

A-Engrossed
House Bill 3557

Ordered by the House June 11
Including House Amendments dated June 11

Sponsored by Representative HOYLE

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.

Requires public bodies that receive requests for disclosure of specified personal contact information of public employees or certain other persons to forward copy of request to affected persons whose information is subject of request or their representatives. Requires public body to delay responding to request for seven days. **Grants immunity to public bodies from any liability that arises from disclosure of information. Permits public bodies to recover costs incurred in responding to requests.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public records; creating new provisions; amending ORS 192.502 and section 3, chapter
3 26, Oregon Laws 2015 (Enrolled House Bill 3037); and declaring an emergency.

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

5 **SECTION 1.** ORS 192.502, as amended by section 1, chapter 26, Oregon Laws 2015 (Enrolled
6 House Bill 3037), is amended to read:

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

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

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

18 (3) **Upon compliance with section 3 of this 2015 Act**, public body employee or volunteer res-
19 idential addresses, residential telephone numbers, personal cellular telephone numbers, personal
20 electronic mail addresses, driver license numbers, employer-issued identification card numbers,
21 emergency contact information, Social Security numbers, dates of birth and other telephone numbers
22 contained in personnel records maintained by the public body that is the employer or the recipient
23 of volunteer services. This exemption:

24 (a) Does not apply to the addresses, dates of birth and telephone numbers of employees or vol-
25 unteers who are elected officials, except that a judge or district attorney subject to election may

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 seek to exempt the judge's or district attorney's address or telephone number, or both, under the
2 terms of ORS 192.445;

3 **(b) Does not apply to employees or volunteers to the extent that the party seeking dis-**
4 **closure shows by clear and convincing evidence that the public interest requires disclosure**
5 **in a particular instance pursuant to section 3 of this 2015 Act;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (10) Public records or information described in this section, furnished by the public body ori-
44 ginally compiling, preparing or receiving them to any other public officer or public body in con-
45 nection with performance of the duties of the recipient, if the considerations originally giving rise

1 to the confidential or exempt nature of the public records or information remain applicable.

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

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

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

11 (a) The exemption does not apply to:

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

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

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

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

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

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

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

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

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

33 (F) Investment agreements and related documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (A) Personal financial statements.

20 (B) Financial statements of applicants.

21 (C) Customer lists.

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

27 (E) Production, sales and cost data.

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

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

32 (A) Personal financial statements.

33 (B) Financial statements of applicants.

34 (C) Customer lists.

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

40 (E) Production, sales and cost data.

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

43 (18) Records, reports or returns submitted by private concerns or enterprises required by law
44 to be submitted to or inspected by a governmental body to allow it to determine the amount of any
45 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such

1 information is in a form which would permit identification of the individual concern or enterprise.
2 Nothing in this subsection shall limit the use which can be made of such information for regulatory
3 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-
4 payer of the delinquency immediately by certified mail. However, in the event that the payment or
5 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the
6 public body shall disclose, upon the request of any person, the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (b) Credit reports.

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

41 (d) Market studies and analyses.

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

43 (f) Commitment letters.

44 (g) Project pro forma statements.

45 (h) Project cost certifications and cost data.

- 1 (i) Audits.
- 2 (j) Project tenant correspondence.
- 3 (k) Personal information about a tenant.
- 4 (L) Housing assistance payments.

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

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

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

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

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

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

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

- 45 (a) The document, material or other information is received upon notice or with an under-

1 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of
2 the document, material or other information; and

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

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

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

7 (a) Generation, storage or conveyance of:

8 (A) Electricity;

9 (B) Gas in liquefied or gaseous form;

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

11 (D) Petroleum products;

12 (E) Sewage; or

13 (F) Water.

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

15 (c) Data transmissions by whatever means provided.

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

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

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

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

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

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

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

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

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

44 (39) Information reported to the Oregon Health Authority under ORS 431.964, except as provided
45 in ORS 431.964 (2)(c) information disclosed by the authority under ORS 431.966 and any information

1 related to disclosures made by the authority under ORS 431.966, including information identifying
2 the recipient of the information.

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

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

8 **SECTION 2.** Section 3, chapter 26, Oregon Laws 2015 (Enrolled House Bill 3037), is amended
9 to read:

10 **Sec. 3. (1) Upon compliance with section 3 of this 2015 Act,** a public body that is the custo-
11 dian of or is otherwise in possession of the following information pertaining to a home care worker
12 as defined in ORS 410.600, an operator of a child care facility as defined in ORS 329A.250, an exempt
13 family child care provider as defined in ORS 329A.430 or an operator of an adult foster home as
14 defined in ORS 443.705 [*may not*] **shall** disclose that information in response to a request to inspect
15 public records under ORS 192.410 to 192.505:

- 16 (a) Residential address and telephone numbers;
- 17 (b) Personal electronic mail addresses and personal cellular telephone numbers;
- 18 (c) Social Security numbers and employer-issued identification card numbers; and
- 19 (d) Emergency contact information.

20 (2) Subsection (1) of this section does not apply to the Judicial Department or the Department
21 of Transportation or to any records in the custody of the Judicial Department or the Department
22 of Transportation.

23 **SECTION 3. (1) A request for the disclosure of records described in ORS 192.502 (3) or**
24 **section 3, chapter 26, Oregon Laws 2015 (Enrolled House Bill 3037), must include the following**
25 **information:**

- 26 (a) **The names of the individuals for whom personal information is sought;**
- 27 (b) **A statement describing the personal information being sought; and**
- 28 (c) **A statement that satisfies subsection (2) of this section.**

29 (2) **The party seeking disclosure shall show by clear and convincing evidence that the**
30 **public interest requires disclosure in a particular instance.**

31 (3) **Upon receiving a request described in subsection (1) of this section, a public body shall**
32 **forward a copy of the request and any materials submitted with the request to the individ-**
33 **uals whose personal information is being sought or to any representatives of each class of**
34 **persons whose personal information is the subject of the request.**

35 (4) **For purposes of subsection (3) of this section, the public body has sole discretion to**
36 **determine the classes of persons whose personal information is the subject of the request**
37 **and to identify the representatives for each class.**

38 (5) **The public body may not disclose information pursuant to the request for at least**
39 **seven days after forwarding copies of the request under subsection (3) of this section.**

40 (6) **The public body shall consider all information submitted under this section and shall**
41 **disclose requested information only if the public body determines that the party seeking**
42 **disclosure has demonstrated by clear and convincing evidence that the public interest re-**
43 **quires disclosure in a particular instance.**

44 **SECTION 4. (1) A public body or any official of the public body that determines that a**
45 **party requesting information under ORS 192.502 (3), section 3, chapter 26, Oregon Laws 2015**

1 (Enrolled House Bill 3037), or section 3 of this 2015 Act has demonstrated by clear and con-
2 vincing evidence that the public interest requires disclosure in a particular instance is im-
3 mune from civil or criminal liability associated with the disclosure.

4 (2) A public body that receives a request for disclosure of records under ORS 192.502 (3)
5 or section 3, chapter 26, Oregon Laws 2015 (Enrolled House Bill 3037), is entitled to recover
6 the cost of complying with section 3 of this 2015 Act without regard to whether the public
7 body determines that the party requesting disclosure has demonstrated by clear and con-
8 vincing evidence that the public interest requires disclosure in a particular instance.

9 **SECTION 5.** Sections 3 and 4 of this 2015 Act are added to and made a part of ORS 192.410
10 to 192.505.

11 **SECTION 6.** This 2015 Act being necessary for the immediate preservation of the public
12 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
13 on its passage.