
HOUSE BILL 2886

State of Washington 65th Legislature 2018 Regular Session

By Representatives Pollet, Graves, Frame, and Kilduff

Read first time 01/19/18. Referred to Committee on State Govt,
Elections & IT.

1 AN ACT Relating to public records of the legislative branch;
2 amending RCW 42.56.010 and 42.56.580; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that the citizens of
5 our nation and Washington state have long understood that our
6 democracy functions at its best when the public knows who influences
7 the governmental process and how government leaders carry out their
8 duties. Such principles are reflected by the statements of Patrick
9 Henry: "The liberties of people never were, nor ever will be, secure,
10 when the transactions of their rulers may be concealed from them;"
11 and President Franklin Roosevelt: "The only sure bulwark of
12 continuing liberty is a government strong enough to protect the
13 interests of the people, and a people strong enough and well enough
14 informed to maintain its sovereign control over the government."

15 The legislature and the judiciary are separate branches of
16 government and not "agencies" of the state, which refers in this
17 chapter to the executive branch of government. As the branch of
18 government responsible for adoption of budgets, lawmaking, and
19 oversight of implementation of laws and budgets by the executive
20 branch, the legislature intends to increase trust in government by
21 clearly stating which of its records are subject to the public

1 records act, guided by these democratic principles. This act should
2 be interpreted to favor openness over secrecy with all due respect to
3 the legislature being a separate branch of government with unique
4 needs to be able to have legislators formulate policy and develop
5 budgets benefiting from advice, counsel, and discussion. The record
6 for formal legislative interpretation, therefore, should not be
7 expanded to include individual legislators' formulative internal
8 decision-making records. The legislature further intends to clarify
9 which records are not subject to the public records act, or are
10 exempt from disclosure, in order to reflect the unique nature of the
11 legislative branch and to protect the ability of legislators to
12 receive advice from staff in order to develop legislation and
13 formulate positions, to protect the privacy interests of constituents
14 who turn to legislators for help in navigating governmental
15 assistance in regard to health and other personal matters, and to
16 enable whistleblowers to communicate to legislators regarding the
17 conduct of state government without fear of retaliation.

18 **Sec. 2.** RCW 42.56.010 and 2017 c 303 s 1 are each amended to
19 read as follows:

20 The definitions in this section apply throughout this chapter
21 unless the context clearly requires otherwise.

22 (1) "Agency" includes all state executive agencies and all local
23 agencies. "State agency" includes every executive state office,
24 department, division, bureau, board, commission, or other state
25 executive agency. "Local agency" includes every county, city, town,
26 municipal corporation, quasi-municipal corporation, or special
27 purpose district, or any office, department, division, bureau, board,
28 commission, or agency thereof, or other local public agency. "Agency"
29 does not include the judicial branch or the state legislature,
30 including individual offices of state legislators, legislative
31 caucuses, or any other office within the state legislature.

32 (2) "Person in interest" means the person who is the subject of a
33 record or any representative designated by that person, except that
34 if that person is under a legal disability, "person in interest"
35 means and includes the parent or duly appointed legal representative.

36 (3) "Public record" includes any writing containing information
37 relating to the conduct of government or the performance of any
38 governmental or proprietary function prepared, owned, used, or
39 retained by any state or local agency regardless of physical form or

1 characteristics. (~~For the office of the secretary of the senate and~~
2 ~~the office of the chief clerk of the house of representatives, public~~
3 ~~records means legislative records as defined in RCW 40.14.100 and~~
4 ~~also means the following: All budget and financial records; personnel~~
5 ~~leave, travel, and payroll records; records of legislative sessions;~~
6 ~~reports submitted to the legislature; and any other record designated~~
7 ~~a public record by any official action of the senate or the house of~~
8 ~~representatives.)) This definition does not include records that are~~

9 not otherwise required to be retained by the agency and are held by
10 volunteers who:

11 (a) Do not serve in an administrative capacity;

12 (b) Have not been appointed by the agency to an agency board,
13 commission, or internship; and

14 (c) Do not have a supervisory role or delegated agency authority.

15 (4)(a) For purposes of the state legislature, "public records"
16 includes:

17 (i) "Legislative records" as defined in RCW 40.14.100;

18 (ii) All budget and financial records, personnel leave, travel,
19 and payroll records, and records of legislative sessions;

20 (iii) Reports submitted to the legislature and any other record
21 designated a public record by any official action of the senate or
22 the house of representatives;

23 (iv) Calendars of meetings or events relating to official duties,
24 including development of legislation or administration of a
25 legislative office; except this does not include personal items that
26 may appear on a calendar for purposes of avoiding conflicts and
27 enabling a legislator or staff to effectively plan;

28 (v) Correspondence with persons outside the legislature regarding
29 official duties, including development of bills or budgets; except
30 this does not include correspondence relating to specific issues of
31 personal or private concern of individuals, such as regarding
32 governmental benefits relating to an individual's health; and

33 (vi) Findings or reports of any person or body appointed or
34 designated by each or both legislative chambers, regarding misconduct
35 of a member or staff of the legislature.

36 (b) For purposes of the state legislature, "public records" does
37 not include:

38 (i) Internal caucus communications;

39 (ii) Communications and records between legislators, including
40 personal, committee, or caucus staff, relating to the development and

1 preparation of legislation, as well as the work of committee or
2 caucus staff to develop and carry out work plans of committees or
3 requests of individual legislators;

4 (iii) Any personal information unrelated to a legislator's
5 official duties, that exists on the legislator's personal device or
6 otherwise was not created or retained with any state resource,
7 including equipment, office, or staff assistance;

8 (iv) Communications from public employees or contractors alleging
9 waste, fraud, or abuse of state funds or resources that are made with
10 a request for anonymity, to the extent that public disclosure would
11 potentially reveal the identity of the person communicating the
12 allegation or jeopardize an investigation by a committee of the
13 legislature or relevant state official, including the state auditor;
14 or

15 (v) The identity of complainants seeking anonymity concerning the
16 conduct of an elected official or employee alleging a violation of
17 law or rules.

18 (c) This subsection must be interpreted consistent with all other
19 provisions of this chapter, the public records act. Nothing in this
20 subsection should be interpreted as limiting or making inapplicable
21 any specific exemption in this chapter or other statute that exempts,
22 provides for a privilege relating to, or prohibits disclosure of
23 specific information or records.

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

33 **Sec. 3.** RCW 42.56.580 and 2007 c 456 s 6 are each amended to
34 read as follows:

35 (1) Each state and local agency shall appoint and publicly
36 identify a public records officer whose responsibility is to serve as
37 a point of contact for members of the public in requesting disclosure
38 of public records and to oversee the agency's compliance with the
39 public records disclosure requirements of this chapter. A state or

1 local agency's public records officer may appoint an employee or
2 official of another agency as its public records officer. For the
3 state legislature, the secretary of the senate and the chief clerk of
4 the house of representatives, respectively, shall serve as the public
5 records officer for the party caucuses and each state legislative
6 office.

7 (2) For state agencies, the name and contact information of the
8 agency's public records officer to whom members of the public may
9 direct requests for disclosure of public records and who will oversee
10 the agency's compliance with the public records disclosure
11 requirements of this chapter shall be published in the state register
12 at the time of designation and maintained thereafter on the code
13 reviser web site for the duration of the designation.

14 (3) For local agencies, the name and contact information of the
15 agency's public records officer to whom members of the public may
16 direct requests for disclosure of public records and who will oversee
17 the agency's compliance within the public records disclosure
18 requirements of this chapter shall be made in a way reasonably
19 calculated to provide notice to the public, including posting at the
20 local agency's place of business, posting on its internet site, or
21 including in its publications.

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