

## Oregon Sunshine Committee

### Comparison of Sample State Exemptions Relating to Investigations of Teacher Misconduct

January 2024

**General Observations:**

-Of the seven states sampled, three had exemptions specific to teacher misconduct. The remaining states had umbrella exemptions for employee discipline, administrative investigations, and personnel files.

-Of the states sampled, most do not make complaints or investigative materials publicly available unless allegations are substantiated and/or discipline is either proposed or imposed. The exceptions are Colorado and Florida, which appear to make everything available once an investigation is complete or abandoned.

-The exemptions in the three states that rely upon an umbrella exemption are contingent upon whether disclosure would constitute an unwarranted or unreasonable invasion of personal privacy (analogous to Oregon’s privacy exemption at ORS 192.355(2)). Thus, in those states, even information about substantiated allegations may not be releasable in every case. Only Colorado’s exemption includes consideration of the public interest in disclosure.

-All states appear to post disciplinary sanctions online, but without any details about the underlying misconduct. Most states also make teacher personnel files exempt from disclosure.

-Overall, Colorado and Florida appear most transparent about teacher misconduct. Arizona appears to be the least transparent as it removes such information from the purview of its public records law. Oregon appears slightly more transparent than the average sampled state because the disclosure of substantiated complaint information is not contingent upon public interest balancing or a determination of whether disclosure would constitute an unreasonable invasion of privacy.

State	Teacher-Specific Exemption?	Public Interest Balancing?	Invasion of Privacy Standard?	Subst Alleg?	Unsub Alleg?	Investig Materials?	Complaints?	Temp?	Online Sanctions Registry?
<b>Oregon</b>	Y	N	N	Y	N	Subst	Subst	N	Y
<b>Arizona</b>	Y	N	N	Unk	N	None	N	N	Y
<b>California</b>	N	N	Y	Y	N <sup>1</sup>	Subst <sup>1</sup>	Subst <sup>1</sup>	N	Y
<b>Colorado</b>	N	Y	N	Y	Y <sup>2</sup>	All <sup>2</sup>	All <sup>2</sup>	Y	Y
<b>Florida</b>	Y	N	N	Y	Y	All	All	Y	Y
<b>Penn</b>	Y	N	N	Y	N	Subst	Subst	N	Y
<b>Texas</b>	N	N	Y	Y <sup>1</sup>	N <sup>1</sup>	None	Subst <sup>1</sup>	N	Y
<b>Wash</b>	N	N	Y	Y <sup>1</sup>	N <sup>1</sup>	Subst <sup>1</sup>	Subst <sup>1</sup>	N	Y

<sup>1</sup>Subject to invasion of privacy analysis.

<sup>2</sup>Subject to public interest determination.

## **Oregon [ORS 342.176](#) Complaint Process**

**Summary:** Makes confidential the records and reports relating to investigations of complaints made to TSPC regarding a licensee when the investigation does not result in a determination to take adverse action against the licensee. Child abuse records provided to TSPC by DHS in connection with such investigations are to remain confidential regardless of TSPC's determination.

### **Relevant Text: [ORS 342.176](#)**

(1)(a) A person may file a complaint with the Teacher Standards and Practices Commission regarding a person licensed by the commission. If a complaint concerns an allegation of sexual conduct that may have been committed by a licensed school employee, contractor, agent or volunteer, the complaint process provided by this section does not apply and the commission shall investigate the complaint as provided by [ORS 339.390](#).

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(4)(a) Except as provided in paragraph (b) of this subsection, **the documents and materials used in the investigation undertaken as provided by this section and the report related to the investigation are confidential and not subject to public inspection unless the commission makes a final determination to:**

- (A) Refuse to issue a license or registration, as provided under [ORS 342.143](#);
- (B) Suspend or revoke a license or registration, discipline a person holding a license or registration, or suspend or revoke the right to apply for a license or registration, as provided under [ORS 342.175](#); or
- (C) Discipline a person for failure to provide appropriate notice prior to resignation, as provided under [ORS 342.553](#).

(b) Records made available to the commission under [ORS 419B.035\(1\)\(h\)](#) shall be kept confidential.

**Enumerated Exceptions or Public Interest Balancing Test?** Records are not confidential under this provision if TSPC makes a determination to take adverse action against a licensee.

### **Applied in Court Cases, AG Opinions and/or Public Records Orders?**

[PRO Upham](#) (4/28/20) and [PRO Upham](#) (2/12/20) (where investigation is ongoing, TSPC investigatory records are confidential until TSPC makes its final determination whether to take action against the licensee)

[PRO Meadowbrook](#) (4/5/02) (allegations of a licensee's earlier misconduct included in investigator's report, but that were not separately investigated, were not confidential under this provision because the investigator considered them of sufficient importance to include them in a report that resulted in a licensee's discipline)

[PRO Kaplan](#) (9/24/01) and [PRO Benson](#) (4/19/93) (under a previous version of the statute, records relating to a complaint that did not result in a determination that the licensee violated standards were confidential and exempt from disclosure)

**Arizona** – teacher-specific exemption.

A.R.S. §15-350. Investigation of immoral or unprofessional conduct; confidentiality; definition

A. On request of the state board of education or the department of education, any school or school district that has employed a certificated or noncertificated person during the time in which the person is alleged to have engaged in conduct constituting grounds for disciplinary action shall make available the attendance and testimony of witnesses, documents and any physical evidence within the school district's control for examination or copying. **All information received and records or reports kept by the state board of education or the department of education during an investigation of immoral or unprofessional conduct are confidential and are not a public record.**

**C. All information, records and reports received by any school or school district pursuant to this section shall be used for employment purposes only, are confidential and are not a public record.**

A.R.S. § 15-537(J): “Copies of the evaluation report and performance classification of a certificated teacher retained by the governing board and the department of education are confidential, do not constitute a public record and shall not be released or shown to any person except \* \* \*.”

-Final discipline is posted online but without any description of the misconduct.

**California** – covered under umbrella exemption for personnel and medical files.

Government Code, Title 1, Division 10, Part 5, Chapter 13, Section 7927.700: “personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.”

-Court cases:

“For purposes of the personnel exemption under the California Public Records Act (CPRA), where complaints of a public employee's wrongdoing and resulting disciplinary investigation reveal allegations of a substantial nature, as distinct from baseless or trivial, and there is reasonable cause to believe the complaint is well-founded, public employee privacy must give way to the public's right to know.” *Bakersfield City School Dist v. Superior Court*, 118 Cal App 4th 1041 (2004).

But see ...

“Potential harm to public high school teacher's privacy interests outweighed the public interest in disclosure of disposition letters addressing the results of investigation into teacher's actions as girls' volleyball coach, and thus public disclosure was not authorized under the California Public Records Act (CPRA), where letters provided sufficient basis upon which to reasonably deduce complaints against teacher were not substantial.” *Associated Chino Teachers v. Chino Valley Unified School Dist.*, 30 Cal App 5<sup>th</sup> 540 (2018).

**Colorado:** covered under umbrella exemptions for personnel files, as well as administrative investigation materials.

CRS 24-72-204(2)(a): The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(IX)(A) Any records of **ongoing civil or administrative investigations** conducted by the state or an agency of the state in furtherance of their statutory authority to protect the public health, welfare, or safety unless the investigation focuses on a person or persons inside of the investigative agency.

(IX)(B) **Upon conclusion of a civil or administrative investigation that is closed because no further investigation, discipline, or other agency response is warranted, all records not exempt pursuant to any other law are open to inspection;** except that the custodian may remove the name or other personal identifying or financial information of witnesses or targets of such closed investigations from investigative records prior to inspection.

(IX)(D) Nothing in this subparagraph (IX) prohibits an agency from disclosing information or materials during an open investigation if it is in the interest of public health, welfare, or safety.

CRS 24-72-204(3)(a): The custodian shall deny the right of inspection of the following records, unless otherwise provided by law \* \* \*:

(II)(A) Personnel files; but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise such person's work.

**Florida** – teacher-specific exemption, but only temporary.

FL St 1012.796(4) “The complaint and all information obtained pursuant to the investigation by the department **shall be confidential and exempt** from the provisions of s. 119.07(1) until the conclusion of the preliminary investigation of the complaint, **until such time as the preliminary investigation ceases to be active**, or until such time as otherwise provided by s. 1012.798(6). \* \*

\* If the preliminary investigation is concluded with the finding that there is no probable cause to proceed, the complaint and information shall be open thereafter to inspection pursuant to s. 119.07(1). If the preliminary investigation is concluded with the finding that there is probable cause to proceed and a complaint is filed pursuant to subsection (6), the complaint and information shall be open thereafter to inspection pursuant to s. 119.07(1). If the preliminary investigation ceases to be active, the complaint and all such material shall be open thereafter to inspection pursuant to s. 119.07(1), except as otherwise provided pursuant to s. 1012.798(6). For the purpose of this subsection, a preliminary investigation shall be considered active as long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future.”

FL ST 119.071(k): “A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

1. Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
2. Concluded the investigation with a finding to proceed with disciplinary action or file charges.

-Florida records disciplinary action on teaching certificates and has two online resources for looking up disciplinary action against teachers.

**Pennsylvania** – teacher-specific temporary exemption. Also covered under umbrella exemptions for personnel files, as well as criminal and non-criminal investigatory materials.

24 PA St 2070.17b: (a) Except as otherwise provided in this act, **all information relating to any complaints or any proceedings relating to or resulting from such complaints, including the identity of the complainant, shall remain confidential, unless or until discipline is imposed**, other than a private reprimand or a supplemental sanction deemed private by the commission, any provision of law to the contrary notwithstanding unless otherwise specified in this act. **All records pertaining to proceedings resulting in public discipline, excluding those records that are privileged or otherwise protected from release, shall become public after the exhaustion of all appeals** except where the commission has determined that immediate discipline is necessary. Records pertaining to immediate discipline proceedings are public at the time that the immediate discipline is imposed.

65 PA ST § 67.708:

(b)(7)(viii) Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of an agency that results in demotion or discharge.

(b)(16) A record of an agency relating to or resulting in a criminal investigation, including:

- (i) Complaints of potential criminal conduct other than a private criminal complaint.
- (ii) Investigative materials, notes, correspondence, videos and reports.

(b)(17) A record of an agency relating to a noncriminal investigation, including:

- (i) Complaints submitted to an agency.
- (ii) Investigative materials, notes, correspondence and reports.
- (vi) A record that, if disclosed, would do any of the following:

- (A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.
- (B) Deprive a person of the right to an impartial adjudication.
- (C) Constitute an unwarranted invasion of privacy.
- (D) Hinder an agency's ability to secure an administrative or civil sanction.
- (E) Endanger the life or physical safety of an individual.

**Texas** – covered under umbrella exemption for personnel files.

TX GOVT Section 552.102(a): “Information is excepted from the requirements of [the Texas Public Records Law] if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy \* \* \*.”

-Texas also has a common law doctrine of confidentiality and privacy, which is encompassed in Texas’ Open Records Act through TX GOVT Section 552.101: “Information is excepted from the requirements of [the Texas Public Records Law] if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

-Additional info:

-Texas has implemented a new “Do Not Hire Registry” for teachers ineligible to work in public schools based on misconduct or criminal history. It is not online yet, and it is not clear whether it will actually describe the disqualifying behavior.

-Under Texas Education Authority rules, reprimands, suspensions, and removals are recorded on the educator’s teaching certificate, which is available for public review online. *See* TEA Rules 429.41 - .42.

-Texas Education Code Section 21.355 makes teacher evaluations confidential.

-Texas Education Code Section 21.062 – makes info compiled during investigation of alleged educator misconduct “confidential and not subject to disclosure under” the Texas Open Records Act.

-Unable to locate any court cases or AG orders dealing with public records requests for teacher disciplinary records.



**Washington** – covered under umbrella exemption for “personal information.”

RCW 42.56.230(3): “Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;”

**-RCW 42.56.050 Invasion of privacy, when.** A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

-Court cases:

Public school teachers against whom unsubstantiated or false accusations of misconduct are made have a right to privacy in their identities, as protected under Public Records Act (PRA), because such allegations concern the teachers' private lives and are not specific incidents of misconduct during the course of employment. When a document does not detail unsubstantiated misconduct of a public school teacher and the teacher is not disciplined or subject to any restriction, the name of the teacher should be redacted before disclosure, pursuant to the Public Records Act (PRA). *Predisik v. Spokane School Dist. No. 81*, 179 Wash.App. 513 (2014).

And ...

Public disclosure act (PDA) mandates disclosure of letters of direction sent to public school teachers, but where a letter simply seeks to guide future conduct, does not mention substantiated misconduct, and a teacher is not disciplined or subject to any restriction, the name and identifying information of the teacher should be redacted. When there is an allegation of sexual misconduct against a public school teacher, the identity of the accused teacher may be disclosed to the public pursuant to public disclosure act (PDA) only if the misconduct is substantiated or the teacher's conduct results in some form of discipline. *Bellevue John Does 1-11 v. Bellevue School Dist. #405*, 164 Wash.2d 199 (2008).