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**HOUSE BILL 2466**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Pollet, Frame, Sells, Tharinger, and Wylie

AN ACT Relating to providing for public disclosure of public records of the legislature and legislators; amending RCW 42.56.010, 42.56.580, 40.14.140, 42.56.070, 42.56.090, 42.56.100, 42.56.150, 42.56.120, 42.56.520, and 42.40.030; adding new sections to chapter 42.56 RCW; and repealing RCW 42.56.560.

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

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

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

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency, and all legislative entities within the legislative branch of government. "Legislative entity" includes the house of representatives, the senate, individual legislators, the office of the chief clerk of the house of representatives, the office of the secretary of the senate, the office of the code reviser, the office of the state actuary, the redistricting commission, the legislative ethics board, legislative support services, and every standing committee, advisory committee, or task force created by one or both chambers of the legislature. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

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

(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. ((~~For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.~~)) This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who:

(a) Do not serve in an administrative capacity;

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

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

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

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

(1) Each state and local agency shall appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency's compliance with the public records disclosure requirements of this chapter. A state or local agency's public records officer may appoint an employee or official of another agency as its public records officer. For legislative entities, public records officers are designated in subsection (4) of this section.

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

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

(4) The public records officers for legislative entities are as follows:

(a) For representatives and committees, task forces, and other entities solely within the house of representatives, the chief clerk of the house of representatives or the chief clerk's designee is the public records officer;

(b) For senators and committees, task forces, and other entities solely within the senate, the secretary of the senate or the secretary's designee is the publics records officer; and

(c) There is established a joint office of legislative public records, which shall employ staff as needed to respond to public records requests, and whose director is the public records officer for entities that are independent of either chamber of the legislature or are established jointly by the house of representatives and the senate.

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

Requests for records in the possession of legislative entities must be addressed as follows:

(1) Except as provided otherwise in this section, any duty in this chapter imposed on an agency that is also a legislative entity must be performed by the public records officer for that legislative entity as provided by RCW 42.56.580.

(2) A public records request for records in the possession of a legislative entity must be directed to the appropriate public records officer for that legislative entity. The web site for each legislative entity must provide information about how to submit a public records request to the appropriate public records officer. A legislative entity that receives a public records request must forward that request to the appropriate public records officer promptly upon receipt. A legislative entity's obligation to respond to a request, and the timeline for a response under RCW 42.56.520, does not begin until the public records officer receives the public records request.

(3) Legislators must comply with the records retention policy developed under RCW 40.14.140 and, when asked by the public records officer, must promptly search for responsive records and provide them to the public records officer.

(4) In an action in court under RCW 42.56.550, the plaintiff must name the appropriate public records officer or officers as a defendant. If the plaintiff prevails and the court awards costs or penalties, the court may decide whether all or part of the costs or penalties should be assessed against the legislative entity rather than the public records officer, as determined by the legislative entity's level of culpability in the violation.

**Sec.**  RCW 40.14.140 and 2011 c 336 s 821 are each amended to read as follows:

(1) It shall be the duty of the ((~~clerk and the secretary~~)) public records officers for legislative entities as provided in RCW 42.56.580 to advise ((~~the party caucuses in each house~~)) legislators and legislative staff concerning the necessity to keep public records. The state archivist or his or her representative shall work with the clerk and secretary to provide information, resources, training, and instructions on the best methods for keeping and searching legislative records.

(2) The public records officers for legislative entities must consult with the secretary of state and the state librarian to adopt a records retention policy that applies to all legislative entities as that term is defined in RCW 42.56.010. The policy must include the following provisions:

(a) Notes sent to legislators in chambers to alert legislators that a person wishes to speak to them need not be retained.

(b) Voicemail on personal devices or devices provided by or designated by the legislature for legislative business may be deleted as necessary to provide storage space for new messages, unless the voicemail is responsive to a records request that has been submitted prior to the deletion of the voicemail.

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

The following records and information in the possession of legislative entities are exempt from public inspection and copying under this chapter:

(1) Notes sent to legislators in chambers to alert legislators that a person wishes to speak to them;

(2) Personally identifying information of a person who reports misconduct within the legislative branch, or who states that he or she is a victim of such misconduct, when that identifying information is contained in a communication by a legislative branch employee to a legislator or other legislative staff member, and when the person who reports or states to be a victim of such misconduct requests that his or her identity be withheld from disclosure;

(3) Communications by state employees to legislators that report improper governmental action, as defined by RCW 42.40.020, are exempt from disclosure if the legislator reports the assertion of improper governmental action to the auditor within the time frame provided in RCW 42.40.040. If the legislator does not report the assertion to the auditor under that section, the communications are not exempt from disclosure; and

(4)(a) Personally identifying information contained in a communication between a legislator and a constituent when:

(i) The communication is made solely for the purpose of having a legislator assist a person with obtaining assistance from a state agency on a personal matter;

(ii) Disclosure would be objectively offensive to a reasonable person by revealing details about a person's health, finances, or other matter of privacy; and

(iii) The communication does not seek to influence legislation, including a budget.

(b) The entire record may be exempt under this subsection if disclosure of the redacted record contains enough information that a person's identity could become known.

**Sec.**  RCW 42.56.070 and 2017 c 304 s 1 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

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

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

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

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

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

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

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

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

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

(7) Each agency may establish, maintain, and make available for public inspection and copying a statement of the actual costs that it charges for providing photocopies or electronically produced copies, of public records and a statement of the factors and manner used to determine the actual costs. Any statement of costs may be adopted by an agency only after providing notice and public hearing.

(a)(i) In determining the actual cost for providing copies of public records, an agency may include all costs directly incident to copying such public records including:

(A) The actual cost of the paper and the per page cost for use of agency copying equipment; and

(B) The actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage and processing service.

(ii) In determining other actual costs for providing copies of public records, an agency may include all costs directly incident to:

(A) Shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used; and

(B) Transmitting such records in an electronic format, including the cost of any transmission charge and use of any physical media device provided by the agency.

(b) In determining the actual costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and send the requested public records may be included in an agency's costs.

(8) 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 the office of the chief clerk of the 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.

**Sec.**  RCW 42.56.090 and 2009 c 428 s 2 are each amended to read as follows:

Public records shall be available for inspection and copying during the customary office hours of the agency((~~, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives~~)) for a minimum of thirty hours per week, except weeks that include state legal holidays, unless the person making the request and the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) or its representative agree on a different time. Customary business hours must be posted on the agency or office's web site and made known by other means designed to provide the public with notice.

**Sec.**  RCW 42.56.100 and 1995 c 397 s 13 are each amended to read as follows:

Agencies shall adopt and enforce reasonable rules and regulations, ((~~and the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for~~)) which for legislative entities may reflect the time, resource, and personnel constraints associated with legislative sessions, consonant with the intent of this chapter to provide full public access to public records((~~,~~)); to recognize the importance of public access to records while an agency is in the process of making a decision, including timely access to influence legislative action; to protect public records from damage or disorganization((~~,~~)); and to prevent excessive interference with other essential functions of the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)). 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((~~, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives~~)) from honoring requests received by mail for copies of identifiable public records.

If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) shall retain possession of the record, and may not destroy or erase the record until the request is resolved.

**Sec.**  RCW 42.56.150 and 2014 c 66 s 3 are each amended to read as follows:

(1) Each local elected official, state legislator, and statewide elected official, and each person appointed to fill a vacancy in a local, state legislative, or statewide office, must complete a training course regarding the provisions of this chapter, and also chapter 40.14 RCW for records retention. Either training may be completed remotely with technology such as the internet as long as there is a process to verify the training is completed by the appropriate person. One aide employed in the office of each state legislator must also complete the trainings required by this section.

(2) Officials required to complete training under this section may complete their training before assuming office but must:

(a) Complete training no later than ninety days after the date the official either:

(i) Takes the oath of office, if the official is required to take an oath of office to assume his or her duties as a public official; or

(ii) Otherwise assumes his or her duties as a public official; and

(b) Complete refresher training at intervals of no more than four years for as long as he or she holds the office.

(3) Training must be consistent with the attorney general's model rules for compliance with the public records act.

((~~(4) Training may be completed remotely with technology including but not limited to internet-based training.~~))

**Sec.**  RCW 42.56.120 and 2017 c 304 s 3 are each amended to read as follows:

(1) No fee shall be charged for the inspection of public records or locating public documents and making them available for copying, except as provided in RCW 42.56.240(14) and subsection (3) of this section. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment ((~~or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives~~)) to copy public records, which charges shall not exceed the amount necessary to reimburse the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) for its actual costs directly incident to such copying. When calculating any fees authorized under this section, an agency shall use the most reasonable cost-efficient method available to the agency as part of its normal operations. If any agency translates a record into an alternative electronic format at the request of a requestor, the copy created does not constitute a new public record for purposes of this chapter. Scanning paper records to make electronic copies of such records is a method of copying paper records and does not amount to the creation of a new public record.

(2)(a) Agency charges for actual costs may only be imposed in accordance with the costs established and published by the agency pursuant to RCW 42.56.070(7), and in accordance with the statement of factors and manner used to determine the actual costs. In no event may an agency charge a per page cost greater than the actual cost as established and published by the agency.

(b) An agency need not calculate the actual costs it charges for providing public records if it has rules or regulations declaring the reasons doing so would be unduly burdensome. To the extent the agency has not determined the actual costs of copying public records, the agency may not charge in excess of:

(i) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records;

(ii) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(iii) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery; and

(iv) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations; and

(v) The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(c) The charges in (b) of this subsection may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(d) An agency may charge a flat fee of up to two dollars for any request as an alternative to fees authorized under (a) or (b) of this subsection when the agency reasonably estimates and documents that the costs allowed under this subsection are clearly equal to or more than two dollars. An additional flat fee shall not be charged for any installment after the first installment of a request produced in installments. An agency that has elected to charge the flat fee in this subsection for an initial installment may not charge the fees authorized under (a) or (b) of this subsection on subsequent installments.

(e) An agency shall not impose copying charges under this section for access to or downloading of records that the agency routinely posts on its public internet web site prior to receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means.

(f) A requestor may ask an agency to provide, and if requested an agency shall provide, a summary of the applicable charges before any copies are made and the requestor may revise the request to reduce the number of copies to be made and reduce the applicable charges.

(3)(a)(i) In addition to the charge imposed for providing copies of public records and for the use by any person of agency equipment copying costs, an agency may include a customized service charge. A customized service charge may only be imposed if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other agency purposes.

(ii) The customized service charge may reimburse the agency up to the actual cost of providing the services in this subsection.

(b) An agency may not assess a customized service charge unless the agency has notified the requestor of the customized service charge to be applied to the request, including an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimate cost of the charge. The notice also must provide the requestor the opportunity to amend his or her request in order to avoid or reduce the cost of a customized service charge.

(4) An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request, including a customized service charge. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request. An agency may waive any charge assessed for a request pursuant to agency rules and regulations. An agency may enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this section, or in response to a voluminous or frequently occurring request.

**Sec.**  RCW 42.56.520 and 2017 c 303 s 3 are each amended to read as follows:

(1) Responses to requests for public records shall be made promptly by agencies((~~, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives~~)). ((~~Within~~)) Except as described in subsection (5) of this section, within five business days of receiving a public record request, an agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) must respond in one of the ways provided in this subsection (1):

(a) Providing the record;

(b) Providing an internet address and link on the agency's web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer;

(c) Acknowledging that the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) has received the request and providing a reasonable estimate of the time the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) will require to respond to the request;

(d) Acknowledging that the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) has received the request and asking the requestor to provide clarification for a request that is unclear, and providing, to the greatest extent possible, a reasonable estimate of the time the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) will require to respond to the request if it is not clarified; or

(e) Denying the public record request.

(2) Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(3)(a) In acknowledging receipt of a public record request that is unclear, an agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) may ask the requestor to clarify what information the requestor is seeking.

(b) If the requestor fails to respond to an agency request to clarify the request, and the entire request is unclear, the agency((~~, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives~~)) need not respond to it. Otherwise, the agency must respond, pursuant to this section, to those portions of the request that are clear.

(4) Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies((~~, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives~~)) shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action ((~~or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives~~)) for the purposes of judicial review.

(5) For a public records request for records in the possession of a legislative entity, an entity's obligation to respond to a request, and the timeline for a response under this section, does not begin until the public records officer receives the public records request.

**Sec.**  RCW 42.40.030 and 2008 c 266 s 3 are each amended to read as follows:

(1) An employee shall not directly or indirectly use or attempt to use the employee's official authority or influence for the purpose of intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence any individual for the purpose of interfering with the right of the individual to: (a) Disclose to the auditor (or representative thereof) or other public official, as defined in RCW 42.40.020, information concerning improper governmental action; or (b) identify rules warranting review or provide information to the rules review committee.

(2) Nothing in this section authorizes an individual to disclose information otherwise prohibited by law, except to the extent that information is necessary to substantiate the whistleblower complaint, in which case information may be disclosed to the auditor or public official, as defined in RCW 42.40.020, by the whistleblower for the limited purpose of providing information related to the complaint. Any information provided to the auditor or public official under the authority of this subsection may not be further disclosed, except as provided in section 5 of this act.

NEW SECTION. **Sec.**  RCW 42.56.560 (Application of RCW 42.56.550) and 2005 c 274 s 289 & 1995 c 397 s 16 are each repealed.

**--- END ---**