



Office of the Director

Kate Brown, Governor

Oregon
Health
Authority

500 Summer St NE E20

Salem OR 97301

Voice: 503-947-2340

Fax: 503-947-2341

www.Oregon.Gov/OHA

www.health.oregon.gov

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To: Chair Harris and Members of the Legislative Subcommittee
Public Records Advisory Council

My name is Jeanne Windham, and I am the public records coordinator for Oregon Health Authority. Thank you for your invitation to share Oregon Health Authority's process in responding to public records requests and, specifically, the costs involved in processing those requests. Before addressing the fee issue, I would like to share a brief background of the agency.

In 2011 the Department of Human Services split into two agencies. At that time, Keely West was charged with centralizing public records requests for OHA. With a background in law and journalism, and the support of leadership, the goal was to build a public records process with transparency as a priority and with easy public access to records in a timely fashion. As time went on, Ms. West began to undertake additional responsibilities and it became apparent that there was a need for a dedicated full-time position to maintain the process. I was hired in 2017 to work in the Director's Office managing the day-to-day records process and supporting Ms. West and OHA in ongoing work to ensure that OHA not only complies with public records laws but also continues improving policy and processes that increase agency transparency across all agency programs.

Since Director Pat Allen took over in 2017, he, Deputy Director Kris Kautz, and Chief of Staff Dawn Jagger have reinforced that they view transparency as a core function of the agency. They and other OHA leaders have made clear they view transparency as not only legally required, but as an asset to the agency in that it builds public trust and a positive relationship with members of the public. Ms. West continues to oversee the work, providing expertise and advice, on-going policy development, and expansion of transparency work. My work includes tracking requests received, acknowledging receipt of requests, working with requesters to clarify and/or narrow the scope of their requests, providing cost estimates, working with individual divisions within OHA to identify and gather responsive records, working with DOJ when appropriate, and reviewing and redacting records, if necessary, before releasing the records.

Leadership's recognition of the importance of my work means that I am fully integrated into the functioning of OHA. I work as a team member with the various divisions to identify and gather responsive records. This makes it easier for us to turn around documents quickly and at a low cost. To ensure we institutionalize best practices, I am in the process of drafting a "public records process" manual, reflecting in detail the procedures of how OHA implements and complies with the law to best serve the public.

As to fees, I provided to you OHA Policy OHA-010-010, Public Record Requests and Fees. The policy requires that costs of less than \$100 are waived. Moreover, for members of the media and non-profit organizations such as Legal Aid and 501(c)(3) corporations, costs of \$100 or less are waived, and costs in excess of \$100 are halved. In reality, OHA waives most public records fees.

That being said, while we generally waive fees, we do not waive fees that require a search of emails with hundreds or thousands of results, which will then need to be converted to PDFs and reviewed for redactions before release. If we did not charge for this process and were required to provide these types of records at no cost, we would necessarily need at least one more FTE. What has worked well is when email searches result in hundreds or thousands of emails, I work with the requester to narrow the scope, to ensure there are minimal costs.

And our stats reflect our commitment to keeping costs down, while providing the public with requested records. For example, in 2021, OHA received 1,278 public records requests, 97% of which were completed within the statutory 15 business days. Of those, only 22 requests involved a fee. And, of those 22, nine (9) requests came from marketing and other for-profit organizations, five (5) requests came from law firms, four (4) requests came from the media, three (3) requests came from individuals, and one (1) request came from a union. Finally, 13 of the 22 requesters paid the fee; and, of the nine requests where the requester did not approve the fees, 3 of the those were from law firms, 4 were from the media, 1 was from a for-profit corporation and 1 was from an individual.

I'd like to conclude with a few observations regarding crafting legislation addressing fees. I applaud you for taking on this challenging task. I see the challenge as trying to draft a one size fits all statute. Unfortunately, it is not a level playing field for all agencies. Some agencies may have the wherewithal to process and release records expeditiously; whereas some agencies are limited in resources, whether it is FTEs or providing records that are not digital or other limitations. And there are agencies that are doing it well. Penalizing those that do well by waiving fees altogether or capping them, removes the ability to negotiate the parameters of the request, leading to a narrowed and focused request. And it will inevitably lead to the need to add FTEs. I do see an opening in defining "actual costs." That appears to be an area where there may be consensus. And, perhaps, a fixed reduction, such as 50% of costs, for the media and non-profits, where the cost exceeds a certain amount.

I'm happy to answer any questions and provide more details about the requests that involve fees.

Jeanne Windham

Public Records Coordinator
OREGON HEALTH AUTHORITY
Central Operations
500 Summer St. NE, E-20
Salem, OR 97301

Operational Policy

Policy Title:	Public Record Requests and Fees		
Policy Number:	OHA-010-010		
Original Date:	6/09/2008 (DHS)	Last Update:	05/06/2019
Approved:	Kris Kautz, Deputy Director OHA		

Purpose

The Oregon Health Authority (OHA) is committed to accountability and transparency in government and strives to foster these values through our management of public records requests. All requests are handled in a manner that is consistent, efficient, timely and in compliance with state and federal law. To foster transparency, the agency makes many materials available at no cost to the requester.

Description

OHA makes records related to the business of the state and the agency available to the public for review, except where those records specifically are exempt from disclosure by federal or state statute. This policy and supporting Oregon Administrative Rule (OAR) do not supersede any existing specific request fees, such as fees for requesting birth certificates.

Applicability

This policy applies to all OHA staff including employees, volunteers, interns and any entity requesting records.

As keepers of the public trust, all agency employees have a responsibility to comply with state and agency policies, administrative rule, and state and federal law. The agency takes this responsibility seriously and failure to fulfill this responsibility is not treated lightly. Employees who fail to comply with state or agency policy, administrative rule, or state and federal law may face progressive discipline, up to and including dismissal from state service.

Policy

1. Public records shall be made available as soon as practicable and without unreasonable delay, in accordance with the timelines and conditions outlined in ORS 192.324 and ORS 192.329. Subject to statutory exceptions, the agency shall:
 - a. Acknowledge requests within five calendar days of receipt.
 - b. Complete requests or provide an estimated date of completion within 15 business days of receipt.
 - c. Complete most requests within 30 calendar days of receipt.
2. A public records team, housed in the office of the Deputy Director, ensures the agency handles all requests consistently and appropriately by overseeing, coordinating, and tracking responses to all public records requests. Records requests received by program staff shall be forwarded to the

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- public records team for response and tracking.
3. Records may be requested by submitting a request to OHA.PublicRecords@dhsoha.state.or.us. A complete request for records includes:
 - a. A description of the information requested, as specific as possible, including the type of records, subject matter, approximate dates the records were created, and the names of the persons involved.
 - b. Contact information for the requestor: name, address or email address, and telephone number of the person or organization requesting the public records.
 - c. The format in which the requestor desires to receive the records (hard copy, electronic copy by e-mail [PDF or other format], electronic copy on media). The agency encourages use of electronic media to reduce both cost and waste.
 4. Records shall be made available upon request unless explicitly exempt from release.
 - a. Records that are exempt from disclosure primarily are defined in ORS Chapter 192.
 - b. The agency may have access to records or data held by business associates or contractors. Records not held by the agency as a routine matter of business, whether or not the agency may request them, are not requested and provided in response to public records requests.
 5. Reasonable time is allowed for the agency to process the request, including gathering, reviewing and, if necessary, redacting those records which are exempt from disclosure. A reasonable amount of time for completing a request depends on the number and type of records requested as well as the amount of required review and redaction.
 6. Program offices are responsible for compiling records responsive to a public records request and providing those records to the public records team.
 - a. Information requests involving an OHA employee, intern or volunteer will be processed in coordination with the OHA Human Resources Office.
 - b. Federal and state law may require a written release by a client, parent or guardian of a client, or other authorized individual prior to release of the records. The requestor will be notified when this situation arises.
 7. In an effort to foster increased transparency, OHA may choose to perform research and create documents in response to requests for records where no responsive records exist at the time of the request.
 - a. Responding to requests for data of this type is entirely at the discretion of the agency and dependent on the availability and workload of staff and the difficulty of extracting and compiling the data.
 - b. These requests may be subject to data use agreements.
 - c. Fees are charged in accordance with the actual cost of producing data.
 8. OHA waives most public records fees but may charge a fee for providing records in accordance with ORS 192.324 and Oregon Department of Administrative Services statewide policy 107-001-030.
 - a. In general, costs of less than \$100 will be waived.
 - b. For members of the media and non-profit organizations such as Legal Aid and 501(c)(3) corporations, costs of \$100 or less will be waived; costs in excess of \$100 will be halved.
 - c. OHA may waive fees up to, but not exceeding, 40 hours of staff time on a single request.

References

[ORS 192.410 to ORS 192.607](#)

[OAR 943-003-0000 to OAR 943-003-0010](#)

[Oregon Attorney General's Public Records and Meetings Manual](#)

Forms

Request for disclosure of public records (HS 5107)
Authorization for use and disclosure of information (MSC 2099)
Request for access to records (MSC 2093)
Request for waiver of public record request fee (HS 5108)
Account receivable billing request (MSC 3300)

Policies and process maps

OHA Privacy Policies (OHA 100-001 et. sequential)
OHA Record request simple process steps
OHA Record request simple process map

Contact

Keely L. West
500 Summer St. NE, E-20
Salem, OR 97301
keely.l.west@state.or.us
Phone: 503-945-6292
Fax: 503-947-5461

Policy History

Version 1 06/09/2008 (established by Department of Human Services)
Version 2 03/03/2014 (individual policy established by Oregon Health Authority)
Version 3 05/06/2019

To request this policy in another format or language, contact the Publications and Design Section at 503-378-3486, 711 for TTY, or email dhs-oha.publicationrequest@state.or.us

Keywords

Data, information, media, public, records, release, request