

Potential agreement areas outside the public interest test

ACTIVITIES FOR WHICH FEES CAN BE CHARGED

ORS 192.324(4)(a) is amended to read:

(4)(a) The public body may establish fees reasonably calculated to reimburse the public body for **up to** the public body's actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, **to search, duplicate, and review public records** to meet the request.

For purposes of this section:

- **"Search" means looking for and retrieving physical or digital records responsive to a request.**
- **"Duplicate" means making a physical or digital copy of a record. Copies can be paper documents, taped or digital audio and video recordings, emails, database files, electronic text files or other record storage formats.**
- **"Review" means reading a record to locate content the public body considers exempt from disclosure and redacting material to which an exemption is applied. Review does not include an attorney's time spent determining whether an exemption may pertain to material or whether the exemption should be applied. Review costs are recoverable even if a record ultimately is not disclosed.**

The public body shall conduct each of these activities in the least expensive manner reasonably possible.

A public body shall not charge more than the hourly compensation rate of its lowest-paid employee capable of searching for, duplicating, or reviewing the public records in the particular instance, regardless of who actually performs the labor.

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 a volunteer at an hourly rate not to exceed the then-applicable minimum hourly wage in the state of Oregon.

HOW COSTS MUST BE ITEMIZED

ORS 192.324 is amended to include (somewhere):

The fee components of searching, duplicating, and reviewing shall be itemized for the requester in a fee estimate before payment of the fees is sought, as well as in a final statement listing actual costs of completing the records request.

Estimates and statements shall include: a) the number of hours worked in each of the activities of search, duplication and review; and b) the hourly compensation rate of the lowest-paid employee who was capable of each activity of search, duplication or review of the public records in the particular instance, regardless of who actually performs the labor.

Commented [SS1]:

From current AG manual: "Actual cost" also may include the cost of time spent by the public body's attorney reviewing and redacting, although the cost of the attorney's time spent determining the application of the Public Records Law is not recoverable."

Commented [SS2]: Todd's version had "wage" — not clear if this is current case law or not. Tyler would like to see benefits included.

COMMUNICATION TO REDUCE COSTS

ORS 192.329 (4)(a) is amended to read:

(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) The above paragraph notwithstanding, if a requester is asked to clarify a request, the requester may inquire about how the public body organizes its records. The public body shall in good faith provide the requested information or inform the requester it is declining to do so. After providing this response, the public body may suspend its response to the request until the requester provides clarification or affirmatively declines to do so.

(c) For public records requests that include email, a public body shall work in good faith with a requester to establish time periods and keywords that may narrow a search for responsive records. A public body upon request may offer, for example, to provide a log of the responsive records revealing only email dates, senders, recipients and subject lines to help the requester narrow a public records request for full email content.

(d) For public records requests that include a database, spreadsheet or other structured data, a public body shall work in good faith with a requester to provide the following descriptive documentation, when it exists, that may help to narrow a request: a data dictionary or record layout containing items such as table and field names, table and field descriptions, and field formats; a manual of how to operate the database system; blank forms from which a responsive database is compiled; other information that may help a requester understand the contents of a database and narrow the request.

COMMUNICATION TO PROMOTE REQUESTER'S RIGHTS

Paraphrased existing 192.324(7)(a), with boldface for proposed additions

A public body shall make available to the public **on its website, or by request if no website exists**, a written procedure for public records requests including: a) the name and address of a person to whom requests may be submitted; and b) the way in which the public body calculates fees when answering records requests.

A public body that fails to make such information available to the public may not establish a fee for completing a public records request. (Effective date for this Jan. 1, 2025)

WAIVERS FOR PERSONAL RECORDS

A public body shall furnish records without charge or at a substantially reduced amount if: the requester is the record's primary subject or the primary subject's legal guardian, or; the requester is indigent and the requested record can reasonably be expected to affect a legal right of the requester, unless:

- the record requested is prepared under a statute, ordinance or administrative rule specifically authorizing the sale of the record to the public;
- the amount of the fee for providing a copy of the public record is otherwise specifically provided by a statute, ordinance or administrative rule; or
- providing the records at no or substantially reduced cost substantially prejudices or prevents the carrying out of the functions of the public body.

Added by TA on 10/14/22

Not covered in Steve's concept:

192.324(4)(a) **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.**

192.324(b)(C) **Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down**

192.329(4)(d)[*as numbered in my version*] 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.