Chapter 192

1981 REPLACEMENT PART

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PUBLIC RECORDS POLICY

192.001 Policy concerning public records. (1) The Legislative Assembly finds that:

(a) The records of the state and its political subdivisions are so interrelated and interdependent, that the decision as to what records are retained or destroyed is a matter of state-wide public policy.

(b) The interest and concern of citizens in public records recognizes no jurisdictional boundaries, and extends to such records wherever they may be found in Oregon.

(c) As local programs become increasingly intergovernmental, the state and its political subdivisions have a responsibility to insure orderly retention and destruction of all public records, whether current or noncurrent, and to insure the preservation of public records of value for administrative, legal and research purposes.

(2) The purpose of ORS 192.005 to 192.170 and 357.805 to 357.895 is to provide direction for the retention or destruction of public records in Oregon, and to assure the retention of records essential to meet the needs of the Legislative Assembly, the state, its political subdivisions and its citizens, in so far as the records affect the administration of government, legal rights and responsibilities, and the accumulation of information of value for research purposes of all kinds. All records not included in types described in this subsection shall be destroyed in accordance with the rules adopted by the Secretary of State. [1973 c 439 §1]

CUSTODY AND MAINTENANCE OF PUBLIC RECORDS

192.005 Definitions for ORS 192.005 to 192.170. As used in ORS 192.005 to 192.170, unless the context requires otherwise:

(1) "Archivist" means the State Archivist.

(2) "Photocopy" includes a photograph, microphotograph and any other reproduction on paper or film in any scale.

(3) "Photocopying" means the process of reproducing, in the form of a photocopy, a public record or writing.

(4) "Political subdivision" means a city, county, district or any other municipal or public corporation in this state.

(5) "Public record" means a document, book, paper, photograph, file, sound recording or other material, such as court files, mortgage and deed records, regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use. "Public records" includes correspondence, public records made by photocopying and public writings, but does not include:

(a) Records of the Legislative Assembly, its committees, officers and employes.

(b) Library and museum materials made or acquired and preserved solely for reference or exhibition purposes.

(c) Extra copies of a document, preserved only for convenience of reference.

(d) A stock of publications.

(6) "Public writing" means a written act or record of an act of a sovereign authority, official body, tribunal or public officer of this state, whether legislative, judicial or executive.

(7) "State agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state. However, "state agency" does not include the Legislative Assembly or its committees, officers and employes. [1961 c.160 §2; 1965 c 302 §1]

192.010 [Repealed by 1973 c.794 §34]

192.015 Secretary of State as public records administrator. The Secretary of State is the public records administrator of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the public records laws. [1973 c 439 §2]

192.020 [Repealed by 1973 c.794 §34]

192.030 [Amended by 1961 c 160 §4; repealed by 1973 c.794 §34]

192.040 Making, filing and recording records by photocopying. A state agency or political subdivision making public records or receiving and filing or recording public records, may do such making or receiving and filing or recording by means of photocopying. Such photocopying shall, except for records which are treated as confidential pursuant to law, be made, assembled and indexed, in lieu of any other method provided by law, in such manner as the governing body of the state agency or political subdivision considers appropriate. [Amended by 1961 c.160 §5]

192.050 Photocopying records; evidentiary effect. A state agency or political subdivision may, with the approval of the proper budgetary authority, cause any public records in its official custody to be photocopied as in the case of original filings or recordings. Every such reproduction shall be deemed an original; and a transcript, exemplification or certified copy of any such reproduction shall be deemed a transcript, exemplification or certified copy, as the case may be, of the original. [Amended by 1961 c 160 §6]

192.060 Indexing and filing photocopied records. All photocopies made under ORS 192.040 and 192.050 shall be properly indexed and placed in conveniently accessible files. Each roll of microfilm shall be deemed a book or volume and shall be designated and numbered and provision shall be made for preserving, examining and using the same. [Amended by 1961 c 160 §7]

192.070 Duplicate rolls of microfilm required; delivery to State Archivist. A duplicate of every roll of microfilm of documents recorded pursuant to law and the indexes therefor shall be made and kept safely. The State Archivist upon request may, pursuant to ORS 357.865, accept for safekeeping the duplicate microfilm. [Amended by 1961 c.160 §8]

192.072 State Archivist performing microfilm services for political subdivision or state agency. (1) As used in this section:

(a) "Political subdivision" includes a city, county, district and any other municipal or public corporation in Oregon.

(b) "State agency" includes any state officer, department, board, commission or court, the Legislative Assembly, its committees, officers and employes.

(2) Upon request of a state agency or political subdivision, the State Archivist may perform microfilm services for the state agency or political subdivision. The cost of rendering the microfilm services shall be paid to the State Archivist by the state agency or political subdivision. The moneys received under this section shall be deposited with the State Treasurer who shall give a receipt therefor. All such moneys are continuously appropriated for the payment of expenses incurred by the Secretary of State in the administration of the office of the State Archivist. [1955 c 87 §1, 1961 c 172 §3, 1973 c 439 §8]

192.074 [1955 c 87 §2, repealed by 1961 c 172 §7]

192.076 [1955 c.87 §3, repealed by 1961 c 172 §7]

192.080 [Amended by 1961 c 160 §9, repealed by 1971 c 508 §4]

192.090 [Repealed by 1961 c 160 §24]

192.100 [Repealed by 1961 c 160 §24]

192.105 State Archivist authorization for public officials and political subdivisions to dispose of records; legislative records excepted. (1) Except as otherwise provided by law, the State Archivist may grant to public officials of the state or any political subdivision, as defined in ORS 192.072, specific or continuing authorization for the retention or disposition of public records which are in their custody, after the records have been in existence for a specified period of time. In granting such authorization, the State Archivist shall consider the value of the public records for legal, administrative or research purposes and shall establish rules for procedure for the retention or disposition of the public records.

(2) The State Archivist shall provide instructions and forms for obtaining authorization. Upon receipt of an authorization or upon the effective date of the applicable rule, the public official who has public records in his custody may destroy or otherwise dispose of those records that are older than the specified period of retention established by the authorization or rule. No record of accounts or financial affairs subject to audit shall be destroyed until released for destruction by the responsible auditor or his representative. If federal funds are involved, records retention requirements of the United States Government must be observed.

(3) Authorizations granted prior to January 1, 1978, by any state agency, the State Archivist, or any board of county commissioners, to state agencies, schools, school districts, soil and water conservation districts, or county officials and offices shall remain in effect until they are adopted or amended by the State Archivist.

(4) This section does not apply to legislative records, as defined in ORS 171.410. [1953 c 244 §1; 1961 c 160 §10, subsection (3) enacted as 1961 c 150 §5, 1971 c 508 §1; 1977 c 146 §1]

192.110 [Amended by 1961 c.160 §11, repealed by 1971 c 508 §4]

192.120 [Repealed by 1971 c 508 §4]

192.130 Disposition of valueless records in custody of State Archivist. If any public records of a state agency or political subdivision in the official custody of the State Archivist prove to be of insufficient value to warrant permanent preservation, the State Archivist may submit a statement or summary thereof to the state agency or governing body of the political subdivision, or successor agency or body, certifying the type and nature thereof and requesting approval of the destruction or other disposal thereof. Upon receipt of such approval, the State Archivist may destroy or otherwise dispose of the public records. If the state agency or political subdivision no longer exists and there is no successor agency or body, the State Archivist may, upon approval of the Attorney General, destroy or otherwise dispose of the records. [Amended by 1961 c 160 §12; 1971 c.508 §2]

192.140 [Amended by 1961 c 160 §13, repealed by 1977 c 146 §2]

192.150 [Amended by 1961 c 160 §14, repealed by 1977 c 146 §2]

192.160 [Amended by 1961 c 160 §15, repealed by 1977 c 146 §2]

192.170 Disposition of materials without authorization. The destruction or other disposal of the following materials do not require specific authorization:

(1) Inquiries and requests from the public and answers thereto not required by law to be preserved or not required as evidence of a public or private legal right or liability.

(2) Public records which are duplicates by reason of their having been photocopied.

(3) Letters of transmittal and acknowledgment, advertising, announcements and correspondence or notes pertaining to reservations of accommodations or scheduling of personal visits or appearances. [Amended by 1961 c 160 §16, 1971 c 508 §3]

PUBLIC REPORTS

192.210 Definitions for ORS 192.210 and 192.220. As used in ORS 192.210 and 192.220, unless the context requires otherwise:

(1) "Issuing agency" means:

(a) Every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid from public funds and includes the Legislative Assembly, the officers and committees thereof, and the courts and the officers and committees thereof; or

(b) Any county, special district, school district or public or quasi-public corporation.

(2) "Printing" includes any form of reproducing written material.

(3) "Report" means any report or other publication of an issuing agency that is required by law to be submitted to the public or to a receiving agency.

(4) "Receiving agency" means any state officer or state board, commission, department, institution or agency or branch of government that is required by law to receive any report from an issuing agency. If the branch of government is the Legislative Assembly, the receiving agency is the Legislative Administration Committee and if the branch is the judicial branch, the receiving agency is the Supreme Court. [1969 c 456 §1, 1971 c 638 §11]

192.220 Standardized report forms; exemptions. (1) Except where form and frequency of reports are specified by law, every receiving agency shall prescribe by rule standardized forms for all reports and shall fix the frequency with which reports shall be submitted.

(2) Receiving agencies in the executive or administrative branch of government shall consult with the Executive Department in preparing rules under this section.

(3) With the consent of the Governor, a receiving agency in the executive or administrative branch may exempt any issuing agency from the requirements imposed under subsection (1) of this section. The Legislative Administration Committee may exempt any issuing agency from such requirements for any report required to be submitted to the Legislative Assembly. The Supreme Court may exempt any issuing agency from such requirements for any report required to be submitted to the courts. [1969 c 456 §2, 1971 c 638 §12]

RECORDS AND REPORTS

192.310 Records and reports required by law to be in English. (1) With the exception of physicians' prescriptions, all records, reports and proceedings required to be kept by law shall be in the English language or in a machine language capable of being converted to the English language by a data processing device or computer.

(2) Violation of this section is a Class C misdemeanor. [1971 c 743 §294]

INSPECTION OF PUBLIC RECORDS

192.410 Definitions for ORS 192.410 to 192.500. As used in ORS 192.410 to 192.500:

(1) "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.

(2) "State agency" includes every state officer, agency, department, division, bureau, board and commission.

(3) "Person" includes any natural person, corporation, partnership, firm or association.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(5) "Writing" means handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents. [1973 c 794 §2]

192.420 Right to inspect public records. Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.500. [1973 c 794 §3]

192.430 Functions of custodian of public records. The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his duties. [1973 c.794 §4]

192.440 Certified copies of public records; fees. (1) The custodian of any public record which a person has a right to inspect shall give him, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making such records available. However, when the records are those filed with the Secretary of State under ORS chapter 79, the fees for furnishing copies, summaries or compilations of such records are those established under ORS chapter 79. [1973 c.794 §5; 1979 c 548 §4]

192.450 Petition to review denial of right to inspect state public record; appeal from decision of Attorney General denying inspection. (1) Subject to ORS 192.480, any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. The burden is on the agency to sustain its action. The Attorney General shall issue his order denying or granting the petition, or denying it in part and granting it in part, within seven days from the day he receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the record, or if he grants the petition in part and orders the state agency to disclose a portion of the record, the state agency shall comply with the order in full within seven days after issuance of the order, unless within the seven-day period it issues a notice of its intention to institute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County. Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner at the address shown on the petition. The state agency shall institute the proceedings within seven days after it issues its notice of intention to do so. If the Attorney General denies the petition in whole or in part, or if the state agency continues to withhold the record or a part of it notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may institute such proceedings.

(3) The Attorney General shall serve as counsel for the state agency in a suit filed under subsection (2) of this section if the suit arises out of a determination by him that the

public record should not be disclosed, or that a part of the public record should not be disclosed if the state agency has fully complied with his order requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Attorney General is prohibited from serving as counsel for the state agency, the agency may retain special counsel. [1973 c.794 §6; 1975 c 308 §2]

192.460 Procedure to review denial of right to inspect other public records. ORS 192.450 is equally applicable to the case of a person denied the right to inspect or receive a copy of any public record of a public body other than a state agency, except that in such case the district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body are located, shall carry out the functions of the Attorney General, and any suit filed shall be filed in the circuit court for such county, and except that the district attorney shall not serve as counsel for the public body, in the cases permitted under ORS 192.450 (3), unless he ordinarily serves as counsel for it. [1973 c 794 §7]

192.465 Effect of failure of Attorney General, district attorney or public official to take timely action on inspection petition. (1) The failure of the Attorney General or district attorney to issue an order under ORS 192.450 or 192.460 denying, granting, or denying in part and granting in part a petition to require disclosure within seven days from the day of receipt of the petition shall be treated as an order denying the petition for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.

(2) The failure of an elected official to deny, grant, or deny in part and grant in part a request to inspect or receive a copy of a public record within seven days from the day of receipt of the request shall be treated as a denial of the request for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460. [1975 c 308 §5]

192.470 Petition form; procedure when petition received. (1) A petition to the Attorney General or district attorney requesting him to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information:

_____ (date)

I (we), _____ (name(s)), the undersigned, request the Attorney General (or District Attorney of _____ County) to order _____ (name of governmental body) and its employes to (make available for inspection) (produce a copy or copies of) the following records:

1. _____
(Name or description of record)

2. _____
(Name or description of record)

I (we) asked to inspect and/or copy these records on _____ (date) at _____ (address) The request was denied by the following person(s):

1. _____
(Name of public officer or employe, title or position, if known)

2. _____
(Name of public officer or employe, title or position, if known)

_____
(Signature(s))

This form should be delivered or mailed to the Attorney General's office in Salem, or the district attorney's office in the county courthouse.

(2) Promptly upon receipt of such a petition, the Attorney General or district attorney shall notify the public body involved. The public body shall thereupon transmit the public record disclosure of which is sought, or a copy, to the Attorney General, together with a statement of its reasons for believing that the public record should not be disclosed. In an appropriate case, with the consent of the Attorney General, the public body may instead disclose the nature or substance of the public record to the Attorney General. [1973 c.794 §10]

192.480 Procedure to review denial by elected official of right to inspect public records. In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attor-

ney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460, and the Attorney General or district attorney may upon request serve or decline to serve, in his discretion, as counsel in such suit for an elected official for which he ordinarily serves as counsel. Nothing in this section shall preclude an elected official from requesting advice from the Attorney General or a district attorney as to whether a public record should be disclosed. [1973 c 794 §8]

192.490 Court authority in reviewing action denying right to inspect public records; docketing; costs and attorney fees. (1) In any suit filed under ORS 192.450, 192.460, 192.470 or 192.480, the court has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(2) Except as to causes the court considers of greater importance, proceedings arising under ORS 192.450, 192.460, 192.470 or 192.480 take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(3) If a person seeking the right to inspect or to receive a copy of a public record prevails in the suit, the person shall be awarded costs and disbursements and reasonable attorney fees at trial and on appeal. If the person prevails in part, the court may in its discretion award the person costs and disbursements and reasonable attorney fees at trial and on appeal, or an appropriate portion thereof. If the state agency failed to comply with the Attorney General's order in full and did not issue a notice of intention to institute proceedings pursuant to ORS 192.450 (2) within seven days after issuance of the order, or did not institute the proceedings within seven days after issuance of the notice, the petitioner shall be awarded costs of suit at the trial level and reasonable attorney fees regardless of which party instituted the suit and regardless of which party prevailed therein. [1973 c 794 §9; 1975 c.308 §3; 1981 c 897 §40]

192.495 Inspection of records more than 25 years old. Notwithstanding ORS 192.500 and except as otherwise provided in ORS 192.496, public records that are more than 25 years old shall be available for inspection. [1979 c.301 §2]

192.496 Public records exempt from disclosure because of age; student records. The following public records are exempt from disclosure:

(1) Records less than 75 years old which contain information about the physical or mental health or psychiatric care or treatment of a living individual, if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy.

(2) Records less than 75 years old which were sealed in compliance with statute or by court order. Such records may be disclosed upon order of a court of competent jurisdiction or as otherwise provided by law.

(3) Records of a person who is or has been in the custody or under the lawful supervision of a state agency, a court or a unit of local government, are exempt from disclosure for a period of 25 years after termination of such custody or supervision to the extent that disclosure thereof would interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure. Nothing in this subsection, however, shall be construed as prohibiting disclosure of the fact that a person is in custody.

(4) Student records required by state or federal law to be exempt from disclosure. [1979 c.301 §3]

192.500 Public records exempt from disclosure. (1) The following public records are exempt from disclosure under ORS 192.410 to 192.500 unless the public interest requires disclosure in the particular instance:

(a) 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 paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:

(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(B) The offense with which the arrested person is charged;

(C) The conditions of release pursuant to ORS 135.230 to 135.290;

(D) The identity of and biographical information concerning both complaining party and victim;

(E) The identity of the investigating and arresting agency and the length of the investigation;

(F) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice;

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this paragraph shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(f) Information relating to the appraisal of real estate prior to its acquisition;

(g) The names and signatures of employes who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(h) Investigatory information relating to any complaint filed under ORS 659.040 or 659.045, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060;

(i) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180; and

(j) The circulation records of a public library showing use of specific library materials by named persons.

(2) The following public records are exempt from disclosure under ORS 192.410 to 192.500:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging

frank communication between officials and employes of public bodies clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof 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;

(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Information or records of the Corrections Division, including the State Board of Parole, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

(e) Records, reports and other information received or compiled by the Superintendent of Banks in the administration of ORS chapters 723, 724, 725 and 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employes and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

(f) Reports made to or filed with the court under ORS 137.075 or 137.530;

(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ORS 1.440, 7.211, 7.215, 41.675, 40.225 to 40.295, 57.850, 135.155, 146.780, 173.230, 179.495, 181.540, 308.290, 308.413, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 346.165, 346.167, 351.065, 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430, 469.090, 474.160 (1974 Replacement Part), 476.090, 482.141, 483.610, 656.702, 657.665, 706.720, 706.730, 715.040, 722.414, 731.264, 734.650, 734.830 or 744.017;

(i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable; and

(j) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530 (3).

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination. [1973 c 794 §11, 1975 c 308 §1, 1975 c.582 §150; 1975 c 606 §41a; 1977 c 107 §1; 1977 c 587 §1, 1977 c 793 §5a; 1979 c 190 §400, 1981 c 107 §1; 1981 c.139 §8; 1981 c 187 §1, 1981 c.892 §92, 1981 c 905 §7]

MEDICAL RECORDS

192.525 State policy concerning medical records. The Legislative Assembly declares that it is the policy of the State of Oregon to protect both the right of an individual to have his medical history protected from disclosure to persons other than his health care provider and insurer who needs such information, and the right of an individual to review his own medical records. It is recognized that both rights may be limited, but only to benefit the patient. These rights of confidentiality and full access must be protected by private and public institutions providing health care services and by private practitioners of the healing arts. The State of Oregon commits itself to fulfilling the objectives of this public policy for public providers of health care. Private practitioners of the healing arts and private institutions providing health care services are encouraged to adopt voluntary guidelines that will grant health care recipients access to their own medical records while preserving those records from unnecessary disclosure. [1977 c 812 §1]

192.530 Health Division to develop guidelines for access to medical records. The Health Division of the Department of

Human Resources and those boards licensing the healing arts that have been established in the division shall assist private health care providers in this state to develop guidelines necessary to fulfill this state's policy of facilitating a patient's access to medical records referring to him and limiting disclosure, without the patient's consent, to persons other than his health care provider and insurer who needs such information. Such guidelines shall be reported to the Sixtieth Legislative Assembly. [1977 c 812 §2]

PRIVATE FINANCIAL RECORDS

192.550 Definitions for ORS 192.550 to 192.595. (1) "Customer" means any person, partnership, limited partnership, corporation, trust or other legal entity, who or which is transacting or has transacted business with a financial institution, or who or which is using or has used the services of such an institution, or for whom or which a financial institution has acted or is acting as a fiduciary.

(2) "Financial institution" means state and national banks, state and federal savings and loan associations, state and federal credit unions, trust companies and mutual savings banks.

(3) "Financial records" means any original written document, any copy thereof, or any information contained therein, held by or in the custody of a financial institution, where such document, copy or information is identifiable as pertaining to one or more customers of such an institution.

(4) "Local agency" means every county, city, school district, municipal organization, district, political subdivision; or any board, commission or agency thereof; or any other local public agency; and every officer, agent or employe thereof.

(5) "State agency" means every state office, department, division, bureau, board and commission or other state agency, including the Legislative Assembly; and every officer, agent or employe thereof.

(6) "Summons or subpena" means an administrative summons or administrative subpena issued by any state or local agency, or a judicial subpena or subpena duces tecum.

(7) "Supervisory agency" means any of the following:

(a) The Banking Division.

(b) The Office of the Savings and Loan Supervisor.

(c) The credit union section of the Department of Commerce.

(d) The Corporation Division. [1977 c 517 §1]

192.555 Disclosure of financial records prohibited; exceptions. (1) Except as provided in ORS 192.560, 192.565 and 192.570, or as required by the Uniform Disposition of Unclaimed Property Act, ORS 98.352 to 98.436:

(a) No financial institution shall provide any financial records of any customer to a state or local agency.

(b) No state or local agency shall request or receive from a financial institution any financial records of customers.

(c) This subsection shall not preclude a financial institution, in its discretion, from initiating contact with, and thereafter communicating with and disclosing customer financial records to, appropriate state or local agencies concerning any suspected violation of the law.

(2) Nothing in ORS 192.550 to 192.595 prohibits any of the following:

(a) The dissemination of any financial information which is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) The examination by, or disclosure to, any supervisory agency of financial records which relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes which grant authority to examine, audit, or require reports of financial records or financial institutions.

(c) The examination by, or disclosure to the Department of Revenue as required by ORS 118.440 relating to the inheritance tax laws.

(d) The furnishing to the Department of Revenue of information by the financial institution, whether acting as principal or agent, as required by ORS 314.360. [1977 c.517 §§2, 8 (1)]

192.560 Authorization of disclosure. (1) A financial institution may disclose financial records of a customer to a state or local agency, and such an agency may request and receive such records, when the customer has authorized such disclosure as provided in this section.

(2) The authorization of disclosure shall:

(a) Be in writing, signed and dated by the customer;

(b) Identify with particularity the records authorized to be disclosed;

(c) Name the agency to whom disclosure is authorized;

(d) Contain notice to the customer that he may revoke such authorization at any time in writing; and

(e) Inform the customer as to the reason for such request and disclosure.

(3) No financial institution shall require a customer to sign an authorization for disclosure as a condition of doing business with such institution. [1977 c 517 §3]

192.565 Disclosure under summons or subpena; procedure. (1) A financial institution may disclose financial records of a customer to a state or local agency, and a state or local agency may request and receive such records, pursuant to a lawful summons or subpena, served upon the financial institution, as provided in this section.

(2) The state or local agency issuing such summons or subpena shall make personal service of a copy of it upon the customer.

(3) The summons or subpena shall name the agency issuing it, and shall specify the statutory authority under which the financial records are being obtained.

(4) The summons or subpena shall state that service of a copy thereof has been made upon the customer, and shall state the date upon which service was accomplished.

(5) Except as provided in subsection (6) of this section, a financial institution shall not disclose the financial records of a customer to a state or local agency, in response to a summons or subpena served upon it, for a period of 10 days following service of a copy thereof upon the customer, unless the customer has consented to earlier disclosure. If the customer moves to quash such summons or subpena, and the financial institution receives written notice of such action from the customer, all within 10 days following the date upon which a copy of the summons or subpena was served upon the customer, the financial institution shall not disclose the financial records of said customer pursuant to said summons or subpena unless:

(a) The customer thereafter consents in writing to the disclosure; or

(b) A court orders disclosure of the financial records to the state or local agency, pursuant to the summons or subpena.

(6) Pursuant to the issuance of a summons or subpena, a state or local agency may petition the court, and the court, upon a showing of reasonable cause to believe that a law subject to the jurisdiction of the petitioning agency has been or is about to be violated, may order that service upon the customer pursuant to subsection (2) of this section, information concerning such service required by subsection (4) of this section, and the 10-day period provided for in subsection (5) of this section be waived or shortened.

(7) Where the court grants such petition, a copy of the court order granting the same shall be attached to the summons or subpena, and shall therewith be served upon the financial institution. [1977 c.517 §4]

192.570 Disclosure under search warrant. (1) A financial institution may disclose financial records of a customer to a state or local agency, and a state or local agency may request and receive such records, pursuant to a lawful search warrant, as provided in this section.

(2) The content of the search warrant shall conform to the requirements of ORS 133.565.

(3) The state or local agency seeking financial records shall make personal service of the search warrant upon the financial institution in the manner provided by law for service of a subpena.

(4) Disclosure of financial records may occur as soon as the warrant is served upon the financial institution. [1977 c.517 §5]

192.575 Liability of financial institution for disclosure. (1) Nothing in ORS 192.550 to 192.595 shall require a financial institution to inquire or determine that those seeking disclosure have duly complied with the requirements set forth in ORS 192.550 to 192.595, provided only that the customer authorization, summons, subpena or search warrant served upon or delivered to a financial institution pursuant to ORS 192.560, 192.565 or 192.570 shows compliance on its face.

(2) A financial institution which in good faith reliance refuses to disclose financial records of a customer upon the prohibitions of ORS 192.550 to 192.595, shall not be liable to its customer, to a state or local agency, or to

any person for any loss or damage caused in whole or in part by such refusal.

(3) Financial institutions shall not be required to notify their customers concerning the receipt by them of request from state or local agencies for disclosures of financial records of such customers. However, except as otherwise provided in ORS 192.550 to 192.595, nothing in ORS 192.550 to 192.595 shall preclude financial institutions from giving such notice to customers. A court may order a financial institution to withhold notification to a customer of the receipt of a summons, subpena or search warrant when the court finds that notice to the customer would impede the investigation being conducted by the state or local agency. [1977 c 517 §6]

192.580 Time for compliance; reimbursement of financial institution. (1) A financial institution shall have a reasonable period of time in which to comply with any proper customer authorization, summons, subpena or search warrant permitting or seeking disclosure of financial records. For the purposes of this section, a "reasonable period of time" shall in no case be less than 10 days from the date upon which the financial institution receives or is served with a customer authorization, summons, subpena or search warrant. Provided, however, that in all cases where disclosure is sought pursuant to ORS 192.565, said reasonable period of time shall be not less than 20 days.

(2) Prior to making disclosures, a financial institution may require that the requesting state or local agency reimburse the financial institution for the reasonable costs incurred by it in the course of compliance. These costs include, but are not limited to, personnel costs, reproduction costs and travel expenses. [1977 c 517 §7]

192.585 Procedure for disclosure to law enforcement agency. (1) When a police or sheriff's department or district attorney's office in this state requests account information from a financial institution to assist in a criminal investigation, the financial institution shall supply a statement setting forth the requested account information with respect to a customer account specified by the police or sheriff's department or district attorney's office, for a period of up to 15 days prior to and 15 days following the date of occurrence of the account transaction giving rise to the criminal investigation. The disclosure statement provided for herein shall include only account information as defined in subsection (2) of this section. The police or sheriff's department or district attorney's office requesting the information shall, within 24 hours of making the request, confirm the same in a writing delivered or mailed to the financial institution, setting forth the nature of the account information sought, the time period for which account information is sought, and that the information has been requested pursuant to a criminal investigation.

(2) As used in this section, "account information" means the number of customer account items dishonored or which created overdrafts, dollar volume of dishonored items and items which when paid created overdrafts, a statement explaining any credit arrangement between the financial institution and the customer to pay overdrafts, dates and amounts of deposits and debits to a customer's account, the account balance on such dates, a copy of the customer's signature card and the dates the account opened or closed. [1977 c 517 §8 (2), (3)]

192.590 Civil liability for violation of ORS 192.550 to 192.595; status of evidence obtained in violation. (1) Any customer who suffers any ascertainable loss as a result of a wilful violation of ORS 192.550 to 192.595 by any person, may bring an individual action in an appropriate court to recover actual damages or $1,000, whichever is greater.

(2) Any customer who suffers any ascertainable loss as a result of a negligent violation of ORS 192.550 to 192.595 by any person, may bring an individual action in an appropriate court to recover actual damages.

(3) In any successful action to enforce civil liability for violation of the provisions of ORS 192.550 to 192.595, the customer may recover the cost of the action, together with reasonable attorney fees at trial and on appeal as determined by the court.

(4) An action to enforce any provision of ORS 192.550 to 192.595 must be commenced within two years after the date on which the violation occurred.

(5) Evidence obtained in violation of ORS 192.550 to 192.595 is inadmissible in any proceeding. [1977 c 517 §9, 1981 c.897 §41]

192.595 Severability. If any provision of ORS 192.550 to 192.595 or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall

not affect any other provision or application of ORS 192.550 to 192.595 which can remain in effect without the invalid provision or application, and to this end the provisions of ORS 192.550 to 192.595 are severable. [1977 c 517 §10]

PUBLIC MEETINGS

192.610 Definitions for ORS 192.610 to 192.690. As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. Meeting does not include any onsite inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c 172 §2, 1979 c 644 §1]

192.620 Policy. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c 172 §1]

192.630 Meetings of governing body to be open to public; location of meetings. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) No quorum of a governing body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies shall be held within the geographic boundaries over which one of the participating public bodies has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action. This subsection does not apply to the Oregon State Bar until December 31, 1980. [1973 c 172 §3, 1979 c 644 §2]

192.640 Public notice required; special notice for executive sessions, special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c 172 §4, 1979 c 644 §3; 1981 c 182 §1]

192.650 Written minutes required; content; content of minutes for executive sessions. (1) The governing body of a public body shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the written minutes must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;

(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

(d) The substance of any discussion on any matter; and

(e) Subject to ORS 192.410 to 192.500 relating to public records, a reference to any document discussed at the meeting but such reference shall not affect the status of the document under ORS 192.410 to 192.500.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound tape recording which need not be transcribed unless otherwise provided by law. Material the disclosure of which is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility. [1973 c 172 §5; 1975 c.664 §1, 1979 c 644 §4]

192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits. (1) Nothing contained in ORS 192.610 to 192.690 shall be construed to prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for the holding of such executive session. Executive session may be held:

(a) To consider the employment of a public officer, employe, staff member or individual agent. The exception contained in this paragraph does not apply to:

(A) The filling of a vacancy in an elective office.

(B) The filling of a vacancy on any public committee, commission or other advisory group.

(C) The consideration of general employment policies.

(D) The employment of the chief executive officer of any public body unless the vacancy in that office has been advertised, regularized procedures for hiring have been adopted by the public body and there has been opportunity for public input into the employment of such an officer. However, the standards, criteria and policy directives to be used in hiring or evaluating chief executive officers shall be adopted by the governing body in meetings open to the public.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employe, staff member or individual agent, unless such public officer, employe, staff member or individual agent requests an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087, 441.990 (3), 442.300, 442.320, 442.330 and 442.340 including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate, pursuant to standards, criteria and policy directives adopted by the governing body, the employment-related performance of the chief executive officer of any public body, a public officer, employe or staff member unless the person whose performance is being reviewed and evaluated requests an open hearing. The standards, criteria and policy directives to be used in hiring or evaluating chief executive officers shall be adopted by the governing body in meetings open to the public in which there has been opportunity for public comment.

(2) Labor negotiations may be conducted in executive session if either side of the negotiators requests closed meetings. Notwithstanding ORS 192.640, subsequent sessions of the negotiations may continue without further public notice.

(3) Representatives of the news media shall be allowed to attend executive sessions other than those held under paragraph (d) of subsection (1) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information subject of the executive session be undisclosed.

(4) No executive session may be held for the purpose of taking any final action or making any final decision. [1973 c.172 §6, 1975 c.664 §2, 1979 c 644 §5; 1981 c.302 §1]

192.670 Meetings by means of telephonic or electronic communication. (1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7, 1979 c 361 §1]

192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members. (1) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body. The court may order such equitable relief as it deems appropriate in the circumstances. A decision shall not be voided if other equitable relief is available. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(2) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (1) of this section and that the violation is the result of wilful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (1) of this section. [1973 c 172 §8; 1975 c.664 §3, 1979 c 644 §6, 1981 c 897 §42]

192.690 Exceptions to ORS 192.610 to 192.690. (1) ORS 192.610 to 192.690 shall not apply to the deliberations of the State Board of Parole, the State Banking Board, the Psychiatric Security Review Board, of state agencies conducting hearings on contested cases in accordance with the provisions of ORS 183.310 to 183.550, the review by the Workers' Compensation Board of similar hearings on contested cases, or to any judicial proceeding.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530 (3). [1973 c 172 §9; 1975 c 606 §41b; 1977 c 380 §19; 1981 c 354 §3]

192.695 Prima facie evidence of violation required of plaintiff. In any suit commenced under ORS 192.680 (1), the plaintiff shall be required to present prima facie evidence of a violation of ORS 192.610 to 192.690 before the governing body shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meetings law, the burden to prove that the provisions of ORS 192.610 to 192.690 were complied with shall be on the governing body. [1981 c 892 §97d]

Note: 192 695 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS 192.610 to 192 990 by legislative action See the Preface to Oregon Revised Statutes for further explanation

192.710 Smoking in public meetings prohibited. (1) No person shall smoke or carry any lighted smoking instrument in a room where a public meeting is being held or is to continue after a recess. For purposes of this subsection, a public meeting is being held from the time the agenda or meeting notice indicates the meeting is to commence regardless of the time it actually commences.

(2) As used in this section:

(a) "Public meeting" means any regular or special public meeting or hearing of a public body to exercise or advise in the exercise of any power of government in buildings or rooms rented, leased or owned by the State of Oregon or by any county, city or other political subdivision in the state regardless of whether a quorum is present or is required.

(b) "Public body" means the state or any department, agency, board or commission of the state or any county, city or other political subdivision in the state.

(c) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment. [1973 c 168 §1; 1979 c 262 §1]

PENALTIES

192.990 Penalties. Violation of ORS 192.710 (1) is a violation punishable by a fine of $10. [1973 c.168 §2]