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**SENATE BILL 5326**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Pearson, Walsh, and Brown

AN ACT Relating to public disclosure and use of personal information of law enforcement and department of corrections employees; amending RCW 42.56.070 and 42.56.250; and prescribing penalties.

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

**Sec.**  RCW 42.56.070 and 2005 c 274 s 284 are each amended to read as follows:

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection ((~~(6)~~)) (9) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.

(a) In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.

(b) In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and mail the requested public records may be included in an agency's costs.

(8) An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(9) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell, or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law((~~: PROVIDED, HOWEVER, That~~)). However, the lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor((~~: PROVIDED FURTHER, That~~)), and such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the administrative procedure act.

(10)(a) This subsection (10) applies only to requests for records of employees and volunteers of law enforcement and employees and volunteers of the department of corrections.

(b) Before obtaining records containing the names or nonexempt contact information of employees or volunteers, the requester must swear under oath that he or she will not use the information to obtain information exempt under RCW 42.56.250 for a commercial purpose or to harass, stalk, threaten, or intimidate any person.

(c) A person is subject to civil liability if he or she:

(i) Requests, pursuant to this chapter, the names or nonexempt contact information of employees or volunteers in order to obtain information exempt under RCW 42.56.250 for a commercial purpose or to harass, stalk, threaten, or intimidate any person; or

(ii) Uses the names or nonexempt contact information of employees or volunteers, with knowledge that the information was obtained through a request made pursuant to this chapter, in order to obtain information exempt under RCW 42.56.250 for a commercial purpose or to harass, stalk, threaten, or intimidate any person.

(d) A person who is liable under (c) of this subsection may be sued in superior court by any aggrieved party, or in the name of the state by the attorney general or the prosecuting authorities of political subdivisions of this state. A plaintiff may recover five hundred dollars for each item of information used in violation of (c) of this subsection, plus costs and reasonable attorneys' fees. The court may order any other appropriate civil remedy.

(e) For purposes of using the names or nonexempt contact information of employees or volunteers in order to obtain information exempt under RCW 42.56.250, a commercial purpose includes:

(i) Soliciting, marketing, advertising, or self-promoting;

(ii) Inducing any person to economically support any entity; or

(iii) Inducing any person to cease or refrain from economically supporting any entity.

(f) It is not a commercial purpose to obtain names or contact information for purposes of soliciting support for or opposition to any political party, candidate, or ballot measure, as defined in RCW 42.17A.005.

**Sec.**  RCW 42.56.250 and 2014 c 106 s 1 are each amended to read as follows:

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

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

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

(3)(a) The following information held by any public agency in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency: Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal ((~~electronic mail~~)) email addresses, social security numbers, driver's license numbers, identicard numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal ((~~electronic mail~~)) email addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240;

(b)(i) The exemption in (a) of this subsection does not apply with regard to the dates of birth of employees and volunteers of law enforcement and employees and volunteers of the department of corrections if:

(A) The purpose of the request for the date of birth information is a legitimate concern to the public;

(B) The law enforcement agency or the department of corrections provides notice to the person whose date of birth information has been requested, and provides a reasonable opportunity for that person to object to the disclosure on the grounds that the request is not of legitimate public concern or would cause a particular threat to the safety or security of any person; and

(C) The law enforcement agency or the department of corrections determines that any objection to the disclosure is not reasonable to deny the request under the facts and circumstances.

(ii) A requestor may seek judicial review of any decision under this subsection (3)(b) to deny a request for a law enforcement or department of corrections employee's or volunteer's date of birth information, in the superior court of the county where the requestor resides or where the date of birth information is maintained;

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

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

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

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

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

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