

Enrolled
Senate Bill 386

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

CHAPTER

AN ACT

Relating to the exemption from disclosure of public records that identify persons involved in research using animals at Oregon Health and Science University; amending ORS 146.035 and 192.501; and repealing section 4, chapter 455, Oregon Laws 2005.

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

SECTION 1. Section 4, chapter 455, Oregon Laws 2005, as amended by section 1, chapter 719, Oregon Laws 2009, section 8, chapter 9, Oregon Laws 2011, section 1, chapter 160, Oregon Laws 2011, and section 8, chapter 1, Oregon Laws 2013, is repealed.

SECTION 2. ORS 192.501, as amended by section 3, chapter 455, Oregon Laws 2005, 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, section 2, chapter 769, Oregon Laws 2009, section 15, chapter 9, Oregon Laws 2011, section 2, chapter 285, Oregon Laws 2011, section 69, chapter 637, Oregon Laws 2011, section 2, chapter 325, Oregon Laws 2013, section 108, chapter 768, Oregon Laws 2013, section 2, chapter 37, Oregon Laws 2014, and section 2, chapter 64, Oregon Laws 2014, is amended to read:

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

(d) Market studies and analyses;

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

(f) Commitment letters;

(g) Project pro forma statements;

(h) Project cost certifications and cost data;

(i) Audits;

(j) Project tenant correspondence 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, a public university listed in ORS 352.002 or the Oregon University System about a person who has or who is interested in donating money or property to the Oregon Health and Science University, the system or a public university, 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 or a public university listed in ORS 352.002.

(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 public university 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.

[(30)] (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.

[(31)] (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, or title company for business purposes, records de-

scribed 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] (33) The following voluntary conservation agreements and reports:

(a) Land management plans required for voluntary stewardship agreements entered into under ORS 541.423; and

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

[33] (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.

[34] (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.

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

[36] (37) Any document or other information related to an audit of a public body, as defined in ORS 174.109, that is in the custody of an auditor or audit organization operating under nationally recognized government auditing standards, until the auditor or audit organization issues a final audit report in accordance with those standards or the audit is abandoned. This exemption does not prohibit disclosure of a draft audit report that is provided to the audited entity for the entity's response to the audit findings.

[37(a)] (38)(a) Personally identifiable information collected as part of an electronic fare collection system of a mass transit system.

(b) The exemption from disclosure in paragraph (a) of this subsection does not apply to public records that have attributes of anonymity that are sufficient, or that are aggregated into groupings

that are broad enough, to ensure that persons cannot be identified by disclosure of the public records.

(c) As used in this subsection:

(A) "Electronic fare collection system" means the software and hardware used for, associated with or relating to the collection of transit fares for a mass transit system, including but not limited to computers, radio communication systems, personal mobile devices, wearable technology, fare instruments, information technology, data storage or collection equipment, or other equipment or improvements.

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

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

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

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

SECTION 3. ORS 146.035, as amended by section 7, chapter 1, Oregon Laws 2013, is amended to read:

146.035. (1) There is established within the Department of State Police the State Medical Examiner's office for the purpose of directing and supporting the state death investigation program.

(2) The State Medical Examiner shall manage all aspects of the State Medical Examiner's program.

(3) Subject to the State Personnel Relations Law, the State Medical Examiner may employ or discharge other personnel of the State Medical Examiner's office.

(4) The State Medical Examiner's office shall:

(a) File and maintain appropriate reports on all deaths requiring investigation.

(b) Maintain an accurate list of all active district medical examiners, assistant district medical examiners and designated pathologists.

(c) Transmit monthly to the Department of Transportation a report for the preceding calendar month of all information obtained under ORS 146.113.

(5) Notwithstanding ORS 192.501 [(35)] **(36)**:

(a) Any parent, spouse, sibling, child or personal representative of the deceased, or any person who may be criminally or civilly liable for the death, or their authorized representatives respectively, may examine and obtain copies of any medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117.

(b) The system described in ORS 192.517 (1) shall have access to reports described in this subsection as provided in ORS 192.517.

Passed by Senate February 19, 2015

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House March 11, 2015

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State