

This document (1) summarizes findings from testimony received by the PRAC Legislative subcommittee between Dec 2021 and Sept 2022; (2) identifies already discussed areas agreement, noting clarifications that are still required; (3) identifies the key area of substantial disagreement; (4) offers an alternative comprehensive approach; (5) lists relatively minor items proposed in strawman draft but not yet discussed; can fold into this alternative and (6) lists proposals made by subcommittee members that have been briefly discussed or not yet discussed.

For reference on subcommittee members comments on strawman draft, "Public records cost reform 2023 LC\_062122draft-REVISION2-090922.docx" is also included with this email and will be posted. That's Todd's draft including everyone's written comments and revisions from our 9/9/22 meeting.

For reference on findings, please see testimony and the Public Records Cost Concerns list "Public Records-Cost Concerns-post 080322 meeting"

## FINDINGS

1. Current fees don't cover the cost of fulfilling public records requests.
2. Fees are a useful instrument for agencies, in part to recover some costs, more significantly as an instrument to negotiate with requestors to narrow requests.
  - a. Broad requests that include emails are particularly challenging, because of the number of documents generated to review.
3. Both requestors and custodians have successful experiences narrowing broad or unclear requests through conversation.
4. Amounts of fees vary widely among public bodies.
5. Fees can be a significant barrier for non-commercial requestors.
6. Services charged for vary. Both requestors and custodians would like more clarity.
7. Determining public interest, which in current law can lead to a fee waiver, is inconsistent.
8. The fee appeals process is ineffective.
9. A number public bodies have efficient records management and response systems. Some public bodies employ specialists/experts in public records.
10. Small public bodies have particular challenges in covering costs of responding to public records requests.
11. Local governments are particularly strapped for public records funding, including modernization and digitization.
12. Access to public records is a cornerstone of democracy.

## **KEY AREAS OF SUBSTANTIAL AGREEMENT**

1. **Provide specific categories of work that public bodies may charge requestors for to recoup costs. No other fees may be established. OPTIONS OF CATEGORIES PROPOSED:**
  - a. Search, duplicate and review.

- b. Identify, locate, review, redact, duplicate, compile, and transmit requested records in response to the request; communicate with the requester to clarify the request; coordinate delivery of records to or review of the records by the requester.
2. **Public bodies may not charge more than the lowest hourly rate of staff member capable of processing request.** HIGHLIGHTED LANGUAGE AGREED; CLARIFICATIONS REQUIRED
  - a. Member or position?
  - b. Employment-related costs, such as payroll taxes and employee benefits?
3. **Clarify that public bodies must post their public records policy, on their website if they have one; if no website, in a publicly available space if such a space is available, and made available upon request. Add that a public body is not permitted to recoup costs from a requester if the amounts of and the manner of calculating fees is not in policy and policy is not posted. Include education grace period.** HIGHLIGHTED LANGUAGE AGREED; CLARIFICATIONS REQUIRED
  - a. Is publicly available space physical? Or, for example, social media?
  - b. Duration of educational grace period; start date of enforcement.
4. (Not discussed in detail but significant agreement): It's appropriate for the state to support public records management/release for local government bodies.

#### **CRITICAL AREA OF SUBSTANTIAL CHALLENGE**

1. **Identify categories of requestors for the purposes of charging different fees.** This is challenging for a number of reasons, including uncertainty about defining media, uncertainty of the impact of waiving fees for an individual seeking own records, and preference to retain the public interest test for fee waivers as a more democratic and transparent approach.  
NEW RECOMMENDATION:
  - **Retain the public interest test for fee waivers or reductions.**
  - **Make fee reductions or waivers “shall” not “may” when a request is found to be in the public interest; provide a minimum standard waiver.**
  - **Continue to allow any requestor to make a public interest case; clarify media as defined by ORS 44.510 to 44.520 as automatically serving the public interest.**
    - ALT: use the FOIA definition of media
  - **When denying public interest, require public bodies to include reasons/rationale in written denial.**
    - These could be publicly shared, possibly through the PRA or AGs office, to build shared understanding across agencies and requestors.
  - **If public interest denial is contested, and if requester demonstrates that the waiver primarily benefits the public, the AG or DA shall issue an order of partial or total fee waiver.**
    - **The AG or DA’s determination will weigh the benefits of disclosure against any impact that a fee waiver would have on the delivery of other public services.**

- **Clarify that public bodies may reduce or waive fees for reasons other than the public interest, if they see fit. Some examples might include for efficiency, for certain commonly requested or easily retrievable records, for individuals requesting their own records, for people below a certain income threshold.**
  - **Must be included in public policy**
- **Require requestors and public bodies to work together actively and in good faith to narrow requests that public bodies find overly broad. Define steps to the extent possible/reasonable. (For example, being specific in request to narrow; providing key words for emails, etc.)**
- **Require the PRA to provide guidance for public bodies to document harassing, intimidating, or otherwise extreme requests, require the PRAC to review and make recommendations to PRA or legislature for handling such requests, provide timeline.**

NOT YET DISCUSSED FROM STRAWMAN DRAFT (relatively minor)

1. Mandatory fee waivers for a given amount of initial work for all non-commercial requests, for example the first 30 minutes or a certain amount of documents.
2. Fee estimates and deposits, including timing, allowed conditions and circumstances.
3. Fees disallowed in certain circumstances, such as exceeding statutory time limits to fulfill requests or if processing/collecting the fee is likely to exceed the amount collected.
4. Deduping
5. Closing requests
6. Clarifying that data dictionaries, metadata etc. are public records and may be routinely requested.
7. Including in legislation recommendations for future legislative action

OTHER PROPOSALS MADE BY PRAC MEMBERS

1. **VOLUNTEER WORK:** 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 volunteer at an hourly rate not to exceed the then-applicable minimum hourly wage in the state of Oregon.
2. **FUTURE PLANNING:** Transparency by Design task force including specialists not on the PRAC
3. **STATE SUPPORT FOR LOCAL GOVERNMENTS:** Grant program funded by state to digitize records
4. **SURCHARGE SUPPORT FOR LOCAL GOVERNMENTS:** Impose a surcharge beyond recouping costs on commercial requests; use money to fund local agencies needs through a grant or such program.
5. **PROFESSIONALIZING THE RANKS:** Offer recognition to staff who are trained as public records responders; incentivize ongoing and in-depth training.

