

## Sunshine Committee Special Projects Subcommittee Recommendations for Trade Secrets

- Place the burden of protecting trade secrets on the private entity that submits potentially protected information to the public entity subject to the PRR
  - Protections under the PRR is predicated on the private entity clearly identifying or marking what submitted information is protected versus what is not
  - Require an attestation from the private entity establishing how and why the submitted information is in fact a trade secret?
  - (this does not necessarily prevent over-classification of information as trade secrets)
- Eliminate the confusion surrounding the exemptions surrounding trade secrets
  - ORS 192.345(2)
    - Conditional exemption, so trade secrets are not to be disclosed unless the public interest requires disclosure
    - Different definition of trade secrets from the UTSA
  - ORS 192.355(9)(a)
    - Non-condition exemption
    - Protects the disclosure of information protected under state or federal law
    - ORS 646.461(2)(d)(B) protects trade secret information from misappropriation
  - These two statutes don't read well together and lead to confusion among what public entities think they can or can't disclose, and confusion amongst the private sector for what they think they can submit and keep protected.
  - Suggestions:
    - Eliminate one or other
      - Make all trade secret disclosures condition, and re-draft ORS 646.461 to state that a disclosure per ORS 192.345(2) is not a misappropriation?
      - Eliminate ORS 192.345(2), and have all reliance on whether a trade secret can be released based on whether that disclosure is considered a misappropriation under the UTSA
    - If the conditional disclosure analysis is kept, include specific rationale for what is or is not a public interest in the disclosure of a trade secret, as this is a difficult analysis for the entity to conduct
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