

ATTORNEY GENERAL'S  
PUBLIC RECORDS LAW  
REFORM TASK FORCE

CENTER FOR  
PUBLIC  
INTEGRITY  
GIVES OREGON A  
FAILING GRADE  
FOR PUBLIC  
ACCESS TO  
INFORMATION

Public Access to Information		GRADE: F (38)	RANK: 34 <sup>th</sup>
Do citizens have a legal right of access to information?		CLOSE X	
In law, citizens have a right of access to government information through a defined mechanism.		YES	
In law, citizens have a right of access to private sector information through a defined mechanism.		MODERATE	
In law, there is an entity/ies to monitor the application of access to information laws.		NO	
In law, citizens have a right of appeal if access to government information is denied.		YES	
In law, there is an open data law, requiring the government to publish data online in an open format.		NO	
Is the right of access to information effective?			
In practice, branches of government, state agencies and government officials do not claim to be exempt from access to information laws.		75	
In practice, private sector information related to government information is not claimed to be exempt from access to information laws.		25	
In practice, the calendars of both the governor and legislators are available to the public.		50	
In practice, citizens receive responses to access to information requests within a reasonable time period and at no cost.		0	
In practice, access to information requests are fully answered and/or detailed reasons for denying information are provided.		25	
In practice, citizens can resolve appeals to access to information requests within a reasonable time period and at no cost.		25	
In practice, the entity/ies to monitor the application of access to information laws independently initiates investigations and imposes penalties on offenders.		0	
In practice, government responses to FOI requests are made available in open data format.		0	

# POLICY STATEMENTS – OREGON SUPREME COURT

Writings coming into the hands of public officers in connection with their official functions should generally be accessible to members of the public so that there will be an opportunity to determine whether those who have been entrusted with the affairs of government are honestly, faithfully and competently performing their function as public servants.

\* \* \* \*

In balancing the interests referred to above, the scales must reflect the fundamental right of a citizen to have access to public records as contrasted with the incidental right of the agency to be free from unreasonable interference.

*MacEwan v. Holm, et al., 226 Or 27 (1961)*

# POLICY STATEMENTS – OREGON SUPREME COURT

Our decisions reflect the preference for a policy of governmental openness in Oregon. [Oregon case law] states the strong and enduring policy that public records and governmental activities be open to the public.

*Jordan v. Motor Vehicles Division, 308 Or 433 (1989)*

Exemptions from disclosure are to be narrowly construed. \* \* \* The legislative history of the relevant statutes shows that the legislature intended that they be applied simply, quickly and with a large measure of uniformity.

*Guard Pub. Co. v. Lane County School Dist. No. 4J, 310 Or 32 (1990)*

# POLICY STATEMENT – VERMONT

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the General Assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action.

Vermont Statutes Title I, Chapter 5 § 315(a)

# POLICY STATEMENT – WEST VIRGINIA

Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the state of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy.

# POLICY STATEMENT – DRAFT

It is the policy of the State of Oregon that public records should ordinarily be accessible to members of the public. Protecting the right of meaningful access to information about government activities enables Oregonians to insure that their public servants perform honestly, faithfully and competently. The disclosure provisions of ORS 192.410 to 192.505 shall be interpreted liberally to implement this policy. Exemptions from public disclosure requirements shall be construed narrowly in order to favor the people's right to know.

# EXEMPTION ORGANIZATION – SAMPLE APPROACHES

- I. Catalogue (list exemptions within Public Records Act)
- II. Tag (exemptions outside of Public Records Act required to include specific language)
- III. Regular Review & Legislative Action
- IV. Explicit Criteria for Exemptions
- V. Miscellaneous

# EXEMPTION ORGANIZATION – CATALOGUES

- A. SB 500 (1993) (combined with an attempt to standardize)
- B. SB 41 (2011) (listed and described)
- C. California Gov't Code § 6275 (listed and described)
- D. Louisiana Revised Statutes § 44:4.1 (listed)

# EXEMPTION ORGANIZATION – TAGS

- A. United States Code § 552(b) (must expressly cite FOIA)
- B. Florida Statutes § 119.15(4)(a) (must state record is exempt under Florida public records act and constitution)

# EXEMPTION ORGANIZATION – REGULAR REVIEW

- A. Florida Statutes § 119.15 (5 year sunset for most exemptions)
- B. Kansas Statutes § 45-229 (5 year sunset; some exceptions, including for exemptions extended twice)
- C. Maine Revised Statutes § 432 (pursuant to schedule)
- D. Revised Code of Washington § 42.56.140 (pursuant to schedule)

# EXEMPTION ORGANIZATION – EXPLICIT EXEMPTION CRITERIA

- A. Florida Statutes § 119.15(6)
- B. Kansas Statutes § 45-229(a) & (h)(2)
  - 1. Effectively and efficiently administer government program; administration significantly impaired without exemption.
  - 2. Information of a sensitive personal nature that would be defamatory or jeopardize safety; identifying information only.
  - 3. Confidential information about entities, such as trade secrets.

# EXEMPTION ORGANIZATION – MISCELLANEOUS

- A. Require public body's policy (ORS 192.440(7)) to include and maintain a list of exemptions outside of Chapter 192 that the public body's work frequently implicates.
- B. Immunity for disclosures in good faith – Revised Code of Washington § 42.56.060
- C. Retain evidentiary privileges even after disclosures under Public Records Law.
- D. Other?