



RESOLUTION No. 2017-3417

**A RESOLUTION REPEALING RESOLUTION 2008-2771, AND
INCORPORATING CHANGES IN OREGON REVISED STATUTE 192
EFFECTIVE JANUARY 1, 2018.**

RECITALS:

1. The City adopted Resolution 2008-2771, which outlined a City policy for responding to Public Records requests.
2. The Oregon State Legislature approved Senate Bill 481 in July 2017, which will take effect January 1, 2018.
3. Staff have put this resolution before the Council to take effect on January 1, 2018 but ask the Council to approve the resolution now to give staff time to amend processes and forms to comply with the changes in state law at the beginning of the calendar year.
4. Senate Bill 481 modifies the Oregon Public Records Law in the Oregon Revised Statutes (ORS) 192.410 to 192.440. This bill amends the following:
 - A) Requirement for a written records request policy by providing a written response to requests within at least five days with at least one of the following responses:
 - i) Confirm that the public body is the custodian of the requested record;
 - ii) Inform the requester that the public body is not the custodian of the requested record; or
 - iii) Notify the requestor that the public body is uncertain whether the public body is the custodian of the requested record.
 - B) Provides further definition for the timeframe to respond to public records requests as described in ORS 192.440 as soon as practicable and without unreasonable delay.
 - i) A public body's response to a public records request is complete when the public body:
 - a) Provides access to or copies of all requested records within the possession or custody of the public body that the public body does not assert are exempt from public disclosure, or explains where the records are already publicly available;
 - b) Asserts any exemptions from disclosure that the public body believes apply to any requested records and, if the public body cites ORS 192.502 (8) or (9), identifies the state or federal law that the public body relied on in asserting the exemptions;

- c) Complies with ORS 192.505;
- d) To the extent that the public body is not the custodian of records that have been requested, provides a written statement to that effect;
- e) To the extent that state or federal law prohibits the public body from acknowledging whether or a requested record exists would result in loss of federal benefits or imposition of another sanction, provides a written statement to that effect, citing the state or federal law that the public body relies on, unless the written statement itself would violate state or federal law; and
- f) If the public body asserts that one or more requested records are exempt from public disclosure, includes a statement that the requester may seek review of the public body's determination pursuant to ORS 192.450, 192.460, 192.470, 192.480 and 192.490.

C) As soon as reasonably possible, but no later than 10 business days after the date by which a public body is required to acknowledge receipt of the request under ORS 192.440, a public body shall:

- i) Complete its response to the public records request; or
- ii) Provide a written statement that the public body is still processing the request and a reasonable estimated date by which the public body expects to complete its response based on the current information available.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

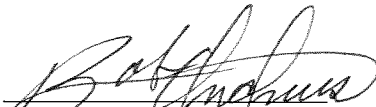
1. Repeal Resolution 2008-2771.
2. Adopt the city policy on public records requests as stated in Exhibit A, which is incorporated in full by this reference.
3. This resolution will take effect on January 1, 2018, which is the date the changes in state law ORS 192 go into effect.

➤ **EFFECTIVE DATE** of this resolution is the first day of the next calendar year after the adoption date, which is: January 1, 2018.

ADOPTED by the City Council of the City of Newberg, Oregon, this 6th day of November, 2017.


Sue Ryan, City Recorder

ATTEST by the Mayor this 8th day of November, 2017.


Bob Andrews, Mayor

Resolution 2017-3417
Exhibit A
City of Newberg Public Records Request Policy

The City desires to adopt a policy addressing the procedure for records requests to comply with the Oregon Public Records Law, ORS 192.410-505. Exempt records will be determined by the City Attorney's office.

Section 1. Right to Inspect Public Records. ORS 192.420 gives every person the right to inspect any non-exempt public record held by a public body. Requests for such City records must be made under the Oregon Public Records Law and in accordance with this policy.

Section 2. Written Requests. All requests must be made in writing [ORS 192.440 (1)].

Section 3. Levels of Requests and Staff Response. The purpose of this policy is to help provide accurate records to the public in a reasonable time. In order to accommodate the purpose of this policy, levels of requests have been established.

Level 1 Request.

Requested records must be current and accessible, require no duplication, are not subject to the Public Records Fee Schedule, and must require no additional staff time or resources to be made available.

Level 2 Request.

Requested records are not accessible, but can be made accessible with no more than 30 minutes of staff time. Level 2 requests can be made to the public records officer for departments as specified in Section 4 C. Requested records must be located in a single department and readily accessible. Records requiring attorney review are Level 3 records.

Level 3 Request. This type of request is complex, involves multiple staff and/or departments, or requires more than 30 minutes of staff time. It may involve extensive research or compilation of records. Any requests requiring legal review fall under this section.

Section 4. Procedures.

A. Requests for public records must include: name, address, sufficient contact information, date of the request, and a detailed description of the requested records including year of creation or range of dates. If electronic records are requested, keywords must be sufficient to locate the requested records.

B. Except as otherwise provided by these rules, public records will not be released for inspection or copies provided to the requestor unless the City receives payment of the required estimated fee from the requesting party.

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C. Written requests for inspection or copies of city records must be submitted, on the City's form, to one of the following or designees for processing: the City Recorder for general City records, the police records custodian for police records, the court administrator for court records or designees. If the City needs additional information or clarification, staff will contact the requestor.

D. If the City is unable to comply with a request, a written response explaining why the City is unable to process the request will be sent to the requesting party.

Section 5. City Response

The City shall follow timelines as required under ORS 192.

A. Within five business days the City will acknowledge all records requests.

B. As soon as reasonably possible, but not later than 10 business days after the date by which a public body is required to acknowledge receipt of the request under ORS 192.440, the City shall:

i. Complete its response to the public records request; or

ii. Provide a written statement that the City is still processing the request and a reasonable estimated date by which City staff expects to complete its response based on the information currently available.

Section 6. Appeal

A person who has submitted a written public records request in compliance with City policy may seek review of the following, in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505:

A. The failure of a public body to provide the response required by ORS 192 within the prescribed period. A failure of the public body to timely respond shall be treated as a denial of the request unless the public body demonstrates that compliance was not required.

B. An estimate of time provided by a public body - if the person believes that the estimated timeframe for the response is unreasonably long and will result in undue delay of disclosure.

C. Any other instance in which the person believes that the public body has failed to comply with ORS 192.

D. The district attorney and the court have the same authority with respect to petitions under this section as when inspection of a public record is denied.

Section 7. Fees

A. Fees for public records requests are set annually by resolution through the Master Fee Schedule process.

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B. Once receipt of a public records request has been acknowledged, staff will prepare a cost estimate reflecting the cost of City staff time and materials required to make the records available. Cost estimate will include costs of summarizing, compiling, or researching the public records request. The City will require a deposit in the full amount of the estimated costs before expending additional City resources on the request. City staff will begin work on the request only upon receipt of the deposit. If the actual cost of completing the request exceeds the estimate, the City will not release records until the City's actual costs are received in full. If the actual cost of responding to the request is less than the estimated cost, then the balance of the deposit will be refunded promptly. The payment will be in the form generally accepted for City purchases.

C. A person requesting a waiver or reduction of fees must file a written request and include the requestor's name, address, basis for the request and whether the requestor can demonstrate benefit to the general public. The city may consider the requestor's ability to pay and any financial hardship on the City that would arise from granting a waiver. Any requestor disabled within the definition of the Americans with Disabilities Act may also apply for a waiver or reduction of fees if any of the cost of complying with the request is due to the requestor's disability. Level 1 or Level 2 requests by the news media will be made available without charge. Any request at a Level 3 may be charged in accordance with the City's Master Fee Schedule. The decision of the city manager or designee on any fee waiver or reduction is final.

Section 7. Inspection of Records.

A. Inspection of records will occur during regular City business hours, by appointment. All records shall be inspected at the City of Newberg's place of business. A person making a public records request may personally inspect the requested records, but the right to inspect records does not include the right to access file cabinets or the right to disassemble or change the order of records in files or binders. Original records may not leave the custody of the City. A City staff member must be present while any records are inspected to ensure protection of the records. If any person attempts to alter, remove, or destroy any record, the City staff shall immediately terminate review and notify the city attorney.

B. If the City maintains 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. The City may require the requestor to obtain written consent from the copyright holder before allowing copying of such materials.

Section 8. Closing of the Request

A. Response to a public records request is complete when the City:

i) Provides access to or copies of all requested records within the possession or custody of the City that are not exempt from public disclosure, or explains where the records are already publicly available;

ii) Asserts any exemptions from disclosure that the City believes apply to any requested records and, if the public body cites ORS 192.502 (8) or (9), identifies the state or federal law that the City relied on in asserting the exemptions;

iii) Complies with ORS 192.505;

iv) To the extent that the City is not the custodian of records that have been requested, provides a written statement to that effect;

v) To the extent that state or federal law prohibits the City from acknowledging whether or a requested record exists would result in loss of federal benefits or imposition of another sanction, provides a written statement to that effect, citing the state or federal law that the City relies on, unless the written statement itself would violate state or federal law;

vi) If the City asserts that one or more requested records are exempt from public disclosure, includes a statement that the requester may seek review of the City determination pursuant to ORS 192.450, 192.460, 192.470, 192.480 and 192.490.