

# House Bill 3399

Sponsored by Representative POWER

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires state agency, in proceeding agency initiates to enjoin disclosure of public records, to name Attorney General as respondent. Requires public body other than state agency, in proceeding public body initiates to enjoin disclosure of public records, to name district attorney as respondent. Provides person seeking disclosure with right to intervene.

## A BILL FOR AN ACT

1  
2 Relating to public records requests; amending ORS 192.411 and 192.415.

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

4 **SECTION 1.** ORS 192.411 is amended to read:

5 192.411. (1) Subject to ORS 192.401 (1) and 192.427, any person denied the right to inspect or to  
6 receive a copy of any public record of a state agency may petition the Attorney General to review  
7 the public record to determine if it may be withheld from public inspection. Except as provided in  
8 ORS 192.401 (2), the burden is on the agency to sustain its action. Except as provided in ORS 192.401  
9 (2), the Attorney General shall issue an order denying or granting the petition, or denying it in part  
10 and granting it in part, within seven days from the day the Attorney General receives the petition.

11 (2)(a) If the Attorney General grants the petition and orders the state agency to disclose the  
12 public record, or if the Attorney General grants the petition in part and orders the state agency to  
13 disclose a portion of the public record, the state agency shall comply with the order in full within  
14 seven days after issuance of the order, unless within the seven-day period *[it]* **the state agency** is-  
15 sues a notice of its intention to institute proceedings for injunctive or declaratory relief in the  
16 Circuit Court for Marion County or, as provided in ORS 192.401 (3), in the circuit court of the  
17 county where the public record is held. *[Copies]* **The state agency shall send copies** of the notice  
18 *[shall be sent]* to the Attorney General and by certified mail to the petitioner at the address shown  
19 on the petition. The state agency shall institute the proceedings within seven days after it issues its  
20 notice of intention to do so. **Proceedings for injunctive or declaratory relief under this para-**  
21 **graph shall name the Attorney General as the respondent party. The Attorney General, as**  
22 **the respondent party, shall defend in the proceeding to uphold the Attorney General's order**  
23 **that the state agency disclose the public record or a portion of the public record. The person**  
24 **seeking disclosure may intervene as a matter of right.**

25 (b) If the Attorney General denies the petition in whole or in part, or if the state agency con-  
26 tinues to withhold the public record or a part of it notwithstanding an order to disclose by the At-  
27 torney General, the person seeking disclosure may institute such proceedings.

28 (3) The Attorney General shall serve as counsel for the state agency in a suit filed under sub-  
29 section (2) of this section if the suit arises out of a determination by the Attorney General that the  
30 public record should not be disclosed, or that a part of the public record should not be disclosed if

**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 the state agency has fully complied with the order of the Attorney General requiring disclosure of  
2 another part or parts of the public record, and in no other case. In any case in which the Attorney  
3 General is prohibited from serving as counsel for the state agency, the agency may retain special  
4 counsel.

5 **SECTION 2.** ORS 192.415 is amended to read:

6 192.415. (1) ORS 192.401 and 192.411 apply to the case of a person denied the right to inspect  
7 or to receive a copy of any public record of a public body other than a state agency, except that:

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

11 (b) Any suit filed must be filed in the circuit court for the county described in paragraph (a) of  
12 this subsection; [*and*]

13 **(c) Where the public body files a proceeding for injunctive or declaratory relief, the public**  
14 **body shall name the district attorney as the respondent party; and**

15 [*c*] **(d)** The district attorney may not serve as counsel for the public body, in the cases per-  
16 mitted under ORS 192.411 (3), unless the district attorney ordinarily serves as counsel for the public  
17 body.

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

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

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