

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 6439

Chapter 335, Laws of 2002

57th Legislature
2002 Regular Session

PUBLIC RECORDS DISCLOSURE--DOMESTIC SECURITY

EFFECTIVE DATE: 6/13/02

Passed by the Senate March 13, 2002
YEAS 38 NAYS 11

BRAD OWEN
President of the Senate

Passed by the House March 8, 2002
YEAS 92 NAYS 3

FRANK CHOPP
**Speaker of the
House of Representatives**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6439** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

Approved April 3, 2002

FILED

April 3, 2002 - 10:43 a.m.

GARY LOCKE
Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6439

AS AMENDED BY THE HOUSE

Passed Legislature - 2002 Regular Session

State of Washington 57th Legislature 2002 Regular Session

By Senate Committee on State & Local Government (originally sponsored by Senators Gardner, Haugen, McCaslin and Winsley; by request of Governor Locke and Attorney General)

READ FIRST TIME 02/08/2002.

1 AN ACT Relating to exemptions from disclosure of public records for
2 domestic security purposes; reenacting and amending RCW 42.17.310; and
3 creating a new section.

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

5 **Sec. 1.** RCW 42.17.310 and 2001 c 278 s 1, 2001 c 98 s 2, and 2001
6 c 70 s 1 are each reenacted and amended to read as follows:

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

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

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

14 (c) Information required of any taxpayer in connection with the
15 assessment or collection of any tax if the disclosure of the
16 information to other persons would (i) be prohibited to such persons by
17 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
18 taxpayer's right to privacy or result in unfair competitive
19 disadvantage to the taxpayer.

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

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

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

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

26 (h) Valuable formulae, designs, drawings, computer source code or
27 object code, and research data obtained by any agency within five years
28 of the request for disclosure when disclosure would produce private
29 gain and public loss.

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

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

1 (k) Records, maps, or other information identifying the location of
2 archaeological sites in order to avoid the looting or depredation of
3 such sites.

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

7 (m) Financial information supplied by or on behalf of a person,
8 firm, or corporation for the purpose of qualifying to submit a bid or
9 proposal for (i) a ferry system construction or repair contract as
10 required by RCW 47.60.680 through 47.60.750 or (ii) highway
11 construction or improvement as required by RCW 47.28.070.

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

16 (o) Financial and commercial information and records supplied by
17 private persons pertaining to export services provided pursuant to
18 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
19 export projects pursuant to RCW 43.23.035.

20 (p) Financial disclosures filed by private vocational schools under
21 chapters 28B.85 and 28C.10 RCW.

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

25 (r) Financial and commercial information and records supplied by
26 businesses or individuals during application for loans or program
27 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
28 or during application for economic development loans or program
29 services provided by any local agency.

30 (s) Membership lists or lists of members or owners of interests of
31 units in timeshare projects, subdivisions, camping resorts,
32 condominiums, land developments, or common-interest communities
33 affiliated with such projects, regulated by the department of
34 licensing, in the files or possession of the department.

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

38 (u) The residential addresses or residential telephone numbers of
39 employees or volunteers of a public agency which are held by any public

1 agency in personnel records, public employment related records, or
2 volunteer rosters, or are included in any mailing list of employees or
3 volunteers of any public agency.

4 (v) The residential addresses and residential telephone numbers of
5 the customers of a public utility contained in the records or lists
6 held by the public utility of which they are customers, except that
7 this information may be released to the division of child support or
8 the agency or firm providing child support enforcement for another
9 state under Title IV-D of the federal social security act, for the
10 establishment, enforcement, or modification of a support order.

11 (w)(i) The federal social security number of individuals governed
12 under chapter 18.130 RCW maintained in the files of the department of
13 health, except this exemption does not apply to requests made directly
14 to the department from federal, state, and local agencies of
15 government, and national and state licensing, credentialing,
16 investigatory, disciplinary, and examination organizations; (ii) the
17 current residential address and current residential telephone number of
18 a health care provider governed under chapter 18.130 RCW maintained in
19 the files of the department, if the provider requests that this
20 information be withheld from public inspection and copying, and
21 provides to the department an accurate alternate or business address
22 and business telephone number. On or after January 1, 1995, the
23 current residential address and residential telephone number of a
24 health care provider governed under RCW 18.130.040 maintained in the
25 files of the department shall automatically be withheld from public
26 inspection and copying unless the provider specifically requests the
27 information be released, and except as provided for under RCW
28 42.17.260(9).

29 (x) Information obtained by the board of pharmacy as provided in
30 RCW 69.45.090.

31 (y) Information obtained by the board of pharmacy or the department
32 of health and its representatives as provided in RCW 69.41.044,
33 69.41.280, and 18.64.420.

34 (z) Financial information, business plans, examination reports, and
35 any information produced or obtained in evaluating or examining a
36 business and industrial development corporation organized or seeking
37 certification under chapter 31.24 RCW.

38 (aa) Financial and commercial information supplied to the state
39 investment board by any person when the information relates to the

1 investment of public trust or retirement funds and when disclosure
2 would result in loss to such funds or in private loss to the providers
3 of this information.

4 (bb) Financial and valuable trade information under RCW 51.36.120.

5 (cc) Client records maintained by an agency that is a domestic
6 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
7 crisis center as defined in RCW 70.125.030.

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

14 (ee) Investigative records compiled by an employing agency
15 conducting a current investigation of a possible unfair practice under
16 chapter 49.60 RCW or of a possible violation of other federal, state,
17 or local laws prohibiting discrimination in employment.

18 (ff) Business related information protected from public inspection
19 and copying under RCW 15.86.110.

20 (gg) Financial, commercial, operations, and technical and research
21 information and data submitted to or obtained by the clean Washington
22 center in applications for, or delivery of, program services under
23 chapter 70.95H RCW.

24 (hh) Information and documents created specifically for, and
25 collected and maintained by a quality improvement committee pursuant to
26 RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW
27 4.24.250, regardless of which agency is in possession of the
28 information and documents.

29 (ii) Personal information in files maintained in a data base
30 created under RCW 43.07.360.

31 (jj) Financial and commercial information requested by the public
32 stadium authority from any person or organization that leases or uses
33 the stadium and exhibition center as defined in RCW 36.102.010.

34 (kk) Names of individuals residing in emergency or transitional
35 housing that are furnished to the department of revenue or a county
36 assessor in order to substantiate a claim for property tax exemption
37 under RCW 84.36.043.

38 (ll) The names, residential addresses, residential telephone
39 numbers, and other individually identifiable records held by an agency

1 in relation to a vanpool, carpool, or other ride-sharing program or
2 service. However, these records may be disclosed to other persons who
3 apply for ride-matching services and who need that information in order
4 to identify potential riders or drivers with whom to share rides.

5 (mm) The personally identifying information of current or former
6 participants or applicants in a paratransit or other transit service
7 operated for the benefit of persons with disabilities or elderly
8 persons.

9 (nn) The personally identifying information of persons who acquire
10 and use transit passes and other fare payment media including, but not
11 limited to, stored value smart cards and magnetic strip cards, except
12 that an agency may disclose this information to a person, employer,
13 educational institution, or other entity that is responsible, in whole
14 or in part, for payment of the cost of acquiring or using a transit
15 pass or other fare payment media, or to the news media when reporting
16 on public transportation or public safety. This information may also
17 be disclosed at the agency's discretion to governmental agencies or
18 groups concerned with public transportation or public safety.

19 (oo) Proprietary financial and commercial information that the
20 submitting entity, with review by the department of health,
21 specifically identifies at the time it is submitted and that is
22 provided to or obtained by the department of health in connection with
23 an application for, or the supervision of, an antitrust exemption
24 sought by the submitting entity under RCW 43.72.310. If a request for
25 such information is received, the submitting entity must be notified of
26 the request. Within ten business days of receipt of the notice, the
27 submitting entity shall provide a written statement of the continuing
28 need for confidentiality, which shall be provided to the requester.
29 Upon receipt of such notice, the department of health shall continue to
30 treat information designated under this section as exempt from
31 disclosure. If the requester initiates an action to compel disclosure
32 under this chapter, the submitting entity must be joined as a party to
33 demonstrate the continuing need for confidentiality.

34 (pp) Records maintained by the board of industrial insurance
35 appeals that are related to appeals of crime victims' compensation
36 claims filed with the board under RCW 7.68.110.

37 (qq) Financial and commercial information supplied by or on behalf
38 of a person, firm, corporation, or entity under chapter 28B.95 RCW

1 relating to the purchase or sale of tuition units and contracts for the
2 purchase of multiple tuition units.

3 (rr) Any records of investigative reports prepared by any state,
4 county, municipal, or other law enforcement agency pertaining to sex
5 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
6 defined in RCW 71.09.020, which have been transferred to the Washington
7 association of sheriffs and police chiefs for permanent electronic
8 retention and retrieval pursuant to RCW 40.14.070(2)(b).

9 (ss) Credit card numbers, debit card numbers, electronic check
10 numbers, card expiration dates, or bank or other financial account
11 numbers supplied to an agency for the purpose of electronic transfer of
12 funds, except when disclosure is expressly required by law.

13 (tt) Financial information, including but not limited to account
14 numbers and values, and other identification numbers supplied by or on
15 behalf of a person, firm, corporation, limited liability company,
16 partnership, or other entity related to an application for a liquor
17 license, gambling license, or lottery retail license.

18 (uu) Records maintained by the employment security department and
19 subject to chapter 50.13 RCW if provided to another individual or
20 organization for operational, research, or evaluation purposes.

21 (vv) Individually identifiable information received by the work
22 force training and education coordinating board for research or
23 evaluation purposes.

24 (ww) Those portions of records (~~containing~~) assembled, prepared,
25 or maintained to prevent, mitigate, or respond to criminal terrorist
26 acts, which are acts that significantly disrupt the conduct of
27 government or of the general civilian population of the state or the
28 United States and that manifest an extreme indifference to human life,
29 the public disclosure of which would have a substantial likelihood of
30 threatening public safety, consisting of:

31 (i) Specific and unique vulnerability assessments or specific and
32 unique response or deployment plans, (~~either of which is intended to~~
33 prevent or mitigate criminal terrorist acts as defined in RCW
34 70.74.285, the public disclosure of which would have a substantial
35 likelihood of threatening public safety)) including compiled underlying
36 data collected in preparation of or essential to the assessments, or to
37 the response or deployment plans; and

38 (ii) Records not subject to public disclosure under federal law
39 that are shared by federal or international agencies, and information

1 prepared from national security briefings provided to state or local
2 government officials related to domestic preparedness for acts of
3 terrorism.

4 (xx) Commercial fishing catch data from logbooks required to be
5 provided to the department of fish and wildlife under RCW 77.12.047,
6 when the data identifies specific catch location, timing, or
7 methodology and the release of which would result in unfair competitive
8 disadvantage to the commercial fisher providing the catch data.
9 However, this information may be released to government agencies
10 concerned with the management of fish and wildlife resources.

11 (yy) Sensitive wildlife data obtained by the department of fish and
12 wildlife. However, sensitive wildlife data may be released to
13 government agencies concerned with the management of fish and wildlife
14 resources. Sensitive wildlife data includes:

15 (i) The nesting sites or specific locations of endangered species
16 designated under RCW 77.12.020, or threatened or sensitive species
17 classified by rule of the department of fish and wildlife;

18 (ii) Radio frequencies used in, or locational data generated by,
19 telemetry studies; or

20 (iii) Other location data that could compromise the viability of a
21 specific fish or wildlife population, and where at least one of the
22 following criteria are met:

23 (A) The species has a known commercial or black market value;

24 (B) There is a history of malicious take of that species; or

25 (C) There is a known demand to visit, take, or disturb, and the
26 species behavior or ecology renders it especially vulnerable or the
27 species has an extremely limited distribution and concentration.

28 (zz) The personally identifying information of persons who acquire
29 recreational licenses under RCW 77.32.010 or commercial licenses under
30 chapter 77.65 or 77.70 RCW, except name, address of contact used by the
31 department, and type of license, endorsement, or tag. However, the
32 department of fish and wildlife may disclose personally identifying
33 information to:

34 (i) Government agencies concerned with the management of fish and
35 wildlife resources;

36 (ii) The department of social and health services, child support
37 division, and to the department of licensing in order to implement RCW
38 77.32.014 and 46.20.291; and

1 (iii) Law enforcement agencies for the purpose of firearm
2 possession enforcement under RCW 9.41.040.

3 (aaa) Information regarding the infrastructure and security of
4 computer and telecommunications networks, consisting of security
5 passwords, security access codes and programs, access codes for secure
6 software applications, security and service recovery plans, security
7 risk assessments, and security test results to the extent that they
8 identify specific system vulnerabilities.

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

17 (3) Inspection or copying of any specific records exempt under the
18 provisions of this section may be permitted if the superior court in
19 the county in which the record is maintained finds, after a hearing
20 with notice thereof to every person in interest and the agency, that
21 the exemption of such records is clearly unnecessary to protect any
22 individual's right of privacy or any vital governmental function.

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

27 NEW SECTION. **Sec. 2.** No later than September 1, 2004, the joint
28 legislative audit and review committee shall review the effect of RCW
29 42.17.310(1) (ww) and (aaa) on state agency performance in responding
30 to requests for disclosure of records under chapter 42.17 RCW. In
31 conducting this review the joint legislative audit and review committee
32 shall select a representative sample of requests for public disclosure,
33 and the agencies' responses to those requests, from up to five state
34 agencies. The joint legislative audit and review committee shall
35 report its findings to the legislature no later than November 30, 2004.

Passed the Senate March 13, 2002.

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