

GUIDE TO THIS DOCUMENT:

Plain text shows current law

~~Strikethrough~~ and **bold** indicate ~~deletions~~ and **additions**

192.324 Copies or inspection of public records; public body response; fees; procedure for records requests. (1) A public body that is the custodian of any public record that a person has a right to inspect shall give the person, upon receipt of a written request:

- (a) A copy of the public record if the public record is of a nature permitting copying; or
- (b) A reasonable opportunity to inspect or copy the public record.

(2) If an individual who is identified in a public body’s procedure described in subsection (7)(a) of this section receives a written request to inspect or receive a copy of a public record, the public body shall within five business days after receiving the request acknowledge receipt of the request or complete the public body’s response to the request. An acknowledgment under this subsection must:

- (a) Confirm that the public body is the custodian of the requested record;
- (b) Inform the requester that the public body is not the custodian of the requested record; or
- (c) Notify the requester that the public body is uncertain whether the public body is the custodian of the requested record.

(3) If the public record is maintained in a machine readable or electronic form, the public body shall provide a copy of the public record in the form requested, if available. If the public record is not available in the form requested, the public body shall make the public record available in the form in which the public body maintains the public record.

ORS 192.324 4(a) is amended to read:

(4)(a) Upon compliance with subsection (7) 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 make the records available and** meet the request.

For purposes of this section:

- (A) “Search” means looking for and retrieving physical or digital records responsive to a request.**
- (B) “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.**
- (C) “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 the applications of the provisions of ORS 192.311 to ORS 192.478**
 - (i) Review costs are recoverable even if a record ultimately is not disclosed.**
- (D) 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 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.**
- (E) 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.

~~(b) The public body may include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records. The public body may not include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in determining the application of the provisions of ORS 192.311 to 192.478.~~

(eb) The public body may not establish a fee greater than \$25 under this section unless the public body first provides the requester with a written notification of the estimated amount of the fee and the requester confirms that the requester wants the public body to proceed with making the public record available.

(c) **A requester who has been notified of a fee under ORS 192.324(4) may request an explanation from the public body as to the basis of the fee, in which case the public body shall provide an explanation of its estimated costs for completing its response to the request. An explanation prepared under this section shall include sufficient detail to permit a reasonable person to understand the amount and purpose of each portion of the estimated fee. A public body shall work in good faith with a requester who seeks to narrow a request in order to reduce a fee.**

(d) **Notwithstanding ORS 192.329(3), the obligation of the public body to complete its response to the request is not suspended until the public body provides any explanation required by subsection (4)(c).**

~~(d)~~(e) Notwithstanding paragraphs (a) to (eb) of this subsection, when the public records are those filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees for furnishing copies, summaries or compilations of the public records are the fees established by the Secretary of State by rule under ORS chapter 79 or ORS 80.100 to 80.130.

ORS 192.324 (5) 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 determines that the public interest in disclosure is outweighed by the substantial prejudice or prevention of a public body's ability to carry out the other functions of the public body.**

(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 in disclosure is outweighed by the substantial prejudice or prevention of a public body's ability to carry out the other functions of the public body, the custodian shall provide the reason for this determination to the requester in writing.**
- (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.**

ORS 192.324 (6) is amended to read

(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.

ORS 192.324 (7) is amended to read:

- (7) A public body shall make available to the public **on its website, or if the public body does not have a website, in a publicly available space if such a space is available and by** ~~make available upon~~ request, a written procedure for making public records requests that includes:
- (a) The name of one or more individuals within the public body to whom public records requests may be ~~sent~~ **made, how to contact that individual and make a request** with addresses; and
 - (b) The amounts of and the manner of calculating fees that the public body charges for responding to requests for public records.
- (c) **A public body that fails to make such information available to the public may not**

establish a fee for completing a public records request.