



A6-08

OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

February 7, 2008
(SENT BY EMAIL)

MEMORANDUM

TO: Members of the Judicial Conference
All Oregon Judicial Department Employees

FROM: Nori J. McCann Cross
Special Counsel

RE: Updated Instructions on Making Requests to Withhold Home Address, Personal Electronic Mail Address, and Personal Telephone Number From Disclosure Under the Public Records Law, ORS 192.445 (FYI)

Judges have been requesting this information, so we are sending it to all of you. This memo updates instructions for judges and Oregon Judicial Department (OJD) employees who wish to use the attached forms to ask OJD and any other public body to protect personal contact information from disclosure. In February 2000, we prepared and issued the forms and instructions to protect personal contact information from disclosure. We updated them in early 2006 and again now. This update makes only minor changes. The substantive law has not changed.

Personal contact information includes your home address, personal electronic mail (email) address, and personal telephone number. The forms are relatively simple and direct and should provide sufficient information so that you and public bodies will know how to complete them and what to do with them when completed. OJD's Personnel Division will include a copy in their packets for new judges and new employees. We also have posted these forms and instructions on the OSCA Reference Manual Index database on Lotus Notes.

We ask trial court administrators to provide this information to local lawyers who serve as judges pro tempore. We ask all supervisors who work with volunteers to provide this information to your volunteers. Judges and staff with questions may first want to work with their trial court administrators and, if needed, have them contact Nori to help answer the questions.

Please read these instructions and the forms carefully as you fill them out to make sure you include all necessary information and send all necessary copies.

You must send a separate request form (or copy) with attachments to each public body that you want to keep your information confidential.

Attached are three forms:

- draft court order
- **request form** to use to submit a request to a public body
- **response form** to send to the public body to allow it to respond to a request

Here are instructions for completing the forms

1. THE ORDER

The order must be **signed and dated** by a judge. It must name each person subject to the order. Public agencies will not search for groups, such as “all judges” or “all court employees.” Attach a copy of the order to each request form sent to a public body.

Although this order is not the only way to ask that your personal contact information be exempt from disclosure under the public records law, OJD worked with the Attorney General to include a specific exemption in the administrative rule to allow court orders for this purpose. If you prefer to establish an exemption in another way, review ORS 192.445 and OAR 137-04-800.

DO NOT simply send a copy of an order to a public body without an attached, separate request (for which you can use the form we provide). Under the rule, the order is “evidence” that a public body **may** use as a basis to grant the exemption. The order is not itself a request.

- ◆ **Who signs.** To avoid issues under the Oregon Code of Judicial Conduct, a judge should not sign an order to create the judge’s own exemption. The presiding judge should sign the orders for judges in the presiding judge’s court. When the presiding judge seeks an exemption, the presiding judge should ask another presiding judge or the Chief Justice to sign the order.
- ◆ **Whom is covered.** Several public bodies refuse to grant an exemption based on an order written in general terms. Some have received orders that state things like: “All judges and court personnel in the _____ courts are exempt.” Most public bodies require the orders to name each person separately in the order. Although some public bodies prefer that an order name only one person, we suggest that an order can name more than one person, and that each person, using a copy of the order, highlight the person’s name on the copy. This will limit the burden on judges and court records staff.
- ◆ **Need for separate request.** An order by itself does not meet the requirements of the statute or rule regarding this exemption; the statute and rule require you to submit a request with the additional information provided by our request form.

Be sure to attach a copy of the order to each request. Otherwise, your exemption may be delayed or the public body may deny the request for failing to comply with statute and rule.

2. THE REQUEST FORM

The request form is the cover document for your request to a public body. Attach the order and response form to the request form before sending to the public body.

- ◆ **Making requests to several public bodies.** You may want to request an exemption from several public bodies, including OJD. Our request form allows you to use it for more than one public body and allows you to direct your request to multiple public bodies. You can then send a copy of the request form and the attached copy of the order to each public body without obtaining additional orders.
- ◆ **Where to send.** If you request an exemption, you are responsible to send it to each public body that you want to keep your information confidential. OJD does not forward copies that it receives to other public bodies. State law requires that you make a separate request to each public body.
- ◆ **Providing an address.** The request form has two places to list addresses and telephone numbers. The first is part 2, sections “b” (mailing address) and “c” (nonconfidential contact telephone number). The second is part 3, where you can list the addresses and telephone numbers that you want exempted from disclosure under the public records law. **State law requires you to provide only the mailing address in part “2b.”** We included the other sections at the request of several public bodies to help them comply with the statute. You may **want** to provide this information to make their job easier. We make no recommendation either way; it is your choice.
- ◆ **Specifying records involved.** Both statute and rule require that you describe the public record you want subject to the exemption with sufficient detail to identify the record. While our forms provide check boxes that describe some types of records, simply checking some or all of these check boxes does not guarantee that a public body will search all records for your home address or telephone number.

For example, the Secretary of State generally recognizes our forms as a basis for keeping confidential your home address and telephone number as it appears in many of their records. **However, and this especially affects judges,** on advice of their own counsel, they do not search signatures on ballot measure (or similar) petitions or candidate or ballot measure contribution and expenditure reports for home addresses and telephone numbers when you make a general request by

checking the boxes on our form. Given the number of petitions and election expenditure reports, this would be an overwhelming task.

If you submit a request to the Secretary of State's office and you are concerned that your home address, personal electronic mail address, or personal telephone number may appear on a petition or expenditure report, you need to identify the ballot measure by number or candidate by name, etc., before the Secretary of State will search these elections records sources to redact information. Use Section 2a "Other" to complete this kind of request. Be specific. **This limitation may apply to other public bodies. You may want to check with the public body in advance about how to make your request specific enough.**

3. THE RESPONSE FORM

Do **not** fill out the response form. In fact, state law does not require you to send the form. But because state law requires public bodies to respond in writing, the form can help a public body approve your request more easily. Send it along with your request form. The public body may well respond in a different form or may use the form to require you to send additional information or to refuse your request. Keep a copy of the response for your records. If a public body refuses your request, there are ways to challenge the refusal.

- ◆ **Effect of a response.** The fact that one public body grants a request for exemption does not obligate any other public body. Each public body has a statutory right to make a decision concerning its own records.
- ◆ **Five-year exemption. An exemption granted by a public body is good for only five years,** as opposed to exemptions established by statute. You **must reapply** to renew it. **Please note this difference as to OJD records.** ORS 192.502(3) exempts (by statute) public employee and volunteer addresses and telephone numbers in OJD personnel records, with limited exceptions. It does not apply to judges, although they may request exemption under ORS 192.445, which is an exemption granted by a public body and expires in five years. That applies to any exemption granted by OJD.

ORS 192.502(3) does **not** protect the following personal contact information for OJD employees and volunteers:

- personal email addresses in any public body's records
- home addresses and personal telephone numbers in OJD records **other than personnel records** and records other than OJD

To protect a personal email address in OJD records or to protect personal contact information in OJD records other than OJD personnel records, an OJD employee or volunteer should ask OJD for an exemption and not rely solely on the statutory exemption under ORS 192.502(3). That exemption expires after five years.

- ◆ **Renewing an exemption.** If your Public bodies that grant these exemptions **do not send out notices when the exemptions expire.**

We first provided these forms more than five years ago. Some who obtained exemptions using these forms will need to reapply for the exemptions. The person holding the exemption is responsible to keep appropriate records and reapply when necessary.

- ◆ **If your address changes.** If your original request specified addresses or telephone numbers you wished to keep confidential, you should notify the public body or bodies **in writing** if you change an address or telephone number. Although state law does not require you to send notice of those changes, it may make a practical difference in how the public body administers the exemption. You are responsible to keep copies of exemption records so that you know which public bodies have granted an exemption and when.

Please feel free to contact me at 503.986.5520 or at nori.j.cross@ojd.state.or.us if you have any questions.

NC:sh/08eNC002sh
Attachments

IN THE _____ COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

In the Matter of the Threat to)	No. ____ - _____
Personal Safety from Disclosing)	
the Home Address, Personal)	ORDER ESTABLISHING THAT
Electronic Mail Address, and)	RELEASE OF PERSONAL
Personal Telephone Number, or)	INFORMATION MAY PLACE A
any of them, of a Person Involved)	PERSON'S PERSONAL SAFETY
in Some Capacity in Court)	IN DANGER
Proceedings)	

Pursuant to ORS 192.445 and OAR 137-04-800(2)(K), this order establishes the following:

1. The persons listed below have been involved in some capacity in a court or grand jury proceeding (insert list of specific persons to whom order is applicable, do not generally describe a group):

Judge _____
Mr. _____
Ms. _____

2. If the home address, personal electronic mail address, or personal telephone number of a person listed under "1" above remains available for public inspection in public records, it would endanger the personal safety of the person or person's family member residing with the person, because the court proceedings (check those applicable)

_____ Involve or relate to criminals or litigants with violent and abusive natures.

_____ Have occasioned threats against the court, courthouse, or individuals involved with the proceedings.

_____ Create the need for increased security to avoid endangering the personal safety of people involved in the proceedings and people who regularly work near or live with people involved in the proceedings.

_____ Other (describe) _____

It is so Ordered.

Dated this _____ day of _____, _____.

(Signature of Judge)

(Typed or printed name of Judge)

(Court)

**REQUEST TO EXEMPT HOME ADDRESS, PERSONAL ELECTRONIC MAIL ADDRESS,
AND PERSONAL TELEPHONE NUMBER FROM
DISCLOSURE UNDER THE OREGON PUBLIC RECORDS LAW**

Under ORS 192.445 and OAR 137-04-800, I request that the public body or bodies described below not disclose my home address, personal electronic mail address, personal telephone number, or any of them, in the records specified in this request. In making this written request, I submit the following (*instructions in italics*):

1. I address this request to the following public body or bodies (*check those public bodies requested to make records confidential and send copies of this request and attachments to the records custodian of each public body you request to make records confidential*):
 The Oregon Judicial Department, Attn: Personnel Division, 1163 State Street, Salem, Oregon 97301-2563.
 Driver and Motor Vehicles Services Division, Oregon Dept. of Transportation, 1905 Lana Avenue NE, Salem, Oregon 97314.
 The Oregon Secretary of State's Office, 136 State Capitol, Salem, Oregon 97310-0722.
 The Oregon Dept. of Administrative Services, Office of the Director, 155 Cottage Street NE, U20, Salem, Oregon 97301-3972.
 The trial court administrator for the circuit court of _____ County/Judicial District (*insert county or judicial district*), (*insert address of court*) _____.
 The county clerk for _____ County, (*address*) _____.
 Other (*type or print*): _____.
2. As required by OAR 137-04-800, established by the Attorney General under ORS 192.445(2), I submit the following with this written request:
 - a. The name or description of public record sufficient to identify the record, as follows (*check those applicable*):
 Any personnel records, payroll records, or other records related to my employment.
 Any records related to elections.
 Records related to issuing a driver license, driver permit, other driving privileges, or identification card; or to the issuance of any vehicle title or registration or official notice concerning driving privileges, vehicle registration, or vehicle ownership.
 Records related to the ownership of any property or to taxation, evaluation, or assessment of any property that can be exempted under OAR 137-04-800.
 Other, as described: _____
 - b. My mailing address as follows (*print or type*): _____
 - c. A **nonconfidential telephone number** where you can contact me. (*NOTE: This information is not required to be provided by statute or rule*): _____
 - d. Evidence sufficient to establish that disclosure of my home address, personal electronic mail address, or personal telephone number would constitute a danger to my personal safety or that of a family member residing with me, as follows (*check applicable*):
 A copy of a court order issued under OAR 137-04-800(2)(K) (**attach copy of order**).
 Other, as described and/or attached: _____
 - e. (*check if applicable*) By checking the space at the beginning of this paragraph, I also request as follows: Should you provide any record specified in this request to any other public body, please indicate any exemption granted pursuant to this request so that the records may remain exempt from disclosure under ORS 192.502(10).
3. **The following is the information that I request you to withhold:** (*NOTE: The following information is not required to be provided by statute or rule but can be helpful to a public body seeking to not disclose the information.*)
 - a. Home Address(es) (*insert addresses sought to be kept confidential, as appropriate*):
First address: _____
Second address: _____
 - b. Personal Electronic Mail Address(es) (*insert electronic mail addresses sought to be kept confidential, as appropriate*):
First address: _____ Second address: _____
 - c. Personal Telephone Number(s) (*insert telephone numbers sought to be kept confidential, as appropriate*):
First number: _____ Second number: _____ Third number: _____

NOTE: Regardless of the specific address or telephone information provided under this part (part 3), I request that the address and any telephone number I provided in parts "2b" and "2c" of this request be the only information accessible under the Oregon Public Records Law when someone requests records with my home address, personal electronic mail address, or personal telephone number.

4. The following is my signature and name for purposes of this request:

(Signature)

(Name, typed or printed)

(Date)

5. (*check if applicable*) **NOTE:** I have attached a form for the convenience of the above-described public body in completing the written response requirements to this request under OAR 137-04-800(3) (**attach copy of response form**).

**PUBLIC BODY RESPONSE TO REQUEST TO EXEMPT HOME ADDRESS,
PERSONAL ELECTRONIC MAIL ADDRESS, AND PERSONAL TELEPHONE NUMBER
FROM DISCLOSURE UNDER THE OREGON PUBLIC RECORDS LAW**

This form is for the convenience of a public body in completing the written response requirements under OAR 137-04-800(3) to a request for exemption of home address, personal electronic mail address, and personal telephone number from disclosure under the Oregon Public Records Law.

By checking the following appropriate places, filling in the information as required, and returning a copy of this completed form to the requestor, _____ (*insert name of public body receiving request*) intends to complete the written response requirements under OAR 137-04-800(3) for the attached request to exempt the home address, personal electronic mail address, and personal telephone number of _____ (*insert name of requestor and attach copy of request*) under ORS 192.445, as follows (*check applicable response or responses and complete*):

_____ Your request to exempt your home address, personal electronic mail address, and personal telephone number from disclosure under the public records law is granted. This public body will withhold disclosure of that information to the extent provided by ORS 192.445 and OAR 137-04-800. The request was received on _____ (*date*). Under OAR 137-04-800(4), this public body provides the following notice:

- ◆ The exemption is effective for five years from the date we received the request, unless you submit a signed, written request to terminate the exemption before the end of the five years.
- ◆ You may make a new request for exemption at the end of the five years.

_____ The request for exemption granted by this response is in respect to a voter registration record. Under OAR 137-04-800(4), this public body provides the following notice:

- ◆ The exemption is effective until you must update your voter registration, unless you submit a signed, written request to terminate the exemption before that time.
- ◆ You may make a new request for exemption when you update your registration

_____ Your request for exemption under ORS 192.445 and OAR 137-04-800 is under review. This public body requests, under OAR 137-04-800(3), that you provide the following additional information so that we can complete our review of the request:

_____ We deny your request for exemption under ORS 192.445 and OAR 137-04-800 for the following reasons: _____

DEAR REQUESTOR, PLEASE NOTE:

- 1. This response addresses only those records mentioned above that we possess.**
- 2. If the mailing address or any contact telephone number you have provided us changes, you will need to let us know.**

(Signature of authorizing public official)

(Public official's name and title, typed or printed)

(Date)