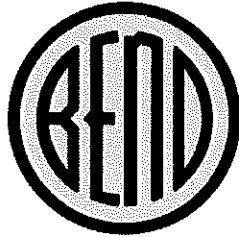




TITLE: Public Records Requests
POLICY NO.: ADM 2019-12



CITY OF BEND

Public Records Requests Policy No. ADM 2019-12

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:

Handwritten signature of Eric King in black ink.

Eric King
City Manager

Dated: 9-10-19

Reviewed by Legal Counsel:

Handwritten signature of Mary Winters in black ink, with a large circular flourish.

Mary Winters
City Attorney

Dated: 9-9-2019



PURPOSE: It is the policy of the City of Bend (City) to make non-exempt public records easily accessible to interested parties. The City recognizes that the Oregon Public Records Law (ORS 192.410-505) gives the public the right to inspect and copy certain public records maintained by the City.¹ The City also recognizes that certain records are exempt from public disclosure, or that disclosure may require balancing the right of the public to access the records against individual privacy rights, governmental interests, confidentiality issues and attorney/client privilege. Additionally, when the City receives a request to inspect or copy public records, it incurs costs and it is in the public interest that costs be recovered by the City.

It is the purpose of this Policy to: Establish an orderly and consistent procedure for responding to public records requests; (b) Establish the basis for a fee schedule intended to reimburse the City for the actual costs incurred in responding to public records requests; and (c) Inform citizens and all City Departments of the procedures and guidelines that apply to public records requests.

Section 1 – Making a Public Records Request

A request for public records that are in the custody of the City of Bend may be made by submitting a written request to the City Recorder, who is the Custodian of Records (or his or her designee). The City is required to allow inspection or copying of all non-exempt public records. Public record requests may be submitted in person, by mail, by fax or by e-mail. The City may request additional information or clarification from the requester for the purpose of expediting its response to the request.

The request must include the name and address of the person requesting the public record; the telephone number or other contact information for the person requesting the public record; and a sufficiently detailed description of the record(s) requested to allow the City of Bend to search for and identify responsive records. The City may require that the request be dated and signed by the person requesting the public record.

Section 2 – Processing a Public Records Request.

1. **Acknowledgment.** Within five business days of receipt of a written public records request the City Recorder shall send a written acknowledgement to the requestor, containing the following:

¹ The City is required to respond to Public Records requests by the Oregon Public Records Law. The Federal "Freedom of Information Act" (FOIA) does not apply to requests for the City's public records. This law only applies to requests for public records maintained by the federal government.

City of Bend
City Manager Administrative Policy



- A. Confirmation of whether or not the City is the custodian of the requested record, if known: or
 - B. A statement that no such records exist, or
 - C. If the request is unclear, a request to clarify the records sought, and
 - D. A cost estimate with a notice that a deposit for costs must be paid before the request will be processed.
2. The City will respond to written public records requests as soon as practicable and without unreasonable delay.
3. The City may request additional information or clarification from a requestor for the purpose of expediting the City's response to the request. If the City has requested additional information or clarification in good faith, its 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. If the requestor fails to respond within 60 days to a good faith request from the City for information or clarification, the City shall close the request.
4. As soon as reasonably possible but not later than 10 business days after the date the City is required to acknowledge receipt of the request, the City will:
- A. Complete the public records request; or
 - B. Provide a written statement to the requestor that the City is still processing the request and a reasonable estimated date by which the City expects to complete its response based on the information current available.
- (Except that the time periods in this Section 2 do not apply if compliance by the City would be impracticable because the staff necessary to complete the response to the request are unavailable (on leave or not scheduled to work), compliance will demonstrably impede the City's ability to perform other necessary services, or because of the volume of public records requests simultaneously being processed by the City. ORS 192.329(6).)*
5. If the City Recorder believes a request should be denied in whole or in part, the Recorder will prepare a written explanation of the basis for the denial, which shall identify all applicable exemptions from disclosure for each part of the record being withheld. The Recorder will work with the City Attorney's office as necessary to identify applicable exemptions.
6. Inspection. If a physical inspection of public records is to occur, City staff shall be present at all times to supervise the inspection and to ensure that no documents are removed, destroyed, or otherwise tampered with.



Section 3 - Calculation of Fees and Response

Based upon an evaluation of actual costs in making public records available for inspection or copying, the City calculates fees for respond records requests in the following manner:

1. \$1.50 for the first page of a photocopied record and \$.15 per page for each page thereafter.
2. The cost of records transmitted by fax is \$1.50 for the first page and \$0.15 for each additional page if the record is to be sent to a FAX number that will result in a long distance charge.
3. There is no per page fee for records transmitted by e-mail. The determination that a file is too large to send via e-mail is at the sole discretion of the City.
4. Actual cost for use of material and equipment for producing copies of non-standard records will be charged.
5. Upon request, copies of public records may also be provided on a USB drive if the document(s) are stored in the City's computer system. Drives will be provided at a cost consistent with the City's fee resolution for each drive and may contain as much information as the drive will hold. Due to the threat of computer viruses, the City will not permit requesters to provide drives for electronic reproduction of computer records.
6. Labor charges that include researching, locating, compiling, editing or otherwise processing information and records:
 - A. There will be no charge for the first 15 minutes of staff time.
 - B. Beginning with the 16th minute, the charge for the request is equal to the salary of the employee(s) gathering the information. The City will determine which staff member is able to gather the material in the most efficient manner.
 - C. The actual cost for delivery of records such as postage and courier fees.
 - D. Cost for City staff time locating the requested records, reviewing the records in order to delete exempt material, supervising a person's inspection of original documents in order to protect the records, or certifying documents as true copies.
 - E. Cost of time spent by the attorney(s) for the City in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records.



- F. Prepayment Required. The City may require pre-payment of estimated fees before taking further action on a request, and having the requestor confirm that he or she wants the City to proceed. If the City has informed the requestor of the estimated fee the City's obligation to complete the request is suspended until the fee has been paid or the fee is waived under Section 7 below. If the requestor fails to pay the fee within 60 days of the date the City informs the requestor of the fee or denies a fee waiver, the City shall close the request.
 - G. If the actual charges are less than the prepayment, any overpayment will be refunded in a timely manner.
7. Fee Waivers. Under the Act, the custodian of a public record may reduce or waive fees if the custodian determines that doing so is in "the public interest because making the record available primarily benefits the general public." Application of the public interest test requires analysis of whether disclosure of a record will benefit the interests of the community or society as a whole, i.e., "the public." A personal benefit to be derived by the requester alone is insufficient to permit a fee waiver. Requests for a fee waiver should identify the reason for the request and the public interest served in waiving or reducing fees. The decision to waive or reduce fees is within the reasonable discretion of the City. Requests for a fee waiver or reduction must be evaluated on a case-by-case basis by the City Recorder.
8. Media Requests. Requests made by media representatives will be charged as follows:
- A. Requests for a limited number of easily available documents will not be charged.
 - B. Requests for broad, staff intensive requests will be charged the same as all other requests unless, on a case by case basis, the City Recorder determines that making a fee waiver or reduction is warranted due to (1) the character of the public interest in the particular disclosure, (2) the extent to which the fee impedes the public interests, and (3) the extent to which a waiver would burden the City's resources.
9. ADA Format. No additional fees will be charged for providing a record in an alternate format in accordance with the Americans with Disabilities Act of 1991.
10. Easily accessible or routinely requested records. In the case of a records that are easily accessible by City staff or are publicly available (such as on the City's website), and that contain no materials that are exempt from disclosure, the City Recorder may inform the requestor how to access the records or may provide a copy of the records at no cost.



Section 4 - General Concepts

What is a Public Record?

ORS 192.311 (5) defines a "public record" as *including*:

(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.

This definition includes information stored on virtually any medium. A record may be handwritten, typed, photocopied, printed, microfilmed, or existing in an electronic form such as e-mail or a word processing document or other types of machine readable or electronic recordings. Telephone messages left on a voicemail system are writings and therefore subject to inspection to the extent that they exist. However, public bodies are not required to retain their telephone messages.

Records need not have been prepared originally by the public body to qualify as public records. If records prepared outside government contain "information relating to the conduct of the public's business," and are "owned, used or retained" by the public body. For example, the Oregon Attorney General has concluded that a contract giving an agency ownership of everything created by the contractor meant that a record never in the agency's possession was a public record subject to disclosure. However, a document prepared by a private entity does not become a public record merely because a public official reviews the document in the course of official business so long as the official neither uses nor retains the document. Not all documents in the possession of a public officer or agency employee necessarily constitute public records.

Public Records vs. Requests for Information.

It is important that employees distinguish between a request for information and a public records request. Many public records requests are requests for information that would actually require the creation of a new public record. Public bodies are not obligated under Oregon's Public Records law to create new public records where none exists in order to respond to requests for information. The public body only has the duty to allow inspection and copying of existing public records. Public bodies are not required to create a record to disclose the "reasoning" behind their actions, or other "knowledge" their staff might have. Nor does the Act require public bodies to explain or to answer questions or provide legal research or analysis about their public records.

Although computer data and printouts generated for use by the public body are public records, the City is not required to create new information using its computer programs

City of Bend
City Manager Administrative Policy



or to create a new program to extract the data in its computer in a manner requested by the public. The Act requires public bodies to retrieve and make available nonexempt computer or electronically stored data and information, when requested, through the computer software or programs in use by the public body. This does not mean that public bodies must develop or acquire new or additional software or programs in order to retrieve the requested information. Nor does it mean that public bodies must use existing programs to develop entirely new information. When the City uses computer software or programs to retrieve information for its own purposes, it must, upon request, use that same software or program to retrieve and make available existing data or information stored by the public body in computer or electronic form.

Appeals.

If a public records request or a fee waiver request is denied, the requestor may appeal the denial to the Deschutes County District Attorney, pursuant to ORS 192.460.