

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. *strike out compensation rate insert WAGE*

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.

strike out "then" and insert "current" - allows for any future change without invalidating that code section

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.

Comment to SS2: Generally speaking, hourly wage/ rate is inclusive of benefits. If an employee is paid \$ 18.01 per hour having a yearly salary of \$ 37,460, after deductions of FICA, SUTA, Work Comp and other benefits such as Retirement & Health Benefits packages the yearly wage is reduced to \$ 30,613.44 or 14.7177 per hour cash take home pay.

Further still any government employment contract application always has "other assigned duties" meaning under this instance, if a public body did not have a sole source employee for fulfilling records requests, that would fall on the "lowest paid employee hourly wage"

Therefore the issue of whether or not hourly wage includes FICA, SUTA, Work Comp, Retirement & Health Benefits packages are standard employment deductibles FROM the hourly/yearly salary.

Or IS IT the intent of this esteemed Advisory Committee that fulfilling a records request is an "other assigned duty" falling outside the standard realm of employment and is therefore subject to hourly wage after deductions. You try telling a union worker that standby hourly pay rate will be reduced by the amount equal to deductions for those hours and that that reduced hourly pay will have standard deductions based upon that reduced hourly rate. Or more pointedly: The Governor says: All the hours spent in Zoom meetings crafting the "Fee" issue, your hourly pay rate WILL NOT be calculated at full rate but at a reduced deductible rate with a second round of deductions based upon that reduced hourly rate. - Double Taxation

WAGE

strike out compensation rate insert WAGE



"was" is past tense.

"is" current & future tense

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.~~

A

(4)(b)

Delete: The first part of first sentence to the comma, and the word "the" and last sentence beginning with "After"

Technically, "how the public body organizes its records" is a structural issue and would constitute a side-bar request not germane to the original records request.

Furthermore, the Organizational Structure of Records can constitute a separate and distinct request for information unrelated to the actual nature and ultimate request and should be a non-billable records request.

Moreover, the Records Organizational Structure is a Policy/Practice/Procedure Issue of the public body and should be made part of the mandatory Records Request Policy. To this extent if the Organizational Structure of Records is not included in the Records Request Policy, the public body should be barred from charging fees, and is a mandatory requirement: SEE 192.001, 192.018 - amend 192.018 to include "political subdivision".

(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.

"email" should be plural "emails"

(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)



Proposed re-write: "A public body shall make available to the public by posting an electronic copy on its website and by posting a hard copy in a conspicuous place in the office where the public has access. The public body shall make available the full written policy/procedure for transparency including . . .[keep "a) and b)"]. Insert New Last Sentence: This Public Records Policy shall be supplied to the requester at no cost. (Effective Date Jan 1, 2024)

(4)(d) A Database Operation Manual could pose a security breach or risk. Examples: Wastewater Treatment Plant's treatment procedure; a financial data input manual. However, the overall Policy Manual of Operations (chain of command, generalized steps of protocol). . .would appear not to create a security breach. SEE: 192.345(15)

Reduce time frame for compliance to 2024 to coincide with revised/new implementation in 2024 of 192.345

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.

WHO IS "MY"
 Document Properties may not necessarily convey WHO the originating author was of the concept.
 Proper Noun Identification is an important consideration when working as a Team meshing together concepts, concerns, ideologies and aspects.

Proposed restructure:
 "if the Requester is:
 a) primary subject, or
 b) legal guardian, or
 c) indigent or establish income threshold below poverty level, or
 d) the requested record can reasonably be expected to affect a legal right

would clarify If a public body has a Records Request Policy identifying set fees, that the public body (city) can not include a county wide fee charge. There should also be an Exemption/Exception of reduced or waived if indigence status is proven

Suggested Re-Write:
 * providing the records at no or substantially reduced costs would prejudice the public body by preventing or disrupting the daily flow of operations based on the nature of and fulfillment the request including but not limited 2 or more hours, volume of requests
 SEE 192.329(6 a-c), (7),(8)

Need Clarifications: This appears to be a court of record determination what the actual costs are, would or should be.

This is a calculation issue and should be placed under the 10-14-2022 ORS 192.324 found on Pg 4 of 9

2021 ORS 192.329(4)(b) states 60 days for the requester to reply to the public body's response. 192.329(5) mandates the public body has to acknowledge the request within 10 days.

This 10-day threshold should be the standard for the requestors' reply - it places both the public body and requestor on an equal time frame footing for response & reply