



## ADMINISTRATIVE POLICIES

SECTION:	General Administration	POLICY #:	213
TITLE:	Public Records Requests	PROCEDURE #:	213-A
		ORDER #:	18-029
DEPT:	Board of Commissioners	DIVISION:	N/A
ADOPTED:	02/18	REVIEWED:	REVISIED:

**PURPOSE:** To establish a county-wide policy for responding to public records requests in compliance with Oregon’s Inspection of Public Records Law (ORS 192.311 to 192.478), which provides members of the public the right to inspect and copy public records that are not otherwise exempt from public disclosure.

**AUTHORITY:** The Marion County Board of Commissioners may establish rules and regulations in reference to managing the interest and business of the county under ORS 203.010, 203.035, 203.111, and 203.230.

**APPLICABILITY:** All Marion County departments shall be subject to this policy.

**GENERAL POLICY:** This policy establishes an orderly and consistent procedure for responding to public records requests, creates the basis for a fee schedule designed to reimburse Marion County for the actual costs incurred in responding to public records requests, and informs individuals of the procedures that apply to public records requests. It is the policy of Marion County to ensure that all requests for public records are handled consistent with applicable public records laws. This policy shall be implemented in a manner that minimizes the impact on County workload and resources.

**DEFINITIONS:**

Business Day: A day other than Saturday, Sunday, or a legal holiday and on which at least one paid employee of the County is scheduled to and does report to work.

Impracticable: For the purposes of this policy and complying with the timelines established in this policy and ORS 192.324 and 192.329, compliance may be deemed impracticable because: (1) The staff or volunteers necessary to complete a response to a public records request are unavailable; (2) Compliance with the timelines would demonstrably impede the county’s ability to perform other necessary services; or (3) The volume of public records requests being simultaneously processed by the county.

Public records officer: An individual who is identified in accordance with this policy to whom public records requests may be sent.

## **SUBJECT: Public Records Requests**

Public records request: A written request, by a person or organization, to be provided access or copies of identified public records. This includes requests received via email. A public records request does not include simple, routine requests for readily available records.

Record: 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). A record may be handwritten, typed, photocopied, printed, microfilmed, or exist in an electronic form such as email or a word processing document, or other types of electronic recordings. A record is a public record if it contains information relating to the conduct of Marion County business and is prepared, owned, used or retained by the county.

### **POLICY GUIDELINES**

#### **1. Public Records Requests**

Written public records requests shall be responded to without unreasonable delay and in accordance with this policy. Public records identified in a request shall be disclosed unless the records are confidential, privileged, or subject to an exemption. Marion County is not required to create a record in order to respond to a public records request.

#### **2. Public Records Officers**

2.1. Each department head within Marion County is responsible for:

- 2.1.1. Appointing one or more public records officer(s) who shall be responsible for coordinating and assisting staff implementation of this policy; and
- 2.1.2. Developing, approving, and maintaining public records procedures for their department, in compliance with this policy.

2.2. Each public records officer within Marion County is responsible for ensuring timely and reliable processing of written public records requests as outlined by this policy.

2.3. Requests from journalists or media representatives shall be handled by a person authorized to speak with the media.

#### **3. Processing Public Records Requests**

3.1. Unless impracticable, the public records officer shall acknowledge receipt of the written request to inspect or receive a copy of a public record within five business days after receiving the request.

3.2. The acknowledgement must be in writing, which includes emailed acknowledgements, and must, at a minimum, inform the requester that the request has been received and that the department or division:

- 3.2.1. is the custodian of the requested record; or
- 3.2.2. is not the custodian of the requested record; or
- 3.2.3. is uncertain whether the department or division has custody of the requested record.

3.3. A written acknowledgement is not required if the public records request is completed within five business days.

3.4. In order to more appropriately respond to the request, a public records officer may request additional information or clarification from the requester. The obligation to further complete the request is suspended until the requester provides the information for clarification. Requests for

## **SUBJECT: Public Records Requests**

additional information or clarification must be made in a good faith attempt to expedite the request.

- 3.5. As soon as reasonably possible, but not later than 15 business days after a public records officer has received a written public records request, the county shall complete its response to the request, or inform the requester in writing that the county is still processing the request and provide a reasonable estimated date when its response will be complete.
  - 3.5.1. The 15 business days timeframe does not apply:
    - 3.5.1.1. If compliance is impracticable;
    - 3.5.1.2. During the time that the county waits for a requester to provide additional information or clarification requested by the public records officer; or
    - 3.5.1.3. For those days the county waited for a requester to pay a fee for the county's anticipated cost of making the public records available.
- 3.6. If a requester seeks access for inspection of records, reasonable steps must be taken to ensure that the records are protected from damage or removal.
- 3.7. A response is complete when:
  - 3.7.1. Access or copies of non-exempt records are provided;
  - 3.7.2. The county asserts that an exemption within ORS 192.311 to 192.478 applies to the requested records; or
  - 3.7.3. The county informs the requester that it is not the custodian of the requested records.
- 3.8. If the county asserts an exemption to disclosure of a record, the response shall include a statement that the requester may seek review of the county's determination pursuant to the provisions set forth in ORS 192.407 to 192.431.

## **4. Fees**

- 4.1. Oregon's Inspection of Public Records Law allows public bodies to recover their actual costs in fulfilling a public records request.
- 4.2. The fee must be reasonably calculated to reimburse Marion County for its actual costs in making records available, and may include:
  - 4.2.1. Charges for the time spent by staff 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 requester's inspection of original documents, to copy records, to certify records as true copies, and to send records by mail;
  - 4.2.2. A per-page charge for photocopies or requested records; and
  - 4.2.3. A per-item charge for CDs, audiotapes, or other electronic copies of requested records.
- 4.3. The Board of Commissioners establishes the public records fee schedule set forth by board order. Departments may request board approval of a department-specific fee schedule.
- 4.4. The requester will be informed of estimated fees and may be required to make a deposit before the request will be further processed.
- 4.5. If the estimated fee is greater than \$25, Marion County must provide the requester with written notice of the estimated amount of the fee prior to fulfilling the records request. The notice may be delivered via email. Marion County will not fulfill the request until the requester makes a deposit in the amount of the estimated fee.
- 4.6. The requester must pay the amount owing before the requested records will be made available.
  - 4.6.1. If the requester was required to make a deposit, fees will be debited against that deposit. If the fees are less than the deposit, Marion County will provide the records along with a refund of the deposit, less the fee.

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4.6.2. If the deposit is insufficient to cover the entire costs of completing the public records request, or the requester was not required to pay a deposit, an invoice for the unpaid costs of completing the public records request will be generated and sent to the requester.

### **5. Fee Waivers**

Requests for fee waivers or reduced fees must be made in writing. The county has discretion to approve or deny the request for a fee waiver. The final decision to grant a fee waiver request must be approved by the Chief Administrative Officer (CAO) or Deputy County Administrative Officer. The CAO or Deputy CAO must consider, among other things, the character of the public interest in the particular disclosure, the purpose for which the requester intends to use the information, the extent to which the fee impedes the public interest and the extent to which the waiver would burden the county. The law prohibits waiving fees if the records were created through use of certain constitutionally dedicated funds, such as fuel taxes or motor vehicle fees, unless the cost of charging the fee would exceed the cost of providing the record.

### **6. Copyrighted Material**

If Marion County maintains public records containing copyrighted material, it 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 county may require the requester to obtain written consent from the copyright holder or an opinion from the person's legal counsel before allowing copying of such materials.

### **7. Destruction of Records**

No employee shall alter or destroy a record that the employee reasonably believes is subject to a public records request or is relevant to current or reasonably anticipated litigation. This includes records otherwise eligible for destruction.

### **8. Implementation**

The Board of Commissioners Office has the sole authority and responsibility to implement this policy and assure compliance by county departments.

### **9. Tracking Public Records Requests**

Each department's public records officer shall document the number and type of public records requests the department has received and completed.

### **10. Periodic Review**

The Board of Commissioners Office shall review this policy every three years, or as state and federal regulations are revised and necessitate a change in the policy. The Board of Commissioners Office shall review the public records officers list at least annually, and notify each department of any changes.

ADOPTED: 02/18