

PUBLIC RECORDS LAW

APPENDIX A - Frequently Asked Questions

Q. Does the Public Records Law require a public body to create a record by collecting information, recording oral statements or otherwise?

A. Generally no. A public body is required to allow inspection (subject to any exemptions) of any public records in its possession.

However, the Public Records Law does require public bodies to use computer software or programs to retrieve and make available data or information the public body stores in computer or electronic form, if the public body employs the computer software or programs to retrieve information for its own purposes. This requirement reaches data retrieval only; it does not mean, for example, that public bodies are required to cut and paste from word processing documents or similar documents in response to public records requests. Also, a public body cannot be required to generate new data or information that do not already exist in agency's records, even when it has the means to do so. *See* Letter of Advice dated June 1, 1987, to Jim Kenney (OP-6126) (see [App E](#)); Public Records Order, October 13, 2004, Johansen (see [App F](#)).

Q. Is a public body required to make public records available for inspection or copying on a periodic basis, or as records come into the possession of the public body, in response to a "continuing request" for records?

A. No. A public body is only required to make non-exempt records that are in the public body's possession at the time the request is made. Persons seeking to inspect or to obtain copies of records of a public body on a continuing basis may be required to make successive requests for records. Of course, an agency may choose to honor a continuing request.

Q. Is a public body required to provide copies of records for which someone else owns the copyright?

A. Under federal law the owner of a copyright has the *exclusive* right to reproduce or distribute copyrighted work, although others may copy a limited amount of the work under the "fair use" doctrine. 17 USC §§ 106, 107, 501. The Public Records Law does not authorize public bodies to violate federal copyright law. A public body must permit a requester to inspect copyrighted materials, but should not make copies or allow someone else to make copies of such materials without the copyright owner's consent or on advice of legal counsel.

Q. Does the Public Records Law mandate that a public body require a requester to prepay the estimated cost of providing requested records?

A. No. A public body *may* require prepayment of estimated fees, but the law does not mandate that it do so. However the law authorizes a public body to charge a fee in excess

of \$25 only if it first provides a written cost estimate and receives confirmation from the requester to continue processing the request. The public body has the option of requiring prepayment of the estimated fee or waiting to collect its actual costs of responding to the request.

Q. May a public body establish a charge of 50 cents per page for copies of public records?

A. Yes, *if* that reasonably reflects its actual cost *including* the time of the person locating and copying the record, plus administrative overhead. See also next question. A public body may not charge more than its *actual cost* of making the records available for inspection or for furnishing copies. Also, a public body may charge a fee in excess of \$25 only if it first provides a written cost estimate and receives confirmation from the requester to continue processing the request.

Q. May a public body charge for time spent in reviewing records to determine which of them are exempt, and for time spent in separating exempt and nonexempt material?

A. Yes. This activity is an essential part of making records available for inspection, and the public body is entitled to recover its actual cost. (If the public body is a state agency, it must adopt a rule establishing the basis for its charges.) Although a public body may not charge for time its attorney spends determining how the Public Records Law applies to the requested records, it may recover the cost of time the attorney spends reviewing public records and separating exempt and nonexempt material at the public body's request.

Q. Are an outside consultant's report and recommendations paid for by a public body subject to disclosure?

A. Yes, although various exemptions may apply to all or parts of the report.

Q. Is a calendar, planner or phone message notepad maintained by a public employee subject to the Public Records Law?

A. If a public employee's calendar, planner or phone message notepad contains information relating to the conduct of the public's business, it is a public record subject to the disclosure provisions of the Public Records Law. If a calendar or planner contains both information relating to the conduct of the public's business and personal information about the employee, such as social activities outside of regular working hours or doctor's appointments, that information possibly can be redacted under the personal privacy exemption, ORS 192.502(2).

Q. Can I get a transcript of material that is on tape?

A. In general, you are entitled only to listen to the tape, and to make (or be furnished) a copy of the tape. The public body is not required to make a transcript of the tape, although of course it may. *See* Public Records Order, April 22, 2004, Birhanzl (stenographic tape of judicial hearing); Public Records Order, August 30, 1982, Palaia (see [App F](#)). If you have a disability that prevents you from listening to a tape, you may be entitled to the record in an alternative format. See discussion of Americans with Disabilities Act. This question does not relate to a tape of a public meeting or executive session held pursuant to the Public Meetings Law. That law's requirement for the recording of public meetings and executive sessions is considered as part of this manual's discussion of the Public Meetings Law.

Q. Do I have the right to actually inspect the original records, or can the public body require me to accept copies?

A. You have the right to inspect original records, except for particular documents that contain exempt and nonexempt material which must be separated, or where the public body has justifiably adopted a requirement that copies will be furnished instead because this is necessary to protect the records or to prevent interference with its work. *Davis v. Walker*, 108 Or App 128, 131-33, 814 P2d 547 (1991).

Q. Are records collected for the purpose of a pending contested case administrative proceeding exempt?

A. Not as such. An administrative proceeding is not "litigation," and therefore ORS 192.501(1) (records prepared for litigation) does not apply. The fact that the ultimate order may lead to litigation is not a ground for nondisclosure. If however, the public body can show that litigation is reasonably likely to occur, the exemption applies. Some of the records also may be exempt for other reasons.

Q. May I inspect a draft of a report in process of preparation?

A. Maybe, maybe not. See Section I.E.4.d.(1) Internal Advisory Communications.

Q. Is it a crime to tamper with public records?

A. Yes. Under ORS 162.305(1), a person commits the crime of tampering with public records if, without lawful authority, the person knowingly destroys, mutilates, conceals, removes, makes a false entry in or falsely alters any public record, including records relating to the Oregon State Lottery. Tampering with Oregon State Lottery records is a Class C felony. Tampering with records other than Lottery records is a Class A misdemeanor.

Q. May a business sell public database information for profit?

A. Generally, yes.^[6] For example, a private business may obtain public database information from a public body, transfer it to CD-ROM (or some other format that makes

the information easy to access) and then sell the CD-ROM for a profit. While members of the public could obtain the information directly from the public body, they may be willing to pay for the information if it is in a more easily accessible format. Although public bodies may only recover their actual costs in making records available, a private business may charge whatever the market will bear.