



CITY OF BEND

Interim Use, Retention and Ownership of Public Records

Policy No. ADM 2019-11

Bend Code Chapter 1.30.005 provides for 'City Manager Authority to Adopt Administrative Regulations, Policies and Guidelines.' All regulations, policies and guidelines adopted by the City Manager shall be consistent with the City of Bend Charter, the Bend Code, and Council ordinances.

The following policy conforms to the above stated standards.

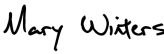
Authorized by City Manager:

DocuSigned by:

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Eric King, City Manager

Dated: 1/27/2023

Reviewed by Legal Counsel:

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Mary Winters, City Attorney

Dated: 1/27/2023

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PURPOSE: This Policy is intended to ensure that public records are being maintained and managed consistently within the City of Bend from the time of creation of a public record to the time of final disposition of the public record.

The purpose of this Policy is the establishment of ordered and consistent processes for maintaining, managing, and retaining public records within the City of Bend.

APPLICABILITY: This Policy applies to City of Bend employees and volunteers.

DEFINITIONS

1. "Public Record" carries the same meaning as that is established by [ORS 192.005](#), and means any information that:

- A. Is prepared, owned, used or retained by City of Bend;
- B. Relates to an activity, transaction or function of the City of Bend; and
- C. Is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the City of Bend.

The following applies to the definition of Public Record:

- Public records may exist in any format, including in paper form or in electronic form (including e-mail).
- Copies of a record, preserved only for convenience or reference, are not public records.
- Messages on voicemail or on other telephone messages storage and retrieval systems are not public records (but are subject to disclosure if retained).
- As discussed below, text messages and instant messages may constitute public records.

2. "Social Media" refers to web-based and mobile communication technologies that allow the creation and exchange of user-generated content such as comments or responsive postings. Examples of "social media" as of the time this Policy is adopted include but are not limited to Twitter, Snapchat, LinkedIn, TikTok, Facebook, YouTube and Instagram.

3. "Text Messages" or "Text Messaging" refers to messages exchanged between fixed-line phones or mobile phones and fixed or portable devices over a network. Excluded from the definition of "text messages" are electronic mail ("e-mail") communications, whether such messages are exchanged among or between official

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City of Bend e-mail accounts or e-mail accounts maintained by private entities and/or private parties.

4. "Instant Messages" or "Instant Messaging" refers to real-time text communications between or among computers or mobile devices over the internet or functionally similar communications network (such as Jabber, Yammer or Teams chat).

PUBLIC RECORDS MANAGEMENT AND RETENTION

1. Management

Public records shall be maintained and managed consistently within City of Bend, without regard to the technology or medium used to create or communicate the record, from the time of creation of a public record to the time of final disposition of the public record.

2. Retention Schedule

The City of Bend shall follow the Cities General Records Retention Schedules codified at [OAR Chapter 166 Division 200](#). Records not found on the City General Records Retention Schedule are considered to be program records of the City of Bend and must be approved by the State Archivist prior to their destruction.

Departments within the City may, but are not required to, implement Department-specific records retention schedules provided the applicable record retention periods are not for less time than the periods described in [OAR Chapter 166 Division 200](#) or as otherwise required by law. Any Department-specific record retention schedule must be approved in writing by the applicable Department Director, the City Attorney's Office, and the City Recorder. Once a Department-specific retention schedule has been approved, the Department must retain all records consistent with such approved retention schedule.

The City Recorder shall retain copies of all approved Department-specific retention schedules.

3. Disposition and/or Destruction of Public Records

The City of Bend will dispose of and/or destroy Public Records pursuant to of OAR 166-030-0060.

4. Role of the City Recorder

The City Recorder will have primary responsibility for overseeing the implementation of and compliance with this Policy. This responsibility includes overseeing the appropriate use of public records, determining how to respond to public records requests, and determining who receives access to public records.

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5. Accessibility

Records maintenance will include ongoing review of technological evolution and availability and public records shall be migrated to keep up with technology and to ensure enduring accessibility.

6. E-Mail

The City of Bend believes that in most circumstances, e-mails sent to or from an individual's official City e-mail account will meet the definition of public record. It is therefore City policy that virtually all e-mail messages composed or sent using an individual's official equipment and/or official e-mail address be for primarily business purposes. Personal use shall be limited and must not: (1) interfere with normal business activities; (2) be associated with any outside for-profit business activity; or (3) otherwise contain any content that would cause embarrassment to the City.

City employees and volunteers should not have any expectation of privacy with regard to official e-mail accounts and systems.

When City of Bend receives a public records request or valid subpoena, all official e-mail accounts and systems used for official City business are subject to search and production.

To the extent that City employees and volunteers use personal e-mail addresses to communicate about official matters (that is, to the extent public records are associated with such addresses), those e-mails are similarly subject to search and production. Individuals are therefore strongly encouraged to engage in communications regarding official business only using their official e-mail accounts and not their personal accounts. If personal accounts must be used, it is City policy that individuals copy their official e-mail accounts on all such outgoing communications and forward any received messages on which their official e-mail accounts are not copied.

7. Text Messages

City of Bend employees and volunteers may use text messaging to communicate factual and logistical information: (1) that is not a substantive part of the City's work, or (2) that has been documented, or necessarily will be documented, in separate public records. In the absence of separate documentation, individuals are not to use text messages for official purposes other than for routine communications that do not meet the definition of a "public record." This Policy applies equally to an individual's "official" mobile phone or computer and to an individual's "personal" mobile phone or computer.

A. Examples of Acceptable Uses

- Scheduling.
- Requesting a call or e-mail on a matter, without substantive discussion.

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- Requesting or offering logistical assistance (“Can you help me get these boxes to the courthouse?”)
- Forwarding any person’s contact information (“I’m at 503-378-6002.”)
- Explaining your current whereabouts, or inquiring about someone else’s (“We’re at the meeting discussing this morning’s announcement. Are you around?”)
- Describing facts or events that do not relate to the substance of the City’s work (“Spilled coffee all over myself right before trial!”), or that have been or necessarily will be separately recorded (“Mr. Jones just testified to the committee that our bill would cost taxpayers \$3 million.”)
- Inquiring about events like those in the previous bullet (“Has Mr. Jones testified in committee yet?”)

B. Discussion of Unacceptable Uses

City of Bend employees and volunteers are to make best efforts to avoid any text messaging-based substantive discussions of the City’s work. As noted above, substantive facts may be reported only if they are already documented in separate public records, or if they necessarily will be documented in separate public records. If, notwithstanding this Policy, substantive discussion (not otherwise documented) relating to the City of Bend or work occurs on a text-messaging system, such discussion is to be immediately copied to a separate public record format (such as by copying the relevant text messages to an individual’s official e-mail).

C. Retention of Text Messages

Because this Policy requires that no text message-based public records be created – or that if they are created, that they be additionally saved to a separate public records format – the City of Bend will not retain text messages, and will not search any existing text messages in response to public records requests.

8. Instant Messages

With the City’s switch to remote operations due to the COVID-19 pandemic, the use of Instant Message services such as Microsoft Teams, Zoom, Skype, and Jabber have increased.

The City of Bend policy with respect to Instant Messages shall be the same as that recited above regarding Text Messages. Like Text Messages, the City will not retain

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Instant Messages, and will not search any existing Instant Messages in response to Public Records requests.

However, individuals should be aware that Instant Messages could be subject to retention and disclosure if they contain content that falls under the City of Bend Records Retention Schedule. Accordingly, it is the individual's responsibility to copy any substantive discussion not otherwise documented related to the City of Bend or work occurring on an Instant Messaging system to a separate public record format.

9. Social Media

Any records placed on any Social Media platform by the City of Bend shall be an accurate copy of an official record that is retained elsewhere by the City of Bend per the official retention schedule. Records placed on any Social Media platform are assumed to not be owned by the City of Bend, even though the underlying record might be. Comments to or re-postings of content placed on any Social Media platform by the City of Bend – when such comments or re-postings themselves appear on a Social Media platform – are assumed to not be prepared, owned, used or retained by the City of Bend, and will not be retained. Should the City of Bend choose to copy into its internal files any such comments or re-postings, such copy is a public record and will be retained per the official retention schedule.

10. Public Records Requests

Generally, the City of Bend will attempt to respond to all public records requests as timely as possible, consistent with applicable law and the proper exercise of judgment relating to the City's other duties. In the event the City of Bend receives a request for public records that may be on an individual's private device or account, it will be the responsibility of the person to search their own personal device or account and determine which records are responsive and which records are not, and to provide any responsive records to the City Recorder for disclosure. Absent an order from the District Attorney or a court of a competent jurisdiction, the City will not perform a search or analysis on a private device or account nor compel an individual to submit their device to the City to be subject to the same.

Any additional guidelines or policies relating to the intake, processing, disclosure and/or charging determinations relating to public records will be the subject of a separate Public Records Request Policy.