



Oregon

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February 28, 2008

MEMORANDUM

TO: Oregon Watershed Enhancement Board

FROM: Melissa Leoni, Senior Policy Coordinator

SUBJECT: **Agenda Item H: Public Records Rules and Fee Schedule
March 19-20, 2008 OWEB Board Meeting**

I. Introduction

This report seeks Board approval of proposed administrative rules related to OWEB's implementation of the Public Records Law (ORS 192.410 to 192.505) and to implement Senate Bill 554 approved by the 2007 Legislature. This report also seeks Board approval of a proposed fee schedule to reimburse OWEB for actual costs associated with 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.

Enacted by the 2007 Legislature, 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. 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.

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. Proposed rules were developed and made available for public comment by January 7, 2008, which was the start of the public comment period. The public comment period ended on February 1, 2008. Public hearings were held at the January Board meeting in Astoria on January 17, 2008, and on January 23, 2008, at the State Lands Building in Salem.

III. Proposed Administrative Rules

The proposed administrative rules are designed to be a standalone division in OWEB's rules and 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 is intended to allow OWEB to continue to provide data or monitoring information that are key to the agency's responsibilities, and to provide grant information and documents that benefit OWEB's administration of its grant awards.

OWEB received only one public comment on the proposed rules. Wayne Hoffman from the Mid-Coast Watersheds Council provided public testimony during the January 17, 2008, public hearing at the Astoria Board meeting. Mr. Hoffman commented on the proposed language in 695-003-0040(1), stating that the language is obtuse and difficult to understand. He requested that what is meant by "routine provision" allow the continued interaction between grantees and OWEB staff. The proposed rule language is written to give OWEB flexibility to allow the continued interaction between OWEB staff and the public and grantees, including the routine provision of grant administration information and documents to grantees. Therefore staff do not recommend changes based on public comment. OWEB will provide additional guidance related to this intent.

Attachment A shows the public comment version of the proposed rules with two minor changes proposed by staff. The first proposed change, in line 10 on page one, is a grammar correction. The second change, to line 24 on page two, is proposed to make the language of 695-003-0040 consistent with other rules in this division by changing "document," which is not defined, to "public records or information from public records."

Attachment B contains a clean copy of the final rule language proposed for Board adoption.

IV. Fee Schedule

The proposed administrative rules do not specify fee amounts in order for the Board to have the ability to adjust fees based on cost increases. Staff have prepared a proposed fee schedule representing the most likely costs to be incurred in responding to requests to inspect or copy public records. The proposed fee schedule is contained in Attachment C.

If a fee has not been adopted by the Board in the fee schedule, the proposed administrative rules allow OWEB to charge its actual costs. Proposed rule 695-003-0030(3) (lines 12 through 14 on page two) states that if no fee has been established, the actual cost will be determined or estimated by OWEB, and the person who submitted the public records request will be notified of that cost before OWEB complies with the request.

V. Recommendation

Staff recommend the Board approve:

- A. The proposed administrative rules for public records access and reproduction contained in Attachment B of this staff report, and
- B. The proposed public records fee schedule contained in Attachment C of this staff report.

Attachments

- A. Proposed Public Records Access and Reproduction Administrative Rules (Tracked Changes)
- B. Proposed Public Records Access and Reproduction Administrative Rules
- C. Proposed Public Records Fee Schedule

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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.

695-003-0020 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~~-requester 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 public records or information from public records related to grant administration or the
25 Oregon Plan.

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

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31 plate revenues statutorily dedicated to salmon recovery projects.

OWEB Proposed Public Records Fee Schedule

- No charge for the first 30 minutes of staff time to provide the information requested.
- \$25 per hour for Support Services staff time after the first 30 minutes.
- \$40 per hour for Professional Services staff time after the first 30 minutes.
- No charge for the first 25 printed or photocopied pages.
- 25 cents per single-sided printed or photocopied page after the first 25 pages.
- 50 cents per two-sided printed or photocopied page after the first 13 pages.
- 25 cents per page faxed.
- \$2 per audio tape.
- \$2 per CD.
- Actual costs of mailing and/or shipping the materials.