

Oregon Office of the Public Records Advocate and Public Records Advisory Council
Joint Public Records Policy

INTRODUCTION

Under ORS 192.314, every person has a right to inspect any public record of the Office of the Public Records Advocate (OPRA) and the Public Records Advisory Council (PRAC), except as otherwise expressly provided by ORS 192.338, ORS 192.345, ORS 192.355, and ORS 192.472.

This policy applies to any request for public records made under Oregon's Public Records Law (ORS 192.311 – ORS 192.478).

POLICY

I. General Information

Public Records Officer: The Public Records Advocate (PRA) shall be designated as the Public Records Officer for the Office.

Consistent with ORS 192.483(5), the PRA serves as the Custodian of Records for the PRAC and shall be designated as the Public Records Officer for the council.

II. Making a Public Records Request

A. A request for public records must be in writing and contain the following information:

1. Preferred form of contact between the requester and the OPRA, including the method by which the requester wishes to receive disclosed records;
2. A description of the record(s) requested in sufficient detail to allow the OPRA to search for and identify responsive records.

B. A written request for public records may be made in the follow ways:

1. By submitting a public records request to:

PublicRecordsAdvocate.PRC@pra.oregon.gov.

2. By submitting a public records request to the following mailing address:

2850 SW Cedar Hills Blvd, #1121 Beaverton, OR 97005

C. Ongoing or Anticipated Litigation: If the requester is a party to a judicial proceeding to which OPRA or the PRAC is a party, or if the requester has filed a notice under ORS 30.275(5)(a), and asks to inspect or receive a copy of a public record that the requester knows relates to the proceeding, then the requester must submit the request in writing to both the Public Records Officer and also the attorney for OPRA. ORS 192.314.

- D. Inspection or Records:** A person may request to inspect or copy a record held by OPRA by submitting a written request in the same manner as described in subsections A and B, above. OPRA does not have a physical office location and primarily retains paperless records; it will work with the requester to coordinate a reasonable opportunity and manner to inspect or copy the record.

III. OPRA's Response to a Public Records Request

- A. When OPRA receives a written request to inspect or receive a copy of a public record, OPRA shall acknowledge receipt of the request within five business days. This acknowledgement will consist of the following:**

1. A statement confirming that OPRA is the custodian of the requested record;
2. A statement informing the requester that OPRA is not the custodian of the requested record; or
3. Notice to the requester that OPRA is uncertain whether it is the custodian of the requested record and requires further clarification of the request.

- B. As soon as is practicable but no longer than 15 business days after receipt of a request, OPRA will respond to the request in one or more of the following ways:**

1. Provide access to or copies of all requested records within OPRA's possession or custody that are not exempt from disclosure;
2. Explain that the records are already publicly available;
3. Assert any exemptions from disclosure that OPRA believes applies to any requested records;
 - i. If OPRA cites ORS 192.355(8) or (9), OPRA will identify the state or federal law relied upon to assert the exemption;
 - ii. If state or federal law prohibits OPRA from even acknowledging whether the requested record exists or if acknowledging whether a requested record exists would result in the loss of federal benefits or imposition of another sanction, then OPRA will provide a written statement to that effect;
 - iii. For all other exemptions to disclosure that OPRA asserts, OPRA will provide the requester with a citation to the applicable exemption(s) and a brief explanation of the nature of the records withheld or redacted for each exemption asserted; and
 - iv. If OPRA asserts that one or more requested records are exempt from public disclosure, it will inform the requester of appeal rights under ORS 192.411.
4. Provide a written statement that OPRA is not the custodian of records that have been requested.

5. OPRA may require additional information or clarification from a requester to expedite its response to the request. If OPRA has requested the additional information or clarification in good faith, its obligation to further complete its response to the request is suspended until the requester provides the clarifying information or affirmatively declines to provide that information.
 - i. If the requester fails to respond to OPRA within 60 days, OPRA will close the request;
 - ii. OPRA will notify the requester that it will close out the request within 60 days if the requester fails to respond to OPRA's request for clarification or additional information.
6. If OPRA requires more than 15 days to complete its response to a request, it will provide a written statement that it is still processing the request and a reasonable estimated date of completion based on the information currently available.

C. OPRA may be excused from the time for response outlined in Parts A and B if compliance is impracticable.

1. Compliance is deemed impracticable for the following reasons:
 - i. The staff necessary to complete a response to the request are unavailable. Unavailability includes staff on leave or not scheduled to work;
 - ii. Compliance with the time for response would demonstrably impede OPRA's ability to perform other necessary services; or
 - iii. There is a high volume of public records requests being simultaneously processed by OPRA.
2. OPRA shall inform the requester that compliance with the statutory time to respond is impracticable and will provide an explanation for why additional time is necessary.
3. OPRA shall, as soon as practicable and without unreasonable delay, acknowledge a public records request and complete the response.

IV. Standards of Conduct

OPRA will engage records requesters in good faith for the duration of the request process by maintaining an open channel of communication and responding in a timely manner to requests for information.

If a requester engages in disruptive or harassing behavior, OPRA reserves the right to limit its communication with the requester to written correspondence only.

V. Fees

ORS 192.324 allows OPRA to establish fees reasonably calculated to reimburse OPRA for up to the actual costs of making public records available. For fees greater than \$25.00, OPRA will provide the requester with a fee estimate before the records are produced. OPRA calculates fees for responses to public records requests as set forth below:

A. Policy for Cost Free Production

OPRA endeavors to not charge fees for its costs to produce public records, whenever possible. However, OPRA may exercise its discretion to charge a fee at the rates calculated in Section IV(B) if the request yields voluminous records requiring substantial staff time to review and redact.

B. Calculation of Fees

Consistent with the Department Administrative Services' model fee schedule, OPRA shall waive a minimum of 30 minutes of staff time for all public records requests after which a fee may be assessed for additional staff time, services and supplies required to fulfill a public records request.

1. Staff Time: 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, even if a managerial-level or professional-level employee fulfills the request on behalf of the agency:

Fees for staff time required to fulfill a public records request shall not exceed:

- \$25/hour for Clerical (administrative, office specialists, other support staff)
 - \$75/hour for Managerial or Professional (IT, HR, Operations and Policy Analyst 4)
 - Oregon Department of Justice, special attorney, or other applicable legal fees: at the actual hourly rate charged for public records related services. Fees subject to statutory limitations described in ORS 192.324(4)(b).
2. Additional Costs of Production: May include miscellaneous costs for postage, printing, data retrieval, costs of software, other third-party costs.
 3. ADA Format: No additional fees will be charged for providing a record in an alternate format in accordance with the Americans with Disabilities Act.

C. Fee Estimate

1. If OPRA has provided the requester with a fee estimate, OPRA's obligation to complete its response to the request is suspended until the requester has paid the fee, OPRA has granted a public interest fee waiver, or the fee otherwise has been ordered waived.
2. If the requester fails to pay the fee within 60 days of the date on which OPRA informed the requester of the fee or fails to pay the fee within 60 days of the date on which OPRA informed the requester of the denial of the fee waiver, OPRA will close the request.

D. Fee Waivers or Reductions

OPRA may reduce or waive fees if it determines that doing so is in “the public interest because making the record available primarily benefits the general public.” ORS 192.324(5). Waiving or reducing fees is in the public interest when release of the requested records has the greatest utility to the community or society as a whole, in contrast to situations where disclosure would primarily affect a concern or interest of a private individual or entity.

The decision to waive or reduce fees is within OPRA’s discretion but must be reasonable under the totality of the circumstances. Requests for a fee waiver or reduction must be evaluated on a case-by-case basis, considering the following factors:

1. The character of the public interest in the particular disclosure. Would disclosure of the requested information directly impact, affect, or serve an identified interest of the general public?
2. The extent to which the fee impedes that public interest;
3. Will the requester be able to actually and meaningfully disseminate the requested information?
4. Is the request targeted at a specifically identified matter—is the request overly-board or complex?
5. Can the agency grant a waiver or reduction without causing an unreasonable burden on agency resources?
6. Is the public interest served by disclosure greater than the burden to the agency?

VI. Appealing a Denial

A. A public records request is considered denied when:

1. OPRA does not provide a timely response as outlined in Section III and also fails to demonstrate that compliance with the statutory timeline is impracticable;
2. If the requester believes that OPRA’s estimated time frame for providing records is unreasonably long and will result in undue delay of disclosure; or
3. Any other instance in which the person believes that OPRA has failed to comply with ORS 192.329.

B. Appeal to the Oregon Attorney General

A requester who has received a denial may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. Consistent with ORS 192.411, the burden is on OPRA to provide justification to the Attorney General for its decision to withhold records from inspection. In addition, a requester who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General in the same manner as a requester who petitions when inspection of a public record is denied under ORS 192.311 to 192.478

The process for an appeal is outlined in ORS 192.411, 192.418, ORS 192.422, and ORS 192.431.