

Oregon Medical Board

POLICY

TITLE/SUBJECT:	Public Records Policy
NUMBER:	847-010-004
SUPERSEDES:	n/a
REFERENCE:	ORS 192.001 through 192.170 and 192.410 through 192.505 ORS 676.175 and 676.405 OAR chapter 166 OAR chapter 847 DAS Statewide Policy 107-004-050, Information Asset Classification OMB Policy 847-206-002, Information Security
APPLICATION:	All Oregon Medical Board (OMB) Employees, Volunteers, Board Members, and Contractors
INTERPRETATION RESPONSIBILITY:	OMB Business Manager and Operations & Policy Analyst
EFFECTIVE DATE:	June 11, 2013
REVISED:	February 24, 2016

POLICY APPROVED BY: _____

Signature on File

Kathleen Haley, Executive Director

PURPOSE

The intent of Oregon public records law is to ensure that Oregon's government is accessible and transparent to its people. It requires state agencies to provide public records to Oregon citizens upon request. The Oregon Medical Board (OMB) adheres to this law and will provide all public records that are not exempt from disclosure by statute.

The purpose of this policy is to establish an orderly and consistent framework for managing public records and responding to public records requests. Specifically, this policy sets requirements for public access to OMB information, including the management of public records in compliance with the OMB Records Retention Schedule on file with the Oregon State Archivist; the request process, fulfillment procedure, and response time; and the common exemptions to disclosure of OMB public records. Further, the policy includes the fee schedule to reimburse the OMB for actual costs incurred and the avenue for appeal should access be denied.

POLICY

Public records shall be maintained and managed consistently within the agency from the time of creation to the time of final disposition. The agency shall maintain an accessible public record or accurate copy of a public record in accordance with the agency retention schedule authorized under ORS 192.105 without regard to the technology or medium used to create or communicate the record. Upon request and payment of any required fees, the agency shall timely provide public records unless exempt from disclosure by statute.

DEFINITIONS

For retention purposes, “public record” means any information that is prepared, owned, used or retained by a state agency; relates to an activity, transaction or function of the state agency or political subdivision; and is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency. (ORS 192.005)

For disclosure purposes, “public record” includes any writing that contains information relating to the conduct of the public’s business,...prepared, owned, used or retained by a public body regardless of physical form or characteristics. (ORS 192.410)

PUBLIC RECORDS MANAGEMENT (ORS 192.005-192.170)

General Guidelines

Only the official copy of a public record must be retained. Extra copies or a stock of publications are not public records and may be preserved for convenience or destroyed.

OMB staff shall:

1. Preserve and classify agency public records in compliance with ORS chapter 192, OAR chapter 166, and DAS Statewide Policy 107-004-050 Information Asset Classification.
2. Maintain the integrity and confidentiality of public information in compliance with statewide policy 107-004-050 and the OMB’s Information Security Policy 847-206-002.
3. Follow the OMB’s retention schedule authorized under ORS 192.105, without regard to the technology or medium used to create or communicate the record.
4. Ensure accessibility of records through system migrations and in the event of disaster through regular back-up of agency records and ongoing technology review. Any IT system updates or changes will include record migration as part of the project plan.
5. Dispose of public records in accordance with OAR 166-030-0060 Public Records Disposition and Destruction.

Electronic Communications

Electronic communications are public records and must be managed according to the general principles above and applicable retention schedule. This applies to all electronic communications regarding agency activities regardless of whether state devices/accounts or personal devices/accounts are used.

1. When using a personal e-mail account, staff shall include an agency e-mail address in the “To” or “CC” field.
Example 1: If a legislator e-mails your personal Gmail account to ask about the OMB’s budget, the e-mail is a public record. To maintain an official copy, include your OMB e-mail address in the “To” or “CC” field when responding.
Example 2: If a co-worker e-mails your personal Hotmail account from her personal Yahoo account to go over the talking points for the next day’s meeting, the e-mail is a public record. The sender should include her own OMB e-mail address in the “To” or “Cc” field. Any responses should use “Reply All.”
2. When sending text messages, staff shall include an agency e-mail address in the message’s “To” field.

PUBLIC RECORDS DISCLOSURE (ORS 192.410-192.505)

General Principles

State agencies are not required to create public records that do not otherwise exist. State agencies do not need to make a public record to show the “reasoning” behind the action or staff “knowledge.” State agencies are not required to explain, answer questions, or provide legal research or analysis about their public records.

The public records disclosure statutes are distinct from the retention statutes. Any retained records are public records subject to disclosure.

*Records do not have to be prepared by the agency to qualify as public records. Records with “information relating to the conduct of the public’s business” and “owned, used or retained” by the agency are within the scope of the public records law. However, a document that is reviewed by the agency but not used or retained by the agency is *not* a public record.*

Request Process

1. Any person (or organization) may request to inspect or receive copies of a public record by mail, fax, or e-mail.
 - a. For aggregate OMB information, requesters may use the [Public Records Request form](#).
 - b. For information on an OMB applicant or licensee, requesters may use the [License Verification form](#) or the [Licensee File Request form](#).
2. The request must include the name and contact information for the requester.
3. The request must identify as specifically as possible the type of record(s), subject matter, approximate date(s), names of persons involved, and the number of copies requested.
4. OMB staff may work with the requester to clarify and narrow his or her request.
5. OMB staff will maintain records of public records requests received.

Fulfillment Process

1. The OMB will acknowledge a request and notify the requester whether the OMB is the custodian, ask for clarification if needed, and provide an estimate of the time and cost.
2. The OMB will fulfill requests in accordance with ORS 192.410 to 192.505, which governs the inspection and disclosure of public records.
3. Requests will be referred to the appropriate staff member. Responses will be prepared in consultation with the Operations & Policy Analyst or Executive Director as needed.
4. OMB staff will obtain archived files from the Oregon State Archive as needed.
5. Staff will separate and redact public records according to statutory exemptions.
6. Upon request, the OMB will provide a place for a requester to view records. Original materials may be inspected on site only and may not be removed from OMB property.
7. The OMB may provide the information in an alternate format if the requested format is impractical or overly burdensome.
8. OMB staff will maintain records of all public records provided.

Response Time

- OMB will provide public records as soon as practicable and without unreasonable delay.
- For standard requests (e.g. license verifications and malpractice reports), the OMB will attempt to fulfill requests within seven business days from receipt of payment.
- For complex requests, the OMB will acknowledge the request within seven business days and either seek clarification or provide an estimated cost and time for fulfilling it.
- The OMB will attempt to provide public records by a requested date but may provide the information after that time if the requested date is impractical or if providing the information by the requested date would be overly burdensome.

Exemptions

Disclosure is prohibited for some categories of records and other categories of records are conditionally exempt from disclosure.

The OMB's common exemptions include:

- ORS 40.225 – attorney-client privilege
- ORS 179.505 and 192.496 – medical records
- ORS 181.534(8), (15) – criminal records checks
- ORS 192.445 – personal contact information with demonstrated personal safety concern
- ORS 192.501(28) – unique identifiers
- ORS 192.501(4) – test questions & scoring keys
- ORS 192.502(2) – personal information
- ORS 192.502(4) – information submitted in confidence
- ORS 192.502(8) – federal law (including 5 USC § 552a – NPDB reports)
- ORS 192.502(9) – other state law that restricts or prohibits disclosure of a public record (including statutes outside of ORS 192)
- ORS 192.502(10) – transferred records
- ORS 192.502(1) – internal advisory communication
- ORS 432.350 – vital records
- ORS 676.175 – investigatory information
- ORS 676.405 – licensee personal e-mail, phone, and home address

The Executive Director may grant requests for licensee personal information and other conditionally exempt records if releasing the information primarily benefits the general public. The requester may be asked to sign an OMB confidentiality agreement.

Based on the protections for information assets in statewide policy 107-004-050, all requests for information above Level 2, “Limited” must be approved by the Executive Director to ensure that no exempt records are released and proper asset security is maintained.

Appeals

The OMB will inform the requester of the right to petition the Attorney General to review a denied request under ORS 192.450.

FEES

1. The OMB may charge for the actual cost of making the record available, including copying costs and time spent locating the records, deleting exempt materials, and supervising the inspection of documents as indicated in OAR 847-005-0005.
2. Fees for public records must be paid in advance.
3. Once payment is received, OMB staff will begin preparing the requested information. The timeline for providing the information begins when payment is received.

Unless otherwise stated in rule, per OAR 847-005-0005 the OMB charges for copies and services are as follows:

1. Charges for copies: \$5.00 per report + \$.20 per page

PLUS

2. Staff time, including time spent researching, collecting, reviewing, separating and redacting, photocopying, and supervising on-site inspections is charged as follows, with a one-hour minimum:

Clerical time	\$ 20 per hour
Administrative time	\$ 40 per hour
Executive time	\$ 50 per hour
Medical Director time	\$ 75 per hour

PLUS

3. Additional charges for cost incurred for legal advice relating to the records request.

Fee Waivers or Reductions

The OMB may waive or reduce the fee if the agency determines the waiver or reduction is in the public interest because making the record available primarily benefits the general public, per ORS 192.440(5). All requests for fee waivers or reductions must be made in writing.

Appeals

The OMB will inform the requester of the right to petition for review of a denial of a fee waiver or reduction to the Attorney General under ORS 192.450 as authorized by ORS 192.440.