
SENATE BILL 5326

State of Washington 65th Legislature 2017 Regular Session

By Senators Pearson, Walsh, and Brown

Read first time 01/20/17. Referred to Committee on Law & Justice.

1 AN ACT Relating to public disclosure and use of personal
2 information of law enforcement and department of corrections
3 employees; amending RCW 42.56.070 and 42.56.250; and prescribing
4 penalties.

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

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

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

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

1 disclosure of specific information or records of the agency. An
2 agency's failure to list an exemption shall not affect the efficacy
3 of any exemption.

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

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

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

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

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

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

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

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

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

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

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

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

38 (b) Final orders entered after June 30, 1990, that are issued in
39 adjudicative proceedings as defined in RCW 34.05.010 and that contain

1 an analysis or decision of substantial importance to the agency in
2 carrying out its duties;

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

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

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

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

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

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

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

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

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

1 photocopies of public records, an agency may include all costs
2 directly incident to shipping such public records, including the cost
3 of postage or delivery charges and the cost of any container or
4 envelope used.

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

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

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

34 (10)(a) This subsection (10) applies only to requests for records
35 of employees and volunteers of law enforcement and employees and
36 volunteers of the department of corrections.

37 (b) Before obtaining records containing the names or nonexempt
38 contact information of employees or volunteers, the requester must
39 swear under oath that he or she will not use the information to

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

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

4 (i) Requests, pursuant to this chapter, the names or nonexempt
5 contact information of employees or volunteers in order to obtain
6 information exempt under RCW 42.56.250 for a commercial purpose or to
7 harass, stalk, threaten, or intimidate any person; or

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

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

20 (e) For purposes of using the names or nonexempt contact
21 information of employees or volunteers in order to obtain information
22 exempt under RCW 42.56.250, a commercial purpose includes:

23 (i) Soliciting, marketing, advertising, or self-promoting;

24 (ii) Inducing any person to economically support any entity; or

25 (iii) Inducing any person to cease or refrain from economically
26 supporting any entity.

27 (f) It is not a commercial purpose to obtain names or contact
28 information for purposes of soliciting support for or opposition to
29 any political party, candidate, or ballot measure, as defined in RCW
30 42.17A.005.

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

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

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

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

1 (3)(a) The following information held by any public agency in
2 personnel records, public employment related records, volunteer
3 rosters, or included in any mailing list of employees or volunteers
4 of any public agency: Residential addresses, residential telephone
5 numbers, personal wireless telephone numbers, personal (~~electronic~~
6 ~~mail~~) email addresses, social security numbers, driver's license
7 numbers, identicard numbers, and emergency contact information of
8 employees or volunteers of a public agency, and the names, dates of
9 birth, residential addresses, residential telephone numbers, personal
10 wireless telephone numbers, personal (~~electronic—mail~~) email
11 addresses, social security numbers, and emergency contact information
12 of dependents of employees or volunteers of a public agency. For
13 purposes of this subsection, "employees" includes independent
14 provider home care workers as defined in RCW 74.39A.240;

15 (b)(i) The exemption in (a) of this subsection does not apply
16 with regard to the dates of birth of employees and volunteers of law
17 enforcement and employees and volunteers of the department of
18 corrections if:

19 (A) The purpose of the request for the date of birth information
20 is a legitimate concern to the public;

21 (B) The law enforcement agency or the department of corrections
22 provides notice to the person whose date of birth information has
23 been requested, and provides a reasonable opportunity for that person
24 to object to the disclosure on the grounds that the request is not of
25 legitimate public concern or would cause a particular threat to the
26 safety or security of any person; and

27 (C) The law enforcement agency or the department of corrections
28 determines that any objection to the disclosure is not reasonable to
29 deny the request under the facts and circumstances.

30 (ii) A requestor may seek judicial review of any decision under
31 this subsection (3)(b) to deny a request for a law enforcement or
32 department of corrections employee's or volunteer's date of birth
33 information, in the superior court of the county where the requestor
34 resides or where the date of birth information is maintained;

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

1 (5) Investigative records compiled by an employing agency
2 conducting an active and ongoing investigation of a possible unfair
3 practice under chapter 49.60 RCW or of a possible violation of other
4 federal, state, or local laws prohibiting discrimination in
5 employment;
6 (6) Criminal history records checks for board staff finalist
7 candidates conducted pursuant to RCW 43.33A.025;
8 (7) Except as provided in RCW 47.64.220, salary and benefit
9 information for maritime employees collected from private employers
10 under RCW 47.64.220(1) and described in RCW 47.64.220(2); and
11 (8) Photographs and month and year of birth in the personnel
12 files of employees and workers of criminal justice agencies as
13 defined in RCW 10.97.030. The news media, as defined in RCW
14 5.68.010(5), shall have access to the photographs and full date of
15 birth. For the purposes of this subsection, news media does not
16 include any person or organization of persons in the custody of a
17 criminal justice agency as defined in RCW 10.97.030.

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