



MEMO

To: MSL Commission
From: Jennie Stapp
Subject: Public information requests policy
Date: November 29, 2023

As passed by the 2023 Legislature, Senate Bill 232 and House Bill 580 legislated changes in how executive branch agencies respond to public information requests. The Office of Public Information Requests (OPIR) within the Department of Administration was created to implement these changes and assist agencies in managing public information requests. To that end, the State mandates that all agencies adopt the following public information requests policy.



**MONTANA STATE LIBRARY
PUBLIC INFORMATION REQUEST
POLICY AND FEE SCHEDULE**

I. PURPOSE

The Montana State Library (MSL) has established this policy to promote consistency and efficiency in responding to public information requests and fees/costs charged for fulfillment. In all record productions, MSL will honor the right to know and the right of individual privacy guaranteed by the Montana Constitution, and comply with other pertinent statutes, regulations, privileges, and judicial decisions.

II. MSL AND OFFICE OF PUBLIC INFORMATION REQUESTS

MSL has entered into a Memorandum of Understanding (MOU) with the Department of Administration, Office of Public Information Requests (OPIR).

OPIR was established to support executive branch agencies in responding to public information requests. OPIR and MSL are responsible for reviewing records and removing or redacting any that may contain confidential or privileged information prior to production to the requester. OPIR counsel shall provide MSL legal advice and assistance in production of responsive public information; however, MSL retains final authority regarding the response to each response to MSL records.

MSL is subject to Mont. Code Ann. §2-6-1006. The statute requires agencies to respond to public information requests within specified times. To comply timely with the statute, MSL shall comply with the following procedures.

III. MSL PROCEDURE FOR ACCEPTING PUBLIC INFORMATION REQUESTS

- A. MSL must establish a designated contact for public information requests. MSL has designated OPIR as its public information request contact.
 - 1. MSL will provide a button or link on the MSL home page to the agency's "Request Public Information" website.
 - 2. MSL will post OPIR's contact information and link to OPIR's website on MSL's "Request Public Information" website.
 - 3. In addition, MSL will provide OPIR a primary and alternate contact to work with OPIR in responding to public information requests. These MSL employees will be the primary and backup contact for OPIR staff for public information purposes.
- B. All requests for MSL public information MUST be made to OPIR, either through the DOA website (insert LINK), by email to [OPIR email], or by other method specified by OPIR. All requests must be submitted in writing. If a public

information request is not submitted to OPIR as required by this section, MSL and OPIR are not required to respond within the timeframes established in Mont. Code Ann. §2-6-1006.

- C. A public information request must be made utilizing OPIR’s website or request form. The requester must:
 - 1. include their name and contact information, including complete mailing address, phone number, and email address (if any); and
 - 2. provide all information in required sections of the OPIR website or form.
- D. Public information requests are public information, and the requester must identify themselves and any organization on whose behalf a request is filed. Anonymous record requests will not be accepted, and any person seeking to make an anonymous request will be directed to provide the required information. If the required information is not provided, OPIR will request the required information and will not begin fulfillment of the request until it is provided.
- E. If a public information request is sent to an MSL employee, the employee will redirect the request to OPIR. The employee shall not fulfill the public information request. If a request is sent to an MSL email address, the request will be forwarded to publicrecords@mt.gov. Paper requests for public information will be scanned by MSL employees and sent by email to OPIR at publicrecords@mt.gov.
- F. If the information requested is readily available, MSL may provide access to and copying of public information. An MSL staff member will be present during the examination and copying of any public information documents. (See Sections VII – Confidentiality, Privacy, and Legal Review & VIII – Examination of Records)

IV. MSL PROCEDURE FOR RESPONDING TO PUBLIC INFORMATION REQUESTS

Mont. Code Ann. §2-6-1006 separates public information requests into different categories. For purposes of this policy, a request for “a single, specific, clearly identifiable, and readily available public record,” as provided in Mont. Code Ann. § 2-6-1006(3)(a)(ii), is considered a simple request. Other requests are considered complex requests. “Requests pertaining only to a specified person or property, including requests for applications, vital records, licenses, permits, or registrations,” as provided in Mont. Code Ann. § 2-6-1006(3)(a)(ii), will be managed according to MSL established statutes, rules, policies, and practices for handling requests for those documents.

- A. **Classifying Requests.** Upon receipt of a properly filed public information request, OPIR will review the request and consult with MSL to determine whether it is a request pertaining only to a specified person or property, a simple public information request, or a complex public information request. MSL and OPIR will make the classification determination within 3 working days.

- B. **Acknowledging Requests.** Upon receipt of a properly filed public information request, after the request is classified but no more than 5 working days from receipt of the request, OPIR will acknowledge receipt of the request to the requester and copy MSL on the acknowledgment. A properly filed public information request is a request made in compliance with Section III – MSL Procedure For Accepting Public Information Requests.
- C. **Requests Pertaining Only to a Specified Person or Property.** A “request pertaining only to a specified person or property” refers to a request for specific information about a specific person or property that MSL has a duty to maintain in the ordinary course of the agency’s business. To the extent MSL collects applications or vital records or issues licenses, permits, or registrations under a statutory duty or incidental to running a program authorized by statute, requests for these types of records about specific person (individual or entity) or property should be handled by MSL. MSL is not required to use the procedures set forth in this policy but should follow MSL established processes for providing such information.
- D. **Simple Public Information Requests.**
1. Definition. A simple public information request is a request:
 - a. that does not require any clarification or additional information from the requester;
 - b. for a single, specific, clearly identifiable, and readily available public record that is easily accessible.
 2. Upon receipt of a properly filed simple public information request, OPIR will:
 - a. work with MSL to classify the request;
 - b. acknowledge the request; and
 - c. send the response to the requester within five working days of acknowledgment of the request and copy MSL on the response.
 3. MSL will assist OPIR in fulfilling the request by:
 - a. retrieving records that are in the sole possession or control of MSL; and
 - b. advising OPIR whether any confidential material needs to be redacted before the records are provided to the requester.
 4. If the request was submitted through the OPIR website or email, the response will be sent to the requester by email or secure file transfer. MSL and OPIR may agree with a requester to transmit the response by another method; however, the requester must pay the cost, if any, of the alternate method of transmission before the response is sent. If the request was submitted on paper, the response will be mailed unless otherwise

instructed. Any mailing or copying costs must be paid in advance by the requester.

- E. **Complex Public Information Requests.** All requests that are not requests pertaining only to a specified person or property or simple public information requests are considered complex public information requests. Unless OPIR and MSL determine responding to a request is not feasible within 90 days, OPIR and MSL will respond to all public information requests within 90 days as follows:
1. Upon receipt of a properly filed complex public information request, OPIR will:
 - a. work with MSL to classify the request;
 - b. acknowledge the request;
 - c. conduct a preliminary search of enterprise systems to assist in estimating the time and effort involved in responding to a request;
 - d. ask MSL to perform an initial search of agency systems and other locations where records may be stored to assist in estimating the time and effort involved in responding to a request;
 - e. collaborate with MSL to
 - i. develop an estimate of the time it will take to respond to the request and the cost of collecting and preparing the response; and
 - ii. determine whether further clarification of the request is necessary; and
 - f. prepare and send the cost estimate and requested clarification, if any, to the requester.
 2. Upon receipt of the estimated cost and clarification from the requester, if any, OPIR will:
 - a. collect the estimated cost from the requester and instruct MSL to begin its search;
 - b. search enterprise systems to gather responsive records;
 - c. review any responsive records to determine whether a record is confidential or otherwise privileged and redact any such materials. OPIR will note the reasons why records are redacted; and
 - d. notify MSL when OPIR has completed search, review, and redaction.
 3. Upon receipt of the estimated cost and clarification from the requester, if any, MSL will:
 - a. search agency systems and other locations where records may be stored to gather responsive records; and

- b. review any responsive records to determine whether a record is confidential or otherwise privileged and redact any such materials. MSL will note the reasons why records are redacted; and
 - c. notify OPIR when MSL has completed search, review, and redaction.
 4. When both OPIR and MSL have completed search, review, and redaction, they will share their results with each other and review all collected materials to make a final determination regarding which records must be provided in response to the request. The final determination will be made by MSL, and agency will provide OPIR a written explanation of the reasons any records must be withheld as provided in Mont. Code Ann. § 2-6-1009(1).
 5. OPIR will provide the requester the records determined to be responsive, subject to any withholding or redaction MSL has determined are necessary. If records are withheld, OPIR will communicate to the requester MSL's written explanation of the reasons records were withheld.
 6. OPIR and the Department of Administration will transfer funds collected from the requester for MSL's portion of the cost of providing records.
 7. If MSL and OPIR determine 90 days is not feasible for a response, MSL will instruct OPIR to send written notice to the requester that the response requires longer than 90 days and explain the reasons it may take the agency up to 6 months (from the date of the initial acknowledgment) to provide the agency's response. Mont. Code Ann. § 2-6-1006(3)(b)(i)(B).

V. ESTIMATING COSTS AND FEES ASSOCIATED WITH REQUESTS FOR PUBLIC INFORMATION

- A. MSL charges a fee for fulfilling all public information requests. The fee shall include the cost of the time required to collect information and the actual costs directly incident to fulfilling each request. Mont. Code Ann. § 2-6-1006(1)(c).
- B. For complex public information requests, OPIR will prepare and send a written cost estimate to the requester. The cost estimate will inform the requester that a request may be closed without further response if the estimated costs are not paid within 30 days.
- C. The cost of time spent by MSL and OPIR employees will be computed based on each employee's salary and benefits. Time will be billed in quarter (0.25) hour increments. Employees are required to record and report all time and expenses associated with fulfilling public information requests to MSL and OPIR.
- D. The estimate shall include the cost of:
 1. staff member's time to search, identify and gather the potential items in a preliminary search;

2. preparing the estimated cost and time for response;
 3. gathering information;
 4. reviewing information; and
 5. providing information.
- E. If a requester does not agree to pay the estimated cost, the agency is not required to provide information. A requester will not be billed for the agency's time spent conducting the preliminary search or preparing the cost estimate, unless the requester chooses to refine their request as provided in Section VI – Refinement and Clarification of a Request.
- F. OPIR shall notify the requester that payment of the estimated costs must be made prior to the documents being gathered. The OPIR shall inform the requester that the final cost of production may exceed the initial estimate invoice and may include legal review fees.
- G. If the costs of fulfilling the request exceed the initial estimate paid, an additional estimate must be provided to the requester and must inform the requester that continued work on fulfillment of the information request will cease until the additional fees/cost are paid.
- H. Requesters will have 30 days from the date a cost estimate or revised cost estimate is sent to pay the estimated cost or refine their request as provided in Section VI. If a requester does not pay the estimated cost or refine their request within 30 days, the request will be closed without further response.
- I. MSL and OPIR are not required to alter or customize public information to provide it in a form specifically for the needs of the requesting person. If MSL agrees to customize a records request response, the cost of the customization may be included in the fees charged by the agency to the requester.
- J. Upon fulfillment of a request, if the agency or OPIR determine the estimated costs collected from the requester exceed the actual cost of fulfillment, a refund will be issued to the requester.
- K. MSL and OPIR shall not show bias or favoritism in requesting fees and costs from requesters. Fees and costs are applicable to all public information requests whether made by a citizen, student, the media, a business, or non-profit or for-profit organization.

VI. REFINEMENT AND CLARIFICATION OF A REQUEST

OPIR may communicate with a requester to request additional information, clarification, or refinement of an information request.

- A. OPIR or MSL may ask for more information about a request or request clarification if it is not clear what the requester is seeking, the requester has not provided all of the required information necessary to submit a request, or the agency cannot perform an information search without additional information.

- B. OPIR may request clarification or refinement of a request if it is not clear what the requester is seeking or when OPIR or MSL employees have reason to believe the search may produce more than 1,000 results.
- C. A person requesting public information may decline a request for clarification. If the requester refuses to clarify a request, OPIR or MSL will perform the search to the best of its ability based on the information provided. The actual cost of performing the search must be included in the cost estimate provided to the requester.
- D. When OPIR or MSL request more information, clarification, or refinement of a request, the agency's response time is suspended until the requester clarifies, refines, or responds to the request for additional information.
 - 1. If the requester does not respond within 30 days, the request will be closed without further action.
 - 2. When requesting additional information, clarification, or refinement, OPIR will notify the requester that the request will be closed without further action if the requester does not respond within 30 days.
- E. When OPIR receives additional information, clarification, or refinement, it will conduct a search using the additional information or clarification.
 - 1. OPIR and MSL will prepare an estimate as provided in Section V – Estimating Costs and Fees Associated with Requests for Public Information and notify the requester.
 - 2. The requester may clarify or further refine the request as provided in this section; however, OPIR and MSL may charge an additional fee for each clarification or refinement. OPIR and MSL may require payment of this fee prior to initiating the clarified or refined search.

VII. CONFIDENTIALITY, PRIVACY, AND LEGAL REVIEW

- A. All materials provided in response to public information requests may be subject to review by MSL or OPIR legal counsel. Legal review protects individuals' privacy, ensures compliance with confidentiality requirements, and safeguards individual and facility safety.
- B. The "right to know" affords persons the right to examine documents of public bodies or agencies of state government, "except in cases in which the demand for individual privacy clearly exceeds the merits of public disclosure."
- C. Judicial decisions have established that agencies must review information before it is produced to determine whether the information should be protected under an individual's right of privacy or another applicable confidentiality provision or privilege. Such review and analysis typically requires involvement of legal counsel.

- D. MSL and OPIR legal counsel will perform legal review of public information prior to release to determine whether they include “confidential information.”
- E. Under Mont. Code Ann. §2-6-1002(1), “confidential information” means information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is:
 - (a) constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure.
 - (b) related to judicial deliberations in adversarial proceedings.
 - (c) necessary to maintain the security and integrity of secure facilities or information systems owned by or serving the state; and
 - (d) designated as confidential by statute or through judicial decisions, findings, or orders.
- F. Judicial decisions have established that agencies must review information before it is produced to determine whether the records should be protected under an individual’s right of privacy or another applicable confidentiality provision or privilege.

VIII. EXAMINATION OF RECORDS

When information is readily available for inspection and copying, an agency may make it available for direct public inspection and examination. In such cases, MSL shall protect and maintain the integrity of the original records. MSL employees must supervise the examination and copying of such records.

IX. FEE SCHEDULE

GENERAL CHARGES

Per page (photocopying)	\$0.25 per page + cost of postage
Identifying, gathering, reviewing, redacting, and preparing information for release	Employee hourly wages and benefits x actual time (in ¼ hour increments)
Initial search	Actual cost. If the initial request is not fulfilled, the requester is not obligated to pay the initial search cost.
Second & subsequent searches	\$50. If the request was refined after an initial search, there is a \$50/search fee for each subsequent search.

X. REFERENCES

- Right to know. Mont. Const. Art. II, § 9.
- Right of privacy. Mont. Const. Art. II, § 10.
- Definitions. Mont. Code Ann. § 2-6-1002.
- Public information requests – fees. Mont. Code Ann. § 2-6-1006.



Written notice of denial – civil action – costs to prevailing party. Mont. Code Ann. § 2-6-1009