



Nathan Vasquez, Multnomah County District Attorney

1200 SW 1st Avenue, Suite 5200, Portland, OR 97204-1193
P: (503) 988-3162 | F: (503) 988-3643 | www.mcda.us

May 8, 2026

via email only

Danielle Dawson
Reporter – InvestigateWest
danielle@investigatwest.org

Heidee Stoller
Legal Counsel – OHSU
stollerhe@ohsu.edu

Re: Petition of Danielle Dawson, on behalf of InvestigateWest, challenging Oregon Health & Science University's denial of a public records request for a building risk and capacity assessment of the neonatal intensive care unit

Dear Ms. Dawson and Ms. Stoller:

On December 23, 2025, petitioner, a reporter for InvestigateWest, submitted a public records request to Oregon Health & Science University (OHSU) seeking, after narrowing, the most recent “risk assessment or capacity assessment” conducted on OHSU’s neonatal intensive care unit (NICU). Petitioner clarified that those terms encompassed “any document or report generated by OHSU evaluating the current physical space of the NICU/perinatal unit and its maximum occupancy, hazards (i.e. fire, electrical and structural risks to occupants) or compliance with building safety codes.” On March 31, 2026, OHSU denied the request, citing ORS 192.355(21), the public records exemption for sensitive business records of OHSU.

Petitioner sought review by this office on April 23, 2026, as permitted by ORS 192.422, arguing that the records she seeks are regulatory compliance records generated to satisfy hospital licensing and fire-safety obligations under ORS 441.025 and ORS 479.215, not sensitive business records, and that the public interest in disclosure outweighs OHSU’s interest in confidentiality.

OHSU provided the disputed material for review pursuant to ORS 192.422(2) and represents that, after a reasonable search, no records of the regulatory or building-safety character petitioner describes were located. The only record OHSU located that references the physical space and maximum occupancy of the NICU is a regional market analysis of NICU bed capacity.

For the reasons that follow, I conclude that such a market analysis is a sensitive business record exempt from disclosure under ORS 192.355(21) and deny the petition.

DISCUSSION

A. OHSU Sensitive Business Records — ORS 192.355(21)

Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

OHSU is unusual among Oregon public bodies. As a “public corporation” under ORS 353.020(1), OHSU participates in the commercial market for healthcare and medical research alongside private hospitals, health systems, and research institutions. The Legislature accommodated by granting OHSU “increased operating flexibility” to ensure its success. ORS 353.010(2). The Court of Appeals has construed “business records” to capture records relating to activities of OHSU that are commercial in nature. *In Defense of Animals v. OHSU*, 199 Or App 160, 173 (2005). The names of companies and drugs being tested at OHSU’s primate research center, for example, fell within the exemption. *Id.* at 174.

Prior orders of this office have applied that framework to a range of OHSU records, both granting and denying petitions depending on the character of the document at issue. We concluded that the documents relating to private funding and engagement with competitors were exempt. *Petition of Oregon AFSCME*, MCDA PRO 25-63 (2025) (terms of the confidential agreement that produced a \$2 billion donation to OHSU exempt); *Petition of Terry*, MCDA PRO 19-16 (2019) (clinical component of OHSU faculty salary exempt).

The exemption has not, however, functioned as a categorical shield for any document in OHSU’s possession. It did not reach financial projections already disseminated to OHSU’s competitors and, in summary form, to the public. *Petition of Schmidt*, MCDA PRO 20-04 (dated projections shared with local competitors not “sensitive”). Nor did it reach records that were not commercial in character, such as the list of tort-claim notices filed against OHSU. *Petition of Budnick*, MCDA PRO 11-16 (2011) (notices of tort claims are not commercial in nature and not interconnected with the sensitive business practices of OHSU).

Petitioner’s argument has force as to a category of records OHSU does not appear to possess. She sought a record evaluating physical hazards or compliance with building safety codes. The exemption protects records arising from OHSU’s commercial or mercantile activity; it does not transform every document touching OHSU’s physical plant into a confidential business document.

The responsive record OHSU located, however, is not of that character. After a reasonable search, OHSU represents that it has no record of the regulatory or building-safety type petitioner describes. The single document OHSU located that references the physical space and maximum occupancy of the NICU is a market analysis. A market analysis evaluating NICU capacity is a record arising from OHSU’s commercial activity: it is the type of internal strategic document by which OHSU plans clinical capacity, allocates resources, and positions itself relative to private competitors providing similar services. That places it more akin *AFSCME* and *Terry* than *Budnick* or *Schmidt*. It is a record of OHSU’s “dealings” with its competitive environment, not a record of its compliance with general regulatory obligations.

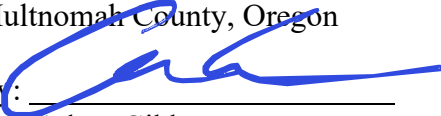
Petitioner argues, in the alternative, that the public interest in disclosure outweighs OHSU's interest in confidentiality. The public interest balancing she describes is a feature of the conditional exemptions under ORS 192.345. ORS 192.355(21) is unconditional. The Legislature determined, categorically, that sensitive business records of OHSU are not subject to disclosure. By including them in ORS 192.355 they are beyond case-by-case weighing.

ORDER

Accordingly, the petition is denied.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: 
Adam Gibbs
General Counsel