

## CRITERIA FOR REVIEWING SELECTED EXEMPTIONS

*Approved at November 6, 2007 Committee meeting*

- 1) Is the exemption narrowly crafted?
  - a) The Public Records Act mandates disclosure unless the records fall within specific exemptions which “exempts or prohibits disclosure of specific information or records.” RCW 42.56.070.
  - b) Exemptions are construed narrowly. RCW 42.56.030.
- 2) Is the exemption of information or records implied?
  - a) Agencies and parties may only rely on exemptions that are expressly authorized by statutory or constitutional provisions. RCW 42.56.070.
- 3) Is the exemption codified under RCW 42.56?
  - a) If not, is there a conflict between the mandate of disclosure under RCW 42.56, and the required non-disclosure of specific information or records under the other statute?
  - b) Should the exemption be re-codified or amended to specifically reference RCW 42.56?
- 4) Is the exemption mandatory?
  - a) Agencies are required to exercise discretion and redact specific information. RCW 42.56.070; RCW 42.56.210. “[T]he exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought.” RCW 42.56.210.
  - b) Should the exemption identify a specific vital government interest? The Legislature’s “choice of the word ‘vital’ must be given due respect.” AGLO 1976 No. 47.
  - c) Should the exemption be amended to allow the agency discretion to redact certain information?
- 5) Could the exemption include statistical information?
  - a) No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons. RCW 42.56.210.
- 6) Is the application of the exemption time-limited? If not, can it be time limited?
- 7) Can the exemption be clarified?

- 8) Does the exemption continue to be necessary given the passage of time and changes in government or policy interests?
- 9) Does withholding or release of the record put an individual's safety at risk?
- 10) Does the withholding or release of the record put an individual's or organization's privacy at risk?
  - a) "Invasion of privacy" is defined in the Public Records Act as where disclosure of information about a person would be (1) highly offensive to a reasonable person; and (2) is not of legitimate concern to the public. RCW 42.56.050.
  - b) It is not enough that disclosure of such personal information "may cause inconvenience or embarrassment to public officials or others." RCW 42.56.550(3).
  - c) "[T]he use of a test that balances the individual's privacy interest against the interest of the public in disclosure is not permitted." *Dawson v. Daly*, 120 Wn.2d 782, 795 (1993) (citing *Brouillet v. Cowles Publ'g Co.*, 114 Wn2d 788, 798 (1990)).
  - d) There is no general exemption just for "privacy" under RCW 42.56. The Public Records Act does "not create any right of privacy beyond those rights that are specified in this chapter as express exemptions". RCW 42.56.050.
  - e) There are five sections in RCW 42.56 that specifically reference "privacy". RCW 42.56.050; .070; .210; .230; .240.
- 11) Does the withholding or release of the record put an individual's or organization's financial interest at risk?
- 12) Does the withholding or release of the record put safety of the general public at risk?
- 13) Does the withholding or release of the record promote a vital government interest/function?
- 14) Is there doubt about an exemption's applicability to specific information?
  - a) Where there is reasonable doubt regarding the applicability of an exemption to specific records or information, disclosure should be required.
  - b) No public agencies or officials "shall be liable, nor shall a cause of action exist, for any loss or damage" for disclosure of public records based upon a "good faith" effort to comply with the Public Records Act. RCW 42.56.060.
- 15) How does the exemption affect government accountability?
- 16) Is the withholding or release of the record directed by federal law or state constitution?