

At the request of Oregon Health Authority

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2836**

1 In line 2 of the printed bill, after “health” insert “; amending ORS 161.336,  
2 161.390, 179.505 and 192.502; and declaring an emergency”.

3 Delete lines 4 through 16 and insert:

4 **“SECTION 1.** ORS 161.336 is amended to read:

5 “161.336. (1)(a) When a person is conditionally released under ORS 161.315  
6 to 161.351, the person is subject to those supervisory orders of the Psychiat-  
7 ric Security Review Board as are in the best interests of justice, the pro-  
8 tection of society and the welfare of the person.

9 “(b) An order of conditional release entered by the board or the Oregon  
10 Health Authority may designate any person or state, county or local agency  
11 capable of supervising the person upon release, subject to the conditions  
12 described in the order of conditional release.

13 “(c) Prior to the designation, the agency conducting the hearing shall  
14 notify the person or state, county or local agency to whom conditional re-  
15 lease is contemplated and provide the person or state, county or local agency  
16 an opportunity to be heard.

17 “(d) After receiving an order entered under this section, the person or  
18 state, county or local agency designated in the order shall assume super-  
19 vision of the person in accordance with the conditions described in the order  
20 and any modifications of the conditions ordered by the board.

21 “(2) Conditions of release contained in orders entered under this section

1 may be modified from time to time and conditional releases may be termi-  
2 nated as provided in ORS 161.351.

3 “(3)(a) As a condition of release, the person may be required to report to  
4 any state or local mental health facility for evaluation. Whenever medical,  
5 psychiatric or psychological treatment is recommended, the order may re-  
6 quire the person, as a condition of release, to cooperate with and accept the  
7 treatment from the facility.

8 “(b) The facility to which the person has been referred for evaluation  
9 shall perform the evaluation and submit a written report of its findings to  
10 the board. If the facility finds that treatment of the person is appropriate,  
11 it shall include its recommendations for treatment in the report to the board.

12 “(c) Whenever treatment is provided by the facility, it shall furnish re-  
13 ports to the board on a regular basis concerning the progress of the person.

14 “(d) Copies of all reports submitted to the board pursuant to this section  
15 shall be furnished to the person and the person’s counsel. The confidentiality  
16 of **health information contained in these reports is subject to ORS**  
17 **179.505 and 192.553 to 192.581, the federal Health Insurance Portability**  
18 **and Accountability Act of 1996 (P.L. 104-191) and regulations adopted**  
19 **under it, including 45 C.F.R. parts 160 and 164, and federal alcohol and**  
20 **drug treatment confidentiality laws and regulations, including 42**  
21 **C.F.R. part 2. The confidentiality of information, other than health**  
22 **information, contained in these reports is determined pursuant to ORS**  
23 **192.501 to 192.505.**

24 “(e) The facility shall comply with the conditional release order and any  
25 modifications of the conditions ordered by the board.

26 “(4)(a) If at any time while the person is under the jurisdiction of the  
27 board it appears to the board or its chairperson that the person has violated  
28 the terms of the conditional release or that the mental health of the indi-  
29 vidual has changed, the board or its chairperson may order the person re-  
30 turned for evaluation or treatment to a state hospital or, if the person is

1 under 18 years of age, to a secure intensive community inpatient facility. A  
2 written order of the board, or its chairperson on behalf of the board, is suf-  
3 ficient warrant for any law enforcement officer to take into custody such  
4 person and transport the person accordingly. A sheriff, municipal police of-  
5 ficer, constable, parole and probation officer, prison official or other peace  
6 officer shall execute the order, and the person shall be returned as soon as  
7 practicable to the state hospital or secure intensive community inpatient  
8 facility designated in the order.

9 “(b) The community mental health program director, the director of the  
10 facility providing treatment to a person on conditional release, any peace  
11 officer or any person responsible for the supervision of a person on condi-  
12 tional release may take a person on conditional release into custody or re-  
13 quest that the person be taken into custody if there is reasonable cause to  
14 believe the person is a substantial danger to others because of mental disease  
15 or defect and that the person is in need of immediate care, custody or  
16 treatment. Any person taken into custody pursuant to this subsection shall  
17 be transported as soon as practicable to a state hospital or, if the person is  
18 under 18 years of age, to a secure intensive community inpatient facility.

19 “(c) Within 20 days following the return of the person to a state hospital  
20 or secure intensive community inpatient facility under this subsection, the  
21 agency having jurisdiction over the person shall conduct a hearing. The  
22 agency shall provide notice of the hearing to the person, the attorney re-  
23 presenting the person and the Attorney General. The state must prove by a  
24 preponderance of the evidence the person’s unfitness for conditional release.  
25 The hearing shall be conducted in accordance with ORS 161.346.

26 “(5)(a) Any person conditionally released under this section may apply to  
27 the board for discharge from or modification of an order of conditional re-  
28 lease on the ground that the person is no longer affected by mental disease  
29 or defect or, if still so affected, no longer presents a substantial danger to  
30 others and no longer requires supervision, medication, care or treatment.

1 Notice of the hearing on an application for discharge or modification of an  
2 order of conditional release shall be made to the Attorney General. The ap-  
3 plicant, at the hearing pursuant to this subsection, must prove by a prepon-  
4 derance of the evidence the applicant's fitness for discharge or modification  
5 of the order of conditional release. Applications by the person for discharge  
6 or modification of conditional release may not be filed more often than once  
7 every six months.

8 “(b) Upon application by any person or agency responsible for supervision  
9 or treatment pursuant to an order of conditional release, the board shall  
10 conduct a hearing to determine if the conditions of release shall be contin-  
11 ued, modified or terminated. The application shall be accompanied by a re-  
12 port setting forth the facts supporting the application.

13 “(6) A person who has spent five years on conditional release shall be  
14 brought before the board for hearing within 30 days before the expiration  
15 of the five-year period. The board shall review the person's status and de-  
16 termine whether the person should be discharged from the jurisdiction of the  
17 board.

18 **“SECTION 2.** ORS 161.390 is amended to read:

19 “161.390. (1) The Oregon Health Authority shall adopt rules for the as-  
20 signment of persons to state mental hospitals or secure intensive community  
21 inpatient facilities under ORS 161.315 to 161.351, 161.365 and 161.370 and for  
22 establishing standards for evaluation and treatment of persons committed to  
23 a state hospital or a secure intensive community inpatient facility or ordered  
24 to a community mental health program under ORS 161.315 to 161.351.

25 “(2) When the Psychiatric Security Review Board or the authority re-  
26 quires the preparation of a predischarge or preconditional release plan before  
27 a hearing or as a condition of granting discharge or conditional release for  
28 a person committed under ORS 161.315 to 161.351 to a state hospital or a  
29 secure intensive community inpatient facility for custody, care and treat-  
30 ment, the authority is responsible for and shall prepare the plan.

1 “(3) In carrying out a conditional release plan prepared under subsection  
2 (2) of this section, the authority may contract with a community mental  
3 health program, other public agency or private corporation or an individual  
4 to provide supervision and treatment for the conditionally released person.

5 “(4) Before the authority conducts a hearing under ORS 161.315 to 161.351,  
6 the authority shall notify the board. The board may provide the authority  
7 with conditions of release that the board determines are advisable. If the  
8 authority orders the person conditionally released, the authority shall in-  
9 clude the conditions of release in the order.

10 “(5)(a) The board and the authority shall maintain and keep current the  
11 medical, social and criminal history of all persons committed to their re-  
12 spective jurisdiction. The confidentiality of **medical** records maintained by  
13 the board shall be determined pursuant to **ORS 179.505 and 192.553 to**  
14 **192.581, the federal Health Insurance Portability and Accountability**  
15 **Act of 1996 (P.L. 104-191) and regulations adopted under it, including**  
16 **45 C.F.R. parts 160 and 164, and federal alcohol and drug treatment**  
17 **confidentiality laws and regulations, including 42 C.F.R. part 2. The**  
18 **confidentiality of records, other than medical records, shall be deter-**  
19 **mined pursuant to ORS 192.501 to 192.505.**

20 “(b) **The testimony of treatment providers at agency hearings does**  
21 **not waive the confidentiality of or protection from disclosure of re-**  
22 **ords under law.**

23 “(6) The evidentiary phase of a hearing conducted by the board or the  
24 authority under ORS 161.315 to 161.351 is not a deliberation for purposes of  
25 ORS 192.690.

26 “**SECTION 3.** ORS 179.505 is amended to read:

27 “179.505. (1) As used in this section:

28 “(a) ‘Disclosure’ means the release of, transfer of, provision of access to  
29 or divulgence in any other manner of information outside the health care  
30 services provider holding the information.

1 “(b) ‘Health care services provider’ means:

2 “(A) Medical personnel or other staff employed by or under contract with  
3 a public provider to provide health care or maintain written accounts of  
4 health care provided to individuals; or

5 “(B) Units, programs or services designated, operated or maintained by a  
6 public provider to provide health care or maintain written accounts of health  
7 care provided to individuals.

8 “(c) ‘Individually identifiable health information’ means any health in-  
9 formation that is:

10 “(A) Created or received by a health care services provider; and

11 “(B) Identifiable to an individual, including demographic information that  
12 identifies the individual, or for which there is a reasonable basis to believe  
13 the information can be used to identify an individual, and that relates to:

14 “(i) The past, present or future physical or mental health or condition of  
15 an individual;

16 “(ii) The provision of health care to an individual; or

17 “(iii) The past, present or future payment for the provision of health care  
18 to an individual.

19 “(d) ‘Personal representative’ includes but is not limited to:

20 “(A) A person appointed as a guardian under ORS 125.305, 419B.372,  
21 419C.481 or 419C.555 with authority to make medical and health care deci-  
22 sions;

23 “(B) A person appointed as a health care representative under ORS  
24 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make  
25 health care decisions or mental health treatment decisions; and

26 “(C) A person appointed as a personal representative under ORS chapter  
27 113.

28 “(e) ‘Psychotherapy notes’ means notes recorded in any medium:

29 “(A) By a mental health professional, in the performance of the official  
30 duties of the mental health professional;

1 “(B) Documenting or analyzing the contents of conversation during a  
2 counseling session; and

3 “(C) That are maintained separately from the rest of the individual’s re-  
4 cord.

5 “(f) ‘Psychotherapy notes’ does not mean notes documenting:

6 “(A) Medication prescription and monitoring;

7 “(B) Counseling session start and stop times;

8 “(C) Modalities and frequencies of treatment furnished;

9 “(D) Results of clinical tests; or

10 “(E) Any summary of the following items:

11 “(i) Diagnosis;

12 “(ii) Functional status;

13 “(iii) Treatment plan;

14 “(iv) Symptoms;

15 “(v) Prognosis; or

16 “(vi) Progress to date.

17 “(g) ‘Public provider’ means:

18 “(A) The Oregon State Hospital campuses;

19 “(B) Department of Corrections institutions as defined in ORS 421.005;

20 “(C) A contractor of the Department of Corrections or the Oregon Health  
21 Authority that provides health care to individuals residing in a state insti-  
22 tution operated by the agencies;

23 “(D) A community mental health program or community developmental  
24 disabilities program as described in ORS 430.610 to 430.695 and the public  
25 and private entities with which it contracts to provide mental health or de-  
26 velopmental disabilities programs or services;

27 “(E) A program or service provided under ORS 431.001 to 431.550 and  
28 431.990;

29 “(F) A program or service established or maintained under ORS 430.630  
30 or 430.664;

1 “(G) A program or facility providing an organized full-day or part-day  
2 program of treatment that is licensed, approved, established, maintained or  
3 operated by or contracted with the Oregon Health Authority for alcoholism,  
4 drug addiction or mental or emotional disturbance;

5 “(H) A program or service providing treatment by appointment that is  
6 licensed, approved, established, maintained or operated by or contracted with  
7 the authority for alcoholism, drug addiction or mental or emotional disturb-  
8 ance; or

9 “(I) The impaired health professional program established under ORS  
10 676.190.

11 “(h) ‘Written account’ means records containing only individually iden-  
12 tifiable health information.

13 “(2) Except as provided in subsections (3), (4), (6), (7), (8), (9), (11), (12),  
14 (14), (15), (16), (17) and (18) of this section or unless otherwise permitted or  
15 required by state or federal law or by order of the court, written accounts  
16 of the individuals served by any health care services provider maintained in  
17 or by the health care services provider by the officers or employees thereof  
18 who are authorized to maintain written accounts within the official scope  
19 of their duties are not subject to access and may not be disclosed. This sub-  
20 section applies to written accounts maintained in or by facilities of the De-  
21 partment of Corrections only to the extent that the written accounts concern  
22 the medical, dental or psychiatric treatment as patients of those under the  
23 jurisdiction of the Department of Corrections.

24 “(3) If the individual or a personal representative of the individual pro-  
25 vides an authorization, the content of any written account referred to in  
26 subsection (2) of this section must be disclosed accordingly, if the authori-  
27 zation is in writing and is signed and dated by the individual or the personal  
28 representative of the individual and sets forth with specificity the following:

29 “(a) Name of the health care services provider authorized to make the  
30 disclosure, except when the authorization is provided by recipients of or ap-



1 plicants for public assistance or medical assistance, as defined in ORS  
2 414.025, to a governmental entity for purposes of determining eligibility for  
3 benefits or investigating for fraud;

4 “(b) Name or title of the persons or organizations to which the informa-  
5 tion is to be disclosed or that information may be disclosed to the public;

6 “(c) Name of the individual;

7 “(d) Extent or nature of the information to be disclosed; and

8 “(e) Statement that the authorization is subject to revocation at any time  
9 except to the extent that action has been taken in reliance thereon, and a  
10 specification of the date, event or condition upon which it expires without  
11 express revocation. However, a revocation of an authorization is not valid  
12 with respect to inspection or records necessary to validate expenditures by  
13 or on behalf of governmental entities.

14 “(4) The content of any written account referred to in subsection (2) of  
15 this section may be disclosed without an authorization:

16 “(a) To any person to the extent necessary to meet a medical emergency.

17 “(b) At the discretion of the responsible officer of the health care services  
18 provider, which in the case of any Oregon Health Authority facility or  
19 community mental health program is the Director of the Oregon Health Au-  
20 thority, to persons engaged in scientific research, program evaluation, peer  
21 review and fiscal audits. However, individual identities may not be disclosed  
22 to such persons, except when the disclosure is essential to the research,  
23 evaluation, review or audit and is consistent with state and federal law.

24 “(c) To governmental agencies when necessary to secure compensation for  
25 services rendered in the treatment of the individual.

26 “(5) When an individual’s identity is disclosed under subsection (4) of this  
27 section, a health care services provider shall prepare, and include in the  
28 permanent records of the health care services provider, a written statement  
29 indicating the reasons for the disclosure, the written accounts disclosed and  
30 the recipients of the disclosure.

1       “(6) The content of any written account referred to in subsection (2) of  
2 this section and held by a health care services provider currently engaged  
3 in the treatment of an individual may be disclosed to officers or employees  
4 of that provider, its agents or cooperating health care services providers who  
5 are currently acting within the official scope of their duties to evaluate  
6 treatment programs, to diagnose or treat or to assist in diagnosing or treat-  
7 ing an individual when the written account is to be used in the course of  
8 diagnosing or treating the individual. Nothing in this subsection prevents  
9 the transfer of written accounts referred to in subsection (2) of this section  
10 among health care services providers, the Department of Corrections, the  
11 Oregon Health Authority or a local correctional facility when the transfer  
12 is necessary or beneficial to the treatment of an individual.

13       “(7) When an action, suit, claim, arbitration or proceeding is brought  
14 under ORS 34.105 to 34.240 or 34.310 to 34.730 and involves a claim of con-  
15 stitutionally inadequate medical care, diagnosis or treatment, or is brought  
16 under ORS 30.260 to 30.300 and involves the Department of Corrections or  
17 an institution operated by the department, nothing in this section prohibits  
18 the disclosure of any written account referred to in subsection (2) of this  
19 section to the Department of Justice, Oregon Department of Administrative  
20 Services, or their agents, upon request, or the subsequent disclosure to a  
21 court, administrative hearings officer, arbitrator or other administrative de-  
22 cision maker.

23       “(8)(a) When an action, suit, claim, arbitration or proceeding involves the  
24 Oregon Health Authority or an institution operated by the authority, noth-  
25 ing in this section prohibits the disclosure of any written account referred  
26 to in subsection (2) of this section to the Department of Justice, Oregon  
27 Department of Administrative Services, or their agents.

28       “(b) Disclosure of information in an action, suit, claim, nonlabor arbi-  
29 tration or proceeding is limited by the relevancy restrictions of ORS 40.010  
30 to 40.585, 183.710 to 183.725, 183.745 and 183.750 and ORS chapter 183. Only

1 written accounts of a plaintiff, claimant or petitioner shall be disclosed un-  
2 der this paragraph.

3 “(c) Disclosure of information as part of a labor arbitration or proceeding  
4 to support a personnel action taken against staff is limited to written ac-  
5 counts directly relating to alleged action or inaction by staff for which the  
6 personnel action was imposed.

7 “(9)(a) The copy of any written account referred to in subsection (2) of  
8 this section, upon written request of the individual or a personal represen-  
9 tative of the individual, shall be disclosed to the individual or the personal  
10 representative of the individual within a reasonable time not to exceed five  
11 working days. The individual or the personal representative of the individual  
12 shall have the right to timely access to any written accounts.

13 “(b) If the disclosure of psychiatric or psychological information con-  
14 tained in the written account would constitute an immediate and grave det-  
15 riment to the treatment of the individual, disclosure may be denied, if  
16 medically contraindicated by the treating physician or a licensed health care  
17 professional in the written account of the individual.

18 “(c) The Department of Corrections may withhold psychiatric or psycho-  
19 logical information if:

20 “(A) The information relates to an individual other than the individual  
21 seeking it.

22 “(B) Disclosure of the information would constitute a danger to another  
23 individual.

24 “(C) Disclosure of the information would compromise the privacy of a  
25 confidential source.

26 “(d) However, a written statement of the denial under paragraph (c) of  
27 this subsection and the reasons therefor must be entered in the written ac-  
28 count.

29 “(10) A health care services provider may require a person requesting  
30 disclosure of the contents of a written account under this section to reim-

1 burse the provider for the reasonable costs incurred in searching files, ab-  
2 stracting if requested and copying if requested. However, an individual or a  
3 personal representative of the individual may not be denied access to written  
4 accounts concerning the individual because of inability to pay.

5 “(11) A written account referred to in subsection (2) of this section may  
6 not be used to initiate or substantiate any criminal, civil, administrative,  
7 legislative or other proceedings conducted by federal, state or local authori-  
8 ties against the individual or to conduct any investigations of the individual.  
9 If the individual, as a party to an action, suit or other judicial proceeding,  
10 voluntarily produces evidence regarding an issue to which a written account  
11 referred to in subsection (2) of this section would be relevant, the contents  
12 of that written account may be disclosed for use in the proceeding.

13 “(12) Information obtained in the course of diagnosis, evaluation or  
14 treatment of an individual that, in the professional judgment of the health  
15 care services provider, indicates a clear and immediate danger to others or  
16 to society may be reported to the appropriate authority. A decision not to  
17 disclose information under this subsection does not subject the provider to  
18 any civil liability. Nothing in this subsection may be construed to alter the  
19 provisions of ORS 146.750, 146.760, 419B.010, 419B.015, 419B.020, 419B.025,  
20 419B.030, 419B.035, 419B.040 and 419B.045.

21 “(13) The prohibitions of this section apply to written accounts concern-  
22 ing any individual who has been treated by any health care services provider  
23 irrespective of whether or when the individual ceases to receive treatment.

24 “(14) Persons other than the individual or the personal representative of  
25 the individual who are granted access under this section **or any other law**  
26 to the contents of a written account referred to in subsection (2) of this  
27 section may not disclose the contents of the written account to any other  
28 person except in accordance with the provisions of this section.

29 “(15) Nothing in this section prevents the Department of Human Services  
30 or the Oregon Health Authority from disclosing the contents of written ac-

1 counts in its possession to individuals or agencies with whom children in its  
2 custody are placed.

3 “(16) The system described in ORS 192.517 (1) shall have access to records,  
4 as defined in ORS 192.515, as provided in ORS 192.517.

5 “(17)(a) Except as provided in paragraph (b) of this subsection, a health  
6 care services provider must obtain an authorization from an individual or a  
7 personal representative of the individual to disclose psychotherapy notes.

8 “(b) A health care services provider may use or disclose psychotherapy  
9 notes without obtaining an authorization from the individual or a personal  
10 representative of the individual to carry out the following treatment, pay-  
11 ment and health care operations:

12 “(A) Use by the originator of the psychotherapy notes for treatment;

13 “(B) Disclosure by the health care services provider for its own training  
14 program in which students, trainees or practitioners in mental health learn  
15 under supervision to practice or improve their skills in group, joint, family  
16 or individual counseling; or

17 “(C) Disclosure by the health care services provider to defend itself in a  
18 legal action or other proceeding brought by the individual or a personal  
19 representative of the individual.

20 “(c) An authorization for the disclosure of psychotherapy notes may not  
21 be combined with an authorization for a disclosure of any other individually  
22 identifiable health information, but may be combined with another authori-  
23 zation for a disclosure of psychotherapy notes.

24 “(18) A health care services provider may disclose information contained  
25 in a written account if the conditions of ORS 192.567 (1) to (5) are met.

26 **“SECTION 4.** ORS 192.502 is amended to read:

27 “192.502. The following public records are exempt from disclosure under  
28 ORS 192.410 to 192.505:

29 “(1) Communications within a public body or between public bodies of an  
30 advisory nature to the extent that they cover other than purely factual ma-

1 terials and are preliminary to any final agency determination of policy or  
2 action. This exemption shall not apply unless the public body shows that in  
3 the particular instance the public interest in encouraging frank communi-  
4 cation between officials and employees of public bodies clearly outweighs the  
5 public interest in disclosure.

6 “(2) Information of a personal nature such as but not limited to that kept  
7 in a personal, medical or similar file, if public disclosure would constitute  
8 an unreasonable invasion of privacy, unless the public interest by clear and  
9 convincing evidence requires disclosure in the particular instance. The party  
10 seeking disclosure shall have the burden of showing that public disclosure  
11 would not constitute an unreasonable invasion of privacy.

12 “(3) Upon compliance with ORS 192.437, public body employee or volun-  
13 teer residential addresses, residential telephone numbers, personal cellular  
14 telephone numbers, personal electronic mail addresses, driver license num-  
15 bers, employer-issued identification card numbers, emergency contact infor-  
16 mation, Social Security numbers, dates of birth and other telephone numbers  
17 contained in personnel records maintained by the public body that is the  
18 employer or the recipient of volunteer services. This exemption:

19 “(a) Does not apply to the addresses, dates of birth and telephone numbers  
20 of employees or volunteers who are elected officials, except that a judge or  
21 district attorney subject to election may seek to exempt the judge’s or dis-  
22 trict attorney’s address or telephone number, or both, under the terms of  
23 ORS 192.445;

24 “(b) Does not apply to employees or volunteers to the extent that the  
25 party seeking disclosure shows by clear and convincing evidence that the  
26 public interest requires disclosure in a particular instance pursuant to ORS  
27 192.437;

28 “(c) Does not apply to a substitute teacher as defined in ORS 342.815  
29 when requested by a professional education association of which the substi-  
30 tute teacher may be a member; and

1 “(d) Does not relieve a public employer of any duty under ORS 243.650 to  
2 243.782.

3 “(4) Information submitted to a public body in confidence and not other-  
4 wise required by law to be submitted, where such information should rea-  
5 sonably be considered confidential, the public body has obliged itself in good  
6 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  
9 the State Board of Parole and Post-Prison Supervision, to the extent that  
10 disclosure would interfere with the rehabilitation of a person in custody of  
11 the department or substantially prejudice or prevent the carrying out of the  
12 functions of the department, if the public interest in confidentiality clearly  
13 outweighs the public interest in disclosure.

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

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

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

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

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

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

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

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

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

8       “(E) The holder of the privilege under ORS 40.225 has made or authorized  
9 a public statement characterizing or partially disclosing the factual infor-  
10 mation compiled by or at the attorney’s direction.

11       “(10) Public records or information described in this section, furnished  
12 by the public body originally compiling, preparing or receiving them to any  
13 other public officer or public body in connection with performance of the  
14 duties of the recipient, if the considerations originally giving rise to the  
15 confidential or exempt nature of the public records or information remain  
16 applicable.

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

19       “(12) Employee and retiree address, telephone number and other nonfi-  
20 nancial membership records and employee financial records maintained by  
21 the Public Employees Retirement System pursuant to ORS chapters 238 and  
22 238A.

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

28       “(a) The exemption does not apply to:

29       “(A) Information in investment records solely related to the amount paid  
30 directly into an investment by, or returned from the investment directly to,



1 the treasurer or council; or

2 “(B) The identity of the entity to which the amount was paid directly or  
3 from which the amount was received directly.

4 “(b) An investment in a publicly traded investment is no longer active  
5 when acquisition, exchange or liquidation of the investment has been con-  
6 cluded.

7 “(14)(a) Records of or submitted to the State Treasurer, the Oregon In-  
8 vestment Council, the Oregon Growth Board or the agents of the treasurer,  
9 council or board relating to actual or proposed investments under ORS  
10 chapter 293 or 348 in a privately placed investment fund or a private asset  
11 including but not limited to records regarding the solicitation, acquisition,  
12 deployment, exchange or liquidation of the investments including but not  
13 limited to:

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

16 “(B) Financial statements of an investment fund, an asset ownership or  
17 their respective investment vehicles.

18 “(C) Meeting materials of an investment fund, an asset ownership or their  
19 respective investment vehicles.

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

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

25 “(F) Investment agreements and related documents.

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

27 “(A) The name, address and vintage year of each privately placed invest-  
28 ment fund.

29 “(B) The dollar amount of the commitment made to each privately placed  
30 investment fund since inception of the fund.

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

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

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

11       “(F) The net internal rate of return of each privately placed investment  
12 fund since inception of the fund.

13       “(G) The investment multiple of each privately placed investment fund  
14 since inception of the fund.

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

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

19       “(15) The monthly reports prepared and submitted under ORS 293.761 and  
20 293.766 concerning the Public Employees Retirement Fund and the Industrial  
21 Accident Fund may be uniformly treated as exempt from disclosure for a  
22 period of up to 90 days after the end of the calendar quarter.

23       “(16) Reports of unclaimed property filed by the holders of such property  
24 to the extent permitted by ORS 98.352.

25       “(17)(a) The following records, communications and information submitted  
26 to the Oregon Business Development Commission, the Oregon Business De-  
27 velopment Department, the State Department of Agriculture, the Oregon  
28 Growth Board, the Port of Portland or other ports as defined in ORS 777.005,  
29 or a county or city governing body and any board, department, commission,  
30 council or agency thereof, by applicants for investment funds, grants, loans,

1 services or economic development moneys, support or assistance including,  
2 but not limited to, those described in ORS 285A.224:

3 “(A) Personal financial statements.

4 “(B) Financial statements of applicants.

5 “(C) Customer lists.

6 “(D) Information of an applicant pertaining to litigation to which the  
7 applicant is a party if the complaint has been filed, or if the complaint has  
8 not been filed, if the applicant shows that such litigation is reasonably likely  
9 to occur; this exemption does not apply to litigation which has been con-  
10 cluded, and nothing in this subparagraph shall limit any right or opportunity  
11 granted by discovery or deposition statutes to a party to litigation or po-  
12 tential litigation.

13 “(E) Production, sales and cost data.

14 “(F) Marketing strategy information that relates to applicant’s plan to  
15 address specific markets and applicant’s strategy regarding specific compet-  
16 itors.

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

20 “(A) Personal financial statements.

21 “(B) Financial statements of applicants.

22 “(C) Customer lists.

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

30 “(E) Production, sales and cost data.

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

4 “(18) Records, reports or returns submitted by private concerns or enter-  
5 prises required by law to be submitted to or inspected by a governmental  
6 body to allow it to determine the amount of any transient lodging tax pay-  
7 able and the amounts of such tax payable or paid, to the extent that such  
8 information is in a form which would permit identification of the individual  
9 concern or enterprise. Nothing in this subsection shall limit the use which  
10 can be made of such information for regulatory purposes or its admissibility  
11 in any enforcement proceedings. The public body shall notify the taxpayer  
12 of the delinquency immediately by certified mail. However, in the event that  
13 the payment or delivery of transient lodging taxes otherwise due to a public  
14 body is delinquent by over 60 days, the public body shall disclose, upon the  
15 request of any person, the following information:

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

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

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

20 “(19) All information supplied by a person under ORS 151.485 for the  
21 purpose of requesting appointed counsel, and all information supplied to the  
22 court from whatever source for the purpose of verifying the financial eligi-  
23 bility of a person pursuant to ORS 151.485.

24 “(20) Workers’ compensation claim records of the Department of Con-  
25 sumer and Business Services, except in accordance with rules adopted by the  
26 Director of the Department of Consumer and Business Services, in any of the  
27 following circumstances:

28 “(a) When necessary for insurers, self-insured employers and third party  
29 claim administrators to process workers’ compensation claims.

30 “(b) When necessary for the director, other governmental agencies of this

1 state or the United States to carry out their duties, functions or powers.

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

5 “(d) When a worker or the worker’s representative requests review of the  
6 worker’s claim record.

7 “(21) Sensitive business records or financial or commercial information  
8 of the Oregon Health and Science University that is not customarily pro-  
9 vided to business competitors.

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

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

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

15 “(b) The name of a library patron together with the address or telephone  
16 number of the patron; and

17 “(c) The electronic mail address of a patron.

18 “(24) The following records, communications and information obtained by  
19 the Housing and Community Services Department in connection with the  
20 department’s monitoring or administration of financial assistance or of  
21 housing or other developments:

22 “(a) Personal and corporate financial statements and information, in-  
23 cluding tax returns.

24 “(b) Credit reports.

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

29 “(d) Market studies and analyses.

30 “(e) Articles of incorporation, partnership agreements and operating

1 agreements.

2 “(f) Commitment letters.

3 “(g) Project pro forma statements.

4 “(h) Project cost certifications and cost data.

5 “(i) Audits.

6 “(j) Project tenant correspondence.

7 “(k) Personal information about a tenant.

8 “(L) Housing assistance payments.

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

13 “(26) Sensitive business, commercial or financial information furnished to  
14 or developed by a public body engaged in the business of providing electricity  
15 or electricity services, if the information is directly related to a transaction  
16 described in ORS 261.348, or if the information is directly related to a bid,  
17 proposal or negotiations for the sale or purchase of electricity or electricity  
18 services, and disclosure of the information would cause a competitive disad-  
19 vantage for the public body or its retail electricity customers. This sub-  
20 section does not apply to cost-of-service studies used in the development or  
21 review of generally applicable rate schedules.

22 “(27) Sensitive business, commercial or financial information furnished to  
23 or developed by the City of Klamath Falls, acting solely in connection with  
24 the ownership and operation of the Klamath Cogeneration Project, if the  
25 information is directly related to a transaction described in ORS 225.085 and  
26 disclosure of the information would cause a competitive disadvantage for the  
27 Klamath Cogeneration Project. This subsection does not apply to cost-of-  
28 service studies used in the development or review of generally applicable rate  
29 schedules.

30 “(28) Personally identifiable information about customers of a municipal

1 electric utility or a people's utility district or the names, dates of birth,  
2 driver license numbers, telephone numbers, electronic mail addresses or So-  
3 cial Security numbers of customers who receive water, sewer or storm drain  
4 services from a public body as defined in ORS 174.109. The utility or district  
5 may release personally identifiable information about a customer, and a  
6 public body providing water, sewer or storm drain services may release the  
7 name, date of birth, driver license number, telephone number, electronic mail  
8 address or Social Security number of a customer, if the customer consents  
9 in writing or electronically, if the disclosure is necessary for the utility,  
10 district or other public body to render services to the customer, if the dis-  
11 closure is required pursuant to a court order or if the disclosure is otherwise  
12 required by federal or state law. The utility, district or other public body  
13 may charge as appropriate for the costs of providing such information. The  
14 utility, district or other public body may make customer records available  
15 to third party credit agencies on a regular basis in connection with the es-  
16 tablishment and management of customer accounts or in the event such ac-  
17 counts are delinquent.

18 “(29) A record of the street and number of an employee's address submit-  
19 ted to a special district to obtain assistance in promoting an alternative to  
20 single occupant motor vehicle transportation.

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

24 “(31) Documents, materials or other information submitted to the Director  
25 of the Department of Consumer and Business Services in confidence by a  
26 state, federal, foreign or international regulatory or law enforcement agency  
27 or by the National Association of Insurance Commissioners, its affiliates or  
28 subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to  
29 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723,  
30 725 or 726, the Bank Act or the Insurance Code when:

1       “(a) The document, material or other information is received upon notice  
2 or with an understanding that it is confidential or privileged under the laws  
3 of the jurisdiction that is the source of the document, material or other in-  
4 formation; and

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

7       “(32) A county elections security plan developed and filed under ORS  
8 254.074.

9       “(33) Information about review or approval of programs relating to the  
10 security of:

11       “(a) Generation, storage or conveyance of:

12       “(A) Electricity;

13       “(B) Gas in liquefied or gaseous form;

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

15       “(D) Petroleum products;

16       “(E) Sewage; or

17       “(F) Water.

18       “(b) Telecommunication systems, including cellular, wireless or radio  
19 systems.

20       “(c) Data transmissions by whatever means provided.

21       “(34) The information specified in ORS 25.020 (8) if the Chief Justice of  
22 the Supreme Court designates the information as confidential by rule under  
23 ORS 1.002.

24       “(35)(a) Employer account records of the State Accident Insurance Fund  
25 Corporation.

26       “(b) As used in this subsection, ‘employer account records’ means all re-  
27 cords maintained in any form that are specifically related to the account of  
28 any employer insured, previously insured or under consideration to be in-  
29 sured by the State Accident Insurance Fund Corporation and any informa-  
30 tion obtained or developed by the corporation in connection with providing,



1 offering to provide or declining to provide insurance to a specific employer.  
2 ‘Employer account records’ includes, but is not limited to, an employer’s  
3 payroll records, premium payment history, payroll classifications, employee  
4 names and identification information, experience modification factors, loss  
5 experience and dividend payment history.

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

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

10 “(b) As used in this subsection, ‘claimant files’ includes, but is not limited  
11 to, all records held by the corporation pertaining to a person who has made  
12 a claim, as defined in ORS 656.005, and all records pertaining to such a  
13 claim.

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

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

19 “(38) Records of or submitted to a domestic violence service or resource  
20 center that relate to the name or personal information of an individual who  
21 visits a center for service, including the date of service, the type of service  
22 received, referrals or contact information or personal information of a family  
23 member of the individual. As used in this subsection, ‘domestic violence  
24 service or resource center’ means an entity, the primary purpose of which is  
25 to assist persons affected by domestic or sexual violence by providing refer-  
26 rals, resource information or other assistance specifically of benefit to do-  
27 mestic or sexual violence victims.

28 “(39) Information reported to the Oregon Health Authority under ORS  
29 431A.860, except as provided in ORS 431A.860 (2)(b) information disclosed by  
30 the authority under ORS 431A.865 and any information related to disclosures

1 made by the authority under ORS 431A.865, including information identifying  
2 the recipient of the information.

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

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

10 “(41) Residential addresses, residential telephone numbers, personal cel-  
11 lular telephone numbers, personal electronic mail addresses, driver license  
12 numbers, emergency contact information, Social Security numbers, dates of  
13 birth and other telephone numbers of individuals currently or previously  
14 certified or licensed by the Department of Public Safety Standards and  
15 Training contained in the records maintained by the department.

16 “(42) Personally identifiable information and contact information of vet-  
17 erans as defined in ORS 408.225 and of persons serving on active duty or as  
18 reserve members with the Armed Forces of the United States, National  
19 Guard or other reserve component that was obtained by the Department of  
20 Veterans’ Affairs in the course of performing its duties and functions, in-  
21 cluding but not limited to names, residential and employment addresses,  
22 dates of birth, driver license numbers, telephone numbers, electronic mail  
23 addresses, Social Security numbers, marital status, dependents, the character  
24 of discharge from military service, military rating or rank, that the person  
25 is a veteran or has provided military service, information relating to an ap-  
26 plication for or receipt of federal or state benefits, information relating to  
27 the basis for receipt or denial of federal or state benefits and information  
28 relating to a home loan or grant application, including but not limited to  
29 financial information provided in connection with the application.

30 “(43) **Health information protected from disclosure under ORS**

1 179.505 and 192.553 to 192.581, the federal Health Insurance Portability  
2 and Accountability Act of 1996 (P.L. 104-191) and regulations adopted  
3 under it, including 45 C.F.R. parts 160 and 164, and federal alcohol and  
4 drug treatment confidentiality laws and regulations, including 42  
5 C.F.R. part 2.

6 SECTION 5. This 2017 Act being necessary for the immediate  
7 preservation of the public peace, health and safety, an emergency is  
8 declared to exist, and this 2017 Act takes effect on its passage.”  
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