

CITY OF SALEM PUBLIC RECORDS POLICY

I. Policy and Purpose.

It is the policy of the City of Salem to make public records easily accessible to interested parties. The City of Salem recognizes that Oregon Public Records Law (ORS 192.410-192.505) gives the public the right to inspect and copy certain public records maintained by the City.¹ The City also recognizes that certain records 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, and that it is in the public interest that those costs be recovered by the City.

The purpose of this Public Records Policy is to: **(a)** 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 of the procedures and guidelines that apply to public records requests.

II. 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, or exist in an electronic form such as e-mail or a word processing document, or other types of electronic 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

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.

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 will provide public records in the format in which they exist, unless an alternate format is requested. If the City agrees to convert the records to an alternate format the requestor will be responsible for any additional cost. If requested public records are in electronic form, the City will make arrangements to inspect the record with the appropriate device. 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.

Some public records are exempt from disclosure under state law. Many of these exemptions may be found in ORS 192.501 and ORS 192.502. Others may be located in other Oregon statutes. Some of the exemptions include:

- 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. Trade Secrets – ORS 192.501(2).** Public records that include “trade secrets” may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
- 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. 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.
- F. 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.

G 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.

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, completion of a Request for Reproduction of Copyrighted Materials form, or an opinion from the person's legal counsel before allowing copying of such materials.

VI. Fees.

The fees for responding to public records requests are established in a fee schedule adopted by the City Council. The fees established are 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 a City contractor to compile 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.
- 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.
- D.** Charges for preparation of a written transcript.

Payments. 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 the City will begin to compile the requested records. The City may require that an initial deposit for costs not to exceed \$25.00 be paid as provided in section VII (E) of this Policy. If the actual costs incurred by the City are less than the amount of any required prepayment, the overpayment will be promptly refunded. If the actual costs incurred by the City are more than the amount of the prepayment, the requestor will be responsible for the additional costs, and will be required to pay the additional amount in prepayment before the requested records are provided.

Fee Waivers. 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. A request for a fee waiver or reduction should be made in writing to the City Recorder. The request should identify the reason for the request and the public interest served in waiving or reducing fees.

The Department Director shall determine whether to grant a fee waiver or reduction on a case-by-case basis. A waiver or fee reduction may be granted if it is determined that the waiver or reduction is in the public interest, because making the record available primarily benefits the general public. In making this determination, the Department Director should consider (1) the character of the public interest in the particular disclosure, (2) the extent to which the fee impedes that public interest, and (3) the extent to which a waiver or reduction would burden the City. A decision on a request for a fee waiver shall be made within five business days of receipt of a request.

The following categories of public records requests are eligible for a fee waiver or reduction:

- 1) Public records requested by a neighborhood association if the records are necessary for that association's work related to the City.
- 2) Public records requested by the League of Oregon Cities or Mid-Willamette Valley Council of Governments.

VII. Procedure.

The following are the procedures for submitting and responding to requests to inspect or receive copies of public records maintained by the City:

A. Making a Request.

1. A request to inspect or obtain copies of a public record must be made in writing. Persons are encouraged to use the City's Public Records Request Form that is available in paper and electronic formats. This form is available on the City's website, at: <https://www.cityofsalem.net/Pages/public-records-request.aspx>. Other forms of written requests will be accepted if all the information required to respond to the request is provided.

2. The written request shall be delivered to the City Recorder either by email to cityrecorder@cityofsalem.net; or by accessing the Public Records section on the City's website at <http://www.cityofsalem.net/>. Requests may also be delivered in person, by mail, or by facsimile, to the City Recorder, 555 Liberty Street SE, Room 205, Salem, OR 97301; 503-361-2202 (fax).

B. Processing a Public Records Request.

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

- (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.

If it is not possible to provide a full cost estimate within the initial five day period, the acknowledgment will indicate that a more accurate cost estimate will be provided when available, and that a deposit for costs in an amount not to exceed \$25.00 must be provided before the City will continue to process the request.

2. The City shall close the request if within 60 calendar days of date of the acknowledgment, the requestor fails to pay the required fee, request a fee waiver, or respond to the City's request for clarification.
3. If a fee waiver is requested, the City Recorder will send the cost estimate and a copy of the request to the applicable Department Director with a copy to the Designated Records Manager for consideration.
4. Upon receipt of the deposit for costs or upon approval of a fee waiver, the City Recorder will direct the Designated Records Manager to compile the public records for either inspection or to make copies of the public records if copies were requested. If copies were requested, the copies should be forwarded to the City Recorder along with a report of the final costs incurred in responding to the request. If requested, the City Recorder shall certify the requested records upon payment of the applicable fee.
5. Within 15 business days of receipt of the public records request, if the applicable fees have been paid or waived, and the requestor has responded to any request for clarification, the City shall;
 - (a) Complete its response to the request, or
 - (b) Provide a written statement that the City is still processing the request and a reasonable date by which the public body expects to complete its response.
6. After the records have been compiled for inspection, or copied, and upon receipt of any additional monies owed for processing the request, the City Recorder will notify the Designated Records Manager and the requestor that an appointment may be scheduled to inspect the records. If copies are requested, the records will either be mailed to the requestor at the requestor's cost, or made available for pick up. It is the requestor's obligation to schedule the inspection appointment with the Designated Records Manager.
7. If an inspection of public records is to occur, the Designated Records Manager, or their designee, shall be present at all times to supervise the inspection and to ensure

that no documents are removed, destroyed, or otherwise tampered with. There may be additional costs associated with the inspection process that must be paid at the time of the inspection.

8. If the Designated Records Manager believes that the request should be denied in whole or in part, the Designated Records Manager shall 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 written denial and the records shall be forwarded to the City Attorney, with a copy to City Recorder. The City Attorney shall review each proposed denial, and either approve, modify, or reject the denial and approve disclosure of the records.

If a request is denied in full or in part, the Designated Records Manager shall provide the requestor a written denial, explaining the basis for the denial, with reference to the applicable law for the denial. All denial letters shall include notice that the requestor may appeal the denial to the Marion County District Attorney, pursuant to ORS 192.450 and 192.460.

- C. **Exceptions.** Requests for the following categories of records are exempt from the procedures in this policy.

Easily accessible or routinely requested records. If requested records are easily accessible by City staff, or are publicly available, such as on the City's website, and contain no materials that are exempt from disclosure, the Department may inform the requestor how to access the records, or provide the records at no cost. If the requestor requests a paper copy of the records, and the records are 20 pages or less, the Department may provide a copy of the records at no cost.

- D. **Appeal.**

If a public records request or a fee waiver request is denied, the requestor may appeal the denial to the Marion County District Attorney, pursuant to ORS 192.450 and 192.460.