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66042-0

ORIGINAL

NO. 66042-0-I.

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION I

JOHN THOMAS ENTLER,
Appellant,

vs.

DEPARTMENT OF CORRECTIONS,
Respondent.

ON APPEAL FROM THE
SUPERIOR COURT OF SNOHOMISH COUNTY

Before the Honorable David Kurtz

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

1.1 Did the trial court error in concluding that if there is no public record in existence at the time a PRA request is made there is no basis for a PRA lawsuit.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

A. Whether or not destroying a public record that still has five years left on the Records Retention Schedule (RRS) violates the PRA?

1. Was The April 2009 Grievance Response By C.U.S. Miller A Public Document?
2. Is Prisoner's Access To Public Records Not Only Necessary To Safeguard Their Closely-Held Constitutional Rights And Necessary to Assure That Prisoner's And The Public Alike Have The Right To Demand Full Access To Information Relating To DOC's Governmental Activities?
3. Does The Department Of Corrections Have A Duty To Protect Public Records Under Chapter 40.14 RCW From Improper Damage Under The PRA?

III. STATEMENT OF THE CASE

3.1 In March 2010 Appellant made a PRA request to the Department of Corrections (DOC) requesting a Grievance response that was completed by Corrections Unit Supervisor (CUS) Mark Miller, with regards to his response to Appellant's allegations that Corrections Officer (C/O) Richard Adame was violating Appellant's Civil Rights. CP- 8, at pp. 1-3, §§1.1-1.6.

3.2 When Appellant first made his PRA request DOC denied that CUS Miller even responded to the Grievance Appellant was referring to. CP- 8, at p. 8, §§1.23. When Appellant filed his appeal under WAC 137-08-140, providing information that he knew the record existed, because he personally wrote in the response portion of the grievance that CUS Miller submitted, CP- 8, at pp. 8, §1.25, DOC stated that they did not have any documents responsive to Appellant's PRA request. Id.

3.3 Just before filing his PRA Suit, Grievance Coordinator Deborha Holly admitted that she possibly misplaced the grievance response or discarded it when she received CPM Annie Williams Grievance Response in the same matter. CP- 8, at p. 7, §1.21. Appellant not knowing what

happened to the Grievance record in question, and DOC's refusal to provide any information regarding the grievance response, other than they did not have document responsive to Appellant's PRA request, filed a PRA suit in the Snohomish County Superior Court. (Snohomish No. 10-2-05000-9). CP- 1 . During the pleading stages in the Trial Court Respondent admitted for the "first time" that the grievance record "did exist at one time" but they destroyed it because it was a "duplicate" of CPM Williams grievance response. CP-13 , at Exhibit 2, at p.3, ¶11(Declaration of Deborah Holly). Thus, Appellant's PRA suit was necessary to receive true answer with regards to his PRA request.

3.4 On September 10, 2010, after considering the pleadings, affidavits, declarations and evidence submitted by the parties, the trial court granted Respondent's Cross Motion for Summary Judgment holding that if there is no public record in existence at the time of the PRA request, there is no basis for a PRA lawsuit. CP-21 , at p. 1, and sent Appellant to the Judgment of this Court.

3.5 This appeal follows the Trial Courts Ruling.

IV. ARGUMENT.

1. THE TRIAL COURT ERRED IN CONCLUDING THAT IF THERE IS NO PUBLIC RECORD IN EXISTENCE AT THE TIME A PRA REQUEST IS MADE THERE IS NO BASIS FOR A PRA LAWSUIT.

A. DESTROYING A PUBLIC DOCUMENT THAT STILL HAS FIVE YEARS LEFT OF THE RETENTION SCHEDULE VIOLATES THE PRA.

(i) Standard Of Review.

4.1 RCW 42.56.550 sets forth the procedure to be followed when a litigant wishes to challenge an Agencies actions surrounding a public records request. The statute provides that the Superior Court, in the related county, has jurisdiction to adjudicate Public Records Act (PRA) disputes, RCW 42.56.550(1), where judicial review of an Agencies action is taken or challenged under RCW 42.56.030 through 42.56.520. Burt v. Dep't of Corrections, 168 Wn.2d 828, 831-32, ¶17, _____ P.3d _____ (2010). In such cases, the Agency bears the burden of proving that any public record not provided is exempt from disclosure. RCW 42.56.550(1). Agencies actions challenged under the PRA are reviewed de novo, RCW 42.56.550(3); Burt v. Dep't of Corr., 168 Wn.2d at 831-32, ¶17, and the Appellate Court stands in the same position as the trial court. Hangartner v. City of Seattle, 151 Wn.2d 439, 447, 90 P.3d 26 (2004). See also Appendix 2 (RCW Title 42.56).

(ii) The Public Records Act, (PRA).

4.2 This matter concerns Chapter 42.56 RCW, the PRA was enacted under former Chapter 42.17 RCW. Burt v. Dep't of Corr., 168 Wn.2d at 832, ¶8. Enacted by initiative, and recodified in 2005 as Chapter 42.56 RCW, the PRA is a "strongly worded mandate for broad disclosure of public records." Burt v. Dep't of Corr., 168 Wn.2d at 832, ¶8; Mechling v. City of Monroe, 152 Wn.App. 830, 841, ¶16, ___ P.3d ___ (2009) (citing Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)).

4.3 The PRA requires all State and Local Agencies to disclose any public record upon request, unless it falls within certain specific, enumerated exemptions, Burt v. Dep't of Corr., 168 Wn.2d at 832, ¶8, or other statute which exempts or prohibits disclosure of specific information or records. RCW 42.56.070(1); Rental Ass'n v. City of Des Moines, 165 Wn.2d 525, 535, ¶22, 199 P.3d 393 (2009). The Language of the PRA identifies the public interests in full disclosure of public records: "The people insist on remaining informed so that they may maintain control over the instruments that they have created." Burt v. Dep't of Corr., 168 Wn.2d at 832, ¶8; Mechling

v. City of Monroe, 152 Wn.App. at 841-42, ¶16 (The purpose of the PRA is to 'ensure the sovereignty of the people and the accountability of the government agencies that serve them' by providing full access to information concerning the conduct of government.")(citations omitted by Appellant).

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.

RCW 42.56.030; Mechling v. City of Monroe, 152 Wn.App. at 841-42, ¶16.

4.4 To implement this policy, the PRA mandates that the provisions of the act must be liberally construed and its exemptions narrowly construed to promote full access to public records, and to assure that the public interests will be fully protected, Burt v. Dep't of Corr., 168 Wn.2d at 832, ¶18; Mechling v. City of Monroe, 152 Wn.App. at 842, ¶18; RCW 42.56.030, and forbids Agencies from distinguishing among persons requesting records. Livingston v. Cedeno, Dep't of Corr., 164 Wn.2d 46, 50-52, ¶¶6-10, 186 P.3d 1055 (2008).

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4.5 RCW 42.56.210(3) states, "agency response refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld." Rental Ass'n v. City of Des Moines, 165 Wn.2d at 535, ¶22.

4.6 The PRA penalty is designed to "'discourage improper denial of access to public records and [encourage] adherence to the goal and procedures directed by the statute.'" Yousofian v. Office of Ron Sims, 165 Wn.2d 439, 453, ¶24, 200 P.3d 232 (2009) (citing Yousofian II, 152 Wn.2d at 429-30).

(iii) Records Retention Schedule, (RRS).

4.7 All public records are the property of the State of Washington. RCW 40.14.020. Public records held by Agencies may not be destroyed except according to a RRS approved under RCW 40.14.050. RCW 40.14.060(1). (State Agency). In general, all public records that are no longer required in the current operation of an agency, but which may not be destroyed according to the applicable retention schedule, must be transferred to the State Archives for preservation. RCW

40.14.030(1). Any exemption from disclosure that applies to such public record while in the possession of an Agency continues to apply to the record when transferred to the State Archives. RCW 40.14.030(2).

4.8 Under 40.14 RCW the term "public record" shall include and paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industries ISO specifications, or other document, regardless of physical form or characteristics, and included such copies thereof, that have been made by or received by any agency of the State of Washington in connection with the transaction of public business, and legislative record as described in RCW 40.14.100. RCW 40.14.010. See also Appendix 1(RCW Title 40).

(iv) Trial Court Ruling.

4.9 The trial Court, after considering the pleadings, affidavits, declarations on file regarding Appellant's Motion for Summary Judgment and Respondent's Cross Motion for Summary Judgment, CP-8;CP-13;CP-19, granted Respondent's Cross Motion on the grounds that it concluded the: "if there

is no public record in existence at the time of the PRA request, there is no basis for a PRA lawsuit." CP-21, at p. 1. The trial court relied on Sperr v. City of Spokane,¹²³ Wn.App. 132,136,96 P.3d 1012(2004), which held that an agency has "no duty to create or produce a record that is nonexistent."

4.10 Over Appellant's objecting that the record in this case "did exist" unlike in Sperr v. City of Spokane, and Respondent's admission that the record "did in fact at one time exist" but that they destroyed it, and over Appellant's assertions that the trial court should decide the issue left open in a substantially similar case in Building Indus. Ass'n v. McCarthy,¹⁵² Wn.App. 720,218 P.3d 196(2009), in deciding Appellant's PRA suit, the trial court overruled Appellant's objections and arguments regarding Bldg Indus. Ass'n and denied Appellant's Motion for Summary Judgment and granted Respondent's cross motion.

THE GRIEVANCE RESPONSE BY CUS MILLER WAS A PUBLIC DOCUMENT.

4.11 RCW 42.56.070(1) requires Agencies to make "public records" available for inspection and copying, absent an exemption from disclosure, "[t]he determination of whether a

document is a 'public record' is critical for purposes of the [act]." Oliver v. Harborview Med. Cntr., 94 Wn.2d 559, 565 n.1, 618 P.2d 75 (1980). RCW 42.56.010(2) defines "public record" to include:

[1] any writing [2] containing information relating to the conduct of government or the performance of any government or proprietary function [3] prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(Emphasis added); RCW 42.56.010(2); RCW 40.14.010; Dragonslayer, Inc. v. Gambling Comm'n, 139 Wn.App. 433, 444, ¶16, 161 P.3d 428 (2007).

4.12 In light of the fact that grievance responses are prepared and retained by DOC, there is little question that CUS Miller's grievance response satisfy the First and Third prongs of the definition of "public record" for purposes of RCW 40.14.010 and RCW 42.56.010(1).

4.13 There is also little question that CUS Miller's grievance response satisfies the Second element of the "public record" definition -- that the writing contain information "relating to the conduct of government or the performance of any governmental or proprietary function" --

since the very purpose of the DOC grievance process is to air-out complaints by inmates regarding the conduct of prison officials, and their performance regarding how they carry out their function of public service, and the grievance in this matter was aimed at a State Official (C/O Richard Adame) who was abusing his official position by harassing and retaliating against Appellant for exercising his First Amendment Rights to complain about State Government conduct. CP-8, at pp. 1-3, §§1.1--1.6; CP-13, at Exhibit 2, at p. 1 (lines 23-26).

2. PRISONER'S ACCESS TO PUBLIC RECORD GRIEVANCES ARE NOT ONLY NECESSARY TO SAFEGUARD THEIR CLOSELY-HELD CONSTITUTIONAL RIGHTS, BUT ALSO TO INSURE THAT PRISONER'S AND THE PUBLIC ALIKE HAVE THE RIGHT TO DEMAND FULL ACCESS TO INFORMATION RELATING TO DOC'S GOVERNMENTAL ACTIVITIES."

4.14 The PRA requires Agencies to make records available to "any person" and forbids Agencies from "distinguish[ing] among person requesting records. Livingstoin v. Cedeno, Dep't of Corr., 164 Wn.2d at 50-52, ¶¶6-10. The Washington State Supreme Court definitively explained how the disclosure to "any person" principle applies with equal force to an incarcerated felon's public records request to DOC. Id., at 52, ¶10.

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4.15 In discussing DOC's responsibilities to an incarcerated felon under the PRA, the court explained:

In its capacity as an agency subject to the public records act, the Department must respond to all public disclosure requests without regards to the status or motives of the requester. The statutory directive to screen incoming and outgoing mail [under the DOC mail policy] does not relieve the Department of its obligation to disclose public records requested by an inmate.

Livingston v. Cedeno, Dep't of Corr., 164 Wn.2d at 53, ¶12. The Court further explained that any disparate treatment of inmates under the PRA would be "impermissible." Id. In light of the Livingston decision, it can scarcely be argued that, (1) incarcerated prisoners do not have standing to make requests under the PRA, (2) that prisoner's do not have the right to demand "full access" to information relating to DOC's governmental activities, or (3) that DOC has the right to decide what is good for prisoners to know and what is not good for them to know. Id., at 53, ¶12; RCW 42.56.030. See Also e.g., Prison Legal News, Inc. v. Dep't of Corr., 154 Wn.2d 628, 115 P.3d 316(2005).

4.16 In fact, the observed result of the trial court's ruling is evident, because it permits DOC to destroy public records contrary to the RRS (40.14.060(1)), and exempt

themselves from having to comply with the PRA (RCW 42.56.030 through 42.56.520), as long as they destroy a "public record" before a prisoner makes a PRA request. See CP-21, at p.1("For example, the court concludes that if there is no public record in existence at the time of the request, there is no basis for a PRA lawsuit.").

4.17 In this case, the public record did exist at one time, unlike the record requested in Sperr v. City of Spokane, supra, and DOC argued that they had no duty to produce a record, under the PRA, that they illegally destroyed, **not** that they don't have to allow an inmate to sift through their records, or to produce or create a document that **NEVER EVER EXISTED**, which was the case in Sperr v. City of Spokane, supra and Smith v. Okanagan County, 100 Wn.App. 7,994 P.2d 857(2000). So DOC's argument, put in it's proper context, really is that because they destroyed the public record before Appellant made his PRA request, they are "exempt" from complying with the RRS and "exempt" from complying with the PRA. CP-13, at pp. 5-6, §D.

4.18 Unquestionably, the PRA is a tool used by many incarcerated felons to exercise closely held constitutional

rights. As one very important example, incarcerated felons have used the PRA to investigate government wrongdoing. See e.g., Prisoner Legal News, Inc. v. Dep't of Corr., 154 Wn.2d at 632-33 (upholding records request by incarcerated journalist investigating prisoner deaths and misconduct by DOC medical staff). Those PRA requests were inextricably tied to the prisoner's First Amendment Rights to publish articles and communicate with the media, Abu-Jamal v. Price, 154 F.3d 128 (3rd cir. 1998), the same as Appellant's First Amendment Rights to expose prison officials violations of prisoner's rights against unlawful First Amendment Retaliation for using the prison grievance process, See e.g., Hinez v. Gomez, 108 F.3d 265 (9th cir. 1997), which was what Appellant was doing by requesting the grievance responses by CUS Miller in this case.

4.19 A prisoner's ability to access prison grievance records is integral to his or her ability to petition the Federal Government for redress of grievance, see 42 U.S.C. §1997e(a), and to establish violations of their Civil Rights retained by prisoners' under the First Amendment. Hinez v. Gomez, 108 F.3d at 268-269.

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4.20 As Appellant knows, first hand, prisoners often cannot rely on Attorneys, nonprofit organizations, or other advocates to represent them or to make public records requests on their behalf, as these entities do not have the resources to help the hundreds of prisoners who request assistance each year. Instead, these organizations frequently require prisoners to largely provide the documentation supporting their claims before deciding whether or not to advocate on the prisoners behalf, where resources may be available.

4.21 Prisoners could make public records requests for reasons wholly unrelated to their incarceration or the penal system. For example, to protect his or her community property rights, a prisoner could seek records from the County Auditor's Office regarding his or her former home to determine whether the property has been sold by his or her former spouse. This request is necessary for the protection of his or her property rights.

4.22 Thus, strong enforcement of the PRA, including strong enforcement of the applicable RRS, including allowing prisoners access to the tools under the PRA, Livingston v.

Cedeno, Dep't of Correct., 164 Wn.2d at 53, ¶12, is critical to keeping government operations transparent and public records reviewable by all members of the public whether incarcerated or not, especially where prisoner's and not the public have first hand knowledge of DOC officials misconduct, where the public is not usually involved in the day-to-day internal operations of DOC like prisoner's are. Appellant's rationale reflects the purposes of the PRA to "enable [] our citizens to retain sovereignty over our government and demand full access to information relating to our governmental activities." Lindeman v. Kelso Sch. Dist. 457, 127 Wn.App. 526, 535, ¶20, 111 P.3d 1235 (2005), rev'd on other grounds, 162 Wn.2d 196, 172 P.3d 329 (2007).

4.23 Allowing DOC to disregard the applicable RRS's established under RCW 40.14.050 and RCW 40.14.060(1), and the PRA's mandate that DOC protect public records from "damage" under RCW 42.56.100(¶1), where usually prisoners, and not the public, have first hand knowledge of DOC's day-to-day internal grievance operations, activities, and misconduct, thus, results in "disparate treatment" of prisoners, because under the trial court's ruling, so long as DOC destroys a public document relating to the conduct of DOC Officials in

the grievance process, under circumstances where the conduct of DOC in the grievance process is not usually knowledgeable by the public, before a prisoner makes a PRA requests, prisoners do not have a right to "demand full access to information relating to DOC's governmental activities, renders the Washington State Supreme Court's decision in Livingstoin v. Cedeno, Dep't of Corr., supra inapplicable, and allows DOC to decide what is good for prisoner's to know and what is not good for them to know contrary to RCW 42.56.030.

3. DOC HAS A DUTY TO PROTECT DOCUMENTS RETAINED UNDER THE RRS FROM IMPROPER DAMAGE UNDER THE PRA RCW 42.56.100.

4.24 Appellant's case gives rise to the opportunity to resolve the issue left open by Division II of the Court of Appeals in Building Indus. Ass'n v. McCarthy, 152 Wn.App. 720, 736-738, ¶¶24-26, 741-742, ¶¶33-37, 218 P.3d 196(2009)(BIAW), where BIAW argued that unless the courts require public agencies to comply with Chapter 40.14 RCW, Agencies may easily circumvent the PRA, Chapter 42.56 RCW by improperly destroying records. Division II of the Court of Appeals held that while the logic of BIAW's argument was compelling, they found no improper destruction of the records under the applicable RRS to be shown by BIAW, so they were not

presented the opportunity to determine if the law supports BIAW's logic. Bldg. Indus. Ass'n v. McCarthy, 152 Wn.App. 741, ¶23.

4.25 However, Appellant proved in the Trial Court that Respondent improperly destroyed the grievance response by CUS Miller contrary to the applicable RRS. CP-19, at pp. 3-11, §§4.2--4.9; CP-19, at pp. 13-14, §§4.23--4.26. So Appellant's case gives rise for this Court to resolve the question left open in Bldg. Indus. Ass'n v. McCarthy, supra, and to provide the lower Court's with guidance with respects to similar claims like Appellant's where a agency improperly destroys a PRA record contrary to the applicable RRS, which is factually dissimilar to both Sperr v. City of Spokane, 123 Wn.2d 132, 96 P.3d 1012(2004), and Smith v. Okanogan County, 100 Wn.App. 7, 994 P.2d 857(2000).

4.26 RCW 42.56.010(2) defines a "public record" as those "retained" by an agency, CP-13 at p.4(lines 10-12)(Defendants Response & Cross Motion for Summary Judgement), regardless of the physical "form" or "characteristics." Respondent admitted in the Trial Court that Grievances are public records subject to a RRS of six years. CP-13, at p. 6(lines 5-6); CP-13, at p.

7(lines 1-2);CP-13, at Exhibit 3, at p. 1. Thus, Appellant submits, when the Legislature defined "public records" it meant those records "retained" under 40.14 RCW, an subject to to disclosure under the PRA. Compare RCW 40.14.010 with RCW 42.56.010(2), and RCW 42.56.070(1).

4.27 The "interplay" and "application" of 40.14 RCW and 42.56 RCW, while separate chapters, is obvious by the fact that the records "retained" and subject to disclosure under the PRA, are the same records DOC is charged with protecting from "damage" under RCW 42.56.100(1). RCW 40.14.010;RCW 40.14.050;RCW 40.14.060(1);42.56.010(2);RCW 42.56.070(1);RCW 42.56.100(1).

4.28 This "interplay" and "applications" of 40.14 RCW and 42.56 RCW is made even more clearer by the fact, that when a "'public record' 'retained'" under the applicable RRS under 40.14.050 and 40.14.060(1), and made disclosable under RCW 42.56.070(1), are determined to be exempt from disclosure under the PRA, that exemption continues to apply to that public record retained by the Agency, when under RCW 40.14.030(2), that record is transferred to the State Archives. RCW 40.14.030(2).

4.29 RCW 42.56.100(¶1) unambiguously places a "DUTY" on State Agencies to protect public records retained by them from "damage." In addition, paragraph two (2) of RCW 42.56.100 provides that if a records request is made at the time such record exists, but is scheduled for destruction under 40.14.060 seq in conformity with the applicable RRS in the near future, the State Agency may not destroy or erase the record until the request is resolved. Accordingly, allowing DOC to improperly destroy (damage) public records before a public records request is made renders the second paragraph of RCW 42.56.100 inoperable as DOC can subvert that provision by destroying public record before a request for records is made.

4.30 So these statutes, (RCW 40.14.010, RCW 40.14.050, RCW 40.14.060(1), RCW 42.56.010(2), RCW 42.56.070(1), and RCW 42.56.100), unquestionably establish the "interpay' and "application" of the RRS and the PRA together, when read together. Through Statutory Construction, this Court has the authority to make DOC comply with the RRS through application of the PRA when necessary to assure Societies interest under RCW 42.56.030 are protected. RCW 42.56.030(This chapter shall be liberally construed ... to assure that the public interest

will be fully protected.). See also e.g., Elec. Contrac. Ass'n v. Riveland, 138 Wn.2d 9,13,15-24,978 P.2d 481(1999)(Construing RCW 19.28.120(1), RCW 49.17 seq, RCW 72.01.110, and RCW 72.09.100 (different statutes) and requiring DOC to comply with the electrical licensing and workers safety laws when using inmate labor).

4.31 Appellant respectfully submits that in applying statutory construct to RCW 40.14.010, RCW 40.14.050, RCW 40.14.060(1), RCW 42.56.010(2), RCW 42.56.070(1), and RCW 42.56.100(1), Respondent fails to comply with the PRA when it improperly destroys (damage) public records retained by DOC under the Applicable RRS. A contrary interpretation results in the "obserd consequences" of allowing DOC to do an **end run around** not only Livingston v. Cedeno, Dep't of Corr., supra, but a **end run around** the PRA's mandate that DOC disclose information relating to the conduct of government, and ignores the "construction statement" of RCW 42.56.030, that the people, in deligating authority, do not give their public servants the right to decide what is good for them to know and what is not good for them to know.

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4.32 Respondent's interpretation of the RRS and PRA, as well as the Trial Court's ruling, allows DOC to dictate to inmates what is good for them to know and what is not good for them to know, and denies inmates the rights to demand full access to information relating to DOC's governmental activities, so long as DOC destroys a public record before an inmate or the public makes a PRA request. DOC's conduct in this case, and the Trial Court's ruling violates Livingston v. Cedenno, Dep't of Corr., 164 Wn.2d at 53, ¶12's mandate to disclose public records requested by inmates.

4.33 This is so, because, if this Court upholds the Trial Court's ruling, allows DOC to assert that they are **exempt** under the PRA, in every future suite where they improperly destroy or do not want the inmates and public to know about their misconduct, so long as DOC improperly destroying a public document before a PRA request is made, creates an "**EXEMPTION**" from DOC having to comply with the applicable RRS, and their duty under RCW 42.56.100(¶1) to protect public records from "damage," which ignores the "construction statement" of RCW 42.56.030 that, "exemptions are narrowly construed to promote full access to public records, and to assure that the public interest is fully protected." See also

Elec. Contrac. Ass'n v. Riveland, 138 Wn.2d at 23 (Rejecting DOC's construing RCW 72.01.110 as authorizing DOC to exempt itself from any statutory restriction it deems an impediment to inmate work programs, and holding that DOC's interpretation would result in the unlikely consequence that statutory requirements which generally apply to most, if not all, State agencies and employers would not apply to DOC) (citations omitted by Appellany).

4.34 Respondent admits that the records retained in this matter under the RRS were the same records they were required to disclose under the PRA. CP-13, at p. 7 (lines 1-2); CP-13, at p. 2 (lines 12-14); CP-13, at Exhibit 3, at p. 1 (Records Retention Schedule For Grievance (RRS)).

4.35 Appellant respectfully submits, requiring DOC to maintain public records under the applicable RRS and to protect public records from "damage" under RCW 42.56.100(¶1), is "essential" for DOC to provide "full assistance" to person requesting public records, and to provide for the "most timely" possible access to public records. RCW 42.56.100(¶1). Otherwise, the PRA is defeated, and the public and inmates interest in requiring State Agencies "fully disclose

information regarding the conduct of government," **is clearly not protected.** CP-8, at pp. 13-14;CP-19, at pp. 7-11, §§4.12--4.19. Again, construing the PRA, RCW 42.56.100's mandate that DOC protect public records from damage, to require DOC to comply with the RRS under the PRA promotes full access to public records and assures that inmates, as well as the public, have the rights to decide what is good for them to know and what is not good for them to know, and the right to demand full access to information concerning the conduct of DOC's governmental activities. Mechling v. City of Monroe, 152 Wn.App. at 841-842, ¶¶16-18; RCW 42.56.030.

4.36 Appellant respectfully submits, requiring DOC to protect public records from "damage" under RCW 42.56.100(¶1) from improper destruction under the applicable RRS and to comply with 40.14 RCW under the PRA, (i.e., complying with RCW 42.56.100(¶1)) is not only necessary to assure that prisoners access to public records is not only protected to safeguard their closely-held constitutional rights, but necessary to protect the public's as well as inmates rights to demand "full access" to information relating to the conduct of DOC's governmental activities. RCW 42.56.010(2);RCW 42.56.030;RCW 42.56.070(1);RCW

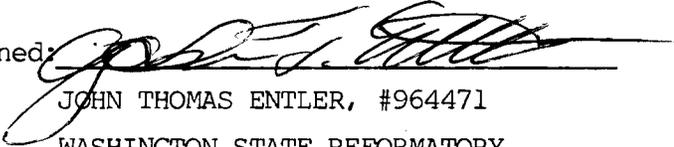
42.56.100(¶1):Livingston v. Cedenó, Dep't of Corr., 164 Wn.2d
at 53, ¶12. Appellant respectfully requests that the Court
find that DOC has a duty to comply with Chapter 40.14 RCW
under DOC's RCW 42.56.100(¶1) duty to protect public records
from damage from improper destruction, and reverse the Trial
Court's ruling.

V. CONCLUSION.

5.1 Based on the forgoing, Appellant would respectfully
request that the Court hold that DOC's destruction of the
Grievance Response submitted by Appellant and CUS Miller
violated the PRA's mandate under RCW 42.56.100(¶1) that DOC
protect public records from damage, and reverse the Trial
Court's ruling.

I declare under the penalty of perjury under the laws of
the State of Washington that the above is true and correct.

Signed this 22nd day of November, 2010

Signed: 

JOHN THOMAS ENTLER, #964471
WASHINGTON STATE REFORMATORY
P.O. BOX 777
MONROE, WA. 98272

APPENDIX-1

26
Book 1

Title 40

PUBLIC DOCUMENTS, RECORDS, AND PUBLICATIONS

Chapters

- 40.04 Public documents.
- 40.06 State publications distribution center.
- 40.07 Management and control of state publications.
- 40.10 Microfilming of records to provide continuity of civil government.
- 40.14 Preservation and destruction of public records.
- 40.16 Penal provisions.
- 40.20 Reproduced records for governments and business.
- 40.24 Address confidentiality for victims of domestic violence, sexual assault, and stalking.

Disclosure of public records: Chapter 42.17 RCW.

Historical materials, preservation: Chapter 27.48 RCW.

Minutes of governmental agencies open to public inspection: RCW 42.32.030.

Newspapers: Chapter 19.56 RCW.

Public documents as evidence: Chapter 5.44 RCW.

Publication of legal notices: Chapter 65.16 RCW.

Recording, registration, and legal publication: Title 65 RCW.

Records and exhibits of superior court, destruction, reproduction: RCW 36.23.065, 36.23.067, 36.23.070.

State records

secretary of state as custodian: RCW 43.07.040.

to be kept at the seat of government: State Constitution Art. 3 § 24.

Uniform business records as evidence act: Chapter 5.45 RCW.

Uniform photographic copies of business and public records as evidence act: Chapter 5.46 RCW.

Chapter 40.04 RCW PUBLIC DOCUMENTS

Sections

- 40.04.030 Session laws, legislative journals, supreme court and court of appeals reports—Duties of public printer, publisher.
- 40.04.031 Session laws—Distribution, sale, exchange.
- 40.04.090 Legislative journals—Distribution, sale, exchange.
- 40.04.100 Supreme court and court of appeals reports—Distribution, exchange—Duties of reporter of decisions.
- 40.04.110 Supreme court and court of appeals reports—Provision by publisher to reporter.

Attorney general to give written opinions: RCW 43.10.030.

Revised Code of Washington, publication: Chapter 1.08 RCW.

Session laws, publication, etc.: Chapter 44.20 RCW.

Supreme court reports, publication: Chapter 2.32 RCW, RCW 43.78.070.

40.04.030 Session laws, legislative journals, supreme court and court of appeals reports—Duties of public printer, publisher. The public printer shall deliver to the statute law committee all bound volumes of the session laws. The public printer shall deliver the house and senate journals as they are published to the chief clerk of the house of representatives and the secretary of the senate, as appropriate. The publisher of the supreme court reports and the court of appeals reports of the state of Washington shall deliver the copies that are purchased by the supreme court for the use of

the state to the state law librarian. [1995 c 24 § 1; 1971 c 42 § 2; 1941 c 150 § 3; Rem. Supp. 1941 § 8217-3.]

40.04.031 Session laws—Distribution, sale, exchange. The statute law committee, after each legislative session, shall distribute, sell, or exchange session laws as required under this section.

(1) One set shall be given to the following: The United States supreme court library; each state adult correctional institution; each state mental institution; the state historical society; the state bar association; the Olympia press corps library; the University of Washington library; the library of each of the regional universities; The Evergreen State College library; the Washington State University library; each county law library; and the municipal reference branch of the Seattle public library.

(2) One set shall be given to the following upon their request: Each member of the legislature; each state agency and its divisions; each state commission, committee, board, and council; each community college; each assistant attorney general; each member of the United States senate and house of representatives from this state; each state official whose office is created by the Constitution; each prosecuting attorney; and each public library in cities of the first class.

(3) Two sets shall be given to the following: The administrator for the courts; the library of congress; the law libraries of any accredited law schools established in this state; and the governor.

(4) Two sets shall be given to the following upon their request: Each United States district court in the state; and each office and branch office of the United States district attorneys in this state.

(5) Three sets shall be given to the library of the circuit court of appeals of the ninth circuit, upon its request.

(6) The following may request, and receive at no charge, as many sets as are needed for their official business: The senate and house of representatives; each county auditor, who shall receive and distribute sets for use by his or her county's officials; the office of the code reviser; the secretary of the senate; the chief clerk of the house of representatives; the supreme court; each court of appeals in the state; the superior courts; the state library; and the state law library.

(7) Surplus copies of the session laws shall be sold and delivered by the statute law committee, in which case the price of the bound volumes shall be sufficient to cover costs. All money received from the sale of the session law sets shall be paid into the statute law committee publications account.

(8) The statute law committee may exchange session law sets for similar laws or legal materials of other states, territories, and governments, and make such other distribution of the sets as in its judgment seems proper. [2007 c 456 § 1; 2006 c 46 § 3.]

40.04.090 Legislative journals—Distribution, sale, exchange. The house and senate journals shall be distributed and sold by the chief clerk of the house of representatives and the secretary of the senate as follows:

(1) Subject to subsection (5) of this section, sets shall be distributed as follows: One to each requesting official whose office is created by the Constitution, and one to each requesting state department director; two copies to the state library; ten copies to the state law library; two copies to the University of Washington library; one to the King county law library; one to the Washington State University library; one to the library of each of the regional universities and to The Evergreen State College; one each to the law library of any accredited law school in this state; and one to each free public library in the state that requests it.

(2) House and senate journals of the preceding regular session during an odd- or even-numbered year, and of any intervening special session, shall be provided for use of legislators and legislative staff in such numbers as directed by the chief clerk of the house of representatives and secretary of the senate.

(3) Surplus sets of the house and senate journals shall be sold and delivered by the chief clerk of the house of representatives and the secretary of the senate at a price set by them after consulting with the state printer to determine reasonable costs associated with the production of the journals, and the proceeds therefrom shall be paid to the state treasurer for the general fund.

(4) The chief clerk of the house of representatives and the secretary of the senate may exchange copies of the house and senate journals for similar journals of other states, territories, and governments, or for other legal materials, and make such other and further distribution of them as in their judgment seems proper.

(5) Periodically the chief clerk of the house of representatives and the secretary of the senate may canvas those entitled to receive copies under this section, and may reduce or eliminate the number of copies distributed to anyone who so concurs. [1995 c 24 § 4; 1993 c 169 § 1; 1982 1st ex.s. c 32 § 2; 1980 c 87 § 13; 1977 ex.s. c 169 § 95; 1973 c 33 § 2; 1941 c 150 § 5; Rem. Supp. 1941 § 8217-5.]

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

40.04.100 Supreme court and court of appeals reports—Distribution, exchange—Duties of reporter of decisions. The supreme court reports and the court of appeals reports shall be distributed by the reporter of decisions as follows:

(1) Each supreme court justice and court of appeals judge is entitled to receive one copy of each volume containing an opinion signed by him or her.

(2) The state law library shall receive such copies as are necessary of each for the benefit of the state law library, the supreme court and its subsidiary offices; and the court of appeals and its subsidiary offices.

(3) The reporter shall provide one copy of each volume to each county for use in the county law library and one copy of the same to each accredited law school established in the state.

(4) The reporter shall likewise provide the state law library with such copies of volumes as necessary to exchange copies of the supreme court reports and the court of appeals reports for similar reports of other states, territories, and governments. [1995 c 257 § 4; 1991 c 363 § 113; 1979 c 151 § 49; 1973 c 33 § 3; 1971 c 42 § 3; 1941 c 150 § 6; Rem. Supp. 1941 § 8217-6.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Publication of supreme court reports by public printer: RCW 43.78.070.

Washington court reports commission: RCW 2.32.160.

40.04.110 Supreme court and court of appeals reports—Provision by publisher to reporter. On the publication of each volume of reports the publisher to whom the contract is awarded shall provide to the reporter the number of copies of each volume of supreme court and court of appeals reports necessary for the reporter and the state law library to comply with RCW 40.04.100. [1995 c 257 § 5; 1971 c 42 § 4; 1941 c 150 § 7; Rem. Supp. 1941 § 8217-7.]

Chapter 40.06 RCW

STATE PUBLICATIONS DISTRIBUTION CENTER

Sections

40.06.010	Definitions.
40.06.020	Center created as division of state library—Depository library system—Rules.
40.06.030	Deposits by state agencies—Exemptions.
40.06.040	Interlibrary depository contracts—Repository of electronic publications.
40.06.050	Center to publish list of publications and other descriptive matter.
40.06.060	Agencies to furnish lists to center.
40.06.070	Exemptions.
40.06.900	Effective date—1963 c 233.

40.06.010 Definitions. As used in this chapter:

(1) "Electronic repository" means a collection of publicly accessible electronic publications stored in a secure digital environment with redundant backup to preserve the collection.

(2) "Format" includes any media used in the publication of state information including electronic, print, audio, visual, and microfilm.

(3) "State agency" includes every state office, officer, department, division, bureau, board, commission and agency of the state, and, where applicable, all subdivisions of each.

(4) "State publication" means information published by state agencies, regardless of format, intended for distribution to state government or the public. Examples may include annual, biennial, and special reports required by law, state agency newsletters, periodicals, and magazines, and other informational material intended for general dissemination to state agencies, the public, or the legislature. [2006 c 199 § 3; 1977 ex.s. c 232 § 8; 1963 c 233 § 1.]

Findings—2006 c 199: See note following RCW 27.04.045.

40.06.020 Center created as division of state library—Depository library system—Rules. There is hereby created as a division of the state library, and under the direction of the state librarian, a state publications distribution center. The center shall utilize the depository library

system to permit citizens economical and convenient access to state publications, regardless of format. To this end the secretary of state shall make such rules as may be deemed necessary to carry out the provisions of this chapter. [2006 c 199 § 4; 2002 c 342 § 5; 1977 ex.s. c 232 § 9; 1963 c 233 § 2.]

Findings—2006 c 199: See note following RCW 27.04.045.

Effective date—2002 c 342: See RCW 27.04.901.

40.06.030 Deposits by state agencies—Exemptions.

(1) Every state agency shall promptly submit to the state library copies of published information that are state publications.

(a) For state publications available only in print format, each state agency shall deposit, at a minimum, two copies of each of its publications with the state library. For the purposes of broad public access, state agencies may deposit additional copies with the state library for distribution to additional depository libraries.

(b) For state publications available only in electronic format, each state agency shall deposit one copy of each of its publications with the state library.

(c) For state publications available in both print and electronic format, each state agency shall deposit two print copies and one electronic copy of the publication with the state library.

(2) Annually, each state agency shall provide the state library with a listing of all its publications made available to state government and the public during the preceding year, including those published in electronic form. The secretary of state shall, by rule, establish the annual date by which state agencies must provide the list of its publications to the state library.

(3) In the interest of economy and efficiency, the state librarian may specifically or by general rule exempt a given state publication or class of publications from the requirements of this section in full or in part.

(4) Upon consent of the issuing state agency, such state publications as are printed by the public printer shall be delivered directly to the center. [2006 c 199 § 5; 1977 ex.s. c 232 § 10; 1963 c 233 § 3.]

Findings—2006 c 199: See note following RCW 27.04.045.

40.06.040 Interlibrary depository contracts—Repository of electronic publications.

(1) To provide economical public access to state publications, the center may enter into depository contracts with any free public library, The Evergreen State College, regional university, or state university library, or, if needed, the library of any privately incorporated college or university in this state. The requirements for eligibility to contract as a depository library shall be established by the secretary of state upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, available housing and space for the publications, the number and qualifications of personnel, and availability for public use. The center may also contract with public, out-of-state libraries for the exchange of state and other publications on a reciprocal basis. Any state publication to be distributed to the public and the legislature shall be mailed at the lowest available postal rate.

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(2) The office of the secretary of state through the state librarian shall preserve and make accessible state agency electronic publications deposited with the state library through an electronic repository. [2006 c 199 § 6; 2002 c 342 § 6; 1981 c 260 § 8. Prior: 1977 ex.s. c 232 § 11; 1977 ex.s. c 169 § 96; 1963 c 233 § 4.]

Findings—2006 c 199: See note following RCW 27.04.045.

Effective date—2002 c 342: See RCW 27.04.901.

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

40.06.050 Center to publish list of publications and other descriptive matter.

The center shall publish and distribute regularly a list of available state publications, and may publish and distribute such other descriptive matter as will facilitate the distribution of and access to state publications. [2006 c 199 § 7; 1963 c 233 § 5.]

Findings—2006 c 199: See note following RCW 27.04.045.

40.06.060 Agencies to furnish lists to center. Upon request by the center, issuing state agencies shall furnish the center with a complete list of its current state publications and a copy of its mailing and/or exchange lists. [1963 c 233 § 6.]

40.06.070 Exemptions. This chapter shall not apply to nor affect the duties concerning publications distributed by, or officers of:

- (1) The state law library; and
- (2) The statute law committee and the code reviser. [1983 c 3 § 83; 1963 c 233 § 7.]

40.06.900 Effective date—1963 c 233. The effective date of this chapter shall be July 1, 1963. [1963 c 233 § 8.]

**Chapter 40.07 RCW
MANAGEMENT AND CONTROL OF
STATE PUBLICATIONS**

Sections	
40.07.010	Legislative declaration.
40.07.020	Definitions.
40.07.030	Reports—Where filed—Review of state publications—Duties of agency head with respect to publications—Guidelines for publications—Director's duties.
40.07.040	Duties of the governor.
40.07.050	Prohibition of state publications not in accordance with RCW 40.07.030—Exceptions.
40.07.060	Notification—Removal from mailing lists, exceptions—Mailing rates.
40.07.070	Advertising in state publications—Prerequisites for advertisers.

40.07.010 Legislative declaration. It is the intent of this legislation to improve executive management and control of state publications and reduce state expenditures through: (1) Elimination of reports and publications which are economically or otherwise unjustified; and (2) the simplification and consolidation of other reports and publications. [1977 ex.s. c 232 § 1.]

40.07.020 Definitions. The terms defined in this section shall have the meanings indicated when used in this chapter.

(1) "Director" means the director of financial management.

(2) "State agency" includes every state office, department, division, bureau, board, commission, committee, higher education institution, community college, and agency of the state and all subordinate subdivisions of such agencies in the executive branch financed in whole or in part from funds held in the state treasury, but does not include the offices of executive officials elected on a statewide basis, agricultural commodity commissions, the legislature, the judiciary, or agencies of the legislative or judicial branches of state government.

(3)(a) "State publication" means publications of state agencies and shall include any annual and biennial reports, any special report required by law, state agency newsletters, periodicals and magazines, and other printed informational material intended for general dissemination to the public or to the legislature.

(b) "State publication" may include such other state agency printed informational material as the director may prescribe by rule or regulation, in the interest of economy and efficiency, after consultation with the governor, the state librarian, and any state agencies affected.

(c) "State publication" does not include:

(i) Business forms, preliminary draft reports, working papers, or copies of testimony and related exhibit material prepared solely for purposes of a presentation to a committee of the state legislature;

(ii) Typewritten correspondence and interoffice memoranda, and staff memoranda and similar material prepared exclusively as testimony or exhibits in any proceeding in the courts of this state, the United States, or before any administrative entity;

(iii) Any notices of intention to adopt rules under RCW 34.05.320;

(iv) Publications relating to a multistate program financed by more than one state or by federal funds or private subscriptions; or

(v) News releases sent exclusively to the news media.

(4) "Print" includes all forms of reproducing multiple copies with the exception of typewritten correspondence and interoffice memoranda. [1989 c 175 § 86; 1979 c 151 § 50; 1977 ex.s. c 232 § 2.]

Effective date—1989 c 175: See note following RCW 34.05.010.

40.07.030 Reports—Where filed—Review of state publications—Duties of agency head with respect to publications—Guidelines for publications—Director's duties. (1) Any annual, biennial, or special report required to be made by any state officer, board, agency, department, commissioner, regents, trustees, or institution to the governor or to the legislature may be typewritten and a copy shall be filed with the governor, or the governor's designee, and the legislature as the law may require. An additional copy shall be filed with the state library as a public record.

(2) The director or the director's designee may selectively review state publications in order to determine if specific state publications are economically and effectively contributing to the accomplishment of state agency program objectives. The director or the director's designee shall pro-

vide general guidelines as to the number of copies to be printed for use or distribution by the issuing agency and any public or other distribution under chapter 40.06 RCW as now or hereafter amended, or other applicable directives.

(3) No agency head shall recommend a state publication for printing and distribution, other than those required by law, unless the benefits from the publication and distribution thereof to the citizens and taxpayers of this state clearly exceed the costs of preparation, printing, and distribution.

(4) The director, after consultation with affected agencies, shall prepare and publish guidelines for use by state agencies in determining and evaluating the benefits and costs of current and proposed state publications. All state agencies shall evaluate each new state publication they propose and shall annually evaluate each continuing state publication they produce in accordance with the guidelines published by the director.

(5) The director shall, after consultation with affected state agencies, also provide by general rules and regulations for overall control of the quality of the printing of state publications. Necessary publications are to be prepared and printed in the most economic manner consistent with effectiveness and achievement of program objectives. [1977 ex.s. c 232 § 3.]

40.07.040 Duties of the governor. (1) The governor or the governor's designee shall take such other action as may be necessary to maximize the economy, efficiency, and effectiveness of state publications and to do so may eliminate, consolidate, or simplify state agency publications.

(2) Nothing in this chapter shall be construed in any way as restricting public access to public records or the public right to copy such records as provided by chapter 42.56 RCW. [2005 c 274 § 276; 1977 ex.s. c 232 § 4.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

40.07.050 Prohibition of state publications not in accordance with RCW 40.07.030—Exceptions. Neither the public printer nor any state agency shall print or authorize for printing any state publication that has been determined by the director to be inconsistent with RCW 40.07.030 except to the extent this requirement may conflict with the laws of the United States or any rules or regulations lawfully promulgated under those laws. A copy of any state publication printed without the approval of the director under the exceptions authorized in this section shall be filed with the director with a letter of transmittal citing the federal statute, rule, or regulation requiring the publication. [1986 c 158 § 5; 1977 ex.s. c 232 § 5.]

40.07.060 Notification—Removal from mailing lists, exceptions—Mailing rates. Each state agency shall at least once each biennium notify the addressees of each state publication in or with that publication that they may be removed from the mailing list by notifying the originating agency. Mailings required by a state or federal statute, rule, or regulation, those maintained by an institution of higher education for official fund raising or curriculum offerings, bulk mailings addressed to "occupant" or a similar designation, and

paid subscriptions are excluded from the provisions of this paragraph.

All publications shall be distributed or mailed at the lowest available rate. [1977 ex.s. c 232 § 6.]

40.07.070 Advertising in state publications—Prerequisites for advertisers. A state agency may not accept advertising for placement in a state publication unless the advertiser: (1) Has obtained a certificate of registration from the department of revenue under chapter 82.32 RCW; and (2) if the advertiser is not otherwise obligated to collect and remit Washington retail sales tax or use tax, the advertiser either (a) agrees to voluntarily collect and remit the Washington use tax upon all sales to Washington consumers, or (b) agrees to provide to the department of revenue, no less frequently than quarterly, a listing of the names and addresses of Washington customers to whom sales were made. This section does not apply to advertising that does not offer items for sale or to advertising that does not solicit orders for sales. [1993 c 74 § 1.]

Effective date—1993 c 74: "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 shall take effect July 1, 1993." [1993 c 74 § 2.]

remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 54 § 6.]

40.10.020 Essential records—Reproduction and storage—Coordination of protection program—Fees. The state archivist is authorized to reproduce those documents designated as essential records by the several elected and appointed officials of the state and local government by microfilm or other miniature photographic process and to assist and cooperate in the storage and safeguarding of such reproductions in such place as is recommended by the state archivist with the advice of the director of community, trade, and economic development. The state archivist shall coordinate the essential records protection program and shall carry out the provisions of the state emergency plan as they relate to the preservation of essential records. The state archivist is authorized to charge the several departments of the state and local government the actual cost incurred in reproducing, storing and safeguarding such documents: PROVIDED, That nothing herein shall authorize the destruction of the originals of such documents after reproduction thereof. [1995 c 399 § 58; 1986 c 266 § 45; 1985 c 7 § 106; 1982 c 36 § 2; 1973 c 54 § 2; 1963 c 241 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 40.10 RCW

MICROFILMING OF RECORDS TO PROVIDE CONTINUITY OF CIVIL GOVERNMENT

Sections

- 40.10.010 Essential records—Designation—List—Security and protection—Reproduction.
- 40.10.020 Essential records—Reproduction and storage—Coordination of protection program—Fees.

40.10.010 Essential records—Designation—List—Security and protection—Reproduction. In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the state shall designate those public documents which are essential records of his office and needed in an emergency and for the reestablishment of normal operations after any such emergency. A list of such records shall be forwarded to the state archivist on forms prescribed by the state archivist. This list shall be reviewed at least annually by the elected or appointed officer to insure its completeness. Any changes or revisions following this review shall be forwarded to the state archivist. Each such elected and appointed officer of state government shall insure that the security of essential records of his office is by the most economical means commensurate with adequate protection. Protection of essential records may be by vaulting, planned or natural dispersal of copies, or any other method approved by the state archivist. Reproductions of essential records may be by photo copy, magnetic tape, microfilm or other method approved by the state archivist. Local government offices may coordinate the protection of their essential records with the state archivist as necessary to provide continuity of local government under emergency conditions. [1982 c 36 § 1; 1973 c 54 § 1; 1963 c 241 § 1.]

Severability—1973 c 54: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the

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Chapter 40.14 RCW

PRESERVATION AND DESTRUCTION OF PUBLIC RECORDS

Sections

- 40.14.010 Definition and classification of public records.
- 40.14.020 Division of archives and records management—State archivist—Powers and duties—Duties of public officials.
- 40.14.022 Division of archives and records management—Imaging account.
- 40.14.024 Division of archives and records management—Local government archives account.
- 40.14.025 Division of archives and records management—Allocation of costs of services—Archives and records management account.
- 40.14.027 Public archives and records management services—Judgment debtor surcharge.
- 40.14.030 Transfer to state archives—Certified copies, cost—Public disclosure.
- 40.14.040 Records officers—Designation—Powers and duties.
- 40.14.050 Records committee—Composition, travel expenses, meetings, powers and duties—Retention schedules.
- 40.14.060 Destruction, disposition of official public records or office files and memoranda—Record retention schedules.
- 40.14.070 Destruction, disposition, donation of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules—Sealed records.
- 40.14.080 Chapter not to affect other laws.
- 40.14.100 Legislative records—Defined.
- 40.14.110 Legislative records—Contribution of papers by legislators and employees.
- 40.14.120 Legislative records—"Clerk," "secretary" defined.
- 40.14.130 Legislative records—Duties of legislative officials, employees and state archivist—Delivery of records—Custody—Availability.
- 40.14.140 Legislative records—Party caucuses to be advised—Information and instructions.
- 40.14.150 Legislative records—Use for research.
- 40.14.160 Legislative records—Rules for access to records.
- 40.14.170 Legislative records—Sound recordings.
- 40.14.180 Legislative records—Construction—Confidentiality of bill drafting records.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

40.14.010 Definition and classification of public records. As used in this chapter, the term "public records" shall include any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100.

For the purposes of this chapter, public records shall be classified as follows:

(1) Official public records shall include all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use, and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state of Washington or any agency thereof may be a party; all fidelity, surety, and performance bonds; all claims filed against the state of Washington or any agency thereof; all records or documents required by law to be filed with or kept by any agency of the state of Washington; all legislative records as defined in RCW 40.14.100; and all other documents or records determined by the records committee, created in RCW 40.14.050, to be official public records.

(2) Office files and memoranda include such records as correspondence, exhibits, drawings, maps, completed forms, or documents not above defined and classified as official public records; duplicate copies of official public records filed with any agency of the state of Washington; documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and other documents or records as determined by the records committee to be office files and memoranda. [1996 c 71 § 1; 1982 c 36 § 3; 1981 c 32 § 4; 1971 ex.s. c 102 § 1; 1957 c 246 § 1.]

40.14.020 Division of archives and records management—State archivist—Powers and duties—Duties of public officials. All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter. In order to insure the proper management and safeguarding of public records, the division of archives and records management is established in the office of the secretary of state. The state archivist, who shall administer the division and have reasonable access to all public records, wherever kept, for purposes of information, surveying, or cataloguing, shall undertake the following functions, duties, and responsibilities:

- (1) To manage the archives of the state of Washington;
- (2) To centralize the archives of the state of Washington, to make them available for reference and scholarship, and to insure their proper preservation;
- (3) To inspect, inventory, catalog, and arrange retention and transfer schedules on all record files of all state departments and other agencies of state government;

(4) To insure the maintenance and security of all state public records and to establish safeguards against unauthorized removal or destruction;

(5) To establish and operate such state record centers as may from time to time be authorized by appropriation, for the purpose of preserving, servicing, screening and protecting all state public records which must be preserved temporarily or permanently, but which need not be retained in office space and equipment;

(6) To adopt rules under chapter 34.05 RCW:

(a) Setting standards for the durability and permanence of public records maintained by state and local agencies;

(b) Governing procedures for the creation, maintenance, transmission, cataloging, indexing, storage, or reproduction of photographic, optical, electronic, or other images of public documents or records in a manner consistent with current standards, policies, and procedures of the department of information services for the acquisition of information technology;

(c) Governing the accuracy and durability of, and facilitating access to, photographic, optical, electronic, or other images used as public records; or

(d) To carry out any other provision of this chapter;

(7) To gather and disseminate to interested agencies information on all phases of records management and current practices, methods, procedures, techniques, and devices for efficient and economical management and preservation of records;

(8) To operate a central microfilming bureau which will microfilm, at cost, records approved for filming by the head of the office of origin and the archivist; to approve microfilming projects undertaken by state departments and all other agencies of state government; and to maintain proper standards for this work;

(9) To maintain necessary facilities for the review of records approved for destruction and for their economical disposition by sale or burning; directly to supervise such destruction of public records as shall be authorized by the terms of this chapter;

(10) To assist and train state and local agencies in the proper methods of creating, maintaining, cataloging, indexing, transmitting, storing, and reproducing photographic, optical, electronic, or other images used as public records;

(11) To solicit, accept, and expend donations as provided in RCW 43.07.037 for the purpose of the archive program. These purposes include, but are not limited to, acquisition, accession, interpretation, and display of archival materials. Donations that do not meet the criteria of the archive program may not be accepted. [2002 c 358 § 4; 1995 c 326 § 1. Prior: 1991 c 237 § 4; 1991 c 184 § 1; 1986 c 275 § 1; 1983 c 84 § 1; 1981 c 115 § 1; 1957 c 246 § 2.]

Effective date—1991 c 237: See note following RCW 44.04.320.

Effective date—1981 c 115: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 115 § 10.]

40.14.022 Division of archives and records management—Imaging account. The imaging account is created in the custody of the state treasurer. All receipts collected under RCW 40.14.020(8) for contract imaging, micrographics,

reproduction, and duplication services provided by the division of archives and records management must be deposited into the account, and expenditures from the account may be used only for these purposes. Only the secretary of state or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2003 c 163 § 2.]

40.14.024 Division of archives and records management—Local government archives account. The local government archives account is created in the state treasury. All receipts collected by the county auditors under RCW 40.14.027 and 36.22.175 for local government services, such as providing records scheduling, security microfilm inspection and storage, archival preservation, cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management, must be deposited into the account, and expenditures from the account may be used only for these purposes. During the 2007-2009 biennium, the legislature may transfer from the local government archives account to the Washington state heritage center account such amounts as reflect the excess fund balance in the account. [2008 c 328 § 6005; 2003 c 163 § 3.]

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

40.14.025 Division of archives and records management—Allocation of costs of services—Archives and records management account. (1) The secretary of state and the director of financial management shall jointly establish a procedure and formula for allocating the costs of services provided by the division of archives and records management to state agencies. The total amount allotted for services to state agencies shall not exceed the appropriation to the archives and records management account during any allotment period.

(2) There is created the archives and records management account in the state treasury which shall consist of all fees and charges collected under this section. The account shall be appropriated exclusively for the payment of costs and expenses incurred in the operation of the division of archives and records management as specified by law. [2003 c 163 § 1; 1996 c 245 § 3; 1991 sp.s. c 13 § 5; 1985 c 57 § 22; 1981 c 115 § 4.]

Effective date—1996 c 245: "This act takes effect on July 1, 1996." [1996 c 245 § 5.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

Effective date—1981 c 115: See note following RCW 40.14.020.

40.14.027 Public archives and records management services—Judgment debtor surcharge. State agencies shall collect a surcharge of twenty dollars from the judgment debtor upon the satisfaction of a warrant filed in superior court for unpaid taxes or liabilities. The surcharge is imposed on the judgment debtor in the form of a penalty in addition to the filing fee provided in RCW 36.18.012(10). The sur-

charge revenue shall be transmitted to the state treasurer for deposit in the archives and records management account.

Surcharge revenue deposited in the local government archives account under RCW 40.14.024 shall be expended by the secretary of state exclusively for disaster recovery, essential records protection services, and records management training for local government agencies by the division of archives and records management. The secretary of state shall, with local government representatives, establish a committee to advise the state archivist on the local government archives and records management program. [2003 c 163 § 4; 2001 c 146 § 4; 1996 c 245 § 4; 1995 c 292 § 17; 1994 c 193 § 2.]

Effective date—1996 c 245: See note following RCW 40.14.025.

Findings—1994 c 193: "The legislature finds that: (1) Accountability for and the efficient management of local government records are in the public interest and that compliance with public records management requirements significantly affects the cost of local government administration; (2) the secretary of state is responsible for insuring the preservation of local government archives and may assist local government compliance with public records statutes; (3) as provided in RCW 40.14.025, all archives and records management services provided by the secretary of state are funded exclusively by a schedule of fees and charges established jointly by the secretary of state and the director of financial management; (4) the secretary of state's costs for preserving and providing public access to local government archives and providing records management assistance to local government agencies have been funded by fees paid by state government agencies; (5) local government agencies are responsible for costs associated with managing, protecting, and providing public access to the records in their custody; (6) local government should help fund the secretary of state's local government archives and records management services; (7) the five-dollar fee collected by county clerks for processing warrants for unpaid taxes or liabilities filed by the state of Washington is not sufficient to cover processing costs and is far below filing fees commonly charged for similar types of minor civil actions; (8) a surcharge of twenty dollars would bring the filing fee for warrants for the collection of unpaid taxes and liabilities up to a level comparable to other minor civil filings and should be applied to the support of the secretary of state's local government archives and records services without placing an undue burden on local government; and (9) the process of collecting and transmitting surcharge revenue should not have an undue impact on the operations of the state agencies that file warrants for the collection of unpaid taxes and liabilities or the clerks of superior court who process them." [1994 c 193 § 1.]

Effective date—1994 c 193: "This act shall take effect July 1, 1994." [1994 c 193 § 3.]

40.14.030 Transfer to state archives—Certified copies, cost—Public disclosure. (1) All public records, not required in the current operation of the office where they are made or kept, and all records of every agency, commission, committee, or any other activity of state government which may be abolished or discontinued, shall be transferred to the state archives so that the valuable historical records of the state may be centralized, made more widely available, and insured permanent preservation: PROVIDED, That this section shall have no application to public records approved for destruction under the subsequent provisions of this chapter.

When so transferred, copies of the public records concerned shall be made and certified by the archivist, which certification shall have the same force and effect as though made by the officer originally in charge of them. Fees may be charged to cover the cost of reproduction. In turning over the archives of his office, the officer in charge thereof, or his successor, thereby loses none of his rights of access to them, without charge, whenever necessary.

(2) Records that are confidential, privileged, or exempt from public disclosure under state or federal law while in the possession of the originating agency, commission, board, committee, or other entity of state or local government retain their confidential, privileged, or exempt status after transfer to the state archives unless the archivist, with the concurrence of the originating jurisdiction, determines that the records must be made accessible to the public according to proper and reasonable rules adopted by the secretary of state, in which case the records may be open to inspection and available for copying after the expiration of seventy-five years from creation of the record. If the originating jurisdiction is no longer in existence, the archivist shall make the determination of availability according to such rules. If, while in the possession of the originating agency, commission, board, committee, or other entity, any record is determined to be confidential, privileged, or exempt from public disclosure under state or federal law for a period of less than seventy-five years, then the record, with the concurrence of the originating jurisdiction, must be made accessible to the public upon the expiration of the shorter period of time according to proper and reasonable rules adopted by the secretary of state. [2003 c 305 § 1; 1957 c 246 § 3.]

Columbia River boundary compact, transfer of records to division of archives: RCW 43.58.070.

40.14.040 Records officers—Designation—Powers and duties. Each department or other agency of the state government shall designate a records officer to supervise its records program and to represent the office in all contacts with the records committee, hereinafter created, and the division of archives and records management. The records officer shall:

(1) Coordinate all aspects of the records management program.

(2) Inventory, or manage the inventory, of all public records at least once during a biennium for disposition scheduling and transfer action, in accordance with procedures prescribed by the state archivist and state records committee: PROVIDED, That essential records shall be inventoried and processed in accordance with chapter 40.10 RCW at least annually.

(3) Consult with any other personnel responsible for maintenance of specific records within his state organization regarding records retention and transfer recommendations.

(4) Analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the state archivist and state records committee minimal retentions for all copies commensurate with legal, financial and administrative needs.

(5) Approve all records inventory and destruction requests which are submitted to the state records committee.

(6) Review established records retention schedules at least annually to insure that they are complete and current.

(7) Exercise internal control over the acquisition of film- and file equipment.

If a particular agency or department does not wish to transfer records at a time previously scheduled therefor, the records officer shall, within thirty days, notify the archivist and request a change in such previously set schedule, includ-

ing his reasons therefor. [1982 c 36 § 4; 1979 c 151 § 51; 1973 c 54 § 3; 1957 c 246 § 4.]

40.14.050 Records committee—Composition, travel expenses, meetings, powers and duties—Retention schedules. There is created a committee, to be known as the records committee, composed of the archivist, an appointee of the state auditor, an appointee of the attorney general, and an appointee of the director of financial management. Committee members shall serve without additional salary, but shall be entitled to travel expenses incurred in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Such expenses shall be paid from the appropriations made for operation of their respective departments or offices.

The records committee shall meet at least once every quarter or oftener as business dictates. Action by the committee shall be by majority vote and records shall be kept of all committee business.

It shall be the duty of the records committee to approve, modify or disapprove the recommendations on retention schedules of all files of public records and to act upon requests to destroy any public records: PROVIDED, That any modification of a request or recommendation must be approved by the head of the agency originating the request or recommendation.

The division of archives and records management shall provide forms, approved by the records committee, upon which it shall prepare recommendations to the committee in cooperation with the records officer of the department or other agency whose records are involved. [1985 c 192 § 1; 1975-'76 2nd ex.s. c 34 § 83; 1957 c 246 § 5.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

40.14.060 Destruction, disposition of official public records or office files and memoranda—Record retention schedules. (1) Any destruction of official public records shall be pursuant to a schedule approved under RCW 40.14.050. Official public records shall not be destroyed unless:

(a) Except as provided under RCW 40.14.070(2)(b), the records are six or more years old;

(b) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly if lesser federal retention periods for records generated by the state under federal programs have been established; or

(c) The originals of official public records less than six years old have been copied or reproduced by any photographic or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

(2) Any lesser term of retention than six years must have the additional approval of the director of financial management, the state auditor and the attorney general, except when records have federal retention guidelines the state records committee may adjust the retention period accordingly. An automatic reduction of retention periods from seven to six years for official public records on record retention schedules

existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the state records committee for approval or disapproval of the change to a retention period of six years.

Recommendations for the destruction or disposition of office files and memoranda shall be submitted to the records committee upon approved forms prepared by the records officer of the agency concerned and the archivist. The committee shall determine the period of time that any office file or memorandum shall be preserved and may authorize the division of archives and records management to arrange for its destruction or disposition. [1999 c 326 § 1; 1982 c 36 § 5; 1979 c 151 § 52; 1973 c 54 § 4; 1957 c 246 § 6.]

40.14.070 Destruction, disposition, donation of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules—Sealed records. (1)(a) County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

(b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

- (i) The records are six or more years old;
- (ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or
- (iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but

the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

(b)(i) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.

(ii) Any sealed record transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval, including records sealed after transfer, shall be electronically retained in such a way that the record is clearly marked as sealed.

(iii) The Washington association of sheriffs and police chiefs shall be permitted to destroy both the paper copy and electronic record of any offender verified as deceased.

(c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.17.020 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW and the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420.

Electronic records marked as sealed shall only be accessible by criminal justice agencies as defined in RCW 10.97.030 who would otherwise have access to a sealed paper copy of the document, the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420, and the system administrator for the purposes of system administration and maintenance.

(3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

(a) The records are seventy years old or more;

(b) The local records committee has approved the destruction of the public records; and

(c) The state archivist has determined that the public records have no historic interest. [2005 c 227 § 1; 2003 c 240 § 1; 1999 c 326 § 2; 1995 c 301 § 71; 1982 c 36 § 6; 1973 c 54 § 5; 1971 ex.s. c 10 § 1; 1957 c 246 § 7.]

Copying, preserving, and indexing of documents recorded by county auditor: RCW 36.22.160 through 36.22.190.

Destruction and reproduction of court records: RCW 36.23.065 through 36.23.070.

40.14.080 Chapter not to affect other laws. The provisions of this chapter shall not be construed as repealing or modifying any other acts or parts of acts authorizing the destruction of public records save for those specifically named in *section 9 of this act; nor shall this chapter affect the provisions of chapter 40.07 RCW requiring the deposit of all state publications in the state library. [1983 c 3 § 84; 1957 c 246 § 8.]

*Reviser's note: "section 9 of this act" refers to 1957 c 246 § 9, which repealed RCW 40.08.010 through 40.08.050 and 40.12.010 through 40.12.110.

40.14.100 Legislative records—Defined. As used in RCW 40.14.010 and 40.14.100 through 40.14.180, unless the context requires otherwise, "legislative records" shall be defined as correspondence, amendments, reports, and minutes of meetings made by or submitted to legislative committees or subcommittees and transcripts or other records of hearings or supplementary written testimony or data thereof filed with committees or subcommittees in connection with the exercise of legislative or investigatory functions, but does not include the records of an official act of the legislature kept by the secretary of state, bills and their copies, published materials, digests, or multi-copied matter which are routinely retained and otherwise available at the state library or in a public repository, or reports or correspondence made or received by or in any way under the personal control of the individual members of the legislature. [1971 ex.s. c 102 § 2.]

40.14.110 Legislative records—Contribution of papers by legislators and employees. Nothing in RCW 40.14.010 and 40.14.100 through 40.14.180 shall prohibit a legislator or legislative employee from contributing his personal papers to any private library, public library, or the state archives. The state archivist is authorized to receive papers of legislators and legislative employees and is directed to encourage the donation of such personal records to the state. The state archivist is authorized to establish such guidelines and procedures for the collection of personal papers and correspondence relating to the legislature as he sees fit. Legislators and legislative employees are encouraged to contribute their personal papers to the state for preservation. [1971 ex.s. c 102 § 3.]

40.14.120 Legislative records—"Clerk," "secretary" defined. As used in RCW 40.14.010 and 40.14.100 through 40.14.180 "clerk" means clerk of the Washington state house of representatives and "secretary" means the secretary of the Washington state senate. [1971 ex.s. c 102 § 4.]

40.14.130 Legislative records—Duties of legislative officials, employees and state archivist—Delivery of records—Custody—Availability. The legislative committee chairman, subcommittee chairman, committee member, or employed personnel of the state legislature having possession of legislative records that are not required for the regular performance of official duties shall, within ten days after the adjournment sine die of a regular or special session, deliver all such legislative records to the clerk of the house or the secretary of the senate.

The clerk of the house and the secretary of the senate are charged to include requirements and responsibilities for keeping committee minutes and records as part of their instructions to committee chairmen and employees.

The clerk or the secretary, with the assistance of the state archivist, shall classify and arrange the legislative records delivered to the clerk or secretary in a manner that he considers best suited to carry out the efficient and economical utilization, maintenance, preservation, and disposition of the records. The clerk or the secretary may deliver to the state archivist all legislative records in his possession when such records have been classified and arranged and are no longer needed by either house. The state archivist shall thereafter be custodian of the records so delivered, but shall deliver such records back to either the clerk or secretary upon his request.

The chairman, member, or employee of a legislative interim committee responsible for maintaining the legislative records of that committee shall, on a scheduled basis agreed upon by the chairman, member, or employee of the legislative interim committee, deliver to the clerk or secretary all legislative records in his possession, as long as such records are not required for the regular performance of official duties. He shall also deliver to the clerk or secretary all records of an interim committee within ten days after the committee ceases to function. [1971 ex.s. c 102 § 5.]

40.14.140 Legislative records—Party caucuses to be advised—Information and instructions. It shall be the duty of the clerk and the secretary to advise the party caucuses in each house concerning the necessity to keep public records. The state archivist or his representative shall work with the clerk and secretary to provide information and instructions on the best method for keeping legislative records. [1971 ex.s. c 102 § 6.]

40.14.150 Legislative records—Use for research. Committee records may be used by legislative employees for research at the discretion of the clerk or the secretary. [1971 ex.s. c 102 § 7.]

40.14.160 Legislative records—Rules for access to records. The clerk or the secretary shall, with advice of the state archivist, prescribe rules for access to records more than three years old when such records have been delivered to the state archives for preservation and maintenance. [1971 ex.s. c 102 § 8.]

40.14.170 Legislative records—Sound recordings. Any sound recording of debate in the house or senate made by legislative employees shall be preserved by the chief clerk

of the house and by the secretary of the senate, respectively, for two years from the end of the session at which made, and thereafter shall be transmitted to the state archivist. The chief clerk and the secretary shall catalogue or index the recordings in their custody according to a uniform system, in order to allow easy access to the debate on specific questions before either house, and shall make available to any court of record, at the cost of reproduction, such portions of the recordings as the court may request. [1971 ex.s. c 102 § 9.]

40.14.180 Legislative records—Construction—Confidentiality of bill drafting records. The provisions of RCW 40.14.010 and 40.14.100 through 40.14.180 shall not be construed as repealing or modifying any other acts or parts of acts authorizing the retention or destruction of public records nor shall RCW 40.14.010 and 40.14.100 through 40.14.180 affect the provisions of chapter 40.07 RCW requiring the deposit of all state publications in the state library nor shall it affect the confidentiality of the bill drafting records of the code reviser's office. [1983 c 3 § 85; 1971 ex.s. c 102 § 10.]

Chapter 40.16 RCW PENAL PROVISIONS

Sections

- 40.16.010 Injury to public record.
40.16.020 Injury to and misappropriation of record.
40.16.030 Offering false instrument for filing or record.

Fraud: Chapter 9A.60 RCW.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Misconduct of public officers: Chapter 42.20 RCW.

Public works accounts and records, penalty for falsifying: RCW 39.04.110.

40.16.010 Injury to public record. Every person who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office, or with any public officer, by authority of law, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both. [2003 c 53 § 214; 1992 c 7 § 34; 1909 c 249 § 95; RRS § 2347.]

Intent—Effective date—2003 c 53: See notes following RCW 24.48.180.

40.16.020 Injury to and misappropriation of record. Every officer who shall mutilate, destroy, conceal, erase, obliterate, or falsify any record or paper appertaining to the officer's office, or who shall fraudulently appropriate to the officer's own use or to the use of another person, or secrete with intent to appropriate to such use, any money, evidence of debt or other property intrusted to the officer by virtue of the officer's office, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [2003 c 53 § 215; 1992 c 7 § 35; 1909 c 249 § 96; RRS § 2348.]

Intent—Effective date—2003 c 53: See notes following RCW 24.48.180.

(2008 Ed.)

40.16.030 Offering false instrument for filing or record. Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both. [2003 c 53 § 216; 1992 c 7 § 36; 1909 c 249 § 97; RRS § 2349.]

Intent—Effective date—2003 c 53: See notes following RCW 24.48.180.

Chapter 40.20 RCW

REPRODUCED RECORDS FOR GOVERNMENTS AND BUSINESS

Sections

- 40.20.010 "Business" defined.
40.20.020 Reproduction by film or photograph.
40.20.030 Use as original.

Court records, destruction and reproduction: RCW 36.23.065 through 36.23.070.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Method for recordation of plats and documents: RCW 65.04.040.

Uniform business records as evidence act: Chapter 5.45 RCW.

Uniform photographic copies of business and public records as evidence act: Chapter 5.46 RCW.

40.20.010 "Business" defined. For the purpose of this chapter, the term "business" shall mean and include business, industry, profession, occupation and calling of every kind. [1949 c 223 § 3; Rem. Supp. 1949 § 1257-6.]

40.20.020 Reproduction by film or photograph. The head of any business or the head of any state, county or municipal department, commission, bureau or board may cause any or all records required or authorized by law to be made or kept by such official, department, commission, bureau, board, or business to be photographed, microphotographed, reproduced on film, or photocopied for all purposes of recording documents, plats, files or papers, or copying or reproducing such records. Such film or reproducing material shall be of permanent material and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all details, and shall be approved for the intended purpose: PROVIDED, That the state archivist shall approve such material for state records use: PROVIDED, FURTHER, That the state auditor shall approve such material for use by local governmental subdivisions. [1981 c 32 § 5; 1973 c 95 § 1; 1949 c 223 § 1; Rem. Supp. 1949 § 1257-4.]

40.20.030 Use as original. Such photostatic copy, photograph, microphotograph or photographic film record, or copy of the original records shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certi-

fied copy of the original. [1949 c 223 § 2; Rem. Supp. 1949 § 1257-5.]

Chapter 40.24 RCW

ADDRESS CONFIDENTIALITY FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING

Sections

40.24.010	Findings—Purpose.
40.24.020	Definitions.
40.24.030	Address confidentiality program—Application—Certification.
40.24.040	Certification cancellation.
40.24.050	Agency use of designated address.
40.24.060	Voting by program participant—Use of address by county auditor.
40.24.070	Disclosure of records prohibited—Exceptions.
40.24.075	Court order for address confidentiality program participant information.
40.24.080	Assistance for program applicants.
40.24.090	Adoption of rules.

40.24.010 Findings—Purpose. The legislature finds that persons attempting to escape from actual or threatened domestic violence, sexual assault, trafficking, or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this chapter is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual assault, trafficking, or stalking, to enable interagency cooperation with the secretary of state in providing address confidentiality for victims of domestic violence, sexual assault, trafficking, or stalking, and to enable state and local agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address. [2008 c 312 § 1; 2001 c 28 § 1; 1998 c 138 § 1; 1991 c 23 § 1.]

40.24.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Address" means a residential street address, school address, or work address of an individual, as specified on the individual's application to be a program participant under this chapter.

(2) "Domestic violence" means an act as defined in RCW 10.99.020 and includes a threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law enforcement officers.

(3) "Program participant" means a person certified as a program participant under RCW 40.24.030.

(4) "Stalking" means an act defined in RCW 9A.46.110 and includes a threat of such acts committed against an individual, regardless of whether these acts or threats have been reported to law enforcement officers.

(5) "Trafficking" means an act as defined in RCW 9A.40.100 or an act recognized as a severe form of trafficking under 22 U.S.C. Sec. 7102(8) as it existed on June 12, 2008, or such subsequent date as may be provided by the secretary of state by rule, consistent with the purposes of this subsection, regardless of whether the act has been reported to

law enforcement. [2008 c 312 § 2; 2008 c 18 § 1; 1991 c 23 § 2.]

Reviser's note: This section was amended by 2008 c 18 § 1 and by 2008 c 312 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

40.24.030 Address confidentiality program—Application—Certification. (1) An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, as defined in RCW 11.88.010, may apply to the secretary of state to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state and if it contains:

(a) A sworn statement, under penalty of perjury, by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, trafficking, or stalking; and (ii) that the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) If applicable, a sworn statement, under penalty of perjury, by the applicant, that the applicant has reason to believe they are a victim of domestic violence, sexual assault, or stalking perpetrated by an employee of a law enforcement agency;

(c) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

(d) The residential address and any telephone number where the applicant can be contacted by the secretary of state, which shall not be disclosed because disclosure will increase the risk of domestic violence, sexual assault, trafficking, or stalking;

(e) The signature of the applicant and of any individual or representative of any office designated in writing under RCW 40.24.080 who assisted in the preparation of the application, and the date on which the applicant signed the application.

(2) Applications shall be filed with the office of the secretary of state.

(3) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The secretary of state shall by rule establish a renewal procedure.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, shall be punishable under RCW 40.16.030 or other applicable statutes. [2008 c 312 § 3; 2008 c 18 § 2; 2001 c 28 § 2; 1998 c 138 § 2; 1991 c 23 § 3.]

Reviser's note: This section was amended by 2008 c 18 § 2 and by 2008 c 312 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

40.24.040 Certification cancellation. (1) If the program participant obtains a legal change of identity, he or she loses certification as a program participant.

(2) The secretary of state may cancel a program participant's certification if there is a change in the residential address, unless the program participant provides the secretary of state with at least two days' prior notice in writing of the change of address.

(3) The secretary of state may cancel certification of a program participant if mail forwarded by the secretary to the program participant's address is returned as nondeliverable, refused, or unclaimed.

(4) The secretary of state shall cancel certification of a program participant who applies using false information. [2008 c 18 § 3; 1991 c 23 § 4.]

40.24.050 Agency use of designated address. (1) A program participant may request that state and local agencies use the address designated by the secretary of state as his or her address. When creating a new public record, state and local agencies shall accept the address designated by the secretary of state as a program participant's substitute address, unless the secretary of state has determined that:

(a) The agency has a bona fide statutory or administrative requirement for the use of the address which would otherwise be confidential under this chapter; and

(b) This address will be used only for those statutory and administrative purposes.

(2) A program participant may use the address designated by the secretary of state as his or her work address.

(3) The office of the secretary of state shall forward all first-class mail to the appropriate program participants. [1991 c 23 § 5.]

40.24.060 Voting by program participant—Use of address by county auditor. A program participant who is otherwise qualified to vote may register as an ongoing absentee voter under RCW 29A.40.040. The county auditor shall transmit the absentee ballot to the program participant at the mailing address provided. Neither the name nor the address of a program participant shall be included in any list of registered voters available to the public. [2008 c 18 § 4; 1991 c 23 § 6.]

40.24.070 Disclosure of records prohibited—Exceptions. The secretary of state may not make any records in a program participant's file available for inspection or copying, other than the address designated by the secretary of state, except under the following circumstances:

(1) If requested by a law enforcement agency, to the law enforcement agency; and

(a) The participant's application contains no indication that he or she has been a victim of domestic violence, sexual assault, or stalking perpetrated by a law enforcement employee; and

(b) The request is in accordance with official law enforcement duties and is in writing on official law enforcement letterhead stationery and signed by the law enforcement agency's chief officer, or his or her designee; or

(2) If directed by a court order, to a person identified in the order; and

(a) The request is made by a nonlaw enforcement agency; or

(b) The participant's file indicates he or she has reason to believe he or she is a victim of domestic violence, sexual assault, or stalking perpetrated by a law enforcement employee. [2008 c 18 § 5; 1999 c 53 § 1; 1998 c 138 § 3; 1991 c 23 § 7.]

Effective date—1999 c 53: "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 [April 20, 1999]." [1999 c 53 § 2.]

40.24.075 Court order for address confidentiality program participant information. A court order for address confidentiality program participant information may only be issued upon a probable cause finding by a judicial officer that release of address confidentiality program participant information is legally necessary:

(1) In the course of a criminal investigation or prosecution; or

(2) To prevent immediate risk to a minor and meet the statutory requirements of the Washington child welfare system.

Any court order so issued will prohibit the release of the information to any other agency or person not a party to the order. [2008 c 18 § 6.]

40.24.080 Assistance for program applicants. The secretary of state shall designate state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic violence, sexual assault, trafficking, or stalking to assist persons applying to be program participants. Any assistance and counseling rendered by the office of the secretary of state or its designees to applicants shall in no way be construed as legal advice. [2008 c 312 § 4; 2001 c 28 § 3; 1998 c 138 § 4; 1991 c 23 § 8.]

40.24.090 Adoption of rules. The secretary of state may adopt rules to facilitate the administration of this chapter by state and local agencies. [1991 c 23 § 9.]

APPENDIX-2

Notice: This material may be protected by copyright law (Title 17 U.S. Code)

held in violation of the provisions of the application of the provision to other persons or circumstances is not affected. [1994 c 154 § 320.]

ter in the Revised Code of Washington that contains laws pertaining to public records. [2005 c 274 § 1.]

Chapter 42.56 RCW
PUBLIC RECORDS ACT

Sections

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- 42.56.010 Definitions.
- 42.56.020 Short title.
- 42.56.030 Construction.
- 42.56.040 Duty to publish procedures.
- 42.56.050 Invasion of privacy, when.
- 42.56.060 Disclaimer of public liability.
- 42.56.070 Documents and indexes to be made public.
- 42.56.080 Facilities for copying—Availability of public records.
- 42.56.090 Times for inspection and copying.
- 42.56.100 Protection of public records—Public access.
- 42.56.110 Destruction of information relating to employee misconduct.
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- 42.56.290 Agency party to controversy.
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- 42.56.340 Timeshare, condominium, etc. owner lists.
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- 42.56.360 Health care.
- 42.56.370 Domestic violence program, rape crisis center clients.
- 42.56.380 Agriculture and livestock.
- 42.56.390 Emergency or transitional housing.
- 42.56.400 Insurance and financial institutions.
- 42.56.403 Property and casualty insurance statements of actuarial opinion.
- 42.56.410 Employment security department records, certain purposes.
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- 42.56.440 Veterans' discharge papers—Exceptions.
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- 42.56.530 Review of agency denial.
- 42.56.540 Court protection of public records.
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- 42.56.600 Mediation communications.
- 42.56.610 Certain information from dairies and feedlots limited—Rules.
- 42.56.900 Purpose—2005 c 274 §§ 402-429.
- 42.56.901 Part headings not law—2005 c 274.
- 42.56.902 Effective date—2005 c 274.
- 42.56.903 Effective date—2006 c 209.
- 42.56.904 Intent—2007 c 391.

Criminal records privacy: Chapter 10.97 RCW.

42.56.001 Finding, purpose. The legislature finds that chapter 42.17 RCW contains laws relating to several discrete subjects. Therefore, the purpose of chapter 274, Laws of 2005 is to recodify some of those laws and create a new chap-

(2008 Ed.)

42.56.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(3) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated. [2007 c 197 § 1; 2005 c 274 § 101.]

42.56.020 Short title. This chapter may be known and cited as the public records act. [2005 c 274 § 102.]

42.56.030 Construction. The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern. [2007 c 197 § 2; 2005 c 274 § 283; 1992 c 139 § 2. Formerly RCW 42.17.251.]

42.56.040 Duty to publish procedures. (1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and

copying at the central office of such local agency, for guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;

(b) Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(e) Each amendment or revision to, or repeal of any of the foregoing.

(2) Except to the extent that he has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed. [1973 c 1 § 25 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.250.]

42.56.050 Invasion of privacy, when. A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records. [1987 c 403 § 2. Formerly RCW 42.17.255.]

Intent—1987 c 403: "The legislature intends to restore the law relating to the release of public records largely to that which existed prior to the Washington Supreme Court decision in *In Re Rosier*," 105 Wn.2d 606 (1986). The intent of this legislation is to make clear that: (1) Absent statutory provisions to the contrary, agencies possessing records should in responding to requests for disclosure not make any distinctions in releasing or not releasing records based upon the identity of the person or agency which requested the records, and (2) agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records. Further, to avoid unnecessary confusion, "privacy" as used in RCW 42.17.255 is intended to have the same meaning as the definition given that word by the Supreme Court in *Hearst v. Hoppe*," 90 Wn.2d 123, 135 (1978)." [1987 c 403 § 1.]

Severability—1987 c 403: "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." [1987 c 403 § 7.]

42.56.060 Disclaimer of public liability. No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter. [1992 c 139 § 11. Formerly RCW 42.17.258]

42.56.070 Documents and indexes to be made public.

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of *subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an

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analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.

(a) In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.

(b) In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and mail the requested public records may be included in an agency's costs.

(8) An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(9) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or

the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [2005 c 274 § 284; 1997 c 409 § 601. Prior: 1995 c 397 § 11; 1995 c 341 § 1; 1992 c 139 § 3; 1989 c 175 § 36; 1987 c 403 § 3; 1975 1st ex.s. c 294 § 14; 1973 c 1 § 26 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.260.]

***Reviser's note:** Subsection (6) of this section was renumbered as subsection (7) by 1992 c 139 § 3; and subsection (7) was subsequently renumbered as subsection (9) by 1995 c 341 § 1.

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

Effective date—1989 c 175: See note following RCW 34.05.010.

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

Exemption for registered trade names: RCW 19.80.065.

42.56.080 Facilities for copying—Availability of public records. Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter. [2005 c 483 § 1; 2005 c 274 § 285; 1987 c 403 § 4; 1975 1st ex.s. c 294 § 15; 1973 c 1 § 27 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.270.]

Reviser's note: This section was amended by 2005 c 274 § 285 and by 2005 c 483 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

42.56.090 Times for inspection and copying. Public records shall be available for inspection and copying during the customary office hours of the agency, the office of the

secretary of the senate, and the office of the chief clerk of the house of representatives: PROVIDED, That if the entity does not have customary office hours of at least thirty hours per week, the public records shall be available from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m. Monday through Friday, excluding legal holidays, unless the person making the request and the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives or its representative agree on a different time. [1995 c 397 § 12; 1973 c 1 § 28 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.280.]

42.56.100 Protection of public records—Public access. Agencies shall adopt and enforce reasonable rules and regulations, and the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives from honoring requests received by mail for copies of identifiable public records.

If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives shall retain possession of the record, and may not destroy or erase the record until the request is resolved. [1995 c 397 § 13; 1992 c 139 § 4; 1975 1st ex.s. c 294 § 16; 1973 c 1 § 29 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.290.]

42.56.110 Destruction of information relating to employee misconduct. Nothing in this chapter prevents an agency from destroying information relating to employee misconduct or alleged misconduct, in accordance with RCW 41.06.450, to the extent necessary to ensure fairness to the employee. [1982 c 208 § 13. Formerly RCW 42.17.295.]

Severability—1982 c 208: See RCW 42.40.900.

42.56.120 Charges for copying. No fee shall be charged for the inspection of public records. No fee shall be charged for locating public documents and making them available for copying. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges shall not exceed the amount necessary to reimburse the agency, the office of the secretary of the senate, or the

office of the chief clerk of the house of representatives for its actual costs directly incident to such copying. Agency charges for photocopies shall be imposed in accordance with the actual per page cost or other costs established and published by the agency. In no event may an agency charge a per page cost greater than the actual per page cost as established and published by the agency. To the extent the agency has not determined the actual per page cost for photocopies of public records, the agency may not charge in excess of fifteen cents per page. An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request. [2005 c 483 § 2. Prior: 1995 c 397 § 14; 1995 c 341 § 2; 1973 c 1 § 30 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.300.]

42.56.130 Other provisions not superseded. The provisions of RCW 42.56.070(7) and (8) and 42.56.120 that establish or allow agencies to establish the costs charged for photocopies of public records do not supersede other statutory provisions, other than in this chapter, authorizing or governing fees for copying public records. [2005 c 274 § 286; 1995 c 341 § 3. Formerly RCW 42.17.305.]

42.56.140 Public records exemptions accountability committee. (1)(a) The public records exemptions accountability committee is created to review exemptions from public disclosure, with thirteen members as provided in this subsection.

(i) The governor shall appoint two members, one of whom represents the governor and one of whom represents local government.

(ii) The attorney general shall appoint two members, one of whom represents the attorney general and one of whom represents a statewide media association.

(iii) The state auditor shall appoint one member.

(iv) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(v) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(vi) The governor shall appoint four members of the public, with consideration given to diversity of viewpoint and geography.

(b) The governor shall select the chair of the committee from among its membership.

(c) Terms of the members shall be four years and shall be staggered, beginning August 1, 2007.

(2) The purpose of the public records exemptions accountability committee is to review public disclosure exemptions and provide recommendations pursuant to subsection (7)(d) of this section. The committee shall develop and publish criteria for review of public exemptions.

(3) All meetings of the committee shall be open to the public.

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(4) The committee must consider input from interested parties.

(5) The office of the attorney general and the office of financial management shall provide staff support to the committee.

(6) Legislative members of the committee shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7)(a) Beginning August 1, 2007, the code reviser shall provide the committee by August 1st of each year with a list of all public disclosure exemptions in the Revised Code of Washington.

(b) The committee shall develop a schedule to accomplish a review of each public disclosure exemption. The committee shall publish the schedule and publish any revisions made to the schedule.

(c) The chair shall convene an initial meeting of the committee by September 1, 2007. The committee shall meet at least once a quarter and may hold additional meetings at the call of the chair or by a majority vote of the members of the committee.

(d) For each public disclosure exemption, the committee shall provide a recommendation as to whether the exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. By November 15th of each year, the committee shall transmit its recommendations to the governor, the attorney general, and the appropriate committees of the house of representatives and the senate. [2007 c 198 § 2.]

Finding—2007 c 198: "The legislature recognizes that public disclosure exemptions are enacted to meet objectives that are determined to be in the public interest. Given the changing nature of information technology and management, recordkeeping, and the increasing number of public disclosure exemptions, the legislature finds that periodic reviews of public disclosure exemptions are needed to determine if each exemption serves the public interest." [2007 c 198 § 1.]

42.56.210 Certain personal and other records exempt. (1) Except for information described in RCW 42.56.230(3)(a) and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(2) Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(3) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [2005 c 274 § 402. Prior:

(2006 c 302 § 11 expired July 1, 2006); (2006 c 75 § 2 expired July 1, 2006); (2006 c 8 § 111 expired July 1, 2006); (2003 1st sp.s. c 26 § 926 expired June 30, 2005); 2003 c 277 § 3; 2003 c 124 § 1; prior: 2002 c 335 § 1; 2002 c 224 § 2; 2002 c 205 § 4; 2002 c 172 § 1; prior: 2001 c 278 § 1; 2001 c 98 § 2; 2001 c 70 § 1; prior: 2000 c 134 § 3; 2000 c 56 § 1; 2000 c 6 § 5; prior: 1999 c 326 § 3; 1999 c 290 § 1; 1999 c 215 § 1; 1998 c 69 § 1; prior: 1997 c 310 § 2; 1997 c 274 § 8; 1997 c 250 § 7; 1997 c 239 § 4; 1997 c 220 § 120 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 58 § 900; prior: 1996 c 305 § 2; 1996 c 253 § 302; 1996 c 191 § 88; 1996 c 80 § 1; 1995 c 267 § 6; prior: 1994 c 233 § 2; 1994 c 182 § 1; prior: 1993 c 360 § 2; 1993 c 320 § 9; 1993 c 280 § 35; prior: 1992 c 139 § 5; 1992 c 71 § 12; 1991 c 301 § 13; 1991 c 87 § 13; 1991 c 23 § 10; 1991 c 1 § 1; 1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1; prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.310.]

Expiration date—2006 c 302 § 9 and 11: See note following RCW 66.28.180.

Expiration date—2006 c 75 § 2: "Section 2 of this act expires July 1, 2006." [2006 c 75 § 4.]

Expiration date—2006 c 8 § 111: "Section 111 of this act expires July 1, 2006." [2006 c 8 § 404.]

Expiration date—Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

Working group on veterans' records: "The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern. At the same time, the integrity of the public record of each county is a matter of utmost importance to the economic life of this state and to the right of each citizen to be secure in his or her ownership of real property and other rights and obligations of our citizens that rely upon the public record for their proof. Likewise the integrity of the public record is essential for the establishment of ancestral ties that may be of interest to this and future generations. While the public record as now kept by the county auditors is sufficient by itself for the accomplishment of these and many other public and private purposes, the proposed use of the public record for purposes that in their nature and intent are not public, so as to keep the veterans' discharge papers from disclosure to those of ill intent, causes concern among many segments of the population of this state.

In order to voice these concerns effectively and thoroughly, a working group may be convened by the joint committee on veterans' and military affairs to develop a means to preserve the integrity of the public record while protecting those veterans from identity theft." [2002 c 224 § 1.]

Effective date—2002 c 224 § 1: "Section 1 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 [March 28, 2002]." [2002 c 224 § 4.]

Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4: See notes following RCW 28A.320.125.

Finding—2001 c 98: "The legislature finds that public health and safety is promoted when the public has knowledge that enables them to make informed choices about their health and safety. Therefore, the legislature declares, as a matter of public policy, that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards or threats to the public.

The legislature also recognizes that the public disclosure of those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, could have a substantial likelihood of threatening public safety. Therefore, the legislature

declares, as a matter of public policy, that such specific and unique information should be protected from unnecessary disclosure." [2001 c 98 § 1.]

Findings—Conflict with federal requirements—Severability—2000 c 134: See notes following RCW 50.13.060.

Effective date—1998 c 69: See note following RCW 28B.95.025.

Effective date—1997 c 274: See note following RCW 41.05.021.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

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.

Severability—1996 c 305: See note following RCW 28B.85.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

Captions not law—Severability—Effective dates—1995 c 267: See notes following RCW 43.70.052.

Effective date—1994 c 233: See note following RCW 70.123.075.

Effective date—1994 c 182: "This act shall take effect July 1, 1994." [1994 c 182 § 2.]

Effective date—1993 c 360: See note following RCW 18.130.085.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

Finding—1991 c 301: See note following RCW 10.99.020.

Effective date—1991 c 87: See note following RCW 18.64.350.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1989 c 279: See RCW 43.163.901.

Severability—1989 c 11: See note following RCW 9A.56.220.

Severability—1987 c 411: See RCW 69.45.900.

Severability—Effective date—1986 c 299: See RCW 28C.10.900 and 28C.10.902.

Severability—1986 c 276: See RCW 53.31.901.

- Exemptions from public inspection*
- accounting records of special inquiry judge: RCW 10.29.090.*
 - basic health plan records: RCW 70.47.150.*
 - bill drafting service of code reviser's office: RCW 1.08.027, 44.68.060.*
 - certificate submitted by individual with physical or mental disability seeking a driver's license: RCW 46.20.041.*
 - commercial fertilizers, sales reports: RCW 15.54.362.*
 - criminal records: Chapter 10.97 RCW.*
 - employer information: RCW 50.13.060.*
 - family and children's ombudsman: RCW 43.06A.050.*
 - legislative service center, information: RCW 44.68.060.*
 - medical quality assurance commission, reports required to be filed with: RCW 18.71.0195.*
 - organized crime advisory board files: RCW 10.29.030.*
 - investigative information: RCW 43.43.856.*
 - public transportation information: RCW 47.04.240.*
 - salary and fringe benefit survey information: RCW 41.06.160.*

42.56.230 Personal information. The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(3) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (a) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(4) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law; and

(5) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identification card. [2008 c 200 § 5; 2005 c 274 § 403.]

42.56.240 Investigative, law enforcement, and crime victims. The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

(5) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator; and

(6) The statewide gang database referenced in RCW 43.43.762. [2008 c 276 § 202; 2005 c 274 § 404.]

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

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42.56.250 Employment and licensing. The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(3) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240;

(4) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(5) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment; and

(6) Except as provided in RCW 47.64.220, salary and employee benefit information collected under RCW 47.64.220(1) and described in RCW 47.64.220(2). [2006 c 209 § 6; 2005 c 274 § 405.]

42.56.260 Real estate appraisals. Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, are exempt from disclosure under this chapter. In no event may disclosure be denied for more than three years after the appraisal. [2005 c 274 § 406.]

42.56.270 Financial, commercial, and proprietary information. The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to

submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of community, trade, and economic development:

(i) Financial and proprietary information collected from any person and provided to the department of community,

trade, and economic development pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of community, trade, and economic development or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of community, trade, and economic development based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of community, trade, and economic development from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information; and

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business. [2008 c 306 § 1. Prior: 2007 c 470 § 2; (2007 c 470 § 1 expired June 30, 2008); 2007 c 251 § 13; (2007 c 251 § 12

expired June 30, 2008); 2007 c 197 § 4; (2007 c 197 § 3 expired June 30, 2008); prior: 2006 c 369 § 2; 2006 c 341 § 6; 2006 c 338 § 5; 2006 c 302 § 12; 2006 c 209 § 7; 2006 c 183 § 37; 2006 c 171 § 8; 2005 c 274 § 407.]

Effective date—2008 c 306 § 1: "Section 1 of this act takes effect June 30, 2008." [2008 c 306 § 2.]

Effective date—2007 c 470 § 2: "Section 2 of this act takes effect June 30, 2008." [2007 c 470 § 4.]

Expiration date—2007 c 470 § 1: "Section 1 of this act expires June 30, 2008." [2007 c 470 § 3.]

Effective date—2007 c 251 § 13: "Section 13 of this act takes effect June 30, 2008." [2007 c 251 § 18.]

Expiration date—2007 c 251 § 12: "Section 12 of this act expires June 30, 2008." [2007 c 251 § 17.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

Effective date—2007 c 197 § 4: "Section 4 of this act takes effect June 30, 2008." [2007 c 197 § 11.]

Expiration date—2007 c 197 § 3: "Section 3 of this act expires June 30, 2008." [2007 c 197 § 10.]

Effective date—2006 c 369 § 2: "Section 2 of this act takes effect July 1, 2006." [2006 c 369 § 3.]

Effective date—2006 c 341 § 6: "Section 6 of this act takes effect July 1, 2006." [2006 c 341 § 7.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

Effective date—Severability—2006 c 338: See RCW 19.112.903 and 19.112.904.

Effective date—2006 c 302 §§ 10 and 12: See note following RCW 66.28.180.

Construction—Severability—Effective date—2006 c 183: See RCW 70.95N.900 through 70.95N.902.

Effective date—2006 c 171 §§ 8 and 10: "Sections 8 and 10 of this act take effect July 1, 2006." [2006 c 171 § 13.]

Findings—Severability—2006 c 171: See RCW 43.325.001 and 43.325.901.

42.56.280 Preliminary drafts, notes, recommendations, intra-agency memorandums. Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this chapter, except that a specific record is not exempt when publicly cited by an agency in connection with any agency action. [2005 c 274 § 408.]

42.56.290 Agency party to controversy. Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter. [2005 c 274 § 409.]

42.56.300 Archaeological sites. (1) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites are exempt from disclosure under this chapter.

(2) Records, maps, and other information, acquired during watershed analysis pursuant to the forests and fish report under RCW 76.09.370, that identify the location of archaeological sites, historic sites, artifacts, or the sites of traditional religious, ceremonial, or social uses and activities of affected Indian tribes, are exempt from disclosure under this chapter

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in order to prevent the looting or depredation of such sites. [2006 c 86 § 1; 2005 c 274 § 410.]

Effective date—2006 c 86: "This act takes effect July 1, 2006." [2006 c 86 § 2.]

42.56.310 Library records. Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, that discloses or could be used to disclose the identity of a library user is exempt from disclosure under this chapter. [2005 c 274 § 411.]

42.56.320 Educational information. The following educational information is exempt from disclosure under this chapter:

(1) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW;

(2) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units;

(3) Individually identifiable information received by the workforce training and education coordinating board for research or evaluation purposes; and

(4) Except for public records as defined in *RCW 40.14.040, any records or documents obtained by a state college, university, library, or archive through or concerning any gift, grant, conveyance, bequest, or devise, the terms of which restrict or regulate public access to those records or documents. [2005 c 274 § 412.]

*Reviser's note: A definition of "public records" is found in RCW 40.14.010.

42.56.330 Public utilities and transportation. The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

(1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095;

(2) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order;

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose

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this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety;

(6) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010;

(7) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order; and

(8) The personally identifying information of persons who acquire and use a driver's license or identicaid that includes a radio frequency identification chip or similar technology to facilitate border crossing. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. Personally identifying information may be released to law enforcement agencies only for United States customs and border protection enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order. [2008 c 200 § 6; 2007 c 197 § 5; 2006 c 209 § 8; 2005 c 274 § 413.]

42.56.335 Public utility districts and municipally owned electrical utilities—Restrictions on access by law enforcement authorities. A law enforcement authority may not request inspection or copying of records of any person who belongs to a public utility district or a municipally owned electrical utility unless the authority provides the public utility district or municipally owned electrical utility with a written statement in which the authority states that it suspects that the particular person to whom the records pertain has committed a crime and the authority has a reasonable belief that the records could determine or help determine whether the suspicion might be true. Information obtained in violation of this section is inadmissible in any criminal proceeding. [2007 c 197 § 6.]

42.56.340 Timeshare, condominium, etc. owner lists. Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts,

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condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department are exempt from disclosure under this chapter. [2005 c 274 § 414.]

42.56.350 Health professionals. (1) The federal Social Security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health is exempt from disclosure under this chapter. The exemption in this section does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations.

(2) The current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department are exempt from disclosure under this chapter, if the provider requests that this information be withheld from public inspection and copying, and provides to the department of health an accurate alternate or business address and business telephone number. The current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department of health shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.56.070(9). [2005 c 274 § 415.]

42.56.360 Health care. (Effective until July 1, 2009.)

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, a notification of an incident under RCW 70.56.040(5), and reports regarding adverse events under RCW 70.56.020(2)(b), regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for

confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170;

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1); and

(h) Information obtained by the department of health under chapter 70.225 RCW.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients. [2008 c 136 § 4. Prior: 2007 c 261 § 4; 2007 c 259 § 49; prior: 2006 c 209 § 9; 2006 c 8 § 112; 2005 c 274 § 416.]

Expiration date—2008 c 136 § 4: "Section 4 of this act expires July 1, 2009." [2008 c 136 § 6.]

Findings—2007 c 261: See note following RCW 43.70.056.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2006 c 8 §§ 112 and 210: "Sections 112 and 210 of this act take effect July 1, 2006." [2006 c 8 § 405.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Basic health plan—Confidentiality: RCW 70.47.150.

42.56.360 Health care. (Effective July 1, 2009.) (1)

The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, a notification of an incident under RCW 70.56.040(5), and reports regarding adverse events under RCW 70.56.020(2)(b), regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an

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antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170;

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1); and

(h) Information obtained by the department of health under chapter 70.225 RCW.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients. [2008 c 136 § 5. Prior: 2007 c 273 § 25; 2007 c 261 § 4; 2007 c 259 § 49; prior: 2006 c 209 § 9; 2006 c 8 § 112; 2005 c 274 § 416.]

Effective date—2008 c 136 § 5: "Section 5 of this act takes effect July 1, 2009." [2008 c 136 § 7.]

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

Findings—2007 c 261: See note following RCW 43.70.056.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2006 c 8 §§ 112 and 210: "Sections 112 and 210 of this act take effect July 1, 2006." [2006 c 8 § 405.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Basic health plan—Confidentiality: RCW 70.47.150.

42.56.370 Domestic violence program, rape crisis center clients. Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030 are exempt from disclosure under this chapter. [2005 c 274 § 417.]

42.56.380 Agriculture and livestock. The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

(1) Business-related information under RCW 15.86.110;

(2) Information provided under RCW 15.54.362;

(3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88,

15.100, 15.89, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;

(4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;

(5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.100, 15.89, or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;

(6) Except under RCW 15.19.080, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer;

(7) Information that can be identified to a particular business and that is collected under RCW 15.17.140(2) and 15.17.143 for certificates of compliance;

(8) Financial statements provided under RCW 16.65.030(1)(d);

(9) Information submitted by an individual or business for the purpose of participating in a state or national animal identification system. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete; and

(10) Results of testing for animal diseases not required to be reported under chapter 16.36 RCW that is done at the request of the animal owner or his or her designee that can be identified to a particular business or individual. [2007 c 177 § 1. Prior: 2006 c 330 § 26; 2006 c 75 § 3; 2005 c 274 § 418.]

Effective date—2006 c 330 § 26: "Section 26 of this act takes effect July 1, 2006." [2006 c 330 § 32.]

Construction—Severability—2006 c 330: See RCW 15.89.900 and 15.89.901.

Effective date—2006 c 75 § 3: "Section 3 of this act takes effect July 1, 2006." [2006 c 75 § 5.]

Findings—2006 c 75: "The legislature finds that livestock identification numbers, premise information, and animal movement data are proprietary information that all have a role in defining a livestock producer's position within the marketplace, including his or her competitive advantage over other producers. The legislature therefore finds that exempting certain voluntary livestock identification, premise, and movement information from state public disclosure requirements will foster an environment that is more conducive to voluntary participation, and lead to a more effective livestock identification system." [2006 c 75 § 1.]

42.56.390 Emergency or transitional housing. Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043 are exempt from disclosure under this chapter. [2005 c 274 § 419.]

42.56.400 Insurance and financial institutions. (Effective until July 1, 2009.) The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of all viators regulated by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11); and

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080; and

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140. [2007 c 197 § 7; 2007 c 82 § 17. Prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]

Reviser's note: This section was amended by 2007 c 82 § 17 and by 2007 c 197 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

Effective date—2006 c 8 §§ 112 and 210: See note following RCW 42.56.360.

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

42.56.400 Insurance and financial institutions. (Effective July 1, 2009.) The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of all viators regulated by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health

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care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140; and

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595. [2007 c 197 § 7; 2007 c 117 § 36; 2007 c 82 § 17. Prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]

Reviser's note: This section was amended by 2007 c 82 § 17, 2007 c 117 § 36, and by 2007 c 197 § 7, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2007 c 117: See RCW 48.17.900 and 48.17.901.

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

Effective date—2006 c 8 §§ 112 and 210: See note following RCW 42.56.360.

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

42.56.403 Property and casualty insurance statements of actuarial opinion. Documents, materials, and information obtained by the insurance commissioner under RCW 48.05.385(2) are confidential and privileged and not subject to public disclosure under this chapter. [2006 c 25 § 3.]

Short title—2006 c 25 §§ 1-3: See note following RCW 48.05.383.

Effective date—2006 c 25 §§ 1-4: See note following RCW 48.05.383.

42.56.410 Employment security department records, certain purposes. Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes are exempt from disclosure under this chapter. [2005 c 274 § 421.]

42.56.420 Security. The following information relating to security is exempt from disclosure under this chapter:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the

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state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism;

(2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety;

(3) Information compiled by school districts or schools in the development of their comprehensive safe school plans under RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school;

(4) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities; and

(5) The *security section of transportation system safety and security program plans required under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180. [2005 c 274 § 422.]

*Reviser's note: "Security section of transportation system safety and security program plans" was changed to "system security and emergency preparedness plan" by chapter 422, Laws of 2007.

42.56.430 Fish and wildlife. The following information relating to fish and wildlife is exempt from disclosure under this chapter:

(1) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data, however, this information may be released to government agencies concerned with the management of fish and wildlife resources;

(2) Sensitive fish and wildlife data. Sensitive fish and wildlife data may be released to the following entities and their agents for fish, wildlife, land management purposes, or scientific research needs: Government agencies, public utilities, and accredited colleges and universities. Sensitive fish and wildlife data may be released to tribal governments. Sensitive fish and wildlife data may also be released to the owner, lessee, or right-of-way or easement holder of the private land to which the data pertains. The release of sensitive

fish and wildlife data may be subject to a confidentiality agreement, except upon release of sensitive fish and wildlife data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish and wildlife data does not include data related to reports of predatory wildlife as specified in RCW 77.12.885. Sensitive fish and wildlife data must meet at least one of the following criteria of this subsection as applied by the department of fish and wildlife:

(a) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(b) Radio frequencies used in, or locational data generated by, telemetry studies; or

(c) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;

(iii) There is a known demand to visit, take, or disturb the species; or

(iv) The species has an extremely limited distribution and concentration;

(3) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag; however, the department of fish and wildlife may disclose personally identifying information to:

(a) Government agencies concerned with the management of fish and wildlife resources;

(b) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(c) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040; and

(4) Information that the department of fish and wildlife has received or accessed but may not disclose due to confidentiality requirements in the Magnuson-Stevens fishery conservation and management reauthorization act of 2006 (16 U.S.C. Sec. 1861(h)(3) and (i), and Sec. 1881a(b)). [2008 c 252 § 1; 2007 c 293 § 1; 2005 c 274 § 423.]

42.56.440 Veterans' discharge papers—Exceptions.

(1) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents are exempt from disclosure under this chapter. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(2) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other

records are exempt from disclosure under this chapter, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(3) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(4) For the purposes of this section, next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister. [2005 c 274 § 424.]

42.56.450 Check cashers and sellers licensing applications. Information in an application for licensing or a small loan endorsement under chapter 31.45 RCW regarding the personal residential address, telephone number of the applicant, or financial statement is exempt from disclosure under this chapter. [2005 c 274 § 425.]

42.56.460 Fireworks. All records obtained and all reports produced as required by state fireworks law, chapter 70.77 RCW, are exempt from disclosure under this chapter. [2005 c 274 § 426.]

42.56.470 Correctional industries workers. All records, documents, data, and other materials obtained under the requirements of RCW 72.09.115 from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under this chapter. [2005 c 274 § 427.]

42.56.480 Inactive programs. Information relating to the following programs and reports, which have no ongoing activity, is exempt from disclosure under this chapter:

(1) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under *RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter;

(2) Personal information in files maintained in a database created under **RCW 43.07.360; and

(3) Data collected by the department of social and health services for the reports required by section 8, chapter 231, Laws of 2003, except as compiled in the aggregate and reported to the senate and house of representatives. [2005 c 274 § 428.]

Reviser's note: *(1) RCW 81.34.070 was repealed by 1991 c 49 § 1. ***(2) RCW 43.07.360 expired December 31, 2000, pursuant to 1996 c 253 § 502.

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42.56.510 Duty to disclose or withhold information—
Otherwise provided. Nothing in RCW 42.56.250 and 42.56.330 shall affect a positive duty of an agency to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law. [2005 c 274 § 287; 1991 c 23 § 11; 1990 c 256 § 2; 1987 c 404 § 3. Formerly RCW 42.17.311.]

42.56.520 Prompt responses required. Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or (3) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons 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. In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review. [1995 c 397 § 15; 1992 c 139 § 6; 1975 1st ex.s. c 294 § 18; 1973 c 1 § 32 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.320.]

42.56.530 Review of agency denial. Whenever a state agency concludes that a public record is exempt from disclosure and denies a person opportunity to inspect or copy a public record for that reason, the person may request the attorney general to review the matter. The attorney general shall provide the person with his or her written opinion on whether the record is exempt.

Nothing in this section shall be deemed to establish an attorney-client relationship between the attorney general and a person making a request under this section. [1992 c 139 § 10. Formerly RCW 42.17.325.]

42.56.540 Court protection of public records. The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, 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 governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice. [1992 c 139 § 7; 1975 1st ex.s. c 294 § 19; 1973 c 1 § 33 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.330.]

42.56.550 Judicial review of agency actions. (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not less than five dollars and not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis. [2005 c 483 § 5; 2005 c 274 § 288; 1992 c 139 § 8; 1987 c 403 § 5; 1975

1st ex.s. c 294 § 20; 1973 c 1 § 34 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.340.]

Reviser's note: This section was amended by 2005 c 274 § 288 and by 2005 c 483 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

42.56.560 Application of RCW 42.56.550. The procedures in RCW 42.56.550 govern denials of an opportunity to inspect or copy a public record by the office of the secretary of the senate or the office of the chief clerk of the house of representatives. [2005 c 274 § 289; 1995 c 397 § 16. Formerly RCW 42.17.341.]

42.56.570 Explanatory pamphlet. (1) The attorney general's office shall publish, and update when appropriate, a pamphlet, written in plain language, explaining this chapter.

(2) The attorney general, by February 1, 2006, shall adopt by rule an advisory model rule for state and local agencies, as defined in RCW 42.56.010, addressing the following subjects:

- (a) Providing fullest assistance to requestors;
- (b) Fulfilling large requests in the most efficient manner;
- (c) Fulfilling requests for electronic records; and
- (d) Any other issues pertaining to public disclosure as determined by the attorney general.

(3) The attorney general, in his or her discretion, may from time to time revise the model rule. [2007 c 197 § 8. Prior: 2005 c 483 § 4; 2005 c 274 § 290; 1992 c 139 § 9. Formerly RCW 42.17.348.]

42.56.580 Public records officers. (1) Each state and local agency shall appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency's compliance with the public records disclosure requirements of this chapter. A state or local agency's public records officer may appoint an employee or official of another agency as its public records officer.

(2) For state agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance with the public records disclosure requirements of this chapter shall be published in the state register at the time of designation and maintained thereafter on the code reviser web site for the duration of the designation.

(3) For local agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance within the public records disclosure requirements of this chapter shall be made in a way reasonably calculated to provide notice to the public, including posting at the local agency's place of business, posting on its internet site, or including in its publications. [2007 c 456 § 6; 2005 c 483 § 3. Formerly RCW 42.17.253.]

42.56.590 Personal information—Notice of security breaches. (1)(a) Any agency that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of this state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3) of this section, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) For purposes of this section, "agency" means the same as in RCW 42.56.010.

(2) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(4) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system when the personal information is not used or subject to further unauthorized disclosure.

(5) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (a) Social security number;
- (b) Driver's license number or Washington identification card number; or
- (c) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(6) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(7) For purposes of this section and except under subsection (8) of this section, notice may be provided by one of the following methods:

- (a) Written notice;
- (b) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. Sec. 7001; or
- (c) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty

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thousand dollars, or that the affected class of subject persons to be notified exceeds five hundred thousand, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(i) E-mail notice when the agency has an e-mail address for the subject persons;

(ii) Conspicuous posting of the notice on the agency's web site page, if the agency maintains one; and

(iii) Notification to major statewide media.

(8) An agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this section is in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(9) Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

(10)(a) Any customer injured by a violation of this section may institute a civil action to recover damages.

(b) Any business that violates, proposes to violate, or has violated this section may be enjoined.

(c) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

(d) An agency shall not be required to disclose a technical breach of the security system that does not seem reasonably likely to subject customers to a risk of criminal activity. [2007 c 197 § 9; 2005 c 368 § 1. Formerly RCW 42.17.31922.]

Similar provision: RCW 19.255.010.

42.56.600 Mediation communications. Records of mediation communications that are privileged under chapter 7.07 RCW are exempt from disclosure under this chapter. [2006 c 209 § 15.]

42.56.610 Certain information from dairies and feedlots limited—Rules. The following information in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations, not required to apply for a national pollutant discharge elimination system permit is disclosable only in ranges that provide meaningful information to the public while ensuring confidentiality of business information regarding: (1) Number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies. [2005 c 510 § 5. Formerly RCW 42.17.31923.]

42.56.900 Purpose—2005 c 274 §§ 402-429. The purpose of sections 402 through 429 of this act is to reorganize the public inspection and copying exemptions in RCW 42.17.310 through 42.17.31921 by creating smaller, discrete code sections organized by subject matter. The legislature does not intend that this act effectuate any substantive change

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to any public inspection and copying exemption in the Revised Code of Washington. [2005 c 274 § 401.]

42.56.901 Part headings not law—2005 c 274. Part headings used in this act are not any part of the law. [2005 c 274 § 501.]

42.56.902 Effective date—2005 c 274. This act takes effect July 1, 2006. [2005 c 274 § 502.]

42.56.903 Effective date—2006 c 209. This act takes effect July 1, 2006. [2006 c 209 § 17.]

42.56.904 Intent—2007 c 391. It is the intent of the legislature to clarify that no reasonable construction of chapter 42.56 RCW has ever allowed attorney invoices to be withheld in their entirety by any public entity in a request for documents under that chapter. It is further the intent of the legislature that specific descriptions of work performed be redacted only if they would reveal an attorney's mental impressions, actual legal advice, theories, or opinions, or are otherwise exempt under chapter 391, Laws of 2007 or other laws, with the burden upon the public entity to justify each redaction and narrowly construe any exception to full disclosure. The legislature intends to clarify that the public's interest in open, accountable government includes an accounting of any expenditure of public resources, including through liability insurance, upon private legal counsel or private consultants. [2007 c 391 § 1.]