



## Nathan Vasquez, Multnomah County District Attorney

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December 12, 2025

*via email only*

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Trevor Byrd  
Deputy City Attorney  
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Re: Petition of Oregon Public Broadcasting seeking emails between the City of Portland and Immigration and Customs Enforcement

Dear Mr. Bial and Mr. Byrd:

On February 12, 2025, Troy Brynelson, a reporter for Oregon Public Broadcasting, submitted a public records request to the City of Portland for, in relevant part:

Any communication involving a city of Portland employee (including but not limited to Portland Police Bureau employees) and any person from an @ice.dhs.gov domain; communications dated between 1/20/2025 and 2/12/2025.

The City produced a set of documents to petitioner on April 4, 2025, but asserted that certain portions were exempt under ORS 192.345(3), ORS 192.355(2), ORS 192.355(40), and ORS 192.355(9) as it incorporated ORS 646A.600 et seq. and ORS 181A.672. The City and OPB engaged in discussion over the exemptions, but were unsuccessful in resolving their differences. OPB filed a petition with this office pursuant to ORS 192.422 on September 4, 2025. On September 11, 2025, the City provided an updated set of records to OPB. This included additional unredacted information and added additional exemptions to the list of those it believed applied to the material it continued to withhold.<sup>1</sup> The matter was thoroughly briefed by both sides over the months between the petition date and today.<sup>2</sup>

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<sup>1</sup> The City asserted that various information was exempt under ORS 192.345(3), ORS 192.355(9) incorporating ORS 181A.280 and OAR 257-015-0060, ORS 192.355(3), ORS 192.355(40), ORS 192.355(9) incorporating ORS 646A.620(1)(c), ORS 192.355(9) incorporating ORS 646A.622(1), ORS 646A.602(12)(a)(ii), ORS 181A.672, ORS 181A.220(1), ORS 192.345(18), ORS 192.345(22), ORS 192.345(23).

<sup>2</sup> I appreciate the responsiveness and patience of the parties to my various inquiries and requests as the matter has proceeded. The filings and responses were helpful in working through the complex issues presented.

## DISCUSSION

### A. Assertion of Exemptions to the District Attorney

As a threshold matter OPB takes the position that the City can only present argument under ORS 192.422(2) as to exemptions that it asserted in its initial response to petitioner. ORS 192.411(1) provides that in a public records petition or lawsuit “the burden is on the agency to sustain its action.” In petitioner’s view, “action” means the specific exemptions that the public body asserted to the requestor. In support of this petitioner cites to ORS 192.329(2)(b), which provides that as part of a response to a request that withholds records a public body must assert “any exemptions from disclosure that the public body believes apply to any requested records.” In the City’s view “action” means the fact of withholding information or records from disclosure, not any particular previously-asserted justification for doing so.

The jurisdictional hook for the district attorney’s adjudication of a public records petition is that a public body has “denied” a request. ORS 192.411(1), ORS 192.415. The task of the district attorney is to “review the public record to determine if it may be withheld from public inspection.” ORS 192.411(1). This office’s role is not to review the public body’s initial response and determine if it was lawful; it is to review the record itself and determine if it is exempt from disclosure.

A public body that has withheld information from its response to a public records request has the burden of establishing that it did so lawfully. In its response to a public records petition, a public body may assert any reason it has “for believing that the public record should not be disclosed” in defense of its action of denying access to information. ORS 192.422(2).

### B. Email Addresses – 192.355(40)

ORS 192.355(40) exempts from disclosure,

Electronic mail addresses in the possession or custody of [...] a local government[.]

The City has applied this exemption to email addresses as they appear in the header information of emails responsive to petitioner’s request. Petitioner objects, arguing persuasively that the intent of the legislature in enacting this section was to prevent mass marketers from harvesting the personal email addresses of those who interact with the government. It is clear from a review of the relevant legislative history that Rep. Barnhart, who introduced the legislation to create the exemption in 2013 and then expand it in 2017, was in fact motivated by precisely this issue. The committee testimony and discussion revolved around this problem.

The Attorney General states that the legislative intent in enacting this exemption was “to enable public bodies to refuse requests for email lists that would then be used to send unsolicited group emails or spam.” ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL (2024) at 112.

The City rejoins that, even assuming for purposes of argument that this was the intent of the legislature, the plain text of the statute clearly is not so limited.

*i. Rules of Statutory Construction*

*State v. Gaines*, 346 Or 160 (2009), sets out the Oregon procedure for construing statutory language. Under *Gaines* a court “seeks to ascertain the intent of the enacting legislature by examining the disputed provision’s text and context, as well as any helpful legislative history.” *Mouton v. TriMet*, 331 Or. App 247, 251 (2024).

Text and context “must be given primary weight in the analysis,” because only the text “receives the consideration and approval of a majority of the members of the legislature,” and “[t]he formal requirements of lawmaking produce the best source from which to discern the legislature’s intent.” “If the legislature’s intent remains unclear after examining text, context, and legislative history, the court may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty.”

*Id.* (internal citations omitted; quotations all from *Gaines*). Prior to *Gaines* the court would not entertain legislative history if the statutory language appeared clear. Post-*Gaines* the court must receive offered legislative history even if the statute is facially unambiguous. While a court is required to receive legislative history, “a party seeking to overcome seemingly plain and unambiguous text with legislative history has a difficult task before it.” *Gaines* at 172.

*Gaines* based its framework on the rules the legislature itself set out for how to interpret its words. As relevant to the particular issues at hand, those rules are as follows:

- “In the construction of a statute, a court shall pursue the intention of the legislature if possible.” ORS 174.020(1)(a).
- “To assist a court in its construction of a statute, a party may offer the legislative history of the statute.” ORS 174.020(1)(b).
- “In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted[.]” ORS 174.010

To these general rules of statutory construction, the Oregon Public Records Law adds one:

- “if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails.” *Colby v. Gunson*, 224 Or App 666, 676 (2008).

*ii. Application*

I conclude from the submitted legislative history, as petitioner urges and the Attorney General advises, that it was almost certainly the intent of the legislature in enacting this exemption to deny mass mailers access to non-governmental email addresses. However, I find that apparent intent in direct conflict with all plausible interpretations of the language of the statute. If a statute is only “superficially clear” legislative history may be used to highlight a “latent ambiguity” in the statute. *Gaines* at 172. However, “[w]hen the text of a statute is truly capable of having only one

meaning, no weight can be given to legislative history that suggests—or even confirms—that legislators intended something different.” *Gaines* at 173.<sup>3</sup>

I conclude that ORS 192.355(40) is in the later category: statutory language truly capable of having only one meaning.

To hold that this language applies only to lists or compilations of email addresses, or is applicable only based on an evaluation of the subjective intent of the requestor, would be to “insert what has been omitted” in derogation of ORS 174.010. In short, petitioner is asking me to conclude that the City may not exempt from disclosure “electronic email addresses in its possession” despite a statute that states it can do exactly that.

Petitioner urges that the “possession or custody” is rendered surplus if it is not interpreted to impose some limit on “email addresses.” I disagree. ORS 192.355(40) is an unusual exemption in that it applies only to a subset of the public bodies identified in ORS 192.311(4). The phrase “possession or custody” renders it applicable only to email addresses retained by the enumerated public bodies.<sup>4</sup> In its original form in 2013, this applied to the executive department, local governments, service districts, and special governmental bodies. In 2017 the legislature expanded it include the legislative department. As ORS 192.355(40)(a) currently stands, the Judicial Department is excluded from its reach. MANUAL at 113. This is the work that “possession or custody” does in this statute. I find no plausible interpretation, as per *Gunson*, or possible interpretation, as per ORS 174.020(1), of “possession or custody” that limits “electronic mail addresses.”

On close examination, this conclusion is not inconsistent with the Attorney General’s advice. Like most exemptions, ORS 192.355(40) is elective: a public body may always choose not to assert it. The Attorney General writes:

A public body applying the exemption literally to redact email addresses that simply appear within email correspondence would be applying the exemption in a manner not contemplated by the legislature. Our advice to state agencies is to assert this exemption only when it appears that the purpose of the request is to acquire email addresses.

MANUAL at 112-13. The Attorney General both expresses what intent of the legislature was, and advises how public bodies can best comply with that intent. The Attorney General did not state that withholding individual email addresses under this exemption would be contrary to law, merely that they advise against doing so.

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<sup>3</sup> As one of the sponsors of the 2001 amendment to ORS 174.020 stated, “We still have to mean what we say when we say it. We can’t say, black, and then ... all agree that black meant white. That’s not going to work.” *Gaines* at n. 10 (quoting Tape Recording, Senate Committee on Judiciary, HB 3677, May 15, 2001, Tape 139, Side A (statement of Rep. Max Williams))

<sup>4</sup> “an agency or subdivision of the executive department, as defined in ORS 174.112, the legislative department, as defined in ORS 174.114, a local government or local service district, as defined in ORS 174.116, or a special government body, as defined in ORS 174.117.” ORS 192.355(40)(a).

In contrast to the Attorney General, who wrote in an advisory capacity, I am presented with this language in an adjudicatory capacity. That is, I am not in a position to advise the City as to what they *should* do, only to determine if their conduct is within the outer bounds of what is permitted by ORS 192.355(40). I conclude that redacting individual email addresses from records is within the outer bounds of ORS 192.355(40).<sup>5</sup>

*iii. Public employee email addresses*

Many of the redacted email addresses in the underlying records are those of federal public employees. ORS 192.355(40)(b) provides for an exception to the exemption:

This subsection does not apply to electronic mail addresses assigned by a public body to public employees for use by the employees in the ordinary course of their employment.

The City correctly states that for purposes of the public records law, ORS 192.311(4) contains a definition that:

“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.

This list of public bodies does not include the federal government. Were this taken as an exclusive list of public bodies, ORS 192.355(40)(b) would not apply to their email addresses. I do not find that this is an exclusive list.

ORS 192.314 sets out the general rule of access to public records and uses the phrase “public body” to describe the agencies to which it applies. The legislature qualified that phrase, and wrote “every person has a right to inspect any public records of a public body *in this state*...” That is to say, any Oregon public body is required to produce records to requestors by virtue of the Oregon Public Records Law, but California, Washington, and federal public bodies are not. This is consistent with ORS 192.311(4)’s use of the indefinite “includes” for its list of entities. Otherwise the “in this state” language in ORS 192.314 has no meaning. At the very least, the text and context of ORS 192.355(40)(b) show that the phrase “public body” is plausibly capable of more than one definition in context.

As noted in the previous section, it is clear from the legislative history submitted that the intent of the legislature was to protect the personal email inboxes of individuals who needed to or chose to provide the government with their email address. As discussed in the previous paragraph it is possible to read the use of the term “public body” in ORS 192.355(40)(b) to be consistent with the expressed intent of protecting only private individuals’ email addresses. Because it is both possible and plausible to read the statute this way, and it results in disclosure of additional

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<sup>5</sup> To be clear, this applies to “electronic mail addresses”, not “names associated with electronic mail addresses.” Public records, including in this batch, frequently include both together. In the formulation “Doe, John <john.doe@domain.com>” only the literal email address “john.doe@domain.com” is exempt.

information, that is the construction I must adopt. *Colby v. Gunson*, 224 Or App at 676; ORS 174.020(1)(a). Governmental email addresses are not exempt under ORS 192.355(40)(b).

C. Criminal Investigatory Information – ORS 192.345(3)

ORS 192.345(3) exempts “investigatory information compiled for criminal law purposes” from disclosure “unless the public interest requires disclosure in the particular instance.” In July this office conducted an extensive examination of this subsection and the judicial and administrative decisions interpreting it. *Petition of OPB*, MCDA PRO 25-30 (2025). Out of that we held that,

a public body faced with a records request for criminal investigative material that it wishes to withhold must:

- identify the various interests in secrecy;
- balance those interests with public’s interest in disclosure;
- release portions of the record where the secrecy interests do not outweigh the disclosure interests.

*Id.* at 5.

Applying this standard to an open investigation, we concluded that validation of witness statements against closely held factual information is a relevant concern in most criminal cases. And, “[i]n such cases it will usually interfere with enforcement proceedings for otherwise confidential and specific factual information about the contents of an investigation to be made public prior to resolution of the case.” *Id.* OPB disagrees with this statement and asks that I revisit this conclusion. I do not see a basis to do so.

Applying ORS 192.345(3) to the records in this case I find the City has mostly correctly applied the rules set out in *OPB*, 25-30. The email threads responsive to the request are mostly communications involving a drug enforcement task force and a warrant service task force. Both of these groups have members from many agencies, including those using the specified email suffixes. Given the core criminal investigative functions of both of these task forces, it is not surprising that certain information they discuss would be subject to this exemption.

In most cases it is clear that as to each redaction the information was gathered as part of criminal investigations. Redaction has been limited (except as noted below) to factual information the release of which could interfere with enforcement actions, and there is no obvious overriding public interest in the specific criminal investigations discussed. The information redacted under this section is exempt, except as noted below:

<b>Page(s)</b>	<b>Disposition</b>
<b>26-27</b>	Quantity of cryptocurrency that is part of a forfeiture application is not exempt under this section.
<b>29</b>	Same as above; information in the table is not exempt including the forfeiture case numbers, deadlines, and dollar values.
<b>84-86</b>	The case referenced in these emails has concluded as of 12/9/2025. Factual information about the apprehension and identity of the individual that was

	redacted is not exempt under this section. <sup>6</sup> The LEDS information contained at the bottom of p. 85 remains exempt.
<b>88-101</b>	Same as above.
<b>102</b>	Subject line is not criminal investigatory information; it is the name of a case.
<b>103</b>	The intersection listed is not obviously information gathered during a criminal investigation; it is a question asked.
<b>140</b>	Exempt, except for paragraph beginning “Upon running,” which is procedural information relating to risk of future non-appearance on the case.
<b>148-49</b>	Exempt, except for the paragraph that spans the two pages, which deals with procedural facts about defendant’s past contacts with the system.
<b>221</b>	The name of the case being investigated (appearing in the subject line of all three emails and once in the body of the bottom-most email) is not exempt, nor is the suspect’s name appearing in the last redaction.

D. Information about Undercover Police – ORS 181A.825(2)

With qualifications not relevant to this petition, ORS 181A.825(2) provides:

a law enforcement agency may not disclose information about an employee of the agency while the employee is assigned duties the agency considers undercover investigative duties and for a period of six months after the conclusion of those duties.

For purposes of this section “‘Law enforcement agency’ has the meaning given that term in ORS 181A.010.” ORS 181A.672(1)(c). ORS 181A.010(7)(d) includes “law enforcement agencies of the federal government” within the definition of “law enforcement agency.”

Thus, those federal officers assigned to undercover duties may have their information redacted from public records responses on the same basis as state and local police officers so-assigned. See *Petition of Cashman*, MCDA PRO 25-05 (2025) (acknowledging policy argument against keeping police information confidential, but finding statutory mandate clear and to the contrary).

The City has submitted a list of non-PPB officers it has confirmed with their employing agencies are assigned undercover investigative duties. Information about those officers (as well those Portland officers so-assigned) may be redacted under ORS 181A.825(2).

E. Public Safety Plans – ORS 192.345(18)

ORS 192.345(18) conditionally exempts from disclosure,

Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used

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<sup>6</sup> I express no opinion on whether it would have been exempt prior to December 9, 2025. As stated Section A above, the district attorney’s role is to evaluate the present withholding of information, not any one discrete determination in the past.

by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity.

The City has applied this redaction to a single document, which appears three times in the production. This document contains three blocks of information: "Steps to Follow After Shooting Incident," "Tactical References," and "Use of Force Policy Statement." Only "Tactical References" is exempt under ORS 192.345(18). The remaining information is not an operational plan nor would releasing it endanger life, safety, or law enforcement activity.

F. Catch-all – ORS 192.355(9)

ORS 192.355(9)(a) exempts from disclosure,

Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

*i. Law Enforcement Data System information – ORS 181A.280(3) / OAR 257-015-0060*

Some of the warrant service task force emails include printouts or copy-paste information from Oregon's Law Enforcement Data System (LEDS). These document warrants or criminal histories for the subjects under discussion. The City argues that such information is exempt by the combined force of ORS 192.355(9), ORS 181A.280(3), and OAR 257-015-0060.

For purposes of the public records law, administrative rules only have force under ORS 192.355(9) if the legislature has expressly delegate the authority to another body to make defined categories of records confidential. Where it has done so, such rules serve to exempt records from disclosure so long as they do not exceed the limit of the authority granted by the authorizing statute. *Petition of Loiselle, Att'y Gen. PRO* (March 6, 1996) at n.3 ("This exemption applies only if the records are protected by a statute outside the Public Records Law. [...] Absent a specific statutory provision making the records confidential (or authorizing the department to do so), the department's administrative rule would not trigger the exemption in ORS 192.502(8) [now numbered ORS 192.355(9)]").

ORS 181A.280(3) does not itself exempt LEDS information from disclosure. However, it delegates to the Oregon State Police the authority to create rules "for ... access and dissemination of information" in the system. OSP has enacted such rules in OAR 257-015-0060 and those rules restrict the access and dissemination of LEDS information to criminal justice purposes. As such, I conclude that the LEDS information in these emails is properly redacted.

*ii. Fingerprints taken at booking – ORS 181A.220(1)*

ORS 181A.220(1) provides that "fingerprints, photographs, records and reports" compiled under ORS 181A.160, among other statutes, may not be released to the public. This is not an exemption incorporated into the public records law by ORS 192.355(9), rather the statute removes these records from the public records law *in toto*. ORS 181A.220(1) ("Notwithstanding the provisions of ORS 192.311 to 192.478 relating to public records...").

ORS 181A.160 requires the collection of fingerprints from arrested individuals. Such fingerprints contained in this record set are properly withheld from disclosure.

*iii. Passwords and access links*

Various passwords and access information for remote meetings or file sharing services appear in the emails and are properly redacted. *Petition of Cashman*, MCDA PRO 22-86 (2022).

*iv. Oregon Consumer Information Protection Act – ORS 646A.600 et seq.*

The City has asserted Oregon Consumer Information Protection Act as authority for redacting Social Security Numbers (SSNs) and Oregon Driver’s License (ODL) numbers. The Act prohibits covered entities from making SSNs available to the public. ORS 646A.620(1)(c). Public bodies are covered by the Act. ORS 646A.602(11). The City has properly redacted social security numbers pursuant to this authority.


As to ODL numbers, the City argues that ORS 646A.622’s mandate to “develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of personal information” means that it can redact them from public records releases. This seems reasonable at first blush, but a deeper read through the Act’s definitions section makes clear that this is not permissible. ORS 646A.602(b) provides that “‘personal information’ does not include information in a [...] local government record, other than a Social Security number, that is lawfully made available to the public.” ORS 646A.602(b). Because the public records law is a way that records are lawfully made available to the public, I do not find that the Oregon Consumer Information Protection Act provides a basis to exempt personal information *other* than SSNs from disclosure.<sup>7</sup>

**ORDER**

Accordingly, the petition is granted in part. The City of Portland is ordered to release to petitioner records responsive to his request, redacted consistent with the discussion above. This release is subject to the payment of fees, if any, not to exceed those authorized by ORS 192.324(4)

Regards,

NATHAN VASQUEZ  
District Attorney  
Multnomah County, Oregon

By:   
Adam Gibbs  
General Counsel

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<sup>7</sup> The ODL numbers of witnesses in active criminal investigations may, however, be redacted as they appear in these particular records under ORS 192.345(3) along with other individually identifying information.

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December 12, 2025

Petition of OPB

**Notice to Public Agency**

Pursuant to ORS 192.411(2), 192.415, and 192.431(3) your agency may become liable to pay petitioner's attorney's fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.

**25-56**