

House Bill 2454

Sponsored by Representatives HUNT, SCHAUFLEER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Exempts from mandatory disclosure under public records law claimant files and employer records of State Accident Insurance Fund Corporation and sensitive business records or financial or commercial information of corporation not customarily provided to business competitors.

A BILL FOR AN ACT

1
2 Relating to records of the State Accident Insurance Fund Corporation; amending ORS 192.502 and
3 656.702.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 192.502 is amended to read:

6 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

7 (1) Communications within a public body or between public bodies of an advisory nature to the
8 extent that they cover other than purely factual materials and are preliminary to any final agency
9 determination of policy or action. This exemption shall not apply unless the public body shows that
10 in the particular instance the public interest in encouraging frank communication between officials
11 and employees of public bodies clearly outweighs the public interest in disclosure.

12 (2) Information of a personal nature such as but not limited to that kept in a personal, medical
13 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the
14 public interest by clear and convincing evidence requires disclosure in the particular instance. The
15 party seeking disclosure shall have the burden of showing that public disclosure would not consti-
16 tute an unreasonable invasion of privacy.

17 (3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and
18 telephone numbers contained in personnel records maintained by the public body that is the em-
19 ployer or the recipient of volunteer services. This exemption:

20 (a) Does not apply to the addresses, dates of birth and telephone numbers of employees or vol-
21 unteers who are elected officials, except that a judge or district attorney subject to election may
22 seek to exempt the judge's or district attorney's address or telephone number, or both, under the
23 terms of ORS 192.445;

24 (b) Does not apply to employees or volunteers to the extent that the party seeking disclosure
25 shows by clear and convincing evidence that the public interest requires disclosure in a particular
26 instance;

27 (c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a pro-
28 fessional education association of which the substitute teacher may be a member; and

29 (d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

30 (4) Information submitted to a public body in confidence and not otherwise required by law to
31 be submitted, where such information should reasonably be considered confidential, the public body

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 has obliged itself in good faith not to disclose the information, and when the public interest would
2 suffer by the disclosure.

3 (5) Information or records of the Department of Corrections, including the State Board of Parole
4 and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of
5 a person in custody of the department or substantially prejudice or prevent the carrying out of the
6 functions of the department, if the public interest in confidentiality clearly outweighs the public in-
7 terest in disclosure.

8 (6) Records, reports and other information received or compiled by the Director of the Depart-
9 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
10 otherwise required by law to be made public, to the extent that the interests of lending institutions,
11 their officers, employees and customers in preserving the confidentiality of such information out-
12 weighs the public interest in disclosure.

13 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

14 (8) Any public records or information the disclosure of which is prohibited by federal law or
15 regulations.

16 (9) Public records or information the disclosure of which is prohibited or restricted or otherwise
17 made confidential or privileged under Oregon law.

18 (10) Public records or information described in this section, furnished by the public body ori-
19 ginally compiling, preparing or receiving them to any other public officer or public body in con-
20 nection with performance of the duties of the recipient, if the considerations originally giving rise
21 to the confidential or exempt nature of the public records or information remain applicable.

22 (11) Records of the Energy Facility Siting Council concerning the review or approval of security
23 programs pursuant to ORS 469.530.

24 (12) Employee and retiree address, telephone number and other nonfinancial membership records
25 and employee financial records maintained by the Public Employees Retirement System pursuant to
26 ORS chapters 238 and 238A.

27 (13) Records submitted by private persons or businesses to the State Treasurer or the Oregon
28 Investment Council relating to proposed acquisition, exchange or liquidation of public investments
29 under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that
30 disclosure of such records reasonably may be expected to substantially limit the ability of the
31 Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such trans-
32 actions. Records which relate to concluded transactions are not subject to this exemption.

33 (14) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the
34 Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as
35 exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

36 (15) Reports of unclaimed property filed by the holders of such property to the extent permitted
37 by ORS 98.352.

38 (16) The following records, communications and information submitted to the Oregon Economic
39 and Community Development Commission, the Economic and Community Development Department,
40 the State Department of Agriculture, the Oregon Growth Account Board, the Port of Portland or
41 other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services includ-
42 ing, but not limited to, those described in ORS 285A.224:

43 (a) Personal financial statements.

44 (b) Financial statements of applicants.

45 (c) Customer lists.

1 (d) Information of an applicant pertaining to litigation to which the applicant is a party if the
2 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
3 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
4 concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery
5 or deposition statutes to a party to litigation or potential litigation.

6 (e) Production, sales and cost data.

7 (f) Marketing strategy information that relates to applicant's plan to address specific markets
8 and applicant's strategy regarding specific competitors.

9 (17) Records, reports or returns submitted by private concerns or enterprises required by law
10 to be submitted to or inspected by a governmental body to allow it to determine the amount of any
11 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such
12 information is in a form which would permit identification of the individual concern or enterprise.
13 Nothing in this subsection shall limit the use which can be made of such information for regulatory
14 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-
15 payer of the delinquency immediately by certified mail. However, in the event that the payment or
16 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the
17 public body shall disclose, upon the request of any person, the following information:

18 (a) The identity of the individual concern or enterprise that is delinquent over 60 days in the
19 payment or delivery of the taxes.

20 (b) The period for which the taxes are delinquent.

21 (c) The actual, or estimated, amount of the delinquency.

22 (18) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-
23 pointed counsel, and all information supplied to the court from whatever source for the purpose of
24 verifying the financial eligibility of a person pursuant to ORS 151.485.

25 (19) Workers' compensation claim records of the Department of Consumer and Business Services,
26 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-
27 ness Services, in any of the following circumstances:

28 (a) When necessary for insurers, self-insured employers and third party claim administrators to
29 process workers' compensation claims.

30 (b) When necessary for the director, other governmental agencies of this state or the United
31 States to carry out their duties, functions or powers.

32 (c) When the disclosure is made in such a manner that the disclosed information cannot be used
33 to identify any worker who is the subject of a claim.

34 (d) When a worker or the worker's representative requests review of the worker's claim record.

35 (20) Sensitive business records or financial or commercial information of the Oregon Health and
36 Science University that is not customarily provided to business competitors.

37 (21) Records of Oregon Health and Science University regarding candidates for the position of
38 president of the university.

39 (22) The records of a library, including circulation records, showing use of specific library ma-
40 terial by a named person or consisting of the name of a library patron together with the address
41 or telephone number, or both, of the patron.

42 (23) The following records, communications and information obtained by the Housing and Com-
43 munity Services Department in connection with the department's monitoring or administration of
44 financial assistance or of housing or other developments:

45 (a) Personal and corporate financial statements and information, including tax returns.

- 1 (b) Credit reports.
- 2 (c) Project appraisals.
- 3 (d) Market studies and analyses.
- 4 (e) Articles of incorporation, partnership agreements and operating agreements.
- 5 (f) Commitment letters.
- 6 (g) Project pro forma statements.
- 7 (h) Project cost certifications and cost data.
- 8 (i) Audits.
- 9 (j) Project tenant correspondence.
- 10 (k) Personal information about a tenant.
- 11 (L) Housing assistance payments.

12 (24) Raster geographic information system (GIS) digital databases, provided by private forestland
 13 owners or their representatives, voluntarily and in confidence to the State Forestry Department,
 14 that is not otherwise required by law to be submitted.

15 (25) Sensitive business, commercial or financial information furnished to or developed by a
 16 public body engaged in the business of providing electricity or electricity services, if the information
 17 is directly related to a transaction described in ORS 261.348, or if the information is directly related
 18 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
 19 disclosure of the information would cause a competitive disadvantage for the public body or its re-
 20 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
 21 velopment or review of generally applicable rate schedules.

22 (26) Sensitive business, commercial or financial information furnished to or developed by the
 23 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
 24 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085
 25 and disclosure of the information would cause a competitive disadvantage for the Klamath
 26 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-
 27 ment or review of generally applicable rate schedules.

28 (27) Personally identifiable information about customers of a municipal electric utility or a
 29 people's utility district or the names, dates of birth, driver license numbers, telephone numbers,
 30 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
 31 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
 32 lease personally identifiable information about a customer, and a public body providing water, sewer
 33 or storm drain services may release the name, date of birth, driver license number, telephone num-
 34 ber, electronic mail address or Social Security number of a customer, if the customer consents in
 35 writing or electronically, if the disclosure is necessary for the utility, district or other public body
 36 to render services to the customer, if the disclosure is required pursuant to a court order or if the
 37 disclosure is otherwise required by federal or state law. The utility, district or other public body
 38 may charge as appropriate for the costs of providing such information. The utility, district or other
 39 public body may make customer records available to third party credit agencies on a regular basis
 40 in connection with the establishment and management of customer accounts or in the event such
 41 accounts are delinquent.

42 (28) A record of the street and number of an employee's address submitted to a special district
 43 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

44 (29) Sensitive business records, capital development plans or financial or commercial information
 45 of Oregon Corrections Enterprises that is not customarily provided to business competitors.

1 (30) Documents, materials or other information submitted to the Director of the Department of
 2 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory
 3 or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates
 4 or subsidiaries under ORS 646.380 to 646.398, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200
 5 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act or the Insurance
 6 Code when:

7 (a) The document, material or other information is received upon notice or with an under-
 8 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of
 9 the document, material or other information; and

10 (b) The director has obligated the Department of Consumer and Business Services not to dis-
 11 close the document, material or other information.

12 (31) A county elections security plan developed and filed under ORS 254.074.

13 (32) Information about review or approval of programs relating to the security of:

14 (a) Generation, storage or conveyance of:

15 (A) Electricity;

16 (B) Gas in liquefied or gaseous form;

17 (C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

18 (D) Petroleum products;

19 (E) Sewage; or

20 (F) Water.

21 (b) Telecommunication systems, including cellular, wireless or radio systems.

22 (c) Data transmissions by whatever means provided.

23 (33) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court des-
 24 ignates the information as confidential by rule under ORS 1.002.

25 (34) If requested by a public safety officer as defined in ORS 181.610, the home address, home
 26 telephone number and electronic mail address of the public safety officer. This exemption does not
 27 apply to addresses and telephone numbers that are contained in county real property or lien records.

28 **(35)(a) Claimant files and employer records of the State Accident Insurance Fund Cor-
 29 poration.**

30 **(b) Sensitive business records or financial or commercial information of the corporation
 31 that is not customarily provided to business competitors.**

32 **SECTION 2.** ORS 656.702 is amended to read:

33 656.702. (1)(a) The records of the State Accident Insurance Fund Corporation[, *excepting em-
 34 ployer account records and claimant files, shall be open to public inspection.*] **are subject to ORS
 35 192.410 to 192.505.**

36 **(b) Notwithstanding ORS 192.502, the corporation shall make** accident experience records
 37 of the corporation [*shall be*] **and accident experience records of carrier-insured employers**
 38 available to a bona fide rating organization to assist in making workers' compensation rates. [*but
 39 any*] Costs involved in making the records available shall be borne by the rating organization. [*Ac-
 40 cident experience records of carrier-insured employers shall also be available on the same terms to as-
 41 sist in making such rates.*]

42 (2) Disclosure of workers' compensation claim records of the Department of Consumer and
 43 Business Services is governed by ORS 192.502 (19).