

**DRAFT 2**  
**Discussion Draft**  
**NOT PRODUCED BY**  
**LEGISLATIVE COUNSEL**

LC \_\_\_\_\_ (booking photos)  
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# DRAFT

## SUMMARY

Prohibits release of booking photos except under specified circumstances. Establishes deadlines for publications that require payment of fees to remove booking photos upon request. Caps fees that may be charged by publications for removal. Prohibits fees in certain circumstances. Provides for civil liability and penalties for publications that fail to comply, and potential criminal liability for publications that impose a fee for removal of a booking photo in circumstances where a fee is prohibited.

1 **A BILL FOR AN ACT**  
2 Relating to booking photos; creating new provisions; and amending ORS 192.345.  
3 **Be It Enacted by the People of the State of Oregon:**  
4 **SECTION 1. (1) As used in this section:**  
5 **(a) “Booking photo” means a photograph or other image of an individual that is**  
6 **generated for identification purposes when the individual is booked into a county or**  
7 **municipal jail by a law enforcement officer.**  
8 **(b) “Law enforcement agency” has the meaning provided in ORS 181A.010.**  
9 **(c) “Law enforcement officer” means an officer, deputy, member, or employee of a**  
10 **law enforcement agency.**  
11 **(d) “Publish-for-pay publication” means a publication or website that requires the**  
12 **payment of a fee or other consideration in order to remove or delete a booking photo from**  
13 **the publication or website.**  
14 **(2) A booking photo shall not be released by a law enforcement agency except as**  
15 **authorized by this section. Booking photos shall be retained by law enforcement agencies in**  
16 **a manner that restricts access and use in a manner designed to prevent disclosure in a**  
17 **manner not authorized by this section.**  
18 **(3) A booking photo may be released by a law enforcement agency only under the**  
19 **following circumstances:**  
20 **(a) To another law enforcement agency or law enforcement officer for law**  
21 **enforcement purposes;**

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           **(b) To the public if the law enforcement agency determines there is a law enforcement**  
2 **purpose for the release, such as assistance with the apprehension of a fugitive or suspect in a**  
3 **criminal investigation, or the identification of additional possible criminal activity;**

4           **(c) Upon criminal conviction if the booking photo was the result of the arrest leading**  
5 **to the conviction; or**

6           **(4)(a) Except as provided in subsection (5), a publish-for-pay publication shall remove**  
7 **and destroy a booking photo of a person who submits a request for removal and destruction**  
8 **within 30 calendar days after the day on which the person makes the request.**

9           **(b) A publish-for-pay publication may not condition removal or destruction of the**  
10 **booking photo on the payment of a fee in an amount greater than \$50.**

11           **(c) If the publish-for-pay publication does not remove and destroy the booking photo**  
12 **in accordance with this subsection, the publish-for-pay publication is liable for:**

13           **(A) All costs, including reasonable attorney fees, resulting from any legal action the**  
14 **person brings in relation to the failure of the publish-for-pay publication to remove and**  
15 **destroy the booking photo; and**

16           **(B) A civil penalty of \$500 per day for each day after the 30-day deadline described**  
17 **in this subsection on which the booking photo is visible or publicly accessible in the publish-**  
18 **for-pay publication.**

19           **(5)(a) A publish-for-pay publication shall remove and destroy a booking photograph**  
20 **of an individual who submits a request for removal and destruction within seven calendar**  
21 **days after the day on which the individual makes the request if the booking photo relates to**  
22 **a criminal charge on which the individual was acquitted or not prosecuted, or was set aside,**  
23 **vacated, or pardoned, and the person submits evidence of a disposition described in this**  
24 **paragraph.**

25           **(b) If the publish-for-pay publication described in paragraph (a) of this subsection**  
26 **does not remove and destroy the booking photo in accordance with this subsection, the**  
27 **publish-for-pay publication is liable for:**

28           **(A) All costs, including reasonable attorney fees, resulting from any legal action that**  
29 **the person brings in relation to the failure of the publish-for-pay publication to remove and**  
30 **destroy the booking photograph; and**

1           **(B) A civil penalty of \$1,000 per day for each day after the seven-day deadline**  
2 **described in this subsection on which the booking photo is visible or publicly accessible in**  
3 **the publish-for-pay publication.**

4           **(c) An act of a publish-for-pay publication described in this subsection that seeks to**  
5 **condition removal or destruction of the booking photo on the payment of any fee or amount**  
6 **constitutes extortion under ORS 164.075 and theft by deception under ORS 164.085.**

7           **SECTION 2.** ORS 192.345 is amended to read:

8           192.345. The following public records are exempt from disclosure under ORS 192.311 to  
9 192.478 unless the public interest requires disclosure in the particular instance:

10           (1) Records of a public body pertaining to litigation to which the public body is a party if  
11 the complaint has been filed, or if the complaint has not been filed, if the public body shows that  
12 such litigation is reasonably likely to occur. This exemption does not apply to litigation which has  
13 been concluded, and nothing in this subsection shall limit any right or opportunity granted by  
14 discovery or deposition statutes to a party to litigation or potential litigation.

15           (2) Trade secrets. “Trade secrets,” as used in this section, may include, but are not limited  
16 to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data,  
17 or compilation of information which is not patented, which is known only to certain individuals  
18 within an organization and which is used in a business it conducts, having actual or potential  
19 commercial value, and which gives its user an opportunity to obtain a business advantage over  
20 competitors who do not know or use it.

21           (3) Investigatory information compiled for criminal law purposes. The record of an arrest  
22 or the report of a crime shall be disclosed unless and only for so long as there is a clear need to  
23 delay disclosure in the course of a specific investigation, including the need to protect the  
24 complaining party or the victim. Nothing in this subsection shall limit any right constitutionally  
25 guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this  
26 subsection, the record of an arrest or the report of a crime includes, but is not limited to:

27           (a) The arrested person’s name, age, residence, employment, marital status and similar  
28 biographical information;

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

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

1 (d) The identity of and biographical information concerning both complaining party and  
2 victim;

3 (e) The identity of the investigating and arresting agency and the length of the  
4 investigation;

5 (f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used;  
6 *[and]*

7 (g) Such information as may be necessary to enlist public assistance in apprehending  
8 fugitives from justice~~[.]~~; **and**

9 **(h) A booking photo, but only if released in accordance with Section 1 of this 2021**  
10 **Act.**

11 (4) Test questions, scoring keys, and other data used to administer a licensing examination,  
12 employment, academic or other examination or testing procedure before the examination is given  
13 and if the examination is to be used again. Records establishing procedures for and instructing  
14 persons administering, grading or evaluating an examination or testing procedure are included in  
15 this exemption, to the extent that disclosure would create a risk that the result might be affected.

16 (5) Information consisting of production records, sale or purchase records or catch records,  
17 or similar business records of a private concern or enterprise, required by law to be submitted to  
18 or inspected by a governmental body to allow it to determine fees or assessments payable or to  
19 establish production quotas, and the amounts of such fees or assessments payable or paid, to the  
20 extent that such information is in a form that would permit identification of the individual concern  
21 or enterprise. This exemption does not include records submitted by long term care facilities as  
22 defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining  
23 fees for patient care. Nothing in this subsection shall limit the use that can be made of such  
24 information for regulatory purposes or its admissibility in any enforcement proceeding.

25 (6) Information relating to the appraisal of real estate prior to its acquisition.

26 (7) The names and signatures of employees who sign authorization cards or petitions for  
27 the purpose of requesting representation or decertification elections.

28 (8) Investigatory information relating to any complaint filed under ORS 659A.820 or  
29 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is  
30 issued under ORS 659A.850.

1 (9) Investigatory information relating to any complaint or charge filed under ORS 243.676  
2 and 663.180.

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

5 (11) Information concerning the location of archaeological sites or objects as those terms  
6 are defined in ORS 358.905, except if the governing body of an Indian tribe requests the  
7 information and the need for the information is related to that Indian tribe's cultural or religious  
8 activities. This exemption does not include information relating to a site that is all or part of an  
9 existing, commonly known and publicized tourist facility or attraction.

10 (12) A personnel discipline action, or materials or documents supporting that action.

11 (13) Fish and wildlife information:

12 (a) Developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and  
13 564.100, regarding the habitat, location or population of any threatened species or endangered  
14 species; or

15 (b) Described in section 2, chapter 532, Oregon Laws 2019.

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

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

23 (a) The original data, including but not limited to numbers, text, voice, graphics and  
24 images;

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

27 (c) The mathematical and statistical formulas which would be used if the manipulated  
28 forms of the original data were to be produced manually.

29 (16) Data and information provided by participants to mediation under ORS 36.256.

1 (17) Investigatory information relating to any complaint or charge filed under ORS chapter  
2 654, until a final administrative determination is made or, if a citation is issued, until an employer  
3 receives notice of any citation.

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

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

17 (b) Financial statements. As used in this paragraph, "financial statement" means a financial  
18 statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390,  
19 with a telecommunications carrier, as defined in ORS 133.721.

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

22 (21) The following records, communications and information submitted to a housing  
23 authority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010,  
24 by applicants for and recipients of loans, grants and tax credits:

25 (a) Personal and corporate financial statements and information, including tax returns;

26 (b) Credit reports;

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

30 (d) Market studies and analyses;

31 (e) Articles of incorporation, partnership agreements and operating agreements;

- 1 (f) Commitment letters;
- 2 (g) Project pro forma statements;
- 3 (h) Project cost certifications and cost data;
- 4 (i) Audits;
- 5 (j) Project tenant correspondence requested to be confidential;
- 6 (k) Tenant files relating to certification; and
- 7 (L) Housing assistance payment requests.
- 8 (22) Records or information that, if disclosed, would allow a person to:
- 9 (a) Gain unauthorized access to buildings or other property;
- 10 (b) Identify those areas of structural or operational vulnerability that would permit unlawful
- 11 disruption to, or interference with, services; or
- 12 (c) Disrupt, interfere with or gain unauthorized access to public funds or to information
- 13 processing, communication or telecommunication systems, including the information contained in
- 14 the systems, that are used or operated by a public body.
- 15 (23) Records or information that would reveal or otherwise identify security measures, or
- 16 weaknesses or potential weaknesses in security measures, taken or recommended to be taken to
- 17 protect:
- 18 (a) An individual;
- 19 (b) Buildings or other property;
- 20 (c) Information processing, communication or telecommunication systems, including the
- 21 information contained in the systems; or
- 22 (d) Those operations of the Oregon State Lottery the security of which are subject to study
- 23 and evaluation under ORS 461.180 (6).
- 24 (24) Personal information held by or under the direction of officials of the Oregon Health
- 25 and Science University or a public university listed in ORS 352.002 about a person who has or
- 26 who is interested in donating money or property to the Oregon Health and Science University or a
- 27 public university, if the information is related to the family of the person, personal assets of the
- 28 person or is incidental information not related to the donation.
- 29 (25) The home address, professional address and telephone number of a person who has or
- 30 who is interested in donating money or property to a public university listed in ORS 352.002.

1 (26) Records of the name and address of a person who files a report with or pays an  
2 assessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon  
3 Beef Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS  
4 578.030.

5 (27) Information provided to, obtained by or used by a public body to authorize, originate,  
6 receive or authenticate a transfer of funds, including but not limited to a credit card number,  
7 payment card expiration date, password, financial institution account number and financial  
8 institution routing number.

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

10 (29) The electronic mail address of a student who attends a public university listed in ORS  
11 352.002 or Oregon Health and Science University.

12 (30) The name, home address, professional address or location of a person that is engaged  
13 in, or that provides goods or services for, medical research at Oregon Health and Science  
14 University that is conducted using animals other than rodents. This subsection does not apply to  
15 Oregon Health and Science University press releases, websites or other publications circulated to  
16 the general public.

17 (31) If requested by a public safety officer, as defined in ORS 181A.355, or a county  
18 juvenile department employee who is charged with and primarily performs duties related to the  
19 custody, control or supervision of youth offenders confined in a detention facility, as defined in  
20 ORS 419A.004:

21 (a) The home address and home telephone number of the public safety officer or county  
22 juvenile department employee contained in the voter registration records for the officer or  
23 employee.

24 (b) The home address and home telephone number of the public safety officer or county  
25 juvenile department employee contained in records of the Department of Public Safety Standards  
26 and Training.

27 (c) The name of the public safety officer or county juvenile department employee contained  
28 in county real property assessment or taxation records. This exemption:

29 (A) Applies only to the name of the officer or employee and any other owner of the property  
30 in connection with a specific property identified by the officer or employee in a request for  
31 exemption from disclosure;



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

3 (C) Applies until the officer or employee requests termination of the exemption;

4 (D) Does not apply to disclosure of records among public bodies as defined in ORS  
5 174.109 for governmental purposes; and

6 (E) May not result in liability for the county if the name of the officer or employee is  
7 disclosed after a request for exemption from disclosure is made under this subsection.

8 (32) Unless the public records request is made by a financial institution, as defined in ORS  
9 706.008, consumer finance company licensed under ORS chapter 725, mortgage banker or  
10 mortgage broker licensed under ORS 86A.095 to 86A.198, or title company for business purposes,  
11 records described in paragraph (a) of this subsection, if the exemption from disclosure of the  
12 records is sought by an individual described in paragraph (b) of this subsection using the procedure  
13 described in paragraph (c) of this subsection:

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

17 (A) A warranty deed, deed of trust, mortgage, lien, deed of reconveyance, release,  
18 satisfaction, substitution of trustee, easement, dog license, marriage license or military discharge  
19 record that is in the possession of the county clerk; or

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

21 (b) The individual claiming the exemption from disclosure must be a district attorney, a  
22 deputy district attorney, the Attorney General or an assistant attorney general, the United States  
23 Attorney for the District of Oregon or an assistant United States attorney for the District of Oregon,  
24 a city attorney who engages in the prosecution of criminal matters or a deputy city attorney who  
25 engages in the prosecution of criminal matters.

26 (c) The individual claiming the exemption from disclosure must do so by filing the claim  
27 in writing with the public body for which the exemption from disclosure is being claimed on a  
28 form prescribed by the public body. Unless the claim is filed with the county clerk, the claim form  
29 shall list the public records in the possession of the public body to which the exemption applies.  
30 The exemption applies until the individual claiming the exemption requests termination of the  
31 exemption or ceases to qualify for the exemption.

1 (33) The following voluntary conservation agreements and reports:

2 (a) Land management plans required for voluntary stewardship agreements entered into  
3 under ORS 541.973; and

4 (b) Written agreements relating to the conservation of greater sage grouse entered into  
5 voluntarily by owners or occupiers of land with a soil and water conservation district under ORS  
6 568.550.

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

10 (a) Apply to the formulas for determining dividends to be paid to employers insured by the  
11 State Accident Insurance Fund Corporation;

12 (b) Apply to contracts for advertising, public relations or lobbying services or to documents  
13 related to the formation of such contracts;

14 (c) Apply to group insurance contracts or to documents relating to the formation of such  
15 contracts, except that employer account records shall remain exempt from disclosure as provided  
16 in ORS 192.355 (35); or

17 (d) Provide the basis for opposing the discovery of documents in litigation pursuant to the  
18 applicable rules of civil procedure.

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

22 (36) A medical examiner's report, autopsy report or laboratory test report ordered by a  
23 medical examiner under ORS 146.117.

24 (37) Any document or other information related to an audit of a public body, as defined in  
25 ORS 174.109, that is in the custody of an auditor or audit organization operating under nationally  
26 recognized government auditing standards, until the auditor or audit organization issues a final  
27 audit report in accordance with those standards or the audit is abandoned. This exemption does not  
28 prohibit disclosure of a draft audit report that is provided to the audited entity for the entity's  
29 response to the audit findings.

30 (38)(a) Personally identifiable information collected as part of an electronic fare collection  
31 system of a mass transit system.

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

5 (c) As used in this subsection:

6 (A) “Electronic fare collection system” means the software and hardware used for,  
7 associated with or relating to the collection of transit fares for a mass transit system, including but  
8 not limited to computers, radio communication systems, personal mobile devices, wearable  
9 technology, fare instruments, information technology, data storage or collection equipment, or  
10 other equipment or improvements.

11 (B) “Mass transit system” has the meaning given that term in ORS 267.010.

12 (C) “Personally identifiable information” means all information relating to a person that  
13 acquires or uses a transit pass or other fare payment medium in connection with an electronic fare  
14 collection system, including but not limited to:

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

19 (ii) Travel dates, travel times, frequency of use, travel locations, service types or vehicle  
20 use, or similar travel information.

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

22 (A) The home address and home telephone number of the civil code enforcement officer  
23 contained in the voter registration records for the officer.

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

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

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

31 (iii) Applies until the civil code enforcement officer requests termination of the exemption;

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

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

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

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

13 (a) Recordings that have been sealed in a court’s record of a court proceeding or otherwise  
14 ordered by a court not to be disclosed may not be disclosed.

15 (b) A request for disclosure under this subsection must identify the approximate date and  
16 time of an incident for which the recordings are requested and be reasonably tailored to include  
17 only that material for which a public interest requires disclosure.

18 (c) A video recording disclosed under this subsection must, prior to disclosure, be edited  
19 in a manner as to render the faces of all persons within the recording unidentifiable.

20 (41) The contents of tips reported to a tip line, as defined in ORS 339.329. However,  
21 personally identifiable information, as defined in ORS 339.329, is not subject to public interest  
22 balancing under this section and remains exempt from disclosure except as provided in ORS  
23 339.329.

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