

## SUMMARY

Establishes state policy regarding public access to government records; provides protections against liability and privilege waivers resulting from public records disclosures; establishes timeframes for public body responses to public records requests; requires Attorney General to maintain catalog of public records law exemptions established by Oregon statutes.

### A BILL FOR AN ACT

Relating to public records; creating new provisions; amending ORS 192.440.

**SECTION 1.** (1) The Legislative Assembly finds that protecting public access to information about government and its actions ensures the public is informed and able to meaningfully participate in government. Access to information also enables Oregonians to ensure their public servants perform honestly, faithfully and competently.

(2) It is therefore the policy of the State of Oregon that public records are accessible to members of the public with specific exemptions. Exemptions from public records disclosure requirements shall be construed narrowly to favor the people's right to know.

(3) In enacting laws that make public records exempt from the disclosure requirements of this chapter, the Legislative Assembly shall expressly identify the interests the exemption is necessary to serve and shall ensure the exemption is no broader than necessary.

**SECTION 2.** (1) No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the disclosure requirements of this chapter.

(2) Notwithstanding ORS 40.280, a public body that discloses any privileged information or record in response to a written request for public records under this chapter does not waive its right to assert the applicable privilege to prevent the introduction of the information or record as evidence, pursuant to ORS 40.225 to 40.295.

**SECTION 3.** ORS 192.440 is amended to read as follows: (1) The custodian of any public record that a person has a right to inspect shall give the person, upon 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 a written request to inspect or receive a copy of a public record is received by a person identified in the public body's procedure described in paragraph (7)(a) of this section, the public body receiving the request shall acknowledge receipt of the request **[within] as soon as practicable and without delay but within five business days.** The acknowledgment shall **include the requested record,** inform the requester whether the public body is or is not the custodian of the requested record, or is uncertain whether it is the custodian of the requested record. *[If a person makes a written request to inspect a public record or to receive a copy of a public record, the public body receiving the request shall respond as soon as practicable and without unreasonable delay. The public body may request additional information or clarification from the requester for the purpose of expediting the public body's response to the request. The response of the public body must acknowledge receipt of the request and must include one of the following:*

- (a) A statement that the public body does not possess, or is not the custodian of, the public record.
- (b) Copies of all requested public records for which the public body does not claim an exemption from disclosure under ORS 192.410 to 192.505.
- (c) A statement that the public body is the custodian of at least some of the requested public records, an estimate of the time the public body requires before the public records may be inspected or copies of the

*records will be provided and an estimate of the fees that the requester must pay under subsection (4) of this section as a condition of receiving the public records.*

*(d) A statement that the public body is the custodian of at least some of the requested public records and that an estimate of the time and fees for disclosure of the public records will be provided by the public body within a reasonable time.*

*(e) A statement that the public body is uncertain whether the public body possesses the public record and that the public body will search for the record and make an appropriate response as soon as practicable.*

*(f) A statement that state or federal law prohibits the public body from acknowledging whether the record exists or that acknowledging whether the record exists would result in the loss of federal benefits or other sanction. A statement under this paragraph must include a citation to the state or federal law relied upon by the public body.]*

(3) If the public record is maintained in a machine readable or electronic form, the custodian 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 custodian shall make the public record available in the form in which the custodian maintains the public record.

(4)(a) The public body may establish fees reasonably calculated to reimburse the public body for 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 meet the person's request.

(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 192.410 to 192.505.

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

(d) Notwithstanding paragraphs (a) to (c) 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 those established by the Secretary of State by rule, under ORS chapter 79 or ORS 80.100 to 80.130.

(5) The custodian of any public record may furnish copies without charge or at a substantially reduced fee 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.

(6) A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

(7) A public body shall make available to the public a written procedure for making public record requests that includes:

(a) The name of one or more persons to whom public record requests may be sent, 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.

(8) This section does not apply to signatures of individuals submitted under ORS chapter 247 for purposes of registering to vote as provided in ORS 247.973.

**SECTION 5. (1) A public body must complete its response to any written request received by a person identified in the public body's procedure described in ORS 192.440(7)(a) as soon as practicable and without unreasonable delay.**

**(2) For purposes of this section, a public body's response to a public records request is complete when the public body:**

- (a) Provides access to or copies of all requested public records within the possession or custody of the public body that the public body does not assert are exempt from public disclosure, or explains where they are already publicly available;
- (b) Asserts any exemptions from disclosure under ORS 192.501 or 192.502 that the public body believes apply to any requested records or information, and, if the public body cites ORS 192.502(8) or (9), identifies the state or federal law that the public body relies on;
- (c) Provides redacted copies of any records containing both exempt and nonexempt information as required by ORS 192.505;
- (d) To the extent that the public body does not have records responsive to a request, provides a written statement to that effect;
- (e) To the extent that state or federal law prohibits the public body from acknowledging whether any requested record exists, or that acknowledging whether a requested record exists would result in the loss of federal benefits or other sanction, provides a written statement to that effect, citing the state or federal law relied upon by the public body, unless such a written statement would itself violate state or federal law; and
- (f) If the public body is asserting any exemption from disclosure, advises the requester of the appropriate procedure under this chapter for the review of that assertion.
- (3) If a public body has informed a requester of the fee permitted under ORS 192.440(4), a public body's obligation to further complete its response to the request is suspended until the requester has paid the fee, the fee has been waived by the public body pursuant to ORS 192.440(5), or the fee has been ordered waived.
- (4) Prior to completing its response, a public body may request additional information or clarification from the requester for the purpose of expediting the public body's response to the request. If a public body has requested such information or clarification in good faith, a public body's obligation to further complete its response to the request is suspended until the requester provides the requested information or clarification or declined to do so.
- (5) Within **no more than** 10 business days of receipt of a written request by a person identified in the public body's procedure required by ORS 192.440(7)(a), a public body must:
- (a) Complete its response to the request for public records; or
- (b) Provide a written statement that the public body is still processing the request, along with a reasonable estimated date **not to exceed 30 days** when the public body expects to complete its response based on the information currently available.
- (6) Compliance with the specific time periods established in ORS 192.440(1) and subsection (5) of this section is not required in **exceptional** circumstances where compliance is impossible. **A public body shall notify the requester of the specific circumstances preventing compliance and provide to the requester a reasonable date for when the response is to be completed.**
- ~~(7)(a) The time periods established in ORS 192.440(2) and subsection (5) of this section:~~
- ~~(A) In the case of a community college district, community college service district or public university in this state, do not apply for periods that students of a school of the respective district or university are not attending class;~~
- ~~(B) In the case of a school district or education service district, do not begin during periods that a majority of students of the district are on break for five or more consecutive days; and~~
- ~~(C) Do not apply to any public body that does not have at least one full-time equivalent employee who reports to work during the week the request is received or during the week following the week the request is received.~~
- (7) A public body's willful failure to comply with requirements of ORS 192.440 (2) and subsections (5) and (6) shall be deemed a denial of the request subject to appeal under ORS 192.450 or ORS 192.460.**

**SECTION 6.** (1) The Attorney General shall maintain and regularly update a catalog of exemptions from the disclosure requirements of this chapter that are established by Oregon statute. The

catalog shall be as comprehensive as reasonably possible and shall be freely available to the public in electronic format that facilitates sorting and searching the catalog.

(2) The catalog required by subsection (1) of this section shall include:

(a) The citation to any Oregon statute creating an exemption from the public disclosure requirements of this chapter;

(b) The relevant text of each statute creating an exemption from disclosure;

(c) If an exemption has been construed by any decision of the Oregon Supreme Court or Oregon Court of Appeals, a citation to any such decision;

(d) To the extent that an exemption is specific to a particular public body or particular types of public bodies, a description of the public body or bodies to which the exemption relates; and

(e) Such additional information as the Attorney General deems appropriate.

(3) To help ensure that the catalog required by subsection (1) of this section is as comprehensive as possible:

(a) Legislative Counsel shall provide the Attorney General with an electronic copy of any bill passed by the legislature that, in the judgment of Legislative Counsel, creates an exemption from the public disclosure requirements of this chapter; and

(b) When a District Attorney issues an order pursuant to ORS 192.460, the District Attorney shall send the Attorney General an electronic copy of that order.

(4) The purpose of the catalog required by subsection (1) of this section is to assist public officials and members of the public in ascertaining what information is exempt from the public disclosure requirements of this chapter. The fact that an Oregon statute is not listed in the catalog shall not preclude a public body from asserting that the statute creates an exemption from disclosure.

**SECTION 7.** ORS 192.440(5) The custodian of any public record may **shall** furnish copies without charge ~~or at a substantially reduced fee 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.~~