
ENGROSSED HOUSE BILL 1891

State of Washington

55th Legislature

1997 Regular Session

By Representatives Dyer, Wolfe and Butler

Read first time 02/12/97. Referred to Committee on Government Administration.

1 AN ACT Relating to the commercial and business uses of government
2 records in electronic form; amending RCW 42.17.020 and 43.105.310;
3 reenacting and amending RCW 42.17.260, 42.17.300, and 42.17.310; and
4 creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
7 delineate between legitimate business use of public records and
8 inappropriate commercial use. It is also the intent of the legislature
9 to protect the privacy of citizens from inappropriate commercial use of
10 public records by providing disincentives for such use. It is also the
11 intent of the legislature to allow agencies to recover a reasonable
12 share of the costs of providing contracted enhanced electronic access
13 to public records for business purposes. Furthermore, the legislature
14 seeks to encourage public-private cooperation in ways that further the
15 public mission of the state and to maintain and enhance public access
16 to public records for the purpose of encouraging public oversight and
17 facilitating other desirable social and economic benefits.

1 **Sec. 2.** RCW 42.17.020 and 1995 c 397 s 1 are each amended to read
2 as follows:

3 (1) "Agency" includes all state agencies and all local agencies.
4 "State agency" includes every state office, department, division,
5 bureau, board, commission, or other state agency. "Local agency"
6 includes every county, city, town, municipal corporation, quasi-
7 municipal corporation, or special purpose district, or any office,
8 department, division, bureau, board, commission, or agency thereof, or
9 other local public agency.

10 (2) "Authorized committee" means the political committee authorized
11 by a candidate, or by the public official against whom recall charges
12 have been filed, to accept contributions or make expenditures on behalf
13 of the candidate or public official.

14 (3) "Ballot proposition" means any "measure" as defined by RCW
15 29.01.110, or any initiative, recall, or referendum proposition
16 proposed to be submitted to the voters of the state or any municipal
17 corporation, political subdivision, or other voting constituency from
18 and after the time when the proposition has been initially filed with
19 the appropriate election officer of that constituency prior to its
20 circulation for signatures.

21 (4) "Benefit" means a commercial, proprietary, financial, economic,
22 or monetary advantage, or the avoidance of a commercial, proprietary,
23 financial, economic, or monetary disadvantage.

24 (5) "Bona fide political party" means:

25 (a) An organization that has filed a valid certificate of
26 nomination with the secretary of state under chapter 29.24 RCW;

27 (b) The governing body of the state organization of a major
28 political party, as defined in RCW 29.01.090, that is the body
29 authorized by the charter or bylaws of the party to exercise authority
30 on behalf of the state party; or

31 (c) The county central committee or legislative district committee
32 of a major political party. There may be only one legislative district
33 committee for each party in each legislative district.

34 (6) "Business use" or "business purpose" means a use of public
35 records, including, but not limited to those records that contain
36 personally identifiable information, in government data bases for the
37 purpose of meeting regulatory requirements, conducting business in a
38 safe and legal manner, or validating information provided by one party,
39 and does not result in an unsolicited commercial contact to persons

1 identified in such records. Furthermore such business use or business
2 purpose must comply with the provisions of RCW 42.17.300 (2) through
3 (4).

4 (7) "Depository" means a bank designated by a candidate or
5 political committee pursuant to RCW 42.17.050.

6 ~~((+7+))~~ (8) "Treasurer" and "deputy treasurer" mean the individuals
7 appointed by a candidate or political committee, pursuant to RCW
8 42.17.050, to perform the duties specified in that section.

9 ~~((+8+))~~ (9) "Candidate" means any individual who seeks nomination
10 for election or election to public office. An individual seeks
11 nomination or election when he or she first:

12 (a) Receives contributions or makes expenditures or reserves space
13 or facilities with intent to promote his or her candidacy for office;

14 (b) Announces publicly or files for office;

15 (c) Purchases commercial advertising space or broadcast time to
16 promote his or her candidacy; or

17 (d) Gives his or her consent to another person to take on behalf of
18 the individual any of the actions in (a) or (c) of this subsection.

19 ~~((+9+))~~ (10) "Caucus political committee" means a political
20 committee organized and maintained by the members of a major political
21 party in the state senate or state house of representatives.

22 ~~((+10+))~~ (11) "Commercial advertiser" means any person who sells
23 the service of communicating messages or producing printed material for
24 broadcast or distribution to the general public or segments of the
25 general public whether through the use of newspapers, magazines,
26 television and radio stations, billboard companies, direct mail
27 advertising companies, printing companies, or otherwise.

28 ~~((+11+))~~ (12) "Commission" means the agency established under RCW
29 42.17.350.

30 ~~((+12+))~~ (13) "Compensation" unless the context requires a narrower
31 meaning, includes payment in any form for real or personal property or
32 services of any kind(~~(:—PROVIDED, That)~~). However, for the purpose of
33 compliance with RCW 42.17.241, the term "compensation" shall not
34 include per diem allowances or other payments made by a governmental
35 entity to reimburse a public official for expenses incurred while the
36 official is engaged in the official business of the governmental
37 entity.

1 (~~(13)~~) (14) "Continuing political committee" means a political
2 committee that is an organization of continuing existence not
3 established in anticipation of any particular election campaign.

4 (~~(14)~~) (15)(a) "Contribution" includes:

5 (i) A loan, gift, deposit, subscription, forgiveness of
6 indebtedness, donation, advance, pledge, payment, transfer of funds
7 between political committees, or anything of value, including personal
8 and professional services for less than full consideration;

9 (ii) An expenditure made by a person in cooperation, consultation,
10 or concert with, or at the request or suggestion of, a candidate, a
11 political committee, or their agents;

12 (iii) The financing by a person of the dissemination, distribution,
13 or republication, in whole or in part, of broadcast, written, graphic,
14 or other form of political advertising prepared by a candidate, a
15 political committee, or its authorized agent;

16 (iv) Sums paid for tickets to fund-raising events such as dinners
17 and parties, except for the actual cost of the consumables furnished at
18 the event.

19 (b) "Contribution" does not include:

20 (i) Standard interest on money deposited in a political committee's
21 account;

22 (ii) Ordinary home hospitality;

23 (iii) A contribution received by a candidate or political committee
24 that is returned to the contributor within five business days of the
25 date on which it is received by the candidate or political committee;

26 (iv) A news item, feature, commentary, or editorial in a regularly
27 scheduled news medium that is of primary interest to the general
28 public, that is in a news medium controlled by a person whose business
29 is that news medium, and that is not controlled by a candidate or a
30 political committee;

31 (v) An internal political communication primarily limited to the
32 members of or contributors to a political party organization or
33 political committee, or to the officers, management staff, or
34 stockholders of a corporation or similar enterprise, or to the members
35 of a labor organization or other membership organization;

36 (vi) The rendering of personal services of the sort commonly
37 performed by volunteer campaign workers, or incidental expenses
38 personally incurred by volunteer campaign workers not in excess of
39 fifty dollars personally paid for by the worker. "Volunteer services,"

1 for the purposes of this section, means services or labor for which the
2 individual is not compensated by any person;

3 (vii) Messages in the form of reader boards, banners, or yard or
4 window signs displayed on a person's own property or property occupied
5 by a person. However, a facility used for such political advertising
6 for which a rental charge is normally made must be reported as an in-
7 kind contribution and counts towards any applicable contribution limit
8 of the person providing the facility;

9 (viii) Legal or accounting services rendered to or on behalf of:

10 (A) A political party or caucus political committee if the person
11 paying for the services is the regular employer of the person rendering
12 such services; or

13 (B) A candidate or an authorized committee if the person paying for
14 the services is the regular employer of the individual rendering the
15 services and if the services are solely for the purpose of ensuring
16 compliance with state election or public disclosure laws.

17 (c) Contributions other than money or its equivalent are deemed to
18 have a monetary value equivalent to the fair market value of the
19 contribution. Services or property or rights furnished at less than
20 their fair market value for the purpose of assisting any candidate or
21 political committee are deemed a contribution. Such a contribution
22 must be reported as an in-kind contribution at its fair market value
23 and counts towards any applicable contribution limit of the provider.

24 (~~(15)~~) (16) "Elected official" means any person elected at a
25 general or special election to any public office, and any person
26 appointed to fill a vacancy in any such office.

27 (~~(16)~~) (17) "Election" includes any primary, general, or special
28 election for public office and any election in which a ballot
29 proposition is submitted to the voters: PROVIDED, That an election in
30 which the qualifications for voting include other than those
31 requirements set forth in Article VI, section 1 (Amendment 63) of the
32 Constitution of the state of Washington shall not be considered an
33 election for purposes of this chapter.

34 (~~(17)~~) (18) "Election campaign" means any campaign in support of
35 or in opposition to a candidate for election to public office and any
36 campaign in support of, or in opposition to, a ballot proposition.

37 (~~(18)~~) (19) "Election cycle" means the period beginning on the
38 first day of December after the date of the last previous general
39 election for the office that the candidate seeks and ending on November

1 30th after the next election for the office. In the case of a special
2 election to fill a vacancy in an office, "election cycle" means the
3 period beginning on the day the vacancy occurs and ending on November
4 30th after the special election.

5 ~~((19))~~ (20) "Enhanced electronic access" means the contracted
6 electronic delivery of public records in a format or through electronic
7 delivery systems, by written agreement that complies with RCW 42.17.300
8 (2) through (4), at the request and for the business purpose of the
9 party seeking the records, but which are not developed or maintained by
10 an agency for its internal use or for the provision of public access to
11 public records.

12 (21) "Expenditure" includes a payment, contribution, subscription,
13 distribution, loan, advance, deposit, or gift of money or anything of
14 value, and includes a contract, promise, or agreement, whether or not
15 legally enforceable, to make an expenditure. The term "expenditure"
16 also includes a promise to pay, a payment, or a transfer of anything of
17 value in exchange for goods, services, property, facilities, or
18 anything of value for the purpose of assisting, benefiting, or honoring
19 any public official or candidate, or assisting in furthering or
20 opposing any election campaign. For the purposes of this chapter,
21 agreements to make expenditures, contracts, and promises to pay may be
22 reported as estimated obligations until actual payment is made. The
23 term "expenditure" shall not include the partial or complete repayment
24 by a candidate or political committee of the principal of a loan, the
25 receipt of which loan has been properly reported.

26 ~~((20))~~ (22) "Final report" means the report described as a final
27 report in RCW 42.17.080(2).

28 ~~((21))~~ (23) "General election" means the election that results in
29 the election of a person to a state office. It does not include a
30 primary.

31 ~~((22))~~ (24) "Gift," is as defined in RCW 42.52.010.

32 ~~((23))~~ (25) "Immediate family" includes the spouse, dependent
33 children, and other dependent relatives, if living in the household.
34 For the purposes of RCW 42.17.640 through 42.17.790, "immediate family"
35 means an individual's spouse, and child, stepchild, grandchild, parent,
36 stepparent, grandparent, brother, half brother, sister, or half sister
37 of the individual and the spouse of any such person and a child,
38 stepchild, grandchild, parent, stepparent, grandparent, brother, half

1 brother, sister, or half sister of the individual's spouse and the
2 spouse of any such person.

3 ~~((+24+))~~ (26) "Independent expenditure" means an expenditure that
4 has each of the following elements:

5 (a) It is made in support of or in opposition to a candidate for
6 office by a person who is not (i) a candidate for that office, (ii) an
7 authorized committee of that candidate for that office, (iii) a person
8 who has received the candidate's encouragement or approval to make the
9 expenditure, if the expenditure pays in whole or in part for political
10 advertising supporting that candidate or promoting the defeat of any
11 other candidate or candidates for that office, or (iv) a person with
12 whom the candidate has collaborated for the purpose of making the
13 expenditure, if the expenditure pays in whole or in part for political
14 advertising supporting that candidate or promoting the defeat of any
15 other candidate or candidates for that office;

16 (b) The expenditure pays in whole or in part for political
17 advertising that either specifically names the candidate supported or
18 opposed, or clearly and beyond any doubt identifies the candidate
19 without using the candidate's name; and

20 (c) The expenditure, alone or in conjunction with another
21 expenditure or other expenditures of the same person in support of or
22 opposition to that candidate, has a value of five hundred dollars or
23 more. A series of expenditures, each of which is under five hundred
24 dollars, constitutes one independent expenditure if their cumulative
25 value is five hundred dollars or more.

26 ~~((+25+))~~ (27)(a) "Intermediary" means an individual who transmits
27 a contribution to a candidate or committee from another person unless
28 the contribution is from the individual's employer, immediate family as
29 defined for purposes of RCW 42.17.640 through 42.17.790, or an
30 association to which the individual belongs.

31 (b) A treasurer or a candidate is not an intermediary for purposes
32 of the committee that the treasurer or candidate serves.

33 (c) A professional fund-raiser is not an intermediary if the fund-
34 raiser is compensated for fund-raising services at the usual and
35 customary rate.

36 (d) A volunteer hosting a fund-raising event at the individual's
37 home is not an intermediary for purposes of that event.

38 ~~((+26+))~~ (28) "Legislation" means bills, resolutions, motions,
39 amendments, nominations, and other matters pending or proposed in

1 either house of the state legislature, and includes any other matter
2 that may be the subject of action by either house or any committee of
3 the legislature and all bills and resolutions that, having passed both
4 houses, are pending approval by the governor.

5 ~~((27))~~ (29) "Lobby" and "lobbying" each mean attempting to
6 influence the passage or defeat of any legislation by the legislature
7 of the state of Washington, or the adoption or rejection of any rule,
8 standard, rate, or other legislative enactment of any state agency
9 under the state Administrative Procedure Act, chapter 34.05 RCW.
10 Neither "lobby" nor "lobbying" includes an association's or other
11 organization's act of communicating with the members of that
12 association or organization.

13 ~~((28))~~ (30) "Lobbyist" includes any person who lobbies either in
14 his or her own or another's behalf.

15 ~~((29))~~ (31) "Lobbyist's employer" means the person or persons by
16 whom a lobbyist is employed and all persons by whom he or she is
17 compensated for acting as a lobbyist.

18 ~~((30))~~ (32) "Person" includes an individual, partnership, joint
19 venture, public or private corporation, association, federal, state, or
20 local governmental entity or agency however constituted, candidate,
21 committee, political committee, political party, executive committee
22 thereof, or any other organization or group of persons, however
23 organized.

24 ~~((31))~~ (33) "Person in interest" means the person who is the
25 subject of a record or any representative designated by that person,
26 except that if that person is under a legal disability, the term
27 "person in interest" means and includes the parent or duly appointed
28 legal representative.

29 ~~((32))~~ (34) "Personally identifiable information" means
30 information disclosed by an individual as a prerequisite to the receipt
31 of a license, approval, award, product, or service from a government
32 agency, which may include name, address, telephone number, social
33 security number, photographs, fingerprints, or computerized images
34 thereof.

35 (35) "Political advertising" includes any advertising displays,
36 newspaper ads, billboards, signs, brochures, articles, tabloids,
37 flyers, letters, radio or television presentations, or other means of
38 mass communication, used for the purpose of appealing, directly or

1 indirectly, for votes or for financial or other support in any election
2 campaign.

3 ~~((+33+))~~ (36) "Political committee" means any person (except a
4 candidate or an individual dealing with his or her own funds or
5 property) having the expectation of receiving contributions or making
6 expenditures in support of, or opposition to, any candidate or any
7 ballot proposition.

8 ~~((+34+))~~ (37) "Primary" means the procedure for nominating a
9 candidate to state office under chapter 29.18 or 29.21 RCW or any other
10 primary for an election that uses, in large measure, the procedures
11 established in chapter 29.18 or 29.21 RCW.

12 ~~((+35+))~~ (38) "Public office" means any federal, state, county,
13 city, town, school district, port district, special district, or other
14 state political subdivision elective office.

15 ~~((+36+))~~ (39) "Public record" includes any writing containing
16 information relating to the conduct of government or the performance of
17 any governmental or proprietary function prepared, owned, used, or
18 retained by any state or local agency regardless of physical form or
19 characteristics. For the office of the secretary of the senate and the
20 office of the chief clerk of the house of representatives, public
21 records means legislative records as defined in RCW 40.14.100 and also
22 means the following: All budget and financial records; personnel
23 leave, travel, and payroll records; records of legislative sessions;
24 reports submitted to the legislature; and any other record designated
25 a public record by any official action of the senate or the house of
26 representatives.

27 ~~((+37+))~~ (40) "Recall campaign" means the period of time beginning
28 on the date of the filing of recall charges under RCW 29.82.015 and
29 ending thirty days after the recall election.

30 ~~((+38+))~~ (41) "State legislative office" means the office of a
31 member of the state house of representatives or the office of a member
32 of the state senate.

33 ~~((+39+))~~ (42) "State office" means state legislative office or the
34 office of governor, lieutenant governor, secretary of state, attorney
35 general, commissioner of public lands, insurance commissioner,
36 superintendent of public instruction, state auditor, or state
37 treasurer.

38 ~~((+40+))~~ (43) "State official" means a person who holds a state
39 office.

1 (~~(41)~~) (44) "Surplus funds" mean, in the case of a political
2 committee or candidate, the balance of contributions that remain in the
3 possession or control of that committee or candidate subsequent to the
4 election for which the contributions were received, and that are in
5 excess of the amount necessary to pay remaining debts incurred by the
6 committee or candidate prior to that election. In the case of a
7 continuing political committee, "surplus funds" mean those
8 contributions remaining in the possession or control of the committee
9 that are in excess of the amount necessary to pay all remaining debts
10 when it makes its final report under RCW 42.17.065.

11 (~~(42)~~) (45) "Writing" means handwriting, typewriting, printing,
12 photostating, photographing, and every other means of recording any
13 form of communication or representation, including, but not limited to,
14 letters, words, pictures, sounds, or symbols, or combination thereof,
15 and all papers, maps, magnetic or paper tapes, photographic films and
16 prints, motion picture, film and video recordings, magnetic or punched
17 cards, discs, drums, diskettes, sound recordings, and other documents
18 including existing data compilations from which information may be
19 obtained or translated.

20 As used in this chapter, the singular shall take the plural and any
21 gender, the other, as the context requires.

22 **Sec. 3.** RCW 42.17.260 and 1995 c 397 s 11 and 1995 c 341 s 1 are
23 each reenacted and amended to read as follows:

24 (1) Each agency, in accordance with published rules, shall make
25 available for public inspection and copying all public records, unless
26 the record falls within the specific exemptions of subsection (6) of
27 this section, RCW 42.17.310, 42.17.315, or other statute which exempts
28 or prohibits disclosure of specific information or records. To the
29 extent required to prevent an unreasonable invasion of personal privacy
30 interests protected by RCW 42.17.310 and 42.17.315, an agency shall
31 delete identifying details in a manner consistent with RCW 42.17.310
32 and 42.17.315 when it makes available or publishes any public record;
33 however, in each case, the justification for the deletion shall be
34 explained fully in writing.

35 (2) For informational purposes, each agency shall publish and
36 maintain a current list containing every law, other than those listed
37 in this chapter, that the agency believes exempts or prohibits
38 disclosure of specific information or records of the agency. An

1 agency's failure to list an exemption shall not affect the efficacy of
2 any exemption.

3 (3) Each local agency shall maintain and make available for public
4 inspection and copying a current index providing identifying
5 information as to the following records issued, adopted, or promulgated
6 after January 1, 1973:

7 (a) Final opinions, including concurring and dissenting opinions,
8 as well as orders, made in the adjudication of cases;

9 (b) Those statements of policy and interpretations of policy,
10 statute, and the Constitution which have been adopted by the agency;

11 (c) Administrative staff manuals and instructions to staff that
12 affect a member of the public;

13 (d) Planning policies and goals, and interim and final planning
14 decisions;

15 (e) Factual staff reports and studies, factual consultant's reports
16 and studies, scientific reports and studies, and any other factual
17 information derived from tests, studies, reports, or surveys, whether
18 conducted by public employees or others; and

19 (f) Correspondence, and materials referred to therein, by and with
20 the agency relating to any regulatory, supervisory, or enforcement
21 responsibilities of the agency, whereby the agency determines, or
22 opines upon, or is asked to determine or opine upon, the rights of the
23 state, the public, a subdivision of state government, or of any private
24 party.

25 (4) A local agency need not maintain such an index, if to do so
26 would be unduly burdensome, but it shall in that event:

27 (a) Issue and publish a formal order specifying the reasons why and
28 the extent to which compliance would unduly burden or interfere with
29 agency operations; and

30 (b) Make available for public inspection and copying all indexes
31 maintained for agency use.

32 (5) Each state agency shall, by rule, establish and implement a
33 system of indexing for the identification and location of the following
34 records:

35 (a) All records issued before July 1, 1990, for which the agency
36 has maintained an index;

37 (b) Final orders entered after June 30, 1990, that are issued in
38 adjudicative proceedings as defined in RCW 34.05.010(1) and that

1 contain an analysis or decision of substantial importance to the agency
2 in carrying out its duties;

3 (c) Declaratory orders entered after June 30, 1990, that are issued
4 pursuant to RCW 34.05.240 and that contain an analysis or decision of
5 substantial importance to the agency in carrying out its duties;

6 (d) Interpretive statements as defined in RCW 34.05.010(8) that
7 were entered after June 30, 1990; and

8 (e) Policy statements as defined in RCW 34.05.010(14) that were
9 entered after June 30, 1990.

10 Rules establishing systems of indexing shall include, but not be
11 limited to, requirements for the form and content of the index, its
12 location and availability to the public, and the schedule for revising
13 or updating the index. State agencies that have maintained indexes for
14 records issued before July 1, 1990, shall continue to make such indexes
15 available for public inspection and copying. Information in such
16 indexes may be incorporated into indexes prepared pursuant to this
17 subsection. State agencies may satisfy the requirements of this
18 subsection by making available to the public indexes prepared by other
19 parties but actually used by the agency in its operations. State
20 agencies shall make indexes available for public inspection and
21 copying. State agencies may charge a fee to cover the actual costs of
22 providing individual mailed copies of indexes.

23 (6) A public record may be relied on, used, or cited as precedent
24 by an agency against a party other than an agency and it may be invoked
25 by the agency for any other purpose only if(←):

26 (a) It has been indexed in an index available to the public; or

27 (b) Parties affected have timely notice (actual or constructive) of
28 the terms thereof.

29 (7) Each agency shall establish, maintain, and make available for
30 public inspection and copying a statement of the actual per page cost
31 or other costs, if any, that it charges for providing photocopies of
32 public records and a statement of the factors and manner used to
33 determine the actual per page cost or other costs, if any.

34 (a) In determining the actual per page cost for providing
35 photocopies of public records, an agency may include all costs directly
36 incident to copying such public records including the actual cost of
37 the paper and the per page cost for use of agency copying equipment.
38 In determining other actual costs for providing photocopies of public
39 records, an agency may include all costs directly incident to shipping

1 such public records, including the cost of postage or delivery charges
2 and the cost of any container or envelope used.

3 (b) In determining the actual per page cost or other costs for
4 providing copies of public records, an agency may not include staff
5 salaries, benefits, or other general administrative or overhead
6 charges, unless those costs are directly related to the actual cost of
7 copying the public records. Staff time to copy and mail the requested
8 public records may be included in an agency's costs.

9 (8) An agency need not calculate the actual per page cost or other
10 costs it charges for providing photocopies of public records if to do
11 so would be unduly burdensome, but in that event: The agency may not
12 charge in excess of fifteen cents per page for photocopies of public
13 records or for the use of agency equipment to photocopy public records
14 and the actual postage or delivery charge and the cost of any container
15 or envelope used to mail the public records to the requestor.

16 (9) This chapter shall not be construed as giving authority to any
17 agency, the office of the secretary of the senate, or the office of the
18 chief clerk of the house of representatives to give, sell or provide
19 access to lists of individuals requested for commercial purposes, and
20 agencies, the office of the secretary of the senate, and the office of
21 the chief clerk of the house of representatives shall not do so unless
22 specifically authorized or directed by law: PROVIDED, HOWEVER, That
23 lists of applicants for professional licenses and of professional
24 licensees shall be made available to those professional associations or
25 educational organizations recognized by their professional licensing or
26 examination board, upon payment of a reasonable charge (~~therefor~~),
27 and comply with the provisions of RCW 42.17.300 (3) and (4): PROVIDED
28 FURTHER, That such recognition may be refused only for a good cause
29 pursuant to a hearing under the provisions of chapter 34.05 RCW, the
30 Administrative Procedure Act.

31 **Sec. 4.** RCW 42.17.300 and 1995 c 397 s 14 and 1995 c 341 s 2 are
32 each reenacted and amended to read as follows:

33 (1) No fee shall be charged for the inspection of public records.
34 No fee shall be charged for locating public documents and making them
35 available for copying. A reasonable charge may be imposed for
36 providing copies of public records and for the use by any person of
37 agency equipment or equipment of the office of the secretary of the
38 senate or the office of the chief clerk of the house of representatives

1 to copy public records, which charges shall not exceed the amount
2 necessary to reimburse the agency, the office of the secretary of the
3 senate, or the office of the chief clerk of the house of
4 representatives for its actual costs directly incident to such copying.
5 Agency charges for photocopies shall be imposed in accordance with the
6 actual per page cost or other costs established and published by the
7 agency. In no event may an agency charge a per page cost greater than
8 the actual per page cost as established and published by the agency.
9 To the extent the agency has not determined the actual per page cost
10 for photocopies of public records, the agency may not charge in excess
11 of fifteen cents per page.

12 (2) An agency may provide information for business use, for which
13 disclosure is permitted by law, in a particular form, number, or means
14 of access as requested, and if the information is not otherwise
15 maintained or accessible by the agency in that form, may establish
16 rates by contract unless otherwise provided by law. Agencies shall
17 base fees on the recovery of the actual cost of providing enhanced
18 electronic access for business purposes. The revenue from enhanced
19 electronic access for business use must be dedicated to the
20 development, maintenance, and refurbishment of electronic information
21 systems and the support of electronic public access systems.

22 (3) All state agencies, unless otherwise directed, specified, or
23 prohibited by this chapter or other state statutes, shall allow
24 otherwise appropriate access to public records for business purposes
25 only through means of a contractual agreement between the agency and
26 the entity requesting the access, hereinafter referred to as the
27 contractor.

28 (4) The agreements for access to public records for business
29 purposes shall require, at a minimum, the following limitations,
30 provided in this section as a general guide to be specifically crafted
31 by each agency as necessary and appropriate for individual legal and
32 contractual requirements:

33 (a) The contractor shall use the information provided by the agency
34 only in connection with the use for which the information was initially
35 sought by the contractor and approved by the agency;

36 (b) The contractor agrees to protect the confidentiality of the
37 information to which access has been provided under the agreement;

38 (c) The contractor, or any employee or agent of the contractor,
39 shall not furnish in any form, to any person, corporation, partnership,

1 association, or organization, a copy of any information, in whole or in
2 part, provided by the agency, without the express written consent of
3 the agency for the provision of the information for a purpose;

4 (d) The contractor shall adhere to any current or subsequently
5 amended statutory or administrative rules regulating privacy or
6 confidentiality relating to the information provided by the agency;

7 (e) Any exceptions, revisions, or waivers to these limitations
8 requested by the contractor must be approved in writing by the agency
9 and received by the contractor prior to the requested use of the
10 information which is otherwise limited;

11 (f) No name or address of any individual furnished by the agency to
12 the contractor shall be published or otherwise disclosed by the
13 contractor in any manner not otherwise approved by the agency;

14 (g) The contractor, or any officer, employee, or agent of the
15 contractor, shall not furnish in any form, to any person, corporation,
16 partnership, association, or organization, any of the individual's
17 personally identifiable information provided by the agency under the
18 agreement for the purpose of making unsolicited commercial contact with
19 the individuals named or otherwise identified, unless specifically
20 approved, in writing, by the agency;

21 (h) The contractor agrees that the agency may provide "control" or
22 "salted" data as a portion of provided information as a means to ensure
23 that any personally identifiable information is utilized only for the
24 specific purposes allowed under the terms of the agreement;

25 (i) The contractor shall not gain any proprietary right to or
26 interest in any information provided by the agency and shall not assign
27 their interest in the agreement or any portion thereof to any person,
28 corporation, partnership, association, or organization of any kind;

29 (j) The contractor accepts full responsibility and liability for
30 any violations of the agreement by the contractor or any officer,
31 employee, or agent of the contractor and any such violation shall
32 result in immediate termination by the agency of all information
33 provision to the contractor or any officer, employee, or agent of the
34 contractor in any form and immediate forfeiture to the agency of any
35 agency provided information, in any form, held by the contractor or any
36 officer, employee, or agent of the contractor; and

37 (k) The agency reserves additional unrestricted financial remedies,
38 on a per-record basis, for any violation of the agreement by the

1 contractor or any officer, employee, or agent of the contractor, in
2 addition to any penalty allowed under state law.

3 **Sec. 5.** RCW 42.17.310 and 1996 c 305 s 2, 1996 c 253 s 302, 1996
4 c 191 s 88, and 1996 c 80 s 1 are each reenacted and amended to read as
5 follows:

6 (1) The following are exempt from public inspection and copying:

7 (a) Personal information in any files maintained for students in
8 public schools, patients or clients of public institutions or public
9 health agencies, or welfare recipients.

10 (b) Personal information in files maintained for employees,
11 appointees, or elected officials of any public agency to the extent
12 that disclosure would violate their right to privacy.

13 (c) Information required of any taxpayer in connection with the
14 assessment or collection of any tax if the disclosure of the
15 information to other persons would (i) be prohibited to such persons by
16 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result
17 in unfair competitive disadvantage to the taxpayer.

18 (d) Specific intelligence information and specific investigative
19 records compiled by investigative, law enforcement, and penology
20 agencies, and state agencies vested with the responsibility to
21 discipline members of any profession, the nondisclosure of which is
22 essential to effective law enforcement or for the protection of any
23 person's right to privacy.

24 (e) Information revealing the identity of persons who are witnesses
25 to or victims of crime or who file complaints with investigative, law
26 enforcement, or penology agencies, other than the public disclosure
27 commission, if disclosure would endanger any person's life, physical
28 safety, or property. If at the time a complaint is filed the
29 complainant, victim or witness indicates a desire for disclosure or
30 nondisclosure, such desire shall govern. However, all complaints filed
31 with the public disclosure commission about any elected official or
32 candidate for public office must be made in writing and signed by the
33 complainant under oath.

34 (f) Test questions, scoring keys, and other examination data used
35 to administer a license, employment, or academic examination.

36 (g) Except as provided by chapter 8.26 RCW, the contents of real
37 estate appraisals, made for or by any agency relative to the
38 acquisition or sale of property, until the project or prospective sale

1 is abandoned or until such time as all of the property has been
2 acquired or the property to which the sale appraisal relates is sold,
3 but in no event shall disclosure be denied for more than three years
4 after the appraisal.

5 (h) Valuable formulae, designs, drawings, and research data
6 obtained by any agency within five years of the request for disclosure
7 when disclosure would produce private gain and public loss.

8 (i) Preliminary drafts, notes, recommendations, and intra-agency
9 memorandums in which opinions are expressed or policies formulated or
10 recommended except that a specific record shall not be exempt when
11 publicly cited by an agency in connection with any agency action.

12 (j) Records which are relevant to a controversy to which an agency
13 is a party but which records would not be available to another party
14 under the rules of pretrial discovery for causes pending in the
15 superior courts.

16 (k) Records, maps, or other information identifying the location of
17 archaeological sites in order to avoid the looting or depredation of
18 such sites.

19 (l) Any library record, the primary purpose of which is to maintain
20 control of library materials, or to gain access to information, which
21 discloses or could be used to disclose the identity of a library user.

22 (m) Financial information supplied by or on behalf of a person,
23 firm, or corporation for the purpose of qualifying to submit a bid or
24 proposal for (i) a ferry system construction or repair contract as
25 required by RCW 47.60.680 through 47.60.750 or (ii) highway
26 construction or improvement as required by RCW 47.28.070.

27 (n) Railroad company contracts filed prior to July 28, 1991, with
28 the utilities and transportation commission under RCW 81.34.070, except
29 that the summaries of the contracts are open to public inspection and
30 copying as otherwise provided by this chapter.

31 (o) Financial and commercial information and records supplied by
32 private persons pertaining to export services provided pursuant to
33 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
34 export projects pursuant to RCW 43.23.035.

35 (p) Financial disclosures filed by private vocational schools under
36 chapters 28B.85 and 28C.10 RCW.

37 (q) Records filed with the utilities and transportation commission
38 or attorney general under RCW 80.04.095 that a court has determined are
39 confidential under RCW 80.04.095.

1 (r) Financial and commercial information and records supplied by
2 businesses or individuals during application for loans or program
3 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
4 or during application for economic development loans or program
5 services provided by any local agency.

6 (s) Membership lists or lists of members or owners of interests of
7 units in timeshare projects, subdivisions, camping resorts,
8 condominiums, land developments, or common-interest communities
9 affiliated with such projects, regulated by the department of
10 licensing, in the files or possession of the department.

11 (t) All applications for public employment, including the names of
12 applicants, resumes, and other related materials submitted with respect
13 to an applicant.

14 (u) The residential addresses and residential telephone numbers of
15 employees or volunteers of a public agency which are held by the agency
16 in personnel records, employment or volunteer rosters, or mailing lists
17 of employees or volunteers.

18 (v) The residential addresses and residential telephone numbers of
19 the customers of a public utility contained in the records or lists
20 held by the public utility of which they are customers.

21 (w)(i) The federal social security number of individuals governed
22 under chapter 18.130 RCW maintained in the files of the department of
23 health, except this exemption does not apply to requests made directly
24 to the department from federal, state, and local agencies of
25 government, and national and state licensing, credentialing,
26 investigatory, disciplinary, and examination organizations; (ii) the
27 current residential address and current residential telephone number of
28 a health care provider governed under chapter 18.130 RCW maintained in
29 the files of the department, if the provider requests that this
30 information be withheld from public inspection and copying, and
31 provides to the department an accurate alternate or business address
32 and business telephone number. On or after January 1, 1995, the
33 current residential address and residential telephone number of a
34 health care provider governed under RCW 18.130.140 maintained in the
35 files of the department shall automatically be withheld from public
36 inspection and copying unless the provider specifically requests the
37 information be released, and except as provided for under RCW
38 42.17.260(9).

1 (x) Information obtained by the board of pharmacy as provided in
2 RCW 69.45.090.

3 (y) Information obtained by the board of pharmacy or the department
4 of health and its representatives as provided in RCW 69.41.044,
5 69.41.280, and 18.64.420.

6 (z) Financial information, business plans, examination reports, and
7 any information produced or obtained in evaluating or examining a
8 business and industrial development corporation organized or seeking
9 certification under chapter 31.24 RCW.

10 (aa) Financial and commercial information supplied to the state
11 investment board by any person when the information relates to the
12 investment of public trust or retirement funds and when disclosure
13 would result in loss to such funds or in private loss to the providers
14 of this information.

15 (bb) Financial and valuable trade information under RCW 51.36.120.

16 (cc) Client records maintained by an agency that is a domestic
17 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
18 crisis center as defined in RCW 70.125.030.

19 (dd) Information that identifies a person who, while an agency
20 employee: (i) Seeks advice, under an informal process established by
21 the employing agency, in order to ascertain his or her rights in
22 connection with a possible unfair practice under chapter 49.60 RCW
23 against the person; and (ii) requests his or her identity or any
24 identifying information not be disclosed.

25 (ee) Investigative records compiled by an employing agency
26 conducting a current investigation of a possible unfair practice under
27 chapter 49.60 RCW or of a possible violation of other federal, state,
28 or local laws prohibiting discrimination in employment.

29 (ff) Business related information protected from public inspection
30 and copying under RCW 15.86.110.

31 (gg) Financial, commercial, operations, and technical and research
32 information and data submitted to or obtained by the clean Washington
33 center in applications for, or delivery of, program services under
34 chapter 70.95H RCW.

35 (hh) Information and documents created specifically for, and
36 collected and maintained by a quality improvement committee pursuant to
37 RCW 43.70.510, regardless of which agency is in possession of the
38 information and documents.

1 (ii) Personal information in files maintained in a data base
2 created under RCW 43.07.360.

3 (jj) Computer programs and software developed by agencies alone or
4 in partnership with other public and private entities. For the
5 purposes of this chapter, software is the programming source codes or
6 object codes developed by an agency or developed by a private
7 contractor for an agency. However, information contained in or
8 accessible through those computer programs and software that is
9 disclosable under state law is not exempt from disclosure under this
10 chapter.

11 (2) Except for information described in subsection (1)(c)(i) of
12 this section and confidential income data exempted from public
13 inspection pursuant to RCW 84.40.020, the exemptions of this section
14 are inapplicable to the extent that information, the disclosure of
15 which would violate personal privacy or vital governmental interests,
16 can be deleted from the specific records sought. No exemption may be
17 construed to permit the nondisclosure of statistical information not
18 descriptive of any readily identifiable person or persons.

19 (3) Inspection or copying of any specific records exempt under the
20 provisions of this section may be permitted if the superior court in
21 the county in which the record is maintained finds, after a hearing
22 with notice thereof to every person in interest and the agency, that
23 the exemption of such records is clearly unnecessary to protect any
24 individual's right of privacy or any vital governmental function.

25 (4) Agency responses refusing, in whole or in part, inspection of
26 any public record shall include a statement of the specific exemption
27 authorizing the withholding of the record (or part) and a brief
28 explanation of how the exemption applies to the record withheld.

29 **Sec. 6.** RCW 43.105.310 and 1996 c 171 s 15 are each amended to
30 read as follows:

31 (1) State agencies and local governments that collect and enter
32 information concerning individuals into electronic records and
33 information systems that will be widely accessible by the public under
34 RCW 42.17.020 shall ensure the accuracy of this information to the
35 extent possible. To the extent possible, information must be collected
36 directly from, and with the consent of, the individual who is the
37 subject of the data. Agencies shall establish procedures for
38 correcting inaccurate information, including establishing mechanisms

1 for individuals to review information about themselves and recommend
2 changes in information they believe to be inaccurate. The inclusion of
3 personal information in electronic public records that is widely
4 available to the public should include information on the date when the
5 data base was created or most recently updated. If personally
6 identifiable information is included in electronic public records that
7 are made widely available to the public, agencies must follow retention
8 and archival schedules in accordance with chapter 40.14 RCW, retaining
9 personally identifiable information only as long as needed to carry out
10 the purpose for which it was collected.

11 (2) Personally identifiable information submitted to a government
12 agency by a person shall be used by that agency for the purpose for
13 which it was submitted. However, the information may be disclosed to
14 any other government agency, including any court or law enforcement
15 agency, in carrying out its functions, or to any authorized agent
16 acting on behalf of a state, federal, or local agency in carrying out
17 its functions. Further, the information may be disclosed for business
18 use and for any purpose otherwise provided by law.

19 (3) State agencies and local governments that collect personally
20 identifiable information that is subject to disclosure under chapter
21 42.17 RCW or other law shall, to the extent practicable, post or
22 publish public notice that the information gathered may be disclosable
23 as a public record. The agency-specific public notice will reflect the
24 common uses of such records. Upon request, state agencies and local
25 governments shall provide a written statement regarding the
26 circumstances under which specific personally identifiable information
27 may be disclosed to the public or for business purposes.

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