
HOUSE BILL 1651

State of Washington

59th Legislature

2005 Regular Session

By Representatives O'Brien, Darneille and Lovick

Read first time 02/01/2005. Referred to Committee on State Government Operations & Accountability.

1 AN ACT Relating to community notification and release of sex
2 offender information; 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 NEW SECTION. **Sec. 1.** It is and has been the intent of the
6 legislature that information regarding sex offenders be shared between
7 state agencies and with local law enforcement, and that public
8 disclosure of sex offender information that is accurate, relevant, and
9 necessary to protect the public be managed by and controlled through
10 the community notification statute, RCW 4.24.550. The legislature
11 finds that law enforcement has been, and continues to be, the most
12 reliable means of ensuring that the information released protects the
13 public, protects the confidentiality of victims, protects ongoing
14 criminal investigations, and complies with the confidentiality
15 provisions of other federal and state laws. The legislature further
16 finds that the criminal records privacy act and other statutes
17 reference RCW 4.24.550 as the disclosure provision for sex offender
18 information.

1 The legislature finds that to accomplish its penological duties,
2 the department of corrections must receive and use protected
3 information to appropriately confine, supervise, treat, and assess the
4 risk of offenders. To further this intent, the legislature has
5 authorized the end of sentence review committee to access and consider
6 information that otherwise may be confidential for the specific reason
7 of determining if the offender should be referred for civil commitment
8 as a sexually violent predator under chapter 71.09 RCW. The
9 legislature further finds that it is appropriate for the department to
10 share information, beyond what is publicly disclosable, with law
11 enforcement agencies for the appropriate supervision of offenders in
12 the community or for the investigation of criminal acts. The
13 legislature does not intend that law enforcement bulletins or notes,
14 comments, and assessments of the end of sentence review committee to
15 assess the risk, or plan the transition of sex offenders to the
16 community, be available for public inspection through public disclosure
17 due to the risk that providing the information in such a manner would
18 pose to the state's community notification program and the risk that
19 the information would unnecessarily traumatize the victims of the
20 offenders' previous offenses.

21 **Sec. 2.** RCW 42.17.310 and 2003 c 277 s 3 and 2003 c 124 s 1 are
22 each reenacted and amended to read as follows:

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

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

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

30 (c) Information required of any taxpayer in connection with the
31 assessment or collection of any tax if the disclosure of the
32 information to other persons would (i) be prohibited to such persons by
33 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
34 taxpayer's right to privacy or result in unfair competitive
35 disadvantage to the taxpayer.

36 (d) Specific intelligence information and specific investigative
37 records compiled by investigative, law enforcement, and penology

1 agencies, and state agencies vested with the responsibility to
2 discipline members of any profession, the nondisclosure of which is
3 essential to effective law enforcement or for the protection of any
4 person's right to privacy.

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

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

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

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

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

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

36 (k) Records, maps, or other information identifying the location of
37 archaeological sites in order to avoid the looting or depredation of
38 such sites.

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

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

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

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

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

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

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

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

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

35 (u) The residential addresses or residential telephone numbers of
36 employees or volunteers of a public agency which are held by any public
37 agency in personnel records, public employment related records, or

1 volunteer rosters, or are included in any mailing list of employees or
2 volunteers of any public agency.

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

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

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

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

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

37 (aa) Financial and commercial information supplied to the state
38 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.

1 (ll) The names, residential addresses, residential telephone
2 numbers, and other individually identifiable records held by an agency
3 in relation to a vanpool, carpool, or other ride-sharing program or
4 service. However, these records may be disclosed to other persons who
5 apply for ride-matching services and who need that information in order
6 to identify potential riders or drivers with whom to share rides.

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

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

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

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

1 (qq) Financial and commercial information supplied by or on behalf
2 of a person, firm, corporation, or entity under chapter 28B.95 RCW
3 relating to the purchase or sale of tuition units and contracts for the
4 purchase of multiple tuition units.

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

11 (ss) Credit card numbers, debit card numbers, electronic check
12 numbers, card expiration dates, or bank or other financial account
13 numbers, except when disclosure is expressly required by or governed by
14 other law.

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

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

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

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

33 (i) Specific and unique vulnerability assessments or specific and
34 unique response or deployment plans, including compiled underlying data
35 collected in preparation of or essential to the assessments, or to the
36 response or deployment plans; and

37 (ii) Records not subject to public disclosure under federal law
38 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)(i) Discharge papers of a veteran of the armed forces of the
4 United States filed at the office of the county auditor before July 1,
5 2002, that have not been commingled with other recorded documents.
6 These records will be available only to the veteran, the veteran's next
7 of kin, a deceased veteran's properly appointed personal representative
8 or executor, a person holding that veteran's general power of attorney,
9 or to anyone else designated in writing by that veteran to receive the
10 records.

11 (ii) Discharge papers of a veteran of the armed forces of the
12 United States filed at the office of the county auditor before July 1,
13 2002, that have been commingled with other records, if the veteran has
14 recorded a "request for exemption from public disclosure of discharge
15 papers" with the county auditor. If such a request has been recorded,
16 these records may be released only to the veteran filing the papers,
17 the veteran's next of kin, a deceased veteran's properly appointed
18 personal representative or executor, a person holding the veteran's
19 general power of attorney, or anyone else designated in writing by the
20 veteran to receive the records.

21 (iii) Discharge papers of a veteran filed at the office of the
22 county auditor after June 30, 2002, are not public records, but will be
23 available only to the veteran, the veteran's next of kin, a deceased
24 veteran's properly appointed personal representative or executor, a
25 person holding the veteran's general power of attorney, or anyone else
26 designated in writing by the veteran to receive the records.

27 (iv) For the purposes of this subsection (1)(aaa), next of kin of
28 deceased veterans have the same rights to full access to the record.
29 Next of kin are the veteran's widow or widower who has not remarried,
30 son, daughter, father, mother, brother, and sister.

31 (bbb) Those portions of records containing specific and unique
32 vulnerability assessments or specific and unique emergency and escape
33 response plans at a city, county, or state adult or juvenile
34 correctional facility, the public disclosure of which would have a
35 substantial likelihood of threatening the security of a city, county,
36 or state adult or juvenile correctional facility or any individual's
37 safety.

1 (ccc) Information compiled by school districts or schools in the
2 development of their comprehensive safe school plans pursuant to RCW
3 28A.320.125, to the extent that they identify specific vulnerabilities
4 of school districts and each individual school.

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

11 (eee) Information obtained and exempted or withheld from public
12 inspection by the health care authority under RCW 41.05.026, whether
13 retained by the authority, transferred to another state purchased
14 health care program by the authority, or transferred by the authority
15 to a technical review committee created to facilitate the development,
16 acquisition, or implementation of state purchased health care under
17 chapter 41.05 RCW.

18 (fff) Proprietary data, trade secrets, or other information that
19 relates to: (i) A vendor's unique methods of conducting business; (ii)
20 data unique to the product or services of the vendor; or (iii)
21 determining prices or rates to be charged for services, submitted by
22 any vendor to the department of social and health services for purposes
23 of the development, acquisition, or implementation of state purchased
24 health care as defined in RCW 41.05.011.

25 (ggg) Records or documents obtained, prepared, or maintained by an
26 agency with the jurisdiction over the release of sex offenders for the
27 purpose of fulfilling the responsibility of the end of sentence review
28 committee and the requirements under RCW 72.09.345 and 71.09.025.

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

37 (3) Inspection or copying of any specific records exempt under the
38 provisions of this section may be permitted if the superior court in

1 the county in which the record is maintained finds, after a hearing
2 with notice thereof to every person in interest and the agency, that
3 the exemption of such records is clearly unnecessary to protect any
4 individual's right of privacy or any vital governmental function.

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

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