



PUBLIC RECORDS POLICY

Effective Date: April 11, 2023

I. Policy and Purpose

- A. Policy. The City recognizes the Oregon Public Records Law (ORS 192.311 *et seq.*) gives every person the right to inspect any of the City's nonexempt public records; inherent in that right is the understanding not all records in the City's custody are subject to disclosure and, in making a disclosure determination, the City may balance the right of public access against individual privacy rights, governmental interests, confidentiality issues, and lawyer-client privilege. Additionally, the City incurs costs to provide its response to requests to inspect or copy public records and it is in the public interest those costs be recovered by the City.
- B. Purpose. Generally, the purpose of this Policy is to ensure the City's responses to requests for public records are consistent with the Oregon Public Records Law and is intended to inform both the public and City staff of the City's procedures and rules applicable to public records requests as of the Effective Date. Specifically, this Policy:
- (1) details an orderly, consistent, and reasonable process for the City's response to requests; and
 - (2) establishes the basis for a fee schedule intended to reimburse the City for its actual costs incurred in responding to requests.

II. Public Records

- A. Public Record Defined. The Oregon Public Records Law defines a **public record** as *any writing that contains 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*.
- B. Record Retrieval. The City is required to retrieve pre-existing information (including electronic data stored in its databases) regardless of whether the City has actually generated a report for its own use containing the requested data. Information contained in a record is not exempt from disclosure simply because the City stores it electronically or because retrieving the data would require the City to query its information systems in ways it otherwise might not.
- C. Format. The City will provide public records in the format requested, if available. If the requested format is unavailable, then the City will provide the data in the form it is maintained.

III. Requests for Information/Freedom of Information Act

- A. Requests for Information. Both City staff and the public must keep in mind the distinction between a **request for information** and a **public records request**. Many public records requests are actually requests for information requiring the City to create a new public record or analyze its records. The State of Oregon does not have a law governing requests for information and thus the City is not obligated to respond to such requests. The Oregon Public Records Law does **not** require the City to:

- (1) create new public records to respond to a request when none exist;
- (2) disclose the reasoning behind its actions;
- (3) answer questions about records in its custody;
- (4) analyze its records for any reason, including to determine whether they contain responsive information; or
- (5) perform legal research to identify responsive records.

- B. Freedom of Information Act. The City's obligations to provide public records in its custody is an exclusive function of the Oregon Public Records Law—the federal Freedom of Information Act (5 U.S.C. § 552) does not apply to cities and the City is not bound by its timeframes or any of its other provisions; however, the City will strive to construe all public records requests it receives consistent with the Oregon Public Records Law's framework.

IV. Making a Public Records Request

Every *person* (as defined by the Oregon Public Records Law) may make a request for public records in the City's custody as provided herein:

- A. Submittal. Any person may send their request to inspect or receive a copy of a public record to the office of the City Attorney of The Dalles (the **City Attorney's Office**). The City reserves the right to identify additional individuals who may accept a request on behalf of the City; consistent with ORS 192.324(7)(a), the City maintains a list of those individuals on the City's Legal Department [website](#).
- B. Written Requests. Consistent with ORS 192.324(2), the City's obligations under the Oregon Public Records Law are triggered **only** when a person sends the City Attorney's Office a written request by:

- (1) personally delivering or mailing a completed paper **Public Records Request Form** furnished by the City to the City Attorney's Office, addressed:

City Attorney's Office
ATTN: *Public Records Request*
313 Court Street
The Dalles, OR 97058

- (2) scanning a completed paper **Public Records Request Form** furnished by the City to the City Attorney's Office and emailing it to publicrecords@ci.the-dalles.or.us; or
 - (3) submitting a digital **Public Records Request Form** through the City's [website](#).
- C. **Completeness**. In order for the City Attorney's Office to deem a request complete, it must:
- (1) comply with **Subsections IV(A) and (B)**;
 - (2) contain the requester's name, address, and telephone number, email address, or other contact information; and
 - (3) provide a sufficiently detailed description of the records requested to allow the City Attorney's Office to search for and identify responsive records.
- D. **Process**. Once the City Attorney's Office receives a complete and written request, certain deadlines to acknowledge and fulfill the request are triggered by the Oregon Public Records Law:
- (1) **Acknowledgment**. The City will acknowledge receipt of a complete request and will send a written acknowledgement to the requester **within five (5) business days** and containing a:
 - a. confirmation of whether the City is the custodian of responsive records;
 - b. statement no such records exist;
 - c. statement the City is uncertain whether it possesses any requested records and indicating it will search for responsive records and respond as soon as practicable after it receives prepayment of the estimated fees the requester must pay to process the request;
 - d. statement Oregon or federal law prohibits the City from acknowledging whether the record exists and a citation to the applicable prohibiting law;
 - e. copy of all requested public records for which the City does not claim an exemption from disclosure or an estimate of time in which copies will be provided or inspection will be available;
 - f. request for additional information or clarification of the records sought; and/or
 - g. fee estimate or fee adjustment accompanied by a notice prepayment must be submitted before the request will be processed, depending on the relative workload associated with fulfilling the request (see **Sections VI and VII**).
 - (2) **Response Timeline**. The City will provide its response as soon as reasonably possible but **not later than ten (10) business days** after the date the City is

required to acknowledge its receipt of the complete request.¹ Pursuant to ORS 192.329(6), none of the Oregon Public Records Law's timelines or time periods for the City's acknowledgment or response apply if compliance by the City would be impracticable because:

- a. the staff necessary to complete the City's response are unavailable (e.g., on leave, not scheduled to work, etc.);
- b. compliance will demonstrably impede the City's ability to perform other necessary services; or
- c. of the volume of other requests simultaneously being processed by the City.

(3) **Additional Information and Clarification.** The City may request additional information or clarification from a requester for the purpose of expediting the City's response to a request. If the City requests additional information or clarification, its obligation to further complete its response to the request is suspended until the requester provides the requested information or clarification or affirmatively declines to provide that information or clarification. If the requester fails to respond within 60 days to the City's good faith request for information or clarification, the City will close the request and take no further action.

(4) **Coordination.** Upon the City Attorney's Office receipt of a completed request (and, if necessary, the requester's fee prepayment), the City Attorney's Office will coordinate with the requester, applicable City staff, and others as necessary to timely complete its response to the request.

(5) **Response.** If the City Attorney believes a request should be denied in whole or in part, they will prepare and deliver to the requester a written explanation of the statutory basis for the denial identifying all applicable exemptions from disclosure for each part of the record or records being withheld. Otherwise, the City Attorney's Office will transmit the requested records or coordinate with the requester a reasonable time for their inspection of the records at City Hall. The City completes its response to and closes a request when it:

- a. provides the requester with access to or copies of all nonexempt responsive records or explained where the records are already publicly available;
- b. cites in writing to the requester any exemption it asserts to withhold responsive records;

¹ If the City does not meet this timeline, it will provide a written statement to the requester indicating it is still processing the request and providing a reasonable estimated date by which the City expects to complete its response based on the information currently available. City staff must often consult with the City Attorney's Office regarding public records requests — briefly postponing the disclosure of records for that purpose does not violate the Oregon Public Records Law, which provides it is reasonable for the City to obtain legal advice on an extensive public records request when compliance will seriously disrupt the City's operations or result in the potential disclosure of documents appearing exempt or otherwise pertinent to a legal claim or litigation.

- c. provides to the requester any nonexempt material from a public record also containing exempt material;
 - d. provides to the requester a written statement the City is not the custodian of any of the records;
 - e. cites in writing to the requester any federal or Oregon law prohibiting the City from acknowledging whether the requested records exist (or to a law that would impose a loss of federal benefits or other sanction) unless providing that citation would violate federal or Oregon law; and
 - f. if the City redacted from or withheld any responsive record, provides the requester a written statement they may seek review of its withholding pursuant to ORS 192.401, 192.411, 192.415, 192.418, 192.422, 192.427, and 192.431.
- E. Inspection. If a requester prefers physical inspection (as opposed to the City's provision of a copy) of a public record, City staff will be present **at all times** to supervise the inspection and to ensure no documents are removed, destroyed, or otherwise tampered with.
- F. Appeal. If the City denies a request in whole or in part, the requester may seek review of the City's withholding or redactions by petitioning the Wasco County District Attorney pursuant to ORS 192.401, 192.411, 192.415, 192.418, 192.422, 192.427, and 192.431.

V. Public Records Exempt from Disclosure

The Oregon Public Records Law exempts numerous types of public records from disclosure. Many of these specifically authorized exemptions are codified as **ORS 192.345 (conditional exemptions)** and **ORS 192.355 (unconditional exemptions)**. Additional exemptions may be codified in other Oregon and federal statutes. If the City Attorney determines even one statutory exemption applies to a public record responsive to a request, the City may or must withhold the record from or redact the applicable confidential information prior to disclosure. Without limitation in any way, a few specific exemptions worth special notice include:

Privacy Exemptions

- Personal Privacy – **ORS 192.355(2)**. Information of a personal nature, including information kept in a personal, medical, or similar file, is exempt from disclosure if disclosure would be an unreasonable invasion of privacy. Personal information includes an individual's home address, phone number, weight, and age.
- Personal Safety – **ORS 192.368(6)**. If an individual demonstrates to the City disclosure of their home address, personal telephone number, or personal email address would endanger their personal safety, or the personal safety of a family member residing with them, then the Oregon Public Records Law prohibits the City from disclosing records containing that information.
- Personnel Discipline Actions – **ORS 192.345(12)**. Public records of a completed discipline action where a sanction has been imposed (and materials or documents supporting that action) are conditionally exempt from disclosure.

- *Public Employee/Volunteer Personal Information* – **ORS 192.355(3)**. The City must withhold the following public employee and volunteer information as exempt from disclosure: home addresses, home phone numbers, personal cell phone numbers, personal email addresses, City-issued ID card numbers, emergency contact information, driver's license numbers, dates of birth, and Social Security Numbers.
- *Social Security Numbers* – **ORS 107.840**. No Social Security Numbers should be disclosed without prior consultation with the City Attorney. The City must redact Social Security Numbers from all public records prior to disclosure.
- *Utility Records* – **ORS 192.355(28)**. The City must redact its utility customers' names, dates of birth, driver's license numbers, phone numbers, email addresses, and Social Security Numbers.

Police and Criminal Record Exemptions

- *Criminal Investigations* – **ORS 192.345(3)**. The City must withhold the police report and any investigatory information compiled for criminal law purposes until the law enforcement investigation or criminal prosecution is completed or abandoned. Requesters are encouraged to contact and submit their request for information covered by this exemption to the Wasco County District Attorney's Office.
- *Public Safety Officer Personnel Records* – **ORS 181A.830(3)**. The City must withhold information about a personnel investigation of a City Police Officer if the investigation does not result in discipline unless the public interest requires disclosure, the employee consents to disclosure, the disclosure is necessary for an investigation by the City, DPSST, or a citizen review body designated by the City, or if the City determines nondisclosure would adversely impact the public's confidence in the City.² In all cases, the City must notify the Police Officer if the City receives a request for any of their personnel information. Pursuant to ORS 192.385(2), in no event does the Oregon Public Records Law authorize the City to disclose audio or video records of internal investigation interviews with its Police Officers.
- *Body Camera Footage* – **ORS 192.345(40)**. All requests for City Police Officer body camera footage must identify the approximate date and time of an incident for which the recording is requested and be reasonably tailored to include only that material for which a public interest requires disclosure. The Oregon Public Records Law requires the City to edit or redact all body camera footage in all cases so as to render the faces of all persons within the recording unidentifiable. The City contracts with a third-party vendor for redacting body camera footage consistent with the Oregon Public Records Law and the City's costs for the vendor's services must be prepaid to the City by the requester (see **Section VI**) in all cases.

² For investigations of a Police Officer stemming from a citizen's complaint, ORS 181A.830(5) provides the City may disclose – to the complainant, only – the disposition of the complaint and a written summary of information obtained in the investigation to the extent the City considers it necessary to explain the City's action on the complaint.

Legal Exemptions

- **Lawyer-Client Privileged Communications** – **ORS 40.225(2)(a)**. Confidential communications covered by Oregon's lawyer-client privilege are exempt from disclosure (e.g., communications between the City Attorney's Office and City staff or officials).
- **Public Records Pertaining to Litigation** – **ORS 192.345(1)**. If the City is involved in litigation, or if litigation is reasonably likely in the future, public records relating to the litigation are conditionally exempt from disclosure.

Confidentiality Exemptions

- **Confidential Submissions** – **ORS 192.355(4)**. The City may withhold information submitted in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the City obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure. The purpose of this exemption is to encourage voluntary submission of relevant information to the City and was designed by the Oregon Legislature to protect the submitter, not the City.
 - The City Attorney, in their sole discretion, determines whether the City is obligated to maintain the confidentiality of materials submitted to the City and whether to assert this exemption in response to any public records request. Accordingly, any person intending to submit confidential information to the City must deliver to the City Attorney's Office a declaration, affidavit, or signed memorandum explaining (a) why the information should reasonably be considered confidential and (b) how the City might benefit by having access to the voluntarily-submitted confidential information. If the City receives a request for records submitted after this Policy's Effective Date, the City reserves the right to not assert this exemption if the submitter has not provided the declaration, affidavit, or signed memorandum described here.
- **Juvenile Records** – **ORS Chapters 419A-C**. Most public records involving juvenile defendants are restricted from public disclosure by operation of the Oregon Juvenile Code. No records implicating juvenile information should be disclosed without prior consultation with the City Attorney.
- **Trade Secrets** – **ORS 192.345(2)** and **ORS 646.461(4)**. In addition to information meeting the Uniform Trade Secrets Act's criteria to qualify as a *trade secret*, the City may withhold information not patented, known only to certain individuals within an organization and which is used in a business it conducts, if the information has actual or potential commercial value and gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
 - The City Attorney, in their sole discretion, determines whether to assert this exemption in response to any public records request. Accordingly, any person intending to submit what they consider to be their trade secret information to the City must deliver to the City Attorney's Office a declaration, affidavit, or signed memorandum explaining how the information meets the definition of a trade secret under ORS 192.345(2) or ORS 646.461(4). If the City receives a request for records submitted after this Policy's Effective Date, the City reserves the right not to assert

this exemption if the submitter has not provided the declaration, affidavit, or signed memorandum described here.

VI. Fees

- A. Fees Authorized. The Oregon Public Records Law authorizes the City to establish fees reasonably calculated to recover its actual costs for making public records available, including the costs for:
- (1) summarizing, compiling, or tailoring the public records to meet the person's request;
 - (2) locating responsive records;
 - (3) reviewing responsive records to redact exempt material;
 - (4) supervising a person's inspection of original documents to protect the records;
 - (5) copying records;
 - (6) certifying documents as true copies;
 - (7) sending records by special methods; and
 - (8) reviewing and redacting (but not time spent by the City Attorney's Office in determining the application of the Oregon Public Records Law or its exemptions).
- B. Accommodation. The City will never include charges for any additional costs incurred to provide records in an alternative format to individuals with vision or hearing impairments when required by the Americans with Disabilities Act (42 U.S.C. § 12131 *et seq.*).
- C. Fees Charged. The City's fee for responding to public records requests is listed on the [City's Fee Schedule](#), as amended. The City will waive all fees for easily accessible or routinely requested records if the request takes **less than one hour of staff time** to find, review, and provide the responsive records. The City will require prepayment in all cases (unless the City Attorney determines in writing a fee waiver is appropriate) if the request takes **more than one hour of staff time** to find, review, and provide the responsive records or otherwise complete its response.³
- D. Search Time. The City may charge for search time even if it fails to locate any records responsive to a request or even if the City Attorney subsequently determines the records located are exempt; however, where possible, the City will advise a requester beforehand if significant portions of the records are likely to be exempt.

³ The City contracts with a third-party vendor to redact **body camera footage** in accordance with the Oregon Public Records Law and the requester must prepay the full amount of the City's costs for the vendor's services in all cases; in addition to both staff time spent to fulfill the request and the vendor's costs (if applicable), the City also charges an additional one-time clerical fee per body camera footage request consistent with the City's Fee Schedule.

- E. Negotiations. The City is permitted to negotiate with requesters to reduce the cost of fulfilling requests in many ways, including informing the requester how to access the records themselves, by agreeing to using narrower search terms or date ranges, limiting the search to only the most relevant City employees, or excluding records most likely to contain exempt information. While requesters are under no obligation to refine their request in order to reduce cost, many appreciate the opportunity to work with the City to obtain the most substantive records for a lower cost.
- F. Prepayment. If the fee estimate for a request exceeds \$25.00, the City must first provide a written estimate to the requester and receive confirmation the requester is willing to pay; unless the City Attorney determines in writing a fee waiver is appropriate, the City requires prepayment of its estimated charges before taking further action on a request. If the actual charges are less than the prepayment, the City will promptly refund any overpayment. A requester may coordinate prepayment with the City's Billing Clerk by emailing payments@ci.the-dalles.or.us for remittal instructions.

VII. Fee Adjustments

- A. Fee Waivers and Reductions. The City may furnish copies **without charge** or at a **reduced fee** if the City Attorney determines fee adjustment is in the public interest because making the record available primarily benefits the general public. If disclosure is in the public interest, the City's decision to deny a fee-waiver or fee-reduction request must be reasonable under the totality of the circumstances. A requester may contest the City's decision not to adjust their fee by submitting an appeal petition to the Wasco County District Attorney before or after paying the fee.
- B. Public Interest. For purposes of determining whether to grant a fee reduction for a request, the furnishing of public records primarily benefits the general public when its greatest utility is to the community or society as a whole — this is distinct from situations where disclosure would primarily impact a private party's concern or interest. Regardless of how interested the public may be in the matter implicated by the requested records, the Oregon Public Records Law provides disclosure will not primarily benefit the public if the requester fails to demonstrate their ability to meaningfully disseminate the information. The City is authorized to seek additional information from a requester to help clarify the basis for seeking a fee adjustment and, without such information, it may be difficult or even impossible to assess whether the requested disclosure is in the public interest.
- C. Fee-Waiver Determination. The City Attorney will make a determination as to whether a requester seeking a fee waiver has established a sufficient public interest to justify the waiver on an individualized, request-by-request basis. Factors typically relevant to the City Attorney's fee-waiver public-interest determination typically include:
 - (1) who the requester is;
 - (2) the purpose for which the requester intends to use the information;
 - (3) the character of the information (i.e., whether the information is customarily in the public domain or of a nature reasonably kept confidential);
 - (4) whether the requested information is already in the public domain;

(5) the requester's inability to pay⁴; and

(6) whether the requester can demonstrate the ability to disseminate the information to the public.

D. Fee-Reduction Determination. The City Attorney will make a fee-reduction determination on an individualized, request-by-request basis. Factors typically relevant to the City Attorney's fee-reduction public-interest determination typically include:

(1) how narrowly tailored the request is to a matter of public interest;

(2) the time and expense needed to fulfill the request;

(3) the volume of the records requested;

(4) the need to segregate exempt from nonexempt materials;

(5) whether the fee was avoidable; and

(6) the requester's ability to pay the fee.

E. City Discretion Despite Public Interest. Even if waiving or reducing the fee is in the public interest, the Oregon Public Records Law still provides the City with the discretion to deny a fee adjustment if its denial is reasonable under the totality of the circumstances; in exercising that discretion (on a request-by-request basis), the City Attorney may consider:

(1) the character of the public interest in the particular disclosure;

(2) the extent to which the fee impedes that public interest;

(3) the extent to which a waiver would burden the City⁵; and

(4) any other considerations potentially appropriate in any given request.

CITY OF THE DALLES


Matthew B. Klebes, City Manager

4/11/23
Date

⁴ The Oregon Public Records Law provides this factor, on its own, is not a sufficient basis for a fee waiver.

⁵ The City may consider the aggregate impact from numerous public records requests from the same requester in assessing this burden.