SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires state agencies to reduce public records request fees by 50 percent if request is made in public interest, and requires state agencies to entirely waive fees if public records request is in public interest and narrowly tailored.

Requires requests made by members of news media to be treated as in public interest.

Requires, on or after January 1, 2022, local governments, local service districts and special government bodies to make identical reductions and waivers in public records requests fees unless governing body of records custodian conducts public meeting, deliberates on and resolves not to adopt fee reductions and waivers.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to public records; creating new provisions; amending ORS 192.324; and declaring an emergency.

Whereas the Legislative Assembly has previously recognized the policy of this state is to guarantee to its citizens the right to know about the activities of their government and to benefit from the information developed by state agencies at public expense; and

Whereas current law allows public bodies to grant anyone a partial or full waiver of fees associated with responding to a public records request if the public body determines that the request is in the public interest; and

Whereas current law nonetheless entitles public bodies to assess full cost, even when disclosure is in the public interest; and

Whereas the assessment of full cost for public records considers only the monetary cost to government of providing records and disregards the many benefits that news media outlets engaged in journalism provide to the members of the public, to community and state leaders and to public coffers, such as deterrence of malfeasance and corruption; and

Whereas in the last decade journalism in Oregon has led to the conviction of multiple officials for public corruption as well as the recoupment of well over $10 million for Oregon government; and

Whereas federal law presumes that public records requests from members of the news media are made in service to the public interest, granting news media members an automatic and full waiver of fees for the costs of retrieval and review of records; and

Whereas the costs of retrieving public records for reproduction can be minimal if a public body makes efforts to store public records in an orderly manner for easy retrieval; and

Whereas many public bodies in Oregon propose fees in the thousands or tens of thousands of dollars, even when a request is narrowly crafted by a member of the news media, forcing requesters to abandon important lines of inquiry that would benefit the public; and

Whereas incentivizing government records clerks to use fee waivers to encourage the narrowing of requests so as to become nononerous can actually save money for governments; and

NOTE: Matter in boldfaced type in an amended section is new; matter in italic and bracketed is existing law to be omitted. New sections are in boldfaced type.

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Whereas such practices applied to legitimate news media requests would serve as a pilot program to incentivize public agency development and employment of best practices and better communication with requesters, and so would benefit the public at large; now, therefore,

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

SECTION 1. ORS 192.324 is amended to read:

192.324. (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 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 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 public body shall make the public record available in the form in which the 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 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 192.311 to 192.478.

(c) The public body may not establish a fee greater than $25 under this section unless the public body first provides the requester with a written notification of the estimated amount of the fee and the requester confirms that the 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 the fees established by the Secretary of State by rule under ORS chapter 79 or ORS 80.100 to 80.130.

(5)(a) The custodian of 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.

(b) If the custodian is a state agency, the custodian shall:

(A) Reduce the fee by 50 percent if the request is in the public interest.
(B) Waive the fee completely if the request is in the public interest and is narrowly tai-
lored. A request is narrowly tailored if the request describes requested records with specificity and includes only records in which there is a public interest within the scope of the request.

(c) For purposes of this subsection, a request made by a representative of the news media constitutes a request in the public interest.

(6) A 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 requester who petitions when inspection of a public record is denied under ORS 192.311 to 192.478. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as when inspection of a public record is denied.

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

(a) The name of one or more individuals within the public body to whom public 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 2. ORS 192.324, as amended by section 1 of this 2021 Act, is amended to read:

192.324. (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 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 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 public body shall make the public record available in the form in which the 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 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 192.311 to 192.478.
(c) The public body may not establish a fee greater than $25 under this section unless the public body first provides the requester with a written notification of the estimated amount of the fee and the requester confirms that the 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 the fees established by the Secretary of State by rule under ORS chapter 79 or ORS 80.100 to 80.130.

(5)(a) The custodian of 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.

(b) If the custodian is a state agency, the custodian shall:
(A) Reduce the fee by 50 percent if the request is made in the public interest.
(B) Waive the fee completely if the request is in the public interest and is narrowly tailored. A request is narrowly tailored if the request describes requested records with specificity and includes only records in which there is a public interest within the scope of the request.

(c) If the custodian is a local government or a local service district, both as defined in ORS 174.116, or a special government body, as defined in ORS 174.117, the custodian shall make the fee reduction or waiver described in paragraph (b) of this subsection unless the governing body of the custodian has held a public meeting and deliberated on and resolved not to adopt the fee reduction or waiver described in paragraph (b) of this subsection.

[(c)] (d) For purposes of this subsection, a request made by a representative of the news media constitutes a request in the public interest.

(6) A 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 requester who petitions when inspection of a public record is denied under ORS 192.311 to 192.478. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as when inspection of a public record is denied.

(7) A public body shall make available to the public a written procedure for making public records requests that includes:
(a) The name of one or more individuals within the public body to whom public 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 3. The amendments to ORS 192.324 by section 2 of this 2021 Act become operative on January 1, 2022.

SECTION 4. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

[4]