

# FINAL BILL REPORT

## ESHB 1692

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Synopsis as Enacted

**Brief Description:** Protecting information concerning agency employees who have filed a claim of harassment or stalking.

**Sponsors:** House Committee on State Government & Tribal Relations (originally sponsored by Representatives Jinkins, Caldier, Fitzgibbon, Doglio, Cody, Macri, Gregerson, Riccelli, Kilduff, Bergquist, Dolan, Appleton, Davis, Ryu, Robinson, Morgan, Blake, Stanford, Frame, Ormsby, Tarleton, Tharinger, Fey, Kloba, Valdez, Orwall, Callan, Harris, Kirby, Ortiz-Self, Senn, Goodman, Peterson and Reeves).

**House Committee on State Government & Tribal Relations**  
**Senate Committee on State Government, Tribal Relations & Elections**  
**Senate Committee on Ways & Means**

### **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 record is prohibited from disclosure or fits into one of the various specific exemptions under the PRA or as otherwise provided in law. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

Certain employment information is exempt from public inspection and copying, including information held by an agency in personnel records, public employment related records, volunteer rosters, or information included in any mailing list of employees or volunteers of any public agency. Examples include:

- examination data such as test questions or scoring keys;
- applications for public employment;
- residential addresses, personal phone numbers, email addresses, Social Security numbers, driver's license or identification card numbers, and emergency contacts of the employee or volunteer; and
- information relating to an active investigation of a possible unfair practice claim, which may include sexual harassment under certain circumstances.

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*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.*

In addition, certain personal information is exempt from public inspection and copying, such as personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

A person's "right to privacy" is invaded or violated if disclosure of information about the person: (1) would be highly offensive to a reasonable person; and (2) is not of legitimate concern to the public.

The Attorney General adopts advisory model rules to provide guidance on the public records process. The model rules are non-binding and provide best practices for requestors and agencies.

### **Summary:**

#### Limits on Disclosure.

Unless by court order, a state agency is prohibited from disclosing records in response to a public records request concerning a state agency employee who has made a claim of workplace sexual harassment or stalking with the employing agency or is named as the victim in the claim (claimant/victim) if:

1. the requestor is the person alleged in the claim to have sexually harassed or stalked the agency employee who is named as the victim in the claim (respondent); and
2. after having conducted an investigation, the agency issued discipline to the requestor as a result of the claim of workplace sexual harassment or stalking.

Upon a public records request for records concerning a claimant/victim by a person other than the respondent the agency must immediately notify the agency employee who is the subject of the request if:

1. the agency conducted an investigation of the claim of workplace sexual harassment or stalking involving the agency employee; and
2. the agency issued discipline as a result of the claim.

Upon such notice from the agency, the state agency employee may bring an action to enjoin disclosure, but must immediately notify the agency upon filing the action for an injunction. Upon notice from the state agency employee, the agency may not disclose the record unless by a court order or if the action is dismissed without the court granting an injunction. Except for the five-day notification requirement for agencies to acknowledge a public records request, the time for the agency to process the public records request is suspended during the pendency of the action for an injunction.

A court may order the release of some or all of the records requested after finding that, in the totality of the circumstances, disclosure would not violate the right to privacy for the state agency employee. As it pertains to the right of privacy, it is presumed to be highly offensive to a reasonable person to disclose, directly or indirectly, records concerning a claimant/victim to the respondent where the agency issued discipline resulting from the claim after conducting an investigation. The presumption may be rebutted upon showing of clear, cogent, and convincing evidence that disclosure of the requested record to such person is not highly offensive.

A record concerning an agency employee does not include work product created by the agency employee as part of his or her official duties.

Civil Liability.

Any person who requests and obtains a record concerning a claimant/victim is subject to civil liability if he or she uses the record or the information in the record to harass, stalk, threaten, or intimidate that agency employee. Such a person is also liable if he or she provides the record or information in the record to a person, knowing that person intends to use it to harass, stalk, threaten, or intimidate that agency employee. An aggrieved party, the Attorney General, or a prosecuting attorney may sue in superior court for violation of this provision. The court may order an appropriate civil remedy, including up to \$1,000 for each record used in violation of this provision, as well as costs and reasonable attorney's fees.

Other.

The Attorney General must create model policies for the implementation of the act by January 1, 2020.

A state agency may not disclose lists of the names of that are maintained by the agency to administer the provisions of the act.

An agency may disclose records concerning a claimant/victim if the agency employee provides written consent to disclose the records.

**Votes on Final Passage:**

House	98	0	
Senate	44	1	(Senate amended)
House	96	0	(House concurred)

**Effective:** July 1, 2020