

192.311 Definitions for ORS 192.311 to 192.478. As used in ORS 192.311 to 192.478:

(1) "Business day" means a day other than Saturday, Sunday or a legal holiday and on which at least one paid office employee of the public body that received the public records request is scheduled to and does report to work. In the case of a community college district, community college service district, public university, school district or education service district, "business day" does not include any day on which the central administration offices of the district or university are closed.

that creates, has care, custody, control, or has prepared, owns, or uses or maintains a public record

(2) "Custodian" means:

(a) The person described in ORS 7.110 for purposes of court records; or

(b) 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.

public bodies need to meet archiving standards for public availability of public records

There is by default more than ONE Custodian of Records and what a "public record" is. The Definition under Archiving for "public records" should be replicated to embody a cohesiveness within the Code. SEE: ORS 192.005(5)(a)(A) "prepared, owned, used. . ."

(3) "Person" includes any natural person, corporation, partnership, firm, association or member or committee of the Legislative Assembly.

insert: Labor Unions (anti-trust laws), municipalities - except under bankruptcy, political subdivision of the state. SEE: Black's Law Dictionary Centennial Edition, Sixth Edition, Pg 1142 "Person"

(4) For purposes of this section, "News media representative" means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

for a representative of the "news media" the News Media must have:
1. corporate structure
2. generate revenue
3. have employees
4. pay compensation

? Does not include pod-casts, blog sites

~~—(4) "Representative of the news media," or "news-media requester," means any person or entity that gathers information of potential interest to a segment of the public, uses their editorial skills to turn the raw materials into a distinct work, and has the means to distribute that work to an audience. For this purpose, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers or articles through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-~~

~~media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the agency may also consider the past publication record of the requester in making such a determination. To qualify under this category, a requester must not be seeking the requested records for a commercial use. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use.~~

(5) “Public body” includes every state ^{office} ~~officer~~, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state ^{a single "officer" does not make a "public body"}
 ^{SEE: Black's Law Dictionary Pg 1273-1274 Centennial Edition, Sixth Edition "public record" under "RECORDS"}

(6)(a) “Public record” includes any writing that contains information relating to the conduct of the public’s business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(b) “Public record” does not include any writing that does not relate to the conduct of the public’s business and that is contained on a privately owned computer.

(7) “Search” means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The public body will conduct searches in the most efficient and least expensive manner reasonably possible.

(8) “Duplicate” means the making of a copy of a record, or of the information contained in it, necessary to respond to a public records request. Subject to ORS 192.324(3), copies can take the form of paper, audiovisual materials, or electronic records, media, or data, among others.

(9) “Review” means the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. The public body may include in a fee 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. **Review time does not include time spent by an attorney for the public body in determining the application of the provisions of ORS 192.311 to 192.478.**

(10) “State agency” means any state ^{office} ~~officer~~, department, board, commission or court created by the Constitution or statutes of this state ~~but does not~~ includes the Legislative Assembly ^{and its} members, committees, officers or employees insofar as they are **not** exempt under section 9, Article IV of the Oregon Constitution. ^{inserted}

(11) “Writing” means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings. [Formerly 192.410]

Public Interest are encompasses numerous topics, such as constitutional law, criminal law, family law, legal ethics, education, the environment, and civil rights. Public interest litigation seeks to advocate for fairness for the average or less represented citizens of the population. Public interest groups attempt to serve as a watchdog against fraud and other abuses in government and the corporate world. Public interest law seeks to uncover threats to public health and well-being and fight to end them, and encourages a fair, sustainable economy, and fosters responsive, democratic government. e.g.: protect people and the environment; hold accountable those who abuse power; challenge governmental, corporate and individual wrongdoing; increase access to the courts; combat threats to our justice system. Public Interest is: is a common concern among citizens in the management and affairs of local, state, and national government. It does not mean mere curiosity but is a broad term that refers to the body politic and the public weal.
(<https://definitions.uslegal.com/p/public-interest/>) (<https://legal-dictionary.thefreedictionary.com/Public+Interest>)

(12) “Public interest” means making a record available because it primarily benefits the general public. Benefitting the general public includes, but is not limited to, the release of records or information that:

- (a) Directly impacts, affects, or serves an identified interest of the general public;**
- (b) Advances the welfare or well-being of the general public;** which "welfare": 'general' denoted under the taxation clause or 'public welfare' social interest of safety, order, morals, economic interest, and non-material and political interests; OR, purview regulations for the promotion of economic welfare and public convenience. - Black Law Pgs. 685, 1233, 1594,
- (c) Is likely to contribute significantly to public understanding of the operations or activities of government;**
- (d) Are the requester’s own records or the records of one for whom the requester is the legal guardian and subject to ORS 192.324(5)(c); or** This is ambiguous on its face. 192.324(5)(c) is in context to "a news media representative making a request on behalf of a commercial entity
- (e) The person requesting the records is indigent and the records effect the legal right of a requester, including but not limited to, use in a hearing before any governmental regulatory commission and subject to ORS 192.324(5)(d).**

192.324(5)(d) are the custodian's determination of IF the Public Record falls into the category of "public interest". Indigent status falls under the affordability of cost and whether a fee reduction or waiver is merited.

192.324 Copies or inspection of public records; public body response; fees; procedure for records requests.

(1) A public body that is the custodian of any public record that a person has a right to inspect shall give the person, upon receipt of a written request:

- (a) A copy of the public record if the public record is of a nature permitting copying; or
- (b) A reasonable opportunity to inspect or copy the public record.

(2) If an individual who is identified in a public body’s procedure described in subsection (7)(a) of this section receives a written request to inspect or receive a copy of a public record, the public body shall within five business days after receiving the request acknowledge receipt of the request or complete the public body’s response to the request. An acknowledgment under this subsection must:

- (a) Confirm that the public body is the custodian of the requested record;
- (b) Inform the requester that the public body is not the custodian of the requested record; or
- (c) Notify the requester that the public body is uncertain whether the public body is the custodian of the requested record.

(3) If the public record is maintained in a machine readable or electronic form, the public body shall provide a copy of the public record in the form requested, if available. If the public record is not available in the form requested, the public body shall make the public record available in the form in which the public body maintains the public record.

(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 to search, duplicate, and review public records for the purpose of making them available upon request. However, a public body may not establish a fee for providing a public record if the cost of recovering the fee would exceed the fee itself.**

NEW: 4(b)(iii) Hourly Wage means what an employee receives per hour inclusive of any benefits and those benefits will not constitute separate fee charges. In the event a public body/entity uses a subcontractor or the records sought are a subcontractors' record, the billable hourly wage inclusive of benefits shall not exceed the lowest paid employee of the public body/entity except when the subcontractors' lowest paid employee receives less than the public body/entity's employee

Renumber 4(b)(ii) ~~(b)(A)~~ **The fee components of searching, duplicating, and reviewing shall be itemized in both a written fee estimate before any payment is requested and a written final statement of fees that states the actual cost of completing the public records request;**

Renumber 4(b)(i) ~~(B)~~ **When calculating labor costs under subsection (4)(a), the estimated and final fee statements shall express both the hourly wage and the number of hours charged to complete a request;**

Renumber: 4(b) ~~(C)~~ **For each fee component in subsection (4)(a), a public body shall not charge more than the hourly wage of its lowest-paid employee capable of searching for, duplicating, and reviewing the public records in the particular instance regardless of whether that person is available or who actually performs the labor. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down; and**

~~— (D) If a requestor has requested a fee waiver or reduction in the public interest and the public body has determined that the requestor is ineligible to have fees waived, substantially reduced, or reduced subject to ORS 192.311(12) and subsection (5) of this section, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written fee statements.~~

(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) 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.

(5) The custodian of a public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest ~~as follows~~: **for any reason it determines, including but not limited to: the cost of fee collection would exceed the amount of the fee itself; a public body has established a policy for routinely waiving or reducing fees; a requester demonstrates indigence; or a request is for records that primarily concern the requester.**

(a) If the custodian of a public record determines that disclosure is in the public interest because making the record available primarily benefits the general public, the custodian shall furnish copies to the requester without charge. The custodian of a public record may limit the portion of fees waived if the custodian demonstrates that, in the particular instance, the public interest in disclosure is partially or entirely outweighed by a severe impact on public services that will be created by preparing the records for the requester.

(b) A request by a news media representative (as defined in Definitions, (4), above) shall be assumed to be in the public interest unless the public body demonstrates that, in the particular instance, it is not.

(c) Except for requests made by a news media representative, a request on behalf of a commercial entity shall not be considered to be in the public interest.

(d) If the custodian of a public record determines that a request is not in the public interest, or that the public interest is partially or entirely outweighed by a severe impact on public services that will be created by preparing the records for the requester, the custodian shall provide the reason for this determination to the requestor in writing.

~~—(a) When a public records request is received by a representative of the news media or news-media requester as defined in ORS 192.311(4), a public body shall waive or substantially reduce the costs of completing the request, unless:~~

~~—(A) Making a record available is not in the public interest because it does not primarily benefit the general public, such as because a representative of the news media or news-media requester requested the records for a commercial use; or~~

~~—(B) Providing the records at no or substantially reduced cost substantially prejudices or prevents the carrying out of the functions of the public body, so long as the public interest in the efficient functioning of the public body clearly outweighs the public interest in disclosure. If a public body makes such a determination, the public body shall furnish the records at a reduced fee that balances the public interest in disclosure against the impact on public services.~~

~~—(b) For public records requests received other than those described in section (5)(a), and for which the requester has requested a fee waiver or reduction in the public interest, a public body shall waive or substantially reduce the costs of completing the request if the public body determines the request is in the public interest as defined in ORS 192.311(12)(a)-(c) and the requester is able to actually, meaningfully disseminate the requested information to the general public, unless:~~

~~—(A) Providing the records at no or substantially reduced cost substantially prejudices or prevents the carrying out of the functions of the public body, so long as the public interest in the efficient functioning of the public body clearly outweighs the public interest in disclosure. If a public body makes such a determination, the public body shall furnish the records at a reduced fee that balances the public interest in disclosure against the impact on public services.~~

(e) When a public record's requester is the subject of the record or the subject's legal guardian, the records shall be furnished without charge for the first \$25.00 of the fee for each request, which is in addition to any reduction or waiver of fees presently offered by the public body, unless:

(A) The record requested is prepared under a statute or administrative rule specifically authorizing the sale of the record to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by a statute or administrative rule; or

(B) Waiving the first \$25.00 of fees substantially prejudices or prevents the carrying out of the functions of the public body, so long as the public interest in the efficient functioning of the public body clearly outweighs the public interest in disclosure. If a public body makes such a determination, the public body shall furnish the records at a reduced fee that balances the public interest in disclosure against the impact on public services.

(f) When the person requesting the records is indigent and the requested record effects the legal right of a requester, the public body shall waive or substantially reduce the fees for completing the request and subject to (5)(d)(B), unless:

(A) Providing the records at no or substantially reduced cost substantially prejudices or prevents the carrying out of the functions of the public body, so long as the public interest in the efficient functioning of the public body clearly outweighs the public interest in disclosure. If a public body makes such a determination, the public body shall furnish the records at a reduced fee that balances the public interest in disclosure against the impact on public services.

(B) An individual who is entitled to records under section (5)(d), must submit an affidavit at the time of their public records request, in response to the receipt of a fee estimate, or at any time requested by a public body stating:

(i) That the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency; and

(ii) The legal rights effected by the requested record.

(6) A requester who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a requester who petitions when inspection of a public record is denied under ORS 192.311 to 192.478. In determining whether there has been an unreasonable denial of a fee waiver or fee reduction, the Attorney General or the district attorney shall consider, amongst other relevant factors, whether providing the records at no or substantially reduced cost substantially prejudices or prevents the carrying out of the functions of the public body, so long as the public interest in the efficient functioning of the public body clearly outweighs the public interest in disclosure. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as when inspection of a public record is denied.

(7)(a) A public body shall make available to the public by posting on a readily accessible portion of its website or, if the public body does not have a website, in a publicly available space if such a space is available, and made 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, 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.

(b) A public body that has not made its public records policy available in accordance with subsection (7)(a) may not establish a fee for completing a public records request.

(8) This section does not apply to signatures of individuals submitted under ORS chapter 247 for purposes of registering to vote as provided in ORS 247.973. [Formerly 192.440]

192.329 Public body's response to public records request.

(1) A public body shall complete its response to a written public records request that is received by an individual identified in the public body's procedure described in ORS 192.324 as soon as practicable and without unreasonable delay.

(2) A public body's response to a public records request is complete when the public body:

(a) Provides access to or copies of all requested records within the possession or custody of the public body that the public body does not assert are exempt from public disclosure, or explains where the records are already publicly available;

(b) Asserts any exemptions from disclosure that the public body believes apply to any requested records and, if the public body cites ORS 192.355 (8) or (9), identifies the state or federal law that the public body relied on in asserting the exemptions;

(c) Complies with ORS 192.338;

(d) To the extent that the public body is not the custodian of records that have been requested, provides a written statement to that effect;

(e) To the extent that state or federal law prohibits the public body from acknowledging whether any requested record exists or that acknowledging whether a requested record exists would result in the loss of federal benefits or imposition of another sanction, provides a written statement to that effect, citing the state or federal law that the public body relies on, unless the written statement itself would violate state or federal law; and

(f) If the public body asserts that one or more requested records are exempt from public disclosure, includes a statement that the requester may seek review of the public body's determination pursuant to ORS 192.401, 192.411, 192.415, 192.418, 192.422, 192.427 and 192.431.

(3)(a) If a public body has informed a requester of a fee permitted under ORS 192.324 (4), the obligation of the public body to complete its response to the request is suspended until the requester has paid the fee, the fee has been waived by the public body pursuant to ORS 192.324 (5) or the fee otherwise has been ordered waived.

(b) If the requester fails to pay the fee within 60 days of the date on which the public body informed the requester of the fee, or fails to pay the fee within 60 days of the date on which the public body informed the requester of the denial of the fee waiver, the public body shall close the request.

(4)(a) A public body may request additional information or clarification from a requester of public records for the purpose of expediting the public body's response to the request. If the public body has requested additional information or clarification in good faith, the public body's obligation to further complete its response to the request is suspended until the requester provides the requested information or clarification or affirmatively declines to provide that information or clarification.

(b)(i) To facilitate a requester's reply to a public body's request for additional information or clarification, a requester may inquire about the way a public body maintains, catalogs, or preserves its records. The public body shall in good faith provide the requested information or inform the requester that it is declining to provide the information. Providing requested information in good faith to a requester includes, but is

not limited to, doing so for the purpose of expediting a request, assisting with narrowing a request or to make it more concise, or to reduce the cost of completing the request; and

(b)(ii) A public body's ability to suspend its completion of a request while waiting for additional information or clarification from a requester shall not occur until it in good faith either provides the information requested from a requester or declines to provide the information. A public body may offer the type of information described in subsection (b)(i) to a requester without a request for information from a requester at any point to improve the public records request process.

(c) For public records requests of electronic records, such as email, metadata, and structured data, a public body shall work in good faith with a requester to establish time periods, key words, and search terms, and to share any non-exempt names of record senders and recipients. For electronic records other than metadata, where a public body has the appropriate search technology, the public body shall provide all available, non-confidential metadata and field definition information upon the request of a requester to better understand an electronic record, such as names, titles, field listings, definitions of those fields, terms, headings, systems, processes, forms, and other information relevant to a request.

(d) If the requester fails to respond within 60 days to a good faith request from the public body for information or clarification and subject to subsections (4)(b) and (4)(c), the public body shall close the request.

(5) As soon as reasonably possible but not later than 10 business days after the date by which a public body is required to acknowledge receipt of the request under ORS 192.324, a public body shall:

(a) Complete its response to the public records request; or

(b) Provide a written statement that the public body is still processing the request and a reasonable estimated date by which the public body expects to complete its response based on the information currently available.

(6) The time periods established by ORS 192.324 and subsection (5) of this section do not apply to a public body if compliance would be impracticable because:

(a) The staff or volunteers necessary to complete a response to the public records request are unavailable;

(b) Compliance would demonstrably impede the public body's ability to perform other necessary services; or

(c) Of the volume of public records requests being simultaneously processed by the public body.

(7) For purposes of this section, staff members or volunteers who are on leave or are not scheduled to work are considered to be unavailable.

(8) A public body that cannot comply with the time periods established by ORS 192.324 and subsection (5) of this section for a reason listed in subsection (6) of this section shall, as soon as practicable and without unreasonable delay, acknowledge a public records request and complete the response to the request.

5-days

