

Attorney General Ellen F. Rosenblum



ATTORNEY GENERAL'S MODEL POLICIES REGARDING IMMIGRATION

Introduction

These recommended policies are issued by the Attorney General pursuant to House Bill 3464 (2017) to help public bodies in Oregon understand state and federal laws governing federal immigration enforcement activities. The goal is to provide practical guidance that complies with applicable laws. However, we strongly encourage public bodies to consult with their legal counsel before adopting any new policies. Given the complex relationship between the enforcement of federal immigration laws and state criminal laws, these policies are not intended for use by law enforcement (including police, sheriffs, and correctional institutions).

Eight model policies are below. (The first and second are two versions of the same policy, as are the fifth and sixth.) The policies are intended for a variety of public bodies. In general, these policies address questions about collecting and maintaining information about citizenship and immigration status; sharing information with federal immigration authorities; practices for documenting encounters with federal immigration enforcement authorities; accessing the facility of a public body; addressing educational records; and addressing patient records.

A glossary of terms can be found after the policies. Many terms in these policies are underlined. Underlined terms are defined in the glossary. Public bodies may want to consider including relevant definitions from the glossary into the particular policies that they choose to adopt.

In addition, we encourage public bodies to designate a point person within the agency to answer internal questions about the policies. The policies have been drafted on the assumption that public bodies will do so.

Two of the policies below appear in two slightly different forms. The first and second policies are different versions of the policy regarding collection and maintenance of information. The fifth and sixth policies are different versions of the policy regarding access to facilities. A public body will need to evaluate its operations and decide which option applies to it. Specifically:

- The first and second model policies deal with information collection and retention. Unless a public body administers a benefit where eligibility turns on citizenship or immigration status, it should only consider the first policy. A public body should consider adopting the second policy only if it administers one or more benefits that depend on citizenship or immigration status. An Oregon Driver License is an example of a benefit that depends on citizenship or immigration status.
- The fifth and sixth model policies govern access to facilities. Unless a public body has control over facilities that are open to the public, but require members of the public to undergo security screening, it should only consider the fifth policy. A public body should consider adopting the sixth policy only if it controls areas that the public can only access after security screening.

Brackets in the model policies call attention to specific information that a public body will need to fill in based on its operations. Some examples include:

- The name of the public body;
- Any benefits administered by the public body that require it to collect information, and the nature of the information the public body must collect;
- Other policies of the public body governing access to specified information (such as student records or patient records).

These brackets reflect the reality that some information necessary to adopt these policies will vary. Hopefully it is clear how the various policies should be used.

If a public body has questions, it can direct them to the Attorney General's office via ImmigrationPolicies@doj.state.or.us. For efficiency, we ask that any questions be collected within a public body and delivered by a single person if possible. While the Oregon Department of Justice can only act as the legal counsel for state agencies, the Attorney General's office is available to answer general questions about these model policies.

Collecting and Maintaining Citizenship or Immigration Status Information

Purpose

This policy explains:

- The limited circumstances under which employees and agents of [PUBLIC BODY] may ask a person for their citizenship or immigration status information; and
- The rules governing the retention and destruction of citizenship or immigration status information.

Who Should Understand This Policy

Any person who regularly interacts with members of the public should understand this policy, particularly if that interaction involves collecting information from members of the public. [PUBLIC BODY] has designated [NAME OR POSITION TITLE] as a resource for employees who may have questions about this policy.

Policy Summary

Employees and agents of [PUBLIC BODY] shall not ask a person for their citizenship or immigration status information. **Exception:** employees or agents may ask for citizenship or immigration status information if a law requires [PUBLIC BODY] to ask.

Citizenship or immigration status information that is collected under this policy is subject to retention schedules governing the particular program for which the information is collected. If an employee or agent of [PUBLIC BODY] comes into possession of citizenship or immigration status information that is not necessary for any official purpose, the information does **not** need to be documented or retained.

Policy

Oregon law prohibits asking a person about their citizenship or immigration status information, “[e]xcept as required by state or federal law, or as necessary to determine eligibility for a benefit a person is seeking.”

Citizenship or immigration status information is information concerning:

- Whether a person is a citizen of the United States; or
- Whether a person has lawful authority to be present in the United States.

When [PUBLIC BODY] collects information to use in its business, the retention of that information is governed by schedules adopted pursuant to ORS 192.018, 192.105 and 192.108. Citizenship or immigration status information that is collected pursuant to this policy is subject to the same retention requirements that govern the records of the program for which the information is collected. [PUBLIC BODY]’s public records retention schedules can be found [EXPLAIN WHERE PUBLIC BODY’S RETENTION SCHEDULES CAN BE FOUND]. Information that is not needed for any official purpose of a public body is not a matter of public record, and need not be documented or retained. ORS 192.005(5).

There are two circumstances in which employees and agents of [PUBLIC BODY] may need to ask a person for their citizenship or immigration status information:

- [PUBLIC BODY] is required by state or federal law to request the information; or
- The information is necessary to evaluate a person's eligibility for a benefit the person is seeking.

Otherwise, asking about citizenship or immigration status information violates state law.

[PUBLIC BODY] does not administer any benefits for which eligibility is based on citizenship or immigration status. But PUBLIC BODY is legally required to ask for citizenship or immigration status information under the following circumstances:

- To verify employees' employment eligibility;
- [LIST OTHER LAWS SPECIFIC TO AGENCY THAT REQUIRE ASKING ABOUT CITIZENSHIP OR IMMIGRATION STATUS. FOR EXAMPLE, MEDICAID ADMINISTRATION, DRIVER LICENSE ISSUANCE, ETC.]

To meet these requirements, employees and agents of [PUBLIC BODY] must collect the following citizenship or immigration status information:

- [SPECIFY INFORMATION THAT MUST BE COLLECTED IN EACH CONTEXT]

Collecting and Maintaining Citizenship or Immigration Status Information

[FOR PUBLIC BODIES THAT ADMINISTER PROGRAMS OR OFFER BENEFITS DEPENDING ON CITIZENSHIP AND IMMIGRATION STATUS]

Purpose

This policy explains:

- The limited circumstances under which employees and agents of [PUBLIC BODY] may ask a person for their citizenship or immigration status information; and
- The rules governing the retention and destruction of citizenship or immigration status information.

Who Should Understand This Policy

Any person who regularly interacts with members of the public should understand this policy, particularly if that interaction involves collecting information from members of the public. [PUBLIC BODY] has designated [NAME OR POSITION TITLE] as a resource for employees who may have questions about this policy.

Policy Summary

Employees and agents of [PUBLIC BODY] shall not ask a person for their citizenship or immigration status information. **Exception:** employees or agents may ask for citizenship or immigration status information if a law requires [PUBLIC BODY] to ask, or the information is needed to evaluate the person's eligibility for a benefit the person is seeking.

Citizenship or immigration status information that is collected under this policy is subject to retention schedules governing the particular program for which the information is collected. If an employee or agent of [PUBLIC BODY] comes into possession of citizenship or immigration status information that is not necessary for any official purpose, the information does not need to be documented or retained.

Policy

Oregon law prohibits asking a person about their citizenship or immigration status information, “[e]xcept as required by state or federal law, or as necessary to determine eligibility for a benefit a person is seeking.”

Citizenship or immigration status information is information concerning:

- Whether a person is a citizen of the United States; or
- Whether a person has lawful authority to be present in the United States.

When [PUBLIC BODY] collects information to use in its business, the retention of that information is governed by schedules adopted pursuant to ORS 192.018, 192.105 and 192.108. Citizenship or immigration status information that is collected pursuant to this policy is subject to the same retention requirements that govern the records of the program for which the information is collected. [PUBLIC BODY]'s public records retention schedules can be found [EXPLAIN WHERE PUBLIC BODY'S RETENTION SCHEDULES CAN BE FOUND]. Information that is not needed for any official purpose of a public body is not a matter of public record, and need not be documented or retained. ORS 192.005(5).

There are two circumstances in which employees and agents of [PUBLIC BODY] may need to ask a person for their citizenship or immigration status information:

- [PUBLIC BODY] is required by state or federal law to request the information; or
- The information is necessary to evaluate a person's eligibility for a benefit the person is seeking.

Otherwise, asking about citizenship or immigration status information violates state law.

a. Legal Requirements

[PUBLIC BODY] is legally required to ask for citizenship or immigration status information under the following circumstances:

- To verify employees' employment eligibility;
- [LIST OTHER LAWS SPECIFIC TO AGENCY REQUIRING INQUIRY ABOUT CITIZENSHIP OR IMMIGRATION STATUS. FOR EXAMPLE, MEDICAID ADMINISTRATION, DRIVER LICENSE ISSUANCE, ETC.]

b. Determination of Eligibility for Benefit

In order to determine eligibility for the following benefits administered by [PUBLIC BODY], [PUBLIC BODY] must ask for citizenship or immigration status information:

- [LIST BENEFITS ADMINISTERED BY PUBLIC BODY THAT REQUIRE CITIZENSHIP OR IMMIGRATION STATUS INFORMATION TO DETERMINE ELIGIBILITY.]

c. Information Collected

In order to comply with relevant laws and properly administer the benefits described above, employees and agents of [PUBLIC BODY] must collect the following citizenship or immigration status information:

- [SPECIFY INFORMATION THAT MUST BE COLLECTED IN EACH CONTEXT]

Sharing Information with Federal Immigration Authorities

Purpose

This policy explains:

- What information generally cannot be shared with federal immigration enforcement authorities;
- The circumstances in which information must be shared with federal immigration enforcement authorities; and

Who Should Understand This Policy

Anyone who can reasonably expect to encounter federal immigration enforcement authorities, or who may come into possession of any person's citizenship or immigration status information, should be familiar with this policy, and should consult with it as necessary when issues governed by the policy arise. [PUBLIC BODY] has designated [NAME OR POSITION TITLE] as a resource for employees who may have questions about this policy.

Policy Summary

Employees and agents of [PUBLIC BODY] may not disclose protected information to federal immigration enforcement authorities. **Exception:** protected information must be disclosed if disclosure is required by a judicial order or otherwise required by state or federal law.

Employees and agents of [PUBLIC BODY] are not required to disclose citizenship or immigration status information about any person. **Exception:** citizenship or immigration status information must be disclosed if required by a judicial order or otherwise required by state or federal law.

Policy Explanation

1. Limited Disclosure of Protected Information

Oregon law generally prohibits sharing the following protected information about a person with federal immigration enforcement authorities:

- Address;
- Workplace or hours of work;
- School or school hours;
- Contact information, including telephone number, electronic mail address or social media account information;
- Known associates or relatives; and
- Date, time or location of the person's hearings, proceedings or appointments with the public body that are not matters of public record.

The same information about a person's relatives or known associates likewise cannot be shared. This information is referred to as protected information throughout this policy.

In general, federal immigration enforcement authorities are agents of the Enforcement and Removal Operations (ERO) section of the Immigration and Customs Enforcement division (ICE), which is housed in the Department of Homeland Security (DHS). However, any federal officer who is clearly seeking to identify or locate one or more individuals for the sole purpose of pursuing possible removal proceedings is also a federal immigration enforcement authority.

Subject to the exceptions described in this policy, protected information may not be shared with federal immigration enforcement authorities, or in any manner that is intended to ultimately result in the disclosure of the information to those authorities. There may be reasons outside of this policy why protected information should not be disclosed to persons who are not federal immigration authorities.

Protected information must be disclosed to federal immigration enforcement authorities when a state or federal law expressly requires disclosure. This exception covers disclosure that is required by a judicial order as well as any other disclosure expressly required by a state or federal law.

a. Judicial order

Protected information must be disclosed in the event of a judicial order that directs a public body to provide the information. A warrant is a common type of judicial order.

Many forms used by ICE look very official, but an ICE form is not a judicial order. A judicial order will have the following features:

- A caption, near the top of the document, identifying the court that issued the order (typically the federal district court for the District of Oregon); and
- A signature block, near the end of the document, including the name of the person who signed the order, and identifying that individual as a judge, magistrate, clerk of court, or other person signing on behalf of a judge or magistrate.

By contrast, an ICE form will identify ICE (or DHS) as the issuer of the document. And the signature block on an ICE form should not identify the person who signed as a judge or magistrate. If you are presented with a document and are unsure whether it is a judicial order, consult your supervisor [or OTHER PERSON DESIGNATED BY POLICY].

b. Other Legal Requirements

[DESCRIBE OTHER LAWS REQUIRING THE PUBLIC BODY TO SHARE PROTECTED INFORMATION, FOR EXAMPLE, IF THE PUBLIC BODY HAS AGREED TO SHARE INFORMATION WITH IMMIGRATION AUTHORITIES AS A CONDITION OF A GRANT.]

2. **Authority to Withhold Citizenship or Immigration Status Information**

Oregon law allows [PUBLIC BODY] to decline to disclose citizenship or immigration status information except as required by a judicial order, or as required by state or federal law.

However, [PUBLIC BODY]'s employees and agents must disclose citizenship or immigration status information if a judicial order, or if some other state or federal law, requires the disclosure.

Citizenship or immigration status information is any information concerning:

- Whether a person is a citizen of the United States; or
- Whether a person has lawful authority to be present in the United States.

This policy does not authorize [PUBLIC BODY] to refuse to disclose citizenship or immigration status information to the individual that the information is about, or to that individual's legal guardian. It does not authorize [PUBLIC BODY] to refuse to disclose information that is not individually identifiable.

Contact with Federal Immigration Enforcement Authorities

Purpose

This policy explains what employees should do if, in the course of their work, they encounter federal officials enforcing federal immigration law.

Who Should Understand This Policy

All employees and agents must be aware of this policy and should consult with it as necessary if they encounter federal immigration enforcement authorities. [PUBLIC BODY] has designated [NAME OR POSITION TITLE] as a resource for employees who may have questions about this policy.

Policy Summary

All interactions with federal immigration enforcement authorities should be orderly and documented. Employees and agents of [PUBLIC BODY] should attempt to verify the identities of federal immigration enforcement authorities, ask about the purpose of the interaction, and ascertain whether a judicial order authorizes the federal officials to access any area under [PUBLIC BODY]'s control that is not open to the public. Employees and agents of [PUBLIC BODY] should consult with a supervisor if they are uncomfortable about any part of an interaction with federal immigration enforcement authorities. Interactions with federal immigration enforcement authorities should be documented and reported.

Policy Explanation

An encounter with federal immigration enforcement authorities while at work is unusual. [PUBLIC BODY] is not tasked with enforcing federal immigration law. Federal immigration enforcement authorities do not have unfettered authority to access [PUBLIC BODY]'s facilities. These steps will help ensure such interactions are handled appropriately:

- Ask federal immigration enforcement authorities to identify themselves.
- Request to copy or photograph identifying credentials, at least with respect to the official who appears to be in charge.
- Ask about the purpose of the encounter.
- If access to areas not accessible to the public is requested, inquire whether the access has been authorized by a judicial order. If so, request to copy or photograph the order before granting access.
- If the encounter is in any way uncomfortable, ask the federal officials to wait. Consult with a supervisor or with an attorney.
- Document the encounter in detail, including time and date, duration, what was requested, what was done by whom, and how the encounter concluded. Provide the documentation to your supervisor.

Federal Immigration Enforcement Authorities' Access to Facilities

Purpose

This policy explains the extent to which [PUBLIC BODY]'s employees and agents should allow federal immigration enforcement authorities to access facilities controlled by [PUBLIC BODY].

Who Should Understand This Policy

Employees and agents who are in a position to allow or prevent access to any [PUBLIC BODY] facility must know and understand this policy. [PUBLIC BODY] has designated [NAME OR POSITION TITLE] as a resource for employees who may have questions about this policy.

Policy Summary

Absent a judicial order or emergency, employees and agents of [PUBLIC BODY] shall give federal immigration enforcement authorities no greater access to facilities operated by [PUBLIC BODY] than members of the general public.

Policy Explanation

A warrant or other judicial order can authorize federal immigration enforcement authorities to access property that is not generally open to the public. In addition, law enforcement authorities generally may enter property as justified by an emergency. Otherwise, law enforcement officers rely on consent to enter property that is not generally open to the public.

[PUBLIC BODY] does not consent to federal immigration enforcement authorities entering areas of [PUBLIC BODY]'s facilities that are not generally open to the public for purposes of enforcing federal immigration law. Employees and agents of [PUBLIC BODY] are not authorized to grant such consent. Consequently, employees and agents of [PUBLIC BODY] are not required to allow federal immigration enforcement authorities access to those areas, unless presented with a warrant or other judicial order that grants access.

Many forms used by the federal ICE look very official, but an ICE form is not a judicial order. A judicial order will have the following features:

- A caption, near the top of the document, identifying the court that issued the order (typically the federal district court for the District of Oregon); and
- A signature block, near the end of the document, including the name of the person who signed the order, and identifying that individual as a judge, magistrate, clerk of court, or other person signing on behalf of a judge or magistrate.

By contrast, an ICE form will identify ICE (or DHS) as the issuer of the document. And the signature block on an ICE form should not identify the person who signed as a judge or magistrate. If you are presented with a document and are unsure whether it is a judicial order, consult your supervisor [or OTHER PERSON DESIGNATED BY POLICY].

Employees and agents of [PUBLIC BODY] should not attempt to impede federal immigration enforcement authorities claiming an emergency justification for entering non-public areas of [PUBLIC BODY]'s facilities. Any such occurrence must be reported to a supervisor so that [PUBLIC BODY] may consider an appropriate response.

Federal Immigration Enforcement Authorities' Access to Facilities

[FOR PUBLIC BODIES WITH AREAS THAT THE PUBLIC CAN ACCESS ONLY AFTER SECURITY SCREENING]

Purpose

This policy explains the extent to which [PUBLIC BODY]'s employees and agents should allow federal immigration enforcement authorities to access facilities controlled by [PUBLIC BODY].

Who Should Understand This Policy

Employees and agents who are in a position to allow or prevent access to any [PUBLIC BODY] facility must know and understand this policy. [PUBLIC BODY] has designated [NAME OR POSITION TITLE] as a resource for employees who may have questions about this policy.

Policy Summary

Absent a judicial order or emergency, employees and agents of [PUBLIC BODY] shall give federal immigration enforcement authorities no greater access to facilities operated by [PUBLIC BODY] than members of the general public. However, employees and agents of [PUBLIC BODY] need not subject federal immigration enforcement authorities to security screening procedures. Federal immigration enforcement authorities with appropriate identification may bypass security screening to the same extent as other federal law enforcement agents.

Policy Explanation

A warrant or other judicial order can authorize federal immigration enforcement authorities to access property that is not generally open to the public. In addition, law enforcement authorities generally may enter property as justified by an emergency. Otherwise, law enforcement officers rely on consent to enter property that is not generally open to the public.

[PUBLIC BODY] does not consent to federal immigration enforcement authorities entering areas of [PUBLIC BODY]'s facilities that are not generally open to the public for purposes of enforcing federal immigration law. Employees and agents of [PUBLIC BODY] are not authorized to grant such consent. Consequently, employees and agents of [PUBLIC BODY] are not required to allow federal immigration enforcement authorities access to those areas, unless presented with a warrant or other judicial order that grants access.

Many forms used by the federal ICE look very official, but an ICE form is not a judicial order. A judicial order will have the following features:

- A caption, near the top of the document, identifying the court that issued the order (typically the federal district court for the District of Oregon); and
- A signature block, near the end of the document, including the name of the person who signed the order, and identifying that individual as a judge, magistrate, clerk of court, or other person signing on behalf of a judge or magistrate.

By contrast, an ICE form will identify ICE (or DHS) as the issuer of the document. And the signature block on an ICE form should not identify the person who signed as a judge or magistrate. If you are presented with a document and are unsure whether it is a judicial order, consult your supervisor [or OTHER PERSON DESIGNATED BY POLICY].

Employees and agents of [PUBLIC BODY] should not attempt to impede federal immigration enforcement authorities claiming an emergency justification for entering non-public areas of [PUBLIC BODY]'s facilities. Any such occurrence must be reported to a supervisor so that [PUBLIC BODY] may consider an appropriate response.

Members of the general public are subjected to security screening before accessing particular areas under the control of [PUBLIC BODY]. [PUBLIC BODY]'s employees and agents need not subject federal immigration enforcement authorities with proper identification to those security screening procedures. They may access publicly accessible secured areas in the same manner as other federal law enforcement officials with proper identification.

Federal Immigration Authority Access to Student Records

Purpose

This policy explains the extent to which [PUBLIC BODY]'s employees and agents should allow federal immigration enforcement authorities access to student records under the control of [PUBLIC BODY]. The policy also explains what records are subject to this policy.

Who Should Understand This Policy

All employees must be familiar enough with this policy to know whether they may be in a position to grant access to records covered by the policy. Employees who may be in a position to grant access to student records must know and understand the policy. [PUBLIC BODY] has designated [NAME OR POSITION TITLE] as a resource for employees who may have questions about this policy.

Policy Summary

[PUBLIC BODY] complies with federal and state laws governing the confidentiality of student records. Student records, and information from them, shall not be disclosed to federal immigration enforcement authorities except as authorized by [PUBLIC BODY]'s policies governing student records ([CITE TO EXISTING STUDENT RECORD POLICY]).

Policy Explanation

Federal and state laws make student records confidential and permit their disclosure only in limited circumstances. [PUBLIC BODY]'s policy with respect to student records can be found [CITE TO EXISTING STUDENT RECORD POLICY]. To assure compliance with applicable federal and state law, [PUBLIC BODY]'s agents and employees shall not disclose student records, or information from those records, to federal immigration enforcement authorities except as allowed by those policies.

Federal Immigration Authority Access to Patient Records

Purpose

This policy explains the extent to which [PUBLIC BODY]'s employees and agents should allow federal immigration enforcement authorities access to patient records controlled by [PUBLIC BODY]. The policy also explains what records are subject to this policy.

Who Should Understand This Policy

All employees must be familiar enough with this policy to know whether they may be in a position to grant access to records covered by the policy. Employees who may be in a position to grant access to patient records must know and understand the policy. [PUBLIC BODY] has designated [NAME OR POSITION TITLE] as a resource for employees who may have questions about this policy.

Policy Summary

[PUBLIC BODY] complies with federal and state laws governing the confidentiality of patient records. Patient records, and information from them, shall not be disclosed to federal immigration enforcement authorities except as authorized by [PUBLIC BODY]'s policies governing patient records ([CITE TO EXISTING PATIENT RECORD POLICIES]).

Policy Explanation

Federal and state laws make patient records confidential and permit their disclosure only in limited circumstances. [PUBLIC BODY]'s policy with respect to patient records can be found [CITE TO EXISTING PATIENT RECORD POLICIES].

To assure compliance with applicable federal and state law, [PUBLIC BODY]'s agents and employees shall not disclose patient records, or information from those records, to federal immigration enforcement authorities except as allowed by those policies.

GLOSSARY OF TERMS

Citizenship or immigration status information is any information concerning:

- Whether a person is a citizen of the United States; or
- Whether a person has lawful authority to be present in the United States.

Federal immigration enforcement authorities are:

(1) Agents of the Enforcement and Removal Operations (ERO) section of the Immigration and Customs Enforcement division (ICE), housed in the Department of Homeland Security (DHS);

(2) Any other federal officer, including agents of the Customs and Border Protection (CBP), but only to the extent that the officer is clearly seeking to identify or locate one or more individuals for the sole purpose of pursuing possible removal proceedings.

Judicial order means an order signed by a duly authorized officer of the judicial branch. Such an order will have the following features:

- A caption, near the top of the document, identifying the court that issued the order (typically the federal district court for the District of Oregon); and
- A signature block, near the end of the document, including the name of the person who signed the order, and identifying that individual as a judge, magistrate, clerk of court, or other person signing on behalf of a judge or magistrate.

By contrast, an ICE form will identify ICE (or the Department of Homeland Security, which houses ICE) as the issuer of the document. And the signature block on an ICE form should not identify the person who signed as a judge or magistrate.

Patient records are records of patients that are subject to federal or state confidentiality laws. Patient records are more thoroughly explained in [CITE TO PUBLIC BODY'S PATIENT RECORDS POLICIES]. Policies governing these records apply to information that comes from these records, as well as the actual records.

Protected information means the following information about an individual:

- Address;
- Workplace or hours of work;
- School or school hours;
- Contact information, including telephone number, electronic mail address or social media account information;
- Known associates or relatives; and
- Date, time or location of the person's hearings, proceedings or appointments with the public body that are not matters of public record.

The same information about a person's relatives or known associates also qualifies as protected information.

Student records are subject to federal and state confidentiality laws. Student records are more thoroughly explained in [CITE TO PUBLIC BODY'S STUDENT RECORDS POLICY]. Policies governing these records apply to information that comes from these records, as well as the actual records.