



Department of Consumer and Business Services

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Public Records Disclosure Exemption for Active Investigations

House Bill 2470

Background: One of ways the Department of Consumer and Business Services (DCBS) protects consumers is by investigating and taking administrative action against financial fraud and violations of state financial laws.

DCBS frequently partners with state and federal law enforcement agencies to investigate allegations of securities fraud, which involve compiling large numbers of records and interviewing multiple people who may have been involved. Records created in the course of a law enforcement agency's fraud investigation are exempt from disclosure under Oregon's Public Records Law as a means of stemming potential interference with a criminal investigation. However, a similar exemption does not exist for similar investigations carried out by DCBS. In general, the department is required to disclose records connected to an ongoing investigation if a request is made, even if the investigation ultimately does not lead to formal enforcement actions.

Early records disclosure presents a number of problems for an ongoing investigation. For instance, upon an individual's knowledge of a DCBS investigation, they may make one or more requests for all files received as part of the inquiry. The information in these files could be misused, seriously disrupting an ongoing criminal investigation or administrative inquiry through actions such as influencing or intimidating witnesses or hiding assets. Also, a person who obtains records in the course of an investigation may draw improper conclusions from the information, which could unnecessarily damage the reputations of those connected to the inquiry without a complete picture of what occurred.

Concept: HB 2470 creates a public records disclosure exemption for investigative materials compiled during investigations of violations of state financial laws and other statutes enforced by DCBS. If the department uses the proposed exemption, it is lifted as soon as the investigation concludes and any resulting enforcement occurs. HB 2470 does not extend to discovery production for administrative or legal hearings, allowing the subject of an enforcement action to prepare a proper defense. Additionally, it preserves current exemptions for specific DCBS regulatory activities, such as the Oregon Insurance Code's confidentiality of information statute.

To date, 31 states and the District of Columbia exempt securities investigations from disclosure as a public record. Some states make records available for public inspection once the investigation is complete.

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