

<b>OREGON MILITARY DEPARTMENT</b>	<b>NUMBER: AGC-248.016</b>
<b>FINANCIAL ADMINISTRATION DIVISION</b>	<b>EFFECTIVE DATE: 1 Dec 18</b>
<b>SUBJECT: Public Records Requests</b>	

1. **APPLICABILITY:** This policy applies to all Oregon Military Department (OMD) Divisions to include the Office of Emergency Management. The requirements in this Policy do not supersede, modify or replace the existing legal responsibilities of this agency. The Military Department must continue to meet obligations required by all applicable laws, policies, procedures and standards including without limitation: state and Federal public records laws, privacy laws and regulations, and applicable DAS policies and procedures.
2. **AUTHORITY/REFERENCE:** Executive Order 16-06 & DAS Policy 107-001-030
3. **PURPOSE:** This Policy is intended to support statewide consistency by establishing standards for state agency policies relating to the charging practices and policies for fulfilling requests for public records and providing a standard process for state agency use when evaluating requests to reduce or waive fees assessed for fulfilling a request.
4. **Previous Authority:** This policy supersedes Policy AGC-248.016 dated 30 June 2016
5. **Response Requirement:** Per ORS 192.324 all public record requests must be acknowledged in writing within 5 business days. The acknowledgement letter must include one of the following:
  - a. Confirm that the public body is the custodian of the requested record
  - b. Inform the requester that the public body is not the custodian of the requested record
  - c. Notify the requester that the public body is uncertain whether the public body is the custodian of the requested record
6. **EXHIBITS**
  - **EXHIBIT A:** Statewide Standardized Fee-Structure Process Document
  - **EXHIBIT B:** Statewide Standardized Fee-Schedule
  - **EXHIBIT C:** Public Interest Threshold Evaluation Form (Fee-Waiver or –Reduction Request)
  - **EXHIBIT D:** Statewide Reduced Fee-Schedule

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Sean M. McCormick  
Director of Financial Administration  
Oregon Military Department

**Exhibit A. Process Document**

**PUBLIC RECORDS REQUEST RECEIVED**

Agencies shall waive 30-minutes of staff time (at a minimum).  
An agency may deny eligibility for the 30-minute waiver if abuse by the requester is determined to exist either by:  
1) Fragmenting a request that if taken in the aggregate would amount to significantly more than 30 minutes  
2) Submitting multiple small requests in a short time-frame causing an undue burden on the agency.

**FEE-WAIVER/REDUCTION REQUEST RECEIVED Waiver Eligibility Determined**

Agencies are statutorily required to consider and grant reasonable requests to waive and/or reduce fees associated with fulfilling a public records request when doing so is in the public interest because providing access primarily benefits the general public.

**Public Interest Threshold Criteria Applied**

*See attached Public Interest Threshold Criteria Evaluation Form.*

Public Interest Threshold Met

Threshold Not Met

**Full Waiver**

All fees waived.

**Partial Waiver**

Reduced fee-schedule applied for any fees not covered by waiver.

**Reduced Fee-schedule**

No waiver available.

**Standard Fee-schedule**

**Required Agency Communication w/ Requester:**

- Notify requester of initial cost-estimate / Seek approval, prior to initiating work to fulfill a Public Records Request, if total costs estimated are > \$25 / Work with requester to refine the scope of their request or otherwise reduce out-of-pocket cost when initial cost-estimate > \$250.

## Exhibit B: Statewide Standardized Fee-Schedule

### Standard Fee-Schedule

The Military Department 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, applicable services and supplies required to fulfill a Public Records Request in accordance with the applicable fee-schedule below.

The hourly rate charged for additional staff time will be based on the level of skill or expertise required to complete the work performed. Meaning, if work done to fulfill a request requires clerical-level skills, agencies may only charge the clerical hourly rate time spent on that portion of the work (as a maximum), even if a managerial-level or professional-level employee actually fulfills the request on behalf of the agency.

The Military Department will not charge for staff time spent witnessing records inspection when the estimated cost of making public records available for inspection is:

- less than the cost of providing the requestor with a copy of the public record; or
- insignificant (requested public records are readily accessible and do not require review, redaction or segregation).

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

### Staff time

Fees for staff time required to fulfill a Public Records Request shall not exceed:

- **\$25/hour for Clerical** (administrative, office specialists, other support staff)
- **\$40/hour for Managerial** (Program managers, PIOs)
- **\$75/hour for Professional** (IT, HR, High-level Analyst)
- **DOJ, special attorney and other applicable legal fees:** at the actual hourly rate charged for Public Records Request-related services. Fees are subject to statutory limitations described in ORS 192.440(4)(b).

### Production of Responsive Records

Fees generated by providing paper or electronic copies to requesters:

- **Copies:** Based on current state printing and distribution price list.
- **Media:** Based on statewide price-agreement with OfficeMax.
- **Postage:** Based on current postal rates.

### Additional Cost Considerations

Miscellaneous fees related to production and release of responsive records: ➤

Expedited Archive retrieval

- Costs of software companies/contracts (as needed to manage the volume of request)
- Other 3<sup>rd</sup> party costs (in extreme circumstances)

## Exhibit C: Public Interest Fee-Waiver or -Reduction Request

### Public Interest Threshold Evaluation Form

#### **HOW TO USE THIS FORM:**

Agencies are statutorily required to consider and grant reasonable requests to waive and/or reduce fees associated with fulfilling a public records request when doing so is in the public interest because providing access primarily benefits the general public.

The Public Interest Threshold Evaluation provides agencies with standardized criteria to use when evaluating a request for a fee-reduction/waiver submitted by a public records requestor under ORS 192.440(5). Agencies shall consider each factor to determine whether the public interest in disclosure of the requested records warrants granting a fee-reduction/waiver.

All requests for a Public Interest Fee-Waiver or -Reduction will be evaluated on a case-by-case basis using information provided by the requestor as well as information independently available to the agency.

#### **ADDITIONAL GUIDANCE:**

- To adequately balance the State's obligation to be transparent and accessible with the obligation to prudently safeguard public funds and resources, fee-waivers and -reductions should be granted when the statutory standard has been met – when disclosure will primarily benefit the general public.
- A request to waive or reduce fees related to a public records request, that requires substantial agency resources to complete, may be denied if the interest of the general public would be better served by preserving agency resources.
- The public interest is not a fixed concept and the balance of public interest may change over time. It may shift as information becomes older or in the light of issues of the day. The circumstances at the time of the request will be considered.
- A genuine public interest in the subject matter of a request is required as the basis for granting a waiver. The public interest is not necessarily the same as what interests the public. The fact that a topic has been discussed in the media does not automatically mean that there is a public interest in disclosing the information that has been requested about it.
- This standardized fee-structure does not supersede, modify or replace the existing legal responsibilities of any state agency. The Military Department must continue to meet obligations required by applicable laws, policies, procedures and standards including without limitation: State and Federal public records laws, privacy laws and regulations and fees for certain public records as defined in statute.

#### **Note:**

**Requests for fee-reduction or waiver will be evaluated on a case-by-case basis based on:**

- **The information provided by the requester; and**
- **The totality of circumstances at the time of the request.**

**Previous requests and evaluations will not be considered as part of the evaluation.**

**Exhibit C: Public Interest Fee-Waiver or -Reduction Request (Continued)**

**Public Interest Threshold Evaluation Form**

Date of Request:

Name of Requestor:

Requested Record(s):

Public Interest Threshold Criteria		
<b>Public Interest Threshold Criteria</b>		
The Military Department shall consider the criteria below to determine whether waiving or reducing the costs associated with fulfilling a public records request would serve the public interest by primarily benefiting the general public.		
<b>Public Interest:</b>		
1. Would disclosure of the requested information directly impact, affect, or serve an Identified interest of the general public?	Yes	No
2. Would the requested information advance the welfare or well being of the general Public?	Yes	No
3. Will the requestor be able to actually, meaningfully disseminate the requested Information?	Yes	No
<b>Private or Commercial Interest:</b>		
4. Is the public benefit greater than the individual benefit derived the disclosure	Yes	No
5. Is there a specifically identified purpose for which the public records are being sought that is wholly unrelated to 1) commercial purposes; or2) actual possible use in connection with administrative, judicial or legal proceedings?	Yes	No
<b>Reasonableness:</b>		
6. Is the request targeted at a specifically identified matter (meaning, not overly-broad or complex)?	Yes	No
7. Can the agency grant a waiver or reduce fees without causing an unreasonable burden on agency resources?	Yes	No
8. Is the public interest served by disclosure greater than the burden to the agency (amount of state time diverted to fulfilling a request and costs of subsidization)?	Yes	No

**Determination/Decision:**

\_\_\_\_\_  
**Manager Name (Print)**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

This form needs to be submitted to the appropriate Division Director for follow on disposition.

## **Exhibit D: Statewide Reduced Fee-Schedule**

### **Reduced Fee-Schedule**

The Military Department 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, applicable services and supplies required to fulfill a Public Records Request in accordance with the applicable fee-schedule below.

The hourly rate charged for additional staff time will be based on the level of skill or expertise required to complete the work performed. Meaning, if work done to fulfill a request requires clerical-level skills, agencies may only charge the clerical hourly rate time spent on that portion of the work (as a maximum), even if a managerial-level or professional-level employee actually fulfills the request on behalf of the agency.

The Military Department will not charge for staff time spent witnessing records inspection when the estimated cost of making public records available for inspection is:

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- insignificant (requested public records are readily accessible and do not require review, redaction or segregation).

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

### **Staff time**

Fees for staff time required to fulfill a Public Records Request shall not exceed:

- **\$20/hour for Clerical** (administrative, office specialists, other support staff)
- **\$32/hour for Managerial** (Program managers, PIOs)
- **\$60/hour for Professional** (IT, HR, High-level Analyst)
- **\$75/hour for DOJ, special attorney and other applicable legal fees.**

### **Production of Responsive Records**

Fees generated by providing paper or electronic copies to requesters:

- **Copies:** Based on current state printing and distribution price list.
- **Media:** Based on statewide price-agreement with OfficeMax.
- **Postage:** Based on current postal rates.

### **Additional Cost Considerations**

No additional cost considerations will be included in the invoiced amount passed on to the requester under this reduced fee structure.