

STATE OF WASHINGTON 2015 ANNUAL REPORT

PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE “SUNSHINE COMMITTEE”

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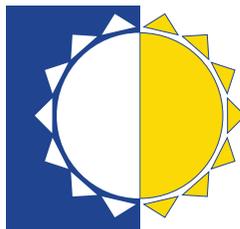
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PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE

“SUNSHINE IN GOVERNMENT”

November 15, 2015

SUMMARY

The Public Records Exemptions Accountability Committee (Sunshine Committee) met four times in calendar year 2015 and initiated a comprehensive review of the following public records exemptions:

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| RCW 42.56.230 and RCW 38.52 | - Incoming Voice 911 Voice Data and 911 Privacy Issues |
| RCW 42.56.240(5) | - Personal Information Involving Child Victims and Witnesses |
| RCW 1.08.027 | - Code Reviser Drafting Services |
| RCW 40.14.180 | - Code Reviser Bill Drafting Records |
| RCW 42.56.270(6) | - Financial and Commercial Information Supplied to Investment Boards |

The review 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 several recommendations, contained in this report, which are designed to achieve statutory clarification and the protection of important privacy interests while ensuring appropriate public disclosure.

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 <http://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. When TVW has not been able to record the meetings but when other video recordings can be made, they are posted on the Committee’s website.

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 adopted an original schedule for reviewing exemptions in 2007 containing 106 items.

The Committee receives an updated list of exemptions from the Office of the Code Reviser each year in August. A new schedule of review, totaling over 500 items, is now posted on the Committee's website. The Committee recognized 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 seventh annual report and summarizes the Committee's work since the November, 2014 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 2015:

Chair, Michael E. Schwab, retired Yakima County Superior Court Judge
Former State Representative Lynn Kessler - Vice Chair
Senator Maralyn Chase (D)
Senator Pam Roach (R)
Representative Jeff Holy (R)
Representative Larry Springer (D)
Nicholas Brown - Counsel to the Governor
Ramsey Ramerman, Assistant City Attorney, City of Everett
Rowland Thompson, Executive Director, Allied Daily Newspapers of Washington
David Zeeck, Publisher, Tacoma News Tribune
Hon. Pete Holmes, Seattle City Attorney
Nancy Krier, Assistant Attorney General for Open Government
Kathy George, Attorney, Harrison-Benis LLP
Sara Di Vittorio, Snohomish County Public Records Deputy Prosecutor

COMMITTEE PRACTICE AND PROCEDURE - 2015

The Committee held four meetings in 2015. Minutes of each meeting are available online at the Committee's website. The following is a summary of the work done by the Committee at each meeting.

FEBRUARY 3, 2015

- a) The Committee continued the extensive discussion regarding 911 privacy issues which had begun in 2014. Substantial public comment was received from 911 agencies and other interested parties. A proposal was submitted to the Committee for consideration which updated the public records exemption to protect the privacy interests in increased collection of private information through technological developments, with the ultimate goal of enhancing public participation in the 911 system. The motion to adopt the proposal (contained herein below in this report) was passed unanimously (8-0) by the Committee.
- b) The Committee also continued its discussion regarding the personal information involving child victims and witnesses (RCW 42.56.240(5)). A proposal was submitted for consideration which attempted to expand privacy protection for juvenile victims and witnesses. Considerable Committee discussion and public comment ensued. The proposal was deferred to consider the comments and to fine tune the proposal.
- c) Kyle Thiessen, the Washington State Code Reviser, made a presentation on his office functions and the applicable public records exemptions contained in RCW 1.08.027 (Code Reviser Drafting Services) and bill drafting records in the Code Reviser's Office (RCW 40.14.18). After extensive Committee discussion and public comment, the Committee determined that no changes in the existing exemptions were needed.
- d) Body cameras for law enforcement agencies have become a prominent and controversial topic



across the United States. Significant public disclosure issues arise in the connection with the creation of body camera videos. The Washington State Legislature has begun consideration of several proposals regarding body cameras and the Sunshine Committee engaged in discussion and received comment regarding these proposals and the related public disclosure ramifications. No proposals were presented to the Committee for consideration.

MAY 19, 2015

- a) Once again the Committee considered the privacy interests of juvenile victims, witnesses and their families through a proposal to modify RCW 42.56.240(5). Extensive Committee discussion and public comment from the Washington Coalition for Open Government (WCOG) and various municipalities ensued. Part of the discussion involved the proposed need to align the Child Victim's Bill of Rights in RCW 7.69A with RCW 42.56.240(5). Based on this discussion, it was decided to continue to refine the proposal for ultimate consideration by the Committee.
 - b) The Seattle City Employees Retirement System presented an issue to the Committee regarding the exemption contained in RCW 42.56.270(6) which only applies to the State Investment Board. Extensive discussion and public comment was received on a proposal to extend the benefits of the exemption to city investment boards in Seattle, Tacoma, and Spokane. Based on this discussion, it was decided to continue to refine the proposal for ultimate consideration by the Committee.
 - c) The Committee received an update on the status of Substitute House Bill 1917, a bill moving through the Legislature and addressing body cameras, and also received information on the Committee's recommendations moving through the legislative session. Engrossed Substitute House Bill 1980 contained several Committee recommendations. It was approved by the Legislature and signed by Governor Inslee except for one provision on guardians ad litem which was vetoed. House Bill 1431 and House Bill 1554 were also enacted into law. Those bills represented issues vetted and ultimately recommended by the Committee.
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AUGUST 18, 2015

- a) This meeting of the Committee involved substantial discussion on two proposals dealing with financial and commercial information supplied to investment boards and concerned RCW 42.56.270. This was a continuation of the presentation begun at the May meeting. The first proposal recommended that a new subsection (subsection 24) be added to the statute creating an exemption for local government investment boards. The second proposal recommended that the current statute at RCW 42.56.270(6) pertaining to the State Investment Board be modified to correct an alleged discrepancy between the statutory exemption and the State Investment Board disclosure policy.

The Committee discussed the matters in detail and received presentations from the municipal investment boards (Seattle, Tacoma, Spokane) and the State Investment Board.

The proposal contained herein below, regarding the municipal investment boards, was approved by the Committee with a vote of seven in favor, three opposed, and one abstention. The proposal regarding the State Investment Board was deferred for further review.

- b) Once again the Committee entertained a proposal to modify RCW 42.56.240(5) regarding child victims and witnesses. This subject has been reviewed by the Committee multiple times and significant input was received from stakeholders and interested parties. A revised proposal was submitted to the Committee for consideration and was approved by a vote of four in favor, three opposed, and four abstentions. A copy of the proposal is attached herein below.
- c) The Committee began a discussion of the process to determine which exemptions will become agenda items. Several recommendations were made to broaden the range of exemptions to be reviewed with an emphasis on narrowing and/or reducing exemptions rather than expanding and/or increasing exemptions. It was agreed this discussion would be renewed at future meetings and would require further study.

OCTOBER 20, 2015

- a) The Committee renewed the discussion regarding the proposal previously presented at the August meeting to modify the State Investment Board exemption. After further consideration and comment, the proposal was withdrawn from consideration.
- b) The Committee also revisited the proposal which had been adopted at the August meeting concerning child victims and witnesses, to simply clarify and explain that the proposal did, in fact, succeed in passing with the vote split of four in favor, three opposed, and four abstentions.
- c) Considerable discussion was presented to conclude the meeting regarding alternative methods to build agendas for future meetings. Several suggestions were made to use Senate and House of Representatives staff to provide research services to assist in determining the best exemptions for review.

RECOMMENDATIONS

The Sunshine Committee hereby makes the following recommendations:

Exhibit A – RCW 42.56.230 and RCW 38.52 – Incoming Voice 911 Data; 911 Privacy Issues

Exhibit B – RCW 42.56.270 – Municipal Investment Boards

Exhibit C – RCW 42.56.240(5) – Personal Information Involving Child Victims and Witnesses

The Committee also recommends that the Legislature consider adopting the various recommendations made by the Committee over the past 5 years.

It should be noted that several recommendations previously worked on by the Committee, including those involving public utility customer information and driver's license information, have been approved by the Legislature after being forwarded and presented to the Legislature by interested stakeholders.

CONCLUSION

The Committee plans to meet at least four times in 2016 and intends to move forward with its task of reviewing 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 to discuss the Committee's recommendations and to seek meaningful contributions to public policy in Washington State, including expansion of the Committee's mandate, the creation of an independent public records/public meetings agency, and the development of a more efficient and cost effective public records dispute resolution process.

Respectfully submitted,



Michael E. Schwab
Chair

November 15, 2015

EXHIBIT A

RCW 42.56.230 and RCW 38.52 – Incoming Voice 911 Data; 911 Privacy Issues

The current statute at RCW 42.56.230 exempts listed personal information. The current statutes in chapter 38.52 RCW address emergency management including 911 communications. At the time the Committee discussed this topic in early 2015, those statutes did not address information collected as a result of recent technological developments in 911 systems. The Committee approved the recommendation described below.

The Sunshine Committee recommends that these statutes be amended to read as follows, to

- Add new sections to Chapter 38.52 RCW; and,
- Amend RCW 42.56.230 to add a new subsection 7(e), move some language in current subsection (8) to subsection (7), and renumber current subsection (8) to subsection (9), as follows:

Chapter 38.52 RCW (emergency management and 911 communications):

NEW SECTION. The legislature finds that public agencies have access to databases containing addresses and telephone numbers, including for private residences, because of the “automatic location identification” and “automatic number identification” features of the enhanced 911 emergency communications system, and that this information should be exempt from public disclosure. The legislature further finds that as the next generation 911 system is implemented throughout the state, database services, including third-party services, will become available that allow persons to voluntarily submit personal information about themselves and their families so that emergency responders can use the information in the event of accessing 911, for example medical, disability, or home security information. The legislature further finds that the possibility of public disclosure of this personal information may discourage persons from submitting this information that could assist emergency responders in the event of accessing 911, and therefore this personal information should be exempt from public disclosure. The legislature further finds that public agencies retain databases containing information obtained from automatic location identification and automatic number identification databases and personal information voluntarily submitted by persons who want to receive notifications about community emergency events, and that this information should be exempt from public disclosure.

NEW SECTION. A new section is added to chapter 38.52 RCW to read as follows:

(1) Information contained in an automatic number identification or automatic location identification database that is part of a county enhanced 911 emergency communications system as defined in RCW 82.14B.020 for display at a public safety answering point with incoming 911 voice or data is confidential and exempt from public inspection and copying under chapter 42.56 RCW.

(2) Information voluntarily submitted to be contained in a database that is part of or associated with a county enhanced 911 emergency communications system as defined in RCW 82.14B.020 for the purpose of display at a public safety answering point with incoming 911 voice or data is confidential and exempt from public inspection and copying under chapter 42.56 RCW.

(3) This section shall not be interpreted to prohibit:

- (a) Display of information at a public safety answering point;
- (b) Dissemination of information by the public safety answering point to police, fire, or emergency medical responders for display on a device used by police, fire, or emergency medical responders for the purpose of handling or responding to emergency calls or for training;
- (c) Maintenance of the database by a county;
- (d) Dissemination of information by a county to local agency personnel for inclusion in an emergency notification system that makes outgoing calls to telephone numbers to provide notification of a community emergency event; or

(e) Inspection or copying by the subject of the information or an authorized representative.

NEW SECTION. A new section is added to chapter 38.52 RCW to read as follows:

Information obtained from an automatic number identification or automatic location identification database or voluntarily submitted to a local agency for inclusion in an emergency notification system is confidential and exempt from public inspection and copying under chapter 42.56 RCW. This section shall not be interpreted to prohibit:

- (1) Making outgoing calls to telephone numbers to provide notification of a community emergency event;
- (2) Maintenance of the database by a local agency; or
- (3) Inspection or copying by the subject of the information or an authorized representative.

RCW 42.56.230 (exempt personal information):

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

...

(7)(a) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicard issued under RCW 46.08.066 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicards that, under RCW 46.08.066, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW 88.02.330 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW 88.02.330, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse; and

~~(e) Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in (c) and (d) of this subsection that is subject to public disclosure.~~

~~(8) Personal information relating to enhanced 911 emergency communications systems and emergency notification systems that is:~~

~~(a) Contained in an automatic number identification or automatic location information database that is part of a county enhanced 911 emergency communications system to the extent provided in section 2 of this act.*~~

~~(b) Contained in a database that is part of or associated with a county enhanced 911 emergency communications system to the extent provided in section 2 of this act.*~~

~~(c) Obtained from an automatic number identification or automatic location identification database or voluntarily submitted to a local agency for inclusion in an emergency notification system to the extent provided in section 3 of this act.**~~

~~(d) This subsection shall not be interpreted to prohibit inspection or copying of records documenting specific calls to a public safety answering point.~~

~~(8) (9) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals under RCW 51.04.063, other than final orders from the board of industrial insurance appeals.~~

~~Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in subsection (7)(c) and (d) of this section that is subject to public disclosure.~~



Note: The Committee approved this recommendation in February 2015. In the 2015 regular session, the Legislature subsequently amended RCW 42.56.230 and added new sections to chapter 38.52 RCW to address disclosure of certain information submitted as part of enhanced emergency communication systems. Engrossed Substitute House Bill 1980 (Chap. 224, Laws of 2015) (effective July 24, 2015).

* “Section 2” refers to the second new section above recommending amending chapter 38.52 RCW.

** “Section 3” refers to the third new section above recommending amending chapter 38.52 RCW.

RCW 42.56.270 – Municipal Investment Boards

The current statute at RCW 42.56.270 provides a list of exemptions for certain financial commercial and proprietary information at public agencies.

The Sunshine Committee recommends that this statute be amended to read as follows:

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

...

(24) Financial and commercial information submitted to or obtained by the retirement board of any city, which is responsible for the management of an employee's retirement system pursuant to the authority of RCW Chapter 35.39, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information. Provided that (1) the names and commitment amounts of the private funds in which retirement funds are invested; and, (2) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure.

Note: This recommendation provides an exemption from disclosure of financial and proprietary information of municipal investment boards.

RCW 42.56.240(5) – Personal Information Involving Child Victims and Witnesses

The current statute at RCW 42.56.240 provides exemptions from disclosure for investigative, law enforcement and crime victims' information listed in the statute.

The current statute at RCW 42.56.240 reads as follows:

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

...

(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[.]

The Sunshine Committee recommends that this statute be amended to read as follows, replacing the current subsection (5) with the following:

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

...

(5) (a) Information revealing the identity of victims of crime who were under age eighteen at the time the crime was committed or witnesses of crime who are under eighteen at the time the witness first had contact with police, unless the child or a parent or guardian who is not the accused perpetrator consents to the release.

(b) For purposes of this act, "information revealing the identity" of a child includes information that, alone or in combination with other information in the police investigative report and associated records, would allow a reasonable person who does not have personal knowledge of the relevant circumstances to identify the child with reasonable certainty. For purposes of this act, "associated records" includes other police reports related to the crime at issue and other records such as emails that relate to incident at issue and contain identifying information.

(1)* For purposes of this act, "information revealing the identity" of a child includes: the child's name, date of birth, address, location, phone number, driver's license number, state identification number, social media alias, email address, personal website address, photograph, audio or video recording, or similar information uniquely associated with the child.

(2)* Except as provided in subsection 3, identifying information also includes similar information for the child's parent, guardian, sibling, or other family member, where a reasonable person could link that other person's information to the child's identity.

(3)* In cases where the alleged perpetrator is a family member, the relationship between the child and perpetrator may be redacted, but the perpetrator's other identifying information shall not be redacted unless it is identical to the child's identifying information, such as a home address or telephone number.

(4)* Nothing in this exemption shall be interpreted to allow an agency to withhold an entire investigative file. Moreover, redactions of particular identifying information under this exemption is not permitted when the redaction would serve to

(A) hide the identity of the perpetrator;

(B) hide the nature of the crime committed; or

(C) materially interfere with the public's ability to evaluate the conduct law enforcement officers conducting the investigation.



Note: This recommendation to address disclosure of personal information regarding child victims and witnesses was discussed by the Committee with a consideration that RCW 7.69A.030(4) provides certain rights to child victims and witnesses. RCW 7.69A.030 describes that child victims and witnesses have the following rights in any criminal court and/or juvenile proceeding:

(4) To not have the names, addresses, nor photographs of the living child victim or witness disclosed by any law enforcement agency, prosecutor's office, or state agency without the permission of the child victim, child witness, parents, or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child victim or witness.

**(1) – (4) would be numbered by the Code Reviser as (i) – (iv).*