

PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE

“SUNSHINE COMMITTEE”

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December 1, 2021

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The Honorable John Braun
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The Honorable Laurie Jinkins
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The Honorable J.T. Wilcox
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RE: Wolf Depredation Exemption Report (RCW 42.56.141)

Greetings:

In 2017, the Washington State Legislature amended RCW 42.56.430 to add two new sections—(3) and (4)—exempting from public disclosure identifying information regarding certain individuals who have interactions with the Washington State Department of Fish and Wildlife (WDFW) or whose pets or livestock are the subject of a wolf depredation, as well as identifying information about employees and contractors of the WDFW who respond to reports of a depredation or assist in the lethal removal of a wolf. At the same time, the Legislature added a new statute, RCW 42.56.141, which requires the Washington State Public Records Exemptions Accountability Committee (Sunshine Committee) to prepare and submit a report to the Legislature by December 1, 2021, that includes recommendations on whether these exemptions “should be continued or allowed to expire.” The statute goes on to state:

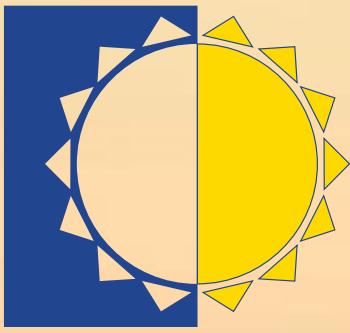
[T]he report should focus on whether the exemption continues to serve the intent of the legislature . . . to provide protections of personal information during the period the state establishes and implements new policies regarding wolf management. The committee must consider whether the development of wolf management policy, by the time of the report, has diminished risks of threats to personal safety so that the protection of personal information . . . is no longer an ongoing necessity.

This report is made pursuant to RCW 42.56.141.

Since 2017, the Sunshine Committee heard from representatives of the WDFW on at least four separate occasions. In addition, the WDFW has provided the Committee with a number of documents and the Committee has access to the public information that the WDFW publishes on its website pursuant to RCW 77.12.285. The Committee also heard from a representative of the Washington Cattle Feeder’s Association, the Washington Farm Bureau (who is also a member of the Wolf Advisory Group), the Washington Cattlemen’s Association, and the Center for Biological Diversity. Individual members of the Committee have spoken to representatives of the WDFW on several occasions in an effort to obtain specific information about the number and extent of threats to the safety of employees,

Committee Members

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contractors, and others both before and after the effective date of the exemption. Despite all of this information, the Committee continues to feel frustration about the quality of the information it has received with regard to personal safety issues. Most of the information has been anecdotal in nature. The WDFW and cattle-industry related representatives expressed a strong desire to have the exemptions maintained as is, while the Center for Biological Diversity representative expressed a desire for greater transparency. However, none of those groups have provided definitive evidence regarding the extent of threats (or lack thereof) to the personal safety of citizens, contractors, or WDFW employees as a result of entering into damage prevention agreements, reporting of wolf depredation, and the lethal removal of wolves. Unfortunately, the Committee lacks the resources and staff support to do an independent investigation as to such threats. The only documentation the Committee has received of actual threats is from summer 2019 when threatening language online resulted in the cancellation of a Wolf Advisory Group meeting. The WDFW has also provided copies of emails it has received from a variety of sources around the state, country, and world. The emails provided to the Committee date from as recently as September 2021. While some of the language in those emails is offensive, it does not appear to be threatening. It also appears to be largely in reaction to the lethal removal of wolves.

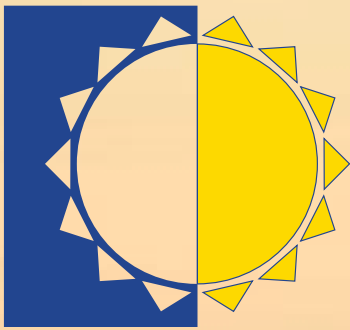
It is clear that continuing up to the present time, there are extremely strong feelings on all sides of the issues related to reintroduction and management of wolves in Washington State. According to WDFW representatives, the exemption, coupled with increased transparency in terms of information the WDFW publishes on its website with regard to wolf depredations, sightings of various wolf packs, and lethal removals as well as the work of the Wolf Advisory Group (made up of stakeholders with varying perspectives), have reduced the number of threatening and concerning communications directed at employees and contractors. In addition, the WDFW representatives believe the exemption has made it easier to get individuals to enter into damage prevention cooperative agreements.

The Committee also discussed the increasingly angry rhetoric and divisiveness around public issues in general around the country, and in Washington State. Committee members noted, based on news reports, sometimes these emotional reactions lead to actions, such as marching on public employees' homes, online harassment, and, in some cases, violence. The Committee deemed it appropriate to take this general atmosphere into consideration as well in making its recommendations. The Committee also noted the policy language of RCW 42.56.030 which states, in part: "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."

The Legislature clearly recognized the importance of public disclosure of some of the information exempted by limiting the time period of the exemptions. If the Legislature does not act prior to June 30, 2022, the exemptions will lapse. *See*, Laws of 2018, Chapter 214 § 3 and Laws of 2017, Chapter 246 § 4. The expressed intent is to maintain the exemption only so long as necessary to protect personal safety. The Committee suggests the Legislature may wish to utilize its more extensive investigative powers to inquire further into the need for an extension of the exemption.

RECOMMENDATIONS:

RCW 42.56.430(3) and (4) actually create exemptions for several different categories of identifying information. The Committee analyzed the different



categories of information separately. The Committee, by unanimous vote, approved this report and the recommendations it contains.

RCW 42.56.430(3)

RCW 42.56.430(3) provides an exemption limited to persons entering into damage prevention agreements with the WDFW:

(3) The following information regarding any damage prevention cooperative agreement, or nonlethal preventative measures deployed to minimize wolf interactions with pets and livestock:

(a) The name, telephone number, residential address, and other personally identifying information of any person who has a current damage prevention cooperative agreement with the department, including a pet or livestock owner, and his or her employees or immediate family members, who agrees to deploy, or is responsible for the deployment of, nonlethal, preventative measures; and

(b) The legal description or name of any residential property, ranch, or farm, that is owned, leased, or used by any person included in (a) of this subsection;

The Committee's recommendation regarding this exemption for identifying information about individuals is that it should be continued for the time being, subject to further review at a later date. In making this recommendation, the Committee noted that the WDFW's opinion was that this exemption makes it easier to get individuals to enter into these agreements. These agreements are intended to further the goal of reintroducing wolves while ameliorating the perceived negative impacts without resort to lethal removal.

RCW 42.56.430(4)

RCW 42.56.430(4) provides an exemption from disclosure of identifying information as follows:

4) The following information regarding a reported depredation by wolves on pets or livestock:

(a) The name, telephone number, residential address, and other personally identifying information of:

(i) Any person who reported the depredation;

(ii) Any pet or livestock owner, and his or her employees or immediate family members, whose pet or livestock was the subject of a reported depredation; and

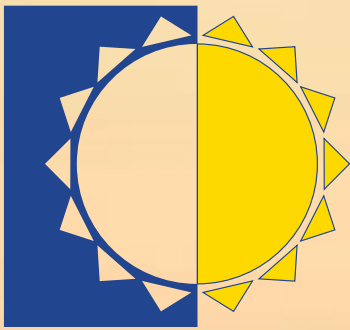
(iii) Any department of fish and wildlife employee, range rider contractor, or trapper contractor who directly:

(A) Responds to a depredation; or

(B) Assists in the lethal removal of a wolf; and

(b) The legal description, location coordinates, or name that identifies any residential property, or ranch or farm that contains a residence, that is owned, leased, or used by any person included in (a) of this subsection;

RCW 42.56.430(4)(a)(i) and (ii) provide an exemption for individuals who report incidents of wolf depredation and any pet or livestock owners (as well as their



employees and immediate family members) whose pet or livestock is the subject of a reported depredation. Reported incidents of wolf depredation, other than the exempted identifying information, are routinely posted on the WDFW's website pursuant to RCW 77.12.285 and included in the annual report published by the WDFW. If the circumstances surrounding the reported depredation raise an issue of criminal action, the matter is subject to a criminal investigation, in which case, disclosure would come under the provisions of RCW 42.56.240 and other provisions applicable to law enforcement investigations and no longer be subject to this exemption, according to WDFW representatives. The Committee recommends this exemption be continued for the time being.

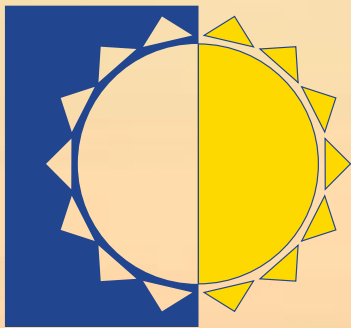
RCW 42.56.430(4)(a)(iii)(A) also provides an exemption from disclosure for employees or contractors who respond to a report of a depredation. The Committee recommends this exemption be allowed to expire. The Committee felt the evidence it received did not support the conclusion that there was a significant threat to the safety of employees or contractors for merely responding to a report of wolf depredation. Representatives of the WDFW made reference to third parties who might be agitated and upset being present at the time they respond to a report but withholding the identity of the person responding would not ameliorate this issue, as the third parties are present and can see for themselves who is responding. Representatives of the WDFW also acknowledged that their identity is usually known to persons present at the time of a report and to persons in the local community. They also indicated that their primary safety concerns did not relate to the local community but to persons from other areas as reflected in the emails provided to the Committee from persons not only in other parts of Washington State, but from places as far away as New York, Florida, India, and Australia. As noted above, some of these emails were offensive but did not appear to contain threats.

Finally, RCW 42.56.430(4)(a)(iii)(B) provides an exemption for identifying information of employees or contractors who assist in lethal removal of wolves. The Committee recommends this exemption also be allowed to expire. The Committee noted that although the lethal removal of wolves is the WDFW's action that raises the most public concern, the Committee was not presented with any recent evidence of actual threats to personal safety related to such removals.

In making the recommendation to allow the exemptions as to public employees and contractors to expire, the Committee noted it is highly unusual to withhold the identity of a public employee or a paid contractor altogether. In general, the public is entitled to know what its public servants are doing. Even without this specific exemption, there is protection for private information of employees. RCW 42.56.230(3) prohibits disclosure of information in employee files "to the extent that disclosure would violate their rights to privacy." RCW 42.56.250(4) specifically protects from disclosure information such as residential addresses, telephone numbers, email addresses, etc. RCW 42.56.250(12) also requires notice to a public employee when information located exclusively in a "personnel, payroll, supervisor, or training file" is requested so that the employee is able to bring a petition in court to prevent the disclosure if there is a basis to do so.

RCW 77.12.885

RCW 77.12.885 requires the WDFW to post "all reported wildlife interactions" on its website but excludes from the posting "all personal information on reported depredations by wolves that is exempted from disclosure as provided in RCW 42.56.430." This statute is also set to expire on June 30, 2022 (*See, Laws of 2017, Chapter 246, § 2*). The Committee considered how its recommendations, if



adopted, would impact this statute. If the Legislature elects to continue all of the exemptions in RCW 42.46.430(3) and (4), then RCW 77.12.885 should continue in its present form for the same time period. If the Legislature elects to allow the exemption in RCW 42.56.430(3) and (4) to expire in whole or part, the Committee recommends amendment of RCW 77.12.885 to give the WDFW discretion as to whether to post the identifying information on its website. The Committee makes this recommendation in recognition that the reintroduction and management of wolves in Washington State continue to generate strong emotions and worldwide attention. Posting the identifying information on a public website makes it much more readily available without any opportunity to consider privacy interests than making it available pursuant to a public records request.

RECOMMENDATION AS TO HOW LONG TO CONTINUE EXEMPTIONS:

The Committee recommends that if the Legislature elects to continue any or all of the exemption for identifying information in RCW 42.56.430(3) and (4), that the exemption be subject to further review in four years.

Respectfully submitted,

LINDA C. KRESE, Chair
Washington State Public Records
Exemptions Accountability Committee

LCK/eg

cc: The Honorable Jay Inslee
The Honorable Bob Ferguson
Pat McCarthy, Washington State Auditor's Office
Kelly Susewind, Director, Washington State Department of Fish and Wildlife
Sunshine Committee Members