
HOUSE BILL 2354

State of Washington

55th Legislature

1998 Regular Session

By Representatives Dyer, Cody and Anderson; by request of Department of Social and Health Services

Prefiled 01/08/98. Read first time 01/12/98. Referred to Committee on Health Care.

1 AN ACT Relating to protection from public disclosure of proprietary
2 information of health care bidders and contractors; reenacting and
3 amending RCW 42.17.310; and adding a new section to chapter 74.09 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 74.09 RCW
6 to read as follows:

7 When soliciting proposals for the purpose of awarding contracts to
8 provide medical assistance covered services as defined under this
9 chapter, the secretary or his or her designee shall, upon written
10 request by the bidder, and upon review by and approval of the secretary
11 or his or her designee, exempt from public inspection and copying such
12 proprietary data and information as follows: Actuarial formulae and
13 underwriting assumptions used in rate development; proposed rates prior
14 to final awards; detailed financial statements and experience data
15 other than those disclosable by the office of the insurance
16 commissioner; provider specific reimbursement information and
17 contracts; accreditation entities' accreditation or certification
18 reports that are not approved by that entity for public issuance; and
19 minutes of internal boards, committees, and meetings, all of which are

1 usually included in the bidder's proposal and relate to the bidder's
2 unique methods of conducting business or of determining prices or
3 premium rates to be charged for services under terms of the proposal.

4 If a contract has been awarded, all of the proprietary data and
5 information listed in this section, other than final rates, submitted
6 to the department during the contract procurement process may, upon
7 request of a contractor and upon review by and approval of the
8 secretary or his or her designee, taking into consideration the public
9 interest in disclosure of the data or information, be withheld at any
10 time from public inspection and copying if necessary to preserve trade
11 secrets or prevent unfair competition.

12 Information and documents that have been submitted to the
13 department as part of the contracting process, and which are otherwise
14 exempted from public disclosure by federal or state law, or by
15 accreditation or certification entities as part of their contract with
16 the contractor, retain their exempt status.

17 **Sec. 2.** RCW 42.17.310 and 1997 c 310 s 2, 1997 c 274 s 8, 1997 c
18 250 s 7, 1997 c 239 s 4, 1997 c 220 s 120 (Referendum Bill No. 48), and
19 1997 c 58 s 900 are each reenacted and amended to read as follows:

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

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

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

27 (c) Information required of any taxpayer in connection with the
28 assessment or collection of any tax if the disclosure of the
29 information to other persons would (i) be prohibited to such persons by
30 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
31 taxpayer's right to privacy or result in unfair competitive
32 disadvantage to the taxpayer.

33 (d) Specific intelligence information and specific investigative
34 records compiled by investigative, law enforcement, and penology
35 agencies, and state agencies vested with the responsibility to
36 discipline members of any profession, the nondisclosure of which is
37 essential to effective law enforcement or for the protection of any
38 person's right to privacy.

1 (e) Information revealing the identity of persons who are witnesses
2 to or victims of crime or who file complaints with investigative, law
3 enforcement, or penology agencies, other than the public disclosure
4 commission, if disclosure would endanger any person's life, physical
5 safety, or property. If at the time a complaint is filed the
6 complainant, victim or witness indicates a desire for disclosure or
7 nondisclosure, such desire shall govern. However, all complaints filed
8 with the public disclosure commission about any elected official or
9 candidate for public office must be made in writing and signed by the
10 complainant under oath.

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

13 (g) Except as provided by chapter 8.26 RCW, the contents of real
14 estate appraisals, made for or by any agency relative to the
15 acquisition or sale of property, until the project or prospective sale
16 is abandoned or until such time as all of the property has been
17 acquired or the property to which the sale appraisal relates is sold,
18 but in no event shall disclosure be denied for more than three years
19 after the appraisal.

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

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

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

31 (k) Records, maps, or other information identifying the location of
32 archaeological sites in order to avoid the looting or depredation of
33 such sites.

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

37 (m) Financial information supplied by or on behalf of a person,
38 firm, or corporation for the purpose of qualifying to submit a bid or
39 proposal for (i) a ferry system construction or repair contract as

1 required by RCW 47.60.680 through 47.60.750 or (ii) highway
2 construction or improvement as required by RCW 47.28.070.

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

7 (o) Financial and commercial information and records supplied by
8 private persons pertaining to export services provided pursuant to
9 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
10 export projects pursuant to RCW 43.23.035.

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

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

16 (r) Financial and commercial information and records supplied by
17 businesses or individuals during application for loans or program
18 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
19 or during application for economic development loans or program
20 services provided by any local agency.

21 (s) Membership lists or lists of members or owners of interests of
22 units in timeshare projects, subdivisions, camping resorts,
23 condominiums, land developments, or common-interest communities
24 affiliated with such projects, regulated by the department of
25 licensing, in the files or possession of the department.

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

29 (u) The residential addresses and residential telephone numbers of
30 employees or volunteers of a public agency which are held by the agency
31 in personnel records, employment or volunteer rosters, or mailing lists
32 of employees or volunteers.

33 (v) The residential addresses and residential telephone numbers of
34 the customers of a public utility contained in the records or lists
35 held by the public utility of which they are customers, except that
36 this information may be released to the division of child support or
37 the agency or firm providing child support enforcement for another
38 state under Title IV-D of the federal social security act, for the
39 establishment, enforcement, or modification of a support order.

1 (w)(i) The federal social security number of individuals governed
2 under chapter 18.130 RCW maintained in the files of the department of
3 health, except this exemption does not apply to requests made directly
4 to the department from federal, state, and local agencies of
5 government, and national and state licensing, credentialing,
6 investigatory, disciplinary, and examination organizations; (ii) the
7 current residential address and current residential telephone number of
8 a health care provider governed under chapter 18.130 RCW maintained in
9 the files of the department, if the provider requests that this
10 information be withheld from public inspection and copying, and
11 provides to the department an accurate alternate or business address
12 and business telephone number. On or after January 1, 1995, the
13 current residential address and residential telephone number of a
14 health care provider governed under RCW 18.130.140 maintained in the
15 files of the department shall automatically be withheld from public
16 inspection and copying unless the provider specifically requests the
17 information be released, and except as provided for under RCW
18 42.17.260(9).

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

21 (y) Information obtained by the board of pharmacy or the department
22 of health and its representatives as provided in RCW 69.41.044,
23 69.41.280, and 18.64.420.

24 (z) Financial information, business plans, examination reports, and
25 any information produced or obtained in evaluating or examining a
26 business and industrial development corporation organized or seeking
27 certification under chapter 31.24 RCW.

28 (aa) Financial and commercial information supplied to the state
29 investment board by any person when the information relates to the
30 investment of public trust or retirement funds and when disclosure
31 would result in loss to such funds or in private loss to the providers
32 of this information.

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

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

37 (dd) Information that identifies a person who, while an agency
38 employee: (i) Seeks advice, under an informal process established by
39 the employing agency, in order to ascertain his or her rights in

1 connection with a possible unfair practice under chapter 49.60 RCW
2 against the person; and (ii) requests his or her identity or any
3 identifying information not be disclosed.

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

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

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

14 (hh) Information and documents created specifically for, and
15 collected and maintained by a quality improvement committee pursuant to
16 RCW 43.70.510, regardless of which agency is in possession of the
17 information and documents.

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

20 (jj) Financial and commercial information requested by the public
21 stadium authority from any person or organization that leases or uses
22 the stadium and exhibition center as defined in RCW 36.102.010.

23 (kk) Names of individuals residing in emergency or transitional
24 housing that are furnished to the department of revenue or a county
25 assessor in order to substantiate a claim for property tax exemption
26 under RCW 84.36.043.

27 (ll) The names, residential addresses, residential telephone
28 numbers, and other individually identifiable records held by an agency
29 in relation to a vanpool, carpool, or other ride-sharing program or
30 service. However, these records may be disclosed to other persons who
31 apply for ride-matching services and who need that information in order
32 to identify potential riders or drivers with whom to share rides.

33 (mm) Proprietary financial and commercial information that the
34 submitting entity, with review by the department of health,
35 specifically identifies at the time it is submitted and that is
36 provided to or obtained by the department of health in connection with
37 an application for, or the supervision of, an antitrust exemption
38 sought by the submitting entity under RCW 43.72.310. If a request for
39 such information is received, the submitting entity must be notified of

1 the request. Within ten business days of receipt of the notice, the
2 submitting entity shall provide a written statement of the continuing
3 need for confidentiality, which shall be provided to the requester.
4 Upon receipt of such notice, the department of health shall continue to
5 treat information designated under this section as exempt from
6 disclosure. If the requester initiates an action to compel disclosure
7 under this chapter, the submitting entity must be joined as a party to
8 demonstrate the continuing need for confidentiality.

9 (nn) Records maintained by the board of industrial insurance
10 appeals that are related to appeals of crime victims' compensation
11 claims filed with the board under RCW 7.68.110.

12 (oo) Information provided to the department of social and health
13 services by health care bidders and contractors that is exempt under
14 section 1 of this act.

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

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

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

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