

D R A F T

SUMMARY

Provides exemption from mandatory disclosure of electronic mail addresses that are in possession of offices of legislative department. Permits disclosure of electronic mail addresses used to distribute elective officeholder newsletters to current candidates who have filed to run for elective office, if requested.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to electronic mail addresses; amending ORS 192.502; and prescribing an effective date.

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

SECTION 1. ORS 192.502 is amended to read:

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

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party

1 seeking disclosure shall have the burden of showing that public disclosure
2 would not constitute an unreasonable invasion of privacy.

3 (3) Upon compliance with ORS 192.437, public body employee or volunteer
4 residential addresses, residential telephone numbers, personal cellular tele-
5 phone numbers, personal electronic mail addresses, driver license numbers,
6 employer-issued identification card numbers, emergency contact information,
7 Social Security numbers, dates of birth and other telephone numbers con-
8 tained in personnel records maintained by the public body that is the em-
9 ployer or the recipient of volunteer services. This exemption:

10 (a) Does not apply to the addresses, dates of birth and telephone numbers
11 of employees or volunteers who are elected officials, except that a judge or
12 district attorney subject to election may seek to exempt the judge's or dis-
13 trict attorney's address or telephone number, or both, under the terms of
14 ORS 192.445;

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

18 (c) Does not apply to a substitute teacher as defined in ORS 342.815 when
19 requested by a professional education association of which the substitute
20 teacher may be a member; and

21 (d) Does not relieve a public employer of any duty under ORS 243.650 to
22 243.782.

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

28 (5) Information or records of the Department of Corrections, including the
29 State Board of Parole and Post-Prison Supervision, to the extent that dis-
30 closure would interfere with the rehabilitation of a person in custody of the
31 department or substantially prejudice or prevent the carrying out of the

functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

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

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

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

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

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

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

(B) The factual information is not prohibited from disclosure under any applicable state or federal law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410 to 192.505;

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

(D) The factual information was not compiled in preparation for litigation, arbitration or an administrative proceeding that was reasonably likely to be initiated or that has been initiated by or against the public body; and

(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement characterizing or partially disclosing the factual information compiled by or at the attorney's direction.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any

other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

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

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapters 238 and 238A.

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

(a) The exemption does not apply to:

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

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

(b) An investment in a publicly traded investment is no longer active when acquisition, exchange or liquidation of the investment has been concluded.

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

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

3 (B) Financial statements of an investment fund, an asset ownership or
4 their respective investment vehicles.

5 (C) Meeting materials of an investment fund, an asset ownership or their
6 respective investment vehicles.

7 (D) Records containing information regarding the portfolio positions in
8 which an investment fund, an asset ownership or their respective investment
9 vehicles invest.

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

12 (F) Investment agreements and related documents.

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

14 (A) The name, address and vintage year of each privately placed invest-
15 ment fund.

16 (B) The dollar amount of the commitment made to each privately placed
17 investment fund since inception of the fund.

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

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

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

28 (F) The net internal rate of return of each privately placed investment
29 fund since inception of the fund.

30 (G) The investment multiple of each privately placed investment fund
31 since inception of the fund.

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

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

5 (15) The monthly reports prepared and submitted under ORS 293.761 and
6 293.766 concerning the Public Employees Retirement Fund and the Industrial
7 Accident Fund may be uniformly treated as exempt from disclosure for a
8 period of up to 90 days after the end of the calendar quarter.

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

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

19 (A) Personal financial statements.

20 (B) Financial statements of applicants.

21 (C) Customer lists.

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

29 (E) Production, sales and cost data.

30 (F) Marketing strategy information that relates to applicant's plan to
31 address specific markets and applicant's strategy regarding specific compet-

itors.

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

(A) Personal financial statements.

(B) Financial statements of applicants.

(C) Customer lists.

(D) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(E) Production, sales and cost data.

(F) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

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

(a) The identity of the individual concern or enterprise that is delinquent

over 60 days in the payment or delivery of the taxes.

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

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

(19) All information supplied by a person under ORS 151.485 for the purpose of requesting appointed counsel, and all information supplied to the court from whatever source for the purpose of verifying the financial eligibility of a person pursuant to ORS 151.485.

(20) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

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

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

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(21) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

(22) Records of Oregon Health and Science University regarding candidates for the position of president of the university.

(23) The records of a library, including:

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

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

(c) The electronic mail address of a patron.

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

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

(b) Credit reports.

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

(d) Market studies and analyses.

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

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

(j) Project tenant correspondence.

(k) Personal information about a tenant.

(L) Housing assistance payments.

(25) Raster geographic information system (GIS) digital databases, provided by private forestland owners or their representatives, voluntarily and in confidence to the State Forestry Department, that is not otherwise required by law to be submitted.

(26) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disad-

1 vantage for the public body or its retail electricity customers. This sub-
2 section does not apply to cost-of-service studies used in the development or
3 review of generally applicable rate schedules.

4 (27) Sensitive business, commercial or financial information furnished to
5 or developed by the City of Klamath Falls, acting solely in connection with
6 the ownership and operation of the Klamath Cogeneration Project, if the
7 information is directly related to a transaction described in ORS 225.085 and
8 disclosure of the information would cause a competitive disadvantage for the
9 Klamath Cogeneration Project. This subsection does not apply to cost-of-
10 service studies used in the development or review of generally applicable rate
11 schedules.

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

30 (29) A record of the street and number of an employee's address submitted
31 to a special district to obtain assistance in promoting an alternative to sin-

gle occupant motor vehicle transportation.

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

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

(a) The document, material or other information is received upon notice or with an understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information; and

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

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

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

(a) Generation, storage or conveyance of:

(A) Electricity;

(B) Gas in liquefied or gaseous form;

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

(D) Petroleum products;

(E) Sewage; or

(F) Water.

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

(c) Data transmissions by whatever means provided.

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

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

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

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

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

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

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

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

(38) Records of or submitted to a domestic violence service or resource center that relate to the name or personal information of an individual who visits a center for service, including the date of service, the type of service

1 received, referrals or contact information or personal information of a family
2 member of the individual. As used in this subsection, “domestic violence
3 service or resource center” means an entity, the primary purpose of which
4 is to assist persons affected by domestic or sexual violence by providing re-
5 ferrals, resource information or other assistance specifically of benefit to
6 domestic or sexual violence victims.

7 (39) Information reported to the Oregon Health Authority under ORS
8 431A.860, except as provided in ORS 431A.860 (2)(b) information disclosed by
9 the authority under ORS 431A.865 and any information related to disclosures
10 made by the authority under ORS 431A.865, including information identifying
11 the recipient of the information.

12 (40)(a) Electronic mail addresses in the possession or custody of an agency
13 or subdivision of the executive department, as defined in ORS 174.112, **the**
14 **legislative department, as defined in ORS 174.114**, a local government or
15 local service district, as defined in ORS 174.116, or a special government
16 body, as defined in ORS 174.117.

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

20 **(c) This subsection and ORS 244.040 do not prohibit current candi-**
21 **dates who have filed to run for elective office from receiving upon re-**
22 **quest the electronic mail addresses used by elective officeholders for**
23 **newsletter distribution.**

24 (41) Residential addresses, residential telephone numbers, personal cellu-
25 lar telephone numbers, personal electronic mail addresses, driver license
26 numbers, emergency contact information, Social Security numbers, dates of
27 birth and other telephone numbers of individuals currently or previously
28 certified or licensed by the Department of Public Safety Standards and
29 Training contained in the records maintained by the department.

30 (42) Personally identifiable information and contact information of veter-
31 ans as defined in ORS 408.225 and of persons serving on active duty or as

1 reserve members with the Armed Forces of the United States, National
2 Guard or other reserve component that was obtained by the Department of
3 Veterans' Affairs in the course of performing its duties and functions, in-
4 cluding but not limited to names, residential and employment addresses,
5 dates of birth, driver license numbers, telephone numbers, electronic mail
6 addresses, Social Security numbers, marital status, dependents, the character
7 of discharge from military service, military rating or rank, that the person
8 is a veteran or has provided military service, information relating to an ap-
9 plication for or receipt of federal or state benefits, information relating to
10 the basis for receipt or denial of federal or state benefits and information
11 relating to a home loan or grant application, including but not limited to
12 financial information provided in connection with the application.

13 **SECTION 3. This 2017 Act takes effect on the 91st day after the date**
14 **on which the 2017 regular session of the Seventy-ninth Legislative**
15 **Assembly adjourns sine die.**