
SECOND SUBSTITUTE SENATE BILL 5236

State of Washington

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1999 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Long, Horn, Haugen, Zarelli, Stevens, Kline, Gardner, McCaslin, Franklin, Roach, Thibaudeau, Rossi, Oke, Winsley, Costa and Benton; by request of Department of Corrections)

Read first time 03/08/1999.

1 AN ACT Relating to retention of records pertaining to sexually
2 violent offenses; and amending RCW 40.14.060, 40.14.070, and 42.17.310.

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

4 **Sec. 1.** RCW 40.14.060 and 1982 c 36 s 5 are each amended to read
5 as follows:

6 (1) Any destruction of official public records shall be pursuant to
7 a schedule approved under RCW 40.14.050. Official public records shall
8 not be destroyed unless:

9 (a) Except as provided under RCW 40.14.070(2)(b), the records are
10 six or more years old;

11 (b) The department of origin of the records has made a satisfactory
12 showing to the state records committee that the retention of the
13 records for a minimum of six years is both unnecessary and
14 uneconomical, particularly if lesser federal retention periods for
15 records generated by the state under federal programs have been
16 established; or

17 (c) The originals of official public records less than six years
18 old have been copied or reproduced by any photographic or other process

1 approved by the state archivist which accurately reproduces or forms a
2 durable medium for so reproducing the original.

3 (2) Any lesser term of retention than six years must have the
4 additional approval of the director of financial management, the state
5 auditor and the attorney general, except when records have federal
6 retention guidelines the state records committee may adjust the
7 retention period accordingly. An automatic reduction of retention
8 periods from seven to six years for official public records on record
9 retention schedules existing on June 10, 1982, shall not be made, but
10 the same shall be reviewed individually by the state records committee
11 for approval or disapproval of the change to a retention period of six
12 years.

13 Recommendations for the destruction or disposition of office files
14 and memoranda shall be submitted to the records committee upon approved
15 forms prepared by the records officer of the agency concerned and the
16 archivist. The committee shall determine the period of time that any
17 office file or memorandum shall be preserved and may authorize the
18 division of archives and records management to arrange for its
19 destruction or disposition.

20 **Sec. 2.** RCW 40.14.070 and 1995 c 301 s 71 are each amended to read
21 as follows:

22 (1)(a) County, municipal, and other local government agencies may
23 request authority to destroy noncurrent public records having no
24 further administrative or legal value by submitting to the division of
25 archives and records management lists of such records on forms prepared
26 by the division. The archivist, a representative appointed by the
27 state auditor, and a representative appointed by the attorney general
28 shall constitute a committee, known as the local records committee,
29 which shall review such lists and which may veto the destruction of any
30 or all items contained therein.

31 (b) A local government agency, as an alternative to submitting
32 lists, may elect to establish a records control program based on
33 recurring disposition schedules recommended by the agency to the local
34 records committee. The schedules are to be submitted on forms provided
35 by the division of archives and records management to the local records
36 committee, which may either veto, approve, or amend the schedule.
37 Approval of such schedule or amended schedule shall be by unanimous
38 vote of the local records committee. Upon such approval, the schedule

1 shall constitute authority for the local government agency to destroy
2 the records listed thereon, after the required retention period, on a
3 recurring basis until the schedule is either amended or revised by the
4 committee.

5 (2)(a) Except as otherwise provided by law, no public records shall
6 be destroyed until approved for destruction by the local records
7 committee. Official public records shall not be destroyed unless:

8 ~~((1))~~ (i) The records are six or more years old;

9 ~~((2))~~ (ii) The department of origin of the records has made a
10 satisfactory showing to the state records committee that the retention
11 of the records for a minimum of six years is both unnecessary and
12 uneconomical, particularly where lesser federal retention periods for
13 records generated by the state under federal programs have been
14 established; or

15 ~~((3))~~ (iii) The originals of official public records less than
16 six years old have been copied or reproduced by any photographic,
17 photostatic, microfilm, miniature photographic, or other process
18 approved by the state archivist which accurately reproduces or forms a
19 durable medium for so reproducing the original.

20 An automatic reduction of retention periods from seven to six years
21 for official public records on record retention schedules existing on
22 June 10, 1982, shall not be made, but the same shall be reviewed
23 individually by the local records committee for approval or disapproval
24 of the change to a retention period of six years.

25 The state archivist may furnish appropriate information,
26 suggestions, and guidelines to local government agencies for their
27 assistance in the preparation of lists and schedules or any other
28 matter relating to the retention, preservation, or destruction of
29 records under this chapter. The local records committee may adopt
30 appropriate regulations establishing procedures to be followed in such
31 matters.

32 Records of county, municipal, or other local government agencies,
33 designated by the archivist as of primarily historical interest, may be
34 transferred to a recognized depository agency.

35 (b) Records of investigative reports prepared by any state, county,
36 municipal, or other law enforcement agency pertaining to sexually
37 violent offenses as defined in RCW 71.09.020 that are not required in
38 the current operation of the law enforcement agency or for pending
39 judicial proceedings shall, following the expiration of the applicable

1 schedule of the law enforcement agency's retention of the records, be
2 transferred to the Washington association of sheriffs and police chiefs
3 for permanent electronic retention and retrieval. Upon electronic
4 retention of any document, the association shall be permitted to
5 destroy the paper copy of the document.

6 (c) Any record transferred to the Washington association of
7 sheriffs and police chiefs pursuant to (b) of this subsection shall be
8 deemed to no longer constitute a public record pursuant to RCW
9 42.17.020 and shall be exempt from public disclosure. Such records
10 shall be disseminated only to criminal justice agencies as defined in
11 RCW 10.97.030 for the sole purpose of determining if a sex offender met
12 the criteria of a sexually violent predator as defined in chapter 71.09
13 RCW.

14 **Sec. 3.** RCW 42.17.310 and 1998 c 69 s 1 are each amended to read
15 as follows:

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

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

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

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

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

35 (e) Information revealing the identity of persons who are witnesses
36 to or victims of crime or who file complaints with investigative, law
37 enforcement, or penology agencies, other than the public disclosure
38 commission, if disclosure would endanger any person's life, physical

1 safety, or property. If at the time a complaint is filed the
2 complainant, victim or witness indicates a desire for disclosure or
3 nondisclosure, such desire shall govern. However, all complaints filed
4 with the public disclosure commission about any elected official or
5 candidate for public office must be made in writing and signed by the
6 complainant under oath.

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

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

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

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

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

27 (k) Records, maps, or other information identifying the location of
28 archaeological sites in order to avoid the looting or depredation of
29 such sites.

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

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

38 (n) Railroad company contracts filed prior to July 28, 1991, with
39 the utilities and transportation commission under RCW 81.34.070, except

1 that the summaries of the contracts are open to public inspection and
2 copying as otherwise provided by this chapter.

3 (o) Financial and commercial information and records supplied by
4 private persons pertaining to export services provided pursuant to
5 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
6 export projects pursuant to RCW 43.23.035.

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

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

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

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

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

25 (u) The residential addresses and residential telephone numbers of
26 employees or volunteers of a public agency which are held by the agency
27 in personnel records, employment or volunteer rosters, or mailing lists
28 of employees or volunteers.

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

36 (w)(i) The federal social security number of individuals governed
37 under chapter 18.130 RCW maintained in the files of the department of
38 health, except this exemption does not apply to requests made directly
39 to the department from federal, state, and local agencies of

1 government, and national and state licensing, credentialing,
2 investigatory, disciplinary, and examination organizations; (ii) the
3 current residential address and current residential telephone number of
4 a health care provider governed under chapter 18.130 RCW maintained in
5 the files of the department, if the provider requests that this
6 information be withheld from public inspection and copying, and
7 provides to the department an accurate alternate or business address
8 and business telephone number. On or after January 1, 1995, the
9 current residential address and residential telephone number of a
10 health care provider governed under RCW 18.130.140 maintained in the
11 files of the department shall automatically be withheld from public
12 inspection and copying unless the provider specifically requests the
13 information be released, and except as provided for under RCW
14 42.17.260(9).

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

17 (y) Information obtained by the board of pharmacy or the department
18 of health and its representatives as provided in RCW 69.41.044,
19 69.41.280, and 18.64.420.

20 (z) Financial information, business plans, examination reports, and
21 any information produced or obtained in evaluating or examining a
22 business and industrial development corporation organized or seeking
23 certification under chapter 31.24 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Upon receipt of such notice, the department of health shall continue to
2 treat information designated under this section as exempt from
3 disclosure. If the requester initiates an action to compel disclosure
4 under this chapter, the submitting entity must be joined as a party to
5 demonstrate the continuing need for confidentiality.

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

9 (oo) Financial and commercial information supplied by or on behalf
10 of a person, firm, corporation, or entity under chapter 28B.95 RCW
11 relating to the purchase or sale of tuition units and contracts for the
12 purchase of multiple tuition units.

13 (pp) Any records of investigative reports prepared by any state,
14 county, municipal, or other law enforcement agency pertaining to
15 sexually violent offenses as defined in RCW 71.09.020, which have been
16 transferred to the Washington association of sheriffs and police chiefs
17 for permanent electronic retention and retrieval pursuant to RCW
18 40.14.070(2)(b).

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

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

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

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