

# Office of Privacy & Data Protection

## Privacy and the Washington State Public Records Act

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- **Preliminaries / Basics**
- **Context of privacy in PRA**
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- **Specific Category of Records**
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- **Linkages issue**
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# Preliminaries



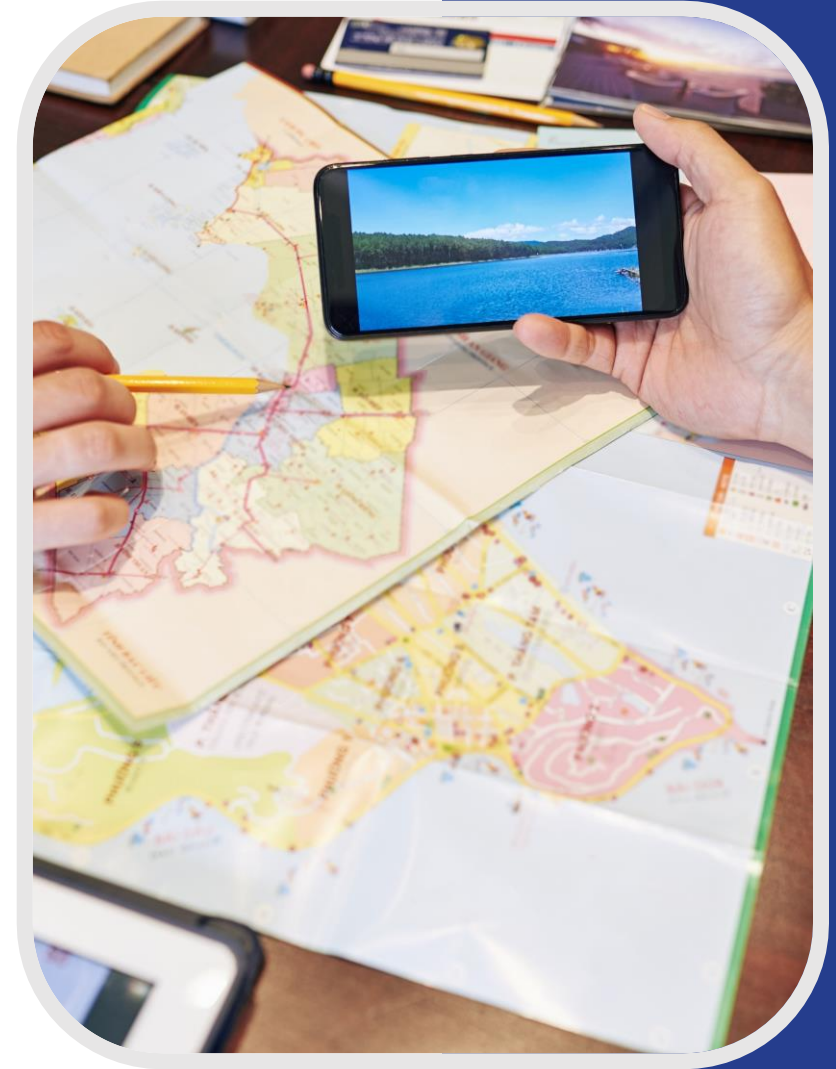
- Washington State Public Records Act (PRA) is codified at Chapter 42.56 Revised Code of Washington (RCW)
  - "The PRA mandates broad public disclosure of public records"
- The PRA's primary purpose is to foster governmental transparency and accountability by making public records available to Washington's citizens. See *City of Lakewood v. Koenig* (2014)
- "The people of this state do not yield their sovereignty to the agencies that serve them." RCW 42.56.030



# What is a record?

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See RCW 42.56.010 (3) ""Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency **regardless of physical form or characteristics.** "



Definition of public record: See RCW 40.14.010 and 42.56.010

“Includes any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or **other document, regardless of physical form or characteristics**, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW **40.14.100**.” (RCW 40.14.010)

# To whom do public records definitions apply?

RCW 42.56.010(1) "State Agency" includes "every state office, department, division, bureau, board, commission, or other state agency."

WAC 44-14-01002 - "An entity which is not an "agency" can still be subject to the act when it is the functional equivalent of an agency. Courts have applied a four-factor, case-by-case test. The factors are:

- (1) Whether the entity performs a government function;
- (2) The level of government funding;
- (3) The extent of government involvement or regulation; and
- (4) Whether the entity was created by the government."

...aka the  
"Telford Test"

# Privacy in Public Records





# What is privacy in the context of public records?

- There is no general “privacy” exemption in the PRA
- Privacy is created and preserved by way of several specific exemptions to the Public Records Act
- Some exemptions include:
  - 42.56.050 – Invasion of privacy, when
  - 42.56.070(1) – Documents and indexes to be made public – Statement of costs
  - 42.56.210 – Certain personal and other records exempt
  - 42.56.230 – Personal information
  - 42.56.240 – Investigative, law enforcement, and crime victims
  - 42.56.250 – Employment and licensing
  - 42.56.660(3)(a) – Agency employee records
- Exemptions are laws that allow for redaction or withholding of parts of the public record

## Interpretations of Exemptions

- The text of the PRA directs that it be "liberally construed and its exemptions narrowly construed ... to assure that the public interest will be fully protected." RCW 42.56.030.
- [Courts] start from the presumption that an agency has "an affirmative duty to disclose public records." *Spokane Police Guild v. WA State Liquor Control Bd (1989)*
- *Holding:* The court held that the records were not essential to effective law enforcement and that the right of privacy did not protect against disclosure of acts performed in a public place among a large number of people would not be highly offensive, thus not infringing on the club's members' right of privacy.

## Where are exemptions?

- Identified specifically in the PRA
- Sunshine Committee – Schedule of Review
- Other statutes
  - The "other statute" exemption "applies only to those exemptions explicitly identified in other statutes; its language does not allow a court 'to imply exemptions but only allows specific exemptions to stand'." *Brouillet v. Cowles Publishing Co.* (1990)

## Could there be a general privacy exemption?

- Not likely – See *In Re Rosier* (1986)
- In *Rosier*, the [Washington State Supreme Court] interpreted a portion of the PRA to imply a general personal privacy exemption.
- The legislature responded swiftly by explicitly overruling *Rosier* and amending what is now RCW 42.56.070 to include the "other statute" exemption.



- "The legislature intends to restore the law relating to the release of public records largely to that which existed prior to the Washington Supreme Court decision in *"In Re Rosier"*
- The intent of this legislation is to make clear that:
  - (1) Absent statutory provisions to the contrary, agencies possessing records should in responding to requests for disclosure not make any distinctions in releasing or not releasing records based upon the identity of the person or agency which requested the records, and
  - (2) agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records.

- Further, to avoid unnecessary confusion, "privacy" as used in RCW **42.17.255** is intended to have the same meaning as the definition given that word by the Supreme Court in *Hearst v. Hoppe* (1978)
- Recodified in 42.56.050 – Invasion of privacy, when. "Agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records."

- The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

- **Invasion of privacy, when.**
- A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person:
  - (1) Would be highly offensive to a reasonable person, and
  - (2) is not of legitimate concern to the public.



- **Invasion of privacy, when.**
- To determine whether public records fall under this exemption, courts must ask a series of four questions:
- First, do the records contain personal information?
- Second, if so, do the subjects of the records have a right to privacy in that information?
- Third, if so, would disclosure be highly offensive to a reasonable person?
- And fourth, is disclosure not of legitimate concern to the public? (*John Doe v. Seattle Police Dep't* 2025)

## **Highly offensive and Not of legitimate public concern**

- No definition of this so the guide we have is facts from case law.
- This test is one of the most litigated provisions of the PRA
- Records that have met both prongs of the test:
  - Records about unsubstantiated claims of sexual misconduct by teachers (*Bellevue John Does*)
  - Suicide note in medical examiner records (*Comaroto v Pierce County Medical Examiner's Office*)

## Highly offensive and Not of legitimate public concern

Records that have not met this test:

- i. Surveillance video of a mass shooting – First responder activity legitimate public concern
- ii. Unsubstantiated allegations of improper accounting procedures by public employee – not highly offensive
- iii. Dates of birth of public employees – not highly offensive
- iv. State retirement records of disabled firefighters – Court said illnesses of firefighters were not “highly offensive to reasonable people”
- v. Description of sexual assault of a child – legitimate public concern in administration of criminal justice system
- vi. Identities of officers attending political rally – participation in public event

## References:

- i. Surveillance video of a mass shooting *Does v. King County* (2015)
- ii. Unsubstantiated allegations of improper accounting procedures of public employee *West v. Port of Olympia* (2014)
- iii. Dates of birth of public employees *WPEA et. al. v. EFF* (2019)
- iv. State retirement records of disabled firefighters – Court said illnesses of disabled firefighters were not “highly offensive to reasonable people” examples the court cited were “back injury, asthma, emphysema, ulcers and arterial problems” (*Seattle Firefighters Union*) (1987)
- v. Description of sexual assault of a child *Koenig v. City of Des Moines* (2006)
- vi. Identities of officers attending political rally *John Doe v. Seattle PD* (2025)



# What about constitutional right to privacy?

- Supreme Court of Washington held regarding the PRA injunction standard:
  - The two-part PRA injunction standard applies regardless of whether the claimed exemption is statutory or **constitutional**. The Court of Appeals erred in holding that the second step (showing disclosure would cause substantial and irreparable damage) is not required when a constitutional right is implicated.  
(John Doe v. Seattle Police Dept. (2025))

## PRA Injunction Standard (42.56.540)

- The two-part PRA injunction standard requiring
    - (1) that the records are exempt, and
    - (2) that disclosure would clearly not be in the public interest and would substantially and irreparably damage a person or governmental function, continues to apply in cases seeking injunctive relief under the PRA.
- (John Doe v. Seattle Police Dept. (2025))

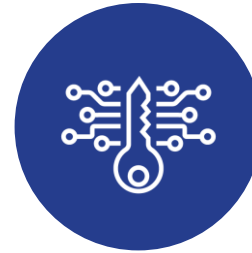
# Medical Records



# Medical Records Held by Public Agencies



Medical records held by public agencies are “public records” under the Public Records Act (PRA)



Medical records may be exempt from disclosure and/or de-identified prior to disclosure



There may be other disclosure considerations re: “other statutes”



PRA exemptions must be construed narrowly – medical records can be provided if personally identifiable information can be removed





## Health Care Privacy Laws

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- HIPAA (Health Insurance Portability and Accountability Act)
- HCIA (Health Care Information Act)
- 42 CFR Part 2: Confidentiality of substance use disorder patient records
- ADA (Americans with Disabilities Act)
- Employee Required Medical Exams
- Employer wellness programs
- FMLA (Family Medical Leave Act)
- Worker's Compensation

## **"Other" Statutes in Medical Records**

- Below are "other statutes" that exempt certain medical information held in public records. However, these laws only apply to certain types of medical records created by specific medical providers.
  - HIPAA – Health Insurance Portability and Accountability Act
  - HCIA – Uniform Health Care Information Act – State law Chapter 70.02 RCW
  - 42 CFR Part 2 – Federal law that applies to substance use disorder information

## Americans with Disabilities Act (ADA) Records - 29 CFR § 1630.14

- The American with Disabilities Act (ADA) governs “medical examinations and inquiries” of employees. An employer “may make inquiries into the ability of an employee to perform job-related functions.”
  - 42 U.S.C. sec. 12112(d)(4)
- Any information obtained regarding the medical condition or history of the applicant must be collected and maintained on separate forms and in separate medical files and must be treated as a confidential medical record
  - 29 CFR § 1630.14(c)(1)

- The following employment records are exempt:
  - Employer-required medical exam between offer and commencement of duties.
  - 42 USC § 12112(d)(3)(B); 29 CFR § 1630.14 (b)(1).
- Employer-required medical exams and inquiries as to whether an employee is an individual with a disability or as to the nature or severity of the disability.
  - 42 USC § 12112(d) (4)(A),(C); 29 CFR § 1630.14(c)(1)

## Is Employee Screening Data Exempt?

- Diagnosis from medical professional
- Per Equal Employment Opportunity Commission, “with limited exceptions, the ADA requires employers to *keep confidential any medical information they learn about any applicant or employee.*” [www.eeoc.gov](http://www.eeoc.gov)
- Keep information in confidential employee medical file

- The **fact** that someone is on a Reasonable Accommodation (RA) is not exempt.
- The **basis** of the RA (such as a specific diagnosis or condition) is considered confidential and typically redacted under RCW 42.56.230(3)
- **If actual medical record – possibly exempt under 70.02?**
  - Chapter 70.02 RCW: Medical Records - Health care information access and disclosure



- Agencies may not disclose information obtained from “voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site.”
  - 42 USC § 12112(d)(4)(B)-(C); 29 CFR § 1630.14(d)(4)(i)

## Family and Medical Leave Act (FMLA)

Records and documents relating to certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files.

- 29 CFR § 825.500(g)

The **fact** that someone is on FMLA, or shared leave is not exempt. The **basis** and underlying documents of FMLA or shared leave is exempt (such as a specific diagnosis or condition)

- State Family and Medical Leave Chapter 50A RCW

- RCW 51.28.070: Information contained in the claim files and records of injured workers, under the provisions of this title, shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but representatives of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant.
- This includes the claim files held by the agency as well as records of workers compensation payments. Often claim files hold medical records due to workplace injuries.
- Consider redacting the information that is specific to the LNI references, such as the claim #, or claim payment identifier.

# Personal Information of Public Employees

- RCW 42.56.230(3) Exempts “personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to **privacy**”
- High threshold for privacy. Need to satisfy RCW 42.56.050:
  - (1) highly offensive and (2) no legitimate concern to public
- “Highly offensive” would include “unpleasant or disgraceful or humiliating illnesses.” *Seattle Firefighters Union Local No. 27 v Hollister*
- Matter for agency determination on whether to use this statute for highly sensitive medical information of employees that does not fall under another exemption

## For employee information does it matter where private or personal information is kept?

- Very frequently yes.
- Usually, it is the substance of the information that triggers an exemption, but this depends on the language of the exemption.
- If exemption requires information to be kept in a particular place, then if the information is not stored in that place the exemption may not apply
- See *Mechling v. City of Monroe* (2009); *Jane Does v. WA State Community College District #17* (2019)\*
  - \*opinion withdrawn based on change in law

## *Jane Does v. WA State Community College District #17 (2019)*

- Records included four hundred pages of e-mail correspondence between and among employees of the community college.
- The community college maintains the e-mail in programs and servers, not in any employment file.
- Court ruled that the Jane Does failed to carry their burden in showing that Spokane Falls Community College maintained the subject records in any personnel file or that the records were similar in nature to records maintained for the benefit of an employee. Therefore, RCW 42.56.230(3) did not shield the redacted information from disclosure.

- Courts and laws do make a distinction
  - 42.56.230(3) **personal information** in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their *right to privacy*;
  - **Personal information** defined in *Bellevue John Does* as “information relating to or affecting a particular individual, information associated with private concerns, or information that is not public”
  - 42.56.050 – **Privacy** test discussed earlier



# Expanding scope of investigation exemptions

- Updated in 2025: Investigative records [RCW 42.56.250\(1\)\(f\)](#)
- HB 1934 2025 Regular Session

23 discrimination or harassment in employment. Records are exempt in  
24 their entirety while the investigation is active and ongoing. After  
25 the agency has notified the complaining employee of the outcome of  
26 the investigation, the records may be disclosed only if the names,  
27 images, employee agency job titles, email addresses, and phone  
28 numbers of complainants, other accusers, and witnesses are redacted  
29 and their voices on any audio recording taken during the course of  
30 the investigation have been altered while retaining inflection and  
31 tone, ((unless)) except to the extent that such a complainant, other  
32 accuser, or witness has consented to the disclosure of ((his or her  
33 name)) such information. The employing agency must inform a  
34 complainant, other accuser, or witness that his or her name, image,

# What about linkages?



## Rejection of Linkages Arguments

- Much discussion about what can be determined through other sources based on information in a public record (e.g. Big Data)
- Courts have rejected the premise that absent other clear exemptions information should be redacted or withheld because someone can link other information to determine otherwise confidential information
  - *King County v. Sheehan* (2002) Names of law enforcement officers
- *Bainbrige Island Police Guild v. Puyallup* and *Koenig v. City of Des Moines* – Asked for records naming individual, but name was redacted from records
- *Doe v. WSP* – fact that victims could be identified in Level 1 sex offender records not does not make records exempt

## Rejection of Linkages Arguments “absurd results”

- No authority to look beyond the “four corners” of the records
- PRR that asks for records with named individual
- What if you have actual knowledge that the requester knows who the records are about even if they only ask by case number or manner of death
- Considerations
  - Injunctions/notice to affected parties 42.56.540
  - Ask requester to voluntarily accept redactions

- See **RCW 50A.25.140**
  - Disclosure when all details identifying an individual or employee are deleted—When authorized.
- “Nothing in this chapter shall prevent the disclosure of information or records deemed private and confidential under this chapter if all details identifying an individual or employer are deleted so long as the information or records cannot be foreseeably combined with other publicly available information to reveal the identity of an individual or employer.”
  - [ 2019 c 13 § 83.]



# Trends in Public Records Laws



# What are the trends in public records laws?

- Exemptions based on broader public policy goals
  - Encouraging victims and witnesses of sexual harassment to come forward – (2019-20 session) HB 2020 - Exempting the disclosure of names in employment investigation records (RCW 42.56.250(6))
  - Protect dates of birth of public employees; other demographic information; require notice to employee's (2019-20 session) HB 1888 (RCW 42.56.250)
  - Enable state agency to receive federal data (Agriculture) (2019-20 session) HB 1385 (RCW 42.56.380)



## What are the trends in public records laws?

- Enable agencies to perform regulatory function – exempt medical information
  - OIC Addressing nonpublic personal health information (2017 session) HB1043/SB 5124 - (RCW 48.02.068)
  - DRS Concerning the confidentiality of retirement system files and records relating to health information (2019-20 session) SB 6499 (RCW 41.04.830)
- Protect identity of gun owners who participated in bump-stock buyback (2019-20 session) SB 6025/HB 2182 (RCW 42.56.230(12))

# What are the trends in public records laws?

- Exemptions on broader public policy goals
  - Protection personal information of minor students (2023 session SSB 5127)
  - Protecting Washington children online (2025-2026 session) HB 1834 & SB 5708 (RCW 19)
  - Recognizing Data Privacy Day (2025-2026 session) HR 4609, [Adopted 1/28/2025](#)
  - Protecting personal data privacy (2025-2026 session) HB 1671 (RCW 19)
  - Creating a charter of people's personal data rights (2023-2024 session) HB 1616 & SB 5643 (RCW 42.56 & 19)
  - Adding blood type information to drivers' licenses and identicards (2025-2026 session) SB 5689 [Effective 1/1/2026](#)

# What are the trends in public records laws?

- Requiring the office of privacy and data protection to develop guidelines for the use of artificial intelligence (2023-2024 session) SB 5957
- Promoting a safe and supportive public education system (2025-2026 session) HB 1296
- Addressing the collection, sharing, and selling of consumer health data (2023-2024 session) SB 5351 & HB 1155
- Concerning the Washington state aerial imagery program (2023-2024 session) SB 5954

## Cases to discuss – Broader Public Policy Considerations re Health Information

- Washington State Supreme Court in *State v. Scherf* (2018) dicta re health information
- Defendant argued he had a statutory right to privacy of medical information under the Health Care Information Act
- Court said:
  - "Here, the medical records at issue were not held by a health care provider or facility. Importantly, RCW 70.02.005(4) does *not carve out a duty* to non-health care providers but *merely* states it is "the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers."

## Cases to discuss – Broader Public Policy Considerations re Health Information

- Photos and names of patients in mental health institutions ordered to be disclosed to media when in law enforcement records (this will include victims as well)
- *Doe G. v. DOC and Zink (2018)* – when health information is NOT health information
  - Holding: SOSSA evaluations do not contain “health care information” because they are forensic examinations done for the purpose of aiding a court in sentencing a sex offender.
- Determination hinged on the use of the word “directly” in the HCIA. Court said health information is only health information if it “**directly** relates to the patient’s health care.”

## Public Policy Considerations

**Full list of SPD officers at Jan. 6 rally now public after records lawsuit dropped**

Four more SPD officers linked to the Jan. 6 Stop the Steal rally at the U.S. Capitol have been revealed in recent records.

**Schools say deeply personal survey saved lives. Then they released student data**

**Police reports tied to Western State Hospital patients are public records, judge rules**

**'Snitch list:' Trolls harass those who reported Covid-19 business violations in Washington state**

**LOCAL NEWS**  
**Cellphone data to help WSP nab speeders**  
A crackdown is focusing on hot spots identified by 2023 data.

## Other considerations

- Agencies incentive to disclose because the risk of penalties is so high favors disclosure
- "As a practical matter, the PRA's stiff monetary penalties, combined with the CPA's grant of immunity for "the release of relevant and necessary information," RCW 4.24.550(7), create an incentive for agencies to ignore the CPA's limits on the disclosure of level I offender information when responding to PRA requests."
- "If an agency is asked to comply with the disclosure requirements of both [the PRA] and [the CPA], it is clear that the most prudent route for an agency to take is to liberally disclose records because there is a strict monetary penalty for non-disclosure under the PRA, and immunity [for] disclosure or non-disclosure ... under [the CPA]. [Thus,] [t]here is little incentive to adhere to the guidelines of RCW 4.24.550." ~Justice Gordon McCloud, dissenting opinion in *Doe v. WSP* (2016)



- Balancing transparency and accountability with personal privacy rights



**Thank  
you!**

**Questions?**

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