

To: Oregon Sunshine Committee – June 2023
From: Oregon Teacher Standards and Practices Commission (TSPC)

RE: Public Records Exemptions Pertaining to TSPC

ORS 342.176: Complaint Process

Does the agency use this exemption? Is so, For what types of information?

Yes. TSPC regularly leverages this statute exemption to protect documents and information gathered as part of an active TSPC investigation. For context, TSPC completes approximately 250 investigations per year through the legislative authorities granted in this statute. The types of information which this statute protects includes, but is not limited to, police investigation reports, DHS investigation reports, school district records containing the names of minors, agency conducted investigation interviews with educators, interviews with students (minors), and interviews with witnesses, as well as various other information which varies depending on the type of investigation being conducted. TSPC relies on ORS 342.176(4) in order to obtain witness cooperation, to protect sensitive information relating to students and their families, as well as to protect the integrity of the investigation when it is not required to disclose investigatory information during the course of an investigation.

What public policy benefit does the exemption serve?

Maintaining confidentiality of these records is vital to TSPC investigation operations. These are documents and records which serve as evidence to active / on-going TSPC investigations. These records must be protected for the same reasons that police investigation records are not subject to public inspection during an ongoing police investigation; exposing these records publicly would seriously jeopardize the legitimacy and effectiveness of the TSPC investigation, and jeopardize the educator's capacity to receive fair, unbiased, consideration by the TSPC Commission. Not to mention the fact that early release of TSPC investigation materials to the media may subject the educator to potential public ridicule and humiliation before the investigation is even completed or the TSPC Commission has made a ruling on the matter. Furthermore, the Commission is better able to carry out its functions when it can reassure complainants and witnesses that the information, they disclose to the Commission will remain confidential during the Commission's investigation or if the Commission does not impose disciplinary action on the educator.

Disclosures at the conclusion of a TSPC Investigation:

In accordance with state statute, investigation records concerning cases on which the TSPC Commission has voted to sanction/charge the education with a violation of the Commission's rules shall be subject to public records requests once the educator has exhausted all Due Process Rights (See ORS 342.177) and a Final Order of Sanction / Charge has been issued by the TSPC Commission. Once a Final Order is issued by the Commission, the TSPC investigation file for the case is available for Public Records upon written

request to the agency (some specific documentation in the file may be subject to separate confidentiality statutes).

Investigation records pertaining to cases where the Commission did not find cause to Sanction / Charge the educator remain confidential and sealed under this statute.

ORS 342.177: Hearing and decision on charges

Does the agency use this exemption? Is so, For what types of information?

Yes, TSPC relies on the confidentiality of hearings under ORS 342.177 as this allows witnesses to provide testimony without the risk of being publicly identified. Witnesses may otherwise be hesitant to assist the Commission on its investigations and any resulting hearings.

Additionally, TSPC and Oregon Educators regularly rely on this statute language as part of the Due Process Rights for educators charged by the Commission. Removing this statute language would remove the Due Process Rights for educators who are sanctioned / charged by the TSPC Commission.

Any removal of the exemptions in this statute would jeopardize an educator's ability to receive a fair hearing before an Oregon Administrative Law Judge, and the educator's ability to contest charges levied against them by the TSPC Commission.

TSPC does not recommend that you remove or impede the Due Process Rights of Oregon Educators.

ORS 342.183: Letters of Informal Reapproval

Does the agency use this exemption? Is so, For what types of information?

Yes. In the 2022 calendar year, the TSPC Commission issued 33 Letters of Informal Reapproval. The Informal Letter of Reapproval is only issued when the educator has engaged in low-level misconduct, but other circumstances convince the Commission that the educator is entitled to an opportunity to have the charges dismissed. This allows the Commission and the educator's employer to monitor certain educators while they fulfill conditions without the educator being permanently stigmatized and scrutinized by the public. Following the Commission's decision to charge the educator with misconduct, the educator is offered the opportunity to agree to the Informal Letter of Reapproval with a monitoring period of up to four years. If the educator agrees, the terms of the letter are only shared with the educator's employer to assist the educator; otherwise, the letter remains confidential. Upon successful completion of the terms of an Informal Letter of Reapproval, the records (investigation report, etc.) are "sealed" and the charges are dismissed. This is an important tool the Commission utilizes when investigations do not rise to the level of imposing a permanent discipline record.

What public policy benefit does the exemption serve?

Because the Informal Letter of Reapproval operates much like a “diversion”/or suspended sentence in a criminal matter, the intent of the letter is to give the educator an opportunity to have the charges dismissed by the Commission. This is accomplished by the educator meeting the terms and requirements of the letter. So long as the educator meets the terms and requirements of the letter, the educator’s ‘record’ with TSPC is expunged and all investigation materials from the original charge / sanction are held as confidential and are not subject to public inspection.

Disclosures Possibilities with an Informal Letter of Reapproval:

In the event the educator fails to meet the terms and conditions of the Informal Letter of Reapproval issued by the TSPC Commission, TSPC has the authority to investigate the educator for any new violations and bring new sanctions / charges against the educator. Once the educator has exhausted all Due Process Rights (See ORS 342.177) and a Final Order has been issued by the TSPC Commission, the investigation files for the case become subject to Public Records upon written request to the TSPC agency.

If the committee has any questions regarding this information, please feel free to contact the TSPC Director of Professional Practices, Cristina Edgar at Cristina.D.EDGAR@tspc.oregon.gov, or via phone at 503-551-6669.

Sincerely,



Trent J. Danowski, *TSPC Deputy Director (Departing)*
Oregon Teacher Standards and Practices Commission.