

HOUSE BILL REPORT

HB 1717

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to public access to public records.

Brief Description: Exempting from public inspection specified information held by law enforcement and correctional agencies.

Sponsors: Representatives Morell, O'Brien, Ballasiotes, McMorris, Cairnes and Ahern.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/16/01, 2/26/01 [DPS].

Brief Summary of Substitute Bill

- Exempts from public disclosure, records that contain certain vulnerability assessments or emergency and escape response plans at a correctional facility.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Ahern, Republican Vice Chair; Lovick, Democratic Vice Chair; Cairnes, Kagi, Kirby and Morell.

Staff: Katy Freeman (786-7386).

Background:

The Public Disclosure Act (PDA) requires all state and local agencies to disclose any public record upon request, unless the record falls within certain specified exemptions. Disclosure requires that the records be made available for public inspection and copying.

Within five business days of receiving a public record request, an agency must respond by either:

- providing the record;

- acknowledging that the agency has received the request and providing a reasonable estimate of the time the agency will require to respond to the request; or
- denying the request.

The time the agency requires to respond to the request may be based on the agency's need to:

- clarify the intent of the request;
- locate and assemble the information requested;
- notify third persons or agencies affected by the request; or
- determine whether any of the information requested is exempt and that a denial should be made as to all or part of a request.

Denials of requests must be accompanied by a written statement of the specific reasons for denying the request. When an agency concludes that a public record is exempt from disclosure and denies a person an opportunity to inspect or copy a public record for that reason, the person may request the attorney general to review the matter. Additionally, the person may file a motion in superior court and the court may require the agency to show cause why it has refused to allow inspection or copying of the record. The burden of proof is on the agency to establish that refusal to permit inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of the specific information or records.

Certain records relating to law enforcement agencies and penology agencies are exempt from the PDA, such as:

- specific intelligence and investigative information compiled by investigative, law enforcement, and penology agencies, if essential to law enforcement or to the protection of a person's right to privacy; and
- with some exceptions, information that reveals the identity of persons who are witnesses to or victims of crime or persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property.

Under regulations, the Department of Corrections (DOC) must formulate written emergency procedures appropriate for each specific facility relative to escapes, riots, rebellions, assaults, injuries, suicides or attempted suicides, outbreak of infectious disease, fire, acts of nature, and any other type of major disaster or disturbance. The emergency plan must outline the responsibilities of the facility staff, evacuation procedures, and subsequent disposition of the prisoners after removal from the area or facility. There is no specific statutory exemption for these records.

Summary of Substitute Bill:

Exempts from disclosure under the PDA, records which if disclosed would have a

substantial likelihood of threatening the security of a correctional facility or any individual's safety and contain:

- specific and unique vulnerability assessments at a correctional facility; or
- specific and unique emergency and escape response plans at a correctional facility.

Substitute Bill Compared to Original Bill:

The substitute bill narrows the records exempt under the PDA. The substitute bill exempts certain records that contain specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a correctional facility.

The original bill exempted records contained in files maintained by a law enforcement agency, penology agency, correctional facility, or juvenile rehabilitation facility if they:

- contained information regarding a confidential informant or information provided by a confidential informant;
- contained specific information regarding emergency and escape response plans and procedures; or
- contained information that has been determined by the head of one of the above agencies or facilities or his or her designee, to present a threat, if disclosed, to the security or rehabilitative objectives of the facility or to the correctional system, or to any individual's safety.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Prisoners are currently given the same access to public records as the general public. The inmates have found that this is a great tool for them to harass prison guards while wasting taxpayers dollars. Prison officials can deny some of the requests, but it takes time and money to formally explain their reasons and often an inmate will file appeal after appeal.

Currently, over 30 of the DOC staff members are assigned either to fulfill these public disclosure requests or assigned to respond to these appeals. It costs over \$350,000 per year for the DOC. Over three-quarters of the DOC's public disclosure requests come from offenders, the offenders' friends, or the offenders' counsel. Over the past two to three years the DOC has experienced an acceleration in the number of requests that they believe may lead to the compromise of the security of the DOC's institutions and eventually the public. This bill does not limit all of the public requests that an inmate can make, but it makes certain information maintained by law enforcement and correction

officials off-limits. This bill saves taxpayers money.

Testimony Against: This bill provides broad discretion to the agency, rather than leaving the discretion with a judge. Most of the provisions in the bill are currently covered by the current specific intelligence exemption. Records pertaining to the use of force by the agency should be available to the public and to those inmates who are in the institution. The prisoners are still citizens and they have the right to the information. It is important to have public oversight of the agency.

Testified: (In support) Representative Morell, prime sponsor; Eldon Vail, Department of Corrections; and Larry Erickson, Washington Association of Sheriffs and Police Chiefs.

(Opposed) Rowland Thompson, Allied Daily Newspapers of Washington.