

# OPEN GOVERNMENT GUIDE

Access to Public Records  
and Meetings in

OREGON

**REPORTERS  
COMMITTEE**  
FOR FREEDOM OF THE PRESS

Sixth Edition  
2011



# OPEN GOVERNMENT GUIDE

## OPEN RECORDS AND MEETINGS LAWS IN

# OREGON

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## OREGON

**SIXTH EDITION  
2011**

Previously Titled  
Tapping Officials' Secrets

Published by The Reporters Committee for Freedom of the Press  
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Production of the sixth edition of this compendium was possible  
due to the generous financial contributions of:  
The Stanton Foundation

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ISBN: 1-58078-238-8

# Contents

Introductory Note .....	iv	V. PROCEDURE FOR OBTAINING RECORDS .....	11
User's Guide .....	v	A. How to start.....	11
FOREWORD .....	1	B. How long to wait.....	11
Open Records .....	1	C. Administrative appeal.....	11
I. STATUTE -- BASIC APPLICATION.....	1	D. Court action.....	12
A. Who can request records? .....	1	E. Appealing initial court decisions.....	13
B. Whose records are and are not subject to the act? .....	1	F. Addressing government suits against disclosure.....	13
C. What records are and are not subject to the act? .....	2	Open Meetings.....	14
D. Fee provisions or practices.....	2	I. STATUTE -- BASIC APPLICATION.....	14
E. Who enforces the act? .....	3	A. Who may attend? .....	14
F. Are there sanctions for noncompliance? .....	3	B. What governments are subject to the law? .....	14
II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS .....	3	C. What bodies are covered by the law? .....	14
A. Exemptions in the open records statute.....	3	D. What constitutes a meeting subject to the law.....	14
B. Other statutory exclusions.....	6	E. Categories of meetings subject to the law.....	15
C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.....	6	F. Recording/broadcast of meetings.....	17
D. Are segregable portions of records containing exempt material available?.....	6	G. Are there sanctions for noncompliance? .....	17
E. Homeland Security Measures.....	6	II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS .....	17
III. STATE LAW ON ELECTRONIC RECORDS.....	6	A. Exemptions in the open meetings statute.....	17
A. Can the requester choose a format for receiving records? .....	6	B. Any other statutory requirements for closed or open meetings. 18	
B. Can the requester obtain a customized search of computer databases to fit particular needs? .....	6	C. Court mandated opening, closing.....	18
C. Does the existence of information in electronic format affect its openness? .....	6	III. MEETING CATEGORIES -- OPEN OR CLOSED.....	18
D. How is e-mail treated? .....	6	A. Adjudications by administrative bodies.....	18
E. How are text messages and instant messages treated? .....	7	B. Budget sessions.....	18
F. How are social media postings and messages treated? .....	7	C. Business and industry relations.....	18
G. How are online discussion board posts treated? .....	7	D. Federal programs.....	18
H. Computer software.....	7	E. Financial data of public bodies.....	18
I. How are fees for electronic records assessed? .....	7	F. Financial data, trade secrets or proprietary data of private corporations and individuals.....	18
J. Money-making schemes.....	7	G. Gifts, trusts and honorary degrees.....	18
K. On-line dissemination.....	7	H. Grand jury testimony by public employees.....	18
IV. RECORD CATEGORIES -- OPEN OR CLOSED.....	8	I. Licensing examinations.....	18
A. Autopsy reports.....	8	J. Litigation; pending litigation or other attorney-client privileges.....	18
B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations) .....	8	K. Negotiations and collective bargaining of public employees.....	18
C. Bank records.....	8	L. Parole board meetings, or meetings involving parole board decisions.....	18
D. Budgets.....	8	M. Patients; discussions on individual patients.....	18
E. Business records, financial data, trade secrets.....	8	N. Personnel matters.....	18
F. Contracts, proposals and bids.....	8	O. Real estate negotiations.....	18
G. Collective bargaining records.....	8	P. Security, national and/or state, of buildings, personnel or other.....	18
H. Coroners reports.....	8	Q. Students; discussions on individual students.....	19
I. Economic development records.....	9	IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS .....	19
J. Election records.....	9	A. When to challenge.....	19
K. Gun permits.....	9	B. How to start.....	19
L. Hospital reports.....	9	C. Court review of administrative decision.....	19
M. Personnel records.....	9	D. Appealing initial court decisions.....	19
N. Police records.....	9	V. ASSERTING A RIGHT TO COMMENT.....	20
O. Prison, parole and probation reports.....	10	A. Is there a right to participate in public meetings? .....	20
P. Public utility records.....	10	B. Must a commenter give notice of intentions to comment? .....	20
Q. Real estate appraisals, negotiations.....	10	C. Can a public body limit comment? .....	20
R. School and university records.....	10	D. How can a participant assert rights to comment? .....	20
S. Vital statistics.....	10	E. Are there sanctions for unapproved comment? .....	20
		Appendix.....	20
		Statute.....	21

## Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

## User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

*Following the outline.* Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, [www.rcfp.org/ogg](http://www.rcfp.org/ogg). The Internet version of the outlines allows you to search the database and compare the law in different states.

*Updates:* The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at [www.rcfp.org/ogg](http://www.rcfp.org/ogg). This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.



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**FOREWORD**

The State of Oregon has a long tradition of extensive public participation in state and local government. The initiative, recall and referendum were all born in Oregon in 1902, introduced by W. S. U'Ren. Oregon's modern open government era began in 1973 with the passage of the Oregon Public Records Law and its companion law, the Oregon Public Meetings Law. The statutes are found in Oregon Revised Statutes (ORS) 192.410 - 192.505 (Public Records) and ORS 192.610 - 192.710 (Open Meetings) (all ORS references are to the 2009 Edition). The impetus for enactment of the records and meetings statutes came from the Oregon Newspaper Publishers Association and a dedicated core of legislators who agreed that these issues should be handled comprehensively rather than on a case-by-case approach. They created a statutory scheme granting citizens and media representatives extensive access to the affairs of government. Introductory statements directing openness are found in both the Public Records and Public Meetings Laws. Withholding and closure are always the exceptions. Statutory exemptions to disclosure are always to be strictly construed.

The State Department of Justice has played a central role in interpreting the Public Records and Meetings statutes and in aiding in their enforcement. The Attorney General publishes an updated Public Records and Meetings Manual ("Manual") every two years. It serves as a useful desk reference for many records and meetings questions. The Manual contains a review of all public records and public meetings statutes and an index and summary of Attorney General opinions. It also includes valuable commentary, including opinions about commonly raised questions. References to the Manual in the following discussion of the statutes are to the January 2011 version. The Manual is available online at no cost through the Oregon Department of Justice at [http://www.doj.state.or.us/pdf/public\\_records\\_and\\_meetings\\_manual.pdf](http://www.doj.state.or.us/pdf/public_records_and_meetings_manual.pdf). Printed copies are available for purchase by calling 503-378-2992. We strongly recommend consulting the Manual on every Oregon public records or public meetings issue.

Largely as a result of heightened public and media awareness about the Public Records and Meetings Laws, political and commercial special interests have routinely sought legislative help in curtailing access to certain types of records and proceedings considered to be proprietary, private or of a sensitive economic or personal nature. This has resulted in a variety of statutes found outside the public records and Public Meetings Laws which contain disclosure restrictions.

A number of things remain to be wished for with regard to open government in Oregon. The cost of obtaining records has escalated and made some important searches prohibitive. On occasion, it appears that a public body purposefully adds to costs, for example by insisting that a highly paid staff person look over the shoulder of someone examining files which previously had been examined without supervision, with the searcher incurring the full hourly costs of that employee, including overhead and benefits. Moreover, the law on fee waivers for matters truly in the public interest is weak. Oregon could also use an ombudsman with expertise in public records and public meetings, who might more efficiently, quickly and consistently resolve disputes. Appeals of public records litigation can take years; they should be expedited, like mandamus proceedings. More teeth could be added for enforcing the Public Meetings Law and pursuing violations. But with all of these concerns, which may be the subject of future legislation, the operations of both the Public Records Law and the Public Meetings Law seem by and large to be adapting slowly but surely to the 21st century.

**Open Records****I. STATUTE -- BASIC APPLICATION****A. Who can request records?****1. Status of requestor.**

Every person, regardless of nationality or residency, has a right to inspect any public record which is not expressly exempt from disclosure. ORS 192.420(1). ORS 192.410 defines "person" to include any natural person, corporation, partnership, firm or association, and any member or committee of the legislature. A public body may not use ORS 192.410(2) to request public records. Attorney General Manual, § I(A). The identity of the person seeking disclosure of a particular record may be relevant when a statutory exemption to disclosure requires a determination of the public interest in disclosure.

**2. Purpose of request.**

A requester's purpose in wishing to inspect a public record is generally irrelevant. *McEwan v. Holm*, 226 Or. 27, 359 P.2d 413 (1961); Attorney General Manual, § I(A). As noted in *Gray v. Salem-Keizer School District*, 139 Or. App. 556, 912 P.2d 938 (1996), however, the requester's purpose may be taken into consideration under those statutory exemptions that call for a determination of the public interest in disclosure.

**3. Use of records.**

The Public Records Law does not restrict the subsequent use of information provided. Again, the use to be made may be relevant in determining the public interest in disclosure.

**B. Whose records are and are not subject to the act?**

Under ORS 192.420, the public records of every "public body" in the state are subject to inspection. ORS 192.410 defines "public body" to include "every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council or agency thereof, and any other public agency of the state." ORS 192.410(5) defines "state agency" to mean "any state officer, department, board, commission or court created by the Constitution or statutes of this state," except the Legislative Assembly, which is exempt under the state Constitution. "Public corporations," such as the state bar organization, the state health and sciences university, and a state accident insurance company, are subject to the public records laws. The records of private non-profit corporations and cooperatives are not subject to disclosure, however, even though those organizations may receive public funds and/or perform governmental functions. The state Supreme Court has held that if an entity is the "functional equivalent" of a public body, the Public Records Law applies to it, listing a variety of factors to be considered. *Marks v. McKenzie High School Fact-Finding Team*, 319 Or. 451, 878 P.2d 417 (1994). Additionally, as noted in the Attorney General's Manual, there are many public records in the custody of government agencies which, by special statutory exemption, are not subject to the Records Law.

**1. Executive branch.****a. Records of the executives themselves.**

The right to inspect the public records of any "public body" in the state includes the records of any "state officer." ORS 192.410(3). This right is limited by the definition of "public record," which includes "any writing that contains information relating to the conduct of the public's business" but expressly excludes "any writing that does not relate to the conduct of the public's business and that is contained on a privately owned computer."

**b. Records of certain but not all functions.**

All records are available for inspection except as expressly exempted by ORS 192.501 to 192.505. ORS 192.420.

## 2. Legislative bodies.

The records of legislative bodies other than the state legislature are subject to inspection under ORS 192.420 and the definitions of ORS 192.410(3). The state Legislative Assembly is not subject to the Public Records Law. ORS 192.410(5); *see also* ORS 171.405 (no requirement to keep records of acts of legislature other than enrolled laws and joint resolutions themselves) and ORS 192.005(5)(a) and (6).

## 3. Courts.

All courts in Oregon are subject to Or. Const. Article I, § 10, which generally requires openness. The applicability of the Public Records Law to the courts is unclear. *See State ex rel. KOIN-TV v. Olsen*, 300 Or. 392, 711 P.2d 966 (1985).

## 4. Nongovernmental bodies.

### a. Bodies receiving public funds or benefits.

That a body receives public funds or benefits does not alone mean it is subject to the Public Records Law. In *Marks v. McKenzie High School Fact Finding Team*, 319 Or 451, 878 P.2d 417 (1994), however, the state court created a six-part test: (1) Was the entity created by government? (2) Is the function of the entity one traditionally performed by government or privately? (3) Can the entity bind government with its decisions or does it only make recommendations? (4) What is the nature and level of governmental financial and nonfinancial support? (5) What is the scope of governmental control over the entity's activities and operations? and (6) Are the entity's officers or staff public employees?

In the *McKenzie High* case, the Court found that a school fact-finding team, asked to investigate a high school's performance, was not a public body and therefore not subject to the Public Records Law.

### b. Bodies whose members include governmental officials.

That any body includes governmental officials among its members does not bring it within the scope of the Public Records Law. Governmental control and support are factors under *Marks v. McKenzie High School*, *supra*.

## 5. Multi-state or regional bodies.

ORS 192.420(1) allows inspection of "any public record of a public body in this state." It is not clear that any multistate or regional body fits within the definitions of public body," ORS 192.410(3), or "state agency," ORS 192.410(5). The records of a multistate or regional body might otherwise fit within the definition of public record, ORS 192.410(4)(a), and ORS 192.420(1) might be parsed to describe such records located within the state.

## 6. Advisory boards and commissions, quasi-governmental entities.

Whether such entities are subject to the Public Records Law is to be tested by the six factors of *Marks v. McKenzie High School*, *supra*.

## 7. Others.

The Attorney General has taken the position that the Public Records Law may be used to obtain records of a private entity that contracts with a public body but is not the functional equivalent of a public body if the public body has custody of the documents; the Attorney General has also opined that that records owned by a public body but in custody of a private entity are also obtainable. *See* Attorney General Manual, § I(B)(2), at 4.

## C. What records are and are not subject to the act?

### 1. What kind of records are covered?

Pursuant to ORS 192.410(4)(a), a public record includes any writing containing information relating to the conduct of the public's business prepared, owned, used or maintained by a public body regardless

of physical form or characteristics. In 2005, the Legislative Assembly made express in ORS 192.410(4)(b) that "public record" does not include any writing that both does not relate to the conduct of the public's business and that is contained on a privately owned computer. This may be frankly redundant, since any writing that did not relate to the conduct of the public's business was already *not* a public record, pursuant to ORS 192.410(4)(a). Moreover, it interestingly raises by negative inference the question whether everything on a publicly owned computer is a public record. In addition, ORS 192.005(5) states that public records do not include voice mail or telephone storage or retrieval systems, or Legislative Assembly records, including committee or employee records.

### 2. What physical form of records are covered?

ORS 192.410(6) specifies that a "writing" includes "handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings." This means that all information stored on computer or in microfiche is included. ORS 192.440(3) states that public records may be in "machine readable or electronic form." E-mail is a public record, even including deleted e-mail. Moreover, the Attorney General has taken the position that while public bodies are not required to develop or acquire new or additional software or programs in response to a public records request, they are required to use available software and programs to retrieve available information, even if the report or document has not existed in that form before. Attorney General's Manual, I(C)(1), 6-7.

### 3. Are certain records available for inspection but not copying?

All records which may be inspected may be copied. ORS 192.440.

## D. Fee provisions or practices.

### 1. Levels or limitations on fees.

Under ORS 192.440(4)(a) a fee "reasonably calculated to reimburse" the public body for its *actual cost* in making the records available may be charged. No more than the actual cost may be charged by a public body. 39 Op. Atty Gen. 721 (1979). In *Defense of Animals v. OHSU*, 199 Or. App. 160, 112 P.3d 336 (2005). The records custodian has the burden of demonstrating the reasonableness of charges for "actual costs" and must do so with specific supporting data. If such data is absent, the charges are *per se* not reasonable. In *Defense of Animals; Davis v. Walker*, 108 Or. App. 128, 814 P.2d 547 (1991). If the fee will exceed \$25, a public body must *first* provide an estimate of the fee and confirm that the requester wants to proceed. ORS 192.440(4)(c).

### 2. Particular fee specifications or provisions.

#### a. Search.

A per-page charge for copies may include the cost of a routine or extraordinary file search and segregation of exempt material from non-exempt. ORS 192.440(4). The Attorney General has held that public bodies may charge for searches even if no responsive records are located.

#### b. Duplication.

Duplication is limited to actual costs.

#### c. Other.

A public body may charge for its attorney's time in redacting and segregating exempt and non-exempt records, but it may not charge for any attorney time spent to determine the applicability of exemptions. ORS 192.440(4)(b).

### 3. Provisions for fee waivers.

Under ORS 192.440(5) a fee waiver or reduction is available where record disclosure "primarily benefits the general public." An appeal

process exists under ORS 192.440(6). The Attorney General has ruled that if a public body's funding is from statutorily or constitutionally dedicated funds, it may not waive fees and must charge its actual costs.

#### 4. Requirements or prohibitions regarding advance payment.

A public body may require prepayment of its estimated charges before beginning to compile records. Public Records Order, April 7, 1989 (Martin); Public Records Order, June 30, 2005 (Mills). If actual charges prove to be less, a refund must be made.

#### 5. Have agencies imposed prohibitive fees to discourage requesters?

Requesters report recent instances of "supervisors" whom, the requester is told, are required to stay with the requester and to look over the requester's shoulder as she looks through records. The public body then charges the requester for that supervising employee's hourly costs to the body, including all benefits.

#### E. Who enforces the act?

##### 1. Attorney General's role.

There is no provision that allows a requester to petition the Attorney General to review fees charged as such, although the Attorney General or the district attorney may be petitioned regarding a request for fee waiver or reduction in the public interest. The intermediate appellate court has held that state courts have jurisdiction to review the reasonableness of fees. *In Defense of Animals v. OHSU*, 199 Or. App. 160, 112 P3d 336 (2005).

##### 2. Availability of an ombudsman.

None.

##### 3. Commission or agency enforcement.

None.

#### F. Are there sanctions for noncompliance?

No, only a subsequent recalculation of fees.

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open records statute.

#### 1. Character of exemptions.

Exemptions are limited in their nature and scope because the Public Records Law is primarily a disclosure law. *Jordan v. MVD*, 308 Or. 433, 781 P.2d 1203 (1989). Oregon courts construe exemptions narrowly and presume they do not apply. ORS 192.490(1); *Coos County v. Department of Fish & Wildlife*, 86 Or. App. 168, 739 P.2d 47 (1987). The "narrow construction" rule means that, if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails. *Colby v. Gunson*, 224 Or. App. 666, 199 P.3d 350, (2008).

#### a. General or specific?

Oregon may be said to have three broad categories of exemptions. The first two categories are generally described in ORS 192.501(1)-(36) and ORS 192.502(1)-(37), which permit the public body to disclose records, if the public body so desires. As noted in Attorney General Manual, § I(E), the exemptions described in the Public Records Law allow the public body to refuse to disclose records but *does not prohibit* their disclosure or *require* that the public body *withhold disclosure* in order to protect third parties. See *Portland Adventist Medical Center v. Sheffield*, 303 Or. 197, 735 P.2d 372 (1987). The claim of exemption is controlled by the public agency, not public officials or employees who may be the subject of the materials being sought. *AFSCME v. State of Oregon, Dept. of Administrative Services*, 150 Or. App. 87, 945 P.2d 102 (1997). These two categories of exemptions may be used for withholding records from the public, but they are subject to qualifying conditions.

The third category of exemptions incorporated into the Public Records Law through ORS 192.502(8) and (9) is found in numerous fed-

eral or state statutory references or regulations outside of the Public Records Law. Some of these exemptions prohibit disclosure of records even if the agency is otherwise willing to provide the records or the records would otherwise be subject to disclosure under the law. A list of many of these statutes is reproduced in an appendix at the end of this outline and is found in Attorney General Manual, Appendix G. Additional exemptions may be hidden within other statutes. In addition, two statutes found in the context of the Public Records Law actually prohibit disclosure, if applicable. ORS 192.445 exempts home addresses and personal telephone numbers and e-mail addresses of individuals who request exemption in writing and establish that their personal safety is in danger if that information were disclosed. ORS 192.447 prohibits disclosure of a public employee's identification badge or card unless the employee consents in writing.

#### b. Mandatory or discretionary?

Except where specific statutes, incorporated into the Public Records Law by ORS 192.502(8) and (9) prohibit or restrict disclosure, and except as in the personal safety exemption, ORS 192.445 and the public employee identification exemption, ORS 192.447, public bodies retain the discretion to disclose records that could be exempt pursuant to Oregon law. As the Attorney General Manual emphasizes, except for ORS 192.445, ORS 192.447, and any state or federal law prohibiting disclosure, all other exemptions permit disclosure, and all public bodies should first determine if there is a good reason to withhold any record. If the agency opts for non-disclosure, this may be tested under the Public Records Law procedures.

#### c. Patterned after federal Freedom of Information Act?

The Oregon Public Records statutes bear similarity in some cases to the Federal Freedom of Information Act and appellate decisions occasionally, but not invariably, discuss the purpose and workings of parallel federal provisions.

### 2. Discussion of each exemption.

*Exemptions under ORS 192.501.* Each of these exemptions is conditional, that is, even if its scope applies, exemption is subject to whether "the public interest requires disclosure in the particular instance." The burden of proving the applicability of any exemption under ORS 192.501 is always on the public body. Moreover, there is always a presumption in favor of disclosure. *Turner v. Reed*, 22 Or. App. 177, 538 P.2d 373 (1975). The identity of the requester and her motives are never relevant in determining whether the request falls within the scope of the exemption. They are relevant, however, if the question of the public interest is reached.

(1) *Records of a public body pertaining to litigation in which the public body is a party or where the public body shows that such litigation is reasonably likely to occur.* ORS 192.501(1). This exemption applies only to those records compiled or acquired by the public body for use in existing or demonstrably expected litigation and not records collected in the ordinary course of business, even if subsequently relevant to litigation. *Lane County School District v. Parks*, 55 Or. App. 416, 637 P.2d 1383 (1981). It does not apply to administrative proceedings or to litigation that has been concluded.

(2) *Trade Secrets.* ORS 192.501(2). Trade secrets are defined by statute as non-patented formulae, plans, processes, production data and similar information. In order to qualify for the exemption, the information must be known only to certain persons within an organization, be used for business purposes, have an actual potential commercial value, and give a user an opportunity to obtain a business advantage over competitors. Fee schedules and price lists may qualify. The "trade secret" definition in the Oregon statute is somewhat narrower than in the Uniform Trade Secrets Act and this relationship is not clear.

(3) *Investigatory information compiled for criminal law purposes, other than the record of an arrest or the report of a crime, unless there is a clear need in a particular case to delay disclosure of an arrest or crime report.* ORS

192.501(3). Disclosure of arrest information or the report of a crime may be delayed only if and for so long as a clear need is shown, including protection of the victim or complaining party. Again, this is a conditional exemption and the public interest may require disclosure.

(4) *Test questions, scoring keys, and other licensing examinations or employment testing data.* ORS 192.501(4). The statute also covers procedures relating to administration and grading of examinations where the result might be affected by disclosure. This exemption is designed to protect the integrity of the testing or examination process.

(5) *Production, sale or purchase records or other private records required by law to be submitted to a public agency in order to determine fees or assessments and the amounts of fees or assessments payable.* ORS 192.501(5). This exemption applies only if the information would permit identification of a specific business concern. The exemption does not cover business records submitted in connection with an application for a license or permit because this information is not utilized to determine a fee or assessment for establishing a production quota.

(6) *Real estate appraisals provided prior to acquisition.* ORS 192.501(6). This exemption applies where the public body is interested in acquiring or condemning (but not disposing of) real property.

(7) *Names of employees requesting representation or decertification elections.* ORS 192.501(7). This exemption is applicable only to information on specific individuals, not to the number of employees who have voted for or against such actions.

(8) *Investigatory information relating to a complaint filed with the Bureau of Labor.* ORS 192.501(8). This exemption does not apply to the complaint itself. The exemption ends when the complaint is resolved or a final order is issued.

(9) *Investigatory information relating to unfair labor practice complaints.* ORS 192.501(9). Again, the complaint itself is not exempt.

(10) *Reports or information received or compiled by the Director of the Department of Consumer and Business Services.* ORS 192.501(10). This relates to investigations and enforcements concerning debt consolidating agencies.

(11) *Information relating to location of archeological sites or objects except in cases where a governing body of an Indian tribe requests such information for purposes of the tribe's cultural or religious activities.* ORS 192.501(11). This exemption does not apply to commonly known and publicized tourist facilities or attractions.

(12) *Personnel discipline action or information supporting such action.* ORS 192.501(12). This exemption relates only to records concerning a completed disciplinary action. It does not apply if an employee resigns. The Attorney General has taken the position that a public body may postpone a request for records while a disciplinary action is still pending. The public interest may in any event require disclosure.

(13) *Information developed under state statute regarding the habitat, location or population of any threatened or endangered species.* ORS 192.501(13). This exemption is similar to the archeological site exemption, subsection (11) above.

(14) *Writings prepared by, or under the direction of, faculty of public educational institutions completed in connection with research.* ORS 192.501(14). This exemption applies only before the information is released, copyrighted or patented.

(15) *Computer programs developed by a public body for its own use.* ORS 192.501(15). This exemption does not pertain to original data or analyses of original data. The exemption includes information that would permit computer access.

(16) *Agricultural producers mediation records.* ORS 192.501(16). This applies to information in connection with certain agricultural foreclosure proceedings.

(17) *Unsafe workplace investigations.* ORS 192.501 (17). This applies to workplace investigatory information but only until a final determination is made.

(18) *Operational plans regarding threats to individual or public safety.* ORS 192.501(18). This deals with anticipated threats to individuals or to the public safety and applies where disclosure would endanger individuals or jeopardize the law enforcement activity.

(19) *Audits of a telecommunications utility.* 192.501(19). This exemption is designed to protect internal evaluations or critiques of the utility's operations and financial statements required to be filed under state law. It does protect an audit of a cost study that would be discoverable in a contested case dealing with rates or other matters.

(20) *The residence address of an elector (voter) where a showing of a reasonable threat to personal safety is present.* ORS 192.510(20). The withholding of such information must be at the request of the voter, accompanied by verifiable information demonstrating the basis of the threat. This is similar to exemption under ORS 192.445.

(21) *Housing authority information submitted by applicants for, and recipients of loans, grants and tax credits.* ORS 192.501(21). This exemption applies to a variety of financial information relating to low income housing developers.

(22) *Records that, if disclosed, would allow unauthorized access to public property or would identify areas of structural or operational vulnerability allowing unlawful disruption of public services.* ORS 192.501(22). This exemption protects the delivery of public services and permits withholding of building information and information that would allow access to public funds or information processing systems.

(23) *Records that, if disclosed, would reveal security measures relating to public employees, public buildings, computer or telecommunications services or the secured operations of the Oregon Lottery.* ORS 192.501(23). This is a companion provision to ORS 192.501(22).

(24) *Personal information held by Oregon Health Sciences University (OHSU) or by the Oregon University System (OUS) relating to a person who has donated or is interested in donating to OHSU or OUS.* ORS 192.501(24). The exemption applies to information that is personal in nature.

(25) *OUS donation records.* This exempts the home address, professional address and telephone number of any person who has donated or is interested in donating to a state university, regardless of what public body holds that information.

(26) *Records of persons who file with, or pay an assessment to, certain state-created agricultural marketing group.* ORS 192.501(26). This exempts disclosure of the names and addresses of those filing.

(27) *Financial transfer records.* This exempts all information a public body possesses in relation to fund transfers.

(28) *Social Security numbers related to marital annulment, dissolution or separation.* Court records on these subjects must redact SSN information.

(29) *Student e-mail addresses.* This exempts all e-mail addresses of students attending a state institution of higher learning.

(30) *OHSU medical researcher information.* This exempts personal information and location of those conducting research using animals.

(31) *Certain personal information of public safety officers, if requested.*

(32) *Personal information of certain government attorneys that is contained in deeds and records not in records of the county clerk.* This exempts certain personal information if requested by prosecuting attorneys, except that certain financial, mortgage, and title companies may successfully request such information.

(33) *Land management plans.* This exempts land management plans required for voluntary stewardship agreements entered into under ORS 541.423.

(34) *Sensitive records of the Oregon State Accident Insurance Fund Corporation (SAIF).* This exempts sensitive business, financial, and commercial information of SAIF that is “not customarily provided to business competitors,” with certain enumerated exceptions.

(35) *Records of pending investigations by the Department of Public Safety Standards and Training.* This exempts information relating to investigations conducted under ORS 181.662 or 181.878 (6), until the department issues the report described in ORS 181.662 or 181.878.

(36) *Medical examiner’s reports.* This exempts a medical examiner’s report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117.

*Exemptions which either are unconditional or have a self-contained balancing test concerning the public interest.* ORS 192.502.

(1) *Communications within a public body or between public bodies of an advisory nature.* ORS 192.502(1). This exemption applies to matters which are not factual and are preliminary. It applies *only if* the public body demonstrates in a particular instance that the public interest in encouraging “frank communication” between public officials “clearly outweighs” the public interest in disclosure. Drafts of materials and preliminary reports are public records for purposes of this exemption. Attorney General Manual, § I(E)(4) at 44-49. Moreover, factual matters must be disclosed in any event.

(2) *Information of a personal nature, including but not limited to the type of information kept in a personal, medical or similar file, if public disclosure of the information would constitute an “unreasonable invasion of privacy.”* ORS 192.502(2). This exemption applies only to information of a personal nature. The public body has the burden of establishing this. Moreover, it must be established that disclosure would constitute an unreasonable invasion of privacy, that is, disclosure would be “highly offensive” to a reasonable person. Even if this is shown, disclosure is appropriate if, by clear and convincing evidence, it is shown that the public interest requires it.

(3) *Public employee or volunteer addresses, birthdates, Social Security and telephone numbers maintained by a public agency.* ORS 192.502(3). This exemption does not apply to elected officials except judges and district attorneys, or to substitute teachers when requested by the teacher’s professional union, and it does not apply when the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure.

(4) *Information submitted to a public body in confidence where such information is not required by law to be submitted.* ORS 192.502(4). This exemption employs a five-part test: first, the information was submitted on the condition it would be kept confidential; second, the information was not required by law to be submitted; third, the information should reasonably be considered confidential; fourth, the public body must have committed itself, in good faith, to keep the information confidential; and finally, the public interest would suffer if the information were disclosed.

(5) *Information or records of the Department of Corrections (including State Parole Board) to the extent that disclosure would interfere with rehabilitation.* ORS 192.502(5). This exemption does not apply unless the public interest in confidentiality “clearly outweighs” the public interest in disclosure.

(6) *Records, reports and other information compiled by the Director of the Department of Consumer and Business Services relating to lending institutions.* ORS 192.502(6). This exemption applies only where the interests of lending institution officers, employees and customers in preserving confidentiality outweighs public interest and disclosure.

(7) *Pre-Sentence Reports, Reports of Probation Officers and Victims Statements.* ORS 192.502(7). This exemption incorporates statutes prohibiting disclosure.

(8) *Any records which are prohibited from disclosure by federal law or regulations.* ORS 192.502(8). The Attorney General concludes that

this exemption applies even if the federal law enforces nondisclosure only indirectly, through loss of funds.

(9) *Records or information prohibited or restricted or otherwise made confidential or privileged under Oregon law.* ORS 192.502(9). This is an unconditional exemption relating to numerous records statutes found outside of the Public Records Law. It includes evidentiary privileges. The Attorney General Manual gathers many of these provisions in its Appendix G.

(10) *Public records otherwise exempt which are transferred between or among public agencies.* ORS 192.502(10). This exemption is designed to extend the exemption when records are transferred to another agency, if originally exempt or confidential. Under ORS 192.410(1), the custodian of a public record does not include a public body that has custody only as agent of another public body, unless the record is not otherwise available.

(11) *Records of the Energy Facility Siting Council concerning security programs.* ORS 192.502(11). This exemption generally relates to security of nuclear power plants.

(12) *Employee and retiree personal information obtained by the Public Employees’ Retirement System.* ORS 192.502(12). This relates to personal financial information to be released only to the individuals it concerns.

(13) *Records submitted by private persons or businesses to the State Treasurer or to the Oregon Investment Council relating to matters under consideration for public investment.* ORS 192.502(13). This exemption applies only to the extent that disclosure of such records would reasonably be expected to limit the ability of the Oregon Investment Council to compete effectively in pursuit of investment objectives. This exemption does not apply to concluded transactions.

(14) *Certain investment records of or submitted to the State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of those entities relating to investments in private investment funds under ORS 293 or 348.* ORS 192.502(14). Exempts background material such as financial statements, portfolio information, and agreements, but does not exempt information on the identity of funds and the value of investments.

(15) *Monthly reports concerning the Public Employees’ Retirement Fund and Industrial Accident Fund.* ORS 192.502(15). This exemption applies to such records for a period of 90 days at the end of each calendar quarter.

(16) *Reports of abandoned property until such time as the Director of the Division of State Lands has provided public notice thereof.* ORS 192.502(16). This exemption applies for two years, only.

(17) *Records submitted to various economic development organizations.* ORS 192.502(17). This exemption covers personal financial statements, certain agribusiness records, customer lists, marketing strategies, and negotiations where information is provided by applicants “for loans or services.”

(18) *Reports submitted by private concerns used for computation of a transient lodging tax where the report would allow identification of the private concern.* ORS 192.502(18). If the tax is delinquent for more than 60 days, however, disclosure of the identifying information shall occur, along with other data about the delinquency.

(19) *Information supplied for purposes of requesting court-appointed legal counsel.* ORS 192.502(19). This exempts personal information submitted to obtain indigent defense.

(20) *Workers compensation claim records.* ORS 192.502(20). Under certain limited circumstances, these records can be released to insurers or government agencies.

(21) *Sensitive business records of Oregon Health Sciences University (OHSU).* ORS 192.502(21). This relates to records “not customarily provided to business competitors.”

(22) *Records of OHSU regarding candidates for university president.* ORS 192.502(22).

(23) *Library records, showing use of library materials by a named person.* ORS 192.502(23). This exemption permits, but does not require, libraries to shield information about their patrons.

(24) *Financial information submitted by applicants for, and recipients of, low income loans, grants and tax credits through the state Housing and Community Services Dept.* ORS 192.502(24).

(25) *Geographic information submitted by private forestland owners, voluntarily and in confidence to the State Forestry Dept. not otherwise required by law to be submitted.* ORS 192.502(25).

(26) *Sensitive business records concerning the sale or purchase of electric power, where a competitive disadvantage would result.* ORS 192.502(26). This applies to community-owned utilities.

(27) *Sensitive business records submitted to or developed by the City Klamath Falls relating to the Klamath Cogeneration Project.* ORS 192.502(27).

(28) *Personally identifiable public utility customer information.* ORS 192.502(28). This now extends to all identifying information of customers of electric utilities and those public bodies that provide water, sewer, or storm drain services.

(29) *A record of a person's address submitted to a special district for bus, carpool, or similar public transit purposes.* ORS 192.502(29).

(30) *Sensitive business records relating to Oregon Corrections Enterprises not customarily provided to business competitors.* ORS 192.502(30). This relates to prison industries.

(31) *Confidential submissions to the Department of Consumer and Business Services.* ORS 192.502(31).

(32) *County election security plans.* ORS 192.502(32). Exempts plans pursuant to ORS 254.074.

(33) *Security programs concerning utilities, petroleum, telecommunications, and data transmission.* ORS 192.502(33).

(34) *Information concerning paternity or support judgments or orders as designated by the Chief Justice of the Supreme Court.* ORS 192.502(34).

(35) *Employer account records of the State Accident Insurance Fund Corporation (SAIF).* Exempts all records specifically related to an employer's account records at SAIF. ORS 192.502(35).

(36) *Claimant files of the State Accident Insurance Fund Corporation (SAIF).* Exempts all SAIF files and associated records of any person who has made a claim as defined in ORS 656.005. ORS 192.502(36).

(37) *Military discharge records.* Exempts, except as authorized by ORS 408.425, "records that certify or verify an individual's discharge or other separation from military service." ORS 192.502(37).

## B. Other statutory exclusions.

The Attorney General Manual provides a list of statutes incorporated by ORS 192.502(9) in Appendix G. Examples include:

*Medical records.* Under ORS 192.525, medical records held by either private or public institutions providing health care services are to remain confidential, with State Health Division guidelines dictating when access to those records may be provided to private health care providers.

*Private financial records.* Under ORS 192.550 *et seq.*, financial records of customers shall not be provided to a state or local agency nor can they be requested by a state or local agency. However, non-depositor-specific information is not covered by this exemption. Furthermore, the customer may waive the confidentiality requirement (ORS 192.560).

*Educator personnel files.* Under ORS 324.850(8), the Oregon Court

of Appeals held in *Springfield School District No. 19 v. Guard Publishing Co.*, 156 Or App 176, 967 P2d 510 (1998), that the contents of an educator's personnel file is unconditionally protected from disclosure. However, in *Oregonian Publishing Co. v. Portland Public Schools*, 329 Or 393, 987 P2d 480 (1998), the Supreme Court held that materials cannot be "dumped" into an educator's personnel file merely to keep the items off-limits.

## C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

The Oregon Evidence Code and common law privileges, which are incorporated by ORS 192.502(9), permit withholding.

## D. Are segregable portions of records containing exempt material available?

Under ORS 192.505, the public body must segregate exempt and non-exempt materials and make all non-exempt materials available for examination. This requirement exists even without a specific request.

## E. Homeland Security Measures.

New exemptions concerning County election security and utilities security were enacted in 2005. ORS 192.502(32) and (33).

## III. STATE LAW ON ELECTRONIC RECORDS

### A. Can the requester choose a format for receiving records?

Yes, if the format is one that is used by the public body or recognized by the Oregon State Archives Division under its adopted administrative rules. The Archives Division rules are found in Oregon Administrative Rules (OAR) Ch. 166 - Divisions 5, 10, 17, 20, 25 and 30. ORS 192.440 (3) states that if a record is maintained in electronic form, the custodian shall provide it in the form requested, if available.

### B. Can the requester obtain a customized search of computer databases to fit particular needs?

Yes. The Attorney General has taken the position that such customized searches must be undertaken if they can be done with existing software and computer programs.

### C. Does the existence of information in electronic format affect its openness?

No. Public records are writings relating to the public's business "regardless of physical form or characteristics." ORS 192.410(4)(a); 192.410(6).

### D. How is e-mail treated?

If it relates to the public's business, e-mail is treated the same as any other public record under ORS 192.410 and 192.420 and is subject to the same disclosure provisions and exemption claims.

#### 1. Does e-mail constitute a record?

Yes. The Oregon Attorney General has determined that e-mails are public records, subject to disclosure if non-exempt and relating to the conduct of the public's business. Attorney General Manual, § I(C)(1).

#### 2. Public matter on government e-mail or government hardware

Yes. If it relates to the public's business, e-mail is treated the same as any other public record under ORS 192.410 and 192.420 and is subject to the same disclosure provisions and exemption claims.

#### 3. Private matter on government e-mail or government hardware

If an e-mail message does not relate to the public's business, then it is by statutory definition not a public record. ORS 192.410(4)(b). However, the Attorney General Manual suggests that if a privately-created record is used or retained by a public official and it relates to

the public's business, it may become a public record. See Attorney General Manual, § I(C)(2).

#### 4. Public matter on private e-mail

An e-mail that relates to the public's business is a public record, regardless of where it is stored. ORS 192.410(4)(a).

#### 5. Private matter on private e-mail

If the e-mail does not relate to the public's business and it is contained on a privately owned computer, then it is by statutory definition not a public record. ORS 192.410(4)(b).

### E. How are text messages and instant messages treated?

There is no statutory or case law specifically addressing this issue. Because a text message or instant message appears to meet the definition of "writing" in ORS 192.410, if such a message relates to the public's business, it would be treated the same as any other public record under ORS 192.410 and 192.420, and would be subject to the same disclosure provisions and exemption claims.

#### 1. Do text messages and/or instant messages constitute a record?

There is no statutory or case law specifically addressing this issue. However, if the text message or instant message relates to the public business, then under ORS 192.410(4)(a) it would be a public record, subject to the same disclosure provisions and exemptions that govern other public records.

#### 2. Public matter message on government hardware.

There is no statutory or case law specifically addressing this issue. Nonetheless, every "writing" that relates to the public's business is a public record under ORS 192.410(4)(a).

#### 3. Private matter message on government hardware.

No. If a message does not relate to the public's business, then it is by statutory definition not a public record. ORS 192.410(4)(b).

#### 4. Public matter message on private hardware.

There is no statutory or case law specifically addressing this issue. However, under the terms of 192.410, a record relating to the public's business is a public record, regardless of where it is stored. ORS 192.410(4)(a).

#### 5. Private matter message on private hardware.

No. If a message does not relate to the public's business and it is contained on a privately owned computer, then it is by statutory definition not a public record. ORS 192.410(4)(b).

### F. How are social media postings and messages treated?

There is no statutory or case law specifically addressing this issue. The test is whether a given posting or message relates to the public's business, under ORS 192.410(4)(a), and is a "writing" under ORS 192.410(6). Because the definition of "writing" is very broad, postings or messages relating to the public's business are probably public records.

### G. How are online discussion board posts treated?

There is no statutory or case law specifically addressing this issue. The test is whether a given posting relates to the public's business, under ORS 192.410(4)(a), and is a "writing" under ORS 192.410(6). Because the definition of "writing" is very broad, postings or messages relating to the public's business are probably public records.

### H. Computer software

ORS 192.501(15) exempts "[c]omputer programs developed or purchased by or for any public body for its own use" from disclosure "unless the public interest requires disclosure in the particular

instance." The definition of "computer program" does not include data, analyses produced by software, or mathematical and statistical formulas. ORS 192.501(15)(a)-(c). The statute does not specifically address software that is "licensed" as opposed to "purchased." The Attorney General has concluded that ORS 192.440(2) "requires public bodies to retrieve and make available nonexempt computer or electronically stored data and information, when requested, through the computer software or programs in use by the public body," but that under ORS 192.501(15) the public body is not required to disclose the underlying software or program. ORS 268.357, concerning software developed using public funds by metropolitan service districts, that "[n]otwithstanding any other provision of law, district software product programming source codes, object codes and geographic databases or systems are confidential and exempt from public disclosure under ORS 192.502."

#### 1. Is software public?

See above.

#### 2. Is software and/or file metadata public?

There is no case law specifically addressing metadata in the context of public records. ORS 192.440(3) provides that "[i]f the public record is maintained in a machine readable or electronic form, the custodian shall provide a copy of the public record in the form requested, if available. If the public record is not available in the form requested, the custodian shall make the public record available *in the form in which the custodian maintains the public record* (emphasis added). Because the form in which many electronic records are stored included meta-data, it appears that this provision makes file metadata public, though no case has addressed the issue.

### I. How are fees for electronic records assessed?

Fees for electronic records are assessed on the same basis as fees for other records. ORS 192.440(4)(a) authorizes public bodies to establish fees "reasonably calculated to reimburse the public body for the public body's actual cost of making public records available." The same provision additionally allows fees to recover the "costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person's request." The actual costs include time spent searching, copying, reviewing and redacting records (including redactions made by attorneys), as well as time spent mailing records by special methods. Actual costs do not include time attorneys spend determining whether the Public Records Law applies, and do not include the costs of providing records in formats to accommodate hearing- or visually-impaired people under the Americans with Disabilities Act. The costs of a search may be charged even if no records are found, or if the records that are found are all exempt from disclosure. Public bodies may require prepayment of estimated charges before taking action on a request. Fee waivers and reductions are available as set forth in ORS 192.440(5) and (6).

### J. Money-making schemes.

There is no statutory or case law addressing this issue.

#### 1. Revenues.

There is no statutory or case law specifically addressing this issue.

#### 2. Geographic Information Systems.

There is no statutory or case law specifically addressing this issue.

### K. On-line dissemination.

ORS 192.430 requires a custodian of public records to provide "proper and reasonable opportunities for inspection and examination of the records in the office of the custodian" during usual business hours to persons seeking access to public records, and ORS 192.440(1) requires "a reasonable opportunity to inspect or copy" public records. No provision generally requires public records to be disseminated over the Internet.

#### IV. RECORD CATEGORIES -- OPEN OR CLOSED

Under the general authority of ORS 192.502(9) the Oregon Legislature has retained significant authority to limit disclosure of specific records provided to, or compiled by, particular agencies.

##### A. Autopsy reports.

ORS 192.501(36) conditionally exempts from disclosure “a medical examiner’s report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117.” These are open to family members or a personal representative of the deceased or to any person who may be criminally or civilly liable for the death; *see* ORS 146.035(S) regarding death records. In addition, deadly weapon and injury reports made under ORS 146.750 are confidential under ORS 146.780.

##### B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

Several conditional exemptions under ORS 192.501 exempt specific investigatory records “unless the public interest requires disclosure in the particular instance. Specifically, ORS 192.501(8) conditionally exempts investigatory information relating to complaints filed with the Commission of the Bureau of Labor and Industries alleging unlawful employment practices or other civil rights violations. ORS 192.501(9) conditionally exempts investigatory information relating to any complaint or charge filed under certain statutes, ORS 243.676 and 663.180, which concern unfair labor practices. ORS 192.501(10) conditionally exempts information received or compiled by the Director of the Department of Consumer and Business Services with respect to investigations of debt consolidation agencies under ORS 697.732. ORS 192.501(12) conditionally exempts “[a] personnel discipline action, or materials or documents supporting that action,” but is limited to completed disciplinary actions where a sanction is imposed. *City of Portland v. Rice*, 308 Or 118, 123, 775 P.2d 1371, 1374 (1989). In one case, Oregon courts have determined that records of a school district’s investigation into alleged misuse and theft of district property were not exempt under ORS 192.502(9), 192.502(12) or ORS 342.850(8). *Oregonian Publishing Company v. Portland School District No. 17*, 144 Or. App. 180, 925 P.2d 591 (1996), *modified* 152 Or. App. 135, 952 P.2d 66 (1998), *affirmed on other grounds* 329 Or. 393, 987 P.2d 480 (1999). However, investigation reports consisting of attorney-client privileged communications are exempt under ORS 192.502(9). *Klamath County School Dist. v. Teamey*, 207 Or. App. 250, 140 P.3d 1152 (2006). ORS 192.501(17) conditionally exempts investigatory information relating to any complaint or charge filed under ORS chapter 654, which concerns workplace health and safety, such as charges filed with the Oregon Occupational Safety and Health Division during the investigation. While this exemption does not cover the complaint itself, a different statute, ORS 654.062, makes the identity of the complaining party confidential. *See* Attorney General Manual, § I(E)(4)(c)(17). The Attorney General has determined that ORS 192.501(20), which exempts workers’ compensation claim records of the Department of Consumer and Business Services, prohibits a request for unredacted rerecords of active worker’s compensation litigation cases. ORS 192.501(35) conditionally exempts records relating to certain investigations concerning licensing and certification by the Department of Public Safety Standards and Training. ORS 676.165 and 676.175 exempt investigatory information and issued reports concerning investigations by health professional regulatory boards.

##### 1. Rules for active investigations.

ORS chapter 192 does not generally provide for different treatment of active and closed administrative investigations, but some exemptions do treat pending investigations differently. ORS 192.501(1) conditionally exempts records pertaining to pending litigation to which a public body is a party, but does not exempt records pertaining to concluded litigation. The conditional exemption for investigatory information concerning complaints to the Commission of the Bureau of Labor and Industries, ORS 192.501(8) extends only until the com-

plaint is resolved or a final order issues. The conditional exemption in ORS 192.501(12) for personnel discipline action[s], or materials or documents supporting that action,” is limited to *completed* disciplinary actions where a sanction is imposed, and does not apply if the employee cuts short the investigation by resignation. *City of Portland v. Rice*, 308 Or. 118, 123, 775 P.2d 1371, 1374 (1989) (narrowly construing exemption). ORS 192.501(17) conditionally exempts investigatory information relating to certain workplace health and safety complaints and charges, including those filed with the Oregon Occupational Safety and Health Division, until a final administrative determination is made or, if a citation issues, the employer receives notice of the citation. While ORS 192.502(1) exempts certain advisory materials, the Attorney General notes that records do not qualify for the ORS 192.502(1) exemption merely because they are preliminary or make recommendations. Absent another basis for an exemption, the Attorney General’s position is that such reports are subject to disclosure. *See* Attorney General Manual, § I(E)(4)(d) at 59.

##### 2. Rules for closed investigations.

*See* above.

##### C. Bank records.

Banking division reports and deposit information are governed by ORS 706.720 and 706.730. Similar provisions to savings and loan associations under ORS 722.419. Certain limits concerning depositor information are set forth in ORS 192.550.

##### D. Budgets.

Under ORS 291.223, the state budget is prepared by the Governor every two years but cannot be publicly disclosed until December 1. Other than ORS 291.223, there appears to be no statutory or case law specifically addressing budgets as public records. The Oregon Attorney General’s office determined, in one case, that a budget prepared by a public university for a foundation that was not a “public body” was nonetheless a nonexempt public record. Attorney General Manual, Appendix F-12 (Public Records Order, April 22, 1988, Peter Murphy).

##### E. Business records, financial data, trade secrets.

*See* specific exemptions for: trade secrets (ORS 192.501(2)); production data (ORS 192.501(5)); production, sales, and cost data or customer lists submitted to agencies (ORS 192.502(17)); and personal information (ORS 192.502(2)).

In addition, income tax reports under ORS 314.835 and 314.840 are not subject to disclosure, nor are Economic Development Department and negotiation information (ORS 194.160), and export trading corporation financial records and trade secrets (ORS 777.795). Industrial plant valuation information is also not subject to disclosure under ORS 305.420 and 308.411.

##### F. Contracts, proposals and bids.

Contracts, proposals and bids are all generally open, except in cases of sealed bid contracts where the sealed bids have not been opened. ORS 279.027 describes when a sealed bid is available for public inspection.

##### G. Collective bargaining records.

Until contract approval, these records are generally confidential, unless both the public agency and the bargaining unit agree to their release. As noted later in the discussion of the Public Meetings Law, labor negotiations involving public bodies generally proceed without the presence of any news media in executive session. As a result, while there is no specific records exemption, the customary practice is to keep such records confidential as records of an executive session.

##### H. Coroners reports.

These are not generally subject to disclosure under ORS 146.035(5). ORS 192.501(36) conditionally exempts from disclosure “a medical examiner’s report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117.”

## I. Economic development records.

Under ORS 194.160, Economic Development Department and negotiation information are not subject to disclosure.

## J. Election records.

Individualized records are not subject to disclosure, including a specific provision dealing with vote challenge information under ORS 254.425. Other generalized election data is open pursuant to ORS Ch.254.

### 1. Voter registration records.

Under ORS 247.965, voters may request that addresses be exempted from disclosure, and such an exemption remains in effect until the voter requests it be terminated or updates his/her registration information. Under ORS 247.973 no one but an election official may make a copy or provide a copy of a voter's signature. Additionally, ORS 247.955 prohibits use of voter registration lists for commercial purposes.

### 2. Voting results.

There is no statute specifically addressing election results or suggesting different treatment for such records. In 38 Op Atty Gen 1318, October 13, 1977, the Oregon Attorney General concluded that an election officer may not refuse inspection of poll book solely because inspection may disclose how a particular elector voted.

## K. Gun permits.

ORS 166.292 indicates "the sheriff shall keep a record of each license issued under ORS 166.291 and this section, or renewed pursuant to ORS 166.295. Oregon's intermediate appellate court has held that records of concealed handgun licenses are public records. *Mail Tribune, Inc. v. Winters*, 236 Or. App. 91, 237 P.3d 831 (2010). The court held that exceptions for personal privacy under 192.502(2) and for security measures under 192.502(23) did not generally prohibit disclosure absent an individualized showing of privacy or security concerns.

## L. Hospital reports.

Patient-specific records are generally not subject to disclosure under ORS 192.518, *et seq.*

## M. Personnel records.

These records are generally available for disclosure (subject to ORS 192.501-505). *But see* ORS 192.501(12) (permitting a public body to make employee disciplinary actions confidential at the discretion of the employee); ORS 192.502(2) (permitting withholding of information of a personal nature, including but not limited to the type of information kept in a personal, medical or similar file, if public disclosure of the information would constitute an "unreasonable invasion of privacy") and ORS 657.665 (permitting withholding of records of Employment Division). Special provisions apply for educators' personnel files, including disciplinary matters. ORS 324.850.

### 1. Salary.

The gross pay of public employees has been determined not to be exempt under ORS 192.502(2). Attorney General Manual, § I(E)(4)(d)(2)(d), at 70. The Attorney General has also opined that the amount of voluntary deductions and how pay is spent are exempt under ORS 192.502(2).

### 2. Disciplinary records.

ORS 192.501(12) conditionally exempts "[a] personnel discipline action, or materials or documents supporting that action," but is limited to completed disciplinary actions where a sanction is imposed. *City of Portland v. Rice*, 308 Or. 118, 123, 775 P.2d 1371, 1374 (1989). Disciplinary records of former teachers are subject to disclosure under ORS 339.388.

## 3. Applications.

Applications may be exempt under various exemptions for personal privacy and medical information ORS 192.502(2); personal financial information, Public Records Order, January 2, 1985, Snell; the address or telephone number of an employee, ORS 192.502(3); information submitted in confidence, ORS 192.502(4); and other personal information

## 4. Personally identifying information.

ORS 192.502(2) exempts "[i]nformation 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," and places the burden on the party seeking disclosure to show that disclosure would not be an unreasonable invasion of privacy. However, information in such a file that is not personal, or the disclosure of which would not be an unreasonable invasion of privacy is not exempt. Attorney General Manual § I(E)(4)(d)(2), at 63.

## 5. Expense reports.

There are no statutes or cases that specifically address expense reports of government employees. ORS 192.501(5) conditionally exempts: "[i]nformation consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding."

## N. Police records.

ORS 192.501(3). Disclosure of arrest information or report of a crime may be delayed if a clear need is shown, including protection of the victim or complaining party.

### 1. Accident reports.

There is no statutory or case law specifically addressing this issue. The Attorney General has addressed disclosure of accident reports from the Department of Transportation and the Division of Motor Vehicles (DMV). See Appendix G of the Attorney General Manual.

### 2. Police blotter.

There is no statutory or case law specifically addressing this issue.

### 3. 911 tapes.

There is no statutory or case law specifically addressing this issue.

### 4. Investigatory records.

ORS 192.501(3) provides a conditional exemption for investigatory information compiled in criminal investigations, while allowing only limited circumstances in which a record or arrest or the report of a crime may remain confidential. This exemption does not expire when the investigation is closed, though the closed status of the governmental investigation decreases the government's interest in maintaining confidentiality. See Attorney General Manual, § I(E)(4)(c)(3).

ORS 192.502(1), which exempts advisory communications where public interest in encouraging frank communication between officials and employees clearly outweighs the public interest in disclosure. Recently, in *City of Portland v. Oregonian Publishing Co.*, 200 Or. App. 120, 112 P.3d 457 (2005) the court held that Portland Police Bureau

records concerning the investigation and discipline of a police officer who killed a civilian during a traffic stop were not exempt from disclosure under this balancing analysis.

**a. Rules for active investigations.**

With respect to police investigations, there appears to be no categorical distinction between active and closed investigations, though closure may change the balancing of interests in the conditional exemption, as noted above. The end of an investigation might also eliminate a need to conceal an arrest record. See 5, below.

**b. Rules for closed investigations.**

See above.

**5. Arrest records.**

ORS 192.501(3) requires disclosure of arrest records unless there is a “clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or victim.” Such arrest records must be disclosed when the need ceases.

**6. Compilations of criminal histories.**

There is no statute or case law specifically addressing this issue. Such compilations do not fit the definition of an “arrest record.”

**7. Victims.**

Under ORS 192.501(3), the need to protect “the complaining party or victim,” may underpin a “clear need to delay disclosure” of arrest records and reports of crimes. See also ORS 147.115 concerning crime victim compensation records.

**8. Confessions.**

There is no statutory or case law specifically addressing this issue.

**9. Confidential informants.**

ORS 192.502(4) exempts “[i]nformation submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.”

**10. Police techniques.**

Information compiled in investigations not connected with pending or contemplated prosecution may remain confidential if it would disclose investigative techniques and procedures. See *Jensen v. Schiffman*, 24 Or. App. 11, 544 P.2d 1048 (1976; Attorney General Manual § I(E)(4)(c) at 37.

**11. Mug shots.**

ORS 181.592 exempts pictures of juvenile sex offenders from disclosure. There appears to be no other statutory or case law specifically concerning mug shots. ORS 807.115 addresses disclosure of duplicate images of DMV photographs.

**12. Sex offender records.**

ORS 181.592 places limits on the information that may be released, concerning first-time sex offenders and juvenile sex offenders, to the sex offender’s name and date of birth, name and zip code, name and telephone number of the supervising contact person; the names of any institutions of higher education that the sex offender attends or works at, and—in the case of non-juvenile first-time offenders—the offender’s physical description and photograph. The Attorney General’s office denied a petition for the Sex Offender Registration Unit of the Oregon State Police (OSP) to disclose its Sex Offender Database in electronic form because it was part of larger database containing both exempt and nonexempt information that could not be effectively segregated.

**13. Emergency medical services records.**

ORS 192.502(2) exempts information of a personal nature, including but not limited to the type of information kept in a personal, medical or similar file, if public disclosure of the information would constitute an “unreasonable invasion of privacy.” See above. Program data concerning emergency medical technicians is regulated by ORS 41.685.

**O. Prison, parole and probation reports.**

ORS 192.502(5) exempts prison, parole and probation records to the extent that disclosure (1) would interfere with the rehabilitation of a person in custody of the Department of Corrections or would (2) “substantially prejudice or prevent the carrying out” of the Department’s functions, but the exception only applies if the “public interest in confidentiality clearly outweighs the public interest in disclosure.”

**P. Public utility records.**

ORS 192.502(28) exempts personally identifiable information about customers of a municipal electric utility or a people’s utility district, as well as certain personal information concerning customers who receive water, sewer, or storm drain services from certain public bodies.

**Q. Real estate appraisals, negotiations.**

**1. Appraisals.**

ORS 192.501(6) conditionally exempts “[i]nformation relating to the appraisal of real estate prior to its acquisition” from disclosure.

**2. Negotiations.**

There is no statutory or case law specifically addressing this issue.

**3. Transactions.**

There is no statutory or case law specifically addressing this issue.

**4. Deeds, liens, foreclosures, title history.**

There is no statutory or case law specifically addressing this issue.

**5. Zoning records.**

There is no statutory or case law specifically addressing this issue.

**R. School and university records.**

**1. Athletic records.**

There is no statutory or case law specifically addressing this issue.

**2. Trustee records.**

There is no statutory or case law specifically addressing this issue.

**3. Student records.**

ORS 192.501(29) conditionally exempts the e-mail addresses of students that attend state colleges and universities.

**4. Other.**

ORS 192.502(21) exempts sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

ORS 192.501(24) conditionally exempts personal information held by or under the direction of officials of the Oregon Health and Science University or the Oregon University System about donors and interested prospective donors.

ORS 192.501(25) conditionally exempts the home address, professional address and telephone number of a donor or interested prospective donor to the Oregon University System, without the requirement that the records are held under the direction of OUS officials.

**S. Vital statistics.**

**1. Birth certificates.**

Under ORS 432.121 and 192.502(9) Birth records for births occurring within 100 years of the request are exempt from disclosure, though abstracts of such records are made public. There are excep-

tions for certain family members or a showing of intent to use the information solely for research purposes.

## 2. Marriage & divorce.

Under ORS 432.121, 432.165 and 192.502(9) Marriage records for marriages occurring within 50 years of the request are exempt from disclosure, though abstracts of such records are made public. There are exceptions for certain family members, a showing of intent to use the information solely for research purposes, or for a need to determine property rights.

## 3. Death certificates.

Under ORS 432.121, 432.165 and 192.502(9) Death records for deaths occurring within 50 years of the request are exempt from disclosure, though abstracts of such records are made public. There are exceptions for certain family members, a showing of intent to use the information solely for research purposes, or for a need to determine property rights.

## 4. Infectious disease and health epidemics.

ORS 433.008 exempts “[i]nformation obtained by the Oregon Health Authority or a local public health administrator in the course of an investigation of a reportable disease or disease outbreak,” with enumerated exceptions for disclosure to state and federal agencies, health care workers, persons with communicable diseases, and certain others, unless there is “clear and convincing evidence that the release is necessary to avoid an immediate danger to other individuals or to the public.”

# V. PROCEDURE FOR OBTAINING RECORDS

## A. How to start.

### 1. Who receives a request?

All requests are first directed to the actual custodian of the records in question. Oregon’s review procedures then vary slightly depending upon whether the records in question are held:

- by a state public body,
- by a county, city or local public body, or
- by an elected official.

Appeal from the denial of disclosure of records held by a state public body goes first to the Attorney General. ORS 192.450. An appeal concerning county, city or local records goes first to the district attorney for the county in which the records are located. ORS 192.460. Appeals concerning records held by any elected official go directly to circuit court. ORS 192.480.

### 2. Does the law cover oral requests?

The Public Records Law is silent on this issue. Of course, a written request will provide better documentation on appeal.

#### a. Arrangements to inspect & copy.

The person designated as the custodian of the public records for a public body is obligated to furnish a reasonable opportunity for inspection and examination during usual business hours. That person may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of official duties. ORS 192.430.

#### b. If an oral request is denied:

Again, the law does not address this. As a practical matter, a written request should be made, which will assist in appeal.

#### (1). How does the requester memorialize the refusal?

There is no specific requirement. As a practical matter, the requester should make requests in writing and memorialize the refusal in writing as well.

### (2). Do subsequent steps need to be in writing?

See notes on petitions to the Attorney General, District Attorney or circuit court below.

### 3. Contents of a written request.

There are no specific content requirements. The request should specify records requested as well as is possible.

#### a. Description of the records.

The request should be as specific as to time and nature as possible. In particular, limitations on dates of records will frequently speed a response. Subject matter or general description of content are common.

#### b. Need to address fee issues.

There is no need to address fees. If the fees will exceed \$25, a public body must now confirm consent to its estimated fees before incurring them. ORS 192.440(4)(c).

#### c. Plea for quick response.

The law does not address this. As a practical matter, such a plea may be helpful.

#### d. Can the request be for future records?

Not addressed by statute or case law.

#### e. Other.

None.

## B. How long to wait.

### 1. Statutory, regulatory or court-set time limits for agency response.

This is a hole in Oregon’s statutory scheme. ORS 192.440(1)(b) provides only that a requester must be given a “reasonable” opportunity to inspect and copy records, which, according to the Attorney General, means records must be provided within a reasonable time. Some requesters state in their written request that if they do not get a response within a specified time, they will deem a lack of response to be a denial, entitling them to appeal. No appellate decision has addressed that, but it is clear that a public body must have an opportunity to review and respond before an appeal may be taken. *Morse Bros. v. ODED*, 103 Or. App. 619, 798 P.2d 719 (1990).

### 2. Informal telephone inquiry as to status.

Not addressed by statute. An inquiry may be useful in establishing that an effective denial has been made, because the public body has exceeded its reasonable opportunity to review and respond.

### 3. Is delay recognized as a denial for appeal purposes?

No case has established this.

### 4. Any other recourse to encourage a response.

As above, threatening to deem a non-response as a denial, thus allowing appeal, may be useful.

## C. Administrative appeal.

If a records request is denied by a state public body, appeal is made to the Attorney General. ORS 192.450. If the denial is made by a county, city, or other local body, the appeal is made to the district attorney for the county where the public body is located. ORS 192.460. If the denial is made by an elected official, however, any appeal must be taken directly to court. ORS 192.480.

*Contents of appeal letter.* The Public Records Law prescribes a form of petition for reviewing a denied public records request. ORS 192.470.

*Description of the record.* The petition should describe the records sought with particularity.

*Need to address fee issues.* No.

*Plea for quick response.* There is no need to make such a plea. Both the Attorney General and a district attorney must rule on the petition within seven days of receipt. ORS 192.465.

*Can the request be for future records?* It would not appear that a public body could effectively deny a request to inspect records not yet existing, and denial is required for appeal.

### 1. Time limit.

Generally, the Attorney General or the district attorney must rule on the appeal petition within seven days of receipt. However with respect to health professional regulatory boards, the Attorney General takes the position that the statutes allow fifteen days to respond where an affected licensee/applicant has the right to respond to the petition. See Attorney General Manual, § I(G), at 108-09. If no decision is rendered within the statutory time limit, the petition is deemed denied and the requester may begin court proceedings. If the Attorney General or district attorney grants the petition in whole or in part, the public body must comply with the order within seven days after its issuance unless within that period it issues a notice of its intention to institute court proceedings testing the order of the Attorney General or District Attorney. ORS 192.450(2); 192.460. In the case of state agencies, such proceedings are filed in Marion County Circuit Court, where the state capital is located. In the case of a District Attorney order, such proceedings are instituted in the county in which the public body has its legal jurisdiction. If a state agency does not comply with the Attorney General's order requiring disclosure and does not issue notice of intention to institute proceedings within the seven-day period or does not in fact institute such proceedings within a subsequent seven days, the requester is entitled to recover costs of suit and reasonable attorney fees in the event of litigation over disclosure of the records, *regardless* of whether the requester is successful in such a court proceeding. ORS 192.490(3). This provision does not apply to local public bodies that fail to follow the District Attorney's order.

### 2. To whom is an appeal directed?

#### a. Individual agencies.

If county, city, or local public bodies, the appeal is directed to the district attorney for the county where the records are located. For requests to health professional regulatory boards, as defined in ORS 676.160, for records "contain[ing] information concerning a licensee or applicant," the petitioner must first send a copy of the petition by first class mail to the health professional regulatory board, then file the petition with the Attorney General. ORS 192.450(4); Attorney General Guide § (G)(1)(c), at 109. Note that decisions by individual elected officials to withhold records are not reviewable by the Attorney General or district attorney, but are subject to court review. See ORS 192.480; Attorney General Manual § I(G)(3), at 110.

#### b. A state commission or ombudsman.

No.

#### c. State attorney general.

Generally, all denials by state public bodies are directed to the Attorney General. However, see a. above regarding health professional regulatory boards and elected officials.

### 3. Fee issues.

There is no need to address fee issues.

### 4. Contents of appeal letter.

The Public Records Law prescribes a form of petition for reviewing a denied public records request. ORS 192.470. The petition should describe the records sought with particularity. Specifically, the peti-

tion must: (1) identify the requester, (2) identify the public body that has the records being sought, (3) identify the records that are sought, (4) include a statement that inspection was requested, and (5) include a statement that the request was denied including the person denying the request and the date of the denial, if known.

#### a. Description of records or portions of records denied.

Yes, see above.

#### b. Refuting the reasons for denial.

Not required, but as a practical matter this is very helpful. See Attorney General Manual, § I(G) at 108.

### 5. Waiting for a response.

Typically, the Attorney General or District Attorney has seven days in which to grant or deny the petition in whole or in part. However with respect to health regulatory boards, the Attorney General's office takes the position that the statutes allow fifteen days to respond where an affected licensee has the right to respond to the petition. See Attorney General Manual, § I(G), at 108-09.

### 6. Subsequent remedies.

Any subsequent appeal must be taken to court.

## D. Court action.

### 1. Who may sue?

Any party dissatisfied with the appeal review may sue. A public body must issue notice of intent to sue within seven days and must institute suit within a subsequent seven days.

### 2. Priority.

Under ORS 192.490(2), proceedings involving the denial of Public Records disclosure requests shall take "precedence on the docket over all other causes" except those "the court considers of greater importance," and shall be heard and tried at the earliest practical date and expedited in every way.

### 3. Pro se.

State law does not preclude a *pro se* litigant.

### 4. Issues the court will address:

The court will determine the matter *de novo*. The burden is on the public body to demonstrate the applicability of the exemption and, where applicable, the public interest in nondisclosure. The court is not only entitled to view the records in chambers, but indeed should make that examination. *Kluge v. Oregon State Bar*, 172 Or App 452, 19 P3d 938 (2000).

#### a. Denial.

Injunctive relief to reverse a denial may be sought.

#### b. Fees for records.

State courts have jurisdiction to review the reasonableness of fees. *In Defense of Animals v. OHSU*, 199 Or App 160, 112 P3d 336 (2005).

#### c. Delays.

There appears to be no statutory or case law on this specific point.

#### d. Patterns for future access (declaratory judgment).

Declaratory may be sought.

### 5. Pleading format.

The proceedings are either for injunctive relief or declaratory relief in the circuit court, the trial court of general jurisdiction. The Oregon Uniform Trial Court Rules, as supplemented by local court rules, dictate the nature and form of the pleadings to be used under the Oregon Rules of Civil Procedure. In order to make certain that the litigation is

given the priority permitted by statute, the complaint should be captioned to indicate that it is litigation under the Public Records Law.

#### 6. Time limit for filing suit.

There is no specific time limit for filing suit by a requester, although the balancing tests incorporated in many statutory exceptions to disclosure could in some instances be tipped by the timeliness of the request. As above, public bodies must indicate their intention to sue and must begin suit within strict time constraints.

#### 7. What court.

With respect to state agencies, including any action for injunctive or declaratory relief following an order of the Attorney General, the litigation must be filed in Marion County Circuit Court. In the case of local governmental bodies, including actions following an order by a district attorney, the litigation is to be instituted in the circuit court for the county in which the public body has its legal jurisdiction. Actions following actions by an elected official may be in the local circuit court or in Marion County. If the records are held by a health professional regulatory board, an action may be filed in the circuit court for the county where the records are held. ORS 192.450(2), (6).

#### 8. Judicial remedies available.

Injunctions or declaratory judgments are the sole remedies available. In the event that the court orders the records to be released and the public body refuses to do so, such a refusal could be punished as a contempt of court. ORS 192.490(1). The statute does not permit the award of any damages or other remedies against the agency.

#### 9. Litigation expenses.

In a case where the requester prevails entirely and obtains disclosure, the requester is entitled to reasonable attorneys' fees and litigation costs and disbursements at trial. If the requester prevails in part, the Court may, in its discretion, award costs, disbursements and reasonable attorneys' fees or a portion thereof. If the requester does not prevail in the litigation, the requester is not liable for the public body's attorneys' fees. If a state agency does not comply with an Attorney General's order requiring disclosure and fails to provide timely notice or to institute proceedings within seven days after the order, the requester is entitled to attorneys' fees regardless of the outcome of subsequent litigation. ORS 192.490(3).

##### a. Attorney fees.

See above.

##### b. Court and litigation costs.

See above.

##### 10. Fines.

None, except contempt of court if the court's order is not obeyed.

##### 11. Other penalties.

None.

##### 12. Settlement, pros and cons.

If the material requested is time-sensitive, it may be that the requester will be satisfied with some but not all materials. Settlement may be attractive to public bodies because the Oregon system strongly favors disclosure of records and attorneys fees will be awarded if the public body loses, but will not be awarded if the body wins. The largest factor influencing settlement from the requester's standpoint is the delay involved in trying a Public Records case and its possible appeal.

#### E. Appealing initial court decisions.

##### 1. Appeal routes.

In Oregon, an appeal from a circuit court decision in a Public Records case is made exclusively to the Oregon Court of Appeals. If the requester is dissatisfied with the Court of Appeals decision, the requester may file (by right) a Petition for Review with the Oregon Supreme Court. The Supreme Court has discretion in whether to take petitions.

*Attorney Fees.* If the requester is successful in either reversing an adverse trial court judgment or in sustaining a trial court judgment requiring disclosure, the requester may also recover reasonable attorney fees on appeal. Again, the requester has no liability for the public body's fees if the requester is the losing party at the appellate level.

##### 2. Time limits for filing appeals.

All appeals from a circuit court decision must be made within 30 days after the date of entry of the final order in the trial court proceeding.

##### 3. Contact of interested amici.

The Oregon Court of Appeals has a process for allowing *amici curiae* to participate. The process for *amici* petitions and *amici* participation is set forth under the Oregon Rules of Appellate Procedure.

#### F. Addressing government suits against disclosure.

Not addressed.

# Open Meetings

## I. STATUTE -- BASIC APPLICATION.

### A. Who may attend?

Under ORS 192.620 and 192.630, the stated policy of the State of Oregon is that decisions of public governing bodies operating in the State of Oregon are arrived at openly. This means that all meetings of public governing bodies *shall* be open to the public and *all* persons shall be permitted to attend any meeting, except as otherwise provided by ORS 192.610 -192.690. Thus, these statutes draw no distinctions between the media and other members of the public regarding attendance at public meetings, except for executive sessions, discussed *infra*. Oregon law makes no requirement that one be a citizen, taxpayer, resident or voter to attend a public meeting.

### B. What governments are subject to the law?

All “public bodies” are subject to the Public Meetings Law. Public bodies include “the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.” ORS 192.610(4).

#### 1. State.

The state is subject to the Public Meetings Law. *See supra*.

#### 2. County.

Counties are subject to the Public Meetings Law. *See supra*.

#### 3. Local or municipal.

Local and municipal governments are subject to the Public Meetings Law. *See supra*.

### C. What bodies are covered by the law?

All “governing bodies” are covered. Governing body “means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.” ORS 192.610(3).

#### 1. Executive branch agencies.

##### a. What officials are covered?

All officials who are members of a governing body are covered, when a quorum of that body is convened to make a decision or deliberate toward a decision.

##### b. Are certain executive functions covered?

No, except as the executive is involved in a meeting of a governing body with a quorum which is making a decision or deliberating toward a meeting.

##### c. Are only certain agencies subject to the act?

All agencies are covered except those exempted under ORS 192.690. These include, for example, deliberations of the State Board of Parole, the State Banking Board, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases under the Oregon Administrative Procedures Act, review by the Workers’ Compensation Board of contested workers’ compensation cases, meetings of state lawyer assistance committees under the Oregon State Bar Act, peer review committees of health care providers, child fatality review teams, and security programs reviewed by the Energy Facility Siting Council.

#### 2. Legislative bodies.

All local legislative bodies are covered by the Public Meetings Law. The law’s applicability to activities of the state Legislative Body is not

clear. Or Const. Art IV, § 14 requires the Legislature’s deliberations to be “open.” The Attorney General has stated that this requirement does not apply to caucuses or closed sessions where permitted under common law or relating to proceedings concerning political party organizational activities.

#### 3. Courts.

All judicial proceedings are exempted from the requirements of the Public Meetings Law. ORS 192.690(1). Under Or Const. Art IV § 10, however, court proceedings are open to the public.

#### 4. Nongovernmental bodies receiving public funds or benefits.

These groups are not subject to the Public Meetings Law merely because of their receipt of funds. The question is whether they become the “functional equivalent” of a public body. *Marks v. McKenzie High School Fact-Finding Team*, 319 Or. 451, 878 P.2d 417 (1994).

#### 5. Nongovernmental groups whose members include governmental officials.

These groups are not subject to the law merely because they include governmental officials.

#### 6. Multi-state or regional bodies.

The Attorney General believes these agencies may be subject to the Public Meetings Law if their Oregon members constitute a majority or if they have a committee with a majority of Oregon members that is authorized to make decisions.

#### 7. Advisory boards and commissions, quasi-governmental entities.

The question is whether they are the functional equivalent of a public body. *See Marks, supra*.

#### 8. Other bodies to which governmental or public functions are delegated.

Again, the question is whether they are the functional equivalent of a public body. *See Marks, supra*.

#### 9. Appointed as well as elected bodies.

These bodies are covered by the Public Meetings Law if they meet the *Marks* test, *supra*.

## D. What constitutes a meeting subject to the law.

### 1. Number that must be present.

#### a. Must a minimum number be present to constitute a “meeting”?

Under ORS 192.610(5) a “meeting” is the convening of a governing body of a public body for which a quorum is required in order to make a decision or deliberate toward a decision on any matter. Therefore, a quorum, i.e., a majority of members of the governing body, must be present in order to constitute a meeting and trigger the statute. A “governing body” must contain “two or more members.” ORS 192.610(3); *Indep Contrs Research Inst v. Dep’t of Admin Servs*, 207 Or. App. 78 (2006).

#### b. What effect does absence of a quorum have?

The absence of a quorum means that there is no “meeting” under the Public Meetings Law. The law does not apply in such instances.

### 2. Nature of business subject to the law.

#### a. “Information gathering” and “fact-finding” sessions.

If the meeting is for the purpose of gathering information to serve as a basis for a subsequent decision, the Public Meetings Law applies. 38 Op Atty Gen 1471 (1977). On-site inspections of projects or pro-

grams and attendance at conventions are specifically excluded from the definition of a “meeting” under ORS 192.610(5).

**b. Deliberations toward decisions.**

Deliberations (e.g., fact finding or “work sessions”) toward decisions are specifically covered by the Public Meetings Law. ORS 192.610(5).

**3. Electronic meetings.**

**a. Conference calls and video/Internet conferencing.**

If a quorum of a governing body meets, the Public Meetings Law applies. Public meetings may be held via contemporaneous communication means, where all governing body members (and the public) can “listen” by speakers or other devices. ORS 192.670 (2).

**b. E-mail.**

If a quorum of a governing body is e-mailing about a decision or using text messages to deliberate toward a decision, the Public Meetings Law applies. Notice and an opportunity for the public to “listen” and “attend” would be required. ORS 192.670(2).

**c. Text messages.**

The statute does not specifically address text messages. However, if a quorum of a governing body is text messaging about a decision or using text messages to deliberate toward a decision, the Public Meetings Law applies. Notice and an opportunity for the public to “listen” and “attend” would be required. ORS 192.670(2).

**d. Instant messaging.**

The statute does not specifically address instant messaging. However, if a quorum of a governing body is instant messaging about a decision or using instant messaging to deliberate toward a decision, the Public Meetings Law applies. Notice and an opportunity for the public to “listen” and “attend” would be required. ORS 192.670(2).

**e. Social media and online discussion boards.**

The statute does not specifically address social media or online discussion boards. However, if a quorum of a governing body is using social media or online discussion boards for a decision or using social media or online discussion boards to deliberate toward a decision, the Public Meetings Law applies. Notice and an opportunity for the public to “listen” and “attend” would be required. ORS 192.670(2).

**E. Categories of meetings subject to the law.**

**1. Regular meetings.**

**a. Definition.**

There is no specific definition of a “regular” meeting under the Public Meetings Law. However, ORS 192.640(1) and (3) distinguish between regular meetings and special meetings. Under this scheme, regular meetings appear to be meetings regularly scheduled with significant advance notice.

**b. Notice.**

**(1). Time limit for giving notice.**

Under ORS 192.640(1) there is no specified time limit but notice must be “reasonably calculated” to give actual notice to interested persons, including news media, who have requested notice. Special meetings require at least 24 hours notice, unless the minutes describe an emergency justifying the lack of such notice. ORS 192.640(3).

**(2). To whom notice is given.**

Notice is to be given to the public generally and to interested persons who have requested notice, including news media.

**(3). Where posted.**

There is no specific posting requirement provided the methods are reasonably calculated to give actual notice.

**(4). Public agenda items required.**

ORS 192.640(1) specifies that the notice shall include a list of the principal subjects anticipated to be considered at the meeting, but public bodies may consider other subjects.

**(5). Other information required in notice.**

ORS 192.640(1) requires the time and place for the meeting to be specified. In addition, if an executive session is to be held, the notice must state the specific provision of the Public Meetings Law authorizing such an executive session. ORS 192.640(2).

**(6). Penalties and remedies for failure to give adequate notice.**

Under the penalties and enforcement section of the Public Meetings Law, ORS 192.680, a court may order equitable relief as appropriate for violation of the law. A decision made at an improperly noticed meeting shall not be voided if the public body properly reinstates the decision. Under ORS 192.685, violators of the Public Meetings Law can be the subject of a complaint to the Oregon Government Ethics Commission, the state’s government ethics tribunal. If a court finds a violation was willful or intentional, it may order reasonable attorney fees paid to a challenger of the meeting. If a court finds that a violation of the Public Meetings Law is the result of the willful conduct of a particular member or members, that member or members will be jointly and severally liable for any attorney fees paid.

**c. Minutes.**

**(1). Information required.**

Under ORS 192.650(1) sound, video, or digital recording or written minutes are to be compiled for all meetings. A full transcript or tape recording is not required but the minutes must give a “true reflection” of the items discussed and the views of participants in the discussion. At a minimum, the minutes must contain the following information:

- (a) All members of the governing body present;
- (b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
- (c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;
- (d) The substance of any discussion on any matter; and
- (e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting.

ORS 192.650(1).

**(2). Are minutes public record?**

Minutes are a public record under the Public Records Law, except for minutes of an executive session.

**2. Special or emergency meetings.**

**a. Definition.**

There is no statutory definition, but it appears this refers to a meeting not regularly scheduled or called on short notice.

**b. Notice requirements.**

**(1). Time limit for giving notice.**

A special meeting may be held on at least 24 hours’ notice. An “actual emergency” special meeting may be held on less than 24 hours’ notice, provided that the minutes for such an emergency meeting must describe the emergency justifying less than 24 hours’ notice. ORS 192.640(3).

**(2). To whom notice is given.**

Notice of a special meeting must be given to the parties who would receive notice to a regular meeting.

**(3). Where posted.**

This is not addressed, except that posting must be reasonably calculated to provide actual notice.

**(4). Public agenda items required.**

The requirement is the same as for regular meetings.

**(5). Other information required in notice.**

None.

**(6). Penalties and remedies for failure to give adequate notice.**

These are the same as for failure to provide notice to a regular meeting.

**c. Minutes.****(1). Information required.**

Minutes requirements for special and emergency meetings are the same as for regular meetings.

**(2). Are minutes a public record?**

Minutes are a public record under the Public Records Law, except for minutes of an executive session.

**3. Closed meetings or executive sessions.****a. Definition.**

Under ORS 192.610(2) an executive session is a meeting or part of meeting of a governing body that is closed to *certain persons* for deliberations on *certain matters*. Because the stated policy of the Public Meetings Law under ORS 192.620 is to require all meetings to be open to the public, a specific exemption from the requirements of openness must be present to justify an executive session. Those exemptions are set forth in ORS 192.660.

*Who may attend executive sessions?* Members of the public are not entitled to attend executive sessions, unless specifically permitted by the public body. Representatives of the news media are allowed to attend all executive sessions, except for labor negotiations, sessions considering the expulsion of an elementary or secondary school student and those sessions concerning litigation where the news media representative or his or her employer is a party to that litigation. ORS 192.660(4). The term “representatives of the news media” is not defined by the statute but has been interpreted by the Attorney General to include “news gathering representatives”, meaning reporters of news gathering media which “ordinarily report” activities of the public body. 39 Op Atty Gen 600 (1979).

*What material discussed at the executive session is privileged?* A governing body may require that the legitimate subjects of an executive session not be disclosed outside the executive session. ORS 192.660(4). A public body’s belief that a reporter has violated executive session confidentiality is not justification for future exclusion of the reporter from executive sessions. If a member of the governing body discusses, outside the executive session, subjects covered in the executive session, the executive session confidentiality requirement does not apply. If the reporter develops the same information discussed at the executive session through independent means, this information may be reported even though it is also the subject of an executive session. If the executive session deals with matters which are not described by the executive session statute, such discussions are fair game and may be disclosed publicly even though the governing body may believe that it is conducting a confidential executive session discussion.

*Action in executive session.* ORS 192.660(6) makes clear that no final action or final decision may be taken during an executive session. All such actions must be made in a public session.

**b. Notice requirements.**

The notice requirements for an executive session are generally the same as those for a non-executive session meeting. However for an executive session, the notice must also provide the statutory justification for holding the executive session.

**(1). Time limit for giving notice.**

The time limit for giving notice for an executive session is the same as for non-executive session meetings. Notice must be “reasonably calculated” to give actual notice to interested persons.

**(2). To whom notice is given.**

If only an executive session will be held, the notice must be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session. ORS 192.640(2).

**(3). Where posted.**

No posting requirement.

**(4). Public agenda items required.**

See below.

**(5). Other information required in notice.**

ORS 192.640(2) specifies that if an executive session is to be the exclusive basis of a meeting, the notice is to state the specific provision authorizing executive session. While the statute requires advance notice of executive session matters, there are instances where the executive session is called during the course of a regular meeting without previous notice of the executive session. The law allows such a practice. ORS 192.660(1). The statutory basis for an executive session called during a regular meeting must be specified before the executive session begins, however.

**(6). Penalties and remedies for failure to give adequate notice.**

The penalties and remedies are the same as those for regular meetings. *See supra* E(1)(6).

**c. Minutes.****(1). Information required.**

Minutes of an executive session are to be in the same form as minutes for a non-executive session. ORS 192.650(2).

**(2). Are minutes a public record?**

Executive session minutes are not a disclosable public record if disclosure would be inconsistent with the purpose for which the executive session was held. They need not be transcribed if an audio tape of the executive session exists. ORS 192.650(2).

**d. Requirement to meet in public before closing meeting.**

None. An executive session may be the sole agenda item for a meeting of a governing body.

**e. Requirement to state statutory authority for closing meetings before closure.**

An applicable exemption must be cited for an executive session which is either scheduled in advance or called during the course of a meeting. ORS 192.640(2), ORS 192.660(1);

**f. Tape recording requirements.**

The minutes of executive sessions shall be kept and an audio record may serve as the source of such minutes, without the necessity of transcription. ORS 192.650(2).

## F. Recording/broadcast of meetings.

### 1. Sound recordings allowed.

There are no statutory provisions dealing with private recordings of the proceedings. The Attorney General has determined that members of the public cannot be prevented from “unobtrusively recording” proceedings. 38 Op Atty Gen 50 (1976). The presiding officer of the governing body has the authority to impose reasonable restrictions for the efficient and orderly conduct of a meeting, however.

### 2. Photographic recordings allowed.

The statute does not deal with this subject.

## G. Are there sanctions for noncompliance?

The penalties for any noncompliance with the Public Meetings Law have been discussed, *supra*. No other sanctions are specified.

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open meetings statute.

#### 1. Character of exemptions.

##### a. General or specific.

Under ORS 192.660, closures of public meetings for executive session purposes are limited to specific situations.

There are certain specified agencies and types of proceedings which are exempt from all requirements of the Public Meetings Law, pursuant to ORS 192.690. Open meetings are required unless a specific exemption is applicable.

##### b. Mandatory or discretionary closure.

If permitted, closure decisions are generally discretionary with the governing body except in personnel and labor negotiation matters.

#### 2. Description of each exemption.

Other than the exceptions to the coverage of the Public Meetings Law under ORS 192.690, to which none of the requirements of the Public Meetings Law apply, the following are the exclusive “exemptions” to the Public Meetings Law pursuant to ORS 192.660(1). Technically, these situations are not exemptions from the process and procedures of the law, but rather justifications permitting the use of an executive session for the conduct of the public business. These “exemptions” are:

(a) Consideration of employment of a public officer, employee, staff member or agent. This exemption does not apply to the filling of a vacancy in an elective office, the filling of a vacancy on any public committee, commission or advisory group, the consideration of general employment policies, or the employment of the chief executive officer, other public officers, employees and staff members of a public body, unless the vacancy in the position has been advertised and regular procedures for hiring have been adopted by the public body with an opportunity for public participation in the filling of such position. All standards, criteria and policy directives used in hiring a chief executive officer must be adopted by the governing body in open session with an opportunity for public comment. ORS 192.660(1)(a).

(b) Consideration of the dismissal or disciplining of, or complaints or charges against, a public officer, employee, staff member or individual agent unless the subject of the disciplinary proceeding requests an open hearing. ORS 192.660(1)(b).

(c) Consideration of matters pertaining to medical staff functions of a public hospital including clinical committees, peer review committees, and other medical competency matters. ORS 192.660(1)(c).

(d) To conduct deliberations with the persons designated by the governing body to carry on labor negotiations. ORS 192.660(1)(d). This executive session provision applies to discussions between the

governing body and its labor negotiator. It is important to note that where a retained negotiator is employed by the governing body, as opposed to delegating such functions to a subcommittee of the governing body, the retained negotiator is neither a public body nor a governing body for purpose of the coverage of the Public Meetings Law. Thus, the negotiator’s activities are outside coverage of the law.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions. ORS 192.660(1)(e). This is very similar to the exemption under ORS 192.660(1)(d).

(f) To consider records that are exempt by law from public inspection. ORS 192.660(1)(f). This provision allows the governing body to discuss records which are exempt from disclosure under the Open Records Law, as well as under other statutes. However, merely because certain records are discussed in executive session does not mean that those records are automatically exempt from disclosure. While the governing body may urge that executive session matters are not subject to disclosure, this only applies to matters which are *properly* the subject of an executive session. Any records that are discussed may be subject to disclosure if they are not independently subject to a records exemption.

(g) To consider preliminary negotiations involving trade or commerce in which the governing body is in competition with governing bodies in other states or nations. ORS 192.660(1)(g). The key word in this subsection is “preliminary” negotiations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. ORS 192.660(1)(h). This executive session provision is perhaps the most hotly disputed in the Open Meetings statute. The definition of litigation “likely to be filed” is often a subjective determination by the public body (or more likely, its legal counsel). Unfortunately, many city attorneys and county counsels view this provision as equivalent to the attorney-client privilege, so that an executive session may be convened to discuss a difficult matter in which the governing body wishes to consult with counsel. The statute does not equate the two. It focuses only on pending or likely litigation. At a minimum, the executive session must be limited strictly to legal issues and is not an occasion for a general discussion of alternative actions available to the governing body.

(i) To review and evaluate the employment-related performance of public employees. ORS 192.660(1)(i). This provision has two important limitations to it. First, the employee has the absolute right to have an open hearing. Secondly, the executive session may not be used for any general evaluation of goals or objectives or generalized personnel policies. Additionally, the provision also reiterates the requirement in exemption (a) that the standards and policy directives to be used in evaluating chief executive officers are to be adopted in public session where there has been opportunity for public comment.

(j) To carry on negotiations for public investments provided the other party to the negotiations is a private person or business. ORS 192.660(1)(j).

(k) To consider information obtained as part of an investigation of licensee or applicant conduct, if the governing body is a health professional regulatory board. ORS 192.660(1)(k).

(L) To consider information obtained as part of an investigation of registrant or applicant conduct, if the governing body is the State Landscape Architect Board. ORS 192.660(1)(L).

(m) To discuss information about review or approval of programs relating to the security of energy, radioactive material, hazardous substances, sewage, water, telecommunication systems and data transmissions as described in the statute. ORS 192.660(1)(m).

Labor negotiations must be conducted in open session unless both sides request executive sessions. Subsequent closed negotiating sessions can continue without further public notice. ORS 192.660(3).

Labor negotiations conducted by an individual negotiator, rather than members of the governing body, are not subject to the Public Meetings Law. *Southwestern Oregon Publishing Co. v. Southwest Oregon Community College District*, 28 Or. App. 383, 559 P.2d 1289 (1977). However, the Attorney General has stated in 42 Op Atty Gen. 362 (1982), that if labor negotiations are not carried on with a recognized bargaining representative, “negotiations” do not occur and an executive session justification does not exist.

**B. Any other statutory requirements for closed or open meetings.**

None.

**C. Court mandated opening, closing.**

There are no provisions for this kind of required closure of public meetings in Oregon.

**III. MEETING CATEGORIES -- OPEN OR CLOSED.**

**A. Adjudications by administrative bodies.**

Under ORS 192.690(1) state agencies conducting hearings on contested cases under the Oregon Administrative Procedures Act or in cases of Workers’ Compensation Board reviews are outside the Public Meetings Law. Therefore, both the hearing and the adjudication are closed.

**1. Deliberations closed, but not fact-finding.**

See above.

**2. Only certain adjudications closed, i.e. under certain statutes.**

See above.

**B. Budget sessions.**

These matters are conducted in public session. For many public bodies, a budget committee separate from the governing body deals with the preliminary discussions about the budget. Such committees are generally subject to the Public Meetings Law as advisory committees to the governing body.

**C. Business and industry relations.**

Generally these matters are heard in public session. Discussions falling under ORS 192.660(1)(e) (negotiations involving real property transactions), ORS 192.660(1)(g) (preliminary negotiations involving trade or commerce in which governing body is in competition with other governing bodies) and ORS 192.660(1)(j) (negotiations with private persons or businesses for public investments) are subjects for executive session deliberations.

The deliberations of the State Banking Board are not subject to the Public Meetings Law. ORS 192.690(1).

**D. Federal programs.**

There is no exemption for discussion of federal programs by governing bodies.

**E. Financial data of public bodies.**

Other than public investments under ORS 192.660(1)(j) such matters are subject to the Public Records Law.

**F. Financial data, trade secrets or proprietary data of private corporations and individuals.**

If these matters are reduced to written form and qualify for a Public Records exemption, they may properly be considered in executive session. ORS 192.660(2)(f).

**G. Gifts, trusts and honorary degrees.**

If any such matter involves records subject to exemption, they may be discussed in executive session.

**H. Grand jury testimony by public employees.**

The Public Meetings Law does not apply to judicial proceedings.

**I. Licensing examinations.**

These matters would only rarely be the subject of a public meeting because the governing body is unlikely to vote on passage or failure of an applicant’s examination performance. To the extent that licensing matters are voted upon by agencies (e.g. liquor licensing) such discussion is conducted in public session, unless it is a contested case hearing by an administrative agency exempt under ORS 192.690(1).

**J. Litigation; pending litigation or other attorney-client privileges.**

An executive session may be held to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. ORS 192.660(2)(h).

**K. Negotiations and collective bargaining of public employees.**

Executive sessions may be held to conduct deliberations with persons designated by the governing body to carry on labor negotiations, pursuant to ORS 192.660(2)(d) and ORS 192.660(3).

**1. Any sessions regarding collective bargaining.**

See above.

**2. Only those between the public employees and the public body.**

See above.

**L. Parole board meetings, or meetings involving parole board decisions.**

These are specifically exempt from requirements of the Public Meetings Law. ORS 192.690(1).

**M. Patients; discussions on individual patients.**

These may be exempt from Public Meetings Law entirely under ORS 192.690 or involve exempt public records, which permits an executive session.

**N. Personnel matters.**

An executive session may be justified for discussions concerning employment, discipline, and dismissal of public employees under ORS 192.660(2)(a)(b) and (i).

**1. Interviews for public employment.**

An executive session may be held.

**2. Disciplinary matters, performance or ethics of public employees.**

An executive session may be held.

**3. Dismissal; considering dismissal of public employees.**

An executive session may be held.

**O. Real estate negotiations.**

Negotiations concerning real property transactions may involve exempt public records and therefore could be conducted in an executive session, under ORS 192.660(1)(f).

**P. Security, national and/or state, of buildings, personnel or other.**

To the extent that such matters involve exempt public records, these matters may be discussed in executive session.

**Q. Students; discussions on individual students.**

Student discipline may be the subject of an executive session under ORS 192.660(4) from which the media may be excluded.

**IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS****A. When to challenge.**

The statute is silent on this issue. The basic procedure for challenging closure of meetings is through litigation, which can result in future direction to the governing body.

**1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?**

No.

**2. When barred from attending.**

The public cannot be barred unless an appropriate executive session has been called. Unless there is a statutory basis under ORS 192.660(4) or (5), representatives of the media may not be barred.

**3. To set aside decision.**

ORS 192.680(1) makes decisions in violation of the act voidable, subject to reinstatement at a properly conducted meeting. Under ORS 192.680(3), however, a decision will be voided if the court finds it to be the result of intentional disregard of the act or willful misconduct by a quorum of members.

**4. For ruling on future meetings.**

Yes, the court may rule on whether future meetings must comply with the statute.

**B. How to start.****1. Where to ask for ruling.**

Under the Oregon Public Meetings Law, there is no administrative process for an informal determination as to proper use of executive session or other kinds of public meetings questions. The Attorney General is of assistance but does not have the statutorily delegated powers which are found in the Public Records Law. A ruling must be sought in circuit court.

**a. Administrative forum.**

None.

**(1). Agency procedure for challenge.**

None.

**(2). Commission or independent agency.**

Yes; Oregon Government Ethics Commission — the state ethics agency.

**b. State attorney general.**

No statutory role.

**c. Court.**

A challenge must be brought in circuit court.

**2. Applicable time limits.**

Any challenge must be brought within 60 days. ORS 192.680(5).

**3. Contents of request for ruling.**

None specified.

**4. How long should you wait for a response?**

There is no informal procedure. A challenge must be filed in court within 60 days.

**5. Are subsequent or concurrent measures (formal or informal) available?**

Not addressed.

**C. Court review of administrative decision.****1. Who may sue?**

Under ORS 192.680(2) any person affected by a decision of a governing body may commence litigation over public meetings violations.

**2. Will the court give priority to the pleading?**

No statutory requirement.

**3. Pro se possibility, advisability.**

While it is possible for a person affected by a public meetings violation to act *pro se*, it may not be advisable in circuit court.

**4. What issues will the court address?****a. Open the meeting.**

A court might order future meetings to be open.

**b. Invalidate the decision.**

Simple violations may be rectified by reinstatement of the decision, as described in ORS 192.680(1). A decision shall be voided if the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the governing body's members. ORS 192.680(3).

**c. Order future meetings open.**

Not addressed.

**5. Pleading format.**

Pursuant to the Oregon Rules of Civil Procedure, the Oregon Uniform Trial Court Rules and any local trial court rules.

**6. Time limit for filing suit.**

There is a 60-day time limit for filing public meetings litigation.

**7. What court.**

Public meetings disputes are to be commenced in the circuit court of the county in which the governing body ordinarily meets. ORS 192.680(2).

**8. Judicial remedies available.**

Under ORS 192.680(3) the court may order such "equitable relief" as it deems appropriate.

**9. Availability of court costs and attorneys' fees.**

The Public Meetings Law makes an award of attorney fees generally discretionary with the court. ORS 192.680(3). If the court finds that the Public Meetings Law violation was a result of "willful misconduct" by any member of the governing body, that member shall be personally liable to the governing body or public body for attorney fees paid, if such fees are awarded by the court. ORS 192.680(2).

**10. Fines.**

Fines may be imposed by the Oregon Government Ethics Commission. ORS 192.685(1).

**11. Other penalties.**

Not specified.

**D. Appealing initial court decisions.****1. Appeal routes.**

Appeal is to the Oregon Court of Appeals.

**2. Time limits for filing appeals.**

An appeal from a circuit court decision must be made within 30 days after entry of judgment.

**3. Contact of interested amici.**

As indicated in the sections dealing with the Open Records Law, *amici curiae* are permitted in Oregon Appellate Court proceedings but must follow the appropriate procedure for obtaining *amicus* status.

**V. ASSERTING A RIGHT TO COMMENT.**

**A. Is there a right to participate in public meetings?**

No, except perhaps removal or citation under criminal law, if applicable.

**B. Must a commenter give notice of intentions to comment?**

No, unless a sign-up mechanism is utilized.

**C. Can a public body limit comment?**

Yes, reasonable time limits and opportunities can be established.

**D. How can a participant assert rights to comment?**

By so indicating to the meeting chair, often by signing a speaker's card or attendance sheet.

**E. Are there sanctions for unapproved comment?**

Yes, potential removal and arrest for disruption.

**Appendix**

*Note: A list of non-Public Records Law exemptions can be found at the end of the following Statutes section.*

*Petition for Attorney General's or District Attorney's Review*

A petition to the Attorney General or district attorney requesting him or her to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information.

\_\_\_\_\_ (date)

I (we), \_\_\_\_\_ (name(s)), the undersigned, request the Attorney General (or District Attorney of \_\_\_\_\_ County) to order \_\_\_\_\_ (name of public body) and its employees to (make available for inspection) (produce a copy or copies of) the following records:

1. \_\_\_\_\_

(Name or description of record)

2. \_\_\_\_\_

(Name or description of record)

I (we) asked to inspect and/or copy these records on \_\_\_\_\_ (date) at \_\_\_\_\_ (address).

The request was denied by the following person(s):

1. \_\_\_\_\_

(Name of public officer or employee; title or position if known)

2. \_\_\_\_\_

(Name of public officer or employee; title or position, if known)

\_\_\_\_\_

(Signature(s))

*Note: This form should be delivered or mailed to the Attorney General's office, in Salem (1162 Court St. NE, Salem, OR 97310); or to the district attorney's office in the county courthouse, as appropriate.*

## Statute

### Open Records

#### INSPECTION OF PUBLIC RECORDS

*192.410 Definitions for ORS 192.410 to 192.505.* As used in ORS 192.410 to 192.505:

(1) “Custodian” means:

(a) The person described in ORS 7.110 for purposes of court records; or

(b) A public body mandated, directly or indirectly, to create, maintain, care for or control a public record. “Custodian” does not include a public body that has custody of a public record as an agent of another public body that is the custodian unless the public record is not otherwise available.

(2) “Person” includes any natural person, corporation, partnership, firm, association or member or committee of the Legislative Assembly.

(3) “Public body” includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(4)(a) “Public record” includes any writing that contains information relating to the conduct of the public’s business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(b) “Public record” does not include any writing that does not relate to the conduct of the public’s business and that is contained on a privately owned computer.

(5) “State agency” means any state officer, department, board, commission or court created by the Constitution or statutes of this state but does not include the Legislative Assembly or its members, committees, officers or employees insofar as they are exempt under section 9, Article IV of the Oregon Constitution.

(6) “Writing” means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings. [1973 c.794 §2; 1989 c.377 §1; 1993 c.787 §4; 2001 c.237 §1; 2005 c.659 §4]

*192.420 Right to inspect public records; notice to public body attorney.* (1) Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505.

(2)(a) If a person who is a party to a civil judicial proceeding to which a public body is a party, or who has filed a notice under ORS 30.275 (5)(a), asks to inspect or to receive a copy of a public record that the person knows relates to the proceeding or notice, the person must submit the request in writing to the custodian and, at the same time, to the attorney for the public body.

(b) For purposes of this subsection:

(A) The attorney for a state agency is the Attorney General in Salem.

(B) “Person” includes a representative or agent of the person. [1973 c.794 §3; 1999 c.574 §1; 2003 c.403 §1]

*192.423 Condensation of public record subject to disclosure; petition to review denial of right to inspect public record; adequacy of condensation.* (1) When a public record is subject to disclosure under ORS 192.502 (9)(b), in lieu of making the public record available for inspection by providing a copy of the record, the public body may prepare and release a condensation from the record of the significant facts that are not otherwise exempt from disclosure under ORS 192.410 to 192.505. The release of the condensation does not waive any privilege under ORS 40.225 to 40.295.

(2) The person seeking to inspect or receive a copy of any public record for which a condensation of facts has been provided under this section may petition for review of the denial to inspect or receive a copy of the records under ORS 192.410 to 192.505. In such a review, the Attorney General, district

attorney or court shall, in addition to reviewing the records to which access was denied, compare those records to the condensation to determine whether the condensation adequately describes the significant facts contained in the records. [2007 c.513 §2]

Note: Section 6, chapter 513, Oregon Laws 2007, provides:

Sec. 6. Section 2 of this 2007 Act [192.423] and the amendments to ORS 40.225, 192.460 and 192.502 by sections 3 to 5 of this 2007 Act apply to public records created on or after the effective date of this 2007 Act [June 20, 2007]. [2007 c.513 §6]

Note: 192.423 was added to and made a part of 192.410 to 192.505 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

*192.430 Functions of custodian of public records; rules.* (1) The custodian of any public records, including public records maintained in machine readable or electronic form, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in the office of the custodian and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. If the public record is maintained in machine readable or electronic form, the custodian shall furnish proper and reasonable opportunity to assure access.

(2) The custodian of the records may adopt reasonable rules necessary for the protection of the records and to prevent interference with the regular discharge of duties of the custodian. [1973 c.794 §4; 1989 c.546 §1]

*192.440 Copies or inspection of public records; written response by public body; fees; waiver or reduction; procedure for records requests.* (1) The custodian of any public record that a person has a right to inspect shall give the person, upon request:

(a) A copy of the public record if the public record is of a nature permitting copying; or

(b) A reasonable opportunity to inspect or copy the public record.

(2) If a person makes a written request to inspect a public record or to receive a copy of a public record, the public body receiving the request shall respond as soon as practicable and without unreasonable delay. The public body may request additional information or clarification from the requester for the purpose of expediting the public body’s response to the request. The response of the public body must acknowledge receipt of the request and must include one of the following:

(a) A statement that the public body does not possess, or is not the custodian of, the public record.

(b) Copies of all requested public records for which the public body does not claim an exemption from disclosure under ORS 192.410 to 192.505.

(c) A statement that the public body is the custodian of at least some of the requested public records, an estimate of the time the public body requires before the public records may be inspected or copies of the records will be provided and an estimate of the fees that the requester must pay under subsection (4) of this section as a condition of receiving the public records.

(d) A statement that the public body is the custodian of at least some of the requested public records and that an estimate of the time and fees for disclosure of the public records will be provided by the public body within a reasonable time.

(e) A statement that the public body is uncertain whether the public body possesses the public record and that the public body will search for the record and make an appropriate response as soon as practicable.

(f) A statement that state or federal law prohibits the public body from acknowledging whether the record exists or that acknowledging whether the record exists would result in the loss of federal benefits or other sanction. A statement under this paragraph must include a citation to the state or federal law relied upon by the public body.

(3) If the public record is maintained in a machine readable or electronic

form, the custodian shall provide a copy of the public record in the form requested, if available. If the public record is not available in the form requested, the custodian shall make the public record available in the form in which the custodian maintains the public record.

(4)(a) The public body may establish fees reasonably calculated to reimburse the public body for the public body's actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person's request.

(b) The public body may include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records. The public body may not include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in determining the application of the provisions of ORS 192.410 to 192.505.

(c) The public body may not establish a fee greater than \$25 under this section unless the public body first provides the requestor with a written notification of the estimated amount of the fee and the requestor confirms that the requestor wants the public body to proceed with making the public record available.

(d) Notwithstanding paragraphs (a) to (c) of this subsection, when the public records are those filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees for furnishing copies, summaries or compilations of the public records are those established by the Secretary of State by rule, under ORS chapter 79 or ORS 80.100 to 80.130.

(5) The custodian of any public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

(6) A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

(7) A public body shall make available to the public a written procedure for making public record requests that includes:

(a) The name of one or more persons to whom public record requests may be sent, with addresses; and

(b) The amounts of and the manner of calculating fees that the public body charges for responding to requests for public records.

(8) This section does not apply to signatures of individuals submitted under ORS chapter 247 for purposes of registering to vote as provided in ORS 247.973. [1973 c.794 §5; 1979 c.548 §4; 1989 c.111 §12; 1989 c.377 §2; 1989 c.546 §2; 1999 c.824 §5; 2001 c.445 §168; 2005 c.272 §1; 2007 c.467 §1]

*192.445 Nondisclosure on request of home address, home telephone number and electronic mail address; rules of procedure; duration of effect of request; liability; when not applicable.* (1) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address, personal telephone number or electronic mail address of the individual. A public body may not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address, personal telephone number or electronic mail address remains available for public inspection.

(2) The Attorney General shall adopt rules describing:

(a) The procedures for submitting the written request described in subsection (1) of this section.

(b) The evidence an individual shall provide to the public body to establish that disclosure of the home address, telephone number or electronic mail address of the individual would constitute a danger to personal safety. The evidence may include but is not limited to evidence that the individual or a family member residing with the individual has:

(A) Been a victim of domestic violence;

(B) Obtained an order issued under ORS 133.055;

(C) Contacted a law enforcement officer involving domestic violence or other physical abuse;

(D) Obtained a temporary restraining order or other no contact order to protect the individual from future physical abuse; or

(E) Filed other criminal or civil legal proceedings regarding physical protection.

(c) The procedures for submitting the written notification from the individual that disclosure of the home address, personal telephone number or electronic mail address of the individual no longer constitutes a danger to personal safety.

(3) A request described in subsection (1) of this section remains effective:

(a) Until the public body receives a written request for termination but no later than five years after the date that a public body receives the request; or

(b) In the case of a voter registration record, until the individual must update the individual's voter registration, at which time the individual may apply for another exemption from disclosure.

(4) A public body may disclose a home address, personal telephone number or electronic mail address of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(5) A public body may not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address, personal telephone number or electronic mail address granted an exemption from disclosure under this section.

(6) This section does not apply to county property and lien records. [1993 c.787 §5; 1995 c.742 §12; 2003 c.807 §1]

Note: 192.445 was added to and made a part of 192.410 to 192.505 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

*192.447 Nondisclosure of public employee identification badge or card.* (1) As used in this section, "public body" has the meaning given that term in ORS 174.109.

(2) A public body may not disclose the identification badge or card of an employee of the public body without the written consent of the employee if:

(a) The badge or card contains the photograph of the employee; and

(b) The badge or card was prepared solely for internal use by the public body to identify employees of the public body.

(3) The public body may not disclose a duplicate of the photograph used on the badge or card. [2003 c.282 §1]

Note: 192.447 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

*192.450 Petition to review denial of right to inspect state public record; appeal from decision of Attorney General denying inspection; records of health professional regulatory boards.* (1) Subject to ORS 192.480 and subsection (4) of this section, any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. Except as provided in subsection (5) of this section, the burden is on the agency to sustain its action. Except as provided in subsection (5) of this section, the Attorney General shall issue an order denying or granting the petition, or denying it in part and granting it in part, within seven days from the day the Attorney General receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the record, or if the Attorney General grants the petition in part and orders the state agency to disclose a portion of the record, the state agency shall comply with the order in full within seven days after issuance of the order,

unless within the seven-day period it issues a notice of its intention to institute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County or, as provided in subsection (6) of this section, in the circuit court of the county where the record is held. Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner at the address shown on the petition. The state agency shall institute the proceedings within seven days after it issues its notice of intention to do so. If the Attorney General denies the petition in whole or in part, or if the state agency continues to withhold the record or a part of it notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may institute such proceedings.

(3) The Attorney General shall serve as counsel for the state agency in a suit filed under subsection (2) of this section if the suit arises out of a determination by the Attorney General that the public record should not be disclosed, or that a part of the public record should not be disclosed if the state agency has fully complied with the order of the Attorney General requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Attorney General is prohibited from serving as counsel for the state agency, the agency may retain special counsel.

(4) A person denied the right to inspect or to receive a copy of any public record of a health professional regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or applicant, and petitioning the Attorney General to review the public record shall, on or before the date of filing the petition with the Attorney General, send a copy of the petition by first class mail to the health professional regulatory board. Not more than 48 hours after the board receives a copy of the petition, the board shall send a copy of the petition by first class mail to the licensee or applicant who is the subject of any record for which disclosure is sought. When sending a copy of the petition to the licensee or applicant, the board shall include a notice informing the licensee or applicant that a written response by the licensee or applicant may be filed with the Attorney General not later than seven days after the date that the notice was sent by the board. Immediately upon receipt of any written response from the licensee or applicant, the Attorney General shall send a copy of the response to the petitioner by first class mail.

(5) The person seeking disclosure of a public record of a health professional regulatory board, as defined in ORS 676.160, that is confidential or exempt from disclosure under ORS 676.165 or 676.175, shall have the burden of demonstrating to the Attorney General by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure. The Attorney General shall issue an order denying or granting the petition, or denying or granting it in part, not later than the 15th day following the day that the Attorney General receives the petition. A copy of the Attorney General's order granting a petition or part of a petition shall be served by first class mail on the health professional regulatory board, the petitioner and the licensee or applicant who is the subject of any record ordered to be disclosed. The health professional regulatory board shall not disclose any record prior to the seventh day following the service of the Attorney General's order on a licensee or applicant entitled to receive notice under this subsection.

(6) If the Attorney General grants or denies the petition for a record of a health professional regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or applicant, the board, a person denied the right to inspect or receive a copy of the record or the licensee or applicant who is the subject of the record may institute proceedings for injunctive or declaratory relief in the circuit court for the county where the public record is held. The party seeking disclosure of the record shall have the burden of demonstrating by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure.

(7) The Attorney General may comply with a request of a health professional regulatory board to be represented by independent counsel in any proceeding under subsection (6) of this section. [1973 c.794 §6; 1975 c.308 §2; 1997 c.791 §8; 1999 c.751 §4]

*192.460 Procedure to review denial of right to inspect other public records; effect of disclosure.* (1) ORS 192.450 applies to the case of a person denied the right to inspect or to receive a copy of any public record of a public body other than a state agency, except that:

(a) The district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body are located, shall carry out the functions of the Attorney General;

(b) Any suit filed must be filed in the circuit court for the county described in paragraph (a) of this subsection; and

(c) The district attorney may not serve as counsel for the public body, in the cases permitted under ORS 192.450 (3), unless the district attorney ordinarily serves as counsel for the public body.

(2) Disclosure of a record to the district attorney in compliance with subsection (1) of this section does not waive any privilege or claim of privilege regarding the record or its contents.

(3) Disclosure of a record or part of a record as ordered by the district attorney is a compelled disclosure for purposes of ORS 40.285. [1973 c.794 §7; 2007 c.513 §4]

Note: See first note under 192.423.

*192.465 Effect of failure of Attorney General, district attorney or elected official to take timely action on inspection petition.* (1) The failure of the Attorney General or district attorney to issue an order under ORS 192.450 or 192.460 denying, granting, or denying in part and granting in part a petition to require disclosure within seven days from the day of receipt of the petition shall be treated as an order denying the petition for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.

(2) The failure of an elected official to deny, grant, or deny in part and grant in part a request to inspect or receive a copy of a public record within seven days from the day of receipt of the request shall be treated as a denial of the request for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460. [1975 c.308 §5]

*192.470 Petition form; procedure when petition received.* (1) A petition to the Attorney General or district attorney requesting the Attorney General or district attorney to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information:

\_\_\_\_\_

(date)

\_\_\_\_\_

I (we), \_\_\_\_\_ (name(s)), the undersigned, request the Attorney General (or District Attorney of \_\_\_\_\_ County) to order \_\_\_\_\_ (name of governmental body) and its employees to (make available for inspection) (produce a copy or copies of) the following records:

1. \_\_\_\_\_

(Name or description of record)

2. \_\_\_\_\_

(Name or description of record)

I (we) asked to inspect and/or copy these records on \_\_\_\_\_ (date) at \_\_\_\_\_ (address). The request was denied by the following person(s):

1. \_\_\_\_\_

(Name of public officer or employee; title or position, if known)

2. \_\_\_\_\_

(Name of public officer or employee; title or position, if known)

\_\_\_\_\_

(Signature(s))

\_\_\_\_\_

This form should be delivered or mailed to the Attorney General's office in Salem, or the district attorney's office in the county courthouse.

(2) Promptly upon receipt of such a petition, the Attorney General or district attorney shall notify the public body involved. The public body shall thereupon transmit the public record disclosure of which is sought, or a copy, to the Attorney General, together with a statement of its reasons for believing that the public record should not be disclosed. In an appropriate case, with the consent of the Attorney General, the public body may instead disclose the nature or substance of the public record to the Attorney General. [1973 c.794 §10]

*192.480 Procedure to review denial by elected official of right to inspect public records.* In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460, and the Attorney General or district attorney may upon request serve or decline to serve, in the discretion of the Attorney General or district attorney, as counsel in such suit for an elected official for which the Attorney General or district attorney ordinarily serves as counsel. Nothing in this section shall preclude an elected official from requesting advice from the Attorney General or a district attorney as to whether a public record should be disclosed. [1973 c.794 §8]

*192.490 Court authority in reviewing action denying right to inspect public records; docketing; costs and attorney fees.* (1) In any suit filed under ORS 192.450, 192.460, 192.470 or 192.480, the court has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(2) Except as to causes the court considers of greater importance, proceedings arising under ORS 192.450, 192.460, 192.470 or 192.480 take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(3) If a person seeking the right to inspect or to receive a copy of a public record prevails in the suit, the person shall be awarded costs and disbursements and reasonable attorney fees at trial and on appeal. If the person prevails in part, the court may in its discretion award the person costs and disbursements and reasonable attorney fees at trial and on appeal, or an appropriate portion thereof. If the state agency failed to comply with the Attorney General's order in full and did not issue a notice of intention to institute proceedings pursuant to ORS 192.450 (2) within seven days after issuance of the order, or did not institute the proceedings within seven days after issuance of the notice, the petitioner shall be awarded costs of suit at the trial level and reasonable attorney fees regardless of which party instituted the suit and regardless of which party prevailed therein. [1973 c.794 §9; 1975 c.308 §3; 1981 c.897 §40]

*192.493 Health services costs.* A record of an agency of the executive department as defined in ORS 174.112 that contains the following information is a public record subject to inspection under ORS 192.420 and is not exempt from disclosure under ORS 192.501 or 192.502 except to the extent that the record discloses information about an individual's health or is proprietary to a person:

(1) The amounts determined by an independent actuary retained by the agency to cover the costs of providing each of the following health services under ORS 414.705 to 414.750 for the six months preceding the report:

- (a) Inpatient hospital services;
- (b) Outpatient hospital services;
- (c) Laboratory and X-ray services;
- (d) Physician and other licensed practitioner services;

- (e) Prescription drugs;
- (f) Dental services;
- (g) Vision services;
- (h) Mental health services;
- (i) Chemical dependency services;
- (j) Durable medical equipment and supplies; and
- (k) Other health services provided under a prepaid managed care health services contract under ORS 414.725;

(2) The amounts the agency and each contractor have paid under each prepaid managed care health services contract under ORS 414.725 for administrative costs and the provision of each of the health services described in subsection (1) of this section for the six months preceding the report;

(3) Any adjustments made to the amounts reported under this section to account for geographic or other differences in providing the health services; and

(4) The numbers of individuals served under each prepaid managed care health services contract, listed by category of individual. [2003 c.803 §27]

Note: 192.493 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

*192.495 Inspection of records more than 25 years old.* Notwithstanding ORS 192.501 to 192.505 and except as otherwise provided in ORS 192.496, public records that are more than 25 years old shall be available for inspection. [1979 c.301 §2]

*192.496 Medical records; sealed records; records of individual in custody or under supervision; student records.* The following public records are exempt from disclosure:

(1) Records less than 75 years old which contain information about the physical or mental health or psychiatric care or treatment of a living individual, if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy.

(2) Records less than 75 years old which were sealed in compliance with statute or by court order. Such records may be disclosed upon order of a court of competent jurisdiction or as otherwise provided by law.

(3) Records of a person who is or has been in the custody or under the lawful supervision of a state agency, a court or a unit of local government, are exempt from disclosure for a period of 25 years after termination of such custody or supervision to the extent that disclosure thereof would interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure. Nothing in this subsection, however, shall be construed as prohibiting disclosure of the fact that a person is in custody.

(4) Student records required by state or federal law to be exempt from disclosure. [1979 c.301 §3]

192.500 [1973 c.794 §11; 1975 c.308 §1; 1975 c.582 §150; 1975 c.606 §41a; 1977 c.107 §1; 1977 c.587 §1; 1977 c.793 §5a; 1979 c.190 §400; 1981 c.107 §1; 1981 c.139 §8; 1981 c.187 §1; 1981 c.892 §92; 1981 c.905 §7; 1983 c.17 §29; 1983 c.198 §1; 1983 c.338 §902; 1983 c.617 §3; 1983 c.620 §12; 1983 c.703 §8; 1983 c.709 §42; 1983 c.717 §30; 1983 c.740 §46; 1983 c.830 §9; 1985 c.413 §1; 1985 c.602 §13; 1985 c.657 §1; 1985 c.762 §179a; 1985 c.813 §1; 1987 c.94 §100; 1987 c.109 §3; 1987 c.320 §145; 1987 c.373 §23; 1987 c.520 §12; 1987 c.610 §24; 1987 c.731 §2; 1987 c.839 §1; 1987 c.898 §26; repealed by 1987 c.764 §1 (192.501, 192.502 and 192.505 enacted in lieu of 192.500)]

*192.501 Public records conditionally exempt from disclosure.* The following

public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

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

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

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

- (a) The arrested person's name, age, residence, employment, marital status and similar biographical information;
- (b) The offense with which the arrested person is charged;
- (c) The conditions of release pursuant to ORS 135.230 to 135.290;
- (d) The identity of and biographical information concerning both complaining party and victim;
- (e) The identity of the investigating and arresting agency and the length of the investigation;
- (f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and
- (g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

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

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

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

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

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

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

(10) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS

697.732.

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

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

(13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species.

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

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

- (a) The original data, including but not limited to numbers, text, voice, graphics and images;
- (b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or
- (c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually.

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

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

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

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

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

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

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

- (a) Personal and corporate financial statements and information, including tax returns;
- (b) Credit reports;
- (c) Project appraisals;
- (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 requested to be confidential;

(k) Tenant files relating to certification; and

(L) Housing assistance payment requests.

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

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

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

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

(23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(a) An individual;

(b) Buildings or other property;

(c) Information processing, communication or telecommunication systems, including the information contained in the systems; or

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

(24) Personal information held by or under the direction of officials of the Oregon Health and Science University or the Oregon University System about a person who has or who is interested in donating money or property to the university, the system or a state institution of higher education, if the information is related to the family of the person, personal assets of the person or is incidental information not related to the donation.

(25) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to the Oregon University System.

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

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

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

(29) The electronic mail address of a student who attends a state institution of higher education listed in ORS 352.002 or Oregon Health and Science University.

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

(31) If requested by a public safety officer, as defined in ORS 181.610:

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

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

(c) The name of the public safety officer contained in county real property assessment or taxation records. This exemption:

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

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

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

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

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

(32) Unless the public records request is made by a financial institution, as defined in ORS 706.008, consumer finance company licensed under ORS chapter 725, mortgage banker or mortgage broker licensed under ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapter 59, or title company for business purposes, records described in paragraph (a) of this subsection, if the exemption from disclosure of the records is sought by an individual described in paragraph (b) of this subsection using the procedure described in paragraph (c) of this subsection:

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

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

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

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

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

(33) Land management plans required for voluntary stewardship agreements entered into under ORS 541.423.

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

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

(b) Apply to contracts for advertising, public relations or lobbying services or to documents related to the formation of such contracts;

(c) Apply to group insurance contracts or to documents relating to the formation of such contracts, except that employer account records shall remain exempt from disclosure as provided in ORS 192.502 (35); or

(d) Provide the basis for opposing the discovery of documents in litigation pursuant to the applicable rules of civil procedure.

(35) Records of the Department of Public Safety Standards and Training relating to investigations conducted under ORS 181.662 or 181.878 (6), until the department issues the report described in ORS 181.662 or 181.878.

(36) A medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117. [1987 c.373 §§23c,23d; 1987 c.764 §2 (enacted in lieu of 192.500); 1989 c.70 §1; 1989 c.171 §26; 1989 c.967 §§11,13; 1989 c.1083 §10; 1991 c.636 §§1,2; 1991 c.678 §§1,2; 1993

c.616 §§4,5; 1993 c.787 §§1,2; 1995 c.604 §§2,3; 1999 c.155 §3; 1999 c.169 §§1,2; 1999 c.234 §§1,2; 1999 c.291 §§21,22; 1999 c.380 §§1,2; 1999 c.1093 §§3,4; 2001 c.104 §66; 2001 c.621 §85; 2001 c.915 §1; 2003 c.217 §1; 2003 c.380 §2; 2003 c.524 §1; 2003 c.604 §98; 2003 c.674 §26; 2003 c.803 §12; 2003 c.807 §§2,3; 2005 c.203 §§1,2; 2005 c.232 §§33,34; 2005 c.455 §1; 2007 c.608 §6; 2007 c.687 §1; 2008 c.48 §1; 2009 c.57 §2; 2009 c.135 §1; 2009 c.222 §2; 2009 c.769 §1]

Note: The amendments to 192.501 by section 3, chapter 455, Oregon Laws 2005, become operative January 2, 2012. See section 4, chapter 455, Oregon Laws 2005, as amended by section 1, chapter 719, Oregon Laws 2009. The text that is operative on and after January 2, 2012, including amendments by section 7, chapter 608, Oregon Laws 2007, section 2, chapter 687, Oregon Laws 2007, section 2, chapter 48, Oregon Laws 2008, section 3, chapter 57, Oregon Laws 2009, section 2, chapter 135, Oregon Laws 2009, section 4, chapter 222, Oregon Laws 2009, and section 2, chapter 769, Oregon Laws 2009, is set forth for the user's convenience.

192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

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

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

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

- (a) The arrested person's name, age, residence, employment, marital status and similar biographical information;
- (b) The offense with which the arrested person is charged;
- (c) The conditions of release pursuant to ORS 135.230 to 135.290;
- (d) The identity of and biographical information concerning both complaining party and victim;
- (e) The identity of the investigating and arresting agency and the length of the investigation;
- (f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and
- (g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

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

(5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include

records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

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

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

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

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

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

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

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

(13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species.

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

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

- (a) The original data, including but not limited to numbers, text, voice, graphics and images;
- (b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or
- (c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually.

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

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

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

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

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

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

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

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

(b) Credit reports;

(c) Project appraisals;

(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 requested to be confidential;

(k) Tenant files relating to certification; and

(L) Housing assistance payment requests.

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

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

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

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

(23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(a) An individual;

(b) Buildings or other property;

(c) Information processing, communication or telecommunication systems, including the information contained in the systems; or

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

(24) Personal information held by or under the direction of officials of the Oregon Health and Science University or the Oregon University System about a person who has or who is interested in donating money or property to the university, the system or a state institution of higher education, if the information is related to the family of the person, personal assets of the person or is incidental information not related to the donation.

(25) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to the Oregon University System.

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

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

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

(29) The electronic mail address of a student who attends a state institution of higher education listed in ORS 352.002 or Oregon Health and Science University.

(30) If requested by a public safety officer, as defined in ORS 181.610:

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

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

(c) The name of the public safety officer contained in county real property assessment or taxation records. This exemption:

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

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

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

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

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

(31) Unless the public records request is made by a financial institution, as defined in ORS 706.008, consumer finance company licensed under ORS chapter 725, mortgage banker or mortgage broker licensed under ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapter 59, or title company for business purposes, records described in paragraph (a) of this subsection, if the exemption from disclosure of the records is sought by an individual described in paragraph (b) of this subsection using the procedure described in paragraph (c) of this subsection:

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

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

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

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

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

(32) Land management plans required for voluntary stewardship agreements entered into under ORS 541.423.

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

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

(b) Apply to contracts for advertising, public relations or lobbying services or to documents related to the formation of such contracts;

(c) Apply to group insurance contracts or to documents relating to the formation of such contracts, except that employer account records shall remain exempt from disclosure as provided in ORS 192.502 (35); or

(d) Provide the basis for opposing the discovery of documents in litigation pursuant to the applicable rules of civil procedure.

(34) Records of the Department of Public Safety Standards and Training relating to investigations conducted under ORS 181.662 or 181.878 (6), until the department issues the report described in ORS 181.662 or 181.878.

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

*192.502 Other public records exempt from disclosure.* 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 seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption:

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

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

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

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

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(5) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of a person in custody of the 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 non-financial 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 Account 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:

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

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

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

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

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

(F) Investment agreements and related documents.

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

(A) The name, address and vintage year of each privately placed investment fund.

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

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

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

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

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

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

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

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

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

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

(17) The following records, communications and information submitted to the Oregon Business Development Commission, the Oregon Business Development Department, the State Department of Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services including, but not limited to, those described in ORS 285A.224:

(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 paragraph 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.

(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 disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

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

(28) Personally identifiable information about customers of a municipal electric utility or a people's utility district or the names, dates of birth, driver license numbers, telephone numbers, electronic mail addresses or Social Security numbers of customers who receive water, sewer or storm drain services from a public body as defined in ORS 174.109. The utility or district may release personally identifiable information about a customer, and a public body providing water, sewer or storm drain services may release the name, date of birth, driver license number, telephone number, electronic mail address or Social Security number of a customer, if the customer consents in writing or electronically, if the disclosure is necessary for the utility, district or other public body to render services to the customer, if the disclosure is required pursuant to a court order or if the disclosure is otherwise required by federal or state law. The utility, district or other public body may charge as appropriate for the costs of providing such information. The utility, district or other public body may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(29) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single 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, 86A.990, 86A.992, 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. [1987 c.373 §23e; 1987 c.764 §3; 1987 c.898 §27 (enacted in lieu of 192.500); 1989 c.6 §17; 1989 c.925 §1; 1991 c.825 §7; 1993 c.694 §27; 1993 c.817 §1; 1995 c.79 §70; 1995 c.162 §62a; 1995 c.604 §1; 1997 c.44 §1; 1997 c.559 §1; 1997 c.825 §1; 1999 c.274 §17; 1999 c.291 §24; 1999 c.379 §1; 1999 c.666 §1; 1999 c.683 §3; 1999 c.811 §2; 1999 c.855 §4; 1999 c.955 §23; 1999 c.1059 §§12,16; 2001 c.377 §§17,18; 2001 c.915 §3; 2001 c.922 §§12,13; 2001 c.962 §§80,81; 2001 c.965 §§62,63; 2003 c.14 §§90,91; 2003 c.524 §§2,3; 2003 c.733 §§49,50; 2003 c.803 §§5,6; 2005 c.397 §1; 2005 c.561 §3; 2005 c.659 §1; 2007 c.152 §1; 2007 c.181 §1; 2007 c.513 §5; 2007 c.687 §7; 2009 c.57 §4; 2009 c.500 §1; 2009 c.541 §7; 2009 c.604 §22]

Note: See first note under 192.423.

192.503 [1993 c.224 §3; repealed by 1997 c.678 §15]

*192.505 Exempt and nonexempt public record to be separated.* If any public record contains material which is not exempt under ORS 192.501 and 192.502, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination. [1987 c.764 §4 (enacted in lieu of 192.500)]

## Open Meetings

### 192.610. Definitions

As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program. "Meeting" also does not include the attendance

of members of a governing body at any national, regional or state association to which the public body or the members belong.

*192.620. Policy*

The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly.

*192.630. Meetings of governing body to be public; location; disabled access; interpreters*

(1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)

(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to the disabled, or, upon request of a deaf or hard-of-hearing person, to fail to make a good faith effort to have an interpreter for deaf or hard-of-hearing persons provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Department of Human Services or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services.

*192.640. Notice requirements; executive sessions; special or emergency meetings*

(1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to

the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice.

*192.650. Recordings and minutes requirement; executive sessions*

(1) The governing body of a public body shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, except as otherwise provided by law, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes or recordings shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;

(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

(d) The substance of any discussion on any matter; and

(e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound or video tape or digital recording, which need not be transcribed unless otherwise provided by law. If the disclosure of certain material is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held, that material may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility.

(3) A reference in minutes or a recording to a document discussed at a meeting of a governing body of a public body does not affect the status of the document under ORS 192.410 to 192.505.

(4) A public body may charge a person a fee under ORS 192.440 for the preparation of a transcript from a recording.

*192.660. Executive sessions; procedure*

(1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (3) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing

body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

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

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

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

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board.

#### *192.670. Use of telephonic or electronic communication in meeting*

(1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the governing body of the public body is present.

#### *192.680. Enforcement; effect of violations; liability*

(1) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section and that the violation is the result of willful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690.

*192.685. Additional enforcement; role of commission*

(1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have been committed by public officials may be made to the Oregon Government Standards and Practices Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(2) The commission may interview witnesses, review minutes and other records and may obtain and consider any other information pertaining to executive sessions of the governing body of a public body for purposes of determining whether a violation of ORS 192.660 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Standards and Practices Commission for its investigation but shall be excluded from public disclosure.

(3) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions.

*192.690. Exceptions*

(1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530.

*192.695. Prima facie evidence required to show violation*

In any suit commenced under ORS 192.680 (2), the plaintiff shall be required to present prima facie evidence of a violation of ORS 192.610 to 192.690 before the governing body shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meetings law, the burden to prove that the provisions of ORS 192.610 to 192.690 were complied with shall be on the governing body.

*192.710. Smoking prohibited at public meetings*

(1) No person shall smoke or carry any lighted smoking instrument in a

room where a public meeting is being held or is to continue after a recess. For purposes of this subsection, a public meeting is being held from the time the agenda or meeting notice indicates the meeting is to commence regardless of the time it actually commences.

(2) As used in this section:

(a) "Public meeting" means any regular or special public meeting or hearing of a public body to exercise or advise in the exercise of any power of government in buildings or rooms rented, leased or owned by the State of Oregon or by any county, city or other political subdivision in the state regardless of whether a quorum is present or is required.

(b) "Public body" means the state or any department, agency, board or commission of the state or any county, city or other political subdivision in the state.

(c) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment.

**Statutes affecting public disclosure**

This appendix lists Oregon statutes incorporated into ORS 192.502(8) that may affect public disclosure. It is not an exhaustive list. Also, some of these statutes are applicable only under certain circumstances; some are conditional; and some are merely permissive. Check the language of the statutes to determine the scope of any potential exemption.

AGENCY-PERSON

MATERIAL AFFECTED: STATUTE

Accountancy, Board of

Information of Practice Review: 673.455

Administrative Services, Dept. of

Contract proposals to public agencies: 279C.107, 279C.410

Adult and Family Services Division

Aid recipients/applicants: 418.130

Child support cases: 418.135

Public assistance records: 411.320

Advisory Council on Child Abuse Assessment

Assessment videotapes: 418.794

Agriculture, Dept. of

Agricultural credit mediation files: 192.501(17)

Commercial feed tests: 633.077(2)

Commodity handlers production records: 576.115(5)

Fertilizer or agriculture mineral tests: 633.500(2)

Fertilizer registrant manufacturer's or importer's reports: 633.485(2)

Fertilizer sales reports: 633.470(2)

Milk handlers records audit: 583.086(1)

Milk marketing referendum records: 583.490(3)

Nursery license application: 571.057(2)

Assessors, County

Appraisal information received in confidence: 308.413

Industrial plant/value appraisal: 308.411(4)

Wasteland/farmland application: 308.372(3)

Attorney

Client communications: 40.225

Domestic relations conciliation communications: 107.600

Pre-trial discovery information: 135.855

Attorney Assistance Committees

Information about attorneys: 9.545(2)

Attorney General/District Attorney

Child abuse information/records, interagency teams: 418.747(13)

- Security seal violation notice: 618.506(2)
- Trade practice violation notice: 646.632(2)
- Bar, Oregon State
  - Liability Fund claims: 9.080
- Blind Commission
  - Records, papers and files: 346.150; 346.165; 346.167
- Child Support Division (formerly Support Enforcement Division)
  - Child support information: 25.260
- Children and Families, State Office for Services to (formerly Children's Services Division)
  - Adoption registry: 109.440; 109.445
  - Aid recipients/applicants: 418.130
  - Child abuse information records, interagency teams: 418,747(13)
  - Child abuse reports/records: 419B.035
  - Child support: 418.135
  - Family violence shelters: 108.620(3)
- Chiropractic Examiners, Board of
  - Investigatory information on licensee conduct: 684.100(10)
  - Peer review information: 684.185(7)
- Citizen Review Boards, Local
  - Information reviewed for actions and recommendations: 419A.100
- Civil Service Commissions
  - Examination papers: 242.722
- Clergy
  - Penitent communications: 40.260
- Clerks, County
  - Commitment hearing transcripts: 426.160
  - Marriage records: Or Laws 1999, ch 776
  - Voters' Pamphlet material (for limited time): 251.430
- Clinical Social Workers
  - Client communications: 40.250; 675.580
- Clinical Social Workers, Board of
  - Complaint information: 675.585(2)
  - Investigatory information on licensee conduct: 675.540(4)
  - Violation of professional standards information: 675.583(2)
- Community Colleges
  - Student records: 341.290(17)
- Consumer and Business Services, Dept. of
  - Debt Consolidation violations: 697.732
  - Depositors and amounts: 706.730
  - Employee safety or health complaints: 654.062(4)
  - Employee safety inspection scheduling information: 654.067
  - Employer report of safety and health hazard evaluations: 654.120
  - Investigation information for limited time: 192.502(18)
  - Medical services provider information: 656.248(5)
  - Order to cure impairment: 732.230(3)
  - Oregon Capital Corporation's certification records of businesses: 284.775
  - Records, reports and information: 192.502(6)
  - Reports investment information/stockholder lists: 706.720
  - Savings and loan company reports: 722.419
  - Service contracts, complaint/investigation: 646.277
- Corrections, Dept. of
  - Information and records: 192.502(5)
- Inmate transfer record: 421.213
- Medical records: 179.495
- Ombudsman complaints, information: 423.430
- Ombudsman testimony privilege: 423.440
- Pre-sentence report: 137.077
- Counselors and Therapists, Board of Licensed Professional
  - Client communications: 40.262
  - Client information complaints: 675.765; 675.580
  - Investigatory information on licensee conduct: 675.745
- Courts, generally
  - Adoption information: 109.440
  - Adoption petitioners: 109.235
  - Adoption proceedings: 7.211
  - Certain judgment reports: 18.425(5)
  - Domestic relations conciliation records/proceedings: 107.600
  - Domestic relations, mediation records/proceedings: 107.785
  - Drug evaluation results: 430.475
  - Expunged information: 419A.260
  - Grand jury indictment (before arrest of defendant): 132.10
  - Information from intercepted communication: 133.729
  - Interception of communications application: 133.723
  - Jury lists: 10.215
  - Mental commitment materials: 426.160
  - Preliminary hearing statements: 135.155
  - Pre-sentence report and written information relating to sentencing: 137.077
- Courts, Juvenile
  - Records acquired or reviewed by court appointed special advocates: 419A.170
  - Reports of juvenile's history and prognosis: 419A.255
- Courts, Tax
  - Industrial plant valuations: 305.420
  - Subpoenaed industrial plant tax information: 305.392
  - Trade secret information in litigation: 305.430
- Dentistry, Board of
  - Complaint information: 679.320
  - Investigatory information on licensee conduct: 679.140(10); 679.280(1)
- Developmental Disabilities Protection and Advocacy System
  - Records of individuals with developmental disabilities: 192.517
- Dietitians, Board of Examiners of Licensed
  - Investigatory information on licensee conduct: 691.585(1)
- Economic Development, Dept. of.
  - Certain submitted records: 192.502(16)
  - "Eligible project" application/negotiations: 285B.392
  - Job Training Partnership Act participant records: 285A.446
  - Negotiations with persons considering location in Oregon: 285A.090
- Emergency Medical Services Providers (evaluating body of)
  - Program data concerning emergency medical technicians: 41.685
- Employees Benefits Board
  - Unfair labor practice complaints: 192.501(9)
- Employment Department
  - Disclosure of wage information to consumer reporting agency: Or Laws 1999, ch 401
  - Information other than for SSA and Federal Unemployment Tax purposes: 657.665

- Employment Relations Board  
 Employee representation cards: 192.501(7)  
 Unfair labor practice complaints: 192.501(9)
- Energy, Office of  
 Certain information on regulation of energy facilities: 469.560(2)  
 Energy Facility Siting Council security programs: 192.502(11)  
 Energy producer records: 469.090
- Environmental Quality, Dept. of  
 Annual progress reports of waste reduction plans not reported to DEQ: 465.024(5)  
 Annual recycling reports: 459A.050  
 Certain hazardous waste information: 466.090  
 Certain information in waste treatment or disposal permit application: 466.060(2)  
 Certain information regarding underground storage tanks: 466.800  
 Financial assistance request records for cleanup costs: 465.300  
 Hazardous waste trade secrets: 465.250(5)  
 Pollution control information: 465095(2)  
 Solid waste reduction account information: 465.024(5)  
 Toxics use and waste reduction plans: 465.018  
 Trade secrets in annual reports as classified by director: 465.031
- Export Trading Corporations  
 Commercial or financial information: 777.793  
 Commercial/financial records, trade secrets: 777.795
- Financial Institutions  
 Private financial records: 192.555
- Fire Fighter Civil Service Commissions  
 Examination papers: 242.722
- Fire Marshal  
 Hazardous substance information: 453.327  
 Investigation testimony: 476.090
- Geology and Mineral Industries, Dept. of  
 Geothermal well reports: 522.365  
 Information in mineral exploration drilling permits: 517.720  
 Information from holes drilled for information purposes only: 520.027  
 Oil/gas drilling records: 520.095
- Governing Bodies  
 Executive sessions, minutes of: 192.650
- Governor  
 Budget estimates: 291.223  
 Energy resource information compiled for emergencies: 176.765
- Health Division  
 Abortion and fetal death reports: 432.337  
 Abuse investigation photos: 441.660  
 Cancer registry system information: 432.530; 432.540  
 Chronic nervous disorders: 807.710(3)  
 Denturist conduct investigatory information: 680.542  
 EMT conduct investigatory information: 682.175(6)  
 Genetic tests (DNA) information: 659.720  
 HIV (AIDS) test results: 433.075  
 HIV test subject, results: 433.045(3)  
 HIV tests of certain convicted persons and crime victims: 135.139  
 Identity of persons affected with or exposed to infectious disease: 433.423(2)
- Identity of those tested for HIV: 433.045(3)  
 Morbidity and mortality information: 432.060  
 Persons with communicable, reportable disease: 433.008  
 Record of quarantine, other public health proceeding: 433.019(21)  
 Scaled adoption reports and information: 432.420  
 Vital records: 432.121
- Health Division and Counties  
 Birth and death abstracts (certain information: 432.119)
- Higher Education, Board of  
 Personal staff records in higher education institutions: 351.065  
 Student records: 351.070(4)
- Hospitals  
 Committee materials on training, supervision and staff discipline: 41.675
- Housing Agency  
 Mobile home park tenants: 90.770
- Human Services, Dept. of  
 Child support information: 25.260  
 Personnel information: 409.160(2)
- Husband-Wife  
 Spouse communication: 40.255
- Industrialized Housing Development Program  
 Information that identifies an industrial housing firm: 352.052
- Informers  
 Elderly abuse reporter: 124.075  
 Health care facility care: 441.057  
 Health/safety law complainant: 654.062(4)  
 Identity of informers: 40275  
 Whistleblower law (identities): 659.535
- Institutions, State  
 Patient Records: 179.505
- Insurance Division  
 Agent compensation agreements: 744.245  
 Certain reports and documents of insurer: 731.750; 731.752  
 Complaints and investigation data: 731.264  
 Examination documents from Surplus Lines Association: 735.430(1)  
 Impaired insurers: 734.650; 734.830  
 Insurer examination records: 731.312  
 Life settlement provider, policyholder identification: 744.316  
 Negligence lawsuits against health care providers: 742.400(3)  
 Surplus lines affidavits: 735.425
- Interagency Investigative Teams  
 Child abuse investigation reports/records: 418.747
- Intergovernmental groups  
 Geographic information: 190.050
- Interpreters  
 Hearing impaired and non-English speaker privilege: 40.272; 40.273
- Judicial Fitness and Disability Commission  
 Disability information: 1.303(6); 1.425(2)  
 Records, files, papers and communications: 1.440
- Justice, Dept. of  
 Antitrust information: 646.836  
 Crime Victim Compensation records: 147.115
- Labor and Industries, Bureau of/Commissioner

- Employment discrimination material and reports: 192.501(8)  
 Wage rate determination: 279.359  
 Wage rate inspection: 279.355
- Landscape Contractors, Board of  
 Landscape contractor investigation records: 671.550(2)
- Legislative Assembly  
 Information made confidential by rule of resolution: 171.430
- Legislative Counsel Committee  
 Matters submitted in confidence: 173.230
- Legislative Revenue Office  
 Individually identifiable information from Department of Revenue records: 173.850
- Libraries, Public  
 Circulation records and patron information: 192.502(23)
- Local Citizen Review Boards  
 Information reviewed for actions and recommendations: 419A.102
- Long-term Care Ombudsman  
 Long-term care residents and complaints: 441.113
- Marine Board  
 Marine accident reports: 830.490
- Massage Technicians Board  
 Investigatory information on licensee conduct: 687.081(9)
- Mediation  
 Child custody communications: 107.179(4)  
 Mediation materials: 36.220
- Medical Examiner  
 Deadly weapon injury reports: 146.780
- Medical Examiners, Board of  
 Investigatory information on licensee conduct: 677.425  
 Peer review information: 441.055  
 Records of Diversion Program Supervisory Council: 677.655
- Mental Health and Developmental Disabilities Services Division  
 Abuse reporting for mentally ill or developmentally disabled: 430.763  
 Complaint information about foster homes: 443.76  
 Medical records: 179.505
- Mental Health Program, Community  
 Commitment investigation information: 426.370
- Mental Illness Protection and Advocacy system  
 Records of individuals with mental illness: 192.517
- Metropolitan Service District  
 Software product programming source codes, object codes, and geographic databases or systems: 268.357
- Mortuary and Cemetery Board  
 Investigatory information on licensee conduct: 692.180(5); 692.230(4)
- Naturopathic Examiners, Board of  
 Investigatory information on licensee conduct: 685.115  
 Peer review information: 685.205(6)
- Notaries Public  
 Notarial journal activities: 194.152(4)
- Nurses  
 Patient communications: 40.240
- Nursing Examiners, Board of  
 Investigatory information on licensee conduct: 678.126(1)
- Nursing Home Administrators, Board of  
 Complaints: 678.725(2)  
 Investigatory information on licensee conduct: 678.780(4)
- Occupational Therapy Licensing Board  
 Investigatory information on licensee conduct: 675.300
- Optometry, Board of  
 Investigatory information on licensee conduct: 683.165(1); 683.335(2)
- Oregon Resource and Technology Development Corporation  
 Client proprietary information: 284.650(19); 284.670(3)(c)
- Parole Board  
 Information and records: 192.502(5)
- Pharmacist Diversion Program Supervisory Council  
 Records: 689.352
- Pharmacy Board  
 Investigatory information on licensee conduct: 689.455(3)
- Physical Therapist Licensing Board  
 Investigatory information on licensee conduct: 688.230
- Physicians  
 Patient communications: 40.235
- Police, Dept. of State  
 Blood samples; autoradiographs; physical evidence; information in DNA database: 181.085  
 Fingerprints, photos, records and reports: 181.540  
 Firearm information: 166.412(7)  
 Phone numbers produced by pen register or trap and trace device: 165.673  
 Medical information on missing persons: 146.535
- Psychiatric Security Review Board  
 Reports; medical, social and criminal histories: 161.336
- Psychologist Examiners, Board of  
 Investigatory information on licensee conduct: 675.075
- Psychotherapists  
 Patient communications: 40.230
- Public Officers  
 Exempt public records: 40.270
- Public Safety Officers  
 Information about employees with undercover investigative duties: Or Laws 1999, ch 855  
 Photographs: Or Laws 1999, ch 855
- Public Utility Commission(er)  
 Automatic phone number identification; unlisted phone numbers; unpublished phone: 401.765(2)  
 Utility and carrier investigation records: 756.075(4)
- Radiologic Technology Board  
 Investigatory information on licensee conduct: 688.525(3); 688.605
- Real Estate Agency  
 Membership campgrounds: 94.974
- Registrars  
 Founding reports: 432.430  
 Vital statistics: 432.121
- Revenue, Dept. of  
 Appraisal information received in confidence: 308.413  
 Books/papers by owner for appraisal of industrial plants: 305.192

- Hotel/motel tax information: 192.502(18)
- Income tax reports: 314.835(1); 314.840
- Inheritance tax returns: 118.525
- Personal property tax returns: 308.290
- Recording filing fees: Or Laws 1999, ch 701
- Timber and log sale or purchase records: 321.381
- School Districts
- 332.061(2) Student medical records including student educational plans:
- Teacher personnel files and disciplinary files: 342.850, 339.388
- School Employees
- Student communications: 40.245
- Schools and Education Institutions
- Blind/deaf student records: 346.169
- Information on released youth offenders: Or Laws 1999, ch 620
- Student records: 326.565; 336.187(1)
- Teacher personnel files: 342.850
- Search Organizations
- Private adoption agency records: 109.507
- Secretary of State
- EDP Programs and media used to store Business Registry information: 56.100
- Fees, copies of records: 128.600
- Government Waste Hotline, informant's identity: 177.180
- Tax information for audits: 297.060
- Voters' Pamphlet material (for limited time): 251.145
- Senior and Disabled Services Division
- Catalog of abuse records: 124.085
- Client information: 410.535
- Complaint information about foster homes: 443.765
- Elderly abuse reports: 124.090
- Information on home health services for individuals: 410.480
- Long-term care patient abuse records: 441.671; 441.650(7);
- Records of services: 410.150
- Speech-Language Pathology and Audiology Board of Examiners
- Investigatory information on licensee conduct: 681.440(4)
- State Accident Insurance Fund
- 656.702 Employer account records and dividend schedules and formulas:
- State Court Administrator
- Information from person requesting counsel; information to verify indigency: 151.495
- Stenographers
- Employer communications: 40.265
- Support information: 180.320
- Tax Service Examiners, Board of
- Names and addresses of tax preparers: 673.710
- Teacher Standards and Practices Commission
- Investigation information: 342.176
- Transit Districts
- Short-term obligations: 267.400(7)
- Transportation, Dept. of
- Hazardous material transport: 824.082(2)
- Hazardous waste reports: 824.092
- Names; addresses; telephone, driver license, permit and identification card numbers:
- 802.220
- Names and addresses of drivers who request nondisclosure: 802.222
- Undercover vehicle registration; accidents or convictions; terminated suspensions; diversion agreement; accident reports: 802.220
- Vehicle fuel dealer reports: 319.190(2)
- Treasurer, State or Local
- Deposits: Or Laws 1999, ch 412
- Records received from banks: 295.018(6)
- Registered bond owners: 288.590
- Veterans' Affairs, Dept. of (Director)
- Federal records: 406.050
- Military discharge records: 192.502(37)
- Veterinary Medical Examining Board
- Investigatory information on licensee conduct: 686.135(3)
- Vocational Rehabilitation Division
- Vocational rehabilitation information and records: 344.530
- Vocational rehabilitation reports: 344.600
- Water Resources Commission
- Well reports: 537.762(4)
- Wife-Husband
- Spouse communication: 40.255
- Workers' Compensation Board
- Medical panel records: 656.327(4)
- Youth Authority
- Child abuse information/records, interagency teams: 418.747(5)
- Juvenile history and prognosis: 419A.255