

D R A F T

SUMMARY

Modifies public records law exemption from required disclosure of certain personal information of public employees and public body volunteers to remove mandated disclosure upon showing that public interest would require disclosure in particular instance.

Requires that certain personal information of home care workers, operators of child care facilities, exempt family child care providers, operators of adult foster homes and those who have submitted voluntary information in confidence to a public body be maintained confidentially and not disclosed pursuant to a public records request.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public records; creating new provisions; amending ORS 192.502;
3 and declaring an emergency.

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

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

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

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

15 (2) Information of a personal nature such as but not limited to that kept

1 in a personal, medical or similar file, if public disclosure would constitute
2 an unreasonable invasion of privacy, unless the public interest by clear and
3 convincing evidence requires disclosure in the particular instance. The party
4 seeking disclosure shall have the burden of showing that public disclosure
5 would not constitute an unreasonable invasion of privacy.

6 (3) Public body employee or volunteer **residential** addresses, **residential**
7 **telephone numbers, personal cellular telephone numbers, personal**
8 **electronic mail addresses, driver license numbers, employer-issued**
9 **identification card numbers, emergency contact information,** Social
10 Security numbers, dates of birth and **other** telephone numbers contained in
11 personnel records maintained by the public body that is the employer or the
12 recipient of volunteer services. This exemption:

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

18 *[(b) Does not apply to employees or volunteers to the extent that the party*
19 *seeking disclosure shows by clear and convincing evidence that the public in-*
20 *terest requires disclosure in a particular instance;]*

21 *[(c)]* (b) Does not apply to a substitute teacher as defined in ORS 342.815
22 when requested by a professional education association of which the substi-
23 tute teacher may be a member; and

24 *[(d)]* (c) Does not relieve a public employer of any duty under ORS 243.650
25 to 243.782.

26 (4) Information submitted to a public body in confidence and not other-
27 wise required by law to be submitted, where such information should rea-
28 sonably be considered confidential, the public body has obliged itself in good
29 faith not to disclose the information, and when the public interest would
30 suffer by the disclosure.

31 (5) Information or records of the Department of Corrections, including the

1 State Board of Parole and Post-Prison Supervision, to the extent that dis-
2 closure would interfere with the rehabilitation of a person in custody of the
3 department or substantially prejudice or prevent the carrying out of the
4 functions of the department, if the public interest in confidentiality clearly
5 outweighs the public interest in disclosure.

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

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

13 (8) Any public records or information the disclosure of which is prohib-
14 ited by federal law or regulations.

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

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

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

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

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

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

30 (E) The holder of the privilege under ORS 40.225 has made or authorized
31 a public statement characterizing or partially disclosing the factual infor-

1 mation compiled by or at the attorney's direction.

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

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

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

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

19 (a) The exemption does not apply to:

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

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

25 (b) An investment in a publicly traded investment is no longer active
26 when acquisition, exchange or liquidation of the investment has been con-
27 cluded.

28 (14)(a) Records of or submitted to the State Treasurer, the Oregon In-
29 vestment Council, the Oregon Growth Board or the agents of the treasurer,
30 council or board relating to actual or proposed investments under ORS
31 chapter 293 or 348 in a privately placed investment fund or a private asset

1 including but not limited to records regarding the solicitation, acquisition,
2 deployment, exchange or liquidation of the investments including but not
3 limited to:

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

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

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

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

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

15 (F) Investment agreements and related documents.

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

17 (A) The name, address and vintage year of each privately placed invest-
18 ment fund.

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

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

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

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

31 (F) The net internal rate of return of each privately placed investment

1 fund since inception of the fund.

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

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

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

8 (15) The monthly reports prepared and submitted under ORS 293.761 and
9 293.766 concerning the Public Employees Retirement Fund and the Industrial
10 Accident Fund may be uniformly treated as exempt from disclosure for a
11 period of up to 90 days after the end of the calendar quarter.

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

14 (17)(a) The following records, communications and information submitted
15 to the Oregon Business Development Commission, the Oregon Business De-
16 velopment Department, the State Department of Agriculture, the Oregon
17 Growth Board, the Port of Portland or other ports as defined in ORS 777.005,
18 or a county or city governing body and any board, department, commission,
19 council or agency thereof, by applicants for investment funds, grants, loans,
20 services or economic development moneys, support or assistance including,
21 but not limited to, those described in ORS 285A.224:

22 (A) Personal financial statements.

23 (B) Financial statements of applicants.

24 (C) Customer lists.

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

1 (E) Production, sales and cost data.

2 (F) Marketing strategy information that relates to applicant's plan to
3 address specific markets and applicant's strategy regarding specific compet-
4 itors.

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

8 (A) Personal financial statements.

9 (B) Financial statements of applicants.

10 (C) Customer lists.

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

18 (E) Production, sales and cost data.

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

22 (18) Records, reports or returns submitted by private concerns or enter-
23 prises required by law to be submitted to or inspected by a governmental
24 body to allow it to determine the amount of any transient lodging tax pay-
25 able and the amounts of such tax payable or paid, to the extent that such
26 information is in a form which would permit identification of the individual
27 concern or enterprise. Nothing in this subsection shall limit the use which
28 can be made of such information for regulatory purposes or its admissibility
29 in any enforcement proceedings. The public body shall notify the taxpayer
30 of the delinquency immediately by certified mail. However, in the event that
31 the payment or delivery of transient lodging taxes otherwise due to a public

1 body is delinquent by over 60 days, the public body shall disclose, upon the
2 request of any person, the following information:

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

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

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

7 (19) All information supplied by a person under ORS 151.485 for the pur-
8 pose of requesting appointed counsel, and all information supplied to the
9 court from whatever source for the purpose of verifying the financial eligi-
10 bility of a person pursuant to ORS 151.485.

11 (20) Workers' compensation claim records of the Department of Consumer
12 and Business Services, except in accordance with rules adopted by the Di-
13 rector of the Department of Consumer and Business Services, in any of the
14 following circumstances:

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

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

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

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

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

27 (22) Records of Oregon Health and Science University regarding candi-
28 dates for the position of president of the university.

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

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

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

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

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

8 (a) Personal and corporate financial statements and information, includ-
9 ing tax returns.

10 (b) Credit reports.

11 (c) Project appraisals, excluding appraisals obtained in the course of
12 transactions involving an interest in real estate that is acquired, leased,
13 rented, exchanged, transferred or otherwise disposed of as part of the project,
14 but only after the transactions have closed and are concluded.

15 (d) Market studies and analyses.

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

18 (f) Commitment letters.

19 (g) Project pro forma statements.

20 (h) Project cost certifications and cost data.

21 (i) Audits.

22 (j) Project tenant correspondence.

23 (k) Personal information about a tenant.

24 (L) Housing assistance payments.

25 (25) Raster geographic information system (GIS) digital databases, pro-
26 vided by private forestland owners or their representatives, voluntarily and
27 in confidence to the State Forestry Department, that is not otherwise re-
28 quired by law to be submitted.

29 (26) Sensitive business, commercial or financial information furnished to
30 or developed by a public body engaged in the business of providing electricity
31 or electricity services, if the information is directly related to a transaction

1 described in ORS 261.348, or if the information is directly related to a bid,
2 proposal or negotiations for the sale or purchase of electricity or electricity
3 services, and disclosure of the information would cause a competitive disad-
4 vantage for the public body or its retail electricity customers. This sub-
5 section does not apply to cost-of-service studies used in the development or
6 review of generally applicable rate schedules.

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

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

1 counts are delinquent.

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

5 (30) Sensitive business records, capital development plans or financial or
6 commercial information of Oregon Corrections Enterprises that is not cus-
7 tomarily provided to business competitors.

8 (31) Documents, materials or other information submitted to the Director
9 of the Department of Consumer and Business Services in confidence by a
10 state, federal, foreign or international regulatory or law enforcement agency
11 or by the National Association of Insurance Commissioners, its affiliates or
12 subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to
13 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723,
14 725 or 726, the Bank Act or the Insurance Code when:

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

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

21 (32) A county elections security plan developed and filed under ORS
22 254.074.

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

25 (a) Generation, storage or conveyance of:

26 (A) Electricity;

27 (B) Gas in liquefied or gaseous form;

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

29 (D) Petroleum products;

30 (E) Sewage; or

31 (F) Water.

1 (b) Telecommunication systems, including cellular, wireless or radio sys-
2 tems.

3 (c) Data transmissions by whatever means provided.

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

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

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

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

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

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

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

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

1 (38) Records of or submitted to a domestic violence service or resource
2 center that relate to the name or personal information of an individual who
3 visits a center for service, including the date of service, the type of service
4 received, referrals or contact information or personal information of a family
5 member of the individual. As used in this subsection, “domestic violence
6 service or resource center” means an entity, the primary purpose of which
7 is to assist persons affected by domestic or sexual violence by providing re-
8 ferrals, resource information or other assistance specifically of benefit to
9 domestic or sexual violence victims.

10 (39) Information reported to the Oregon Health Authority under ORS
11 431.964, except as provided in ORS 431.964 (2)(c) information disclosed by the
12 authority under ORS 431.966 and any information related to disclosures made
13 by the authority under ORS 431.966, including information identifying the
14 recipient of the information.

15 (40)(a) Electronic mail addresses in the possession or custody of an agency
16 or subdivision of the executive department, as defined in ORS 174.112, a local
17 government or local service district, as defined in ORS 174.116, or a special
18 government body, as defined in ORS 174.117.

19 (b) This subsection does not apply to electronic mail addresses assigned
20 by a public body to public employees for use by the employees in the ordi-
21 nary course of their employment.

22 **SECTION 2. Sections 3 and 4 of this 2015 Act are added to and made**
23 **a part of ORS 192.410 to 192.505.**

24 **SECTION 3. A public body that is the custodian of or is otherwise**
25 **in possession of the following information pertaining to a home care**
26 **worker as defined in ORS 410.600, an operator of a child care facility**
27 **as defined in ORS 329A.250, an exempt family child care provider as**
28 **defined in ORS 329A.430 or an operator of an adult foster home as de-**
29 **defined in ORS 443.705 may not disclose that information in response to**
30 **a request to inspect public records under ORS 192.410 to 192.505:**

31 (1) Residential address and telephone numbers;

1 **(2) Personal electronic mail addresses and personal cellular tele-**
2 **phone numbers;**

3 **(3) Social Security numbers and employer-issued identification card**
4 **numbers; and**

5 **(4) Emergency contact information.**

6 **SECTION 4. A public body that is the custodian of or is otherwise**
7 **in possession of information that was submitted to the public body in**
8 **confidence and is not otherwise required by law to be submitted, must**
9 **redact all of the following information before making a disclosure de-**
10 **scribed in ORS 192.502 (4):**

11 **(1) Residential address and telephone numbers;**

12 **(2) Personal electronic mail addresses and personal cellular tele-**
13 **phone numbers;**

14 **(3) Social Security numbers and employer-issued identification card**
15 **numbers; and**

16 **(4) Emergency contact information.**

17 **SECTION 5. This 2015 Act being necessary for the immediate pres-**
18 **ervation of the public peace, health and safety, an emergency is de-**
19 **clared to exist, and this 2015 Act takes effect on its passage.**

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