

AN ACT Relating to the protection of personal privacy; amending RCW 42.56.010 and 42.56.070; reenacting and amending RCW 42.56.080; adding new sections to chapter 42.56 RCW; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** This act may be known and cited as the Washington personal privacy protection act.

NEW SECTION. **Sec. 2.** The people have a strong and legitimate interest in discouraging and preventing persons with improper purposes from utilizing the resources of the state to invade other people's personal privacy. It is the intent of this act to protect that public interest by (1) prohibiting the use of public records for harassment and intimidation or for commercial purposes; (2) defining the scope of the existing prohibition against disclosure of public records for commercial purposes; and (3) providing enforcement mechanisms.

#### **PART I**

#### **PROHIBITING THE RELEASE AND USE OF PUBLIC RECORDS FOR HARASSMENT, INTIMIDATION, OR COMMERCIAL PURPOSES.**

NEW SECTION. **Sec. 3.** A new section is added to chapter 42.56 RCW to read as follows:

(1) No entity subject to this chapter may release personal information of any individual for the purpose of harassment or intimidation or for a commercial purpose.

(2) "Personal information of any individual" means names and other personally identifying information.

(3) Before releasing personal information of any individual or records containing a list of individuals with or without their residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses,

social security numbers, driver's license numbers, or other personally identifying information, any entity subject to this chapter shall provide the requestor with the definition of commercial purpose set forth in this act and shall require the requestor to sign the following oath under penalty of perjury: "I have not requested this information to harass or to intimidate any person or for a commercial purpose and I understand that any such use of the requested information is illegal and may subject me to civil penalties."

(4) Before releasing personal information of any individual or records containing a list of individuals with or without their residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, driver's license numbers, or other personally identifying information, entities subject to this chapter shall determine whether the release of such information could lead to disclosure of personal information of students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients. If the entity subject to this chapter determines that the release of such information could lead to the identification of students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients, the entity should redact any information that could lead to the identification of students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

**Sec. 4.** RCW 42.56.070 and 2005 c 274 § 284 are each amended to read as follows:

(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

(~~96~~) 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 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 with or without their residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, driver's license numbers or other personally identifying information 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~~ However, lists of applicants for professional licenses and of professional licensees ~~shall~~ may 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 the recipient agrees to prevent the disclosure of the information to any third party: ~~PROVIDED FURTHER, That,~~ and 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.

NEW SECTION. **Sec. 5.** A new section is added to chapter 42.56 RCW to read as follows:

(1) A person is subject to civil liability if the person uses personal information of any individual obtained through a public records request to harass or intimidate any person or for a commercial purpose.

(2) A person who violates any of the provisions of this section may be sued in superior court by any aggrieved party, or in the name of the state by the attorney general or the prosecuting authorities of political subdivisions of this state. The court shall enjoin any use of information that is prohibited by this act. When the defendant is on notice that the information used to harass, intimidate, or for a commercial purpose was derived from a public records request, the plaintiff may recover five hundred dollars for each item of personal identification, including each name that was obtained or used in violation of this chapter, plus costs and reasonable attorneys' fees. The court may order any other appropriate civil remedy.

**Sec. 6.** RCW 42.56.080 and 2005 c 483 s 1 and 2005 c 274 s 285 are each reenacted and amended to read as follows:

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), section 3 of this act, 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.

**Sec. 7.** RCW 42.56.010 and 2010 c 204 s 1005 are each amended to read as follows:

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) (a) "Commercial purpose" means the use of a public record, or part of a record, for any of the following: (i) the sale or resale of the record; (ii) raising revenue through direct or indirect use of the record, including but not limited to soliciting, marketing, advertising, self-promoting or fundraising; (iii) inducing any person to economically support any entity; (iv) inducing any person to cease or refrain from economically



supporting any entity; (v) inducing any person to join or become a member of an entity, to cease from joining any entity, or to terminate membership in any entity; or (vi) obtaining any record with the intent of providing such records to any third party to be used for any of these purposes.

(b) "Commercial purpose" does not mean (i) information about specific individual(s) or specific public employee(s) is used by a bona fide news organization solely to conduct an investigation into, or report upon, the actions of such specific individual(s) or employee(s); or (ii) use solely in any judicial or quasi-judicial proceeding.

(3) ~~(2)~~ "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, "person in interest" means and includes the parent or duly appointed legal representative.

(4) ~~(3)~~ "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.

(5) ~~(4)~~ "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.

**Sec. 8.** This act shall be liberally construed to promote the public policy set forth in section 2, above, and to assure that the public interest described therein will be fully protected.

**Sec. 9.** 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.