



Oregon

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Oregon Watershed Enhancement Board

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December 26, 2007

MEMORANDUM

TO: Oregon Watershed Enhancement Board

FROM: Melissa Leoni, Senior Policy Coordinator

SUBJECT: **Agenda Item S: Public Records Rulemaking and Public Hearing
January 16-17, 2008 OWEB Board Meeting**

I. Introduction

This report provides an update on the rulemaking process to address Senate Bill 554, legislation passed in the 2007 session, related to public records requests.

II. Background

The public has a right to inspect and obtain a copy of any public document unless the document is specifically excluded from disclosure (ORS 192.420). State agencies may charge a fee reasonably calculated to reimburse it for the costs associated with making the records available (ORS 192.440). "Actual costs" include the time agency staff spend locating the records; searching its records for the requested material (even if it does not locate any requested records); supervising a requestor's inspection of the records to protect the records' integrity; copying, certifying, and mailing the requested records; and separating exempt from non-exempt material.

Senate Bill 554 (SB 554) requires a state agency to respond "as soon as practicable and without undue delay" to a written request for a public document. State agencies may request clarification concerning a public records request. SB 554 requires a response that acknowledges receipt of the request, identifies whether the agency possesses the documents, and estimates the time and cost associated with honoring the request. Under SB 554 government entities must also make available to the public a written procedure for public records requests, including the name of the person to whom the request may be sent, the amounts charged for requests, and how these charges are determined. SB 554 is effective on January 1, 2008.

Staff asked the Board for authorization to begin rulemaking to address public records requests at the September 2007 meeting. Board members unanimously approved the staff recommendation to initiate rulemaking.

III. Public Records Rulemaking

Proposed administrative rules addressing public records requests and SB 554 requirements will be made available for public comment as of January 7, 2008. The public comment period lasts four weeks and ends at 5:00 p.m. on February 1, 2008. In addition to public comment that may

be offered at the January Board meeting, OWEB staff will hold a public hearing on January 23, 2008, at 10:30 a.m. in the State Lands Building, Land Board Room in Salem.

The proposed rules (Attachment A) are designed to be a stand alone division in OWEB's rules, largely to make them more visible for public. The proposed rules are divided into four sections, Purpose, Requests to Inspect or Obtain Copies of Public Records, Fees for Inspections or Copies of Public Records, and Fee Waivers and Reductions. In general, the proposed rules include that public records requests should be sent to a single Public Records Coordinator, OWEB will charge its actual costs to respond to requests, and fees will be waived for providing public records that are within the normal scope of implementing OWEB's programs. The latter allows OWEB to continue to provide data or monitoring information that are key to the agency's responsibilities, and to provide grant documents that benefit OWEB's administration of its grant awards.

The rules do not specify fee amounts. Rather than put the fees in rules where future additional rulemaking would be required to adjust fees based on cost increases, staff propose the rules identify that fees will be adopted by the Board. Staff will present proposed fees for adoption by the Board at the same time as the rules. OWEB staff will present the proposed administrative rules for adoption by the Board at the March 2008 Board meeting.

IV. Public Records Written Procedure

Attachment B contains OWEB's written public records procedure, which will be made available on the agency's Web site by January 1, 2008. The attached procedure is consistent with the proposed administrative rules described in Attachment A; any rule changes and fees adopted by the Board in March will require the public records procedure to be updated.

V. Recommendation

This is an informational item. No Board action is requested at this time.

Attachments

- A. Proposed Administrative Rules
- B. OWEB Public Records Request Procedure

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DIVISION 3

PUBLIC RECORDS ACCESS AND REPRODUCTION

695-003-0010 Purpose

These rules govern implementation by the Oregon Watershed Enhancement Board (OWEB) of the public records law, ORS 192.410 to 192.505, including fees for recovery of the actual costs involved in making public records available and in providing copies of public records, pursuant to ORS 192.440.

695-003-020 Requests to Inspect or Obtain Copies of Public Records

(1) The right to review public records includes the right to review the original public record where practicable. The requestor does not have a right to personally locate the public record or to review portions of the public record that are exempt from disclosure pursuant to ORS 192.501 to 192.505.

(2) A request to inspect or obtain copies of a public record or information from public records must be made in writing to the Public Records Coordinator at the Oregon Watershed Enhancement Board, 775 Summer Street NE, Suite 360, Salem, OR 97301-1290, and must include:

- (a) The name, mailing address, email address, and telephone number of the requester;
- (b) Identification of the needed public record or of the type and format of needed public record information, if known to the requester;
- (c) The time period the records or information were produced, and the officials involved in producing the records or relevant information, if known to the requester; and
- (d) The number of copies for each item requested of the record, if copies are requested.

(3) OWEB will make all its public records, not otherwise exempt from disclosure by law, available for inspection and copying during regular business hours.

(4) OWEB may condition the time and manner of inspection or copying as necessary under the circumstances to protect the records and prevent interference with the regular discharge of the duties of the OWEB Board, OWEB, and OWEB’s employees.

(5) OWEB will accommodate public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.

1 **695-003-0030 Fees for Inspections or Copies of Public Records**

2 (1) A person inspecting a public record or receiving a copy of a public record or
3 information from a public record must pay OWEB's actual costs, as follows:

4 (a) The cost of staff time necessary to locate and handle the records, to delete material
5 exempt from disclosure and to supervise the inspection by the requester;

6 (b) The cost of producing the copy or the information; and

7 (c) The cost of other supplies or services necessary to furnish the copy or information.

8 (2) The OWEB Board shall establish the agency's list of fees for inspection and copying
9 of public records. The list of fees shall be posted on OWEB's website and shall be
10 available on request from OWEB. The OWEB Board shall review the list of fees adopted
11 from time to time in order to ensure that the fees reflect current actual costs.

12 (3) If the request appears to require services for which no fee has been established, the
13 actual costs will be determined or estimated by OWEB, and the requester will be notified
14 of those costs before OWEB complies with the request.

15 (4) OWEB may require that all or a portion of the estimated fees be paid before the
16 public record is made available for inspection or copies provided.

17 (5) Payment for public record requests may be made in the form of cash, check, or money
18 order.

19 **695-003-0040 Exception to Fee Charge; Fee Waivers and Reductions**

20 (1) There is no fee for obtaining one or more copies of a public record, if providing one
21 or more copies of that particular public record without charge is part of OWEB's
22 programs at the time of the request, including but not limited to the public distribution of
23 OWEB reports, news releases and public notices, and the routine provision of documents
24 related to grant administration or the Oregon Plan.

25 (2) Subject to the exception described in subsection (1), no fee waiver or reduction will
26 be given for OWEB's actual costs in providing access for inspection or furnishing copies
27 of public records, if those actual costs would be otherwise paid from funds dedicated to
28 watershed protection under Article IV, Section 4b, of the Oregon Constitution, federal
29 funding allocated by intergovernmental agreement to salmon recovery efforts, or license
30 plate revenues statutorily dedicated to salmon recovery projects.

1 **DRAFT Public Records Request Procedure**

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3 Public records requests should be sent to:

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5 Melissa Leoni , Public Records Coordinator
6 Oregon Watershed Enhancement Board
7 775 Summer Street NE, Suite 360
8 Salem, OR 97301-1290
9 melissa.leoni@state.or.us
10 (503) 986-0179

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12 A request to inspect or obtain copies of a public record should include:

- 13 1. The name, mailing address, email address, and telephone number of the requester;
14 2. Identification of the needed public record or of the type and format of needed public
15 record information, if known;
16 3. The time period the records or information were produced and the officials involved
17 in producing records or relevant information, if known; and
18 4. The number of copies for each item requested of the record, if copies are requested.

19
20 There is no fee for obtaining one or more copies of a public record, if providing one or more
21 copies of that particular public record without charge is part of OWEB's programs at the time
22 of the request, including but not limited to the public distribution of OWEB reports, news
23 releases and public notices, and the routine provision of documents related to grant
24 administration or the Oregon Plan.

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26 Other than this exception, no fee waiver or reduction will be given if OWEB's actual costs
27 would be otherwise paid from funds dedicated to watershed protection under Article IV,
28 Section 4b, of the Oregon Constitution, federal funding allocated by intergovernmental
29 agreement to salmon recovery efforts, or license plate revenues statutorily dedicated to
30 salmon recovery projects.

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32 OWEB's existing fees for public record requests have been established by an agreement with
33 the Oregon Water Resources Department. Those fees are:

- 34 • Copies made by OWEB: \$2 for the first page, 50 cents for each subsequent page.
35 • Copies made by the customer: 10 cents a copy, with a minimum charge of \$2.
36 • Research fees are \$20/hour.
37 • Tapes are \$2 each.

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39 If the request appears to require services for which no fee has been established, the actual
40 costs will be determined or estimated by the agency and the requester will be notified of such
41 prior to the agency complying with the request.

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43 OWEB's fees are subject to change. The OWEB Board will be asked to consider proposed
44 administrative rules and to establish the fees to be charged for public records requests at its
45 March 19-20, 2008, meeting.