

Opinion

Christine O. Gregoire

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PUBLIC DISCLOSURE LAW - Authority of public agencies to allow inspection and copying of lists of individuals.

RCW 42.17.260 prohibits public agencies from disclosing or allowing the inspection of lists of individuals if the requester intends to make commercial use of the information; the prohibition is not limited to cases where the requester intends to commercially solicit the individuals on the list.

January 27, 1998

The Honorable Phil Dyer
State Representative, 5th District
P.O. Box 40600
Olympia, WA 98504-0600

The Honorable Mary Margaret Haugen
State Senator, 10th District
P.O. Box 40482
Olympia, WA 98504-0482

The Honorable Cathy Wolfe
State Representative, 22nd District
P.O. Box 40600
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The Honorable Dino Rossi
State Senator, 5th District
P.O. Box 40482
Olympia, WA 98504-0482

Cite As: AGO 1998 No. 2

Dear Senators Haugen and Rossi, and Representatives Dyer and Wolfe:

By letter previously acknowledged, you requested our opinion on a question which we paraphrase as follows:

Is a commercial firm entitled to inspect and copy public records not otherwise exempt from public disclosure, including lists of individuals, when the firm's purpose is not to contact individuals for purposes of commercial solicitation, but the firm does expect to use the records for general business purposes?

For the reasons set forth below, we conclude that the answer to your question is "no". Although commercial firms are entitled to inspect and copy public records which are not otherwise exempt from disclosure, the Public Records Act prohibits disclosure of lists of

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STATE OF WASHINGTON
FEB 18 1998
TIME 9:26
98-05-076

individuals which are requested for commercial purposes. There is nothing contained in the Act which distinguishes between different types of commercial purposes.

BACKGROUND

The Public Disclosure Act was enacted in 1972 as Initiative 276. It became effective July 1, 1973, and was codified in chapter 42.17 RCW. The Act is "a strongly worded mandate for broad disclosure of public records." *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). The term "public record" is defined in the Act as "any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." RCW 42.17.020(36).

The Act states the provisions of chapter 42.17 RCW "shall be liberally construed to promote . . . full access to public records so as to assure continuing public confidence [in] . . . governmental processes, and so as to assure that the public interest will be fully protected." RCW 42.17.010(11). The state Supreme Court has held this declaration of policy is a command that the provisions of the Act "be liberally construed and that its exceptions be narrowly confined." *Hearst*, 90 Wn.2d at 128.

Although disclosure is favored, RCW 42.17.010(11) cautions that the Act "shall be enforced so as to insure that . . . all persons reporting under this chapter will be protected from harassment and unfounded allegations based on information they have freely disclosed." As we stated in AGO 1975 No. 15, there are two general types of public records which are exempt from disclosure: records which would invade personal privacy and those which would impair a vital governmental interest.¹ See RCW 42.17.310 - 31909.

ANALYSIS

Under the Public Records Act, commercial firms are entitled to inspect and copy public records which are not otherwise exempt from public disclosure or prohibited from being disclosed. However, the Public Records Act prohibits disclosure of lists of individuals which are requested for commercial purposes. RCW 42.17.260(9) states:²

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 office of the chief clerk of the

¹ A copy of AGO 1975 No. 15 is attached.

² The language found in RCW 42.17.260(9) was originally codified in RCW 42.17.260(5).

house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That 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 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.

We understand you are concerned about whether the statute restricts access to lists, regardless of whether the requester intends to directly solicit the individuals named in the list, or intends to use the information for general business reasons. The first step in understanding a statute is to consider its plain language. Washington State Coalition for the Homeless v. Department of Soc. & Health Servs., No. 62879, 1997 WL 795959, at *5 (S. Ct. Dec. 24, 1997). When a statute is unambiguous, "it is not subject to judicial construction and its meaning is to be derived from the language of the statute alone." State v. Chester, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997); In re Eaton, 110 Wn.2d 892, 898, 757 P.2d 961 (1988).

RCW 42.17.260(9) broadly states that it applies when a list is requested for "commercial purposes". The statute does not distinguish between different types of commercial purposes. Nor is the phrase "commercial purpose" among the words and phrases defined by the Public Records Act. See RCW 42.17.020. When a specific, statutory definition does not exist, the words of a statute are given their ordinary meaning. Chester, 133 Wn.2d at 22. Nontechnical words are given their dictionary definition. Id. Black's Law Dictionary states that the term "commercial" "[r]elates to or is connected with trade and traffic or commerce in general; is occupied with business and commerce Generic term for most all aspects of buying and selling." Black's Law Dictionary 270 (6th ed. 1990) (citations omitted). This comports with Webster's Dictionary, which defines commercial as "[o]f or relating to commerce . . . [e]ngaged in commerce." Webster's II New Riverside Univ. Dictionary 286 (1988). As we concluded in AGO 1975 No. 15, the word "commercial" broadly encompasses "any 'profit expecting' business activity." AGO 1975 No. 15 at 10.

The next step in analyzing the phrase is to consider the meaning of the word "purpose". "Purpose" is defined as "[t]hat which one sets before him to accomplish; an end, intention, or aim, object, plan, project. [The] term is synonymous with ends sought, an object to be attained, an intention, etc." Black's at 1236 (citations omitted). Similarly, Webster's defines "purpose" as "[t]he object toward which one strives or for which something exists". Webster's at 956. When the word "purpose" is read together with "commercial", the phrase "clearly indicates that what is required in order to render the statute applicable is an intent to use the list of individuals in such a manner as to facilitate commercial activity." AGO 1975 No. 15 at 10.

There is nothing in the definitions which limits the scope of the terms "commercial" or "purpose". When the language of a statute is clear, the courts will not add language to the statute "even if [they] believe the Legislature intended something else but failed to express it

adequately.” Washington State Coalition for the Homeless, 1997 WL 795959, at *3. AGO 1975 No. 15 states that if the requester has a commercial purpose and intends to directly contact or personally affect the individuals named in the list, RCW 42.17.260 prohibits disclosure. AGO 1975 No. 15 at 10. It is our understanding that this language in the 1975 opinion has been interpreted in a variety of ways by state agencies. While the statute clearly encompasses a commercial purpose which involves direct contact of the individuals named in a list, we do not believe the scope of the term “commercial purpose” is limited to situations in which individuals are directly contacted or personally affected.

Our opinion is solidified by a recent case in which the state Supreme Court considered the broadly phrased exemption from the Public Records Act found in RCW 42.17.310(1)(d), Newman v. King County, __ Wn.2d __, 947 P.2d 712 (1997). RCW 42.17.310(1)(d) exempts:

Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person’s right to privacy.

In Newman, the question before the Court was whether information which pertains to an open police investigation can be withheld from disclosure. At the time the public records request for access to the file was made, the investigation file in question was twenty-five years old. The case was reopened approximately three years before the request for access was made. The Court recognized that exemptions to the Public Records Act are narrowly construed and disclosure is strongly favored. Newman, 947 P.2d at 715. However, the Court found “[a]n inherent clash exists between the PDA’s presumption and preference for disclosure, prior case law requiring a narrow interpretation of exemptions, and the broad language of the exemption.” Id. The Court concluded that the statute provides a “categorical exemption” for all records contained in open, investigative files. Id. The Court held that since the statute does not limit the scope of the exemption, the PDA does not require the police department to perform any segregation of the documents in the file. Id. at 716. Like the exemption considered in Newman, RCW 42.17.260(9), the provision at issue, is a broadly stated, categorical prohibition. There is absolutely nothing contained in the statute which narrows the definition of a commercial purpose.

It should be noted that the general prohibition contained in RCW 42.17.260(9) is not absolute. If disclosure of a list of individuals is “specifically authorized or directed by law”, the list may be disclosed regardless of whether it is requested for a commercial purpose. RCW 42.17.260(9). An example of a law authorizing disclosure is found in RCW 46.12.370. The Department of Licensing may disclose lists of registered owners of vehicles for limited commercial purposes, such as identifying vehicle owners to manufacturers so that notice may be given of safety-related defects. RCW 46.12.370(1). Through the use of such statutes, the

ATTORNEY GENERAL OF WASHINGTON

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Representatives Dyer and Wolfe

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Legislature is able to identify the commercial purposes which it believes justify disclosure of lists of individuals.

We trust the foregoing will be of assistance to you.

Very truly yours,

CHRISTINE O. GREGOIRE
Attorney General



ANNE E. EGELER
Assistant Attorney General

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Enclosure



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OFFICES AND OFFICERS--STATE--DEPARTMENT OF MOTOR VEHICLES--
PUBLIC RECORDS--ACCESS TO LISTS OF INDIVIDUALS UNDER
INITIATIVE NO. 276.

(1) In the absence of specific legal authorization or direction, a public agency governed by Initiative No. 276 (chapter 42.17 RCW) is prohibited by RCW 42.17.260(5) from supplying the names of natural persons in list form when the person requesting such information from the public records of the agency intends to use it to contact or in some way personally affect the individuals identified on the list and when the purpose of the contact would be to facilitate that person's commercial activities.

(2) Application of above principles to several specific factual situations involving records in the custody of the state department of motor vehicles.

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July 17, 1975

Honorable Jack G. Nelson
Director, Department of Motor Vehicles
Highways-Licenses Building
Olympia, Washington 98504

Cite as:
AGO 1975 No. 15

Dear Sir:

By letter previously acknowledged you have requested our opinion on several questions pertaining to RCW 42.17.260 which establishes controls on the distribution of lists of individuals by a public agency such as the department of motor vehicles.¹ We paraphrase those questions as follows:

(1) Does RCW 42.17.260(5) prohibit the department of motor vehicles from supplying a list of names and addresses of individuals licensed to do business by it when such information is requested either to facilitate the organization

¹ Since our receipt of your request this statute has been significantly amended in a manner bearing directly upon your first and third questions. See, § 14, chapter 294, Laws of 1975, 1st Ex. Sess., which we will quote in pertinent part, and discuss, in responding to those questions within the body of our opinion.

of a trade group or to identify competitors'

(2) Does RCW 42.17.260(5) prohibit the department from supplying a list of names and addresses of owners of antique cars specially licensed by the state when the intended use by the requester is to solicit membership in an antique car owner's club organized as a nonprofit organization?

(3) Does RCW 42.17.260(5) prohibit the department from allowing access to a list of individuals who have been licensed by it where the requester intends to use the list to identify licensed individuals for the purpose of attempting to sell products or services?

(4) Does RCW 42.17.260(5) prohibit access to public records in list form which identify individuals as registered owners of automobiles blocking emergency exits or "no parking" areas where the requester is a commercial entity?

(5) Does RCW 42.17.260(5) prohibit the department from supplying lists of individuals, together with ancillary information as to their ownership interests in personal property, when the requester intends to use the lists for the related purposes of assessing credit risks or identifying holders of security interests and making judgments about future business dealings?

(6) Does RCW 42.17.260(5) prohibit the department from supplying access to lists of individuals to a business entity which merely uses those lists to create statistics which are then sold when the requester agrees to prevent further access to or use of the names thus provided for the purpose of contacting the named individuals or otherwise personally affecting them?

We answer questions (2), (4) and (6) in the negative, question (5) in the affirmative, and questions (1) and (3) in the manner set forth in our analysis.

ANALYSIS

Chapter 42.17 RCW, which codifies Initiative No. 276,² as amended, is a comprehensive enactment consisting of four major substantive chapters. Your questions pertain, particularly, to Chapter IV, relating to public records, which

² Approved by the voters at the November 7, 1972, state general election.

is codified as RCW 42.17.250 through .340.

The basic thrust of this part of the law is to make all "public records," as broadly defined in RCW 42.17.020(26),³ open to inspection by any person requesting access to them. Accord, RCW 42.17.010(11), a part of the "declarations of policy" contained in the measure, which provides that:

" . . . mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society."

See, also, RCW 42.17.260(1) and RCW 42.17.270, the basic substantive provisions implementing this policy, which read, in part, as follows:

" . . . Each agency, in accordance with published rules, shall make available for public inspection and copying all public records. . . ." (RCW 42.17.260(1).)

"Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter." (RCW 42.17.270.)⁴

³ "'Public record' includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."

⁴ As amended by § 15, chapter 294, Laws of 1975, 1st Ex. Sess.

In contrast to these provisions which mandate access to public records there, however, are two general situations in which the law reflects the finding of a need to prevent public disclosure; i.e., if public review would (1) invade a protected zone of personal privacy or (2) impair a vital governmental interest. Thus, RCW 42.17.260(1) goes on (after the opening sentence above quoted) to provide that:

" . . . To the extent required to prevent an unreasonable invasion of personal privacy, an agency shall delete identifying details when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing."

In addition, RCW 42.17.290⁵ states that:

"Agencies shall adopt and enforce reasonable rules and regulations, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies from honoring requests received by mail for copies of identifiable public records."

Similarly, RCW 42.17.310, after providing for certain specific exemptions from the "public access" requirements of RCW 42.17.260(1) and .270, then qualifies those exceptions as follows:

"(2) The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the

⁵ As amended by § 16, chapter 294, Laws of 1975, 1st Ex. Sess.

specific records sought. No exemption shall be construed to permit the non-disclosure of statistical information not descriptive of any readily identifiable person or persons."

And finally, RCW 42.17.330 provides that:

"The examination of any specific public record may be enjoined if, upon motion and affidavit, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions."

Complementing these exemptions is the provision you have requested us to construe and apply - RCW 42.17.260(5), the final subsection of that statute. At the time we received your request this subsection read as follows:

"This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law."

Subsequently, however, § 14, chapter 294, Laws of 1975, 1st Ex. Sess., which became effective on July 2, 1975, when signed by the governor,⁶ amended this subsection by adding the following provisos:

". . . PROVIDED, HOWEVER, That 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 such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.04 RCW."

⁶ Accord, an emergency clause appearing in § 28 of the act.

In reviewing your request, we have determined that it requires a response on two levels. First we need in the abstract to establish the correct construction of the phrase "lists of individuals requested for commercial purposes" in RCW 42.17.260(5). Then we must apply the analysis developed in construing that phrase to the particular factual situations described in your specific questions which, we understand, have arisen in the context of actual requests for public records directed to your agency.⁷

Preliminarily, however, we must address ourselves to another issue. As will readily be seen, the restriction contained in RCW 42.17.260(5) is only conditional since an agency may provide lists if it has specific authorization or direction to do so.⁸ We need, therefore, to determine at the outset whether the department of motor vehicles has specific authority or direction to supply such public records as would otherwise fall under this restriction.

The only relevant statute is RCW 46.01.250, which predates chapter 42.17 RCW. Under that statute it is the duty of the department, through its director:

". . . upon request and payment of the fee as provided herein to furnish under seal of the director certified copies of any records of the department, except those for confidential use only. . . ."

In our opinion, RCW 46.01.250 does not contain the requisite specific authority that would cancel the restriction contained in RCW 42.17.260(5). In the first place, the statute predates Initiative No. 276,⁹ and since the concept introduced by RCW 42.17.260(5) is new it cannot be said that the issue involved was contemplated and covered by the earlier provision.

Secondly, RCW 46.01.250 does not specifically direct access to lists of individuals requested for any purpose while the later enacted terms of RCW 42.17.260(5) address that problem area specifically. We must construe the two statutes

⁷ From the information with which you have provided us there appears to be no question but that all of the materials with which you are concerned are "public records" as defined in RCW 42.17.020(26), supra.

⁸ E.g., the above quoted 1975 amendment to RCW 42.17.260(5) itself.

⁹ See, § 46.08.110, chapter 12, Laws of 1961.

together, Champion v. Shoreline School Dist., 81 Wn. 2d 672, 504 P. 2d 304 (1972), and in so doing the integrity of both is maintained because RCW 46.01.250 controls requests of the department for certified records except when compliance with such requests is restrained by the provisions of RCW 42.17.260(5).¹⁰

Having so concluded we turn, now, to the basic task at hand - the construction of RCW 42.17.260(5) itself. We begin with two general observations regarding this statute which may be derived from certain of our previous opinions regarding its provisions. First, RCW 42.17.260(5) does not prohibit access to raw data from which a person could construct his own list of individuals for commercial purposes. See, AGLO 1973 No. 113, copy enclosed. It does, however, prevent access to lists of individuals requested for commercial purposes even if the agency having custody can effectively grant access to the requested information only in list form. Accord, AGLO 1975 No. 38, a copy of which is also enclosed.

Another general observation regarding RCW 42.17.260(5) is that it is to be narrowly construed. First, we so conclude for the reason that the policy declaration in RCW 42.17.020 indicates that the statute is intended to open up access to public records and decision-making apparatus. To unduly restrict such access by resort to RCW 42.17.260(5) would be inconsistent with that declaration.

Secondly, as we have earlier seen, the primary reasons contained in the law for restricting access to public records are based upon (a) rights of personal privacy and (b) the protection of vital governmental interests. Once those interests were given consideration and protected adequately it is apparent that the intent of the drafters was to create greater access to public records. However RCW 42.17-.260(5), if liberally applied, could significantly narrow that access.

Consistent with this rationale, it is further our opinion that this subsection of the Initiative was intended by its framers to give statutory recognition to one particular

¹⁰ This conclusion is buttressed by the construction clause of Initiative No. 276, now RCW 42.17.920, which reads as follows:

"The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern."

circumstance in which a public agency, if not restrained, could contribute to potential invasions of personal privacy. Where the work product of an agency in the form of a list of individuals would, if supplied to others, be used by the persons requesting it in such a manner as to contact or otherwise personally affect the individuals identified on the list it was, in our judgment, the intent of the drafters (though somewhat ineptly expressed) to limit access.

Next, let us consider the key statutory words; i.e., "... lists of individuals requested for commercial purposes . . ." (Emphasis supplied.)

Each of these words is to be construed in accordance with its ordinary meaning since, absent any indications to the contrary, words used in a statute are to be so read. Rena-Ware Distrib., Inc. v. State, 77 Wn. 2d 514, 463 P. 2d 622 (1970). Unlike a number of other terms used in Initiative No. 276, none of the above were apparently thought to be ambiguous enough to the drafters to warrant special definition in the act.¹¹

We begin with the word "lists." In singular form this word generally means:

"A catalogue or roll [as developed from a strip of paper] consisting of a row or series of names, figures, words or the like."¹²

Any grouping of names of individuals in a row or series is thus a "list" for the purposes of the statute under consideration.¹³

¹¹ See, RCW 42.17.020 which, while defining some twenty-seven other words or phrases, is silent with regard to "lists," "individuals," or "commercial purposes."

¹² 2 Oxford English Dictionary, Compact Edition, p. 336.

¹³ However, even given the broad definition of public record in RCW 42.17.020(26), to the extent that such a list would have to be "made to order" to meet a request (rather than being an already created public record) the agency involved would have no duty to produce or process the list since such a "custom" list would not be a public record as defined in the statute.

Next, we turn to the word "individuals." This term, as used in the initiative, has a certain meaning which can be inferred from the expressly defined word "person." RCW 42.17.020(21) states that:

"'Person' includes an individual, partnership, joint venture, public or private corporation, association, federal, state or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized."

The content of this definition thus suggests that the word "individual" was intended to refer to natural persons - as opposed to business entities, committees, or groups.¹⁴ Further, the defined term "person" is often used in the law in contexts including both natural persons and entities. See, for example, RCW 42.17.090(1)(b), requiring the reporting of the names of persons who contribute to candidates or political committees; also, RCW 42.17.200, directing certain persons who engage in "grass roots" lobbying to file designated reports. In each of these cases there is a clear indication that "persons," as opposed to "individuals," need to be identified or to report. In contrast, see, RCW 42.17-.050(1)(a), which requires a candidate or political committee to identify to the public disclosure commission (the agency which administers the subject law) "one legally competent individual" to be his or its treasurer. Clearly, the intent here is to require a natural person to be the treasurer.

In dealing with the phrase "commercial purposes" we will first consider the adjective "commercial." This word is one which has been construed a number of times in a variety of context and it is possible to limit it so as to exclude business activities not involved in buying and selling of goods.¹⁵ However, we believe that the word as here used was intended to cover a broader range of business activity.

¹⁴ That being the case, we conclude that RCW 42.17.260(5) does not preclude an agency from supplying names and other identifying details of persons other than individuals if the agency is otherwise permitted or required to do so by RCW 42.17.260, et seq., and other statutory provisions.

¹⁵ United States v. Public Service Co. of Colorado, 143 F. 2d 79 (1944).

Such a construction is most consistent with what we see as the intent of RCW 42.17.260(5); namely, to limit such ease of access to "individuals" by persons with commercial interests as would otherwise be facilitated by the supplying by a public agency of lists of individuals in its possession. In contrast, a narrower definition of "commercial" could lead to the granting of access to one type of business activity and not to another - a result which would not only be inconsistent with our general analysis herein but would also be inconsistent in the treatment of similar enterprises.

We therefore conclude that a broad definition, encompassing any "profit expecting" business activity, is intended. Accord 15A CJS, Commercial, p. 1, where the following observation is made:

"The term 'commercial,' in its broad sense comprehends all business and industrial enterprises, and in a comprehensive sense it includes occupations and recognized forms of business enterprise which do not necessarily involve trading in merchandise as well as buying, selling, and exchange in the . . . traffic of [American] markets, . . ."

As for the word "purposes," we read this word as referring to the intent of the person requesting that list. When combined with "commercial," this word thus clearly indicates that what is required in order to render the statute applicable is an intent to use the list of individuals in such a manner as to facilitate commercial activity.

Let us now summarize our overall response to this aspect of your request. For the above stated reasons our reading of RCW 42.17.260(5) is that this subsection of Initiative No. 276 was intended by its framers, in the absence of specific legal authorization or direction to the contrary, to prohibit an agency covered by the law from supplying the names of natural persons in list form when the person requesting such information from the public records of the agency intends to use it to contact or in some way personally affect the individuals identified on the list and when the purpose of the contact would be to facilitate that person's commercial activities.

Bearing this conclusion in mind we now turn to the second aspect of your opinion request. As indicated above, you have related to us several factual circumstances in which requests for records have recently been received by the department of motor vehicles. Rather than respond to each such factual pattern, however, we have in paraphrasing your specific questions isolated what appear to us to be the issues raised by the various requests. We understand that your purpose

in identifying particular fact patterns was not so much to gain direct answers to all of them as it was to identify what appear to be key variables in application of the provisions of RCW 42.17.260(5).

Question (1):

Repeated for ease of reference, the first question which we have thus formulated is as follows:

Does RCW 42.17.260(5) prohibit the department of motor vehicles from supplying a list of names and addresses of individuals licensed to do business by it when such information is requested either to facilitate the organization of a trade group or to identify competitors?

If the requester is a "recognized professional association or educational organization," within the meaning of the 1975 amendment to the statute,¹⁶ the answer to this question is now clearly in the negative. Under that amendment the department is not only authorized but is required, upon the payment to it of a reasonable fee, to provide such lists of professional licensees to those associations or organizations.

If the requester is not such an organization, however, further analysis is still necessary and a somewhat qualified answer must, instead, be given.

Certainly, any use of the information requested to facilitate the organization of a trade group would involve contacts with individuals. Further, the object of contacting those individuals would be to facilitate commercial purposes.

¹⁶ See, § 14(5), chapter 294, Laws of 1975, 1st Ex. Sess., here repeated for ease of reference:

"This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That 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 such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.04 RCW."

Therefore, as to the first portion of the instant question, we believe that the department is prohibited by RCW 42.17-.260(5) from supplying the list described in those cases not covered by the 1975 amendment thereto.

However, the second part of the question involving, merely, "identifying competitors" is not susceptible to as certain an answer. It may be that no contact would be made with the named individuals and no direct impact on them would be intended or anticipated. In that case, the prohibition of RCW 42.17.260(5), as we have interpreted it, would not apply. On the other hand, such contact or impact could occur or be contemplated. If so, it is unlikely that the contact would be for anything but a commercial purpose and thus the act by the department of supplying the list would be prohibited.

It is therefore incumbent on the department in any cases not covered by the 1975 amendment to identify the true components of any such request as this to determine, in the light of the above analysis, whether the request can be granted.

Question (2):

Next you have asked:

Does RCW 42.17.260(5) prohibit the department from supplying a list of names and addresses of owners of antique cars specially licensed by the state when the intended use by the requester is to solicit membership in an antique car owner's club organized as a nonprofit organization?

Here there is no question but that the requester intends to contact the named individuals. However, the difficult issue is whether the use contemplated indicates a commercial purpose. In our view, it does not.

As noted in our general analysis, the commercial purpose infers that there is "profit-expecting" activity. The requester in this case, however, is not a commercial entity and the use to which the information would be put is not commercially oriented. Rather, it is intended to be an attempt to inform interested individuals of the existence of the club and to offer those individuals the opportunity to participate in its activities.

Assuming that all of the facts are as above stated, and that there is no intent evident to use the list for any other purpose, we would therefore conclude that this would not be a request "for commercial purposes." The department, however, can place adequate controls on usage to satisfy itself that any such list requested for the described purposes is not, in fact, used for commercial purposes instead.

Question (3):

Your third question, repeated for ease of reference, asks:

Does RCW 42.17.260(5) prohibit the department from allowing access to a list of individuals who have been licensed by it where the requester intends to use the list to identify individuals for the purpose of attempting to sell products or services?

It is clear in this case that there would be both a commercial purpose and a direct contact with the individuals named. The department cannot, therefore, generally honor such a request as this. However again, as with question (1) above, a different answer now must be given if the requester is a recognized professional association or educational organization within the meaning of § 14(5), chapter 294, supra, and the list requested is one of professional licensees. Once these points have been established the purpose of the request or the intended use of the list is now apparently of no legal consequence.

Question (4):

Does RCW 42.17.260(5) prohibit access to public records in list form which identify individuals as registered owners of automobiles blocking emergency exists or "no parking" areas where the requester is a commercial entity?

We assume that in this situation the requester identifies the auto license number or numbers of the parked automobiles. Thus, if there are a number of such autos the department's response would constitute a "list." Nevertheless, we are of the opinion that this would not be a request involving a use of the names for commercial purposes.

Certainly, one could argue that in the broad view, the use described could benefit the commercial activity of an entity inasmuch as the result might be to "open up" parking spaces for other potential customers - thus contributing to the commercial success of the entity. However, the primary intent undoubtedly would be to promote an even traffic flow and the potential commercial benefit would certainly be minimal if it exists at all.

This is the point at which our general conclusion that the prohibition of RCW 42.17.260(5) should be narrowly applied becomes important. Where the requester's potential commercial benefit is remote and ephemeral and there is a clear purpose other than commercial benefit, the statute does not prohibit supplying the information in list form.

Question (5):

Your fifth question then asks:

Does RCW 42.17.260(5) prohibit the department from supplying lists of individuals, together with ancillary information as to their ownership interests in personal property, when the requester intends to use the lists for the related purposes of assessing credit risks or identifying holders of security interests and making judgments about future business dealings?

There is no doubt that both components of our analysis would be present here. The requester intends to make a profit in selling the list either for the purpose of identifying specific individuals or for making business judgments about such individuals. The persons named would thus either be directly contacted or affected. Therefore, the department may not provide access to a list of individuals under circumstances such as this.

Question (6):

Finally you have asked:


Does RCW 42.17.260(5) prohibit the department from supplying access to lists of individuals to a business entity which merely uses those lists to create statistics which are then sold when the requester agrees to prevent further access to or use of the names thus provided for the purpose of contacting the named individuals or otherwise personally affecting them?

There is no question that this would also be a commercial purpose. However, in our opinion, this action would not be prohibited by RCW 42.17.260(5) since the second component of our analysis (i.e., the possibility that there will be an intrusion into the named individuals' sphere of privacy) would be lacking. By agreement between the department and the requester, with adequate safeguards imposed by the agency, there would be no direct, personal impact on the individual. Therefore, access to a list of individuals under this circumstance is not prohibited by RCW 42.17.260(5).

We trust that this analysis is of some assistance to you.

Very truly yours,

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Attorney General


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