

Division 35
Facilitated Dispute Resolution

166-035-0005

Purpose

This Division specifies requirements for a public body and the public to request facilitated dispute resolution services when requested from the Archives Division. As used in this rule, “person” includes members of the public or media, and “public body” includes state agencies and local governments.

Stat. Auth.: ORS 192.015; ORS 357.895; ORS 357.855

Stats. Implemented: ORS 192 & 357

166-035-0010

Requesting Facilitated Dispute Resolution

(1) A person may seek facilitated dispute resolution services under this section when seeking to inspect or receive copies of public records from a public body and the person:

- (a) Has been denied access to all or a portion of the records being sought;
- (b) Has been denied a fee waiver or reduction in fees after asserting under ORS 192.440 (5) that a fee waiver or reduction of fees is in the public interest; or
- (c) Received a written fee estimate under ORS 192.440 (4) that the person believes exceeds the actual cost to be incurred by the public body in producing the requested records.

(2) A public body may seek facilitated dispute resolution services under this section if, in response to a request for public records, the public body asserts:

- (a) That all or a portion of the records being sought are not public records;
- (b) That all or a portion of the records being sought are exempt from mandatory disclosure;
- (c) That the public body is, under ORS 192.440, entitled to the fees the public body is seeking in order to produce the records being requested; or
- (d) That the scope of the public records request is too broad to be cost efficient.

Stat. Auth.: ORS 192.015; ORS 357.895; ORS 357.855

Stats. Implemented: ORS 192 & 357

166-035-0015

Facilitated Dispute Resolution Process

Upon receipt of a request for facilitated dispute resolution services, the State Archivist shall communicate with both parties regarding the records request. The Archivist shall determine if the request meets the requirements of OAR 166-035-0010, needs to be narrowed or clarified and shall work with both parties to reach a compromise.

(1) Subject to ORS 357.875, the State Archivist may confidentially access, examine, or receive the records in question to determine if they can be disclosed in whole, in part, or not at all. In some cases, the Attorney General may be consulted for legal advice.

(2) If the facilitated dispute resolution results in an agreement between the public records requester and the public body, the State Archivist shall prepare a written document memorializing the agreement. The written agreement shall be executed by the public records requester and an authorized representative of the public body. The written agreement shall control the resolution of the records request.

(3) If an agreement is not reached, the State Archivist shall inform the requestor of the process to escalate to the Attorney General, District Attorney, or appropriate legal counsel. The public body will also be informed of their right to consult their legal counsel for a formal opinion.

(4) The State Archivist possesses sole discretion over the conduct of facilitated dispute resolution sessions within the bounds of this rule.

(5) The State Archivist may decline to accept requests for facilitated dispute resolution if the State Archivist has reason to believe that facilitated dispute resolution would not be productive, such as if a person or public body has acted in bad faith.

(6) The State Archivist may delegate duties under this rule.

(7) The State Archivist shall publish an annual report on facilitated dispute resolution services requested, resulting outcomes, and recommended process improvements. A copy shall be sent to the Legislature and Governor.

Stat. Auth.: ORS 192.015; ORS 357.895; ORS 357.855; ORS 357.875
Stats. Implemented: ORS 192 & 357

Division 37

Public Records Training and Research

166-037-0010

Public Records Training

(1) The State Archivist shall provide training for members of the public, media, state agencies, and local governments at locations throughout the state regarding the requirements and best practices for the management of public records and processing and responding to public records requests.

(2) The State Archivist shall notify members of the public, media, state agencies, and local governments of training opportunities and create a process allowing members of the public, media, state agencies, and local governments to request trainings.

(3) Upon the written request of a state agency or local government, the State Archivist may provide guidance and advice on matters pertaining to the management of public records and public records request processing and the disclosure and applicability of exemptions from disclosure of public records.

(4) The State Archivist may delegate duties under this rule.

(5) The State Archivist shall publish an annual report on trainings conducted under this rule. A copy shall be sent to the Legislature and Governor.

Stat. Auth.: ORS 192.015; ORS 357.895; ORS 357.855

Stats. Implemented: ORS 192 & 357

166-037-0020

Public Records Survey, Research, and Reporting

(1) The State Archivist shall periodically:

(a) Survey state agency and local government practices and procedures for:

(A) Receiving public records requests, identifying the existence of records responsive to the requests, and gathering and disclosing responsive records;

(B) Determining fee estimates and imposing or waiving fees under ORS 192.440; and

(C) Determining and applying exemptions from required disclosure of public records.

(D) Written policies that set forth the agency's use, access, management, retention and ownership of public records.

(b) Examine practices in other jurisdictions that are similar to those described in paragraph (a) of this subsection.

(c) Identify inefficiencies and inconsistencies in application of public records laws that impede transparency in the public records disclosure process and government.

(d) Make recommendations on changes in law, policy, or practice that could enhance transparency in the public records disclosure process and government, and facilitate rapid dissemination of public records to requesters.

(2) The State Archivist may delegate duties under this rule.

(3) The State Archivist shall publish an annual report on research conducted under this rule. A copy shall be sent to the Legislature and Governor.

Stat. Auth.: ORS 192.015; ORS 357.895; ORS 357.855

Stats. Implemented: ORS 192 & 357