

**MULTNOMAH COUNTY, OREGON
ADMINISTRATIVE PROCEDURE REC-2**

SUBJECT: Multnomah County Public Records Policy

PURPOSE: To standardize protocols to respond to public records requests

ORGANIZATION

RESPONSIBLE: County Attorney's Office

DATE: September 15, 2021

Deborah Kojmy

ORGANIZATIONS

AFFECTED: All Multnomah County Departments

**LEGAL CITATION/
REFERENCE:**

ORS Chapter 192

Attorney General's Public Records and Meetings Manual

Executive Rules 0301

Personnel Rule 3-35 Use of Information Technology

Administrative Procedure FAC-20 Video Monitoring Systems Access and Footage

<https://multco.us/public-records-request>

1. Purpose

This administrative procedure provides guidelines for responding to public record requests in compliance with Oregon Public Records laws, ORS 192.410-505. This general policy is in addition to, not a substitute for, more specific Department or Division policies; any such policies must be reviewed by the County Attorney for legal compliance.

2. Policy Statement

It is the policy of Multnomah County to respond to public records requests in a lawful, orderly and consistent manner.

3. What is a Public Record?

A public record “includes any writing that contains information relating to the conduct of the [County’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(5)(a).

For purposes of public records law, the term "writing" is defined broadly. A writing means "handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings." ORS 192.410(7).

Accordingly, each of the following items is a public record if it contains information relating to the conduct of County business that is prepared, owned, used or retained by the County: email, text or instant messages, chats, and posts to social media. Similarly, a record created or maintained on a personal device is a public record if it contains information relating to the conduct of County business and is prepared, owned, used or retained by the County.

Public records are limited to writings that exist at the time the request is made. The County is not required to create a record in order to respond to a public records request. Similarly, the County is not required to explain the content of records or answer questions or provide analysis about public records. Lastly, the County is not required to use any special software, technology or process to retrieve records; instead, the County is only required to use the method of retrieval that County employees use in the normal course of business.

4. Written Public Records Requests Required

When possible, public record requests should be in writing on the most recent County Public Records Request Form and describe the records as specifically as possible, including relevant dates, subject matter, type of record, and the requester's contact information.

5. Processing Public Records Requests

A. Department Designation.

1. Each Department or Division should designate and name a person to receive public records requests. Such designation must be made public by posting on the County's website so that persons requesting public records know whom to direct the request to.
2. The IT Security Manager is the designated point person for receiving public records requests for or involving the Information Technology Division.

B. Routing

1. All public records requests shall be routed to designated personnel.
2. Upon receipt by the designee, all public records requests from the media shall be forwarded to the Communications Public Affairs Office and/or the County Attorney's Office. The Communications Office and County Attorney's Office will coordinate the response to the media.
3. Any employee receiving a public records request that involves IT assistance with electronic records should forward the request to the IT Security Manager.
4. With respect to requests for copies of footage from Multnomah County Video Monitoring Systems (VMSF) (e.g., copies of footage from building cameras, closed circuit television systems, etc.), the person designated to receive public records requests may obtain assistance in retrieving VMSF from the VMS Facilitator identified in Administrative Procedure FAC-20 and shall comply with FAC-20, Sec. V.B to the extent possible.
5. County Attorney review is required prior to production when:
 - a. An exemption may apply. See section (5)(C)(2) of this policy.
 - b. A portion of the request may be denied or redacted.
 - c. The records relate to litigation.
 - d. Email research is required.
 - e. When the request is for personal information of an employee or volunteer, including but not limited to: residential address,

private email, telephone numbers, Social Security number, date of birth, or driver's license number.

- f. Where information sought relates to a person's reputation, honesty or truthfulness.

C. Written Acknowledgment of Request

1. Pursuant to ORS 192.440(2), all requests for public records shall receive a written acknowledgment as soon as practicable and without unreasonable delay, but no later than five business days after receiving the request. "Business days" shall have the meaning as provided in ORS 192.410(1).
2. Responders should use the County Public Records Request Acknowledgment Form and/or provide the following:
 - a. The County is the custodian of and does possess the requested record; or
 - b. Inform the requester that the County is not the custodian of the requested record; or
 - c. Notify the requester that the County is uncertain whether the public body is the custodian of the requested record and will conduct a search for responsive documents; or
 - d. Based on your request, the County is unable to determine what records you are seeking. Please clarify your request by specifying in as much detail as possible the records you are seeking; or
 - e. State or Federal law prohibits the County from acknowledging whether the requested records exist (include citation of state or federal law); or
 - f. Your request is denied in its entirety or in part based on the following [insert reason].
3. Notification Regarding Fees
 - a. If estimated fees are more than \$25.00, the following written statement, or one substantially similar, must be provided: "The costs associated with production of the requested records is estimated to be \$____. Fees will accrue even if the County fails to locate any responsive records. Please verify that you will pay the fees associated with this production. The

County will not proceed with processing this request until written verification and payment is received. If the actual cost is less than estimated, the County will refund requester the amount of over payment. If the cost is more than originally estimated, the County will notify the requester of the revised estimate and the additional payment must be received prior to the County providing the records."

- b. All cost estimates must include an explanation of the estimated costs.
- c. If the estimated fees are less than \$25.00, a written estimate is not required. See section (5)(D) for information on calculation of charges and requests for waivers.
- d. The IT Security Manager will coordinate with the appropriate IT service professional to estimate the amount of time and effort to fulfill the public records request and generate an estimate of fees, if expected to be in excess of \$25, to retrieve the records. Once payment has been received, the IT Security Manager will coordinate with the appropriate IT service professional to retrieve the record.

D. Providing Records

- 1. The County will provide copies or allow inspection of records as soon as practicable and without unreasonable delay as follows:
 - a. Within ten business days after the date which the County was required to acknowledge receipt of request, the County must:
 - i. Complete its response to the request; or
 - ii. Provide a written statement that the public body is still processing the request and provide a reasonable estimated date by which the public body expects to complete its response based on currently available information.
 - b. The ten-day period is suspended if:
 - i. the requester has been informed that fees are estimated to exceed \$25; or
 - ii. the County has requested additional information or clarification from a requester.

c. Examples:

Example 1: A records request is received on Day 1. On Day 5, the County acknowledges receipt of the request. Because it is a small request that will not cost more than \$25.00, the County begins processing the request. By Day 15, the County must have either completed its response or provided a written statement that the County is still processing the request, with an estimated date of completion.

Example 2: A records request is received on Day 1. On Day 5, the County acknowledges receipt of the request and because of the size of the request, includes a fee estimate of \$750, noting that the County will not proceed with processing the request until written verification and payment are received. On Day 25, the County receives written verification and payment. By Day 35, the County must have either completed its response or provided a written statement that the County is still processing the request, with an estimated date of completion.

Example 3: A records request is received on Day 1. On Day 5, the County acknowledges receipt of the request, and because of the size of the request, includes a fee estimate of \$750, noting that the County will not proceed with processing the request until written verification and payment are received. On Day 25, the County receives written verification and payment, which gives the County until Day 35 to either complete its response or provide a written statement that the County is still processing the request. However, on Day 32 (7 days into the ten-day response period), while processing the request, the County determines that it needs additional information and requests that information from the requester. The remaining portion of the ten-day response period is now suspended. When the County receives the additional information, it will have the remaining 3 days of the ten-day timeline to complete the request or provide a written statement that the County is still processing the request, with an estimated date of completion. If the additional information arrives on Day 40, the County will have until Day 43 to complete the request or notify the requester that it is processing the request, with an estimate date of completion.

2. Departments shall provide reasonable opportunities for requesters to inspect and examine public records in the office of the records custodian or other appropriate facility during normal business hours.
 - a. If the records are in an electronic format or machine readable format, the County shall provide, to the extent practical, access to the records for review by the requester in the original format. Departments should not allow a requester access to records in the original format if doing so would compromise the County's information technology security or reveal confidential or exempt information.
 - b. Departments may adopt reasonable rules for the protection of records to be reviewed in their original format, including allowing an employee to supervise the inspection of records.
3. Exemptions, Denials, and Attorney Review:
 - a. All records must be reviewed for available exemptions from production under the law. If you believe an exemption may apply, contact the County Attorney's Office. Some possible exemptions include:
 - i. Confidential or sensitive information.
 - ii. Medical information.
 - iii. Social Security numbers.
 - iv. Public employee addresses, date of birth, and telephone numbers.
 - v. Mail addresses, excluding those that are issued by the County to its employees.
 - vi. Personnel disciplinary actions.
 - vii. Attorney-Client privileged communications.
 - viii. Any exemptions, redactions, denials, or requests for personal information of employees must be reviewed by the County Attorney's Office prior to responding to the requester.

E. Fees

1. The County may recover actual costs associated with making public records available. ORS 192.440(4)(a). A requester may be charged for the search for records even if he or she chooses to review the records in person rather than have them copied. Costs charged for public records requests may include:
 - a. Staff time to summarize, compile, research or monitor production of records.
 - b. Materials used (CD/DVD, audio tape, videotape).
 - c. Copying.
 - d. Attorney review.
 - e. Delivery costs.
2. Fee Schedules are to be set by each Department. The Department may use the Fee Schedule form or develop a schedule.
3. A written estimate of fees must be provided to the requester for charges over \$25. See section (5)(B)(2) of this policy for communicating about fees.
4. Waivers
 - a. Records may be provided at no cost to the requester if doing so would be a more efficient use of County time. For example, if billing for costs would take more time than simply complying with the request, then consider providing the document at no cost.
 - b. A full or partial fee waiver may be granted if the Chief Executive Officer, County Attorney or their designees determine that a waiver is in the public interest. ORS 192.440(5).