


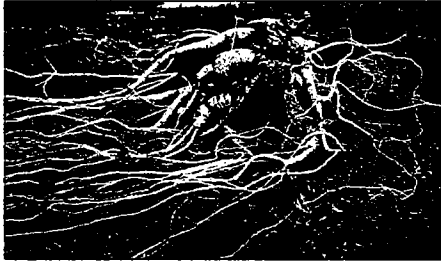
The Washington Association of Public Records Officers

PRA 101 Exemptions

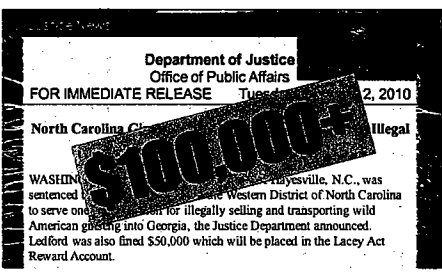


presented by
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The Ginseng Exemption: *exemptions gone wild?*



The Ginseng Exemption: *exemptions gone wild?*



A Win-Win Rejection

Dear Requester,

We regret to inform you that we will not be sending you the requested records because:

- ✗ It's too hard
- ✗ We don't have to
- ✓ We're looking out for your interests

The Ginseng Exemption:

International treaty **mandates** registration, to protect location of wild ginseng, an endangered plant

Agricultural disclosure exemptions

- Prevent **unfair** competition
- Encourage participation in voluntary programs designed to **protect** public health and Washington economy

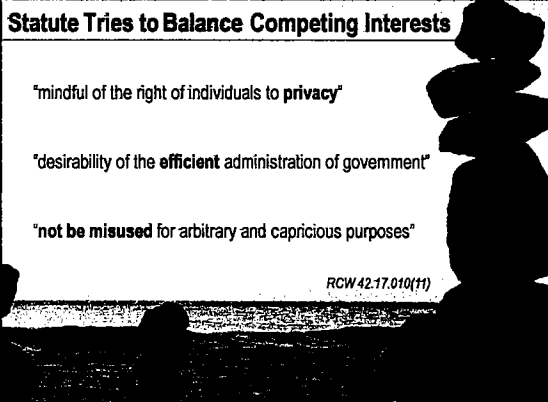
Statute Tries to Balance Competing Interests

"mindful of the right of individuals to **privacy**"

"desirability of the **efficient** administration of government"

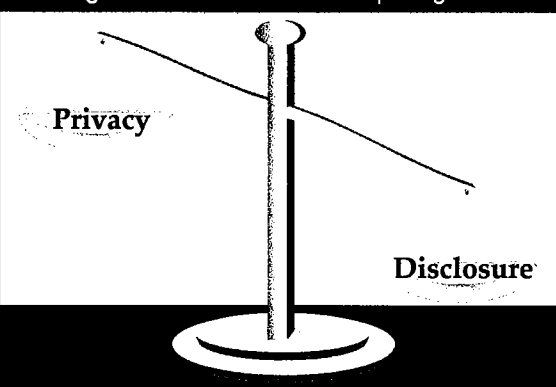
"**not be misused** for arbitrary and capricious purposes"

RCW 42.17.010(11)





Striking a Balance Between Competing Interests



What Public Interests?

Commercial interests

RCW 42.56.270(17): Farm Plans

Sure you can show my records to all my competitors, no problem!

Personal privacy

“The basic purpose and policy . . . was to allow public scrutiny of government, rather than to promote scrutiny of particular individuals.” Tacoma Public Library v. Woessner, 90 Wn. App. 205, 218 (1998)

Confidential information in employee files

What Public Interests?

Taxpayer interests

- Preserving the public fiscal
- Agency bargaining power

Efficient administration

- “I can’t work under these conditions!”
- Employment testing

Public safety

- Law enforcement
- Vulnerable infrastructure

Specific Exemption Required

Policy NOT an independent basis for withholding records

“Each agency . . . shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions”

RCW 42.56.070(1)

The “how would it look if” test

Only assert an exemption if

nondisclosure serves the public interest

To determine if nondisclosure serves the public's interest, ask yourself “how would it look if this document was leaked or inadvertently disclosed?”

- ✓ If you would be proud to explain how nondisclosure served the public good, then withhold if an exemption applies
- ✗ If it makes you cringe, then disclose

Exemptions Are Narrow

"This chapter shall be **liberally construed** and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected."

RCW 42.56.030

"... the 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

Top Ten Public Interest Exemptions

#1

Law Enforcement RCW 42.56.420, .240

- Terrorism-prevention records, assessments, plans, RCW 42.56.420
- Law-enforcement intelligence & investigations, RCW 42.56.240(1)
- Identities of crime victims and witnesses, RCW 42.56.240(2) & (5)

Public Interest Reason

- Public safety
- Effective law enforcement
- Personal privacy

Top Ten Public Interest Exemptions

#2

Personal Financial Information RCW 42.56.230

- Credit card and financial account numbers
- Tax records
- PUD Billing/usage NOT exempt – *except from police*

Public Interest Reason – Privacy

- Risk of grave harm to individuals
- No legitimate public interest in these details

Top Ten Public Interest Exemptions

#3

Employee privacy

- Information in personnel files, if information would violate the right to privacy, RCW 42.56.230(2)
 - "Highly offensive" & no "legitimate concern" to public, RCW 42.56.050
- Addresses, phone numbers, personal email address, RCW 42.56.250(3)
- Healthcare records Federal law (ADA)
- No exemption just because NOT related to conduct of government

Public Interest Reason

- Risk of grave harm to individuals
- Low employee morale harms public
- No legitimate public concern in these details

Top Ten Public Interest Exemptions

#4

Employment and Licensing

- Public employment applications RCW 42.56.250(2)
- Test questions RCW 42.56.250(1)

Public Interest Reason

- Encourage qualified applicants
- Maintain integrity of hiring and licensing process
- Applicant's privacy

Top Ten Public Interest Exemptions

#5

Public Employment Discrimination

- Identity of agency employee seeking "informal" advice, RCW 42.56.250(4)
- Employing agency's investigative records, RCW 42.56.250(5)

Public Interest Reason

- Reduce taxpayer expenses
 - Encourages informal process
 - Allows investigation without interference

Top Ten Public Interest Exemptions

#6

Real Estate Appraisal, RCW 42.56.260

- Appraisal for agency sale or purchase of realty
- Only during sale, not more than three years

Public Interest Reason

- Fair bargaining with taxpayer dollars

Top Ten Public Interest Exemptions

#7

Legal advice

- Attorney-client communications, RCW 5.60.060(2)
- Work product, RCW 42.56.290
- Mediation records, RCW 42.56.600

Public Interest Reasons

- Before dispute: guide actions & avoid disputes
- During dispute: equal footing with adversary
- During mediation: encourage settlement

Top Ten Public Interest Exemptions

#8

Deliberative process RCW 42.56.280

- Drafts, recommendations, memos
- Opinions and policy positions – *NOT the raw data*
- NOT exempt after final decision

Public Interest Reasons

- Fosters decision making process
- Secures negotiation strategy

Top Ten Public Interest Exemptions

#9

Agency "Trade Secrets" RCW 42.56.270

- Valuable formulae, designs, source code, data
- If disclosure would produce "private gain and public loss"
- Five year window

Public Interest Reason

- Protects public investment
- Allows agencies to fairly compete

Top Ten Public Interest Exemptions

#10

Private Commercial Information RCW 42.56.270

- Economic development loan applications
- Trade secrets
 - if private gain and public loss
 - or if Trade Secret Act applies

Public Interest Reason

- Encourage State industry
- Encourage contractor/vendor applicants

No liability if your release in good faith!

- RCW 42.56.060 "No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter."

Show Your Work!

- Combat public cynicism by showing public **benefits**
- Add **benefit explanation** to exemption log
- Most exemptions are discretionary – **weigh public interests**
- Don't assert an exemption if there is **no public benefit**

#10

have implementing legislation at the state level.

(8) That the concepts of disclosure and limitation of election campaign financing are established by the passage of the Federal Election Campaign Act of 1971 by the Congress of the United States, and in consequence thereof it is desirable to have implementing legislation at the state level.

(9) That small contributions by individual contributors are to be encouraged, and that not requiring the reporting of small contributions may tend to encourage such contributions.

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

The provisions of this act shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence in fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected.

