

PRAC Legislative subcommittee meeting 10/28/2022
Approved language and unaddressed ideas

Approved - minor points for clarification

- See blue highlights

Strikethrough and bold indicate deletions and additions

Public body recoverable costs

192.324 (4)(a) is amended to read:

(4)(a) Upon compliance with subsection (7) the public body may establish fees reasonably calculated to reimburse the public body for up to the public body's actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, **to search, duplicate, and review public records** to meet the request. For purposes of this section:

(A) "Search" means looking for and retrieving physical or digital records responsive to a request.

(B) "Duplicate" means making a physical or digital copy of a record. Copies can be paper documents, taped or digital audio and video recordings, emails, database files, electronic text files or other record storage formats.

(C) "Review" means reading a record to locate content the public body considers exempt from disclosure and redacting material to which an exemption is applied. Review does not include an attorney's time spent determining whether an exemption may pertain to material or whether the exemption should be applied
(reference note: does this replace 192.324 (4)(b), below?)

(i) Review costs are recoverable even if a record ultimately is not disclosed.

(D) The public body shall conduct each of these activities in the least expensive manner reasonably possible. A public body shall not charge more than the hourly compensation (rate) of its lowest-paid employee capable of searching for, duplicating, or reviewing the public records in the particular instance, regardless of who actually performs the labor.

(E) If unpaid volunteers are available or necessary to respond to requests for public records, the public body may establish a fee for the time spent by such a volunteer at an hourly rate not to exceed the then-applicable minimum hourly wage in the state of Oregon.

(b) The public body may include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records. The public body may not include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in determining the application of the provisions of ORS 192.311 to 192.478.

(c) The public body may not establish a fee greater than \$25 under this section unless the public body first provides the requester with a written notification of the estimated amount of the fee and the requester confirms that the requester wants the public body to proceed with making the public record available.

(d) A requester who has been notified of a fee under ORS 192.324(4) may request an explanation from the public body as to the basis of the fee, in which case the public body shall provide an explanation of its estimated costs for completing its response to the request. An explanation prepared under this section shall include sufficient detail to permit a reasonable person to understand the amount and purpose of each portion of the estimated fee. A public body shall work in good faith with a requester who seeks to narrow a request in order to reduce a fee.

(e) Notwithstanding ORS 192.329(3)(a), the obligation of the public body to complete its response to the request is not suspended until the public body provides any explanation required by this section. *(reference note: 192.329(3)(a) says that once a public body has given a fee estimate, the public body can suspend filling the records request until the fee is paid or waived. This does not change that; (e) says that required explanations must be made before suspension while waiting for fees is allowed.*

(f) Notwithstanding paragraphs (a) to (c) of this subsection, when the public records are those filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees for furnishing copies, summaries or compilations of the public records are the fees established by the Secretary of State by rule under ORS chapter 79 or ORS 80.100 to 80.130.

Costs unrecoverable without publicly available policy

192.324 (7) is amended to read:

(7) A public body shall make available to the public **on its website, or if the public body does not have a website, in a publicly available space if such a space is available and by** ~~make available upon~~ request, a written procedure for making public records requests that includes:

(a) The name of one or more individuals within the public body to whom public records requests may be ~~sent~~ **made, how to contact that individual and make a request with addresses;** and

(b) The amounts of and the manner of calculating fees that the public body charges for responding to requests for public records.

(c) A public body that fails to make such information available to the public may not establish a fee for completing a public records request.

Unaddressed other proposals

- **Any points of shared interest to include in this proposed legislation, or to recommend to full PRAC to take future action on?**
 1. **FUTURE PLANNING:** Transparency by Design task force, including specialists not on the PRAC.
 2. **STATE SUPPORT FOR LOCAL GOVERNMENTS:** Grant program funded by state to digitize records
 3. **SURCHARGE SUPPORT FOR LOCAL GOVERNMENTS:** Impose a surcharge commercial requests; use money to fund local agencies needs through a grant or such program.
 4. **PROFESSIONALIZING THE RANKS:** Offer recognition to staff who are trained as public records responders; incentivize ongoing and in-depth training.