
HOUSE BILL 2515

State of Washington 59th Legislature 2006 Regular Session

By Representative Nixon

Read first time 01/10/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to public records; amending RCW 42.56.290;
2 reenacting and amending RCW 42.17.310; providing an effective date; and
3 providing an expiration date.

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

5 **Sec. 1.** RCW 42.17.310 and 2005 c 424 s 16, 2005 c 349 s 1, 2005 c
6 312 s 6, 2005 c 284 s 1, 2005 c 172 s 13, and 2005 c 33 s 4 are each
7 reenacted and amended to read as follows:

8 (1) The following are exempt from public inspection and copying:

9 (a) Personal information in any files maintained for students in
10 public schools, patients or clients of public institutions or public
11 health agencies, or welfare recipients.

12 (b) Personal information in files maintained for employees,
13 appointees, or elected officials of any public agency to the extent
14 that disclosure would violate their right to privacy.

15 (c) Information required of any taxpayer in connection with the
16 assessment or collection of any tax if the disclosure of the
17 information to other persons would (i) be prohibited to such persons by
18 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the

1 taxpayer's right to privacy or result in unfair competitive
2 disadvantage to the taxpayer.

3 (d) Specific intelligence information and specific investigative
4 records compiled by investigative, law enforcement, and penology
5 agencies, and state agencies vested with the responsibility to
6 discipline members of any profession, the nondisclosure of which is
7 essential to effective law enforcement or for the protection of any
8 person's right to privacy.

9 (e) Information revealing the identity of persons who are witnesses
10 to or victims of crime or who file complaints with investigative, law
11 enforcement, or penology agencies, other than the public disclosure
12 commission, if disclosure would endanger any person's life, physical
13 safety, or property. If at the time a complaint is filed the
14 complainant, victim or witness indicates a desire for disclosure or
15 nondisclosure, such desire shall govern. However, all complaints filed
16 with the public disclosure commission about any elected official or
17 candidate for public office must be made in writing and signed by the
18 complainant under oath.

19 (f) Test questions, scoring keys, and other examination data used
20 to administer a license, employment, or academic examination.

21 (g) Except as provided by chapter 8.26 RCW, the contents of real
22 estate appraisals, made for or by any agency relative to the
23 acquisition or sale of property, until the project or prospective sale
24 is abandoned or until such time as all of the property has been
25 acquired or the property to which the sale appraisal relates is sold,
26 but in no event shall disclosure be denied for more than three years
27 after the appraisal.

28 (h) Valuable formulae, designs, drawings, computer source code or
29 object code, and research data obtained by any agency within five years
30 of the request for disclosure when disclosure would produce private
31 gain and public loss.

32 (i) Preliminary drafts, notes, recommendations, and intra-agency
33 memorandums in which opinions are expressed or policies formulated or
34 recommended except that a specific record shall not be exempt when
35 publicly cited by an agency in connection with any agency action.

36 (j)(i) Records which are relevant to a controversy to which an
37 agency is a party but which records would not be available to another

1 party under the rules of pretrial discovery for causes pending in the
2 superior courts.

3 (ii)(A) Records reflecting communications relevant to a controversy
4 transmitted in confidence between a public official or employee of a
5 public agency acting in the performance of his or her duties and an
6 attorney serving in the capacity of legal advisor for the purpose of
7 rendering or obtaining legal advice relevant to a controversy, and
8 records prepared by the attorney in furtherance of the rendition of
9 legal advice relevant to a controversy. Records relevant to a
10 controversy shall be as narrowly construed as those relating to
11 completed, existing, or reasonably anticipated litigation.

12 (B) Records are not exempt from disclosure under this subsection
13 merely because they reflect communications in meetings where legal
14 counsel was present or because a record or copy of a record was
15 provided to legal counsel, if the elements of (j)(ii)(A) of this
16 subsection are not met.

17 (C) This subsection (1)(j)(ii) governs exemption of records from
18 the provisions of this chapter based on the attorney-client privilege
19 as applied to public agencies and public officials in their official
20 capacities, and no broader exemption may be invoked under RCW
21 5.60.060(2).

22 (k) Records, maps, or other information identifying the location of
23 archaeological sites in order to avoid the looting or depredation of
24 such sites.

25 (l) Any library record, the primary purpose of which is to maintain
26 control of library materials, or to gain access to information, which
27 discloses or could be used to disclose the identity of a library user.

28 (m) Financial information supplied by or on behalf of a person,
29 firm, or corporation for the purpose of qualifying to submit a bid or
30 proposal for (i) a ferry system construction or repair contract as
31 required by RCW 47.60.680 through 47.60.750 or (ii) highway
32 construction or improvement as required by RCW 47.28.070.

33 (n) Railroad company contracts filed prior to July 28, 1991, with
34 the utilities and transportation commission under RCW 81.34.070, except
35 that the summaries of the contracts are open to public inspection and
36 copying as otherwise provided by this chapter.

37 (o) Financial and commercial information and records supplied by

1 private persons pertaining to export services provided pursuant to
2 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
3 export projects pursuant to RCW 43.23.035.

4 (p) Financial disclosures filed by private vocational schools under
5 chapters 28B.85 and 28C.10 RCW.

6 (q) Records filed with the utilities and transportation commission
7 or attorney general under RCW 80.04.095 that a court has determined are
8 confidential under RCW 80.04.095.

9 (r) Financial and commercial information and records supplied by
10 businesses or individuals during application for loans or program
11 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
12 or during application for economic development loans or program
13 services provided by any local agency.

14 (s) Membership lists or lists of members or owners of interests of
15 units in timeshare projects, subdivisions, camping resorts,
16 condominiums, land developments, or common-interest communities
17 affiliated with such projects, regulated by the department of
18 licensing, in the files or possession of the department.

19 (t) All applications for public employment, including the names of
20 applicants, resumes, and other related materials submitted with respect
21 to an applicant.

22 (u) The residential addresses, residential telephone numbers,
23 personal wireless telephone numbers, personal electronic mail
24 addresses, Social Security numbers, and emergency contact information
25 of employees or volunteers of a public agency, and the names, dates of
26 birth, residential addresses, residential telephone numbers, personal
27 wireless telephone numbers, personal electronic mail addresses, Social
28 Security numbers, and emergency contact information of dependents of
29 employees or volunteers of a public agency, which are held by any
30 public agency in personnel records, public employment related records,
31 or volunteer rosters, or are included in any mailing list of employees
32 or volunteers of any public agency. For purposes of this subsection,
33 "employees" includes independent provider home care workers as defined
34 in RCW 74.39A.240.

35 (v) The residential addresses and residential telephone numbers of
36 the customers of a public utility contained in the records or lists
37 held by the public utility of which they are customers, except that
38 this information may be released to the division of child support or

1 the agency or firm providing child support enforcement for another
2 state under Title IV-D of the federal social security act, for the
3 establishment, enforcement, or modification of a support order.

4 (w)(i) The federal social security number of individuals governed
5 under chapter 18.130 RCW maintained in the files of the department of
6 health, except this exemption does not apply to requests made directly
7 to the department from federal, state, and local agencies of
8 government, and national and state licensing, credentialing,
9 investigatory, disciplinary, and examination organizations; (ii) the
10 current residential address and current residential telephone number of
11 a health care provider governed under chapter 18.130 RCW maintained in
12 the files of the department, if the provider requests that this
13 information be withheld from public inspection and copying, and
14 provides to the department an accurate alternate or business address
15 and business telephone number. On or after January 1, 1995, the
16 current residential address and residential telephone number of a
17 health care provider governed under RCW 18.130.040 maintained in the
18 files of the department shall automatically be withheld from public
19 inspection and copying unless the provider specifically requests the
20 information be released, and except as provided for under RCW
21 42.17.260(9).

22 (x) Information obtained by the board of pharmacy as provided in
23 RCW 69.45.090.

24 (y) Information obtained by the board of pharmacy or the department
25 of health and its representatives as provided in RCW 69.41.044,
26 69.41.280, and 18.64.420.

27 (z) Financial information, business plans, examination reports, and
28 any information produced or obtained in evaluating or examining a
29 business and industrial development corporation organized or seeking
30 certification under chapter 31.24 RCW.

31 (aa) Financial and commercial information supplied to the state
32 investment board by any person when the information relates to the
33 investment of public trust or retirement funds and when disclosure
34 would result in loss to such funds or in private loss to the providers
35 of this information.

36 (bb) Financial and valuable trade information under RCW 51.36.120.

37 (cc) Client records maintained by an agency that is a domestic

1 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
2 crisis center as defined in RCW 70.125.030.

3 (dd) Information that identifies a person who, while an agency
4 employee: (i) Seeks advice, under an informal process established by
5 the employing agency, in order to ascertain his or her rights in
6 connection with a possible unfair practice under chapter 49.60 RCW
7 against the person; and (ii) requests his or her identity or any
8 identifying information not be disclosed.

9 (ee) Investigative records compiled by an employing agency
10 conducting a current investigation of a possible unfair practice under
11 chapter 49.60 RCW or of a possible violation of other federal, state,
12 or local laws prohibiting discrimination in employment.

13 (ff) Business related information protected from public inspection
14 and copying under RCW 15.86.110.

15 (gg) Financial, commercial, operations, and technical and research
16 information and data submitted to or obtained by the clean Washington
17 center in applications for, or delivery of, program services under
18 chapter 70.95H RCW.

19 (hh) Information and documents created specifically for, and
20 collected and maintained by, a quality improvement committee pursuant
21 to RCW 43.70.510 or 70.41.200, by a peer review committee under RCW
22 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640
23 or 18.20.390, regardless of which agency is in possession of the
24 information and documents.

25 (ii) Personal information in files maintained in a data base
26 created under RCW 43.07.360.

27 (jj) Financial and commercial information requested by the public
28 stadium authority from any person or organization that leases or uses
29 the stadium and exhibition center as defined in RCW 36.102.010.

30 (kk) Names of individuals residing in emergency or transitional
31 housing that are furnished to the department of revenue or a county
32 assessor in order to substantiate a claim for property tax exemption
33 under RCW 84.36.043.

34 (ll) The names, residential addresses, residential telephone
35 numbers, and other individually identifiable records held by an agency
36 in relation to a vanpool, carpool, or other ride-sharing program or
37 service. However, these records may be disclosed to other persons who

1 apply for ride-matching services and who need that information in order
2 to identify potential riders or drivers with whom to share rides.

3 (mm) The personally identifying information of current or former
4 participants or applicants in a paratransit or other transit service
5 operated for the benefit of persons with disabilities or elderly
6 persons.

7 (nn) The personally identifying information of persons who acquire
8 and use transit passes and other fare payment media including, but not
9 limited to, stored value smart cards and magnetic strip cards, except
10 that an agency may disclose this information to a person, employer,
11 educational institution, or other entity that is responsible, in whole
12 or in part, for payment of the cost of acquiring or using a transit
13 pass or other fare payment media, or to the news media when reporting
14 on public transportation or public safety. This information may also
15 be disclosed at the agency's discretion to governmental agencies or
16 groups concerned with public transportation or public safety.

17 (oo) Proprietary financial and commercial information that the
18 submitting entity, with review by the department of health,
19 specifically identifies at the time it is submitted and that is
20 provided to or obtained by the department of health in connection with
21 an application for, or the supervision of, an antitrust exemption
22 sought by the submitting entity under RCW 43.72.310. If a request for
23 such information is received, the submitting entity must be notified of
24 the request. Within ten business days of receipt of the notice, the
25 submitting entity shall provide a written statement of the continuing
26 need for confidentiality, which shall be provided to the requester.
27 Upon receipt of such notice, the department of health shall continue to
28 treat information designated under this section as exempt from
29 disclosure. If the requester initiates an action to compel disclosure
30 under this chapter, the submitting entity must be joined as a party to
31 demonstrate the continuing need for confidentiality.

32 (pp) Records maintained by the board of industrial insurance
33 appeals that are related to appeals of crime victims' compensation
34 claims filed with the board under RCW 7.68.110.

35 (qq) Financial and commercial information supplied by or on behalf
36 of a person, firm, corporation, or entity under chapter 28B.95 RCW
37 relating to the purchase or sale of tuition units and contracts for the
38 purchase of multiple tuition units.

1 (rr) Any records of investigative reports prepared by any state,
2 county, municipal, or other law enforcement agency pertaining to sex
3 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
4 defined in RCW 71.09.020, which have been transferred to the Washington
5 association of sheriffs and police chiefs for permanent electronic
6 retention and retrieval pursuant to RCW 40.14.070(2)(b).

7 (ss) Credit card numbers, debit card numbers, electronic check
8 numbers, card expiration dates, or bank or other financial account
9 numbers, except when disclosure is expressly required by or governed by
10 other law.

11 (tt) Financial information, including but not limited to account
12 numbers and values, and other identification numbers supplied by or on
13 behalf of a person, firm, corporation, limited liability company,
14 partnership, or other entity related to an application for a horse
15 racing license submitted pursuant to RCW 67.16.260(1)(b), liquor
16 license, gambling license, or lottery retail license.

17 (uu) Records maintained by the employment security department and
18 subject to chapter 50.13 RCW if provided to another individual or
19 organization for operational, research, or evaluation purposes.

20 (vv) Individually identifiable information received by the work
21 force training and education coordinating board for research or
22 evaluation purposes.

23 (ww) Those portions of records assembled, prepared, or maintained
24 to prevent, mitigate, or respond to criminal terrorist acts, which are
25 acts that significantly disrupt the conduct of government or of the
26 general civilian population of the state or the United States and that
27 manifest an extreme indifference to human life, the public disclosure
28 of which would have a substantial likelihood of threatening public
29 safety, consisting of:

30 (i) Specific and unique vulnerability assessments or specific and
31 unique response or deployment plans, including compiled underlying data
32 collected in preparation of or essential to the assessments, or to the
33 response or deployment plans; and

34 (ii) Records not subject to public disclosure under federal law
35 that are shared by federal or international agencies, and information
36 prepared from national security briefings provided to state or local
37 government officials related to domestic preparedness for acts of
38 terrorism.

1 (xx) Commercial fishing catch data from logbooks required to be
2 provided to the department of fish and wildlife under RCW 77.12.047,
3 when the data identifies specific catch location, timing, or
4 methodology and the release of which would result in unfair competitive
5 disadvantage to the commercial fisher providing the catch data.
6 However, this information may be released to government agencies
7 concerned with the management of fish and wildlife resources.

8 (yy) Sensitive wildlife data obtained by the department of fish and
9 wildlife. However, sensitive wildlife data may be released to
10 government agencies concerned with the management of fish and wildlife
11 resources. Sensitive wildlife data includes:

12 (i) The nesting sites or specific locations of endangered species
13 designated under RCW 77.12.020, or threatened or sensitive species
14 classified by rule of the department of fish and wildlife;

15 (ii) Radio frequencies used in, or locational data generated by,
16 telemetry studies; or

17 (iii) Other location data that could compromise the viability of a
18 specific fish or wildlife population, and where at least one of the
19 following criteria are met:

20 (A) The species has a known commercial or black market value;

21 (B) There is a history of malicious take of that species; or

22 (C) There is a known demand to visit, take, or disturb, and the
23 species behavior or ecology renders it especially vulnerable or the
24 species has an extremely limited distribution and concentration.

25 (zz) The personally identifying information of persons who acquire
26 recreational licenses under RCW 77.32.010 or commercial licenses under
27 chapter 77.65 or 77.70 RCW, except name, address of contact used by the
28 department, and type of license, endorsement, or tag. However, the
29 department of fish and wildlife may disclose personally identifying
30 information to:

31 (i) Government agencies concerned with the management of fish and
32 wildlife resources;

33 (ii) The department of social and health services, child support
34 division, and to the department of licensing in order to implement RCW
35 77.32.014 and 46.20.291; and

36 (iii) Law enforcement agencies for the purpose of firearm
37 possession enforcement under RCW 9.41.040.

1 (aaa)(i) Discharge papers of a veteran of the armed forces of the
2 United States filed at the office of the county auditor before July 1,
3 2002, that have not been commingled with other recorded documents.
4 These records will be available only to the veteran, the veteran's next
5 of kin, a deceased veteran's properly appointed personal representative
6 or executor, a person holding that veteran's general power of attorney,
7 or to anyone else designated in writing by that veteran to receive the
8 records.

9 (ii) Discharge papers of a veteran of the armed forces of the
10 United States filed at the office of the county auditor before July 1,
11 2002, that have been commingled with other records, if the veteran has
12 recorded a "request for exemption from public disclosure of discharge
13 papers" with the county auditor. If such a request has been recorded,
14 these records may be released only to the veteran filing the papers,
15 the veteran's next of kin, a deceased veteran's properly appointed
16 personal representative or executor, a person holding the veteran's
17 general power of attorney, or anyone else designated in writing by the
18 veteran to receive the records.

19 (iii) Discharge papers of a veteran filed at the office of the
20 county auditor after June 30, 2002, are not public records, but will be
21 available only to the veteran, the veteran's next of kin, a deceased
22 veteran's properly appointed personal representative or executor, a
23 person holding the veteran's general power of attorney, or anyone else
24 designated in writing by the veteran to receive the records.

25 (iv) For the purposes of this subsection (1)(aaa), next of kin of
26 deceased veterans have the same rights to full access to the record.
27 Next of kin are the veteran's widow or widower who has not remarried,
28 son, daughter, father, mother, brother, and sister.

29 (bbb) Those portions of records containing specific and unique
30 vulnerability assessments or specific and unique emergency and escape
31 response plans at a city, county, or state adult or juvenile
32 correctional facility, the public disclosure of which would have a
33 substantial likelihood of threatening the security of a city, county,
34 or state adult or juvenile correctional facility or any individual's
35 safety.

36 (ccc) Information compiled by school districts or schools in the
37 development of their comprehensive safe school plans pursuant to RCW

1 28A.320.125, to the extent that they identify specific vulnerabilities
2 of school districts and each individual school.

3 (ddd) Information regarding the infrastructure and security of
4 computer and telecommunications networks, consisting of security
5 passwords, security access codes and programs, access codes for secure
6 software applications, security and service recovery plans, security
7 risk assessments, and security test results to the extent that they
8 identify specific system vulnerabilities.

9 (eee) Information obtained and exempted or withheld from public
10 inspection by the health care authority under RCW 41.05.026, whether
11 retained by the authority, transferred to another state purchased
12 health care program by the authority, or transferred by the authority
13 to a technical review committee created to facilitate the development,
14 acquisition, or implementation of state purchased health care under
15 chapter 41.05 RCW.

16 (fff) Proprietary data, trade secrets, or other information that
17 relates to: (i) A vendor's unique methods of conducting business; (ii)
18 data unique to the product or services of the vendor; or (iii)
19 determining prices or rates to be charged for services, submitted by
20 any vendor to the department of social and health services for purposes
21 of the development, acquisition, or implementation of state purchased
22 health care as defined in RCW 41.05.011.

23 (ggg) The personally identifying information of persons who acquire
24 and use transponders or other technology to facilitate payment of
25 tolls. This information may be disclosed in aggregate form as long as
26 the data does not contain any personally identifying information. For
27 these purposes aggregate data may include the census tract of the
28 account holder as long as any individual personally identifying
29 information is not released. Personally identifying information may be
30 released to law enforcement agencies only for toll enforcement
31 purposes. Personally identifying information may be released to law
32 enforcement agencies for other purposes only if the request is
33 accompanied by a court order.

34 (hhh) Financial, commercial, operations, and technical and research
35 information and data submitted to or obtained by the life sciences
36 discovery fund authority in applications for, or delivery of, grants
37 under chapter 43.350 RCW, to the extent that such information, if

1 revealed, would reasonably be expected to result in private loss to the
2 providers of this information.

3 (iii) Records of mediation communications that are privileged under
4 chapter 7.07 RCW.

5 (2) Except for information described in subsection (1)(c)(i) of
6 this section and confidential income data exempted from public
7 inspection pursuant to RCW 84.40.020, the exemptions of this section
8 are inapplicable to the extent that information, the disclosure of
9 which would violate personal privacy or vital governmental interests,
10 can be deleted from the specific records sought. No exemption may be
11 construed to permit the nondisclosure of statistical information not
12 descriptive of any readily identifiable person or persons.

13 (3) Inspection or copying of any specific records exempt under the
14 provisions of this section may be permitted if the superior court in
15 the county in which the record is maintained finds, after a hearing
16 with notice thereof to every person in interest and the agency, that
17 the exemption of such records is clearly unnecessary to protect any
18 individual's right of privacy or any vital governmental function.

19 (4) Agency responses refusing, in whole or in part, inspection of
20 any public record shall include a statement of the specific exemption
21 authorizing the withholding of the record (or part) and a brief
22 explanation of how the exemption applies to the record withheld.

23 **Sec. 2.** RCW 42.56.290 and 2005 c 274 s 409 are each amended to
24 read as follows:

25 (1) Records that are relevant to a controversy to which an agency
26 is a party but which records would not be available to another party
27 under the rules of pretrial discovery for causes pending in the
28 superior courts are exempt from disclosure under this chapter.

29 (2)(a) Records reflecting communications relevant to a controversy
30 transmitted in confidence between a public official or employee of a
31 public agency acting in the performance of his or her duties and an
32 attorney serving in the capacity of legal advisor for the purpose of
33 rendering or obtaining legal advice relevant to a controversy, and
34 records prepared by the attorney in furtherance of the rendition of
35 legal advice relevant to a controversy are exempt from disclosure under
36 this chapter. Records relevant to a controversy shall be as narrowly

1 construed as those relating to completed, existing, or reasonably
2 anticipated litigation.

3 (b) Records are not exempt from disclosure under this subsection
4 merely because they reflect communications in meetings where legal
5 counsel was present or because a record or copy of a record was
6 provided to legal counsel, if the elements of (a) of this subsection
7 are not met.

8 (3) This section governs exemption of records from the provisions
9 of this chapter based on the attorney-client privilege as applied to
10 public agencies and public officials in their official capacities, and
11 no broader exemption may be invoked under RCW 5.60.060(2).

12 NEW SECTION. Sec. 3. Section 1 of this act expires July 1, 2006.

13 NEW SECTION. Sec. 4. Section 2 of this act takes effect July 1,
14 2006.

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