

LC 1828
2023 Regular Session
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D R A F T

SUMMARY

Directs public bodies to perform search, review and duplication work in responding to public records requests in least expensive manner reasonably possible. Limits hourly rate of compensation that may be charged for public record search, review and duplication work.

Requires public body to provide explanation of basis of fee if explanation is sought by public records requester.

Enumerates factors public body may take into account in determining to waive or reduce fees, although authorizes public records custodian to waive or reduce fees for any reason. Requires custodian to furnish copy of public record without charge if disclosure primarily benefits general public unless disclosure outweighed by substantial prejudice to custodian or if waiver would prevent custodian from performing other required functions. Provides that public records request by representative of news media is assumed to be in public interest unless custodian demonstrates, in particular instance, that request is not in public interest.

1 A BILL FOR AN ACT

2 Relating to public records fees; amending ORS 147.421, 192.324, 192.329,
3 192.464 and 802.183.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 192.324 is amended to read:

6 **192.324. (1) As used in this section:**

7 **(a) “Duplicate” means to make a physical or digital copy of a re-**
8 **cord, including but not limited to a paper copy, an audio or digital tape**
9 **or file, an item of electronic mail, a database file, an electronic text**
10 **file or a record in any storage format.**

11 **(b) “News” means information that is about current events or that**
12 **would be of current interest to the public.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (c) “**News media**” or “**news media entity**” means:

2 (A) A television or radio station that disseminates news;

3 (B) The publisher of a periodical that disseminates news, whether
4 through print publication or through electronic dissemination.

5 (d) “**Representative of the news media**” means:

6 (A) Any person that gathers information of potential interest to a
7 segment of the public, uses editorial skill to turn information into a
8 distinct work and who distributes that work to an audience.

9 (B) A freelance journalist unaffiliated with news media entities, if
10 the journalist can demonstrate a reasonable expectation or prior his-
11 tory of publication through news media, including but not limited to
12 a publication contract with one or more news media entities.

13 (e) “**Review**”:

14 (A) Means reading, listening to, viewing or watching a record to
15 locate content that the public body considers exempt from disclosure
16 and redacting material in order to apply an exemption.

17 (B) Does not include time spent by an attorney determining the
18 application of ORS 192.311 to 192.478 to material.

19 (f) “**Search**” means looking for and retrieving physical or digital
20 records responsive to a public records request.

21 [(1)] (2) A public body that is the custodian of any public record that a
22 person has a right to inspect shall give the person, upon receipt of a written
23 request:

24 (a) A copy of the public record if the public record is of a nature per-
25 mitting copying; or

26 (b) A reasonable opportunity to inspect or copy the public record.

27 [(2)] (3) If an individual who is identified in a public body’s procedure
28 described in subsection [(7)(a)] (8)(a) of this section receives a written re-
29 quest to inspect or receive a copy of a public record, the public body shall
30 within five business days after receiving the request acknowledge receipt of
31 the request or complete the public body’s response to the request. An ac-

1 knowledgegment under this subsection must:

2 (a) Confirm that the public body is the custodian of the requested record;

3 (b) Inform the requester that the public body is not the custodian of the
4 requested record; or

5 (c) Notify the requester that the public body is uncertain whether the
6 public body is the custodian of the requested record.

7 [(3)] (4) If the public record is maintained in a machine readable or elec-
8 tronic form, the public body shall provide a copy of the public record in the
9 form requested, if available. If the public record is not available in the form
10 requested, the public body shall make the public record available in the form
11 in which the public body maintains the public record.

12 [(4)(a)] (5)(a) **Upon compliance with subsection (8) of this section**, the
13 public body may establish fees reasonably calculated to reimburse the public
14 body for **up to** the public body's actual cost *[of making public records avail-
15 able, including costs for summarizing, compiling or tailoring the public re-
16 cords, either in organization or media, to meet the request]* **to search,
17 duplicate and review public records in order to make the records
18 available to the requester. Costs associated with reviewing a public
19 record may be recovered by the public body even if the public record
20 is ultimately not disclosed to a requester.**

21 (b) The public body *[may include in a fee established under paragraph (a)
22 of this subsection the cost of time spent by an attorney for the public body in
23 reviewing the public records, redacting material from the public records or
24 segregating the public records into exempt and nonexempt records.]* shall
25 **conduct the activities described in paragraph (a) of this subsection in
26 the least expensive manner reasonably possible. In determining costs,
27 the public body may not charge more than the hourly rate of com-
28 pensation of the lowest-paid employee capable of performing the ac-
29 tivities described in paragraph (a) of this subsection. If an unpaid
30 volunteer is available or used to perform the activities described in
31 paragraph (a) of this subsection, the public body may establish a fee**

1 **for the time spent by the volunteer that does not exceed the applicable**
2 **minimum hourly wage under the laws of this state.**

3 **(c)** The public body may not include in a fee established under [paragraph
4 (a) of] this subsection the cost of time spent by an attorney for the public
5 body in determining the application of the provisions of ORS 192.311 to
6 192.478.

7 [(c)] **(d)(A)** The public body may not establish a fee greater than \$25 un-
8 der this section unless the public body first provides the requester with a
9 written notification of the estimated amount of the fee and the requester
10 confirms that the requester wants the public body to proceed with making
11 the public record available.

12 **(B) A requester who has received a notification of the estimated**
13 **amount of the fee under this paragraph may request an explanation**
14 **from the public body as to the basis for the fee. If an explanation is**
15 **requested, the public body shall provide an explanation to the re-**
16 **quester of the estimated costs for completing the public body's re-**
17 **sponse to the request that is in sufficient detail to permit a reasonable**
18 **person to understand the amount and purpose of each component of**
19 **the estimated fee. The public body shall work in good faith with a re-**
20 **quester who seeks to narrow a request in order to reduce a fee.**

21 **(C) If a requester seeks an explanation for the basis of the fee under**
22 **this paragraph, the obligation of the public body to complete its re-**
23 **sponse to the request is not suspended until the public body supplies**
24 **an explanation to the requester that satisfies the requirements of this**
25 **paragraph.**

26 (d) Notwithstanding paragraphs (a) to (c) of this subsection, when the
27 public records are those filed with the Secretary of State under ORS chapter
28 79 or ORS 80.100 to 80.130, the fees for furnishing copies, summaries or
29 compilations of the public records are the fees established by the Secretary
30 of State by rule under ORS chapter 79 or ORS 80.100 to 80.130.

31 [(5)] **(6)(a)** The custodian of a public record may **for any reason** furnish

1 copies without charge or at a substantially reduced fee [*if the custodian de-*
2 *termines that the waiver or reduction of fees is in the public interest because*
3 *making the record available primarily benefits the general public*]. **Factors**
4 **the custodian may take into account in determining to waive or reduce**
5 **fees include, but are not limited to:**

- 6 (A) **The cost of collecting the fee exceeding the amount of the fee;**
- 7 (B) **The policy of the custodian to routinely waive fees;**
- 8 (C) **The requester demonstrating indigence to the custodian; or**
- 9 (D) **The request being for public records that primarily concern the**
10 **requester.**

11 (b) **The custodian of a public record shall furnish copies without**
12 **charge if the custodian determines that disclosure is in the public in-**
13 **terest because disclosure of the record primarily benefits the general**
14 **public, except that the custodian may limit the portion of fees that**
15 **are waived if the custodian determines that the public interest in dis-**
16 **closure is outweighed by substantial prejudice to the custodian or be-**
17 **cause waiver will prevent the custodian from being able to carry out**
18 **the other functions the custodian is charged with performing.**

19 (c) **A request by a representative of the news media shall be as-**
20 **sumed to be in the public interest unless the custodian demonstrates**
21 **that, in the particular instance, the request is not in the public in-**
22 **terest.**

23 (d) **A request by a commercial entity who is not a representative**
24 **of the news media may not be considered a request made in the public**
25 **interest.**

26 (e) **If the custodian of a public record determines that a request is**
27 **not in the public interest or that the public interest in disclosure is**
28 **outweighed by substantial prejudice or will prevent the custodian from**
29 **carrying out the other functions the custodian is charged with per-**
30 **forming, the custodian shall provide the reason for this determination**
31 **to the requester in writing.**

1 [(6)] **(7)** A requester who believes that *[there has been an unreasonable*
2 *denial of a fee waiver or fee reduction]* **a public body has failed to comply**
3 **with subsection (6) of this section** may petition the Attorney General or
4 the district attorney in the same manner as a requester who petitions when
5 inspection of a public record is denied under ORS 192.311 to 192.478. The
6 Attorney General, the district attorney and the court have the same author-
7 ity in instances when a *[fee waiver or reduction is denied]* **public body has**
8 **failed to comply with subsection (6) of this section** as when inspection
9 of a public record is denied.

10 [(7)] **(8)(a)** A public body shall make available to the public a written
11 procedure for making public records requests that includes:

12 [(a)] **(A)** The name of one or more individuals within the public body to
13 whom public records requests may be sent, with addresses; and

14 [(b)] **(B)** The amounts of and the manner of calculating fees that the
15 public body charges for responding to requests for public records.

16 **(b) The written procedure described in paragraph (a) of this sub-
17 section shall be made available:**

18 **(A) On the public body's website; or**

19 **(B) If the public body does not have a website, at a publicly acces-
20 sible physical space, if available, and also provided upon request to a
21 requester.**

22 **(c) A public body that fails to make the written procedure described
23 in this subsection available to the public in conformance with this
24 subsection may not establish and charge fees for completing a public
25 records request.**

26 [(8)] **(9)** This section does not apply to signatures of individuals submitted
27 under ORS chapter 247 for purposes of registering to vote as provided in ORS
28 247.973.

29 **SECTION 2.** ORS 192.329 is amended to read:

30 192.329. (1) A public body shall complete its response to a written public
31 records request that is received by an individual identified in the public

1 body's procedure described in ORS 192.324 as soon as practicable and without
2 unreasonable delay.

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

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

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

13 (c) Complies with ORS 192.338;

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

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

22 (f) If the public body asserts that one or more requested records are ex-
23 empt from public disclosure, includes a statement that the requester may
24 seek review of the public body's determination pursuant to ORS 192.401,
25 **192.407**, 192.411, 192.415, 192.418, 192.422, 192.427 and 192.431.

26 (3)(a) If a public body has informed a requester of a fee permitted under
27 ORS 192.324 (4), the obligation of the public body to complete its response
28 to the request is suspended until:

29 (A) The requester has **requested an explanation of the basis for the**
30 **fee, in which case the suspension ceases until the public body has**
31 **provided an explanation to the requester that satisfies the require-**

1 **ments of ORS 192.324 (5)(d)(B);**

2 **(B) The requester has** paid the fee[,]; **or**

3 **(C) The fee has been waived by the public body pursuant to ORS 192.324**
4 **[(5)] (6)** or the fee otherwise has been ordered waived.

5 **(b) The public body shall close the request** if the requester fails to pay
6 the fee within 60 days of the **later of**:

7 **(A) The** date on which the public body informed the requester of the
8 fee[, *or fails to pay the fee within 60 days of*];

9 **(B) The** date on which the public body informed the requester of the de-
10 nial of the fee waiver[, *the public body shall close the request*]; **or**

11 **(C) The date on which the public body provided an explanation of**
12 **the basis for the fee to the requester.**

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

20 (b) If the requester fails to respond within 60 days to a good faith request
21 from the public body for information or clarification, the public body shall
22 close the request.

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

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

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

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

1 because:

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

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

6 (c) Of the volume of public records requests being simultaneously pro-
7 cessed by the public body.

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

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

15 **SECTION 3.** ORS 147.421 is amended to read:

16 147.421. (1) If a public body is the custodian of any of the following in-
17 formation, upon the request of the victim, the public body shall provide to
18 the victim any of the following information of which it is the custodian and
19 that is about the defendant or convicted criminal:

20 (a) The conviction and sentence;

21 (b) Criminal history;

22 (c) Imprisonment; and

23 (d) Future release from physical custody.

24 (2) A public body, in its discretion, may provide the requested information
25 by furnishing the victim with copies of public records. The public body may
26 charge the victim its actual cost for making public records available as
27 provided in ORS 192.324 [(4)] (5).

28 (3) As used in this section:

29 (a) "Criminal history" means a description of the prior arrests, con-
30 victions and sentences of the person.

31 (b) "Future release" means the projected or scheduled date of release of

1 the person from confinement, the name and location of the correctional fa-
2 cility from which the person is to be released and the community where the
3 person is scheduled to reside upon release.

4 (c) "Imprisonment" means the name and location of the correctional fa-
5 cility in which the person is confined.

6 (d) "Public body" has the meaning given that term in ORS 192.311.

7 **SECTION 4.** ORS 192.464 is amended to read:

8 192.464. (1)(a) The Public Records Advocate shall provide facilitated dis-
9 pute resolution services when requested by a person described in subsection
10 (2) of this section or by a state agency under the conditions described in
11 subsection (3) of this section.

12 (b) The Public Records Advocate may provide facilitated dispute resol-
13 ution services when requested by a person described in subsection (6) of this
14 section and a city.

15 (2) A person may seek facilitated dispute resolution services under this
16 section when seeking to inspect or receive copies of public records from a
17 state agency and the person:

18 (a) Has been denied access to all or a portion of the records being sought;

19 (b) Has been denied a fee waiver or reduction in fees after asserting under
20 ORS 192.324 [(5)] (6) that a fee waiver or reduction of fees is in the public
21 interest **or that another factor warrants waiver or reduction in fees**; or

22 (c) Received a written fee estimate under ORS 192.324 [(4)] (5) that the
23 person believes exceeds the actual cost to be incurred by the public body in
24 producing the requested records.

25 (3)(a) A state agency may seek facilitated dispute resolution services un-
26 der this section if, in response to a request for public records, the agency
27 asserts:

28 (A) That the records being sought are not public records;

29 (B) That the records being sought are exempt from mandatory disclosure;

30 or

31 (C) That the agency is, under ORS 192.324, entitled to the fees the agency

1 is seeking in order to produce the records being requested.

2 (b) A person seeking to inspect or receive copies of public records may
3 opt out of facilitated dispute resolution services being sought by a state
4 agency by giving written notice of the requester's election within five days
5 of the requester's receipt of the agency's request for facilitated dispute re-
6 solution. If written notice is given under this paragraph, the state agency
7 may not determine under subsection (4)(a) of this section that the person
8 seeking to inspect or receive copies of public records has failed to engage in
9 good faith in the facilitated dispute resolution process.

10 (4) Notwithstanding any other provision of ORS 192.311 to 192.478:

11 (a) The failure of a person seeking to inspect or receive copies of public
12 records to engage in good faith in the facilitated dispute resolution process
13 described in this section upon being authorized to do so under subsection (2)
14 of this section shall be grounds for the state agency to deny the request and
15 refuse to disclose the requested records.

16 (b) The failure of a state agency to engage in good faith in the facilitated
17 dispute resolution process described in this section after a public records
18 requester seeks facilitated dispute resolution services under subsection (2)
19 of this section shall be grounds for the award of costs and attorney fees to
20 the public records requester for all costs and attorney fees incurred in pur-
21 suing the request after a good faith determination under subsection (5) of
22 this section.

23 (5)(a) Either party to the facilitated dispute resolution may request that
24 the Public Records Advocate make a determination concerning whether a
25 party is acting in good faith for purposes of applying the remedies described
26 in subsection (4) of this section.

27 (b) A determination by the advocate that a party failed to engage in good
28 faith facilitated dispute resolution and an award of costs and attorney fees
29 are subject to review by the Circuit Court of Marion County as a proceeding
30 under ORS 183.484.

31 (6) In the case of a person seeking to inspect or obtain copies of public

1 records from a city, either the person seeking records or the city may seek
2 facilitated dispute resolution services under this section, but only if both the
3 person seeking records and the city agree to have the Public Records Advo-
4 cate facilitate resolution of the dispute and the advocate consents to facili-
5 tated resolution of the dispute. A dispute described in this subsection is not
6 subject to subsections (4) and (5) of this section.

7 (7) Facilitated dispute resolution shall be requested by submitting a
8 written request for facilitated dispute resolution and such other information
9 as may be required by the Public Records Advocate. Facilitated dispute re-
10 solution between parties shall be conducted and completed within 21 days
11 following receipt by the advocate of the request for facilitated dispute re-
12 solution. The facilitated dispute resolution period may be extended by
13 unanimous agreement among the public records requester, the public body
14 and the advocate.

15 (8) If the facilitated dispute resolution results in an agreement between
16 the public records requester and the state agency or city, the advocate shall
17 prepare a written document memorializing the agreement. The written
18 agreement shall be executed by the public records requester and an author-
19 ized representative of the state agency or city. The written agreement shall
20 control the resolution of the records request.

21 **SECTION 5.** ORS 802.183 is amended to read:

22 802.183. (1) The Department of Transportation may establish fees reason-
23 ably calculated to reimburse it for its actual cost in making personal infor-
24 mation available to a person or government agency authorized under ORS
25 802.179 to obtain the information. Fees established under this subsection are
26 subject to the provisions of ORS 192.324 [(4) to (6)] **(5) to (7)**.

27 (2) The department may adopt rules specifying conditions that must be
28 met by a person or government agency requesting personal information under
29 ORS 802.179. Such conditions may include but need not be limited to:

30 (a) Providing reasonable assurance of the identity of the requester;
31 (b) Providing reasonable assurance of the uses to which the personal in-

- 1 formation will be put, if applicable;
- 2 (c) Showing that the individual whose personal information is to be dis-
- 3 closed has given permission for the disclosure, if permission is required; and
- 4 (d) Submitting a written request for the personal information in a form
- 5 prescribed by the department.

6 _____