

Attorney General's Public Records Law Reform Task Force
Preliminary "Transaction" Exemption Streamlining Proposal
5/27/2016

First Proposed Exemption

(1) The following public records of any public body that, as a primary function of the public body, is regularly engaged in selling goods or services to private individuals or enterprises are exempt from public disclosure to the extent that they are not customarily provided to business competitors and would cause a competitive disadvantage for the public body:

- (a) sensitive business records;
- (b) commercial information;
- (c) financial information.

(2) The exemption created by subsection (1) of this subsection shall apply to the City of Klamath Falls to the extent it is acting solely in connection with the ownership and operation of the Klamath Cogeneration Project.

(3) The exemption created by subsection (1) of this section does not apply:

- (a) to cost of service studies used in the development or review of generally-applicable electricity rate schedules;
- (b) to formulas used by the State Accident Insurance Fund Corporation to determine dividends paid to insured employers;
- (c) to executed contracts to which the public body is a party, unless there is a separate statutory basis for exempting the contracts from public disclosure;
- (d) to records pertaining to transactions of the public body that are subject to a competitive procurement
- (e) if the public interest requires disclosure in the particular instance.

Changes from five existing exemptions:

- Does not specifically list OHSU or Oregon Corrections Enterprises but relies on general character of public body.
- Universal application of public interest test and competitive harm requirement. Currently only SAIF's records are subject to the public interest test, and only electricity providers' records are subject to the competitive disadvantage requirement.
- No explicit protection for competitive interests of utilities' retail electricity customers (legitimate confidentiality for private entities should still be protected by trade secret provisions).
- Makes executed contracts specifically subject to disclosure; current exemptions only mention some SAIF contracts as expressly subject to disclosure.
- Exception for records pertaining to transactions governed by competitive procurement process (not addressed by current exemptions).
- Potentially broader application to electric utilities.
- Does not specifically mention Corrections Enterprises capital development plans.

Existing exemptions being combined:

192.501(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.

192.502(22) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

192.502(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.

192.502(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.

192.502(30) Sensitive business records, capital development plans or financial or commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors.

Second Proposed Exemption (Alternative to Third)

To protect the ability of public bodies to compete fairly in financial transactions, the following records are temporarily exempt from public disclosure:

- (1) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented, unless the public interest requires earlier disclosure in the particular instance.
- (2) Information relating to the appraisal of real estate prior to its acquisition or sale, until the transaction is completed, unless the public interest requires earlier disclosure in the particular instance.
- (3) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund, for a period of up to 90 days after the end of the calendar quarter.

(4) Information related to a transportation project proposed under ORS 367.800 to 367.824, including but not limited to the project's design, management, financing and other details, until: (a) The department shares the information with a local government, metropolitan planning organization or area commission on transportation under ORS 367.804(3)(c); or (b) The department completes its evaluation of the proposed project and has selected the proposal for negotiation of an agreement.

(5) 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.

Changes from five existing exemptions:

- No substantive changes.

Existing exemptions being combined:

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

192.501(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented.

192.502(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.

192.502(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.

367.804(5) Except as provided in subsection (6) of this section:

(a) Information related to a transportation project proposed under ORS 367.800 to 367.824, including but not limited to the project's design, management, financing and other details, is exempt from disclosure under ORS 192.410 to 192.505 until:

(A) The department shares the information with a local government, metropolitan planning organization or area commission on transportation under subsection (3)(a)(C) of this section; or

(B) The department completes its evaluation of the proposed project and has selected the proposal for negotiation of an agreement.

(b) After the department has either shared the information described in paragraph (a) of this subsection with a local government, metropolitan planning organization or area commission on transportation, or has completed its evaluation of the proposed project, the information is subject to disclosure under ORS 192.410 to 192.505.

Third Proposed Exemption (Alternative to Second)

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

(2) Records of or submitted to a public body pertaining to active or proposed publicly traded investments that the public body is authorized to make, 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) The amount paid directly into an investment by, or returned from the investment directly to, the public body; 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 or abandoned.

(3) (a) Information pertaining to a proposed capital project or acquisition of a public body, to the extent that disclosure of the information:

(A) Is likely to increase the cost of the proposed project to the public body;

(B) Is not otherwise required by law; and

(C) Has not been made to any individual other than employees of the public body or employees of other public bodies that are also involved in the project

(b) For purposes of this subsection, "capital project or acquisition" means the acquisition, maintenance or improvement of real property, structures, and roads.

Changes from five existing exemptions:

- Exemptions related to investments made available to entities other than the Treasury, PERF and the Industrial Accident fund.
- Exemptions for highway projects and real estate appraisals combined into a broader exemption for capital projects and acquisitions.

Existing exemptions being combined:

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

192.501(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented.

192.502(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.

192.502(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.

367.804(5) Except as provided in subsection (6) of this section:

(a) Information related to a transportation project proposed under ORS 367.800 to 367.824, including but not limited to the project's design, management, financing and other details, is exempt from disclosure under ORS 192.410 to 192.505 until:

(A) The department shares the information with a local government, metropolitan planning organization or area commission on transportation under subsection (3)(a)(C) of this section; or

(B) The department completes its evaluation of the proposed project and has selected the proposal for negotiation of an agreement.

(b) After the department has either shared the information described in paragraph (a) of this subsection with a local government, metropolitan planning organization or area commission on transportation, or has completed its evaluation of the proposed project, the information is subject to disclosure under ORS 192.410 to 192.505.