

Chapter 192

1993 EDITION

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MISCELLANEOUS MATTERS

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 statewide 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 non-current, 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 in order 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, and in order to assure the prompt destruction of records without continuing value. 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; 1991 c.671 §3]

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, machine readable electronic record 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 employees.

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

(c) Records or information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905.

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

(e) 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 employees. [1961 c.160 §2; 1965 c.302 §1; 1983 c.620 §11; 1989 c.16 §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 the responsibility of the secretary 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 Copying 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

or captured by digital imaging system as in the case of original filings or recordings or recorded by means of analog or digital audio and video tape technology. Each photocopy, digital image and analog or digital audio and video tape shall be made in accordance with the appropriate standard as determined by the State Archivist. 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; 1991 c.671 §4]

192.060 Indexing and filing copied records. All photocopies, digital images and analog or digital audio and video tapes 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; 1991 c.671 §5]

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 employees.

(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 state officials to dispose of records; legislative records excepted; local government policy on disposing of public records; child abuse reports; limitations; records officer; standards for State Records Center. (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. In order to protect and preserve the private legal rights of a person who as a minor was the subject of a record relating to child abuse and foster home placement and supervision, and to retain such a record for use in any subsequent counseling required by such a person, the State Archivist shall retain all records of the Children's Services Division of the Department of Human Resources that relate to child abuse for:

(a) 75 years if the abuse is substantiated; and

(b) 30 years if the abuse is unsubstantiated.

(2)(a) 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, a state official who has public records in custody shall destroy or otherwise dispose of those records that are older than the specified period of retention established by the authorization or rule. An official of a local government may destroy such records if such destruction is consistent with the policy of the local government. No record of accounts or financial affairs subject to audit shall be destroyed until released for destruction by the responsible auditor or representative of the auditor. If federal funds are involved, records retention requirements of the United States Government must be observed. Each state agency and political subdivision shall designate a records officer to coordinate its records management program and to serve as liaison with the State Archivist. The county records officers for the purposes of ORS 192.001, 192.050, 192.060, 192.105, 192.130, 357.825, 357.835 and 357.875 shall be

those officers identified in ORS 205.110. The State Archivist shall require periodic reports from records officers about records management programs. The State Archivist may require state agency records designated as inactive by the State Archivist to be transferred to the State Records Center, pending the availability of space.

(b) The State Archivist shall determine which parts of a public record are acceptable for admission to the State Records Center and may require the state agency or governing body to cause the unacceptable part to be removed before the record is submitted to the State Records Center.

(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; 1991 c.671 §6; 1993 c.660 §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; notice prior to disposition. If the State Archivist determines that any public records of a state agency or political subdivision in the official custody of the State Archivist prove to have insufficient administrative, legal or research value to warrant permanent preservation, the State Archivist shall submit a statement or summary thereof to the records officer of the state agency or political subdivision, or successor agency or body, certifying the type and nature thereof and giving prior notification of the destruction. [Amended by 1961 c.160 §12; 1971 c.508 §2; 1991 c.671 §7]

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]

192.190 Consular corps credentials as public records; duties of Secretary of State; fees. (1) Subject to such rules as the Secretary of State may adopt, the secretary may accept and file as a public record the credentials of a member of the consular corps if that member's jurisdiction includes the State of Oregon.

(2) The Secretary of State may certify as to the official character and the genuineness of the signature of a member of the consular corps whose credentials have been accepted and filed under subsection (1) of this section.

(3) Fees for the filing of credentials and the issuance of certificates under this section shall be established by the Secretary of State pursuant to ORS 177.130. [1983 c.232 §1]

PUBLIC REPORTS

(Standardized Form)

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 Oregon Department of Administrative Services 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]

(Policy; Compliance)

192.230 Definitions for ORS 192.235 to 192.250. As used in ORS 192.235 to 192.245, "report" means informational matter that is published as an individual document at state expense or as required by law. "Report" does not include documents prepared strictly for agency administrative or operational purposes. [1991 c.842 §1]

Note: 192.230 to 192.250 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.235 Policy for ORS 192.230 to 192.250. (1) The Legislative Assembly finds that:

(a) Many state agency reports are published for reasons that are historical and no longer based on the public's need to be informed.

(b) The format of many state agency reports is not economical or well suited to providing needed information in easily understandable form.

(c) State agency reports containing information that is useful but not to the general public should be placed on a self-supporting schedule.

(2) It is the policy of the Legislative Assembly to encourage state agencies to inform the public, the Legislative Assembly and the Governor of matters of public interest and concern. It is further the policy of this state to guarantee to its citizens the right to know about the activities of their government, to

benefit from the information developed by state agencies at public expense and to enjoy equal access to the information services of state agencies. It is further state policy to encourage agencies to consider whether needed information is most effectively and economically presented by means of printed reports. [1991 c.842 §2]

Note: See note under 192.230.

192.240 Duties of state agency issuing report. To comply with the state policy relating to reports outlined in ORS 192.235, a state agency shall do the following:

(1) Use electronic communications whenever the agency determines that such use reduces cost and still provides public access to information.

(2) Whenever possible, use standard 8-1/2-by-11-inch paper printed on both sides of the sheet and use recycled paper in accordance with ORS 279.545 to 279.650 and 279.729 and rules adopted pursuant thereto.

(3) Insure that publications are furnished to the State Librarian, as required in ORS 182.070. [1991 c.842 §3]

Note: See note under 192.230.

192.245 Form of report to legislature. Whenever a law of this state requires a written report be submitted to the Legislative Assembly, the requirement shall be met by distribution of an executive summary of no more than two pages sent to every member of the Legislative Assembly and one copy of the report to the office of the Speaker of the House of Representatives, one copy to the office of the President of the Senate and five copies to the Legislative Administration Committee. This requirement does not preclude providing a copy of any report to a specific legislative committee if required by law. [1991 c.842 §4]

Note: See note under 192.230.

192.250 Director of Oregon Department of Administrative Services to report to legislature on ORS 192.230 to 192.250. The Director of the Oregon Department of Administrative Services shall report to the Legislative Assembly by appearing before the appropriate interim committees designated by the Speaker of the House of Representatives and the President of the Senate. The director shall testify as to the effectiveness of ORS 171.206, 192.230 to 192.250 and 292.956, including any cost savings realized or projected and any recommendations for further legislative action. [1991 c.842 §5]

Note: See note under 192.230.

(Distribution)

192.270 Definitions for ORS 192.270 and 192.275. As used in ORS 192.270 and 192.275:

(1) "Public" does not include any state officer or board, commission, committee, department, institution, branch or agency of state government to which a report is specifically required by law to be submitted but does include any such to which a copy is sent for general informational purposes or as a courtesy.

(2) "Report" means informational matter published as a report or other document by a state agency but does not include an order as defined in ORS 183.310.

(3) "State agency" means any state officer or board, commission, department, institution or agency of the executive, administrative or legislative branches of state government. [1993 c.181 §1]

Note: 192.270 and 192.275 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.275 Notice when report required; content; effect. Notwithstanding ORS 192.230 to 192.245, if any state or federal law requires a state agency to send, mail or submit a report to the public, the state agency may meet this requirement by mailing notice of the report to the public. The notice shall state that if the recipient returns an attached or enclosed postcard to the state agency, the state agency will supply a copy of the report. The postcard may contain a checkoff to indicate whether the person wants to continue receiving a copy of complete reports. [1993 c.181 §2]

Note: See note under 192.270.

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 192.505. As used in ORS 192.410 to 192.505:

(1) "Custodian" means:

(a) The person described in ORS 7.110 for purposes of court records; or

(b) A public body mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include a public body that has custody of a public record as an agent of another public body that is the custodian unless the public record is not otherwise available.

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

(3) "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.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(5) "State agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state but does not include the Legislative Assembly or its members, committees, officers or employees insofar as they are exempt under section 9, Article IV of the Oregon Constitution.

(6) "Writing" means handwriting, type-writing, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings. [1973 c.794 §2; 1989 c.377 §1; 1993 c.787 §4]

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 192.501 to 192.505. [1973 c.794 §3]

192.430 Functions of custodian of public records. (1) The custodian of any public records, including public records maintained in machine readable or electronic form, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in the office of the custodian and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. If the public record is maintained in machine readable or electronic form, the custodian shall furnish proper and reasonable opportunity to assure access.

(2) The custodian of the records may adopt reasonable rules necessary for the pro-

tection of the records and to prevent interference with the regular discharge of duties of the custodian. [1973 c.794 §4; 1989 c.546 §1]

192.440 Certified copies of public records; fees; waiver or reduction. (1) The custodian of any public record which a person has a right to inspect shall give the person, 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) If the public record is maintained in a machine readable or electronic form, the custodian shall provide copies of the public record in the form requested, if available. If the public record is not available in the form requested, it shall be made available in the form in which it is maintained.

(3) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making such records available including costs for summarizing, compiling or tailoring such record, either in organization or media, to meet the person's request. 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 by the Secretary of State by rule, under ORS chapter 79.

(4) The custodian of any public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

(5) A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied. [1973 c.794 §5; 1979 c.548 §4; 1989 c.111 §12; 1989 c.377 §2; 1989 c.546 §2]

192.445 Nondisclosure on request of home address and home telephone number; rules of procedure; duration of effect of request; liability; when not applicable.

(1) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member

residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.

(2) The Attorney General shall adopt rules describing:

(a) The procedures for submitting the written request described in subsection (1) of this section.

(b) The evidence an individual shall provide to the public body to establish that disclosure of the home address or telephone number of the individual would constitute a danger to personal safety. Such evidence may include but is not limited to evidence that the individual or a family member residing with the individual has:

(A) Been a victim of domestic violence;

(B) Obtained an order issued under ORS 133.055;

(C) Contacted a law enforcement officer involving domestic violence or other physical abuse;

(D) Obtained a temporary restraining order or other no contact order to protect the individual from future physical abuse; or

(E) Filed other criminal or civil legal proceedings regarding physical protection.

(c) The procedures for submitting the written notification from the individual that disclosure of the home address or personal telephone number of the individual no longer constitutes a danger to personal safety.

(3) A request described in subsection (1) of this section shall remain effective:

(a) Until the public body receives a written request for termination but no later than five years after the date that a public body receives the request; or

(b) In the case of a voter registration record, until the individual must reregister to vote, at which time the individual may apply for another exemption from disclosure.

(4) A public body may disclose a home address or personal telephone number of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(5) A public body shall not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address or personal telephone number granted an exemption from disclosure under this section.

(6) This section does not apply to county property and lien records. [1993 c.787 §5]

Note: 192.445 was added to and made a part of 192.410 to 192.505 by legislative action but was not

added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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 an order denying or granting the petition, or denying it in part and granting it in part, within seven days from the day the Attorney General receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the record, or if the Attorney General 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 the Attorney General 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 the order of the Attorney General 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 the district attorney 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 the Attorney General or district attorney 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 employees 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 employee;
 title or position, if known)
2. _____
 (Name of public officer or employee;
 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 Attorney 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 the discretion of the Attorney General or district attorney, as counsel in such suit for an elected official for which the Attorney General or district attorney 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 ju-

isdiction 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 192.501 to 192.505 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 [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; 1983 c.17 §29; 1983 c.198 §1; 1983 c.338 §902; 1983 c.617 §3; 1983 c.620 §12; 1983 c.703 §8; 1983 c.709 §42; 1983 c.717 §30; 1983 c.740 §46; 1983 c.830 §9; 1985 c.413 §1; 1985 c.602 §13; 1985 c.657 §1; 1985 c.762 §179a; 1985 c.813 §1; 1987 c.94 §100; 1987 c.109 §3; 1987 c.320 §145; 1987 c.373 §23; 1987 c.520 §12; 1987 c.610 §24; 1987 c.731 §2; 1987 c.839 §1; 1987 c.898 §26; repealed by 1987 c.764 §1 (192.501, 192.502 and 192.505 enacted in lieu of 192.500)]

192.501 Public records exempt from disclosure. The following public records are exempt from disclosure under ORS 192.410 to 192.505 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;

(2) 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 an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(3) Investigatory information compiled for criminal law purposes. The record of an ar-

rest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, 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;

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected;

(5) 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 subsection shall limit the use which can be made of such information for

regulatory purposes or its admissibility in any enforcement proceeding;

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

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

(8) 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;

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

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

(11) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732;

(12) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction;

(13) A personnel discipline action, or materials or documents supporting that action;

(14) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species;

(15) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented;

(16) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually;

(17) Data and information provided by participants to mediation under section 5, chapter 967, Oregon Laws 1989;

(18) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation;

(19) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared and used by a law enforcement agency, if public disclosure thereof would endanger the life or physical safety of a citizen or law enforcement officer or jeopardize the law enforcement activity involved;

(20)(a) Audits or audit reports of a telecommunications utility. As used in this paragraph, "audit or audit report of a telecommunications utility" means any external or internal audit or audit report pertaining to a telecommunications utility, as defined in ORS 759.005, or pertaining to a corporation having an affiliated interest, as defined in ORS 759.010, with a telecommunications utility that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications utility or affiliate under compulsion of state law. "Audit or audit report of a telecommunications utility" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order.

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.010, with a telecommunications utility, as defined in ORS 759.005; and

(21) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967. [1987 c.373 §S.23c, 23d; 1987 c.764 §2 (enacted in lieu of 192.500); 1989 c.70 §1; 1989 c.171 §26; 1989 c.967 §11; 1989 c.1083 §10; 1991 c.636 §1; 1991 c.678 §1; 1993 c.616 §4; 1993 c.787 §1]

Note: The amendments to 192.501 by section 13, chapter 967, Oregon Laws 1989, by section 2, chapter 636, and section 2, chapter 678, Oregon Laws 1991, and by section 5, chapter 616, and section 2, chapter 787, Oregon Laws 1993, take effect June 30, 1995. See section 17, chapter 967, Oregon Laws 1989. The text that is effective on and after June 30, 1995, is set forth for the user's convenience.

192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505 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;

(2) 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 an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, 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;

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected;

(5) 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 subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

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

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

(8) 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;

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

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

(11) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732;

(12) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction;

(13) A personnel discipline action, or materials or documents supporting that action;

(14) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species;

(15) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented;

(16) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually;

(17) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation;

(18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared and used by a law enforcement agency, if public disclosure thereof would endanger the life or physical

safety of a citizen or law enforcement officer or jeopardize the law enforcement activity involved;

(19)(a) Audits or audit reports of a telecommunications utility. As used in this paragraph, "audit or audit report of a telecommunications utility" means any external or internal audit or audit report pertaining to a telecommunications utility, as defined in ORS 759.005, or pertaining to a corporation having an affiliated interest, as defined in ORS 759.010, with a telecommunications utility that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications utility or affiliate under compulsion of state law. "Audit or audit report of a telecommunications utility" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order;

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.010, with a telecommunications utility, as defined in ORS 759.005; and

(20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967.

192.502 Other exempt records. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

(1) 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 employees of public bodies clearly outweighs the public interest in disclosure;

(2) 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;

(3) 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;

(4) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public in-

terest in confidentiality clearly outweighs the public interest in disclosure;

(5) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

(6) Reports made to or filed with the court under ORS 137.077 or 137.530;

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

(8) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law;

(9) 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;

(10) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530;

(11) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees' Retirement System pursuant to ORS 237.001 to 237.320;

(12) Records submitted by private persons or businesses to the State Treasurer or the Oregon Investment Council relating to proposed acquisition, exchange or liquidation of public investments under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that disclosure of such records reasonably may be expected to substantially limit the ability of the Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such transactions. Records which relate to concluded transactions are not subject to this exemption;

(13) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees' Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter;

(14) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352;

(15) The following records, communications and information submitted to the Economic Development Commission, the Economic Development Department, the Oregon Resource and Technology Development Corporation, the Port of Portland or other ports, as defined in ORS 777.005, by applicants for loans or services described in ORS 285.120:

- (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 paragraph 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; and

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

(16) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes;

(b) The period for which the taxes are delinquent; and

(c) The actual, or estimated, amount of the delinquency;

(17) All information supplied by a person under ORS 151.430 to 151.491 for the purpose of requesting court-appointed counsel, and all information supplied to the State Court Administrator from whatever source for the purpose of verifying indigency of a person pursuant to ORS 151.430 to 151.491; and

(18) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record. [1987 c.373 §23e; 1987 c.764 §3; 1987 c.898 §27 (enacted in lieu of 192.500); 1989 c.6 §17; 1989 c.925 §1; 1991 c.825 §7; 1993 c.694 §27; 1993 c.817 §1]

192.503 Release of information submitted to Department of Transportation limited; certification of intent by requester. (1) A person or agency submitting a report to the Department of Transportation under ORS 810.460 and 810.470 may not release the report or information from the report to any person who intends to use the information for commercial purposes.

(2) For purposes of determining intent, the person or agency responsible for deciding whether or not information may be released is entitled to rely on a written certification of intent signed by the person requesting release of the report or information.

(3) As used in this section, "commercial purposes" has the meaning given in ORS 802.224. [1993 c.224 §3]

192.505 Exempt and nonexempt public record to be separated. If any public record contains material which is not exempt under ORS 192.501 and 192.502, 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. [1987 c.764 §4 (enacted in lieu of 192.500)]

RECORDS OF DEVELOPMENTALLY DISABLED OR MENTALLY ILL INDIVIDUALS

192.515 Definitions for ORS 192.515 and 192.517. As used in ORS 179.505, 192.515 and 192.517:

(1) "Individual" means:

(a) A person with a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. §6001); or

(b) An individual with mental illness as defined in the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. §10802).

(2) "Records" includes reports prepared or received by any staff of a facility rendering care or treatment or reports prepared by an agency or staff person charged with investigating reports of incidents of abuse, neglect, injury or death occurring at the facility that describe such incidents and the steps taken to investigate the incidents and discharge planning records. [1993 c.262 §1]

Note: 192.515 and 192.517 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.517 Access to records of individuals who are developmentally disabled or individuals with mental illness. (1) The system designated to protect and advocate the rights of individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. §6041 et seq.) and the rights of individuals with mental illness under the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. §10801 et seq.) shall have access to all records of:

(a) Any individual who is a client of the system if the individual or the legal guardian, conservator or other legal representative of the individual has authorized the system to have such access;

(b) Any individual, including an individual who has died or whose whereabouts are unknown:

(A) If the individual by reason of the individual's mental or physical condition is unable to authorize such access;

(B) If the individual does not have a legal guardian, conservator or other legal representative, or the state is the legal guardian of the individual; and

(C) If a complaint has been received by the system or if, as a result of monitoring or other activities which result from a complaint or other evidence, there is probable

cause to believe that the individual has been subject to abuse or neglect; and

(c) Any individual who has a legal guardian, conservator or other legal representative, who is the subject of a complaint of abuse or neglect received by the system, or whose health and safety is believed with probable cause to be in serious and immediate jeopardy if the legal guardian, conservator or other legal representative:

(A) Has been contacted by the system upon receipt of the name and address of the legal guardian, conservator or other legal representative;

(B) Has been offered assistance by the system to resolve the situation; and

(C) Has failed or refused to act on behalf of the individual.

(2) The system that obtains access to records under this section shall maintain the confidentiality of the records to the same extent as is required of the provider of the services, except as provided under the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. §10806).

(3) This section is not intended to limit or overrule the provisions of ORS 41.675 or 441.055 (9). [1993 c.262 §2]

Note: See note under 192.515.

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 the medical history of the individual protected from disclosure to persons other than the health care provider and insurer of the individual who needs such information, and the right of an individual to review the medical records of that individual. 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 the patient and limiting disclosure, without the patient's consent, to persons other than the health care provider and insurer of the patient 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" has the meaning given that term in ORS 706.005.

(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, when the 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 employee 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 employee thereof.

(6) "Summons or subpoena" means an administrative summons or administrative subpoena issued by any state or local agency, or a judicial subpoena or subpoena duces tecum. [1977 c.517 §1; 1985 c.762 §180; 1987 c.373 §24; 1987 c.414 §146]

192.555 Disclosure of financial records prohibited; exceptions. (1) Except as provided in ORS 192.557, 192.559, 192.560, 192.565, 192.570 and 192.585 or as required by the Uniform Disposition of Unclaimed Property Act, ORS 98.302 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.

(2) Subsection (1) of this section shall not preclude a financial institution, in its discretion, from initiating contact with, and thereafter communicating with and disclosing customer financial records to:

(a) Appropriate state or local agencies concerning any suspected violation of the law.

(b) The office of the State Treasurer if the records relate to state investments in commercial mortgages involving the customer. The records and the information contained therein are public records but shall be exempt from disclosure under ORS 192.410 to 192.505 unless the public interest in disclosure clearly outweighs the public interest in confidentiality. However, the following records in the office shall remain open to public inspection:

(A) The contract or promissory note establishing a directly held residential or commercial mortgage and information identifying collateral;

(B) Any copy the office retains of the underlying mortgage note in which the office purchases a participation interest; and

(C) Any information showing that a directly held loan is in default.

(3) 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, the Department of Consumer and Business Services of financial records which relate solely to the exercise of its supervisory function. The scope of the department'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 furnishing to the Department of Revenue of information by the financial institution, whether acting as principal or agent, as required by ORS 314.360.

(4) Notwithstanding subsection (1) of this section, a financial institution may:

(a) Enter into an agreement with the Oregon State Bar that requires the financial institution to make reports to the Oregon State Bar whenever a properly payable instrument is presented for payment out of an attorney trust account that contains insufficient funds, whether or not the instrument is honored by the financial institution; and

(b) Submit reports to the Oregon State Bar concerning instruments presented for payment out of an attorney trust account under a trust account overdraft notification program established under ORS 9.132. [1977 c.517 §2, 8 (1); 1985 c.565 §24; 1987 c.373 §25; 1987 c.438 §4; 1993 c.131 §3; 1993 c.274 §1; 1993 c.695 §1]

192.557 Disclosure to Department of Human Resources; procedure; limitations. (1) Upon the request of the Department of Human Resources and the receipt of the certification required under subsection (2) of this section, a financial institution shall advise whether a person has one or more accounts with the financial institution, and if so, the balance on deposit in each such account on the date this information is provided.

(2) In requesting information under subsection (1) of this section, the department shall specify the name and social security number of the person upon whom the account information is sought, and shall certify to the financial institution in writing, signed by an agent of the department that the person upon whom account information is sought is an applicant for or recipient of public assistance, as described in ORS 411.010 to 411.116, or is required by court or administrative order to provide child or spousal support. In addition:

(a) If the account information is sought with respect to a person who is an applicant for or recipient of public assistance, the department shall further certify that it has authorization from the person for release of the account information.

(b) If the account information is sought with respect to a person who is required by court or administrative order to pay child or spousal support, the department shall further certify that the person is delinquent in the payment of such support, and that the department has authorization from the person for release of the account information or has given the person written notice of its request for financial information, or will give such notice within five days after the financial institution responds to the request.

(3) Any financial institution supplying account information under ORS 192.550 to 192.557 and 411.632 shall be reimbursed for actual costs incurred.

(4) No financial institution that supplies account information to the department pursuant to this section shall be liable to any person for any loss, damage or injury arising out of or in any way pertaining to the disclosure of account information under this section.

(5) Each financial institution that is requested to supply account information under

this section may specify to the department that requests for account information and responses from the financial institution shall be submitted in written, tape or electronic format. A reasonable time shall be provided the financial institution for response.

(6) The department shall seek account information only with respect to persons who are applicants for or recipients of public assistance as described in ORS 411.010 to 411.116 or who are required by court or administrative order to provide child or spousal support and are delinquent in the payment of such support.

(7) As used in this section, "department" means the Department of Human Resources. [1987 c.438 §2]

192.559 Disclosure to State Court Administrator; procedure; limitations. (1) Upon the request of the State Court Administrator and the receipt of the certification required under subsection (2) of this section, a financial institution shall advise whether a person has one or more accounts with the financial institution and, if so, the balance on deposit in each such account on the date this information is provided and a record of the account's activity for at least the prior 30 days, which may include the current and previous account statement period.

(2) In requesting information under subsection (1) of this section, the administrator shall specify the name and social security number of the person about whom the account information is sought, and shall certify to the financial institution in writing, signed by an agent of the administrator, that the person about whom account information is sought has requested court-appointed counsel or that court-appointed counsel has been provided for the person. In addition, the administrator shall forward to the financial institution a certification signed by the person about whom account information is sought that authorizes the release of the account information.

(3) Any financial institution supplying account information under this section shall be reimbursed for reasonable costs incurred.

(4) No financial institution that supplies account information to the administrator pursuant to this section shall be liable to any person for any loss, damage or injury arising out of or in any way pertaining to the disclosure of account information under this section.

(5) Each financial institution that is requested to supply account information under this section may specify to the administrator that requests for account information and responses from the financial institution shall be submitted in written, tape or electronic

format. The financial institution shall respond to the request within three business days.

(6) The administrator shall seek account information only with respect to persons who have requested court-appointed counsel or who have had counsel appointed by the court.

(7) As used in this section, "administrator" means the State Court Administrator. [1991 c.825 §2; 1993 c.274 §2]

192.560 Authorization by customer for 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 the customer 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 subpoena; 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 subpoena, served upon the financial institution, as provided in this section.

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

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

(4) The summons or subpoena 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 subpoena 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 subpoena, 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 subpoena was served upon the customer, the financial institution shall not disclose the financial records of said customer pursuant to said summons or subpoena 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 subpoena.

(6) Pursuant to the issuance of a summons or subpoena, 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 subpoena, 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 subpoena.

(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, subpoena 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, subpoena or search warrant when the court finds that notice to the customer would impede the investigation being conducted by the state or local agency.

(4) Financial institutions that participate in a trust account overdraft notification program established under ORS 9.132 are not liable to a lawyer or law firm on the attorney trust account, to a beneficiary of the trust account or to the Oregon State Bar for loss or damage caused in whole or in part by that participation or arising in any way out of that participation. [1977 c.517 §6; 1993 c.131 §4]

192.580 Time for compliance; reimbursement; exceptions. (1) A financial institution shall have a reasonable period of time in which to comply with any proper customer authorization, summons, subpoena 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, subpoena or search warrant. However, in all cases in which disclosure is sought pursuant to ORS 192.565, the 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. The following charges shall be deemed reasonable costs:

(a) Personnel costs, \$10 per hour per person, computed on the basis of \$2.50 per

quarter hour or fraction thereof, for time expended by personnel of the financial institution in searching, locating, retrieving, copying and transporting or conveying the requested material to the place of examination.

(b) Reproduction costs, 10 cents per page, including copies produced by reader and printer reproduction processes. Photographs, films and other materials shall be reimbursed at actual costs.

(c) Travel expenses, 20 cents per mile, plus other actual costs, necessary to transport personnel to locate and retrieve the information required or requested and to convey the required or requested material to the place of examination.

(3) The provisions of subsection (2) of this section shall not apply in the case of records subpoenaed by a prosecuting attorney as evidence of the crimes of negotiating a bad check under ORS 165.065, forgery under ORS 165.007 to 165.013, theft by deception by means of a bad check under ORS 164.085 or fraudulent use of a credit card under ORS 165.055. [1977 c.517 §7; 1985 c.797 §4; 1987 c.482 §1]

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 cus-

tomers' 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)]

192.587 Charges for participation in attorney trust account overdraft notification program. Financial institutions that participate in an attorney trust account overdraft notification program established under ORS 9.132 may charge attorneys or law firms who have trust accounts with the financial institution for the reasonable costs incurred by the financial institution by reason of that participation. [1993 c.131 §6]

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 willful 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; disabled access; interpreters. (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, national origin or disability 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.

(5)(a) It shall be considered discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to the disabled, or, upon request of a hearing impaired person, to fail to make a good faith effort to have an interpreter for hearing impaired persons provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Oregon Disabilities Commission or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the Oregon Disabilities Commission or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1]

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 192.505 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 192.505.

(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, employee, 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, other public officers, employees and staff members 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 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.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, unless such public officer, employee, 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 and 441.990 (3) 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, employee 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 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. An executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member shall not include a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(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; 1983 c.453 §1; 1985 c.657 §2]

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) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

(2) 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.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. 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.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section and that the violation is the result of willful 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 (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c. 644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1]

192.685 Additional enforcement of alleged violations of ORS 192.660. (1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have been committed by public officials may be made to the Oregon Government Standards and Practices Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(2) The commission may interview witnesses, review minutes and other records and may obtain and consider any other information pertaining to executive sessions of the governing body of a public body for purposes of determining whether a violation of ORS 192.660 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Standards and Practices Commission for its investigation but shall be excluded from public disclosure.

(3) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions. [1993 c.743 §28]

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 and Post-Prison Supervision, 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, meetings of the state lawyers assistance committees, the local lawyers assistance committees in accordance with the provisions of ORS 9.545, the multidisciplinary teams required to review child abuse and neglect fatalities in accordance with the provisions of ORS 418.747, the peer review committees in accordance with the provisions of ORS 441.055 and mediation conducted under sections 2 to 10,

chapter 967, Oregon Laws 1989, 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. [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3; 1989 c.6 §18; 1989 c.967 §12; 1991 c.451 §3; 1993 c.318 §3]

Note: The amendments to 192.690 by section 14, chapter 967, Oregon Laws 1989, and by section 33, chapter 18, and section 4, chapter 318, Oregon Laws 1993, take effect June 30, 1995. See section 17, chapter 967, Oregon Laws 1989. The text that is effective on and after June 30, 1995, is set forth for the user's convenience.

192.690. (1) ORS 192.610 to 192.690 shall not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, 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, meetings of the state lawyers assistance committees, the local lawyers assistance committees in accordance with the provisions of ORS 9.545, the multidisciplinary teams required to review child abuse and neglect fatalities in accordance with the provisions of ORS 418.747, and the peer review committees in accordance with the provisions of ORS 441.055 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.

192.695 Prima facie evidence of violation required of plaintiff. In any suit commenced under ORS 192.680 (2), 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; 1989 c.544 §3]

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 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]

FINANCIAL INSTITUTION RECORD DISCLOSURES

192.800 Definitions. (1) "Customer" means any person 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 any state or national bank, state or federal savings and loan association, federal savings bank, state or federal credit union, trust company or mutual savings bank.

(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, when the document, copy or information is identifiable as pertaining to one or more customers of the financial institution.

(4) "Subpoena" means a judicial subpoena or subpoena duces tecum. [1985 c.797 §1]

192.805 Reimbursement required prior to disclosure; charges. Before producing any documents or making any disclosures, a financial institution may require the requesting person who caused the subpoena to be issued to reimburse the financial institution for the reasonable costs incurred by the financial institution in the course of compliance. These costs shall include but are not limited to personnel costs, reproduction costs and travel expenses. The following charges shall be deemed reasonable costs:

(1) Personnel costs, \$10 per hour per person, computed on the basis of \$2.50 per quarter hour or fraction thereof, for time expended by personnel of the financial institution in searching, locating, retrieving, copying and transporting or conveying the

requested material to the place of examination.

(2) Reproduction costs, 10 cents per page, including copies produced by reader and printer reproduction processes. Photographs, films and other materials shall be reimbursed at actual cost.

(3) Travel expenses, 20 cents per mile, plus other actual costs, necessary to transport personnel to locate and retrieve the information required or requested and to convey the required or requested material to the place of examination. [1985 c.797 §2; 1989 c.309 §1]

192.810 Applicability of ORS 192.805. ORS 192.805 does not apply to any subpoena issued by or on behalf of a state agency or local agency subject to the provisions of ORS 192.550 to 192.595, or if the financial institution is a named party to litigation that is the basis for issuance of the subpoena. [1985 c.797 §3; 1989 c.309 §2]

PENALTIES

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