

# House Bill 2224

Sponsored by Representative WILDE (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Limits amount public body may charge for public employee time for responding to public records request.

Prohibits district attorney from reviewing petitions from persons seeking public records of county or other public body, if county or other public body provides financial support to district attorney or office of district attorney. Directs, in cases where district attorney is prohibited from reviewing petitions seeking disclosures of public record, Attorney General to issue opinion regarding subject of petition.

Authorizes persons seeking disclosure of public records to request binding arbitration in lieu of instituting proceedings for injunctive or declaratory relief in court. Directs Public Records Advocate to appoint arbitrator. Requires advocate to develop and maintain list of interested and qualified persons to conduct arbitrations. Authorizes advocate to adopt rules establishing arbitrator qualifications and arbitration procedural requirements.

Provides that limits on fees, restrictions on certain district attorney reviews of petitions, and option to choose binding arbitration become operative January 1, 2022.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to public records; creating new provisions; amending ORS 192.324, 192.407 and 192.415; and  
3 prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 192.324 is amended to read:

6 192.324. (1) A public body that is the custodian of any public record that a person has a right  
7 to inspect shall give the person, upon receipt of a written request:

8 (a) A copy of the public record if the public record is of a nature permitting copying; or

9 (b) A reasonable opportunity to inspect or copy the public record.

10 (2) If an individual who is identified in a public body's procedure described in subsection (7)(a)  
11 of this section receives a written request to inspect or receive a copy of a public record, the public  
12 body shall within five business days after receiving the request acknowledge receipt of the request  
13 or complete the public body's response to the request. An acknowledgment under this subsection  
14 must:

15 (a) Confirm that the public body is the custodian of the requested record;

16 (b) Inform the requester that the public body is not the custodian of the requested record; or

17 (c) Notify the requester that the public body is uncertain whether the public body is the custo-  
18 dian of the requested record.

19 (3) If the public record is maintained in a machine readable or electronic form, the public body  
20 shall provide a copy of the public record in the form requested, if available. If the public record is  
21 not available in the form requested, the public body shall make the public record available in the  
22 form in which the public body maintains the public record.

23 (4)(a) The public body may establish fees reasonably calculated to reimburse the public body for  
24 the public body's actual cost of making public records available, including costs for summarizing,

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 compiling or tailoring the public records, either in organization or media, to meet the request, **ex-**  
 2 **cept that a public body may not establish a fee that is greater than \$25 per hour for time**  
 3 **spent by a public employee in reviewing public records, redacting content of public records**  
 4 **or otherwise responding to a public records request.**

5 (b) The public body may include in a fee established under paragraph (a) of this subsection the  
 6 cost of time spent by an attorney for the public body in reviewing the public records, redacting  
 7 material from the public records or segregating the public records into exempt and nonexempt re-  
 8 cords. The public body may not include in a fee established under paragraph (a) of this subsection  
 9 the cost of time spent by an attorney for the public body in determining the application of the pro-  
 10 visions of ORS 192.311 to 192.478.

11 (c) The public body may not establish a fee greater than \$25 under this section unless the public  
 12 body first provides the requester with a written notification of the estimated amount of the fee and  
 13 the requester confirms that the requester wants the public body to proceed with making the public  
 14 record available.

15 (d) Notwithstanding paragraphs (a) to (c) of this subsection, when the public records are those  
 16 filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees for fur-  
 17 nishing copies, summaries or compilations of the public records are the fees established by the  
 18 Secretary of State by rule under ORS chapter 79 or ORS 80.100 to 80.130.

19 (5) The custodian of a public record may furnish copies without charge or at a substantially  
 20 reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest  
 21 because making the record available primarily benefits the general public.

22 (6) A requester who believes that there has been an unreasonable denial of a fee waiver or fee  
 23 reduction may petition the Attorney General or the district attorney in the same manner as a re-  
 24 quester who petitions when inspection of a public record is denied under ORS 192.311 to 192.478.  
 25 The Attorney General, the district attorney and the court have the same authority in instances  
 26 when a fee waiver or reduction is denied as when inspection of a public record is denied.

27 (7) A public body shall make available to the public a written procedure for making public re-  
 28 cords requests that includes:

29 (a) The name of one or more individuals within the public body to whom public records requests  
 30 may be sent, with addresses; and

31 (b) The amounts of and the manner of calculating fees that the public body charges for re-  
 32 sponding to requests for public records.

33 (8) This section does not apply to signatures of individuals submitted under ORS chapter 247 for  
 34 purposes of registering to vote as provided in ORS 247.973.

35 **SECTION 2.** ORS 192.407 is amended to read:

36 192.407. (1) A person who has submitted a written public records request in compliance with a  
 37 public body's policy may seek review of the following, in the same manner as a person petitions  
 38 when inspection of a public record is denied under ORS 192.311 to 192.478:

39 (a) The failure of a public body to provide the response required by ORS 192.329 within the  
 40 prescribed period. A failure of the public body to timely respond shall be treated as a denial of the  
 41 request unless the public body demonstrates that compliance was not required under ORS 192.329.

42 (b) An estimate of time provided by a public body pursuant to ORS 192.329, if the person be-  
 43 lieves that the estimated time frame for the response is unreasonably long and will result in undue  
 44 delay of disclosure.

45 (c) Any other instance in which the person believes that the public body has failed to comply

1 with ORS 192.329.

2 (2) Except as provided in subsection (3) of this section, the Attorney General, [the] a district  
 3 attorney **authorized under ORS 192.415 to act on a petition** and the court have the same au-  
 4 thority with respect to petitions under this section as when inspection of a public record is denied.

5 (3) If the Attorney General, [the] **an authorized** district attorney or a court grants a petition  
 6 filed under this section, the order granting the petition:

7 (a) May require disclosure of nonexempt material responsive to the request within seven days,  
 8 or within any other period that the Attorney General, district attorney or court concludes is ap-  
 9 propriate to comply with ORS 192.329;

10 (b) May require the public body to pay a penalty of \$200 to the requester if the Attorney Gen-  
 11 eral, district attorney or court determines that the public body responded to the request with undue  
 12 delay or failed to respond to the request; and

13 (c) May order a fee waiver or a fee reduction if a public body has responded to the request with  
 14 undue delay or has failed to respond to the request in the time and manner prescribed in ORS  
 15 192.329. Nothing in this subsection prohibits a reviewing body from finding an unreasonable denial  
 16 of a fee waiver or a fee reduction on other grounds.

17 (4) Nothing in this section limits the authority of a court to act under ORS 192.431.

18 **SECTION 3.** ORS 192.415 is amended to read:

19 192.415. (1) ORS 192.401 and 192.411 apply to the case of a person denied the right to inspect  
 20 or to receive a copy of any public record of a public body other than a state agency, except that:

21 (a) The district attorney of the county in which the public body is located, or if it is located in  
 22 more than one county the district attorney of the county in which the administrative offices of the  
 23 public body are located, shall carry out the functions of the Attorney General, **if the district at-**  
 24 **torney is authorized to act under subsection (4) of this section;**

25 (b) Any suit filed must be filed in the circuit court for the county described in paragraph (a) of  
 26 this subsection; and

27 (c) The district attorney may not serve as counsel for the public body, in the cases permitted  
 28 under ORS 192.411 (3), unless the district attorney ordinarily serves as counsel for the public body.

29 (2) Disclosure of a record to the district attorney in compliance with subsection (1) of this sec-  
 30 tion does not waive any privilege or claim of privilege regarding the record or its contents.

31 (3) Disclosure of a record or part of a record as ordered by the district attorney is a compelled  
 32 disclosure for purposes of ORS 40.285.

33 **(4)(a) Notwithstanding subsection (1) of this section, a district attorney may carry out**  
 34 **the functions of the Attorney General under subsections (1) to (3) of this section and ORS**  
 35 **192.401, 192.407 and 192.411 only if the district attorney or the office of the district attorney**  
 36 **does not receive financial support from the county or other public body that is the custodian**  
 37 **of the records that are the subject of the public records request.**

38 **(b) If a district attorney is not authorized to carry out the functions of the Attorney**  
 39 **General, the Attorney General shall provide a public opinion concerning the subject of the**  
 40 **petition. The county or other public body that is the custodian of the records that are the**  
 41 **subject of the request shall pay any costs incurred by the Attorney General in preparing the**  
 42 **opinion. The county or other public body may not use other internal or outside counsel to**  
 43 **prepare the opinion.**

44 **SECTION 4.** Sections 5 and 6 of this 2021 Act are added to and made a part of ORS 192.311  
 45 **to 192.478.**

1       **SECTION 5.** (1) In any case where a person seeking to inspect or receive a copy of a  
2 public record is denied access to the record, the person, in lieu of instituting proceedings for  
3 injunctive or declaratory relief in circuit court, may request binding arbitration through an  
4 arbitrator appointed by the Public Records Advocate under subsection (2) of this section, if:

5       (a) The Attorney General or an authorized district attorney has denied a petition seeking  
6 records under ORS 192.411 or 192.415;

7       (b) The Attorney General has issued an opinion under ORS 192.415 (4)(b) that opines that  
8 the person seeking records is not entitled to the records; or

9       (c) The records are in the custody of an elected official, or in the custody of any other  
10 person but as to which the elected official claims the right to withhold disclosure.

11       (2) When the Public Records Advocate receives a request for binding arbitration from a  
12 person described in subsection (1) of this section, the advocate shall appoint an arbitrator  
13 from the list of qualified arbitrators maintained by the advocate under section 6 of this 2021  
14 Act, and shall notify both the person described in subsection (1) of this section and the public  
15 body from which the records are being sought of the appointment.

16       (3) The appointed arbitrator shall conduct the arbitration in accordance with rules  
17 adopted by the Public Records Advocate and shall determine the resolution of the dispute.

18       (4) Reasonable costs of the arbitration shall be paid by the losing party, except that  
19 reasonable costs may not include attorney fees.

20       **SECTION 6.** (1) The Public Records Advocate shall develop and maintain a list of inter-  
21 ested and qualified persons to be appointed to conduct binding arbitrations described in sec-  
22 tion 5 of this 2021 Act.

23       (2) The Public Records Advocate may adopt rules concerning:

24       (a) The qualifications and selection of persons to be included in the list of arbitrators  
25 described in subsection (1) of this section; and

26       (b) Procedures and timelines for the conduct of binding arbitrations under section 5 of  
27 this 2021 Act.

28       **SECTION 7.** Section 5 of this 2021 Act and the amendments to ORS 192.324, 192.407 and  
29 192.415 by sections 1 to 3 of this 2021 Act become operative on January 1, 2022.

30       **SECTION 8.** This 2021 Act takes effect on the 91st day after the date on which the 2021  
31 regular session of the Eighty-first Legislative Assembly adjourns sine die.

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