

MINUTES
Public Records Exemptions Accountability Committee
(“Sunshine Committee”)
Virtual Meeting held via GoToWebinar
John A. Cherberg Building – Conference Room ABC – Olympia, WA

February 28, 2023

Members Present: Linda Krese, Lynn Kessler, Dave Zeeck, Kathy George, Sen. Jeff Wilson, Rowland Thompson, Jennifer Steele, Melissa Luck, and Ann Marie Soto

Members Absent: Sen. Sam Hunt, Rep. Jenny Graham, Rep. Larry Springer, and Tip Wonhoff

Staff Present: Assistant Attorney General Lisa Petersen (Committee Counsel), Elaine Ganga, Elizabeth Mateo, and Ann Armstrong (Committee Staff)

1) Call to Order

1.1 Introduction / Roll Call and Establishment of Quorum

Chair Linda Krese called the meeting of the Sunshine Committee (Committee) to order at 9:01 a.m., February 28, 2023, remotely via GoToWebinar and at the Cherberg Building, Conference Room ABC, Olympia, WA.

Nine out of 13 members were present at the beginning of the meeting. A quorum was established.

1.2 Adoption of Agenda for February 28, 2023

Motion: To adopt the February 28, 2023, agenda. Kathy proposed to move 5.5 to the top of the agenda, seconded by Sen. Jeff Wilson. Approved unanimously.

1.3 Review and Approve October 18, 2022, Meeting Minutes

Motion: To adopt the October 18, 2022, meeting minutes. Amendment on the minutes to correct Rep. to Sen. Wilson on page 2. Moved by Sen. Jeff Wilson, seconded by Rowland Thompson. Approved unanimously.

2) Old Business

2.1 Other Chapters – RCW 2.64.111 (Judicial Conduct Commission) [George] (No. 214 on Schedule of Review)

Kathy George indicated she did not have an updated memo since her presentation on October 18, 2022. Ms. George explained RCW 2.64.111 exempts all records and files of the Judicial Conduct Commission during the investigation and initial proceeding with regard to a complaint. If probable cause is found for the complaint, all records of the initial proceeding that were the basis of the finding of probable cause are then subject to public disclosure. These provisions are consistent with Art. IV, § 31(2)(3) of the Washington State Constitution.

The Committee discussed the issue of whether to recommend amending the exemption to provide for disclosure of documents after an investigation was completed regardless of whether it results in a finding of probable cause as well as whether to recommend the legislature consider amending the state constitution to include a similar provision.

Motion: To recommend retaining the exemption in RCW 2.64.111 as is. Moved by Rowland Thompson, seconded by Jennifer Steele. Yes – 7 (Krese, Kessler, Luck, Soto, Steele, Thompson, Zeeck). Abstention – (George). Motion passed.

Kathy George announced her resignation and left at 10:12 a.m. The remaining members in attendance still constituted a quorum.

2.2 Exempting Information Relating to the Regulation of Explosives from Public Disclosure (HB 1673) – RCW 42.56.460 (No. 205 on Schedule of Review)

Tammy Fellin from the Department of Labor and Industries (LNI), commented on the exemption protecting from disclosure regarding storage locations of explosives material. LNI licenses explosives handlers, storage, users, manufacturers, and a whole series of workers who are involved with explosives in Washington State. The Department sees value in maintaining the confidentiality of those records, and would request that this exemption from public disclosure remain as is.

The committee engaged in discussion and decided that it needed additional input before reaching a decision with regard to its recommendation regarding this exemption.

This agenda item will be addressed further at the May meeting.

Sen. Wilson left the meeting at 9:51 a.m. The remaining members in attendance still constituted a quorum.

3) New Business

3.1 Other Chapters (Risk Management) – RCW 4.92.210 [Steele] (No. 218 on Schedule of Review)

Jennifer Steele explained RCW 4.92.210 deals with review of tort claims against the state of Washington, its officers, employees, and volunteers by the Office of Risk Management. The statute requires a centralized claim tracking system “to provide agencies with accurate and timely data on the status of liability claims”. There are two sections of the statute that contain exemptions, § 2 and § 6. The exemption in § 2 provides that all information in the claim file other than the claim itself “shall be privileged and confidential. Section 6 provides that valuation of specific claims “shall be privileged and confidential.” Ms. Steele spoke to multiple people about this statute, including a risk manager at the Department of Enterprise Services.

The committee also considered written and oral public comment from Tom Thiersch.

Motion: To recommend retaining the exemption in RCW 4.92.210 as is. Moved by Jennifer Steele, seconded by Ann Marie Soto. Approved unanimously.

3.2 Commodities – RCW 21.30.170 [Steele] (No. 296 on Schedule of Review)

Jennifer Steele explained the exemption in RCW 21.30.170 protects certain information obtained by the Washington State Office of Financial Institutions from disclosure. As set forth in § (1)(a), this exemption relates to commodities transactions and the information protected includes information obtained in private investigations, information exempt from disclosure under Chapter 42.56 RCW and information obtained from state and federal agencies which is not subject to disclosure under federal or state law. Section (2)(a) grants the director of the Office of Financial Institutions discretion to disclose information made confidential under RCW 21.30.170(1)(a) to securities agencies or administrators of “another jurisdiction” as provided in RCW 21.30.180.

Motion: To recommend retaining the exemption in RCW 21.30.170 as is. Moved by Jennifer Steele, seconded by Ann Marie Soto. Approved unanimously.

3.3 Criminal Proceedings – RCW 9.73.230 [Krese] (No. 232 on Schedule of Review)

Chair Krese explained RCW 9.73.230 applies to investigations regarding manufacturing and selling controlled substances and commercial sexual abuse of a child. It typically arises when a confidential informant or undercover officer consents to an interaction being recorded but the other party (or parties) to the conversation does not know the conversation is being recorded. The statute provides for maintaining confidentiality regarding the identity of the consenting party when that person is a confidential informant. The committee requested additional information about when an investigating agency may be required to provide the identity of a confidential informant and the matter was set over for further consideration.

This agenda item will be addressed at the May meeting.

3.4 Health Care – RCW 43.70.050(2) [Krese] (No. 349 on Schedule of Review)

Chair Krese explained the exemption in RCW 43.70.050(2) protects certain health-related data being collected by the state from disclosure:

“Such data in any form where the patient or provider of health care can be identified shall not be disclosed, subject to disclosure according to chapter 42.56 RCW, discoverable or admissible in judicial or administrative proceedings. Such data can be used in proceedings in which the use of the data is clearly relevant and necessary and both the department and the patient or provider are parties.”

Motion: To recommend retaining the exemption in RCW 43.70.050(2) as is. Moved by David Zeck, seconded by Jennifer Steele. Approved unanimously.

4) **Public Comment**

The committee received public comment from Tom Thiersch.

5) **Committee Business**

5.1 **Committee Bylaws**

Judge Krese proposed amending Article V: Meetings, Sections 5 and 9; Article VII: Minority Reports, Section 1; and Article VIII: Housekeeping, Section 2. line.

Motion: To approve all proposed amendments. Moved by David Zeeck, seconded by Jennifer Steele. Approved unanimously.

5.2 **Election of Vice Chair**

Rep. Lynn Kessler, after many years of service as vice chair, has indicated that she does not wish to continue serving in this position. Chair Krese asked members to notify Elizabeth Mateo if anyone is interested in serving as vice chair and scheduled it for a vote at the next meeting.

5.3 **Updated Priority List of Exemption for Review**

Chair Krese asked members to look at the Updated Priority List of Exemptions for Review and to inform staff of any exemptions they would be willing to take on for review and presentation to the committee.

5.4 **2023 Legislative Session and Status**

Chair Krese reported that none of the recommendations in the Committees 2022 Annual Report have been the subject of proposed legislation in the current legislative session. No members of the legislature appeared to be interested in sponsoring any bill related to the 2022 recommendations.

5.5 **Should the Sunshine Committee consider whether to recommend modification or repeal of RCW 42.56.140?**

Chair Krese raised the issue of whether the committee should consider recommending modification or repeal of RCW 42.56.140. The committee discussed this issue at length.

Motion: To recommend repeal of RCW 42.56.140. Moved by Kathy George, seconded by Lynn Kessler. Yes – 2 (George and Kessler); No – 5 (Krese, Soto, Thompson, Wilson and Zeeck); (Abstention – 2 (Luck and Steele). Motion failed.

Chair Krese indicated that she will place this issue on the agenda for further consideration at the May meeting when more of the members will be available to attend.

The committee adjourned at 10:58 a.m.