

Requested by Representative GOMBERG

**PROPOSED AMENDMENTS TO
HOUSE BILL 2841**

1 On page 1 of the printed bill, delete lines 4 through 29 and delete pages
2 2 through 8 and insert:

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

5 **“SECTION 2. (1) The State Department of Fish and Wildlife may
6 refuse to disclose information described in subsection (2) of this sec-
7 tion about a fish or wildlife species or about the habitat of a fish or
8 wildlife species that is:**

9 **“(a) A sensitive species as defined by department rule;**

10 **“(b) Listed by the federal government or by the State Fish and
11 Wildlife Commission as a threatened species or endangered species;
12 or**

13 **“(c) Under consideration by the commission for listing as a threat-
14 ened species or endangered species.**

15 **“(2) The department may refuse to disclose information about a
16 species described in subsection (1) of this section if the information
17 concerns:**

18 **“(a) Past, present or projected locations of individual members or
19 populations of the species;**

20 **“(b) Past, present or projected habitat use by the species, or by an
21 individual member or a population of the species, during breeding,**

1 **nesting, denning, migration, dispersal or other sensitive or vulnerable**
2 **life stages; or**

3 **“(c) Telemetry, radio frequency or other information concerning**
4 **tracking or monitoring equipment or methods that have been used,**
5 **are in use or are being considered for use.**

6 **“(3) The department may refuse to disclose information about the**
7 **location or habitat of a fish or wildlife species or of an individual**
8 **member or a population of a species if:**

9 **“(a) The species has value as a commercial species or game species,**
10 **or has black market value;**

11 **“(b) There exists a history of harm to the species from malicious**
12 **or unlawful behavior, accidental taking, disturbance or harassment**
13 **and the behavior or ecology of the species makes the species especially**
14 **vulnerable to that harm;**

15 **“(c) There is a known detrimental level of demand for taking the**
16 **species;**

17 **“(d) The species has limited distribution and concentration or is an**
18 **endemic species; or**

19 **“(e) The information is capable of compromising the viability of the**
20 **species or of an individual member or a population of the species.**

21 **“(4) The department may refuse to disclose information about the**
22 **location or habitat of a species described in subsection (3) of this sec-**
23 **tion that concerns:**

24 **“(a) Results or other specific information from the unpublished data**
25 **and findings of research, monitoring or evaluation efforts conducted**
26 **by the state or by an entity acting jointly with the state; or**

27 **“(b) Confidential information provided on a voluntary basis by pri-**
28 **vate landowners or representatives of private landowners.**

29 **“(5) The department may disclose information withheld under sub-**
30 **section (2) or (3) of this section to:**

1 “(a) The federal government, a public body as defined in ORS
2 174.109, a public utility or an accredited college or university;

3 “(b) Tribal governments;

4 “(c) Owners of, lessees of rights-of-way in or holders of easements
5 on private land to which the information pertains; and

6 “(d) Resource management partners and stakeholders.

7 “(6) The department shall require a recipient of information dis-
8 closed under subsection (5) of this section to sign an agreement to
9 maintain the confidentiality of the information.

10 “(7) A disclosure of information under subsection (5) of this section
11 does not require that the department disclose the information to any
12 other party.

13 “(8) Except as provided in this subsection, if the department dis-
14 closes information described in this section relating to fish and wildlife
15 management, the department shall ensure that the information is at
16 a spatial and temporal scale that does not put an individual member
17 or a population of a species at risk of harm. This subsection does not
18 apply to a disclosure of information authorized under subsection (5)
19 of this section.

20 “SECTION 3. ORS 192.345 is amended to read:

21 “192.345. The following public records are exempt from disclosure under
22 ORS 192.311 to 192.478 unless the public interest requires disclosure in the
23 particular instance:

24 “(1) Records of a public body pertaining to litigation to which the public
25 body is a party if the complaint has been filed, or if the complaint has not
26 been filed, if the public body shows that such litigation is reasonably likely
27 to occur. This exemption does not apply to litigation which has been con-
28 cluded, and nothing in this subsection shall limit any right or opportunity
29 granted by discovery or deposition statutes to a party to litigation or po-
30 tential litigation.

1 “(2) Trade secrets. ‘Trade secrets,’ as used in this section, may include,
2 but are not limited to, any formula, plan, pattern, process, tool, mechanism,
3 compound, procedure, production data, or compilation of information which
4 is not patented, which is known only to certain individuals within an or-
5 ganization and which is used in a business it conducts, having actual or
6 potential commercial value, and which gives its user an opportunity to ob-
7 tain a business advantage over competitors who do not know or use it.

8 “(3) Investigatory information compiled for criminal law purposes. The
9 record of an arrest or the report of a crime shall be disclosed unless and only
10 for so long as there is a clear need to delay disclosure in the course of a
11 specific investigation, including the need to protect the complaining party
12 or the victim. Nothing in this subsection shall limit any right constitu-
13 tionally guaranteed, or granted by statute, to disclosure or discovery in
14 criminal cases. For purposes of this subsection, the record of an arrest or the
15 report of a crime includes, but is not limited to:

16 “(a) The arrested person’s name, age, residence, employment, marital sta-
17 tus and similar biographical information;

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

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

20 “(d) The identity of and biographical information concerning both com-
21 plaining party and victim;

22 “(e) The identity of the investigating and arresting agency and the length
23 of the investigation;

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

26 “(g) Such information as may be necessary to enlist public assistance in
27 apprehending fugitives from justice.

28 “(4) Test questions, scoring keys, and other data used to administer a li-
29 censing examination, employment, academic or other examination or testing
30 procedure before the examination is given and if the examination is to be

1 used again. Records establishing procedures for and instructing persons ad-
2 ministering, grading or evaluating an examination or testing procedure are
3 included in this exemption, to the extent that disclosure would create a risk
4 that the result might be affected.

5 “(5) Information consisting of production records, sale or purchase records
6 or catch records, or similar business records of a private concern or enter-
7 prise, required by law to be submitted to or inspected by a governmental
8 body to allow it to determine fees or assessments payable or to establish
9 production quotas, and the amounts of such fees or assessments payable or
10 paid, to the extent that such information is in a form that would permit
11 identification of the individual concern or enterprise. This exemption does
12 not include records submitted by long term care facilities as defined in ORS
13 442.015 to the state for purposes of reimbursement of expenses or determining
14 fees for patient care. Nothing in this subsection shall limit the use that can
15 be made of such information for regulatory purposes or its admissibility in
16 any enforcement proceeding.

17 “(6) Information relating to the appraisal of real estate prior to its ac-
18 quisition.

19 “(7) The names and signatures of employees who sign authorization cards
20 or petitions for the purpose of requesting representation or decertification
21 elections.

22 “(8) Investigatory information relating to any complaint filed under ORS
23 659A.820 or 659A.825, until such time as the complaint is resolved under ORS
24 659A.835, or a final order is issued under ORS 659A.850.

25 “(9) Investigatory information relating to any complaint or charge filed
26 under ORS 243.676 and 663.180.

27 “(10) Records, reports and other information received or compiled by the
28 Director of the Department of Consumer and Business Services under ORS
29 697.732.

30 “(11) Information concerning the location of archaeological sites or ob-

1 jects as those terms are defined in ORS 358.905, except if the governing body
2 of an Indian tribe requests the information and the need for the information
3 is related to that Indian tribe’s cultural or religious activities. This ex-
4 emption does not include information relating to a site that is all or part
5 of an existing, commonly known and publicized tourist facility or attraction.

6 “(12) A personnel discipline action, or materials or documents supporting
7 that action.

8 “(13) **Fish and wildlife** information:

9 “(a) Developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS
10 496.192 and 564.100, regarding the habitat, location or population of any
11 threatened species or endangered species[.]; **or**

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

13 “(14) Writings prepared by or under the direction of faculty of public ed-
14 ucational institutions, in connection with research, until publicly released,
15 copyrighted or patented.

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

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

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

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

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

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

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

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

20 “(b) Financial statements. As used in this paragraph, ‘financial
21 statement’ means a financial statement of a nonregulated corporation having
22 an affiliated interest, as defined in ORS 759.390, with a telecommunications
23 carrier, as defined in ORS 133.721.

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

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

30 “(a) Personal and corporate financial statements and information, in-

1 cluding tax returns;

2 “(b) Credit reports;

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

7 “(d) Market studies and analyses;

8 “(e) Articles of incorporation, partnership agreements and operating
9 agreements;

10 “(f) Commitment letters;

11 “(g) Project pro forma statements;

12 “(h) Project cost certifications and cost data;

13 “(i) Audits;

14 “(j) Project tenant correspondence requested to be confidential;

15 “(k) Tenant files relating to certification; and

16 “(L) Housing assistance payment requests.

17 “(22) Records or information that, if disclosed, would allow a person to:

18 “(a) Gain unauthorized access to buildings or other property;

19 “(b) Identify those areas of structural or operational vulnerability that
20 would permit unlawful disruption to, or interference with, services; or

21 “(c) Disrupt, interfere with or gain unauthorized access to public funds
22 or to information processing, communication or telecommunication systems,
23 including the information contained in the systems, that are used or operated
24 by a public body.

25 “(23) Records or information that would reveal or otherwise identify se-
26 curity measures, or weaknesses or potential weaknesses in security measures,
27 taken or recommended to be taken to protect:

28 “(a) An individual;

29 “(b) Buildings or other property;

30 “(c) Information processing, communication or telecommunication sys-

1 tems, including the information contained in the systems; or

2 “(d) Those operations of the Oregon State Lottery the security of which
3 are subject to study and evaluation under ORS 461.180 (6).

4 “(24) Personal information held by or under the direction of officials of
5 the Oregon Health and Science University or a public university listed in
6 ORS 352.002 about a person who has or who is interested in donating money
7 or property to the Oregon Health and Science University or a public uni-
8 versity, if the information is related to the family of the person, personal
9 assets of the person or is incidental information not related to the donation.

10 “(25) The home address, professional address and telephone number of a
11 person who has or who is interested in donating money or property to a
12 public university listed in ORS 352.002.

13 “(26) Records of the name and address of a person who files a report with
14 or pays an assessment to a commodity commission established under ORS
15 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the
16 Oregon Wheat Commission created under ORS 578.030.

17 “(27) Information provided to, obtained by or used by a public body to
18 authorize, originate, receive or authenticate a transfer of funds, including
19 but not limited to a credit card number, payment card expiration date,
20 password, financial institution account number and financial institution
21 routing number.

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

23 “(29) The electronic mail address of a student who attends a public uni-
24 versity listed in ORS 352.002 or Oregon Health and Science University.

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

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

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

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

7 “(c) The name of the public safety officer contained in county real prop-
8 erty assessment or taxation records. This exemption:

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

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

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

16 “(D) Does not apply to disclosure of records among public bodies as de-
17 fined in ORS 174.109 for governmental purposes; and

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

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

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

1 “(A) A warranty deed, deed of trust, mortgage, lien, deed of reconveyance,
2 release, satisfaction, substitution of trustee, easement, dog license, marriage
3 license or military discharge record that is in the possession of the county
4 clerk; or

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

6 “(b) The individual claiming the exemption from disclosure must be a
7 district attorney, a deputy district attorney, the Attorney General or an as-
8 sistant attorney general, the United States Attorney for the District of
9 Oregon or an assistant United States attorney for the District of Oregon, a
10 city attorney who engages in the prosecution of criminal matters or a deputy
11 city attorney who engages in the prosecution of criminal matters.

12 “(c) The individual claiming the exemption from disclosure must do so by
13 filing the claim in writing with the public body for which the exemption from
14 disclosure is being claimed on a form prescribed by the public body. Unless
15 the claim is filed with the county clerk, the claim form shall list the public
16 records in the possession of the public body to which the exemption applies.
17 The exemption applies until the individual claiming the exemption requests
18 termination of the exemption or ceases to qualify for the exemption.

19 “(33) The following voluntary conservation agreements and reports:

20 “(a) Land management plans required for voluntary stewardship agree-
21 ments entered into under ORS 541.973; and

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

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

28 “(a) Apply to the formulas for determining dividends to be paid to em-
29 ployers insured by the State Accident Insurance Fund Corporation;

30 “(b) Apply to contracts for advertising, public relations or lobbying ser-

1 vices or to documents related to the formation of such contracts;

2 “(c) Apply to group insurance contracts or to documents relating to the
3 formation of such contracts, except that employer account records shall re-
4 main exempt from disclosure as provided in ORS 192.355 (35); or

5 “(d) Provide the basis for opposing the discovery of documents in liti-
6 gation pursuant to the applicable rules of civil procedure.

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

10 “(36) A medical examiner’s report, autopsy report or laboratory test report
11 ordered by a medical examiner under ORS 146.117.

12 “(37) Any document or other information related to an audit of a public
13 body, as defined in ORS 174.109, that is in the custody of an auditor or audit
14 organization operating under nationally recognized government auditing
15 standards, until the auditor or audit organization issues a final audit report
16 in accordance with those standards or the audit is abandoned. This ex-
17 emption does not prohibit disclosure of a draft audit report that is provided
18 to the audited entity for the entity’s response to the audit findings.

19 “(38)(a) Personally identifiable information collected as part of an elec-
20 tronic fare collection system of a mass transit system.

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

25 “(c) As used in this subsection:

26 “(A) ‘Electronic fare collection system’ means the software and hardware
27 used for, associated with or relating to the collection of transit fares for a
28 mass transit system, including but not limited to computers, radio commu-
29 nication systems, personal mobile devices, wearable technology, fare instru-
30 ments, information technology, data storage or collection equipment, or other

1 equipment or improvements.

2 “(B) ‘Mass transit system’ has the meaning given that term in ORS
3 267.010.

4 “(C) ‘Personally identifiable information’ means all information relating
5 to a person that acquires or uses a transit pass or other fare payment me-
6 dium in connection with an electronic fare collection system, including but
7 not limited to:

8 “(i) Customer account information, date of birth, telephone number,
9 physical address, electronic mail address, credit or debit card information,
10 bank account information, Social Security or taxpayer identification number
11 or other identification number, transit pass or fare payment medium balances
12 or history, or similar personal information; or

13 “(ii) Travel dates, travel times, frequency of use, travel locations, service
14 types or vehicle use, or similar travel information.

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

16 “(A) The home address and home telephone number of the civil code
17 enforcement officer contained in the voter registration records for the offi-
18 cer.

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

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

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

26 “(iii) Applies until the civil code enforcement officer requests termination
27 of the exemption;

28 “(iv) Does not apply to disclosure of records among public bodies as de-
29 fined in ORS 174.109 for governmental purposes; and

30 “(v) May not result in liability for the county if the name of the civil code

1 enforcement officer is disclosed after a request for exemption from disclosure
2 is made under this subsection.

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

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

13 “(a) Recordings that have been sealed in a court’s record of a court pro-
14 ceeding or otherwise ordered by a court not to be disclosed may not be dis-
15 closed.

16 “(b) A request for disclosure under this subsection must identify the ap-
17 proximate date and time of an incident for which the recordings are re-
18 quested and be reasonably tailored to include only that material for which
19 a public interest requires disclosure.

20 “(c) A video recording disclosed under this subsection must, prior to dis-
21 closure, be edited in a manner as to render the faces of all persons within
22 the recording unidentifiable.

23 **“SECTION 4. (1) The Legislative Assembly intends that section 2**
24 **of this 2019 Act and the amendments to ORS 192.345 by section 3 of this**
25 **2019 Act apply retroactively to September 1, 2018. The Legislative As-**
26 **sembly hereby validates any disclosure refusal by the State Depart-**
27 **ment of Fish and Wildlife on or after September 1, 2018, and prior to**
28 **the effective date of this 2019 Act regarding information described in**
29 **section 2 of this 2019 Act or in the amendments to ORS 192.345 by**
30 **section 3 of this 2019 Act.**

1 **“(2) Section 2 (1) to (7) of this 2019 Act does not allow the depart-**
2 **ment to withhold information in violation of a data sharing commit-**
3 **ment or obligation, including but not limited to a commitment under**
4 **a management plan, entered into by the department prior to the ef-**
5 **fective date of this 2019 Act. However, section 2 (8) of this 2019 Act**
6 **applies to any such data sharing.”.**

7
