

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 414  
DEPARTMENT OF EARLY LEARNING AND CARE

**FILED**

04/16/2024 3:13 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Adopts Public Records Requests Rules for DELC

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/31/2024 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

CONTACT: Crys O'Grady  
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crys.ograde@delc.oregon.gov

700 Summer Street NE  
#350  
Salem, OR 97301

Filed By:  
Crys O'Grady  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 05/23/2024

TIME: 5:00 PM - 6:00 PM

OFFICER: Crys O'Grady

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-254-5252

CONFERENCE ID: 1609807157

SPECIAL INSTRUCTIONS:

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Crys O'Grady by email at [Crys.OGrady@delc.oregon.gov](mailto:Crys.OGrady@delc.oregon.gov).

NEED FOR THE RULE(S)

The Oregon Department of Early Learning and Care (DELC) became an independent state agency on July 1, 2023. ORS 192.324(7) requires each public body to publish its procedure for making public records requests. These proposed rules clarify the definitions and process for making public records requests for public records when DELC is the custodian.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 192.324, ORS 192.329, DAS Statewide Policy No. 107-001-030:

[https://www.oregon.gov/dsl/Documents/PublicRecordsRequests\\_StatewidePolicy.pdf](https://www.oregon.gov/dsl/Documents/PublicRecordsRequests_StatewidePolicy.pdf)

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

There are no known direct impacts that will affect racial equity in this state.

FISCAL AND ECONOMIC IMPACT:

The proposed rule amendments may have a moderate financial impact on the Department of Early Learning and Care (DELIC). Administrative costs may be incurred by DELIC to amend policies and procedures. These proposed rules comply with DAS Statewide Policy No. 107-001-030, which requires public agencies and bodies to provide the process of a public records requests and an option to request a fee waiver. The proposed rules outline the fee schedule, estimation of fees, and the process to request a waiver of fees based on the public interest test.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) There are no anticipated adverse impacts for units of local governments, and members of the public are not likely to be economically affected by the rule(s).

(2) No small businesses are likely to be impacted by the proposed rule changes.

(a) The entities impacted by these proposed rules will be those who make public records requests, which varies on an annual basis. Public records requests are not categorized by whether a requestor is a small business or not.

(b) There are no anticipated costs of compliance to small businesses for reporting, recordkeeping and administrative activities due to the adoption of these proposed rules.

(c) There is no anticipated cost of compliance to small businesses for new equipment, supplies, additional staff, or additional training due to the adoption of these proposed rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

DELIC will convene Rules Advisory Committee (RAC) with community partners from across the state, including organizations serving populations representing racial, ethnic, geographic, socioeconomic, and linguistic diversity, to inform the development of the administrative rules. The RAC will meet once on May 21, 2024 from 4-5PM.

DELIC will seek additional public comments by posting drafts of the administrative rules on its website and seeking comments both in writing and through a public hearing on May 23, 2024 from 5-6PM.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

414-002-0000, 414-002-0001

ADOPT: 414-002-0000

RULE SUMMARY: OAR 414-002-0000 outlines the definitions for terms used with the Department's public records request process.

CHANGES TO RULE:

414-002-0000

Definitions

The following definitions apply to OAR 414-002-0001 unless otherwise indicated:¶

(1) "Department" or "DELIC" refers to the Department of Early Learning and Care and the operating sub-units of the Department of Early Learning and Care. ¶

(2) "Person" includes any natural person, corporation, partnership, firm, or association.¶

(3) "Photocopy(ing)" includes a photograph, microphotograph and any other reproduction on paper or film in any scale, or the process of reproducing, in the form of a photocopy, a public record.¶

(4) "Public record" includes any writing that contains information relating to the conduct of the public's business that is prepared, owned, used or retained by the Department regardless of physical form or characteristics.¶

(5) "Requestor" refers to a person requesting inspection, copies, or other reproduction of a public record of the Department.¶

(6) "Writing" means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings. It includes information stored on computer tape, microfiche, photographs, films, tape or videotape or that is maintained in a machine readable or electronic form.

Statutory/Other Authority: ORS 192.311 to 192.478

Statutes/Other Implemented: ORS 192.311 to 192.478

ADOPT: 414-002-0001

RULE SUMMARY: OAR 414-002-0001 outlines the process, fees, and format to be used by the Department in response to public records requests.

CHANGES TO RULE:

414-002-0001

Fees for Inspection or Copies of Public Records and Department Publications; Other Services

(1) The Department may charge a fee reasonably calculated to reimburse the Department for the cost of making public records available;¶

(a) Costs include but are not limited to:¶

(A) The services and supplies used in making the records available;¶

(B) The time spent locating the requested records, reviewing the records, and redacting, or separating material exempt from disclosure;¶

(C) Supervising a person's inspection of original documents;¶

(D) Copying records;¶

(E) Certifying copies of records;¶

(F) Summarizing, compiling, or organizing the public records to meet the person's request;¶

(G) Searching for and reviewing records even if the records subsequently are determined to be exempt from disclosure;¶

(H) Postal and freight charges for shipping the copies of the public records, sent first class or bulk rate based on weight, or other reasonable rates charged by the selected freight carrier;¶

(I) Indirect costs or third-party charges associated with copying and preparing the public records; and¶

(J) Costs associated with electronic retrieval of records.¶

(b) A fee will not be charged for the cost of time spent by an attorney in determining the application of the provisions of ORS 192.410 to 192.505;¶

(c) Staff time will be calculated based on the level of skill or expertise required to complete the work performed in accordance with the Department of Administrative Services Statewide Policy regarding Public Records Requests Fees and Charges; ¶

(d) The cost for publications will be based on the actual costs of development, printing and distribution, as determined by the Department;¶

(e) The cost for a public records request requiring the Department to access the State's mainframe computer system, may include but not be limited to costs for computer usage time, data transfer costs, disk workspace costs, programming, and fixed portion costs for printing and/or tape drive usage.¶

(2) No additional fee will be charged for providing records or documents in an alternative format when required by the Americans with Disabilities Act (ADA).¶

(3) The Department will notify requestors of the estimated fees for making the public records available for inspection or for providing copies to the requestor. The Department will provide written notice of the estimated fees and will not act further to respond to the request until the requestor notifies the Department, in writing, to proceed with making the records available;¶

(a) The Department may require that all or a portion of the estimated fees be paid before the Department will proceed with making the record available; ¶

(b) The Department may require that actual costs of making the record available be paid before the record is made available for inspection or copies provided;¶

(c) A requestor's payment of estimated fees shall not be construed as payment of the actual costs of making the record available. If the actual costs of making the record available exceed the estimated fees paid by the requestor, then the Department may require that the total of the actual costs, minus the amount paid, of making the record available be paid before the record is made available for inspection or copies provided;¶

(d) If the Department becomes aware that the estimated fees quoted to the requestor will be less than the actual fees owed at time of production, the Department will notify the requestor as soon as possible with an updated fee estimate and wait for the requestor to respond in writing whether they wish to proceed or modify their request based on the new estimate.¶

(4) The Department may reduce or waive fees when a determination is made that the waiver or reduction of fees is in the public interest because making the records available primarily benefits the general public. Factors that may be taken into account in making such a determination include, but are not limited to: ¶

(a) the requester's identity; ¶

(b) the purpose for which the requester intends to use the information; ¶

(c) whether the requested information is already in the public domain; ¶

(d) The request is narrowly tailored to a matter of public interest; ¶

- (e) whether the requester can demonstrate the ability to disseminate the information to the public; ¶
  - (f) The overall time needed and expense to be incurred by the Department to fulfill the request; ¶
  - (g) The volume of records requested is reasonable and not unduly burdensome to process; ¶
  - (h) The request requires the Department to segregate exempt from nonexempt materials; ¶
  - (i) The fees are otherwise avoidable, including the requestor's ability to utilize ordinary tools of discovery as part of pending administrative, judicial, or arbitration proceedings; or ¶
  - (j) The ability of the requester to pay the fee. ¶
- (5) All requests for waiver or reduction of fees must be made in writing to the Department. If the Department subsequently denies the written request for a waiver or reduction of fees, the requestor may petition the Attorney General for a review of the denial pursuant to the provisions of ORS 192.324(6).
- Statutory/Other Authority: ORS 192.329
- Statutes/Other Implemented: ORS 192.311 to 192.478