	Department of Human Services **CHILDREN, ADULT & FAMILIES** **ADMINISTRATIVE SUPPORT MANUAL III** **ISSUED BY:** Field Operations **EFFECTIVE DATE:** July 1, 2001	**NUMBER:** III-F.1.6 **OAR:** 413-350-0000 / 0090 **SECTION:** F. Information Management **SUBSECTION:** 1. Administrative Information Management
SUBJECT: 6. Inspection and Copying of Records - Oregon Administrative Rules		

Prior Version

Responsible Manager: Assistant Administrator
Field Operations

Approval: _____
Assistant Administrator,
Field Operations

Interpretation: Executive Assistant,
Field Operations

REFERENCES: ORS 192.496, 192.501, 192.502, 192.420
ORS 135.230-290, 659.040-060
ORS 243.676 and 663.180
American Disabilities Act

PURPOSE

413-350-0000 The purpose of these rules is to establish procedures for viewing and copying public records and describe fees charged by the State Office for Services to Children and Families (SOSCF) for providing copies of paper and electronic public records to the public.

Statutory Authority: ORS 418.005
Stats. Implemented: ORS 192.420

DEFINITIONS

413-350-0010 (1) "Custodian" means the SOSCF manager responsible for the service location at which the record is located.

(2) "Public Record" includes any writing containing 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.

(3) "Writing" means handwriting, typewriting, printing, photostating, photographing and every means of recording including letters, words, pictures, sounds or symbols, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, disks, drums or other documents.

Statutory Authority: ORS 418.005
Stats. Implemented: ORS 192.420

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POLICY

ACCESS

413-350-0020 Any person has a right to inspect any public record of the State Office for Services to Children and Families.
Statutory Authority: ORS 418.005
Stats. Implemented: ORS 192.420

ACCESS TO ELECTRONIC PUBLIC RECORDS

413-350-0030 If the public record is maintained in a machine readable or electronic form, SOSCF shall provide copies of the public record in the form requested, if available. If the public record is not available in the form requested, it shall be made available in the form in which it is maintained.
Statutory Authority: ORS 418.005
Stats. Implemented: ORS 192.440

EXEMPTIONS FROM DISCLOSURE

413-350-0040 (1) Per ORS 192.496, the following records are exempt from disclosure:

(a) Records less than 75 years old which contain information about the physical or mental health or psychiatric care or treatment of a living individual, if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy;

(b) Records less than 75 years old which were sealed in compliance with statute or by court order. Such records may be disclosed upon order of a court of competent jurisdiction or as otherwise provided by law;

(c) Records of a person who is or has been in the custody or under the lawful supervision of a state agency, a court or a unit of local government, are exempt from disclosure for a period of 25 years after termination of such custody or supervision to the extent that disclosure thereof would interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure. Nothing in this subsection, however, shall be construed as prohibiting disclosure of the fact that a person is in custody;

(d) Student records required by state or federal law to be exempt from disclosure.

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(2) Per ORS 192.501, the following public records are exempt from disclosure:

(a) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or disposition statutes to a party to litigation or potential litigation.

(b) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(B) The offense with which the arrested person is charged;

(C) The conditions of release pursuant to ORS 135.230 to 135.290;

(D) The identity and biographical information concerning both complaining party and victim;

(E) The identity of the investigating and arresting agency and the length of the investigation;

(F) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(c) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

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(d) Investigatory information relating to any complaint filed under ORS 659.040 or 659.045, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060.

(e) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180.

(f) A personnel discipline action, or materials or documents supporting that action.

(g) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(A) The original data, including but not limited to, numbers, text, voice, graphics and images;

(B) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(C) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually.

(h) Data and information provided by participants to mediation under section 5, chapter 967, Oregon Laws 1989.

(i) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation.

(3) Per ORS 192.502, the following records are exempt from disclosure:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure;

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(b) Information of a personal nature such as, but not limited to, that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

(e) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(f) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law;

(g) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable;

(h) Employee and retiree address, telephone number and other non-financial membership records and employee financial records maintained by the Public Employees' Retirement System pursuant to ORS 237.001 to 237.320.
Statutory Authority: ORS 418.005
Stats. Implemented: ORS 192.496, 192.501, 192.502

SUPERVISORY REVIEW

413-350-0050 Prior to any person viewing or copying a public record held by SOSCF, the supervisor shall determine which material in the record is exempt from disclosure. If the supervisor has any doubt as to whether information contained in the record is exempt from disclosure, the supervisor shall consult with designated or state

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office staff in appropriate program or administrative role, depending on type of record in question.

Statutory Authority: ORS 418.005
Stats. Implemented: ORS 192.496, 192.501, 192.502

TIME FRAME

413-350-0060 SOSCF provides opportunity for the inspection and copying of records. To protect its records and prevent interference with the regularly scheduled duties of its staff, SOSCF and the person requesting to inspect the record shall establish a reasonable time at which the records may be inspected. The time frame for inspection shall normally be within 10 working days. When this time frame is not possible, the custodian will discuss the reasons with the requester and establish an expected date for availability. If copies are requested, SOSCF shall make them within a reasonable time period, not to exceed five working days of the request for the specific material, and shall mail the material to the requester.

Statutory Authority: ORS 418.005
Stats. Implemented: ORS 192.430

VIEWING AND COPYING PROCEDURES

413-350-0070 (1) When SOSCF is required or permitted to make records available pursuant to ORS 419B.035, the identities of the abuse reporters and victims will be deleted from the material provided for examination. Prior to allowing examination or copying of the public record, SOSCF shall separate any material which is exempt from disclosure from non-exempt material, and make the non-exempt material available for examination.

(2) Names, addresses and other identifying information of mandatory abuse reporters, as well as voluntary abuse reporters and persons making complaints who requested confidentiality, must be covered to protect their identity. Names of alleged perpetrators if the perpetrator is a juvenile in SOSCF custody, and victims included in such complaints must also be covered.

(3) SOSCF shall provide the person requesting examination a place to review the record. A person designated by SOSCF shall sit with the person reviewing the record in order to assure it is not altered in any way.

(4) The person viewing the record may designate pages to be copied, or may request copies of specific information contained in the record. Only SOSCF staff shall copy the designated material.

Statutory Authority: ORS 418.005
Stats. Implemented: ORS 419B.035

CHARGES

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413-350-0080 (1) SOSCF shall charge for the cost of making the record available. Charges for record review and copying are limited to the actual cost of making the record available. "Actual cost" may include a charge for the time spent in locating the requested records, reviewing the records in order to delete exempt material, supervising a person's inspection of original documents, or copying records. When an Attorney General's review of the records is required by SOSCF, a charge will be made to cover the cost of that service. "Actual cost" includes the cost of search and review time even if the records located are subsequently determined to be exempt from disclosure.

(2) SOSCF shall inform requester of estimated charges and may require a deposit before acting on the request, or may require prepayment of actual costs before making the record available for inspection.

(3) The requester may ask SOSCF for a waiver of the charges for the cost of making the record available. While it is in the public interest to make the information available, it is also in the public interest to obtain reimbursement for the actual costs of making the record available. SOSCF shall consider the following when evaluating a request for a fee waiver:

(a) The requester's commercial interest and ability to pay;

(b) The extent of time and expense and interference with the business of the agency;

(c) The extent of the sheer volume of the records;

(d) The necessity to segregate exempt from non-exempt materials; and

(e) The extent to which an examination of the record by the requester is insufficient for the public interest or for the particular needs of the requester.

(4) If SOSCF denies the request for a waiver of all or part of the actual cost of providing the record, the requester may petition the Attorney General for a review of the denial of the waiver.

Statutory Authority: ORS 418.005
Stats. Implemented: ORS 192.440

AVAILABILITY OF ALTERNATIVE PRINT FORMAT

413-350-0090 Upon request of a person with a disability for public records otherwise available to the requester under these rules, SOSCF will consult with that individual about making the requested records available in alternative print format at no additional cost to the requester.

Statutory Authority: ORS 418.005

Stats. Implemented: Americans with Disabilities Act

Prior Version