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Exemption Statute and Title: [ORS 17.095](#) Prohibition of Confidential Settlements and Compromises

Summary: In certain lawsuits, prohibits public officials and agencies from entering settlements or compromises with confidential terms or conditions unless confidentiality is required by federal law, or if a court orders the identity of a victim remain confidential in cases involving minor victims of sexual abuse.

Relevant Text: [ORS 17.095](#)

- (1) A public body, or officer, employee or agent of a public body, who is a defendant in an action under [ORS 30.260](#) to [30.300](#), or who is a defendant in an action under [ORS 294.100](#), may not enter into any settlement or compromise of the action if the settlement or compromise requires that the terms or conditions of the settlement or compromise be confidential.
- (2) Notwithstanding subsection (1) of this section:
 - (a) A public body, or officer, employee or agent of a public body, may enter into a settlement or compromise that requires the terms or conditions to be confidential if federal law requires terms or conditions of that settlement or compromise to be confidential. Only terms and conditions that are required to be confidential under federal law may be confidential in the settlement or compromise.
 - (b) A court may order that the terms or conditions of a settlement or compromise that reveal the identity of a person be confidential if:
 - (A) The person whose identity is revealed is a victim of sexual abuse or is under 18 years of age; and
 - (B) The court determines, by written findings, that the specific privacy interests of the person outweigh the public's interest in the terms or conditions.
 - (c) A court record relating to the settlement of a minor's claim is confidential when required by ORS 17.204.

Enumerated Exceptions or Public Interest Balancing Test? Generally no, but in cases involving sexual abuse of a minor, the identity of the victim is not confidential unless the court determines that the specific privacy interests of the victim outweigh in the public's interest in the terms or conditions.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 17.204](#) Court records relating to settlement of minor's claim; confidentiality.

Summary: Makes confidential the settlement of a minor's claim approved under ORCP 27 I.

Relevant Text: [ORS 17.204](#)

A court record relating to the settlement of a minor's claim approved under ORCP 27 I is confidential and may not be disclosed, except pursuant to a court order issued for good cause shown. Good cause for purposes of this section includes, but is not limited to, a showing that the claimant is no longer a minor.

[ORCP 27 I](#)

Settlement. Except as permitted by ORS 126.725, in cases where settlement of the action will result in the receipt of property or money by a party for whom a guardian ad litem was appointed under section B of this rule, court approval of any settlement must be sought and obtained by a conservator unless the court, for good cause shown and on any terms that the court may require, expressly authorizes the guardian ad litem to enter into a settlement agreement.

Enumerated Exceptions or Public Interest Balancing Test? No.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 17.200](#) Confidentiality of Affidavit in Support of Petition for Approval of Settlement

Summary: Makes confidential an affidavit submitted to a court in support of a petition for approval of settlement of a personal injury claim of an incapacitated person, a minor or a decedent.

Relevant Text: [ORS 17.200](#)

(1) As used in this section, “incapacitated” and “minor” have the meanings given those terms in [ORS 125.005 \(Definitions\)](#).

(2) An affidavit submitted to a court in support of a petition for approval of settlement of a personal injury claim of an incapacitated person, a minor or a decedent is confidential. The caption of the affidavit must state that the affidavit is confidential. The affidavit is not subject to inspection except pursuant to a court order entered after a showing of good cause.

Enumerated Exceptions or Public Interest Balancing Test? No.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 31.266](#) **Mandatory Dispute Resolution for Certain Actions Against Health Practitioners and Health Care Facilities**

Summary: Requires parties to any action against a health practitioner or health care facility based on negligence, unauthorized rendering of health care or product liability to participate in some form of dispute resolution. Makes discussions of adverse health care incidents between providers and patients confidential.

Relevant Text: [ORS 31.266](#)

Sec. 4. Discussion communications.

- (1) As used in this section, “discussion communication” means:
 - (a) All communications, written and oral, that are made in the course of a discussion under [ORS 31.264](#); and
 - (b) All memoranda, work products, documents and other materials that are prepared for or submitted in the course of or in connection with a discussion under [ORS 31.264](#).
- (2) Discussion communications and offers of compensation made under [ORS 31.264](#):
 - (a) Do not constitute an admission of liability.
 - (b) Are confidential and may not be disclosed.
 - (c) Except as provided in subsection (3) of this section, are not admissible as evidence in any subsequent adjudicatory proceeding and may not be disclosed by the parties in any subsequent adjudicatory proceeding.

Enumerated Exceptions or Public Interest Balancing Test? No.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 36.220](#) Confidentiality of Mediation Communications and Agreements

Summary: Makes mediation communications confidential, with certain exceptions.

Relevant Text: [ORS 36.220](#)

- (1) Except as provided in [ORS 36.220](#) to [36.238](#):
 - (a) Mediation communications are confidential and may not be disclosed to any other person.
 - (b) The parties to a mediation may agree in writing that all or part of the mediation communications are not confidential.
- (2) Except as provided in [ORS 36.220](#) to [36.238](#):
 - (a) The terms of any mediation agreement are not confidential.
 - (b) The parties to a mediation may agree that all or part of the terms of a mediation agreement are confidential.
- (3) Statements, memoranda, work products, documents and other materials, otherwise subject to discovery, that were not prepared specifically for use in a mediation, are not confidential.
- (4) Any document that, before its use in a mediation, was a public record as defined in [ORS 192.311](#) remains subject to disclosure to the extent provided by [ORS 192.311](#) to [192.478](#).
- (5) Any mediation communication relating to child abuse that is made to a person who is required to report child abuse under the provisions of [ORS 419B.010](#) is not confidential to the extent that the person is required to report the communication under the provisions of [ORS 419B.010](#). Any mediation communication relating to elder abuse that is made to a person who is required to report elder abuse under the provisions of [ORS 124.050](#) to [124.095](#) is not confidential to the extent that the person is required to report the communication under the provisions of [ORS 124.050](#) to [124.095](#).
- (6) A mediation communication is not confidential if the mediator or a party to the mediation reasonably believes that disclosing the communication is necessary to prevent a party from committing a crime that is likely to result in death or substantial bodily injury to a specific person.
- (7) A party to a mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under [ORS 40.010](#) to [40.585](#) or other provision of law. A party may disclose confidential mediation communications to any other person for the purpose of obtaining advice concerning the subject matter of the mediation, if all parties to the mediation so agree.

(8) The confidentiality of mediation communications and agreements in a mediation in which a public body is a party, or in which a state agency is mediating a dispute as to which the state agency has regulatory authority, is subject to [ORS 36.224](#), [36.226](#) and [36.230](#).

Enumerated Exceptions or Public Interest Balancing Test? Exceptions for mediation communication relating to child abuse or elder abuse that are made to a person who is required to report the abuse.

Applied in Court Cases, AG Opinions and/or Public Records Orders? Applied in several court cases, but not in the context of public records requests.

Exemption Statute and Title: [ORS 36.224](#) State Agencies

Summary: Authorizes state agencies to adopt rules making mediation communications confidential. Exempts from disclosure any mediation communications made confidential by rule. Makes confidential any mediation communications regarding a claim for workers' compensation benefits.

Relevant Text: [ORS 36.224](#)

(1) Except as provided in this section, mediation communications in mediations in which a state agency is a party, or in which a state agency is mediating a dispute as to which the state agency has regulatory authority, are not confidential and may be disclosed or admitted as evidence in subsequent adjudicatory proceedings, as described in [ORS 36.222\(7\)](#).

(2) The Attorney General shall develop model rules that provide for the confidentiality of mediation communications in mediations described in subsection (1) of this section. The rules shall also provide for limitations on admissibility and disclosure in subsequent adjudicatory proceedings, as described in [ORS 36.222\(7\)](#). The rules shall contain provisions governing mediations of workplace interpersonal disputes. The rules may be amended by the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under ORS chapter 183.

(5) Except as provided in [ORS 36.222](#), mediation communications in any mediation regarding a claim for workers' compensation benefits conducted pursuant to rules adopted by the Workers' Compensation Board are confidential, are not subject to disclosure under [ORS 192.311](#) to [192.478](#) and may not be disclosed or admitted as evidence in subsequent adjudicatory proceedings, as described in [ORS 36.222\(7\)](#), without regard to whether a state agency or other public body is a party to the mediation or is the mediator in the mediation.

(6) Mediation communications made confidential by a rule adopted by a state agency are not subject to disclosure under [ORS 192.311](#) to [192.478](#).

Enumerated Exceptions or Public Interest Balancing Test? No.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 36.226](#) Public Bodies Other Than State Agencies

Summary: Makes confidential mediation communications in mediations in which a public body other than a state agency is a party.

Relevant Text: [ORS 36.226](#)

(1) Except as provided in subsection (2) of this section, mediation communications in mediations in which a public body other than a state agency is a party are confidential and may not be disclosed or admitted as evidence in subsequent adjudicatory proceedings, as described in [ORS 36.222](#).

(2) A public body other than a state agency may adopt a policy that provides that all or part of mediation communications in mediations in which the public body is a party will not be confidential. If a public body adopts a policy under this subsection, notice of the policy must be provided to all other parties in mediations that are subject to the policy.

Enumerated Exceptions or Public Interest Balancing Test? No, but it does authorize such public bodies to adopt rules providing that such mediation communications are not confidential.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 36.230](#) Public Bodies

Summary: Details the circumstances under which terms and conditions of otherwise non-confidential mediation agreements may be confidential; e.g., provisions of a mediation agreement that are exempt from disclosure under some other provision of the public records law are confidential.

Relevant Text: [ORS 36.230](#)

- (1) Except as provided in this section, mediation agreements are not confidential if a public body is a party to the mediation or if the mediation is one in which a state agency is mediating a dispute as to which the state agency has regulatory authority.
- (2) If a public body is a party to a mediation agreement, any provisions of the agreement that are exempt from disclosure as a public record under [ORS 192.311](#) to [192.478](#) are confidential.
- (3) If a public body is a party to a mediation agreement, and the agreement is subject to the provisions of [ORS 17.095](#), the terms of the agreement are confidential to the extent that those terms are confidential under [ORS 17.095\(2\)](#).
- (4) If a public body is a party to a mediation agreement arising out of a workplace interpersonal dispute:
 - (a) The agreement is confidential if the public body is not a state agency, unless the public body adopts a policy that provides otherwise;
 - (b) The agreement is confidential if the public body is a state agency only to the extent that the state agency has adopted a rule under [ORS 36.224](#) that so provides; and
 - (c) Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the public body, may not be made confidential by a rule or policy of a public body.

Enumerated Exceptions or Public Interest Balancing Test? No.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 36.262](#) Confidentiality of Mediation Materials

Summary: Makes confidential certain mediation materials and communications made in connection with agricultural mediation coordinated by the Department of Agriculture.

Relevant Text: [ORS 36.262](#)

(1) For purposes of a mediation under [ORS 36.252](#) to [36.268](#), all memoranda, work products and other materials contained in the case files of a mediator, an agricultural mediation service provider or the State Department of Agriculture are confidential. Any communication made in, or in connection with, the mediation that relates to the dispute being mediated, whether made to the mediator or a party, or to any other person if made at a mediation session, is confidential. However, a mediation agreement entered into under [ORS 36.260](#) is not confidential unless the parties otherwise agree in writing.

(2) Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

- (a) When all parties to the mediation agree, in writing, to waive the confidentiality;
- (b) In a subsequent action between the mediator and a party to the mediation for damages arising out of the mediation; or
- (c) When the material or communications are statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, that were not prepared specifically for use in and not actually used in the mediation.

Key Terms:

[ORS 36.252](#) to [36.268](#) relates to agricultural mediation services coordinated by the Oregon Department of Agriculture.

Enumerated Exceptions or Public Interest Balancing Test? Parties to the mediation may jointly agree to waive confidentiality.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 90.771](#) Confidentiality of Information Regarding Disputes

Summary: In mediating and resolving disputes between landlords and tenants of manufactured dwellings and floating home facilities, OHCS shall treat as confidential the identities of the parties, as well as any information provided or discovered while investigating the dispute.

Relevant Text: [ORS 90.771](#)

- (1) In order to foster the role of the Housing and Community Services Department in mediating and resolving disputes between landlords and tenants of manufactured dwelling and floating home facilities, the department shall establish procedures to maintain the confidentiality of information received by the department pertaining to individual landlords and tenants of facilities and to landlord-tenant disputes. The procedures must comply with the provisions of this section.
- (2) Except as provided in subsection (3) of this section, the department shall treat as confidential and not disclose:
 - (a) The identity of a landlord, tenant or complainant involved in a dispute or of a person who provides information to the department in response to a department investigation of a dispute;
 - (b) Information provided to the department by a landlord, tenant, complainant or other person relating to a dispute; or
 - (c) Information discovered by the department in investigating a dispute.
- (3) The department may disclose:
 - (a) Information described in subsection (2) of this section to a state agency; and
 - (b) Information described in subsection (2) of this section if the landlord, tenant, complainant or other person who provided the information being disclosed, or the legal representative thereof, consents orally or in writing to the disclosure and specifies to whom the disclosure may be made. Only the landlord, tenant, complainant or other person who provided the information to the department may authorize or deny the disclosure of the information.

Enumerated Exceptions or Public Interest Balancing Test? A landlord, tenant, complainant or other person who provided the information to the department may authorize or deny the disclosure of the information.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 192.345\(1\)](#) Public Records Conditionally Exempt From Disclosure

Summary: Conditionally and temporarily exempts from disclosure the records of a public body pertaining to litigation to which the body is party if a complaint as been filed or litigation is reasonably likely to occur.

Relevant Text: [ORS 192.345](#). 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:

(1) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

Enumerated Exceptions or Public Interest Balancing Test? Yes – not exempt if the public interest requires disclosure in the particular instance. Such records are subject to disclosure once litigation is concluded or abandoned.

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

[Lane County Sch. Dist. No. 4J v. Parks](#), 55 Or App 416 (1981) (district’s substitute teacher roster was not exempt as a litigation record; exemption applied only “when the records contain information compiled or acquired by the public body for use in ongoing litigation * * * or when such litigation ‘is reasonably likely to occur;’” although disclosure might reveal a cause of action against the district and would materially assist the plaintiffs, the records were not compiled *because of* the litigation)

[PRO Upham](#) (7/29/20) (state bar was permitted to withhold internal legal memoranda relating to a pending disciplinary action where litigation with the requester was reasonably likely to occur)

[PRO Bobbitt](#) (8/16/04) (Department of Corrections was permitted to withhold a tort claim investigative report prepared in anticipation of litigation with the requester; requester’s interest in private litigation does not qualify as a public interest requiring disclosure)

[PRO Franzen](#) (10/1/03) (DAS was permitted to withhold an investigative file prepared in response to a tort claim notice; public interest did not require disclosure because disclosure would impair DAS’ ability to litigate the matter)

[PRO Madrid](#) (6/8/90) (same; ordinary tools of discovery generally negate the need to use the public records law to obtain records that pertain to litigation)

[PRO Bischoff](#) (1/12/90) (filing of a tort claim notice is sufficient evidence that litigation is reasonably likely to occur for purposes of the litigation exemption; the policy furthered by the exemption is “to place governmental bodies on an even footing with private parties before and during court litigation”)

Exemption Statute and Title: [ORS 192.345\(16\)](#) Public Records Conditionally Exempt From Disclosure

Summary: Makes confidential data and information provided by participants in connection with agricultural mediation coordinated by the Department of Agriculture. Also see [ORS 36.262](#).

Relevant Text: [ORS 192.345](#)

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:

(16) Data and information provided by participants to mediation under [ORS 36.256](#).

Key Terms:

[ORS 36.256](#) pertains to requests for agricultural mediation services coordinated by the Department of Agriculture. Also see [ORS 36.262](#).

Enumerated Exceptions or Public Interest Balancing Test? Yes – not exempt if the public interest requires disclosure in the particular instance.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 423.430](#) Investigative Priority

Summary: Requires the Department of Corrections ombudsman to treat confidentially all matters and the identities of the complainants or witnesses coming before the ombudsman.

Relevant Text: [ORS 423.430](#)

The Corrections Ombudsman shall:

- (1) Give priority to investigating administrative actions that are not otherwise reviewable by either administrative or judicial action;
- (2) Treat confidentially all matters and the identities of the complainants or witnesses coming before the ombudsman; and
- (3) Not levy any fees for the submission or investigation of complaints.

Enumerated Exceptions or Public Interest Balancing Test? No.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 423.610](#) Liability of Persons Associated with Program

Summary: Makes confidential facilitated dialogue and responsibility letter bank program communications coordinated by the Department of Corrections.

Relevant Text: [ORS 423.610](#)

(3) Facilitated dialogue and responsibility letter bank program communications are confidential and may not be disclosed to any other person, except as permitted under rules established pursuant to [ORS 423.615](#).

Key Terms:

[ORS 423.605](#) “Facilitated dialogue and responsibility letter bank program communications” means all communications by a victim, survivor or adult in custody, or by a program facilitator, advisory committee member or staff person, that are made in the course of or in connection with a facilitated dialogue or responsibility letter bank program conducted pursuant to Department of Corrections rules. The communications include but are not limited to:

- (1) All memoranda, assessment and evaluation forms, documents and other materials, including letters that are prepared for or submitted in connection with a facilitated dialogue;
- (2) All communications, whether oral, written or recorded, made during the intake of a case, during preparations for a facilitated dialogue, during any joint in-person meetings or telephone calls, and during any post-dialogue meetings or conversations; and
- (3) All materials or recordings submitted in connection with a responsibility letter bank program by a victim, survivor or adult in custody or by another person on behalf of a victim, survivor or adult in custody.

Enumerated Exceptions or Public Interest Balancing Test? No.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 618.506](#) Enjoining Security Seal Violations

Summary: Authorizes civil prosecuting attorneys to file suit to enjoin the use of certain measuring devices (e.g., scales) with broken or removed security seals. Requires the prosecutor to first give notice of the action to the alleged violator and exempts such notice from the definition of a public record for 10 days from the date of service.

Relevant Text: [ORS 618.506](#)

- (1) A prosecuting attorney who has probable cause to believe that a person is committing or has committed a security seal violation may bring suit in the name of the State of Oregon in the appropriate court to restrain such person from committing the alleged violation.
- (2) Before filing a suit under subsection (1) of this section, the prosecuting attorney shall in writing notify the person charged of the alleged security seal violation and the relief to be sought. Such notice shall be served in the manner set forth in [ORS 618.526](#) for the service of investigative demands. The person charged thereupon shall have 10 days within which to execute and deliver to the prosecuting attorney an assurance of voluntary compliance. Such assurance shall set forth what actions, if any, the person charged intends to take with respect to the alleged violation. The assurance of voluntary compliance shall not be considered an admission of a violation for any purpose. If the prosecuting attorney is satisfied with the assurance of voluntary compliance, it may be submitted to an appropriate court for approval and if approved shall thereafter be filed with the clerk of the court. Violation of an assurance of voluntary compliance which has been approved by and filed with the court constitutes a contempt of court. The notice of the prosecuting attorney under this subsection is not a public record until the expiration of 10 days from the service of the notice.

Key Terms: [ORS 618.501](#)

- (2) “Prosecuting attorney” means the Attorney General or the district attorney of any county in which a security seal violation is alleged to have been committed.
- (3) “Security seal” means a lead-and-wire seal or similar nonreusable closure, attached to a weighing or measuring instrument or device for protection against undetectable access, removal, adjustment or unauthorized use.
- (4) “Security seal violation” means the use, in violation of this chapter or any rule promulgated pursuant thereto, of any liquid or gaseous metering instrument or device to which a security seal is required to be affixed, when the security seal has been broken or removed.

Enumerated Exceptions or Public Interest Balancing Test? No.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 646.632](#) Enjoining Unlawful Trade Practices

Summary: Authorizes civil prosecuting attorneys to file suit to enjoining unlawful trade practices. Requires the prosecutor to first give notice of the action to the alleged violator and exempts such notice from the definition of a public record for 10 days from the date of service.

Relevant Text: [ORS 646.632](#)

(1) Except as provided in [ORS 646.633](#), a prosecuting attorney who has probable cause to believe that a person is engaging in, has engaged in, or is about to engage in an unlawful trade practice may bring suit in the name of the State of Oregon in the appropriate court to restrain such person from engaging in the alleged unlawful trade practice.

(2) Except as provided in subsections (5) and (6) of this section, before filing a suit under subsection (1) of this section, the prosecuting attorney shall in writing notify the person charged of the alleged unlawful trade practice and the relief to be sought. *** The notice of the prosecuting attorney under this subsection shall not be deemed a public record until the expiration of 10 days from the service of the notice.

Key Terms:

[ORS 646.605\(5\)](#) “Prosecuting attorney” means the Attorney General or the district attorney of any county in which a violation of [ORS 336.184](#) and [646.605](#) to [646.652](#) is alleged to have occurred.

Enumerated Exceptions or Public Interest Balancing Test? No.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.

Exemption Statute and Title: [ORS 659A.840](#) Settlement

Summary: Prohibits the disclosure of information about settlement discussions concerning complaints of unlawful housing discrimination.

Relevant Text: [ORS 659A.840](#)

(6) Nothing said or done in the course of settlement discussions concerning a complaint alleging an unlawful practice under [ORS 659A.145](#) or [659A.421](#) or discrimination under federal housing law may be disclosed in any manner, including but not limited to disclosure under [ORS 192.311](#) to [192.478](#), or be used as evidence in a subsequent proceeding under this chapter or under federal housing law, without the written consent of the persons concerned.

Key Terms:

[ORS 659A.145](#) relates to discrimination against individuals with disabilities in real property transactions.

[ORS 659A.421](#) relates to discrimination in selling, renting or leasing real property.

Enumerated Exceptions or Public Interest Balancing Test? No.

Applied in Court Cases, AG Opinions and/or Public Records Orders? No.