

To: Oregon Sunshine Committee Members
From: Michael Kron, Oregon Sunshine Committee Chair
Re: Exemptions to be Reviewed at May 16, 2018 Meeting
Date: April 30, 2018

The focus of our next meeting will be public records exemptions that relate to personal contact information. The attached materials provide a brief summary of those exemptions to aid in your preparation. Note that a few of these exemptions encompass other types of information, such as social security numbers and dates of birth, which we should also be prepared to discuss. For those who are new to Oregon Public Records Law, we have summarized some general guidance and principles below.

Guiding Principles of Oregon Public Records Law

The Oregon Public Records Law, [ORS 192.311 to 192.431](#), provides that every person “has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by [ORS 192.338](#), [192.345](#) and [192.355](#).”¹ In determining whether an exemption to disclosure applies, disclosure is the rule and exemptions from disclosure are narrowly construed.² This requirement reflects “the strong and enduring policy that public records and governmental activities be open to the public.”³

The Court of Appeals has explained that the “‘narrow construction’ rule means that, if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails.”⁴ Moreover, the Court of Appeals emphasized that exemptions must be “expressly” stated in law and that [ORS 192.314\(1\)](#) “forbids giving effect to any implicit and broader meaning of a statutory exemption from disclosure ... than what the statute ‘expressly’ allows.”⁵

General Guidance Regarding the Disclosure of “Personal Contact Information”

For purposes of this review, personal contact information includes an individual’s residential and mailing address(es), personal email address(es) and personal telephone number(s). The issue of whether public bodies must disclose personal contact information is frequently evaluated under the generic “personal privacy” exemption--[ORS 192.355\(2\)](#). That exemption bars the disclosure of “information of a personal nature” if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest in the particular instance requires disclosure by clear and convincing evidence. Oregon Courts and the Attorney General have consistently held that personal contact information is “information of a personal nature,” but that public disclosure of personal contact information is not an unreasonable invasion of privacy *per se*.⁶ In other words, the default rule for personal contact information is that it must be disclosed upon request.

¹ [ORS 192.314\(1\)](#)

² See *Guard Publ'g Co. v. Lane County School Dist.*, 310 Or 32, 39 (1990)

³ *Jordan v. Motor Vehicles Division*, 308 Or 433, 438 (1989)

⁴ *Colby v. Gunson*, 224 Or App 666, 676 (2008)

⁵ *Id.*

⁶ See discussion and citations in *Attorney General’s Public Records and Meetings Manual* at 77-81 (2014)

Exemption Statute and Title: [ORS 165.673](#) Disclosure of results prohibited

Summary: Prohibits law enforcement from releasing lists of telephone Caller ID information obtained pursuant to a court order and (usually) without the knowledge of the parties to the calls. Incorporated into Oregon PRL through [ORS 192.355\(9\)](#) (disclosure prohibited or restricted under Oregon law).

Relevant Text:

No law enforcement agency shall disclose lists of telephone numbers produced by a pen register or trap and trace device except in the performance of a law enforcement function or as otherwise provided by law or order of a court.

Key Terms & Definitions: ([ORS 165.657](#))

“Pen register” means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but does not include ...

“Trap and trace device” means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

Enumerated Exceptions? Yes. Disclosure authorized:

- a. In performance of law enforcement functions
- b. As otherwise provided by law
- c. Order of a court

Cited in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 192.345\(25\)](#) **Public records conditionally exempt from disclosure** (formerly ORS 192.501(25))

Summary: Conditionally exempts the contact information of donors to public universities. Incorporated directly into Oregon PRL.

Relevant Text: The following public records are exempt from disclosure under [ORS 192.311](#) to [192.478](#) unless the public interest requires disclosure in the particular instance:

(25) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to a public university listed in [ORS 352.002](#).

Key Terms & Definitions:

-[ORS 352.002](#) defines public universities as:

- UofO -OSU
- PSU -OIT
- Eastern, Western and Southern Oregon Universities

Enumerated Exceptions or Public Interest Balancing Test? Yes.

Exempt unless the public interest requires disclosure in the particular instance.

Cited in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 192.345\(29\)](#) **Public records conditionally exempt from disclosure** (formerly ORS 192.501(29))

Summary: Conditionally exempts the disclosure of college student email addresses. Incorporated directly into Oregon PRL.

Relevant Text: The following public records are exempt from disclosure under [ORS 192.311](#) to [192.478](#) unless the public interest requires disclosure in the particular instance:

(29) The electronic mail address of a student who attends a public university listed in [ORS 352.002](#) or Oregon Health and Science University.

Key Terms & Definitions:

-[ORS 352.002](#) defines public universities as:

- UofO
- OSU
- PSU
- OIT
- Eastern, Western and Southern Oregon Universities

Enumerated Exceptions or Public Interest Balancing Test? Yes.

Exempt unless the public interest requires disclosure in the particular instance

Cited in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 192.355\(3\)](#) **Public records exempt from disclosure**
(formerly ORS 192.502(3))

Summary: Conditionally exempts certain personally identifiable information of public employees and volunteers contained in personnel records maintained by employing agency. Provides limited disclosure of personal information for elected officials and substitute teachers. Incorporated directly into Oregon PRL.

Relevant Text: The following public records are exempt from disclosure under [ORS 192.311](#) to [192.478](#):

(3) Upon compliance with [ORS 192.363](#), public body employee or volunteer residential addresses, residential telephone numbers, personal cellular telephone numbers, personal electronic mail addresses, driver license numbers, employer-issued identification card numbers, emergency contact information, Social Security numbers, dates of birth and other telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption:

(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or volunteers who are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of [ORS 192.368](#);

(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance pursuant to [ORS 192.363](#);

(c) Does not apply to a substitute teacher as defined in [ORS 342.815](#) when requested by a professional education association of which the substitute teacher may be a member; and

(d) Does not relieve a public employer of any duty under [ORS 243.650](#) to [243.782](#).

Key Terms & Definitions:

-[ORS 192.363](#): this statute requires requests for information covered by [ORS 192.355\(3\)](#) include the names of the individuals for whom the personal information is sought; a statement describing the personal information being sought; and a statement showing by clear and convincing evidence that the public interest requires disclosure in the particular instance. Also requires the public body to forward the request and any supporting materials to any individuals whose information is being sought.

-[ORS 192.368](#): upon request, restricts a public body from disclosing the home address, personal telephone number or email address of an individual if the personal safety of the individual or a family member residing with the individual would be endangered by disclosure.

-[ORS 243.650](#) to [243.782](#): Oregon's collective bargaining statutes.

Enumerated Exceptions or Public Interest Balancing Test? Yes.

-Upon compliance with [ORS 192.363](#), public bodies shall disclose requested information only if the public body determines that the requester has demonstrated by clear and convincing evidence that the public interest requires disclosure in the particular instance. See [ORS 192.355\(3\)\(b\)](#) and [192.363\(6\)](#).

Cited in Court Cases, AG Opinions and/or Public Records Orders? Yes.

-[PRO Brosseau \(5/5/15\)](#) (the dates of birth of public employees are not exempt under [ORS 192.355\(3\)](#) when requested from a public body that is not the employing agency; disclosure of dates of birth also not an unreasonable invasion of privacy under [ORS 192.355\(2\)](#)).

Exemption Statute and Title: [ORS 192.355\(12\)](#) Public records exempt from disclosure (formerly ORS 192.502(12))

Summary: Expressly exempts the disclosure of *employee and retiree* contact information and other nonfinancial membership, as well as *employee* financial records maintained by PERS. Incorporated directly into Oregon PRL.

Relevant Text: The following public records are exempt from disclosure under [ORS 192.311](#) to [192.478](#):

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapters [238](#) and [238A](#).

Key Terms & Definitions:

-[Chapter 238](#) governs the PERS program.

-[Chapter 238A](#) governs the Oregon Public Service Retirement Plan.

-Nonfinancial membership records: “Information that concerns a member in the member’s individual capacity and not the member’s capacity as a current or former public employee, that must ultimately be kept up-to-date by the member and not the employer, or that is unnecessary to calculate the benefits payable on an account, but is necessary to properly manage the account for the member’s benefit.” [PRO Hinkle](#) (10/1/10)

Enumerated Exceptions or Public Interest Balancing Test? No.

Cited in Court Cases, AG Opinions and/or Public Records Orders? Yes.

-[PRO Noah](#) (6/27/14) (information about the location of a PERS employee is exempt from disclosure as “nonfinancial membership records,” e.g., county)

-[PRO Hinkle](#) (10/1/10) (a PERS retiree’s retirement date, employer, years of service and job classification are not exempt as “nonfinancial membership records;” [ORS 109.355\(12\)](#) does not require a showing that the disclosure of nonfinancial information would be an unreasonable invasion of privacy)

-[PRO Re](#) (10/20/09) (the name of a PERS employee is not exempt from disclosure as “nonfinancial” information)

Exemption Statute and Title: [ORS 192.335\(29\)](#) **Public records exempt from disclosure**
(formerly ORS 192.502(29))

Summary: Expressly exempts the disclosure of employee addresses submitted to mass transit, transportation and metropolitan service districts so that the districts can contact employees about using alternative transportation. The exemption does not apply to zip codes. Incorporated directly into Oregon PRL.

Relevant Text: The following public records are exempt from disclosure under [ORS 192.311](#) to [192.478](#):

(29) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

Key Terms & Definitions:

-Employee: employees of public bodies

Enumerated Exceptions or Public Interest Balancing Test? No.

Cited in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 192.355\(40\)](#) **Public records exempt from disclosure**
(formerly ORS 192.502(40))

Summary: Expressly exempts the disclosure of personal email addresses in the possession of most public bodies. Provides a limited exception for the release of personal emails to campaign offices for newsletter distribution. Does not apply to email addresses assigned by public bodies. Incorporated directly into Oregon PRL.

Relevant Text: The following public records are exempt from disclosure under [ORS 192.311](#) to [192.478](#):

(40)(a) Electronic mail addresses in the possession or custody of an agency or subdivision of the executive department, as defined in [ORS 174.112](#), the legislative department, as defined in [ORS 174.114](#), a local government or local service district, as defined in [ORS 174.116](#), or a special government body, as defined in [ORS 174.117](#).

(b) This subsection does not apply to electronic mail addresses assigned by a public body to public employees for use by the employees in the ordinary course of their employment.

(c) This subsection and [ORS 244.040](#) do not prohibit the campaign office of the current officeholder or current candidates who have filed to run for that elective office from receiving upon request the electronic mail addresses used by the current officeholder's legislative office for newsletter distribution, except that a campaign office that receives electronic mail addresses under this paragraph may not make a further disclosure of those electronic mail addresses to any other person.

Key Terms & Definitions:

-Special Government Body: examples include public corporations, school districts, education service districts, community college and education service districts, intergovernmental bodies, and any other entity created by statute, ordinance or resolution that is not part of state or local government. (*See* [ORS 174.117](#))

-[ORS 244.040](#) details the prohibited uses of a public officials position or office.

Enumerated Exceptions or Public Interest Balancing Test? No.

Cited in Court Cases, AG Opinions and/or Public Records Orders? Yes.

-[PRO Simmons](#) (7/13/16) (applying the AG guidance below to conclude that redacting email addresses from responsive records was appropriate where the requester specifically sought email addresses)

“Although on its face [ORS 192.355(40)] seemingly applies to any e-mail address, the legislative history strongly suggests that the intent was to enable public bodies to refuse requests for e-mail lists that would then be used to send unsolicited group emails or spam. A public body applying the exemption literally to redact email addresses that simply appear within e-mail correspondence would be applying the exemption in a manner not contemplated by the legislature. Our advice to state agencies is to assert this exemption only when it appears that the purpose of the request is to acquire e-mail addresses.” *Attorney General’s Public Records and Meetings Manual* at 116 (2014)

Exemption Statute and Title: [ORS 192.365](#) Disclosure of information pertaining to home care worker, operator of child care facility, exempt child care provider or operator of adult foster home (formerly ORS 192.435)

Summary: Expressly exempts from disclosure certain contact and personally identifiable information of home care, child care, and adult foster care providers and facility operators. Incorporated directly into Oregon PRL.

Relevant Text:

(1) Upon compliance with [ORS 192.363](#), a public body that is the custodian of or is otherwise in possession of the following information pertaining to a home care worker as defined in [ORS 410.600](#), an operator of a child care facility as defined in [ORS 329A.250](#), an exempt family child care provider as defined in [ORS 329A.430](#) or an operator of an adult foster home as defined in [ORS 443.705](#) shall disclose that information in response to a request to inspect public records under [ORS 192.311](#) to [192.478](#):

- (a) Residential address and telephone numbers;
- (b) Personal electronic mail addresses and personal cellular telephone numbers;
- (c) Social Security numbers and employer-issued identification card numbers;
- and
- (d) Emergency contact information.

(2) Subsection (1) of this section does not apply to the Judicial Department or the Department of Transportation or to any records in the custody of the Judicial Department or the Department of Transportation.

Key Terms & Definitions:

-[ORS 192.363](#): this statute requires requests for information covered by [ORS 192.365](#) include the names of the individuals for whom the personal information is sought; a statement describing the personal information being sought; and a statement showing by clear and convincing evidence that the public interest requires disclosure in the particular instance. Also requires the public body to forward the request and any supporting materials to any individuals whose information is being sought.

Enumerated Exceptions or Public Interest Balancing Test? Yes.

-Upon compliance with [ORS 192.363](#), public bodies shall disclose requested information only if the public body determines that the requester has demonstrated by clear and convincing evidence that the public interest requires disclosure in the particular instance. *See* [192.363\(6\)](#).

-Does not apply to the Judicial Department or to the Department of Transportation.

Cited in Court Cases, AG Opinions and/or Public Records Orders? Yes.

-[PRO Gibson](#) (2/2/16) (requester's stated purpose for requesting home care worker's personal information did not constitute clear and convincing evidence that the public interest required disclosure)

-[PRO Gibson](#) (11/19/15) ([ORS 192.365](#) does not exempt personal information that is not enumerated in the law, such as the names of child care providers)

Exemption Statute and Title: [ORS 403.135\(2\)](#) **When blocking of information prohibited**
(formerly ORS 401.765)

Summary: Conditionally exempts from disclosure the Caller ID information collected by 9-1-1 emergency operators. Unless otherwise exempt under Oregon Public Records Law, telephone numbers may be disclosed as part of an official report. Unlisted numbers may not be disclosed under any circumstances without permission from the subscriber. Incorporated into Oregon PRL through [ORS 192.355\(9\)](#) (disclosure prohibited or restricted under Oregon law).

Relevant Text:

(2) Automatic number identifications received by public safety answering points are confidential and are not subject to public disclosure unless and until an official report is written by the public or private safety agency and that agency does not withhold the telephone number under [ORS 192.311](#) to [192.478](#) or other state and federal laws. The official report of a public safety answering point may not include nonpublished or nonlisted telephone numbers. The official report of a public or private safety agency may not include nonpublished or nonlisted telephone numbers. Nonpublished or nonlisted telephone numbers are not otherwise subject to public disclosure without the permission of the subscriber.

Key Terms & Definitions:

-Automatic number identification: a component or capability of the emergency communications system that provides automatic display in the designated public safety answering point of a telephone number associated with the access line from which an incoming emergency call originates. [ORS 403.105\(3\)](#)

-Public safety answering point: a communications facility established as an answering location for emergency calls originating within a 9-1-1 service area. [ORS 403.105\(21\)](#)

Enumerated Exceptions or Public Interest Balancing Test? Yes.

-Listed telephone numbers may be released as part of an official report, if not otherwise exempt under Oregon Public Records Law.

Citations in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 403.135\(5\)](#) When blocking of information prohibited (formerly ORS 401.765)

Summary: Expressly exempts from disclosure subscriber information maintained by 9-1-1 jurisdictions for the purpose of providing emergency services. Specifies the circumstances under which other public agencies may use such information. Incorporated into Oregon PRL through [ORS 192.355\(9\)](#) (disclosure prohibited or restricted under Oregon law).

Relevant Text:

(5) Subscriber information acquired by a 9-1-1 jurisdiction for the purpose of providing emergency communications services under [ORS 403.105](#) to [403.250](#) is not subject to public disclosure and may not be used by other public agencies except:

- (a) To respond to an emergency call;
- (b) To respond to an emergency situation that involves the risk of death or serious physical harm to an individual, as provided in [ORS 403.132](#); or
- (c) To notify the public of an emergency by utilizing an automated notification system if a provider has provided subscriber information to the 9-1-1 jurisdiction or emergency services provider.

Key Terms & Definitions:

-[ORS 403.105 to 403.250](#) relates to the Emergency Telecommunications System and the Tax for Emergency Communications

-[ORS 403.132](#) governs the provision of the location of a cellular device to law enforcement when the device is used to place an emergency call, or is reasonably believed to be in the possession of an individual law enforcement reasonably believes is in an emergency situation involving the risk of death or serious physical harm

Enumerated Exceptions or Public Interest Balancing Test? No.

Citations in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 646.574\(3\)-\(4\)](#) List of persons who do not wish to receive telephone solicitations

Summary: Conditionally exempts the disclosure of certain information provided by individuals who participate in “do not call” registries. Defines who may receive such information and under what circumstances they may receive it. Incorporated into Oregon PRL through [ORS 192.355\(9\)](#) (disclosure prohibited or restricted under Oregon law).

Relevant Text:

(1) If the Attorney General enters into a contract pursuant to [ORS 646.572\(1\)\(a\)](#), the administrator of the telephone solicitation program shall create, maintain and distribute a database containing a list of telephone numbers of parties who do not wish to receive any telephone solicitation at the listed numbers

(3) Information about a party is confidential. The Attorney General may not disclose information about a party.

(4) The administrator may not furnish the list or disclose any information about a party to any person, except as follows:

(a) Upon request of a person engaging or intending to engage in telephone solicitations and after payment of the fees in the amounts specified in the contract between the administrator and the Attorney General, the administrator shall furnish to the person:

(A) The most recent copy of the list described in subsection (1) of this section.

(B) The names of the parties whose telephone numbers are on the list.

(b) Upon request of a qualified trade association and after payment of the fees in the amounts specified in the contract between the administrator and the Attorney General, the administrator shall furnish to the qualified trade association:

(A) The most recent copy of the list described in subsection (1) of this section.

(B) The names of the parties whose telephone numbers are on the list.

(c) A qualified trade association that receives a list or the names of the parties whose telephone numbers are on the list under this subsection may make the

list or the names available to its members on any terms the association and its members may impose.

(d) Upon request of the Attorney General for the purpose of enforcing [ORS 646.569](#) the administrator shall furnish the Attorney General with all requested information about a party or any person who the Attorney General believes has engaged in a solicitation prohibited by [ORS 646.569](#). The administrator may not charge a fee for furnishing the information to the Attorney General.

(e) Upon request of any party who has filed a notice and paid the fee as provided in subsection (2) of this section, the administrator shall furnish the party with all requested information about the party or any person who the party believes has engaged in a solicitation prohibited by [ORS 646.569](#). The administrator may not charge a fee for furnishing the information to the party.

(f) The administrator shall comply with any lawful subpoena or court order directing disclosure of the list and of any other information.

(g) The administrator shall provide all information that may be requested by any successor administrator who may be selected by the Attorney General. The administrator may not charge a fee for furnishing the information to the successor administrator.

Key Terms & Definitions:

-Information about a party: information specific to a party, including but not limited to the name and address of the party and the method by which the party paid the fee required by [ORS 646.574](#). [ORS 646.567\(2\)](#)

-Party: a telephone customer of a telecommunications company. [ORS 646.567\(3\)](#)

-[ORS 646.569](#) generally prohibits a person from engaging in telephone solicitations of parties on the “do not call” list established under [ORS 646.572](#).

-[ORS 646.572](#) directs the Attorney General to either contract for an Oregon “do not call” registry, or to designate the federal “do not call” registry in lieu of an Oregon registry.

Enumerated Exceptions or Public Interest Balancing Test? Yes.

-Enumerated exceptions at the request of persons engaging or intending to engage in telephone solicitations, qualified trade associations, the Attorney General, a party, and pursuant to court orders.

Citations in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 676.405\(2\)](#) Release of personal information

Summary: Grants discretion to various health professional regulatory authorities to disclose or withhold certain personal information for persons licensed, registered or certified by such authorities. Incorporated into Oregon PRL through [ORS 192.355\(9\)](#) (disclosure prohibited or restricted under Oregon law).

Relevant Text:

(2) Notwithstanding [ORS 192.311](#) to [192.478](#), a health professional regulatory board may, at its discretion, release or withhold the personal electronic mail address, home address and personal telephone number for a person licensed, registered or certified by the board. If the personal electronic mail address, home address or personal telephone number is requested for a public health or state health planning purpose, the board shall release the information.

Key Terms & Definitions:

-Health professional regulatory board: the agencies listed in [ORS 676.160](#) and the Health Licensing Office created in [ORS 676.560](#).

-[ORS 676.160](#) defines the following as a health regulatory board:

- (1) State Board of Examiners for Speech-Language Pathology and Audiology;
- (2) State Board of Chiropractic Examiners;
- (3) State Board of Licensed Social Workers;
- (4) Oregon Board of Licensed Professional Counselors and Therapists;
- (5) Oregon Board of Dentistry;
- (6) State Board of Massage Therapists;
- (7) State Mortuary and Cemetery Board;
- (8) Oregon Board of Naturopathic Medicine;
- (9) Oregon State Board of Nursing;
- (10) Oregon Board of Optometry;
- (11) State Board of Pharmacy;
- (12) Oregon Medical Board;
- (13) Occupational Therapy Licensing Board;
- (14) Physical Therapist Licensing Board;
- (15) Oregon Board of Psychology;
- (16) Board of Medical Imaging;
- (17) Oregon State Veterinary Medical Examining Board; and
- (18) Oregon Health Authority, to the extent that the authority licenses emergency medical services providers

Enumerated Exceptions or Public Interest Balancing Test? No.

Cited in Court Cases, AG Opinions and/or Public Records Orders? No.