

Public Records Access and Reproduction

340-011-0310

Purpose

Increased public involvement and awareness of environmental issues has placed greater demands on viewing and copying Department records. OAR 340-011-0310 *et seq.* allows the Department to recover its costs for providing these services, as authorized by Oregon statute. Furthermore, these rules serve to ensure that all Department records remain available for viewing and intact for future use.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.410 - ORS 192.440

Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94

340-011-0330

Requests for Review or to Obtain Copies of Public Records

(1) The right to review records includes the right to review the original record where practicable. It does not provide the right to the requestor to locate the record himself or to review the original record when it contains exempt material.

(2) Request to review or copy public records should be made to, and will be handled by, the appropriate Department staff maintaining the records requested. For questions, contact the Department's general information number listed in the phone book.

(3) Requests for Department records should be as specific as possible, including type of record, subject matter, approximate record date, and relevant names of parties. Whenever possible, the request should include the site location or county of the facility if known. If the request is unclear or overly burdensome, the Department may request further clarification of the request. If the Department cannot identify specific records responsive to a record request, the Department may provide general files or distinct sections of records that are likely to contain the requested records.

(4) Requests to either review or obtain copies of records may be made in writing, by telephone or in-person. The Department may require a request to be made in writing if needed for clarification or specification of the record request.

(a) Each Department office will establish daily hours during which the public may review the Department's records. The hours maintained in each office will be determined by staff and equipment available to accommodate record review and reproduction.

(b) Pursuant to ORS 192.430(1) and this rule, each Department office shall designate and provide a supervised space, if available, for viewing records. This space will accommodate at least one reviewer at a time.

(c) The Department accommodates public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.

(d) The Department's ability to accommodate in-person requests may be limited by staff and equipment availability. Additionally prior to making records available for public review, the Department will ascertain whether the record requested is exempt from public disclosure under ORS chapter 192 and other applicable law.

(5) Time to provide requested records: The Department will respond to a record request as quickly as reasonable. This time frame will vary depending on the volume of records requested, staff availability to respond to the record request, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting with legal counsel. If the Department determines that it will require more than 30 days to respond to a record request, it will inform the requestor of the estimated time necessary to comply with the record request.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

340-011-0340

Costs for Record Review and Copying

(1) Outside Copying/Loaning Records — In order to protect the integrity of Department records, no records may be loaned or taken off-premises by a person besides Department staff unless the Department has a contract with the person removing the records.

(2) Hardcopy Records:

(a) Persons Requesting to Make Copies Themselves: Requestors are allowed to use their own equipment to make copies of requested records depending on the facilities available within each Department office. Use of non-Department equipment within a Department office will not be allowed without staff being present. Staff time will be charged at \$30.00 per hour. The Department office may determine that use of non-Department equipment will not be allowed based on:

(A) Staff time available to oversee the copying; and

(B) Space limitations for the equipment.

(b) Reimbursement of Department staff time: An hourly rate of \$30.00 will be assessed for any staff time greater than 15 minutes spent locating records, reviewing records to delete exempt material, supervising the inspection of records, copying records, certifying records, and mailing records. The Department may charge for the cost of searching for records regardless of whether the Department was able to locate the requested record.

(c) Reimbursement of Department of Justice Attorney General time: If necessary to respond to a record request, an hourly rate of \$90.00 will be assessed for any Department of Justice Attorney General time spent reviewing records to delete exempt material.

(d) Copy Charges: The fee schedule listed below is reasonably calculated to reimburse the Department for the actual costs of making records available and providing copies of records. The per-page copy charge includes 15 minutes of staff time for routine file searches.

(A) Department Administrative Rule sets:

(i) Complete set: \$35.00;

(ii) Update Service: \$115.00 (per annum);

(iii) Individual Divisions: \$0.05 (per page).

(B) Hardcopy (black and white, letter or legal size): \$0.25 per page. Costs for other sized or color copies will be the Department's actual cost plus staff time.

(C) Additional charges:

(i) Fax charges: \$0.50 (per page);

(ii) Document certification: \$2.50 (per certificate);

(iii) Invoice processing: \$5.00 (per invoice);

(iv) Express Mailing: actual or minimum of \$9.00;

(v) Archive Retrieval: actual or minimum of \$10.00.

(e) Whenever feasible, the Department will provide double-sided copies of a record request. Each side of a double-sided copy will constitute one page.

(3) Electronic Records:

(a) Copies of requested electronic records may be provided in the format or manner maintained by the Department. The Department will perform all downloading, reproducing, formatting and manipulating of records. Public access to Department computer terminals may be possible as such terminals become available in the future.

(b) Reimbursement of Department staff time: An hourly rate of \$40.00 will be assessed for any staff time spent locating records, reviewing records to delete exempt material, supervising the inspection of records, downloading and manipulating records, certifying records and mailing records. The

Department may charge for the cost of searching for records regardless of whether the Department was able to locate the requested records.

(c) Reimbursement of Department of Justice Attorney General time: If necessary to respond to a record request, an hourly rate of \$90.00 will be assessed for any Department of Justice Attorney General time spent reviewing records to delete exempt material.

(d) Hardcopy printouts (black and white; legal or letter size): \$0.25 per page. Costs for other sized or color copies will be the Department's actual cost plus staff time.

(e) Other media (if provided by the Department):

(A) Diskettes: \$1.00 each;

(B) 2 hour VHS videocassette: \$6.00 each;

(C) Magnetic Audio Tapes: \$3.00 each;

(D) Compact Disks: \$3.00 each.

(f) Additional charges:

(A) Fax charges: \$0.50 (per page);

(B) Document certification: \$2.50 (per certificate);

(C) Invoice processing: \$5.00 (per invoice);

(D) Express Mailing: actual or minimum of \$9.00;

(E) Archive Retrieval: actual or minimum of \$10.00.

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Collecting Fees

(1) Method: Payment may be made in the form of cash, check, or money order. Make checks payable to "Department of Environmental Quality."

(2) Billing: Requestors wishing to be billed may make such arrangements at the time of record request. Purchase orders will only be accepted for orders \$10.00 or more.

(3) Receipts: A receipt may be given, upon request, for charges incurred.

(4) Reasonable costs associated with responding to a request to review or copy a record not specifically addressed by these rules may be assessed including the actual costs for the Department to have another person make copies of the records.

(5) Prepayment of Copy Costs: Depending on the volume of the records requested, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting with legal counsel, the Department may preliminarily estimate the charges for responding to a record request and require prepayment of the estimated charges. If the actual charges are less than the prepayment, any overpayment will be refunded to the requestor.

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Stats. Implemented: ORS 192.440

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Certification of Copies of Records

Certification of both hard and electronic copies of records will be provided. The Department will only certify that on the date copied, the copy was a true and correct copy of the original record. The Department cannot certify as to any subsequent changes or manipulation of the record.

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Stats. Implemented: ORS 192.440

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Fee Waivers and Reductions

(1) Ordinarily there will be no charge for one copy of a public record:

(a) When the material requested is currently being distributed as part of the public participation process such as a news release or public notice.

(b) When the material requested has been distributed through mass mailing and is readily available to the Department at the time of request.

(c) When the records request is made by a local, state, or federal public/governmental entity or a representative of a public/governmental entity acting in a public function or capacity. Even if a person qualifies under this subsection, the Department may still charge for either record review or copying based on the following factors:

(A) Any financial hardship on the Department;

(B) The extent of time, expense and interference with the Department's regular business;

(C) The volume of the records requested; or

(D) The necessity to segregate exempt from non-exempt materials.

(2) Public Interest Annual Fee Waivers: (a) An approved annual fee waiver allows the requestor to either review or obtain one copy of a requested record at no charge. Fee waivers are effective for a one year period..

(b) A person including members of the news media and non-profit organizations may be entitled to an annual fee waiver provided that a Fee Waiver Form is completed and approved by the Department. The form must identify the person's specific ability to disseminate information of the kind maintained by the Department to the general public and that such information is generally in the interest of and benefit to the public within the meaning of the Public Records Law. Additional information may be requested by the Department prior to granting any fee waiver.

(c) Even if a person has a fee waiver, the Department may charge for either record review or copying based on the following factors:

(A) Any financial hardship on the Department;

(B) The extent of time, expense and interference with the Department's regular business;

(C) The volume of the records requested;

(D) The necessity to segregate exempt from non-exempt materials; and

(E) The extent to which the record request does not further the public interest or the particular needs of the requestor.

(3) Case-by-Case Waivers or Reductions: A person that does not request, or is not approved for an annual waiver, may request a waiver or a reduction of record review or reproduction costs on a case-by-case basis.

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Stats. Implemented: ORS 192.440

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Exempt Records

All records held by the Department are public records unless exempt from disclosure under ORS chapter 192 or other applicable law. If the Department determines that all or part of a requested public record is exempt from disclosure, the Department will notify the requestor and the reasons why the Department considers the record exempt. .

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020

Stats. Implemented: ORS 192.501 & ORS 192.502

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