

HOUSE BILL REPORT

HB 1160

As Reported by House Committee On:
State Government, Elections & Information Technology

Title: An act relating to recommendations of the sunshine committee.

Brief Description: Enacting recommendations of the sunshine committee.

Sponsors: Representatives Springer, Kilduff and Pollet.

Brief History:

Committee Activity:

State Government, Elections & Information Technology: 1/25/17, 2/3/17 [DPS].

Brief Summary of Substitute Bill

- Requires public disclosure for certain otherwise exempted personal information where the subject of the information consents to disclosure.
- Exempts public employee and volunteer passport and visa numbers from public disclosure.
- Provides that the exemption from public disclosure of information regarding the ongoing investigations of employment-related discrimination lasts until the agency provides notice of the outcome of the investigation.
- Exempts trade secrets from public disclosure.
- Allows attorney's fees to any defendant who successfully defends against an injunction of the public disclosure of financial related records.

HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Koster, Ranking Minority Member; Volz, Assistant Ranking Minority Member; Appleton, Gregerson, Irwin, Kraft and Pellicciotti.

Staff: Sean Flynn (786-7124).

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.

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 in the PRA or otherwise provided in law. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

Public Records Act Exemptions.

Personal Information. Personal information is exempt from disclosure in various circumstances within the PRA. A general category of exemptions for personal information includes: childcare enrollment, public employees and officials, tax assessments, personal financial information, driver's license records, vehicle license information associated with certain agencies conducting investigations, 911 emergency systems data, selective service declination, and claims to the Board of Industrial Insurance Appeals.

Public Employee Records. A separate exemption protects certain personal information of public employee personnel records from disclosure. Such information includes residential and email addresses, telephone numbers, social security and driver's license numbers, and emergency contact information. The exemption includes the same information of an employee's dependents. Records of an agency's active and ongoing investigation of an employment-related discrimination claim is also exempt.

Financial Information. A category of exemptions applies to certain kinds of sensitive financial, commercial, and proprietary information obtained by agencies. Some of the main exemptions in this category include: valuable designs, codes, or data that would cause private gain and public loss if disclosed; information obtained for certain bidding processes; investment information related to public trust or retirement funds; proprietary vendor information related to state purchased health care; certain business related information collected by the Department of Commerce; and certain business information related to marijuana licensing and regulation.

Enjoining Disclosure. The PRA allows a procedure for an agency, or person whose name is in information subject to disclosure, to seek an injunction in superior court to stop the disclosure of a record. The court may enjoin disclosure if it finds that disclosure is clearly not in the public interest and would substantially and irreparably damage a person or vital governmental function.

Non-Public Record Act Protected Information.

State Procurement Records. State procurement law exempts from disclosure bid submissions and evaluations of bids for goods and services contracts until the agency announces the apparent successful bidder.

Trade Secrets. A trade secret is defined in law as information that is under efforts to remain secret and has economic value from not being generally known or ascertainable to other people who could use such information for economic value. The law protects trade secrets from misappropriation and courts may order injunctions and penalties against misappropriations of trade secrets.

Summary of Substitute Bill:

Personal Information. The types of information located in the general personal information exemption category of the PRA are not exempt if the subject of the information, or the parents or guardian of a child who is the subject of the information, provide consent to the agency for disclosure.

Public Employee Records. The exemption for the residential addresses of public employees and volunteers does not exempt the part of the address containing the city, state, and service area zip code. Employee and volunteer passport and visa numbers are also added to the exemption. The exemption for information regarding the ongoing and active agency investigation of employment-related discrimination expressly includes the entire records of the ongoing investigation and lasts until the agency informs the complaining employee of the outcome of the investigation.

Financial Information. Trade secret information is included as an exemption within this financial information category. A court may award attorney's fees to any defendant that prevails in opposing an injunction to enjoin disclosure of financial, commercial, or proprietary information.

State Procurement Records. The protection against disclosure of bid submissions and evaluations of bids for goods and services contracts is transferred to be included as an exemption under the PRA.

Enjoining Disclosure. A court may award attorney's fees to any defendant, including an agency, who successfully defends against an action to enjoin disclosure of financial, commercial, and proprietary related records.

Substitute Bill Compared to Original Bill:

The precondition that certain sensitive financial information is only exempt if the information is marked confidential and includes an explanation of the expected harm disclosure would cause, or the agency determines that disclosure is substantially likely to cause public or private loss or unfair private gain, is removed. The disclosure of public employee residential zip codes does not include the additional four digits of an enhanced zip code.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) These exemptions are recommendations from the Sunshine Committee, as part of its function to review the PRA for exemptions that are outdated or need updating.

The requirement to provide an explanation for why financial information needs exemption will reduce the need for litigation by setting forth the justification in advance. Currently, businesses must file injunctions in court to attempt to explain why certain sensitive information should not be disclosed. This bill would require businesses to provide the explanation up front so agencies have the proper information to make determinations on disclosure. The bill also provides an incentive to avoid litigation by allowing attorney's fees for parties that defend injunctions to bar disclosure.

(Opposed) None.

Persons Testifying: Representative Springer, prime sponsor; Nancy Krier, Office of the Attorney General; Kathy George, Sunshine Committee, and Washington Coalition for Open Government; Rowland Thompson, Allied Daily Newspapers; and Ryan Sevigny, The Cannabis Alliance.

Persons Signed In To Testify But Not Testifying: None.