

FINAL BILL REPORT

ESHB 1533

C 458 L 23
Synopsis as Enacted

Brief Description: Exempting the disclosure of certain information of agency employees or their dependents who are survivors of domestic violence, sexual assault, harassment, or stalking.

Sponsors: House Committee on State Government & Tribal Relations (originally sponsored by Representatives Mena, Davis, Reed, Doglio, Fosse, Berg, Taylor, Ryu, Peterson, Berry, Walen, Alvarado, Ramel, Simmons, Griffey, Morgan, Gregerson, Shavers, Ormsby, Pollet, Fey, Kloba, Bateman and Macri).

House Committee on State Government & Tribal Relations
Senate Committee on State Government & Elections

Background:

The Public Records Act.

The Public Records Act (PRA) requires that all public records maintained by state and local agencies be made available to all members of the public, except for records specifically exempt under the PRA or other statute. A public record is defined as any writing that is prepared, owned, used, or retained by any state or local government agency, and which contains information that relates to the conduct of government, or the performance of any governmental or proprietary function. Within five business days of receiving the request, 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. Provisions under the PRA are construed liberally, and the exemptions must be construed narrowly.

Many statutes provide for exemptions to the requirement to disclose public records or prohibit the disclosure of such records. For example, the PRA provides for various exemptions related to personally identifiable information or a person's right to privacy. The PRA prohibits agencies from disclosing lists of individuals when that list is requested for commercial purposes. Personal information in employee files maintained by an agency is also exempt to the extent that disclosure would violate an employee's right to privacy,

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meaning that the disclosure of the information: (1) would be highly offensive to a reasonable person; and (2) is not of legitimate concern to the public. In addition, certain employment information held by an agency in personnel records is also exempt under the PRA such as residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, driver's license numbers, identicard numbers, payroll deductions, and emergency contact information of employees; and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees. Further, the PRA exempts from disclosure client records maintained by an agency that is a domestic violence program or a community sexual assault program.

Address Confidentiality Program.

The Address Confidentiality Program (ACP) is a service administered by the Office of the Secretary of State to help people who fear for their safety maintain a confidential address from perpetrators who might locate their personal address through public records such as driver licenses, voter registries, and marriage records. Participants in the ACP are assigned a P.O. Box address that they can use as their legal home, work, or school address. State, county, and city government agencies are legally required to accept the substitute address. Washington's ACP is available to state residents who are survivors of stalking, domestic violence, trafficking, or sexual assault. In 2011 the program expanded to include criminal justice employees who have been threatened or harassed because of their work and expanded once more in 2022 to include state elections officials. Currently, the ACP serves more than 5,000 residents.

Domestic Violence.

Domestic violence is defined in the criminal procedure statute as including any of the following crimes when committed either by one family or household member against another family or household member, or one intimate partner against another intimate partner: assault, drive by shooting, reckless endangerment, coercion, burglary, criminal trespass, malicious mischief, kidnapping, unlawful imprisonment, violation of a no contact order, rape, stalking, or interference in reporting domestic violence. The definition of "domestic violence" under the civil protection order statute is similar, but also includes the infliction of fear of physical harm, coercive control, and unlawful harassment.

Sexual Assault.

Sexual assault is defined under the Victims of Sexual Assault Act as one or more of the following: rape or rape of a child, assault with intent to commit rape or rape of a child, incest or indecent liberties, child molestation, sexual misconduct with a minor, custodial sexual misconduct, crimes with a sexual motivation, sexual exploitation or commercial sex abuse of a minor, promoting prostitution, or an attempt to commit any of the aforementioned offenses. The civil protection order statute uses the term "sexual abuse," which generally has the same definition as "sexual assault" under the Victims of Sexual Assault Act, but also includes sexual coercion, sexually explicit photographing or recording,

voyeurism, indecent exposure, and sexual harassment.

Stalking.

Under the criminal code, a person is guilty of stalking when: (1) they intentionally and repeatedly harass or follow another person; (2) the person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or another person; and (3) the stalker either intends to frighten, intimidate, or harass the person or knows or reasonably should know that the person is afraid, intimidated, or harassed. The civil protection order statute has a similar definition of stalking, but also includes cyber harassment, attempts to contact, monitoring, tracking, surveillance, keeping under observation, and disrupting activities.

Harassment.

Under the criminal code, harassment occurs when, without lawful authority, a person knowingly threatens to: (1) cause bodily injury immediately or in the future to another; (2) cause physical damage to the property of another; (3) subject the person threatened or any other person to physical confinement or restraint; or (4) maliciously do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety. The perpetrator of the harassment, by words or conduct, must have placed the person threatened in reasonable fear that the threat will be carried out. The civil protection order statute includes a similar definition of harassment, but also includes conduct directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, that serves no legitimate or lawful purpose and which would cause a reasonable person to suffer substantial emotional distress.

Summary:

Except as applied to public record requests from the news media, an employee's personally identifiable information maintained by an agency in its personnel records or systems or that is responsive to a request for a list of individuals which is subject to the commercial purpose prohibition, such as job title, addresses of work stations and locations, work email address, work phone number, and bargaining unit, is exempt from disclosure under the PRA if:

1. the employee or their dependent is a survivor of domestic violence, sexual assault, sexual abuse, stalking, or harassment, as defined under the specified criminal procedure statute, Victims of Sexual Assault Act, civil protection order statute, or criminal code; and
2. the employee provides:
 - a. proof of participation in the ACP to their employing agency; or
 - b. a sworn statement signed under penalty of perjury and verified by the director of the employee's employing agency attesting that the employee or the employee's dependent is a survivor of domestic violence, sexual assault, sexual abuse, stalking, or harassment and the reasons why the employee has a reasonable basis to believe that the risk of domestic violence, sexual assault, sexual abuse, stalking, or harassment continues to exist.

The sworn statement expires after two years but may subsequently renewed. The director may verify the sworn statement by confirming that the sworn statement identifies the alleged perpetrator by name and, if possible, image or likeness, or by obtaining a copy of the policy report, protection order petition, or other documentation of the allegations.

Any documentation maintained by an agency to administer the exemption is confidential and may not be disclosed. Agencies are permitted to provide information to their employees on how to anonymize their work email address.

Votes on Final Passage:

House	80	15	
Senate	48	0	(Senate amended)
House	57	41	(House concurred)

Effective: May 15, 2023