

HOUSE BILL REPORT

ESHB 1349

As Passed House:
March 9, 2015

Title: An act relating to requesting public records for the purpose of obtaining exempted information relating to employment and licensing.

Brief Description: Concerning public records requests for the purpose of obtaining exempted employment and licensing information.

Sponsors: House Committee on State Government (originally sponsored by Representative S. Hunt).

Brief History:

Committee Activity:

State Government: 2/18/15, 2/19/15 [DPS].

Floor Activity:

Passed House: 3/9/15, 51-47.

Brief Summary of Engrossed Substitute Bill

- Creates civil liability for requesting or using agency employee or volunteer names and contact information to obtain information exempted from disclosure under the Public Records Act for a commercial purpose or to harass, stalk, threaten, or intimidate any person.
- Requires a requester of agency employee or volunteer information to swear under oath that such information will not be used to obtain exempted information.
- Includes license-exempt in-home child care providers as employees for purposes of exempting public employment and licensing information from public disclosure.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Appleton and Gregory.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Holy, Ranking Minority Member; Van Werven, Assistant Ranking Minority Member; Hawkins.

Staff: Sean Flynn (786-7124).

Background:

The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

One exemption prohibits agencies from providing access to lists of persons that are requested for commercial purposes, unless otherwise specifically authorized by law. However, agencies must provide lists of licensees and applicants for professional licenses to the professional associations and educational organizations recognized by the respective licensing board.

Another exemption exists for certain employment and licensing information from public disclosure, including:

- test question and scoring keys for licensing, academic, or employment examinations;
- materials submitted in applications for public employment;
- certain personal information in public employee personnel records and volunteer rosters;
- identifying information of an employee seeking advice or involving an ongoing investigation regarding discriminatory practices; and
- other specific exemptions regarding particular agencies.

The exempted personal information in employee personnel files and volunteer rosters includes residential addresses and telephone numbers, cell phone numbers, electronic mail addresses, social security numbers, driver's license and Identocard numbers, emergency contact information, and similar personal information of an employee's and volunteer's dependents.

In-Home License-Exempt Child Care Providers.

The Department of Early Learning (DEL) provides licenses to child care providers. Certain providers are exempt from such licensing requirements, including persons who provide child care services for family members, neighbors, or friends.

Summary of Engrossed Substitute Bill:

A person may not make a public records request for the names or nonexempt contact information of agency employees or volunteers in order to obtain information that falls under the employment and licensing exemption of the PRA to use for a commercial purpose or to harass, stalk, threaten, or intimidate any person. A person requesting employee or volunteer names or contact information must swear under oath that the information will not be used for such purposes.

A person who violates this prohibition is subject to civil liability and may be sued in superior court. Such a suit may be brought by an aggrieved party or in the name of the state by the attorney general or a local prosecutor. A court may order any appropriate remedy for such a violation, including a \$500 penalty for each item of information that is used in violation of the prohibition.

Regarding this prohibition, a commercial purpose includes soliciting, marketing, advertising, self-promoting, or inducing any person to economically support, or refrain from supporting, any entity. It is not a commercial purpose, to obtain names or contact information to solicit support or opposition for a political party, candidate, or ballot measure.

In-home child care providers who are exempt from DEL licensing requirements are included as employees for purposes of the public records exemptions for certain employment and licensing information.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Persons seeking retaliation are able to access an employee's name through a records request and use it to obtain otherwise exempt personal information about the employee. This makes employees, particularly those working in correctional facilities, vulnerable to retaliation and harassment. Employees should have a reasonable expectation of being protected from these kinds of abuses.

The Legislature already has made the decision to exempt this information, but people are finding loopholes to get around the exemption for nefarious purposes. This bill closes a loophole for people who obtain exempted information indirectly. This protects public employees, especially when dealing with people who may want to retaliate against them or cause them harm. This is a minor change that protects the original intent of the PRA.

This bill does not limit a person's right to lawfully obtain information regarding an employee's name and job position. There is no constitutional right to obtain personal information from public employees and this bill does not infringe on any rights.

(Opposed) This bill is drawn too broadly and actually would penalize any person who simply obtained a person's name from an employee roster and used that to obtain the employee's address from a telephone directory. This bill will impede reasonable transparency, including reporters searching for a source, an attorney looking for potential class action participants, and union organizers.

This bill does address the underlying problem of protecting employees from retaliation. There are protections against targeted retaliation under existing law. Usually, the victim of

retaliation is already known to the perpetrator, so they do not need to use a public records request.

Persons Testifying: (In support) Geoff Simpson, Washington State Council of Fire Fighters; and Sarena Davis and Brenda Wiest, Teamsters 117.

(Opposed) Rowland Thompson, Allied Daily Newspapers; and Jami Lund, Freedom Foundation.

Persons Signed In To Testify But Not Testifying: None.