

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 Marissa Madrigal, 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 *Records and Information Management (RIM) Glossary of 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 using the Metro Public Records Request Center web page.

Note: If a requester does not have access to a computer, staff should contact RIM staff for assistance.

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 Metro Online Records
 - 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 fees.

- **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 fees; however, these fees could be waived.

The Metro Records Officer serves as the public records request (PRR) process lead and will work with the response team 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.
 - 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. The Metro 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, Metro records and information management (RIM) staff will coordinate the 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 will 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), and 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
- Facilitating fee waiver/reduction request
- Ensuring the complete documentation of the transaction

Note: 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, the requester will receive an automated courtesy acknowledgment that Metro has received the request. 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.

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.

These protocols are in place for the following:

- **Reoccurring Requests:** When requesters ask for the same information on an ongoing basis, they need to submit a new request each time.
- **Requests for records that do not currently exist but are likely to be created:** Metro does not provide notice when records become available. If a requester asks for records that do not yet exist but are likely to be created, staff should notify the requester of this and confirm that the requester will need to submit a new request in the future. If known, staff may provide a timeline regarding when the records may be available.

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, cloud repositories, and personal or Metro-issued devices. Staff should identify all records locations to ensure all responsive records are found.

Please note that if a request includes “all communications...”, it may be necessary to retrieve responsive records (e.g. text messages and emails) from any device if the records have not already been transferred to Metro systems. If assistance is needed, staff should contact Information Services.

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:

- Charges may include staff time spent searching, assembling, reviewing, redacting, copying, and re-filing the records. These charges apply to requests requiring more than 30 minutes of staff time to complete.
- 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.
- 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.

Note: 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, RIM staff will send the cost estimate 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 content.
- 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, including 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.

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. RIM staff will notify Accounts Payable that payment is anticipated and request notification when payment is received. The request will be placed on "Pause" pending payment notification. Upon receipt of notification, the completion date will be reset based on date of payment.

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 estimate 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

Per Oregon's public records law, 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 must complete and submit the *Request for Fee Waiver/Reduction* through the Metro Public Records Request Center. RIM program staff will forward the request to the appropriate department director who will evaluate the request to reduce or waive fees on a case-by-case basis, taking into consideration the cost of producing the information; whether making the records available primarily benefits the public; and other criteria, using information provided by the requester as well as information independently available to the Agency. The request will be “Paused” during the decision process. Metro’s decision will be communicated to the requester within five business days of receipt of a request and will be documented by the decision maker using the *Public Interest Threshold Evaluation* form. In addition, the completion date of the request will be reset based on the date that the decision was transmitted to the requester.

Staff must calculate final costs and report them to the Records Officer, regardless of whether fees will be assessed to the requester. All documentation needs to be sent to the Records Officer.

In the event that several departments are involved in responding to a public records request (PRR), the following steps should be taken:

- Directors of departments involved in the PRR should discuss the fee waiver/reduction request, and
- The director whose department initially received the PRR should complete the *Public Interest Threshold Evaluation* form to document the final decision.

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. If the requester disputes the decision, they may seek review of the decision to withhold documents from inspection (ORS 192.415 - Procedure to review denial of right to inspect other public records).

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 must 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:

a. 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

b. 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 five-day 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 Metro 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 requester may seek review of the Agency's determination.

14. Completing the Record of the Transaction

The public records request lead (PRRL) will work with RIM staff to ensure that a complete record of the transaction is captured in the Metro Public Records Request Center 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, practical, or legal issues related to the request
 - Serves as a point of contact for public records requests
 - Generally serves as Public Records Request Lead (PRRL); may delegate tasks, while providing oversight
 - 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 and information 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 Center
 - Provides training resources for staff
 - Maintains the *Metro PRR Internal Contacts List* (with input from staff)
- **Legal Point-person**
 - Provides general legal advice, including:
 - Assists in developing electronic search terms
 - Identifies potential or current litigation
 - Approves all exemptions and redactions identified by Public Records Request Lead (PRRL)
- **Communications Department point person**
 - Provides specialized advice to Public Records Request Lead (PRRL) concerning public record requests from media
- **Information Technology 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 RIM staff
- **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 submit a public records request

References

- *Metro Records Retention Schedule (RRS)*
- *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*