

Requested by Representative NATHANSON

**PROPOSED AMENDMENTS TO
HOUSE BILL 4149**

1 On page 1 of the printed bill, line 2, after “ORS” insert “192.355,”.

2 On page 12, after line 35, insert:

3 **“SECTION 16.** ORS 192.355 is amended to read:

4 “192.355. The following public records are exempt from disclosure under
5 ORS 192.311 to 192.478:

6 “(1) Communications within a public body or between public bodies of an
7 advisory nature to the extent that they cover other than purely factual ma-
8 terials and are preliminary to any final agency determination of policy or
9 action. This exemption shall not apply unless the public body shows that in
10 the particular instance the public interest in encouraging frank communi-
11 cation between officials and employees of public bodies clearly outweighs the
12 public interest in disclosure.

13 “(2)(a) Information of a personal nature such as but not limited to that
14 kept in a personal, medical or similar file, if public disclosure would consti-
15 tute an unreasonable invasion of privacy, unless the public interest by clear
16 and convincing evidence requires disclosure in the particular instance. The
17 party seeking disclosure shall have the burden of showing that public dis-
18 closure would not constitute an unreasonable invasion of privacy.

19 “(b) Images of a dead body, or parts of a dead body, that are part of a law
20 enforcement agency investigation, if public disclosure would create an un-
21 reasonable invasion of privacy of the family of the deceased person, unless

1 the public interest by clear and convincing evidence requires disclosure in
2 the particular instance. The party seeking disclosure shall have the burden
3 of showing that public disclosure would not constitute an unreasonable in-
4 vasion of privacy.

5 “(3) Upon compliance with ORS 192.363, public body employee or volun-
6 teer residential addresses, residential telephone numbers, personal cellular
7 telephone numbers, personal electronic mail addresses, driver license num-
8 bers, employer-issued identification card numbers, emergency contact infor-
9 mation, Social Security numbers, dates of birth and other telephone numbers
10 contained in personnel records maintained by the public body that is the
11 employer or the recipient of volunteer services. This exemption:

12 “(a) Does not apply to the addresses, dates of birth and telephone numbers
13 of employees or volunteers who are elected officials, except that a judge or
14 district attorney subject to election may seek to exempt the judge’s or dis-
15 trict attorney’s address or telephone number, or both, under the terms of
16 ORS 192.368;

17 “(b) Does not apply to employees or volunteers to the extent that the
18 party seeking disclosure shows by clear and convincing evidence that the
19 public interest requires disclosure in a particular instance pursuant to ORS
20 192.363;

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

24 “(d) Does not relieve a public employer of any duty under ORS 243.650 to
25 243.809.

26 “(4) Information submitted to a public body in confidence and not other-
27 wise required by law to be submitted, where such information should rea-
28 sonably be considered confidential, the public body has obliged itself in good
29 faith not to disclose the information, and when the public interest would
30 suffer by the disclosure.

1 “(5) Information or records of the Department of Corrections, including
2 the State Board of Parole and Post-Prison Supervision, to the extent that
3 disclosure would interfere with the rehabilitation of a person in custody of
4 the department or substantially prejudice or prevent the carrying out of the
5 functions of the department, if the public interest in confidentiality clearly
6 outweighs the public interest in disclosure.

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

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

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

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

18 “(b) Subject to ORS 192.360, paragraph (a) of this subsection does not
19 apply to factual information compiled in a public record when:

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

21 “(B) The factual information is not prohibited from disclosure under any
22 applicable state or federal law, regulation or court order and is not other-
23 wise exempt from disclosure under ORS 192.311 to 192.478;

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

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

30 and

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

4 “(10) Public records or information described in this section, furnished
5 by the public body originally compiling, preparing or receiving them to any
6 other public officer or public body in connection with performance of the
7 duties of the recipient, if the considerations originally giving rise to the
8 confidential or exempt nature of the public records or information remain
9 applicable.

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

12 “(12) Employee and retiree address, telephone number and other nonfi-
13 nancial membership records and employee financial records maintained by
14 the Public Employees Retirement System pursuant to ORS chapters 238 and
15 238A or by another retirement system operated by a public body.

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

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

22 “(A) Information in investment records solely related to the amount paid
23 directly into an investment by, or returned from the investment directly to,
24 the treasurer or council; or

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

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

30 “(14)(a) Records of or submitted to the State Treasurer, the Oregon In-

1 vestment Council, the Oregon Growth Board or the agents of the treasurer,
2 council or board relating to actual or proposed investments under ORS
3 chapter 293 or 348 in a privately placed investment fund or a private asset
4 including but not limited to records regarding the solicitation, acquisition,
5 deployment, exchange or liquidation of the investments including but not
6 limited to:

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

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

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

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

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

18 “(F) Investment agreements and related documents.

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

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

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

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

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

30 “(E) The dollar amount, on a fiscal year-end basis, of the remaining value

1 of assets in a privately placed investment fund attributable to an investment
2 by the State Treasurer, the Oregon Investment Council, the Oregon Growth
3 Board or the agents of the treasurer, council or board.

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

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

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

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

12 “(15) The monthly reports prepared and submitted under ORS 293.761 and
13 293.766 concerning the Public Employees Retirement Fund and the Industrial
14 Accident Fund may be uniformly treated as exempt from disclosure for a
15 period of up to 90 days after the end of the calendar quarter.

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

18 “(17)(a) The following records, communications and information submitted
19 to the Oregon Business Development Commission, the Oregon Business De-
20 velopment Department, the State Department of Agriculture, the Oregon
21 Growth Board, the Port of Portland or other ports as defined in ORS 777.005,
22 or a county or city governing body and any board, department, commission,
23 council or agency thereof, by applicants for investment funds, grants, loans,
24 services or economic development moneys, support or assistance including,
25 but not limited to, those described in ORS 285A.224:

26 “(A) Personal financial statements.

27 “(B) Financial statements of applicants.

28 “(C) Customer lists.

29 “(D) Information of an applicant pertaining to litigation to which the
30 applicant is a party if the complaint has been filed, or if the complaint has

1 not been filed, if the applicant shows that such litigation is reasonably likely
2 to occur; this exemption does not apply to litigation which has been con-
3 cluded, and nothing in this subparagraph shall limit any right or opportunity
4 granted by discovery or deposition statutes to a party to litigation or po-
5 tential litigation.

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

7 “(F) Marketing strategy information that relates to applicant’s plan to
8 address specific markets and applicant’s strategy regarding specific compet-
9 itors.

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

13 “(A) Personal financial statements.

14 “(B) Financial statements of applicants.

15 “(C) Customer lists.

16 “(D) Information of an applicant pertaining to litigation to which the
17 applicant is a party if the complaint has been filed, or if the complaint has
18 not been filed, if the applicant shows that such litigation is reasonably likely
19 to occur; this exemption does not apply to litigation which has been con-
20 cluded, and nothing in this subparagraph shall limit any right or opportunity
21 granted by discovery or deposition statutes to a party to litigation or po-
22 tential litigation.

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

24 “(F) Marketing strategy information that relates to applicant’s plan to
25 address specific markets and applicant’s strategy regarding specific compet-
26 itors.

27 “(18) Records, reports or returns submitted by private concerns or enter-
28 prises required by law to be submitted to or inspected by a governmental
29 body to allow it to determine the amount of any transient lodging tax pay-
30 able and the amounts of such tax payable or paid, to the extent that such

1 information is in a form which would permit identification of the individual
2 concern or enterprise. Nothing in this subsection shall limit the use which
3 can be made of such information for regulatory purposes or its admissibility
4 in any enforcement proceedings. The public body shall notify the taxpayer
5 of the delinquency immediately by certified mail. However, in the event that
6 the payment or delivery of transient lodging taxes otherwise due to a public
7 body is delinquent by over 60 days, the public body shall disclose, upon the
8 request of any person, the following information:

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

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

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

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

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

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

23 “(b) When necessary for the director, other governmental agencies of this
24 state or the United States to carry out their duties, functions or powers.

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

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

30 “(21) Sensitive business records or financial or commercial information

1 of the Oregon Health and Science University that is not customarily pro-
2 vided to business competitors.

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

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

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

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

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

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

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

17 “(b) Credit reports.

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

22 “(d) Market studies and analyses.

23 “(e) Articles of incorporation, partnership agreements and operating
24 agreements.

25 “(f) Commitment letters.

26 “(g) Project pro forma statements.

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

28 “(i) Audits.

29 “(j) Project tenant correspondence.

30 “(k) Personal information about a tenant.

1 “(L) Housing assistance payments.

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

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

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

23 “(28) Personally identifiable information about customers of a municipal
24 electric utility or a people’s utility district or the names, dates of birth,
25 driver license numbers, telephone numbers, electronic mail addresses or So-
26 cial Security numbers of customers who receive water, sewer or storm drain
27 services from a public body as defined in ORS 174.109. The utility or district
28 may release personally identifiable information about a customer, and a
29 public body providing water, sewer or storm drain services may release the
30 name, date of birth, driver license number, telephone number, electronic mail

1 address or Social Security number of a customer, if the customer consents
2 in writing or electronically, if the disclosure is necessary for the utility,
3 district or other public body to render services to the customer, if the dis-
4 closure is required pursuant to a court order or if the disclosure is otherwise
5 required by federal or state law. The utility, district or other public body
6 may charge as appropriate for the costs of providing such information. The
7 utility, district or other public body may make customer records available
8 to third party credit agencies on a regular basis in connection with the es-
9 tablishment and management of customer accounts or in the event such ac-
10 counts are delinquent.

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

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

17 “(31) Documents, materials or other information submitted to the Director
18 of the Department of Consumer and Business Services in confidence by a
19 state, federal, foreign or international regulatory or law enforcement agency
20 or by the National Association of Insurance Commissioners, its affiliates or
21 subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to
22 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723,
23 725 or 726, the Bank Act or the Insurance Code when:

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

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

30 “(32) A county elections security plan developed and filed under ORS

1 254.074.

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

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

5 “(A) Electricity;

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

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

8 “(D) Petroleum products;

9 “(E) Sewage; or

10 “(F) Water.

11 “(b) Telecommunication systems, including cellular, wireless or radio
12 systems.

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

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

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

19 “(b) As used in this subsection, ‘employer account records’ means all re-
20 cords maintained in any form that are specifically related to the account of
21 any employer insured, previously insured or under consideration to be in-
22 sured by the State Accident Insurance Fund Corporation and any informa-
23 tion obtained or developed by the corporation in connection with providing,
24 offering to provide or declining to provide insurance to a specific employer.
25 ‘Employer account records’ includes, but is not limited to, an employer’s
26 payroll records, premium payment history, payroll classifications, employee
27 names and identification information, experience modification factors, loss
28 experience and dividend payment history.

29 “(c) The exemption provided by this subsection may not serve as the basis
30 for opposition to the discovery documents in litigation pursuant to applicable

1 rules of civil procedure.

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

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

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

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

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

21 “(39) Information reported to the Oregon Health Authority under ORS
22 431A.860, except as provided in ORS 431A.865 (3)(b), information disclosed
23 by the authority under ORS 431A.865 and any information related to disclo-
24 sures made by the authority under ORS 431A.865, including information
25 identifying the recipient of the information.

26 “(40)(a) Electronic mail addresses in the possession or custody of an
27 agency or subdivision of the executive department, as defined in ORS 174.112,
28 the legislative department, as defined in ORS 174.114, a local government or
29 local service district, as defined in ORS 174.116, or a special government
30 body, as defined in ORS 174.117.

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

4 “(c) This subsection and ORS 244.040 do not prohibit the campaign office
5 of the current officeholder or current candidates who have filed to run for
6 that elective office from receiving upon request the electronic mail addresses
7 used by the current officeholder’s legislative office for newsletter distrib-
8 ution, except that a campaign office that receives electronic mail addresses
9 under this paragraph may not make a further disclosure of those electronic
10 mail addresses to any other person.

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

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

1 “(43) Business, commercial, financial, operational and research data and
2 information, including but not limited to pricing, intellectual property and
3 customer records, furnished to, developed by or generated in connection with
4 the ownership and operation of an unmanned aerial system test range, if
5 disclosure of the information would cause a competitive disadvantage to the
6 test range or its users.

7 “(44) Personally identifiable information about a child under the age of
8 16 years that is submitted to the State Fish and Wildlife Commission or an
9 agent of the commission to obtain a license, tag or permit under the wildlife
10 laws.

11 “(45) Proprietary information subject to a nondisclosure agreement that
12 is provided to the Oregon Broadband Office pursuant to ORS 285A.176.

13 “(46) With respect to records held by the State Treasurer relating to un-
14 claimed properties under ORS 98.302 to 98.436:

15 “(a) All materials or communications received during an examination
16 under ORS 98.412 (2) and (3), except to the extent that the information in the
17 materials or communications appears within a report under ORS 98.412 (4)
18 or 98.352 and the information is not otherwise exempt under ORS 98.352 (4).

19 “(b) All materials or communications assembled or used by the state or
20 its auditor during the preparation of a report under ORS 98.412 (4), including
21 drafts, correspondence, working papers and other preparatory documents.

22 “(c) Information obtained during an examination under ORS 98.412 (2) and
23 (3) concerning an unclaimed property holder’s potential liability in a state
24 other than Oregon, even if that information is included in a report under
25 ORS 98.412 (4) or 98.352.

26 “(d) Information in or supporting claims to unclaimed property under ORS
27 98.392, except to the extent that the claimant consents to the information’s
28 disclosure.

29 “(47) Any document, record or plan for protection relating to the exist-
30 ence, nature, location or function of cybersecurity devices, programs or sys-

1 tems designed to protect computer, information technology or
2 communications systems against threat or attack, including but not limited
3 to:

4 “(a) Records pertaining to devices, programs or systems that depend for
5 their effectiveness in whole or part upon a lack of public knowledge; and

6 “(b) Contractual records or insurance records that set forth cybersecurity
7 specifications, insurance application and coverage details.

8 **“(48) Sensitive business, commercial or financial information, that**
9 **is not customarily provided to business competitors, that is furnished**
10 **to or developed by the Oregon Prescription Drug Program in con-**
11 **nection with purchasing prescription drugs or contracting for the**
12 **services of a pharmacy benefit manager or pharmacy networks pur-**
13 **suant to ORS 414.312.”.**

14 In line 36, delete “16” and insert “17”.

15 In line 40, delete “17” and insert “18”.

16 On page 13, line 1, delete “18” and insert “19”.

17 In line 8, delete “19” and insert “20”.

18 In line 9, delete “20” and insert “21”.

19
