

New Public Records Act Legislation: Changes to Exemptions and Reporting Requirements Effective at the End of This Month

Legal Alert
July 12, 2019

The legislature passed a flurry of Public Records Act amendments this past session, including a number of changes to exemptions, and changes to the JLARC reporting requirements. These bills take effect at the end of this month, on July 28, 2019.

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Amendments to Exemptions

- **Alternative Public Works.** [SHB 1295](#) amends RCW 42.56.270(2) to exempt financial information supplied by or on behalf of a person, firm or corporation in submitting a bid or proposal for an alternative public works contracting procedures under chapter 39.10 RCW, which includes design-build contracting the general contractor/ construction manager (“GCCM”) procedure, and job order contracting.
- **Child Victims of Sexual Assault.** [HB 1505](#) amends RCW 10.97.130 to provide broader protection. The statute previously exempted information revealing the “identity” of child victim of sexual assault under eighteen. As amended by the bill, the statute exempts information revealing “specific details that describe an alleged or proven child victim of sexual assault under age eighteen, or the identity or contact information of an alleged or proven child victim of sexual assault who is under age eighteen.” The bill defines “contact information” to include phone numbers, email addresses, social media profiles, and usernames and passwords. The bill expands the definition of identifying information to be an inclusive rather than exhaustive list, and to specifically include the name of a stepsibling.
- **Applications for Public Employment.** [HB 1537](#), the bill enacted based on the Sunshine Committee’s

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recommendations on PRA exemptions, amends the application for public employment exemption. RCW 42.56.250(2). As amended, the exemption will no longer apply to applications for elective offices.

- **Investigations of Discrimination and Harassment.** EHB 2020 amends RCW 42.56.250 (6) to expand protection for employment investigations. The statute previously exempted for employment investigations “active and ongoing” records regarding possible unfair practices under Washington Law Against Discrimination, Chapter 49.60 RCW, or federal, state or local discrimination law. EHB 2020 expands the protection to investigations regarding the breach of an employer’s internal policy prohibiting discrimination, and investigations regarding harassment. In addition, under the revised statute, records are exempt while the investigation is “active and ongoing.” After the investigation is complete, the agency must inform the complainant, other accusers, and any witnesses of a request for the investigation’s records, and the records may be disclosed only if the names of the complainant, other accusers, and any witnesses are redacted. These individuals’ names may only be released with their consent.
- **Information Regarding Gambling Disorders.** SHB 1302 amends 42.56.230 to exempts information submitted in support of a self-exclusion program for people with a gambling problem or gambling disorder. These programs allow individuals to exclude themselves from gambling establishments licensed by the Washington state gambling commission.
- **FDA information.** SHB 1385 exempts information or records obtained pursuant to a food and drug administration contract or commissioning agreement.
- **Paid Family and Medical Leave Act.** SHB 1399 exempts records maintained by the employment security department in connection with Paid Family and Medical Leave Act.
- **Explosives.** HB 1673 amends RCW 42.56.460 to exempt all reports submitted under the Washington state explosives act, chapter 70.74 RCW.
- **Marijuana Businesses.** ESSB 5318 amends RCW 42.56.270 to exempt “valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services to a licensed marijuana business.”
- **Caregiver Information.** SSB 5955 amends RCW 42.56.230 to exempt personal information for substitute caregivers who are licensed or approved to provide overnight care of children by the department of children, youth, and families.
- **Bump-fire Stock Buy Back.** SB 6025 amends RCW 42.56.230 to exempt names, addresses, or other personal information of individuals who participated in the bump-fire stock buy-back program under RCW 43.43.920.

Changes to JLARC Reporting Requirements

A new bill, [ESHB 1667](#), will require changes to JLARC reporting requirements under RCW 40.14.026 for agencies with actual staff and legal costs of at least \$100,000.

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- The bill removes the requirement to identify “leading practices” and “technological upgrades,” as well as the requirement to measure “requestor satisfaction with agency responses, communication, and process relating to the fulfilment of public records requests.”
- Instead of being required to report the “average length of time taken to acknowledge receipt” agencies will be required to identify the number of requests where the agency provided the requested records within five days.
- Agencies will be required to report the average and median number of days from receipt of request to the date the request is closed, but the new bill removes the language requiring reporting of “a comparison of the agency’s average initial estimate provided for full disclosure of responsive records with the actual time when all responsive records were fully disclosed, including whether the agency sent subsequent estimates of anticipated response time.”
- Agencies were previously required to report the “number of requests denied the most common reasons for denying requests,” and the new bill clarifies that this applies to requests denied “in full or in part.”

If you have any questions, contact a member of our [Public Records & Open Government](#) team.