

Policies and procedures



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Subject Public Records Requests Policy and Procedures
Section Information Services (IS)
Subsection Records and Information Management (RIM) program
Approved by Martha Bennett, Chief Operating Officer

POLICY

Metro complies with both the spirit and letter of the law regarding its obligations to make its non-exempt records available to the public, setting a standard of governmental transparency and accountability. Metro will make this Policy, and associated procedures, available to the public. In addition, Metro will ensure that all requests for public records are responded to in a lawful, timely, thorough, and consistent manner that honors the rights and obligations of Metro and the public.

Applicable to

This policy addresses all records and information created or received by or in the possession of Metro. It applies to all Metro staff, including elected officials, regular and temporary status employees, interns, volunteers, and seasonal workers.

Definitions

Terms used in this document are defined in the [Glossary of Records and Information Management Terms](#) maintained on the RIM program website.

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 192.410 (4).

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

Guidelines

The purpose of this policy is to standardize Metro's protocols for responding to public records requests in compliance with Oregon Public Records laws, ORS 192.410-505.

Many public records requests are requests for information that would require the creation of a new public record. Public bodies are not obligated under Oregon's Public Records Law to create new public records where none exist. A public body may, if it chooses, create a new record to provide information.

Metro is only obligated to provide public records in the format in which they exist. If the Agency agrees to convert the records to an alternate format the requester will be responsible for any additional cost. Metro will provide records in alternative formats to provide reasonable accommodation to persons with disabilities.

All public records requests need to be submitted in writing, preferably using *Metro's Public Records Request* form.

Metro receives public records requests (PRR) in a variety of ways, for example by email, mail, walk-in, phone call, etc. In order to help provide accurate records to the public in a reasonable time, three levels of requests have been established.

- **Level 1 Request.** These requests are not considered public records requests; they include:
 - Any records or documents available to the public on Metro's website or through WebDrawer
 - Information requested in the normal course of business, such as
 - clarifications requested by bidders responding to RFPs
 - requests by contract partners for information within the scope of their engagement
 - Information requested in the course of a litigation or discovery process

Level 1 requests are *not* subject to the Public Records Fee Schedule.

- **Level 2 Request.** These are requests that can be fulfilled *within* 30 minutes. No charge for staff time will be assessed; however, fees for materials may apply.
- **Level 3 Request.** These types of requests require *more than* 30 minutes of staff time. They may require extensive research or compilation of records. Any requests requiring legal review fall under this section. Level 3 requests are subject to the Public Records Fee Schedule; however, these fees could be waived.

The Metro Records Officer serves as the public records request (PRR) process lead; hence, if Metro staff directly receive a public records request, they need to transmit all communications related to the request to Metro's Records Officer to ensure processes in place are followed and that a complete and accurate record of each transaction is made.

The law allows, and in some cases requires, Metro to exempt certain records from public disclosure. A few examples of categories identified by Oregon law that *may* qualify a record for exemption are:

- privileged attorney-client communication
- trade secrets
- proprietary information
- confidential information

Follow these additional guidelines regarding roles and responsibilities:

- Certain types of requests must be handled by specific Metro staff. Follow the routing guidelines below:
 - Requests pertaining to employee information must be handled by Human Resources.
 - Requests from attorneys or law firms and any requests related to – or suspected of being related to a legal action - must be brought to the attention of the Office of Metro Attorney.
 - Requests from the media must be handled by Communications staff in conjunction with program staff. Communications staff will be involved in initially screening all media requests and in reviewing all responses to media requests before they are sent.

PROCEDURES

The following procedures guide staff through the public records request process. Metro's Records Officer is available to assist and advise staff in all stages of these procedures.

The majority of requests received by Metro are straightforward and easily fulfilled. When requests are complex and require coordination among several staff, the Metro Records Officer will convene a planning meeting to discuss any issues that may pertain to the request and to assign roles and responsibilities. This ad hoc group will operate as a team, identify a point person for the request (usually a department supervisor), and designate other individuals responsible for completing tasks, such as:

- Identifying and contacting staff who need to be aware of the request
- Identifying what, if any, clarification of the request is needed
- Establishing communication protocols
- Contacting the requester for clarification (if needed), to provide cost estimates (if applicable)

- Coordinating the development of keywords for electronic searches
- Coordinating the implementation of electronic searches
- Monitoring the policy-required timeline
- Ensuring that any exemptions or redactions are appropriate and properly documented
- Determining when to release responsive documents
- Ensuring the complete documentation of the transaction
- Facilitating fee waiver/reduction requests

Metro records and information management (RIM) staff will coordinate the planning meeting. The team will include the staff described in the Roles and Responsibilities section, as well as any other staff familiar with the subject matter of the request.

1. Acknowledging the request

a. Courtesy acknowledgement

As a courtesy, RIM staff will notify the requester (usually within twenty four hours) that Metro has received the request. If the requester has not submitted a completed *Public Records Request Form*, the courtesy acknowledgement will include the form (including the blank *Public Records Fees Worksheet* on the reverse), and the requester will be asked to fill it out.

This acknowledgement accomplishes these important goals:

- Assures the requester that the request has been received and is being handled
- Helps ensure the accuracy of the request
- Makes the requester aware that fees may be assessed
- Begins the documentation of the transaction

b. Required acknowledgement

Within five business days, the point person for the request must notify the requester whether Metro is – or is not – the custodian of the records being sought. If staff is uncertain whether Metro is the custodian of the records being requested, this must be stated along with an estimated time by which Metro will know whether it is the custodian. RIM staff will provide assistance with this task, as needed. [See Appendix: *Suggested Language for Acknowledgment of Request*]

Note: If the request is *completed* before five business days have passed, the Required Acknowledgement is not needed.

Within ten business days after sending the Required Acknowledgement, Metro must complete the request. If the request cannot be completed in that time, staff must contact the requester to report on the status of the request and provide an estimate of how much additional time is needed to fulfill the request. RIM staff will provide assistance with this task, as needed.

2. Clarifying the request

It may be necessary to contact the requester to seek additional information to respond to the request. A brief conversation can save considerable time and expense in responding to public records requests.

While it may be necessary to contact the requester to clarify the request, it is *not* appropriate to question the requester about the reason for the request. If the requester does not respond within 60 days to a good faith request for clarification, Metro will close the request.

3. Identifying records

The primary program must ensure that all responsive records are identified. For requests that seek a discrete set of records, identification is not a time-consuming process. For other types of requests, identifying records involves at least two steps:

- Identify all primary program staff who may have the records; and
- Identify locations where the records may be stored.

Records may be stored in a variety of locations, including paper files, email folders, computer drives, and cloud repositories. Staff should identify all records locations to ensure all responsive records are found. If a cost estimate has been prepared and sent to the requester, staff should wait for notification from RIM staff regarding the receipt of the required deposit before assembling the records.

4. Assessing Fees

Metro is authorized under Oregon Public Records Law to recover actual costs associated with making public records available. To assess fees, follow these guidelines:

- Metro will charge for the time spent by staff searching for records whether the requester chooses to review the records in person or have them copied and sent.
- On the *Public Records Fees Worksheet*:
 - charges listed under Standard Copy Fees include staff time for preparing and making copies
 - charges listed under Supplemental Labor Fees apply to staff time spent searching, assembling, reviewing, and re-filing the records. These charges apply to requests requiring more than 30 minutes of staff time to complete.
- When a request is for records that were previously gathered for another requester, no fees should be charged unless the request also includes additional records or requires additional work.

Tasks associated with assessing fees will be coordinated by RIM staff with input from others in the response team.

5. Providing a Cost Estimate

Tasks associated with providing a cost estimate will be coordinated by RIM staff with input from others in the response team. Upon completion of the *Public Records Fees Worksheet*, RIM staff will send it to the requester for review/response. The estimate should include the cost of staff time and materials required to make the public records available, including:

- Searching, retrieving, and reviewing records to redact exempt material.
- Compiling or tailoring the public records, either in organization or media, to meet the request.
- Supervising the inspection of records, copying and mailing costs. When a requester wishes to inspect records on-site, a cost estimate will be prepared if the time required to assemble the records exceeds 30 minutes, noting time spent supervising their on-site inspection of records and any copies requested while on-site will incur further charges.

If the requester fails to respond within 60 days of the date on which Metro transmitted the cost estimate, Metro will close the request.

6. Deposit and Payment Requirements

- If the estimated costs are less than \$25.00, payment will be due upon receipt of the records requested.
- If the estimated costs exceed \$25.00, a cost estimate will be provided and will require the requester's approval before work begins.
- If the estimated costs exceed \$100.00, Metro will require a 50% deposit before expending additional resources on the request. Metro staff will begin work on the request only upon receipt of the deposit.

In cases where a deposit has been required, the work of gathering and assembling the records may begin once the deposit has been received. At the discretion of Metro management, receipt of final payment may be required before releasing the records. [See: *Metro Public Records Request Form* for additional guidance regarding when a cost estimate must be provided and when a deposit may be required]

Tasks associated with preparing/transmitting cost estimates and facilitating payment of fees will be coordinated by RIM staff with input from others in the response team.

Note: All payments related to public records requests are posted to account **4211-010**.

If the requester fails to pay the fee within 60 days of the date on which Metro informed the requester of the fee (or its denial of a fee waiver request), Metro will close the request. In the event that the records have been released and payment remains outstanding, collections will be handled by Accounts Receivable.

7. Amending a Cost Estimate

Once staff has identified, gathered, and reviewed all responsive records, it may be necessary to amend the original cost estimate, in which case an amended *Public Records Fees Worksheet* should be prepared and transmitted to the requester for review/response. Tasks associated with amending/transmitting a cost estimate will be coordinated by RIM staff with input from others in the response team.

If the actual cost of completing the request exceeds the estimate, Metro will not release the records until the fees have been paid in full. If the actual cost of responding to the request is less than the deposit made, the difference will be refunded promptly.

If the requester fails to respond within 60 days of the date on which Metro informed the requester of the amended fees, Metro will close the request.

8. Waiver or Reduction in Fees

Metro may grant a request to fulfill a public records request at no charge or at a reduced fee if it is determined that the waiver or reduction is in the public interest. To have a request for a fee waiver or reduction considered, the requester needs to complete and submit the *Request for Fee Waiver/Reduction Request* form to the Metro Records Officer who will refer the request to the appropriate department director for review (often in conjunction with legal staff).

A decision on a request for a fee waiver will be made by Metro management within five business days of receipt of a request and must be documented by the decision maker using the *Public Interest Threshold Evaluation* form. All documentation needs to be sent to the Records Officer. In cases where charges have been waived, staff still must report time spent on processing the request to the Records Officer.

9. Exemptions from Disclosure

Staff must consult with Legal staff if they believe any records, or parts of records, might be exempt from disclosure. Legal will determine whether exemptions apply and handle the matter if the requester challenges Metro's non-disclosure of documents.

10. Inspecting Records

Metro must provide a requester with the option of inspecting the agency's records during regularly scheduled business hours from 8:30 a.m. to 4:30 p.m., Monday through Friday (except legal holidays). A Metro staff member should be present while any original public records are being inspected to ensure the protection of the documents. No original public records will be loaned for use outside of Metro's offices.

Requesters wishing to inspect Metro's public records on-site must conform to the following:

- **Paper-based records**
 - Patrons shall not smoke, drink or eat while inspecting the public records
 - Patrons shall use only a pencil for taking notes, shall not mark the public records, and shall maintain the original order of the public records consulted

- Patrons shall not alter, mutilate or otherwise deface public records
- Patrons shall not remove from the areas of study, any public records or other materials in the official custody of Metro
- **Electronic records**
If the records are in an electronic format or machine readable format, Metro shall provide, to the extent practical, access to the records for review by the requester in the original format. Staff should not allow a requester access to records in the original format if doing so would compromise the agency's information technology security, reveal confidential or exempt information, or subject the records to possible corruption.

11. Copying Records

Metro will honor requests for particular formats and means of transmitting within reason and depending on the available format of the material requested. Metro is under no obligation to provide copies of records in formats different from the format in which they are maintained.

12. Completing the Public Records Request

Metro must complete its response to the request as soon as possible, but not later than ten business days from the date the Required Acknowledgement was sent. If the response cannot be completed in that time, staff must provide a written statement to the requester that Metro is still processing the request and provide a reasonable estimated date by which the response will be completed. If the requester has been notified that a payment is required, Metro's obligation to complete its response to the request is suspended until the payment is received. If no payment is received within 60 days, the request will be closed by the Records Officer upon receipt of confirmation from staff.

13. Closing of the Public Records Request

Response to a public records request is complete when Metro:

- Provides access to or copies of all requested records within the possession or custody of the Agency that are not exempt from public disclosure, or explains where the records are already publicly available;
- Asserts any exemptions from disclosure that Metro believes apply to any requested records and identifies the state or federal law that Metro relied on in asserting the exemptions;
- To the extent that Metro is not the custodian of records that have been requested, provides a written statement to that effect;
- Asserts that one or more requested records are exempt from public disclosure and includes a statement that the requestor may seek review of the Agency's determination.

14. Completing the Record of the Transaction

Copies of all completed forms and correspondence must be transmitted to the Metro Records Officer for retention, reporting, and audit purposes.

Roles and Responsibilities

- **Program Supervisor**
 - Possesses subject matter expertise and contextual knowledge of the program's activities and records
 - Ascertains potential political or legal issues related to the request
 - Serves as a point of contact for public records requests
 - Identifies department staff who will be involved and delegates responsibilities
 - Assists RIM point-person with monitoring public records requests timelines
 - Notifies Metro Records Officer when updates to the PRR contacts list are needed

- **Department Staff**
 - Possesses subject matter expertise and contextual knowledge of the program's activities and records
 - Ascertains potential political or legal issues related to the request
 - Locates responsive records
- **RIM Point-person (records officer or records analyst)**
 - Provides oversight of the public records request process
 - Provides guidance on all records-related policies and procedures
 - Monitors public records requests timelines
 - Assists with coordinating PRR planning meetings
 - Coordinates the development and implementation of electronic search terms
 - Takes the lead in preparing/transmitting/amending cost estimates
 - Takes the lead in coordinating fee deposits and payments
 - Takes the lead in communicating fee waiver/reduction requests and outcomes
 - Provides administrative oversight of the Metro Public Records Request Audit Log
 - Maintains Metro's internal PRR contacts list
- **Legal Point-person**
 - Provides legal review of responsive documents
 - Identifies potential or current litigation
 - Approves all exemptions and redactions
 - Assists in developing electronic search terms
 - Communicates any exemptions to staff or the requester
- **Information Services Point-person**
 - Executes electronic search for responsive records
 - Oversees the transfer of records to a secure network folder for staff review
- **Metro Director**
 - Takes the lead in reviewing fee waiver/reduction requests and making a final decision
 - Documents the final decision and sends documentation to the Metro Records Officer
- **All Metro employees**
All Metro employees are responsible for:
 - Understanding the basics of Metro's policy and procedures and complying with its requirements
 - Understanding that the public is entitled to request copies of Metro's records.
 - Fielding inquiries from the public about how to access Metro's public records request process (i.e., direct them to Metro's website or provide inquirers with hardcopies of the *Metro Public Records Request* form).
 - Transmitting all communications related to a public records request to Metro's Records Officer to ensure that a complete and accurate record of every transaction is made.

References

- *Metro Records Retention Schedule (RRS)*
- *Public Records Request Form/Fees Worksheet*
- *Public Records Request Flowchart*
- *Check List: Processing Non-routine Public Records Requests*
- *Request for Fee Waiver/Reduction Request Form*
- *Public Interest Threshold Evaluation Form*
- *Metro Public Records Requests Roles and Responsibilities Matrix*
- *Public Records Requests FAQ's*

APPENDIX

Suggested Language – Acknowledgment of Request

Courtesy Acknowledgment – this is an initial acknowledgment, sent as a courtesy (usually within 24 hours) by RIM staff to let the requester know that Metro has received the request.

Metro acknowledges receipt of your public records request, received August 30, 2017:

Records pertaining to the xyz affair, including correspondence and consultant studies

Your request has been transmitted to appropriate staff, who will determine whether or not Metro has the records being requested. You will be notified of their findings as soon as possible. If staff requires clarification of your request, they will contact you.

Please be advised that fees may be charged, depending on the time and material required to respond.

For a description of Metro's policy regarding public record requests, including a Frequently Asked Questions (FAQ) sheet, please follow the Request Public Records [link](#) on oregonmetro.gov.

This communication is being cc'd to Metro's records officer

Required Acknowledgment – Within five days of receipt of the public records request, Metro is required by Oregon law to send a formal acknowledgment to the requester including one of the three statements in **bold** type below.

Regarding your public records request, received August 30, 2017.

Records pertaining to the xyz affair, including correspondence and consultant studies

Option A: Metro confirms that it is the custodian of the requested record[s].

Option B: Metro is not the custodian of the requested record[s].

staff may include additional information, such as "We believe OR DEQ may have the records you are seeking" or

"the records you have requested have been destroyed in accordance with Metro's records retention schedule"

Option C: Metro is not certain whether it is the custodian of the requested record[s].

Staff will contact you as soon as a determination has been made.

For a description of Metro's policy regarding public record requests, including a Frequently Asked Questions (FAQ) sheet, please follow the [Request Public Records](#) link on oregonmetro.gov.

This communication is being cc'd to Metro's records officer

Suggested Language – Communicating a Cost Estimate

Regarding your public records request, received June 30, 2018.

Records pertaining to the xyz affair, including correspondence and consultant studies

Please see the attached Fee Worksheet which shows the estimated staff time and cost it will take to process your records request. This estimate includes time spent to locate the requested records and to review the records for exempt material. Please note that the true costs may be higher or lower than the estimate provided.

As per Metro policy guidelines, we require that you pay in advance 50% of the total estimated cost of **\$183.40**. You can elect to pay **\$92.40** via:

- credit card by calling Metro Accounting at (503) 797-1620, or
- send a check payable to “Metro” to: Metro, Attn: Accounts Receivable, 600 NE Grand Ave., Portland, OR 97232

The work of gathering and assembling the records may *begin once the deposit has been received*.

Please note: The following can be included in the cost estimate, but it is left to the discretion of Metro management:

Upon completing the compilation of said records, you will be contacted to process the remaining balance (either by invoice, credit card or check). After receiving final payment, Metro will forward the records to you electronically. If you require paper copies, there will be an additional fee.