

Chapter 50.13 RCW
RECORDS AND INFORMATION—PRIVACY AND CONFIDENTIALITY

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RCW 50.13.015 Information held private and confidential—Requests for disclosure. (1) If information provided to the department by another governmental agency is held private and confidential by state or federal laws, the department may not release such information.

(2) Information provided to the department by another governmental entity conditioned upon privacy and confidentiality is to be held private and confidential according to the agreement between the department and other governmental agency.

(3) The department may hold private and confidential information obtained for statistical analysis, research, or study purposes if the information was supplied voluntarily, conditioned upon maintaining confidentiality of the information.

(4) Persons requesting disclosure of information held by the department under subsection (1) or (2) of this section shall request such disclosure from the agency providing the information to the department rather than from the department.

(5) This section supersedes any provisions of chapter 42.56 RCW to the contrary. [2005 c 274 § 319; 1989 c 92 § 3.]

RCW 50.13.020 Information or records deemed private and confidential—Exceptions. Any information or records concerning an individual or employing unit obtained by the employment security department pursuant to the administration of this title shall be private and confidential, except as otherwise provided in this chapter. This chapter does not create a rule of evidence. Information or records may be released by the employment security department when the release is:

(1) Required by the federal government in connection with, or as a condition of funding for, a program being administered by the employment security department; or

(2) Requested by a county clerk for the purposes of RCW 9.94A.760.

The provisions of RCW 50.13.060(1) (a), (b) and (c) will not apply to such release. [2019 c 81 § 1; 2004 c 121 § 5; 1981 c 35 § 2; 1977 ex.s. c 153 § 2.]

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

RCW 50.13.030 Rules. The commissioner shall have the authority to adopt, amend, or rescind rules interpreting and implementing the provisions of this chapter. [2019 c 81 § 2; 2005 c 274 § 320; 1977 ex.s. c 153 § 3.]

RCW 50.13.040 Access of individual or employing unit to records and information. (1) An individual shall have access to all records and information concerning that individual held by the employment security department, unless the information is exempt from disclosure under RCW 42.56.410.

(2) An employing unit shall have access to its own records and to any records and information relating to a benefit claim by an individual if the employing unit is either the individual's last employer or is the individual's base year employer.

(3) An employing unit shall have access to any records and information relating to any decision to allow or deny benefits if:

(a) The decision is based on employment or an offer of employment with the employing unit; or

(b) If the decision is based on material information provided by the employing unit.

(4) An employing unit shall have access to general summaries of benefit claims by individuals whose benefits are chargeable to the employing unit's experience rating or reimbursement account.

(5) The employment security department may disclose records and information deemed confidential under this chapter to a third party acting on behalf of an individual or employing unit that would otherwise be eligible to receive records under subsections (1) through (4) of this section when the employment security department receives a release from the individual, the employing unit, or the third party. The release must be signed and include a statement:

(a) Specifically identifying the information that is to be disclosed;

(b) That state government files will be accessed to obtain the information;

(c) Of the specific purpose or purposes for which the information is sought and that the information obtained under the release will only be used for that purpose or purposes; and

(d) Indicating all the parties who may receive the information disclosed. [2019 c 81 § 3; 2005 c 274 § 321; 1993 c 483 § 6; 1977 ex.s. c 153 § 4.]

Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

RCW 50.13.050 Access to records or information by interested party in proceeding before appeal tribunal or commissioner—Decisions not private and confidential, exception. (1) Any interested party, as defined by rule, in a proceeding before the appeal tribunal or commissioner shall have access to any information or records deemed private and confidential under this chapter if the information or records are material to the issues in that proceeding.

(2) No decisions by the commissioner or the appeals tribunal shall be deemed private and confidential under this chapter unless the decisions are based on information obtained in a closed hearing. [1977 ex.s. c 153 § 5.]

RCW 50.13.060 Access to records or information by governmental agencies. (1) Unless otherwise required by federal law, only state and local governmental agencies and federally recognized Indian tribes as defined in Title 26 U.S.C. Sec. 3306(u) of the federal unemployment tax act may have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in a manner specified by the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the employment security department; and

(b) The director, commissioner, chief executive, or other official of the agency requesting records or information has verified the need for the specific information; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the employment security department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsection (1) of this section shall not apply to the state legislative branch. The state legislature may have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to state and local governmental agencies and federally recognized Indian tribes as defined in Title 26 U.S.C. Sec. 3306(u) of the federal unemployment tax act where the procedures would frustrate the investigation of possible violations of criminal laws or to the release of employing unit names, addresses, number of employees, and aggregate employer wage data for the purpose of state governmental agencies preparing small business economic impact statements under chapter 19.85 RCW or preparing cost-benefit analyses under RCW 34.05.328(1) (c) and (d).

(5) State and local governmental agencies and federally recognized Indian tribes as defined in Title 26 U.S.C. Sec. 3306(u) of the federal unemployment tax act may have access to certain records or information deemed private and confidential under this chapter for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, to determine potential tax liability or employer compliance with registration and licensing requirements, or for reasons otherwise within the discharge of their official duties. In those cases the state or local governmental agency or federally recognized Indian tribe as defined in Title 26 U.S.C. Sec. 3306(u) of the federal unemployment tax act shall not be required to comply with subsection (1)(c) of this section, but the requirements of subsection (1)(a) and (b) of this section must be satisfied.

(6) Governmental agencies may have access to certain records and information, limited to employer information possessed by the employment security department for purposes authorized in chapter 50.38 RCW. Access to these records and information is limited to only those individuals conducting authorized statistical analysis, research, and evaluation studies. Only in cases consistent with the purposes of chapter 50.38 RCW are governmental agencies not required to comply with subsection (1)(c) of this section, but the requirements of subsection (1)(a) and (b) of this section must be satisfied.

(7) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(8) The employment security department may provide information for purposes of statistical analysis and evaluation of the WorkFirst program or any successor state welfare program to the department of social and health services, the office of financial management, and

other governmental entities with oversight or evaluation responsibilities for the program in accordance with RCW 43.20A.080. The confidential information provided by the employment security department shall remain the property of the employment security department and may be used by the authorized requesting agencies only for statistical analysis, research, and evaluation purposes as provided in RCW 74.08A.410 and 74.08A.420. The department of social and health services, the office of financial management, or other governmental entities with oversight or evaluation responsibilities for the program are not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section and applicable federal laws and regulations must be satisfied. The confidential information used for evaluation and analysis of welfare reform supplied to the authorized requesting entities with regard to the WorkFirst program or any successor state welfare program are exempt from public inspection and copying under chapter 42.56 RCW.

(9) In conducting periodic salary or fringe benefit studies pursuant to law, the office of financial management shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply.

(10)(a) To promote the reemployment of job seekers, the commissioner may enter into data-sharing contracts with partners of the one-stop system established by P.L. 113-128 or its successor and identified as signatories of local memoranda of understanding. The contracts shall provide for the transfer of data only to the extent that the transfer is necessary for the efficient provisions of workforce programs, including but not limited to public labor exchange, unemployment insurance, worker training and retraining, vocational rehabilitation, vocational education, adult education, transition from public assistance, and support services. The transfer of information under contracts with one-stop partners is exempt from subsection (1)(c) of this section.

(b) An individual who applies for services from the employment security department and whose information will be shared under (a) of this subsection must be notified that his or her private and confidential information in the employment security department's records will be shared among the one-stop partners to facilitate the delivery of one-stop services to the individual. The notice must advise the individual that he or she may request that private and confidential information not be shared among the one-stop partners and the employment security department must honor the request. In addition, the notice must:

(i) Advise the individual that if he or she requests that private and confidential information not be shared among one-stop partners, the request will in no way affect eligibility for services;

(ii) Describe the nature of the information to be shared, the general use of the information by one-stop partner representatives, and among whom the information will be shared;

(iii) Inform the individual that shared information will be used only for the purpose of delivering one-stop services and that further disclosure of the information is prohibited under contract and is not subject to disclosure under chapter 42.56 RCW; and

(iv) Be provided in English and an alternative language selected by the one-stop center or job service center as appropriate for the community where the center is located.

If the notice is provided in-person, the individual who does not want private and confidential information shared among the one-stop partners must immediately advise the one-stop partner representative of that decision. The notice must be provided to an individual who applies for services telephonically, electronically, or by mail, in a suitable format and within a reasonable time after applying for services, which shall be no later than ten working days from the employment security department's receipt of the application for services. Information describing the nature, extent, and purpose for which the information may be shared must be available upon request.

(11) To facilitate improved operation and evaluation of state programs, the commissioner may enter into data-sharing contracts with other state and local governmental agencies and federally recognized Indian tribes as defined in Title 26 U.S.C. Sec. 3306(u) of the federal unemployment tax act, and by extension their agents, only to the extent that such transfer is necessary for the efficient operation or evaluation of outcomes for those programs. The transfer of information by contract under this subsection is exempt from subsection (1)(c) of this section. [2019 c 81 § 4; 2011 1st sp.s. c 43 § 466; 2008 c 120 § 6; 2005 c 274 § 322; 2003 c 165 § 3; 2000 c 134 § 2. Prior: 1997 c 409 § 605; 1997 c 58 § 1004; 1996 c 79 § 1; 1993 c 281 § 59; 1981 c 177 § 1; 1979 ex.s. c 177 § 1; 1977 ex.s. c 153 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

Findings—2000 c 134: "The legislature finds that individuals in need of employment and related services would be better served by integrating employment and training services to form a comprehensive network of state and local programs, called a one-stop career development system. Successful integration of employment and training services demands prompt and efficient exchange of information among service providers. The legislature further finds that efficient operation of state programs and their evaluation demand at times information held by the employment security department. Current restrictions on information exchange hamper this coordination, resulting in increased administrative costs, reduced levels of service, and fewer positive outcomes than could otherwise be achieved." [2000 c 134 § 1.]

Conflict with federal requirements—2000 c 134: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2000 c 134 § 4.]

Severability—2000 c 134: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 134 § 5.]

Effective date—1997 c 409 § 605: "Section 605 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 1997]." [1997 c 409 § 608.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Conflict with federal requirements—1996 c 79: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 79 § 3.]

Effective date—1996 c 79: "This act shall take effect July 1, 1996." [1996 c 79 § 4.]

Effective date—1993 c 281: See note following RCW 41.06.022.

RCW 50.13.070 Availability of records or information to parties to judicial or administrative proceedings—Discovery proceedings—Subpoenas. Information or records deemed private and confidential under this chapter shall be available to parties to judicial or formal administrative proceedings only upon a written finding by the presiding officer that the need for the information or records in the proceeding outweighs any reasons for the privacy and confidentiality of the information or records. Information or records deemed private and confidential under this chapter shall not be available in discovery proceedings unless the court in which the action has been filed has made the finding specified above. A judicial or administrative subpoena directed to the employment security department must contain this finding. A subpoena for records or information under this section must be submitted in a manner prescribed by the employment security department. The employment security department may recover costs of responding to subpoenas, consistent with 20 C.F.R. Sec. 603.8 (2012), for proceedings where the employment security department is not a party. [2019 c 81 § 5; 1977 ex.s. c 153 § 7.]

RCW 50.13.080 Disclosure of records or information to private persons or organizations contracting to assist in operation and management of department—Penalties. (1) The employment security department shall have the right to disclose information or records deemed private and confidential under this chapter to any private person or organization when such disclosure is necessary to permit private contracting parties to assist in the operation and management of the employment security department in instances where certain employment security departmental functions may be delegated to private parties to increase the employment security department's efficiency or quality of service to the public. The private persons or organizations shall use the information or records solely for the purpose for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as employment security department employees.

(2) Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.56.070(8). [2019 c 81 § 6; 2005 c 274 § 323; 1996 c 79 § 2; 1977 ex.s. c 153 § 8.]

Conflict with federal requirements—Effective date—1996 c 79: See notes following RCW 50.13.060.

RCW 50.13.090 Disclosure of records or information to contracting governmental or private organizations. Where the employment security department contracts to provide services to other governmental or private organizations, the department may disclose to those organizations information or records deemed private and confidential which have been acquired in the performance of the department's obligations under the contracts. [1977 ex.s. c 153 § 9.]

RCW 50.13.100 Disclosure of records or information where identifying details deleted or individual or employing unit consents. Nothing in this chapter shall prevent the disclosure of information or records deemed private and confidential under this chapter if all details identifying an individual or employing unit are deleted so long as the information or records cannot be foreseeably combined with other publicly available information to reveal the identity of an individual or employing unit or the individual or employing unit consents to the disclosure in a manner prescribed by the employment security department. [2019 c 81 § 7; 1977 ex.s. c 153 § 10.]

RCW 50.13.110 Disclosure of confidential information—Duty to prevent—Prohibition—Penalties—Exemptions. (1) All private persons, governmental agencies, and organizations authorized to receive information from the employment security department under this chapter have an affirmative obligation to take all reasonable actions necessary that are designed to prevent the disclosure of confidential information.

(2) The disclosure of any records or information by a private person, governmental agency, or organization that obtained the records or information from the employment security department under this chapter is prohibited unless expressly permitted by this chapter.

(3) If misuse or an unauthorized disclosure of confidential records or information occurs, all parties aware of the violation must inform the employment security department immediately and take all reasonably available actions to rectify the disclosure to the employment security department's standards.

(4) The misuse or unauthorized disclosure of records or information deemed private and confidential under this chapter by any private person, governmental agency, or organization to which access is permitted by this chapter shall subject the person, governmental agency, or organization to a civil penalty of up to twenty thousand dollars in 2018 and annually adjusted by the employment security department on the first calendar day of each year based on changes in the United States consumer price index for all urban consumers. Other applicable sanctions under state and federal law also apply. The amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section.

(5) Any redisclosure of information obtained under this chapter by a private person, governmental agency, or organization must be expressly permitted by the employment security department prior to redisclosure. Failure to obtain prior approval by the employment security department could subject the private person, governmental agency, or organization to the penalties described in subsection (4) of this section.

(6) State and local governmental agencies and federally recognized Indian tribes as defined in Title 26 U.S.C. Sec. 3306(u) of the federal unemployment tax act are exempt from the penalties described in subsection (4) of this section if the redisclosure is necessary for the state, local, or tribal government to conduct a criminal prosecution. [2019 c 81 § 8.]

RCW 50.13.120 Administration and oversight of this chapter—

Agency privacy officer—Report to governor and legislature. (1) The employment security department shall designate an agency privacy officer to oversee the administration of this chapter and chapter 50A.25 RCW. In coordination with the state office of privacy and data protection, the agency privacy officer must:

(a) Develop an agency personal information minimization policy to reduce the use and retention of personal information wherever possible;

(b) Create a work plan that includes the estimated costs of execution for the following:

(i) An inventory of all personal information prepared, owned, used, or retained by the employment security department, that would include the specific type of information, the purpose for its collection, and the extent to which the information is protected from unauthorized access; and

(ii) A map of the physical or digital location of all personal information collected by the employment security department, indexed to the inventory created in (b)(i) of this subsection; and

(c) Report the work plan created under (b) of this subsection to the state office of privacy and data protection annually.

(2) Any inventory or data map records created under subsection (1)(b) of this section that reveal the location of personal

information or the extent to which it is protected may not be disclosed under the public records act, chapter 42.56 RCW.

(3) On December 1st of each odd-numbered year, the employment security department must report to the governor and the legislature on the implementation and maintenance of this section, including best practices and recommendations for developing and implementing the employment security department's policy and plan under this section.

(4) For purposes of this section, "personal information" means any information obtained by the employment security department deemed private and confidential under this chapter and chapter 50A.25 RCW. [2019 c 81 § 9.]

RCW 50.13.130 Application to information obtained by the employment security department under Title 50A RCW. Except for RCW 50.13.120, the provisions of this chapter do not apply to information obtained by the employment security department under Title 50A RCW. [2019 c 81 § 11.]

RCW 50.13.900 Construction. Any ambiguities in this chapter shall be construed in a manner consistent with federal laws applying to the employment security department. If any provision of this chapter or the application thereof is held invalid by a final decision of any court or declared by the secretary of the department of labor of the United States to be inconsistent with federal laws upon which funding of the employment security department is contingent, the invalid or inconsistent provision shall be ineffective only to the extent necessary to insure compliance with the court decision or federal determination and the remainder of the chapter shall be given full effect. [1977 ex.s. c 153 § 11.]