
SENATE BILL 6251

State of Washington

55th Legislature

1998 Regular Session

By Senators Horn, T. Sheldon, Patterson and Rossi; by request of Department of Information Services

Read first time . Referred to Committee on .

1 AN ACT Relating to the protection of taxpayer funded computer
2 software; reenacting and amending RCW 42.17.310; and creating a new
3 section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that computer software
6 developed to support the public missions of state and local agencies is
7 a strategic public asset and needs to be managed as such. The
8 legislature also finds that computer software and related intellectual
9 property is central to many of its plans to improve service delivery to
10 the public.

11 It is the intent of the legislature to protect the significant
12 taxpayer investment in software development. It is also the intent of
13 the legislature to encourage public-private cooperation in ways that
14 further the mission of the state, including measures to support joint
15 projects with private-sector companies in which the risks and rewards
16 of software development are shared.

17 The legislature also seeks to ensure that Washington state is able
18 to compete for private partners with other states that have enacted

1 measures to exempt computer software from the definition of a public
2 record.

3 It is also the intent of the legislature that copies of such
4 software be available to support the full range of the public's
5 business, including but not limited to public access to records
6 otherwise subject to disclosure and legislatively mandated audits,
7 during the entire life cycle of any given system.

8 **Sec. 2.** RCW 42.17.310 and 1997 c 310 s 2, 1997 c 274 s 8, 1997 c
9 250 s 7, 1997 c 239 s 4, 1997 c 220 s 120 (Referendum Bill No. 48), and
10 1997 c 58 s 900 are each reenacted and amended to read as follows:

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

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

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

18 (c) Information required of any taxpayer in connection with the
19 assessment or collection of any tax if the disclosure of the
20 information to other persons would (i) be prohibited to such persons by
21 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
22 taxpayer's right to privacy or result in unfair competitive
23 disadvantage to the taxpayer.

24 (d) Specific intelligence information and specific investigative
25 records compiled by investigative, law enforcement, and penology
26 agencies, and state agencies vested with the responsibility to
27 discipline members of any profession, the nondisclosure of which is
28 essential to effective law enforcement or for the protection of any
29 person's right to privacy.

30 (e) Information revealing the identity of persons who are witnesses
31 to or victims of crime or who file complaints with investigative, law
32 enforcement, or penology agencies, other than the public disclosure
33 commission, if disclosure would endanger any person's life, physical
34 safety, or property. If at the time a complaint is filed the
35 complainant, victim or witness indicates a desire for disclosure or
36 nondisclosure, such desire shall govern. However, all complaints filed
37 with the public disclosure commission about any elected official or

1 candidate for public office must be made in writing and signed by the
2 complainant under oath.

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

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

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

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

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

23 (k) Records, maps, or other information identifying the location of
24 archaeological sites in order to avoid the looting or depredation of
25 such sites.

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

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

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

38 (o) Financial and commercial information and records supplied by
39 private persons pertaining to export services provided pursuant to

1 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
2 export projects pursuant to RCW 43.23.035.

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

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

8 (r) Financial and commercial information and records supplied by
9 businesses or individuals during application for loans or program
10 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
11 or during application for economic development loans or program
12 services provided by any local agency.

13 (s) Membership lists or lists of members or owners of interests of
14 units in timeshare projects, subdivisions, camping resorts,
15 condominiums, land developments, or common-interest communities
16 affiliated with such projects, regulated by the department of
17 licensing, in the files or possession of the department.

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

21 (u) The residential addresses and residential telephone numbers of
22 employees or volunteers of a public agency which are held by the agency
23 in personnel records, employment or volunteer rosters, or mailing lists
24 of employees or volunteers.

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

32 (w)(i) The federal social security number of individuals governed
33 under chapter 18.130 RCW maintained in the files of the department of
34 health, except this exemption does not apply to requests made directly
35 to the department from federal, state, and local agencies of
36 government, and national and state licensing, credentialing,
37 investigatory, disciplinary, and examination organizations; (ii) the
38 current residential address and current residential telephone number of
39 a health care provider governed under chapter 18.130 RCW maintained in

1 the files of the department, if the provider requests that this
2 information be withheld from public inspection and copying, and
3 provides to the department an accurate alternate or business address
4 and business telephone number. On or after January 1, 1995, the
5 current residential address and residential telephone number of a
6 health care provider governed under RCW 18.130.140 maintained in the
7 files of the department shall automatically be withheld from public
8 inspection and copying unless the provider specifically requests the
9 information be released, and except as provided for under RCW
10 42.17.260(9).

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

13 (y) Information obtained by the board of pharmacy or the department
14 of health and its representatives as provided in RCW 69.41.044,
15 69.41.280, and 18.64.420.

16 (z) Financial information, business plans, examination reports, and
17 any information produced or obtained in evaluating or examining a
18 business and industrial development corporation organized or seeking
19 certification under chapter 31.24 RCW.

20 (aa) Financial and commercial information supplied to the state
21 investment board by any person when the information relates to the
22 investment of public trust or retirement funds and when disclosure
23 would result in loss to such funds or in private loss to the providers
24 of this information.

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

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

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

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

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

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

7 (hh) Information and documents created specifically for, and
8 collected and maintained by a quality improvement committee pursuant to
9 RCW 43.70.510, regardless of which agency is in possession of the
10 information and documents.

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

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

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

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

26 (mm) Proprietary financial and commercial information that the
27 submitting entity, with review by the department of health,
28 specifically identifies at the time it is submitted and that is
29 provided to or obtained by the department of health in connection with
30 an application for, or the supervision of, an antitrust exemption
31 sought by the submitting entity under RCW 43.72.310. If a request for
32 such information is received, the submitting entity must be notified of
33 the request. Within ten business days of receipt of the notice, the
34 submitting entity shall provide a written statement of the continuing
35 need for confidentiality, which shall be provided to the requester.
36 Upon receipt of such notice, the department of health shall continue to
37 treat information designated under this section as exempt from
38 disclosure. If the requester initiates an action to compel disclosure

1 under this chapter, the submitting entity must be joined as a party to
2 demonstrate the continuing need for confidentiality.

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

6 (oo) Computer software owned solely by agencies and political
7 subdivisions or together with private entities. "Computer software"
8 means the programming source code or object code necessary for the
9 operation of a computer program. It does not include records
10 accessible through the use of the computer program that are not
11 otherwise exempt.

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

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

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

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