

Enrolled
Senate Bill 618

Sponsored by Senators GEORGE, WINTERS; Senators BATES, BOQUIST, GIROD, MONNES ANDERSON, MORRISSETTE, MORSE, PROZANSKI, SCHRADER, Representatives BARKER, BERGER, BOONE, CAMERON, CLEM, GILLIAM, KOMP, KRIEGER, OLSON, SCHAUFLEER, STIEGLER, THATCHER, WHISNANT (at the request of Richard Manning)

CHAPTER

AN ACT

Relating to military discharge records; creating new provisions; amending ORS 192.502 and 408.420; repealing section 14, chapter 41, Oregon Laws 2009 (Enrolled Senate Bill 96); and declaring an emergency.

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

SECTION 1. ORS 192.502 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) The factual information was not compiled in preparation for litigation, arbitration or an administrative proceeding that was reasonably likely to be initiated or that has been initiated by or against the public body; and

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

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

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

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

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

(a) The exemption does not apply to:

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

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

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

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

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

(B) Financial statements of an investment fund, an asset ownership or their respective investment vehicles.

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

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

(E) Capital call and distribution notices of an investment fund, an asset ownership or their respective investment vehicles.

(F) Investment agreements and related documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Personal financial statements.

(b) Financial statements of applicants.

(c) Customer lists.

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been

concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(e) Production, sales and cost data.

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) The records of a library, including:

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

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

(c) The electronic mail address of a patron.

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

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

(b) Credit reports.

(c) Project appraisals.

(d) Market studies and analyses.

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

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

- (j) Project tenant correspondence.
- (k) Personal information about a tenant.
- (L) Housing assistance payments.

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

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

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

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

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

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

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

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

(b) The director has obligated the Department of Consumer and Business Services not to disclose the document, material or other information.

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

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

- (a) Generation, storage or conveyance of:
 - (A) Electricity;

- (B) Gas in liquefied or gaseous form;
- (C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);
- (D) Petroleum products;
- (E) Sewage; or
- (F) Water.

- (b) Telecommunication systems, including cellular, wireless or radio systems.
- (c) Data transmissions by whatever means provided.

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

(35) Except as authorized by section 3 of this 2009 Act, records that certify or verify an individual's discharge or other separation from military service.

SECTION 2. ORS 408.420 is amended to read:

408.420. Each county clerk shall maintain in the office a special book in which the county clerk shall, upon request, record the final discharge of any [*war*] **military** veteran. No recording fee shall be collected when the [*war*] **military** veteran requesting [*such*] **the** record is an actual resident of [*said*] **the** county or was [*such*] a resident at the time of entrance into the service of the United States. In all other cases a legal fee shall be charged. There shall be kept in connection with [*such*] **the** record[,] an alphabetical index referring to the name of the [*soldier, sailor or marine*] **military veteran** whose name appears in each discharge paper so recorded. [*Such*] Books [*as*] **that** are necessary for the recording of the discharge papers shall be paid for by the several counties in the manner provided for paying other claims against the county.

SECTION 2a. If Senate Bill 96 becomes law, ORS 408.420, as amended by section 2 of this 2009 Act, is amended to read:

408.420. Each county clerk shall maintain in the office a special book in which the county clerk shall, upon request, record the final discharge of any [*military*] veteran. [*No*] **A** recording fee [*shall*] **may not** be collected when the [*military*] veteran requesting the record is an actual resident of the county or was a resident at the time of entrance into the service of the United States. In all other cases a legal fee shall be charged. There shall be kept in connection with the record an alphabetical index referring to the name of the [*military*] veteran whose name appears in each discharge paper so recorded. Books that are necessary for the recording of the discharge papers shall be paid for by the several counties in the manner provided for paying other claims against the county.

SECTION 2b. Section 14, chapter 41, Oregon Laws 2009 (Enrolled Senate Bill 96) (amending ORS 408.420), is repealed.

SECTION 3. (1) Each county clerk who receives a request to inspect military veteran discharge papers that are recorded under ORS 408.420 shall produce the recorded discharge papers for inspection if:

- (a) The request for inspection is made in writing;
- (b) The request sets forth the name, address and telephone number of the requester;
- (c) The request sets forth the name and the date of birth or the last four digits of the Social Security number of the military veteran; and
- (d) The request is made by:
 - (A) The military veteran or the spouse, legal guardian or personal representative of the military veteran;
 - (B) A county veterans' service officer appointed under ORS 408.410;
 - (C) A representative of the Department of Veterans' Affairs; or
 - (D) A licensed funeral establishment seeking to ascertain if a decedent was a veteran for the purpose of obtaining veteran's burial benefits.

(2) This section does not create a cause of action and may not be asserted as the basis of a per se negligence claim.

(3) Each county clerk may adopt additional policies in order to protect recorded discharge papers from malicious or unlawful use and policies regarding copying of recorded discharge papers.

(4) Each county clerk shall maintain in the records of the county clerk a copy of each request for inspection of recorded discharge information for a period of at least 10 years after the date the request is received by the county clerk.

SECTION 3a. If Senate Bill 96 becomes law, section 3 of this 2009 Act is amended to read:

Sec. 3. (1) Each county clerk who receives a request to inspect [*military*] veteran discharge papers that are recorded under ORS 408.420 shall produce the recorded discharge papers for inspection if:

(a) The request for inspection is made in writing;

(b) The request sets forth the name, address and telephone number of the requester;

(c) The request sets forth the name and the date of birth or the last four digits of the Social Security number of the [*military*] veteran; and

(d) The request is made by:

(A) The [*military*] veteran or the spouse, legal guardian or personal representative of the [*military*] veteran;

(B) A county veterans' service officer appointed under ORS 408.410;

(C) A representative of the Department of Veterans' Affairs; or

(D) A licensed funeral establishment seeking to ascertain if a decedent was a veteran for the purpose of obtaining veteran's burial benefits.

(2) This section does not create a cause of action and may not be asserted as the basis of a per se negligence claim.

(3) Each county clerk may adopt additional policies in order to protect recorded discharge papers from malicious or unlawful use and policies regarding copying of recorded discharge papers.

(4) Each county clerk shall maintain in the records of the county clerk a copy of each request for inspection of recorded discharge information for a period of at least 10 years after the date the request is received by the county clerk.

SECTION 3b. The repeal of section 14, chapter 41, Oregon Laws 2009 (Enrolled Senate Bill 96) (amending ORS 408.420), by section 2b of this 2009 Act and the amendments to ORS 408.420 and section 3 of this 2009 Act by sections 2a and 3a of this 2009 Act become operative on January 1, 2010.

SECTION 4. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate May 5, 2009

Repassed by Senate June 12, 2009

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Secretary of Senate

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President of Senate

Passed by House June 10, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State