

Senate Bill 160

Sponsored by Senator DEMBROW (Pre-session filed.)

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 certain public bodies to reduce public records request fees by 40 percent if request is made in public interest. Requires same public bodies to reduce fees by between 50 and 100 percent, as determined by custodian, if public records request is in public interest and is narrowly tailored.

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

Requires, on and after January 1, 2027, all public bodies to reduce fees by 40 percent if request is made in public interest. Requires same public bodies to reduce fees by between 50 and 100 percent, as determined by custodian, if public records request is in public interest and is narrowly tailored.

A BILL FOR AN ACT

1
2 Relating to public records; creating new provisions; and amending ORS 192.324.

3 Whereas the Legislative Assembly has recognized Oregonians' right to know about the activities
4 of their government, including information developed by public bodies at public expense; and

5 Whereas current law nonetheless allows public bodies to assess requesters with sometimes on-
6 erous fees for production of records even when disclosure is in the public interest; and

7 Whereas Oregonians' access to public records deters fraud, waste and corruption, having led to
8 three public corruption convictions in Oregon in the last decade; and

9 Whereas more clearly empowering public record custodians to award fee waivers in conjunction
10 with narrowly tailored public interest requests can increase efficiency and reduce the cost and time
11 of public records law compliance for government; now, therefore,

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

13 **SECTION 1.** ORS 192.324 is amended to read:

14 192.324. (1) A public body that is the custodian of any public record that a person has a right
15 to inspect shall give the person, upon receipt of a written request:

16 (a) A copy of the public record if the public record is of a nature permitting copying; or

17 (b) A reasonable opportunity to inspect or copy the public record.

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

23 (a) Confirm that the public body is the custodian of the requested record;

24 (b) Inform the requester that the public body is not the custodian of the requested record; or

25 (c) Notify the requester that the public body is uncertain whether the public body is the custo-
26 dian of the requested record.

27 (3) If the public record is maintained in a machine readable or electronic form, the public body
28 shall provide a copy of the public record in the form requested, if available. If the public record is

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

1 not available in the form requested, the public body shall make the public record available in the
2 form in which the public body maintains the public record.

3 (4)(a) The public body may establish fees reasonably calculated to reimburse the public body for
4 the public body's actual cost of making public records available, including costs for summarizing,
5 compiling or tailoring the public records, either in organization or media, to meet the request.

6 (b) The public body may include in a fee established under paragraph (a) of this subsection the
7 cost of time spent by an attorney for the public body in reviewing the public records, redacting
8 material from the public records or segregating the public records into exempt and nonexempt re-
9 cords. The public body may not include in a fee established under paragraph (a) of this subsection
10 the cost of time spent by an attorney for the public body in determining the application of the pro-
11 visions of ORS 192.311 to 192.478.

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

16 (d) Notwithstanding paragraphs (a) to (c) of this subsection, when the public records are those
17 filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees for fur-
18 nishing copies, summaries or compilations of the public records are the fees established by the
19 Secretary of State by rule under ORS chapter 79 or ORS 80.100 to 80.130.

20 (5)(a) The custodian of a public record may furnish copies without charge or at a substantially
21 reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest
22 because making the record available primarily benefits the general public.

23 **(b) If the custodian is a state agency, a county with a population of 300,000 or more, a**
24 **city with a population of 100,000 or more or a school district with a student enrollment of**
25 **17,000 or more, the custodian shall:**

26 **(A) Reduce the fee by 40 percent if the request is in the public interest.**

27 **(B) Reduce the fee by between 50 percent and 100 percent, as determined by the custo-**
28 **dian, if the request is in the public interest and is narrowly tailored. A request is narrowly**
29 **tailored if the request describes requested records with specificity and primarily includes**
30 **records in which there is a public interest.**

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

33 (6) A requester who believes that there has been an unreasonable denial of a fee waiver or fee
34 reduction may petition the Attorney General or the district attorney in the same manner as a re-
35 quester who petitions when inspection of a public record is denied under ORS 192.311 to 192.478.
36 The Attorney General, the district attorney and the court have the same authority in instances
37 when a fee waiver or reduction is denied as when inspection of a public record is denied. **In de-**
38 **termining upon a petition brought under this subsection, the Attorney General, the district at-**
39 **torney and the court may consider whether the custodian appeared to engage in good-faith**
40 **efforts to work with the public records requester to produce records in the most efficient**
41 **way possible.**

42 (7) A public body shall make available to the public a written procedure for making public re-
43 cords requests that includes:

44 (a) The name of one or more individuals within the public body to whom public records requests
45 may be sent, with addresses; and

1 (b) The amounts of and the manner of calculating fees that the public body charges for re-
2 sponding to requests for public records.

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

5 **SECTION 2.** ORS 192.324, as amended by section 1 of this 2023 Act, is amended to read:

6 192.324. (1) A public body that is the custodian of any public record that a person has a right
7 to inspect shall give the person, upon receipt of a written request:

8 (a) A copy of the public record if the public record is of a nature permitting copying; or

9 (b) A reasonable opportunity to inspect or copy the public record.

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

15 (a) Confirm that the public body is the custodian of the requested record;

16 (b) Inform the requester that the public body is not the custodian of the requested record; or

17 (c) Notify the requester that the public body is uncertain whether the public body is the custo-
18 dian of the requested record.

19 (3) If the public record is maintained in a machine readable or electronic form, the public body
20 shall provide a copy of the public record in the form requested, if available. If the public record is
21 not available in the form requested, the public body shall make the public record available in the
22 form in which the public body maintains the public record.

23 (4)(a) The public body may establish fees reasonably calculated to reimburse the public body for
24 the public body's actual cost of making public records available, including costs for summarizing,
25 compiling or tailoring the public records, either in organization or media, to meet the request.

26 (b) The public body may include in a fee established under paragraph (a) of this subsection the
27 cost of time spent by an attorney for the public body in reviewing the public records, redacting
28 material from the public records or segregating the public records into exempt and nonexempt re-
29 cords. The public body may not include in a fee established under paragraph (a) of this subsection
30 the cost of time spent by an attorney for the public body in determining the application of the pro-
31 visions of ORS 192.311 to 192.478.

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

36 (d) Notwithstanding paragraphs (a) to (c) of this subsection, when the public records are those
37 filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees for fur-
38 nishing copies, summaries or compilations of the public records are the fees established by the
39 Secretary of State by rule under ORS chapter 79 or ORS 80.100 to 80.130.

40 (5)(a) The custodian of a public record may furnish copies without charge or at a substantially
41 reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest
42 because making the record available primarily benefits the general public.

43 (b) *[If the custodian is a state agency, a county with a population of 300,000 or more, a city with*
44 *a population of 100,000 or more or a school district with a student enrollment of 17,000 or more, the*
45 *custodian shall]* **At a minimum, a custodian must reduce a request made in the public**

1 **interest:**

2 (A) [*Reduce the fee*] By 40 percent [*if the request is in the public interest.*]; **or**

3 (B) [*Reduce the fee*] By between 50 percent and 100 percent, as determined by the custodian, if
4 the request is in the public interest and is narrowly tailored. A request is narrowly tailored if the
5 request describes requested records with specificity and primarily includes records in which there
6 is a public interest.

7 (c) For purposes of this subsection, a request made by a representative of the news media con-
8 stitutes a request in the public interest.

9 (6) A requester who believes that there has been an unreasonable denial of a fee waiver or fee
10 reduction may petition the Attorney General or the district attorney in the same manner as a re-
11 quester who petitions when inspection of a public record is denied under ORS 192.311 to 192.478.
12 The Attorney General, the district attorney and the court have the same authority in instances
13 when a fee waiver or reduction is denied as when inspection of a public record is denied. In deciding
14 upon a petition brought under this subsection, the Attorney General, the district attorney and the
15 court may consider whether the custodian appeared to engage in good-faith efforts to work with the
16 public records requester to produce records in the most efficient way possible.

17 (7) A public body shall make available to the public a written procedure for making public re-
18 cords requests that includes:

19 (a) The name of one or more individuals within the public body to whom public records requests
20 may be sent, with addresses; and

21 (b) The amounts of and the manner of calculating fees that the public body charges for re-
22 sponding to requests for public records.

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

25 **SECTION 3. The amendments to ORS 192.324 by section 2 of this 2023 Act become oper-**
26 **ative on January 1, 2027.**

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