

House Bill 3037

-1 Amendment Handwritten
By: Erin Seiler
3/9/2015

Sponsored by COMMITTEE ON RULES

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**.

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; and declaring an emer-
3 gency.

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 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 **residential** addresses, **residential telephone numbers**,
18 **personal cellular telephone numbers**, **personal electronic mail addresses**, **driver license**
19 **numbers**, **employer-issued identification card numbers**, **emergency contact information**, So-
20 cial Security numbers, dates of birth and **other** telephone numbers contained in personnel records
21 maintained by the public body that is the employer or the recipient of volunteer services. This ex-
22 emption:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (12) Employee and retiree address, telephone number and other nonfinancial membership records
45 and employee financial records maintained by the Public Employees Retirement System pursuant to

1 ORS chapters 238 and 238A.

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

6 (a) The exemption does not apply to:

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

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

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

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

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

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

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

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

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

28 (F) Investment agreements and related documents.

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

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

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

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

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

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

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

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

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

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

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

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

8 (17)(a) The following records, communications and information submitted to the Oregon Business
9 Development Commission, the Oregon Business Development Department, the State Department of
10 Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS
11 777.005, or a county or city governing body and any board, department, commission, council or
12 agency thereof, by applicants for investment funds, grants, loans, services or economic development
13 moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

14 (A) Personal financial statements.

15 (B) Financial statements of applicants.

16 (C) Customer lists.

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

22 (E) Production, sales and cost data.

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

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

27 (A) Personal financial statements.

28 (B) Financial statements of applicants.

29 (C) Customer lists.

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

35 (E) Production, sales and cost data.

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

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

1 public body shall disclose, upon the request of any person, the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (b) Credit reports.

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

36 (d) Market studies and analyses.

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

38 (f) Commitment letters.

39 (g) Project pro forma statements.

40 (h) Project cost certifications and cost data.

41 (i) Audits.

42 (j) Project tenant correspondence.

43 (k) Personal information about a tenant.

44 (L) Housing assistance payments.

45 (25) Raster geographic information system (GIS) digital databases, provided by private forestland

1 owners or their representatives, voluntarily and in confidence to the State Forestry Department,
2 that is not otherwise required by law to be submitted.

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

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

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

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

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

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

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

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

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

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

2 (a) Generation, storage or conveyance of:

3 (A) Electricity;

4 (B) Gas in liquefied or gaseous form;

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

6 (D) Petroleum products;

7 (E) Sewage; or

8 (F) Water.

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

10 (c) Data transmissions by whatever means provided.

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

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

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

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

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

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

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

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

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

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

1 (b) This subsection does not apply to electronic mail addresses assigned by a public body to
2 public employees for use by the employees in the ordinary course of their employment.

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

5 **“SECTION 3. (1) A public body that is the custodian of or is other-**
6 **wise in possession of the following information pertaining to a home**
7 **care worker as defined in ORS 410.600, an operator of a child care fa-**
8 **ility as defined in ORS 329A.250, an exempt family child care provider**
9 **as defined in ORS 329A.430 or an operator of an adult foster home as**
10 **defined in ORS 443.705 may not disclose that information in response**
11 **to a request to inspect public records under ORS 192.410 to 192.505:**

12 **“(a) Residential address and telephone numbers;**

13 **“(b) Personal electronic mail addresses and personal cellular tele-**
14 **phone numbers;**

15 **“(c) Social Security numbers and employer-issued identification**
16 **card numbers; and**

17 **“(d) Emergency contact information.**

18 **“(2) Subsection (1) of this section does not apply to the Judicial**
19 **Department or the Department of Transportation or to any records in**
20 **the custody of the Judicial Department or the Department of Trans-**
21 **portation.”.**

22 **SECTION 4.** A public body that is the custodian of or is otherwise in possession of in-
23 formation that was submitted to the public body in confidence and is not otherwise required
24 by law to be submitted, must redact all of the following information before making a disclo-
25 sure described in ORS 192.502 (4):
26

27 (1) Residential address and telephone numbers;

28 (2) Personal electronic mail addresses and personal cellular telephone numbers;

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

30 (4) Emergency contact information.

31 **SECTION 5.** This 2015 Act being necessary for the immediate preservation of the public
32 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
33 on its passage.