



Seattle City Attorney

Thomas A. Carr

November 13, 2009

Lt. Governor Brad Owen, President of the Senate
Senator Lisa Brown, Senate Majority Leader
Representative Frank Chopp, Speaker, House of Representatives
Senator Darlene Fairley, Chair, Committee on Government Operations and Elections
Representative Sam Hunt, Chair, Committee on State Government and Tribal Affairs

Re: Annual Report of the Public Records Exemptions Accountability Committee

The Public Records Exemptions Accountability Committee – or “Sunshine Committee” – was created by Substitute House Bill 5435 in 2007.

In that bill, the Legislature stated that in light of the changing nature of information technology, recordkeeping, and the increasing number of public disclosure exemptions, periodic reviews of public disclosure exemptions are needed to determine if exemptions continue to serve the public interest. For this reason, the Legislature established the Committee to review all public disclosure exemptions, and make a recommendation 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 called for an annual report on the Committee’s recommendations. This is the third report, and summarizes the Committee’s work since November 2008.

The following individuals were appointed to the Committee by the Governor, Legislature, Attorney General, and State Auditor:

Chair, Thomas A. Carr, Seattle City Attorney
Vice Chair, Timothy D. Ford, Assistant Attorney General
Senator Adam Kline
Senator Pam Roach
Representative Lynn Kessler
Representative Jay Rodne
Rowland Thompson, (effective September 10, 2008)
Ken Bunting, Associate Publisher, Seattle Post-Intelligencer
Frank Garred, retired newspaper publisher
Roselyn Marcus, Director of Legal Affairs,
Office of Financial Management (reappointed August 2009)
Patience Rogge

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Ramsey Ramerman, Assistant City Attorney, City of Everett
Candy Jackson, NATIVE Health of Spokane (term expired August 6, 2009)

In 2009, the Committee held 4 meetings, roughly on a quarterly basis. The Committee adopted eight recommendations to retain, modify, or terminate exemptions. These recommendations relate to 9 exemptions contained in either RCW 42.56 or other chapters of the Revised Code of Washington (see Appendices). The Committee received and considered public comment with regard to all of these exemptions prior to adopting these recommendations. The Committee also heard public testimony at several meetings on a proposal related to the records and information that is required to be gathered relating to court appointed special advocates, and on numerous additional exemptions related to the insurance industry.

The Committee's recommendations are attached to this letter. This year, the Committee's recommendations are presented as one package because they are supported by a majority of the members and there is no minority report.

1. At the March 18, 2009 meeting, the Committee voted to recommend the Legislature retain the exemption found in RCW 42.56.330(1), which exempts records filed with the utilities and transportation commission or Attorney General under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095. (See #5 below for the Committee's recommendation relating to RCW 80.04.095).
2. At the May 12, 2009 meeting, the Committee voted to recommend the Legislature retain the exemptions found in RCW 42.56.330(6), (7), and (8). The text of each of those exemptions, as well as the text of RCW 42.56.330(1) referenced above, is attached as Appendix A. For subsection (7), the committee recommended that the Legislature add a requirement that there be annual reports of the aggregate data on use of transponders to pay tolls.
3. At the May 12, 2009 meeting, the Committee voted to recommend the Legislature retain the exemption found in RCW 42.56.335.
4. At the August 31, 2009 meeting, the Committee voted to recommend that the exemption for Legislative records in RCW 42.56.010(2) be eliminated. The text of the Committee recommendation is attached as Appendix C.
5. At the October 13, 2009 meeting, the Committee voted to recommend that the exemption in RCW 42.56.330(2) be retained. The text of that statute is also included in Appendix A to this report.

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6. At the October 13, 2009 meeting, the Committee voted to recommend that the exemption in RCW 80.04.095, for utility records filed with the Utilities and Transportation Commission containing commercially valuable information, be retained. The text of that statute is found in Appendix D to this report.
7. At the October 13, 2009 meeting, the Committee voted to recommend that the exemption in RCW 48.03.050, which allows the Insurance Commissioner to withhold reports of market conduct examination from public disclosure for five days, or for a longer period if the Commissioner believes it appropriate, be retained but that a requirement be added that the Commissioner include a time limit on how long the report can be withheld, and shall state why continued confidentiality of the report is necessary.
8. At the October 13, 2009 meeting, the Committee voted to recommend that any future exemptions from public disclosure be specifically referenced in Ch. 42.56 RCW, and be limited to five years, with a review by the JLARC in the year before expiration. The text of the Committee's recommendation is included as Appendix E to this report.

The Committee also reaffirms the recommendations contained in its 2008 report, and asks that they be considered by the Legislature in its 2010 session.

Very truly yours,



Thomas A. Carr, Chair
Public Records Exemptions Accountability Committee

Attachments:

- Appendix A-text of RCW 42.56.330(1), (2), (6), (7) and (8) (retain)
- Appendix B-text of RCW 42.56.335 (retain)
- Appendix C-text of recommendation to modify RCW 42.56.010
- Appendix D-text of RCW 80.04.095 (retain)
- Appendix E-recommendation regarding new exemptions
- Appendix F-- List of exemptions considered to date

Recommendation to retain exemptions in RCW 42.56.330(1),(2),(7)and (8)

RCW 42.56.330, Public utilities and transportation

The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

(1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095;

(2) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order;

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety;

(6) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010;

(7) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information

