



## **Public Records Requests Common Information Exempt from Disclosure**

Although the purpose of the Public Records Law is to provide for disclosure rather than protection of public records, the law does provide that some types of records are “exempt” from disclosure. In some cases, this is an “absolute” exemption, meaning an agency may not disclose the record; in some cases it is a “conditional” exemption, meaning an agency may determine whether to disclose the record after applying a balancing test to determine if the public interest requires disclosure in the particular situation.

In addition to the Public Records Law, other applicable laws, e.g., the Prevailing Wage Rate Law and Oregon Consumer Identity Theft Protection Act, may prohibit disclosure of certain information.

The following are exemptions that *most commonly* apply to BOLI records (This is not a complete list):

- **Social Security numbers, driver license numbers, state identification card numbers, passport numbers, financial account numbers, credit and debit card numbers** – Oregon Consumer Theft Protection Act (ORS 646A.600 – .628)
  
- **Civil Rights Investigation Material**– ORS 192.501(8)  
Until a CRD file is closed due to administrative closure, settlement, or a commissioner’s final order is issued and all appeals exhausted, all information in the file **except the complaint and names and addresses of respondents against whom complaints are pending** is exempt from disclosure to anyone. CRD administrative rules allow the complainant to see the materials the complainant has put into the investigative file, and the respondent to see the materials the respondent has put into the investigative file.
  
- **Information regarding settlement discussions in real property transaction discrimination or federal housing law cases** – ORS 659A.840(6)
  
- **Information of a personal nature constituting an unreasonable invasion of privacy** – ORS 192.502(2)  
This includes information the disclosure of which would constitute an unreasonable invasion of privacy an ordinary reasonable person would deem highly offensive. This may include extremely embarrassing or damaging information. Information exempt from disclosure pursuant to this exemption includes:
  - **Individually identifiable health information** (Medical information may be disclosed if a medical release from the individual is provided.)
  - **Wage and deduction information**
  - **Personal information downloaded from investigative databases**
  
- **Internal Advisory Communications** – ORS 192.502(1)  
These include written communications between BOLI staff or with other agencies of an advisory nature covering other than purely factual information preliminary to a final agency action. It must be determined in the particular instance that the public interest in encouraging frank communication clearly outweighs the public interest in disclosure.

- **Attorney-Client Privilege – ORS 40.225**  
These may be in the form of formal or informal opinions, letters, memos, emails or faxes.
- **Public Records Pertaining to Litigation – ORS 192.501(1)**  
Records pertaining to litigation that is filed or likely to be filed in which BOLI is or would be a party is exempt. If litigation has already been filed, the public records request should be referred to the AG who is handling the case. Otherwise, this is most likely to apply in situations where there has been a clear threat of a lawsuit against the agency and then a request for the records involved.
- **PWR wage survey information – ORS 279C.815(4)**
- **Payroll or other records submitted by contractors in PWR investigations – ORS 279C.850(3)**  
DOJ has advised the agency that it may provide this information to other state agencies and the US DOL upon request for an enforcement action but not to the general public.
- **Personal safety – ORS 192.445**  
This exemption prohibits the disclosure of the home address or personal telephone number of anyone if that individual demonstrates to the satisfaction of the agency that the personal safety of the individual or a family member residing with the individual is in danger pursuant to OAR 137-004-100.
- **Confidential information submitted by citizens – ORS 192.502(4)**  
This includes information provided by a member of the public who was not legally obligated to provide the information, and which BOLI has been asked not to disclose. It includes pre-complaint inquiries submitted in any form.
- **Exempt records or documents from another state agency or federal agency – ORS 192.502(8)**  
Includes:
  - Workers Comp claim records (ORS 192.502(20))
  - Oregon Employment Department UI records (ORS 657.665)
- **Tests and Examination Material – ORS 192.501(4)**
- **Public Employee Personnel Discipline Actions – ORS 192.501(12)**
- **Trade Secrets – ORS 192.501(2)**  
This exemption is triggered only by the request of the person or entity seeking to protect the materials and may include any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information meeting the following four criteria: not patented; known only to certain individuals within and organization and used in the business it conducts; having actual or potential commercial value; giving the user a business advantage over competitors who do not know or use it.

**Questions regarding application of any of the exemptions under the Public Records Law should be directed to a BOLI manager or the agency's Custodian of Records.**