

SENATE BILL REPORT

SB 5418

As of February 1, 2018

Title: An act relating to recommendations of the sunshine committee.

Brief Description: Enacting recommendations of the sunshine committee.

Sponsors: Senator Chase.

Brief History:

Committee Activity: State Government: 2/10/17.

State Government, Tribal Relations & Elections: 1/31/18.

Brief Summary of Bill

- Requires public disclosure for personal information where the subject of the information consents to disclosure.
- Exempts public employee and volunteer passport and visa numbers and dates of birth from public disclosure.
- Exempts information regarding the ongoing investigations of employment-related discrimination from public disclosure until the agency provides notice of the investigation outcome.
- Exempts trade secrets from public disclosure.
- Exempts financial information from public disclosure only if the information is marked confidential and accompanied by a statement describing the expected harm, loss, or unfair private gain disclosure would cause.
- Allows an award of attorney's fees to any defendant who successfully defends against an injunction of public disclosure of financial, commercial, or proprietary records.

SENATE COMMITTEE ON STATE GOVERNMENT

Staff: Samuel Brown (786-7470)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

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Background: The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires that all state and local government agencies make all public records available for public inspection and copying unless certain statutory exemptions apply. Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Personal Information. Personal information is exempt from disclosure in various circumstances within the PRA. A general category of exemptions for personal information includes: childcare enrollment, public employees and officials, tax assessments, personal financial information, driver's license records, vehicle license information associated with certain agency conducting investigations, 911 emergency systems data, selective service declination, and claims to the Board of Industrial Insurance Appeals.

Public Employee Records. A separate exemption protects certain personal information of public employee personnel records from disclosure. Such information includes residential and email addresses, telephone numbers, social security and driver's license numbers, and emergency contact information. The exemption includes the same information of an employee's dependents. Records of an agency's active and ongoing investigation of an employment related discrimination claim is also exempt.

Financial Information. A category of exemptions applies to certain kinds of sensitive financial, commercial, and proprietary information obtained by agencies. Some of the main exemptions in this category include: valuable designs, codes, or data that would cause private gain and public loss if disclosed; information obtained for certain bidding processes; investment information related to public trust or retirement funds; proprietary vendor information related to state purchased health care; certain business related information collected by the Department of Commerce; and certain business information related to marijuana licensing and regulation.

State Procurement Records. State procurement law exempts bid submissions and evaluations of bids for goods and services contracts from disclosure until the agency announces the apparent successful bidder.

Trade Secrets. A trade secret is defined in law as information that is under efforts to remain secret and has economic value from not being generally known or ascertainable to other people who could use such information for economic value. The law protects trade secrets from misappropriation and courts may order injunctions and penalties against misappropriations of trade secrets.

Enjoining Disclosure. The PRA allows a procedure for an agency, or person whose name is in information subject to disclosure, to seek an injunction in superior court to stop the disclosure of a record. The court may enjoin disclosure if it finds that disclosure is clearly not in the public interest and would substantially and irreparably damage a person or vital governmental function.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Personal Information. The subject of personal information, or the parents or guardian of a child who is the subject of personal information, may provide consent to the agency for disclosure of the information.

Public Employee Records. The city, state, and zip code of the residential address of a public employee or volunteer is not exempt from public disclosure requirements. Employee and volunteer passport and visa numbers and dates of birth are exempt from public disclosure requirements. All identifying and contact information of public agency employee or volunteer dependents is exempt from public disclosure requirements. The exemption for information regarding the ongoing and active agency investigation of employment-related discrimination expressly includes the entire records of the ongoing investigation and lasts until the agency informs the complaining employee of the outcome of the investigation.

Financial Information. Financial, commercial, and proprietary information is only exempt from public disclosure if the information is submitted to the agency with a designation as confidential and an explanation for the expected harm disclosure would cause, or the agency determines that disclosure is substantially likely to cause public or private loss or unfair private gain. Trade secrets are exempt from public disclosure requirements.

A court may award attorney's fees to any defendant, including an agency, who successfully defends against an action to enjoin disclosure of financial, commercial, and proprietary related records.

State Procurement Records. The exemption from disclosure of bid submissions and evaluations of bids for goods and services contracts until a successful bidder is announced is transferred to the PRA.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (State Government): *Testimony from 2017 Regular Session.* PRO: This bill will increase accountability and transparency of public information held by the government. It would also make it easier for businesses, agencies, and individuals to comply with the PRA. The bill will reduce lawsuits when business information is requested by clarifying what is exempt, rather than needing a third-

party lawsuit to enjoin disclosure. Right now, there's a chilling effect on public records requests for business information because of the likelihood of a lawsuit and the lack of fee-shifting in favor of a requestor, who's acting in the public interest.

CON: The awarding of attorney's fees potentially encourages businesses to seek a competitor's business information to gain an unfair advantage in the marketplace, with the business reporting that information to the government liable for attorney's fees.

OTHER: The requirements for the classification of information at the time of the disclosure may potentially be problematic. The threshold to exempt business information is significantly raised, which may put Washington in a worse competitive position to secure new business sites.

Persons Testifying (State Government): PRO: Senator Maralyn Chase, Prime Sponsor; Nancy Krier, Office of the Attorney General; Rowland Thompson, Sunshine Committee; Kathy George, Sunshine Committee.

CON: Steve Gano, Uber.

OTHER: Jaime Rossman, Washington State Department of Commerce.

Persons Signed In To Testify But Not Testifying (State Government): No one.

Staff Summary of Public Testimony on Proposed Substitute (State Government, Tribal Relations & Elections): PRO: The Sunshine Committee has considered these issues carefully and is trying to make sure that our citizens are protected.

CON: We are concerned about the data we submit for regulatory compliance being obtained by our competitors and have concerns about the attorney fee-shifting provision.

OTHER: We are concerned about the disclosure of employee zip codes; no public purpose is served by this disclosure. Exempting employee dates of birth was not a Sunshine Committee recommendation, and by passing that, the committee process would be damaged by stifling debate and voting. The current system for disclosure of financial information does not work for anyone, and having sensitive information be marked from the outset will make it work more easily. Firms are targeting public employees using data such as zip codes in public databases.

Persons Testifying (State Government, Tribal Relations & Elections): PRO: Senator Maralyn Chase, Prime Sponsor.

CON: Steve Gano, Uber.

OTHER: Matt Zuvich, Washington Federation of State Employees; Rowland Thompson, Allied Daily Newspapers of Washington; Kathy George, Sunshine Committee; Arthur West, citizen; Seamus Petrie, Washington Public Employees Association.

Persons Signed In To Testify But Not Testifying (State Government, Tribal Relations & Elections): No one.