



Oregon State Agency Mediation Confidentiality

Oregon Department of Justice

March 2017

Private Party Mediation is Confidential by Default

Mediation is a process in which a third party assists two or more parties to a controversy in reaching a mutually acceptable resolution of the dispute (ORS 36.110). Unlike litigation, which relies on depositions and other forms of discovery, mediation depends largely on the voluntary disclosure of information by the parties to further the negotiation process. This voluntary disclosure is often essential to get to the root of a problem, but voluntary disclosures may only be forthcoming if the parties have some assurance that the information will not be used against them later. Confidentiality in mediation may also:

- Facilitate a more informal and candid discussion of a controversy;
- Allow the parties greater creativity in exploring a wide range of possible solutions;
- Allow the mediator and the parties to explore their underlying issues and interests;
- Reduce the need for an attorney to guard the client's disclosure, enabling the principal parties to take a more direct and prominent role in the negotiations; and,
- Allow information to be given out selectively (e.g., a party in a caucus session may ask a mediator not to share information with the other party).

Under ORS 36.110 – 36.238 mediations involving private parties are confidential by default.

State Agency Mediation is, by Default, Not Confidential

While state agencies may also benefit from participating in a confidential mediation this benefit must be weighed against the need for government transparency. To ensure that agencies carefully consider the balance

between transparency and confidentiality in each case ORS 36.224 declares that mediations involving state agencies are **not** confidential unless the agency adopts and follows rules developed by the Attorney General.

In determining the need for confidentiality in a specific mediation the agency should consider the benefits of confidentiality and the benefits of greater transparency. For example:

- Does the public have an interest in the deliberations and might the public perceive a confidential mediation in this case as "secretive" or "back room" deal;
- Is it possible that a pattern of unlawful actions or behavior never comes to light because many related complaints or regulatory actions are handled through individual, confidential mediation;
- If persons in similar disputes with the agency want to know that the resolution of their dispute is consistent with the mediated case, would confidentiality make it difficult to demonstrate the basis for the agency's action?
- Does the agency anticipate that a disclosure in the mediation may need to be used in a subsequent agency regulatory action?



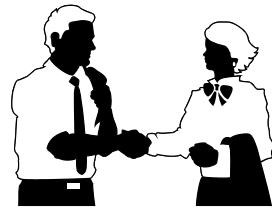
Confidential State Agency Mediation:

- 1 An effective dispute resolution process requires a **thoughtful approach** to the information needs of the participants, achieving the voluntary disclosure of helpful information by limiting where else that information will be shared. *See Page 3 for help thinking about the flow of information in mediation.*
- 2 There are a **variety of strategies and laws** that can be employed to achieve the participants desired level of candor and information disclosure. *See Page 4 for a chart summarizing the options available to you.*
- 3 State agency **adoption of mediation confidentiality rules** is much easier thanks to recent (2015) changes to ORS 36.224. *See page 5 for details regarding the current rule adoption process.*
- 4 An **agreement to mediate** must be executed before a state agency mediation can be confidential. *See details on page 7.*
- 5 Mediation confidentiality statutes and rules include a number of **important exceptions**. You'll find a summary of these beginning on page 8.
- 6 There are a few **"traps for the unwary"** you should be aware of with regard to mediation confidentiality. We identify a few of these, and highlight a significant Supreme Court opinion beginning on page 11.

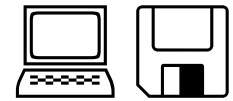
What degree of candor and disclosure do you need for *this* dispute resolution process to be successful?

1. What are the expectations regarding the confidentiality of these various interactions?
2. Who needs access to information or data? How will they get it?
3. To what extent will the persons in these sessions be sharing information with others inside or outside their organization or agency?
4. To what extent will information be needed later for a subsequent proceeding or process?

Informal, conversations between a party and the mediator before any "agreement to mediate" is signed.



Subsequent Proceeding



Electronic communications between parties or the mediator (Are these transmission/storage systems acceptable in this case?)



Caucus without a mediator



Communications in sessions with all parties & mediator



A party's communications with friends, family, attorney or accountant



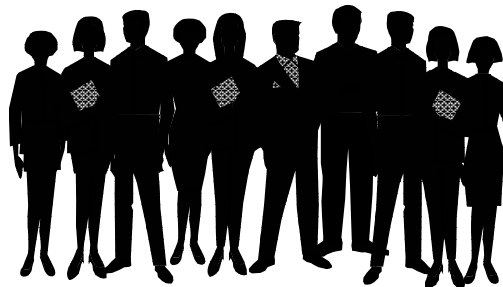
Caucus with a mediator

Communications with the media



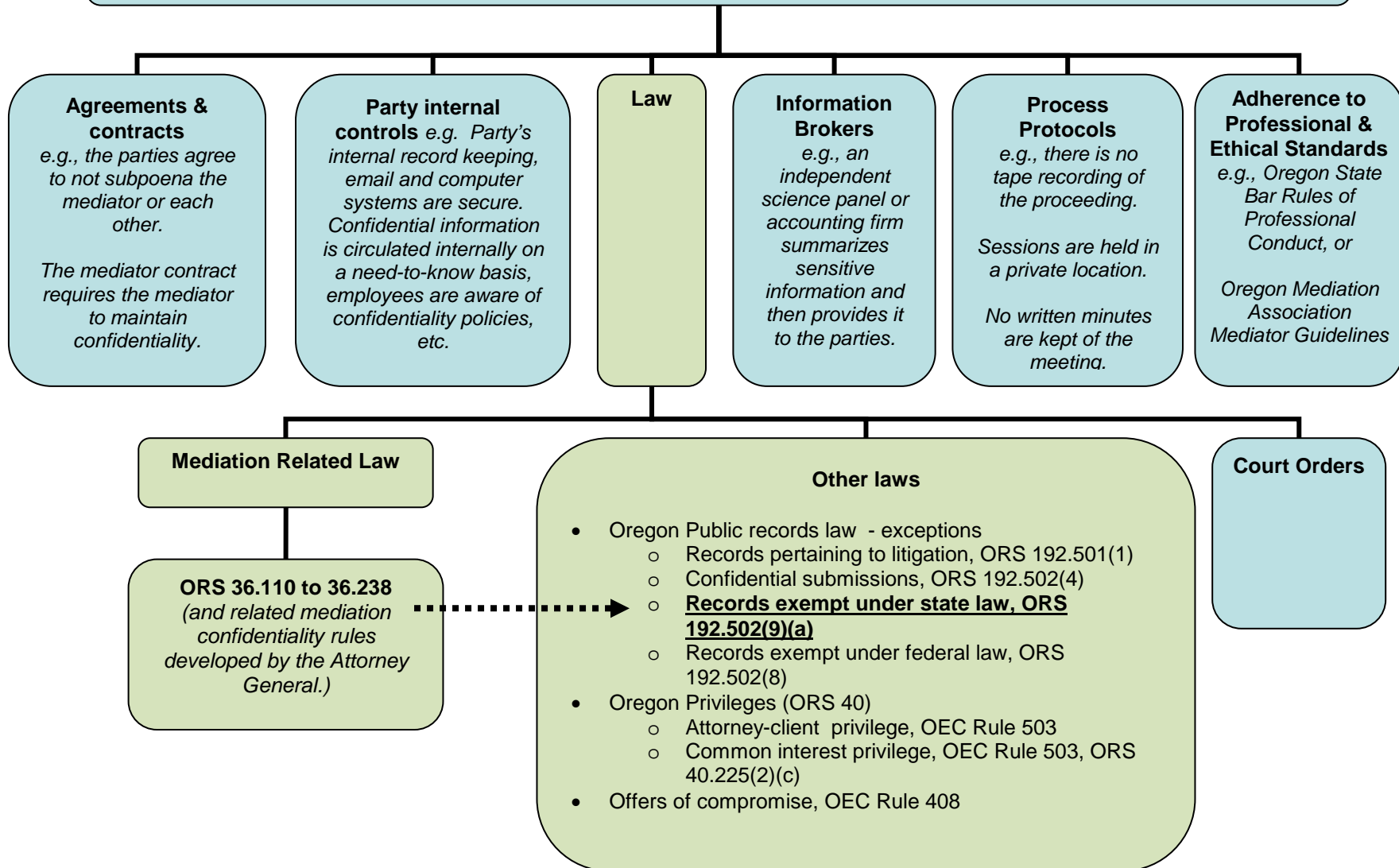
Mediator communications with parties after an agreement has been reached

Communications to and from constituent groups or others in the same organization



There are a **variety of strategies and laws** that can be employed to achieve the participants desired level of candor and information disclosure.

What are the Tools for Achieving Confidentiality in Mediation?



Adoption of Mediation Confidentiality Rules...It's Easy.

There are two mediation confidentiality rules available.

State agencies wishing to participate in confidential mediations may only do so after adopting mediation confidentiality rules developed by the Attorney General under ORS 36.224. The most current version of the Attorney General's Mediation Confidentiality rules are found on the Secretary of State's website in Chapter 137, Division 5 at http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_005.html. There are two rules, one-for workplace interpersonal disputes and another for all other mediations:

- OAR 137-005-0054 "Confidentiality and Inadmissibility of Workplace Interpersonal Mediation Communications" - For workplace interpersonal disputes within a state agency; and
- OAR 137-005-0052 "Confidentiality and Inadmissibility of Mediation Communications" – For all other types of mediation.

A list of agencies that that have adopted mediation confidentiality rules can be found at: <http://www.doj.state.or.us/adr/pages/adr20.aspx>.

In 2015, the legislature amended ORS 36.224(4) to allow agencies to adopt the Attorney General's Mediation Confidentiality Rules by reference. ORS 36.224(4) provides:

"A state agency may adopt the model rules developed by the Attorney General under this section in their entirety without complying with the rulemaking procedures under ORS 183.335. The agency shall file notice of adoption of rules under this subsection with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules."

If your agency is adopting a mediation confidentiality rule for the first time:

The Agency does not need to comply with the rulemaking procedures under ORS 183.335 (i.e., notice and comment rulemaking). The agency must draft a rule adopting by reference the most current version of the Mediation Confidentiality Rule(s) (the effective date should be specified, *i.e.*, Attorney General's Mediation Confidentiality rules OAR 137-005-0052 and 137-005-0054 *effective as of 10/27/15*). The Agency then must file a certified copy and an order of adoption with the Secretary of State in the manner provided by ORS 183.355 for filing rules. The agency also must file a copy of the rule with Legislative Counsel in the manner required by ORS 183.715.

If your agency is amending its existing mediation confidentiality rule(s) to adopt the most current version of the Attorney General's Mediation Confidentiality Rule(s).

The Agency should amend its existing rule(s) to replace them in their entirety with the most current Attorney General's Mediation Confidentiality rule(s) specifying the effective date of the most current version. The agency then must file a certified copy and an order of adoption with the Secretary of State in the manner provided by ORS 183.355 for filing rules and also file a copy of the rule(s) with Legislative Counsel in the manner required by ORS 183.715 (See an example of such a filing on the next page.)

Additional guidance for the adoption of these rules is available from your contact attorney and on the web at <http://www.doj.state.or.us/adr/pages/rules.aspx> .

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

FILED
7-25-16 9:39 AM
ARCHIVES DIVISION
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the
Department of Justice 137

Agency and Division Administrative Rules Chapter Number
Carol Riches (503) 378-5987
Rules Coordinator Telephone
1162 Court St. NE, Salem, OR 97301

Address
To become effective Upon filing, Rulemaking Notice was published in the Oregon Bulletin.

RULE CAPTION

Confidentiality and Inadmissibility of Mediation Communications and Workplace Interpersonal Dispute Mediation Communications

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

137-008-0100, 137-008-0120

REPEAL:

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 36.224, 36.228, 36.232

Other Authority:

Statutes Implemented:

ORS 36.224, 36.228, 36.230, 36.232

RULE SUMMARY

Pursuant to ORS 36.224(4), amending DOJ's mediation confidentiality rules OAR 137-008-0100 and 137-008-0120 to adopt the model mediation confidentiality rules developed by the Attorney General that are effective as of 10-27-15.

Carol Riches Carol.Riches@state.or.us
Rules Coordinator Name Email Address

An agreement to mediate must be executed before a state agency mediation can be confidential

Having the parties develop and execute an agreement to mediate, a document describing how the mediation will proceed, is a best practice in all mediations and is required for confidential mediations involving state agencies.

The agreement to mediate typically describes the dispute that is at the core of the mediation, the role of the parties and the mediator and what is and isn't confidential. In some cases this agreement will describe the mediator compensation or the logistical details for when and where the mediation will occur. While a comprehensive agreement to mediate (covering all aspects of the mediation) is best practice OAR [137-005-0052](#) requires only that, with respect to mediation confidentiality:

“(7)(a) The parties to the mediation sign an agreement to mediate specifying the extent to which mediation communications are confidential”

and

“(9) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. The agreement to mediate also must refer to this rule. Violation of this provision does not waive confidentiality or inadmissibility.”

For agencies that are using rules adopted prior to 7/27/2011 the required clause must be similar to the following:

“The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR [Agency

confidentiality rule adopted pursuant to ORS 36.224] and this agreement. This agreement relates to the following mediation:

a) _____ (Identify the mediation to which this agreement applies)

b) To the extent authorized by OAR [Agency confidentiality rule adopted pursuant to ORS 36.224], mediation communications in this mediation are: (check one or more)

___ confidential and may not be disclosed to any other person

___ not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding

___ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding.”

A sample agreement to mediate for state agency-related mediation can be found at <http://www.doj.state.or.us/adr/pages/agree.aspx>

**Oregon State Agency
“Agreement to Mediate” Template
Version A – 12/1/2015**

The following template was prepared by the Department of Justice for use by its intended for use in mediations in which an Oregon state agency is a party, at least one also a party to the mediation and an independent third-party is the mediator. It is assumed that all parties are seeking the maximum confidentiality available and that all state agencies who are have adopted mediation confidentiality rules as required by ORS 36.224.

This form includes optional clauses at the end of the template. State agency parties should consult the Assistant Attorney General regarding the adaptation of this form to a specific mediation.

Additional information related to state agency mediation confidentiality can be found at <http://www.doj.state.or.us/adr/pages/index.aspx>.

This agreement is between the undersigned parties, the mediator and any other mediators.

Mediation confidentiality statutes and rules include a number of **important exceptions**....

1) **EXCEPTIONS FOUND IN ORS 36.220:**

- a) The **parties to a mediation may agree** in writing that all or part of the mediation communications are not confidential.
- b) Materials, otherwise subject to discovery, that were **not prepared specifically for use in a mediation**, are not confidential.
- c) Any document that, **before its use in a mediation**, was a public record as defined in ORS 192.410 remains subject to disclosure.
- d) Any mediation communication relating to **child abuse** that is made to a person who is required to report child abuse.
- e) Any mediation communication relating to **elder abuse** that is made to a person who is required to report elder abuse.
- f) A mediation communication is not confidential if the mediator or a party to the mediation reasonably believes that disclosing the communication is necessary to **prevent a party from committing a crime** that is likely to result in death or substantial bodily injury to a specific person.
- g) A party to a mediation may disclose confidential mediation communications to a person if the party's communication with that person is **privileged under ORS 40.010 to 40.585** or other provision of law. A party may disclose confidential mediation communications to any other person for the purpose of **obtaining advice** concerning the subject matter of the mediation, if all parties to the mediation so agree.

2) **EXCEPTIONS FOUND IN ORS 36.222.**

(Disclosure that are permitted in subsequent adjudicatory proceeding):

- a) A party may disclose confidential mediation communications or agreements in any subsequent adjudicative **proceeding if all parties to the mediation agree** in writing to the disclosure.
- b) A mediator may disclose confidential mediation communications or confidential mediation agreements in a subsequent adjudicatory proceeding **if all parties to the mediation, the mediator, and the mediation program, if any, agree** in writing to the disclosure.
- c) A mediator may disclose confidential mediation communications directly related to child abuse or elder abuse **if the mediator is a person who has a duty to report child abuse** under ORS 419B.010 or elder abuse under ORS 124.050 to 124.095.
- d) **In an action for damages or other relief** between a party to a mediation and a mediator or mediation program, confidential mediation communications or confidential mediation agreements may be disclosed to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding **to prevent further disclosure** of the mediation communications or agreements.

3) **EXCEPTION IN ORS 36.228.**

If the only parties to a mediation are public bodies, mediation communications and mediation agreements in the mediation are not

confidential unless exempt under public records law.

- 4) **EXCEPTION IN ORS 36.230.**
Mediation Agreements are not confidential if a public body is a party to the mediation or if the mediation is one in which a state agency is mediating a dispute as to which the state agency has regulatory authority.
- 5) **EXCEPTION IN ORS 36.232.**
Disclosures of Mediation
Communications are allowed **for reporting, research, training and educational purposes.**

EXCEPTIONS IN DOJ MODEL RULE OAR 137-005-0052 that differ from statutory exceptions in ORS 36 (These differences reflect the policies choices made by the Attorney General under 36.224 to ensure that state agencies are able to participate in a confidential mediation AND fulfill their essential role protecting the public):

- a) A mediation communication may be disclosed to the extent the communication is necessary to **prevent the commission of a crime** that is likely to result in death or bodily injury to any person.
- b) A mediation communication may be disclosed in a subsequent proceeding to the extent its disclosure may **further the investigation or prosecution of a felony crime** involving physical violence to a person.
- c) Any mediation communication **related to the conduct of a licensed professional** that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

- d) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to **conduct authorized activities of the agency.**
- e) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding **at the discretion of the party who prepared the communication** so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.
- f) To the extent a mediation communication contains information the substance of which is **required to be disclosed by Oregon statute,** other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.
- g) Written mediation **communications prepared by or for the agency or its attorney** are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:
- i) Attorney client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or
- ii) Attorney work product prepared in anticipation of litigation or for trial, or

- iii) Prepared exclusively for the mediator or in a caucus session and not given to another party in
 - iv) the mediation other than a state agency, or
 - v) Prepared in response to the written request of the mediator for specific documents or
 - vi) information and given to another party in the mediation, or
 - vii) Settlement concepts or proposals,
- i) The **terms of any mediation agreement are not confidential** and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 17.095 or state or federal law requires the terms to be confidential.



shared with the mediator or other parties.

- h) A mediation communication made to the agency may be disclosed and may be admitted into evidence **to the extent the agency director, administrator or board determines** that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety and the communication is not otherwise confidential or privileged under state or federal law.

6) **Exceptions in DOJ model rule OAR 137-005-0054 (8)**

- a) **The terms of any agreement arising out of the mediation of a workplace interpersonal dispute** are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

More about the “Prepared by or for the agency...” Exception

Model Rule 137-005-0052(8)(m) includes an exception to mediation confidentiality for certain written mediation communications of a state agency:

“Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

- (A) Attorney client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or*
- (B) Attorney work product prepared in anticipation of litigation or for trial, or*
- (C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or*
- (D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or*
- (E) Settlement concepts or proposals, shared with the mediator or other parties.”*

To better illustrate how this exception works we use the following example:

The state Barkdust Commission is in mediation with Chipper Industries to resolve a dispute regarding delinquent fees owed to the Commission. In the course of the mediation the Commission prepares a report for use in the mediation.

If the Agency’s Report...	and during the mediation is shared with	Then it is
Is an attorney-client privileged communication	Chipper Industries (party) The mediator and not with a party	Disclosable
Contains settlement concepts or proposals	A party, the mediator or both	Confidential
Contains mediation communications from Chipper Industries		
Was prepared at the written request of the mediator		
Was prepared for the mediator	The mediator (only) in a private caucus	Confidential
Contains attorney-client work product prepared in anticipation of litigation	Doesn’t matter	
Contains something other than a settlement proposal, a confidential communication from the other party or attorney-client work product prepared for litigation	Doesn’t matter	Disclosable

Traps for the Unwary and A Significant Court Opinion

Required Disclosure, Prohibited Disclosure and Everything In Between...

State agencies operate within a complex legal environment that balances differing policy interests regarding the disclosure of information. When navigating the Public records and Meetings Laws, mediation confidentiality statutes and other laws it is important to distinguish between provisions that:

- **Require disclosure** of information, whether or not it has been requested (i.e. the agency or individual has a duty to report the information). The mandatory reporting of child or elder abuse is an example of this type of requirement.
- **Require disclosure in response to a request** - Under Public Records Law “every person has a right to inspect any record of a public body except as otherwise expressly exempt.” ORS 192.420;
- **Allow non-disclosure** (i.e. the law allows, but does not require, the agency to withhold a document). An agency may choose, for example, not to disclose a document because there is an exception in the public records law allowing the agency to do that. Note that where confidentiality is not required, the agency may later choose to disclose the document to the public.
- **Prohibit Disclosure.** This “required” confidentiality is the case for most mediation communications covered by ORS 36.220 through 36.238 - the agency may not disclose the communication. This is also the situation for some information covered under the Public Records Law, such as the personal safety exemption in ORS 192.445.

Mediators Cannot Also be Parties

ORS 36.220 to 36.238 apply only to a "mediation" facilitated by a "mediator" as those terms are defined in ORS 36.110(6) and (10). If the agency has a direct interest in the controversy, agency staff would not be a "third

party" and therefore would not meet the definition of a "mediator." For example, if a licensing agency uses its staff to facilitate the settlement of a matter in which the agency has proposed to revoke a license, the staff would not be a "third party" because the agency has a direct interest in the controversy. If the agency wanted a confidential mediation of this licensing matter the agency could use a private mediator or a mediator from another agency. The mediation would then be confidential to the extent provided in the agency's confidentiality rules.

Confidentiality by Default If Agency Is the Mediator

Note that mediation communications are confidential without rule adoption when an agency is acting only as the mediator in a controversy so long as the agency does not have a direct interest in the controversy that is the subject of the mediation and does not have regulatory authority over the matter. ORS 36.220, 36.224.

Who is a “Party” to a mediation?

Note that ORS 36 defines a “party” differently than that term is used for litigation or contested cases. ORS 36.234 defines a party as (Emphasis added):

*“***a person, state agency or other public body is a party to a mediation if the person or public body **participates in a mediation** and **has a direct interest in the controversy that is the subject of the mediation**. A person or public body is not a party to a mediation solely because the person or public body is conducting the mediation, is making the mediation available or is serving as an information resource at the mediation.”*

Mediator Disclosures Treated Differently

The confidentiality rules treat disclosures by mediators differently from disclosures by the parties to a mediation. This is consistent with confidentiality statutes and the practice of most mediators to limit disclosures by the mediator, regardless of whether or not the parties may disclose mediation communications. These limitations on mediator disclosure are viewed as important both to preserve the mediator's impartial status and to ensure that discussions with a mediator cannot be taken out of context and used later in the mediation or in subsequent proceedings. The parties' behavior with the mediator may also be artificial or guarded if they know that the mediator may later be called on to offer his or her opinion as to the sincerity of the parties' negotiations or the strength of their positions.



A Public Meeting and a Mediation?

In some rare cases a mediator may be assisting a public body in the resolution of a dispute and the mediation may be subject to the Public Meetings Law. Note that, while ORS chapter 36 makes certain mediation communications exempt from disclosure under the Public Records Law ORS 36 does **not** exempt agencies from the requirements of the Public Meetings Law.

The Oregon Public Meetings Law, ORS

192.610 to ORS 192.690, establishes Oregon's policy of open decision-making by governing bodies. It's implicated when a quorum of governing body of a public body (or an advisory body to a governing body) is meeting. (An individual elected official or an agency head is not a public body.) Additional guidance regarding the public meetings law is available from the agency contact attorney and online at http://www.doj.state.or.us/public_records/pages/index.aspx

Communications before the "Agreement to Mediate" is signed

While the early communications between a mediator and a single mediation party are typically confidential in "private" mediations whether an agreement to mediate is executed or not. The same is not true for mediations involving state agencies. When a state agency is a party to the mediation confidentiality is only available after an agreement to mediate is executed, with one exception. Under the DOJ model mediation confidentiality rule 137-005-0052 the communications between a mediator and a party during the early convening or assessment stage of the mediation may be confidential to the extent provided in OAR 137-005-0052(6):

"Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

- (a) All the parties to the mediation and the mediator agree in writing to the disclosure; or*
- (b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l), (o)–(p) and (r)–(s) of section (8) of this rule."*

Confidentiality will vary depending on who the parties and mediator are representing....

	IF THE PARTIES (as defined in ORS 36.234)	AND THE MEDIATOR (as defined in ORS 36.110(10)) IS	THEN CONFIDENTIALITY IS
1	Are all private parties	Private, public body (other than state agency) or state agency that has no regulatory authority over matter in mediation	Assumed
2	Include a public body (other than a state agency) and a private party	Private, public body (other than state agency) or a state agency that has no regulatory authority over matter in mediation.	Assumed
3	Include a public body (other than a state agency) and a private party	A state agency with regulatory authority over matter in mediation.	Only available if agency adopts an approved rule
4	Include a state agency and a private party	Any type	Only available if agency adopts an approved rule
5	Include public bodies (one of which has non-confidentiality policy/law) and a private party	Any type	Not available
6	Are all public bodies	Any type	Not available
7	Include multiple state agencies and a private party and one of the agencies has not adopted a confidentiality rule	Any type	Not available

Case of “First Impression” Mediation Confidentiality in Alfieri V Solomon

In December 2015 the Oregon Supreme Court released an opinion in a malpractice case involving the confidentiality of communications made between an attorney and client during and immediately after mediation. The detailed analysis of the mediation confidentiality statute in this Supreme Court opinion makes this an important case for anyone who is participating in mediation in Oregon. Chief Justice Balmer begins the opinion by stating:

*“The issue presented in this case is one of first impression: to what extent do the confidentiality provisions of Oregon’s mediation statutes, ORS 36.100 to 36.238, prevent a client from offering evidence of communications made by his attorney and others in a subsequent malpractice action against that attorney? ***** We agree that ORS 36.220 and ORS 36.222 limit the subsequent disclosure of mediation settlement terms and certain communications that occur in the course of or in connection with mediation. We disagree, however, as to the scope of communications that are confidential under those statutes.”*

For the full opinion see: <http://www.publications.ojd.state.or.us/docs/S062520.pdf>

JUSTICE-#5209738-v26-State_Agency_Mediation_Confidentiality