



Personnel and Administrative Policy and Procedure

SUBJECT: Public Records	EFFECTIVE DATE: January 1, 2008 REVIEWED: October 2019 REVISED: November 2019
CATEGORY: 600 POLICY NUMBER: 600.2	CROSS REFERENCE: Milwaukie Municipal Code 2.35 -- City Records (Ordinance 2185) Resolution 68-2019 -- adopting measures to ensure the integrity of City records Annual fee resolution establishing charges for copying and staff time in fulfilling extensive records requests

Purpose: Establish a procedure that recognizes and respects the public's right to access public records and the importance of maintaining files to facilitate public access in an efficient and cost-effective manner.

Definitions:

Public Body: Oregon Revised Statute (ORS) 192.311(4) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

Public Record: ORS 192.311(5)(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.¹

ORS 192.311(5)(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.

Writing: ORS 192.311(7) "Writing" means handwriting, typewriting, printing, photographing, and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles, or electronic recordings.

Objective: To balance the public's right to access Milwaukie public bodies' records, with the expectation that the city will not disclose records that meet state confidentiality standards.

Scope: This procedure applies to the City Council, advisory boards and commissions, officers or agents, staff, departments, and contractors who are the "functional equivalent" of a public body.

Policy: The right to inspect public records

According to ORS 192.314, "every person" in Oregon has the right to inspect any nonexempt public record. The following is an excerpt from the Attorney General's *Public Records and Meetings Manual*, 2019:

¹ This would include a record prepared outside of the city that contained information being used to conduct the public's business with records "owned, used or retained" by the public body. Not included would be a document prepared by a private entity that is simply reviewed, but not retained, by the city.

Generally, the identity, motive, and need of the person requesting access to public records are irrelevant. Interested persons, news media representatives, business people seeking access for personal gain, persons seeking to embarrass government agencies, and scientific researchers all stand on equal footing.

However, the identity and motive of the person seeking disclosure may be relevant in determining the weight of the public interest in disclosure, a factor that is relevant to some exemptions. In addition, the identity and motive of the requestor may be relevant to determining whether the public body should waive or reduce its fee in fulfilling the request.

Those subject to the public records law

Any public body in the state of Oregon is subject to the public records law. In Milwaukie, this includes the City Council, employees, boards and commissions, officers or agents, and departments. This also applies to a contractor that is the “functional equivalent” of a public body. As outlined in the Attorney General’s manual:

Even if a private entity is not the functional equivalent of a public body, but contracts with a public body, its records may be obtained from the public body if the public body has custody of copies of the records. In addition, a public body by rule or contract may require private entities with which it deals to make pertinent records available for public inspection. Records in a private entity’s possession may also be subject to disclosure where a public body actually owns the records.

The city is not required, however, to create a public record to disclose the reasoning behind an action or knowledge the staff might have. The Attorney General’s Office has concluded that:

The Public Records Law does not require public bodies to create new public records. Nor does it require public bodies to disclose the reasoning behind their actions; answer questions about their records; analyze their records; or perform legal research in order to identify records that are responsive to a request.

Email is also a public record. Although a user may delete an individual email, the email may continue to exist on a back-up tape or in another user’s mailbox and is a public record. A public body must make all nonexempt email available for inspection and copying regardless of its storage location.

Regarding electronic records or data files, the Attorney General’s manual states that:

The format the information is produced in may depend on what formats are available to the public body or software vendor through the specific information system at issue. Electronic data must be provided “in the form requested, if available”; if the requested format is not available, then the data should be provided in the form it is maintained.

This does not mean the city must create public records to respond to a public records request.

Making a records inspection request. Although the city needs to respond to a request under the federal Freedom of Information Act (FOIA), Oregon public bodies are covered by the Oregon Public Records Law and are not bound by the timeframes or other requirements of the federal act.

The city recognizes and respects the public’s right to public records and the importance of maintaining orderly files to facilitate access in an efficient and cost-effective manner. The city will provide proper and reasonable opportunities to inspect and examine the city’s records during usual business hours if the request does not interfere with the staff’s regular work. The city will respond to a person who makes a written request for a public record as soon as practicable and without unreasonable delay. In accordance with records management best practices and subject to the requirements of ORS 192.314 to 192.431, the

city will acknowledge all records requests within five business days. The city will complete the request or provide a written statement noting the status of the request within 10 business days after the date the city is required to acknowledge receipt of the request.

All requests need to be submitted in writing (paper or electronic format) with the date, name, address, e-mail address, and signature of the person making the request. The request must contain, if known, a specific-enough statement to determine the nature, content, and probable department in which the record is located.

If the public record in a machine readable or electronic form, the city will provide a copy of the public record in the form requested, if available. The city will provide an opportunity for individuals with disabilities to request an alternative form.

A person making a public record request may personally inspect the requested record during usual business hours in the presence of a city staff member. Original public records must always remain in the city's custody. The city will not create any new records or customize any existing records in response to a records request.

Fees. If a record contains exempt information, the city will provide a copy with the exempt portion redacted. The city may include the cost of having legal assistance to redact material in the charged fee.

The city will establish a fee that is reasonably calculated to reimburse the city for the actual cost of making public records available. Hourly rates for employee services are billed at the actual cost per hour for that employee. A listing of these fees is available on the city website under administration and billable hourly rates, see the link below.

www.milwaukieoregon.gov/finance/fees-charges

A request that would significantly disrupt staff's regular duties will be assessed a fee regardless of whether copies are provided. The city may not establish a fee greater than \$25 unless the city provides written notice of the estimated amount to the requestor and the requestor confirms that they want the city to proceed. Pre-payment of at least half the estimated fee amount is required if the amount of the request is greater than \$25.

Fee Waiver Request. The city may provide copies of public records without cost or at a substantial reduction if the city records officer determines the waiver is in the public interest. A requestor must submit a request in writing for a fee reduction or waiver. The officer will review the request and will consider the requestor's ability to pay and any financial hardship on the city that might arise from granting the waiver. Anyone who believes there has been an unreasonable denial of a fee waiver or reduction request may petition the district attorney.

The city will provide copies of routine materials to a requestor without charge except for police reports. The city will provide copies of routine materials requested by any Milwaukie elected official, appointed advisory board, or representative of a recognized neighborhood association without charge if the request relates to information needed to act in one's official capacity.

For more information about the city's public records policy or requests, contact the Office of the City Recorder at ocr@milwaukieoregon.gov or 503-786-7502.

To submit a records request, visit: www.milwaukieoregon.gov/cityrecorder/public-records-request-form