent to which inspection of records would be sufficient for the public interest **or the particular needs of the requester;**[.]

(D) Volume of records requested; and

(E) The necessity of segregating exempt from non-exempt materials.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 192.420 - 192.440

Hist.: BL 4-1986, f. & ef. 6-16-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93; BLI 9-1998, f. & cert. ef. 11-2-98; BLI 25-2000, f.11-17-00, cert. ef. 12-1-00; BLI 15-2006, f. 4-6-06, cert. ef. 4-7-06

G:BOLI Rule Amendments – 2008/839-030-0010 (my draft amendments)