



Montana Teachers' Retirement System
Policy 3-0300-002
Public Information Request Policy and Fee Schedule

Section: Administrative

Implementer: All TRS Personnel

Effective Date: October 7, 2016

Revision Date: November 30, 2023

I. Purpose:

The Montana Teachers' Retirement System (TRS) 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, TRS 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.

A request from a TRS member or benefit recipient for information pertaining to their TRS account or benefits is not a request for public information and should be directed to appropriate TRS staff. No fee will be charged for TRS's production of such information to the member or benefit recipient.

II. TRS and the Office of Public Information Requests

TRS must establish a designated contact for public information requests. TRS has entered into a Memorandum of Understanding (MOU) with the Department of Administration, Office of Public Information Requests (OPIR) and has designated OPIR as its public information request contact.

OPIR was established to support executive branch agencies in responding to public information requests. OPIR and TRS 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 TRS legal advice and assistance in production of responsive public information; however, TRS retains final authority regarding the response to each response for TRS records.

TRS is subject to Mont. Code Ann. §2-6-1006, which requires agencies to respond to public information requests within specified times. To comply with the statute, the following procedures will be followed.

III. Procedure for Submitting Public Information Requests – TRS Member or Benefit Recipient Request for Their Own Information is Not a Public Information Request

- A. All requests for TRS public information MUST be made to OPIR through one of the following: the link on the TRS website (trs.mt.gov); the OPIR website (opir.mt.gov), by email to OPIR (publicrecords@mt.gov), or by US mail to OPIR (the Office of Public Information Requests, P.O. Box 200101, Helena, MT 59620-0101). If a public information request is not submitted to OPIR as required by this section, TRS and OPIR are not required to respond within the timeframes established in Mont. Code Ann. §2-6-1006.

- B. A public information request must be made in writing 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.
- C. 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.
- D. If a public information request is submitted directly to TRS, the requestor will be redirected to OPIR.
- E. Once a request is received by OPIR, if the information requested is readily available, TRS may provide access to and copying of public information. A TRS staff member will be present during the examination and copying of any public information documents. (See *Sections VII – Confidentiality, Privacy, and Legal Review and VIII – Examination of Records*)

IV. TRS 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 TRS 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 TRS 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. TRS 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 TRS on the acknowledgment. A properly filed public information request is a request made in compliance with *Section III – Procedure for Submitting 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 TRS has a duty to maintain in the ordinary course of the agency’s business. To the extent TRS 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 TRS. TRS is not required to use the procedures set forth in this policy but should follow TRS's 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 TRS 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 TRS on the response.
3. TRS will assist OPIR in fulfilling the request by:
 - a. retrieving records that are in the sole possession or control of TRS; 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. TRS 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 TRS determine responding to a request is not feasible within 90 days, OPIR and TRS 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 closely with TRS 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 TRS 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 TRS 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 requestor.
2. Upon receipt of the estimated cost and clarification from the requestor, if any, OPIR will:
 - a. collect the estimated cost from the requester and instruct TRS 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 TRS when OPIR has completed search, review, and redaction.
 3. Upon receipt of the estimated cost and clarification from the requester, if any, TRS 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. TRS will note the reasons why records are redacted; and
 - c. notify OPIR when TRS has completed search, review, and redaction.
 4. When both OPIR and TRS 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 TRS, 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 TRS has determined are necessary. If records are withheld, OPIR will communicate to the requester TRS's written explanation of the reasons records were withheld.
 6. OPIR and the Department of Administration will transfer funds collected from the requester for TRS's portion of the cost of providing records.

7. If TRS and OPIR determine 90 days is not feasible for a response, TRS 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. TRS 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 TRS 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 TRS 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. TRS 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 TRS 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. TRS 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 TRS 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 TRS 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 TRS 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 TRS 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 TRS 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 TRS may charge an additional fee for each clarification or refinement. OPIR and TRS 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 TRS 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 if 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. TRS 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, TRS shall protect and maintain the integrity of the original records. TRS 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 and 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

XI. Signature

By board action taken on (date) November 30, 2023, and by my signature below, the TRS board has authorized implementation of this original or modified policy. The effective date of this policy is:

X the date of board action set forth above

_____ (date) _____.

BY: Daniel Chamberlin, Acting Chair

/s/ Daniel Chamberlin

Signature

TRS policies may be amended or revoked from time to time, effective from the date of board action or later date as specified in the policy. The official version of any TRS policy is the version currently posted on the [TRS Board Policies webpage](#) and deviation will be resolved in favor of the official version. Please review the material online prior to placing reliance on printed or archived versions.