

SENATE BILL REPORT

ESHB 1533

As Reported by Senate Committee On:
State Government & Elections, March 28, 2023

Title: An act relating to exempting the disclosure of certain information of agency employees or their dependents who are survivors of domestic violence, sexual assault, harassment, or stalking.

Brief Description: Exempting the disclosure of certain information of agency employees or their dependents who are survivors of domestic violence, sexual assault, harassment, or stalking.

Sponsors: House Committee on State Government & Tribal Relations (originally sponsored by Representatives Mena, Davis, Reed, Doglio, Fosse, Berg, Taylor, Ryu, Peterson, Berry, Walen, Alvarado, Ramel, Simmons, Griffey, Morgan, Gregerson, Shavers, Ormsby, Pollet, Fey, Kloba, Bateman and Macri).

Brief History: Passed House: 3/6/23, 80-15.

Committee Activity: State Government & Elections: 3/21/23, 3/28/23 [DPA].

Brief Summary of Amended Bill

- Exempts personally identifying information of state agency and K to 12 public school employees from public disclosure requirements if the employee provides a sworn statement, subject to renewal every two years, that the employee or a dependent is a survivor of domestic violence, sexual assault or abuse, stalking, or harassment, or demonstrates that the employee or dependent participates in the Address Confidentiality Program.
- Creates an exception to the exemption for disclosure to the news media.
- Requires a Joint Legislative Audit and Review Committee report to the Legislature on the impacts of the exemption.

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

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hunt, Chair; Valdez, Vice Chair; Wilson, J., Ranking Member; Dozier, Fortunato, Hasegawa and Kuderer.

Staff: Samuel Brown (786-7470)

Background: Public Records Act. The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires all state and local government agencies to make all public records available for public inspection and copying, unless certain statutory exemptions apply. Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure must be interpreted liberally, while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure. However, agencies may not disclose lists of individuals requested for commercial purposes unless specifically authorized by law.

Personal and Employment Information. Personal information in employee files maintained by an agency is exempt from disclosure requirements to the extent that disclosure would violate the employee's right to privacy. A person's right to privacy is violated if the disclosure of the information (1) would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.

Certain employment information held by an agency in personnel records is exempt from the PRA's disclosure requirements, including:

- residential addresses and telephone numbers;
- personal wireless telephone numbers and email addresses;
- social security, driver's license, and identicard numbers;
- payroll deductions; and
- emergency contact information.

The names, dates of birth, residential addresses, residential and personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees in agency personnel records are also exempt from the PRA's disclosure requirements.

Address Confidentiality Program. The Address Confidentiality Program (ACP), administered by the Office of the Secretary of State, to help people who fear for their safety maintain a confidential address. ACP participants are assigned a post office box address that they can use as their legal home, work, or school address, which public agencies are legally required to accept. State residents who are targets of stalking, domestic violence, trafficking, or sexual assault are eligible to participate in the ACP. Currently, the ACP

serves over 5000 residents.

Summary of Amended Bill: Employee Personal Information. The name or other personally identifying information of a state agency or K to 12 public school employee in agency personnel records, systems, or lists is exempt from public disclosure requirements, except to the news media, if the employee has provided:

- a sworn statement, which expires after two years but may be renewed, that the employee or a dependent of the employee is a survivor of domestic violence, sexual assault, sexual abuse, stalking, or harassment, and the employee has a reasonable basis that risk of that conduct continues to exist and why; or
- proof of the employee or a dependent's participation in the ACP.

The employee's agency director or a designee must verify the employee's sworn statement by:

- confirming that it identifies the alleged perpetrator or perpetrators by name and, if possible, image or likeness; or
- obtaining a police report, petition for a protection order, or other documentation of allegations.

Personally identifying information subject to the exemption includes the employee's birthdate, job title, job site, work e-mail address and phone number, and bargaining unit. Any documentation maintained by an agency to administer the exemption is confidential and may not be disclosed without consent of the employee. State agencies and K to 12 public schools may provide employees information on how to anonymize their work email address.

Report to the Legislature. By May 1, 2025, the Joint Legislative Audit and Review Committee (JLARC) must submit a report to the Legislature analyzing the exemption created in the act. In preparing the report, JLARC must consult survivors with direct lived experience of domestic violence, sexual assault, sexual abuse, stalking, or harassment. The report must include:

- whether the exemption protects public employees and their dependents by protecting their personal information while maintaining transparency and oversight of governmental operations; and
- whether the exemption should be maintained or modified.

EFFECT OF STATE GOVERNMENT & ELECTIONS COMMITTEE AMENDMENT(S):

Employee Personal Information. The exemption from disclosure requirements does not apply to disclosure to the news media. The sworn statement must substantiate the employee's belief that the risk of domestic violence, sexual assault, sexual abuse, stalking, or harassment continues to exist. The employee's agency director or a designee must verify the employee's sworn statement by:

- confirming that it identifies the alleged perpetrator or perpetrators by name and, if possible, image or likeness; or
- obtaining a police report, petition for a protection order, or other documentation of allegations.

The employee may consent to disclosure of documentation used to administer the exemption.

Report to the Legislature. By May 1, 2025, the Joint Legislative Audit and Review Committee (JLARC) must submit a report to the Legislature analyzing the exemption created in the act. In preparing the report, JLARC must consult survivors with direct lived experience of domestic violence, sexual assault, sexual abuse, stalking, or harassment. The report must include:

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- whether the exemption should be maintained or modified.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: It's impracticable for survivors to go to court each time a request for information that would disclose their location is made. The significant effort for agencies to gather information about survivors is too much for each broad request for lists or large volumes of records. The process right now is a burden on survivors who have to go to court every time. I shouldn't have to take my personal money to go to court any time my ex-husband tries to seek my personal information. I spent 16 hours calling law firms to find someone to help me file an injunction against the request for records. Affidavits won't be gamed because employees won't risk termination of employment or prosecution for submitting false evidence.

This will make me feel safer at work. Survivors' world outside the workplace has already been rocked—they have systems they need to put in place to protect their security. Give them one more place to feel safe. I am a person who wants to do a great job and I deserve safety. Many survivors wouldn't feel safe testifying on a bill like this in person, and I'm advocating to help them.

I'm speaking for someone who'd taken out a domestic violence protection order against her boyfriend and was shot and killed at her office. She did everything right: worked remotely, hid her address, and he still found her. My agency found a work name for me that was different than what I'd previously been identified as to protect me. Stalkers are resourceful. Many survivors must sustain a life of moving and hiding for a long time to stay safe. This makes it difficult to obtain employment or a permanent address, which is required for participation in the ACP. If a records request reveals your employer and your work location could be only one of a couple places, like in small school districts, it's pretty easy to find you.

My ex-boyfriend broke into my apartment and installed hidden cameras; if I still worked at my previous state agency, he'd know how to find me. He still found my work cell phone on my new agency's website and called it repeatedly in the middle of the night.

I'm actively afraid that my ex-husband or his family may use the PRA to request information about me. He has threatened to and tried to kill me in the past—if he gets my address from work, I'm not sure what will happen. I've lived in a travel trailer so I don't have a permanent address so he and his parents can't find me.

The parent of a former client has violated an anti-stalking and harassment order against me. They had their friends harass me when I was in the hospital after my ex-husband stabbed me 9 times, telling me I deserved it. The parent has posted the results of public records requests about me on social media. I live in constant fear that their threats will become reality. This bill could have prevented my information from being posted online.

I've been subjected to dehumanizing threats and harassment, even after the person was removed from my caseload. A recently submitted all-inclusive PRA request seeking personal information makes me feel that my and my family's safety is at risk.

A parent who put all the private information of me and their child's treatment team online, asked them to stop treatment "by all means necessary," and the parents and others showed up at our homes. Another person left multiple messages saying they were going to "take me out," and I don't think it was for coffee. I attempted to get restraining orders, but was told they weren't direct enough threats. In both cases, they got my personal information from public disclosure requests.

Survivors we work with are particularly vulnerable to continued targeting when they work in the public sector. PRA exemptions aren't responsive to gender-based violence. Criticisms of the bill play into old tropes that survivors lie—in fact, few survivors disclose offenses committed against them.

Journalistic integrity includes protecting trusted resources, letting us do our jobs. I don't want their next article to be about my funeral. Is the media going to protect me when someone tries to kill me? Because that's happened as a direct result of someone

weaponizing the public disclosure process.

CON: The scope of this proposed exemption is very broad. It could make some public employees essentially ghost employees and would make investigative reporting impossible. Cases where journalists uncovered information about a Monroe prison doctor who had patients die in her care, a State Patrol psychologist who rejected candidates of color, and a principal who covered up for a teacher who'd been sexually assaulting students, a teacher who used racial slurs in class and defended it, and where another teacher harassed students, ultimately resulting in a federal lawsuit wouldn't happen if those employees were participants in this program.

To protect victims, this bill potentially aids predators. This bill is both too little and too much —people still have public-facing jobs and agencies still need to function, but people who are committing misconduct could enter the program and cover up their misdeeds. Today it is easier than ever to locate people through LinkedIn, Google, and other third-party services.

This will actually place victims at more risk, since we won't know what agencies are doing to monitor risks or did when the employee came to them. Many cases where public systems didn't work and instead operated as a shield for those committing misconduct wouldn't have been uncovered under this bill. It is extremely rare for public employees to be targeted using information gained from a public records request.

Don't allow labor unions to hijack these good intentions to make bad policy. This bill appears to be about limiting the Freedom Foundation's ability to communicate with public employees about labor organization opt-out rights.

We have restraining orders and penalties for violating them. Perhaps using the PRA to violate a restraining order should be made a felony. The ACP already provides protections and could be fine-tuned. Other protections are already in place—the law requires notice to the employee of any request for any information in an agency personnel file. Another law already prohibits disclosure of information to a coworker who stalked or harassed the employee, and could be expanded without treating every member of the public as a threat. The bill provides no way for the public to know if the affidavits are false—there is no court or law enforcement scrutiny.

The bill could be amended to require a police report, protection order, or some other request be filed with the affidavit, require a JLARC study of the use of the exemption, or be limited to only the employee's work location, rather than extending a Harry Potter-like invisibility cloak over employees.

Persons Testifying: PRO: Kathy Barnard, Barnard, Iglitzin, and Lavitt; Juliane Williams, WPEA; Danielle Plessner, WPEA; Jessica Parker, WFSE; Allison Fine, WFSE; Crystal Mays, WFSE; Mike Yestramski, WFSE; Erin Haick, SEIU 925; Shontrana Gates-Wertman, Sexual Violence Law Center.

CON: Joe Kunzler, None; Neal Boling, KHQ-TV; Michael Fancher, Washington Coalition for Open Government; Katherine George, Johnston George LLP; Jonathan Martin, The Seattle Times; Michele Earl-Hubbard, Allied Law Group LLC; Jon Bauer, The Daily Herald of Everett; Josh O'Connor, Sound Publishing, Inc.; Melissa Luck, KXLY-TV; Maxford Nelsen, Freedom Foundation; Robert McClure; Rowland Thompson, Allied Daily Newspapers, WA Newspaper Publishers Assn, and WSABroadcasters.

Persons Signed In To Testify But Not Testifying: No one.