

A-Engrossed
House Bill 2841

Ordered by the House April 12
Including House Amendments dated April 12

Sponsored by Representatives GOMBERG, LIVELY, SMITH DB, GORSEK, HELM, WITT; Representatives BONHAM, MARSH, REARDON, WILDE, Senators DEMBROW, FREDERICK, RILEY, ROBLAN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Allows State Department of Fish and Wildlife to refuse disclosure of information relevant to department ability to manage or protect described fish or wildlife species or individual members or populations of species. **Creates exceptions.** Exempts information from disclosure as public record.

Makes disclosure criteria and public record law exemption retroactive to September 1, 2018. Validates department nondisclosures of information since September 1, 2018.

A BILL FOR AN ACT

1
2 Relating to the release of animal data; creating new provisions; and amending ORS 192.345.

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

4 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 496.**

5 **SECTION 2. (1) The State Department of Fish and Wildlife may refuse to disclose infor-**
6 **mation described in subsection (3) of this section regarding the habitat, location or popu-**
7 **lation of a fish or wildlife species that is:**

8 (a) **Listed by the federal government or by the State Fish and Wildlife Commission as a**
9 **threatened species or an endangered species;**

10 (b) **Under consideration by the commission for listing as a threatened species or an en-**
11 **dangered species; or**

12 (c) **A sensitive species as defined by the department by rule.**

13 (2) **The department may refuse to disclose data regarding the location or habitat of a fish**
14 **or wildlife species or of an individual member or a population of a species if:**

15 (a) **The species has value as a commercial species or game species, or has black market**
16 **value;**

17 (b) **There exists a history of harm to a local population of the species from malicious or**
18 **unlawful behavior, accidental taking, disturbance or harassment and the behavior or ecology**
19 **of the species makes the species especially vulnerable to that harm;**

20 (c) **There is a known demand for taking or harassing the species; or**

21 (d) **The species has limited distribution and concentration or is an endemic species.**

22 (3) **The department may refuse to disclose telemetry, radio frequency or other locational**
23 **data about a species, an individual member of a species or the habitat of a species or indi-**
24 **vidual member of a species, that are described in subsection (1) or (2) of this section if the**
25 **data concern:**

26 (a) **Present, projected or recent past locations of individual members or populations of**

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 **the species;**

2 **(b) Present, projected or recent past habitat used by the species, including but not lim-**
3 **ited to habitat used for breeding, nesting, denning, migration, dispersal or other sensitive**
4 **or vulnerable life stages, if disclosure of the habitat could be expected to lead to discovery**
5 **of the location of the species or of an individual member of the species;**

6 **(c) Results or other specific information from the unpublished data and findings of re-**
7 **search, monitoring or evaluation efforts conducted by the state or by an entity acting jointly**
8 **with the state; or**

9 **(d) Confidential information provided on a voluntary basis by private landowners or rep-**
10 **resentatives of private landowners.**

11 **(4) The department shall disclose data withheld under subsections (1) to (3) of this section**
12 **to:**

13 **(a) The federal government, a public body as defined in ORS 174.109, a public utility or**
14 **an accredited college or university;**

15 **(b) Tribal governments;**

16 **(c) Owners of, lessees of rights-of-way in or holders of easements on private land to**
17 **which the data pertain;**

18 **(d) Holders of public grazing permits for the land to which the data pertain; and**

19 **(e) Resource management partners and stakeholders.**

20 **(5) The department shall require a recipient of information disclosed under subsection (4)**
21 **of this section to sign an agreement to maintain the confidentiality of the information.**

22 **(6) A disclosure of information under subsection (4) of this section does not require that**
23 **the department disclose the information to any other party.**

24 **(7) Subsections (1) to (3) of this section may not be used to withhold data, studies or**
25 **other information about the total numbers or health of a species in this state or in a region**
26 **of this state.**

27 **(8) If the department provides data described in this section, to the extent practicable**
28 **the department shall aggregate the data to a scale that does not create a risk to the fish or**
29 **wildlife species or members of the species.**

30 **SECTION 3.** ORS 192.345 is amended to read:

31 192.345. The following public records are exempt from disclosure under ORS 192.311 to 192.478
32 unless the public interest requires disclosure in the particular instance:

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

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

44 (3) Investigatory information compiled for criminal law purposes. The record of an arrest or the
45 report of a crime shall be disclosed unless and only for so long as there is a clear need to delay

1 disclosure in the course of a specific investigation, including the need to protect the complaining
2 party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or
3 granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the
4 record of an arrest or the report of a crime includes, but is not limited to:

5 (a) The arrested person's name, age, residence, employment, marital status and similar bi-
6 ographical information;

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

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

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

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

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

12 (g) Such information as may be necessary to enlist public assistance in apprehending fugitives
13 from justice.

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

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

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

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

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

34 (9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and
35 663.180.

36 (10) Records, reports and other information received or compiled by the Director of the De-
37 partment of Consumer and Business Services under ORS 697.732.

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

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

44 (13) **Fish and wildlife** information:

45 (a) Developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, re-

1 guarding the habitat, location or population of any threatened species or endangered species[.]; or

2 **(b) Described in section 2 of this 2019 Act.**

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

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

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

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

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

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

16 (17) Investigatory information relating to any complaint or charge filed under ORS chapter 654,
17 until a final administrative determination is made or, if a citation is issued, until an employer re-
18 ceives notice of any citation.

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

23 (19)(a) Audits or audit reports required of a telecommunications carrier. As used in this para-
24 graph, "audit or audit report" means any external or internal audit or audit report pertaining to a
25 telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an af-
26 filiated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to
27 make the operations of the entity more efficient, accurate or compliant with applicable rules, pro-
28 cedures or standards, that may include self-criticism and that has been filed by the telecommuni-
29 cations carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an
30 audit of a cost study that would be discoverable in a contested case proceeding and that is not
31 subject to a protective order; and

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

35 (20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS
36 247.967.

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

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

41 (b) Credit reports;

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

45 (d) Market studies and analyses;

- 1 (e) Articles of incorporation, partnership agreements and operating agreements;
 - 2 (f) Commitment letters;
 - 3 (g) Project pro forma statements;
 - 4 (h) Project cost certifications and cost data;
 - 5 (i) Audits;
 - 6 (j) Project tenant correspondence requested to be confidential;
 - 7 (k) Tenant files relating to certification; and
 - 8 (L) Housing assistance payment requests.
- 9 (22) Records or information that, if disclosed, would allow a person to:
- 10 (a) Gain unauthorized access to buildings or other property;
 - 11 (b) Identify those areas of structural or operational vulnerability that would permit unlawful
 - 12 disruption to, or interference with, services; or
 - 13 (c) Disrupt, interfere with or gain unauthorized access to public funds or to information pro-
 - 14 cessing, communication or telecommunication systems, including the information contained in the
 - 15 systems, that are used or operated by a public body.
- 16 (23) Records or information that would reveal or otherwise identify security measures, or
- 17 weaknesses or potential weaknesses in security measures, taken or recommended to be taken to
- 18 protect:
- 19 (a) An individual;
 - 20 (b) Buildings or other property;
 - 21 (c) Information processing, communication or telecommunication systems, including the infor-
 - 22 mation contained in the systems; or
 - 23 (d) Those operations of the Oregon State Lottery the security of which are subject to study and
 - 24 evaluation under ORS 461.180 (6).
- 25 (24) Personal information held by or under the direction of officials of the Oregon Health and
- 26 Science University or a public university listed in ORS 352.002 about a person who has or who is
- 27 interested in donating money or property to the Oregon Health and Science University or a public
- 28 university, if the information is related to the family of the person, personal assets of the person or
- 29 is incidental information not related to the donation.
- 30 (25) The home address, professional address and telephone number of a person who has or who
- 31 is interested in donating money or property to a public university listed in ORS 352.002.
- 32 (26) Records of the name and address of a person who files a report with or pays an assessment
- 33 to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council
- 34 created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030.
- 35 (27) Information provided to, obtained by or used by a public body to authorize, originate, re-
- 36 ceive or authenticate a transfer of funds, including but not limited to a credit card number, payment
- 37 card expiration date, password, financial institution account number and financial institution routing
- 38 number.
- 39 (28) Social Security numbers as provided in ORS 107.840.
- 40 (29) The electronic mail address of a student who attends a public university listed in ORS
- 41 352.002 or Oregon Health and Science University.
- 42 (30) The name, home address, professional address or location of a person that is engaged in,
- 43 or that provides goods or services for, medical research at Oregon Health and Science University
- 44 that is conducted using animals other than rodents. This subsection does not apply to Oregon Health
- 45 and Science University press releases, websites or other publications circulated to the general pub-

1 lic.

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

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

5 (b) The home address and home telephone number of the public safety officer contained in re-
6 cords of the Department of Public Safety Standards and Training.

7 (c) The name of the public safety officer contained in county real property assessment or taxa-
8 tion records. This exemption:

9 (A) Applies only to the name of the public safety officer and any other owner of the property
10 in connection with a specific property identified by the officer in a request for exemption from dis-
11 closure;

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

14 (C) Applies until the public safety officer requests termination of the exemption;

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

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

19 (32) Unless the public records request is made by a financial institution, as defined in ORS
20 706.008, consumer finance company licensed under ORS chapter 725, mortgage banker or mortgage
21 broker licensed under ORS 86A.095 to 86A.198, or title company for business purposes, records de-
22 scribed in paragraph (a) of this subsection, if the exemption from disclosure of the records is sought
23 by an individual described in paragraph (b) of this subsection using the procedure described in par-
24 agraph (c) of this subsection:

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

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

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

31 (b) The individual claiming the exemption from disclosure must be a district attorney, a deputy
32 district attorney, the Attorney General or an assistant attorney general, the United States Attorney
33 for the District of Oregon or an assistant United States attorney for the District of Oregon, a city
34 attorney who engages in the prosecution of criminal matters or a deputy city attorney who engages
35 in the prosecution of criminal matters.

36 (c) The individual claiming the exemption from disclosure must do so by filing the claim in
37 writing with the public body for which the exemption from disclosure is being claimed on a form
38 prescribed by the public body. Unless the claim is filed with the county clerk, the claim form shall
39 list the public records in the possession of the public body to which the exemption applies. The ex-
40 emption applies until the individual claiming the exemption requests termination of the exemption
41 or ceases to qualify for the exemption.

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

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

45 (b) Written agreements relating to the conservation of greater sage grouse entered into volun-

1 tarily by owners or occupiers of land with a soil and water conservation district under ORS 568.550.

2 (34) Sensitive business records or financial or commercial information of the State Accident In-
3 surance Fund Corporation that is not customarily provided to business competitors. This exemption
4 does not:

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

7 (b) Apply to contracts for advertising, public relations or lobbying services or to documents re-
8 lated to the formation of such contracts;

9 (c) Apply to group insurance contracts or to documents relating to the formation of such con-
10 tracts, except that employer account records shall remain exempt from disclosure as provided in
11 ORS 192.355 (35); or

12 (d) Provide the basis for opposing the discovery of documents in litigation pursuant to the ap-
13 plicable rules of civil procedure.

14 (35) Records of the Department of Public Safety Standards and Training relating to investi-
15 gations conducted under ORS 181A.640 or 181A.870 (6), until the department issues the report de-
16 scribed in ORS 181A.640 or 181A.870.

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

19 (37) Any document or other information related to an audit of a public body, as defined in ORS
20 174.109, that is in the custody of an auditor or audit organization operating under nationally re-
21 cognized government auditing standards, until the auditor or audit organization issues a final audit
22 report in accordance with those standards or the audit is abandoned. This exemption does not pro-
23 hibit disclosure of a draft audit report that is provided to the audited entity for the entity's response
24 to the audit findings.

25 (38)(a) Personally identifiable information collected as part of an electronic fare collection sys-
26 tem of a mass transit system.

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

31 (c) As used in this subsection:

32 (A) "Electronic fare collection system" means the software and hardware used for, associated
33 with or relating to the collection of transit fares for a mass transit system, including but not limited
34 to computers, radio communication systems, personal mobile devices, wearable technology, fare in-
35 struments, information technology, data storage or collection equipment, or other equipment or im-
36 provements.

37 (B) "Mass transit system" has the meaning given that term in ORS 267.010.

38 (C) "Personally identifiable information" means all information relating to a person that ac-
39 quires or uses a transit pass or other fare payment medium in connection with an electronic fare
40 collection system, including but not limited to:

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

45 (ii) Travel dates, travel times, frequency of use, travel locations, service types or vehicle use,

1 or similar travel information.

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

3 (A) The home address and home telephone number of the civil code enforcement officer con-
4 tained in the voter registration records for the officer.

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

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

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

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

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

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

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

21 (40) Audio or video recordings, whether digital or analog, resulting from a law enforcement
22 officer's operation of a video camera worn upon the officer's person that records the officer's inter-
23 actions with members of the public while the officer is on duty. When a recording described in this
24 subsection is subject to disclosure, the following apply:

25 (a) Recordings that have been sealed in a court's record of a court proceeding or otherwise or-
26 dered by a court not to be disclosed may not be disclosed.

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

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

32 **SECTION 4. (1) The Legislative Assembly intends that section 2 of this 2019 Act and the**
33 **amendments to ORS 192.345 by section 3 of this 2019 Act apply retroactively to September**
34 **1, 2018. The Legislative Assembly hereby validates any disclosure refusal by the State De-**
35 **partment of Fish and Wildlife on or after September 1, 2018, and prior to the effective date**
36 **of this 2019 Act regarding information described in section 2 of this 2019 Act or in the**
37 **amendments to ORS 192.345 by section 3 of this 2019 Act.**

38 **(2) Section 2 of this 2019 Act does not allow the department to refuse information in vi-**
39 **olation of a data sharing commitment or obligation, including but not limited to a commit-**
40 **ment under a management plan, entered into by the department prior to the effective date**
41 **of this 2019 Act. However, section 2 (8) of this 2019 Act applies to any such data sharing.**

42