

# Mastering Public Records Law

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*OACD January 2026*



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## Basic Law

**ORS 192.314:** (1) Every person has a right to inspect any public record of a public body of this state, except as otherwise expressly provided by ORS 192.338, 192.345, and 192.355.

# Public Records and Records Retention



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# Who is Subject to the Records Law?

Any public body that is the “custodian” of public records.

- “Custodian” is the public body mandated, directly or indirectly, to create, maintain, care for or control a public record.

Private entities, even if contracted with the state, generally are not public bodies.

- Records of private bodies that are in custody and control of a public body may be covered.



# What Records are Subject to Public Records Law?

- Any public record of any public body.
  - Public record includes any “writing” containing information relating to conduct of public business;
  - That is prepared owned, used or retained by a public body;
  - Regardless of physical form or characteristic.



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# What Records are Subject to Public Records Law?

- “Writing” is broadly defined and includes databases, email, text, and voicemail.
  - Voicemail messages – only if retained.
  - Not required to create a new public record, analyze, or answer questions.
  - Reports from databases (think QuickBooks).

# Public Records Retention



Rules provide for the orderly retention and disposition of public records regardless of format.



The Board should have a records retention policy.



If you don't need to keep the record, you should get rid of it.. If you have it, it must be disclosed.



Throw a shredding party once a year!

## Records Retention Schedules

- Archival Records
- Oregon Administrative Rules (OARs)
- Oregon Blue Book
- Records Management**
- Records Retention Schedules
- Transferring Records
- Oregon Records Management Solution (ORMS)
- Records Management Training
- Records Management Guidance
- Exhibits
- Legislative Research

The State Archivist grants authorization to Oregon government agencies, in the form of records retention schedules, for the retention and disposition of public records in their custody. Collaborating with staff of the agency being surveyed, the State Archivist considers the value of the public records for legal, fiscal, administrative, tribal cultural, or research purposes.

### Annotated Guides to the new City and County/Special District Records Retention Schedules

 **Annotated Guide to the new City Schedule**  
To assist in interpreting changes to the updated City General Records Retention Schedule.

 **Annotated Guide to the new County and Special District Schedule**  
To assist in interpreting changes to the updated County and Special District General Records Retention Schedule.

### June 2023 Supplementary Schedule

 **Special Authorization to Destroy Records**  
All agencies are authorized to use records retention series in the above supplementary schedule until they are fully integrated into all appropriate general retention schedules.

### General Records Retention

General Records Retention Schedules published as Oregon Administrative Rules provide state and local agencies with the lawful authority to destroy or otherwise dispose of commonly occurring public records.

State Agencies, Boards and Commissions

Cities

Counties and Special Districts

Schools, School Districts and ESDs

Community Colleges



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# OAR 166-150-006

- (8) **Correspondence Records:** Series documents communications sent and received by agency personnel which relate to the work of that agency. Records may include letters, memoranda, and electronic communications such as email, instant/direct messages, text messages, and social media. **Retention is based on content of communications, not format.** **Communications pertaining to agency business sent or received on private accounts or devices are considered public records and are subject to retention requirements.** Agencies may either retain with associated records per this General Schedule or retain per role-based groupings using methods approved by the State Archives. Communications used only to send copies of documents or duplicate information, conveying short-term logistical data or instructions, or relating to personal matters are not considered Public Records per ORS 192.005 and may be disposed of when no longer needed.



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# OAR 166-150-006

(17) **Meeting Records, Governing Body:** Series documents the proceedings of any regularly scheduled, special, executive session, or emergency meeting of any governing body, as described in Oregon's Public Meetings Law (ORS 192.610 to 192.705), including boards, commissions, advisory councils, task forces, and similar groups. Records may include minutes, agendas, exhibits, resolutions, staff reports, indexes, meeting packets, petitions, notes taken by members of the governing body during the meeting, audio and video recordings, and related documentation. SEE ALSO: Meeting Records, Staff; and Board of Commissioners or County Court Meeting Records. **Minimum retention: (a) Minutes (except executive session minutes), agendas, resolutions, packets, indexes, and exhibits (not retained permanently elsewhere in agency records), permanent; (b) Executive session minutes, 10 years; (c) Audio and video recordings, 1 year after minutes approved, if no minutes approved recordings are treated as minutes; (d) All other records and exhibits not pertinent to minutes, 5 years.**

(18) **Meeting Records, Staff:** Series documents meetings within the agency which are not subject to Oregon's Public Meetings Law (ORS 192.610 to 192.705). Records may include minutes, notes, virtual meeting chats, reports, and related documentation. **Minimum retention: Until no longer needed.**



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# OAR 166-150-006

(30) **Public Notice Records:** Series documents compliance with laws requiring public notice of government activities including assessments, elections, land use changes, public meetings and hearings, sale of property, and others. Records may include public or legal notices, certificates, affidavits of publication, and related documentation. SEE ALSO: Competitive Bid and Competitive Proposal Records; and Voters Pamphlet Records. **Minimum retention: 4 years.**

(33) **Publications:** Series documents published records produced by or for the agency or any of its departments or programs and made available to the public. Records may include newsletters, pamphlets, brochures, leaflets, reports, studies, proposals, and similar published records. **Minimum retention: (a) Records documenting special events or information with long term value, permanent; (b) All other records, until superseded or obsolete.**



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# Public Records Requests

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*Don't call it FOIA!*



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# Who Can Inspect Public Records?



“Every person.”

“Person” means any natural person, corporation, partnership, firm, association or member or committee of the Legislative Assembly.



Motives of the requestor generally are irrelevant.



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# Who Can Inspect Public Records?

- Public body may not use Public Records law to request records from another public body (except as provide for by law).
- Public officials could, in an individual capacity, use Public Records law.

# Duties of Public Records Custodian

Must segregate exempt material from nonexempt material and disclose the nonexempt material.

Must state reason why material was exempt.



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# Duties of Public Records Custodian

- Must furnish proper and reasonable opportunity for inspection.
  - General right to inspect original documents..
  - Inform the requestor if information has been redacted.
- Must furnish reasonable facilities for making memoranda and abstract.

# Prerogatives of Public Records Custodian

- May make reasonable rules and regulations.
- May consult with counsel before responding to a request.
- May establish fees “reasonably calculated” to reimburse for its “actual cost” in making records available.
- May/Must reduce or waive fees if in the public interest.



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# Public Records Policy

The Board must adopt written procedures for responding to public record requests that includes:

- The name of one or more person to whom public records requests may be sent, with address; and
- The amounts of and the manner of calculating fees that the public body charges for responding to requests for public records.



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# Public Records Policy

- Acknowledge receipt of public records request – 5 days
  - Confirm that the public body is the custodian or not.
- Within 10 days of acknowledging receipt:
  - Provide records if custodian
  - Ask for clarification
  - Explain why it will take longer
- If fees are greater than \$25, must provide estimate to the requestor.
- If no response to fee estimate or clarification questions in 60 days, may close request.

# Public Records Exempt from Disclosure

- Hundreds + Federal
- ORS 192.345 – Conditional
  - Balance public interest and confidentiality
  - Favors disclosure
- ORS 192.355 – Unconditional
  - May have specific conditions attached
- Waiving an exemption via public disclosure

**Records more than 25 years old must be disclosed!**



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# Public Records Exempt from Disclosure

- Appeals to Custodian decisions – District Attorney
- Public Records Advocate

# Public Records Exempt from Disclosure

- Some Conditional Exemptions (ORS 192.345)
  - Public records pertaining to current or likely litigation.
  - Trade secrets
  - Real estate appraisals
  - Personnel discipline actions – those resulting in action
  - Interference with property or services/security measures
  - Sage grouse agreements



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# Public Records Exempt from Disclosure

- Some ~~Unconditional~~ Exemptions (ORS 192.355)
  - Internal Advisory Communications (5 criteria test)
    - Draft minutes and reports not inherently exempt
  - Information of a personal nature that would constitute an unreasonable invasion of privacy
    - “A general desire to be left alone” is insufficient
    - Individual’s addresses, telephone number, or email not exempt
      - Except under employee records exemption
      - Personal safety exemption (OAR 137-004-0800 or Appendix G)

# Public Records Exempt from Disclosure

- Some ~~Unconditional~~ Exemptions (ORS 192.355)
  - Public employee personal information
  - Does not apply to elected officials (address, DOB, telephone)
- Prohibited by federal law
- Email address lists

# Resources



Attorney General's Public Records and Meetings Manual



Secretary of State website



State Archives website



Your attorney



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# Questions?

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