

HOUSE BILL REPORT

HB 1891

As Reported By House Committee On:
Government Administration

Title: An act relating to the commercial and business uses of government records in electronic form.

Brief Description: Authorizing the distribution of certain governmental lists of public information to private companies for use by federal, state or local governments and certain business entities.

Sponsors: Representatives Dyer and Wolfe.

Brief History:

Committee Activity:

Government Administration: 2/28/97, 3/5/97 [DP].

HOUSE COMMITTEE ON GOVERNMENT ADMINISTRATION

Majority Report: Do pass. Signed by 10 members: Representatives D. Schmidt, Chairman; D. Sommers, Vice Chairman; Scott, Ranking Minority Member; Gardner, Assistant Ranking Minority Member; Doumit; Murray; Reams; L. Thomas; Wensman and Wolfe.

Minority Report: Do not pass. Signed by 3 members: Representatives Dunn; Dunshee and Smith.

Staff: Steve Lundin (786-7127).

Background: The open public records law requires that all public records of state agencies and local governments are open to public inspection and copying unless expressly excluded. Among other express exclusions, the following public records are not available for inspection and copying by the public: (1) Personal information in files the disclosure of which would violate the right to privacy; (2) certain taxpayer information; (3) preliminary drafts or notes; (4) library records that disclose the identity of the library user; (5) certain financial and commercial information supplied by individuals applying for various programs; and (6) valuable formulae or designs.

The open public records law does not authorize the use of lists of individuals for commercial purposes unless specifically authorized by law.

Federal law prohibits the disclosure of Social Security numbers, except in certain limited instances.

Summary of Bill: General prohibition on access to personally identifiable information requested for commercial use. The prohibition on the commercial use of lists of names, that is included in the open public records law, is altered to prohibit access to personally identifiable information requested for commercial use. Personally identifiable information is defined to include information disclosed by an individual as a prerequisite to the receipt of a license, approval, or service from a government that the individual would not otherwise disclose to a third party, and includes a person's name, address, telephone number, and Social Security number.

Disclosure of information for business uses. The privacy portion of the open records law is amended to specifically allow a government agency to disclose information to any other government agency in carrying out its functions and to disclose information for business use. Business use is defined to mean the use of government information, including personally identifiable information authorized by the Legislature, that does not result in an unsolicited commercial contract to persons identified in the records. News gathering is declared not to be a business use.

Restriction on the charging of fees for access to information. A state agency or local government may provide information for business use, if disclosure is authorized by law, in a requested form or means and may charge fees for this information if it is not otherwise maintained or accessible by the agency or local government in that form. The fee shall be based upon the recovery cost of providing enhanced electronic access for business purposes, but only to the extent that the enhanced electronic access was not developed or maintained by the agency for its own internal use or the provision of general public access to public records. Fee revenue must be dedicated to the development, maintenance, and refurbishment of electronic information systems and the support of such systems.

Contracts for access to public records held by the state. State agencies shall only allow access to public records for business use through a contractual agreement between the agency and entity requesting the access, that includes certain minimal requirements, such as the following:

- The information shall only be used in connection with the use identified by the entity that was approved by the agency;
- The entity agrees to protect the confidentiality of the information and to not furnish the information to others;
- No name or address of any individual may be published or disclosed by the entity unless the use or disclosure is approved by the agency;

- Controlled or salted– data may be provided to ensure that personally identifiable information is utilized only for the specifically authorized purposes;
- No proprietary right or interest shall inure to the entity; and
- The entity accepts full responsibility and liability for any violations of the agreement and may be subject to additional unrestricted financial remedies for any violation of the agreement.

Prohibition on disclosure of computer programs and software. Computer programs and software developed by state agencies and local governments are not disclosable under the open public records law.

Posting of notice that information may be disclosed. State agencies and local governments that collect personally identifiable information that is subject to disclosure shall post or publish public notice that the information gathered may be disclosable as a public record.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The opposition is misdirected. Oregon has a similar law. This allows legitimate business uses of government data. Privacy is protected.

Testimony Against: This is confusing. The 1972 Privacy Act is good - don't change it. A preference is given to one group. There are major privacy concerns with this.

Testified: (Pro) Representative Dyer, prime sponsor; Ron Weaver, Department of Health; Sharon Foster, Community Information Systems; and Rick Jensen, Car Rental Association.

(Con) Rowland Thompson, Allied Daily Newspaper; Tom Kenningen, The Columbian; Mike Killeen, counsel to Seattle Times; Jeffrey Michka, Coalition of Washington Communities; and Janeane Dubuar, Computer Professionals for Social Responsibility.