

SENATE BILL REPORT

SB 6217

As of January 28, 2014

Title: An act relating to the disclosure of global positioning system data by law enforcement officers.

Brief Description: Addressing the disclosure of global positioning system data by law enforcement officers.

Sponsors: Senators Roach, Hasegawa, Fain and McCoy.

Brief History:

Committee Activity: Governmental Operations: 1/28/14.

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Staff: Samuel Brown (786-7470)

Background: The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires that all state and local government agencies make all public records available for public inspection and copying unless certain statutory exemptions apply.

Every state office, department, division, bureau, board, commission, or other state agency is subject to the PRA. The PRA's definition of local agency covers "every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency." Under the PRA, a public record includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics.

Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Personal information in files maintained for employees, appointees, or elected officials of any public agency is exempt from public inspection and copying to the extent that disclosure

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would violate the employee's right to privacy. A court must find two elements to determine that a person's right to privacy is invaded: (1) the disclosure would be highly offensive to a reasonable person; and (2) the disclosure is not of legitimate concern to the public. Numerous court decisions have held that certain information in files maintained for public employees is of legitimate public concern and therefore not exempt from disclosure under the PRA.

Various types of information related to law enforcement and criminal justice are exempt from public disclosure, including:

- intelligence and investigative information essential to effective law enforcement or for the protection of a person's privacy;
- information revealing the identities of witnesses, victims, or complainants of crime, if disclosure would endanger their safety;
- investigative reports prepared pertaining to sex offenses;
- applications for concealed pistol licenses;
- information revealing the identity of child victims of sexual assault;
- the statewide gang database;
- data from the electronic sales tracking system for certain pharmaceutical drugs;
- information from recipients of the statewide unified sex offender notification system;
- information relating to local security alarm system and vacation crime watch programs;
- the conviction database of felony firearm offenders;
- the identities of public employee whistleblowers; and
- security threat group status information.

Summary of Bill: Global Positioning System (GPS) data that shows the area within three miles of the residential address of an employee of a criminal justice agency is exempt from public disclosure. For purposes of this exemption, criminal justice agency means a court or any other agency performing and allocating a substantial part of its budget to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

GPS data related to the arrival of an employee of a criminal justice agency at an incident or to the conduct of an enforcement action is not exempt from public disclosure.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This is a very straightforward bill. This bill enhances the safety and security of law enforcement and their families across the state. GPS is an extremely valuable tool that enhances safety, accountability, and resource deployment. Troopers begin their tours of duty at their residences by logging in and activating the GPS system. If a citizen believed that there was misconduct or that an officer was derelict in their

duties, that would gain strong attention from the agency, and the citizen could file the records request.

It is imperative that public records response and IT personnel work with the clearest parameters possible when determining redactions, restrictions, or the release of information, as errors can be costly. The three-mile radius provides clear boundaries and takes into account the rural diversity of the state. We are amenable to a change to the three-mile radius provision.

This is a fix that keeps up with technology. Arson investigators are law enforcement officers. The firefighters support this bill.

OTHER: We are sympathetic to the purposes of the bill and would like to see it pass, but have problems with the drafting. Most jurisdictions fit within the six-mile circle this bill creates. There is concern about the misuse of vehicles. Amending the bill to exempt disclosure of GPS coordinates that would indicate the officer's residence would give the agency discretion and is preferable. The qualifiers in this exception subsume the exemption.

Persons Testifying: PRO: Senator Roach, prime sponsor; Rick Jensen, WA State Patrol (WSP) Troopers Assn.; Rob Huss, WSP; Geoff Simpson, WA State Council of Fire Fighters.

OTHER: Rowland Thompson, Allied Daily Newspapers of WA.