

HOUSE BILL REPORT

E2SHB 1317

As Passed House:
February 13, 2010

Title: An act relating to disclosure of public records containing information used to locate or identify employees of criminal justice agencies.

Brief Description: Regarding the disclosure of public records containing information used to locate or identify employees of criminal justice agencies.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Kessler, Rodne, Simpson, O'Brien, Hunt, Hurst, Ormsby, Moeller, Chase, Sullivan and Kelley).

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/30/09, 1/29/10 [DPS];
Ways & Means: 2/6/10, 2/8/10 [DP2S(w/o sub SGTA)].

Floor Activity:

Passed House: 2/13/10, 95-0.

Brief Summary of Engrossed Second Substitute Bill

- Exempts the photographs and month and year of birth information in personnel files of criminal justice employees and workers from disclosure under the Public Records Act.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Hurst, Miloscia and Taylor.

Staff: Tracey O'Brien (786-7196).

HOUSE COMMITTEE ON WAYS & MEANS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on State Government & Tribal Affairs. Signed by 22 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest, Ross, Schmick and Seaquist.

Staff: Steve Smith (786-7178).

Background:

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure. The PRA requires agencies to respond to public records requests within five business days. The agency must either provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Additional time may be required to respond to a request where the agency needs to notify third parties 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. For practical purposes, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial. Any person who is denied the opportunity to inspect or copy a public record may file a motion to show cause in superior court why the agency has refused access to the record. The burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Judicial review of the agency decision is de novo and the court may examine the record in camera. Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person no less than \$5 but not to exceed \$100 for each day he or she was denied the right to inspect or copy the public record. The court's discretion lies in the amount per day, but the court may not adjust the number of days for which the agency is fined.

An agency or its representative, or a person who is named in the record or to whom the record specifically pertains, may file a motion or affidavit asking the superior court to enjoin disclosure of the public record. The court may issue an injunction if it finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital government functions.

Summary of Engrossed Second Substitute Bill:

The photograph and month and year of birth found in employment or licensing records of employees and workers of criminal justice agencies shall be exempt from public disclosure. The news media shall still have access to the photographs and birth information. A criminal justice agency is a court or a government agency which performs the administration of

criminal justice pursuant to a statute or an executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (State Government & Tribal Affairs):

See Committee records from 2009.

Staff Summary of Public Testimony (Ways & Means):

(In support) Substitute House Bill (SHB) 1317 does not drive state dollars. The Department of Corrections (DOC) processes about 1,500 public disclosure requests per month and many of these requests are retaliatory in nature. The public disclosure process, specifically background information and photographs, in the hands of an inmate is used as a weapon to get back at DOC staff. The amount of tension this creates cannot be understated, and DOC staff is very concerned about their personal information being given to inmates, and this tension then affects the overall environment in correctional facilities.

This bill is part of the recommendations coming from the Governor's task force on the Lakewood Police murders. We do not support the bill with the purpose of keeping information from the media, but in the aftermath of the shooting, the Lakewood Police Department was barraged with information requests on officers and their families, and in some cases the individuals turned out to be members of Maurice Clemmons's family. A much broader bill would be preferable, but SHB 1317 at least addresses the problem of criminals obtaining personal information from local agencies.

It is easier for the newspaper industry to purchase records than for employees to defend requests in court systems, which are tied up with these actions. Inmates and other parties use them to target and endanger individuals and families.

(Opposed) The original bill was completely untenable. The bill would have applied to all records, it would have highlighted exactly who the law enforcement officers were, and it would have been very expensive to separate out only date of birth information.

After the Brame case, Washington state newspapers went through databases and matched up the employees of criminal justice agencies with the database of criminal convictions, cases, and arrests. This occurred specifically with domestic violence information, but it also occurred across the board, and newspaper staff was able to match up how criminal justice employees were treated in these cases. It is specifically the name and date-of-birth that really are the two necessary identifiers for these databases.

The fear of being able to discover information about an individual should not be seen as so closely linked with SHB 1317 because personal information is already readily available on the Internet from commercial sources, and the information withheld under SHB1317 would not impact the information available from other sources.

Persons Testifying (State Government & Tribal Affairs): See Committee records from 2009.

Persons Testifying (Ways & Means): (In support) Scott Blonien, Department of Corrections; Jamie Daniels, Washington Council of Police and Sheriffs; and Anna Fanceaici, Teamsters 117.

(Opposed) Rowland Thompson, Allied Daily Newspapers.

Persons Signed In To Testify But Not Testifying (State Government & Tribal Affairs): See Committee records from 2009.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.