
HOUSE BILL 2754

State of Washington

55th Legislature

1998 Regular Session

By Representatives Dyer and Wolfe

Read first time 01/19/98. Referred to Committee on Government Administration.

1 AN ACT Relating to the distribution of certain governmental lists
2 and information; amending RCW 82.32.330 and 43.105.310; reenacting and
3 amending RCW 46.12.370 and 43.105.170; adding a new section to chapter
4 42.17 RCW; and adding a new section to chapter 82.32 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 42.17 RCW
7 to read as follows:

8 In addition to the provisions of RCW 42.17.260, state agencies may
9 furnish lists that they maintain of public information, including such
10 lists in computer readable form or on magnetic tape, that they make
11 available to other federal, state, or local government agencies,
12 including law enforcement agencies, to private companies that provide
13 on-line computer data base services with data bases consisting
14 primarily of public records. An agency shall first obtain the written
15 agreement and assurances of the data base company satisfactory to the
16 agency that the company will supply the lists and information so
17 obtained only to federal, state, or local government agencies, or to
18 business entities not engaged in commercial solicitation. For the
19 purposes of this section, "commercial solicitation" means the use of

1 lists of public records for the purpose of soliciting, by any means,
2 the persons or businesses identified in those records in order to gain
3 pecuniary benefit.

4 **Sec. 2.** RCW 46.12.370 and 1997 c 432 s 6 and 1997 c 33 s 1 are
5 each reenacted and amended to read as follows:

6 In addition to any other authority which it may have, the
7 department of licensing may furnish lists of registered and legal
8 owners of motor vehicles only for the purposes specified in this
9 section to:

10 (1) The manufacturers of motor vehicles, or their authorized
11 agents, to be used to enable those manufacturers to carry out the
12 provisions of the National Traffic and Motor Vehicle Safety Act of 1966
13 (15 U.S.C. sec. 1382-1418), including amendments or additions thereto,
14 respecting safety-related defects in motor vehicles;

15 (2) Any governmental agency of the United States or Canada, or
16 political subdivisions thereof, to be used by it or by its authorized
17 commercial agents or contractors only in connection with the
18 enforcement of motor vehicle or traffic laws by, or programs related to
19 traffic safety of, that government agency. Only such parts of the list
20 as are required for completion of the work required of the agent or
21 contractor shall be provided to such agent or contractor;

22 (3) A commercial parking company requiring the names and addresses
23 of registered owners to notify them of outstanding parking violations.
24 Subject to the disclosure agreement provisions of RCW 46.12.380 and the
25 requirements of Executive Order 97-01, the department may provide only
26 the parts of the list that are required for completion of the work
27 required of the company;

28 (4) An authorized agent or contractor of the department, to be used
29 only in connection with providing motor vehicle excise tax, licensing,
30 title, and registration information to motor vehicle dealers; ((or))

31 (5) Any business regularly making loans to other persons to finance
32 the purchase of motor vehicles, to be used to assist the person
33 requesting the list to determine ownership of specific vehicles for the
34 purpose of determining whether or not to provide such financing; or

35 (6) To private companies that provide on-line computer data base
36 services to federal, state, or local agencies or business entities not
37 engaged in commercial solicitation. The department shall first obtain
38 the written agreement and assurances satisfactory to the agency of any

1 company requesting information under this section that any list so
2 obtained shall not be provided to any person other than as provided in
3 this section.

4 In the event a list of registered and legal owners of motor
5 vehicles is used for any purpose other than that authorized in this
6 section, the manufacturer, governmental agency, commercial parking
7 company, authorized agent, contractor, financial institution, or their
8 authorized agents or contractors responsible for the unauthorized
9 disclosure or use will be denied further access to such information by
10 the department of licensing.

11 For the purposes of this section, "commercial solicitation" means
12 the use of lists of public records for the purpose of soliciting, by
13 any means, the persons or businesses identified in those records in
14 order to gain pecuniary benefit.

15 **Sec. 3.** RCW 82.32.330 and 1996 c 184 s 5 are each amended to read
16 as follows:

17 (1) For purposes of this section:

18 (a) "Disclose" means to make known to any person in any manner
19 whatever a return or tax information;

20 (b) "Return" means a tax or information return or claim for refund
21 required by, or provided for or permitted under, the laws of this state
22 which is filed with the department of revenue by, on behalf of, or with
23 respect to a person, and any amendment or supplement thereto, including
24 supporting schedules, attachments, or lists that are supplemental to,
25 or part of, the return so filed;

26 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
27 nature, source, or amount of the taxpayer's income, payments, receipts,
28 deductions, exemptions, credits, assets, liabilities, net worth, tax
29 liability deficiencies, overassessments, or tax payments, whether taken
30 from the taxpayer's books and records or any other source, (iii)
31 whether the taxpayer's return was, is being, or will be examined or
32 subject to other investigation or processing, (iv) a part of a written
33 determination that is not designated as a precedent and disclosed
34 pursuant to RCW 82.32.410, or a background file document relating to a
35 written determination, and (v) other data received by, recorded by,
36 prepared by, furnished to, or collected by the department of revenue
37 with respect to the determination of the existence, or possible
38 existence, of liability, or the amount thereof, of a person under the

1 laws of this state for a tax, penalty, interest, fine, forfeiture, or
2 other imposition, or offense: PROVIDED, That data, material, or
3 documents that do not disclose information related to a specific or
4 identifiable taxpayer do not constitute tax information under this
5 section. Except as provided by RCW 82.32.410, nothing in this chapter
6 shall require any person possessing data, material, or documents made
7 confidential and privileged by this section to delete information from
8 such data, material, or documents so as to permit its disclosure;

9 (d) "State agency" means every Washington state office, department,
10 division, bureau, board, commission, or other state agency;

11 (e) "Taxpayer identity" means the taxpayer's name, address,
12 telephone number, registration number, or any combination thereof, or
13 any other information disclosing the identity of the taxpayer; and

14 (f) "Department" means the department of revenue or its officer,
15 agent, employee, or representative.

16 (2) Returns and tax information shall be confidential and
17 privileged, and except as authorized by this section, neither the
18 department of revenue nor any other person may disclose any return or
19 tax information.

20 (3) The foregoing, however, shall not prohibit the department of
21 revenue from:

22 (a) Disclosing such return or tax information in a civil or
23 criminal judicial proceeding or an administrative proceeding:

24 (i) In respect of any tax imposed under the laws of this state if
25 the taxpayer or its officer or other person liable under Title 82 RCW
26 is a party in the proceeding; or

27 (ii) In which the taxpayer about whom such return or tax
28 information is sought and another state agency are adverse parties in
29 the proceeding;

30 (b) Disclosing, subject to such requirements and conditions as the
31 director shall prescribe by rules adopted pursuant to chapter 34.05
32 RCW, such return or tax information regarding a taxpayer to such
33 taxpayer or to such person or persons as that taxpayer may designate in
34 a request for, or consent to, such disclosure, or to any other person,
35 at the taxpayer's request, to the extent necessary to comply with a
36 request for information or assistance made by the taxpayer to such
37 other person: PROVIDED, That tax information not received from the
38 taxpayer shall not be so disclosed if the director determines that such
39 disclosure would compromise any investigation or litigation by any

1 federal, state, or local government agency in connection with the civil
2 or criminal liability of the taxpayer or another person, or that such
3 disclosure would identify a confidential informant, or that such
4 disclosure is contrary to any agreement entered into by the department
5 that provides for the reciprocal exchange of information with other
6 government agencies which agreement requires confidentiality with
7 respect to such information unless such information is required to be
8 disclosed to the taxpayer by the order of any court;

9 (c) Disclosing the name of a taxpayer with a deficiency greater
10 than five thousand dollars and against whom a warrant under RCW
11 82.32.210 has been either issued or filed and remains outstanding for
12 a period of at least ten working days. The department shall not be
13 required to disclose any information under this subsection if a
14 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued
15 a warrant that has not been filed; and (iii) has entered a deferred
16 payment arrangement with the department of revenue and is making
17 payments upon such deficiency that will fully satisfy the indebtedness
18 within twelve months;

19 (d) Disclosing the name of a taxpayer with a deficiency greater
20 than five thousand dollars and against whom a warrant under RCW
21 82.32.210 has been filed with a court of record and remains
22 outstanding;

23 (e) Publishing statistics so classified as to prevent the
24 identification of particular returns or reports or items thereof;

25 (f) Disclosing such return or tax information, for official
26 purposes only, to the governor or attorney general, or to any state
27 agency, or to any committee or subcommittee of the legislature dealing
28 with matters of taxation, revenue, trade, commerce, the control of
29 industry or the professions;

30 (g) Permitting the department of revenue's records to be audited
31 and examined by the proper state officer, his or her agents and
32 employees;

33 (h) Disclosing any such return or tax information to a peace
34 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
35 official purposes. The disclosure may be made only in response to a
36 search warrant, subpoena, or other court order, unless the disclosure
37 is for the purpose of criminal tax enforcement. A peace officer or
38 county prosecuting attorney who receives the return or tax information
39 may disclose that return or tax information only for use in the

1 investigation and a related court proceeding, or in the court
2 proceeding for which the return or tax information originally was
3 sought;

4 (i) Disclosing any such return or tax information to the proper
5 officer of the internal revenue service of the United States, the
6 Canadian government or provincial governments of Canada, or to the
7 proper officer of the tax department of any state or city or town or
8 county, for official purposes, but only if the statutes of the United
9 States, Canada or its provincial governments, or of such other state or
10 city or town or county, as the case may be, grants substantially
11 similar privileges to the proper officers of this state;

12 (j) Disclosing any such return or tax information to the Department
13 of Justice, the Bureau of Alcohol, Tobacco and Firearms of the
14 Department of the Treasury, the Department of Defense, the United
15 States Customs Service, the Coast Guard of the United States, and the
16 United States Department of Transportation, or any authorized
17 representative thereof, for official purposes;

18 (k) Publishing or otherwise disclosing the text of a written
19 determination designated by the director as a precedent pursuant to RCW
20 82.32.410;

21 (l) Disclosing, in a manner that is not associated with other tax
22 information, the taxpayer name, entity type, business address, mailing
23 address, revenue tax registration numbers, standard industrial
24 classification code of a taxpayer, and the dates of opening and closing
25 of business. This subsection shall not be construed as giving
26 authority to the department to give, sell, or provide access to any
27 list of taxpayers for any commercial purpose except as provided in
28 section 4 of this act; or

29 (m) Disclosing such return or tax information that is also
30 maintained by another Washington state or local governmental agency as
31 a public record available for inspection and copying under the
32 provisions of chapter 42.17 RCW or is a document maintained by a court
33 of record not otherwise prohibited from disclosure.

34 (4)(a) The department may disclose return or taxpayer information
35 to a person under investigation or during any court or administrative
36 proceeding against a person under investigation as provided in this
37 subsection (4). The disclosure must be in connection with the
38 department's official duties relating to an audit, collection activity,
39 or a civil or criminal investigation. The disclosure may occur only

1 when the person under investigation and the person in possession of
2 data, materials, or documents are parties to the return or tax
3 information to be disclosed. The department may disclose return or tax
4 information such as invoices, contracts, bills, statements, resale or
5 exemption certificates, or checks. However, the department may not
6 disclose general ledgers, sales or cash receipt journals, check
7 registers, accounts receivable/payable ledgers, general journals,
8 financial statements, expert's workpapers, income tax returns, state
9 tax returns, tax return workpapers, or other similar data, materials,
10 or documents.

11 (b) Before disclosure of any tax return or tax information under
12 this subsection (4), the department shall, through written
13 correspondence, inform the person in possession of the data, materials,
14 or documents to be disclosed. The correspondence shall clearly
15 identify the data, materials, or documents to be disclosed. The
16 department may not disclose any tax return or tax information under
17 this subsection (4) until the time period allowed in (c) of this
18 subsection has expired or until the court has ruled on any challenge
19 brought under (c) of this subsection.

20 (c) The person in possession of the data, materials, or documents
21 to be disclosed by the department has twenty days from the receipt of
22 the written request required under (b) of this subsection to petition
23 the superior court of the county in which the petitioner resides for
24 injunctive relief. The court shall limit or deny the request of the
25 department if the court determines that:

26 (i) The data, materials, or documents sought for disclosure are
27 cumulative or duplicative, or are obtainable from some other source
28 that is more convenient, less burdensome, or less expensive;

29 (ii) The production of the data, materials, or documents sought
30 would be unduly burdensome or expensive, taking into account the needs
31 of the department, the amount in controversy, limitations on the
32 petitioner's resources, and the importance of the issues at stake; or

33 (iii) The data, materials, or documents sought for disclosure
34 contain trade secret information that, if disclosed, could harm the
35 petitioner.

36 (d) The department shall reimburse reasonable expenses for the
37 production of data, materials, or documents incurred by the person in
38 possession of the data, materials, or documents to be disclosed.

1 (e) Requesting information under (b) of this subsection that may
2 indicate that a taxpayer is under investigation does not constitute a
3 disclosure of tax return or tax information under this section.

4 (5) Any person acquiring knowledge of any return or tax information
5 in the course of his or her employment with the department of revenue
6 and any person acquiring knowledge of any return or tax information as
7 provided under subsection (3)(f), (g), (h), (i), or (j) of this
8 section, who discloses any such return or tax information to another
9 person not entitled to knowledge of such return or tax information
10 under the provisions of this section, is guilty of a misdemeanor. If
11 the person guilty of such violation is an officer or employee of the
12 state, such person shall forfeit such office or employment and shall be
13 incapable of holding any public office or employment in this state for
14 a period of two years thereafter.

15 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.32 RCW
16 to read as follows:

17 The department of revenue may furnish lists of taxpayer names,
18 entity types, business addresses, mailing addresses, revenue tax
19 registration numbers, standard industrial classification code of a
20 taxpayer, and the dates of opening and closing of a business to
21 companies that provide on-line computer data base services. The on-
22 line computer companies shall provide the data bases consisting
23 primarily of public records to federal, state, or local government
24 agencies, or business entities not engaged in commercial solicitation.
25 Before providing a list to a company under this section, the department
26 shall obtain a written agreement that any list so provided shall be
27 used only for the purposes specified in this section. For the purposes
28 of this section, "commercial solicitation" means the use of lists of
29 public records for the purpose of soliciting, by any means, the persons
30 or businesses identified in those records in order to gain pecuniary
31 benefit.

32 **Sec. 5.** RCW 43.105.310 and 1996 c 171 s 15 are each amended to
33 read as follows:

34 State agencies and local governments that collect and enter
35 information concerning individuals into electronic records and
36 information systems that will be widely accessible by the public under
37 RCW 42.17.020 shall ensure the accuracy of this information to the

1 extent possible. To the extent possible, information must be collected
2 directly from, and with the consent of, the individual who is the
3 subject of the data. Agencies shall establish procedures for
4 correcting inaccurate information, including establishing mechanisms
5 for individuals to review information about themselves and recommend
6 changes in information they believe to be inaccurate. The inclusion of
7 personal information in electronic public records that is widely
8 available to the public should include information on the date when the
9 data base was created or most recently updated. If personally
10 identifiable information is included in electronic public records that
11 are made widely available to the public, agencies must follow retention
12 and archival schedules in accordance with chapter 40.14 RCW, retaining
13 personally identifiable information only as long as needed to carry out
14 the purpose for which it was collected. State agencies and local
15 governments that collect information that is subject to disclosure
16 shall, to the extent practicable, post public notice that the
17 information gathered may be disclosable as a public record. The
18 agency-specific notice will generally reflect the common use of the
19 records. Upon request, state and local governments shall provide a
20 written statement regarding the circumstances under which public
21 records may be disclosed and its common business uses to the public.

22 **Sec. 6.** RCW 43.105.170 and 1996 c 171 s 10 and 1996 c 137 s 13 are
23 each reenacted and amended to read as follows:

24 (1) Each agency shall develop an agency strategic information
25 technology plan which establishes agency goals and objectives regarding
26 the development and use of information technology. The superintendent
27 of public instruction shall develop its plan in conjunction with
28 educational service districts and state-wide or regional providers of
29 K-12 education information technology services. Plans shall include,
30 but not be limited to, the following:

31 (a) A statement of the agency's mission, goals, and objectives for
32 information technology, including goals and objectives for achieving
33 electronic access to agency records, information, and services;

34 (b) An explanation of how the agency's mission, goals, and
35 objectives for information technology support and conform to the state
36 strategic information technology plan developed under RCW 43.105.160;

1 (c) An implementation strategy to provide electronic access to
2 public records and information. This implementation strategy must be
3 assembled to include:

4 (i) Compliance with Title 40 RCW;

5 (ii) Adequate public notice and opportunity for comment;

6 (iii) Consideration of a variety of electronic technologies,
7 including those that help transcend geographic locations, standard
8 business hours, economic conditions of users, and disabilities;

9 (iv) Methods to educate both state employees and the public in the
10 effective use of access technologies;

11 (d) Projects and resources required to meet the objectives of the
12 plan; and

13 (e) Where feasible, estimated schedules and funding required to
14 implement identified projects.

15 (2) Plans developed under subsection (1) of this section shall be
16 submitted to the department for review and forwarded along with the
17 department's recommendations to the board for review and approval. The
18 board may reject, require modification to, or approve plans as deemed
19 appropriate by the board. Plans submitted under this subsection shall
20 be updated and submitted for review and approval as necessary.

21 (3) Each agency shall prepare and submit to the department a
22 biennial performance report. The superintendent of public instruction
23 shall develop its plan in conjunction with educational service
24 districts and state-wide or regional providers of K-12 education
25 information technology services. The report shall include:

26 (a) An evaluation of the agency's performance relating to
27 information technology;

28 (b) An assessment of progress made toward implementing the agency
29 strategic information technology plan;

30 (c) Progress toward electronic access to public information and
31 enabling citizens to have two-way interaction for obtaining information
32 and services from agencies; and

33 (d) An inventory of agency information services, equipment, and
34 proprietary software.

35 (4) The department, with the approval of the board, shall establish
36 standards, elements, form, and format for plans and reports developed
37 under this section.

38 (5) Agency activities to increase electronic access to public
39 records and information, as required by this section, must be

1 implemented within available resources and existing agency planning
2 processes.

3 (6) The board may exempt any agency from any or all of the
4 requirements of this section.

5 (7) Each state agency and local government shall maintain a listing
6 available for public inspection of all agreements with other
7 governments and business entities for the release and disclosure of
8 public record information.

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