

This opinion is issued in response to a question from Edward Johnson II, State Registrar, Center for Health Statistics, Oregon Health Division, concerning ORS 432.121.

QUESTION PRESENTED

Does ORS 432.121 affect the public's access to marriage records filed in a county clerk's office?

ANSWER GIVEN

ORS 432.121 prohibits or limits access to marriage records less than 50 years old filed in a county clerk's office to all but a few categories of persons and agencies set forth in that statute.

DISCUSSION

The Public Records Law, ORS chapter 192, confers a right on any person to inspect any public record of a public body in Oregon, subject to certain exceptions and limitations. ORS 192.420 states that "[e]very 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." ORS 192.410(3) includes in its definition of a "public body" every county governing body or agency thereof. "Public record" as defined in ORS 192.410(4) "includes any writing containing information relating to the conduct of the public's business, including but not limited to court records."

ORS 192.502(9) exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." Thus, the question is whether ORS 432.121 prohibits or restricts the disclosure of marriage records filed in a county clerk's office such that they are exempted from disclosure under the Public Records Law.

ORS 432.121 states in relevant part:

(1) To protect the integrity of vital records and vital reports, to ensure their proper use and to ensure the efficient and proper administration of the system of vital statistics, *it shall be unlawful for any person to permit inspection of, or to disclose information contained in vital records or in vital reports or to copy or issue a copy of all or part of any such record or report unless authorized by this chapter* and by rules adopted pursuant thereto or by order of a court of competent jurisdiction. Rules adopted under this section shall provide for adequate standards of security and confidentiality of vital records and vital reports.

(2) The State Registrar of the Center for Health Statistics shall authorize the inspection, disclosure and copying of the information referred to in subsection (1) of this section as follows:

* * * * *

(c) When * * * 50 years have elapsed after the date of * * * marriage or dissolution of marriage.

(Emphasis added.) This statute establishes a general rule that disclosure of vital records by any person is unlawful unless otherwise specifically authorized. None of the authorized reasons for release of vital records permit disclosure to the general public of records that are less than 50 years old.⁽¹⁾

In order to determine the public's ability to access marriage records filed in the county clerk's office, we first must determine whether they are "vital records."⁽²⁾ "Vital records" are defined as "certificates or reports of birth, death, marriage, dissolution of marriage and data related thereto." ORS 432.005(14). This definition of vital records makes no distinction as to their location.

The marriage records filed in a county clerk's office might include (in either an electronic or paper form): a Department of Human Resources, Health Division License and Record of Marriage form;⁽³⁾ an affidavit or other type of proof of the age of one or both of the applicants as set forth in ORS 106.050; a form for the waiver of the statutory three-day waiting period as set forth in ORS 106.077; a form for the consent to the marriage of a minor by the minor's parent or guardian as set forth in ORS 106.060; and a certificate of solemnization as set forth in ORS 106.170(2).⁽⁴⁾

In addition to the above-mentioned documents which are "filed" in a county clerk's office, there are other marriage-related documents and information that a county clerk may have or create. These include (in either an electronic or paper form): a "marriage book" as set forth in ORS 106.100; a "record of marriages" as set forth in ORS 106.180; and a book entitled "Authority to Solemnize Marriages" as set forth in ORS 106.120(2), which lists those ministers who are authorized to solemnize a marriage.

The documents listed above are required by law. It would be impossible for this opinion to address all of the various documents that a clerk's office might possess or create in addition to those expressly required by law. Therefore, we will discuss only the documents listed above.

Whether or not these documents are "vital records" depends upon whether the documents are "certificates or reports" of marriage or "data related thereto." Given the plain meaning of "data related thereto," we believe that, with one exception, all of the documents listed above are either marriage certificates or reports or "data related" to the marriage certificates or reports and therefore would be "vital records." Unlike each of the other documents, the list of ministers in the book entitled "Authority to Solemnize Marriages" is not data pertaining to a specific marriage certificate or report of a specific marriage. Because this list contains information about who may solemnize marriages generally, we do not believe that it is data related to marriage certificates or reports within the meaning of ORS 432.121 any more than a list of judicial officers within the county, who may also solemnize marriages, ORS 106.120(1), would be data related to marriage certificates or reports.

Having determined that, except for the list of ministers, the marriage records described above are "vital records" for purposes of ORS 432.121, we next consider whether the restrictions on disclosure apply to such records filed or maintained in the county clerk's office. It has been suggested that because ORS 432.005(5) defines "file" as the presentation and acceptance of a vital record "by the Center for Health Statistics" (Center), the prohibitions in ORS 432.121 apply only to marriage records accepted and filed by the Center. Although the definition of "file" may distinguish between the filing of records with a county clerk and the filing of records with the Center, that distinction is irrelevant to the definition of "vital records," which makes no reference to records that are "filed." Accordingly, we look to ORS 432.121 to see if its restrictions on the disclosure of vital records are limited only to records in the custody of the Center.

In interpreting a statute, our goal is to discern the intent of the legislature. ORS 174.020; *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). We first look at the text and context of the statute, including other provisions of the same statute and related statutes. In so doing, we consider statutory and judicially developed rules of construction that bear directly on how to read the text, such as "words of common usage typically should be given their plain, natural, and ordinary meaning." *Id.* at 611. If the legislative intent is clear from the text and context of the statute, the search ends there. Only if the legislative intent is not clear from the text and context will we look to the statute's legislative history to attempt to discern that intent. *Id.* at 611-612.

ORS 432.121(1) makes it unlawful for "any person to permit inspection of, or to disclose information contained in vital records * * * unless authorized by" ORS chapter 432. The term "person" is not defined in ORS chapter 432. The plain meaning of "person" is "an individual human being." *Websters Third New International Dictionary 1686* (unabridged 1993). ORS 432.121(1) does not differentiate between persons in the county clerk's office and persons in the Center; it makes unlawful the disclosure of vital records by *any* person unless authorized by ORS chapter 432.

This interpretation is bolstered by other provisions of ORS 432.121. ORS 432.121(5) provides that

Nothing in this section shall prohibit a health care provider from disclosing information contained in the provider's records as otherwise allowed by law.

This exclusion from the prohibition on disclosure of vital records would be unnecessary if ORS 432.121(1) applied only to the records in the custody of the Center.

The context of ORS 432.121(1) also includes other related statutes. One such statute is ORS 432.095, which states:

The provisions of [ORS chapter 432] regarding the copying, inspection, disclosure or furnishing of vital records and vital reports also apply to all certificates or reports of birth, death, marriage, dissolution of marriage, fetal death, induced termination of pregnancy and suicide attempt by a person under 18 years of age received prior to October 4, 1997, by the Vital Statistics Unit *or in the custody of any other custodian of vital records.*

ORS 432.095 (emphasis added). This statute clarifies that the prohibition on "copying, inspection, disclosure or furnishing

of vital records" applies to certificates and reports of marriage received by the Vital Statistics Unit (now known as the Center for Health Statistics) before October 4, 1997,⁽⁵⁾

and also to such certificates and reports "in the custody of any other custodian of vital records." A county clerk is a custodian of vital records.⁽⁶⁾ Accordingly, this statute makes the prohibitions on copying, inspection, disclosure or furnishing of vital records applicable to marriage certificates in the custody of the county clerks.

ORS 432.095 does not address all "vital records" in the custody of custodians of vital records other than the Center, but only "certificates and reports." Merely because ORS 432.095 prohibits disclosure of only a subset of the vital records that are in the custody of county clerks, however, we do not believe that we may interpret the prohibition in ORS 432.121(1) as applying to the remaining vital records only when they are in the custody of the Center. By its terms, ORS 432.121(1) makes unlawful the disclosure of all vital records by "any person." Nothing in ORS 432.095 either limits the application of ORS 432.121(1) only to the Center or authorizes the disclosure of records by county clerks.

The legislative intent is clear from the text and context of the statutes.⁽⁷⁾ ORS 432.121(1) prohibits any person from disclosing any vital records except as expressly authorized by ORS chapter 432. This prohibition applies to the marriage certificates and "data related thereto" that are required by law to be filed or maintained in a county clerk's office. ORS chapter 432 does not authorize the release of such records to the general public by a county clerk's office, except for marriage records that are at least 50 years old. Accordingly, it is our opinion that ORS 432.121 restricts the public's access to marriage certificates and data related thereto that are required by law to be filed or maintained in a county clerk's office.⁽⁸⁾

The Oregon Department of Justice does not act as legal counsel to the counties of this state. They are entitled to seek and rely upon advice from their own attorneys. The legal opinions stated herein are given solely for your use and benefit.

HARDY MYERS
Attorney General

-
1. ORS 432.121 authorizes the following disclosures of vital records:
 - (2) The State Registrar of the Center for Health Statistics shall authorize the inspection, disclosure and copying of [vital records and vital reports] as follows:
 - (a) To the spouse, child, parent, sibling or legal guardian of the registrant, an authorized representative of the spouse, child, parent, sibling or legal guardian of the registrant or, in the case of death records, to other next of kin.
 - (b) When a person demonstrates that a death record is needed for the determination of protection of a personal or property right.
 - (c) When 100 years have elapsed after the date of birth or 50 years have elapsed after the date of death, marriage or dissolution of marriage.
 - (d) When the person requesting the information demonstrates that the person intends to use the information solely for research purposes. In order to receive the information, the person must submit a written request to the state registrar requesting a research agreement. The state registrar shall issue a research agreement if the person demonstrates that the information will be used only for research and will be held confidential. The research agreement shall prohibit the release by the person of any information other than that authorized by the agreement that might identify any person or institution.
 - (e) To the federal agency responsible for national vital statistics, upon request. The copies of data may be used solely for the conduct of official duties. Before furnishing the records, reports or data, the state registrar shall enter into an agreement with the federal agency

indicating the statistical or research purposes for which the records, reports or data may be used. The agreement shall also set forth the support to be provided by the federal agency for the collection, processing and transmission of the records, reports or data. Upon written request of the federal agency, the state registrar may approve, in writing, additional statistical or research uses of the records, reports or data supplied under the agreement.

(f) To federal, state and local governmental agencies, upon request. The copies of data may be used solely for the conduct of official duties of the requesting governmental agency.

(g) To offices of vital statistics outside this state when such records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. Before furnishing the records, reports or data, the state registrar shall enter into an agreement with the office of vital statistics. The agreement shall specify the statistical and administrative purposes for which the records, reports or data may be used and the agreement shall further provide instructions for the proper retention and disposition of the copies. Copies received by the Center for Health Statistics from offices of vital statistics in other states shall be handled in the same manner as prescribed in this section.

(3) The state registrar, upon request of a family member or legal representative, shall issue a certified copy or other copy of a death certificate containing the cause of death information as provided in subsection (2) of this section or as follows:

* * * * *

(4) Nothing in this section prohibits the release of information or data that would not identify any person or institution named in a vital record or a vital report.

(5) Nothing in this section shall prohibit a health care provider from disclosing information contained in the provider's records as otherwise allowed by law.

Return to [previous location](#).

2. Although the disclosure of "vital reports" is also limited by ORS 432.121, such reports are not pertinent to marriage records. "Vital reports" are "reports of fetal death, induced termination of pregnancy, suicide attempts by persons under 18 years of age and survey and questionnaire documents and data related thereto." ORS 432.005(15).

Return to [previous location](#).

3. For most counties, this form usually serves as the application, license and certificate as set forth in ORS 106.041, 106.077, 106.120, 106.150 and 106.170. This form is in duplicate. The copy that goes to the Center for Health Statistics has an additional section containing statistical information, which is not retained by the county clerk.

Return to [previous location](#).

4. Most, if not all, counties use the Department of Human Resources, Health Division License and Record of Marriage form in lieu of the specific form in ORS 106.170(2).

Return to [previous location](#).

5. ORS 432.121 became effective October 4, 1997. Or Laws 1997, ch 783.

Return to [previous location](#).

6. ORS 432.030(2) authorizes the state registrar to delegate functions and duties of the state registrar to employees of the Center and to employees of any office of a county registrar designated under ORS 432.035. There is nothing in ORS chapter 432, however, to suggest that the reference to "any other custodian of vital records" was limited to these persons. Had the legislature so intended, it could easily have done so by an explicit reference to such persons. Instead, the Act uses the term "custodian," the common meaning of which is "one entrusted officially with guarding and keeping (as property, artifacts, or records)." Webster's Third New International Dictionary 559 (unabridged 1993). As to those vital records that are required by law to be filed or maintained in the county clerk's office, the county clerk is a custodian within the meaning of ORS 432.095.

Return to [previous location](#).

7. Because the legislative intent is clear from the text and context of the statutes, review of the legislative history is not necessary. Even if we were able to reach the legislative history in an attempt to further delineate the legislative intent, we do not find persuasive evidence in that history supporting a contrary interpretation of the statute as to records filed in a county clerk's office.

Return to [previous location](#).

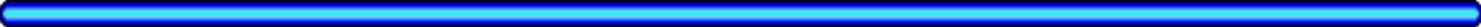
8. >As noted above, this opinion addresses only specific documents that the county clerks are required by law to file or maintain. Any other documents or information that a county clerk may have or create should be analyzed on a case-by-case basis to determine if the documents or information come within the definition of a marriage certificate or report or "data related thereto." This opinion does not address marriage records in the hands of other persons or entities, which would also need to be analyzed on a

Return to [previous location](#).

Go to:

[Top of page.](#)

[AG Opinions home page.](#)





Created 03/10/98
Webmaster see: [Print Services](#).

