



June 28, 2016

Public Records Taskforce  
Oregon Department of Justice  
1162 Court St NE  
Salem, Oregon 97301

Dear Public Records Taskforce members:

SAIF appreciates the invitation from the Attorney General to provide feedback on the Taskforce's work on public record exemptions, and specifically on its work related to the sensitive business records exemption. SAIF supports the Taskforce's effort to provide Oregon citizens improved access to records relevant to public decision-making processes.

**SAIF's Unique Mission: Provide Workers' Compensation Insurance in a Competitive Market**

SAIF is a competitive insurance company working to meet the needs of Oregon workers and employers. Like other insurers providing workers' compensation insurance in Oregon, SAIF operates without legislatively appropriated funds. By pursuing carefully selected strategies, SAIF maintains a focus on safety and health, drives system-wide innovation, fosters healthy market competition, and ultimately reduces costs to Oregon policyholders. Using proprietary information allows SAIF to effectively underwrite high risk and new businesses that may not otherwise be able to obtain coverage in the voluntary insurance market.

As a not-for-profit public corporation, SAIF's presence in the Oregon workers' compensation market helps keep Oregon workers' compensation rates amongst the lowest in the nation. SAIF's safety programs help Oregon employers keep accidents from happening, while our active claims management takes care of workers when injuries do occur. SAIF insures more than 50,000 Oregon employers providing coverage for more than 600,000 workers. During 2015 SAIF accepted more than 32,000 claims, and paid benefits to those injured workers and their beneficiaries. The promise of payment continues as long as benefits are owed, for example, SAIF continues to pay survivor benefits for a worker who died on the job in 1942.

**Public Interest Test and Narrow Exemption Protects Public Access**

SAIF respectfully requests that the Taskforce leave in place SAIF's conditional exemption for sensitive business records, without changing the public interest test. This exemption was passed by the 2009 legislature, and it recognizes the unique and competitive environment in which SAIF operates. The conditional sensitive business records exemption became law with the support of SAIF's largest competitor, Liberty Northwest, whose lobbyist testified that exemption was fair. This carefully crafted

exemption helps SAIF continue to provide crucial services to Oregon employers and workers, while allowing public access to its records with the exception of records that SAIF's competitors can protect. Additionally, this exemption is subject to a public interest test that allows a balancing of the public's interest should SAIF claim the sensitive business exemption in response to a request to produce documents.

SAIF is concerned that changing the exemption standard puts at risk these records by creating a new untested, standard of proof that a record's release creates a competitive disadvantage. This would create uncertainty for SAIF policyholders and injured workers.

Businesses that insure with SAIF rely on the protection of the information they submit, whether stored in a policy file or used by SAIF to analyze its book of business. Just as other insurers analyze their businesses, SAIF creates sensitive records. These records determine premium audit selection criteria for policyholders, assess rate adequacy for specific classifications, establish overall reserving practices, and analyze pricing. Producing these sensitive business records may create a competitive disadvantage for groups of policyholders or industries. For example, rate adequacy records may cause other insurers to discontinue insuring certain classes of business. SAIF audit selection criteria records may foreshadow types of business selected for audit and encourage fraud. It may be impossible to prove that a specific document, set of documents, or type of document, will produce a competitive disadvantage until a year, two years, or even a decade after the documents have been produced. Due to the nature of workers' compensation insurance, a competitive disadvantage for SAIF and its policyholders may not be realized for many years.

#### **Proposed New Language Creates Uncertainty without Public Benefit**

Changes to SAIF's sensitive business records exemption may create these or other problems, and SAIF is unclear as to the problem the new language is addressing, especially given the unique nature of SAIF's business and the existing inclusion of the public interest test. The exemption ensures that SAIF is on a level playing field with its insurance industry competitors in its work with employers, injured workers, and business partners.

Uncertainty is detrimental to insurers. SAIF requests that the taskforce maintain SAIF's specific business records exemption as it currently exists in the statutes. The specific narrow exemption acknowledges SAIF's competitive position in a business environment, and, coupled with the public interest test, provides appropriate public access to SAIF records. Changing the exemption adds uncertainty without adding any apparent benefit to Oregonians. Thank you for your work on this difficult and important issue.

Sincerely,



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