

CITY OF SALEM PUBLIC RECORDS POLICY

I. Purpose.

The City of Salem recognizes that Oregon Public Records Law (ORS 192.410-192.505) gives members of the public the right to inspect and copy certain public records maintained by the City.¹ The City also recognizes that certain records maintained by the City 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, confidentially issues and attorney/client privilege. Additionally, when the City receives a request to inspect or copy public records, costs are incurred by the City in responding to the request. The purpose of this Public Records Policy is **(a)** to establish an orderly and consistent procedure for responding to public records requests; **(b)** to establish the basis for a fee schedule designed to reimburse the City for the actual costs incurred in responding to public records requests; and **(c)** to inform citizens of the procedures and guidelines that apply to public records requests.

II. Policy.

It is the policy of the City to respond in an orderly, consistent and reasonable manner in accordance with the Oregon Public Records Law to requests to inspect or receive copies of public records maintained by the City. The City must respond to the request within a reasonable amount of time. What is “reasonable” depends on the size and complexity of the request, available staff time and resources, and whether legal counsel needs to be consulted prior to disclosing the requested records.

III. Public Records.

Oregon Public Records law defines a public record as:

“any writing containing 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.” ORS 192.410 (4).

A record may be handwritten, typed, photocopied, printed, microfilmed, and exist in an electronic form such as e-mail or a word processing document, or other types of electronic

¹The City is required to respond to public requests by 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.

recordings.

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. Although a public body may, if it chooses, create a new record to provide information, the public body does not have to create a new record and only has a duty to allow the inspection and copying of an existing public record.

The City is obligated to provide public records in the format in which they exist. If requested public records are in electronic form, the City will make arrangements to inspect the record with the appropriate device, such as a computer or tape recorder. The City is not obligated to provide a public record in another form, such as a written transcript. The City may provide the public record in an alternative format such as a transcript if it wishes and the person making the request fully reimburses the City for the costs of providing the record in such alternative form. This City will provide records in alternative format at no cost, if necessary to provide reasonable accommodation to persons with disabilities.

IV. Public Records Exempt from Disclosure.

There are numerous types of public records that are exempt from disclosure. Many of these exemptions may be found in ORS 192.501 and ORS 192.502. Others may be located in other Oregon statutes. A few specific exemptions worth special notice are as follows:

- A. Personal Safety Exemption - ORS 192.445(1).** If an individual requests in writing that a public body not disclose the phone number or address of the individual, the public body is prohibited from disclosing the information if the safety of the individual or family member would be in danger.
- B. Public Records Relating to Pending Litigation - ORS 192.501(1).** If a public body is involved in litigation, or if litigation is reasonably likely in the future, the public records relating to the litigation are exempt from disclosure.
- C. Archeological Sites or Objects - ORS 192.501(11).** Information concerning the location of archeological sites or objects are exempt from disclosure, unless requested by the governing body of an affected Indian tribe.
- D. Personal Discipline Actions - ORS 192.501(12).** Public records of a discipline action or materials or documents supporting that action are exempt from disclosure.
- E. Threatened or Endangered Species - ORS 192.501(13).** Certain information regarding the habitat, location or population of any threatened or endangered species is exempt from disclosure.

- F. Personal Privacy Exemption - ORS 192.502(2).** Information of a personal nature, such as that kept in a medical or personal file, is exempt from disclosure if disclosure would be an unreasonable invasion of privacy, unless disclosure is in the public interest by clear and convincing evidence. Personal information includes home address, phone number, weight and age.
- G. Public Employees Addresses, Dates of Birth and Telephone Numbers - ORS 192.502(3).** The addresses, dates of birth and phone numbers of public employees and volunteers which are maintained by the public body in personnel files are exempt from disclosure.
- H. Confidential Information Submitted by Citizens - ORS 192.502(4).** Information submitted to a public body in confidence and not required to be submitted, where the information should reasonably be considered confidential, and the public body has in good faith obliged itself to keep the information confidential, is exempt from disclosure.
- I. Records Deemed Confidential or Privileged under federal and state laws or regulations - ORS 192.502(8) & (9).** Communications that are subject to attorney/client privilege, such as communications between the City Attorney's Office and a City Department or staff person are exempt from disclosure.
- J. Social Security Numbers.** No social security numbers should be disclosed without prior consultation with the City Attorney. If a public record contains a social security number, the number should be blacked out prior to disclosure.

V. Copyrighted Material.

If the City maintains public records containing copyrighted material, the City will permit the person making the request to inspect the copyrighted material, and may allow limited copying of such material if allowed under Federal copyright law. The City may require written consent from the copyright holder or an opinion from the person's legal counsel before allowing copying of such materials.

VI. Fees.

The fee for responding to a public records request will be that established in the fee schedule adopted by the City which is in effect at the time the request is submitted. The fee will be reasonably calculated to reimburse the City for its actual costs in making the records available and may include:

- A.** Charges for the time spent by City staff or any City contractor to locate the requested public records, to review the records in order to determine whether any requested records are exempt from disclosure, to segregate exempt records, to supervise the requestor's inspection of original documents, to copy records, to certify records as true copies and

to send records by special or overnight methods such as express mail or overnight delivery; and

- B. A per page charge for photocopies of requested records.
- C. A per item charge for providing CDs, audiotapes, or other electronic copies of requested records.

The City will prepare an estimate of the charges that will be incurred to respond to a public records request. Prepayment of the estimated charges is required before making the records available for inspection or copying or making copies of any requested records. If the actual costs incurred by the City to respond to a records request are less than the amount of any required prepayment, the overpayment will be promptly refunded. If the actual costs incurred by the City to respond to the request are more than the amount of the prepayment, the City will charge the requestor for all such additional costs, and may require an additional amount in prepayment.

Unless otherwise prohibited by law, the City may, at the City's discretion, furnish copies of requested records without charge or at a reduced fee if the City determines that the waiver or reduction of fees is in the public interest.

VII. Procedure.

The following procedures must be followed in submitting and responding to requests to inspect or receive copies of public records maintained by the City:

- A. **Custodian of the Records.** The City Recorder is the designated Custodian of the Records for all public records maintained by the City, regardless of which City Department where the record is located. In the City Recorder's absence the Deputy City Recorder shall serve as the Custodian.
- B. **Request in Writing.** A request to inspect or obtain copies of a public record must be made in writing. Persons are encouraged to use the standard Public Records Request Form (*see* Form A: Public Records Request) provided by the City, although other forms of written requests will be accepted if all the information required on the standard form is provided.
- C. **Departmental Policies.** Subject to prior approval by the City Manager and the City Attorney, a Department Head may establish a separate Departmental policy to allow verbal or written requests to be made directly to the Department for public records maintained by the Department that are routinely requested by members of the public in connection with the Department's regular duties.

D. Delivery of Written Request. The written request shall be delivered directly to the City Recorder by the person making the request. Delivery can be in person, by mail, by facsimile or via electronic mail, and shall be directed to: The City Recorder, 555 Liberty Street SE, Room 205, Salem, OR 97301; 503-588-6091 (phone); 503-361-2202 (fax).

E. Processing a Public Records Request.

1. Upon receipt, the City Recorder will date stamp the written request, and immediately forward one copy of the request to the appropriate Department's Designated Records Manager, along with a Staff Instruction Form, a Denial of Request and a Final Cost Report (*see* Form B: Staff Instruction Letter; Form C: Denial of Request; and Form D: Final Cost Report).
2. Upon receipt, the Designated Records Manager shall: **(a)** estimate the costs necessary to provide the requested records; **(b)** estimate the amount of time necessary to provide the requested records; and **(c)** identify any records that the Designated Records Manager believes are exempt from public disclosure. The Designated Records Manager should respond to the City Recorder and the City Attorney with this information within five business days of receipt of the materials from the City Recorder.
3. After receipt of the response from the Designated Records Manager, the City Recorder will contact the person making the request within not more than three business days to advise the person **(a)** of the estimated costs involved in fulfilling the request; **(b)** whether additional time is needed to locate the records and/or prepare the estimate; and **(c)** if the request to inspect or copy the public records is being denied, the basis for the denial. ***No further work on the request will be undertaken until the estimated costs have been deposited with the City Recorder.***
4. Upon receipt of the deposit, the City Recorder will contact the Designated Records Manager and direct the Designated Records Manager to make the public records ready for inspection or to make copies of the public records. The original public records or the copies should be forwarded to the City Recorder along with a report of the final costs incurred in responding to the request. When the Final Cost Report is received, time spent by the City Recorder will be added to determine the total cost.
5. The City Recorder will contact the person making the request and arrange for inspection of the original public records, or to pick up the copies, or to confirm the copies are to be mailed, and advise of the final cost which must be paid before inspection occurs or the copies are provided.
6. If an inspection of original public records is to occur, the City Recorder shall be present at all times to supervise the inspection and to ensure that no documents are removed, destroyed, or otherwise tampered with.

7. If certified copies were requested, the City Recorder will attach the Certification (see Form E: Certification) to the copies before releasing or mailing them.
8. If the request is being denied, the City Recorder should prepare a written explanation of the denial based upon information provided by the Department Head and the City Attorney, and shall forward the denial to the Requestor.
9. The City Recorder shall establish a system to monitor each step of the process in responding to a request to inspect public records to insure that the person making the request has a response within a reasonable time frame, and shall maintain a copy of each request and corresponding records related to the City's response, including notes of each contact with the person making the request.

F. Departmental Duties.

1. The Department Head shall appoint a Designated Records Manager, who shall be responsible for reviewing and responding to public records requests received from the City Recorder or made under a Department Policy for responding to routine requests.
2. The Designated Records Manager shall conduct a review to determine what public records, if any, exist which are responsive to the request and if any records might be exempt from disclosure. The Department should not, without prior approval of the City Manager, compile information or create documents related to a public records request.
3. Once it is determined whether any responsive public records exist, the Designated Records Manager should make an estimate of the expected costs in complying with the request (see Form B: Staff Instructions / Estimate), and forward a copy of the estimate to the City Recorder and the City Attorney within five business days of receipt of the materials from the City Recorder. If the estimate cannot be completed within five business days, the City Recorder should be advised of the estimated time to complete the review and estimate. ***No further work on the request will be undertaken until the Designated Records Manager has received notice from the City Recorder that the estimated costs have been deposited with the City Recorder.***
4. When the City Recorder has given notice that the estimated costs have been paid, the Designated Records Manager should proceed to prepare the original public records for inspection, or have photocopies made of the records if copies have been requested.
5. The Designated Records Manager shall keep a record of all time spent in responding to the request and any applicable costs.

6. The original public records, or the photocopies, if applicable, should be forwarded to the City Recorder, along with a final report of costs incurred (see Form D: Final Cost Report).

G. Place and Time of Inspection. The City Recorder will provide a reasonable opportunity for the inspection, examination or copying of public records. Any inspection, examination or copying of requested records shall take place in City Offices during regular City business hours, at a time determined by the City Recorder.

H. Denial of Public Records Request.

1. **Review by City Attorney.** Should the Designated Records Manager believe there are public records that are, or may be, exempt from public disclosure, the records shall be provided to City Attorney for review and redaction before the records are released for inspection or copying. The City Attorney shall keep a record of all time spent in reviewing the request and provide that information to the Designated Records Manager for inclusion in the final report of costs incurred.
2. **Denial.** If a public records request is denied, a denial form (see Form C: Denial of Request for Access to Public Record) should be completed and forwarded to the City Recorder providing a brief explanation of why an exemption applies to the particular records. The denial form should include a citation to the specific statute upon which the denial is based. The City Recorder shall review the denial form with the City Attorney, and prepare a denial of the request, which shall be provided to the person making the request as soon as is practicable.
3. **Appeal.** If a public records request is denied, the person making the request may appeal the denial to the Marion County District Attorney's Office (see Form F: Petition to Review Denial of Request for Access to Public Records). If the Marion County District Attorney determines that disclosure is appropriate, the Department can disclose the records or the City can challenge the District Attorney's decision in court.

Form A: Public Records Request

Form B: Staff Instructions and Cost Estimates

Form C: Denial of Request for Access to Public Record

Form D: Final Cost Report

Form E: Certification

Form F: Petition to Review Denial of Request for Access to Public Records

FORM A
CITY OF SALEM
PUBLIC RECORDS REQUEST

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| <u>REQUESTOR INFORMATION:</u> | Date of Request: _____ |
| Request is for: <input type="checkbox"/> inspection of public records | <input type="checkbox"/> copies of public records |
| Name: _____ | |
| Mailing Address: _____ | |
| City, State, Zip: _____ | |
| E-Mail address: _____ Daytime Phone: _____ | |
| Preferred Method of Contact: <input type="checkbox"/> Mail <input type="checkbox"/> Phone <input type="checkbox"/> e-mail | |
| If available, do you wish to get a certified copy of the public records requested? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| [Please note that there will be additional charges for this service] | |

| |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>PUBLIC RECORD INFORMATION:</u> |
| Designate City Department from which records are requested. _____ |
| What records are you requesting? (e.g., annual report, aerial photos, meeting minutes, correspondence, staff reports, etc.) Be as specific as possible. [If you need more room, please attach additional sheets of paper.] _____ _____ _____ |
| For what time frame? (July 2006 to present; most current; last two years, etc.) _____ |

Please provide any additional details that will aid in quickly locating the documents you are requesting (e.g., permit or application numbers; tax account numbers; project name; owner's name; property address, etc.)

Note:

Public records are writings containing information relating to the conduct of the public's business. Writings include handwritten, typed, photographed, electronic or otherwise recorded words, letters, pictures, sounds, symbols or combinations of any of these mediums. ORS 192.410. There are numerous exceptions to the public records laws which allow a public body to refuse to disclose public records. ORS 192.501, 192.502. Public bodies are not required to explain or answer questions about their public records, nor are they required to create public records where none exist. Public bodies are required to make available for inspection and copying, subject to any applicable exemptions, only those records that exist at the time of the request.

The City may need up to eight business days to initially respond to your request. The first contact from the City Recorder will be to advise of the estimated costs involved in fulfilling your request, which must be prepaid before any further work is performed in completing your request. No public record request will be processed absent prepayment of the estimated cost. Once paid, the City Recorder will contact you 1) when the records you requested are ready for your review; or 2) to provide a date when the records can be reviewed or picked up; or 3) to advise that the request is being denied. If the City denies your request to review the public record(s), a written explanation of the reason for denial will be forwarded to you by the City Recorder within a reasonable amount of time.

Full payment of the total amount of costs incurred is required before the public records are inspected or copies are released. YOU WILL BE REQUIRED TO PAY THE COSTS OF PROCESSING YOUR PUBLIC RECORDS REQUEST EVEN IF NO RECORDS ARE FOUND, OR IF THE RECORDS ARE EXEMPT FROM DISCLOSURE.

Most records available for public inspection are City of Salem property. NOTHING CAN BE ALTERED, ADDED, OR REMOVED FROM THESE RECORDS. Photographing documents is not permitted. Allowing the inspection and/or copying of public records in the custody of the City of Salem is not meant to waive or restrict any copyright, proprietary, confidentiality, privilege, exemption from disclosure, or other rights in said documents.

I HAVE READ AND AGREE TO COMPLY WITH THE ABOVE CONDITIONS and further agree to pay the cost of fulfilling this Public Records Request according to the conditions set forth above and as established in the fee schedule adopted by the City Council which is in effect at the time my request is submitted. These costs may include the cost of locating records, reviewing records to delete exempt material, supervising the inspection of records, copying records, certifying records and mailing records, including the cost of searching for records regardless of whether staff was able to locate the requested records.

[Signature of Requestor]

[Date]

FORM B
CITY OF SALEM
PUBLIC RECORDS REQUEST
STAFF INSTRUCTIONS AND COST ESTIMATES
 [For completion by Department Records Manager]

PRELIMINARY INQUIRIES

Is this a request for public records, as opposed to information? [For example, a record is something you could go find, such as a report, map, deed, letter, computer printout or file, and either obtain a copy or allow the requestor to view it. If no public record exists, we are not obligated to create one.] If this is a request for information, immediately advise the City Recorder that no public records exist.

Does the request appear to request records which this Department maintains? If not, advise the City Recorder that your Department maintains no such public records and, if known, where the records are believed to be maintained.

Is the request simple or complex? If it is complex, unusual, or requests records which appear to be exempt from disclosure, the City Attorney should be consulted.

ESTIMATE CHARGES FOR REQUEST FROM: _____

A. Estimated cost to locate records, separate non-disclosable records, delete confidential information, make copies, certify copies, organize, tailor or compile records. [If request is expected to take 10 minutes or less, there is no charge.]

Estimated staff time: ____ hours X \$_____ per hour = \$ _____

B. Estimated cost for the City Attorney to review request.

Estimated staff time: ____ hours X \$_____ per hour = \$ _____

C. *Estimated copies: ____ pages X 35¢ per page black & white = \$ _____
 ____ pages X \$1.00 per page color = \$ _____

** If only inspection of the public record(s) has been requested, an estimate of photocopy costs need not be made.*

D. Estimated certified copies: ____ documents X \$5.00 per document = \$ _____

E. Additional fees: (e.g., oversize copies, electronic records, audio tapes, certain finance/assessment/taxation/election documents) consult the current fee schedule. Also special request fees, such as mailing public records to Requestor, add actual cost of mailing plus staff time. = \$ _____

Total estimated charges for responding to public records request: \$ _____

THIS AMOUNT MUST BE PAID PRIOR TO FURTHER PROCESSING THIS PUBLIC RECORDS REQUEST. ONCE THE CITY RECORDER HAS ADVISED THAT PAYMENT HAS BEEN RECEIVED, THE DESIGNATED RECORDS MANAGER WILL BE DIRECTED TO MAKE THE PUBLIC RECORDS READY FOR INSPECTION OR TO MAKE COPIES OF THE PUBLIC RECORDS. REMEMBER TO TRACK ALL TIME AND EXPENSES INCURRED IN RESPONDING TO THE REQUEST (see, Final Costs, Form E), WHICH SHOULD BE DELIVERED TO THE CITY RECORDER WITH THE REQUESTED PUBLIC RECORD(S).

[Designated Department Records Manager]

[Date]

When form is completed, retain original and send copies to
the City Recorder and the City Attorney

FORM C
DENIAL OF REQUEST FOR ACCESS TO PUBLIC RECORD

The City of Salem has this date received the request of _____
_____ for access to one or more public record(s).

In response to this request, the City is refusing to allow inspection or copying of

[identify public record(s)]. This material is being withheld pursuant to ORS 192.501 / 192.502 [circle one], paragraph _____.

A brief explanation of how this exemption applies is as follows: _____
_____.

This/these exemption(s) authorize withholding of all, or specific, portions of the public record. The public record to which access was requested is exempt from disclosure requirements. Therefore, the request for access to the above described record is denied.

CERTIFICATION

I certify that on the _____ day of _____, 20____, I hand delivered / mailed by certified mail, return receipt requested [circle one], to _____ at _____, the Denial of Request for Access to a Public Record(s) on which this Certification appears.

Dated: _____, 20____.

City Recorder

Note: This decision can be appealed by filling out and delivering the enclosed Petition to Review Denial of Request to the Marion County District Attorney.

FORM D
PUBLIC RECORDS REQUEST
FINAL COST REPORT
 [For completion by Department Staff]

Final report of costs incurred in responding to request made by _____ to access public records:

- A. Cost to locate records, separate non-disclosable records, delete confidential information, make copies, certify copies, organize, tailor or compile records. [If request is expected to take 10 minutes or less, there is no charge.]

Department staff time: ____ hours X \$_____ per hour = \$ _____

- B. Cost for the Legal Department to review request.

Attorney time: ____ hours X \$_____ per hour = \$ _____
 Staff time: ____ hours X \$_____ per hour = \$ _____

- C. Actual number of copies made: ____ pages X 35¢ per page black & white = \$ _____
 ____ pages X \$1.00 per page color = \$ _____

- D. Costs for certified copies: ____ documents X \$5.00 per document = \$ _____

- E. Additional fees: consult the current fee schedule.
 (e.g., oversized copies, electronic records, audio tapes, certain finance/assessment/taxation/election documents). Also, special request fees, such as mailing public records to requestor, add actual cost of mailing plus staff time. = \$ _____

- F. Cost for the City Recorder to handle request.

Recorder staff time: ____ hours X \$_____ per hour = \$ _____

TOTAL CHARGES FOR RESPONDING TO PUBLIC RECORDS REQUEST. \$ _____

THIS AMOUNT MUST BE PAID PRIOR TO INSPECTION OF THE REQUESTED PUBLIC RECORDS OR OBTAINING PHOTOCOPIES OF SAME.

 [Designated Department Staff] [Date]

When form is completed, retain original and send copies to City Recorder

FORM E

Public Records Request

CERTIFICATION
[True Copy(ies)]

I certify that

- 1) I have compared the attached / foregoing [circle one] _____
_____ [identify document(s)] consisting
of _____ page(s) with the original in this office,
 - 2) I am the Custodian of the Records, and
 - 3) The attached / foregoing [circle one] is a true and correct copy.
- Dated at Salem, Oregon, this _____ day of _____, 20_____.

City Recorder

[Note: Certified copies must be provided upon demand, if the record is of a nature permitting such copying. This statement on a cover sheet or the last sheet of the copy constitutes a certification].

FORM F

PETITION TO REVIEW DENIAL OF REQUEST
FOR ACCESS TO PUBLIC RECORDS(S)
UNDER ORS 192.450 & 192.460

TO: MARION COUNTY DISTRICT ATTORNEY

I (we), _____, the undersigned, request the District Attorney of Marion County, Oregon to order the City of Salem and its staff to make available for inspection / produce a copies of [circle one] the following records:

1) _____

[name / description of record].

2) _____

[name / description of record].

I (we) asked to inspect and/or copy these records on the _____ day of _____, 20____ at the Salem City Attorney's Office, 555 Liberty Street SE, Salem, OR 97301. The request was denied by _____.

Dated this _____ day of _____, 20____.

(Signature)

(Signature)

(Address)

(Address)

(Address)

(Address)

(Phone Number)

(Phone Number)