

House Bill 2495

Sponsored by Representatives HUNT, SCHAUFLER, Senator WALKER

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**.

Limits access to certain public records of State Accident Insurance Fund Corporation. Creates exceptions to limitations for certain records.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to records of State Accident Insurance Fund Corporation; amending ORS 192.501, 192.502
3 and 656.702; and declaring an emergency.

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

5 **SECTION 1.** ORS 656.702 is amended to read:

6 656.702. (1)(a) The records of the State Accident Insurance Fund Corporation[, *excepting em-*
7 *ployer account records and claimant files, shall be open to public inspection*] **are subject to ORS**
8 **192.410 to 192.505.**

9 **(b) Notwithstanding ORS 192.502, the State Accident Insurance Fund Corporation shall**
10 **make** the accident experience records of the corporation [*shall be*] available to a bona fide rating
11 organization to assist in making workers' compensation rates. [*but any*] Costs involved in making
12 the records available shall be borne by the rating organization. Accident experience records of
13 carrier-insured employers shall also be available on the same terms to assist in making such rates.

14 (2) Disclosure of workers' compensation claim records of the Department of Consumer and
15 Business Services is governed by ORS 192.502 (20).

16 **SECTION 2.** ORS 192.501, as amended by section 1, chapter 48, Oregon Laws 2008, is amended
17 to read:

18 192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505
19 unless the public interest requires disclosure in the particular instance:

20 (1) Records of a public body pertaining to litigation to which the public body is a party if the
21 complaint has been filed, or if the complaint has not been filed, if the public body shows that such
22 litigation is reasonably likely to occur. This exemption does not apply to litigation which has been
23 concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery
24 or deposition statutes to a party to litigation or potential litigation.

25 (2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to,
26 any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or
27 compilation of information which is not patented, which is known only to certain individuals within
28 an organization and which is used in a business it conducts, having actual or potential commercial
29 value, and which gives its user an opportunity to obtain a business advantage over competitors who
30 do not know or use it.

31 (3) Investigatory information compiled for criminal law purposes. The record of an arrest or the

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 report of a crime shall be disclosed unless and only for so long as there is a clear need to delay
 2 disclosure in the course of a specific investigation, including the need to protect the complaining
 3 party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or
 4 granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the
 5 record of an arrest or the report of a crime includes, but is not limited to:

6 (a) The arrested person's name, age, residence, employment, marital status and similar bi-
 7 ographical information;

8 (b) The offense with which the arrested person is charged;

9 (c) The conditions of release pursuant to ORS 135.230 to 135.290;

10 (d) The identity of and biographical information concerning both complaining party and victim;

11 (e) The identity of the investigating and arresting agency and the length of the investigation;

12 (f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

13 (g) Such information as may be necessary to enlist public assistance in apprehending fugitives
 14 from justice.

15 (4) Test questions, scoring keys, and other data used to administer a licensing examination,
 16 employment, academic or other examination or testing procedure before the examination is given
 17 and if the examination is to be used again. Records establishing procedures for and instructing
 18 persons administering, grading or evaluating an examination or testing procedure are included in
 19 this exemption, to the extent that disclosure would create a risk that the result might be affected.

20 (5) Information consisting of production records, sale or purchase records or catch records, or
 21 similar business records of a private concern or enterprise, required by law to be submitted to or
 22 inspected by a governmental body to allow it to determine fees or assessments payable or to estab-
 23 lish production quotas, and the amounts of such fees or assessments payable or paid, to the extent
 24 that such information is in a form which would permit identification of the individual concern or
 25 enterprise. This exemption does not include records submitted by long term care facilities as defined
 26 in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for pa-
 27 tient care. Nothing in this subsection shall limit the use which can be made of such information for
 28 regulatory purposes or its admissibility in any enforcement proceeding.

29 (6) Information relating to the appraisal of real estate prior to its acquisition.

30 (7) The names and signatures of employees who sign authorization cards or petitions for the
 31 purpose of requesting representation or decertification elections.

32 (8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825,
 33 until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under
 34 ORS 659A.850.

35 (9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and
 36 663.180.

37 (10) Records, reports and other information received or compiled by the Director of the De-
 38 partment of Consumer and Business Services under ORS 697.732.

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

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

45 (13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and

1 564.100, regarding the habitat, location or population of any threatened species or endangered spe-
 2 cies.

3 (14) Writings prepared by or under the direction of faculty of public educational institutions, in
 4 connection with research, until publicly released, copyrighted or patented.

5 (15) Computer programs developed or purchased by or for any public body for its own use. As
 6 used in this subsection, “computer program” means a series of instructions or statements which
 7 permit the functioning of a computer system in a manner designed to provide storage, retrieval and
 8 manipulation of data from such computer system, and any associated documentation and source
 9 material that explain how to operate the computer program. “Computer program” does not include:

10 (a) The original data, including but not limited to numbers, text, voice, graphics and images;

11 (b) Analyses, compilations and other manipulated forms of the original data produced by use of
 12 the program; or

13 (c) The mathematical and statistical formulas which would be used if the manipulated forms of
 14 the original data were to be produced manually.

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

16 (17) Investigatory information relating to any complaint or charge filed under ORS chapter 654,
 17 until a final administrative determination is made or, if a citation is issued, until an employer re-
 18 ceives notice of any citation.

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

23 (19)(a) Audits or audit reports required of a telecommunications carrier. As used in this para-
 24 graph, “audit or audit report” means any external or internal audit or audit report pertaining to a
 25 telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an af-
 26 filiated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to
 27 make the operations of the entity more efficient, accurate or compliant with applicable rules, pro-
 28 cedures or standards, that may include self-criticism and that has been filed by the telecommuni-
 29 cations carrier or affiliate under compulsion of state law. “Audit or audit report” does not mean an
 30 audit of a cost study that would be discoverable in a contested case proceeding and that is not
 31 subject to a protective order; and

32 (b) Financial statements. As used in this paragraph, “financial statement” means a financial
 33 statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390,
 34 with a telecommunications carrier, as defined in ORS 133.721.

35 (20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS
 36 247.967.

37 (21) The following records, communications and information submitted to a housing authority
 38 as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants
 39 for and recipients of loans, grants and tax credits:

40 (a) Personal and corporate financial statements and information, including tax returns;

41 (b) Credit reports;

42 (c) Project appraisals;

43 (d) Market studies and analyses;

44 (e) Articles of incorporation, partnership agreements and operating agreements;

45 (f) Commitment letters;

- 1 (g) Project pro forma statements;
 - 2 (h) Project cost certifications and cost data;
 - 3 (i) Audits;
 - 4 (j) Project tenant correspondence requested to be confidential;
 - 5 (k) Tenant files relating to certification; and
 - 6 (L) Housing assistance payment requests.
- 7 (22) Records or information that, if disclosed, would allow a person to:
- 8 (a) Gain unauthorized access to buildings or other property;
 - 9 (b) Identify those areas of structural or operational vulnerability that would permit unlawful
 - 10 disruption to, or interference with, services; or
 - 11 (c) Disrupt, interfere with or gain unauthorized access to public funds or to information pro-
 - 12 cessing, communication or telecommunication systems, including the information contained in the
 - 13 systems, that are used or operated by a public body.
- 14 (23) Records or information that would reveal or otherwise identify security measures, or
- 15 weaknesses or potential weaknesses in security measures, taken or recommended to be taken to
- 16 protect:
- 17 (a) An individual;
 - 18 (b) Buildings or other property;
 - 19 (c) Information processing, communication or telecommunication systems, including the infor-
 - 20 mation contained in the systems; or
 - 21 (d) Those operations of the Oregon State Lottery the security of which are subject to study and
 - 22 evaluation under ORS 461.180 (6).
- 23 (24) Personal information held by or under the direction of officials of the Oregon Health and
- 24 Science University or the Oregon University System about a person who has or who is interested
- 25 in donating money or property to the university, the system or a state institution of higher educa-
- 26 tion, if the information is related to the family of the person, personal assets of the person or is
- 27 incidental information not related to the donation.
- 28 (25) The home address, professional address and telephone number of a person who has or who
- 29 is interested in donating money or property to the Oregon University System.
- 30 (26) Records of the name and address of a person who files a report with or pays an assessment
- 31 to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council
- 32 created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030.
- 33 (27) Information provided to, obtained by or used by a public body to authorize, originate, re-
- 34 ceive or authenticate a transfer of funds, including but not limited to a credit card number, payment
- 35 card expiration date, password, financial institution account number and financial institution routing
- 36 number.
- 37 (28) Social Security numbers as provided in ORS 107.840.
- 38 (29) The electronic mail address of a student who attends a state institution of higher education
- 39 listed in ORS 352.002 or Oregon Health and Science University.
- 40 (30) The name, home address, professional address or location of a person that is engaged in,
- 41 or that provides goods or services for, medical research at Oregon Health and Science University
- 42 that is conducted using animals other than rodents. This subsection does not apply to Oregon Health
- 43 and Science University press releases, websites or other publications circulated to the general pub-
- 44 lic.
- 45 (31)(a) If requested by a public safety officer, as defined in ORS 181.610, by a district attorney,

1 by a deputy district attorney or by an assistant attorney general designated by the Attorney Gen-
 2 eral, the home address and home telephone number of the public safety officer or attorney contained
 3 in the voter registration records for the public safety officer or attorney.

4 (b) If requested by a public safety officer, as defined in ORS 181.610, the home address and home
 5 telephone number of the public safety officer contained in records of the Department of Public
 6 Safety Standards and Training.

7 (32) If requested by a public safety officer, as defined in ORS 181.610, by a district attorney, by
 8 a deputy district attorney or by an assistant attorney general designated by the Attorney General,
 9 the name of the public safety officer or attorney contained in county real property assessment or
 10 taxation records. This exemption:

11 (a) Applies only to the name of the public safety officer or attorney and any other owner of the
 12 property in connection with a specific property identified by the officer or attorney in a request for
 13 exemption from disclosure;

14 (b) Applies only to records that may be made immediately available to the public upon request
 15 in person, by telephone or using the Internet;

16 (c) Applies until the public safety officer or attorney requests termination of the exemption;

17 (d) Does not apply to disclosure of records among public bodies as defined in ORS 174.109 for
 18 governmental purposes; and

19 (e) May not result in liability for a county if the name of a public safety officer or attorney is
 20 disclosed after a request for exemption from disclosure is made under this subsection.

21 (33) Land management plans required for voluntary stewardship agreements entered into under
 22 ORS 541.423.

23 **(34) Sensitive business records or financial or commercial information of the State Ac-**
 24 **cident Insurance Fund Corporation that is not customarily provided to business competitors.**
 25 **This exemption does not:**

26 **(a) Apply to the formulas for determining dividends to be paid to employers insured by**
 27 **the State Accident Insurance Fund Corporation;**

28 **(b) Apply to contracts for advertising, public relations or lobbying services or to docu-**
 29 **ments related to the formation of such contracts;**

30 **(c) Apply to group insurance contracts or to documents relating to the formation of such**
 31 **contracts, except that employer account records shall remain exempt from disclosure as**
 32 **provided in ORS 192.502 (35); or**

33 **(d) Provide the basis for opposing the discovery of documents in litigation pursuant to**
 34 **the applicable rules of civil procedure.**

35 **SECTION 3.** ORS 192.501, as amended by section 3, chapter 455, Oregon Laws 2005, section 7,
 36 chapter 608, Oregon Laws 2007, section 2, chapter 687, Oregon Laws 2007, and section 2, chapter
 37 48, Oregon Laws 2008, is amended to read:

38 192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505
 39 unless the public interest requires disclosure in the particular instance:

40 (1) Records of a public body pertaining to litigation to which the public body is a party if the
 41 complaint has been filed, or if the complaint has not been filed, if the public body shows that such
 42 litigation is reasonably likely to occur. This exemption does not apply to litigation which has been
 43 concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery
 44 or deposition statutes to a party to litigation or potential litigation.

45 (2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to,

1 any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or
 2 compilation of information which is not patented, which is known only to certain individuals within
 3 an organization and which is used in a business it conducts, having actual or potential commercial
 4 value, and which gives its user an opportunity to obtain a business advantage over competitors who
 5 do not know or use it.

6 (3) Investigatory information compiled for criminal law purposes. The record of an arrest or the
 7 report of a crime shall be disclosed unless and only for so long as there is a clear need to delay
 8 disclosure in the course of a specific investigation, including the need to protect the complaining
 9 party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or
 10 granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the
 11 record of an arrest or the report of a crime includes, but is not limited to:

- 12 (a) The arrested person's name, age, residence, employment, marital status and similar bi-
 13 ographical information;
- 14 (b) The offense with which the arrested person is charged;
- 15 (c) The conditions of release pursuant to ORS 135.230 to 135.290;
- 16 (d) The identity of and biographical information concerning both complaining party and victim;
- 17 (e) The identity of the investigating and arresting agency and the length of the investigation;
- 18 (f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and
- 19 (g) Such information as may be necessary to enlist public assistance in apprehending fugitives
 20 from justice.

21 (4) Test questions, scoring keys, and other data used to administer a licensing examination,
 22 employment, academic or other examination or testing procedure before the examination is given
 23 and if the examination is to be used again. Records establishing procedures for and instructing
 24 persons administering, grading or evaluating an examination or testing procedure are included in
 25 this exemption, to the extent that disclosure would create a risk that the result might be affected.

26 (5) Information consisting of production records, sale or purchase records or catch records, or
 27 similar business records of a private concern or enterprise, required by law to be submitted to or
 28 inspected by a governmental body to allow it to determine fees or assessments payable or to estab-
 29 lish production quotas, and the amounts of such fees or assessments payable or paid, to the extent
 30 that such information is in a form which would permit identification of the individual concern or
 31 enterprise. This exemption does not include records submitted by long term care facilities as defined
 32 in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for pa-
 33 tient care. Nothing in this subsection shall limit the use which can be made of such information for
 34 regulatory purposes or its admissibility in any enforcement proceeding.

35 (6) Information relating to the appraisal of real estate prior to its acquisition.

36 (7) The names and signatures of employees who sign authorization cards or petitions for the
 37 purpose of requesting representation or decertification elections.

38 (8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825,
 39 until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under
 40 ORS 659A.850.

41 (9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and
 42 663.180.

43 (10) Records, reports and other information received or compiled by the Director of the De-
 44 partment of Consumer and Business Services under ORS 697.732.

45 (11) Information concerning the location of archaeological sites or objects as those terms are

1 defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and
2 the need for the information is related to that Indian tribe's cultural or religious activities. This
3 exemption does not include information relating to a site that is all or part of an existing, commonly
4 known and publicized tourist facility or attraction.

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

6 (13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and
7 564.100, regarding the habitat, location or population of any threatened species or endangered spe-
8 cies.

9 (14) Writings prepared by or under the direction of faculty of public educational institutions, in
10 connection with research, until publicly released, copyrighted or patented.

11 (15) Computer programs developed or purchased by or for any public body for its own use. As
12 used in this subsection, "computer program" means a series of instructions or statements which
13 permit the functioning of a computer system in a manner designed to provide storage, retrieval and
14 manipulation of data from such computer system, and any associated documentation and source
15 material that explain how to operate the computer program. "Computer program" does not include:

16 (a) The original data, including but not limited to numbers, text, voice, graphics and images;

17 (b) Analyses, compilations and other manipulated forms of the original data produced by use of
18 the program; or

19 (c) The mathematical and statistical formulas which would be used if the manipulated forms of
20 the original data were to be produced manually.

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

22 (17) Investigatory information relating to any complaint or charge filed under ORS chapter 654,
23 until a final administrative determination is made or, if a citation is issued, until an employer re-
24 ceives notice of any citation.

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

29 (19)(a) Audits or audit reports required of a telecommunications carrier. As used in this para-
30 graph, "audit or audit report" means any external or internal audit or audit report pertaining to a
31 telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an af-
32 filiated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to
33 make the operations of the entity more efficient, accurate or compliant with applicable rules, pro-
34 cedures or standards, that may include self-criticism and that has been filed by the telecommuni-
35 cations carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an
36 audit of a cost study that would be discoverable in a contested case proceeding and that is not
37 subject to a protective order; and

38 (b) Financial statements. As used in this paragraph, "financial statement" means a financial
39 statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390,
40 with a telecommunications carrier, as defined in ORS 133.721.

41 (20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS
42 247.967.

43 (21) The following records, communications and information submitted to a housing authority
44 as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants
45 for and recipients of loans, grants and tax credits:

- 1 (a) Personal and corporate financial statements and information, including tax returns;
- 2 (b) Credit reports;
- 3 (c) Project appraisals;
- 4 (d) Market studies and analyses;
- 5 (e) Articles of incorporation, partnership agreements and operating agreements;
- 6 (f) Commitment letters;
- 7 (g) Project pro forma statements;
- 8 (h) Project cost certifications and cost data;
- 9 (i) Audits;
- 10 (j) Project tenant correspondence requested to be confidential;
- 11 (k) Tenant files relating to certification; and
- 12 (L) Housing assistance payment requests.
- 13 (22) Records or information that, if disclosed, would allow a person to:
- 14 (a) Gain unauthorized access to buildings or other property;
- 15 (b) Identify those areas of structural or operational vulnerability that would permit unlawful
- 16 disruption to, or interference with, services; or
- 17 (c) Disrupt, interfere with or gain unauthorized access to public funds or to information pro-
- 18 cessing, communication or telecommunication systems, including the information contained in the
- 19 systems, that are used or operated by a public body.
- 20 (23) Records or information that would reveal or otherwise identify security measures, or
- 21 weaknesses or potential weaknesses in security measures, taken or recommended to be taken to
- 22 protect:
- 23 (a) An individual;
- 24 (b) Buildings or other property;
- 25 (c) Information processing, communication or telecommunication systems, including the infor-
- 26 mation contained in the systems; or
- 27 (d) Those operations of the Oregon State Lottery the security of which are subject to study and
- 28 evaluation under ORS 461.180 (6).
- 29 (24) Personal information held by or under the direction of officials of the Oregon Health and
- 30 Science University or the Oregon University System about a person who has or who is interested
- 31 in donating money or property to the university, the system or a state institution of higher educa-
- 32 tion, if the information is related to the family of the person, personal assets of the person or is
- 33 incidental information not related to the donation.
- 34 (25) The home address, professional address and telephone number of a person who has or who
- 35 is interested in donating money or property to the Oregon University System.
- 36 (26) Records of the name and address of a person who files a report with or pays an assessment
- 37 to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council
- 38 created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030.
- 39 (27) Information provided to, obtained by or used by a public body to authorize, originate, re-
- 40 ceive or authenticate a transfer of funds, including but not limited to a credit card number, payment
- 41 card expiration date, password, financial institution account number and financial institution routing
- 42 number.
- 43 (28) Social Security numbers as provided in ORS 107.840.
- 44 (29) The electronic mail address of a student who attends a state institution of higher education
- 45 listed in ORS 352.002 or Oregon Health and Science University.

1 (30)(a) If requested by a public safety officer, as defined in ORS 181.610, by a district attorney,
 2 by a deputy district attorney or by an assistant attorney general designated by the Attorney Gen-
 3 eral, the home address and home telephone number of the public safety officer or attorney contained
 4 in the voter registration records for the public safety officer or attorney.

5 (b) If requested by a public safety officer, as defined in ORS 181.610, the home address and home
 6 telephone number of the public safety officer contained in records of the Department of Public
 7 Safety Standards and Training.

8 (31) If requested by a public safety officer, as defined in ORS 181.610, by a district attorney, by
 9 a deputy district attorney or by an assistant attorney general designated by the Attorney General,
 10 the name of the public safety officer or attorney contained in county real property assessment or
 11 taxation records. This exemption:

12 (a) Applies only to the name of the public safety officer or attorney and any other owner of the
 13 property in connection with a specific property identified by the officer or attorney in a request for
 14 exemption from disclosure;

15 (b) Applies only to records that may be made immediately available to the public upon request
 16 in person, by telephone or using the Internet;

17 (c) Applies until the public safety officer or attorney requests termination of the exemption;

18 (d) Does not apply to disclosure of records among public bodies as defined in ORS 174.109 for
 19 governmental purposes; and

20 (e) May not result in liability for a county if the name of a public safety officer or attorney is
 21 disclosed after a request for exemption from disclosure is made under this subsection.

22 (32) Land management plans required for voluntary stewardship agreements entered into under
 23 ORS 541.423.

24 **(33) Sensitive business records or financial or commercial information of the State Ac-**
 25 **cident Insurance Fund Corporation that is not customarily provided to business competitors.**
 26 **This exemption does not:**

27 **(a) Apply to the formulas for determining dividends to be paid to employers insured by**
 28 **the State Accident Insurance Fund Corporation;**

29 **(b) Apply to contracts for advertising, public relations or lobbying services or to docu-**
 30 **ments related to the formation of such contracts;**

31 **(c) Apply to group insurance contracts or to documents relating to the formation of such**
 32 **contracts, except that employer account records shall remain exempt from disclosure as**
 33 **provided in ORS 192.502 (35); or**

34 **(d) Provide the basis for opposing the discovery of documents in litigation pursuant to**
 35 **the applicable rules of civil procedure.**

36 **SECTION 4.** ORS 192.502 is amended to read:

37 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

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

43 (2) Information of a personal nature such as but not limited to that kept in a personal, medical
 44 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the
 45 public interest by clear and convincing evidence requires disclosure in the particular instance. The

1 party seeking disclosure shall have the burden of showing that public disclosure would not consti-
 2 tute an unreasonable invasion of privacy.

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

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

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

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

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

16 (4) Information submitted to a public body in confidence and not otherwise required by law to
 17 be submitted, where such information should reasonably be considered confidential, the public body
 18 has obliged itself in good faith not to disclose the information, and when the public interest would
 19 suffer by the disclosure.

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

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

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

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

33 (9)(a) Public records or information the disclosure of which is prohibited or restricted or other-
 34 wise made confidential or privileged under Oregon law.

35 (b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information
 36 compiled in a public record when:

37 (A) The basis for the claim of exemption is ORS 40.225;

38 (B) The factual information is not prohibited from disclosure under any applicable state or fed-
 39 eral law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410
 40 to 192.505;

41 (C) The factual information was compiled by or at the direction of an attorney as part of an
 42 investigation on behalf of the public body in response to information of possible wrongdoing by the
 43 public body;

44 (D) The factual information was not compiled in preparation for litigation, arbitration or an
 45 administrative proceeding that was reasonably likely to be initiated or that has been initiated by

1 or against the public body; and

2 (E) The holder of the privilege under ORS 40.225 has made or authorized a public statement
 3 characterizing or partially disclosing the factual information compiled by or at the attorney's di-
 4 rection.

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

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

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

14 (13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the
 15 agents of the treasurer or the council relating to active or proposed publicly traded investments
 16 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or
 17 liquidation of the investments. For the purposes of this subsection:

18 (a) The exemption does not apply to:

19 (A) Information in investment records solely related to the amount paid directly into an invest-
 20 ment by, or returned from the investment directly to, the treasurer or council; or

21 (B) The identity of the entity to which the amount was paid directly or from which the amount
 22 was received directly.

23 (b) An investment in a publicly traded investment is no longer active when acquisition, exchange
 24 or liquidation of the investment has been concluded.

25 (14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the
 26 Oregon Growth Account Board or the agents of the treasurer, council or board relating to actual
 27 or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a
 28 private asset including but not limited to records regarding the solicitation, acquisition, deployment,
 29 exchange or liquidation of the investments including but not limited to:

30 (A) Due diligence materials that are proprietary to an investment fund, to an asset ownership
 31 or to their respective investment vehicles.

32 (B) Financial statements of an investment fund, an asset ownership or their respective invest-
 33 ment vehicles.

34 (C) Meeting materials of an investment fund, an asset ownership or their respective investment
 35 vehicles.

36 (D) Records containing information regarding the portfolio positions in which an investment
 37 fund, an asset ownership or their respective investment vehicles invest.

38 (E) Capital call and distribution notices of an investment fund, an asset ownership or their re-
 39 spective investment vehicles.

40 (F) Investment agreements and related documents.

41 (b) The exemption under this subsection does not apply to:

42 (A) The name, address and vintage year of each privately placed investment fund.

43 (B) The dollar amount of the commitment made to each privately placed investment fund since
 44 inception of the fund.

45 (C) The dollar amount of cash contributions made to each privately placed investment fund since

1 inception of the fund.

2 (D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State
 3 Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the
 4 treasurer, council or board from each privately placed investment fund.

5 (E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately
 6 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment
 7 Council, the Oregon Growth Account Board or the agents of the treasurer, council or board.

8 (F) The net internal rate of return of each privately placed investment fund since inception of
 9 the fund.

10 (G) The investment multiple of each privately placed investment fund since inception of the fund.

11 (H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end
 12 basis to each privately placed investment fund.

13 (I) The dollar amount of cash profit received from each privately placed investment fund on a
 14 fiscal year-end basis.

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

18 (16) Reports of unclaimed property filed by the holders of such property to the extent permitted
 19 by ORS 98.352.

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

25 (a) Personal financial statements.

26 (b) Financial statements of applicants.

27 (c) Customer lists.

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

33 (e) Production, sales and cost data.

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

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

45 (a) The identity of the individual concern or enterprise that is delinquent over 60 days in the

1 payment or delivery of the taxes.

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

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

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

7 (20) Workers' compensation claim records of the Department of Consumer and Business Services,
8 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-
9 ness Services, in any of the following circumstances:

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

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

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

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

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

19 (22) Records of Oregon Health and Science University regarding candidates for the position of
20 president of the university.

21 (23) The records of a library, including:

22 (a) Circulation records, showing use of specific library material by a named person;

23 (b) The name of a library patron together with the address or telephone number of the patron;
24 and

25 (c) The electronic mail address of a patron.

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

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

30 (b) Credit reports.

31 (c) Project appraisals.

32 (d) Market studies and analyses.

33 (e) Articles of incorporation, partnership agreements and operating agreements.

34 (f) Commitment letters.

35 (g) Project pro forma statements.

36 (h) Project cost certifications and cost data.

37 (i) Audits.

38 (j) Project tenant correspondence.

39 (k) Personal information about a tenant.

40 (L) Housing assistance payments.

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

44 (26) Sensitive business, commercial or financial information furnished to or developed by a
45 public body engaged in the business of providing electricity or electricity services, if the information

1 is directly related to a transaction described in ORS 261.348, or if the information is directly related
 2 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
 3 disclosure of the information would cause a competitive disadvantage for the public body or its re-
 4 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
 5 velopment or review of generally applicable rate schedules.

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

12 (28) Personally identifiable information about customers of a municipal electric utility or a
 13 people's utility district or the names, dates of birth, driver license numbers, telephone numbers,
 14 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
 15 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
 16 lease personally identifiable information about a customer, and a public body providing water, sewer
 17 or storm drain services may release the name, date of birth, driver license number, telephone num-
 18 ber, electronic mail address or Social Security number of a customer, if the customer consents in
 19 writing or electronically, if the disclosure is necessary for the utility, district or other public body
 20 to render services to the customer, if the disclosure is required pursuant to a court order or if the
 21 disclosure is otherwise required by federal or state law. The utility, district or other public body
 22 may charge as appropriate for the costs of providing such information. The utility, district or other
 23 public body may make customer records available to third party credit agencies on a regular basis
 24 in connection with the establishment and management of customer accounts or in the event such
 25 accounts are delinquent.

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

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

30 (31) Documents, materials or other information submitted to the Director of the Department of
 31 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory
 32 or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates
 33 or subsidiaries under ORS 646A.250 to 646A.270, 697.005 to 697.095, 697.602 to 697.842, 705.137,
 34 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act or the
 35 Insurance Code when:

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

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

41 (32) A county elections security plan developed and filed under ORS 254.074.

42 (33) Information about review or approval of programs relating to the security of:

43 (a) Generation, storage or conveyance of:

44 (A) Electricity;

45 (B) Gas in liquefied or gaseous form;

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

2 (D) Petroleum products;

3 (E) Sewage; or

4 (F) Water.

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

6 (c) Data transmissions by whatever means provided.

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

9 **(35)(a) Employer account records of the State Accident Insurance Fund Corporation.**

10 **(b) As used in this subsection, "employer account records" means all records maintained**
11 **in any form that are specifically related to the account of any employer insured, previously**
12 **insured or under consideration to be insured by the State Accident Insurance Fund Corpo-**
13 **ration and any information obtained or developed by the corporation in connection with**
14 **providing, offering to provide or declining to provide insurance to a specific employer. "Em-**
15 **ployer account records" includes, but is not limited to, an employer's payroll records, pre-**
16 **mium payment history, payroll classifications, employee names and identification**
17 **information, experience modification factors, loss experience and dividend payment history.**

18 (c) The exemption provided by this subsection may not serve as the basis for opposition
19 to the discovery documents in litigation pursuant to applicable rules of civil procedure.

20 **(36)(a) Claimant files of the State Accident Insurance Fund Corporation.**

21 **(b) As used in this subsection, "claimant files" includes, but is not limited to, all records**
22 **held by the corporation pertaining to a person who has made a claim, as defined in ORS**
23 **656.005, and all records pertaining to such a claim.**

24 (c) The exemption provided by this subsection may not serve as the basis for opposition
25 to the discovery documents in litigation pursuant to applicable rules of civil procedure.

26 **SECTION 5. This 2009 Act being necessary for the immediate preservation of the public**
27 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
28 **on its passage.**

29