

How was the Statewide Standardized Fee-Structure developed?

In 2015, the Secretary of State's Statewide Performance Audit of state agencies' responses to public records recommended that DAS establish standard rates for the labor and materials used to fulfill a public records requests. In addition to the audit report recommendation, in January of 2016 the Governor Brown issued Executive Order (EO) No. 16-06 on Public Records directing DAS to work with the Governor's office to "develop uniform statewide standards and guidelines on agency fee structures or charging policies."

To that end, the Statewide Standardized Fee-Structure Workgroup (workgroup), was convened in July 2016, under work-stream one of the Public Records Requests and Management Project. The workgroup included representatives from the nine agencies selected as the representative-sample for the Audit and eight additional agencies that were specifically selected based on known complexities arising from unique, agency-specific constraints (e.g. potential compliance barriers based on use-restrictions for certain funding-streams). The seventeen agencies also capture a broad range of perspectives and issues related to the size of the agency, agency structure, types of requests received and volume of requests received.

The workgroup, convened several times over the course of three-months, developed a statewide standardized fee-structure that includes:

1. statewide standardized fee-structure process;
2. statewide standard fee-schedule;
3. statewide charging policy, The Public Interest Threshold Evaluation Criteria, that establishes standard criteria for state agencies to use when determining whether to discount or waive fees related to fulfilling public records requests that serve the public interest; and
4. statewide reduced fee-schedule.

Upon the approval of the Enterprise Leadership Team, the DAS Director and Chief Operating Officer and the Governor's Office, DAS adopted the Fee-Structure as a Statewide Policy (DAS Policy Number 107-001-030). The Policy requires agencies to comply with the fee-structure and fee-schedules.

When are agencies expected to implement the Policy?

Upon the effective date of the Policy, February 15, 2017. The Policy requires agencies to implement the fee-structure and established a time-window of 90-days, from the effective-date of the Policy, for agencies to capture and submit feedback regarding the impact of implementation.

What type of information should agencies submit as feedback regarding the impact of implementation?

If agencies can demonstrate that implementation of the Policy impacted the agency financially or created capacity issues through an increase in the volume of requests or an increase in the amount of time spent by agency staff to comply with the requirements within the Policy.

To whom should an agency submit a written feedback regarding the impact of implementation?

Agencies should submit written feedback for assistance to DAS, Office of the Chief Operating Officer.

What happens at the end of the 90-day window?

DAS will aggregate feedback received from agencies and make adjustments to the Policy, if warranted, prior to initiating a formal rule-making process to adopt the Policy as a statewide Oregon Administrative Rule (OAR).

Will agencies be able to provide feedback after 90-days?

Yes. The formal rule-making process provides time and opportunity for additional input from state agencies and other affected parties.

How should agencies use the Policy exhibits?

Exhibit A, the Process, describes the process agencies should utilize regarding fee generation and consideration of fee-reduction or waiver when processing a public records request.

Exhibit B, the standard fee-schedule, must be utilized by agencies to calculate fees for all public records requests received, unless a fee-reduction has been granted.

Exhibit C, the Public Interest Threshold Evaluation Form, is the standard form agencies must use when evaluating a request to waive or reduce fees made by the requesting party claiming the PRR is primarily in the public interest.

Exhibit D, the reduced fee-schedule, must be utilized by agencies when a fee-reduction has been granted unless an agency chooses to reduce fees even further.

If all agencies must waive 30 minutes of staff time, would an agency charge for total time it takes to complete the request minus 30 minutes?

Yes. If a public records request takes longer than 30 minutes to fulfill, agencies should only charge for the additional time, at the appropriate hourly-rate, plus the cost of materials.

Both the standard and reduced fee-schedules address this question in the overview section:

"Agencies shall waive a minimum of 30 minutes of staff time for all public records requests after which fees may be assessed for additional staff time."

Where can agencies find information regarding the rates for materials?

There is a 2017-2019 pricelist published on the Public Records Requests and Management Project website that contains information related to rates for production materials.

Can agencies charge for the time it takes to determine whether an exemption, within the public records law, applies to the requested records (i.e. the time spent reviewing the documents to determine if there is any information that must be redacted, determine exemption, and then physically redacting)?

Agencies cannot charge for the time it takes to determine whether or not an exemption applies to requested records. However, once the determination has been made that an exemption applies to a portion of or all of the requested records, agencies can charge for the time it takes to review and redact exempt information from the records prior to release.

Both the standard and reduced fee-schedules address this question in the overview section:

"Fees will be charged for staff time required to redact exempt information from requested public records prior to release."

How should agencies treat documents/record-types that already have pre-set, fixed-fees/charges?

The fee-schedule does not apply to documents and record-types that have a pre-set, fixed-fee/rate so long as that pre-set, fixed-fee/rate had been established and effective at the time of the Policy's effective date.

Please provide additional guidance regarding tiered-rates for staff time in the fee-schedules, to help agencies determine the appropriate rate to charge requesters.

An agency's determination regarding the appropriate hourly rate to charge should be based on the public records related function and the level of expertise required to execute the work. Although each category has a few examples of employee position-types that might typically be required to execute the associated level of work, rates should not be charged based on the job-classification or compensation of the specific employee doing the work.

- **Clerical-level work** would be work that can be completed by almost any staff member of an agency. It does not require any level of expertise related to the agency's business functions or public records law (e.g. copying, mailing, emailing, and most basic office functions etc...).
- **Managerial-level work** would be work require specific knowledge of an agency program area and/or general awareness of the public records law including agency specific exemptions/exemptions frequently used by an agency (e.g. identifying responsive records, flagging those in need of additional review, and reviewing prior to release).
- **Professional-level work** would be a highly-specialized requiring a deep knowledge of agency programs and/or systems and high-familiarity of public records law, sensitive agency-specific record-types and specific exemptions (e.g. designing queries for technical search and production, reviewing record to redact exempt information, engaging with DOJ for further review and analysis of highly-sensitive records).

To whom should an agency submit a written request for assistance (referenced in the Policy) regarding financial hardship, should that become necessary?

Agencies should submit written requests for assistance to DAS, Office of the Chief Operating Officer.