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SENATE BILL 6542

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State of Washington                      64th Legislature                      2016 Regular Session

By Senators Benton, Pearson, Hargrove, Dansel, Hill, and Litzow

Read first time 01/25/16. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to public disclosure and use of personal  
2 information; amending RCW 42.56.070 and 42.56.250; and prescribing  
3 penalties.

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

5            **Sec. 1.** RCW 42.56.070 and 2005 c 274 s 284 are each amended to  
6 read as follows:

7            (1) Each agency, in accordance with published rules, shall make  
8 available for public inspection and copying all public records,  
9 unless the record falls within the specific exemptions of subsection  
10 (~~((6))~~) (9) of this section, this chapter, or other statute which  
11 exempts or prohibits disclosure of specific information or records.  
12 To the extent required to prevent an unreasonable invasion of  
13 personal privacy interests protected by this chapter, an agency shall  
14 delete identifying details in a manner consistent with this chapter  
15 when it makes available or publishes any public record; however, in  
16 each case, the justification for the deletion shall be explained  
17 fully in writing.

18            (2) For informational purposes, each agency shall publish and  
19 maintain a current list containing every law, other than those listed  
20 in this chapter, that the agency believes exempts or prohibits  
21 disclosure of specific information or records of the agency. An

1 agency's failure to list an exemption shall not affect the efficacy  
2 of any exemption.

3 (3) Each local agency shall maintain and make available for  
4 public inspection and copying a current index providing identifying  
5 information as to the following records issued, adopted, or  
6 promulgated after January 1, 1973:

7 (a) Final opinions, including concurring and dissenting opinions,  
8 as well as orders, made in the adjudication of cases;

9 (b) Those statements of policy and interpretations of policy,  
10 statute, and the Constitution which have been adopted by the agency;

11 (c) Administrative staff manuals and instructions to staff that  
12 affect a member of the public;

13 (d) Planning policies and goals, and interim and final planning  
14 decisions;

15 (e) Factual staff reports and studies, factual consultant's  
16 reports and studies, scientific reports and studies, and any other  
17 factual information derived from tests, studies, reports, or surveys,  
18 whether conducted by public employees or others; and

19 (f) Correspondence, and materials referred to therein, by and  
20 with the agency relating to any regulatory, supervisory, or  
21 enforcement responsibilities of the agency, whereby the agency  
22 determines, or opines upon, or is asked to determine or opine upon,  
23 the rights of the state, the public, a subdivision of state  
24 government, or of any private party.

25 (4) A local agency need not maintain such an index, if to do so  
26 would be unduly burdensome, but it shall in that event:

27 (a) Issue and publish a formal order specifying the reasons why  
28 and the extent to which compliance would unduly burden or interfere  
29 with agency operations; and

30 (b) Make available for public inspection and copying all indexes  
31 maintained for agency use.

32 (5) Each state agency shall, by rule, establish and implement a  
33 system of indexing for the identification and location of the  
34 following records:

35 (a) All records issued before July 1, 1990, for which the agency  
36 has maintained an index;

37 (b) Final orders entered after June 30, 1990, that are issued in  
38 adjudicative proceedings as defined in RCW 34.05.010 and that contain  
39 an analysis or decision of substantial importance to the agency in  
40 carrying out its duties;

1 (c) Declaratory orders entered after June 30, 1990, that are  
2 issued pursuant to RCW 34.05.240 and that contain an analysis or  
3 decision of substantial importance to the agency in carrying out its  
4 duties;

5 (d) Interpretive statements as defined in RCW 34.05.010 that were  
6 entered after June 30, 1990; and

7 (e) Policy statements as defined in RCW 34.05.010 that were  
8 entered after June 30, 1990.

9 Rules establishing systems of indexing shall include, but not be  
10 limited to, requirements for the form and content of the index, its  
11 location and availability to the public, and the schedule for  
12 revising or updating the index. State agencies that have maintained  
13 indexes for records issued before July 1, 1990, shall continue to  
14 make such indexes available for public inspection and copying.  
15 Information in such indexes may be incorporated into indexes prepared  
16 pursuant to this subsection. State agencies may satisfy the  
17 requirements of this subsection by making available to the public  
18 indexes prepared by other parties but actually used by the agency in  
19 its operations. State agencies shall make indexes available for  
20 public inspection and copying. State agencies may charge a fee to  
21 cover the actual costs of providing individual mailed copies of  
22 indexes.

23 (6) A public record may be relied on, used, or cited as precedent  
24 by an agency against a party other than an agency and it may be  
25 invoked by the agency for any other purpose only if:

26 (a) It has been indexed in an index available to the public; or

27 (b) Parties affected have timely notice (actual or constructive)  
28 of the terms thereof.

29 (7) Each agency shall establish, maintain, and make available for  
30 public inspection and copying a statement of the actual per page cost  
31 or other costs, if any, that it charges for providing photocopies of  
32 public records and a statement of the factors and manner used to  
33 determine the actual per page cost or other costs, if any.

34 (a) In determining the actual per page cost for providing  
35 photocopies of public records, an agency may include all costs  
36 directly incident to copying such public records including the actual  
37 cost of the paper and the per page cost for use of agency copying  
38 equipment. In determining other actual costs for providing  
39 photocopies of public records, an agency may include all costs  
40 directly incident to shipping such public records, including the cost

1 of postage or delivery charges and the cost of any container or  
2 envelope used.

3 (b) In determining the actual per page cost or other costs for  
4 providing copies of public records, an agency may not include staff  
5 salaries, benefits, or other general administrative or overhead  
6 charges, unless those costs are directly related to the actual cost  
7 of copying the public records. Staff time to copy and mail the  
8 requested public records may be included in an agency's costs.

9 (8) An agency need not calculate the actual per page cost or  
10 other costs it charges for providing photocopies of public records if  
11 to do so would be unduly burdensome, but in that event: The agency  
12 may not charge in excess of fifteen cents per page for photocopies of  
13 public records or for the use of agency equipment to photocopy public  
14 records and the actual postage or delivery charge and the cost of any  
15 container or envelope used to mail the public records to the  
16 requestor.

17 (9)(a) This chapter shall not be construed as giving authority to  
18 any agency, the office of the secretary of the senate, or the office  
19 of the chief clerk of the house of representatives to give, sell, or  
20 provide access to lists of individuals requested for commercial  
21 purposes, and agencies, the office of the secretary of the senate,  
22 and the office of the chief clerk of the house of representatives  
23 shall not do so unless specifically authorized or directed by law(~~(-~~  
24 ~~PROVIDED, HOWEVER, That)~~). However, the lists of applicants for  
25 professional licenses and of professional licensees shall be made  
26 available to those professional associations or educational  
27 organizations recognized by their professional licensing or  
28 examination board, upon payment of a reasonable charge therefor(~~(-~~  
29 ~~PROVIDED FURTHER, That)~~), and such recognition may be refused only  
30 for a good cause pursuant to a hearing under the provisions of  
31 chapter 34.05 RCW, the administrative procedure act.

32 (b) Before obtaining records containing the names or nonexempt  
33 contact information of employees or volunteers from any agency, the  
34 requester must swear under oath that he or she will not use the  
35 information to obtain information exempt under RCW 42.56.250 for a  
36 commercial purpose or to harass, stalk, threaten, or intimidate any  
37 person.

38 (c) A person is subject to civil liability if he or she:

39 (i) Requests, pursuant to this chapter, the names or nonexempt  
40 contact information of agency employees or volunteers in order to

1 obtain information exempt under RCW 42.56.250 for a commercial  
2 purpose or to harass, stalk, threaten, or intimidate any person; or

3 (ii) Uses the names or nonexempt contact information of agency  
4 employees or volunteers, with knowledge that the information was  
5 obtained through a request made pursuant to this chapter, in order to  
6 obtain information exempt under RCW 42.56.250 for a commercial  
7 purpose or to harass, stalk, threaten, or intimidate any person.

8 (d) A person who is liable under (c) of this subsection may be  
9 sued in superior court by any aggrieved party, or in the name of the  
10 state by the attorney general or the prosecuting authorities of  
11 political subdivisions of this state. A plaintiff may recover five  
12 hundred dollars for each item of information used in violation of (c)  
13 of this subsection, plus costs and reasonable attorneys' fees. The  
14 court may order any other appropriate civil remedy.

15 (e) For purposes of using the names or nonexempt contact  
16 information of agency employees or volunteers in order to obtain  
17 information exempt under RCW 42.56.250, a commercial purpose  
18 includes:

19 (i) Soliciting, marketing, advertising, or self-promoting;  
20 (ii) Inducing any person to economically support any entity; or  
21 (iii) Inducing any person to cease or refrain from economically  
22 supporting any entity.

23 (f) It is not a commercial purpose to obtain names or contact  
24 information for purposes of soliciting support for or opposition to  
25 any political party, candidate, or ballot measure, as defined in RCW  
26 42.17A.005.

27 **Sec. 2.** RCW 42.56.250 and 2014 c 106 s 1 are each amended to  
28 read as follows:

29 The following employment and licensing information is exempt from  
30 public inspection and copying under this chapter:

31 (1) Test questions, scoring keys, and other examination data used  
32 to administer a license, employment, or academic examination;

33 (2) All applications for public employment, including the names  
34 of applicants, resumes, and other related materials submitted with  
35 respect to an applicant;

36 (3) The following information held by any public agency in  
37 personnel records, public employment related records, volunteer  
38 rosters, or included in any mailing list of employees or volunteers  
39 of any public agency: Residential addresses, residential telephone

1 numbers, personal wireless telephone numbers, personal ((~~electronic~~  
2 ~~mail~~)) email addresses, social security numbers, driver's license  
3 numbers, identicard numbers, and emergency contact information of  
4 employees or volunteers of a public agency, and the names, dates of  
5 birth, residential addresses, residential telephone numbers, personal  
6 wireless telephone numbers, personal ((~~electronic~~—~~mail~~)) email  
7 addresses, social security numbers, and emergency contact information  
8 of dependents of employees or volunteers of a public agency. For  
9 purposes of this subsection, "employees" includes independent  
10 provider home care workers as defined in RCW 74.39A.240, family day  
11 care providers exempt from licensing requirements as provided in  
12 chapter 43.215 RCW, and language access providers as provided in  
13 chapter 41.56 RCW;

14 (4) Information that identifies a person who, while an agency  
15 employee: (a) Seeks advice, under an informal process established by  
16 the employing agency, in order to ascertain his or her rights in  
17 connection with a possible unfair practice under chapter 49.60 RCW  
18 against the person; and (b) requests his or her identity or any  
19 identifying information not be disclosed;

20 (5) Investigative records compiled by an employing agency  
21 conducting an active and ongoing investigation of a possible unfair  
22 practice under chapter 49.60 RCW or of a possible violation of other  
23 federal, state, or local laws prohibiting discrimination in  
24 employment;

25 (6) Criminal history records checks for board staff finalist  
26 candidates conducted pursuant to RCW 43.33A.025;

27 (7) Except as provided in RCW 47.64.220, salary and benefit  
28 information for maritime employees collected from private employers  
29 under RCW 47.64.220(1) and described in RCW 47.64.220(2); and

30 (8) Photographs and month and year of birth in the personnel  
31 files of employees and workers of criminal justice agencies as  
32 defined in RCW 10.97.030. The news media, as defined in RCW  
33 5.68.010(5), shall have access to the photographs and full date of  
34 birth. For the purposes of this subsection, news media does not  
35 include any person or organization of persons in the custody of a  
36 criminal justice agency as defined in RCW 10.97.030.

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