**To:** Public Records Advisory Council Legislative Subcommittee

**From:** Todd Albert, Public Records Advocate

**Date:** June 14, 2022

**Subject:** First draft of ideas to reform how costs are assessed and collected under the Oregon

Public Records Law ([ORS Chapter 192](https://www.oregonlegislature.gov/bills_laws/ors/ors192.html))

1. **LC/BILL:** needs narrow relating clause
2. **GOALS**
   * Reduce costs for requesters;
   * Preserve the ability of public bodies to charge fees and determine when to offer fee waivers or reductions;
   * Improve and increase communication between records custodians and requesters as normal part of public records request and disclosure process;
   * Clarify terms and processes;
   * Incentivize public body leadership to better fund public records systems/staff, etc.; and
   * Respond to feedback from District Attorney’s Association
3. **FEES**
4. **Establishing costs**

* Revise [ORS 192.324(4)(a)](https://www.oregonlegislature.gov/bills_laws/ors/ors192.html):

The public body may establish fees reasonably calculated to reimburse the public body for **up to** the actual cost to **search, duplicate and review** public records for the purpose of making them available upon request. No other fees may be established.

* Must waive at least the first x (30?) minutes (may combine requester’s requests over x amount of time (30 days?) to consider as “one” request for this purpose)
* Must waive first x amount of pages (100?) (may combine requester’s requests over x amount of time (30 days?) to consider as “one” request for this purpose)
* When determining up to actual cost, should ORS chapter 192 define hourly rate at all and, if so, as based only on salary or salary + benefits?
* No fee to transfer records electronically.
* May charge fee for actual cost of external media (e.g., flash drives).
* A deposit in an amount **not to exceed 25% of the estimated cost** of making requested public records available may be demanded at the time a fee estimate is provided if the public body provides along with a fee estimate:

1. An inventory of responsive records and asserts any exemptions from disclosure that the public body believes apply to any requested records; and
2. If the public body cites [ORS 192.355 (8) or (9)](https://www.oregonlegislature.gov/bills_laws/ors/ors192.html) as the basis for an exemption, identifies the state or federal law that the public body relied on in asserting the exemptions along with the fee estimate.

This is the only way in which a public body may demand a deposit.

* The public body may close the request after making a demand for a deposit if:

1. The requester does not accept and pay the required percentage of the estimated fee within 60 days; or
2. The requester does not negotiate in good faith with the public body to reduce the proposed fee after a fee estimate has been provided.

* Paper records
* No charge for up to x pages (100?) (may combine requester’s requests over x amount of time (30 days?) to consider as “one” request for this purpose).
* After that, set amount per page (e.g. like other states or at 25 cents per page as per OR counties/[ORS 205.320(1)(d)(B)](https://www.oregonlegislature.gov/bills_laws/ors/ors205.html)).

1. **Requester tiers – charging requesters based on who they are**

* Requester tiers for charging up to actual cost:
  + - * Commercial: document search, duplication, and review.
* Media is not commercial.
  + - * Media, public interest (affects community, requester has platform to disseminate), educational, non-commercial scientific institution: duplication.
      * General: search and duplication.
* However, may only charge up to the actual cost of duplication for in-person inspection of records.

1. **Additional requirements**

* For each category of records response preparation (search, duplicate, review) public body must utilize lowest class & comp staff member available capable of processing request.
* No fee for a public body to provide fee estimate.
* No fee for requester’s own files or records.
* No fee if public body exceeds 15 business days to complete a request unless the public body has communicated an updated time estimate to requester.
* No fee if routine collection and processing of the fee is likely to equal or exceed the amount of the fee.
* Public body may remove redundant electronic records (like deduping in discovery) at no cost to requester if process is agreed to by requester. Requester may request to receive duplicate records at the appropriate cost.
* Expand [ORS 192.329(4)](https://www.oregonlegislature.gov/bills_laws/ors/ors192.html):

1. For requests for email, structured data, and metadata, public body to work with requester to establish record custodians, timeframes, key words/search terms and to provide data dictionaries where applicable. Where public body has appropriate search technology, the public body is obligated to provide all available, non-confidential metadata and field definition information for requester to understand names, titles, field listings, definitions of those fields, terms, headings, systems, processes, forms, etc. relevant to request.
2. 60-day time frame to close request due to non-responsive requester after public body request for clarification does not begin to run for the types of records requested in (a) until public body has offered to establish the categories of information denoted in (a).
3. Requester is obligated to communicate in good faith with public body for the types of records requested in (a) to establish the categories of information denoted in (a). Otherwise, public body may close request after 60 days.

* Expand [ORS 192.324(7)](https://www.oregonlegislature.gov/bills_laws/ors/ors192.html) to include that a public body must post their public records policy on website (if they have one) as well as being required to post it “publicly”. Also, a public body is not permitted to recoup costs from a requester if how the amounts of and the manner of calculating fees is not in policy and policy is not posted.
* Fees may be recouped for request that does not disclose responsive records, except:
* No fee may be charged for a record request that does not disclose responsive records if the public body and requester engaged in good faith in the process described in the expanded ORS 192.329(4).

1. **FEE WAIVERS AND REDUCTIONS**
   * List factors for determining when to waive or reduce fees as “including but not limited to …”, e.g., community affected, ability to disseminate to that community, # of requests by requester over specified amount of time, etc.
   * If (1) requester is a member of the media, (2) public body determines request is in the public interest, or (3) for any other reason of the public body’s choosing and public body has at least one full or principally dedicated FTE for processing public records requests:

* Public body shall waive or reduce fees by at least 25%.
* If (1) requester is a member of the media, (2) public body determines request is in the public interest, or (3) for any other reason of the public body’s choosing and public body does not have at least one fully or principally dedicated FTE for processing public records requests:
* Public body shall waive or reduce fees by at least 25% if request does not exceed certain level/scope; and
* Public body may waive or reduce for all other instances.

1. **EXPAND PUBLIC BODY TIME TO APPEAL**

* Amend ORS [192.411(2)](https://www.oregonlegislature.gov/bills_laws/ors/ors192.html) to increase time period from 7 calendar days to 10 business days to give public bodies more time to negotiate disposition after adverse DA/AG order rather than being compelled to file a lawsuit against the requester to preserve its rights.

1. **EXPAND DA/AG TIME TO ADJUDICATE A PUBLIC RECORDS APPEAL**

* Amend ORS [192.411(1)](https://www.oregonlegislature.gov/bills_laws/ors/ors192.html) and ORS 192.418(1) from 7 calendar days to 15 business days.

1. **ROUND 2 LEGISLATION?**
2. Organization and accessibility of records
3. Centralized funding/state-administered grants
4. Centralized records officers for small public bodies at state and local levels