

STATE OF OREGON
DEPARTMENT OF JUSTICE

ATTORNEY GENERAL'S
PUBLIC RECORDS
AND
MEETINGS MANUAL



"Knowledge will forever govern ignorance.
And a people who mean to be their own governors, must arm
themselves with the power knowledge gives. A popular government
without popular information or the means of acquiring it, is but
a prologue to a farce or a tragedy, or perhaps both."
James Madison (1822)

HARDY MYERS
Attorney General

January 2008

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INTRODUCTION

The Public Records and Public Meetings Laws were enacted by the Oregon legislature in 1973. These laws underscore the state’s policy that the public is entitled to know how the public’s business is conducted. Thus, the written record of the conduct of the public’s business is, with some important exceptions, available to any citizen. Similarly, the deliberations and decisions of public bodies are, for the most part, open to attendance by any interested persons.

The Public Records Law requires the Attorney General to adopt a Uniform Rule describing the evidence to be submitted to support a request for exemption of a home address, personal telephone number, or electronic mail address because of a danger to the personal safety of an individual or a family member residing with the individual. That rule is included in appendix H of this manual.

Following each legislative session, the Attorney General reviews and updates this manual for consistency with legislative changes to the Public Records and Public Meetings Laws, recent appellate court decisions interpreting these statutes, and Public Records Orders applying the statutes and issued since this manual’s last publication. This review also includes consideration of comments received from state agencies and local government bodies, assistant attorneys general and the public based on their experience using the manual. The Attorney General’s Uniform Rule is amended, as necessary, based on this review.

The 2007 legislature enacted several important amendments to the Public Records Law. One that is particularly significant for all public bodies is a requirement that a public body promptly respond to written public records requests by acknowledging receipt of the request and providing information about the status of the public body’s processing of the request. ORS 192.440(2) (Or Laws 2007, ch 467). The public body must also make available a written procedure for making a public record request, identifying the person to whom requests should be directed, and explaining how the public body calculates fees for responding to requests. ORS 192.440(7) (Or Laws 2007, ch 467). These requirements are effective January 1, 2008. To assist public bodies in complying with these requirements, we have developed sample templates that are set out in Appendix B of the Public Records Law section of this manual.

The legislature amended the state law “catchall” exemption to limit use of the attorney-client privilege to exempt from disclosure factual information developed during investigations into allegations of wrong doing by the public body. ORS 192.501(9) (Or Laws 2007, ch 513). Under circumstances described in the statute, the public body will be required to disclose the factual information or to prepare and disclose a condensation of the facts. ORS 192.423, 192.501(9) (Or Laws 2007, ch 513). These requirements apply to records created on or after June 20, 2007.

The legislature repealed the existing exemption for the home address, home telephone number and electronic mail address of a public safety officer (ORS 192.502(34)), and replaced it with two new exemptions that apply to district attorneys, deputy district attorneys and assistant attorneys general as well as public safety officers, but that also apply to a narrower range of records and information. ORS 192.501(30), (31) (Or Laws 2007, ch 687). Because the new exemptions are in ORS 192.501, they are subject to the public interest balancing test. The legislature amended the existing exemption for State Treasurer and Oregon Investment Council investment information (ORS 192.502(13)), dividing the existing exemption into separate exemptions applying to publicly traded investments (ORS 192.502(13)) and investments in private funds or assets (ORS 192.502(14)). It is important to note that this amendment renumbers the exemptions in ORS 192.502 that follow new ORS 192.502(14). (Or Laws 2007, ch 152). The legislature also amended ORS 192.502(22) (now ORS 192.502(23)) pertaining to library patron records to exempt patron e-mail addresses (Or Laws 2007, ch 181). Finally, the legislature created a new exemption for land management plans required for voluntary stewardship agreements entered into under ORS 541.423. (ORS 192.501(33)) (Or Laws 2007, ch 608). The changes described in this paragraph are effective January 1, 2008.

Four bills enacted by the 2007 legislature amend the Public Meetings Law. The first, effective January 1, 2009, amends ORS 192.690 to add the “Health Professionals Program Supervisory Council established under ORS 677.615” to the list of government entities exempt from the Public Meetings Law. (Or Laws 2007, ch 796). The second, effective January 1, 2008, amends ORS 192.630(3) to prohibit governing bodies from holding meetings at places that discriminate on the basis of “sexual orientation.” (Or

Laws 2007, ch 100). The third, also effective January 1, 2008, amends ORS 192.630(5)(a) by respectively replacing “the disabled” with “persons with disabilities” and the “deaf or hard-of-hearing” with “persons who are deaf or hard of hearing.” (Or Laws 2007, ch 70). The fourth, effective January 1, 2009, makes a clerical change to ORS 192.660(2)(c) (replacing “[ORS] 441.990(3)” with “ORS 441.990(2)).” (Or Laws 2007, ch 602).

None of these changes, however, altered the fundamental premise underlying both the Public Records and Public Meetings Laws: any doubts in interpreting the legislation should be resolved in favor of providing the public with information. The authority to hold private meetings, executive (closed) and emergency sessions, as well as to claim confidentiality of records, are exceptions to the general rule of openness and must be narrowly interpreted. Even when public bodies have the ability to operate in secret, they generally are not required to do so.

This manual is an opinion of the Attorney General interpreting the Public Records and Public Meetings Laws. Its principal purpose is to provide general legal advice to state agencies. As in the case of any Attorney General’s opinion, it is intended also to provide substantial assistance to local governments and to the public generally.

We would appreciate continued comments and suggestions from users of this manual. These observations have greatly assisted us in revising the manual, as well as providing perspectives on corrective legislation.

I gratefully acknowledge the substantial assistance of Joe McNaught, Amy Alpaugh, Steven Wolf, Serena Hewitt, Robin Stender and Tonie Cotell of the Department of Justice in preparing this latest revision.

HARDY MYERS
Attorney General



January 2008

PREFACE

This Manual is organized in two parts: Part I discusses the Public Records Law; Part II discusses the Public Meetings Law. Each part is followed by its own set of appendices which include answers to commonly asked questions about the law, sample forms, summaries of court decisions, Attorney General opinions, and a reprint of the statutes. Each part of the manual also has a table of cases and a topic index.

I

PUBLIC RECORDS

A. Who Has the Right to Inspect Public Records?

Under ORS 192.420 “every person” has a right to inspect any nonexempt public record of a public body in Oregon. This right extends to any natural person, any corporation, partnership, firm or association, and any member or committee of the Legislative Assembly. ORS 192.410(2).¹ The definition of “person” in ORS 192.410(2) does not mention a “public body,” and we have concluded that a public body may not use the Public Records Law to obtain public records from another public body.² Similarly, a public official, other than a legislator, acting within his or her official capacity may not rely on the Public Records Law to obtain records, although the individual could do so in his or her individual capacity.

Generally, the identity, motive and need of the person requesting access to public records are irrelevant.³ Interested persons, news media representatives, business people seeking access for personal gain, busybodies on fishing expeditions, persons seeking to embarrass government agencies, and scientific researchers all stand on an equal footing.⁴

However, the identity and motive of the person seeking disclosure of a particular public record may be relevant in determining whether a record is exempt from disclosure under a conditional exemption. ORS 192.501 conditionally exempts certain records from disclosure “unless the public interest requires disclosure in the particular instance.” As the discussion of exemptions below demonstrates, many of the exemptions listed in ORS

¹ A legislative committee also may compel the production of public documents by means of a legislative summons. ORS 171.505 to 171.530.

² Letter of Advice dated June 26, 1987, to Wanda Clinton, Department of Revenue (OP-6049) at 8 (see App E-5); Public Records Order, October 7, 2002, Snow (see App F-50).

³ See, e.g., *State ex rel Frohnmayer v. Oregon State Bar*, 307 Or 304, 767 P2d 893 (1989) (lawyer who is subject of bar disciplinary proceeding may use Public Records Law to gather records) (see App C-9); *State v. Spada*, 286 Or 305, 594 P2d 815 (1979); *Smith v. School Dist. No. 45*, 63 Or App 685, 692, 666 P2d 1345, rev den 295 Or 773, 670 P2d 1036 (1983) (see App C-6).

⁴ *MacEwan v. Holm, et al.*, 226 Or 27, 359 P2d 413 (1961) (see App C-1).