

# Oregon Medical Board

## POLICY

<b>TITLE/SUBJECT:</b>	Public Records Policy
<b>NUMBER:</b>	847-010-004
<b>SUPERSEDES:</b>	n/a
<b>REFERENCE:</b>	ORS 192.001 through 192.478 ORS 676.175 and 676.405 OAR chapter 166 OAR chapter 847 DAS Statewide Policy 107-001-020, Public Records Management DAS Statewide Policy 107-001-030, Public Records Requests Fees & Charges DAS Statewide Policy 107-004-050, Information Asset Classification DAS Statewide Policy 107-004-150, Cloud Computing OMB Policy 847-206-002, Information Security
<b>APPLICATION:</b>	All Oregon Medical Board Employees, Volunteers, Board Members, and Contractors
<b>INTERPRETATION RESPONSIBILITY:</b>	OMB Business Manager and Operations & Policy Analyst
<b>EFFECTIVE DATE:</b>	April 12, 2019
<b>REVISION SIGNED:</b>	May 29, 2019

**POLICY APPROVED BY:** \_\_\_\_\_ [Signature on File](#) \_\_\_\_\_  
Nicole Krishnaswami, JD, Executive Director

### **PURPOSE**

The intent of Oregon public records law is to ensure that Oregon's government is accessible and transparent to its people. It requires state agencies to provide public records to Oregon citizens upon request. The Oregon Medical Board (OMB) adheres to this law and will provide all public records that are not exempt from disclosure by statute.

The purpose of this policy is to establish an orderly and consistent framework for managing public records and responding to public records requests. Specifically, this policy sets requirements for public access to OMB information, including the management of public records in compliance with the OMB Records Retention Schedule on file with the Oregon State Archivist; the request process, fulfillment procedure, response time, and appeal process; the fees in compliance with the Oregon Department of Administrative Services (DAS) Statewide Policy 107-001-030; and the common exemptions to disclosure of OMB public records.

### **POLICY**

ORS 192.018 requires every state agency to have a "written policy that sets forth the agency's use, retention and ownership of public records" so that public records are maintained and managed appropriately across the enterprise of state government, from the time of creation of a public record to the time of final disposition of the public record.

The OMB is required to seek review and approval from the State Archivist, in accordance with ORS 192.018, prior to adopting an internal public records management policy.

The OMB will review and, if necessary, update this policy at least once per biennium to reflect changes in applicable laws policies and business needs, and to ensure ongoing access to OMB records. Any updates or revisions must be submitted for review and approval by the State Archivist according to ORS 192.018, prior to adoption.

### **SPECIAL SITUATIONS**

- Retained records may be subject to public disclosure upon request, even if their retention was not required by law. The statutes requiring public disclosure of records apply more broadly than the statutes requiring records to be retained.
- Agencies are not required to create public records that would not otherwise exist.
- Only the official copy of a public record must be retained. Stock of publications are not public records and may be preserved for convenience or destroyed.

### **GENERAL INFORMATION**

The goal of this policy is to ensure public records are managed and maintained appropriately within the OMB and consistently across the enterprise of state government.

This OMB Public Records Management Policy, adopted in according to the requirements of DAS Statewide Policy 107-011-020 and ORS 192.018.

OMB staff must:

1. Preserve and classify agency public records in compliance with ORS chapter 192, OAR chapter 166, and DAS Statewide Policy 107-004-050 Information Asset Classification.
2. Maintain the integrity and confidentiality of public information in compliance with statewide policy 107-004-050 and the OMB's Information Security Policy 847-206-002.
3. Follow the OMB's retention schedule authorized under ORS 192.105, without regard to the technology or medium used to create or communicate the record.
4. Ensure accessibility of records through system migrations and in the event of disaster through regular back-up of agency records and ongoing technology review. Any IT system updates or changes will include record migration as part of the project plan.
5. Dispose of public records in accordance with OAR 166-030-0060 Public Records Disposition and Destruction and OAR 166-350-0010 Board and Commission Records.

### **COMPLIANCE**

The OMB will develop and implement internal processes and procedures that support compliance, deter abuse, and detect violations of this policy.

### **DEFINITIONS**

**Authorized Retention Schedule:** Either a General Schedule published by the State Archivist in the OAR in which certain common public records are described or listed by title and a retention period is established for each; or a Special Schedule approved by the State Archivist for the public records of a specific agency.

**Cloud-computing:** Has the meaning established in the National Institute of Standards and Technology (NIST) [Special Publication 800-145](#).

**Custodian:** A public body mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include a public body that has custody of a public record as an agent of another public body that is the custodian, unless the public record is not otherwise available.

**Instant Messaging:** Real-time text communications between or among computers or mobile devices over the internet or functionally similar communications networks.

**Metadata:** Data that provides information about other data. Metadata assists in resource discovery by allowing resources to be found by relevant criteria, identifying resources, bringing similar resources together, distinguishing dissimilar resources, and giving location information.

**Public Record:** Has the meaning established in ORS 192.005. In general it refers to information that is prepared, owned, used or retained by a state agency or political subdivision; relates to an activity, transaction or function of a state agency or political subdivision; and is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision. Refer to the Secretary of State's guide for determination of a public record:

<https://sos.oregon.gov/archives/Documents/recordsmgmt/train/brm/managingrecords.pdf>.

**Social Media:** Web-based and mobile communication technologies that allow the creation and exchange of user-generated content such as comments or responsive postings. Examples of social media include but are not limited to Twitter, Flickr, blogging sites, Facebook, YouTube and Instagram.

**Text Messaging:** Messages exchanged between fixed-line phones or mobile phones and fixed or portable devices over a network. Excluded from the definition of text messages are electronic mail (e-mail) communications, whether such messages are exchanged among or between official state government e-mail accounts or e-mail accounts maintained by private entities.

## **POLICY GUIDELINES**

### **I. PUBLIC RECORDS MAINTENANCE**

Public records must be maintained and managed in a manner that protects the integrity of the records within the OMB without regard to the technology or medium used to create or communicate the record, from the time of creation of a public record to the time of final disposition of the public record as determined by their authorized records retention schedule.

### **II. ROLES AND RESPONSIBILITIES**

Oregon law requires agencies to designate an Agency Records Officer "to coordinate its agency's Records Management Program" (ORS 192.105 (2)(a)). The OMB records officer, will serve as primary liaison with the State Archivist and receive training from the State Archivist in performing their duties.

The OMB will ensure agency public records are managed in accordance with their authorized records retention schedules, from the time of creation to final disposition, by assigning designated staff/positions with the following responsibilities:

### **Agency Records Officer/Records Retention Coordinator**

- Regular review of records, regardless of format to determine if records should be retained or destroyed.
- Identify and develop retention schedules for new records series.
- Maintain a filing system of the agency's paper and electronic records based on authorized retention schedules.
- Develop and implement internal processes and procedures for the transfer, retrieval and destruction of records in accordance with authorized retention periods.
- Ensure that records are destroyed according to their authorized retention period.
- Document the destruction of public records and retain that documentation according to the authorized records retention schedule found in OAR chapter 166-300.

### **Legislative & Policy Analyst**

- Review and update internal public records management policies and procedures. Obtain State Archivist approval of revisions to the agency public records management policy.

### **Human Resources Manager**

- Coordinate and track employee completion of public records management training to ensure agency staff understand how to properly manage records, in compliance with authorized records retention schedules.

## **III. EDUCATION AND TRAINING**

Basic public records training will be completed as a component of the OMB new employee orientation training; and incorporated as part of regular employee training, completed once a biennium. The OMB will utilize statewide public records iLearn training and OMB staff led training to provide biennial public records training.

## **IV. ACCESS AND OWNERSHIP**

Without regard to how public records are being stored, the OMB will have custody and control over public records. Through ongoing review of technological advances, the OMB will ensure all public records are maintained and accessible for as long as required by authorized retention schedules or litigation holds.

The OMB's disaster mitigation process is addressed in the Continuity of Operations Plan for the Oregon Medical Board and incorporated by reference here.

## **V. INTEGRITY**

The OMB will ensure appropriate access and version controls are applied to all electronically stored records from record creation to final disposition.

The authenticity of each record can be demonstrated either by certified copy of paper records or via accompanying metadata for all electronic records.

## **VI. RETENTION, GENERALLY**

The OMB will preserve and classify public records according to ORS chapter 192, OAR chapter 166-300, OAR chapter 166-350, and DAS Statewide Policy 107-004-050 regarding Information

Asset Classification. The OMB will work with the Archives Division to establish retention practices to ensure compliance with ORS chapter 192 and OAR chapter 166-300.

**a. CLOUD-COMPUTING**

The OMB practices and procedures with respect to public records management in the Cloud will comply with the DAS Statewide Cloud Computing Policy (DAS Policy 107-004-150) and OAR chapter 166-300.

**b. EMAIL**

**Official Email Accounts**

In most circumstances, emails sent to or from a state employee’s official email account will meet the definition of a public record. Therefore, this policy requires that virtually all email messages composed or sent using employees’ official equipment or official email addresses be for primarily business purposes.

When the OMB receives a public records request, all official email accounts and systems used for official state business are subject to search and production.

**Personal Email Accounts**

If employees must use personal email accounts must be used to conduct state business, it is the OMB requires that employees copy their official email accounts on all such outgoing communications, and forward any received messages on which their official email accounts are not copied, immediately or as soon as practicably possible.

**c. INSTANT MESSAGING**

The OMB policy regarding Instant Messages is the same as that recited below regarding TEXT MESSAGING.

**d. SOCIAL MEDIA**

The OMB will not use any social media platform.

**e. TEXT MESSAGING**

OMB employees should avoid communicating official state business or engaging in discussions regarding the primary business of their work over text message. OMB employees may use text messaging to communicate if the information does not meet the definition of a “public record.” Any information communicated via text messaging that meets the definition of a public record must be documented and retained separately according to the agency’s authorized records retention schedule.

**Acceptable Use:**

Communication that does not meet the definition of a “public record.”

Examples of Acceptable Uses

- Scheduling.
- Requesting a call or email on a matter, without substantive discussion.
- Requesting or offering logistical assistance (“Can you help me get these boxes to the Capitol?”).
- Forwarding any person’s contact information (“I’m at 503-378-6002.”).

- Explaining your current whereabouts, or inquiring about someone else’s (“We’re at the meeting discussing this morning’s announcement. Are you around?”).
- Describing facts or events that do not relate to the substance of the agency’s work (“Spilled coffee all over myself right before my presentation!”), or that have been or necessarily will be separately recorded (“Mr. Jones just testified to the committee that our bill would cost taxpayers \$3 million.”).
- Inquiring about events like those in the previous bullet (“Has Mr. Jones testified in committee yet?”).

**Conditional Use:**

If an employee uses text message to create or communicate information relating to official state business, such discussion is to be immediately converted and saved in a separate public record format (e.g., by forwarding the relevant text messages to their official state e-mail). Personal devices are subject to search if used to create or transmit a public record.

Because the OMB requires that no text message-based public records be created – or if they are created, that they be converted and saved in an alternate format, which would serve as the official copy of the record – the OMB will not retain text messages.

**f. UNIFIED COMMUNICATIONS**

The OMB will not use IBM Unified Communications in a way that creates public records.

**g. VOICEMAIL**

Unless otherwise required, the OMB will not retain messages on voicemail. The OMB does not transcribe voicemails into email.

**VII. STORAGE AND RETRIEVAL**

Paper Records:

The OMB will maintain a filing system of the agency’s paper records based on authorized retention schedules. The filing system will include the location of records, retention periods and procedures for retrieval to ensure accessibility of agency records.

Electronic Records:

The OMB will maintain a filing system and naming conventions for all agency records stored in electronic format based on the agency’s authorized retention schedules. The filing system and naming conventions will include the location of records in agency directories, retention periods, access controls and privacy conditions to support management of the agency’s inventory of electronic records.

The OMB will work with the State Archivist to ensure the agency meets retention periods for all records before any data is destroyed and prior to deleting any large electronic record system.

**VIII. PUBLIC RECORDS REQUESTS**

The OMB will respond to all official requests for public records as soon as practicable and without unreasonable delay, according to timelines outlined in ORS 192.324 and ORS 192.329.

The OMB’s procedures for managing public records requests are provided under PUBLIC RECORDS DISCLOSURE.

## **IX. DISPOSITION AND DESTRUCTION OF PUBLIC RECORDS**

The OMB will dispose of or destroy public records according to the requirements of authorized records retention schedules, OAR chapter 166-300, and OAR chapter 166-350.

Pursuant to ORS 357.855, OMB employees will consult the State Archivist for advice and assistance with determining the disposition of certain record types not accounted for in State Agency General or Special Retention Schedules, and reconciling unforeseen public records issues.

## **PUBLIC RECORDS DISCLOSURE (ORS 192.410-192.505)**

### **I. GENERAL PRINCIPLES**

*State agencies are not required to create public records that do not otherwise exist. State agencies do not need to make a public record to show the “reasoning” behind the action or staff “knowledge.” State agencies are not required to explain, answer questions, or provide legal research or analysis about their public records.*

*The public records disclosure statutes are distinct from the retention statutes. Any retained records are public records subject to disclosure.*

*Records do not have to be prepared by the agency to qualify as public records. Records with “information relating to the conduct of the public’s business” and “owned, used or retained” by the agency are within the scope of the public records law. However, a document that is reviewed by the agency but not used or retained by the agency is *not* a public record.*

### **II. REQUEST PROCESS**

1. Any person (or organization) may request to inspect or receive copies of a public record by mail, fax, or e-mail.
  - a. For OMB data, requesters may use the [Public Records Request form](#).
  - b. For information on an OMB applicant or licensee, requesters may use the [License Verification form](#) or the [Licensee File Request form](#).
2. The request must include the name and contact information for the requester.
3. The request must identify as specifically as possible the type of record(s), subject matter, approximate date(s), names of persons involved, and the number of copies requested.
4. OMB staff may work with the requester to clarify and refine his or her request.
5. OMB staff will maintain records of public records requests received.

### **III. FULFILLMENT PROCESS**

1. The OMB will acknowledge a request and notify the requester whether the OMB is the custodian, ask for clarification if needed, and provide an estimate of the time and cost.
2. Costs will be calculated according to the fee schedule in OAR chapter 847, division 005 and in accordance with statewide policy 107-001-030.
  - a. The first 30 minutes of staff time will be waived when calculating charges.
  - b. If the estimated total cost is more than \$25, OMB staff will seek prior approval.
  - c. If the estimated total costs are more than \$250, OMB staff will work with the requester to refine the scope of the request or otherwise reduce the total cost.
3. The OMB will fulfill requests in accordance with ORS 192.311 to 192.431, which

governs the inspection and disclosure of public records.

4. Requests will be referred to the appropriate staff member. Responses will be prepared in consultation with the Legislative & Policy Analyst or Executive Director as needed.
5. OMB staff will obtain archived files from the Oregon State Archive as needed.
6. Staff will separate and redact public records according to statutory exemptions.
7. Upon request, the OMB will provide a place for a requester to view records. Original materials may be inspected on site only and may not be removed from OMB property.
8. The OMB may provide the information in an alternate format if the requested format is impractical or overly burdensome.
9. OMB staff will maintain records of all public records provided.

#### **IV. RESPONSE TIME**

- OMB will provide public records as soon as practicable and without unreasonable delay.
- For standard requests (e.g. license verifications, malpractice reports and standard data lists), the OMB will attempt to fulfill requests within five business days from receipt of payment.
- All other requests will be fulfilled in accordance with ORS 192.324 and 192.329.

#### **V. EXEMPTIONS**

Disclosure is prohibited for some categories of records and other categories of records are conditionally exempt from disclosure.

The OMB's common exemptions include:

- ORS 40.225 – lawyer-client privilege
- ORS 179.505 and 192.395 – medical records
- ORS 181A.195(11) – criminal records checks
- ORS 192.368 – personal contact information with demonstrated personal safety concern
- ORS 192.345(28) – social security numbers
- ORS 192.345(4) – test questions & scoring keys
- ORS 192.355(2) – personal information
- ORS 192.355(4) – information submitted in confidence
- ORS 192.355(8) – federal law (including 5 USC § 552a – NPDB reports)
- ORS 192.355(9) – other state law that restricts or prohibits disclosure of a public record (including statutes outside of ORS 192)
- ORS 192.355(10) – transferred records
- ORS 192.355(1) – internal advisory communication
- ORS 192.371 – employee photo identification badge
- ORS 432.350 – vital records
- ORS 676.175 – investigatory information
- ORS 676.405 – licensee personal e-mail, phone, and home address

The Executive Director may grant requests for licensee personal information and other conditionally exempt records if releasing the information primarily benefits the general public. The requester may be asked to sign an OMB confidentiality agreement.

Based on the protections for information assets in statewide policy 107-004-050, all requests for information above Level 2, "Limited" must be approved by the Executive Director to ensure that

no exempt records are released and proper asset security is maintained.

**VI. APPEALS**

The OMB will inform the requester of the right to petition the Attorney General to review a denied request under ORS 192.401 and 192.411.

**FEES**

**I. STANDARD FEES**

1. The OMB may charge fees according to OAR chapter 847, division 005 and statewide policy 107-001-030. Two categories of charges exist:
  - a. Public records with an established pre-set price.
  - b. Public records that do not have an established pre-set price, for which the cost will include production charges and staff time for locating, redacting and supervising inspection. The first 30 minutes of staff time will be waived.
2. Fees for public records must be paid in advance. Once payment is received, OMB staff will begin preparing the requested information.

OMB charges for public records that do not have an established pre-set price:

<p><b>Production Costs</b> <i>based on state price agreements and lists</i></p>	+	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: left; padding: 2px;">Records Search/Staff Time</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px;">Clerical staff</td> <td style="padding: 2px;">\$25/hour</td> </tr> <tr> <td style="padding: 2px;">Managerial staff</td> <td style="padding: 2px;">\$40/hour</td> </tr> <tr> <td style="padding: 2px;">Professional staff</td> <td style="padding: 2px;">\$75/hour</td> </tr> <tr> <td style="padding: 2px;">Dept. of Justice</td> <td style="padding: 2px;">actual cost</td> </tr> </tbody> </table>	Records Search/Staff Time		Clerical staff	\$25/hour	Managerial staff	\$40/hour	Professional staff	\$75/hour	Dept. of Justice	actual cost	+	<p><b>Additional Costs</b> <i>e.g. expedited archive retrieval or other 3<sup>rd</sup> party costs</i></p>
Records Search/Staff Time														
Clerical staff	\$25/hour													
Managerial staff	\$40/hour													
Professional staff	\$75/hour													
Dept. of Justice	actual cost													

**II. FEE WAIVERS OR REDUCTIONS**

The OMB may waive or reduce the fee if the agency determines the waiver or reduction is in the public interest because making the record available primarily benefits the general public, per ORS 192.324(5). All requests for fee waivers or reductions must be made in writing.

Requests for fee waivers or reductions will be evaluated using the [Public Interest Threshold Evaluation Form](#) provided in statewide policy 107-001-030. When the OMB determines that a fee reduction would serve the public interest, the following charges for services will apply:

<p><b>Production Costs</b> <i>based on state price agreements and lists</i></p>	+	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: left; padding: 2px;">Records Search/Staff Time</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px;">Clerical staff</td> <td style="padding: 2px;">\$20/hour</td> </tr> <tr> <td style="padding: 2px;">Managerial staff</td> <td style="padding: 2px;">\$32/hour</td> </tr> <tr> <td style="padding: 2px;">Professional staff</td> <td style="padding: 2px;">\$60/hour</td> </tr> <tr> <td style="padding: 2px;">Dept. of Justice</td> <td style="padding: 2px;">\$70/hour</td> </tr> </tbody> </table>	Records Search/Staff Time		Clerical staff	\$20/hour	Managerial staff	\$32/hour	Professional staff	\$60/hour	Dept. of Justice	\$70/hour	+	<p><i>No additional costs</i></p>
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Clerical staff	\$20/hour													
Managerial staff	\$32/hour													
Professional staff	\$60/hour													
Dept. of Justice	\$70/hour													

**III. APPEALS**

The OMB will inform the requester of the right to petition for review of a denial of a fee waiver or reduction to the Attorney General under ORS 192.324(6).