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SENATE BILL 5294

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State of Washington

61st Legislature

2009 Regular Session

By Senators Kline, Oemig, and Hatfield

Read first time 01/20/09. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to implementing the nonunanimous recommendations of  
2 the public records exemptions accountability committee; amending RCW  
3 42.56.250 and 42.56.330; and adding a new section to chapter 42.56 RCW.

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

5 **Sec. 1.** RCW 42.56.250 and 2006 c 209 s 6 are each amended to read  
6 as follows:

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

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

11 (2) All applications for public employment, including the names of  
12 applicants, resumes, and other related materials submitted with respect  
13 to an applicant, subject to the following exceptions:

14 (a) Applications for the highest management position in a public  
15 agency, county, or local government department with confidential  
16 reference information removed or redacted is not exempt from inspection  
17 and copying; and

18 (b) Application materials not exempt from inspection and copying

1 must be available to the public after the finalists are selected, but  
2 before the agency, county, or local government makes its decision;

3 (3) The residential addresses, residential telephone numbers,  
4 personal wireless telephone numbers, personal electronic mail  
5 addresses, social security numbers, and emergency contact information  
6 of employees or volunteers of a public agency, and the names, dates of  
7 birth, residential addresses, residential telephone numbers, personal  
8 wireless telephone numbers, personal electronic mail addresses, social  
9 security numbers, and emergency contact information of dependents of  
10 employees or volunteers of a public agency that are held by any public  
11 agency in personnel records, public employment related records, or  
12 volunteer rosters, or are included in any mailing list of employees or  
13 volunteers of any public agency. For purposes of this subsection,  
14 "employees" includes independent provider home care workers as defined  
15 in RCW 74.39A.240;

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

22 (5) Investigative records compiled by an employing agency  
23 conducting a current investigation of a possible unfair practice under  
24 chapter 49.60 RCW or of a possible violation of other federal, state,  
25 or local laws prohibiting discrimination in employment; and

26 (6) Except as provided in RCW 47.64.220, salary and employee  
27 benefit information collected under RCW 47.64.220(1) and described in  
28 RCW 47.64.220(2).

29 For the purposes of this section, "employment" does not include  
30 service on boards or commissions where the individual does not receive  
31 pay or benefits, even if that individual may receive minimal  
32 reimbursement or stipend for expenses.

33 **Sec. 2.** RCW 42.56.330 and 2008 c 200 s 6 are each amended to read  
34 as follows:

35 The following information relating to public utilities and  
36 transportation is exempt from disclosure under this chapter:

1 (1) Records filed with the utilities and transportation commission  
2 or attorney general under RCW 80.04.095 that a court has determined are  
3 confidential under RCW 80.04.095;

4 (2) The residential addresses and residential telephone numbers of  
5 the customers of a public utility contained in the records or lists  
6 held by the public utility of which they are customers, except that  
7 this information may be released to the division of child support or  
8 the agency or firm providing child support enforcement for another  
9 state under Title IV-D of the federal social security act, for the  
10 establishment, enforcement, or modification of a support order;

11 (3)(a) The names, residential addresses, residential telephone  
12 numbers, and other individually identifiable records held by an agency  
13 in relation to a vanpool, carpool, or other ride-sharing program or  
14 service(~~(; however, these records)~~). Participants' names, general  
15 locations, and email addresses may be disclosed to other persons who  
16 apply for ride-matching services and who need that information in order  
17 to identify potential riders or drivers with whom to share rides;

18 (b) Participants concerned about personal safety may request that  
19 their information not be released to individuals they identify;

20 (c) No civil liability may be imposed by any court on any public  
21 entity or agency or its officers or employees under this subsection for  
22 erroneously releasing a participant's information, except upon proof of  
23 willful or wanton misconduct;

24 (4) The personally identifying information of current or former  
25 participants or applicants in a paratransit or other transit service  
26 operated for the benefit of persons with disabilities or elderly  
27 persons;

28 (5) The personally identifying information of persons who acquire  
29 and use transit passes and other fare payment media including, but not  
30 limited to, stored value smart cards and magnetic strip cards, except  
31 that an agency may disclose this information to a person, employer,  
32 educational institution, or other entity that is responsible, in whole  
33 or in part, for payment of the cost of acquiring or using a transit  
34 pass or other fare payment media(~~(, or to the news media when reporting~~  
35 ~~on public transportation or public safety. This information may also~~  
36 ~~be disclosed at the agency's discretion to governmental agencies or~~  
37 ~~groups concerned with public transportation or public safety)));~~

1 (6) Any information obtained by governmental agencies that is  
2 collected by the use of a motor carrier intelligent transportation  
3 system or any comparable information equipment attached to a truck,  
4 tractor, or trailer; however, the information may be given to other  
5 governmental agencies or the owners of the truck, tractor, or trailer  
6 from which the information is obtained. As used in this subsection,  
7 "motor carrier" has the same definition as provided in RCW 81.80.010;

8 (7) The personally identifying information of persons who acquire  
9 and use transponders or other technology to facilitate payment of  
10 tolls. This information may be disclosed in aggregate form as long as  
11 the data does not contain any personally identifying information. For  
12 these purposes aggregate data may include the census tract of the  
13 account holder as long as any individual personally identifying  
14 information is not released. Personally identifying information may be  
15 released to law enforcement agencies only for toll enforcement  
16 purposes. Personally identifying information may be released to law  
17 enforcement agencies for other purposes only if the request is  
18 accompanied by a court order; and

19 (8) The personally identifying information of persons who acquire  
20 and use a driver's license or identicard that includes a radio  
21 frequency identification chip or similar technology to facilitate  
22 border crossing. This information may be disclosed in aggregate form  
23 as long as the data does not contain any personally identifying  
24 information. Personally identifying information may be released to law  
25 enforcement agencies only for United States customs and border  
26 protection enforcement purposes. Personally identifying information  
27 may be released to law enforcement agencies for other purposes only if  
28 the request is accompanied by a court order.

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 42.56 RCW  
30 to read as follows:

31 (1) Records reflecting communications transmitted in confidence  
32 between a public official, representative, or employee of a public  
33 agency acting in the performance of his or her duties and an attorney  
34 serving in the capacity of legal advisor for the purpose of rendering  
35 or obtaining legal advice, and records prepared by the attorney or a  
36 public official, representative, or employee of a public agency in

1 furtherance of the request for or rendition of legal advice, are exempt  
2 from inspection and copying under this chapter pursuant to the  
3 attorney-client privilege.

4 (2) Records are not exempt from inspection and copying under this  
5 section merely because they reflect communications in meetings where  
6 legal counsel was present or because a record or copy of a record was  
7 provided to legal counsel, if the elements of subsection (1) of this  
8 section are not met.

9 (3) If an agency elects to produce a record that would otherwise be  
10 protected by the attorney-client privilege, any privilege is waived  
11 only as to the record produced. The production shall not waive the  
12 privilege as to the subject matter addressed in the produced record or  
13 as to any other record.

14 (4) Nothing in this section changes the applicability of the  
15 privilege set forth in RCW 5.60.060(2) to public agencies, nor its  
16 scope when claimed by a public agency.

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