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<u>Exemption Statute and Title</u>: <u>192.355(17)</u> Public Records Exempt From Disclosure

<u>Summary</u>: Exempts from disclosure various private business and financial information submitted to various state and local agencies by applicants for investment funds, grants, loans, services or economic development moneys, support or assistance, and energy tax credits or grants.

<u>Relevant Text</u>: 192.355(17) The following public records are exempt from disclosure under ORS 192.311 to 192.478:

* * *

(17)(a) The following records, communications and supporting information submitted to the Oregon Business Development Commission, the Oregon Business Development Department, the State Department of Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS 777.005, or a county or city governing body and any board, department, commission, council or agency of a county or city, by applicants as part of an application for investment funds, grants, loans, services or economic development moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

(A) Financial statements.

(B) Customer lists.

(C) Information pertaining to litigation to which the applicant or a proposed beneficiary of the application is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(D) Production, sales and cost data.

(E) Marketing strategy information that relates to the applicant's plan or a proposed beneficiary of the application to address specific markets and strategy regarding specific competitors.

(b) The following records, communications and information submitted to the State Department of Energy by applicants for tax credits or for grants awarded under ORS 469B.256:

(A) Personal financial statements.

(B) Financial statements of applicants.

(C) Customer lists.

(D) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(E) Production, sales and cost data.

(F) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

<u>Enumerated Exceptions or Public Interest Balancing Test</u>? No.

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

Exemption Statute and Title: 285A.075 Department Duties

Summary: If requested, requires Business Oregon to maintain the confidentiality of negotiations conducted with persons interested in locating business in the state.

Relevant Text: 285A.075

(1) The Oregon Business Development Department shall:

* * *

(b) Act as the official state liaison agency for persons interested in locating industrial or business firms in the state and for state and local groups seeking new industry or business, and maintain the confidentiality of negotiations conducted pursuant to this paragraph, if requested.

Enumerated Exceptions or Public Interest Balancing Test? No.

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

Exemption Statute and Title: 285C.145 Leasing Existing Property to Authorized Firm

Summary: Exempts from disclosure information submitted by a business in connection with the Enterprise Zone Act that identifies a qualified property; reveals investment plans prior to authorization; lists employee compensation; or includes the various business, financial and personal information described in ORS 192.355(17).

Relevant Text: 285C.145

> (4)(a) Records, communications or supporting information submitted to a public body by a business firm for purposes of ORS 285C.050 to 285C.250 or 285C.400 to 285C.420 are exempt from disclosure under ORS 192.311 to 192.478 if the records, communications or supporting information:
> (A) Identify particular items of real property, machinery and equipment or personal property.
> (B) Reveal investment plans prior to authorization or certification.
> (C) Include the compensation or wages the business firm provides to firm employees.
> (D) Are described in ORS 192.355 (17).
> (E) Are submitted under ORS 285C.225 or 285C.235.
>
> (b) Records, communications or supporting information described in paragraph (a) of this subsection may be shared among the county assessor, the zone sponsor, the Department of Revenue and the Oregon Business Development Department, as appropriate, without affecting the exemption from disclosure under this subsection.

Enumerated Exceptions or Public Interest Balancing Test? No.

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

> PRO Meiffren (4/15/13) (Dept of Revenue was permitted to redact information revealing the compensation of a firm's employees and the amount of a firm's investment in property)

Exemption Statute and Title: 285C.615 Annual Participant Reports

Summary: Exempts from disclosure any financial performance data of individual firms obtained by Business Oregon from annual reports it receives from firms that own or lease property receiving a real property tax exemption under the strategic investment program.

Relevant Text: 285C.615

> (1) On or before April 1 following each tax year that property is exempt under ORS 307.123, the business firm that owns or leases the exempt property shall submit a report to the Oregon Business Development Department, in addition to any other reporting or filing requirement.
>
> * * *
>
> (5) Specific data concerning the financial performance of individual firms collected under this section is exempt from public disclosure under ORS chapter 192.

Enumerated Exceptions or Public Interest Balancing Test? No.

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

PRO Meiffren (3/11/13) (under a narrow construction of "data concerning * * * financial performance," requested information was not exempt under ORS 285C.615)

Exemption Statute and Title: 285C.620 Confidentiality of Project Information

Summary: Makes confidential the identity of an applicant, the application, and negotiations relating to an application for a strategic investment program project until the county governing body gives notice of intent to act upon the application.

Relevant Text: 285C.620

> Notwithstanding ORS 192.311 to 192.478, the identity of an applicant for an eligible project determination under ORS 285C.606, the application form submitted to the county governing body and the Oregon Business Development Commission and the negotiations conducted between the applicant and the county shall be confidential, until the county governing body gives notice of its intent to take official action on the application.

Enumerated Exceptions or Public Interest Balancing Test? No.

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

Exemption Statute and Title: 465.300 Financial Assistance Applications Exempt From Disclosure as Public Record

Summary: Conditionally exempts from disclosure information submitted to DEQ as part of an application for financial assistance to conduct an environmental remedial action.

Relevant Text: 465.300

> Financial records and other information that are submitted to the Department of Environmental Quality as part of an application for financial assistance under ORS 465.265 to 465.310 shall be exempt from disclosure under ORS 192.311 to 192.478, unless the public interest requires disclosure in a particular instance.

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

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

<u>Exemption Statute and Title</u>: <u>470.065</u> Confidentiality of Information Provided by or on Behalf of Applicant

<u>Summary</u>: If requested in writing, makes confidential certain business and financial information submitted with an application for a small scale local energy project or loan.

<u>Relevant Text</u>: 470.065

(1) The following records, communications and information furnished by or on behalf of the applicant under this chapter shall be confidential and maintained as such, if so requested in writing by the person providing the information:

(a) Personal financial statements;
(b) Financial statements of applicants;
(c) Customer lists;
(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur;
(e) Production, sales and cost data;
(f) Marketing strategy information that relates to an applicant's plan to address specific markets or the applicant's strategy regarding specific competitors, or both; and
(g) Technical information or data related to an applicant's proposed small scale local energy project, including but not limited to any description, analysis, evaluation or projection regarding the project or a component of the project.

(2) The confidentiality provided by subsection (1)(d) of this section does not apply to concluded litigation. Nothing in subsection (1)(d) of this section limits any right granted by discovery statutes to a party to litigation or potential litigation.

<u>Enumerated Exceptions or Public Interest Balancing Test</u>? Not exempt unless confidentiality requested in writing.

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

PRO Siemers (5/6/09) (interpreting the exemption to apply not just to historical performance data, but to *pro forma* performance projections as well)