

# STATE OF WASHINGTON 2019 ANNUAL REPORT

## PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE “SUNSHINE COMMITTEE”

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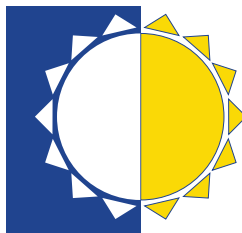
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# **PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE**

**“SUNSHINE IN GOVERNMENT”**

**November 14, 2019**

## **SUMMARY**

The Public Records Exemptions Accountability Committee (Sunshine Committee) met four times in calendar year 2019 to review and discuss the following exemptions:

### **Fish and Wildlife Exemptions:**

RCW 42.56.430(3) – Wolf Depredation  
RCW 42.56.430(4) – Wolf Depredation  
RCW 77.12.885 – Predatory Wolf Interactions  
RCW 42.56.141 – Wolf Depredation Report

### **Religious Affiliation Exemption:**


RCW 42.56.235 – Information Regarding Religious Beliefs

### **Juvenile Victim/Witness/Offender/Juvenile Records/Child Welfare Exemptions:**

RCW 7.69A.020(8) – Identifying Information of Child Victim Witnesses  
RCW 7.69A.030(4) – Information Regarding Child Victims and Assault  
RCW 10.97.130 – Information Regarding Child Victims of Sexual Assault  
RCW 42.56.240(5) – Information Regarding Child Victims of Sexual Assault  
RCW 10.52.100 – Identity of Child Victims of Sexual Assault  
RCW 13.40.150 – Disposition Hearings of Juvenile Offenders  
RCW 13.40.215 – Juvenile Sex Offenders  
RCW 13.40.217 – Juvenile Sex Offenders  
RCW 13.50.100(2) – Juvenile Records  
RCW 13.34.046 – Educational Liaisons for Juveniles  
RCW 13.50.010(15) – Educational Juvenile Records  
RCW 13.50.010(16) – Juvenile Welfare Records  
RCW 13.50.010(17) – Juvenile Welfare Records  
RCW 74.13A.045 – Adoptive Parent’s Financial Information  
RCW 74.13A.065 – Adoption Support Records  
RCW 74.13.280(2) – Dependent Child Records  
RCW 74.13.500-.525 – Child Welfare Records  
RCW 74.20A.360 – Child Support Records  
RCW 74.20A.370 – Child Support Records  
RCW 74.13.640 – Child Fatality Reviews  
RCW 42.56.240(1) – Law Enforcement Investigative Reviews  
RCW 13.50.050(3) – Juvenile Court Records  
RCW 13.50.050(6) – Juvenile Offender Records  
RCW 13.50.050(7) – Juvenile Offender Records  
RCW 13.50.050(9) – Juvenile Offender Records

### **Regulation of Explosives:**

RCW 42.56.460(1) – Fireworks and Explosives  
RCW 42.56.460(2) – Sunshine Committee Report



The review and discussion of these exemptions involved notice to the public and direct outreach to specific stakeholders. The Committee received testimony from public agencies and numerous interested parties, as well as extensive briefing by staff and Committee members, and considerable Committee discussion. This review process resulted in recommendations, contained in this report, which are designed to achieve statutory clarification and the protection of important privacy interests while ensuring appropriate public disclosure.

In summary, the Committee's 2019 recommendations are to review the religious affiliation exemption in RCW 42.56.235 and to amend the exemptions related to juveniles in RCW 42.56.240(1), RCW 7.69A.020, and RCW 13.50.050. The Committee also recommends that the Legislature consider adopting the various other recommendations made by the Committee over the past several years, including but not limited to those introduced in the 2017, 2018 and 2019 Legislative sessions, namely HB 1160 and HB 1538.

In 2020, the Committee anticipates it will continue its review of several other exemptions it began to discuss in 2019, in particular those related to fish and wildlife, agriculture and livestock, juvenile law, wolf depredation, and storage of explosives amongst others.

## **HISTORY OF THE COMMITTEE**

The Committee was created by Substitute House Bill 5435 in 2007 (codified in RCW 42.56.140). The bill established the Committee to review all public disclosure exemptions, and make recommendations to the Legislature as to whether each exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. The Legislature stated that in light of the changing nature of information technology, record-keeping and the increasing number of public disclosure exemptions, periodic review of public disclosure exemptions is needed to determine if exemptions continue to serve the public interest.

Further information about the Committee and its work is available to the public on the Internet at <https://www.atg.wa.gov/sunshine-committee>. The Committee posts its agenda for each meeting on the website, and when available, the video of the meeting is also posted. In addition, the website invites citizens to join a listserv, so they may receive notification when new material is posted.

TVW, the state's public affairs television broadcaster, has filmed or recorded most of the meetings, and the website for the Committee contains links to the TVW website or the recording so that the public can view previous meetings.

As required by the Legislature, the Committee has adopted and published criteria for reviewing exemptions. A copy of the Committee's criteria is available on the Committee website.

The Committee receives an updated list of exemptions from the Office of the Code Reviser each year in August. A Schedule of Review is used by the Committee to organize its review activity. This schedule currently contains over 500 items and is posted on the Committee's website.

The Committee recognizes the importance of public comment and will continue to provide notice to the citizenry of the Committee's meeting agendas in order to encourage citizen participation and comment. The Committee receives staff assistance from the Attorney General's Office, as directed by the legislation establishing the Committee.

The Legislature called for an annual report of the Committee's recommendations. This is the twelfth annual report and summarizes the Committee's work since the November 2018 report was submitted.





## MEMBERS OF THE COMMITTEE

The members are appointed to the Committee by the Governor, Legislature, Attorney General and State Auditor. The following individuals served on the Committee in 2019:

- Chair, Michael E. Schwab, retired Yakima County Superior Court Judge
- Former State Representative Lynn Kessler - Vice Chair
- Representative Luanne Van Werven (R)
- Representative Larry Springer (D)
- Taylor (Tip) Wonhoff - Deputy Counsel to the Governor
- Rowland Thompson, Executive Director, Allied Daily Newspapers of Washington
- David Zeeck, former Publisher, Tacoma News Tribune
- Hon. Pete Holmes, Seattle City Attorney
- Jennifer Steele, Attorney General's Office Public Records Counsel
- Kathy George, Attorney, Johnston George LLP
- Sara Di Vittorio, Assistant General Counsel, Snohomish County Public Utilities District #1


## COMMITTEE PRACTICE AND PROCEDURE - 2019

The Committee held four meetings in 2019. Approved minutes of each meeting are available on the Committee's website. The following is a summary of the work done by the Committee at each meeting.

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### FEBRUARY 26, 2019

- a. This was the first meeting of the year in 2019 and the Committee engaged in an initial discussion about its Schedule of Review of exemptions to public disclosure laws. The Schedule of Review is updated every year by the Washington State Code Reviser's Office and currently contains over 500 exemptions. The Schedule of Review serves as the basis for the Committee's review process. In 2015-2016, the Committee decided to evaluate the numerous exemptions by category, which would allow for a more expeditious and comprehensive analysis of the schedule.
- b. The Committee proceeded with a discussion of the 2019 Legislative Session which had begun in January. There were numerous items of interest regarding public records laws which were pending, including several bills containing Sunshine Committee recommendations (HB 1537 and HB 1538), Report of the Public Records Taskforce and proposed legislation (SB 5784). Finally, a bill relating to the regulation of explosives (HB 1673) was introduced which contained a new assignment for the Sunshine Committee to issue a report regarding the exemption created by the bill.
- c. In 2017, the Legislature enacted a new law and exemption concerning wolf depredation, which included an assignment for the Sunshine Committee to issue a report in 2023 regarding the need to maintain the exemption. This exemption was intended to protect the identity of individuals involved in the death and termination of wolves and wolf packs in the State of Washington. In order to begin the process of ultimately preparing the report required by the Legislature, the Committee invited several officials from the Washington Department of Fish and Wildlife to discuss their work with the issue of wolf depredation. Extensive discussion ensued between the Committee and these officials regarding the current status of the wolf population in Washington State, the extent of alleged predation by the wolf packs, the existence of threats made in reaction to wolf terminations, and public records requests made to the Department of Fish and Wildlife on this subject. This is a complicated and sensitive topic and will be explored in future Committee meetings through the testimony of interested parties and the analysis of data.

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- d. As stated hereinabove, the Committee had decided in 2015-2016 to evaluate its Schedule of Review by category. In 2018, the Committee had begun an analysis of the numerous exemptions relating to juveniles on the Schedule of Review. Discussion was now initiated regarding juvenile victim and witness exemptions. A proposal to modify some of these exemptions was introduced and discussed, but it was agreed to table the discussion until future meetings, for additional research and issue development.
  - e. In 2018, the Legislature enacted RCW 42.56.235, which was intended to exempt from disclosure all records relating to information about an individual's religious beliefs, practices and affiliation.

Extensive discussion ensued regarding problems created by the overly broad sweep of the exemption and several proposals were discussed to modify the language in the exemption to provide for a more appropriate method of protecting religious privacy interests while not unduly restricting the dissemination of public records. It was agreed that further discussion was needed to develop these proposals.

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#### **MAY 14, 2019**

- a. The initial discussion at this meeting concerned the recently completed 2019 Legislative Session. Several bills concerning Sunshine Committee recommendations were presented, HB 1537 and HB 1538. A third bill containing Committee recommendations from 2018 was prepared but never officially submitted to the Legislature. HB 1537 was passed and signed into law by the Governor. HB 1538 was never officially submitted for a floor vote. Committee discussion ensued regarding strategy to be used for future bills to be presented in the 2020 session.
- b. HB 1673 did pass in the Legislature and was signed by the Governor. It is now codified in RCW 42.56.460(1) and (2). It requires that the Sunshine Committee prepare a report by December 1, 2023 for the Legislature on whether the exemption created by the statute as to records regarding explosives, should be maintained, modified or repealed. Discussion by the Committee was presented as to how the Committee would gather information over time in order to prepare this report.
- c. The Committee engaged in further discussion regarding the religious affiliation exemption in RCW 42.56.235. This statute has created considerable problems for municipal and other public record-keepers because of its extensive reach and there was widespread agreement that the statute should be modified to reduce these problems. The Committee decided that rather than create a proposal to modify the statute, that a letter should be written to the appropriate legislative committees indicating the problems that the Committee has identified, and inviting further discussion and review with the Legislature. Chairman Schwab was directed by unanimous vote to prepare and submit a letter to the Legislature outlining the Committee's position.
- d. The Committee continued its discussions regarding the category of juvenile related exemptions, specifically child welfare and support, juvenile case and report records, and juvenile victim/witness exemptions. Several proposals were presented to modify existing exemptions, mostly to achieve clarification and provide a more expeditious process to preserve and disseminate public records.

Extensive discussion was generated regarding 911 tapes containing the voices of juvenile victims. Michael Gulizia of Kent, appeared and presented emotional testimony regarding the tragic events of his young daughter's death and her frantic call for help to the 911 system. There was no action item presented at this time to consider modifying the statute, but it was agreed that this topic, with follow-up testimony from Mr. Gulizia and media representatives should be continued to a future meeting.

It was also agreed that further work would be done to fine tune and/or develop any proposals regarding the overall topic of juvenile exemptions so that the Committee could complete its review of this entire topic by the end of 2019.



## AUGUST 20, 2019

- a. The Committee continued the discussion about the religious affiliation exemption. At the May meeting, the Committee voted to send a letter to the appropriate legislative body expressing the Committee's concerns regarding RCW 42.56.235. A letter was drafted and circulated and unanimously approved. A copy of the letter is attached herein as Exhibit A.
- b. Discussion also continued regarding RCW 42.56.460 and the assignment directed to the Sunshine Committee concerning the regulation of explosives exemption. In order to begin the process of gathering information for the ultimate preparation of the final report, a number of witnesses from the Washington State Department of Labor and Industries and private industry professional blasting experts and explosives engineers were called to testify. They all provided valuable information on the subject of the storage and use of explosives in the state of Washington, and answered numerous questions from Committee members.
- c. In 2018, the Committee began a comprehensive review of the numerous exemptions pertaining to juveniles on the Schedule of Review. The hope was expressed by Chairman Schwab that consideration of the juvenile exemptions could be completed by the last Committee meeting in October. Toward that end, considerable discussion followed to recommend that many of the juvenile witness and victim exemptions, child welfare and support exemptions, and juvenile records exemptions be maintained.

The remaining juvenile law exemptions will be considered for review, including a number of proposals thereafter, at the October meeting. It is also anticipated that Michael Gulizia, who previously testified before the Committee in May, will appear at the Committee meeting in October to discuss a proposal regarding 911 tape recordings of juveniles.

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## OCTOBER 22, 2019

- a. The Committee continued its yearlong discussion on the exemptions related to juveniles on the Schedule of Review. A number of proposals were submitted for consideration.
  - (i) A proposal was submitted to the Committee by James DeHart, the Public Disclosure Officer with the Washington State Department of Children, Youth and Families. This proposal recommends narrowing the language contained in the exemption at RCW 42.56.240(1) in order to promote a more efficient and meaningful management of the Department's handling of investigations into child abuse and neglect. After extensive discussion, the Committee voted 7-1 to approve the proposal. A copy of the proposal is contained herein in Exhibit B.
  - (ii) A proposal was submitted to the Committee by Michael Gulizia, a private citizen, concerning the release of 911 tapes containing the voices of juveniles. Discussion by the Committee ensued with significant concern expressed by Committee members and Keith Shipman on behalf of the Washington State Association of Broadcasters that limitations on the release of 911 tapes would hamper monitoring of the 911 system by the media. After extensive discussion, the Committee voted 5-3 to adopt the recommendation to amend RCW 7.69A.020, which would exempt material involving juveniles from release. A copy of the proposal which was adopted is contained herein as Exhibit C.
  - (iii) A proposal was submitted to the Committee by Jessica Nadelman of the Seattle City Attorney's Office to clarify the language in RCW 13.50.050 concerning juvenile offenders in order to minimize confusion in the application of the statute. After extensive discussion, the Committee voted 8-0 to approve the proposal. A copy of the proposal is contained herein as Exhibit D.
  - (iv) Several proposals were also discussed regarding access to child protection records and exemptions regarding juvenile justice and care agency records. It was decided that more work was needed to refine these proposals and they were continued for consideration at future meetings.



## RECOMMENDATIONS

The Sunshine Committee hereby makes the following recommendations:

- Exhibit A – Letter recommending review of RCW 42.56.235
- Exhibit B – Recommend amendment to RCW 42.56.240(1)
- Exhibit C – Recommend amendment to RCW 7.69A.020
- Exhibit D – Recommend amendment to RCW 13.50.050

The Committee also recommends that a number of exemptions that were reviewed be maintained as described hereinabove.

## CONCLUSION

The Committee plans to meet at least four times in 2020 and intends to move forward with its task of reviewing the exemptions from public disclosure contained in RCW 42.56 and other statutes. The Committee has developed considerable expertise in reviewing exemptions and will use that experience to address the many important issues that relate to the disclosure of public records. Finally, the Committee will endeavor to work closely with the Legislature in the upcoming session in 2020 to discuss the Committee's recommendations and to seek meaningful contributions to public policy in Washington State, including the evolution of the Committee's original mandate, and the development of a more efficient and cost effective public records dispute process.

Respectfully submitted,

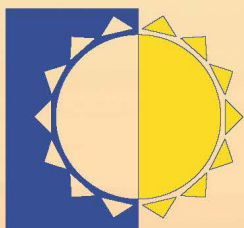


Michael E. Schwab  
Chair

November 14, 2019

## EXHIBIT A

The Committee recommends that the Legislature review RCW 42.56.235 per the letter indicated herein below.



### Committee Members

Michael E. Schwab (Chair)  
Lynn Kessler (Vice Chair)  
Rep. Luanne Van Werven (R)  
Rep. Larry Springer (D)  
Taylor (Tip) Wonhoff  
Rowland Thompson  
David Zeeck  
Hon. Pete Holmes  
Sara Di Vittorio  
Kathy George  
Jennifer Steele

### PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE

“SUNSHINE COMMITTEE”

PO Box 40100 • Olympia, WA 98504 • 360-753-6200 • [www.atg.wa.gov/sunshine-committee](http://www.atg.wa.gov/sunshine-committee)

August 28, 2019

The Honorable Laurie Jinkins, Chair  
Civil Rights and Judiciary Committee  
339C Legislative Building  
P.O. Box 40600  
Olympia, WA 98504

RE: RCW 42.56.235

Dear Representative Jinkins:

We are writing to you on behalf of the Public Records Exemptions Accountability Committee (Sunshine Committee) with regard to RCW 42.56.235. This statute was enacted in 2018 and became effective June 7, 2018. The bill originated in your committee. The statute reads as follows:

All records that relate to or contain personally identifying information about an individual's religious beliefs, practices, or affiliation are exempt from disclosure under this chapter.

Our committee discussed this statute at length and received input from various interested parties and stakeholders. It is the unanimous opinion of the Sunshine Committee that the Legislature should re-evaluate this statutory exemption in light of potentially unintended consequences for a number of reasons.

First, the exemption does not define the type of information intended to be exempted. For example, information about religious affiliation could include records reflecting the location of an event, the job title of an individual, a signature block containing a faith-based reference, a menu including dietary restrictions, land use applications for religious institutions, photos or videos of individuals dressed in faith-based attire, or employee records referencing requested leave.

Second, this exemption applies to “records” as opposed to information. As a result, if a record references a religious affiliation, an agency may exempt the entire record, rather than just the information which identifies the affiliation. Practically speaking, if an email is signed by a “Reverend” the agency may withhold the entire document under the plain language of the statute. Further, if a crime occurs at a mosque, synagogue, or other house of worship, the entire record is exempt from disclosure as any records related to the crime would necessarily identify the religious beliefs, practices, or affiliations of victims and witnesses.



**PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE**

**"SUNSHINE COMMITTEE"**

PO Box 40100 • Olympia, WA 98504 • 360-753-6200 • [www.atg.wa.gov/sunshine-committee](http://www.atg.wa.gov/sunshine-committee)

Third, the exemption applies to a broad category of records with potential high public interest. Agencies frequently partner with religious-based organizations that provide social or other services to the public. The exemption would allow the withholding of all records created by or exchanged with any such organization.

Fourth, the exemption requires agency employees who respond to public records to recognize information that concerns religious affiliation. Recognizing such information requires significant knowledge of religious practices or the creation of additional records to verify whether particular information is exempt. For example, if a record contains a reference to an employee's dietary restriction, an agency may need to contact that employee to determine whether the restriction is religious or otherwise based.

These are some examples of what we believe are unintended consequences although there are myriad more. We do not believe this was the Legislature's intended effect in creating this statutory exemption.

Please let us know if you have any questions in this regard and if you would like a member of our committee to meet with your committee to continue this discussion.

Thank you,



Michael E. Schwab, Chair  
Sunshine Committee

cc: The Honorable Mia Gregerson, Chair  
State Government and Tribal Relations Committee



## EXHIBIT B

The Sunshine Committee recommends that the Legislature amend RCW 42.56.240(1) as follows:

**RCW 42.56.240(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;

(a) For the Department of Children, Youth, and Families, records regarding an on-going CPS investigation in conjunction with an early learning licensing (ELL) complaint inspection, the records shall remain exempt during the course of the CPS investigation. At the conclusion of the CPS investigation, all responsive records shall be made available to the public when requested.



## EXHIBIT C

The Sunshine Committee recommends that the Legislature amend RCW 7.69A.020 as follows:

**RCW 7.69A.020(2):**

“Child” means any living child under the age of eighteen years.

**RCW 7.69A.020(3):**

“Victim” means a living person against whom a crime has been committed.

**RCW 7.69A.020(8):**

“Identifying information” means the child’s name, address, telephone number, email address, social media identifier, image, voice, location of child (except the location of the assault when not the child’s address), and the surname of the child’s parent if it is the same as the child’s and the parent is not the alleged perpetrator. In cases where the child victim is a victim of sexual assault, “identifying information” also includes the relationship between the child and the alleged perpetrator when the alleged perpetrator is a relative or step-relative of the child victim. location, and photograph, and in cases in which the child is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator.





## EXHIBIT D

The Sunshine Committee recommends that the Legislature amend RCW 13.50.050 as follows:

**RCW 13.50.050(6):**

~~Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.~~ must be released to the juvenile offender or his or her attorney, parent or legal guardian upon their request.

**RCW 13.50.050(7):**

~~Upon the decision to arrest or the arrest, law enforcement and prosecuting attorneys may cooperate with schools in releasing information to a school pertaining to the investigation, diversion, and prosecution of a juvenile attending the school. Upon the decision to arrest or the arrest, unredacted incident reports may be released to a school, unless redaction is necessary to avoid releasing the records would jeopardize the investigation or prosecution or endangering witnesses. If release of incident reports would jeopardize the investigation or prosecution or endanger witnesses, law enforcement and prosecuting attorneys may release information to the maximum extent possible to assist schools in protecting other students, staff, and or school property.~~

**RCW 13.50.050(9):**

~~Upon request of the victim of a crime or the victim's immediate family, incident reports the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.~~