

Protecting the public's right to know.

A Quick Reference Guide to Oregon's Public Records Law

For local and state officials, members of Oregon boards
and commissions, citizens, and nonprofit groups

*The guide is published as a public service by Open Oregon: a Freedom of Information
Coalition in cooperation with the Oregon Office of the Public Records Advocate.*

Last Updated: March 2019

A Time-Saving Reference -----

This guide is brought to you as a joint project between **Open Oregon: A Freedom of Information Coalition** (www.open-oregon.com) and the **Oregon Office of the Public Records Advocate**.

Original funding for this guide came from the National Freedom of Information Coalition, through a generous grant from the John S. and James L. Knight Foundation.

How to Use this Guide -----

This summary is intended as a quick reference to the Oregon Public Records Law, last updated January 2019. The entire law, which was renumbered in 2017, may be found in Oregon Revised Statutes 192.311 to 192.513. Additional information may be obtained by sending an e-mail request to openoregondotcom@gmail.com or sending a letter to **Open Oregon**, % The Oregonian 1500 SW First Ave, Suite 400, Portland, OR 97201.

For a comprehensive analysis of the law, refer to the latest edition of the **Attorney General's Public Records and Meetings Manual**, available on the Attorney General's Website:

<https://www.doj.state.or.us/oregon-department-of-justice/public-records/public-records-and-meetings-law/>.

What is Open Oregon?-----

Open Oregon: A Freedom of Information Coalition is a nonprofit educational and charitable organization with a single purpose: to assist and educate the general public, students, educators, public officials, media and legal professionals to understand and exercise:

- Their rights to open government.
- Their right and responsibilities under the Oregon public records and meetings laws.
- Their rights under the federal Freedom of Information Act.

Open Oregon is a 501(c)3 nonprofit corporation. Go to www.open-oregon.com for more information.

TABLE OF CONTENTS

THE SPIRIT OF OREGON’S PUBLIC RECORDS LAW	3
OREGON’S PUBLIC RECORDS LAW	4
POLICY.....	5
WHO IS SUBJECT TO THE LAW?	6
HOW IT WORKS	8
CITE THE LAW	9
HOW RECORDS ARE MADE AVAILABLE	11
WHAT IS EXEMPT FROM THE LAW	13
PUBLIC INTEREST VS. CONFIDENTIALITY	15
KEEPERS AND SEEKERS	16
REVIEW OF PUBLIC RECORDS DECISIONS (APPEALS)	18
FEES	20
RESOURCES	21

THE SPIRIT OF OREGON'S PUBLIC RECORDS LAW

The state of Oregon has a policy of openness. The most important advocate for open government is the public itself. The news media acts on the public's behalf in seeking public records in order to inform citizens about the work done in their name. Individual citizens also perform this watchdog function or use the public records law to inform themselves how, or how well, government is functioning.



“Under ORS 192... ‘every person’ has a right to inspect any nonexempt public record of a public body in Oregon.”

— Oregon Attorney General

Public records “should generally be accessible to members of the public so that there will be an opportunity to determine whether those who have been entrusted with the affairs of government are honestly, faithfully and competently performing their function as public servants.”

— Oregon Supreme Court
MacEwan v. Holm

Oregon has a “strong and enduring policy that public records and governmental activities be open to the public.”

— Oregon Supreme Court
Jordan v. MVD

“Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided...”

— Oregon Court of Appeals
City of Portland v. Anderson



OREGON'S PUBLIC RECORDS LAW

Oregon's public records law – ORS 192.311 – attempts to balance the need for efficient government with the need for the public to know how government operates.

In 1973, Oregon joined many other states across the country in enacting the Public Records and Public Meetings Law. At the time it was passed, Oregon's law was one of the most sweeping in the nation. In the decades since, however, lawmakers have steadily chipped away at the provisions requiring openness, adding exemption after exemption allowing more information to be kept from the public. In recent years, heightened concerns about privacy, public safety and homeland security have caused agencies to further limit release of information.

In 2017, legislators enacted several important reforms.

First, the 2017 reforms created timelines in the law, requiring agencies, under normal circumstances, to acknowledge a request within five business days (ORS 192.324) and either respond or at least provide a reasonable estimated date of completion within fifteen business days (ORS 192.329).

Second, the Oregon Sunshine Committee was created to conduct a comprehensive review of all exemptions and make recommendations to the legislature. More information on this Committee is available at:

<https://www.doj.state.or.us/oregon-department-of-justice/public-records/public-records-reform/oregon-sunshine-committee/>.

Third, the Office of the Public Records Advocate was created to provide dispute resolution and advice on public records issues, provide training on the public records law, and chair the associated Public Records Advisory Council. More information on the Office is available at: <https://sos.oregon.gov/public-records/Pages/default.aspx>.

Fourth, the Attorney General is directed to maintain an up-to-date list of all public records exemptions. This list is available at:

<https://justice.oregon.gov/PublicRecordsExemptions/>.

Fifth, bills that come up before the Oregon legislature that impact public records are flagged with Open Government Impact Statements, written by legislative counsel. A list of these statements can be found at:

<https://www.oregonlegislature.gov/open-government-impact-statements>.

POLICY

On its face, Oregon’s public records law sounds simple. It applies to all government records and writings. The public body must consider each request for records on a case-by-case basis. The law favors disclosure as the rule, and agencies have the burden of proving an exemption allows them to withhold information. And even then, those exemptions for the most part do not *prohibit* agencies from releasing the information – they simply allow them to choose to withhold it.

Tip #1: Don’t call it FOIA

The state public records law mirrors the federal Freedom of Information Act in some ways, but they are separate laws with different provisions. For information about seeking records from the federal government, go to the Reporters Committee for Freedom of the Press: <http://www.rcfp.org/foi.html>. For a comprehensive guide regarding fees, exemptions, and timelines under FOIA, go to the U.S. Department of Justice’s FOIA Guide, available at: <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

In practice, though, the law is more complex. The attorney general’s office, 36 county district attorneys, the Office of the Public Records Advocate, and Oregon’s courts all have a role in interpreting the application of the law. A helpful in-depth resource is the Attorney General’s Public Records and Meetings Manual, which is reviewed and updated for consistency after each legislative session. Each new edition also incorporates appellate court decisions interpreting the public records law. The Manual is available at: <https://www.doj.state.or.us/oregon-department-of-justice/public-records/public-records-and-meetings-law/>.

For the text of Oregon’s public records law as of January 2019, go to: https://www.oregonlegislature.gov/bills_laws/ors/ors192.html.

It’s worth noting that Oregon courts and the legislature have repeatedly affirmed the requirement that Oregon governments provide public information — it is the law, not a suggestion.

“Oregon’s Attorneys General have long recognized that this transparency is vital to a healthy democracy. Public scrutiny helps ensure that government spends tax dollars wisely and works for the benefit of the people,” reads [the introduction](#) to the Attorney General’s public records manual. “...When public bodies do have the authority to exclude the public from some types of discussions, or withhold certain records from public view, that authority is an exception to the general rule of openness. The scope of such an exception must be interpreted narrowly in order to preserve to Oregonians the power to understand and oversee the activities of their government.”

WHO IS SUBJECT TO THE LAW?

The law applies to any “public body,” and it defines that term broadly: every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council or agency thereof; and any other public agency of the state. Schools, police and fire departments, county and state agencies, cities: all are subject to the public records law. Notably, Oregon’s public records law applies not only to state and local agencies, but also to state and local elected officials.

TIP #2 : Don't be adversarial

- Start with a phone call or a visit to ask about the availability of the records you are seeking. You might want to, or be asked to, put your request in writing, but a conversation in advance can clear up many issues. How hard is it to make the record available? How much time does the agency estimate it will need? Is the agency even the custodian for the record at issue? What is the proper name for the record you are seeking? How can you craft a narrow, direct request?
- Keep in mind that records requests land on busy government employees and often are in addition to their regular duties. That's not to say they are not required by law to respond, but it is worth remembering that if you can make the task easier, you might get the records more quickly.
- Also, keep in mind that the person responsible for records request processing is likely not the same person who has custody of the records you are asking for. The records officer is often relying on other government employees to conduct searches of their documents and emails.
- If you believe you ultimately will be in an adversarial position with the agency, start with a written request and document every interaction. It could help on appeal later on.
- Ask the agency to cite in writing any exemption it is relying on for withholding the information.
- Follow up on a biweekly basis by phone to inquire, politely, about the status of your request. Offer to work with the records officer to find a way to narrow your request to expedite processing and lessen costs.

The public records law does not apply to private entities such as nonprofit corporations. In 1994, however, the Oregon Supreme Court ruled that the law applies to an entity that is judged the “functional equivalent” of a public body. Determining if an entity is the functional equivalent of a public body depends on the analysis of six factors established by the state court:

⚖️ RULING ON PRIVATE BODIES ⚖️

- Was the entity created by government or independently?
- Is the entity’s functions traditionally performed by government?
- Does it have authority to make binding decisions or only recommendations?
- How much financial and non-financial support does it receive from government?
- Does the government employ the entity’s officers and employees?
- Scope of governmental control over the entity.

Even some organizations that sound public or conduct some public functions are not public bodies. Oregon Public Broadcasting and the Oregon School Activities Association, for example, are not public bodies, according to the Attorney General's office.

The law does apply to elected officials on the state and local levels, but it makes an important distinction between elected officials and other public bodies. The law applies to each similarly but two differences are noteworthy:

- The law imposes a deadline for elected officials to respond to a records request. It is seven business days. (Public bodies also have a deadline but it is fifteen business days.)
- The law provides for no administrative appeal of an elected official's denial; the requestor must file a lawsuit in court to pursue the denied records. (Denials by non-elected public-body officials may be appealed to either the county district attorney or the state attorney general, depending on whether the agency is a state agency or a local agency, before any lawsuit is contemplated.)

Tip #3: Knowledge is power

-> Invest time in learning about the agency. What records are routinely kept? How long are those records kept under the agency's record retention guidelines? What records are routinely released to the media or the public? If you are a reporter covering a fire department, find out what reports are generated after a house fire or a hazardous materials incident. That helps you later when you need to know what record to request, and it helps the agency to know the specific title as well.

-> Work the chain of command: Overworked public employees may deny release of a record that is indeed public. They might be uncertain, wrong or just busy. The first step to try is to seek supervisors higher in the agency who might be more knowledgeable or have more authority. Do this in a courteous and nonconfrontational way. It's amazing how much faster people work when you cc their boss....

-> Another approach is to ask whether the agency employs a records officer, public affairs, or public information official. That person typically is well-versed in the requirements of the records law.

-> If the agency does not employ a public information specialist, ask the public employee to seek legal advice on the issue of releasing records. Often a quick phone call to the agency's counsel or the local district attorney clears up the matter. Or, approach the Oregon Public Records Advocate yourself. The advocate often has useful advice even if the agency you are seeking records from is a local, not state, agency.

HOW IT WORKS

The law defines “public record” as “any writing that contains information relating to the conduct of the public’s business... prepared, owned, used, or retained by a public body regardless of physical form or characteristics.” [ORS 192.311(5)(a)]

This includes not only physical records, but digital records as well, and not only traditional “documents,” but also photographs, videos, spreadsheets, and other media. Public bodies are not required, however, to create documents (including summaries of existing documents) in response to a records request. Nor does this law require that agencies answer inquiries, including legal inquiries. Agencies are only required to provide documents already in existence.

The law does not specify how records requests must be made, so — in the absence of an agency policy specifying how requests will be received — requests can be made in person, by letter, e-mail or phone. However, the law does allow public bodies to create a public records policy which outlines how the public body will receive public records requests. If a requester does not comply with this policy, the request may be rejected. Most agencies prefer – and specify in their policies – that initial requests be made in writing. But media members, for example, often begin with a phone call and, if requested by the custodian, will follow up with a more detailed written request.

Tip #4: Find the policy

- > If possible, locate the public body’s public records policy and submit your request in compliance with it.
- > If you cannot locate the policy easily, reach out to the agency via telephone to inquire about how you should submit your request.
- > Before submitting your request, reach out to the agency via telephone to ask advice about how to draft a narrow request and where specifically to send your request.

CITE THE LAW

A request in writing should say that the request is being made under provisions of the Oregon public records law, ORS 192. It should be as specific as possible about the record sought, with record title and date if possible. It should include a request that the agency cite any exemption it relies on in its response and include a provision that fees over a specified amount (say \$10 or \$50, depending on the scope of the request) should be discussed in advance. If you are going to request a public interest fee waiver or reduction, that should be included, with supporting arguments, in your initial public records request to the agency.

If you are uncertain of the number or exact nature of a specific document, a good approach is to tell the custodian what you are trying to learn and enlist the person's help in seeing if that information can be retrieved through public records.

The law includes a five business day timeline for the agency to acknowledge your request and a fifteen business day timeline for agencies to either produce the records or provide you with an estimated date of completion. There is, however, an exception to that for agencies that are facing significant backlogs or staff shortages. In the case of agencies who meet that exception, they must respond "as soon as practicable" and "without unreasonable delay." That depends on the size and scope of the request, how accessible the records are and whether someone needs to review the documents to redact exempt material.

Tip #5: Example of a request

- Type of document sought, being as specific as possible about the subject matter.
- Specific date ranges of the document.
- Other information that can narrow the search, such as dates and/or names of specific officials or offices.
- Ask the custodian whether the record is kept in paper or electronic form.
- In an effort to keep costs at a minimum, first inspect a file, then ask for digital copies of only what's relevant.
- If requesting a public interest fee waiver or reduction, include an argument for why you should be entitled to a waiver or reduction with your initial public records request.

Tip #6: Keep lines of communication open

- > Whenever possible, reach out to the agency via telephone (no more than every other week or so) to check in on the status of your request, offer to narrow your request, and work with the agency to get the request fulfilled. See fee estimates and estimated dates of completion as opportunities to negotiate with the agency.
- > If you are not sure which record will be of the most use to you, narrow your request. Once you have reviewed one record, you can decide whether it is helpful. You can then go back and ask for the same reports for a longer time period, for example.
- > If an agency refuses to release a record, ask for more information about what – generally – the record contains. If all of the record is public, except for one section that includes someone’s Social Security number – that discussion may help the agency worker realize he can redact the problematic section and release the rest of the record.
- > If the agency balks at releasing records, ask it to briefly describe the records it has and which exemption(s) it thinks applies to each record.

HOW RECORDS ARE MADE AVAILABLE

The “custodian” of the public record is the public body mandated to create, maintain and control records. The custodian is required to provide “proper and reasonable opportunities for inspection and examination” of such records. In short, custodians, or record holders, are directed to take “reasonable” steps to accommodate members of the public while they inspect records. That often includes copying of records, but custodians are not required to “create” an entirely new record for a requestor.

Tip #8: Many hands make light work

- When large amounts of information are released at once, several reporters from one newsroom might team up to review the records. If the agency is charging the news organization for staff to supervise the inspection, this approach might mean an hour’s work by 10 reporters rather than 10 hours’ work by one reporter. The staff cost to the agency, ultimately borne by the news organization, can be lessened considerably.
- The group also can “inspect” the records and pick and choose which then will be copied. This saves time and money over the alternative of simply copying everything.
- In the same vein, portable scanners brought to the agency by the requestor can reduce copying costs. There are several apps that turn a smartphone into a scanner, as well.
- If the records are kept electronically, enlist your information technology specialist to talk to the agency’s information technology person. Often, the people who understand the systems can find efficiencies.
- “Copies” of records can be offered digitally. Put large amounts of files on Dropbox, Google drive or another file-sharing service to save everyone time and money. Some PDFs can be converted into searchable forms using software widely available.

Record holders are required to adopt “reasonable” rules necessary to protect their records. For example, people requesting information don’t have the right to rummage at-will through file cabinets, file folders or electronic files. The inspection of original documents is ordinarily allowed if requested, but administrative measures may be adopted to supervise review of such documents.

HELPFUL HINTS FOR CUSTODIANS:

- Designate one person to coordinate responses to requests.
- Make that person’s contact information, including phone number, easily available on your website so that requesters with questions can reach out.
- Proactively reach out to requesters to assist them in narrowing requests and submitting requests to the correct agency or office. Seek clarification if a request is ambiguous, overly broad or misdirected.
- Clarify whether the requestor merely wants to inspect the records or actually wants copies.
- As soon as possible, estimate the time and expense required to respond. If the request is broad and will take a large amount of time and money to process, reach out to the requester to discuss this and offer to assist in narrowing.

- Consider whether any exemptions apply; if so, whether the public body wants to disclose the record despite an exemption.
- Release of records may be delayed to consult with legal counsel about exemptions.
- When denying a request, cite the specific exemption(s) on which you rely. Also try to give the requester an explanation regarding why these exemptions apply.
- If no exemptions apply, coordinate release of the records in a timely manner.

WHAT IS EXEMPT FROM THE LAW

The guiding principle of the records law is: Exemptions do not prohibit disclosure; they merely exempt the public body from the law's mandate to disclose public records.

Many exemptions are contained within ORS 192, especially in subsections 345 and 355. Others are scattered across Oregon law and Federal laws and regulations. As part of the 2017 public records reforms, the Attorney General is now required to keep an up-to-date list of all exemptions online. That list is available here:

<https://justice.oregon.gov/PublicRecordsExemptions/>.

All exemptions are also currently being reviewed by the Oregon Sunshine Committee: <https://www.doj.state.or.us/oregon-department-of-justice/public-records/public-records-reform/oregon-sunshine-committee/>. Interested requesters are encouraged to follow the Committee's work and engage by submitting testimony and comments.

Many exemptions are “conditional.” These conditional exemptions are not stated in absolute terms. Instead, they involve a balancing of interests, which grants discretion to public bodies. For example, ORS 192.355(5), allows for withholding of “[i]nformation or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.”

Conditional exemptions contained in ORS 192.345 all rely on the same “public interest” balancing test. That is, documents should be exempt “unless the public interest requires disclosure in the particular instance.” Some conditional exemptions are also contained in ORS 192.355, but those exemptions each have unique balancing tests, which are included in the text of each exemption.

Most exemptions are conditional and disclosure is favored.

EXAMPLES

- Police might withhold investigatory information compiled for criminal law purposes if untimely release would compromise a specific investigation.
- Agencies might withhold records generated by the threat of litigation if release would give private parties an advantage in that litigation.
- Public bodies might withhold information regarding their real estate transactions if release might give the other party an advantage in negotiations.

Some exemptions are “unconditional” and affirmatively prohibit disclosure.

Balancing tests are not appropriate for “unconditional” exemptions because the Legislature already has struck the balance of these competing interests and has concluded that confidentiality interests outweigh public disclosure interests in the matter of law. For example, under ORS 247.973(5) “[i]dentifying information relating to a disability of an elector that is entered into official voter registration records by an elections official is exempt from disclosure under ORS 192.311 to 192.478.”

Agencies should also be aware that in 2017, the legislature added a new provision to the law which protects agencies from liability for public records disclosures unless the disclosure was affirmatively prohibited by statute (that is, unless the exemption was an unconditional exemption). Because most of Oregon’s public records exemptions are conditional, most agency disclosures will no longer subject the agency to liability under this new provision.

PUBLIC INTEREST VS. CONFIDENTIALITY

The phrase “public interest in disclosure” is not defined in the records law. The Oregon Courts of Appeals has stated, however, that the law “expresses the Legislature’s view that members of the public are entitled to information that will facilitate their understanding of how public business is conducted.” Similarly, the court has characterized the public interest in disclosure as “the right of citizens to monitor what elected and appointed officials are doing on the job.”

Federal courts have ruled that requestors must identify the public interest in disclosure with “reasonable specificity” whether they are simply seeking records or waivers of fees. Relevant specific factors include the requestor’s identity and purpose, the character of the information, whether the information is already in the public domain, and how able the requestor is to disseminate the information to the public.

For that reason, even though the identity and motive of anyone requesting a public record are considered irrelevant and are not required by law, when seeking to overcome an exemption with a public interest balancing test, requesters should provide relevant information.

The requestor’s motive (government accountability, say) and ability to spread the word (quickly and widely) often become deciding factors on whether a conditional exemption or disclosure shall rule.

EXAMPLES

- Community concern can equal public interest. In one case, a district attorney ordered police shooting reports released because “(t)his matter has been one of great community concern ... (and) (f)ull disclosure can only prompt a more intelligent and informed public debate on the issues involved.”
- Public interest can mean furthering the public’s watchdog role and citizens’ interest in transparency. When a secret agreement between an Oregon port and private companies was ordered released, the public interest was described this way: “It is inappropriate for a public body ... to participate with certain private enterprises in an investigation and evaluation of the pollution of the public waterways under circumstances hidden from public view. The public interest is not served by such secret agreements.”
- There is more public interest in top officials and – in general – when public safety, financial oversight or a pattern of problems is involved. A district attorney ordered a city agency to release its investigative findings in the public interest because “we are dealing with a high ranking public employee responsible for the expenditure of the public’s money.”

KEEPERS AND SEEKERS

While most public records are readily provided to those requesting them, conflicts can arise between those seeking records and the public employees who are in custody of the information.

Because disclosure is the spirit of the law and most records are fit for public consumption, regular seekers of records often simply assume that the records they seek exist and are accessible. Seekers say conflicts often occur when recordkeepers are unaccustomed to requests or don't realize that their only concern should be whether the request is allowed under the law.

KEEPERS: Some tips for those responding to records requests include:

- Make sure that any claim that the record is not public is supported by the law.
- Make sure that processing fees are reasonable.
- Make sure that the seeker's reason for wanting the record doesn't influence your response or the timeliness of it in a negative way.
- Pick up the phone: a conversation about the record in question could focus the request and save both of you time.
- If you are tasked with multiple requests, keep a spreadsheet and calendar reminders to stay on top of response deadlines.
- Utilize file-sharing software, like Google Drive or DropBox, to share large files or to multiple requesters quickly and easily.
- If an easy-to-fill request comes in, feel free to take care of it right away. First-come, first-served policies run counter to the spirit of timely transparency that Oregon Public Records Law requires.

SEEKERS: While a seeker's approach should not technically influence whether or not a custodian will release a record, human beings are social creatures. The projection of a professional, flexible demeanor can go a long way in enlisting the record holder's cooperation. Custodians say that most media representatives who work with them wisely try to build a level of trust with recordkeepers.

Tips for those requesting records include:

- Keep in mind that most record request processors are not the person who actually has custody of the record. The record processor is relying on other government officials to provide records and does not necessarily control the timing or outcome of their response.
- Be aware that many agencies do not have access to centralized cloud computing servers or high-quality search tools.

- Familiarize yourself with the department that holds the records you keep. Organizational charts (“org charts”) are a very handy first request, if they are not already available online.
- Exhibit patience along with your persistence, since many offices handle dozens of requests each day.
- Avoid using offensive language and don’t threaten the staff with lawsuits.
- Be clear with a request, which helps speed the information-gathering stage and creates a realistic public interest claim if the seeker is denied access.
- Don’t stiff the recordkeeper – if you agree to the cost of production, pay up.
- Offer to narrow or clarify a request in order to facilitate faster, less expensive processing.

Tip #9: Make sure to follow through

- > If you requested records, be prompt at picking them up and paying for them.
- > If for some reason, you cannot get them right away, let the custodian know you still plan to pick them up.
- > If you plan to make future requests, ask the custodian of the records if there is anything you can do to make filling the next request easier.

REVIEW OF PUBLIC RECORDS DECISIONS (“APPEALS”)

If the initial request for a record is denied, the custodian should be prepared to give a written explanation for the refusal, including citing all exemptions that have been applied. It is suggested that upon first denial of access by a subordinate agency employee, the requestor should seek a decision at a higher agency level. In order of hierarchy, this could be the record custodian’s boss, the head of the agency, the elected body that governs the agency and, finally, the public at-large who can be informed online or through the news of the agency’s request denial. In some cases, there can be a negotiation that allows the release of portions of record while protecting the confidentiality interests involved.

The Oregon Office of the Public Records Advocate is a possible avenue for assistance, facilitated dispute resolution, and advice regarding public records requests. Requesters who encounter obstacles in obtaining documents, including fees, long delays, denials, or assertion of exemptions, may contact the Office of the Public Records Advocate for assistance. If a requester asks for assistance regarding a request to a state agency, the state agency is required under ORS 192.464 to engage in facilitated dispute resolution in good faith. Other public bodies are not subject to the same mandate.

Public bodies may also avail themselves of the services of the Office of the Public Records Advocate if they want facilitated dispute resolution or have questions regarding fees, exemptions, timelines, or other public records matters.

More formal avenues of review are also available under ORS 192. A requester may appeal a public body’s failure to respond within the statutory timelines (fifteen business days), the public body’s estimated date of completion, the public body’s denial of a request for a fee waiver/reduction, or a public body’s decision to withhold records (in whole or in part).

If the public body denying the request is a state agency, then the requester can file a public records petition with the Oregon Attorney General. If the public body is a locality, city, county, or other non-elected body, the requester can file a petition with the local district attorney. The appeal should include:

EXAMPLE

- The name of the agency from which the records were requested and denied;
- Name of the custodian of the record and how to contact them;
- The procedural background: when was the request submitted, how the agency responded (or failed to respond);
- A copy of the request;
- Any written responses or communications from the public agency, if available;
- Other information that clarifies the requestor’s position.

- Much of the above information can be contained in the email thread with the agency about the request. Forward the thread but add to the top a summary of the discussion and outline your arguments for why the Attorney General or district attorney's office should rule in your favor.

Since the records law is one of disclosure and many of the exemptions are voluntary, the Attorney General or district attorney may simply recommend that the public body in question release the records – even if they could be covered by an exemption.

If the agency refuses to disclose voluntarily, the merits of the case are reviewed by the Attorney General or district attorney. A decision is made — within seven days, as the law requires — to either deny the appeal or issue an order that forces disclosure of the records.

If a petition is denied, the requestor may still file a lawsuit in circuit court to try to force disclosure.

If a petition is granted, the public body has seven days to decide what to do and then seven more days to actually do it. Typically, when ordered to release the records, agencies do so promptly. If the agency wishes to fight the order, it must file a lawsuit against the requestor in circuit court.

FEES

Under the law, requestors are legally bound to pay for the expense required to release public records. Fees are calculated to reimburse the agency for its “actual cost” of fulfilling the public records request – and no more. Charges may include time spent locating the records, reviewing in order to delete exempt material, supervision, attorney time spent reviewing documents (but not conducting legal research), and copying and sending records.

Requestors who regularly seek public records, such as media representatives, consider fee negotiations an important part of the process. They ensure a fee is established before the work begins, and many will ask for a fee waiver if, in their opinion, the release of specific records is in the public’s interest.

Agencies should generally grant requests for fee waiver or reduction that are made by media representatives. News reporters are, almost by definition, interested in government activities that will interest a broad cross-section of the public and therefore operate within the public interest.

In considering requests for fee waiver or reduction made by non-media representatives, agencies should consider the person’s intention and ability to disseminate information to the public and whether or not the information would benefit the public at large (instead of just the person making the request).

EXAMPLE

- A neighborhood association president seeking records concerning military aviation safety at an airbase near the neighborhood — to be disseminated to the general public — may satisfy the public interest standard for a waiver if it is demonstrated that fee requirements inhibit the neighborhood’s ability to obtain the government records in question.

Waivers are up to the agency, which can charge only a “reasonable amount.” The public body is directed to weigh the public interest issue when deciding on the fee. An agency may even decide, as some do, that provision of government information is a core function and therefore part of its fiduciary responsibilities to the public.

Tip #10: Time is money; save everyone both

- Go narrow first: to keep fees low, ask for just one document, review it and tailor your broader request.
- Ask to inspect the documents, rather than asking for copies.
- Agencies should use lower-wage workers when possible, rather than top managers, to keep down the hourly cost of staff time assessed to requestors.

Agencies, however, are not required to grant a complete fee waiver, even if the public interest test is met. A requestor dissatisfied with a denial of either a waiver or a reduction may petition the Attorney General or district attorney in the same manner as a person appeals when inspection of a public record is rejected.

RESOURCES

Local:

- [Open-Oregon.com](#) keeps updated materials, including this guide, online.
- The [Oregon Public Records Advocate](#) has resources and advice for requesters and public servants alike.
- The [Attorney General's Public Meetings and Records Manual](#) offers a comprehensive look at the state requirements.
- The [Oregon Sunshine Committee](#) is charged with reviewing exemptions to public records law.
- The [Society of Professional Journalists' Oregon Territory Chapter](#) organizes educational events and advocacy efforts in Oregon among full-time and freelance journalists.
- For issues involving the City of Portland, its [Ombudsman Office](#) can offer advice and solutions.
- The State of Oregon maintains a [public records request log](#) and the [governor's public calendar](#).
- For a list of previous public records appeals decisions in Multnomah County, visit the district attorney's [public records page](#).
- Search previous [Public Records Orders](#) issued by the Attorney General's Office.

National:

- The [National Freedom of Information Coalition](#) advocates for open government nationwide.
- The Society of Professional Journalists [Freedom of Information Committee](#) offers numerous resources online. The reporter-only organization also has a [Legal Defense Fund](#) and a [First Amendment Forever Fund](#), which may be able to supply financial resources.
- The American Society of News Editors organizes [Sunshine Week](#) every year (usually in March) to draw attention to information freedom issues and celebrate successes.
- The [Brehner Center for Freedom of Information](#) conducts and collects research on public records policies nationwide.
- The [Electronic Privacy Information Center](#) focuses on digital information.
- The [Reporters Committee for Freedom of the Press](#) does pro bono legal work and offers legal guides on open government topics.
- The [Sunlight Foundation](#) offers resources and advocates for broad and technologically advanced access to government.
- [Investigative Reporters & Editors](#) has thousands of online tip sheets and organizes a popular annual conference called NICAR.
- [News Media for Open Government](#), a D.C.-based coalition
- [Fourth Estate](#) advocates for journalists and conducts strategic litigation.
- [ClearGov](#) offers computing solutions for government recordkeeping.
- The [Freedom of the Press Foundation](#) focuses on a broad range of issues in 21st Century journalism, including digital security.

- [FollowtheMoney.org](#) is run by the National Institute on Money in Politics and offers trainings and data analytics for looking into campaign finance.
- [Open the Government](#) advocates for reductions in government secrecy.
- [MuckRock](#) offers public records request templates and a free tracker tool.

OPEN OREGON BOARD OF DIRECTORS

Shasta Kearns Moore, President, journalist, Pamplin Media Group
Duane Bosworth, Vice President, attorney, Davis Wright Tremaine
Therese Bottomly, Treasurer/Secretary, Editor, The Oregonian/OregonLive
Lisa Phipps, executive director, Tillamook Estuaries Partnership
John Schrag, executive editor, Pamplin Media Group
Ginger McCall, public records advocate, State of Oregon
Tim Gleason, professor, University of Oregon School of Journalism
Mary Beth Herkert, state archivist, State of Oregon
Lee van der Voo, managing director, InvestigateWest
Gail Holmes, West Linn civic leader
Norman Turrill, president, League of Women Voters of Oregon
Emily Harris, reporter and producer, Reveal from The Center for Investigative Reporting

Open Oregon is a 501(C)3 nonprofit corporation in Oregon and a chapter of the National Freedom of Information Coalition. Visit open-oregon.com for more information and resources.

A Quick Reference Guide to Oregon's Public Records Law
© 2019 Open Oregon