
SUBSTITUTE HOUSE BILL 2202

State of Washington 63rd Legislature 2014 Regular Session

By House Government Operations & Elections (originally sponsored by Representatives Carlyle, Pollet, Bergquist, Hudgins, and Riccelli)

READ FIRST TIME 02/04/14.

1 AN ACT Relating to the establishment of an open data policy to
2 facilitate sharing and publication of government data; amending RCW
3 43.41A.010, 43.41A.125, and 43.41A.130; adding a new chapter to Title
4 42 RCW; decodifying RCW 43.41A.135; and repealing RCW 43.41A.115.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that Washington state
7 has a long history and tradition of ensuring open government. In the
8 early 1970s, the state experienced a moment of transformation: In
9 1971, the legislature enacted the open public meetings act to make the
10 conduct of government more accessible and open to the public. The
11 following year, Washington voters approved the public records act,
12 stating that full access to information concerning the conduct of
13 government on every level must be assured as a fundamental and
14 necessary precondition to the sound governance of a free society. More
15 than forty years have passed, and the state once more finds itself at
16 a transformative moment, when it is incumbent upon us to take a step
17 toward a true modernization of our public records law. New
18 technologies have dramatically changed both the way government conducts
19 business and the public's expectations about access to government

1 information. Accessible government data is now a valuable resource
2 that can be used by citizens and businesses of the state to fuel
3 entrepreneurship, innovation, and scientific discovery. Open
4 government data readily available for public use creates new
5 opportunities to combine information from a variety of sources and
6 visualize this information in new and unexpected ways. With ingenuity
7 and access, any member of the public can dream up and create an
8 application that is commercially or recreationally useful to others.
9 Such innovation can help drive economic growth, and not surprisingly,
10 many cities and states have opened up their data and established
11 policies, standards, and best practices to promote open data.
12 President Obama issued an executive order requiring federal agencies to
13 ensure that government data is open and machine-readable by default.
14 These initiatives have recognized that publishing open data in open
15 formats is a transformational step, making government transparency
16 actionable by the people who the government has been created to serve.
17 It increases government transparency, effectiveness, and
18 accountability, allowing government agencies as well as citizens to
19 browse, interpret trends, and draw attention to issues with greater
20 efficiency. It is the intent of the legislature to encourage state and
21 local government agencies that collect and create information to do so
22 in a manner that supports downstream information processing and
23 dissemination activities, ensuring that the default status of
24 government data is open.

25 NEW SECTION. **Sec. 2.** The definitions in this section apply
26 throughout this chapter unless the context clearly requires otherwise.

27 (1)(a) "Data" means final versions of statistical or factual
28 information that:

29 (i) Are in alphanumeric form reflected in a list, table, graph,
30 chart, or other nonnarrative form, that can be digitally transmitted or
31 processed;

32 (ii) Are regularly created or maintained by or on behalf of an
33 agency and controlled by such agency; and

34 (iii) Record a measurement, transaction, or determination related
35 to the mission of the agency.

36 (b) As used in this subsection (1), "statistical or factual
37 information" does not include image files, such as designs, drawings,

1 photos, or scanned copies of original documents, but it does include
2 geographic information system data and statistical or factual
3 information about such image files.

4 (2) "Data set" means a named collection of related records
5 maintained on a storage device, with the collection containing data
6 organized or formatted in a specific or prescribed way, often in
7 tabular form.

8 (3) "Local government" means every county, city, town, and every
9 other municipal or quasi-municipal corporation.

10 (4) "Office" means the office of the chief information officer.

11 (5) "Open data" means freely available, machine readable, and
12 structured in a way that enables the data to be fully discoverable and
13 usable by end users.

14 (6) "Open format" means a published, free file format for storing
15 digital data, where such format is in the public domain or otherwise
16 free of restrictions on reuse, and can be used and implemented by
17 anyone.

18 (7) "Public data set" means data maintained on a computer system
19 by, or on behalf of, an agency that the agency is permitted, required,
20 or able to make available to the public. "Public data set" does not
21 include:

22 (a) Any data set or portion of a data set to which an agency may
23 deny access pursuant to the public records act, chapter 42.56 RCW, or
24 any other provision of a federal or state law, rule, or regulation or
25 local law;

26 (b) Any data set that contains a significant amount of data to
27 which an agency may deny access pursuant to (a) of this subsection, the
28 redaction of which would impose undue financial, operative, or
29 administrative burden on the agency;

30 (c) Data that reflects the internal deliberative process of an
31 agency or agencies, including but not limited to negotiating positions,
32 future procurements, or pending or reasonably anticipated legal or
33 administrative proceedings;

34 (d) Data subject to copyright, patent, trademark, confidentiality
35 agreements, or trade secret protection;

36 (e) Proprietary applications, computer code, software, operating
37 systems, or similar materials;

1 (f) Data related to internal agency administration, including
2 employment records, internal employee-related directories or lists, and
3 facilities data;

4 (g) Data or data sets related to externally funded research and
5 development activities, unless specifically identified for inclusion in
6 the open data portal by the agency in the compliance plan required
7 under section 3(6) of this act;

8 (h) Data or data sets related to and specifically used for teaching
9 activities, unless specifically identified for inclusion in the open
10 data portal by the agency in the compliance plan required under section
11 3(6) of this act; or

12 (i) Any data or data set that cannot feasibly be converted to an
13 open format as required by the uniform standards adopted by the office
14 without undue financial, operative, or administrative burden on the
15 agency.

16 (8) "Public record" means any document that meets the definition of
17 a public record as provided in RCW 42.56.010 or chapter 40.14 RCW.

18 (9) "State agency" or "agency" means every state office,
19 department, division, bureau, board, commission, or other state agency
20 of the executive branch, including offices headed by a statewide
21 elected official.

22 NEW SECTION. **Sec. 3.** OPEN DATA PORTAL. (1)(a) The chief
23 information officer shall coordinate implementation and expansion of an
24 open data portal to facilitate the sharing and publication of
25 government data in an open format.

26 (b) Public data sets already available in an open format on an
27 existing state government data portal, such as www.erdc.wa.gov/data and
28 geography.wa.gov, need not be separately uploaded onto the open data
29 portal if they are readily accessible, searchable, and discoverable
30 from the open data portal web site.

31 (2) Within ninety days of the effective date of this section, the
32 office shall publish draft uniform standards for the open format of
33 data submitted for publication on the open data portal and guidelines
34 for agencies to use in complying with this section.

35 (3) The office shall consider industry best practices in
36 establishing standards for an information architecture that supports
37 the usability and findability of information and may develop and update

1 standards as necessary to reflect industry best practices. In
2 developing such standards, the office shall be guided by principles
3 that encourage easy analysis and reuse of the data.

4 (a) The office is encouraged to develop standards that address:

5 (i) Full description of public data sets, including the use of
6 human-readable, meaningful field names that allow users to understand
7 what information is contained in the data set, thorough documentation
8 of data elements, data dictionaries, and, if applicable, additional
9 description of the purposes and methods of data collection;

10 (ii) The release of high-volume data sets using bulk downloads,
11 meaning that the entire public data set is provided in response to an
12 electronic request in a computer-friendly format, as well as
13 application programming interfaces (APIs);

14 (iii) The assignment of unique identifiers to increase the accuracy
15 of public data sets; and

16 (iv) The use of metadata terms to facilitate data discovery,
17 administration, resource description, and interoperability of different
18 data sets.

19 (b) The office may convene a working group of data coordinators and
20 may implement such other procedures necessary to monitor compliance
21 with standards that the office has developed under this section. The
22 office may require agencies to report to the office on such compliance.

23 (4) Within ninety days of the effective date of this section, the
24 office shall implement an online forum to solicit feedback from the
25 public and to encourage public discussion on open data policies and
26 public data set availability.

27 (5)(a) Within thirty days of the effective date of this section,
28 each agency shall designate a data officer who:

29 (i) Has authority equivalent to that of a deputy director or the
30 head of a division or department within the agency;

31 (ii) Has knowledge of data and resources in use by the agency; and

32 (iii) Is responsible for that agency's compliance with this
33 chapter.

34 (b) An agency will be deemed to have complied with the requirements
35 of (a) of this subsection if the agency designates a data officer from
36 within the agency's current deputy directors or division or department
37 heads who is ultimately responsible for the agency's compliance, and

1 designates a separate data coordinator who has relevant technical
2 expertise, including knowledge of data and resources in use by the
3 agency, and is directly accountable to the data officer.

4 (6)(a) Within fifteen months of the effective date of this section,
5 each agency shall provide to the office a proposed compliance plan,
6 which shall include a catalog of the agency's public data sets and a
7 timeline for making each data set publicly available as open data in an
8 open format.

9 (b) Where multiple versions exist of a public data set or portion
10 of a public data set, each agency that has custody of the public data
11 set and access and authority to update the public data set is
12 encouraged to include the public data set in its data catalog. The
13 office must include a mechanism in the open data portal for ensuring
14 that such multiple versions of a public data set are published, similar
15 and equal access is provided to all versions of the public data set,
16 and the data of one agency is not systematically privileged over the
17 data of another.

18 (c) In establishing the timeline, the agency shall prioritize
19 publication of data based on the extent to which information:

- 20 (i) Can be used to increase agency accountability and
21 responsiveness;
- 22 (ii) Improves public knowledge of the agency and its operations;
- 23 (iii) Furthers the mission of the agency;
- 24 (iv) Creates economic opportunity;
- 25 (v) Currently exists in or can easily be converted to the open
26 format as required by the uniform standards adopted by the office;
- 27 (vi) Responds to a need or demand identified by public
28 consultation; and
- 29 (vii) Furthers any other objective established by the office that
30 the office deems important in furthering the intent of this chapter.

31 (d) If the agency has identified a public data set that it has not
32 proposed to make public within five years of the effective date of this
33 section, the agency's work plan must state the reasons why the public
34 data set cannot be made available and the actions that would be
35 necessary to make the identified public data set available on the open
36 data portal.

37 (e) Each agency shall provide two interim reports to the office,
38 one within six months of the effective date of this section and the

1 second within one year of the effective date of this section. The
2 office shall review the reports to ensure that the agency is making
3 adequate progress in developing the compliance plan required under this
4 section.

5 (f) In addition to standards developed by the office under
6 subsections (2) and (3) of this section, agencies should leverage other
7 existing guidance, such as the enterprise architecture program
8 developed by the office pursuant to RCW 43.41A.065, to maximize
9 interoperability and information accessibility when developing the
10 agency's compliance plan.

11 (7) No later than eighteen months after the effective date of this
12 section, and annually thereafter, the office shall post on the open
13 data portal and submit to the governor and the legislature an updated
14 compliance plan for each agency. The update must include:

15 (a) Specific measures undertaken since the immediately preceding
16 update;

17 (b) Specific measures that will be undertaken before the next
18 update;

19 (c) An update to the list of public data sets, if necessary;

20 (d) Any changes to the prioritization of public data sets;

21 (e) Any update to the timeline for the inclusion of data sets on
22 the open data portal, if necessary; and

23 (f) If a public data set cannot be made available on the open data
24 portal within five years of the effective date of this section, the
25 reasons why it cannot and, to the extent practicable, the date by which
26 the agency believes that such public data set will be available on the
27 open data portal.

28 (8) Local governments and other branches of state government are
29 encouraged but not required to prepare a catalog and timeline for
30 publication of public data sets and to submit the data to the office
31 for inclusion in the open data portal. The office is authorized to
32 provide technical guidance, assistance, and expertise to assist local
33 governments and other branches of state government in participating in
34 the open data portal, as provided in subsection (7) of this section.

35 (9) The office shall provide technical guidance, assistance, and
36 expertise to assist agencies in participating in the open data portal.
37 This may include, but is not limited to, adopting rules or providing
38 models and guidelines for agencies to follow when:

- 1 (a) Creating their data catalogs;
- 2 (b) Setting a schedule for initial and ongoing publication of data;
- 3 (c) Prioritizing data sets for publication;
- 4 (d) Identifying and reviewing public data sets, including
- 5 consultation with public records officers and other entities to ensure
- 6 confidential or otherwise nonpublic information is not disclosed; and
- 7 (e) Preparing data for publication as open data in an open format
- 8 pursuant to the uniform standard established under this section.

9 (10)(a) An agency may request from the office a waiver from
10 compliance with the timelines established in this section. The request
11 must include an explanation of why the waiver is needed, the
12 consequences the agency will suffer if the waiver is not approved, and
13 any other information required by the office. The chief executive of
14 the agency must sign the waiver request.

15 (b) The office may grant the waiver only if compliance would
16 adversely affect the ability of the requesting agency to accomplish a
17 function critical to the agency or would cause a major adverse
18 financial impact on the requesting agency that is not offset by
19 statewide savings or by the public interest served in expediting access
20 to open government data. In granting a waiver, the office must
21 establish the new timeline for the agency's compliance.

22 (c) The office must include in the report to the legislature
23 required under subsection (7) of this section a description of any
24 waivers it grants and the basis for its decision to grant the waiver,
25 as well as the revised timelines it has established.

26 NEW SECTION. **Sec. 4.** LEGAL POLICY. (1) Public data sets made
27 available on the open data portal are provided for informational
28 purposes.

29 (2) Public data sets made available on the open data portal should
30 be offered as open data in an open format and free of cost, wherever
31 feasible, consistent with standards and policies developed by the
32 office, and not otherwise provided by law or contract. The office
33 shall develop a data licensing policy to facilitate the removal of
34 barriers to access and reuse of government data, while providing
35 adequate notice in the limited cases where the use of public data sets
36 must be subject to license terms and conditions.

1 (3) In developing the data licensing policy, the office shall
2 provide agencies guidance on the use of a standard public domain
3 dedication tool to place the data into the public domain to the
4 greatest extent allowed by law, so that anyone may freely build upon,
5 enhance, and reuse the data for any purpose without restriction.

6 (4) The open data portal must include a mechanism by which a member
7 of the public who has identified deficiencies in a public data set can
8 provide feedback to the office about the deficiency. The office may
9 transmit the feedback to the agency that owns or controls the data set.
10 If the agency deems the deficiency to be real and substantial, it may
11 post a notice of such deficiency on the open data portal.

12 (5) The state does not warrant the completeness, accuracy,
13 content, or fitness for any particular purpose or use of any public
14 data set made available on the open data portal, nor are any such
15 warranties to be implied or inferred with respect to the public data
16 sets furnished on the open data portal.

17 (6) The state is not liable for any deficiencies in the
18 completeness, accuracy, content, or fitness for any particular purpose
19 or use of any public data set, or application using the data set,
20 provided by any third party.

21 (7) Nothing in this chapter may be construed to create a private
22 right of action or claim on the part of any individual, entity, or
23 agency to enforce its provisions. Failure to comply with this chapter
24 does not result in liability to an agency.

25 (8) The office shall conspicuously publish on the open data portal
26 the legal policies set forth in this section.

27 (9) The office is prohibited from making changes to the source data
28 of a public data set posted by an agency on the open data portal. Only
29 the agency that posts the public data set has authority to alter the
30 source data. Changes made by an agency to source data after it has
31 been posted on the open data portal must be recorded in a log that is
32 readily accessible on the open data portal. This log must include, at
33 a minimum, the date the change was made, a description by the agency of
34 the change that was made, and an explanation of why such change was
35 necessary. The agency must retain, pursuant to normal operating
36 procedures and policies governing data retention by the agency, the
37 underlying source data that has been changed.

1 **Sec. 5.** RCW 43.41A.010 and 2013 2nd sp.s. c 33 s 3 are each
2 amended to read as follows:

3 (1) The office of the chief information officer is created within
4 the office of financial management.

5 (2) Powers, duties, and functions assigned to the department of
6 information services as specified in this chapter shall be transferred
7 to the office of chief information officer as provided in this chapter.

8 (3) The primary duties of the office are:

9 (a) To prepare and lead the implementation of a strategic direction
10 and enterprise architecture for information technology for state
11 government;

12 (b) To enable the standardization and consolidation of information
13 technology infrastructure across all state agencies to support
14 enterprise-based system development and improve and maintain service
15 delivery;

16 (c) To establish standards and policies for the consistent and
17 efficient operation of information technology services throughout state
18 government;

19 (d) To establish statewide enterprise architecture that will serve
20 as the organizing standard for information technology for state
21 agencies;

22 (e) To educate and inform state managers and policymakers on
23 technological developments, industry trends and best practices,
24 industry benchmarks that strengthen decision making and professional
25 development, and industry understanding for public managers and
26 decision makers; and

27 (f) To coordinate implementation and expansion of the open data
28 portal established in sections 3 and 4 of this act.

29 (4) In the case of institutions of higher education, the powers of
30 the office and the provisions of this chapter apply to business and
31 administrative applications but do not apply to (a) academic and
32 research applications; and (b) medical, clinical, and health care
33 applications, including the business and administrative applications
34 for such operations. However, institutions of higher education must
35 disclose to the office any proposed academic applications that are
36 enterprise-wide in nature relative to the needs and interests of other
37 institutions of higher education. Institutions of higher education
38 shall provide to the chief information officer sufficient data and

1 information on proposed expenditures on business and administrative
2 applications to permit the chief information officer to evaluate the
3 proposed expenditures pursuant to RCW 43.88.092(3).

4 (5) The legislature and the judiciary, which are constitutionally
5 recognized as separate branches of government, are strongly encouraged
6 to coordinate with the office and participate in shared services
7 initiatives and the development of enterprise-based strategies, where
8 appropriate. Legislative and judicial agencies of the state shall
9 submit to the chief information officer information on proposed
10 information technology expenditures to allow the chief information
11 officer to evaluate the proposed expenditures on an advisory basis.

12 **Sec. 6.** RCW 43.41A.125 and 1996 c 171 s 5 are each amended to read
13 as follows:

14 Within existing resources and consistent with section 3 of this
15 act, state agencies shall plan for and implement processes for making
16 information available electronically and for making public data sets
17 available as open data in an open format. Public demand and agencies'
18 missions and goals shall drive the selection and priorities for
19 government information to be made available electronically. When
20 planning for increased public electronic access, agencies should
21 determine what information the public wants and needs most. Widespread
22 public electronic access does not mean that all government information
23 is able to be made available electronically.

24 (1) In planning for and implementing electronic access, state
25 agencies shall:

26 (a) Where appropriate, plan for electronic public access and two-
27 way electronic interaction when acquiring, redesigning, or rebuilding
28 information systems;

29 (b) Focus on providing electronic access to current information,
30 leaving archival material to be made available digitally as resources
31 allow or as a need arises;

32 (c) Coordinate technology planning across agency boundaries in
33 order to facilitate electronic access to vital public information;

34 (d) Develop processes to determine which information the public
35 most wants and needs;

36 (e) Develop and employ methods to readily withhold or mask
37 nondisclosable data.

1 (2) In planning or implementing electronic access and two-way
2 electronic interaction and delivery technologies, state agencies and
3 local governments are encouraged to:

4 (a) Increase their capabilities to receive information
5 electronically from the public and to transmit forms, applications, and
6 other communications and transactions electronically;

7 (b) Use technologies allowing public access throughout the state
8 that allow continuous access twenty-four hours a day, seven days per
9 week, involve little or no cost to access, and are capable of being
10 used by persons without extensive technological ability; and

11 (c) Consider and incorporate wherever possible ease of access to
12 electronic technologies by persons with disabilities. In planning and
13 implementing new public electronic access projects, agencies should
14 consult with people who have disabilities, with disability access
15 experts, and the general public.

16 ~~((3) The final report of the public information access policy task
17 force, "Encouraging Widespread Public Electronic Access to Public
18 Records and Information Held by State and Local Governments," shall
19 serve as a major resource for state agencies and local governments in
20 planning and providing increased access to electronic public records
21 and information.))~~

22 **Sec. 7.** RCW 43.41A.130 and 1996 c 171 s 12 are each amended to
23 read as follows:

24 Funding to meet the costs of providing access, including the
25 building of the necessary information systems, the digitizing of
26 information, ~~((developing))~~ the preparation of data as open data in an
27 open format, the development of the ability to mask nondisclosable
28 information, and maintenance and upgrade of information access systems
29 should come primarily from state and local appropriations, federal
30 dollars, grants, private funds, cooperative ventures among governments,
31 nonexclusive licensing, and public/private partnerships. Agencies
32 should not offer customized electronic access services as the primary
33 way of responding to requests or as a primary source of revenue. Fees
34 for staff time to respond to requests, and other direct costs may be
35 included in costs of providing customized access.

36 Agencies and local governments are encouraged to pool resources and
37 to form cooperative ventures to provide electronic access to government

1 records and information. State agencies are encouraged to seek federal
2 and private grants for projects that provide increased efficiency and
3 improve government delivery of information and services, including
4 projects that facilitate or expedite the inclusion of all public data
5 sets in the open data portal.

6 NEW SECTION. Sec. 8. RCW 43.41A.115 (Electronic access to public
7 records--Findings--Intent) and 1996 c 171 s 1 are each repealed.

8 NEW SECTION. Sec. 9. RCW 43.41A.135 is decodified.

9 NEW SECTION. Sec. 10. Sections 1 through 4 of this act constitute
10 a new chapter in Title 42 RCW.

--- END ---