
SUBSTITUTE HOUSE BILL 1538

State of Washington

66th Legislature

2019 Regular Session

By House State Government & Tribal Relations (originally sponsored by Representative Springer)

1 AN ACT Relating to sunshine committee recommendations; amending
2 RCW 42.56.230 and 42.56.250; reenacting and amending RCW 42.56.270;
3 adding a new section to chapter 42.56 RCW; and repealing RCW
4 39.26.030.

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

6 **Sec. 1.** RCW 42.56.230 and 2018 c 109 s 16 are each amended to
7 read as follows:

8 The following personal information is exempt from public
9 inspection and copying under this chapter, unless the agency has
10 received consent for disclosure from the subject of the information
11 or, in the case of a child, from the child's parent or guardian:

12 (1) Personal information in any files maintained for students in
13 public schools, patients or clients of public institutions or public
14 health agencies, or welfare recipients;

15 (2)(a) Personal information:

16 (i) For a child enrolled in licensed child care in any files
17 maintained by the department of children, youth, and families;

18 (ii) For a child enrolled in a public or nonprofit program
19 serving or pertaining to children, adolescents, or students,
20 including but not limited to early learning or child care services,

1 parks and recreation programs, youth development programs, and after-
2 school programs; or

3 (iii) For the family members or guardians of a child who is
4 subject to the exemption under this subsection (2) if the family
5 member or guardian has the same last name as the child or if the
6 family member or guardian resides at the same address as the child
7 and disclosure of the family member's or guardian's information would
8 result in disclosure of the personal information exempted under
9 (a)(i) and (ii) of this subsection.

10 (b) Emergency contact information under this subsection (2) may
11 be provided to appropriate authorities and medical personnel for the
12 purpose of treating the individual during an emergency situation;

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

16 (4) Information required of any taxpayer in connection with the
17 assessment or collection of any tax if the disclosure of the
18 information to other persons would: (a) Be prohibited to such persons
19 by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance
20 authorized under RCW 35.102.145; or (b) violate the taxpayer's right
21 to privacy or result in unfair competitive disadvantage to the
22 taxpayer;

23 (5) Credit card numbers, debit card numbers, electronic check
24 numbers, card expiration dates, or bank or other financial
25 information as defined in RCW 9.35.005 including social security
26 numbers, except when disclosure is expressly required by or governed
27 by other law;

28 (6) Personal and financial information related to a small loan or
29 any system of authorizing a small loan in RCW 31.45.093;

30 (7)(a) Any record used to prove identity, age, residential
31 address, social security number, or other personal information
32 required to apply for a driver's license or identicard.

33 (b) Information provided under RCW 46.20.111 that indicates that
34 an applicant declined to register with the selective service system.

35 (c) Any record pertaining to a vehicle license plate, driver's
36 license, or identicard issued under RCW 46.08.066 that, alone or in
37 combination with any other records, may reveal the identity of an
38 individual, or reveal that an individual is or was, performing an
39 undercover or covert law enforcement, confidential public health
40 work, public assistance fraud, or child support investigative

1 activity. This exemption does not prevent the release of the total
2 number of vehicle license plates, drivers' licenses, or identicards
3 that, under RCW 46.08.066, an agency or department has applied for,
4 been issued, denied, returned, destroyed, lost, and reported for
5 misuse.

6 (d) Any record pertaining to a vessel registration issued under
7 RCW 88.02.330 that, alone or in combination with any other records,
8 may reveal the identity of an individual, or reveal that an
9 individual is or was, performing an undercover or covert law
10 enforcement activity. This exemption does not prevent the release of
11 the total number of vessel registrations that, under RCW 88.02.330,
12 an agency or department has applied for, been issued, denied,
13 returned, destroyed, lost, and reported for misuse;

14 (8) All information related to individual claims resolution
15 structured settlement agreements submitted to the board of industrial
16 insurance appeals under RCW 51.04.063, other than final orders from
17 the board of industrial insurance appeals.

18 Upon request by the legislature, the department of licensing
19 shall provide a report to the legislature containing all of the
20 information in subsection (7)(c) and (d) of this section that is
21 subject to public disclosure;

22 (9) Voluntarily submitted information contained in a database
23 that is part of or associated with enhanced 911 emergency
24 communications systems, or information contained or used in emergency
25 notification systems as provided under RCW 38.52.575 and 38.52.577;
26 and

27 (10) Until the person reaches eighteen years of age, information,
28 otherwise disclosable under chapter 29A.08 RCW, that relates to a
29 future voter, except for the purpose of processing and delivering
30 ballots.

31 **Sec. 2.** RCW 42.56.250 and 2018 c 109 s 17 are each amended to
32 read as follows:

33 The following employment and licensing information is exempt from
34 public inspection and copying under this chapter:

35 (1) Test questions, scoring keys, and other examination data used
36 to administer a license, employment, or academic examination;

37 (2) All applications for public employment, including the names
38 of applicants, resumes, and other related materials submitted with
39 respect to an applicant;

1 (3) Professional growth plans (PGPs) in educator license renewals
2 submitted through the eCert system in the office of the
3 superintendent of public instruction;

4 (4)(a) The following information held by any public agency in
5 personnel records, public employment related records, volunteer
6 rosters, or included in any mailing list of employees or volunteers
7 of any public agency:

8 (i) Residential addresses (not including city, state, and zip
9 codes), residential telephone numbers, personal wireless telephone
10 numbers, personal email addresses, social security numbers, driver's
11 license numbers, identicard numbers, passport and visa numbers, and
12 emergency contact information of employees or volunteers of a public
13 agency~~((7))~~; and ~~((the names, dates of birth, residential addresses,~~
14 ~~residential telephone numbers, personal wireless telephone numbers,~~
15 ~~personal email addresses, social security numbers, and emergency~~
16 ~~contact information))~~

17 (ii) All identifying and contact information of dependents of
18 employees or volunteers of a public agency.

19 (b) For purposes of this subsection (4), "employees" includes
20 independent provider home care workers as defined in RCW 74.39A.240;

21 (5) Information that identifies a person who, while an agency
22 employee: (a) Seeks advice, under an informal process established by
23 the employing agency, in order to ascertain his or her rights in
24 connection with a possible unfair practice under chapter 49.60 RCW
25 against the person; and (b) requests his or her identity or any
26 identifying information not be disclosed;

27 (6) Investigative records compiled by an employing agency
28 conducting an active and ongoing investigation of a possible unfair
29 practice under chapter 49.60 RCW or of a possible violation of other
30 federal, state, or local laws prohibiting discrimination in
31 employment. For purposes of this subsection, the exemption is
32 categorical and exempts the records in their entirety while the
33 investigation is ongoing. Once the agency has notified the
34 complaining employee of the outcome of the investigation, the
35 exemption no longer applies;

36 (7) Criminal history records checks for board staff finalist
37 candidates conducted pursuant to RCW 43.33A.025;

38 (8) Except as provided in RCW 47.64.220, salary and benefit
39 information for maritime employees collected from private employers
40 under RCW 47.64.220(1) and described in RCW 47.64.220(2);

1 (9) Photographs and month and year of birth in the personnel
2 files of employees and workers of criminal justice agencies as
3 defined in RCW 10.97.030. The news media, as defined in RCW
4 5.68.010(5), shall have access to the photographs and full date of
5 birth. For the purposes of this subsection, news media does not
6 include any person or organization of persons in the custody of a
7 criminal justice agency as defined in RCW 10.97.030;

8 (10) The global positioning system data that would indicate the
9 location of the residence of a public employee or volunteer using the
10 global positioning system recording device; and

11 (11) Until the person reaches eighteen years of age, information,
12 otherwise disclosable under chapter 29A.08 RCW, that relates to a
13 future voter, except for the purpose of processing and delivering
14 ballots.

15 **Sec. 3.** RCW 42.56.270 and 2018 c 201 s 8008, 2018 c 196 s 21,
16 and 2018 c 4 s 9 are each reenacted and amended to read as follows:

17 (1) The following financial, commercial, and proprietary
18 information is exempt from disclosure under this chapter, as long as
19 the information is clearly marked as confidential and accompanied by
20 a particularized explanation of expected harm from disclosure at the
21 time of submission, subject to subsection (2) of this section:

22 ~~((1))~~ (a) Valuable formulae, designs, drawings, computer source
23 code or object code, and research data obtained by any agency within
24 five years of the request for disclosure when disclosure would
25 produce private gain and public loss;

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

32 ~~((3))~~ (c) Financial and commercial information and records
33 supplied by private persons pertaining to export services provided
34 under chapters 43.163 and 53.31 RCW, and by persons pertaining to
35 export projects under RCW 43.23.035;

36 ~~((4))~~ (d) Financial and commercial information and records
37 supplied by businesses or individuals during application for loans or
38 program services provided by chapters 43.325, 43.163, 43.160, 43.330,

1 and 43.168 RCW, or during application for economic development loans
2 or program services provided by any local agency;

3 ~~((5))~~ (e) Financial information, business plans, examination
4 reports, and any information produced or obtained in evaluating or
5 examining a business and industrial development corporation organized
6 or seeking certification under chapter 31.24 RCW;

7 ~~((6))~~ (f) Financial and commercial information supplied to the
8 state investment board by any person when the information relates to
9 the investment of public trust or retirement funds and when
10 disclosure would result in loss to such funds or in private loss to
11 the providers of this information;

12 ~~((7))~~ (g) Financial and valuable trade information under RCW
13 51.36.120;

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

18 ~~((9))~~ (i) Financial and commercial information requested by the
19 public stadium authority from any person or organization that leases
20 or uses the stadium and exhibition center as defined in RCW
21 36.102.010;

22 ~~((10)(a))~~ (j)(i) Financial information, including but not
23 limited to account numbers and values, and other identification
24 numbers supplied by or on behalf of a person, firm, corporation,
25 limited liability company, partnership, or other entity related to an
26 application for a horse racing license submitted pursuant to RCW
27 67.16.260(1)(b), marijuana producer, processor, or retailer license,
28 liquor license, gambling license, or lottery retail license;

29 ~~((b))~~ (ii) Internal control documents, independent auditors'
30 reports and financial statements, and supporting documents: ~~((i))~~
31 (A) Of house-banked social card game licensees required by the
32 gambling commission pursuant to rules adopted under chapter 9.46 RCW;
33 or ~~((ii))~~ (B) submitted by tribes with an approved tribal/state
34 compact for class III gaming;

35 ~~((11))~~ (k) Proprietary data, trade secrets, or other
36 information that is submitted by any vendor to the department of
37 social and health services for purposes of the development,
38 acquisition, or implementation of state purchased health care as
39 defined in RCW 41.05.011, and that relates to: ~~((a))~~ (i) A vendor's
40 unique methods of conducting business; ~~((b))~~ (ii) data unique to

1 the product or services of the vendor; or ~~((e))~~ (iii) determining
2 prices or rates to be charged for services ~~(, submitted by any vendor~~
3 ~~to the department of social and health services or the health care~~
4 ~~authority for purposes of the development, acquisition, or~~
5 ~~implementation of state purchased health care as defined in RCW~~
6 ~~41.05.011));~~

7 ~~((12)(a))~~ (l)(i) When supplied to and in the records of the
8 department of commerce:

9 ~~((i))~~ (A) Financial and proprietary information collected from
10 any person and provided to the department of commerce pursuant to RCW
11 43.330.050(8); and

12 ~~((ii))~~ (B) Financial or proprietary information collected from
13 any person and provided to the department of commerce or the office
14 of the governor in connection with the siting, recruitment,
15 expansion, retention, or relocation of that person's business and
16 until a siting decision is made, identifying information of any
17 person supplying information under this subsection and the locations
18 being considered for siting, relocation, or expansion of a business;

19 ~~((b))~~ (ii) When developed by the department of commerce based
20 on information as described in ~~((a)(i))~~ (l)(i)(A) of this
21 subsection, any work product is not exempt from disclosure;

22 ~~((e))~~ (iii) For the purposes of this subsection, "siting
23 decision" means the decision to acquire or not to acquire a site;

24 ~~((d))~~ (iv) If there is no written contact for a period of sixty
25 days to the department of commerce from a person connected with
26 siting, recruitment, expansion, retention, or relocation of that
27 person's business, information described in ~~((a)(ii))~~ (l)(i)(B) of
28 this subsection will be available to the public under this chapter;

29 ~~((13))~~ (m) Financial and proprietary information submitted to
30 or obtained by the department of ecology or the authority created
31 under chapter 70.95N RCW to implement chapter 70.95N RCW;

32 ~~((14))~~ (n) Financial, commercial, operations, and technical and
33 research information and data submitted to or obtained by the life
34 sciences discovery fund authority in applications for, or delivery
35 of, grants under chapter 43.350 RCW, to the extent that such
36 information, if revealed, would reasonably be expected to result in
37 private loss to the providers of this information;

38 ~~((15))~~ (o) Financial and commercial information provided as
39 evidence to the department of licensing as required by RCW 19.112.110
40 or 19.112.120, except information disclosed in aggregate form that

1 does not permit the identification of information related to
2 individual fuel licensees;

3 ~~((16))~~ (p) Any production records, mineral assessments, and
4 trade secrets submitted by a permit holder, mine operator, or
5 landowner to the department of natural resources under RCW 78.44.085;

6 ~~((17)(a))~~ (q)(i) Farm plans developed by conservation
7 districts, unless permission to release the farm plan is granted by
8 the landowner or operator who requested the plan, or the farm plan is
9 used for the application or issuance of a permit;

10 ~~((b))~~ (ii) Farm plans developed under chapter 90.48 RCW and not
11 under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are
12 subject to RCW 42.56.610 and 90.64.190;

13 ~~((18))~~ (r) Financial, commercial, operations, and technical and
14 research information and data submitted to or obtained by a health
15 sciences and services authority in applications for, or delivery of,
16 grants under RCW 35.104.010 through 35.104.060, to the extent that
17 such information, if revealed, would reasonably be expected to result
18 in private loss to providers of this information;

19 ~~((19))~~ (s) Information gathered under chapter 19.85 RCW or RCW
20 34.05.328 that can be identified to a particular business;

21 ~~((20))~~ (t) Financial and commercial information submitted to or
22 obtained by the University of Washington, other than information the
23 university is required to disclose under RCW 28B.20.150, when the
24 information relates to investments in private funds, to the extent
25 that such information, if revealed, would reasonably be expected to
26 result in loss to the University of Washington consolidated endowment
27 fund or to result in private loss to the providers of this
28 information;

29 ~~((21))~~ (u) Market share data submitted by a manufacturer under
30 RCW 70.95N.190(4);

31 ~~((22))~~ (v) Financial information supplied to the department of
32 financial institutions or to a portal under RCW 21.20.883, when filed
33 by or on behalf of an issuer of securities for the purpose of
34 obtaining the exemption from state securities registration for small
35 securities offerings provided under RCW 21.20.880 or when filed by or
36 on behalf of an investor for the purpose of purchasing such
37 securities;

38 ~~((23))~~ (w) Unaggregated or individual notices of a transfer of
39 crude oil that is financial, proprietary, or commercial information,
40 submitted to the department of ecology pursuant to RCW

1 90.56.565(1)(a), and that is in the possession of the department of
2 ecology or any entity with which the department of ecology has shared
3 the notice pursuant to RCW 90.56.565;

4 ~~((24))~~ (x) Financial institution and retirement account
5 information, and building security plan information, supplied to the
6 liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331,
7 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or
8 prospective licensee for the purpose of obtaining, maintaining, or
9 renewing a license to produce, process, transport, or sell marijuana
10 as allowed under chapter 69.50 RCW;

11 ~~((25))~~ (y) Marijuana transport information, vehicle and driver
12 identification data, and account numbers or unique access identifiers
13 issued to private entities for traceability system access, submitted
14 by an individual or business to the liquor and cannabis board under
15 the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and
16 69.50.345 for the purpose of marijuana product traceability.
17 Disclosure to local, state, and federal officials is not considered
18 public disclosure for purposes of this section;

19 ~~((26))~~ (z) Financial and commercial information submitted to or
20 obtained by the retirement board of any city that is responsible for
21 the management of an employees' retirement system pursuant to the
22 authority of chapter 35.39 RCW, when the information relates to
23 investments in private funds, to the extent that such information, if
24 revealed, would reasonably be expected to result in loss to the
25 retirement fund or to result in private loss to the providers of this
26 information except that ~~((a))~~ (i) the names and commitment amounts
27 of the private funds in which retirement funds are invested and
28 ~~((b))~~ (ii) the aggregate quarterly performance results for a
29 retirement fund's portfolio of investments in such funds are subject
30 to disclosure;

31 ~~((27))~~ (aa) Proprietary financial, commercial, operations, and
32 technical and research information and data submitted to or obtained
33 by the liquor and cannabis board in applications for marijuana
34 research licenses under RCW 69.50.372, or in reports submitted by
35 marijuana research licensees in accordance with rules adopted by the
36 liquor and cannabis board under RCW 69.50.372;

37 ~~((28))~~ (bb) Trade secrets, technology, proprietary information,
38 and financial considerations contained in any agreements or
39 contracts, entered into by a licensed marijuana business under RCW

1 69.50.395, which may be submitted to or obtained by the state liquor
2 and cannabis board; (~~and~~

3 ~~(29))~~ (cc) Financial, commercial, operations, and technical and
4 research information and data submitted to or obtained by the Andy
5 Hill cancer research endowment program in applications for, or
6 delivery of, grants under chapter 43.348 RCW, to the extent that such
7 information, if revealed, would reasonably be expected to result in
8 private loss to providers of this information; (~~and~~

9 ~~(30))~~ (dd) Proprietary information filed with the department of
10 health under chapter 69.48 RCW; and

11 (ee) Trade secrets as defined in RCW 19.108.010.

12 (2) (a) If an agency receives a request for information under
13 subsection (1) of this section that is not clearly marked as
14 confidential and accompanied by a particularized explanation of
15 expected harm from disclosure, the agency must notify the subject of
16 the information of the request within five business days of receiving
17 the request.

18 (b) The time that an agency has to respond to a request for
19 information under RCW 42.56.520 is suspended until twenty business
20 days after the agency sends notice to the subject of the information.
21 The agency shall notify the requester of the need to notify third
22 parties affected by the request.

23 (c) If the subject of the information provides the agency with a
24 written statement of the need to keep the information confidential,
25 including a particularized explanation of expected harm from
26 disclosure, within fifteen business days after the agency sends
27 notice to the subject of the information, the information is exempt
28 from disclosure. If the agency does not receive such a statement from
29 the subject of the information, the information must be disclosed.

30 (d) If the requester initiates an action to compel disclosure
31 under this chapter, the subject of the information must be joined as
32 a party to demonstrate the need for confidentiality.

33 (3) In any action under RCW 42.56.540 to enjoin disclosure of
34 financial, commercial, or proprietary information pursuant to this
35 section, the court may award attorneys' fees to any defendant,
36 including a requester or agency, to the extent that the defendant
37 prevailed in opposing an injunction.

38 NEW SECTION. Sec. 4. A new section is added to chapter 42.56
39 RCW to read as follows:

1 Bids, quotations, or proposals submitted to an agency for goods
2 or services in response to a solicitation issued for such goods or
3 services are exempt from disclosure until the agency announces the
4 apparent successful bidder based on predetermined criteria or decides
5 not to accept any bids, quotations, or proposals.

6 NEW SECTION. **Sec. 5.** RCW 39.26.030 (State procurement records—
7 Disclosure) and 2012 c 224 s 4 are each repealed.

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