
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, 42.17.255, and
3 43.105.310; reenacting and amending RCW 42.17.260, 42.17.300, and
4 42.17.310; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that the constant
7 evolution of technology presents a challenge for state agencies
8 responsible for maintaining and releasing public records. Digital
9 technologies create a fundamental change in the nature of records
10 themselves, serving to expand the market for information, and increase
11 the demand for government records in electronic format for a wide range
12 of commercial purposes. Some of the most valuable records include
13 personally identifiable information about citizens, such as names,
14 addresses, and social security numbers. Commercial use of personally
15 identifiable information contained in electronic public records raises
16 new concerns about citizens' privacy in an electronic era. It is the
17 intent of the legislature to protect citizens' privacy by delineating
18 between legitimate business use of government records and inappropriate
19 commercial use and providing disincentives against inappropriate

1 commercial use. It is also the legislature's intent to allow agencies
2 to recover a reasonable share of the costs of providing enhanced
3 electronic access to government records by commercial entities.
4 Furthermore, the legislature seeks to encourage public-private sector
5 cooperation in ways that further the public mission of the state and to
6 maintain and enhance public access to public information for the
7 purpose of encouraging and facilitating desirable social and economic
8 benefits.

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

11 (1) "Agency" includes all state agencies and all local agencies.
12 "State agency" includes every state office, department, division,
13 bureau, board, commission, or other state agency. "Local agency"
14 includes every county, city, town, municipal corporation, quasi-
15 municipal corporation, or special purpose district, or any office,
16 department, division, bureau, board, commission, or agency thereof, or
17 other local public agency.

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

22 (3) "Ballot proposition" means any "measure" as defined by RCW
23 29.01.110, or any initiative, recall, or referendum proposition
24 proposed to be submitted to the voters of the state or any municipal
25 corporation, political subdivision, or other voting constituency from
26 and after the time when the proposition has been initially filed with
27 the appropriate election officer of that constituency prior to its
28 circulation for signatures.

29 (4) "Benefit" means a commercial, proprietary, financial, economic,
30 or monetary advantage, or the avoidance of a commercial, proprietary,
31 financial, economic, or monetary disadvantage.

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

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

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

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

4 (6) "Business use" or "business purpose" means a use of government-
5 held information, including, but not limited to personally identifiable
6 information, authorized by the legislature, that is required to meet
7 regulatory requirements, conduct business in a safe and legal manner,
8 or to validate information provided by one party, and shall not result
9 in an unsolicited commercial contact to persons identified in
10 government records.

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

13 (~~(7)~~) (8) "Treasurer" and "deputy treasurer" mean the individuals
14 appointed by a candidate or political committee, pursuant to RCW
15 42.17.050, to perform the duties specified in that section.

16 (~~(8)~~) (9) "Candidate" means any individual who seeks nomination
17 for election or election to public office. An individual seeks
18 nomination or election when he or she first:

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

21 (b) Announces publicly or files for office;

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

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

26 (~~(9)~~) (10) "Caucus political committee" means a political
27 committee organized and maintained by the members of a major political
28 party in the state senate or state house of representatives.

29 (~~(10)~~) (11) "Commercial advertiser" means any person who sells
30 the service of communicating messages or producing printed material for
31 broadcast or distribution to the general public or segments of the
32 general public whether through the use of newspapers, magazines,
33 television and radio stations, billboard companies, direct mail
34 advertising companies, printing companies, or otherwise.

35 (~~(11)~~) (12) "Commercial use" means the use of personally
36 identifiable information, without the individual's prior consent, for
37 an unsolicited contact with that individual for profit-expecting
38 purposes, or to maintain that information in its original or modified

1 form in anticipation of sharing the information with a third party for
2 a fee or other consideration unless otherwise specified by law.

3 (13) "Commission" means the agency established under RCW 42.17.350.

4 (~~(12)~~) (14) "Compensation" unless the context requires a narrower
5 meaning, includes payment in any form for real or personal property or
6 services of any kind(~~(:—PROVIDED, That)~~). However, for the purpose of
7 compliance with RCW 42.17.241, the term "compensation" shall not
8 include per diem allowances or other payments made by a governmental
9 entity to reimburse a public official for expenses incurred while the
10 official is engaged in the official business of the governmental
11 entity.

12 (~~(13)~~) (15) "Continuing political committee" means a political
13 committee that is an organization of continuing existence not
14 established in anticipation of any particular election campaign.

15 (~~(14)~~) (16)(a) "Contribution" includes:

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

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

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

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

30 (b) "Contribution" does not include:

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

33 (ii) Ordinary home hospitality;

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

37 (iv) A news item, feature, commentary, or editorial in a regularly
38 scheduled news medium that is of primary interest to the general
39 public, that is in a news medium controlled by a person whose business

1 is that news medium, and that is not controlled by a candidate or a
2 political committee;

3 (v) An internal political communication primarily limited to the
4 members of or contributors to a political party organization or
5 political committee, or to the officers, management staff, or
6 stockholders of a corporation or similar enterprise, or to the members
7 of a labor organization or other membership organization;

8 (vi) The rendering of personal services of the sort commonly
9 performed by volunteer campaign workers, or incidental expenses
10 personally incurred by volunteer campaign workers not in excess of
11 fifty dollars personally paid for by the worker. "Volunteer services,"
12 for the purposes of this section, means services or labor for which the
13 individual is not compensated by any person;

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

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

21 (A) A political party or caucus political committee if the person
22 paying for the services is the regular employer of the person rendering
23 such services; or

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

28 (c) Contributions other than money or its equivalent are deemed to
29 have a monetary value equivalent to the fair market value of the
30 contribution. Services or property or rights furnished at less than
31 their fair market value for the purpose of assisting any candidate or
32 political committee are deemed a contribution. Such a contribution
33 must be reported as an in-kind contribution at its fair market value
34 and counts towards any applicable contribution limit of the provider.

35 (~~(15)~~) (17) "Elected official" means any person elected at a
36 general or special election to any public office, and any person
37 appointed to fill a vacancy in any such office.

38 (~~(16)~~) (18) "Election" includes any primary, general, or special
39 election for public office and any election in which a ballot

1 proposition is submitted to the voters: PROVIDED, That an election in
2 which the qualifications for voting include other than those
3 requirements set forth in Article VI, section 1 (Amendment 63) of the
4 Constitution of the state of Washington shall not be considered an
5 election for purposes of this chapter.

6 ~~((17))~~ (19) "Election campaign" means any campaign in support of
7 or in opposition to a candidate for election to public office and any
8 campaign in support of, or in opposition to, a ballot proposition.

9 ~~((18))~~ (20) "Election cycle" means the period beginning on the
10 first day of December after the date of the last previous general
11 election for the office that the candidate seeks and ending on November
12 30th after the next election for the office. In the case of a special
13 election to fill a vacancy in an office, "election cycle" means the
14 period beginning on the day the vacancy occurs and ending on November
15 30th after the special election.

16 ~~((19))~~ (21) "Enhanced electronic access" means the electronic
17 delivery of public records in a format or through electronic delivery
18 systems provided at the request and for the convenience of the party
19 seeking the records, but which are not developed or maintained by an
20 agency for its internal use or for the provision of general public
21 access to public records.

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

36 ~~((20))~~ (23) "Final report" means the report described as a final
37 report in RCW 42.17.080(2).

1 (~~(21)~~) (24) "General election" means the election that results in
2 the election of a person to a state office. It does not include a
3 primary.

4 (~~(22)~~) (25) "Gift," is as defined in RCW 42.52.010.

5 (~~(23)~~) (26) "Immediate family" includes the spouse, dependent
6 children, and other dependent relatives, if living in the household.
7 For the purposes of RCW 42.17.640 through 42.17.790, "immediate family"
8 means an individual's spouse, and child, stepchild, grandchild, parent,
9 stepparent, grandparent, brother, half brother, sister, or half sister
10 of the individual and the spouse of any such person and a child,
11 stepchild, grandchild, parent, stepparent, grandparent, brother, half
12 brother, sister, or half sister of the individual's spouse and the
13 spouse of any such person.

14 (~~(24)~~) (27) "Independent expenditure" means an expenditure that
15 has each of the following elements:

16 (a) It is made in support of or in opposition to a candidate for
17 office by a person who is not (i) a candidate for that office, (ii) an
18 authorized committee of that candidate for that office, (iii) a person
19 who has received the candidate's encouragement or approval to make the
20 expenditure, if the expenditure pays in whole or in part for political
21 advertising supporting that candidate or promoting the defeat of any
22 other candidate or candidates for that office, or (iv) a person with
23 whom the candidate has collaborated for the purpose of making the
24 expenditure, if the expenditure pays in whole or in part for political
25 advertising supporting that candidate or promoting the defeat of any
26 other candidate or candidates for that office;

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

31 (c) The expenditure, alone or in conjunction with another
32 expenditure or other expenditures of the same person in support of or
33 opposition to that candidate, has a value of five hundred dollars or
34 more. A series of expenditures, each of which is under five hundred
35 dollars, constitutes one independent expenditure if their cumulative
36 value is five hundred dollars or more.

37 (~~(25)~~) (28)(a) "Intermediary" means an individual who transmits
38 a contribution to a candidate or committee from another person unless
39 the contribution is from the individual's employer, immediate family as

1 defined for purposes of RCW 42.17.640 through 42.17.790, or an
2 association to which the individual belongs.

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

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

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

10 (~~(26)~~) (29) "Legislation" means bills, resolutions, motions,
11 amendments, nominations, and other matters pending or proposed in
12 either house of the state legislature, and includes any other matter
13 that may be the subject of action by either house or any committee of
14 the legislature and all bills and resolutions that, having passed both
15 houses, are pending approval by the governor.

16 (~~(27)~~) (30) "Lobby" and "lobbying" each mean attempting to
17 influence the passage or defeat of any legislation by the legislature
18 of the state of Washington, or the adoption or rejection of any rule,
19 standard, rate, or other legislative enactment of any state agency
20 under the state Administrative Procedure Act, chapter 34.05 RCW.
21 Neither "lobby" nor "lobbying" includes an association's or other
22 organization's act of communicating with the members of that
23 association or organization.

24 (~~(28)~~) (31) "Lobbyist" includes any person who lobbies either in
25 his or her own or another's behalf.

26 (~~(29)~~) (32) "Lobbyist's employer" means the person or persons by
27 whom a lobbyist is employed and all persons by whom he or she is
28 compensated for acting as a lobbyist.

29 (~~(30)~~) (33) "Person" includes an individual, partnership, joint
30 venture, public or private corporation, association, federal, state, or
31 local governmental entity or agency however constituted, candidate,
32 committee, political committee, political party, executive committee
33 thereof, or any other organization or group of persons, however
34 organized.

35 (~~(31)~~) (34) "Person in interest" means the person who is the
36 subject of a record or any representative designated by that person,
37 except that if that person is under a legal disability, the term
38 "person in interest" means and includes the parent or duly appointed
39 legal representative.

1 (~~(32)~~) (35) "Personally identifiable information" means
2 information disclosed by an individual as a prerequisite to the receipt
3 of a license, approval, award, product, or service from a governmental
4 organization that the individual would not otherwise disclose to a
5 third party. Such information may include, but is not limited to, the
6 name, address, telephone number, social security number, financial,
7 medical, biometric, or disability information, photographs or
8 fingerprints or computerized images thereof, and other records that a
9 person would not otherwise disclose to the general public.

10 (36) "Political advertising" includes any advertising displays,
11 newspaper ads, billboards, signs, brochures, articles, tabloids,
12 flyers, letters, radio or television presentations, or other means of
13 mass communication, used for the purpose of appealing, directly or
14 indirectly, for votes or for financial or other support in any election
15 campaign.

16 (~~(33)~~) (37) "Political committee" means any person (except a
17 candidate or an individual dealing with his or her own funds or
18 property) having the expectation of receiving contributions or making
19 expenditures in support of, or opposition to, any candidate or any
20 ballot proposition.

21 (~~(34)~~) (38) "Primary" means the procedure for nominating a
22 candidate to state office under chapter 29.18 or 29.21 RCW or any other
23 primary for an election that uses, in large measure, the procedures
24 established in chapter 29.18 or 29.21 RCW.

25 (~~(35)~~) (39) "Public office" means any federal, state, county,
26 city, town, school district, port district, special district, or other
27 state political subdivision elective office.

28 (~~(36)~~) (40) "Public record" includes any writing containing
29 information relating to the conduct of government or the performance of
30 any governmental or proprietary function prepared, owned, used, or
31 retained by any state or local agency regardless of physical form or
32 characteristics. For the office of the secretary of the senate and the
33 office of the chief clerk of the house of representatives, public
34 records means legislative records as defined in RCW 40.14.100 and also
35 means the following: All budget and financial records; personnel
36 leave, travel, and payroll records; records of legislative sessions;
37 reports submitted to the legislature; and any other record designated
38 a public record by any official action of the senate or the house of
39 representatives.

1 (~~(37)~~) (41) "Recall campaign" means the period of time beginning
2 on the date of the filing of recall charges under RCW 29.82.015 and
3 ending thirty days after the recall election.

4 (~~(38)~~) (42) "State legislative office" means the office of a
5 member of the state house of representatives or the office of a member
6 of the state senate.

7 (~~(39)~~) (43) "State office" means state legislative office or the
8 office of governor, lieutenant governor, secretary of state, attorney
9 general, commissioner of public lands, insurance commissioner,
10 superintendent of public instruction, state auditor, or state
11 treasurer.

12 (~~(40)~~) (44) "State official" means a person who holds a state
13 office.

14 (~~(41)~~) (45) "Surplus funds" mean, in the case of a political
15 committee or candidate, the balance of contributions that remain in the
16 possession or control of that committee or candidate subsequent to the
17 election for which the contributions were received, and that are in
18 excess of the amount necessary to pay remaining debts incurred by the
19 committee or candidate prior to that election. In the case of a
20 continuing political committee, "surplus funds" mean those
21 contributions remaining in the possession or control of the committee
22 that are in excess of the amount necessary to pay all remaining debts
23 when it makes its final report under RCW 42.17.065.

24 (~~(42)~~) (46) "Writing" means handwriting, typewriting, printing,
25 photostating, photographing, and every other means of recording any
26 form of communication or representation, including, but not limited to,
27 letters, words, pictures, sounds, or symbols, or combination thereof,
28 and all papers, maps, magnetic or paper tapes, photographic films and
29 prints, motion picture, film and video recordings, magnetic or punched
30 cards, discs, drums, diskettes, sound recordings, and other documents
31 including existing data compilations from which information may be
32 obtained or translated.

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

35 **Sec. 3.** RCW 42.17.255 and 1987 c 403 s 2 are each amended to read
36 as follows:

37 (1) A person's "right to privacy," "right of privacy," "privacy,"
38 or "personal privacy," as these terms are used in this chapter, is

1 invaded or violated only if disclosure of information about the person:
2 (~~(+1)~~) (a) Would be highly offensive to a reasonable person, and
3 (~~(+2)~~) (b) is not of legitimate concern to the public. The provisions
4 of this chapter dealing with the right to privacy in certain public
5 records do not create any right of privacy beyond those rights that are
6 specified in this chapter as express exemptions from the public's right
7 to inspect, examine, or copy public records.

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

16 **Sec. 4.** RCW 42.17.260 and 1995 c 397 s 11 and 1995 c 341 s 1 are
17 each reenacted and amended to read as follows:

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

29 (2) For informational purposes, each agency shall publish and
30 maintain a current list containing every law, other than those listed
31 in this chapter, that the agency believes exempts or prohibits
32 disclosure of specific information or records of the agency. An
33 agency's failure to list an exemption shall not affect the efficacy of
34 any exemption.

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

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

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

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

7 (d) Planning policies and goals, and interim and final planning
8 decisions;

9 (e) Factual staff reports and studies, factual consultant's reports
10 and studies, scientific reports and studies, and any other factual
11 information derived from tests, studies, reports, or surveys, whether
12 conducted by public employees or others; and

13 (f) Correspondence, and materials referred to therein, by and with
14 the agency relating to any regulatory, supervisory, or enforcement
15 responsibilities of the agency, whereby the agency determines, or
16 opines upon, or is asked to determine or opine upon, the rights of the
17 state, the public, a subdivision of state government, or of any private
18 party.

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

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

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

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

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

31 (b) Final orders entered after June 30, 1990, that are issued in
32 adjudicative proceedings as defined in RCW 34.05.010(1) and that
33 contain an analysis or decision of substantial importance to the agency
34 in carrying out its duties;

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

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

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

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

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

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

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

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

27 (a) In determining the actual per page cost for providing
28 photocopies of public records, an agency may include all costs directly
29 incident to copying such public records including the actual cost of
30 the paper and the per page cost for use of agency copying equipment.
31 In determining other actual costs for providing photocopies of public
32 records, an agency may include all costs directly incident to shipping
33 such public records, including the cost of postage or delivery charges
34 and the cost of any container or envelope used.

35 (b) In determining the actual per page cost or other costs for
36 providing copies of public records, an agency may not include staff
37 salaries, benefits, or other general administrative or overhead
38 charges, unless those costs are directly related to the actual cost of

1 copying the public records. Staff time to copy and mail the requested
2 public records may be included in an agency's costs.

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

10 (9) This chapter shall not be construed as giving authority to any
11 agency, the office of the secretary of the senate, or the office of the
12 chief clerk of the house of representatives to give, sell or provide
13 access to (~~lists of individuals~~) personally identifiable information
14 requested for commercial (~~purposes~~) use as defined in this chapter,
15 and agencies, the office of the secretary of the senate, and the office
16 of the chief clerk of the house of representatives shall not do so
17 unless specifically authorized or directed by law: PROVIDED, HOWEVER,
18 That lists of applicants for professional licenses and of professional
19 licensees shall be made available to those professional associations or
20 educational organizations recognized by their professional licensing or
21 examination board, upon payment of a reasonable charge therefor:
22 PROVIDED FURTHER, That such recognition may be refused only for a good
23 cause pursuant to a hearing under the provisions of chapter 34.05 RCW,
24 the Administrative Procedure Act. Further, news gathering is not a
25 business use for the purposes of this chapter. Provisions concerning
26 business use in this chapter in no way hamper or complicate access by
27 the public or media to public records otherwise available for
28 inspection and disclosure.

29 **Sec. 5.** RCW 42.17.300 and 1995 c 397 s 14 and 1995 c 341 s 2 are
30 each reenacted and amended to read as follows:

31 (1) No fee shall be charged for the inspection of public records.
32 No fee shall be charged for locating public documents and making them
33 available for copying. A reasonable charge may be imposed for
34 providing copies of public records and for the use by any person of
35 agency equipment or equipment of the office of the secretary of the
36 senate or the office of the chief clerk of the house of representatives
37 to copy public records, which charges shall not exceed the amount
38 necessary to reimburse the agency, the office of the secretary of the

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

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

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

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

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

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

36 (c) The contractor, or any employee or agent of the contractor,
37 shall not furnish in any form, to any person, corporation, partnership,
38 association, or organization, a copy of any information, in whole or in
39 part, provided by the agency, without the express written consent of

1 the agency for the specific provision of the information for a specific
2 purpose;

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

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

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

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

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

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

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

36 (k) The agency reserves additional unrestricted financial remedies,
37 on a per-record basis, for any violation of the agreement by the
38 contractor or any officer, employee, or agent of the contractor, in
39 addition to any penalty allowed under state law.

1 **Sec. 6.** RCW 42.17.310 and 1996 c 305 s 2, 1996 c 253 s 302, 1996
2 c 191 s 88, and 1996 c 80 s 1 are each reenacted and amended to read as
3 follows:

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

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

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

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

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

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

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

34 (g) Except as provided by chapter 8.26 RCW, the contents of real
35 estate appraisals, made for or by any agency relative to the
36 acquisition or sale of property, until the project or prospective sale
37 is abandoned or until such time as all of the property has been
38 acquired or the property to which the sale appraisal relates is sold,

1 but in no event shall disclosure be denied for more than three years
2 after the appraisal.

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

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

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

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

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

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

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

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

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

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

38 (r) Financial and commercial information and records supplied by
39 businesses or individuals during application for loans or program

1 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
2 or during application for economic development loans or program
3 services provided by any local agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **Sec. 7.** RCW 43.105.310 and 1996 c 171 s 15 are each amended to
27 read as follows:

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

1 available to the public should include information on the date when the
2 data base was created or most recently updated. If personally
3 identifiable information is included in electronic public records that
4 are made widely available to the public, agencies must follow retention
5 and archival schedules in accordance with chapter 40.14 RCW, retaining
6 personally identifiable information only as long as needed to carry out
7 the purpose for which it was collected.

8 (2) State agencies and local governments that collect personally
9 identifiable information that is subject to disclosure under chapter
10 42.17 RCW or other law shall, to the extent practicable, post or
11 publish public notice that the information gathered may be disclosable
12 as a public record. The agency-specific public notice will reflect the
13 common uses of such records. Upon request, state agencies and local
14 governments shall provide a written statement regarding the
15 circumstances under which specific personally identifiable information
16 may be disclosed to the public or for business purposes. The state
17 must also identify the procedure established by the state agency or
18 local government for reviewing personally identifiable information, as
19 specified in subsection (1) of this section.

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