

Enrolled
Senate Bill 481

Sponsored by Senators BEYER, KRUSE, Representatives HELM, HUFFMAN; Representative KENNEMER (at the request of Attorney General Ellen F. Rosenblum) (Presession filed.)

CHAPTER

AN ACT

Relating to public records; creating new provisions; and amending ORS 40.280, 192.410, 192.440 and 287A.350.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 4, 5, 7 and 8 of this 2017 Act are added to and made a part of ORS 192.410 to 192.505.

SECTION 2. ORS 192.410 is amended to read:

192.410. As used in ORS 192.410 to 192.505:

(1) **“Business day” means a day other than Saturday, Sunday or a legal holiday and on which at least one paid employee of the public body that received the public records request is scheduled to and does report to work. In the case of a community college district, community college service district, public university, school district or education service district, “business day” does not include any day on which the central administration offices of the district or university are closed.**

[(1)] (2) **“Custodian” means:**

(a) The person described in ORS 7.110 for purposes of court records; or

(b) A public body mandated, directly or indirectly, to create, maintain, care for or control a public record. “Custodian” does not include a public body that has custody of a public record as an agent of another public body that is the custodian unless the public record is not otherwise available.

[(2)] (3) **“Person” includes any natural person, corporation, partnership, firm, association or member or committee of the Legislative Assembly.**

[(3)] (4) **“Public body” includes 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 this state.**

[(4)(a)] (5)(a) **“Public record” includes any writing that contains information relating to the conduct of the public’s business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.**

(b) **“Public record” does not include any writing that does not relate to the conduct of the public’s business and that is contained on a privately owned computer.**

[(5)] (6) **“State agency” means any state officer, department, board, commission or court created by the Constitution or statutes of this state but does not include the Legislative Assembly or its**

members, committees, officers or employees insofar as they are exempt under section 9, Article IV of the Oregon Constitution.

[(6)] (7) "Writing" means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings.

SECTION 3. ORS 192.440 is amended to read:

192.440. (1) **A public body that is** the custodian of any public record that a person has a right to inspect shall give the person, upon **receipt of a written** 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 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.]

(2) If an individual who is identified in a public body's procedure described in subsection (7)(a) of this section receives a written request to inspect or receive a copy of a public record, the public body shall within five business days after receiving the request acknowledge receipt of the request or complete the public body's response to the request. An acknowledgment under this subsection must:

- (a) Confirm that the public body is the custodian of the requested record;**
- (b) Inform the requester that the public body is not the custodian of the requested record; or**
- (c) Notify the requester that the public body is uncertain whether the public body is the custodian of the requested record.**

(3) If the public record is maintained in a machine readable or electronic form, the [custodian] **public body** 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] **public body** shall make the public record available in the form in which the [custodian] **public body** 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] **requester** with a written notification of the estimated amount of the fee and the [requestor] **requester** confirms that the [requestor] **requester** 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] **the fees** established by the Secretary of State by rule[,] under ORS chapter 79 or ORS 80.100 to 80.130.

(5) The custodian of [any] a 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] **requester** 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] **requester who** 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] **records** requests that includes:

(a) The name of one or more [persons] **individuals within the public body** to whom public [record] **records** 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 4. (1) A public body shall complete its response to a written public records request that is received by an individual identified in the public body's procedure described in ORS 192.440 as soon as practicable and without unreasonable delay.

(2) 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 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 the records are already publicly available;

(b) Asserts any exemptions from disclosure that the public body believes apply to any requested records and, if the public body cites ORS 192.502 (8) or (9), identifies the state or federal law that the public body relied on in asserting the exemptions;

(c) Complies with ORS 192.505;

(d) To the extent that the public body is not the custodian of records that have been requested, 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 imposition of another sanction, provides a written statement to that effect, citing the state or federal law that the public body relies on, unless the written statement itself would violate state or federal law; and

(f) If the public body asserts that one or more requested records are exempt from public disclosure, includes a statement that the requester may seek review of the public body's determination pursuant to ORS 192.450, 192.460, 192.465, 192.470, 192.480 and 192.490.

(3)(a) If a public body has informed a requester of a fee permitted under ORS 192.440 (4), the obligation of the public body to 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 otherwise has been ordered waived.

(b) If the requester fails to pay the fee within 60 days of the date on which the public body informed the requester of the fee, or fails to pay the fee within 60 days of the date on which the public body informed the requester of the denial of the fee waiver, the public body shall close the request.

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

(b) If the requester fails to respond within 60 days to a good faith request from the public body for information or clarification, the public body shall close the request.

(5) As soon as reasonably possible but not later than 10 business days after the date by which a public body is required to acknowledge receipt of the request under ORS 192.440, a public body shall:

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

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

(6) The time periods established by ORS 192.440 and subsection (5) of this section do not apply to a public body if compliance would be impracticable because:

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

(b) Compliance would demonstrably impede the public body's ability to perform other necessary services; or

(c) Of the volume of public records requests being simultaneously processed by the public body.

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

(8) A public body that cannot comply with the time periods established by ORS 192.440 and subsection (5) of this section for a reason listed in subsection (6) of this section shall, as soon as practicable and without unreasonable delay, acknowledge a public records request and complete the response to the request.

SECTION 5. (1) A person who has submitted a written public records request in compliance with a public body's policy may seek review of the following, in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505:

(a) The failure of a public body to provide the response required by section 4 of this 2017 Act within the prescribed period. A failure of the public body to timely respond shall be treated as a denial of the request unless the public body demonstrates that compliance was not required under section 4 of this 2017 Act.

(b) An estimate of time provided by a public body pursuant to section 4 of this 2017 Act, if the person believes that the estimated time frame for the response is unreasonably long and will result in undue delay of disclosure.

(c) Any other instance in which the person believes that the public body has failed to comply with section 4 of this 2017 Act.

(2) Except as provided in subsection (3) of this section, the Attorney General, the district attorney and the court have the same authority with respect to petitions under this section as when inspection of a public record is denied.

(3) If the Attorney General, district attorney or a court grants a petition filed under this section, the order granting the petition may require disclosure of nonexempt material responsive to the request within seven days, or within any other period that the Attorney General, district attorney or court concludes is appropriate to comply with section 4 of this 2017 Act.

SECTION 6. Sections 4 and 5 of this 2017 Act and the amendments to ORS 192.410 and 192.440 by sections 2 and 3 of this 2017 Act apply to public records requests made on or after the effective date of this 2017 Act.

SECTION 7. (1) The Attorney General shall maintain and regularly update a catalog of exemptions created by Oregon statute from the disclosure requirements of ORS 192.410 to 192.505. The catalog must be as comprehensive as reasonably possible and must be freely available to the public in an electronic format that facilitates sorting and searching of the catalog.

(2) The catalog required by subsection (1) of this section must include the following information for each exemption:

(a) A citation to the Oregon statute or statutes creating the exemption from the disclosure requirements of ORS 192.410 to 192.505;

(b) The relevant text of each statute creating the exemption;

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

(d) To the extent that the 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) 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) The Legislative Counsel shall provide the Attorney General with an electronic copy of any Act passed by the Legislative Assembly that, in the judgment of the Legislative Counsel, creates an exemption from the disclosure requirements of ORS 192.410 to 192.505; 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 ORS 192.410 to 192.505. The catalog is not intended to provide legal advice to public bodies or to members of the public.

(5) A public body may assert that an Oregon statute exempts a public record in the custody of the public body from disclosure even if that statute is not listed in the catalog or the catalog does not include that public body in the catalog's description of the public bodies to which that exemption applies.

SECTION 8. (1) A public body that, acting in good faith, discloses a public record in response to a request for public records is not liable for any loss or damages based on the disclosure unless the disclosure is affirmatively prohibited by state or federal law or by a court order applicable to the public body. Nothing in this subsection shall be interpreted to create liability on the part of a public body, or create a cause of action against a public body, based on the disclosure of a public record.

(2) A public body that discloses any information or record in response to a written request for public records under ORS 192.410 to 192.505 that is privileged under ORS 40.225 to 40.295 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 9. ORS 40.280 is amended to read:

40.280. A person upon whom ORS 40.225 to 40.295 confer a privilege against disclosure of the confidential matter or communication waives the privilege if the person or the person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication. This section does not apply if the disclosure is itself a privileged communication. Voluntary disclosure does not occur with the mere commencement of litigation or, in the case of a deposition taken for the purpose of perpetuating testimony, until the offering of the deposition as evidence. Voluntary disclosure does not occur when representatives of the news media are allowed to attend executive sessions of the governing body of a public body as provided in ORS 192.660 (4), or when representatives of the news media disclose information after the governing body has prohibited disclosure of the information under ORS 192.660 (4). **Voluntary disclosure does not occur when a public body, as defined in ORS 192.410, discloses information or records in response to a written request for public records made under ORS 192.410 to 192.505.** Voluntary disclosure does occur, as to psychotherapists in the case of a mental or emotional condition and physicians in the case of a physical condition upon the holder's offering of any person as a witness who testifies as to the condition.

SECTION 10. ORS 287A.350 is amended to read:

287A.350. The records of registered bond ownership, whether maintained by a public body or otherwise, are not public records within the meaning of ORS 192.410 [(4)].

Passed by Senate April 18, 2017

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 12, 2017

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

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Dennis Richardson, Secretary of State