

**A-Engrossed**  
**House Bill 4130**

Ordered by the House February 19  
Including House Amendments dated February 19

Sponsored by Representatives HOYLE, DAVIS, HACK, LIVELY, RAYFIELD, GILLIAM; Representative NEARMAN  
(Presession filed.)

**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 state agency public records policies, and public record retention schedules of state agencies and political subdivisions of this state, to require retention of public records for a minimum of two years.]*

Requires public bodies to provide standardized acknowledgment of receipt of requests for public records within five business days of receipt of request. Requires public bodies to provide records, or to assert exemption from required disclosure, within 30 days of receipt of request. **Provides exceptions where five-day and 30-day time periods do not apply.** Permits public body to exceed 30-day deadline if public body provides requester with estimated time that records will be disclosed or exemptions claimed. Permits requesters to petition for administrative or judicial review if public body fails to meet 30-day deadline.

*[Limits amounts public bodies with 10 or more full-time equivalent employees may charge as fees for producing public records.]*

Directs county clerks and city elections officers to give notice to Secretary of State regarding petitions for county or local initiative measures, and requires secretary to provide reasonable statewide notice of county or local initiative measures.

Appropriates moneys from General Fund to Secretary of State to implement statewide notice of county or local initiative measures.

*[Declares emergency, effective on passage.]*

**A BILL FOR AN ACT**

1  
2 Relating to transparency in governmental decision-making; creating new provisions; and amending  
3 ORS 147.421, 192.440, 192.450, 192.460, 192.465 and 802.183.

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

5  
6 **PUBLIC RECORDS PRODUCTION**

7  
8 **SECTION 1.** ORS 192.440 is amended to read:

9 192.440. (1) The custodian of any public record that a person has a right to inspect shall give  
10 the person, upon request:

11 (a) A copy of the public record if the public record is of a nature permitting copying; or

12 (b) A reasonable opportunity to inspect or copy the public record.

13 (2) If a person makes a written request to inspect a public record or to receive a copy of a  
14 public record, the public body receiving the request shall respond *[as soon as practicable and without*  
15 *unreasonable delay]* **within five business days of receipt of the request by a person identified**  
16 **by the public body in subsection (8)(a) of this section.** The public body may request additional  
17 information or clarification from the requester for the purpose of expediting the public body's re-  
18 sponse to the request. The response of the public body **must be in a standard form,** must ac-

**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 knowledge receipt of the request and must include one of the following:

2 (a) A statement that the public body does not possess, or is not the custodian of, the public re-  
3 cord.

4 (b) Copies of all requested public records for which the public body does not claim an exemption  
5 from disclosure under ORS 192.410 to 192.505.

6 (c) A statement that the public body is the custodian of at least some of the requested public  
7 records, an estimate of the time the public body requires before the public records may be inspected  
8 or copies of the records will be provided and an estimate of the fees that the requester must pay  
9 under subsection [(4)] (5) of this section as a condition of receiving the public records.

10 (d) A statement that the public body is the custodian of at least some of the requested public  
11 records and that an estimate of the time and fees for disclosure of the public records will be pro-  
12 vided by the public body within a reasonable time.

13 (e) A statement that the public body is uncertain whether the public body possesses the public  
14 record and that the public body will search for the record and make an appropriate response as soon  
15 as practicable.

16 (f) A statement that state or federal law prohibits the public body from acknowledging whether  
17 the record exists or that acknowledging whether the record exists would result in the loss of federal  
18 benefits or other sanction. A statement under this paragraph must include a citation to the state  
19 or federal law relied upon by the public body.

20 **(3) A public body must within 30 days of receipt of the request by a person identified by**  
21 **the public body under subsection (8)(a) of this section:**

22 **(a) Produce all requested public records within the possession or custody of the public**  
23 **body;**

24 **(b) Claim an exemption from disclosure under ORS 192.410 to 192.505 with respect to re-**  
25 **quested records and explain with specificity the reason the exemption applies to the re-**  
26 **quested records; or**

27 **(c) State that the public body is still gathering the requested records and provide an es-**  
28 **timated date when the requested records will be ready for inspection or delivery to the re-**  
29 **quester, or when the public body will be able to claim an exemption from disclosure of the**  
30 **requested records.**

31 [(3)] (4) If the public record is maintained in a machine readable or electronic form, the custo-  
32 dian shall provide a copy of the public record in the form requested, if available. If the public record  
33 is not available in the form requested, the custodian shall make the public record available in the  
34 form in which the custodian maintains the public record.

35 [(4)(a)] (5)(a) The public body may establish fees reasonably calculated to reimburse the public  
36 body for the public body's actual cost of making public records available, including costs for sum-  
37 marizing, compiling or tailoring the public records, either in organization or media, to meet the  
38 person's request.

39 (b) The public body may include in a fee established under paragraph (a) of this subsection the  
40 cost of time spent by an attorney for the public body in reviewing the public records, redacting  
41 material from the public records or segregating the public records into exempt and nonexempt re-  
42 cords. The public body may not include in a fee established under paragraph (a) of this subsection  
43 the cost of time spent by an attorney for the public body in determining the application of the pro-  
44 visions of ORS 192.410 to 192.505.

45 (c) The public body may not establish a fee greater than \$25 under this section unless the public

1 body first provides the requestor with a written notification of the estimated amount of the fee and  
2 the requestor confirms that the requestor wants the public body to proceed with making the public  
3 record available. **Any period of time after the public body has supplied a written estimate to**  
4 **a requester and before the requester confirms the requester's interest in proceeding with the**  
5 **request is not taken into account in determining the public body's compliance with deadlines**  
6 **established under subsection (3) of this section.**

7 (d) Notwithstanding paragraphs (a) to (c) of this subsection, when the public records are those  
8 filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees for fur-  
9 nishing copies, summaries or compilations of the public records are those established by the Secre-  
10 tary of State by rule, under ORS chapter 79 or ORS 80.100 to 80.130.

11 [(5)] (6) The custodian of any public record may furnish copies without charge or at a substan-  
12 tially reduced fee if the custodian determines that the waiver or reduction of fees is in the public  
13 interest because making the record available primarily benefits the general public.

14 [(6)] (7) A person who believes that there has been an unreasonable denial of a fee waiver or  
15 fee reduction may petition the Attorney General or the district attorney in the same manner as a  
16 person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The  
17 Attorney General, the district attorney and the court have the same authority in instances when a  
18 fee waiver or reduction is denied as it has when inspection of a public record is denied.

19 [(7)] (8) A public body shall make available to the public a written procedure for making public  
20 record requests that includes:

21 (a) The name of one or more persons to whom public record requests may be sent, with ad-  
22 dresses; and

23 (b) The amounts of and the manner of calculating fees that the public body charges for re-  
24 sponding to requests for public records.

25 [(8)] (9) This section does not apply to signatures of individuals submitted under ORS chapter  
26 247 for purposes of registering to vote as provided in ORS 247.973.

27 (10)(a) **The time periods established in subsections (2) and (3) of this section:**

28 (A) **In the case of a community college district, community college service district or**  
29 **public university in this state, do not apply for periods that students of a school of the re-**  
30 **spective district or university are not attending class;**

31 (B) **In the case of a school district or education service district, do not begin during pe-**  
32 **riods that a majority of students of the district are on break for five or more consecutive**  
33 **days; and**

34 (C) **Do not apply to any public body that does not have at least one full-time equivalent**  
35 **employee who reports to work during the week the request is received or during the week**  
36 **following the week the request is received.**

37 (b) **A public body that is not subject to the time periods established in subsections (2) and**  
38 **(3) of this section because of the provisions of paragraph (a) of this subsection must still,**  
39 **as soon as is practicable and without unreasonable delay, acknowledge receipt of the request**  
40 **and provide the requester with copies of the requested records, an opportunity to inspect**  
41 **requested records or an explanation for why the requested records will not be made available**  
42 **to the requester.**

43 **SECTION 2.** ORS 192.450 is amended to read:

44 192.450. (1) Subject to ORS 192.480 and subsection (4) of this section, any person denied the right  
45 to inspect or to receive a copy of any public record of a state agency, **or who has not received**

1 **copies of requested records or an opportunity to inspect requested records by the date pre-**  
2 **scribed in ORS 192.440 (3),** may petition the Attorney General to review the public record to de-  
3 termine if it may be withheld from public inspection **or to determine if the agency is being**  
4 **unreasonably slow in responding to the request.** Except as provided in subsection (5) of this  
5 section, the burden is on the agency to sustain its action. Except as provided in subsection (5) of  
6 this section, the Attorney General shall issue an order denying or granting the petition, or denying  
7 it in part and granting it in part, within seven days from the day the Attorney General receives the  
8 petition.

9 (2) If the Attorney General grants the petition and orders the state agency to disclose the re-  
10 cord, or if the Attorney General grants the petition in part and orders the state agency to disclose  
11 a portion of the record, the state agency shall comply with the order in full within seven days after  
12 issuance of the order, unless within the seven-day period it issues a notice of its intention to insti-  
13 tute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County or, as  
14 provided in subsection (6) of this section, in the circuit court of the county where the record is held.  
15 Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner  
16 at the address shown on the petition. The state agency shall institute the proceedings within seven  
17 days after it issues its notice of intention to do so. If the Attorney General denies the petition in  
18 whole or in part, or if the state agency continues to withhold the record or a part of it  
19 notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may  
20 institute such proceedings.

21 (3) The Attorney General shall serve as counsel for the state agency in a suit filed under sub-  
22 section (2) of this section if the suit arises out of a determination by the Attorney General that the  
23 public record should not be disclosed, or that a part of the public record should not be disclosed if  
24 the state agency has fully complied with the order of the Attorney General requiring disclosure of  
25 another part or parts of the public record, and in no other case. In any case in which the Attorney  
26 General is prohibited from serving as counsel for the state agency, the agency may retain special  
27 counsel.

28 (4) A person denied the right to inspect or to receive a copy of any public record of a health  
29 professional regulatory board, as defined in ORS 676.160, that contains information concerning a  
30 licensee or applicant, and petitioning the Attorney General to review the public record shall, on or  
31 before the date of filing the petition with the Attorney General, send a copy of the petition by first  
32 class mail to the health professional regulatory board. Not more than 48 hours after the board re-  
33 ceives a copy of the petition, the board shall send a copy of the petition by first class mail to the  
34 licensee or applicant who is the subject of any record for which disclosure is sought. When sending  
35 a copy of the petition to the licensee or applicant, the board shall include a notice informing the  
36 licensee or applicant that a written response by the licensee or applicant may be filed with the At-  
37 torney General not later than seven days after the date that the notice was sent by the board. Im-  
38 mediately upon receipt of any written response from the licensee or applicant, the Attorney General  
39 shall send a copy of the response to the petitioner by first class mail.

40 (5) The person seeking disclosure of a public record of a health professional regulatory board,  
41 as defined in ORS 676.160, that is confidential or exempt from disclosure under ORS 676.165 or  
42 676.175, shall have the burden of demonstrating to the Attorney General by clear and convincing  
43 evidence that the public interest in disclosure outweighs other interests in nondisclosure, including  
44 but not limited to the public interest in nondisclosure. The Attorney General shall issue an order  
45 denying or granting the petition, or denying or granting it in part, not later than the 15th day fol-

1 lowing the day that the Attorney General receives the petition. A copy of the Attorney General's  
 2 order granting a petition or part of a petition shall be served by first class mail on the health pro-  
 3 fessional regulatory board, the petitioner and the licensee or applicant who is the subject of any  
 4 record ordered to be disclosed. The health professional regulatory board shall not disclose any re-  
 5 cord prior to the seventh day following the service of the Attorney General's order on a licensee  
 6 or applicant entitled to receive notice under this subsection.

7 (6) If the Attorney General grants or denies the petition for a record of a health professional  
 8 regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or ap-  
 9 plicant, the board, a person denied the right to inspect or receive a copy of the record or the  
 10 licensee or applicant who is the subject of the record may institute proceedings for injunctive or  
 11 declaratory relief in the circuit court for the county where the public record is held. The party  
 12 seeking disclosure of the record shall have the burden of demonstrating by clear and convincing  
 13 evidence that the public interest in disclosure outweighs other interests in nondisclosure, including  
 14 but not limited to the public interest in nondisclosure.

15 (7) The Attorney General may comply with a request of a health professional regulatory board  
 16 to be represented by independent counsel in any proceeding under subsection (6) of this section.

17 **SECTION 3.** ORS 192.460 is amended to read:

18 192.460. (1) ORS 192.450 applies to the case of a person denied the right to inspect or to receive  
 19 a copy of any public record of a public body other than a state agency **or when a public body is**  
 20 **being unreasonably slow in responding to the request**, except that:

21 (a) The district attorney of the county in which the public body is located, or if it is located in  
 22 more than one county the district attorney of the county in which the administrative offices of the  
 23 public body are located, shall carry out the functions of the Attorney General;

24 (b) Any suit filed must be filed in the circuit court for the county described in paragraph (a) of  
 25 this subsection; and

26 (c) The district attorney may not serve as counsel for the public body, in the cases permitted  
 27 under ORS 192.450 (3), unless the district attorney ordinarily serves as counsel for the public body.

28 (2) Disclosure of a record to the district attorney in compliance with subsection (1) of this sec-  
 29 tion does not waive any privilege or claim of privilege regarding the record or its contents.

30 (3) Disclosure of a record or part of a record as ordered by the district attorney is a compelled  
 31 disclosure for purposes of ORS 40.285.

32 **SECTION 4.** ORS 192.465 is amended to read:

33 192.465. (1) The failure of the Attorney General or district attorney to issue an order under ORS  
 34 192.450 or 192.460 denying, granting, or denying in part and granting in part, a petition to require  
 35 disclosure within seven days from the day of receipt of the petition shall be treated as an order  
 36 denying the petition for the purpose of determining whether a person may institute proceedings for  
 37 injunctive or declaratory relief under ORS 192.450 or 192.460.

38 (2) The failure of an elected official to [*deny, grant, or deny in part and grant in part a request*  
 39 *to inspect or receive a copy of a public record within seven days from the day of receipt of the*  
 40 *request*] **issue a response described in ORS 192.440 (2) by the date prescribed in ORS 192.440**  
 41 **(2)** shall be treated as a denial of the request for the purpose of determining whether a person may  
 42 institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.

43 **(3) The failure of an elected official to provide a requester with copies of requested re-**  
 44 **ords or an opportunity to inspect requested records by the date prescribed in ORS 192.440**  
 45 **(3) shall be treated as a denial of the request for the purpose of determining whether a per-**

1 son may institute proceedings for injunctive or declaratory relief under ORS 192.450 or  
2 192.460.

3 (4) Subsections (2) and (3) of this section do not apply to a request to inspect or receive  
4 a copy of court records that is submitted to a judge.

5  
6 **NOTICE OF LOCAL INITIATIVES**

7  
8 **SECTION 5.** Section 6 of this 2016 Act is added to and made a part of ORS chapter 250.

9 **SECTION 6.** (1) Upon receiving a prospective petition for an initiative measure:

10 (a) Under ORS 250.165, the county clerk shall provide notice to the Secretary of State of  
11 the prospective petition for an initiative measure.

12 (b) Under ORS 250.265, the city elections officer shall provide notice to the Secretary of  
13 State of the prospective petition for an initiative measure.

14 (2) Upon receipt of notice of a prospective petition for an initiative measure under sub-  
15 section (1) of this section, the Secretary of State shall provide reasonable statewide notice  
16 of the prospective petition for an initiative measure.

17 (3) Upon determining whether a prospective petition for an initiative measure:

18 (a) Meets the requirements of Article IV, section 1 (2)(d), and Article VI, section 10, of  
19 the Oregon Constitution, the county clerk shall provide notice to the Secretary of State of  
20 the clerk's determination.

21 (b) Meets the requirements of Article IV, section 1 (2)(d) and (5), of the Oregon Consti-  
22 tution, the city elections officer shall provide notice to the Secretary of State of the elections  
23 officer's determination.

24 (4) The Secretary of State shall provide reasonable statewide notice of determinations  
25 made under subsection (3) of this section.

26  
27 **APPROPRIATION**

28  
29 **SECTION 7.** In addition to and not in lieu of any other appropriation, there is appropri-  
30 ated to the Secretary of State, for the biennium ending June 30, 2017, out of the General  
31 Fund, the amount of \$\_\_\_\_\_ for the purpose of implementing the provisions of section 6  
32 of this 2016 Act.

33  
34 **CONFORMING AMENDMENTS**

35  
36 **SECTION 8.** ORS 147.421 is amended to read:

37 147.421. (1) If a public body is the custodian of any of the following information, upon the re-  
38 quest of the victim, the public body shall provide to the victim any of the following information of  
39 which it is the custodian and that is about the defendant or convicted criminal:

40 (a) The conviction and sentence;

41 (b) Criminal history;

42 (c) Imprisonment; and

43 (d) Future release from physical custody.

44 (2) A public body, in its discretion, may provide the requested information by furnishing the  
45 victim with copies of public records. The public body may charge the victim its actual cost for

1 making public records available as provided in ORS 192.440 [(4)] (5).

2 (3) As used in this section:

3 (a) "Criminal history" means a description of the prior arrests, convictions and sentences of the  
4 person.

5 (b) "Future release" means the projected or scheduled date of release of the person from con-  
6 finement, the name and location of the correctional facility from which the person is to be released  
7 and the community where the person is scheduled to reside upon release.

8 (c) "Imprisonment" means the name and location of the correctional facility in which the person  
9 is confined.

10 (d) "Public body" has the meaning given that term in ORS 192.410.

11 **SECTION 9.** ORS 802.183 is amended to read:

12 802.183. (1) The Department of Transportation may establish fees reasonably calculated to re-  
13 imburse it for its actual cost in making personal information available to a person or government  
14 agency authorized under ORS 802.179 to obtain the information. Fees established under this sub-  
15 section are subject to the provisions of ORS 192.440 [(4) to (6)] (5) to (7).

16 (2) The department may adopt rules specifying conditions that must be met by a person or gov-  
17 ernment agency requesting personal information under ORS 802.179. Such conditions may include  
18 but need not be limited to:

19 (a) Providing reasonable assurance of the identity of the requester;

20 (b) Providing reasonable assurance of the uses to which the personal information will be put, if  
21 applicable;

22 (c) Showing that the individual whose personal information is to be disclosed has given permis-  
23 sion for the disclosure, if permission is required; and

24 (d) Submitting a written request for the personal information in a form prescribed by the de-  
25 partment.

26  
27 **CAPTIONS**

28  
29 **SECTION 10.** The unit captions used in this 2016 Act are provided only for the conven-  
30 ience of the reader and do not become part of the statutory law of this state or express any  
31 legislative intent in the enactment of this 2016 Act.