

CERTIFICATION OF ENROLLMENT  
ENGROSSED SUBSTITUTE HOUSE BILL 2876

52nd Legislature  
1992 Regular Session

Passed by the House March 10, 1992  
Yeas 97 Nays 0

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**Speaker of the  
House of Representatives**

Passed by the Senate March 6, 1992  
Yeas 49 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE HOUSE BILL 2876 as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE HOUSE BILL 2876

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AS AMENDED BY THE SENATE

Passed Legislature - 1992 Regular Session

State of Washington                      52nd Legislature                      1992 Regular Session

By House Committee on State Government (originally sponsored by  
Representatives Anderson, McLean, R. Fisher, Pruitt, Bowman and Basich)

Read first time 02/07/92.

1            AN ACT Relating to open government; amending RCW 42.17.020,  
2 42.17.260, 42.17.290, 42.17.320, 42.17.330, and 42.17.340; reenacting  
3 and amending RCW 42.17.310; adding new sections to chapter 42.17 RCW;  
4 and creating a new section.

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

6            **Sec. 1.** RCW 42.17.020 and 1991 sp.s. c 18 s 1 are each amended to  
7 read as follows:

8            (1) "Agency" includes all state agencies and all local agencies.  
9 "State agency" includes every state office, department, division,  
10 bureau, board, commission, or other state agency. "Local agency"  
11 includes every county, city, town, municipal corporation, quasi-  
12 municipal corporation, or special purpose district, or any office,  
13 department, division, bureau, board, commission, or agency thereof, or  
14 other local public agency.

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

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

10 (4) "Treasurer" and "deputy treasurer" mean the individuals  
11 appointed by a candidate or political committee, pursuant to RCW  
12 42.17.050, to perform the duties specified in that section.

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

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

17 (b) Announces publicly or files for office.

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

24 (7) "Commission" means the agency established under RCW 42.17.350.

25 (8) "Compensation" unless the context requires a narrower meaning,  
26 includes payment in any form for real or personal property or services  
27 of any kind: PROVIDED, That for the purpose of compliance with RCW  
28 42.17.241, the term "compensation" shall not include per diem  
29 allowances or other payments made by a governmental entity to reimburse

1 a public official for expenses incurred while the official is engaged  
2 in the official business of the governmental entity.

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

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

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

1 (12) "Election" includes any primary, general, or special election  
2 for public office and any election in which a ballot proposition is  
3 submitted to the voters: PROVIDED, That an election in which the  
4 qualifications for voting include other than those requirements set  
5 forth in Article VI, section 1 (Amendment 63) of the Constitution of  
6 the state of Washington shall not be considered an election for  
7 purposes of this chapter.

8 (13) "Election campaign" means any campaign in support of or in  
9 opposition to a candidate for election to public office and any  
10 campaign in support of, or in opposition to, a ballot proposition.

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

25 (15) "Final report" means the report described as a final report in  
26 RCW 42.17.080(2).

27 (16) "Gift," for the purposes of RCW 42.17.170 and 42.17.2415,  
28 means a rendering of anything of value in return for which reasonable  
29 consideration is not given and received and includes a rendering of  
30 money, property, services, discount, loan forgiveness, payment of

1 indebtedness, or reimbursements from or payments by persons (other than  
2 the federal government, or the state of Washington or any agency or  
3 political subdivision thereof) for travel or anything else of value.  
4 The term "reasonable consideration" refers to the approximate range of  
5 consideration that exists in transactions not involving donative  
6 intent. However, the value of the gift of partaking in a single hosted  
7 reception shall be determined by dividing the total amount of the cost  
8 of conducting the reception by the total number of persons partaking in  
9 the reception. "Gift" for the purposes of RCW 42.17.170 and 42.17.2415  
10 does not include:

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

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

15 (c) A contribution that is required to be reported under RCW  
16 42.17.090 or 42.17.243;

17 (d) Informational material that is transferred for the purpose of  
18 informing the recipient about matters pertaining to official business  
19 of the governmental entity of which the recipient is an official or  
20 officer, and that is not intended to confer on that recipient any  
21 commercial, proprietary, financial, economic, or monetary advantage, or  
22 the avoidance of any commercial, proprietary, financial, economic, or  
23 monetary disadvantage;

24 (e) A gift that is not used and that, within thirty days after  
25 receipt, is returned to the donor or delivered to a charitable  
26 organization. However, this exclusion from the definition does not  
27 apply if the recipient of the gift delivers the gift to a charitable  
28 organization and claims the delivery as a charitable contribution for  
29 tax purposes;

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

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

7 (17) "Immediate family" includes the spouse, dependent children,  
8 and other dependent relatives, if living in the household.

9 (18) "Legislation" means bills, resolutions, motions, amendments,  
10 nominations, and other matters pending or proposed in either house of  
11 the state legislature, and includes any other matter that may be the  
12 subject of action by either house or any committee of the legislature  
13 and all bills and resolutions that, having passed both houses, are  
14 pending approval by the governor.

15 (19) "Lobby" and "lobbying" each mean attempting to influence the  
16 passage or defeat of any legislation by the legislature of the state of  
17 Washington, or the adoption or rejection of any rule, standard, rate,  
18 or other legislative enactment of any state agency under the state  
19 Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor  
20 "lobbying" includes an association's or other organization's act of  
21 communicating with the members of that association or organization.

22 (20) "Lobbyist" includes any person who lobbies either in his own  
23 or another's behalf.

24 (21) "Lobbyist's employer" means the person or persons by whom a  
25 lobbyist is employed and all persons by whom he is compensated for  
26 acting as a lobbyist.

27 (22) "Person" includes an individual, partnership, joint venture,  
28 public or private corporation, association, federal, state, or local  
29 governmental entity or agency however constituted, candidate,  
30 committee, political committee, political party, executive committee

1 thereof, or any other organization or group of persons, however  
2 organized.

3 (23) "Person in interest" means the person who is the subject of a  
4 record or any representative designated by that person, except that if  
5 that person is under a legal disability, the term "person in interest"  
6 means and includes the parent or duly appointed legal representative.

7 (24) "Political advertising" includes any advertising displays,  
8 newspaper ads, billboards, signs, brochures, articles, tabloids,  
9 flyers, letters, radio or television presentations, or other means of  
10 mass communication, used for the purpose of appealing, directly or  
11 indirectly, for votes or for financial or other support in any election  
12 campaign.

13 (25) "Political committee" means any person (except a candidate or  
14 an individual dealing with his own funds or property) having the  
15 expectation of receiving contributions or making expenditures in  
16 support of, or opposition to, any candidate or any ballot proposition.

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

20 (27) "Public record" includes any writing containing information  
21 relating to the conduct of government or the performance of any  
22 governmental or proprietary function prepared, owned, used, or retained  
23 by any state or local agency regardless of physical form or  
24 characteristics.

25 (28) "Surplus funds" mean, in the case of a political committee or  
26 candidate, the balance of contributions that remain in the possession  
27 or control of that committee or candidate subsequent to the election  
28 for which the contributions were received, and that are in excess of  
29 the amount necessary to pay remaining debts incurred by the committee  
30 or candidate prior to that election. In the case of a continuing



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

5 (29) "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 NEW SECTION. **Sec. 2.** A new section is added to chapter 42.17 RCW  
17 under the subchapter heading "public records" to read as follows:

18 The people of this state do not yield their sovereignty to the  
19 agencies that serve them. The people, in delegating authority, do not  
20 give their public servants the right to decide what is good for the  
21 people to know and what is not good for them to know. The people  
22 insist on remaining informed so that they may maintain control over the  
23 instruments that they have created. The public records subdivision of  
24 this chapter shall be liberally construed and its exemptions narrowly  
25 construed to promote this public policy.

26 **Sec. 3.** RCW 42.17.260 and 1989 c 175 s 36 are each amended to read  
27 as follows:

1       (1) Each agency, in accordance with published rules, shall make  
2 available for public inspection and copying all public records, unless  
3 the record falls within the specific exemptions of subsection (~~(5)~~)  
4 (6) of this section, RCW 42.17.310, 42.17.315, or other statute which  
5 exempts or prohibits disclosure of specific information or records. To  
6 the extent required to prevent an unreasonable invasion of personal  
7 privacy interests protected by RCW 42.17.310 and 42.17.315, an agency  
8 shall delete identifying details in a manner consistent with RCW  
9 42.17.310 and 42.17.315 when it makes available or publishes any public  
10 record; however, in each case, the justification for the deletion shall  
11 be explained fully in writing.

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

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

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

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

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

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

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

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

11 (~~((3))~~) (4) A local agency need not maintain such an index, if to  
12 do so would be unduly burdensome, but it shall in that event:

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

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

18 (~~((4) By July 1, 1990,))~~ (5) Each state agency shall, by rule,  
19 establish and implement a system of indexing for the identification and  
20 location of the following records:

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

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

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

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

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

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

18 ~~((+5))~~ (6) A public record may be relied on, used, or cited as  
19 precedent by an agency against a party other than an agency and it may  
20 be invoked by the agency for any other purpose only if--

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

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

24 ~~((+6))~~ (7) This chapter shall not be construed as giving authority  
25 to any agency to give, sell or provide access to lists of individuals  
26 requested for commercial purposes, and agencies shall not do so unless  
27 specifically authorized or directed by law: PROVIDED, HOWEVER, That  
28 lists of applicants for professional licenses and of professional  
29 licensees shall be made available to those professional associations or  
30 educational organizations recognized by their professional licensing or

1 examination board, upon payment of a reasonable charge therefor:  
2 PROVIDED FURTHER, That such recognition may be refused only for a good  
3 cause pursuant to a hearing under the provisions of chapter 34.05 RCW,  
4 the Administrative Procedure Act.

5 **Sec. 4.** RCW 42.17.290 and 1975 1st ex.s. c 294 s 16 are each  
6 amended to read as follows:

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

16 If a public record request is made at a time when such record  
17 exists but is scheduled for destruction in the near future, the agency  
18 shall retain possession of the record, and may not destroy or erase the  
19 record until the request is resolved.

20 **Sec. 5.** RCW 42.17.310 and 1991 c 301 s 13, 1991 c 87 s 13, and  
21 1991 c 23 s 10 are each reenacted and amended to read as follows:

22 (1) The following are exempt from public inspection and copying:

23 (a) Personal information in any files maintained for students in  
24 public schools, patients or clients of public institutions or public  
25 health agencies, or welfare recipients.

26 (b) Personal information in files maintained for employees,  
27 appointees, or elected officials of any public agency to the extent  
28 that disclosure would violate their right to privacy.

1 (c) Information required of any taxpayer in connection with the  
2 assessment or collection of any tax if the disclosure of the  
3 information to other persons would (i) be prohibited to such persons by  
4 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result  
5 in unfair competitive disadvantage to the taxpayer.

6 (d) Specific intelligence information and specific investigative  
7 records compiled by investigative, law enforcement, and penology  
8 agencies, and state agencies vested with the responsibility to  
9 discipline members of any profession, the nondisclosure of which is  
10 essential to effective law enforcement or for the protection of any  
11 person's right to privacy.

12 (e) Information revealing the identity of persons who are witnesses  
13 to or victims of crime or who file complaints with investigative, law  
14 enforcement, or penology agencies, other than the public disclosure  
15 commission, if disclosure would endanger any person's life, physical  
16 safety, or property. If at the time ((the)) a complaint is filed the  
17 complainant, victim or witness indicates a desire for disclosure or  
18 nondisclosure, such desire shall govern. However, all complaints filed  
19 with the public disclosure commission about any elected official or  
20 candidate for public office must be made in writing and signed by the  
21 complainant under oath.

22 (f) Test questions, scoring keys, and other examination data used  
23 to administer a license, employment, or academic examination.

24 (g) Except as provided by chapter 8.26 RCW, the contents of real  
25 estate appraisals, made for or by any agency relative to the  
26 acquisition or sale of property, until the project or prospective sale  
27 is abandoned or until such time as all of the property has been  
28 acquired or the property to which the sale appraisal relates is sold,  
29 but in no event shall disclosure be denied for more than three years  
30 after the appraisal.

1 (h) Valuable formulae, designs, drawings, and research data  
2 obtained by any agency within five years of the request for disclosure  
3 when disclosure would produce private gain and public loss.

4 (i) Preliminary drafts, notes, recommendations, and intra-agency  
5 memorandums in which opinions are expressed or policies formulated or  
6 recommended except that a specific record shall not be exempt when  
7 publicly cited by an agency in connection with any agency action.

8 (j) Records which are relevant to a controversy to which an agency  
9 is a party but which records would not be available to another party  
10 under the rules of pretrial discovery for causes pending in the  
11 superior courts.

12 (k) Records, maps, or other information identifying the location of  
13 archaeological sites in order to avoid the looting or depredation of  
14 such sites.

15 (l) Any library record, the primary purpose of which is to maintain  
16 control of library materials, or to gain access to information, which  
17 discloses or could be used to disclose the identity of a library user.

18 (m) Financial information supplied by or on behalf of a person,  
19 firm, or corporation for the purpose of qualifying to submit a bid or  
20 proposal for (a) a ferry system construction or repair contract as  
21 required by RCW 47.60.680 through 47.60.750 or (b) highway construction  
22 or improvement as required by RCW 47.28.070.

23 (n) Railroad company contracts filed prior to July 28, 1991, with  
24 the utilities and transportation commission under RCW 81.34.070, except  
25 that the summaries of the contracts are open to public inspection and  
26 copying as otherwise provided by this chapter.

27 (o) Financial and commercial information and records supplied by  
28 private persons pertaining to export services provided pursuant to  
29 chapter 43.163 RCW and chapter 53.31 RCW.

1 (p) Financial disclosures filed by private vocational schools under  
2 chapter 28C.10 RCW.

3 (q) Records filed with the utilities and transportation commission  
4 or attorney general under RCW 80.04.095 that a court has determined are  
5 confidential under RCW 80.04.095.

6 (r) Financial and commercial information and records supplied by  
7 businesses during application for loans or program services provided by  
8 chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

9 (s) Membership lists or lists of members or owners of interests of  
10 units in timeshare projects, subdivisions, camping resorts,  
11 condominiums, land developments, or common-interest communities  
12 affiliated with such projects, regulated by the department of  
13 licensing, in the files or possession of the department.

14 (t) All applications for public employment, including the names of  
15 applicants, resumes, and other related materials submitted with respect  
16 to an applicant.

17 (u) The residential addresses and residential telephone numbers of  
18 employees or volunteers of a public agency which are held by the agency  
19 in personnel records, employment or volunteer rosters, or mailing lists  
20 of employees or volunteers.

21 (v) The residential addresses and residential telephone numbers of  
22 the customers of a public utility contained in the records or lists  
23 held by the public utility of which they are customers.

24 (w) Information obtained by the board of pharmacy as provided in  
25 RCW 69.45.090.

26 (x) Information obtained by the board of pharmacy or the department  
27 of health and its representatives as provided in RCW 69.41.044,  
28 69.41.280, and 18.64.420.

29 (y) Financial information, business plans, examination reports, and  
30 any information produced or obtained in evaluating or examining a



1 business and industrial development corporation organized or seeking  
2 certification under chapter 31.24 RCW.

3 (z) Financial and commercial information supplied to the state  
4 investment board by any person when the information relates to the  
5 investment of public trust or retirement funds and when disclosure  
6 would result in loss to such funds or in private loss to the providers  
7 of this information.

8 (aa) Financial and valuable trade information under RCW 51.36.120.

9 (bb) Client records maintained by an agency that is a domestic  
10 violence program as defined in RCW 70.123.020 or a rape crisis center  
11 as defined in RCW 70.125.030.

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

18 (2) Except for information described in subsection (1)(c)(i) of  
19 this section and confidential income data exempted from public  
20 inspection pursuant to RCW 84.40.020, the exemptions of this section  
21 are inapplicable to the extent that information, the disclosure of  
22 which would violate personal privacy or vital governmental interests,  
23 can be deleted from the specific records sought. No exemption may be  
24 construed to permit the nondisclosure of statistical information not  
25 descriptive of any readily identifiable person or persons.

26 (3) Inspection or copying of any specific records exempt under the  
27 provisions of this section may be permitted if the superior court in  
28 the county in which the record is maintained finds, after a hearing  
29 with notice thereof to every person in interest and the agency, that

1 the exemption of such records is clearly unnecessary to protect any  
2 individual's right of privacy or any vital governmental function.

3 (4) Agency responses refusing, in whole or in part, inspection of  
4 any public record shall include a statement of the specific exemption  
5 authorizing the withholding of the record (or part) and a brief  
6 explanation of how the exemption applies to the record withheld.

7 **Sec. 6.** RCW 42.17.320 and 1975 1st ex.s. c 294 s 18 are each  
8 amended to read as follows:

9 Responses to requests for public records shall be made promptly by  
10 agencies. Within five business days of receiving a public record  
11 request, an agency must respond by either (1) providing the record; (2)  
12 acknowledging that the agency has received the request and providing a  
13 reasonable estimate of the time the agency will require to respond to  
14 the request; or (3) denying the public record request. Additional time  
15 required to respond to a request may be based upon the need to clarify  
16 the intent of the request, to locate and assemble the information  
17 requested, to notify third persons or agencies affected by the request,  
18 or to determine whether any of the information requested is exempt and  
19 that a denial should be made as to all or part of the request. In  
20 acknowledging receipt of a public record request that is unclear, an  
21 agency may ask the requestor to clarify what information the requestor  
22 is seeking. If the requestor fails to clarify the request, the agency  
23 need not respond to it. Denials of requests must be accompanied by a  
24 written statement of the specific reasons therefor. Agencies shall  
25 establish mechanisms for the most prompt possible review of decisions  
26 denying inspection, and such review shall be deemed completed at the  
27 end of the second business day following the denial of inspection and  
28 shall constitute final agency action for the purposes of judicial  
29 review.

1       **Sec. 7.** RCW 42.17.330 and 1975 1st ex.s. c 294 s 19 are each  
2 amended to read as follows:

3       The examination of any specific public record may be enjoined if,  
4 upon motion and affidavit by an agency or its representative or a  
5 person who is named in the record or to whom the record specifically  
6 pertains, the superior court for the county in which the movant resides  
7 or in which the record is maintained, finds that such examination would  
8 clearly not be in the public interest and would substantially and  
9 irreparably damage any person, or would substantially and irreparably  
10 damage vital governmental functions. An agency has the option of  
11 notifying persons named in the record or to whom a record specifically  
12 pertains, that release of a record has been requested. However, this  
13 option does not exist where the agency is required by law to provide  
14 such notice.

15       **Sec. 8.** RCW 42.17.340 and 1987 c 403 s 5 are each amended to read  
16 as follows:

17       (1) Upon the motion of any person having been denied an opportunity  
18 to inspect or copy a public record by an agency, the superior court in  
19 the county in which a record is maintained may require the responsible  
20 agency to show cause why it has refused to allow inspection or copying  
21 of a specific public record or class of records. The burden of proof  
22 shall be on the agency to establish that refusal to permit public  
23 inspection and copying is in accordance with a statute that exempts or  
24 prohibits disclosure in whole or in part of specific information or  
25 records.

26       (2) Upon the motion of any person who believes that an agency has  
27 not made a reasonable estimate of the time that the agency requires to  
28 respond to a public record request, the superior court in the county in  
29 which a record is maintained may require the responsible agency to show

1 that the estimate it provided is reasonable. The burden of proof shall  
2 be on the agency to show that the estimate it provided is reasonable.

3 (3) Judicial review of all agency actions taken or challenged under  
4 RCW 42.17.250 through 42.17.320 shall be de novo. Courts shall take  
5 into account the policy of this chapter that free and open examination  
6 of public records is in the public interest, even though such  
7 examination may cause inconvenience or embarrassment to public  
8 officials or others. Courts may examine any record in camera in any  
9 proceeding brought under this section. The court may conduct a hearing  
10 based solely on affidavits.

11 ~~((+3+))~~ (4) Any person who prevails against an agency in any action  
12 in the courts seeking the right to inspect or copy any public record or  
13 the right to receive a response to a public record request within a  
14 reasonable amount of time shall be awarded all costs, including  
15 reasonable attorney fees, incurred in connection with such legal  
16 action. In addition, it shall be within the discretion of the court to  
17 award such person an amount not less than five dollars and not to  
18 exceed ~~((twenty-five))~~ one hundred dollars for each day that he was  
19 denied the right to inspect or copy said public record.

20 NEW SECTION. Sec. 9. A new section is added to chapter 42.17 RCW  
21 under the subchapter heading "public records" to read as follows:

22 The attorney general's office shall publish, and update when  
23 appropriate, a pamphlet, written in plain language, explaining the  
24 provisions of the public records subdivision of this chapter.

25 NEW SECTION. Sec. 10. A new section is added to chapter 42.17 RCW  
26 under the subchapter heading "public records" to read as follows:

27 Whenever a state agency concludes that a public record is exempt  
28 from disclosure and denies a person opportunity to inspect or copy a

1 public record for that reason, the person may request the attorney  
2 general to review the matter. The attorney general shall provide the  
3 person with his or her written opinion on whether the record is exempt.

4 Nothing in this section shall be deemed to establish an attorney-  
5 client relationship between the attorney general and a person making a  
6 request under this section.

7 NEW SECTION. **Sec. 11.** A new section is added to chapter 42.17 RCW  
8 under the subchapter heading "public records" to read as follows:

9 No public agency, public official, public employee, or custodian  
10 shall be liable, nor shall a cause of action exist, for any loss or  
11 damage based upon the release of a public record if the public agency,  
12 public official, public employee, or custodian acted in good faith in  
13 attempting to comply with the provisions of this chapter.

14 NEW SECTION. **Sec. 12.** The legislature finds that electronic  
15 data and electronic records pose a number of challenging public  
16 disclosure questions. Included in these challenging questions are how  
17 to provide public access to electronic records while balancing personal  
18 privacy and vital governmental interests; how to best address requests  
19 for electronic records which require agencies to manipulate data; how  
20 to open electronic records to public inspection; how to calculate  
21 charges for data or products from electronic records, particularly if  
22 that data or product is to be used for a commercial purpose; and how  
23 public agencies and employees should handle the personal privacy issues  
24 associated with electronic mail.

25 The legislature finds that there is a large and growing number of  
26 exemptions of records from public disclosure. The legislature finds  
27 that certain types of information are treated inconsistently under  
28 current disclosure laws. The legislature further finds that there may

1 be opportunities for consolidation of many individual record exemptions  
2 into fewer, broader exemptions. There is a need to thoroughly review  
3 both the content and organization of such exemptions.

4 The legislature recognizes that there is legal uncertainty  
5 regarding the status of investigative records under the open records  
6 law. It is important that clear statutory direction be provided in  
7 this area to ensure reasonable access to such records while protecting  
8 the integrity of the investigatory process and privacy interests.

9 The legislature also finds that certain entities that may have  
10 substantial impacts on public policy are not covered by the open public  
11 meetings act. Such entities include certain boards, councils,  
12 committees, or other groups of similar nomenclature that serve in an  
13 advisory capacity. To ensure that public agencies comply with the  
14 intent of the open public meetings act, it is important for the  
15 legislature to determine which categories of such groups should be  
16 covered by the open public meetings act.

17 The legislature shall investigate special meetings and notice  
18 procedures, emergency meetings, executive sessions and matters that may  
19 be properly addressed in an executive session, publication of and  
20 provision to the public a regular meeting agenda, and penalties related  
21 to failure to comply with open meeting violations.

22 Finally, while the open public meetings act authorizes agencies to  
23 use closed executive sessions to consider certain matters specified in  
24 the act, agencies when in closed executive session are required to  
25 restrict their consideration to those matters. The act's provisions  
26 may need to be amended to prevent or deter public agencies from  
27 considering matters in closed executive session that they are not  
28 entitled to consider.

29 The joint select committee on open government shall examine these  
30 five issues and shall report back to the legislature with any

1 recommendations for statutory changes by January 1, 1993. In examining  
2 these issues, the committee shall provide ample opportunity for input  
3 from all interested parties.