

SENATE BILL REPORT

2SHB 1888

As Reported by Senate Committee On:
State Government, Tribal Relations & Elections, February 26, 2020
Ways & Means, March 2, 2020

Title: An act relating to protecting employee information from public disclosure.

Brief Description: Protecting employee information from public disclosure.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Hudgins and Valdez).

Brief History: Passed House: 2/14/20, 91-7.

Committee Activity: State Government, Tribal Relations & Elections: 2/21/20, 2/26/20 [DPA-WM].

Ways & Means: 2/28/20, 3/02/20 [DPA (SGTE), DNP].

Brief Summary of Amended Bill

- Exempts month and year of birth, photographs, and payroll deduction information of public employees and volunteers held in personnel files from public disclosure requirements, but permits the news media to have access to full dates of birth and photographs.
- Exempts race or ethnicity, sexual orientation, national origin, or disability status information voluntarily submitted to state agencies which is not in deidentified or aggregated format from public disclosure requirements.
- Requires an agency to notify an employee, the employee's union, and the requestor when a public records request has been made for information located exclusively in the employee's personnel, payroll, supervisor, or training file.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Zeiger, Ranking Member; Muzzall, Assistant Ranking Member; Hasegawa, Hawkins and Takko.

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.

Staff: Samuel Brown (786-7470)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Muzzall, Pedersen and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, Rivers, Schoesler, Wagoner, Warnick and Wilson, L..

Staff: Sarian Scott (786-7729)

Background: Public Records Act. The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires that all state and local government agencies make all public records available for public inspection and copying unless certain statutory exemptions apply. Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Personal Information. Several exemptions apply to records containing personal information and records that raise privacy concerns, including medical information, contact information, financial information, and other personally identifying information. Photographs and month and year of birth of employees and workers of criminal justice agencies in personnel files are exempt from public disclosure. However, the news media may access photographs and full dates of birth. In October 2019, the Washington Supreme Court held that birth dates of state employees are not exempt from disclosure under PRA, and their release does not violate the state Constitution's guarantee of privacy.

Third-Party Notification. Agencies generally may notify persons named in a record or to whom a record pertains that the release of a record has been requested if the agency is not already required to do so by law. Persons named in a record or to whom a record specifically pertains may seek to enjoin the release of a record. A court may enjoin the release of a record if disclosure is not in the public interest and would substantially and would irreparably damage a person or vital government functions.

Summary of Amended Bill: Exemptions. The month and year of birth, photographs, and payroll deductions of public agency employees and volunteers are exempt from public disclosure requirements. This exemption does not restrict disclosure of full dates of birth and photographs to the news media.

Information voluntarily submitted to a state agency or higher education institution that identifies an individual's race or ethnicity, sexual orientation, national origin, or disability

status is exempt from the PRA's disclosure requirements. The exemption does not apply to deidentified or aggregated information.

Notification. An agency receiving a request for information located exclusively in the employee's personnel, payroll, supervisor, or training file must provide notice to the employee, any union representing the employee, and the requestor with:

- the date of the request;
- the nature of the requested record;
- that agency will release any nonexempt information in the record at least ten days after the notice is made; and
- that the employee may seek a court order enjoining disclosure.

EFFECT OF STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS COMMITTEE AMENDMENT(S): Notification. Agencies must only provide notice upon a request for information located exclusively in an employee's personnel, payroll, supervisor, or training file. The date the agency intends to release the record must be at least ten days after the notice is made, rather than mailed. The notice must state that the agency will only release information not exempt from public disclosure requirements if no injunction is obtained.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Second Substitute House Bill (State Government, Tribal Relations & Elections): *The committee recommended a different version of the bill than what was passed.* PRO: This bill lines up with a lot of other work around privacy and cybersecurity. Public agencies are stewards of their employees, and no other employer would send out all this information. Public employees have to say "no" all the time, to awarding benefits or parental rights, and that puts them in danger of being retaliated against. Members of law enforcement and firefighters protect our community, and they should be protected too. One of our members adopted a foster child, and releasing his birthdate puts him and his family at risk to threats from the child's biological family. Public employees involved in closed adoptions and in domestic abuse situations have very real reasons for not wanting their employers to release their personal information.

We want to protect retired law enforcement officers who worked dangerous undercover assignments—the lives of them and their families could be jeopardized through disclosures. Some retirees have passed away, but their beneficiaries are still there, some whom are disabled and need some safety. Disclosure of this information is very intrusive to our plan's retirees, the majority of whom are disabled. Retirees are scared when they see a public disclosure request aimed at a broad number of employees and retirees. This is about the safety and privacy of one in ten Washingtonians. I have been harassed in my home based on information my employer gave out. My identity has been stolen. A woman is getting ready

to quit her public service job because her employer informed her the address confidentiality program will not protect her information, after she has had to move out of two other states to avoid a domestic abuse situation.

This is a reasonable accommodation between privacy and accountability interests that would let our journalists do their job.

CON: If notice is given under the bill, it could be potentially anything about a person because "personal information" is not defined in the PRA. It is cumbersome and expensive to give notice to 800,000 public employees, and that requirement should be in the personnel exemptions section, not the personal information exemptions section. This bill will not protect the safety or privacy of public employees. We have no documented instances of this information being used to target public employees. If there is a problem, it should be addressed by correcting laws around protection of criminal justice employees, domestic violence victims, or the address confidentiality program.

Persons Testifying (State Government, Tribal Relations & Elections): PRO: Representative Zack Hudgins, Prime Sponsor; Sandra Toussaint, AFSCME Council 28/WFSE; Lucinda Young, WEA; Erin Haick, SEIU 925; AJ Johnson, Washington State Council of Firefighters; Brent Beden, Washington State Retired Deputy Sheriff & Police Officers Association; William Dickinson, Joyce Willms, LEOFF 1 Coalition; Mark Allen, Washington State Association of Broadcasters; Kati Thompson, citizen; Bob Evans, citizen.

CON: Rowland Thompson, Allied Daily Newspapers of Washington; Maxford Nelsen, Freedom Foundation.

Persons Signed In To Testify But Not Testifying (State Government, Tribal Relations & Elections): No one.

Staff Summary of Public Testimony on Bill as Amended by State Government, Tribal Relations & Elections (Ways & Means): PRO: Members were concerned their personal information was shared. Language has been modernized. Agencies can use email, robocall, things other than a letter than can be quite costly. Public employees are angry about this. We want to keep employees safe. Please exempt LEOFF1 from having this information out there. If you can not, require that they get MAILED notification that someone is asking for this information. Many do not have emails.

CON: We do not think this bill will protect employees. Public employees' date of birth have been subject to public disclosure for decades. Current law provides strong protections.

OTHER: Newspapers want date of birth so they can identify people. Allows identification of misconduct. We can also follow employees moving from school district to school district.

Persons Testifying (Ways & Means): PRO: Sandra Toussaint, Washington Federation of State Employees; Lucinda Young, Washington Education Association; Joyce Willms, LEOFF 1 Coalition.

CON: Maxford Nelsen, Freedom Foundation.

OTHER: Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.