

Definitions:

1. "Agreement to mediate" means a written agreement to mediate executed by the parties establishing the terms and conditions of the mediation, which may include provisions specifying the extent to which mediation communications will be confidential.
2. "Complaint" means a specific, written charge, as described within the administrative rules below. This must be filed via the online form or via U.S. mail and must include:
 - a. The name of the complainant (individual or representative of an agency or other organization);
 - b. Their contact information, including address and phone number and, if possible, email address;
 - c. A brief description of the nature of the dispute, including relevant dates;
 - d. The name of the government body involved;
 - e. An authorization permitting the Advocate to share your name and information with the government body, to the extent necessary to process your complaint.
3. "Complainant" means the aggrieved public records requester (or their designee or agent) or the aggrieved government body which has filed a complaint with the Office.
4. "Mediation" means a process in which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties or the mediation process is terminated.
5. "Mediation agreement" means an agreement arising out of a mediation, including any term or condition of the agreement.
6. "Mediation communication" means:
 - a. All communications that are made, in the course of or in connection with a mediation, to a mediator, a mediation program or a party to, or any other person present at, the mediation proceedings; and
 - b. All memoranda, work products, documents and other materials, including any draft mediation agreement, that are prepared for or submitted in the course of or in connection with a mediation or by a mediator, a mediation program or a party to, or any other person present at, mediation proceedings.
7. "Office" refers to the Office of the Public Records Advocate.
8. "Party" means a person or government body participating in a mediation who has a direct interest in the controversy that is the subject of the mediation. A person or government body is not a party to a mediation solely because the person or government body is conducting the mediation, is making the mediation available or is serving as an information resource at the mediation.
9. "Public Record" has the meaning assigned in ORS 192.410(4)(a).
10. "State Agency" refers to a state executive branch agency(s), board(s), or commission(s).

Dispute Resolution Services:

1. The Office's mediation services encourage dispute resolution through non-binding voluntary actions aided by an unbiased third party, as a non-exclusive alternative to litigation.

2. The Office performs all mediation services and responsibilities in accordance with ORS 192.464.
3. The Office follows confidentiality requirements in ORS 36.220 to 36.238, and adopts, by reference, OAR 137-005-0052 as promulgated by the Attorney General effective as of October 27, 2015. Therefore, the Office will not disclose mediation communications, unless an exception applies. This allows all parties in the mediation process to engage in candid discussions without concerns that other parties might later use those statements against them.
4. In the interest of transparency, mediation agreements are not confidential, in keeping with ORS 36.230.
5. The Office offers mediation services between state agencies and requesters only at the request of one or more of the parties.
6. The Office mediation services between cities and requesters only when all parties involved agree to mediation. This service is offered at the discretion of the Office, when time and resources allow.
7. At its discretion, the Office may offer informal public records assistance to requesters who have made requests to agencies, cities, legislative bodies, judicial bodies, or other government bodies. This service is offered when time and resources allow.
8. The Office may decline to offer mediation services when:
 - a. The complainant seeks assistance concerning matters other than access to public records under ORS 192;
 - b. The public records request was not made to a city or agency;
 - c. The complainant fails to provide sufficient information;
 - d. When the complainant fails to respond to communications from the Office;
 - e. When the complainant files a request for assistance five or more years after the agency's decision on their open records request
 - f. When the parties fail to sign an agreement to mediate.
9. The mediation services of the Office are meant to be a supplement to, not a substitute for, the administrative review provided by the District Attorney, Attorney General, or courts within ORS 192.411 and 192.415.
10. Agreeing to participate in mediation and to discuss a dispute and possible resolution does not mean that a party is admitting to noncompliance, and resolving a dispute does not constitute a finding that the party did not comply with ORS 192.
11. Once the parties agree to engage in mediation, they should participate fully and promptly in any meetings or telephone discussions arranged by the Office as part of the mediation process. Either party can share information with the Office in confidence to enable the Office's mediation process to work as intended.

Requesting Mediation Services

1. To request mediation, either the state agency or the public records requester must file a written complaint, which may be submitted via mail to the Office of the Public Records Advocate, 800 Summer St. NE Salem, OR 97310, or via web form available on . Requests submitted by telephone or email may not be accepted.
2. The written complaint must include:
 - a. Complainant's name (organizational affiliation is optional);

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- b. Complainant's contact information (address and phone number are mandatory, email address is appreciated) and an indication of which method of contact Complainant would prefer;
 - c. A brief description of the nature of the dispute, including relevant dates;
 - d. The name of the state agency or government body involved;
 - e. An authorization permitting the Office to share complainant's name and information with other parties, to the extent necessary to process the complaint.
3. A failure to authorize sharing of necessary information may result in the closing of the case.
4. Once the complaint is received the Office will then send an acknowledgement letter (or email) to complainant, with a case tracking number and request for documentation, using the contact information provided.
5. The acknowledgement letter is not a commitment to conduct mediation services.
6. The acknowledgement letter will contain instructions for submission of additional necessary documentation, including:
 - a. The original request;
 - b. All communications between parties regarding the request;
 - c. All records of associated proceedings, including review petitions to the District Attorney or Attorney General;
 - d. An agreement to mediate, which will include an explanation of confidentiality requirements, per ORS 36.224(2).
7. If the complainant fails to provide the necessary documentation within 30 days of the date stamp on the acknowledgment letter, the Office may close the case.

Deadlines in Formal Mediation

1. Once all relevant documents are received the complaint will be deemed to be received for the purposes of the 21 day deadline within ORS 192.464(7).
2. The 21 day deadline is tolled during periods in which the Office is awaiting replies, further clarification, or documentation from either party.
3. The mediation process may be extended by unanimous agreement among the public records requester, state agency (or city), and the Office.
4. Except in cases of exceptional circumstances, all parties involved in mediation must respond to communications from the Office within five days. A failure to respond in a timely manner may result in a finding of bad faith, as contemplated under ORS 192.192.464(4).

Mediation Process

1. When the Office receives a request for mediation from one or more parties to a dispute, it will review the information to determine if it may appropriately offer such services. To make this determination, it must review the complaint and the relevant documents to ensure that the complaint meets the requirements in ORS 192.464.
2. Once the Office determines that it may appropriately offer mediation services, the other party or parties will be contacted in writing.
 - a. If the other party is a state agency, the other party will be contacted and informed of the Office's intention to begin mediation.

- b. If the other party is a city, the other party will be contacted and consent to begin mediation will be requested.
 - c. If the other party is an open records requester, the requester will be contacted and consent to begin mediation will be requested. If the requester does not wish to participate in mediation, pursuant to ORS 192.464(3)(b), the requester must give written notice of a desire to opt out of mediation within five days of receiving the written communication from the Office. Failure to give timely notice of desire to opt out of the mediation process may result in a finding of bad faith.
 - d. The parties will then be required to sign an agreement to mediate, per OAR 137-005-0052.
3. If the Office determines that it cannot offer mediation services under ORS 192.464, it will notify the complainant, explain why the Office is unable to provide mediation services, and advise the complainant of other options.
 4. If mediation is initiated, the Office will facilitate communication between the parties, including joint or separate discussions, to help them come to a mutually agreeable solution. The mediators may use all appropriate customary mediation techniques.

Confidentiality of Mediation Communications

1. In mediation with state agencies, pursuant to ORS 36.224, the Office adopts by reference OAR 137-005-0052 as promulgated by the Attorney General effective as of October 27, 2015.
2. In mediation with public bodies other than a state agency, pursuant to ORS 36.226, mediation communications are confidential and may not be disclosed or admitted as evidence in subsequent adjudicatory proceedings.

Confidentiality of Mediation Agreement

1. Pursuant to ORS 36.220(2)(a), mediation agreements are not confidential and may be disclosed in a variety of circumstances, including, but not limited to, on the Office's website, in response to public records requests, or to other government bodies.

Conclusion of Mediation

1. Either party may withdraw from the mediation at any point.
2. If one of the parties initiates litigation during the course of the mediation process, the party must notify the Office and mediation will cease.
3. The mediation is concluded when:
 - a. Both parties reach an agreement;
 - b. The Office makes a finding of "bad faith" against one or both of the parties;
 - c. A party requests withdrawal from the mediation;
 - d. Litigation is initiated;
 - e. The parties reach an impasse, as determined by both parties or by the Office.
4. The Office will issue a final response letter when the mediation concludes. This letter documents the outcome of the process and any mediation settlement the parties have reached. Per OAR 137-005-0052 and ORS 36.220(2)(a), this final letter and/or any mediation settlement are not confidential.

Imposition of Penalties; Finding of Bad Faith

1. Penalties are limited to the consequences of a finding of bad faith, as described in ORS 192.464(4).
2. Either party to the mediation may request that the Office make a determination concerning whether a party is acting in good faith.
3. A finding of bad faith may be justified in a variety of scenarios, including, but not limited to:
 - a. Failure to make timely responses to communications by the Office;
 - b. Dishonestly or misrepresentations regarding facts of the case;
 - c. Failure to abide by the confidentiality agreement;
 - d. Unwillingness to abide by the legal requirements of ORS 192;
 - e. In the case of a state agency, a failure to engage in mediation or share necessary documents with the Office;
 - f. In the case of a requester, a failure to give timely notice of desire to opt out of the mediation process.