

House Bill 3294

Sponsored by Representatives BARNHART, KENNEMER, TOMEI; Representatives DEMBROW, DOHERTY, FREDERICK, GALLEGOS, GORSEK, GREENLICK, JENSON, LIVELY, Senators BATES, DINGFELDER, PROZANSKI

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 electronic mail addresses in possession or custody of executive department from required disclosure under public records law, except for electronic mail addresses furnished by public body to public employees.

A BILL FOR AN ACT

1
2 Relating to disclosure of electronic mail addresses; amending ORS 192.502.

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

4 **SECTION 1.** ORS 192.502, as amended by section 26, chapter 45, Oregon Laws 2012, and
5 sections 19 and 30, chapter 90, Oregon Laws 2012, 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

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 be submitted, where such information should reasonably be considered confidential, the public body
 2 has obliged itself in good faith not to disclose the information, and when the public interest would
 3 suffer by the disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the
 44 agents of the treasurer or the council relating to active or proposed publicly traded investments
 45 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or

1 liquidation of the investments. For the purposes of this subsection:

2 (a) The exemption does not apply to:

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

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

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

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

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

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

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

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

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

24 (F) Investment agreements and related documents.

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

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

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

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

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

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

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

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

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

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

44 (15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the
45 Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as

1 exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

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

4 (17)(a) The following records, communications and information submitted to the Oregon Business
5 Development Commission, the Oregon Business Development Department, the State Department of
6 Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports as defined in
7 ORS 777.005, or a county or city governing body and any board, department, commission, council
8 or agency thereof, by applicants for investment funds, grants, loans, services or economic develop-
9 ment moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

10 (A) Personal financial statements.

11 (B) Financial statements of applicants.

12 (C) Customer lists.

13 (D) Information of an applicant pertaining to litigation to which the applicant is a party if the
14 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
15 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
16 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-
17 ery or deposition statutes to a party to litigation or potential litigation.

18 (E) Production, sales and cost data.

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

21 (b) The following records, communications and information submitted to the State Department
22 of Energy by applicants for tax credits or for grants awarded under ORS 469B.256:

23 (A) Personal financial statements.

24 (B) Financial statements of applicants.

25 (C) Customer lists.

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

31 (E) Production, sales and cost data.

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

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

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

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

- 1 (c) The actual, or estimated, amount of the delinquency.
- 2 (19) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-
3 pointed counsel, and all information supplied to the court from whatever source for the purpose of
4 verifying the financial eligibility of a person pursuant to ORS 151.485.
- 5 (20) Workers' compensation claim records of the Department of Consumer and Business Services,
6 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-
7 ness Services, in any of the following circumstances:
- 8 (a) When necessary for insurers, self-insured employers and third party claim administrators to
9 process workers' compensation claims.
- 10 (b) When necessary for the director, other governmental agencies of this state or the United
11 States to carry out their duties, functions or powers.
- 12 (c) When the disclosure is made in such a manner that the disclosed information cannot be used
13 to identify any worker who is the subject of a claim.
- 14 (d) When a worker or the worker's representative requests review of the worker's claim record.
- 15 (21) Sensitive business records or financial or commercial information of the Oregon Health and
16 Science University that is not customarily provided to business competitors.
- 17 (22) Records of Oregon Health and Science University regarding candidates for the position of
18 president of the university.
- 19 (23) The records of a library, including:
- 20 (a) Circulation records, showing use of specific library material by a named person;
- 21 (b) The name of a library patron together with the address or telephone number of the patron;
22 and
- 23 (c) The electronic mail address of a patron.
- 24 (24) The following records, communications and information obtained by the Housing and Com-
25 munity Services Department in connection with the department's monitoring or administration of
26 financial assistance or of housing or other developments:
- 27 (a) Personal and corporate financial statements and information, including tax returns.
- 28 (b) Credit reports.
- 29 (c) Project appraisals.
- 30 (d) Market studies and analyses.
- 31 (e) Articles of incorporation, partnership agreements and operating agreements.
- 32 (f) Commitment letters.
- 33 (g) Project pro forma statements.
- 34 (h) Project cost certifications and cost data.
- 35 (i) Audits.
- 36 (j) Project tenant correspondence.
- 37 (k) Personal information about a tenant.
- 38 (L) Housing assistance payments.
- 39 (25) Raster geographic information system (GIS) digital databases, provided by private forestland
40 owners or their representatives, voluntarily and in confidence to the State Forestry Department,
41 that is not otherwise required by law to be submitted.
- 42 (26) Sensitive business, commercial or financial information furnished to or developed by a
43 public body engaged in the business of providing electricity or electricity services, if the information
44 is directly related to a transaction described in ORS 261.348, or if the information is directly related
45 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and

1 disclosure of the information would cause a competitive disadvantage for the public body or its re-
2 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
3 velopment or review of generally applicable rate schedules.

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

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

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

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

28 (31) Documents, materials or other information submitted to the Director of the Department of
29 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory
30 or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates
31 or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200
32 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the Insurance Code
33 when:

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

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

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

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

41 (a) Generation, storage or conveyance of:

42 (A) Electricity;

43 (B) Gas in liquefied or gaseous form;

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

45 (D) Petroleum products;

1 (E) Sewage; or

2 (F) Water.

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

4 (c) Data transmissions by whatever means provided.

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

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

8 (b) As used in this subsection, “employer account records” means all records maintained in any
9 form that are specifically related to the account of any employer insured, previously insured or un-
10 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-
11 mation obtained or developed by the corporation in connection with providing, offering to provide
12 or declining to provide insurance to a specific employer. “Employer account records” includes, but
13 is not limited to, an employer’s payroll records, premium payment history, payroll classifications,
14 employee names and identification information, experience modification factors, loss experience and
15 dividend payment history.

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

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

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

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

24 (37) Except as authorized by ORS 408.425, records that certify or verify an individual’s discharge
25 or other separation from military service.

26 (38) Records of or submitted to a domestic violence service or resource center that relate to the
27 name or personal information of an individual who visits a center for service, including the date of
28 service, the type of service received, referrals or contact information or personal information of a
29 family member of the individual. As used in this subsection, “domestic violence service or resource
30 center” means an entity, the primary purpose of which is to assist persons affected by domestic or
31 sexual violence by providing referrals, resource information or other assistance specifically of ben-
32 efit to domestic or sexual violence victims.

33 **(39)(a) Electronic mail addresses in the possession or custody of an agency or subdivision**
34 **of the executive department, as defined in ORS 174.112.**

35 **(b) This subsection does not apply to electronic mail addresses furnished by a public body**
36 **to public employees.**

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