



Oregon Department of Environmental Quality

## Testimony on Public Records Request Fees Public Records Advisory Council Legislative Committee

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My name is Leela Yellesetty, and I am the information governance officer for the Oregon Department of Environmental Quality (DEQ). Thank you for your invitation to share DEQ's process in responding to public records requests and, specifically, our process for handling fees and fee waivers. Before addressing the fee issue, I would like to share some brief background on the agency.

DEQ's mission is to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water. With over 700 hundred staff located across the state, we operate hundreds of programs including permitting, licensing and certifications, vehicle inspections, environmental cleanup and monitoring.

DEQ receives one of the highest volumes records requests of any state agency at around 300 per month. Many of these relate to a specific facility or site that is of interest to property owners, developers or contractors. Others can be broader in scope and reflect public and media interest in agency decisions that impact our shared environment.

We currently have a full-time records staff of two, myself and public records coordinator Kristen Mercer. In order to manage our large volume of requests we rely on a network of over 50 public records coordinators in our different programs and regions. In July of 2020 we implemented request tracking software from GovQA to help manage our requests. I am proud to say that for the past several quarters we have averaged a 99% compliance rate with statutory deadlines, with the vast majority of requests completed in just a few days.

The new tracking system has made it much easier for both our internal users and for requesters, who now have the option to download their records and pay fees directly from the online portal, whereas before they could only pay by cash or check. It has also made it much easier to collect data about our requests, including fees and fee waivers. That said, we are continuing to work out the best process for tracking this information in a very complex system, so please keep in mind that the estimates that follow are approximate.

First a background on what fees we charge. In 2017, the Department of Administrative Services (DAS) created a standardized fee schedule for all state agencies. Since our fees are still written into rule, we are waiting for DAS to adopt their schedule in rule, so we can incorporate them by reference. In the meantime, we have opted to adopt whichever rates were lower of the two. As you can see for nearly all of our time categories, the actual hourly pay for DEQ employees exceeds what we charge in fees. The only non-time related fees we charge are for large scanning jobs, for which we charge the actual cost as billed by the vendor, which is around 4.5 cents per page.

	<b>Fee schedule hourly rate</b>	<b>DEQ actual hourly range</b>
<b>Clerical</b>	\$25	\$21-26
<b>Professional</b>	\$30	\$26-56
<b>Managerial</b>	\$30	\$41-87
<b>Attorney</b>	\$159	\$242 (DOJ rate)

Since implementing the new tracking system in July of 2020, DEQ has received 5751 records requests, or an average of 287 per month. For the vast majority of those, we completed the request within thirty minutes and therefore did not charge any fees. In practice, if a request takes a little longer than that, we still don't charge due to the effort involved in collecting the fees themselves. This means that at present, DEQ employees are spending a minimum of 140 hours per month on records requests free of charge. This staff time and vendor costs are presently billed back to the respective departments whose records were requested. Any fees

collected are used to offset the cost of the GovQA tracking software, though it doesn't come close to fully covering it.

In the time since July 2020, we collected fees for 178 requests, or 3% of all requests. The total amount of fees collected was \$41,829. This works out to an average of around \$2092 per month in fees.

#### **DEQ Fees July 2020 - March 2022**

Total number of requests:	5,751
Number of requests with fees:	178 (3%)
Total fees collected:	\$41,829.32
Average fees collected per month:	\$2,092
Average days open (requests with fees)	36.53
Average days open (all requests)	12.38

As you can see, the requests for which we assess the most fees tend to take much longer to complete. Often these are requests that are broad in scope and involve a lot of back and forth with the requester and/or coordination between numerous offices and programs. As a regulatory agency we collect a fair amount of information from companies that they believe to be trade secrets, so sometimes a request will entail back and forth with submitting party's attorneys along with those of the requester.

If we believe a request will take more than 30 minutes DEQ provides requesters with an itemized estimate of fees for them to agree to before we start work. Sometimes this initial estimate provides an opportunity to negotiate with the requester to narrow their request and reduce the fees, and we attempt to work with requesters to do so whenever possible.

However we've found this doesn't work as well with certain types of requesters, specifically law firms because they simply bill this time to their clients. Requests from law firms represent only 3% of our total requests, but 17% of the requests for which we charge fees and 42% of the fees charged.

Probably the biggest pain point we have are requests for email. The agency currently has an archive of more than 30 million emails and counting and search tools are not particularly sophisticated when it comes to unstructured content. We have processed requests involving tens of thousands of emails, some of which have to be reviewed by multiple people and in consultation with our attorneys to determine if exemptions apply. Requests for email represent 1% of our overall requests, but 11% of requests with fees, and 57% of total fees charged.

In the same time period of July 2020 until present, DEQ received a total of 298 requests for fee waivers. For 214 of those we had no fees to waive, 80 were granted full waivers, and three were denied. We did approve one partial waiver but the requester declined to pursue the request. In total, DEQ waived an estimated \$18,440 in fees during this time period, or an average of \$922 per month.

Our fee waiver process is also based on DAS guidance. When a requester submits a request on our portal, they have the opportunity to check if they are requesting a waiver and if so they are prompted to respond to the following questions:

- 1) General background/mission information on requesting individual/group/organization as this information relates to public record requests from the DEQ
- 2) Purpose for which the requesting party intends to use the information/records requested
- 3) Specific ability (and plans) of requesting party to disseminate the information to the general public
- 4) Explain how dissemination of the records/information requested will benefit the general public
- 5) Any other information that requesting party feels would be valuable in evaluating fee waiver/reduction request

If a fee estimate is prepared for a waiver request, it is routed to the records team to evaluate and make a recommendation. To inform our decision we answer the following questions:

1. Would disclosure of the requested information, directly impact, affect or serve an identified interest of the general public?
2. Would the request information, advance the welfare or wellbeing of the general public?
3. Will the requester be able to actually, meaningfully disseminate the requested information?
4. Is the public benefit greater than the individual benefit derived from disclosure?
5. Is there a specifically identified purposes for which the public records are being sought that is wholly unrelated to 1) commercial purposes; or 2) actual or possible use in connection with administrative, judicial or legal proceedings?
6. Is the request targeted at a specifically identified matter (meaning, not overly-broad or complex)?
7. Can the agency grant a waiver or reduce fees without causing an unreasonable burden on agency resources?
8. Is the public interest in disclosure greater than the burden to the agency (amount of staff time diverted to fulfilling a request and costs of subsidization)?

Based on the totality of responses, the records team then makes a recommendation to grant a full or partial waiver, or deny the request. This is then reviewed by our manager, who consults with the appropriate program managers as needed to make a final determination.

Generally speaking any waiver requests from media, government or nonprofit organizations are granted. The only exception would be if the request is so broad as to be overly burdensome to the agency, but in most cases we are able to work with the requester to narrow the scope instead. The three instances of waiver denials in the time since we've been tracking were from private individuals or companies who had a clear commercial or legal interest and we were not able to identify a substantial public interest.

I'd like to conclude with just a few general observations. I see a great potential in future years to reduce the cost of public records requests for both the agency and the public. At present, DEQ is in the midst of a major technology modernization project called Your DEQ Online which will replace many of our formerly manual and paper-based processes with a central online portal. This will allow us to proactively make many more public records directly available online.

That said, we continue to maintain a vast amount of legacy records, many of them still in paper. Due to the long term nature of environmental trends and the long life of hazardous materials in the environment, many of these records will remain of public interest for decades to come. In recent years a few DEQ programs have undertaken massive digitization projects to make these records directly available to the public. The scanning and posting of residential onsite septic records alone reduced the number of records requests to the agency by around 100 per month. These scanning projects are not cheap however, and some of our programs are struggling to find the resources for the upfront investment involved.

Lastly it's important to keep in mind that there will never come a time when there are no costs associated with public records requests. Not all agency information can be posted online and must be reviewed for sensitive information before being released. This is especially true of the growing number of requests for emails—and we expect to see more requests for things like chat and text messages in the future. The explosive growth of digital content poses many challenges, not just for the public but even our own employees being able to find the information they need, when they need it.

DEQ is striving to be a leader in government transparency and endeavors to limit fees charged for records requests, but the reality remains that we have no dedicated budget for these requests so they ultimately cut into the time and resources needed to do our core work. I sincerely appreciate this committee's willingness to investigate and come up with creative solutions to this issue.

Thanks again for your time and I am happy to answer any questions.