

HOUSE BILL REPORT

HB 2114

As Reported by House Committee On:
Local Government

Title: An act relating to clarifying the exemption in the public records act for customer information held by public utilities.

Brief Description: Clarifying the exemption in the public records act for customer information held by public utilities.

Sponsors: Representatives Kretz, Van De Wege, Takko, Nealey, Haler, Buys and Liias.

Brief History:

Committee Activity:

Local Government: 1/13/14, 1/16/14 [DPS].

Brief Summary of Substitute Bill

- Modifies an existing Public Records Act exemption for customer information held by a public utility to exempt from disclosure all customers' addresses, telephone numbers, electronic contact information, and specific utility usage and billing information in increments less than a billing cycle or monthly, whichever is greater.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Takko, Chair; Gregerson, Vice Chair; Overstreet, Ranking Minority Member; Kochmar, Assistant Ranking Minority Member; Fitzgibbon, Springer and Taylor.

Minority Report: Do not pass. Signed by 1 member: Representative Pike.

Staff: Michaela Murdock (786-7289).

Background:

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.

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 Washington Supreme Court has stated that the general purpose of the exemptions is to "exempt from public inspection those categories of public records most capable of causing substantial damage to the privacy rights of citizens or damage to vital functions of government." The provisions requiring public records disclosure must be interpreted liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

While not defined within the PRA, in general, public utilities supply a utility service or commodity, such as telecommunications, sewer, water, energy, or solid waste or refuse, to the public for compensation. Certain information relating to public utilities is exempt from disclosure under the PRA, including customers' residential addresses and residential telephone numbers contained in the records or lists held by the public utility of which they are customers. Residential addresses and residential telephone numbers may be released, though, to the Division of Child Support or the agency or firm providing child support enforcement for another state.

The PRA includes numerous other exemptions and disclosure prohibitions. For example, there are exemptions for information, the disclosure of which would constitute an invasion or violation of personal privacy (*i.e.*, the disclosure would be highly offensive to a reasonable person and is not of legitimate concern to the public); certain personal information like credit and debit card numbers, bank or other financial account numbers, and documents and materials used to prove identity, age, residential address, social security number, or other personal information required to obtain a driver's license or identicard; and other financial, commercial, and proprietary information.

Summary of Substitute Bill:

An exemption from disclosure under the PRA for customer information held by public utilities is expanded. In addition to residential addresses and telephone numbers, the following information for all customers of a public utility that is contained in the records or lists held by the public utility is exempt from disclosure:

- addresses;
- telephone numbers;
- electronic contact information; and
- customer-specific utility usage and billing information in increments less than a billing cycle or a month, whichever is greater.

Substitute Bill Compared to Original Bill:

The substitute bill modifies changes that the underlying bill makes to a PRA exemption for customer information held by a public utility. It establishes that for all customers, not just residential customers, their addresses, telephone numbers, electronic contact information, and customer-specific utility usage and billing information in certain increments is exempt from disclosure.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Public disclosure and open government are important and are supported; however, this bill is necessary to protect customer privacy and proprietary information. This bill is not about making utilities' operations less transparent. The Sunshine Committee voted in November to endorse the bill in its current form.

The primary reason for this bill is that advanced or smart utility readers permit utilities to collect more detailed data than ever before. In the old days, a meter reader would go out to a house once every month or two, take a reading of the meter, and then use a single reading to bill a customer for consumption. Now, smart meters are able to read meters in small increments, such as minutes or hours. For example, 100 percent of Benton County Public Utility District's electrical customers are using smart meters. Residential data is captured hourly and commercial and industrial data is captured every 15 minutes. Customers are concerned that this level of detail can reveal too much information about their private lives. It can show when they are away from home or leave for work, which can make them vulnerable to burglaries.

Industrial or commercial customers have security and competitiveness concerns, because they often have more sophisticated meters. The data from these meters feed into energy management systems, production and manufacturing processes, and heating, ventilation, and air conditioning systems, and can reveal proprietary information.

Advanced meters are more efficient and provide benefits and greater transparency to customers and utilities. Utilities are installing them at a rapid pace. More detailed data gives customers a better understanding of how to conserve energy and lower their bills. However, anyone, not just a customer of record, can currently make a PRA request for this information. Utilities are concerned that the disclosure of daily or hourly data will be considered intrusive by customers and an invasion of their privacy.

Another reason for this bill is to update the law for modern times by exempting electronic contact information. Customers' electronic contact information can be used for cyber-hacking or scams, and presents other internet security issues. Electronic mail (e-mail) addresses are replacing physical addresses as a primary point of contact with utilities.

Private investor-owned utilities already treat this information as private, and accordingly, customer information is treated differently depending on whether you belong to a public or private utility. Whether your privacy will be protected should not depend on whether your utility happens to be private or public.

This bill does not do several things: exempt aggregated or de-identified data; exempt rates or the rate-making process; exempt service contracts or conservation agreements; or change provisions governing law enforcement access to customer information.

(In support with amendment(s)) Industrial companies consider this information proprietary, particularly when data can be disclosed on an hourly basis. Under this bill, the public will still be able to look at usage in increments of a billing cycle and compare that against rates that were set at a public meeting. There are concerns about the text of the bill; there is ambiguity as to whether the term "residential" modifies the entire list of protected information, or just "addresses." This needs to be amended, because commercial customer information should be protected too.

(In support with concerns) The form of the bill as it currently stands is not what was agreed upon by the Sunshine Committee in November.

Public utility district commissioners are in charge of setting the rates for individual businesses and residents as a class; however, they can pick out large businesses, like aluminum smelters or saw mills (users of large amounts of energy), and give them preferential rates. Disclosure of the actual billing information and rates for these customers is important. In particular, the public needs to see the relationship between commissioners and those large users who enjoy preferential rates.

Customers of a public utility are also the owners of the utility; they elect the commissioners. Commissioners use e-mail addresses for multiple purposes, such as to send newsletters and correspondence. The public needs the ability to request customer e-mail addresses in bulk, so that they can contact customers/owners in the same way that the commissioners do. The cost of physical mailing is high, while sending e-mail is inexpensive. Electronic mail addresses can be released in bulk without names.

(Opposed) None.

Persons Testifying: (In support) Representative Kretz, prime sponsor; Anne Spangler, Snohomish Public Utility District; Chad Bartram, Benton Public Utility District; Bill Clarke, Washington Public Utility District Association; and Chris Kaasa, American Civil Liberty Union of Washington.

(In support with amendment(s)) Rowland Thompson, Allied Daily Newspapers of Washington.

(In support with concerns) Tim Boyd, Industrial Customers of Northwest Utilities.

Persons Signed In To Testify But Not Testifying: None.