

PRAC Legislative subcommittee meeting 10/28/2022

Primary points for discussion and votes

- Definition of public interest
 - Should individual and indigent be considered in the public interest? (d-e)
 - Do we want public interest examples in statute? (a-c)
- Media fee reductions or waivers (5)(a-e)
 - Any proposed changes to language?
 - Is the non-media right to argue a request is in the public interest fee adequately retained?
- Individual records fee reductions or waivers (5)(f)
 - Any proposed changes to language?
- Indigent requesters fee reductions or waivers (5)(g)
 - Any proposed changes to language?
- Appeals to public interest determinations (6) Language suggested by Michael Kron to comport with suggested amendments to (5)

Strikethrough and bold indicate deletions and additions

Public interest definition

ORS 192.311 is amended to read:

(XX) “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; hold a public body accountable for wise spending or policy decisions;

(b) Advances the welfare or well-being of the general public; shed substantial light on the performance of a public official’s duties;

(c) Is likely to contribute significantly to public understanding of the operations or activities of government; reveal trends and emerging problems in issues of public health and public safety; expose harm to people whose welfare is the public body’s responsibility.

(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

(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).

Reductions and waivers

ORS 192.324 is amended to read:

(5) The custodian of a public record may furnish copies without charge or at a substantially reduced fee **for any reason, such as when** ~~if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public;~~ **the cost of fee collection would exceed the amount of the fee itself; a public body has established a policy for routinely waiving fees; a requester demonstrates indigence; 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 paragraph ‘e’ below) 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 requester in writing.**

[the following is adapted from 5 USC 552(a)(4)(A)(ii)]

- (e) **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.

- (f) If the custodian of a public record determines that 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.
- (g) If the custodian of a public record determines that 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 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.

Appeals:

From Michael Kron email to subcommittee Chair and Vice-chair:

I think very minor changes to ORS 192.324 (6) would be appropriate, given the changes we are proposing to (5).

(6) A requester who believes that ~~there has been an unreasonable denial of a fee waiver or fee reduction~~ **a public body has failed to comply with subsection (5) of this section** 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. The Attorney General, the district attorney and the court have the same authority **under this subsection** ~~in instances when a fee waiver or reduction is denied~~ as when inspection of a public record is denied.