Lincoln County Policy and Procedure for Public Records Request

I. Purpose and Application

Lincoln County recognizes the right of the public to access certain public records maintained by the County in accordance with the Oregon Public Records Law. The County also recognizes that certain records maintained by the County are not public records or may be exempt from public disclosure and that a request to access public records may require a balancing of the right of the public to access the records, individual privacy rights, governmental interests, confidentiality issues and privilege issues. Additionally, when the County responds to requests to inspect or copy records, costs are incurred by the County. This policy is adopted to 1) balance these competing interests; 2) establish an orderly and consistent procedure for responding to requests to access public records; 3) protect requested records and prevent interference with the regular discharge of duties by County staff; 4) support the adoption of a fee schedule designed to reimburse the County for the actual costs incurred in responding to public records requests; and 5) inform the citizens of the procedures and guidelines that apply to such requests.

II. Policy and Procedure

A. It is the policy of Lincoln County to respond in an orderly, consistent, and reasonable manner in accordance with the Oregon Public Records Law to requests to inspect or receive copies of public records maintained by Lincoln County. Many public record requests are made orally and are simultaneously satisfied in the normal course of business. This procedure is not intended to replace established departmental procedures of this kind. However, each written request will receive a written response.

B. Providing Documents; Written Requests

Upon request, all County offices shall provide accurate and timely records and information as required by law. When multiple records are requested or a specific record is difficult to compile, calculate or retrieve from archived files, a written request may be required, specifically identifying, or describing the requested record. Persons are encouraged to use the standard Lincoln County Public Records Request Form located here https://www.co.lincoln.or.us/564/Public-Records-Requests. Other forms of written requests will be accepted if all the information required on the standard form is provided.

C. Records Request Procedure

(1) Persons requesting Public Records must submit a completed Public Records Form to the appropriate Records Custodian. If multiple Departments possess the requested record, the requestor must submit one form for each Department. Requests should clearly identify the specific records requested, if possible.

(2) If a request can be honored at the time the request is made, the Records Custodian may waive the requirement that the request must be in writing.

(3) Fees and Deposits. Persons making Records Requests shall pay a deposit in the amount of the estimated cost according to the Fee Schedule before the County responds to the Records Request and shall pay any additional costs incurred by the County in responding to the request. If the deposit exceeds actual cost, then the excess shall be refunded. If a requestor failed to pay a Fee for a previous Records Request, the requestor shall pay the outstanding Fee and deposit the estimated Fee for the pending Records Request. Records Custodians may waive the deposit requirement if the estimated Fee is less than $20.

(4) Fee Reduction or Waiver. A request for a Fee reduction or waiver must be submitted in writing with the Request for Public Records Form. The request must include sufficient information and evidence to allow the County to determine whether a reduction or waiver of the Fee will be granted in accordance with the law. The County is prohibited from reducing or waiving Fees from Departments receiving sole funding from statutorily or constitutionally dedicated funds.

D. Records Custodian

Each County Department has designated a Records Custodian. The names and addresses of the Records Custodians are maintained at http://www.co.lincoln.or.us and may be obtained from County Counsel's Office, Lincoln County Courthouse, 225 W. Olive Street, Newport, OR 97365. All written Records Requests must be sent to the appropriate Records Custodian.

E. County Response to Records Request

(1) If a request is satisfied immediately at the time the request is made, the requestor waives a written response from the Records Custodian.

(2) The County will not create a record that does not already exist in response to a Records Request.

(3) Once the Records Custodian receives a Request for Public Records Form, the Records Custodian will respond as soon as practicable and without unreasonable delay. The Records Custodian may request additional information or clarification from the requestor to expedite the Department's response. The response will acknowledge the receipt of the request and state one or more of the following:

(a) The Department does not possess or is not the custodian of the records requested;

(b) The Department has some or all of the records and provides an estimate of the time and fees to be charged;

(c) The Department is uncertain whether it possesses the public records requested, and that it will search for them and make an appropriate response as soon as practicable;

(d) Some or all of the records requested are exempt from disclosure under Oregon law. The Department must cite the law that it is relying upon; or,

(e) State or federal laws prohibit acknowledging whether the record exists or acknowledging whether the record exists would result in loss in federal benefits or other sanctions. The Department shall cite the law it is relying upon.

F. Security for Record Inspection

(1) Original records shall not be removed by any person from the Department.

(2) An appropriate location within each office should be used for a record inspection that permits sufficient monitoring by the Records Custodian.

(3) The public may not make any notes, comments, or markings on a Public Record.

(4) Any Department may, in its discretion and subject to the provisions of this Chapter, furnish a Copy of a record in lieu of inspection if it determines that it is necessary for the protection of the records or, the request interferes with Department duties.

G. Exempt Records Procedure

(1) Unless Legal Counsel and the Department have established that specific categories of records are exempt from disclosure, the Records Custodian shall forward all Records Requests that involve records fully or partially exempt from disclosure to Legal Counsel. The Records Custodian shall provide a Copy of the record and an explanation why the Custodian believes the record may be exempt.

(2) Counsel will review the documents and direct the Records Custodian how to respond to the Records Request.

H. Litigation Request Procedure

The following steps are required for Record Requests that relate to Litigation:

(1) Any person who makes a Records Request related to Litigation, must submit Public Records Form to Legal Counsel pursuant to ORS 192.420.

(2) Any Records Custodian who recognizes that a Public Records Form relates to Litigation must immediately notify Legal Counsel before providing any information. Legal Counsel will advise the Records Custodian regarding the appropriate response.

I. Only Copies Will be Provided

Copies of records shall be provided and not original records. Original documents will not be released except and unless a specific court order directs a County office to provide an original document to the court.

J. Charges Not to Exceed Reasonable Calculation of Actual Costs

County staff time and materials used to comply with requests for records or to summarize, compile or tailor records to meet a specific request will be charged at an amount reasonably calculated to reimburse the County for the actual cost to the County for employee time and materials. The County shall not charge more than a reasonable calculation of the actual costs to respond to the request. ORS 192.440(4)(a).

K. County to Provide Advance Written Cost Estimate for Charges Over $25

Charges that exceed $25 will only be required after an advance written cost estimate is provided to the requestor. The written cost estimate should also notify the requestor that the County is authorized by law to require payment of actual costs even if the County fails to locate any responsive records, and even if the records found turn out to be entirely exempt from disclosure. The County has authority to charge a fee in excess of $25 only if it receives confirmation that the requester wants it to proceed with the request. ORS 192.440(4)(c).

L. Prepayment of Estimated Charges

The County may require prepayment of estimated charges before completing the work necessary to respond to a public records request. If the actual charges are less than the prepayment amount, then the County shall promptly refund the difference. If the actual costs incurred by the County to respond to the request are more than the amount of the prepayment, the County will charge the requestor for all such additional costs.

M. Copying Charges

All single-page, one-sided copies (letter, legal or 11x17) may be charged at the rate of $0.25 for the first page and 10 cents for each additional page. (A single page of an owner or applicant's account/file may be provided at no cost). This fee applies to all records except those for which a previous fee schedule has been established by law, including those listed in Appendix A of the County Code. There is no fee for electronic copies except for staff time, or as may otherwise be set by law or in Appendix A.

N. Staff Time and Materials Charges

Staff time eligible to be charged to the requestor includes time spent locating documents, reviewing documents for determinations of exempt/non-exempt status, certification of documents, and time spent supervising review of records, when supervision is reasonably necessary to protect the documents under review.

O. Attorney Fees Associated with Request

Eligible staff time also includes County attorney fees for review, redaction, and

segregation of documents. County attorney fees for determining whether or not public records law applies to a request are not eligible for being charged to the requestor. ORS 192.440(4)(b).

P. Fee Waivers

The Records Custodian or designee may waive or reduce fees for copying or inspecting records if the administrator or designee finds the waiver is in the public interest. ORS 192.440(5).

Q. Statutory Compliance

All County offices shall comply with Chapter 192 of the Oregon Revised Statutes on Records, Reports and Meetings. The Lincoln County District Attorney is an independent state elected official and also serves as the appellate review for any county denials of requests for public records, other than those by elected officials. Therefore, the District Attorney may adopt specific procedures to perform its independent functions and to comply with state law.

The Office of County Counsel is assigned the duty of keeping the Public Records Custodian List current and may also revise the Public Records Request Form as it deems necessary. County Counsel may develop explanatory materials to assist the public and County employees in understanding and applying this Policy. The Office of County Counsel is authorized to update statutory references or make ministerial changes as it deems necessary, but may not alter the substance, meaning or effect of this Policy.