

# House Bill 2485

Sponsored by Representative POWER (at the request of Society of Professional Journalists) (Pre-session 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**.

Requires state agencies to reduce public records request fees by 50 percent if request is made in public interest, and requires state agencies to entirely waive fees if public records request is in public interest and narrowly tailored.

Requires requests made by members of news media to be treated as in public interest.

Requires, on or after January 1, 2022, local governments, local service districts and special government bodies to make identical reductions and waivers in public records requests fees unless governing body of records custodian conducts public meeting, deliberates on and resolves not to adopt fee reductions and waivers.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to public records; creating new provisions; amending ORS 192.324; and declaring an emer-  
3 gency.

4 Whereas the Legislative Assembly has previously recognized the policy of this state is to guar-  
5 antee to its citizens the right to know about the activities of their government and to benefit from  
6 the information developed by state agencies at public expense; and

7 Whereas current law allows public bodies to grant anyone a partial or full waiver of fees asso-  
8 ciated with responding to a public records request if the public body determines that the request is  
9 in the public interest; and

10 Whereas current law nonetheless entitles public bodies to assess full cost, even when disclosure  
11 is in the public interest; and

12 Whereas the assessment of full cost for public records considers only the monetary cost to  
13 government of providing records and disregards the many benefits that news media outlets engaged  
14 in journalism provide to the members of the public, to community and state leaders and to public  
15 coffers, such as deterrence of malfeasance and corruption; and

16 Whereas in the last decade journalism in Oregon has led to the conviction of multiple officials  
17 for public corruption as well as the recoupment of well over \$10 million for Oregon government; and

18 Whereas federal law presumes that public records requests from members of the news media are  
19 made in service to the public interest, granting news media members an automatic and full waiver  
20 of fees for the costs of retrieval and review of records; and

21 Whereas the costs of retrieving public records for reproduction can be minimal if a public body  
22 makes efforts to store public records in an orderly manner for easy retrieval; and

23 Whereas many public bodies in Oregon propose fees in the thousands or tens of thousands of  
24 dollars, even when a request is narrowly crafted by a member of the news media, forcing requesters  
25 to abandon important lines of inquiry that would benefit the public; and

26 Whereas incentivizing government records clerks to use fee waivers to encourage the narrowing  
27 of requests so as to become nononerous can actually save money for governments; and

**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 Whereas such practices applied to legitimate news media requests would serve as a pilot pro-  
 2 gram to incentivize public agency development and employment of best practices and better com-  
 3 munication with requesters, and so would benefit the public at large; now, therefore,

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,  
 25 compiling or tailoring the public records, either in organization or media, to meet the request.

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

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

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

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

43 **(b) If the custodian is a state agency, the custodian shall:**

44 **(A) Reduce the fee by 50 percent if the request is in the public interest.**

45 **(B) Waive the fee completely if the request is in the public interest and is narrowly tai-**

1 **lored. A request is narrowly tailored if the request describes requested records with**  
 2 **specificity and includes only records in which there is a public interest within the scope of**  
 3 **the request.**

4 **(c) For purposes of this subsection, a request made by a representative of the news media**  
 5 **constitutes a request in the public interest.**

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

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

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

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

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

19 **SECTION 2.** ORS 192.324, as amended by section 1 of this 2021 Act, is amended to read:

20 192.324. (1) A public body that is the custodian of any public record that a person has a right  
 21 to inspect shall give the person, upon receipt of a written request:

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

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

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

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

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

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

33 (3) If the public record is maintained in a machine readable or electronic form, the public body  
 34 shall provide a copy of the public record in the form requested, if available. If the public record is  
 35 not available in the form requested, the public body shall make the public record available in the  
 36 form in which the public body maintains the public record.

37 (4)(a) The public body may establish fees reasonably calculated to reimburse the public body for  
 38 the public body's actual cost of making public records available, including costs for summarizing,  
 39 compiling or tailoring the public records, either in organization or media, to meet the request.

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

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

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

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

12 (b) If the custodian is a state agency, the custodian shall:

13 (A) Reduce the fee by 50 percent if the request is made in the public interest.

14 (B) Waive the fee completely if the request is in the public interest and is narrowly tailored. A  
 15 request is narrowly tailored if the request describes requested records with specificity and includes  
 16 only records in which there is a public interest within the scope of the request.

17 **(c) If the custodian is a local government or a local service district, both as defined in**  
 18 **ORS 174.116, or a special government body, as defined in ORS 174.117, the custodian shall**  
 19 **make the fee reduction or waiver described in paragraph (b) of this subsection unless the**  
 20 **governing body of the custodian has held a public meeting and deliberated on and resolved**  
 21 **not to adopt the fee reduction or waiver described in paragraph (b) of this subsection.**

22 [(c)] (d) For purposes of this subsection, a request made by a representative of the news media  
 23 constitutes a request in the public interest.

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

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

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

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

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

37 **SECTION 3. The amendments to ORS 192.324 by section 2 of this 2021 Act become oper-**  
 38 **ative on January 1, 2022.**

39 **SECTION 4. This 2021 Act being necessary for the immediate preservation of the public**  
 40 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**  
 41 **on its passage.**