

# HOUSE BILL REPORT

## HB 1538

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**As Reported by House Committee On:**  
State Government & Tribal Relations

**Title:** An act relating to sunshine committee recommendations.

**Brief Description:** Concerning sunshine committee recommendations.

**Sponsors:** Representative Springer.

**Brief History:**

**Committee Activity:**

State Government & Tribal Relations: 2/8/19, 2/19/19 [DPS].

**Brief Summary of Substitute Bill**

- Provides that certain personal information that is exempt from disclosure under the Public Records Act may be disclosed with the consent of the subject of the information.
- Provides that certain financial, commercial, and proprietary data that is exempt from disclosure under the Public Records Act may be disclosed if it is not marked confidential and accompanied by a particularized explanation of harm.
- Narrows disclosure exemptions for certain employment information and for state procurement records.

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### HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Goehner, Assistant Ranking Minority Member; Appleton, Dolan, Hudgins and Mosbrucker.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Smith.

**Staff:** Jason Zolle (786-7124).

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*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.*

## **Background:**

The Public Records Act (PRA) generally requires state and local agencies to make many government records available to the public upon request. There are, however, over 500 statutory exemptions for certain records or information contained in records. The Office of the Code Reviser is required to annually compile a list of all public disclosure exemptions in Washington statutes.

Washington created a Public Records Exemption Accountability Committee, known as the Sunshine Committee, in 2007 to review these exemptions from public disclosure and provide recommendations as to whether exemptions should be continued, modified, or terminated. The Sunshine Committee consists of 13 members appointed to staggered four-year terms.

The Sunshine Committee meets in public and considers input from interested parties. By November 15 of each year, it provides a report to the Legislature with its annual recommendations.

In its 2016 report, the Sunshine Committee recommended amendments to the PRA exemptions for certain personal information, employment information, financial, commercial, and proprietary data, and records related to state procurement.

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## **Summary of Substitute Bill:**

Several PRA exemptions for certain personal information, employment information, financial, commercial, and proprietary data, and records related to state procurement are modified as recommended by the Sunshine Committee in 2016.

### Certain Personal Information May Now Be Disclosed With Consent.

Certain personal information is no longer categorically exempt from disclosure—instead, it may be disclosed if the agency has received consent for disclosure from the subject of the information or, in the case of a child, from the child's parent or guardian. This applies to:

- personal information in files of public school students, public health agency patients, welfare recipients, children enrolled in child care or early learning services or youth programs, government employees, and taxpayers;
- financial information, including credit card numbers and Social Security numbers, or relating to a small loan;
- records used to apply for a driver's license or identicaid;
- information related to worker compensation claims resolution structured settlement agreements submitted to the Board of Industrial Appeals;
- information contained in emergency notification or enhanced 911 databases; and
- voter registration information for people under the age of 18.

Changes are also made to the exemption for personal information in agency records for employees and volunteers. The exemption for residential addresses is narrowed such that

city, state, and zip codes are now subject to disclosure. Passport and visa numbers are now explicitly exempt from disclosure.

Records compiled by an agency during an active and ongoing investigation into unlawful employment discrimination continue to be exempt from disclosure. The duration of the exemption is clarified; records are subject to disclosure once the agency has notified the complaining employee of the outcome of the investigation.

Certain Financial, Commercial, and Proprietary Information May Now Be Disclosed Unless Clearly Marked Confidential with a Clear Explanation of Harm.

Certain financial, commercial, and proprietary information is no longer categorically exempt from disclosure—instead, there is a presumption that it may be disclosed unless it is clearly marked as confidential and accompanied by a particularized explanation of the harm that is expected if it were disclosed. This applies to:

- financial, commercial, or business information:
  - in a bid or proposal for a contract for construction or repair of a ferry system or highway;
  - pertaining to export services under the purview of the Economic Development Finance Authority or in connection with an export trading company or state agricultural market;
  - in applications for loans with programs for energy freedom, economic development, the Department of Commerce, and rural Washingtonians;
  - related to evaluations and examinations for business and industrial development corporations;
  - for health care services and equipment contracting;
  - related to leases for a football and soccer stadium;
  - related to licensing applications for horse racing, marijuana production and retail, liquor, gambling, and lottery, as well as other documents related to social-card-game gambling;
  - provided to the Department of Ecology (ECY) or the Life Sciences Discovery Fund;
  - provided in connection with motor vehicle fuel licensing;
  - for small businesses when it can be connected to a particular business;
  - relating to University of Washington investments and endowment funds;
  - related to small securities offerings supplied to the Department of Financial Institutions;
  - supplied to the Washington State Liquor and Cannabis Board (LCB) in connection with obtaining a marijuana-related license;
  - related to marijuana transport information submitted to the LCB; or
  - in possession of a city's retirement board for its employees; and
- proprietary or research data:
  - obtained by any agency within the past five years (including valuable formulae, designs, drawings, computer source, or object code);
  - in applications for and delivery of services by the Clean Washington Center;
  - relating to vendors' methods of conducting business in connection with state-purchased health care;

- in surface mining or reclamation permit applications submitted to the Department of Natural Resources;
- in farm plans developed by conservation districts or in connection with water pollution control;
- in applications for grants related to bioscience-based economic development and disease control;
- submitted to the ECY related to electronic product recycling;
- related to a transfer of crude oil from a railroad car submitted to the ECY; or
- related to the Drug Take-Back Program filed with the Department of Health.

When a requester seeks records and information from the above list of financial, commercial, and proprietary information that are not clearly marked as confidential, the agency's time to respond to the request is suspended. The agency must send a notice to the subject of information within five business days. If the subject of the information responds to the agency with a written statement of the need to keep the information confidential, including a particularized explanation of expected harm from disclosure, within 15 business days after the agency sends its notice, the information is exempt from disclosure. If the agency does not receive such a statement from the subject of the information, the information must be disclosed.

*Trade Secrets.* A new exemption from disclosure is created for trade secrets as defined in the Uniform Trade Secrets Act, subject to the same requirement that they be marked as confidential and coupled with a particularized explanation of harm.

*Attorneys' Fees.* Attorneys' fees are now available for a government defendant that prevails when sued for failing to disclose any of the financial, commercial, or proprietary information listed above.

*State Procurement Records.* The exemption for records related to state procurement, which applies until the agency announces a successful bidder, is narrowed in two ways:

- the exemption now applies only to bids, quotations, or proposals submitted to an agency for goods or services; and
- the exemption no longer applies once the agency has decided not to accept any bids, quotations, or proposals.

### **Substitute Bill Compared to Original Bill:**

The substitute bill removes agency discretion to exempt from disclosure certain financial, commercial, and proprietary information that is not marked as confidential, but it instead imposes a notice requirement to allow third parties to submit a letter to the agency that requires the agency to keep their information confidential.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The PRA exemptions related to financial, commercial, and proprietary information were enacted in response to a fear from businesses that disclosure rules put them at a disadvantage when they submit sensitive information to the government. What is considered private, however, is in the eye of the beholder. Right now agencies simply do not disclose any information in these records, but some of that information should be disclosable. This bill puts the burden on the entity to say what information they want to be kept confidential and why, and the agency will honor that. The provision in this bill allowing personal information to become public with consent is a response to media representatives that wanted to get information around child abuse and foster care violations. The default position is to protect the identity of minor children, but there are instances when parents and child advocates want this information to be available. This bill allows agencies to do that.

(Opposed) None.

(Other) The new language in this bill that allows agencies to exempt certain financial, commercial, and proprietary information that is substantially likely to cause public or private loss or unfair gain is too subjective for agencies to make that determination. The provision in this bill that subjects the city, state, and zip code of public employees to disclosure is intrusive on an employee's privacy and makes it easier for employees to be tracked down and threatened. The PRA exemption for records in an active and ongoing employment discrimination investigation should be extended to cover the names of witnesses, victims, and persons involved even after the investigation is complete.

**Persons Testifying:** (In support) Representative Springer, prime sponsor.

(Other) Bill Clarke, Washington PUD Association; Dennis Eagle, Washington Federation of State Employees; and Lauren Burnes.

**Persons Signed In To Testify But Not Testifying:** None.