
SECOND SUBSTITUTE HOUSE BILL 2202

State of Washington

63rd Legislature

2014 Regular Session

By House Appropriations (originally sponsored by Representatives Carlyle, Pollet, Bergquist, Hudgins, and Riccelli)

READ FIRST TIME 02/11/14.

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; creating a new section; decodifying RCW 43.41A.135; and
5 repealing RCW 43.41A.115.

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

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

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

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

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

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

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

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

1 (b) As used in this subsection (1), "statistical or factual
2 information" does not include image files, such as designs, drawings,
3 photos, or scanned copies of original documents, but it does include
4 geographic information system data and statistical or factual
5 information about such image files.

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

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

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

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

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

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

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

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

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

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

1 (e) Proprietary applications, computer code, software, operating
2 systems, or similar materials;

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

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

10 (h) Data or data sets related to and specifically used for teaching
11 activities, unless specifically identified for inclusion in the open
12 data portal by the agency in the compliance plan required under section
13 3(6) of this act;

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

18 (j) Data or data sets that the head of an agency, after due
19 consideration and consultation with the office, determines should not
20 be published on the open data portal because publication would be
21 detrimental to the public interest, however the agency must prepare a
22 detailed rationale for its determination and publish the rationale on
23 the open data portal.

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

26 (9) "State agency" or "agency" means every state office,
27 department, division, bureau, board, commission, or other state agency
28 of the executive branch, including offices headed by a statewide
29 elected official.

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

34 (b) Public data sets already available in an open format on an
35 existing state government data portal, such as www.erdc.wa.gov/data and
36 geography.wa.gov, need not be separately uploaded onto the open data

1 portal if they are readily accessible, searchable, and discoverable
2 from the open data portal web site.

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

7 (3) The office shall consider industry best practices in
8 establishing standards for an information architecture that supports
9 the usability and findability of information and may develop and update
10 standards as necessary to reflect industry best practices. In
11 developing such standards, the office shall be guided by principles
12 that encourage easy analysis and reuse of the data.

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

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

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

23 (iii) The assignment of unique identifiers to increase the accuracy
24 of public data sets;

25 (iv) The use of metadata terms to facilitate data discovery,
26 administration, resource description, and interoperability of different
27 data sets;

28 (v) A method of time stamping or otherwise indicating the date and
29 time that a data set was added to or changed on the open data portal;
30 and

31 (vi) If the data set is regularly or frequently updated, a
32 description of the frequency and changes that occur during the updates.

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

37 (4) Within ninety days of the effective date of this section, the

1 office shall implement an online forum to solicit feedback from the
2 public and to encourage public discussion on open data policies and
3 public data set availability.

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

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

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

9 (iii) Is responsible for that agency's compliance with this
10 chapter.

11 (b) An agency will be deemed to have complied with the requirements
12 of (a) of this subsection if the agency designates a data officer from
13 within the agency's current deputy directors or division or department
14 heads who is ultimately responsible for the agency's compliance, and
15 designates a separate data coordinator who has relevant technical
16 expertise, including knowledge of data and resources in use by the
17 agency, and is directly accountable to the data officer.

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

23 (b) Where multiple versions exist of a public data set or portion
24 of a public data set, each agency that has custody of the public data
25 set and access and authority to update the public data set shall
26 include the public data set in its data catalog, except as provided in
27 section 2(7) of this act. The office must include a mechanism in the
28 open data portal for ensuring that such multiple versions of a public
29 data set are published, similar and equal access is provided to all
30 versions of the public data set, and the data of one agency is not
31 systematically privileged over the data of another.

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

34 (i) Can be used to increase agency accountability and
35 responsiveness;

36 (ii) Improves public knowledge of the agency and its operations;

37 (iii) Furthers the mission of the agency;

38 (iv) Creates economic opportunity;

1 (v) Currently exists in or can easily be converted to the open
2 format as required by the uniform standards adopted by the office;

3 (vi) Responds to a need or demand identified by public
4 consultation; and

5 (vii) Furthers any other objective established by the office that
6 the office deems important in furthering the intent of this chapter.

7 (d) If the agency has identified a public data set that it has not
8 proposed to make public within five years of the effective date of this
9 section, the agency's work plan must state the reasons why the public
10 data set cannot be made available and the actions that would be
11 necessary to make the identified public data set available on the open
12 data portal.

13 (e) Each agency shall provide two interim reports to the office,
14 one within six months of the effective date of this section and the
15 second within one year of the effective date of this section. The
16 office shall review the reports to ensure that the agency is making
17 adequate progress in developing the compliance plan required under this
18 section.

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

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

29 (a) Specific measures undertaken since the immediately preceding
30 update;

31 (b) Specific measures that will be undertaken before the next
32 update;

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

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

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

37 (f) If a public data set cannot be made available on the open data
38 portal within five years of the effective date of this section, the

1 reasons why it cannot and, to the extent practicable, the date by which
2 the agency believes that such public data set will be available on the
3 open data portal.

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

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

15 (a) Creating their data catalogs;

16 (b) Setting a schedule for initial and ongoing publication of data;

17 (c) Prioritizing data sets for publication;

18 (d) Identifying and reviewing public data sets, including
19 consultation with public records officers and other entities to ensure
20 confidential or otherwise nonpublic information is not disclosed; and

21 (e) Preparing data for publication as open data in an open format
22 pursuant to the uniform standard established under this section.

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

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

36 (c) The office must include in the report to the legislature
37 required under subsection (7) of this section a description of any

1 waivers it grants and the basis for its decision to grant the waiver,
2 as well as the revised timelines it has established.

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

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

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

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

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

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

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

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

3 (9) The office is prohibited from making changes to the source data
4 of a public data set posted by an agency on the open data portal. Only
5 the agency that posts the public data set has authority to alter the
6 source data. The agency must retain, pursuant to normal operating
7 procedures and policies governing data retention by the agency, the
8 underlying source data that has been changed.

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

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

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

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

17 (a) To prepare and lead the implementation of a strategic direction
18 and enterprise architecture for information technology for state
19 government;

20 (b) To enable the standardization and consolidation of information
21 technology infrastructure across all state agencies to support
22 enterprise-based system development and improve and maintain service
23 delivery;

24 (c) To establish standards and policies for the consistent and
25 efficient operation of information technology services throughout state
26 government;

27 (d) To establish statewide enterprise architecture that will serve
28 as the organizing standard for information technology for state
29 agencies;

30 (e) To educate and inform state managers and policymakers on
31 technological developments, industry trends and best practices,
32 industry benchmarks that strengthen decision making and professional
33 development, and industry understanding for public managers and
34 decision makers; and

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

1 (4) In the case of institutions of higher education, the powers of
2 the office and the provisions of this chapter apply to business and
3 administrative applications but do not apply to (a) academic and
4 research applications; and (b) medical, clinical, and health care
5 applications, including the business and administrative applications
6 for such operations. However, institutions of higher education must
7 disclose to the office any proposed academic applications that are
8 enterprise-wide in nature relative to the needs and interests of other
9 institutions of higher education. Institutions of higher education
10 shall provide to the chief information officer sufficient data and
11 information on proposed expenditures on business and administrative
12 applications to permit the chief information officer to evaluate the
13 proposed expenditures pursuant to RCW 43.88.092(3).

14 (5) The legislature and the judiciary, which are constitutionally
15 recognized as separate branches of government, are strongly encouraged
16 to coordinate with the office and participate in shared services
17 initiatives and the development of enterprise-based strategies, where
18 appropriate. Legislative and judicial agencies of the state shall
19 submit to the chief information officer information on proposed
20 information technology expenditures to allow the chief information
21 officer to evaluate the proposed expenditures on an advisory basis.

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

24 Within existing resources and consistent with section 3 of this
25 act, state agencies shall plan for and implement processes for making
26 information available electronically and for making public data sets
27 available as open data in an open format. Public demand and agencies'
28 missions and goals shall drive the selection and priorities for
29 government information to be made available electronically. When
30 planning for increased public electronic access, agencies should
31 determine what information the public wants and needs most. Widespread
32 public electronic access does not mean that all government information
33 is able to be made available electronically.

34 (1) In planning for and implementing electronic access, state
35 agencies shall:

36 (a) Where appropriate, plan for electronic public access and two-

1 way electronic interaction when acquiring, redesigning, or rebuilding
2 information systems;

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

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

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

10 (e) Develop and employ methods to readily withhold or mask
11 nondisclosable data.

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

15 (a) Increase their capabilities to receive information
16 electronically from the public and to transmit forms, applications, and
17 other communications and transactions electronically;

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

22 (c) Consider and incorporate wherever possible ease of access to
23 electronic technologies by persons with disabilities. In planning and
24 implementing new public electronic access projects, agencies should
25 consult with people who have disabilities, with disability access
26 experts, and the general public.

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

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

35 Funding to meet the costs of providing access, including the
36 building of the necessary information systems, the digitizing of
37 information, ~~((developing))~~ the preparation of data as open data in an

1 open format, the development of the ability to mask nondisclosable
2 information, and maintenance and upgrade of information access systems
3 should come primarily from state and local appropriations, federal
4 dollars, grants, private funds, cooperative ventures among governments,
5 nonexclusive licensing, and public/private partnerships. Agencies
6 should not offer customized electronic access services as the primary
7 way of responding to requests or as a primary source of revenue. Fees
8 for staff time to respond to requests, and other direct costs may be
9 included in costs of providing customized access.

10 Agencies and local governments are encouraged to pool resources and
11 to form cooperative ventures to provide electronic access to government
12 records and information. State agencies are encouraged to seek federal
13 and private grants for projects that provide increased efficiency and
14 improve government delivery of information and services, including
15 projects that facilitate or expedite the inclusion of all public data
16 sets in the open data portal.

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

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

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

22 NEW SECTION. Sec. 11. If specific funding for the purposes of
23 this act, referencing this act by bill or chapter number, is not
24 provided by June 30, 2014, in the omnibus appropriations act, this act
25 is null and void.

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