

REVENUE: No revenue impact
FISCAL: Fiscal statement issued

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	9 - 0 - 0
Yeas:	Barker, Bonamici, Cameron, Flores, Komp, Krieger, Read, Whisnant, Macpherson
Nays:	0
Exc.:	0
Prepared By:	Bill Taylor, Counsel
Meeting Dates:	5/14

WHAT THE MEASURE DOES: Requires a public body to release a condensed version of factual information that would otherwise be exempt under the attorney-client privilege without waiving these privileges. Allows a person seeking to inspect records, but who instead received a condensed version, to petition for a review of the denial. Requires the judge, Attorney General, or district attorney doing the review to compare the records to which access was denied to the condensed version to determine if the condensed version adequately describes these records.

Requires disclosure, in condensed version, of information that would otherwise not be subject to disclosure if the information is factual information, not legal opinion or advice, and the factual information is: (1) The basis of the claim for nondisclosure is the attorney-client privilege; (2) Information not otherwise prohibited from disclosure under any applicable state or federal law, regulation or court order; (3) Information that was compiled by or at the direction of an attorney as part of an investigation on behalf of the public body in response to possible wrongdoing; (4) Information that was not compiled in preparation for litigation, arbitration or an administrative proceeding that has been initiated against the public body or is likely to be initiated; and (5) Information that has been disclosed, in whole or in part, by a public statement made by the public body or at the attorney's direction. Declares an emergency; effective upon passage.

ISSUES DISCUSSED:

- *Klamath County School District. v. Teamey*
- Confidential communications between client and attorney and open government

EFFECT OF COMMITTEE AMENDMENT: Substitutes the phrase "subject to" for the phrase "not exempt" as it relates to records "subject to" disclosure under ORS 192.502(9)(b).

BACKGROUND: Oregon law, ORS 192.420, presumes that the public has a right to inspect and copy all public records, unless a specific exemption allows the public body not to disclose. One exemption is for records pertaining to litigation or potential litigation involving the public body. ORS 192.501(1). Another is for information otherwise protected from disclosure under Oregon law. ORS 192.502(9).

Oregon law, ORS 40.225 (Or. Evid. Code 503), recognizes that a client of an attorney has the right to prevent the attorney from disclosing confidential communications to third parties. This is more commonly known as "attorney-client" privilege and has its roots deep in the history of American and English common law.

The right of the public to inspect public records and the attorney-client privilege met head on in the matter of *Klamath County School District v. Teamey*, 207 Or. App. 250 (2006); petition for review denied, 342 Or.46 (2006). Here, the Klamath County School District (the District) received a complaint from county residents concerning mismanagement and misconduct by district employees. The District sent a copy of the allegations to an attorney who had represented the District in the past asking for advice. He responded that in order to properly advise them, he would have to investigate and would need to hire an auditor and an investigator. The District asked him to do so and he did. The auditor and

investigator reported back to him and he forwarded the reports to the District. The two reports were not made public. The District issued a press release stating that the District purchasing procedures were being reviewed and strengthened. As to wrong doing, there is clear evidence that none existed. Mr. Bert Teamey sought to obtain copies of these two reports. The District refused on the grounds that this information was privileged communication under the attorney-client privilege. The Oregon Court of Appeals agreed and the Oregon Supreme Court upheld this opinion when it refused to review the Court of Appeals decision. *Klamath County School District v. Teamey*, 207 Or. App. 250 (2006); petition for review denied, 342 Or.46 (2006).