

Requested by SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2841**

1 On page 1 of the printed A-engrossed bill, line 2, delete “and” and after
2 “192.345” insert “; and declaring an emergency”.

3 In line 13, after “data” delete the rest of the line and line 14 and insert
4 “described in subsection (3) of this section if:”.

5 In line 20, after “for” insert “illegally”.

6 On page 2, delete lines 11 through 19 and insert:

7 “(4)(a) The department may disclose data withheld under subsections (1)
8 to (3) of this section to a requester that is one or more of the following:

9 “(A) The federal government, a tribal government, a public body as de-
10 fined in ORS 174.109, a public utility or an accredited college or university;

11 “(B) Owners of, lessees of rights-of-way in or holders of easements on
12 private land to which the data pertain;

13 “(C) Holders of public grazing permits for the land to which the data
14 pertain;

15 “(D) Owners of agricultural land or forestland, if the disclosure might
16 prevent loss to an agricultural or forest operation; and

17 “(E) Resource management partners and stakeholders.

18 “(b) If the department refuses disclosure because disclosure could harm
19 a species or member of a species, the department shall issue a proposed order
20 refusing the disclosure request and provide the requester with notice of
21 rights and remedies as provided in ORS 183.415.”.

1 In line 21, after the period insert “The agreement may include, but need
2 not be limited to, a proposed protective order for use, if necessary, in a legal
3 proceeding to maintain confidentiality of the information. If the department
4 is prohibited under subsection (8) of this section from withholding the in-
5 formation, the agreement may prohibit the recipient from disclosing the in-
6 formation, except to further the protection or conservation of a species in a
7 manner described in subsection (8) of this section.”.

8 After line 26, insert:

9 “(8) The department may not withhold information under subsection (3)
10 of this section if the information is relevant to:

11 “(a) An ongoing petition, litigation or other administrative or legal action
12 in furtherance of the protection or conservation of a species; or

13 “(b) The preparation of a petition, or for a litigation or other adminis-
14 trative or legal action, in furtherance of the protection or conservation of
15 a species.”.

16 In line 27, delete “(8)” and insert “(9)”.

17 On page 8, after line 31, insert:

18 “**SECTION 4.** ORS 192.345, as amended by section 3 of this 2019 Act, is
19 amended to read:

20 “192.345. The following public records are exempt from disclosure under
21 ORS 192.311 to 192.478 unless the public interest requires disclosure in the
22 particular instance:

23 “(1) Records of a public body pertaining to litigation to which the public
24 body is a party if the complaint has been filed, or if the complaint has not
25 been filed, if the public body 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 subsection shall limit any right or opportunity
28 granted by discovery or deposition statutes to a party to litigation or po-
29 tential litigation.

30 “(2) Trade secrets. ‘Trade secrets,’ as used in this section, may include,

1 but are not limited to, any formula, plan, pattern, process, tool, mechanism,
2 compound, procedure, production data, or compilation of information which
3 is not patented, which is known only to certain individuals within an or-
4 ganization and which is used in a business it conducts, having actual or
5 potential commercial value, and which gives its user an opportunity to ob-
6 tain a business advantage over competitors who do not know or use it.

7 “(3) Investigatory information compiled for criminal law purposes. The
8 record of an arrest or the report of a crime shall be disclosed unless and only
9 for so long as there is a clear need to delay disclosure in the course of a
10 specific investigation, including the need to protect the complaining party
11 or the victim. Nothing in this subsection shall limit any right constitu-
12 tionally guaranteed, or granted by statute, to disclosure or discovery in
13 criminal cases. For purposes of this subsection, the record of an arrest or the
14 report of a crime includes, but is not limited to:

15 “(a) The arrested person’s name, age, residence, employment, marital sta-
16 tus and similar biographical information;

17 “(b) The offense with which the arrested person is charged;

18 “(c) The conditions of release pursuant to ORS 135.230 to 135.290;

19 “(d) The identity of and biographical information concerning both com-
20 plaining party and victim;

21 “(e) The identity of the investigating and arresting agency and the length
22 of the investigation;

23 “(f) The circumstances of arrest, including time, place, resistance, pursuit
24 and weapons used; and

25 “(g) Such information as may be necessary to enlist public assistance in
26 apprehending fugitives from justice.

27 “(4) Test questions, scoring keys, and other data used to administer a li-
28 censing examination, employment, academic or other examination or testing
29 procedure before the examination is given and if the examination is to be
30 used again. Records establishing procedures for and instructing persons ad-

1 ministering, grading or evaluating an examination or testing procedure are
2 included in this exemption, to the extent that disclosure would create a risk
3 that the result might be affected.

4 “(5) Information consisting of production records, sale or purchase records
5 or catch records, or similar business records of a private concern or enter-
6 prise, required by law to be submitted to or inspected by a governmental
7 body to allow it to determine fees or assessments payable or to establish
8 production quotas, and the amounts of such fees or assessments payable or
9 paid, to the extent that such information is in a form that would permit
10 identification of the individual concern or enterprise. This exemption does
11 not include records submitted by long term care facilities as defined in ORS
12 442.015 to the state for purposes of reimbursement of expenses or determining
13 fees for patient care. Nothing in this subsection shall limit the use that can
14 be made of such information for regulatory purposes or its admissibility in
15 any enforcement proceeding.

16 “(6) Information relating to the appraisal of real estate prior to its ac-
17 quisition.

18 “(7) The names and signatures of employees who sign authorization cards
19 or petitions for the purpose of requesting representation or decertification
20 elections.

21 “(8) Investigatory information relating to any complaint filed under ORS
22 659A.820 or 659A.825, until such time as the complaint is resolved under ORS
23 659A.835, or a final order is issued under ORS 659A.850.

24 “(9) Investigatory information relating to any complaint or charge filed
25 under ORS 243.676 and 663.180.

26 “(10) Records, reports and other information received or compiled by the
27 Director of the Department of Consumer and Business Services under ORS
28 697.732.

29 “(11) Information concerning the location of archaeological sites or ob-
30 jects as those terms are defined in ORS 358.905, except if the governing body

1 of an Indian tribe requests the information and the need for the information
2 is related to that Indian tribe's cultural or religious activities. This ex-
3 emption does not include information relating to a site that is all or part
4 of an existing, commonly known and publicized tourist facility or attraction.

5 “(12) A personnel discipline action, or materials or documents supporting
6 that action.

7 “[*(13) Fish and wildlife information:*]

8 “[*(a) Developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS*
9 *496.192 and 564.100, regarding the habitat, location or population of any*
10 *threatened species or endangered species; or]*

11 “[*(b) Described in section 2 of this 2019 Act.*]

12 “**(13) Fish and wildlife information developed pursuant to ORS**
13 **496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the**
14 **habitat, location or population of any threatened species or endan-**
15 **gered species.**

16 “(14) Writings prepared by or under the direction of faculty of public ed-
17 ucational institutions, in connection with research, until publicly released,
18 copyrighted or patented.

19 “(15) Computer programs developed or purchased by or for any public
20 body for its own use. As used in this subsection, ‘computer program’ means
21 a series of instructions or statements which permit the functioning of a
22 computer system in a manner designed to provide storage, retrieval and ma-
23 nipulation of data from such computer system, and any associated documen-
24 tation and source material that explain how to operate the computer
25 program. ‘Computer program’ does not include:

26 “(a) The original data, including but not limited to numbers, text, voice,
27 graphics and images;

28 “(b) Analyses, compilations and other manipulated forms of the original
29 data produced by use of the program; or

30 “(c) The mathematical and statistical formulas which would be used if the

1 manipulated forms of the original data were to be produced manually.

2 “(16) Data and information provided by participants to mediation under
3 ORS 36.256.

4 “(17) Investigatory information relating to any complaint or charge filed
5 under ORS chapter 654, until a final administrative determination is made
6 or, if a citation is issued, until an employer receives notice of any citation.

7 “(18) Specific operational plans in connection with an anticipated threat
8 to individual or public safety for deployment and use of personnel and
9 equipment, prepared or used by a public body, if public disclosure of the
10 plans would endanger an individual’s life or physical safety or jeopardize a
11 law enforcement activity.

12 “(19)(a) Audits or audit reports required of a telecommunications carrier.
13 As used in this paragraph, ‘audit or audit report’ means any external or
14 internal audit or audit report pertaining to a telecommunications carrier, as
15 defined in ORS 133.721, or pertaining to a corporation having an affiliated
16 interest, as defined in ORS 759.390, with a telecommunications carrier that
17 is intended to make the operations of the entity more efficient, accurate or
18 compliant with applicable rules, procedures or standards, that may include
19 self-criticism and that has been filed by the telecommunications carrier or
20 affiliate under compulsion of state law. ‘Audit or audit report’ does not mean
21 an audit of a cost study that would be discoverable in a contested case pro-
22 ceeding and that is not subject to a protective order; and

23 “(b) Financial statements. As used in this paragraph, ‘financial
24 statement’ means a financial statement of a nonregulated corporation having
25 an affiliated interest, as defined in ORS 759.390, with a telecommunications
26 carrier, as defined in ORS 133.721.

27 “(20) The residence address of an elector if authorized under ORS 247.965
28 and subject to ORS 247.967.

29 “(21) The following records, communications and information submitted
30 to a housing authority as defined in ORS 456.005, or to an urban renewal

1 agency as defined in ORS 457.010, by applicants for and recipients of loans,
2 grants and tax credits:

3 “(a) Personal and corporate financial statements and information, in-
4 cluding tax returns;

5 “(b) Credit reports;

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

10 “(d) Market studies and analyses;

11 “(e) Articles of incorporation, partnership agreements and operating
12 agreements;

13 “(f) Commitment letters;

14 “(g) Project pro forma statements;

15 “(h) Project cost certifications and cost data;

16 “(i) Audits;

17 “(j) Project tenant correspondence requested to be confidential;

18 “(k) Tenant files relating to certification; and

19 “(L) Housing assistance payment requests.

20 “(22) Records or information that, if disclosed, would allow a person to:

21 “(a) Gain unauthorized access to buildings or other property;

22 “(b) Identify those areas of structural or operational vulnerability that
23 would permit unlawful disruption to, or interference with, services; or

24 “(c) Disrupt, interfere with or gain unauthorized access to public funds
25 or to information processing, communication or telecommunication systems,
26 including the information contained in the systems, that are used or operated
27 by a public body.

28 “(23) Records or information that would reveal or otherwise identify se-
29 curity measures, or weaknesses or potential weaknesses in security measures,
30 taken or recommended to be taken to protect:

1 “(a) An individual;

2 “(b) Buildings or other property;

3 “(c) Information processing, communication or telecommunication sys-
4 tems, including the information contained in the systems; or

5 “(d) Those operations of the Oregon State Lottery the security of which
6 are subject to study and evaluation under ORS 461.180 (6).

7 “(24) Personal information held by or under the direction of officials of
8 the Oregon Health and Science University or a public university listed in
9 ORS 352.002 about a person who has or who is interested in donating money
10 or property to the Oregon Health and Science University or a public uni-
11 versity, if the information is related to the family of the person, personal
12 assets of the person or is incidental information not related to the donation.

13 “(25) The home address, professional address and telephone number of a
14 person who has or who is interested in donating money or property to a
15 public university listed in ORS 352.002.

16 “(26) Records of the name and address of a person who files a report with
17 or pays an assessment to a commodity commission established under ORS
18 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the
19 Oregon Wheat Commission created under ORS 578.030.

20 “(27) Information provided to, obtained by or used by a public body to
21 authorize, originate, receive or authenticate a transfer of funds, including
22 but not limited to a credit card number, payment card expiration date,
23 password, financial institution account number and financial institution
24 routing number.

25 “(28) Social Security numbers as provided in ORS 107.840.

26 “(29) The electronic mail address of a student who attends a public uni-
27 versity listed in ORS 352.002 or Oregon Health and Science University.

28 “(30) The name, home address, professional address or location of a person
29 that is engaged in, or that provides goods or services for, medical research
30 at Oregon Health and Science University that is conducted using animals

1 other than rodents. This subsection does not apply to Oregon Health and
2 Science University press releases, websites or other publications circulated
3 to the general public.

4 “(31) If requested by a public safety officer, as defined in ORS 181A.355:

5 “(a) The home address and home telephone number of the public safety
6 officer contained in the voter registration records for the officer.

7 “(b) The home address and home telephone number of the public safety
8 officer contained in records of the Department of Public Safety Standards
9 and Training.

10 “(c) The name of the public safety officer contained in county real prop-
11 erty assessment or taxation records. This exemption:

12 “(A) Applies only to the name of the public safety officer and any other
13 owner of the property in connection with a specific property identified by the
14 officer in a request for exemption from disclosure;

15 “(B) Applies only to records that may be made immediately available to
16 the public upon request in person, by telephone or using the Internet;

17 “(C) Applies until the public safety officer requests termination of the
18 exemption;

19 “(D) Does not apply to disclosure of records among public bodies as de-
20 fined in ORS 174.109 for governmental purposes; and

21 “(E) May not result in liability for the county if the name of the public
22 safety officer is disclosed after a request for exemption from disclosure is
23 made under this subsection.

24 “(32) Unless the public records request is made by a financial institution,
25 as defined in ORS 706.008, consumer finance company licensed under ORS
26 chapter 725, mortgage banker or mortgage broker licensed under ORS
27 86A.095 to 86A.198, or title company for business purposes, records described
28 in paragraph (a) of this subsection, if the exemption from disclosure of the
29 records is sought by an individual described in paragraph (b) of this sub-
30 section using the procedure described in paragraph (c) of this subsection:

1 “(a) The home address, home or cellular telephone number or personal
2 electronic mail address contained in the records of any public body that has
3 received the request that is set forth in:

4 “(A) A warranty deed, deed of trust, mortgage, lien, deed of reconveyance,
5 release, satisfaction, substitution of trustee, easement, dog license, marriage
6 license or military discharge record that is in the possession of the county
7 clerk; or

8 “(B) Any public record of a public body other than the county clerk.

9 “(b) The individual claiming the exemption from disclosure must be a
10 district attorney, a deputy district attorney, the Attorney General or an as-
11 sistant attorney general, the United States Attorney for the District of
12 Oregon or an assistant United States attorney for the District of Oregon, a
13 city attorney who engages in the prosecution of criminal matters or a deputy
14 city attorney who engages in the prosecution of criminal matters.

15 “(c) The individual claiming the exemption from disclosure must do so by
16 filing the claim in writing with the public body for which the exemption from
17 disclosure is being claimed on a form prescribed by the public body. Unless
18 the claim is filed with the county clerk, the claim form shall list the public
19 records in the possession of the public body to which the exemption applies.
20 The exemption applies until the individual claiming the exemption requests
21 termination of the exemption or ceases to qualify for the exemption.

22 “(33) The following voluntary conservation agreements and reports:

23 “(a) Land management plans required for voluntary stewardship agree-
24 ments entered into under ORS 541.973; and

25 “(b) Written agreements relating to the conservation of greater sage
26 grouse entered into voluntarily by owners or occupiers of land with a soil
27 and water conservation district under ORS 568.550.

28 “(34) Sensitive business records or financial or commercial information
29 of the State Accident Insurance Fund Corporation that is not customarily
30 provided to business competitors. This exemption does not:

1 “(a) Apply to the formulas for determining dividends to be paid to em-
2 ployers insured by the State Accident Insurance Fund Corporation;

3 “(b) Apply to contracts for advertising, public relations or lobbying ser-
4 vices or to documents related to the formation of such contracts;

5 “(c) Apply to group insurance contracts or to documents relating to the
6 formation of such contracts, except that employer account records shall re-
7 main exempt from disclosure as provided in ORS 192.355 (35); or

8 “(d) Provide the basis for opposing the discovery of documents in liti-
9 gation pursuant to the applicable rules of civil procedure.

10 “(35) Records of the Department of Public Safety Standards and Training
11 relating to investigations conducted under ORS 181A.640 or 181A.870 (6),
12 until the department issues the report described in ORS 181A.640 or 181A.870.

13 “(36) A medical examiner’s report, autopsy report or laboratory test report
14 ordered by a medical examiner under ORS 146.117.

15 “(37) Any document or other information related to an audit of a public
16 body, as defined in ORS 174.109, that is in the custody of an auditor or audit
17 organization operating under nationally recognized government auditing
18 standards, until the auditor or audit organization issues a final audit report
19 in accordance with those standards or the audit is abandoned. This ex-
20 emption does not prohibit disclosure of a draft audit report that is provided
21 to the audited entity for the entity’s response to the audit findings.

22 “(38)(a) Personally identifiable information collected as part of an elec-
23 tronic fare collection system of a mass transit system.

24 “(b) The exemption from disclosure in paragraph (a) of this subsection
25 does not apply to public records that have attributes of anonymity that are
26 sufficient, or that are aggregated into groupings that are broad enough, to
27 ensure that persons cannot be identified by disclosure of the public records.

28 “(c) As used in this subsection:

29 “(A) ‘Electronic fare collection system’ means the software and hardware
30 used for, associated with or relating to the collection of transit fares for a

1 mass transit system, including but not limited to computers, radio commu-
2 nication systems, personal mobile devices, wearable technology, fare instru-
3 ments, information technology, data storage or collection equipment, or other
4 equipment or improvements.

5 “(B) ‘Mass transit system’ has the meaning given that term in ORS
6 267.010.

7 “(C) ‘Personally identifiable information’ means all information relating
8 to a person that acquires or uses a transit pass or other fare payment me-
9 dium in connection with an electronic fare collection system, including but
10 not limited to:

11 “(i) Customer account information, date of birth, telephone number,
12 physical address, electronic mail address, credit or debit card information,
13 bank account information, Social Security or taxpayer identification number
14 or other identification number, transit pass or fare payment medium balances
15 or history, or similar personal information; or

16 “(ii) Travel dates, travel times, frequency of use, travel locations, service
17 types or vehicle use, or similar travel information.

18 “(39)(a) If requested by a civil code enforcement officer:

19 “(A) The home address and home telephone number of the civil code
20 enforcement officer contained in the voter registration records for the offi-
21 cer.

22 “(B) The name of the civil code enforcement officer contained in county
23 real property assessment or taxation records. This exemption:

24 “(i) Applies only to the name of the civil code enforcement officer and
25 any other owner of the property in connection with a specific property
26 identified by the officer in a request for exemption from disclosure;

27 “(ii) Applies only to records that may be made immediately available to
28 the public upon request in person, by telephone or using the Internet;

29 “(iii) Applies until the civil code enforcement officer requests termination
30 of the exemption;

1 “(iv) Does not apply to disclosure of records among public bodies as de-
2 fined in ORS 174.109 for governmental purposes; and

3 “(v) May not result in liability for the county if the name of the civil code
4 enforcement officer is disclosed after a request for exemption from disclosure
5 is made under this subsection.

6 “(b) As used in this subsection, ‘civil code enforcement officer’ means an
7 employee of a public body, as defined in ORS 174.109, who is charged with
8 enforcing laws or ordinances relating to land use, zoning, use of rights-of-
9 way, solid waste, hazardous waste, sewage treatment and disposal or the
10 state building code.

11 “(40) Audio or video recordings, whether digital or analog, resulting from
12 a law enforcement officer’s operation of a video camera worn upon the
13 officer’s person that records the officer’s interactions with members of the
14 public while the officer is on duty. When a recording described in this sub-
15 section is subject to disclosure, the following apply:

16 “(a) Recordings that have been sealed in a court’s record of a court pro-
17 ceeding or otherwise ordered by a court not to be disclosed may not be dis-
18 closed.

19 “(b) A request for disclosure under this subsection must identify the ap-
20 proximate date and time of an incident for which the recordings are re-
21 quested and be reasonably tailored to include only that material for which
22 a public interest requires disclosure.

23 “(c) A video recording disclosed under this subsection must, prior to dis-
24 closure, be edited in a manner as to render the faces of all persons within
25 the recording unidentifiable.

26 **“SECTION 5. The amendments to ORS 192.345 by section 4 of this**
27 **2019 Act become operative January 2, 2024.**

28 **“SECTION 6. Section 2 of this 2019 Act is repealed on January 2,**
29 **2024.”.**

30 In line 32, delete “4” and insert “7”.

1 In line 41, delete “(8)” and insert “(9)”.

2 After line 41, insert:

3 **“SECTION 8. This 2019 Act being necessary for the immediate**
4 **preservation of the public peace, health and safety, an emergency is**
5 **declared to exist, and this 2019 Act takes effect on its passage.”.**

6 _____