
SENATE BILL 5340

State of Washington **54th Legislature** **1995 Regular Session**

By Senators Kohl, Cantu, Fraser, Prentice, Winsley and Fairley

Read first time 01/19/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to disclosure of public information for commercial
2 purposes; amending RCW 42.17.020 and 42.17.260; adding new sections to
3 chapter 42.17 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the disclosure of
6 public information for commercial purposes does not facilitate the
7 fundamental purpose of the public disclosure act of assuring open
8 government and that achieving a proper balance between the need for
9 open government and the right of individual citizens to personal
10 privacy requires clarification of the restrictions on disclosure of
11 information for commercial purposes and the adoption of effective
12 sanctions for violations of these restrictions.

13 **Sec. 2.** RCW 42.17.020 and 1992 c 139 s 1 are each amended to read
14 as follows:

15 (1) "Agency" includes all state agencies and all local agencies.
16 "State agency" includes every state office, department, division,
17 bureau, board, commission, or other state agency. "Local agency"
18 includes every county, city, town, municipal corporation, quasi-

1 municipal corporation, or special purpose district, or any office,
2 department, division, bureau, board, commission, or agency thereof, or
3 other local public agency.

4 (2) "Ballot proposition" means any "measure" as defined by RCW
5 29.01.110, or any initiative, recall, or referendum proposition
6 proposed to be submitted to the voters of the state or any municipal
7 corporation, political subdivision, or other voting constituency from
8 and after the time when the proposition has been initially filed with
9 the appropriate election officer of that constituency prior to its
10 circulation for signatures.

11 (3) "Depository" means a bank designated by a candidate or
12 political committee pursuant to RCW 42.17.050.

13 (4) "Treasurer" and "deputy treasurer" mean the individuals
14 appointed by a candidate or political committee, pursuant to RCW
15 42.17.050, to perform the duties specified in that section.

16 (5) "Candidate" means any individual who seeks election to public
17 office. An individual shall be deemed to seek election when he first:

18 (a) Receives contributions or makes expenditures or reserves space
19 or facilities with intent to promote his candidacy for office; or

20 (b) Announces publicly or files for office.

21 (6) "Commercial advertiser" means any person who sells the service
22 of communicating messages or producing printed material for broadcast
23 or distribution to the general public or segments of the general public
24 whether through the use of newspapers, magazines, television and radio
25 stations, billboard companies, direct mail advertising companies,
26 printing companies, or otherwise.

27 (7) "Commercial purposes" means any activity by a private person
28 for profit that involves:

29 (a) Initiating communication with an individual with the intent of
30 either introducing a product or service for sale or soliciting
31 information to be used for the marketing of a product or service;

32 (b) Assembling information about an individual with the intent of
33 selling or otherwise transferring such information to a person for the
34 purposes described in (a) of this subsection.

35 (8) "Commission" means the agency established under RCW 42.17.350.

36 ((+8)) (9) "Compensation" unless the context requires a narrower
37 meaning, includes payment in any form for real or personal property or
38 services of any kind: PROVIDED, That for the purpose of compliance
39 with RCW 42.17.241, the term "compensation" shall not include per diem

1 allowances or other payments made by a governmental entity to reimburse
2 a public official for expenses incurred while the official is engaged
3 in the official business of the governmental entity.

4 ~~((9))~~ (10) "Continuing political committee" means a political
5 committee that is an organization of continuing existence not
6 established in anticipation of any particular election campaign.

7 ~~((10))~~ (11) "Contribution" includes a loan, gift, deposit,
8 subscription, forgiveness of indebtedness, donation, advance, pledge,
9 payment, transfer of funds between political committees, or transfer of
10 anything of value, including personal and professional services for
11 less than full consideration, but does not include interest on moneys
12 deposited in a political committee's account, ordinary home hospitality
13 and the rendering of personal services of the sort commonly performed
14 by volunteer campaign workers, or incidental expenses personally
15 incurred by volunteer campaign workers not in excess of fifty dollars
16 personally paid for by the worker. Volunteer services, for the
17 purposes of this chapter, means services or labor for which the
18 individual is not compensated by any person. For the purposes of this
19 chapter, contributions other than money or its equivalents shall be
20 deemed to have a money value equivalent to the fair market value of the
21 contribution. Sums paid for tickets to fund-raising events such as
22 dinners and parties are contributions; however, the amount of any such
23 contribution may be reduced for the purpose of complying with the
24 reporting requirements of this chapter, by the actual cost of
25 consumables furnished in connection with the purchase of the tickets,
26 and only the excess over the actual cost of the consumables shall be
27 deemed a contribution.

28 ~~((11))~~ (12) "Elected official" means any person elected at a
29 general or special election to any public office, and any person
30 appointed to fill a vacancy in any such office.

31 ~~((12))~~ (13) "Election" includes any primary, general, or special
32 election for public office and any election in which a ballot
33 proposition is submitted to the voters: PROVIDED, That an election in
34 which the qualifications for voting include other than those
35 requirements set forth in Article VI, section 1 (Amendment 63) of the
36 Constitution of the state of Washington shall not be considered an
37 election for purposes of this chapter.

1 (~~(13)~~) (14) "Election campaign" means any campaign in support of
2 or in opposition to a candidate for election to public office and any
3 campaign in support of, or in opposition to, a ballot proposition.

4 (~~(14)~~) (15) "Expenditure" includes a payment, contribution,
5 subscription, distribution, loan, advance, deposit, or gift of money or
6 anything of value, and includes a contract, promise, or agreement,
7 whether or not legally enforceable, to make an expenditure. The term
8 "expenditure" also includes a promise to pay, a payment, or a transfer
9 of anything of value in exchange for goods, services, property,
10 facilities, or anything of value for the purpose of assisting,
11 benefiting, or honoring any public official or candidate, or assisting
12 in furthering or opposing any election campaign. For the purposes of
13 this chapter, agreements to make expenditures, contracts, and promises
14 to pay may be reported as estimated obligations until actual payment is
15 made. The term "expenditure" shall not include the partial or complete
16 repayment by a candidate or political committee of the principal of a
17 loan, the receipt of which loan has been properly reported.

18 (~~(15)~~) (16) "Final report" means the report described as a final
19 report in RCW 42.17.080(2).

20 (~~(16)~~) (17) "Gift," for the purposes of RCW 42.17.170 and
21 42.17.2415, means a rendering of anything of value in return for which
22 reasonable consideration is not given and received and includes a
23 rendering of money, property, services, discount, loan forgiveness,
24 payment of indebtedness, or reimbursements from or payments by persons
25 (other than the federal government, or the state of Washington or any
26 agency or political subdivision thereof) for travel or anything else of
27 value. The term "reasonable consideration" refers to the approximate
28 range of consideration that exists in transactions not involving
29 donative intent. However, the value of the gift of partaking in a
30 single hosted reception shall be determined by dividing the total
31 amount of the cost of conducting the reception by the total number of
32 persons partaking in the reception. "Gift" for the purposes of RCW
33 42.17.170 and 42.17.2415 does not include:

34 (a) A gift, other than a gift of partaking in a hosted reception,
35 with a value of fifty dollars or less;

36 (b) The gift of partaking in a hosted reception if the value of the
37 gift is one hundred dollars or less;

38 (c) A contribution that is required to be reported under RCW
39 42.17.090 (~~(or 42.17.243)~~);

1 (d) Informational material that is transferred for the purpose of
2 informing the recipient about matters pertaining to official business
3 of the governmental entity of which the recipient is an official or
4 officer, and that is not intended to confer on that recipient any
5 commercial, proprietary, financial, economic, or monetary advantage, or
6 the avoidance of any commercial, proprietary, financial, economic, or
7 monetary disadvantage;

8 (e) A gift that is not used and that, within thirty days after
9 receipt, is returned to the donor or delivered to a charitable
10 organization. However, this exclusion from the definition does not
11 apply if the recipient of the gift delivers the gift to a charitable
12 organization and claims the delivery as a charitable contribution for
13 tax purposes;

14 (f) A gift given under circumstances where it is clear beyond any
15 doubt that the gift was not made as part of any design to gain or
16 maintain influence in the governmental entity of which the recipient is
17 an officer or official or with respect to any legislative matter or
18 matters of that governmental entity; or

19 (g) A gift given prior to September 29, 1991.

20 (~~(17)~~) (18) "Immediate family" includes the spouse, dependent
21 children, and other dependent relatives, if living in the household.

22 (~~(18)~~) (19) "Legislation" means bills, resolutions, motions,
23 amendments, nominations, and other matters pending or proposed in
24 either house of the state legislature, and includes any other matter
25 that may be the subject of action by either house or any committee of
26 the legislature and all bills and resolutions that, having passed both
27 houses, are pending approval by the governor.

28 (~~(19)~~) (20) "Lobby" and "lobbying" each mean attempting to
29 influence the passage or defeat of any legislation by the legislature
30 of the state of Washington, or the adoption or rejection of any rule,
31 standard, rate, or other legislative enactment of any state agency
32 under the state administrative procedure act, chapter 34.05 RCW.
33 Neither "lobby" nor "lobbying" includes an association's or other
34 organization's act of communicating with the members of that
35 association or organization.

36 (~~(20)~~) (21) "Lobbyist" includes any person who lobbies either in
37 his own or another's behalf.

1 (~~(21)~~) (22) "Lobbyist's employer" means the person or persons by
2 whom a lobbyist is employed and all persons by whom he is compensated
3 for acting as a lobbyist.

4 (~~(22)~~) (23) "Person" includes an individual, partnership, joint
5 venture, public or private corporation, association, federal, state, or
6 local governmental entity or agency however constituted, candidate,
7 committee, political committee, political party, executive committee
8 thereof, or any other organization or group of persons, however
9 organized.

10 (~~(23)~~) (24) "Person in interest" means the person who is the
11 subject of a record or any representative designated by that person,
12 except that if that person is under a legal disability, the term
13 "person in interest" means and includes the parent or duly appointed
14 legal representative.

15 (~~(24)~~) (25) "Political advertising" includes any advertising
16 displays, newspaper ads, billboards, signs, brochures, articles,
17 tabloids, flyers, letters, radio or television presentations, or other
18 means of mass communication, used for the purpose of appealing,
19 directly or indirectly, for votes or for financial or other support in
20 any election campaign.

21 (~~(25)~~) (26) "Political committee" means any person (except a
22 candidate or an individual dealing with his own funds or property)
23 having the expectation of receiving contributions or making
24 expenditures in support of, or opposition to, any candidate or any
25 ballot proposition.

26 (~~(26)~~) (27) "Public office" means any federal, state, county,
27 city, town, school district, port district, special district, or other
28 state political subdivision elective office.

29 (~~(27)~~) (28) "Public record" includes any writing containing
30 information relating to the conduct of government or the performance of
31 any governmental or proprietary function prepared, owned, used, or
32 retained by any state or local agency regardless of physical form or
33 characteristics.

34 (~~(28)~~) (29) "Surplus funds" mean, in the case of a political
35 committee or candidate, the balance of contributions that remain in the
36 possession or control of that committee or candidate subsequent to the
37 election for which the contributions were received, and that are in
38 excess of the amount necessary to pay remaining debts incurred by the
39 committee or candidate prior to that election. In the case of a

1 continuing political committee, "surplus funds" mean those
2 contributions remaining in the possession or control of the committee
3 that are in excess of the amount necessary to pay all remaining debts
4 when it makes its final report under RCW 42.17.065.

5 (~~(29)~~) (30) "Writing" means handwriting, typewriting, printing,
6 photostating, photographing, and every other means of recording any
7 form of communication or representation, including, but not limited to,
8 letters, words, pictures, sounds, or symbols, or combination thereof,
9 and all papers, maps, magnetic or paper tapes, photographic films and
10 prints, motion picture, film and video recordings, magnetic or punched
11 cards, discs, drums, diskettes, sound recordings, and other documents
12 including existing data compilations from which information may be
13 obtained or translated.

14 As used in this chapter, the singular shall take the plural and any
15 gender, the other, as the context requires.

16 **Sec. 3.** RCW 42.17.260 and 1992 c 139 s 3 are each amended to read
17 as follows:

18 (1) Each agency, in accordance with published rules, shall make
19 available for public inspection and copying all public records, unless
20 the record falls within the specific exemptions of subsection (6) of
21 this section, RCW 42.17.310, 42.17.315, or other statute which exempts
22 or prohibits disclosure of specific information or records. To the
23 extent required to prevent an unreasonable invasion of personal privacy
24 interests protected by RCW 42.17.310 and 42.17.315, an agency shall
25 delete identifying details in a manner consistent with RCW 42.17.310
26 and 42.17.315 when it makes available or publishes any public record;
27 however, in each case, the justification for the deletion shall be
28 explained fully in writing.

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) Final orders entered after June 30, 1990, that are issued in
32 adjudicative proceedings as defined in RCW 34.05.010(1) and that
33 contain an analysis or decision of substantial importance to the agency
34 in carrying out its duties;

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

38 (d) Interpretive statements as defined in RCW 34.05.010(8) that
39 were entered after June 30, 1990; and

1 (e) Policy statements as defined in RCW 34.05.010(14) that were
2 entered after June 30, 1990.

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

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

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

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

22 (7) This chapter shall not be construed as giving authority to any
23 agency to give, sell or provide access to (~~lists~~) names or addresses
24 of individuals requested for commercial purposes, and agencies shall
25 not do so unless specifically authorized or directed by law: PROVIDED,
26 HOWEVER, That lists of applicants for professional licenses and of
27 professional licensees shall be made available to those professional
28 associations or educational organizations recognized by their
29 professional licensing or examination board, upon payment of a
30 reasonable charge therefor: PROVIDED FURTHER, That such recognition
31 may be refused only for a good cause pursuant to a hearing under the
32 provisions of chapter 34.05 RCW, the administrative procedure act.

33 NEW SECTION. Sec. 4. A new section is added to chapter 42.17 RCW
34 to read as follows:

35 (1) Except as otherwise authorized by law, it is a violation of
36 this chapter for any person to request from any agency the names or
37 addresses of individuals, or to use any names or addresses of
38 individuals obtained by such request for commercial purposes.

1 (2) A violation of this section is subject to the remedies,
2 procedures, penalties, and sanctions provided for in RCW 42.17.350
3 through 42.17.450.

4 (3) Any individual whose name or address has been obtained and used
5 in violation of this section has a cause of action for invasion of
6 privacy and may recover actual and punitive damages and costs.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 42.17 RCW
8 to read as follows:

9 In order to facilitate the tracing of the source, if public
10 information has been disseminated or used in violation of law, agencies
11 may "salt" the data that is disseminated by randomly inserting
12 fictitious names.

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