

ORS 181A.830 – photographs and investigations of public safety employees

Does DPSST use this exemption? Yes, primarily for section (2) and academy class photos. Section (3) could also apply to DPSST personnel investigations of public safety employees who are employed by DPSST.

Notes:

- This exemption was established in 1999 through SB 975 at the request of law enforcement constituents. The staff measure summary for SB 975 outlined the issue as the release of information about an employee without their knowledge or assent while the employee is involved in undercover investigative duties. The release of that information could jeopardize the investigation and could put the undercover officer and their family at risk.
- Subsection (4) (d) was added in 2021 by HB 4207 (First Special Session).
- ORS 181A.830 was renumbered to ORS 181A.674 (2021 Edition of ORS).

2021 Edition of ORS 181A.674 Disclosure of information about certain public safety employees. (1) As used in this section:

(a) “Public body” has the meaning given that term in ORS 192.311.

(b) “Public safety employee” means a certified reserve officer, corrections officer, parole and probation officer, police officer or youth correction officer as those terms are defined in ORS 181A.355.

(2) A public body may not disclose a photograph of a public safety employee of the public body without the written consent of the employee. This subsection does not apply to the use by the public body of a photograph of a public safety employee.

(3) A public body may not disclose information about a personnel investigation of a public safety employee of the public body if the investigation does not result in discipline of the employee.

(4) Subsection (3) of this section does not apply:

(a) When the public interest requires disclosure of the information.

(b) When the employee consents to disclosure in writing.

(c) When disclosure is necessary for an investigation by the public body, the Department of Public Safety Standards and Training or a citizen review body designated by the public body.

(d) To disclosures required under ORS 181A.667.

(e) When the public body determines that nondisclosure of the information would adversely affect the confidence of the public in the public body.

(5) If an investigation of a public safety employee of a public body results from a complaint, the public body may disclose to the complainant the disposition of the complaint and, to the extent the public body considers necessary to explain the action of the public body on the complaint, a written summary of information obtained in the investigation.

(6) A public body must notify a public safety employee of the public body if the public body receives a request for:

(a) A photograph of the employee.

(b) Information about the employee that is exempt from disclosure under ORS 192.345 or 192.355 (2) or (3).

(c) Information about the employee that is prohibited from disclosure by subsection (3) of this section. [Formerly 181A.830]

Supporting citation references:

ORS 192.311 (4) “Public body” includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

ORS 181A.667 Review, provision and retention of personnel records; immunity from liability.
(1) As used in this section:

(a) “Law enforcement agency” has the meaning given that term in ORS 181A.775.

(b) “Personnel records” means the entire personnel file of a police officer or reserve officer, including but not limited to records of complaints and disciplinary action against the officer.

(2) Before extending an offer of employment to an applicant for a police officer or reserve officer position, a law enforcement agency shall request and review the applicant’s personnel records from all law enforcement agencies in any jurisdiction at which the applicant was formerly employed.

(3) A law enforcement agency shall provide the personnel records of a police officer or reserve officer who was employed by the law enforcement agency at any time to another law enforcement agency that requests the records for review under subsection (2) of this section.

*** additional sections not included***

ORS 192.355 (2) or (3)

(2)(a) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) Images of a dead body, or parts of a dead body, that are part of a law enforcement agency investigation, if public disclosure would create an unreasonable invasion of privacy of the family of the deceased person, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(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 243.809.

ORS 192.345(35) – DPSST investigations of public safety officers and private security providers

Does DPSST use this exemption? Yes. This conditional exemption applies to all DPSST professional standards cases for criminal justice public safety officers, fire service professionals, and private security providers.

Notes:

- This exemption was established in 2009 through HB 2315 at the request of the BPSST and DPSST.
- DPSST had the longstanding practice of not releasing records related to an open professional standards case until the case was completed.
- In 2007, DPSST discovered through a ruling that the existing exemptions did not cover DPSST records.
- This bill codified past practice. The exemption was requested to ensure all DPSST professional standards investigations adhere to due process.
 - Per Rebecca - The purpose of the exemption, as was explained to me by previous managers, is to protect the integrity of the investigation. If DPSST were required to divulge information in a case before the investigation is complete, the subject of the investigation, or others involved in it, may have the opportunity to manipulate or destroy potential evidence in the matter, thus compromising the outcome. Just as in criminal investigations, protecting the integrity of the case is vital for a just result.
- Per Rebecca - Once the Professional Standards case is concluded, and the policy committee staff report is published, the records are no longer covered by this exemption.

2021 Edition of ORS 192.345 Public records *conditionally* exempt from disclosure. 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:

(35) Records of the Department of Public Safety Standards and Training relating to investigations conducted under ORS 181A.640 or 181A.870 (6), *until the department issues the report described in ORS 181A.640 or 181A.870.*

Supporting citation references:

ORS 181A.640 (DPSST/BPSST authority to deny/suspend/revoke public safety officer (CJ and Fire) certifications)

(9) When the department completes an investigation relating to a person's qualifications for employment, training or certification under this section, the department shall issue a report.

ORS 181A.870 (DPSST/BPSST authority to deny/suspend/revoke private security provider certification/license)

(6) The department shall investigate alleged violations of the provisions of ORS 181A.840 to 181A.893 and of any rules adopted by the department or the board. The department shall issue a report when the investigation is complete.

ORS 192.385 – audio or video recordings of investigatory interviews of public safety officers

Does DPSST use this exemption? DPSST would apply section (4) of this statute. DPSST may be subject to section (2) if the records were DPSST internal investigation interviews of public safety officers employed by DPSST.

Notes:

- This exemption was established in 2011 through HB 3251 at the request of the Oregon Council of Police Associations and Oregon State Police Officers Association.
- Intent was stated as protecting the officer’s voice and image from dissemination, because such interviews include emotional responses. Specific examples cited a use of deadly force interview. After the recording was shared by media, someone created a ringtone of the officer voice that was posted for sale.
- The exemption does not prohibit release of the content in another format such as a transcript.
- There are exceptions to the exemption outlined in the statute, including the ability for the public body to release the recording to DPSST for the purpose of a DPSST professional standards case investigation. Section (4) of the statute allows DPSST to maintain the exemption from disclosure when DPSST becomes the recipient of a protected recording.

2021 Edition of ORS 192.385 Nondisclosure of certain public safety officer investigation records; exceptions. (1) As used in this section:

- (a) “Law enforcement unit” has the meaning given that term in ORS 181A.355.
- (b) “Public body” has the meaning given that term in ORS 192.311.
- (c) “Public safety officer” has the meaning given that term in ORS 181A.355.

(2) A public body may not disclose audio or video records of internal investigation interviews of public safety officers.

(3) Subsection (2) of this section does not prohibit disclosure of the records described in subsection (2) of this section to:

- (a) A law enforcement unit for purposes of the investigation;
- (b) An attorney representing a public safety officer who is the subject of the investigation;
- (c) The Department of Public Safety Standards and Training as required by ORS 181A.670;
- (d) A district attorney, as defined in ORS 131.005;
- (e) A public safety officer who is the subject of the investigation;
- (f) An attorney for a defendant in a criminal proceeding related to the investigation, for use in preparation for the criminal proceeding;
- (g) A labor organization, as defined in ORS 243.650, for use in an action by an employer against a member of the labor organization for the purpose of punishing the member;
- (h) A public body responsible for civilian oversight or a citizen review body designated by the public body for the purposes of fulfilling the investigative and oversight functions of the body;
- (i) A federal law enforcement agency for purposes of the investigation; or
- (j) The Attorney General.

(4) The disclosure of records under subsection (3) of this section does not make the records subject to further disclosure.

Supporting citation references:

ORS 192.311 (4) “Public body” includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

ORS 181A.355 (16) “Public safety personnel” and “public safety officer” include corrections officers, youth correction officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, reserve officers, telecommunicators, regulatory specialists and fire service professionals.

ORS 703.473 – investigator contact info, client files, and disciplinary investigation info

Does DPSST use this exemption? Yes

Notes:

- The exemption found in section (1) of this ORS was added to statute in 2001 (SB 722) at the request of the Oregon Association of Licensed Investigators, when the investigator licensure was under the Oregon Board of Investigators.
 - Also in 2001, ORS 703.480 stated “The Oregon Board of Investigators shall: (9) Keep an accurate record of all proceedings and activities of the board. All records shall be kept in the office of the board. *All of the records of the board shall be public.* However, investigator client files obtained by the board are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance.”
 - This exemption may have been requested to clearly make exempt sensitive or personally identifiable information that was required by statute for the application for licensure or during the application process, and to protect against accidental disclosure through the statutory requirement for the regulatory body to post investigator information on a website (ORS 703.480(2)(c)). An investigator’s business address may also be a home address.
- The exemption found in section (2) was relocated during the transfer of OBI to BPSST/DPSST under 2005 (HB 2117). The exemption previously stated: ORS 703.480 “The Oregon Board of Investigators shall (9) Keep an accurate record of all proceedings and activities of the board. All records shall be kept in the office of the board. All of the records of the board shall be public. However, investigator client files obtained by the board are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance.”
 - ORS 703.450 requires the investigator to maintain the confidentiality of clients. This public records exemption is to continue the protection of the investigator’s client information if it becomes part of the regulatory body’s investigative materials in a professional standards case.
- The exemption found in section (3) was added to the statute in 2005 through HB 2117 which transferred the OBI to the BPSST/DPSST.
 - This exemption may have been requested in recognition of the DPSST practices for open CJ, Fire and Private Security professional standards cases and not disclosing the records until the case was final. (ORS 192.345 (35) codifying that practice came later.)

2021 Edition of ORS 703.473 Confidentiality of investigator personal identifying information and client files.

(1) An investigator's home address, home telephone number, personal electronic mail address, Social Security number, photograph and other personal identifying information are confidential and not subject to disclosure under ORS 192.311 to 192.478 unless written consent to disclose is given by the investigator.

(2) Except as provided by rules established by the Board on Public Safety Standards and Training, investigator client files obtained by the Department of Public Safety Standards and Training are confidential and not subject to disclosure under ORS 192.311 to 192.478.

(3) Information obtained by the department as part of an investigation of a licensee or applicant, including complaints concerning the licensee or applicant, is confidential and not subject to disclosure under ORS 192.311 to 192.478 until the department dismisses the case or issues a proposed order. [2001 c.838 §21; 2005 c.613 §23; 2007 c.320 §10]

ORS 703.480 – investigatory info obtained by DPSST relating to allegations found to be false

Does DPSST use this exemption? Yes

Notes:

- This exemption was added to statute in 2001 (SB 722) at the request of the Oregon Association of Licensed Investigators, when the investigator licensure was under the Oregon Board of Investigators.

2001 language: Investigate alleged violations of ORS 703.401 to 703.490 and of any rules adopted by the board. When the board conducts an investigation under this subsection, the board shall destroy all information about the alleged violation if the board determines that the allegation is false.

- 2005 HB 2117 transferred the OBI to BPSST/DPSST
- 2007 SB 169 - at the request of the BPSST/DPSST – changed the language to allow retention of the records, keeping them exempt from disclosure, instead of destruction of the records to allow DPSST to track complaints and identify data/trends in types of complaints, number of complaints, and who is the subject of complaints.
- DPSST interpretation prior to 2021 was that “false” included unfounded allegations. (based on the verbal and written public testimony provided in 2001 and 2007)

2021 Edition of ORS 703.480 Board and department duties; rules; fees.

(2) The department shall:

(a) Investigate alleged violations of ORS 703.401 to 703.490 and of any rules adopted by the board or department. Notwithstanding ORS 703.473 (3), when the department conducts an investigation under this paragraph, all information about the alleged violation and the investigation is confidential and is not subject to disclosure under ORS 192.311 to 192.478 if the department determines that the allegation is false.
