

## Cost of public records access in Oregon

Issues of Concern/Problems to solve

Based on testimony and research of the PRAC Legislative Subcommittee, 2021-22

<b>Concern/Fear/Issue raised (Problems)</b>	<b>Affected parties</b>	<b>Possible solutions</b>
<p>1. Without fees, public bodies would be unable to limit the size and scope of requests that take up an unreasonable amount of staff time and agency resources, and may face an increase in periodic extreme requests/requestors who become harassing.</p>	<p>Public employees. Public record custodians across the board – agencies, employees – take a lot of time, resources Public/affects resource allocation if busy with records requests. Limited resources Requestors – if fees are a leverage, requestors are affected.</p>	
<p>2. Even after partial fee waivers, the price of accessing public records can be a significant barrier.</p>	<p>news organizations. Particularly smaller news organizations. individuals and non-media public-interest oriented organizations. General public/voters (anytime fee is a barrier) oversight and change through voting. Public employees through unions requests.</p>	
<p>3. Fees, cost estimates, and interpretation of “the public interest” to justify fee reductions vary widely, leaves significant, sometimes too much room for interpretation by public bodies, as does the methodology or</p>	<p>Media – “independent third oversight” – feels like too much discretion. Everyone who request records Public bodies are affected by the vagueness, by needing to take responsibility of interpreting the statute.</p>	<p>Possibly more accountability in making the decision to alleviate the discretion. May need better definitions, ie of public interest. Clarify statute so public bodies have better guidance.</p>

<p>justification agencies use to make these determinations.</p>		
<p>4. Interpretation of public interest is vague in current law, forcing public bodies to make decisions without adequate guidance.</p>	<p>Public bodies are affected by the vagueness, by needing to take responsibility of interpreting the statute.</p>	
<p>5. The fee appeals process is ineffective.</p>	<p>District attorneys Requestors – DA has no authority to compel Public bodies (must sue immediately/no time to negotiate) Courts – the process is shifted to them</p>	<p>(Concern about revising appeals process is not cost related)</p>
<p>6. It takes an excessive amount of time, resources and expertise to review documents. Drivers include electronic overall, new communication tools also - <del>emails in particular</del> - for non-releasable (sensitive PII) information and responsive information. Problem is becoming worse. <b>**one of the biggest drivers in costs **common problem even if found easily **messes up both ability to provide and to protect information</b></p>	<p>Government agencies Government workers Anyone who is paying the cost (gove thru fee waiver or requestor) Requestors – Other government workers who don't handle public record requests, for example IT, individual employees who may be asked to look for records</p>	<p>Any solution would need to work for tools in the future, and current modes of communication.  Segregate information would be best practice. Encrypt. Also could help simplify disclosure. (concern can't proof)  Way to work with requestor to see if a request is done/enough  Put more records online</p>
<p>7. It is sometimes difficult to determine which public body, or which</p>	<p>Requestors – sent in circles Responders. Ie city is asked for county records.</p>	<p>(Law already requires that there is a point of contact for prr in all agencies, and a policy. May just</p>

<p>section of one large agency, holds what records. (A single POC may not know where a record is.)</p>		<p>need to do it.) Civic education [not able to charge if do not post] Professionalized records staff/specialist?</p>
<p>8. Fees don't cover true costs of responding to records requests [don't know exact true costs] Are not making agencies whole in budget.</p>	<p>Agencies/budgets Citizens at large - if dollars are shifted to unbudgeted items, for example breaking story, or especially large request. Requestors/public bodies feel pressure and less inclined to waive/lower. [some say will never offer, bc of other costs]</p>	<p>Budget at state level/line item</p>
<p>9. People responsible for responding to public records requests often have other more primary duties. For example, the chair of a volunteer board or a mayor, whose primary responsibilities are governance, or a PIO, whose primary responsibility is communicating information or perspective that the agency wishes to share with the public. This is in contrast with the federal government approach, which professionalizes public record specialists.</p>	<p>Affect all parties, as discussed above.</p>	<p>(put more record online)</p>
<p>10. Some public bodies have limited or no budgets for routine good public record management practices,</p>	<p>Small agencies in particular. (unexpected most potent) Requestors</p>	<p>Regional solution?</p>

<p>such as legal reviews. (per legal example see #6/expertise on time)[low demand too?]</p>		
<p>11. Many public bodies don't have money in their budgets for public record management practices or infrastructure that could reduce the cost of compliance <b>long-term</b>, such as digitizing records and modernizing systems. [Water resources department – records still paper?] [DEQ testimony on large reduction in time/costs once modernized]</p>	<p>Small, also state. Requestors</p>	<p>State funds [match/competitive grants?] (archives provide good assistance/model*? Enhance?) May be one-off/or periodic...</p> <p>*more on program – free advice and services/all levels of gov. Have stored older records. Maintain retention schedules. Oregon Records Management Solution – HP spin off - “Content Manager” Pay per month/seat. Milwaukie helped pilot Back of house and public facing.</p> <p>PRA does education/beef up? Citizens and help agencies know options?</p>
<p>12. (Public records are a core service/function, widespread shared value worth communicating.) Some (certainly not all!!) public bodies see responding to public records requests as a burden? <del>distraction</del> cost driver, taking resources away from other important public services <del>from their core mission</del>. (Underfunded and over worked/measure</p>	<p>Agencies Requestors</p>	<p>Public body leadership brought on board/education of role</p> <p>Models for training for new officials already available (Mark cites) that encourages understanding of transparency and trust (need to go back to voters for requests)</p> <p>(how do you do a solution, particularly if there is such a range of agencies/some no all/what's the trigger in these terms “distraction/core service..” How would you measure and enforce anything? Officials need refresher/CE? Noting costs</p>

<p>5/budgets shrinking. Bigger problem than public records. Governments struggle to meet needs of citizens overall. In PRR, fees are the one leverage point you have. Not allowed to make money off it, just can meet real costs...</p>		<p>\$. Maybe a associations solution?)</p>
<p>13. Defining media (public interest) for the purposes of interacting with government is not appropriate in a democracy. Related to fees because of the “may” reduce fees issue. Fear of automatic reduction for media – others will claim. [unclear evidence. Challenge/pain point to judge “worth” of requestor, (media v. public/nonprofits) Unique in public service.] Public interest test is messy to begin with</p>	<p>Media Public Agencies Non profits who have public interest work/mission</p>	<p>Some states define media FOIA defines media – broadly [anyone right now in Oregon statute can argue for public interest waiver; also in PRA draft]</p>
<p>14. The public records law too often serves as the only access to people whose individual needs in a specific circumstance may be different from general public needs. Contested cases in front of agencies,</p>	<p>Affects people, more than agencies. Used to make claims about public record request numbers and costs. State licensing boards/might treat proof of licensure as records request. Child welfare/family law...lawyers for children funneled into the public records request framework. [Do they</p>	<p>Problem includes turning public record law into more than that. Comprehensive look – change laws in those contexts, allow access for those who need it. [Fee waiver for child/legal aid] [count separately] Would need a line where individual case stops and become general/unreasonable. If tiered</p>

<p>instead of discovery.</p>	<p>create log jams? For other requests? Police reports/licensure..] Incarcerated adults. Crime victims. Current or former staff/HR records. [Cheri/historically were thru HR, but now PRR bc have a system! She is folding them in. Individual looking for own records...and expands ie emails]          OSP gets lots/agency requests, civil litigation, agency hiring background checks.          effect on public interest / media requests? Affects the “expense of public records law” perception, when these other/individual services mixed in. Reveals the agencies underfundness across the board.</p>	<p>system of individual records let jump queue...if individuals get expedited access ie...what would the broad affects be.          Concerns of fairness/order?          Need to clear up the perception of cost.          Incentivize leaders to improve systems...including possible consideration of this specific issue.</p>
<p>15. Changes to law could shift costs in an unfunded way.</p>	<p>agency</p>	
<p>16. Lack of communication can cause problems that affect cost by not getting the right records or taking too much time.</p>	<p>All parties</p>	<p>Parameters in law? Data dictionaries? Required to help to get to clarity of records.</p>
<p>17. Lack of education about the process, how to make an appropriate response to the right place.</p>	<p>All parties</p>	