



PUBLIC RECORDS POLICY

1. Policy and Purpose

It is the policy of the City of The Dalles to make public records easily accessible to interested parties. The City recognizes the Oregon Public Records Law (ORS 192.311 to 192.478) gives the public the right to inspect and copy certain public records maintained by the City. (End note #1). The City also recognizes certain records maintained by the City are exempt from public disclosure, or disclosure may require balancing the right of the public to access the records against individual privacy rights, governmental interests, confidentiality 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 it is in the public interest 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 applicable to Public Records Requests.

2. 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 192.311(5)(a).

A record may be handwritten, typed, photocopied, printed, microfilmed, or exist in an electronic form such as an e-mail, a word processing or excel document, or other types of electronic recordings.

Many Public Records Requests are requests for information and actually require the creation of a new public record. Public bodies are not obligated under Oregon 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 information, the public body holds sole discretion as to whether it creates 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 and the City Attorney approves of the conversion. If the City Attorney agrees to convert the records to an alternate format, the requester will be responsible for any additional cost. If requested public records are in electronic form, the City will provide the document in electronic form, or make arrangements to inspect the record with an appropriate device. The City will provide records in alternative format, if necessary, to provide reasonable accommodation to persons with disabilities.

3. **Public Records Exempt from Disclosure**

Some public records are exempt from disclosure under state law. Many of these exemptions may be found in ORS 192.345 and ORS 192.355. Others may be located in other Oregon statutes. Some of the exemptions include:

- A. **Personal Safety Exemption - ORS 192.368(1).** If an individual requests in writing 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 192.345(1).** If a public body is involved in litigation, or if litigation is reasonably likely in the future, the public records relating to litigation are exempt from disclosure.
- C. **Trade Secrets - ORS 192.345(2).** Public records comprising “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. **Personnel Discipline Actions - ORS 192.345(12).** Public records of a personnel discipline action or materials or documents supporting that action are exempt from disclosure.
- E. **Personal Privacy Exemption - ORS 192.355(2).** Information of a personal nature, such as information 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.
- F. **Public Employee Addresses, Dates of Birth and Telephone Numbers - ORS 192.355(3).** The addresses, dates of birth, and telephone 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 192.355(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.

4. **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 as determined by the City Attorney. 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 requester's legal counsel before allowing copying of such materials.

5. **Fees**

The fees for responding to Public Records Requests are established in a fee schedule adopted by the City Council by resolution. 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 time spent by the City Attorney in reviewing the public records, and charges for time spent by City staff or a City contractor to compile the requested public records, to segregate exempt records, to supervise the requester'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; and
- E. charges for redaction of police officer body camera footage.

Payments. The City will prepare an estimate of the charges it expects to be incur in responding to a Public Records Request. For a fee estimate in excess of \$25, the City may require an initial deposit of \$25.00 be paid as provided in Section 6 of this Policy. For a fee estimate in excess of \$100, the City requires prepayment in full. 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 requester 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 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 Attorney. The request must identify the reason for the request and the public interest served in waiving or reducing the fee.

The City Attorney 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 the waiver or reduction is in the public interest because making the record available primarily benefits the general public. In making this determination, the City Attorney shall consider **(a)** the character of the public interest in the particular disclosure, **(b)** the extent to which the fee impedes that public interest, and **(c)** 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 (5) business days of receipt of a Request.

6. Procedure

The following are the procedures for submitting and responding to requests to inspect or receive copies of public records in the City's custody:

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 available in paper and electronic formats. This form is available on the City's website at www.thedalles.org. 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 Clerk's Office either by email or by delivery in person or by mail addressed to City Clerk, 313 Court Street, The Dalles, OR 97058, by facsimile at (541) 296-6906, or by email to cityinfo@ci.the-dalles.or.us.

B. Processing a Public Records Request.

1. Acknowledgment. Within five (5) business days of receipt of a Public Records Request, the City Clerk or City Attorney shall send a written acknowledgment to the requester containing the following:
 - a. Confirmation of whether the City is the custodian of the requested record, or whether the City is uncertain if the City is the custodian of the requested record; or
 - b. A statement indicating no such records exist; or
 - c. If the request is unclear, a request to clarify the records sought; and
 - d. If applicable, a cost estimate with a notice a deposit 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 acknowledgement will indicate a more accurate cost estimate will be provided when available, and the full, prepaid deposit for costs must be provided before the City will continue to process the request.

2. The City shall close the request within sixty (60) calendar days of the acknowledgment if the requester 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 Clerk will send a copy of the request to the applicable Department Manager for their review.
4. Upon receipt of the deposit for costs, or upon approval of a fee waiver, the City Clerk shall work with the applicable City staff, if necessary, to produce the requested copies. At the City Clerk's reasonable discretion, the copies shall be forwarded to the City Attorney's Office along with a report of the final costs incurred in responding to the request; provided, however, the City Clerk shall always forward Requests to the City Attorney when such Requests are received from a law office or connected with pending litigation, litigation expected to be filed, or upon request by the City Attorney.
5. Within fifteen (15) days of receipt of a Public Records Request, if the applicable fees have been paid or waived and the requester 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 City expects to complete its response.
6. After the records have been compiled for inspection, the City Clerk shall notify the requester an appointment may be scheduled to inspect the records at City Hall. Where the requester desires to inspect the public records, it is the requester's obligation to schedule the inspection appointment with the City Clerk. If copies of the records are requested, upon receipt of any additional monies owed for processing the request, the records will either be mailed to the requester or be made available for pickup.
7. If an inspection of public records is to occur, the City Clerk (or the Clerk's authorized designee) shall be present **at all times** to supervise the inspection and to ensure no documents are removed, destroyed, or otherwise tampered with. There may be additional costs associated with the inspection process required to be paid at the time of inspection.
8. If the City Attorney believes the request should be denied in whole or in part, the City Attorney 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 shall be provided to the requester. All denial letters shall include a notice that the requester may appeal the denial to the Wasco County District Attorney's Office pursuant to ORS 192.411, 192.415, 192.418, 192.422, 192.427, and 192.431.

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 exempt from disclosure, City staff may inform the requester how to access the records or provide the records at no cost. If the requester requests a paper copy of the records, and the records are twenty (20) pages or less, City staff may provide a copy of the records at no cost.

D. Appeal

If a Public Records Request or a fee waiver is denied, the requester may appeal the denial to the Wasco County District Attorney's Office pursuant to ORS 192.411, 192.415, 192.418, 192.422, 192.427, and 192.431.

Endnotes

- (1) The City is required to respond to requests by Oregon Public Records Law. The Federal "Freedom of Information Act" only applies to requests for public records in the federal government's custody and does not apply to requests for the City's public records.



Julie Krueger, City Manager

7-19-21

Date