# Oregon Public Records Law

The purpose of Public Records Law is to assure that all records of a public agency, with some exceptions, are available for inspection and copying by the public.

* + Every person has a right to inspect any non-exempt public records of a public body in the state. The intent, identity, motivations, or need of the person requesting the records are irrelevant.
	+ Public Records Law applies to all public bodies, but may also apply to private bodies established by public agencies or other groups which are the functional equivalent of a public body.

# What is a Public Record?

Public Records Laws apply to all government records, no matter what kind. As defined by the Oregon Statutes, public records are any information that is prepared, owned, used or retained by a state agency or political subdivision that relates to an activity, transaction or function of a state agency or political subdivision; and that is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision.

Public agencies are required to maintain a public record without regard to the technology or medium used to create or communicate the record. Public records can be in the form of paper, tape, film, photographs, discs, pictures, sounds, symbols, or any other physical medium used to record information. Many public bodies use electronic mail (e-mail) for communications. E-mail is a public record. Even after individual e-mail messages are “deleted” from a computer, the messages generally continue to exist on computer back-up tapes, which are also public records. As with any public record, a public body must make all nonexempt e-mail available for inspection and copying regardless of its storage location.

Public Records Laws does not require public bodies to create public records. For example, if a district has information stored in a computer and the public requests that it be provided with a copy of the information in a different form than the district stores the information, the district is not required to manipulate the information to create the requested document. Alternate forms must be provided if the person is asking because of a disability, unless to do so would impose an undue financial or administrative burden on the district.

If an outside body, such as a private contractor, prepares a document for a district that contains information that can be considered public information, the records are considered public and fall within Public Records Laws. However, a record created by a private organization or individual does not become a public record simply because it is reviewed by a public body. For example, sample materials prepared and owned by a private company are not considered public records when they are simply reviewed by the public body and no decisions to use the materials have been made.

# Obtaining Public Records

Districts must ensure that their records are made accessible to the public. A written public records policy must be made available to the public listing the individual responsible for receiving the request, cost, and how costs are determined.

A public entity must provide, as appropriate:

* A statement that it does not possess, or is not the custodian of, the record.
* Copies of all requested public records to which an exemption does not apply.
* A statement that it is the custodian of at least some of the requested records, an estimate of the time the public body requires before inspection can be made or copies of the records provided, and an estimate of the fees to be paid as a condition of receiving the records.
* A statement that it is the custodian of at least some of the requested records and that an estimate of the time and fees for disclosure of the public records will be provided within a reasonable time.
* A statement that it is uncertain whether it possesses the record and that it will search for the record and make an appropriate response as soon as practicable.
* A statement that state or federal law prohibits it from acknowledging whether the record exists, or that acknowledging whether the record exists would result in the loss of federal benefits or other sanction, and citing the applicable law.

**Copying**

If the records can be copied, then it is the responsibility of the district to furnish a copy of the records to the requester. Private individuals also have the right to make their own copies, using their own equipment, or inspect copies of the records. The district has the right to protect the records if it feels that the method used to copy the records will cause them damage.

Records must be available during usual business hours to persons wishing to either review or copy the records. The requester of the records is obligated to come to the district to get the records. The district need not deliver any records. When a request is submitted in writing, the response time must be “as soon as practicable and without undue delay.”

**Fees**

Districts are allowed to charge a fee for copying or locating records. The fee must be reasonable and reflect the actual cost of making the records available. Fees must be limited to no more than $25.00 unless the requestor is provided with a written notification of the estimated amount of the fee and the requestor confirms that he/she wants the public body to proceed. Services that are permissible to charge a fee for include:

* The time spent by staff in locating the requested records.
* Reviewing records in order to delete exempt material.
* Supervising a person's inspection of original documents in order to protect the records.
* Copying records.
* Certifying documents as true copies.
* Sending records by special methods, such as express mail.

Fees should be consistent and included in the official policies of the district. A per-page charge is recommended that includes the expenses involved with handling and providing access to the records.

The requestor of the records does have the right to petition for a waiver of the fee if the records are of "public interest." If the records simply relate to a personal matter, such as seeking information relating to defense in a criminal matter, then the request for a waiver can be denied.

# Public Records Exempt from Disclosure

If a district denies a request for a public record, it has the burden to prove that the record is exempt from disclosure. If the record is exempt from disclosure, the district is not required to provide the record. In many instances, the district has the authority to voluntarily provide records, even if they are exempt from disclosure. If a district does voluntarily provide an exempt record to an individual, it does not give up the right to deny access of the record to another individual in the future.

The district records officer should use the following steps when deciding whether to honor a request for the district's records:

* Is there any good reason not to disclose the records?
* If the answer is yes, is the record exempt from disclosure?
* If there is any question as to whether or not the record is exempt, and the district does not wish to release the record, then legal counsel should be consulted.

An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal tele-phone number remains available for public inspection.

Documents that are exempt from disclosure unless "the public interest requires disclosure in the particular instance," include the following:

* **Public Records Pertaining to Litigation**

Litigation records in which the district is part of the complaint or which the district believes that it is likely to become part of the complaint. This exemption does not apply to litigation which has been concluded. [ORS 192.501(1)]

* **Trade Secrets**

The information must not be patented, it must only be known to a limited number of persons, it must have the potential of deriving economic value, and it must give its users the chance to obtain a business advantage over competitors not having the information. [ORS 192.501(2)]

* **Criminal Investigatory Material** Information compiled in a criminal investigation that if divulged may deprive a person of a fair trial, constitute an invasion of privacy, disclose the identity of a confidential source, disclose investigation techniques, or endanger the safety of law enforcement officers. [ORS 192.501(3)]
* **Tests and Examination Material**

Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination. [ORS 192.501(4)]

* **Business Records Required to be Submitted**

Records which will identify a particular business and its production levels. [ORS 192.501(5)]

* **Real Estate Appraisal Information**

Information relating to the appraisal of real estate prior to its acquisition. [ORS 192.501(6)]

* **Employee Representation Cards**

The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections. [ORS 192.501(7)]

* **Civil Rights Investigation Material**

Information relating to complaints of discrimination in housing, places of public accommodation, or private vocational, professional or trade schools. However, the actual complaint is not exempt. [ORS 192.501(8)]

* **Unfair Labor Practices Complaints**

Information which relates to unfair labor practice investigations and complaints before the Employment Relations Board. The complaint itself would not be exempt from disclosure. [ORS 192.501(9)]

* **Debt Collection Agency Investigation Records**

Records, reports and other information received or compiled by the Director of Consumer and Business Services concerning debt collection. [ORS 192.501(10)]

* **Archaeological Site Information**

Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. [ORS 192.501(11)]

* **Personnel Discipline Actions**

A personnel discipline action, or materials or documents supporting that action, if a sanction was imposed. This exemption does not apply when an employee of a public body resigns during an employer investigation or in lieu of disciplinary action. [ORS 192.501(12)]

* **Information About Threatened or Endangered Species**

Information regarding the habitat, location or population of any threatened or endangered species, if the requestor of the records will use the information to further endanger the species. [ORS 192.501(13)]

* **Faculty Research**

Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented. [ORS 192.501(14)]

* **Computer Programs for the Use of Public Bodies**

Computer programs developed or purchased by or for a public body for its own use, not including the original data or the mathematical formulas used to manipulate the data. [ORS 192.501(15)]

* **Agricultural Producer Indebtedness Mediation Data**

Data and information provided by participants to mediation for agricultural producers in danger of foreclosure. [ORS 192.501(16)]

* **Unsafe Workplace Investigation Materials**

Investigatory information relating to complaints of violations of laws governing workplace safety. It does not cover the complaint itself but provides for confidentiality of the identity of the employee making the complaint. [ORS 192.501(17)]

* **Public Safety Plans**

Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared and used by a law enforcement agency, if public disclosure would endanger the life or physical safety of a citizen or law enforcement officer or jeopardize the law enforcement activity involved. [ORS 192.501(18)]

* **Telecommunications Utility Audits**

An external or internal audit or audit report pertaining to a telecommunications carrier. [ORS 192.501(19)]

* **Residence Address of Elector**

Requires the county clerk to keep the elector’s residence address exempt from disclosure if requested by an elector who demonstrates to the satisfaction of the county clerk that the elector’s personal safety or that of any family member residing with the elector is in danger. [ORS 192.501(20)]

* **Housing Authority and Urban Renewal Agency Records**

Certain records, communications and information submitted to a housing authority as defined in ORS 456.005 by applicants for and recipients of loans, grants and tax credits. [ORS 192.501(21)]

* **Interference with Property or Service** Records or information that if disclosed would allow a person to gain unauthorized access to buildings or other property; identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body. [ORS 192.501 (22)]
* **Security Measures**

Records or information that would reveal the security measures taken or recommended to be taken to protect [ORS 192.501 (23)]:

* + An individual
	+ Buildings or other property used or owned by a public body
	+ Information processing, communication or telecommunication systems, including the information contained therein, that are used or operated by a public body
* **OHSU Donation Records**

Writings prepared by or under the direction of officials of Oregon Health Sciences University about a person and the person's potential interest in donating money or property to the university or the person's actual donation unless disclosure is authorized by the person. [ORS 192.501(24)]

* **Financial Transfer Records**

Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number. [ORS 192.501(27)]

* **Attorney-Client Privilege Records**

A public body that denies a request for a record that would otherwise be exempt under attorney-client privilege must provide a “condensed version” of the factual information in the record without waiving the privilege. A person whose request is denied may petition a court for review to make sure the condensed version is accurate.

* **Work Papers and Documents for Audits**

Work papers and related documents are exempt from disclosure until the final audit is released. Copies of the draft audit sent to an audited entity are disclosable. Affected audits are those that are conducted under nationally recognized auditing standards.

* **Email Addresses in a Public Body’s Possession**

This exemption does not apply to email addresses assigned by a public body to a public employee for use by that employee in the course of his or her public employment.

The following public records are always exempt from disclosure (ORS 192.502):

* **Internal Advisory Communications** Communication within a public body or between public bodies if it is advisory or preliminary to any final action. If the communication covers purely factual materials, or if the public interest in frank communication outweighs the public interest of disclosure then the records are exempt from disclosure.
* **Personal Privacy Exemption**

Information, which would constitute an unreasonable invasion of privacy if publicly disclosed. Unless the public interest by clear and convincing evidence requires disclosure in the particular instance.

* **Public Employee Addresses, Social Security Number, Birth Dates and Telephone Numbers**

Addresses, social security numbers, dates of birth and telephone numbers contained in personnel records maintained by employer or recipient of volunteer services. Does not apply to employees or volunteers if they are elected officials or that public interest requires disclosure in a particular instance.

* **Confidential Submissions**

In order for records submitted by a citizen of the district in confidence to be exempt, they must meet the following tests:

* The informant must have submitted the information on the condition that it would be kept confidential.
* The informant must not have been required by law to provide the information.
* The information itself must be of a nature that reasonably should be kept confidential.
* The public body must show that it has obliged itself in *good faith* not to disclose the information.
* Disclosure of the information must cause harm to the public interest.
	+ **Corrections and Parole Board Records**

Information or records from the Department of Corrections which if made available to the public would interfere with the rehabilitation of a person in custody.

* + **Lending Institution Records**

Records, reports and other information received or compiled by the Department of Consumer and Business Services to the extent that interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

* + **Presentence and Probation Reports** Presentence and probation reports filed with court order.
	+ **Federal Law Exemption**

Any public records or information the disclosure of which is prohibited by federal law. For example, public assistance and unemployment insurance records, and certain student records.

* + **Other Oregon Statutes Establishing Specific Exemptions**

Any public records or information the disclosure of which is prohibited, restricted, or otherwise made confidential or privileged under Oregon law.

* + Transferred Records

Public records or information furnished by a public body to any other public officer or public body in connection with performance of the duties of the recipient.

* + **Security Programs for Transportation of Radioactive Materials**

Records of the Energy Facility Sitting Council concerning the review or approval of security programs pursuant to sitting of nuclear power plants.

* + **PERS Nonfinancial Information about Members**

Employee and retiree address, telephone number and other non-financial membership records and employee financial records maintained by the Public Employees Retirement System.

* + **Records Relating to Treasury or OIC Publicly Traded Investments**

Confidential records provided to the State Treasurer or Oregon Investment Council by private businesses or individuals related to proposed public investments.

* + **Public Employee Retirement Fund and Industrial Accident Fund Monthly Reports**

The monthly reports prepared and submitted concerning the Public Employee Retirement Fund and Industrial Accident Fund may be exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

* + **Abandoned Property Reports**

Reports of abandoned property filed by the property holder.

* + **Economic Development Information**

Information submitted to the Oregon Economic Development Department, including personal financial statements, financial statements of applicants, customer lists, information of an applicant pertaining to litigation, production and sales data, or marketing strategy information.

* + **Transient Lodging Tax Records**

Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid.

* + **Information for Obtaining Court** **Appointed Counsel**

All information supplied by a person for the purpose of requesting court-appointed counsel.

* **Workers’ Compensation Claim Records**

Workers’ compensation claims records that can be used to discriminate unlawfully against persons previously injured on the job who has filed a workers’ compensation claim.

* **OHSU Sensitive Business Records**

Records of financial or commercial information of the Oregon Health Sciences University that is not customarily provided to business competitors.

* **OHSU Candidates for University President**

Records of the Oregon Health Sciences University regarding candidates for the position of university president.

* **Library Records**

The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number, or both, of the patron.

* **Housing and Community Services Department Records**

Records, communications and information submitted by applicants for and recipients of loans, grants and tax credits:

* + Personal and corporate financial statements and information, including tax returns
	+ Credit reports
	+ Project appraisals
	+ Market studies and analyses
	+ Articles of incorporation, partnership agreements and operating agreements
	+ Commitment letters
	+ Project pro forma statements
	+ Project cost certifications and cost data
	+ Audits
	+ Project tenant correspondence requested to be confidential
	+ Tenant files relating to certification.
	+ Housing assistance payment requests
* **Forestland Geographic Information System**

Raster Geographical Information System (GIS) digital databases provided voluntarily and in confidence to the State Forestry Department.

* **Electricity Sale or Purchase of Electric Power**

Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers.

* **Klamath Cogeneration Project**

Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project.

* **Public Utility Customer Information**

Personally identifiable information about customers of a municipal electric utility or a people's utility district, or the names, dates of birth, driver license numbers, telephone numbers, electronic mail addresses or Social Security numbers of customers who receive water, sewer or storm drain services from a public body as defined in ORS 174.109.

* **Security Programs**

Information about or approval of programs relating to the security of:

* + Generation, storage or conveyance of electricity; gas in liquefied or gaseous form; hazardous substance as defined in ORS 453.005(7)(a), (b) and (d); petroleum products; sewage; or water.
	+ Telecommunication systems, including cellular, wireless or radio systems.
	+ Data transmission by whatever means provided.
		- **Public Safety Officer Addresses, Telephone Numbers and Electronic Mail Addresses**

The home address, home telephone number and electronic mail address if requested by a public safety officer, defined in ORS 181.610 to include “corrections officers, youth correction officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, telecommunicators and fire service professionals.” This exemption does not apply to addresses and telephone numbers that are contained in county real property or lien records.

* + - **Separation of Exempt and Nonexempt Material**

If any public record contains material which is not exempt under ORS 192.501 and 192.502, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

Other Public Record Exemption Rules

* After 25 years, exempt records lose their exemption and may be available to the public.
* Records may be exempt for up to 75 years if they contain information about the physical or mental health, or psychiatric care or treatment of a living individual.
* Records less than 75 years old which are sealed by statue or by a court order are exempt unless a court orders disclosure.
* Records of a person who is or has been in custody or under the supervision of a state agency, court or local government are exempt from disclosure for 25 years following termination of the custody to the extent that disclosure would interfere with rehabilitation of the person. The public interest in confidentiality may outweigh the exemption.
* Student records required by state or federal law to exempt from disclosure.

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# Enforcement

A person denied the right to inspect or obtain a copy of a public record may petition the District Attorney for release of the record. The District may seek the advice of the District Attorney prior to denial of an inspection request. Upon receipt of the petition for review to the District Attorney, the DA will ask the District for a copy of the record for review. The District should provide a copy to the DA with an explanation justifying denial of disclosure. The DA has seven days to deny or grant the petition, and failure of the DA to decide within the seven-day period constitutes denial of disclosure. If the DA denies disclosure, the petition may seek judicial review. If the DA orders disclosure, against the denial by the District, the District may give notice and file suit in Circuit Court for a judicial determination.

Districts should seek the advice of legal counsel if they receive a request, which is difficult to arrange, or if they feel the request should be denied on the basis that the records are exempt from the Public Records Laws. The State Attorney General has concluded that, "when a public body does so, it does not thereby actually or constructively deny the request. Nor does a public body deny a request merely because it fails to comply with the deadline the requester seeks to impose."

# Sample Public Records Policy

**Compliance**

The District shall fully comply with the Oregon Public Records Law, ORS 192.410‑192.505.

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* Specificity of Request: In order to facilitate the public's access to records in the District's possession, and to avoid unnecessary expenditure of staff time, persons requesting access to public records for inspection or copying, or who submit written requests for copies of public records, shall specify the records requested with particularity, furnishing the dates, subject matter and such other detail as may be necessary to enable District personnel to readily locate the records sought.
* Access: The District shall permit inspection and examination of its non‑exempt public records during regular business hours in the District's offices, or such other locations as the District Manager may reasonably designate from time to time. Copies of non‑exempt public records maintained in machine readable or electronic form shall be furnished, if available, in the form requested. If not available in the form requested, such records shall be made available in the form in which they are maintained. ORS 192.440(2).

**Fees for Public Records**

Fees must be limited to no more than $25.00 unless the requestor is provided with a written notification of the estimated amount of the fee and the requestor confirms that he/she wants the public body to proceed.

In order to recover its costs for responding to public records requests, the following fee schedule is adopted by the District:

* Copies of Public Records; Certified Copies: Copies of public records shall be cents per copy for standard, letter size copies. Copies shall be certified for an additional charge of \_\_\_\_\_.
* Copies of Sound Recordings: Copies of sound recordings of meetings shall be per copy.
* Copies of Maps and Other Nonstandard Documents: Charges for copying maps or other nonstandard size documents shall be charged in accordance with the actual costs incurred by the District.
* Research Fees: If a request for records requires District personnel to spend more than 15 minutes searching or reviewing records prior to their review or release for copying, the minimum fee shall be \_\_\_\_ hour and additional charges shall be in ¼ hour increments. The District shall estimate the total amount of time required to respond to the records request, and the person making the request shall make payment for the estimated cost of the search and copying of the records in advance. If the actual time and costs are less than estimated, the excess money shall be refunded to the person requesting the records. If the actual costs and time are in excess of the estimated time, the difference shall be paid by the person requesting the records at the time the records are produced.
* Additional Charges: If a request is of such magnitude and nature that compliance would disrupt the District's normal operation, the District may impose such additional charges as are necessary to reimburse the District for its actual costs of producing the records.
* Reduced Fee or Free Copies: Whenever it determines that furnishing copies of public records in its possession at a reduced fee or without costs would be in the public interest, the Board or District Manager may so authorize. ORS 192.440(4).

**Authorization Required for Removal of Original Records**

At no time shall an original record of the District be removed from the District's files or the place at which the record is regularly maintained, except upon authorization of the Board of Directors or Manager of the District.

**On-Site Review of Original Records**

If a request to review original records is made, the District shall permit such a review provided that search fees are paid in advance in accordance with the Fees for Public Records section, above. A representative shall be present at any time original records are reviewed, and the charges for standing by while the records are reviewed shall be the same as the charges for searching or reviewing records.

**Unauthorized Alteration, Removal, or Destruction of Records**

If any person attempts to alter, remove or destroy any District record, the District representative shall immediately terminate such person’s review, and notify the attorney for the District.

**Sample Documents from Department of Justice Website**

* Sample Request for Disclosure of Public Records
* Sample Written Procedures for Public Records Requests
* Sample Response to Public Records Request
* Certification of True Copy (Paper Records)
* Certification of True Copy (Electronic Records)
* Petition for Attorney General’s or District Attorney’s Review
* Helpful Hints for Responding to Public Records Requests

[**http://www.doj.state.or.us/public\_records/manual/pages/public\_meetings\_b.aspx**](http://www.doj.state.or.us/public_records/manual/pages/public_meetings_b.aspx)

#  Resolution Adopting Public Meeting and Records Law Compliance

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION ADOPTING DISTRICT COMPLIANCE

WITH PUBLIC MEETING AND RECORDS LAW

WHEREAS, compliance with Oregon’s Public Meeting and Records Law set out in Oregon Revised Statutes 192, is required by all Oregon special districts.

 NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

 That the District shall comply with the provisions of Public Meeting and Records Law, and with the instructions and requirements of the Oregon Department of Justice, in accordance with Oregon Revised Statute 192.

 ADOPTED BY BOARD OF DIRECTORS THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 President (or Chairman)

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Secretary (or Clerk)