

# D R A F T

## SUMMARY

Exempts from mandatory disclosure records and information of Legislative Equity Office that relate to disclosures, reports or other allegations made to equity office or relate to investigations undertaken by equity office or at request of equity office. Provides exceptions where disclosure of specified records is required.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to legislative branch investigation records; amending ORS 192.355;  
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 192.355 is amended to read:

6 192.355. The following public records are exempt from disclosure under  
7 ORS 192.311 to 192.478:

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

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

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

3 (b) Images of a dead body, or parts of a dead body, that are part of a law  
4 enforcement agency investigation, if public disclosure would create an un-  
5 reasonable invasion of privacy of the family of the deceased person, unless  
6 the public interest by clear and convincing evidence requires disclosure in  
7 the particular instance. The party seeking disclosure shall have the burden  
8 of showing that public disclosure would not constitute an unreasonable in-  
9 vasion of privacy.

10 (3) Upon compliance with ORS 192.363, public body employee or volunteer  
11 residential addresses, residential telephone numbers, personal cellular tele-  
12 phone numbers, personal electronic mail addresses, driver license numbers,  
13 employer-issued identification card numbers, emergency contact information,  
14 Social Security numbers, dates of birth and other telephone numbers con-  
15 tained in personnel records maintained by the public body that is the em-  
16 ployer or the recipient of volunteer services. This exemption:

17 (a) Does not apply to the addresses, dates of birth and telephone numbers  
18 of employees or volunteers who are elected officials, except that a judge or  
19 district attorney subject to election may seek to exempt the judge's or dis-  
20 trict attorney's address or telephone number, or both, under the terms of  
21 ORS 192.368;

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

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

28 (d) Does not relieve a public employer of any duty under ORS 243.650 to  
29 243.782.

30 (4) Information submitted to a public body in confidence and not other-  
31 wise required by law to be submitted, where such information should rea-

1 sonably be considered confidential, the public body has obliged itself in good  
2 faith not to disclose the information, and when the public interest would  
3 suffer by the disclosure.

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

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

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

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

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

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

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

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

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

30 (D) The factual information was not compiled in preparation for liti-  
31 gation, arbitration or an administrative proceeding that was reasonably

1 likely to be initiated or that has been initiated by or against the public body;  
2 and

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

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

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

14 (12) Employee and retiree address, telephone number and other nonfinan-  
15 cial membership records and employee financial records maintained by the  
16 Public Employees Retirement System pursuant to ORS chapters 238 and  
17 238A.

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

23 (a) The exemption does not apply to:

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

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

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

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

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

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

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

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

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

19 (F) Investment agreements and related documents.

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

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

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

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

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

31 (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 ap-  
30 plicant is a party if the complaint has been filed, or if the complaint has not  
31 been filed, if the applicant shows that such litigation is reasonably likely to

1 occur; this exemption does not apply to litigation which has been concluded,  
2 and nothing in this subparagraph shall limit any right or opportunity  
3 granted by discovery or deposition statutes to a party to litigation or po-  
4 tential litigation.

5 (E) Production, sales and cost data.

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

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

12 (A) Personal financial statements.

13 (B) Financial statements of applicants.

14 (C) Customer lists.

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

22 (E) Production, sales and cost data.

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

26 (18) Records, reports or returns submitted by private concerns or enter-  
27 prises required by law to be submitted to or inspected by a governmental  
28 body to allow it to determine the amount of any transient lodging tax pay-  
29 able and the amounts of such tax payable or paid, to the extent that such  
30 information is in a form which would permit identification of the individual  
31 concern or enterprise. Nothing in this subsection shall limit the use which

1 can be made of such information for regulatory purposes or its admissibility  
2 in any enforcement proceedings. The public body shall notify the taxpayer  
3 of the delinquency immediately by certified mail. However, in the event that  
4 the payment or delivery of transient lodging taxes otherwise due to a public  
5 body is delinquent by over 60 days, the public body shall disclose, upon the  
6 request of any person, the following information:

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

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

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

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

15 (20) Workers' compensation claim records of the Department of Consumer  
16 and Business Services, except in accordance with rules adopted by the Di-  
17 rector of the Department of Consumer and Business Services, in any of the  
18 following circumstances:

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

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

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

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

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

31 (22) Records of Oregon Health and Science University regarding candi-



1 dates for the position of president of the university.

2 (23) The records of a library, including:

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

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

7 (c) The electronic mail address of a patron.

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

12 (a) Personal and corporate financial statements and information, includ-  
13 ing tax returns.

14 (b) Credit reports.

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

19 (d) Market studies and analyses.

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

22 (f) Commitment letters.

23 (g) Project pro forma statements.

24 (h) Project cost certifications and cost data.

25 (i) Audits.

26 (j) Project tenant correspondence.

27 (k) Personal information about a tenant.

28 (L) Housing assistance payments.

29 (25) Raster geographic information system (GIS) digital databases, pro-  
30 vided by private forestland owners or their representatives, voluntarily and  
31 in confidence to the State Forestry Department, that is not otherwise re-

1 quired by law to be submitted.

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

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

19 (28) Personally identifiable information about customers of a municipal  
20 electric utility or a people's utility district or the names, dates of birth,  
21 driver license numbers, telephone numbers, electronic mail addresses or So-  
22 cial Security numbers of customers who receive water, sewer or storm drain  
23 services from a public body as defined in ORS 174.109. The utility or district  
24 may release personally identifiable information about a customer, and a  
25 public body providing water, sewer or storm drain services may release the  
26 name, date of birth, driver license number, telephone number, electronic mail  
27 address or Social Security number of a customer, if the customer consents  
28 in writing or electronically, if the disclosure is necessary for the utility,  
29 district or other public body to render services to the customer, if the dis-  
30 closure is required pursuant to a court order or if the disclosure is otherwise  
31 required by federal or state law. The utility, district or other public body

1 may charge as appropriate for the costs of providing such information. The  
2 utility, district or other public body may make customer records available  
3 to third party credit agencies on a regular basis in connection with the es-  
4 tablishment and management of customer accounts or in the event such ac-  
5 counts are delinquent.

6 (29) A record of the street and number of an employee's address submitted  
7 to a special district to obtain assistance in promoting an alternative to sin-  
8 gle occupant motor vehicle transportation.

9 (30) Sensitive business records, capital development plans or financial or  
10 commercial information of Oregon Corrections Enterprises that is not cus-  
11 tomarily provided to business competitors.

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

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

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

25 (32) A county elections security plan developed and filed under ORS  
26 254.074.

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

29 (a) Generation, storage or conveyance of:

30 (A) Electricity;

31 (B) Gas in liquefied or gaseous form;

- 1 (C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);
- 2 (D) Petroleum products;
- 3 (E) Sewage; or
- 4 (F) Water.

5 (b) Telecommunication systems, including cellular, wireless or radio sys-  
6 tems.

7 (c) Data transmissions by whatever means provided.

8 (34) The information specified in ORS 25.020 (8) if the Chief Justice of the  
9 Supreme Court designates the information as confidential by rule under ORS  
10 1.002.

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

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

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

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

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

31 (c) The exemption provided by this subsection may not serve as the basis

1 for opposition to the discovery documents in litigation pursuant to applicable  
2 rules of civil procedure.

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

5 (38) Records of or submitted to a domestic violence service or resource  
6 center that relate to the name or personal information of an individual who  
7 visits a center for service, including the date of service, the type of service  
8 received, referrals or contact information or personal information of a family  
9 member of the individual. As used in this subsection, "domestic violence  
10 service or resource center" means an entity, the primary purpose of which  
11 is to assist persons affected by domestic or sexual violence by providing re-  
12 ferrals, resource information or other assistance specifically of benefit to  
13 domestic or sexual violence victims.

14 (39) Information reported to the Oregon Health Authority under ORS  
15 431A.860, except as provided in ORS 431A.860 (2)(b) information disclosed by  
16 the authority under ORS 431A.865 and any information related to disclosures  
17 made by the authority under ORS 431A.865, including information identifying  
18 the recipient of the information.

19 (40)(a) Electronic mail addresses in the possession or custody of an agency  
20 or subdivision of the executive department, as defined in ORS 174.112, the  
21 legislative department, as defined in ORS 174.114, a local government or lo-  
22 cal service district, as defined in ORS 174.116, or a special government body,  
23 as defined in ORS 174.117.

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

27 (c) This subsection and ORS 244.040 do not prohibit the campaign office  
28 of the current officeholder or current candidates who have filed to run for  
29 that elective office from receiving upon request the electronic mail addresses  
30 used by the current officeholder's legislative office for newsletter distrib-  
31 ution, except that a campaign office that receives electronic mail addresses

1 under this paragraph may not make a further disclosure of those electronic  
2 mail addresses to any other person.

3 (41) Residential addresses, residential telephone numbers, personal cellu-  
4 lar telephone numbers, personal electronic mail addresses, driver license  
5 numbers, emergency contact information, Social Security numbers, dates of  
6 birth and other telephone numbers of individuals currently or previously  
7 certified or licensed by the Department of Public Safety Standards and  
8 Training contained in the records maintained by the department.

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

23 **(43) Records and information of the Legislative Equity Office es-**  
24 **tablished in section 1, chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled**  
25 **Senate Bill 744), that relate to disclosures, reports or other allegations**  
26 **made to the equity office or that relate to investigations undertaken**  
27 **by the equity office or by an investigator at the request of the equity**  
28 **office, except that:**

29 **(a) A formal complaint made under legislative branch personnel**  
30 **rules is disclosable when requested;**

31 **(b) Records relating to an investigation of a member of the Legis-**

1 **lative Assembly following a formal complaint being made concerning**  
2 **the member are subject to disclosure after the fact-finding investi-**  
3 **gation has concluded, even if a legislative committee has not yet met**  
4 **or deliberated on the investigation's findings; and**

5 **(c) Records relating to an investigation of allegations of conduct**  
6 **prohibited by legislative branch personnel rules and not described in**  
7 **paragraph (b) of this subsection are subject to disclosure upon a de-**  
8 **termination being made that the person who was the subject of the**  
9 **investigation is subject to remedial measures or discipline.**

10 **SECTION 2. This 2019 Act being necessary for the immediate pres-**  
11 **ervation of the public peace, health and safety, an emergency is de-**  
12 **clared to exist, and this 2019 Act takes effect on its passage.**

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