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### 1. Introduction

As a public entity, every document EMSWCD produces, either in paper or electronically, is considered a public record. The public has a right to inspect any public record requested, with some clearly identified exceptions. These exceptions are defined specifically in ORS and outlined within this policy as well.

To provide for an understanding of what constitutes a public record, what records may be condensed, redacted, or exempted from disclosure, what defines the ability and process to follow to access the records (in the interest of transparency), and to provide efficiency to EMSWCD employees, this policy will outline and guide the staff, Board and general public in their ability to access the information in an informed manner.

According to Oregon Revised Statutes, ORS 192.311(4), a “public record” is broadly defined to include any writing that contains information relating to the conduct of the public’s business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

Despite this broad definition, not all public records are available for inspection through Public Records Law. There are some prohibitions that prevent agencies, including EMSWCD, from



disclosing certain records, or give public agencies the discretion not to disclose. If a writing qualifies as a public record, EMSWCD must either disclose it in response to a records request or assert an exemption from disclosure citing the reason.

The retention and ownership of public records is broadly defined in ORS (192.108 and 192.018(1)). Specific records and the associated retention schedules for Special Districts are outlined in Oregon Administrative Rules (OAR), Archives Division – Chapter 166, Division 150 (County & Special District Retention Schedule). OAR 166-150-0005 through 166-150-0215, as well as in OAR 166.17 – Electronic Records. Additionally, EMSWCD further outlines its retention schedule in compliance with ORS, OAR, and EMSWCD policy in Policy 1.2.1 – Record Retention Schedule. The destruction of public records is illegal except in accordance with and alignment of the Record Retention Schedule defined in Policy 1.2.1.

As noted, the destruction of paper or electronic documentation should be in accordance with Policy 1.2.1. However, it should be noted that electronic communications (emails) are automatically saved in the EMSWCD email system and not tied to any particular computer. It is acceptable to delete emails on your computer as they are archived elsewhere. Other electronic files or documents should be reviewed carefully before any decision to delete them is made, (this includes EMSWCD related emails that are not sent to or from an emswcd.org email account). Check with your supervisor before deleting or recycling reports, letters, meeting minutes, text messages, or other records. Refer to the retention schedule in Policy 1.2.1 to aid in discerning whether to retain or delete items. Items that are acceptable to be deleted and/or recycled include: duplicates, drafts (unless considered early version drafts discussed at a Board or Committee meeting as an early version), and recorded telephone messages.

Ideally not every change in a document or every thread in an email requires a new draft to be saved; however, some items would require all iterations or threads to be saved separately. If in doubt as to saving multiple iterations or drafts of documents, please check with your supervisor, refer to Policy 1.2.1 or OAR 166-150 or OAR 166.17 depending on the medium of the record.

Most employees will not be receiving requests from the public for records; however, should any employee receive a formal public records request, the request must be submitted to the Executive Director. Requests for public records must be submitted in writing and EMSWCD reserves the right to charge a nominal fee for time and copies per this policy and fee schedule outlined in this policy (see Section 6).

As the governing authority of EMSWCD, current EMSWCD Board Members can access any EMSWCD-related records needed to conduct EMSWCD business, except for certain confidential personnel related information exempt from disclosure under state and federal law. EMSWCD Policy 1.3.1 Board & Committee Policies and Procedures, Sections 4.3.8 (Record Access) and



10.14.4 (Meeting Minutes) outlines further information on Board access to EMSWCD records, including the procedure for Board member requests to staff for access of records.

## 2. Compliance, Written Requests, Written Response

### 2.1 Compliance:

EMSWCD will fully comply with the Oregon Public Records Law, ORS 192.311-192.431. Any revisions to the Oregon Revised Statutes related to Public Records Law will be included in this policy by reference until such time a policy revision can be implemented.

When EMSWCD receives a written request, it must respond within five (5) business days acknowledging the receipt of the request. The request must be fulfilled in an additional 10 (ten) business days or provide a written response estimating how long fulfillment will take. EMSWCD is not subject to this response timeframe if it is awaiting a response from the requester seeking clarification of the inquiry or if the requester has not agreed to pay for the records, provided that the cost is \$25 or more. Other considerations that apply are:

- Complicated requests
- Large volume of requests
- Requests involving documents not readily available or if the necessary staff are unavailable to fulfill the request
- Evaluation and determination as to whether a requested record is partially or fully exempt from disclosure; to redact portions of the requested record(s) as necessary; and to consult with EMSWCD's attorney for said purposes.

### 2.2 Written Request:

Requests to inspect, receive, or copy public records must be submitted in writing. In order to facilitate the public's access to records in EMSWCD's possession, and to avoid unnecessary expenditure of staff time. Persons requesting access to public records for inspection or copying, or who submit written requests for copies of public records, shall specify the records requested with particularity, furnishing the dates, subject matter and such other detail as may be necessary to enable EMSWCD personnel to readily locate the records sought in a timely fashion and to determine if the record is partially or fully exempt from disclosure.

To facilitate this process, a public records request form is available at EMSWCD's office. This form is also made part of this policy by reference and included as Exhibit 1. An alternate form may be used provided all the required information is included. Minimally this includes; date of request, name and address of person making the request, email address, phone number, specific records requested, dates or timeframe of records sought, the subject matter, and any other details if applicable that would be necessary to enable EMSWCD staff to readily locate the records and/or determine exemption/non-exempt status.



Written requests must be presented in person, by email to any EMSWCD staff, or by mail to EMSWCD at 5211 N Williams Ave, Portland OR, 97217. Phone or verbal requests will not be fulfilled until a formal request in writing has been submitted.

Upon receipt of a written request submitted pursuant to the above section, EMSWCD will provide, as appropriate:

- A copy of the public record if the public record is of a nature permitting copying; or
- A reasonable opportunity to inspect or copy the public record.

Copies of non-exempt public records maintained in machine readable or electronic format will be furnished, if available, in the format requested within a reasonable period of time as determined by EMSWCD. Under normal circumstances this period will not exceed 10 business days. If the record(s) is not available in the format requested, such records will be made available in the format in which they are maintained.

### **2.3 Written Response:**

If the request cannot be accommodated or cannot be accommodated within the time periods established in Section 2 of this policy, EMSWCD must provide a written response as required by ORS 192.329, indicating the reason for such delay or denial. The written response must indicate one or more of the following:

- A. EMSWCD does not possess, or is not the custodian of, the public record.
- B. EMSWCD is the custodian of at least some of the requested public records, an estimate of the time EMSWCD requires before the public records may be inspected or copies provided, and an estimate of the fees that the requester must pay under Section 6 of this policy (Fees for Public Records) as a condition of receiving the public records.
- C. EMSWCD is the custodian of at least some of the requested public records and that an estimate of the time and fees for disclosure of the public records will be provided within a reasonable time.
- D. EMSWCD is uncertain whether it possesses the public record and that it will search for the record and make an appropriate response as soon as practicable.
- E. State or Federal law prohibits EMSWCD from acknowledging whether the record exists or that acknowledging whether the record exists would result in the loss of federal benefits or other sanction. A statement under this paragraph must include a citation to the State or Federal law relied upon.



- F. Whether or not the record is exempt from disclosure under State or Federal law.
- G. When a public record is subject to disclosure under ORS 192.355 (9)(b) [relating to possible wrongdoing of EMSWCD that is subject to attorney-client privilege], in lieu of making the public record available for inspection by providing a copy of the record, EMSWCD may prepare and release a condensation from the record of the significant facts (ORS 192.360) that are not otherwise exempt from disclosure under ORS 192.311 - 192.431. The release of the condensation does not waive any privilege under ORS 40.225 to 40.295. EMSWCD may take a reasonable amount of time to confer with legal counsel regarding the contents of such disclosure.

### 3. Exempt Public Records

Public records exempt from disclosure under Oregon law that are relevant to EMSWCD include, but are not limited to, the following:

- A. Residential addresses, Social Security numbers, dates of birth, residential telephone numbers (cellular or otherwise), personal email addresses, drivers license numbers, employer-issued identification numbers, emergency contact information of EMSWCD employees or volunteers, contained in personnel records maintained by EMSWCD (ORS 192.355(3)). This exemption:
  - (1) Does not apply to the addresses, dates of birth and telephone numbers of employees or volunteers who are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.368;
  - (2) Does not apply to employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance;
  - (3) Does not relieve EMSWCD of any duty under ORS 243.650 to 243.782 (collective bargaining).
- B. The identification badge or card of an employee of EMSWCD without the written consent of the employee if: (a) The badge or card contains the photograph of the employee; and (b) The badge or card was prepared solely for internal use by EMSWCD to identify its employees. EMSWCD also may not disclose a duplicate of the photograph used on the badge or card.
- C. Communications within EMSWCD 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 (ORS 192.355(1)). This exemption shall not apply unless EMSWCD 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.

- D. Information of a personal nature such as but not limited to that kept in a personal, personnel, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance (ORS 192.355(2)). The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.
- E. Public records of non-employees or volunteers indicating the home address, personal telephone number or electronic mail address of said individual(s), if the individual(s) has/have requested, in writing pursuant to ORS 192.368, that EMSWCD not disclose such record and the individual(s) demonstrates to the satisfaction of EMSWCD that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address, personal telephone number or electronic mail address remains available for public inspection. Such request shall be effective for the time periods described in ORS 192.368(3).
- F. Information submitted to EMSWCD in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, EMSWCD has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure (ORS 192.355(4)).
- G. Any public records or information the disclosure of which is prohibited by Federal law or regulations (ORS 192.355(8)).
- H. Public records or information of which the disclosure is prohibited or restricted or otherwise made confidential or privileged under Oregon law and consistent with ORS 192.360, this paragraph does not apply to factual information compiled in a public record when (ORS 192.355(9)):

(1) The basis for the claim of exemption is ORS 40.225 (lawyer-client privilege);

(2) The factual information is not prohibited from disclosure under any applicable State or Federal law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.311 to 192.431;



(3) The factual information was compiled by or at the direction of an attorney as part of an investigation on behalf of EMSWCD in response to information of possible wrongdoing by EMSWCD;

(4) The factual information was not compiled in preparation for litigation, arbitration or an administrative proceeding that was reasonably likely to be initiated or that has been initiated by or against EMSWCD; and

(5) The holder of the privilege under ORS 40.225 has made or authorized a public statement characterizing or partially disclosing the factual information compiled by or at the attorney's direction.

- I. Public records or information described in this section, furnished by EMSWCD 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 (ORS 192.355(10)).
- J. A record of the street and number of an employee's address submitted to EMSWCD to obtain assistance in promoting an alternative to single occupant motor vehicle transportation (ORS 192.355(29)).
- K. Unless the public interest requires disclosure in the particular instance (ORS 192.345):
  - (1) Records of EMSWCD pertaining to litigation to which EMSWCD is a party if the complaint has been filed, or if the complaint has not been filed, if EMSWCD 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 deposition statutes to a party to litigation or potential litigation.
  - (2) Trade secrets, which may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
  - (3) 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;

(4) Information relating to the appraisal of real estate prior to its acquisition;

(5) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(6) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825 for unlawful discrimination, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850.

(7) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180 (unfair labor practice).

(8) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction.

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

(10) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species.

(11) Computer programs developed or purchased by or for EMSWCD 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.

(12) Data and information provided by participants to mediation under ORS 36.256.

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

(14) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by EMSWCD, if public disclosure of the plans would endanger an individual’s life or physical safety or jeopardize a law enforcement activity.

(15) Records or information that, if disclosed, would allow a person to:

- (a) Gain unauthorized access to buildings or other property;
- (b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or
- (c) Disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems that are used or operated by EMSWCD.

(16) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

- (a) An individual;
- (b) Buildings or other property;
- (c) Information processing, communication or telecommunication systems, including the information contained in the systems.

(17) Information provided to, obtained by or used by EMSWCD to authorize,



originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number.

(18) Land management plans required for voluntary stewardship agreements entered into under ORS 541.973 with the Oregon Department of Agriculture.

#### **4. Inspection of Records:**

EMSWCD permits inspection and examination of its non-exempt public records during regular business hours EMSWCD's offices, or such other locations as the Executive Director may reasonably designate from time to time.

EMSWCD permits such a review provided that applicable search fees are paid in advance in accordance with Section 6 of this policy (Fees for Public Records). A staff member must be present at any time original records are reviewed to ensure the integrity of the records, and the charges for standing by while the records are reviewed shall be the same as the charges for searching or reviewing records.

#### **5. Unauthorized Alteration, Removal, or Destruction of Records:**

If any person attempts to alter, remove or destroy any EMSWCD record, an EMSWCD staff member will immediately terminate such person's review, and notify EMSWCD's attorney. Law enforcement authorities may also be notified.

##### **5.1 Authorization Required for Removal of Original Records**

At no time may an original record of EMSWCD be removed from its files or the place at which the record is regularly maintained, except upon authorization of the Board of Directors or EMSWCD's Executive Director.

#### **6. Fees for Public Records**

EMSWCD may charge reasonable fees for reimbursement for the cost of responding to a public records request. This includes staff time for making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the request. EMSWCD may also charge a fee to cover the cost of time spent by EMSWCD's attorney in reviewing the public records, redacting material from the public records or segregating the public records into exempt and non-exempt records.

Fees must be limited to no more than \$25.00 unless the requestor is provided with a written notification of the estimated amount of the fee and the requestor confirms that he/she wants EMSWCD to proceed.



In order to recover its costs for responding to public records requests, the following fee schedule is adopted by EMSWCD:

- A. There is no charge for responding to records request if the request can be accommodated in 15 minutes or less. If a request for records requires EMSWCD staff to spend more than 15 minutes searching or reviewing records prior to their review or release for copying, the minimum fee shall be at a rate of \$30 per hour, prorated and additional charges shall be in ¼ hour increments. Should the estimate be greater than \$25.00, the requestor will be notified and must agree to the estimated costs and confirm that they want EMSWCD to proceed.
- B. Attorney time will be charged at the attorney's regular hourly rate.
- C. EMSWCD will charge \$0.20 cents per page for black-and-white, letter-size, printed copies. For copies of sound recordings, color copies, maps and other unusual formats, the charge will be set to reimburse EMSWCD for the actual costs incurred, unless the format request is exempt under the Americans with Disabilities Act.
- D. If a request is of such magnitude and nature that compliance would disrupt EMSWCD's normal operation, EMSWCD may impose such additional charges as are necessary to be reimbursed for its actual costs of producing the records.
- E. EMSWCD may provide an estimate of costs in advance and may require such amount to be paid prior to providing the requested record(s). If the estimated amount exceeds \$25, EMSWCD will provide written notification to the requester and obtain confirmation that the requester desires to move forward with the request. If the actual amount to produce the record(s) exceeds the amount of the estimate, the requester shall pay the additional amount prior to receiving the record(s). If the actual amount is less than the amount of the estimate, the difference shall be refunded to the requester.
- F. Per ORS 192.324(5), whenever it is determined that furnishing copies of public records in the EMSWCD's possession at a reduced fee or without cost would be in the public interest, the Board or Executive Director may so authorize.



### Exhibit 1 – Public Record Request Form

Requests to inspect or copy public records shall be submitted in writing. Written requests must be presented in person, by email to any EMSWCD employee, or by mail to EMSWCD, 5211 N Williams Ave, Portland OR, 97217. An alternate form may be used provided all the required information is included. EMSWCD may request additional information or clarification from the requester for the purpose of expediting its response to the request.

Upon receipt of a completed written request, EMSWCD shall provide, as appropriate:

- A copy of the public record if the public record is of a nature permitting copying; or
- A reasonable opportunity to inspect or copy the public record.

EMSWCD shall respond as soon as practicable and without unreasonable delay. EMSWCD may take a reasonable amount of time to determine whether a requested record is partially or fully exempt from disclosure; to redact portions of the requested record(s) as necessary; and to consult with EMSWCD's attorney for this purpose.

Fees: EMSWCD may charge reasonable fees to reimburse EMSWCD for the cost of responding to a public records request. This includes staff time for making public records available and to cover the cost of time spent by the EMSWCD's attorney in reviewing the public records as necessary. When it is determined that furnishing copies of public records in EMSWCD's possession at a reduced fee or without cost would be in the public interest, Executive Director may so authorize.

Date of request: \_\_\_\_\_

Name of person making request: \_\_\_\_\_

Address of person making request:

\_\_\_\_\_

\_\_\_\_\_

Email address: \_\_\_\_\_

Phone number(s): \_\_\_\_\_

Specific record(s) sought:

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\_\_\_\_\_

\_\_\_\_\_



Dates of records sought:

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Subject matter:

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Other detail as may be necessary to enable District personnel to readily locate the records:

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