



Requests for Personnel Records Exemptions and Processing Considerations

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***Assisting local
governments with
PRA best practices.***

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Technical Assistance – Training – Risk Mitigation

Disclaimer

- This presentation is educational only and is not legal advice or a legal opinion. The PRA changes over time. Later court decisions or changes in statutes can impact the PRA and an agency's obligations.
- Opinions and thoughts shared today are not necessarily the views of the AGO or the Attorney General.
- Employment related PRA requests can be some of the more challenging requests. Talk with you legal counsel and get legal advice.

The Primary Characters



Joe Banks, Advertising Specialist



Our Requester, Dr. Ellison

A Few General Considerations...

- Location of the record does matter, as may its purpose.
- Former employees have same expectation of **privacy** as current employees.

Belenski v. Jefferson County, 187 Wn. App. 724, 350 P.3d 689 (2015).

- Third party notice is required for records exclusively in an employee's personnel, payroll, supervisor, or training file.

RCW 42.56.250(2)



I would like a copy of the following for Joe Banks,

- 1) Resume,
- 2) Application materials including letters of recommendation,
- 3) Background investigation materials including any lie detector test and arrest information,
- 4) Contact information including personal email and cell number,
- 5) Salary information including all benefits including union dues and other deductions,
- 6) Performance reviews,
- 7) Copy of his personnel file,
- 8) Any psychological, mental health or medical information,
- 9) Any and all discipline records including complaints or allegations of misconduct, investigations, resignations or termination letters, and
- 10) Any records related to the official action taken by the director related to Banks' resignation/termination.

Specifics of the Request: Pre-employment Records

I would like a copy of the following for Joe Banks,

- 1) Resume,
- 2) Application materials including letters of recommendation,
- 3) Background investigation materials including any lie detector test and arrest information,
- 4) Contact information including personal email and cell number,
- 5) Salary information including all benefits including union dues and other deductions,
- 6) Performance reviews,
- 7) Copy of his personnel file,
- 8) Any psychological, mental health or medical information,
- 9) Any and all discipline records including complaints or allegations of misconduct, investigations, resignations or termination letters, and
- 10) Any records related to the official action taken by the director related to Banks' resignation/termination.

Items 1 & 2

Resume and Application Material



RCW 42.56.250(1)(b): The following employment and licensing information is exempt from public inspection and copying:

- applications for public employment (including the names of applicants, resumes) and,
- other related materials submitted with respect to an applicant.

Does not apply to materials to fill vacancies in elective office.

Item 3: Background and testing

Material submitted with respect to an applicant.

RCW 42.56.250(1)(b)

- Background investigation.
- Polygraph.
- Driving record.

Testing

RCW 42.56.250(1)(a)

- Civil Service test.
- Other testing.



Specifics of the Request: Routine Employment Records

I would like a copy of the following for Joe Banks,

- 1) Resume,
- 2) Application materials including letters of recommendation,
- 3) Background investigation materials including any lie detector test and arrest information,
- 4) Contact information including personal email and cell number,
- 5) Salary information including all benefits including union dues and other deductions,
- 6) Performance reviews,
- 7) Copy of his personnel file,
- 8) Any psychological, mental health or medical information,
- 9) Any and all discipline records including complaints or allegations of misconduct, investigations, resignations or termination letters, and
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Item 4: Contact Information



RCW 42.56.250(1)(d)

Exempts personal information including phone number, address, personal email address and details about an employee's dependents.



Must be “personnel records or public employment related records..”

Employee Dates of Birth and Photographs

RCW 42.56.250(1)(d)

The following are exempt:

- Photographs in personnel files.
- Month and year of birth *in* personnel files but NOT day of birth.

Exception: “Media” can obtain full records.

Q: Who qualifies as media? See: Green v. Pierce County, RCW 5.68.010(5).



Item 5: Salary and Benefits

Salaries and Paid benefits are public information subject to disclosure:

- Total Compensation
- Vacation/sick time awarded.
- Travel, insurance.
- Employer contributions to retirement.

Exempt Salary information:

- Payroll deductions including the amount and identification of the deduction.
- RCW 42.56.250(1)(d)

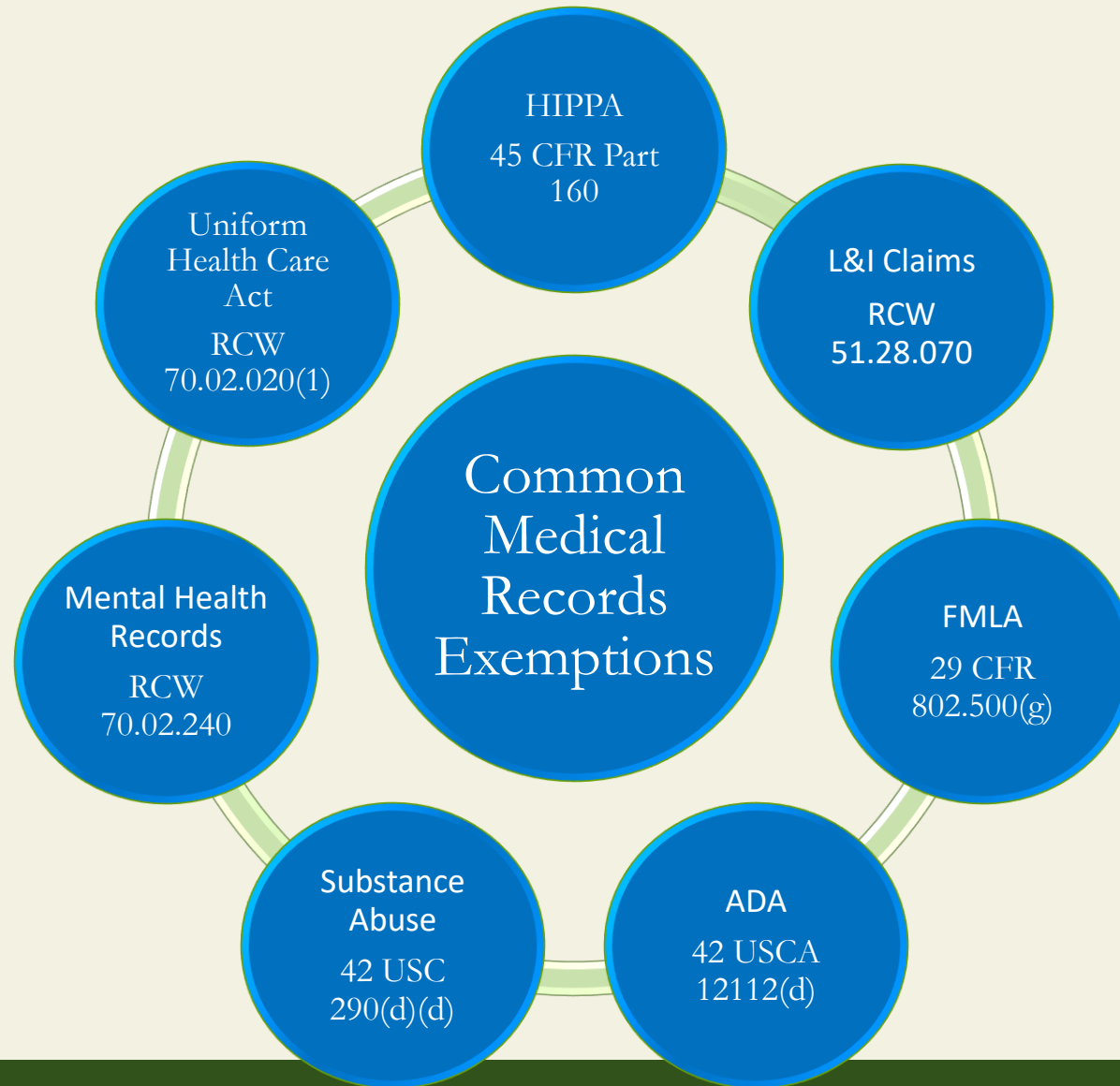
Joe Banks is crazy!
I want his **medical** files, he
keeps going on about a brain
cloud, saving Patricia and
something about steamer
trunks.



I jumped into
the volcano,
BOOM, then
I'm in the
water!



Item 6: Health Care Information



Each of these exemptions is fact specific and may not apply to every medical related record.

Case Law Regarding Medical Records

Patient records from a public hospital are a writing, “prepared, owned, used, or retained,” in the performance of a governmental function – the administration of health care services.

Oliver v. Harborview Medical Center, 94 Wn. 2d 559, 618 P.2d 76 (1980)

Information relating to disabilities exempt.

Tacoma Public Library v. Woessner, 90 Wn. App. 205 (1998)

Medical records require de-identification; UHCA and HIPAA de-identification requirements are similar but not the same.

Seattle Children's Hospital v. King County, Unpublished, Decided December 28, 2020

Item 7 & 8: Personnel File and Evaluations

Personal information in files maintained for employees is exempt appointees to the extent that disclosure would violate their right to privacy.

RCW 42.56.230(3)

Right to Privacy

Highly offensive to a reasonable person,

AND

Not of legitimate concern to the public.



The release of performance evaluation is presumed to be **highly offensive** within the meaning of RCW 42.56.050 and not of a **legitimate public concern**.

Sustained misconduct must be produced

Dawson v. Daly,

120 Wash.2d 782, 845 P.2d 995 (1993)

Bellevue John Does v. Bellevue School District,

164 Wn.2d 199 (2008)

Church of the Divine Earth v. City of Tacoma,

13 Wn. App.2d 487, 486 P.3d 789 (2020)

Evaluations – the Exception to the Exemption

High Ranking Public Officials

The position of Spokane City Manager is not like that of other public employees. The Spokane City Manager is the City's chief executive officer, its leader and a public figure. The performance of the City Manager's job is a legitimate subject of public interest and public debate.

Spokane Research and Defense Fund v. City of Spokane, 99 Wn. App. 452, 994 P.2d 267 (2000)



Waponi Woo, Chief Executive Officer

Specifics of the Request: End of Employment

I request copies of Bank's:

- 1) Resume,
- 2) Application materials including letters of recommendation,
- 3) Background investigation materials including any lie detector test and arrest information,
- 4) Contact information including personal email and cell number,
- 5) Salary information including all benefits including union dues and other deductions,
- 6) Performance reviews,
- 7) Copy of his personnel file,
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Item 9: Misconduct and Discipline Records



Accusations of
misconduct against
public employees

&

records related to the
investigations of those
accusations.

Subject to disclosure

Two narrow exceptions

Exception 1: Harassment Complaints Exempt

RCW 42.56.250(1)(f)



Active Investigations

Exempt in their entirety while the investigation is active and ongoing.

Closed Investigations

Notify complaining employee of the outcome, then disclose report without names of complainants/accusers/witnesses unless they have consented to the disclosure of their name

Domestic Violence and Stalking

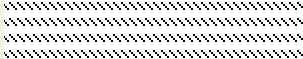
RCW 42.56.250(1)(i)

- Victim may be employee or family member.
- Protects personally identifying information.
- In personnel related records/systems OR responsive to request for list of individuals.
- Requires sworn statement or proof of participation in address confidentially program.
- Documents used to administer this exemption also protected.
- Does not apply to news media as defined in RCW 5.68.010(5).

Exception 2: Certain “Unsubstantiated” Allegations

For stigmatizing unsubstantiated allegations,
identifying information may be redacted.

What is a stigmatizing allegation?

 School teacher
accused of sexual misconduct.
Police asking other victims to come
forward

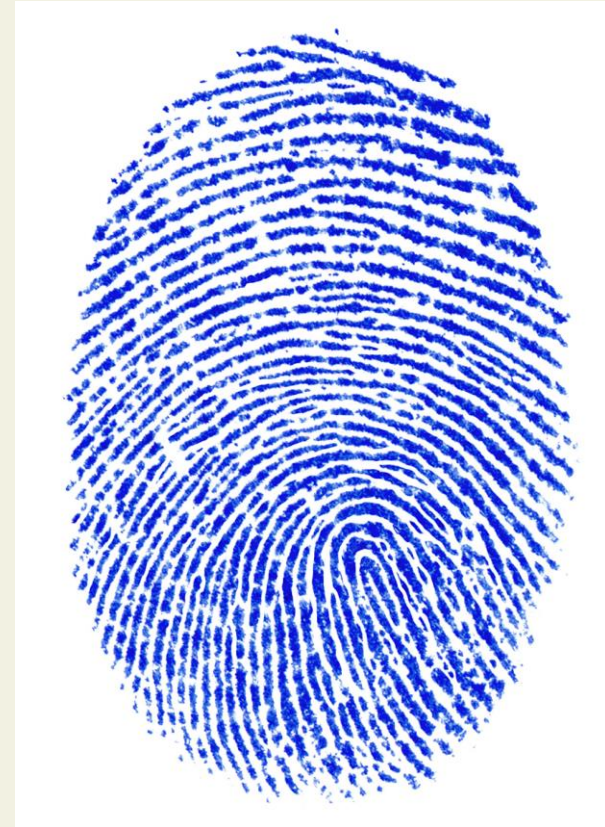
 **police officer accused of exchanging
inappropriate texts, photos to underage
students**

West v. Port of Olympia, 183 Wn. App. 306, 333 P.3d 488 (2014)

Item 9: Misconduct and Discipline Records

What is “identifying information”?

- Name
- Photograph
- Address
- Phone number
- Employee number
- Other?



Item 10: Other records related resignation/termination.

Joe Banks and the agency reach agreement, resolves allegations of misconduct. They sign a settlement agreement.

- 1) Settlement agreements are public records.
- 2) Agreement cannot expand expectation of privacy by stating information will remain private.

Yakima Newspapers, Inc. v. City of Yakima,
77 Wn. App. 319, 328, 890 P.2d 544 (1995)

SEPARATION AGREEMENT AND GENERAL RELEASE
BETWEEN
COACH DELAR AND SOUTH EARMUFF SCHOOL DISTRICT

I. RECITALS

1. This Separation Agreement and General Release ("Agreement") is between **COACH DELAR** his/her marital community or domestic partnership, heirs, administrators, representatives, executors, attorneys, successors and assigns ("You" or "Your") and **SOUTH EARMUFF SCHOOL DISTRICT** its affiliates, employees, members, directors, officers, agents, attorneys, successors, and assigns ("EMPLOYER"), collectively, the "Parties."
2. You have been employed by EMPLOYER since 1985
3. Both You and EMPLOYER are desire to resolve all matters, known or unknown, arising out of Your employment with EMPLOYER and separation from EMPLOYER according to the terms, conditions and consideration included in this Agreement.
4. This Agreement is dated for reference purposes which is the date EMPLOYER delivered this Agreement to You for Your consideration.

"Strict"
confidentiality
and NDA clause

Provides that the
agreement is to
remain
"confidential"

Item 10: Other records related resignation/termination.

- a) Assignment to home letter.
- b) Appointment of interim advertising specialist.
- c) Hiring an outside investigator: email and agreement.
- d) Emails with District's attorney regarding allegations.
- e) Other?

5 General Considerations

Consideration 1: PRA Exemptions are Not Universal

Exemptions only apply under some circumstances, to specific records or locations:

- For several exemptions, records must be “in” personnel files or employment related records.
- Exemptions only apply to PRA requests, not union information requests or employee’s 49.12 RCW requests.



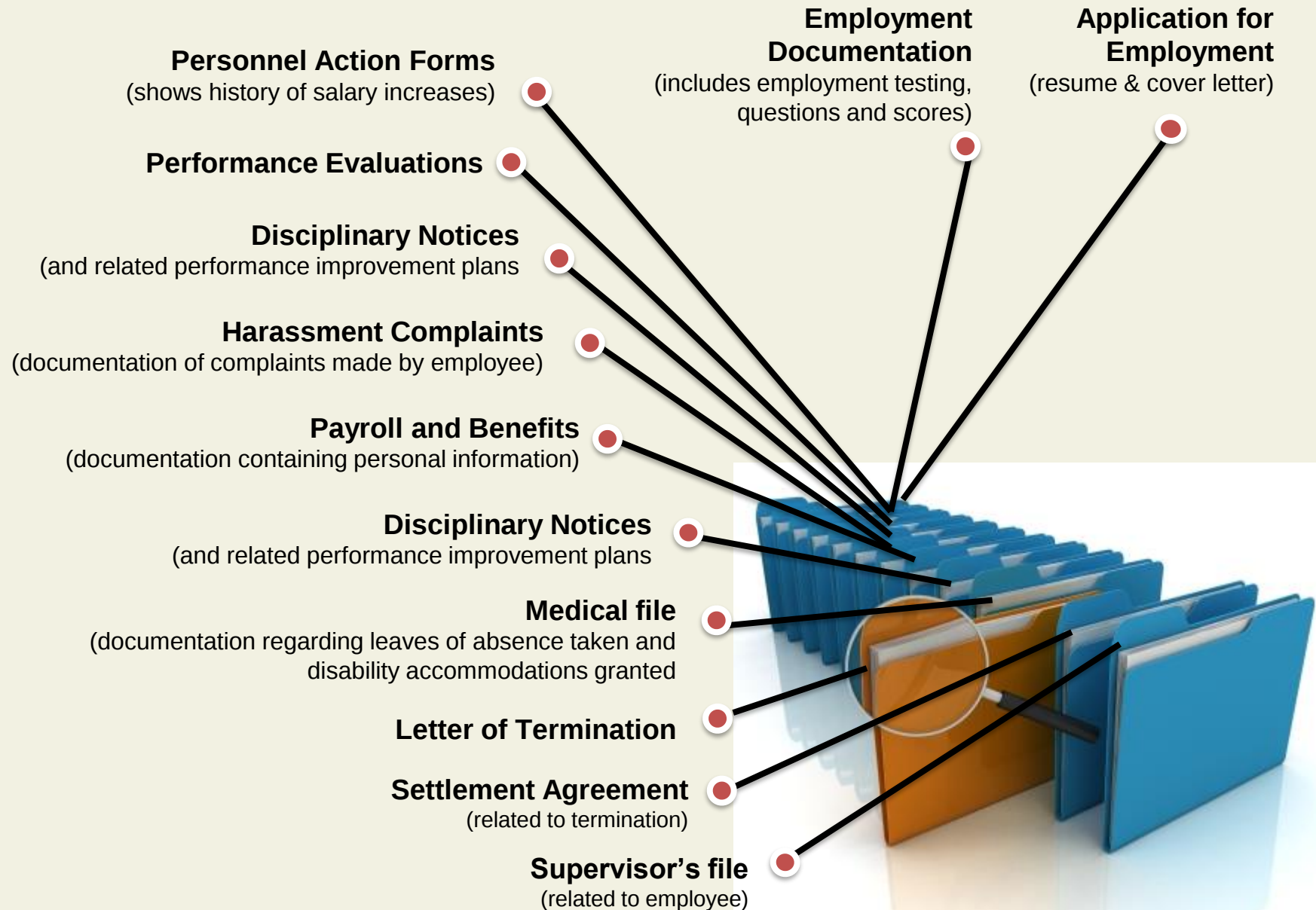
Consideration 2: Notice to Employees

Consider notification when request targets a specific employee, privacy interest may be implicated as well as safety considerations.

Notify each time records are requested when required? See RCW 42.56.250(2)



Consideration 3: “Personnel File” Very Rarely Defined



Consideration 4: Can't Create an Exemption



Cannot expand secrecy
by agreeing by contract
to keep something secret.

Confidentiality
agreements, union
confidentiality clauses
are ineffective.

There is no way to isolate
a file from inspection by
marking it “confidential”
or by storing it in a
special location.

Consideration 5: Embarrassment is Not an Exemption



Educate your staff starting with New Employee Orientation and follow up with routine refreshers.

Success is No Accident

It is hard work, perseverance,
learning, studying, sacrifice and
most of all, lover of what you
are doing or leering to do.

Pele

