

Requested by Senator THATCHER

**PROPOSED AMENDMENTS TO
SENATE BILL 417**

1 On page 1 of this printed bill, line 2, after “192.329,” insert “192.411,
2 192.418,”.

3 Delete lines 4 through 25 and delete pages 2 through 7 and insert:

4 **“SECTION 1.** ORS 192.324 is amended to read:

5 **“192.324. (1) As used in this section:**

6 **“(a) ‘Duplicate’ means to make a physical or digital copy of a re-**
7 **cord, including but not limited to a paper copy, an audio or digital tape**
8 **or file, an item of electronic mail, a database file, an electronic text**
9 **file or a record in any storage format.**

10 **“(b) ‘Review’ means:**

11 **“(A) Summarizing, compiling or tailoring a record; or**

12 **“(B) Reading, listening to, viewing or watching a record to locate**
13 **content that the public body considers exempt from disclosure and**
14 **redacting material in order to apply an exemption.**

15 **“(c) ‘Search’ means looking for and retrieving physical or digital**
16 **records responsive to a public records request.**

17 **“[(1)] (2) A public body that is the custodian of any public record that a**
18 **person has a right to inspect shall give the person, upon receipt of a written**
19 **request:**

20 **“(a) A copy of the public record if the public record is of a nature per-**
21 **mitting copying; or**

1 “(b) A reasonable opportunity to inspect or copy the public record.

2 “[2] (3) If an individual who is identified in a public body’s procedure
3 described in subsection [(7)(a)] (8)(a) of this section receives a written re-
4 quest to inspect or receive a copy of a public record, the public body shall
5 within five business days after receiving the request acknowledge receipt of
6 the request or complete the public body’s response to the request. An ac-
7 knowledgment under this subsection must:

8 “(a) Confirm that the public body is the custodian of the requested record;

9 “(b) Inform the requester that the public body is not the custodian of the
10 requested record; or

11 “(c) Notify the requester that the public body is uncertain whether the
12 public body is the custodian of the requested record.

13 “[3] (4) If the public record is maintained in a machine readable or
14 electronic form, the public body shall provide a copy of the public record in
15 the form requested, if available. If the public record is not available in the
16 form requested, the public body shall make the public record available in the
17 form in which the public body maintains the public record.

18 “[4)(a)] (5)(a) **Upon compliance with subsection (8) of this section,**
19 the public body may establish fees reasonably calculated to reimburse the
20 public body for **up to** the public body’s actual cost [*of making public records*
21 *available, including costs for summarizing, compiling or tailoring the public*
22 *records, either in organization or media, to meet the request]* **to search, du-**
23 **PLICATE AND REVIEW PUBLIC RECORDS IN ORDER TO MAKE THE RECORDS AVAIL-**
24 **ABLE TO THE REQUESTER.**

25 “(b) The public body may include in a fee established under paragraph (a)
26 of this subsection the cost of time spent by an attorney for the public body
27 in reviewing the public records, redacting material from the public records
28 or segregating the public records into exempt and nonexempt records. The
29 public body may not include in a fee established under paragraph (a) of this
30 subsection the cost of time spent by an attorney for the public body in de-

1 terminating the application of the provisions of ORS 192.311 to 192.478.

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

7 **“(B) A requester who has received a notification of the estimated**
8 **amount of the fee under this paragraph may request an explanation**
9 **from the public body as to the basis for the fee. If an explanation is**
10 **requested, the public body shall provide an explanation to the re-**
11 **quester of the estimated costs for completing the public body’s re-**
12 **sponse to the request that is in sufficient detail to permit a reasonable**
13 **person to understand the amount and purpose of each component of**
14 **the estimated fee. The public body shall work in good faith with a re-**
15 **quester who seeks to narrow a request in order to reduce a fee.**

16 **“(C) If a requester seeks an explanation for the basis of the fee**
17 **under this paragraph, the public body shall respond as soon as is**
18 **practicable but in no event later than five business days from the date**
19 **the requester seeks an explanation, unless the requester consents to**
20 **an extension offered by the public body. The period of time between**
21 **when a requester seeks an explanation for the basis for the fee and the**
22 **response by the public body may not be taken into account in deter-**
23 **mining when a public body is obligated to respond to a requester under**
24 **ORS 192.329.**

25 “(d) Notwithstanding paragraphs (a) to (c) of this subsection, when the
26 public records are those filed with the Secretary of State under ORS chapter
27 79 or ORS 80.100 to 80.130, the fees for furnishing copies, summaries or
28 compilations of the public records are the fees established by the Secretary
29 of State by rule under ORS chapter 79 or ORS 80.100 to 80.130.

30 “[5] **(6)(a)** The custodian of a public record may **for any reason** furnish

1 copies without charge or at a substantially reduced fee [*if the custodian de-*
2 *termines that the waiver or reduction of fees is in the public interest because*
3 *making the record available primarily benefits the general public*].

4 **“(b) A requester may request a waiver or a substantial reduction**
5 **of the fee associated with the public records request on the basis that**
6 **the waiver or substantial reduction is in the public interest. If the**
7 **custodian determines that waiver or substantial reduction of the fee**
8 **is in the public interest, the custodian shall grant the waiver or sub-**
9 **stantial reduction of the fee.**

10 **“(c) The custodian shall weigh all relevant factors in determining**
11 **whether a waiver or substantial reduction of a fee is in the public in-**
12 **terest and, in the case of a substantial reduction of a fee, the amount**
13 **by which to reduce the fee. The factors to be weighed under this par-**
14 **agraph include, but are not limited to:**

15 **“(A) Whether the request is in the public interest because disclo-**
16 **sure primarily benefits the general public;**

17 **“(B) Whether a requester is a member of the news media, without**
18 **regard to whether the request benefits the general public;**

19 **“(C) Whether the requester has the ability to meaningfully dissem-**
20 **inate the requested information;**

21 **“(D) Whether waiving or substantially reducing the fee would cre-**
22 **ate an articulable and substantial burden on the public body; and**

23 **“(E) Whether, if fulfillment of the request would create an**
24 **articulable and substantial burden on the public body, the requester**
25 **and the public body have worked together in good faith to attempt to**
26 **reduce the burden on the public body.**

27 **“(d) If the public body denies a request for a waiver or substantial**
28 **reduction of the fee associated with the public records request, the**
29 **public body shall provide a written explanation of the denial.**

30 **“[(6)] (7)(a) A requester who believes that there has been an unreasonable**

1 denial of a fee waiver or fee reduction may petition the Attorney General
2 or the district attorney **to challenge the denial of a fee waiver or fee**
3 **reduction** in the same manner as a requester who petitions when inspection
4 of a public record is denied under ORS 192.311 to 192.478. The Attorney
5 General, the district attorney and the court have the same authority in in-
6 stances when a fee waiver or reduction is denied as when inspection of a
7 public record is denied. **The authority of the Attorney General, the dis-**
8 **trict attorney or the court includes the authority to order a fee waiver**
9 **or reduction, either in a particular amount or percentage of reduction,**
10 **or with instruction to the custodian on how to determine the partic-**
11 **ular amount or percentage of reduction.**

12 “(b) The Attorney General, the district attorney or the court shall
13 conduct a de novo review of the public body’s denial of a fee waiver
14 or fee reduction, weighing all relevant factors including, but not lim-
15 ited to, the factors described in subsection (6) of this section.

16 “(c) The Attorney General or district attorney shall determine to
17 wholly or partially grant or deny a petition made under this subsection
18 within 15 days of the date the petition is received by the Attorney
19 General or district attorney, except that the 15-day time period may
20 be extended by agreement between the petitioner and the public body.

21 “[7] (8)(a) A public body shall make available to the public a written
22 procedure for making public records requests that includes:

23 “[a] (A) The name of one or more individuals within the public body to
24 whom public records requests may be sent, with addresses; and

25 “[b] (B) The amounts of and the manner of calculating fees that the
26 public body charges for responding to requests for public records.

27 “(b) The written procedure described in paragraph (a) of this sub-
28 section shall be made available:

29 “(A) On the public body’s website; or

30 “(B) If the public body does not have a website, at a publicly ac-

1 **cessible physical space, if available, and also upon request to a re-**
2 **quester.**

3 **“(c) A public body that fails to make the written procedure de-**
4 **scribed in this subsection available to the public in conformance with**
5 **this subsection may not establish and charge fees for completing a**
6 **public records request.**

7 “[8] (9) This section does not apply to signatures of individuals submit-
8 ted under ORS chapter 247 for purposes of registering to vote as provided in
9 ORS 247.973.

10 **“SECTION 2.** ORS 192.329 is amended to read:

11 “192.329. (1) A public body shall complete its response to a written public
12 records request that is received by an individual identified in the public
13 body’s procedure described in ORS 192.324 as soon as practicable and without
14 unreasonable delay.

15 “(2) A public body’s response to a public records request is complete when
16 the public body:

17 “(a) Provides access to or copies of all requested records within the pos-
18 session or custody of the public body that the public body does not assert
19 are exempt from public disclosure, or explains where the records are already
20 publicly available;

21 “(b) Asserts any exemptions from disclosure that the public body believes
22 apply to any requested records and, if the public body cites ORS 192.355 (8)
23 or (9), identifies the state or federal law that the public body relied on in
24 asserting the exemptions;

25 “(c) Complies with ORS 192.338;

26 “(d) To the extent that the public body is not the custodian of records
27 that have been requested, provides a written statement to that effect;

28 “(e) To the extent that state or federal law prohibits the public body from
29 acknowledging whether any requested record exists or that acknowledging
30 whether a requested record exists would result in the loss of federal benefits

1 or imposition of another sanction, provides a written statement to that ef-
2 fect, citing the state or federal law that the public body relies on, unless the
3 written statement itself would violate state or federal law; and

4 “(f) If the public body asserts that one or more requested records are ex-
5 empt from public disclosure, includes a statement that the requester may
6 seek review of the public body’s determination pursuant to ORS 192.401,
7 **192.407**, 192.411, 192.415, 192.418, 192.422, 192.427 and 192.431.

8 “(3)(a) If a public body has informed a requester of a fee permitted under
9 ORS 192.324 [(4)] **(5)**, the obligation of the public body to complete its re-
10 sponse to the request is suspended until:

11 “**(A)** The requester has paid the fee[,]; **or**

12 “**(B)** The fee has been waived by the public body pursuant to ORS 192.324
13 [(5)] **(6)** or the fee otherwise has been ordered waived.

14 “(b) **The public body shall close the request** if the requester fails to
15 pay the fee within 60 days of the **later of:**

16 “**(A)** **The date on which the public body informed the requester of the**
17 **fee[, or fails to pay the fee within 60 days of];**

18 “**(B)** **The date on which the public body informed the requester of the**
19 **denial of the fee waiver[, the public body shall close the request]; **or****

20 “**(C)** **The date on which the public body provided an explanation of**
21 **the basis for the fee to the requester.**

22 “(4)(a) A public body may request additional information or clarification
23 from a requester of public records for the purpose of expediting the public
24 body’s response to the request. If the public body has requested additional
25 information or clarification in good faith, the public body’s obligation to
26 further complete its response to the request is suspended until the requester
27 provides the requested information or clarification or affirmatively declines
28 to provide that information or clarification.

29 “(b) If the requester fails to respond within 60 days to a good faith re-
30 quest from the public body for information or clarification, the public body

1 shall close the request.

2 “(5) As soon as reasonably possible but not later than 10 business days
3 after the date by which a public body is required to acknowledge receipt of
4 the request under ORS 192.324, a public body shall:

5 “(a) Complete its response to the public records request; or

6 “(b) Provide a written statement that the public body is still processing
7 the request and a reasonable estimated date by which the public body expects
8 to complete its response based on the information currently available.

9 “(6) The time periods established by ORS 192.324 and subsection (5) of this
10 section do not apply to a public body if compliance would be impracticable
11 because:

12 “(a) The staff or volunteers necessary to complete a response to the public
13 records request are unavailable;

14 “(b) Compliance would demonstrably impede the public body’s ability to
15 perform other necessary services; or

16 “(c) Of the volume of public records requests being simultaneously pro-
17 cessed by the public body.

18 “(7) For purposes of this section, staff members or volunteers who are on
19 leave or are not scheduled to work are considered to be unavailable.

20 “(8) A public body that cannot comply with the time periods established
21 by ORS 192.324 and subsection (5) of this section for a reason listed in sub-
22 section (6) of this section shall, as soon as practicable and without unrea-
23 sonable delay, acknowledge a public records request and complete the
24 response to the request.

25 **“SECTION 3.** ORS 192.411 is amended to read:

26 “192.411. (1) Subject to ORS 192.401 (1) and 192.427, any person denied the
27 right to inspect or to receive a copy of any public record of a state agency
28 may petition the Attorney General to review the public record to determine
29 if it may be withheld from public inspection. Except as provided in ORS
30 192.401 (2), the burden is on the agency to sustain its action. Except as pro-

1 vided in ORS 192.401 (2), the Attorney General shall issue an order denying
2 or granting the petition, or denying it in part and granting it in part, within
3 seven days from the day the Attorney General receives the petition. **How-**
4 **ever, the seven-day period may be extended by agreement between the**
5 **petitioner and the state agency.**

6 “(2) If the Attorney General grants the petition and orders the state
7 agency to disclose the public record, or if the Attorney General grants the
8 petition in part and orders the state agency to disclose a portion of the
9 public record, the state agency shall comply with the order in full within
10 seven days after issuance of the order, unless within the seven-day period it
11 issues a notice of its intention to institute proceedings for injunctive or
12 declaratory relief in the Circuit Court for Marion County or, as provided in
13 ORS 192.401 (3), in the circuit court of the county where the public record
14 is held. Copies of the notice shall be sent to the Attorney General and by
15 certified mail to the petitioner at the address shown on the petition. The
16 state agency shall institute the proceedings within seven days after it issues
17 its notice of intention to do so. If the Attorney General denies the petition
18 in whole or in part, or if the state agency continues to withhold the public
19 record or a part of it notwithstanding an order to disclose by the Attorney
20 General, the person seeking disclosure may institute such proceedings.

21 “(3) The Attorney General shall serve as counsel for the state agency in
22 a suit filed under subsection (2) of this section if the suit arises out of a
23 determination by the Attorney General that the public record should not be
24 disclosed, or that a part of the public record should not be disclosed if the
25 state agency has fully complied with the order of the Attorney General re-
26 quiring disclosure of another part or parts of the public record, and in no
27 other case. In any case in which the Attorney General is prohibited from
28 serving as counsel for the state agency, the agency may retain special
29 counsel.

30 **“SECTION 4.** ORS 192.418 is amended to read:

1 “192.418. (1) The failure of the Attorney General or district attorney to
2 issue an order under ORS **192.324 (7)**, 192.401, 192.411 or 192.415 denying,
3 granting, or denying in part and granting in part a petition to require dis-
4 closure within [*seven days from the day of receipt of the petition*] **the time**
5 **period specified by the relevant statute** shall be treated as an order de-
6 nying the petition for the purpose of determining whether a person may in-
7 stitute proceedings for injunctive or declaratory relief under ORS **192.324 (7)**,
8 192.401, 192.411 or 192.415.

9 “(2) The failure of an elected official to deny, grant, or deny in part and
10 grant in part a request to inspect or receive a copy of a public record within
11 [*seven days from the day of receipt of the request*] **the time period specified**
12 **by the relevant statute** shall be treated as a denial of the request for the
13 purpose of determining whether a person may institute proceedings for
14 injunctive or declaratory relief under ORS **192.324 (7)**, 192.401, 192.411 or
15 192.415.

16 **“SECTION 5.** ORS 147.421 is amended to read:

17 “147.421. (1) If a public body is the custodian of any of the following in-
18 formation, upon the request of the victim, the public body shall provide to
19 the victim any of the following information of which it is the custodian and
20 that is about the defendant or convicted criminal:

21 “(a) The conviction and sentence;

22 “(b) Criminal history;

23 “(c) Imprisonment; and

24 “(d) Future release from physical custody.

25 “(2) A public body, in its discretion, may provide the requested informa-
26 tion by furnishing the victim with copies of public records. The public body
27 may charge the victim its actual cost for making public records available as
28 provided in ORS 192.324 [(4)] (5).

29 “(3) As used in this section:

30 “(a) ‘Criminal history’ means a description of the prior arrests, con-

1 victions and sentences of the person.

2 “(b) ‘Future release’ means the projected or scheduled date of release of
3 the person from confinement, the name and location of the correctional fa-
4 cility from which the person is to be released and the community where the
5 person is scheduled to reside upon release.

6 “(c) ‘Imprisonment’ means the name and location of the correctional fa-
7 cility in which the person is confined.

8 “(d) ‘Public body’ has the meaning given that term in ORS 192.311.

9 **“SECTION 6.** ORS 192.464 is amended to read:

10 “192.464. (1)(a) The Public Records Advocate shall provide facilitated dis-
11 pute resolution services when requested by a person described in subsection
12 (2) of this section or by a state agency under the conditions described in
13 subsection (3) of this section.

14 “(b) The Public Records Advocate may provide facilitated dispute resol-
15 ution services when requested by a person described in subsection (6) of this
16 section and a city.

17 “(2) A person may seek facilitated dispute resolution services under this
18 section when seeking to inspect or receive copies of public records from a
19 state agency and the person:

20 “(a) Has been denied access to all or a portion of the records being
21 sought;

22 “(b) Has been denied a fee waiver or reduction in fees after asserting
23 under ORS 192.324 [(5)] **(6)** that a fee waiver or reduction of fees is in the
24 public interest **or that another factor warrants waiver or reduction of**
25 **fees;** or

26 “(c) Received a written fee estimate under ORS 192.324 [(4)] **(5)** that the
27 person believes exceeds the actual cost to be incurred by the public body in
28 producing the requested records.

29 “(3)(a) A state agency may seek facilitated dispute resolution services
30 under this section if, in response to a request for public records, the agency

1 asserts:

2 “(A) That the records being sought are not public records;

3 “(B) That the records being sought are exempt from mandatory disclosure;

4 or

5 “(C) That the agency is, under ORS 192.324, entitled to the fees the
6 agency is seeking in order to produce the records being requested.

7 “(b) A person seeking to inspect or receive copies of public records may
8 opt out of facilitated dispute resolution services being sought by a state
9 agency by giving written notice of the requester’s election within five days
10 of the requester’s receipt of the agency’s request for facilitated dispute re-
11 solution. If written notice is given under this paragraph, the state agency
12 may not determine under subsection (4)(a) of this section that the person
13 seeking to inspect or receive copies of public records has failed to engage in
14 good faith in the facilitated dispute resolution process.

15 “(4) Notwithstanding any other provision of ORS 192.311 to 192.478:

16 “(a) The failure of a person seeking to inspect or receive copies of public
17 records to engage in good faith in the facilitated dispute resolution process
18 described in this section upon being authorized to do so under subsection (2)
19 of this section shall be grounds for the state agency to deny the request and
20 refuse to disclose the requested records.

21 “(b) The failure of a state agency to engage in good faith in the facilitated
22 dispute resolution process described in this section after a public records
23 requester seeks facilitated dispute resolution services under subsection (2)
24 of this section shall be grounds for the award of costs and attorney fees to
25 the public records requester for all costs and attorney fees incurred in pur-
26 suing the request after a good faith determination under subsection (5) of
27 this section.

28 “(5)(a) Either party to the facilitated dispute resolution may request that
29 the Public Records Advocate make a determination concerning whether a
30 party is acting in good faith for purposes of applying the remedies described

1 in subsection (4) of this section.

2 “(b) A determination by the advocate that a party failed to engage in good
3 faith facilitated dispute resolution and an award of costs and attorney fees
4 are subject to review by the Circuit Court of Marion County as a proceeding
5 under ORS 183.484.

6 “(6) In the case of a person seeking to inspect or obtain copies of public
7 records from a city, either the person seeking records or the city may seek
8 facilitated dispute resolution services under this section, but only if both the
9 person seeking records and the city agree to have the Public Records Advo-
10 cate facilitate resolution of the dispute and the advocate consents to facili-
11 tated resolution of the dispute. A dispute described in this subsection is not
12 subject to subsections (4) and (5) of this section.

13 “(7) Facilitated dispute resolution shall be requested by submitting a
14 written request for facilitated dispute resolution and such other information
15 as may be required by the Public Records Advocate. Facilitated dispute re-
16 solution between parties shall be conducted and completed within 21 days
17 following receipt by the advocate of the request for facilitated dispute re-
18 solution. The facilitated dispute resolution period may be extended by
19 unanimous agreement among the public records requester, the public body
20 and the advocate.

21 “(8) If the facilitated dispute resolution results in an agreement between
22 the public records requester and the state agency or city, the advocate shall
23 prepare a written document memorializing the agreement. The written
24 agreement shall be executed by the public records requester and an author-
25 ized representative of the state agency or city. The written agreement shall
26 control the resolution of the records request.

27 **“SECTION 7.** ORS 802.183 is amended to read:

28 “802.183. (1) The Department of Transportation may establish fees rea-
29 sonably calculated to reimburse it for its actual cost in making personal in-
30 formation available to a person or government agency authorized under ORS

1 802.179 to obtain the information. Fees established under this subsection are
2 subject to the provisions of ORS 192.324 [*(4) to (6)*] **(5) to (7)**.

3 “(2) The department may adopt rules specifying conditions that must be
4 met by a person or government agency requesting personal information under
5 ORS 802.179. Such conditions may include but need not be limited to:

6 “(a) Providing reasonable assurance of the identity of the requester;

7 “(b) Providing reasonable assurance of the uses to which the personal
8 information will be put, if applicable;

9 “(c) Showing that the individual whose personal information is to be
10 disclosed has given permission for the disclosure, if permission is required;
11 and

12 “(d) Submitting a written request for the personal information in a form
13 prescribed by the department.”.

14 _____