

Top Ten Exemptions Under the Public Records Act

WAPRO 2025 Virtual
Spring Conference
May 21, 2025

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(ret.)

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Exemptions Framework

“PRA exemptions “are ‘*narrowly tailored to specific situations* in which privacy rights or vital governmental interests require protection.’”” *Does 1, 2, 4 , & 5 v. Seattle Police Dep’t*, 563 P.3d 1037, 1042 (Wash. 2025) (emphasis original)

Agency has the burden to prove an exemption applies. *Citizen Action Def. Fund v. Washington State Off. of Fin. Mgmt.*, 31 Wn. App. 2d 633, 641, 552 P.3d 341 (2024)

“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.”

RCW 42.56.050 (emphasis added)

Honorable Mention No.11: Real Estate

Real Estate Transactions

- 1) Subject to the **time limitations** in subsection (2) of this section, the following documents relating to an agency's real estate transactions are exempt from public inspection and copying under this chapter:
 - a) Except as provided by chapter [8.26](#) RCW, the contents of **real estate appraisals**, made for or by any agency relative to the acquisition or sale of property;
 - b) Documents prepared for the purpose of considering **the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price**, including records prepared for executive session pursuant to RCW [42.30.110](#)(1)(b); and
 - c) (c) Documents prepared for the purpose of considering the **minimum price of real estate that will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price**, including records prepared for executive session pursuant to RCW [42.30.110](#)(1)(c).
- 2) The exemptions in this section do not apply when disclosure is mandated by another statute or **after the project or prospective project is abandoned or all properties that are part of the project have been purchased, sold, or leased**. No appraisal may be withheld for more than three years.

[RCW 42.56.260](#) (emphasis added)

No. 10: Deliberative Process

Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this chapter, except that a specific record is not exempt when publicly cited by an agency in connection with any agency action.

RCW 42.56.280

No. 10: Deliberative Process

Key aspects of deliberative process:

“[1] the records contain pre[-]decisional opinions or recommendations of subordinates expressed as part of a deliberative process;

[2] that disclosure would be injurious to the deliberative or consultative function of the process;

[3] that disclosure would inhibit the flow of recommendations, observations, and opinions; and finally,

[4] that the materials covered by the exemption reflect policy recommendations and opinions and not the raw factual data on which a decision is based....”

“The purpose of this exemption is to permit frank and uninhibited discussion **during the decision-making process.**”

Citizen Action Def. Fund v. Washington State Off. of Fin. Mgmt., 31 Wn. App. 2d 633, 641-42, 552 P.3d 341 (2024)
(emphasis added, quotes omitted)

No. 9: Security

Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, or secure facility for persons civilly confined under chapter [71.09](#) RCW, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility, secure facility for persons civilly confined under chapter [71.09](#) RCW, or any individual's safety;

[RCW 42.56.420\(2\)](#)

No. 9: Security

To qualify for this exemption, the information must (1) contain specific and unique vulnerability assessments or specific and unique emergency and escape response plans, (2) at a city, county, or state adult or juvenile correctional facility, (3) the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility, or any individual's safety.

Williams v. Dep't of Corr., 2 Wn. App. 2d 1043, 2018 WL 1004892 at *6 (2018)

No. 8: “Effective Law Enforcement”

Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

RCW 42.56.240(1)

No. 8: “Effective Law Enforcement”

To qualify for this exemption, the information must be (1) intelligence or investigative in nature, (2) compiled by a law enforcement, penology, or investigative agency, **and** (3) essential to law enforcement or the protection of privacy.

Williams v. Dep't of Corr., 2 Wn. App. 2d 1043, 2018 WL 1004892 at *5 (2018) (emphasis added)

[T]he agency asserting a categorical exemption from disclosure based on the effective law enforcement exemption statute, does so at its own risk because the exemption only covers investigations that are “open and active.”

White v. City of Lakewood, 194 Wn. App. 778, 789, 374 P.3d 286 (2016)

No. 8: “Effective Law Enforcement”

CASE STUDY:

To demonstrate how nondisclosure of these surveillance videos is “essential to effective law enforcement,” the DOC supplied the declaration of Richard Morgan, DOC's Director of Prisons. Morgan explained that DOC's surveillance system is (1) “[o]ne of the most important tools for maintaining the security and orderly operation of prisons,” and (2) “an essential element of effective control of a population that is 100 [percent] criminal in its composition and is accustomed to evading detection and exploiting the absence of authority, monitoring, and accountability”...

Morgan concluded, “Providing offenders access to recordings of DOC surveillance videos would allow them to accurately determine which areas are weak or devoid in DOC's ability to capture identities in the aftermath of an incident or crime.” The record contains no controverting evidence.

Gronquist v. State, 177 Wn. App. 389, 399–400, 313 P.3d 416 (2013)

No. 7: Trade Secrets

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

RCW 19.108.010(4)

No. 6: “Valuable Formulae”

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

RCW 42.56.270(1)

There are actually **32** specific categories!

Nos. 7-6: Trade Secrets & Valuable Formulae: Third-Party Notice

The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.

RCW 42.56.540

Interlude

No. 5: Medical Records

According to the PRA, “health care information” under chapter 70.02 RCW, the Uniform Health Care Information Act (UHCIA), is exempt from public disclosure. RCW 42.56.360(2). The UHCIA defines “health care information” as information “that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care.” RCW 70.02.010(16). Furthermore, “[h]ealth care” means any care, service, or procedure provided by a health care provider ... [t]o diagnose, treat, or maintain a patient's physical or mental condition.” RCW 70.02.010(14)(a).

Doe G v. Dep't of Corr., 190 Wn.2d 185, 193, 410 P.3d 1156 (2018)

No. 4: Personnel Records

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.

RCW 42.56.230(3)

No. 4: Personnel Records

[T]o 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? The records are exempt only if the answer to all four questions is “yes.”

Does 1, 2, 4 , & 5 v. Seattle Police Dep't, 563 P.3d 1037, 1049 (Wash. 2025)

No. 3: The “(1)(f)” “Exemption”

Investigative records compiled by an employing agency in connection with an investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws or an employing agency's internal policies prohibiting discrimination or harassment in employment. Records are exempt in their entirety while the investigation is active and ongoing. After the agency has notified the complaining employee of the outcome of the investigation, the records may be disclosed only if the names of complainants, other accusers, and witnesses are redacted, unless a complainant, other accuser, or witness has consented to the disclosure of his or her name. The employing agency must inform a complainant, other accuser, or witness that his or her name will be redacted from the investigation records unless he or she consents to disclosure.

RCW 42.56.250(1)(f)

No. 3: The “(1)(f)” “Exemption”

Questions to ask:

1. Investigative records compiled by an employing agency?
2. Is the investigation about a possible unfair practice under chapter 49.60 RCW [the Law Against Discrimination] or of a possible violation of other federal, state, or local laws or an employing agency's internal policies prohibiting discrimination or harassment in employment?
3. Is the investigation active and ongoing? If so, the records are exempt in full at that time.
4. Once the investigation ends, has the employee been notified of the result?
5. If the employee has been notified, the records may be disclosed only if the names of complainants, other accusers, and witnesses are redacted, unless a complainant, other accuser, or witness has consented to the disclosure of his or her name.
6. Not really an exemption issue, but: The employing agency *must* inform a complainant, other accuser, or witness that his or her name will be redacted from the investigation records unless he or she consents to disclosure

No. 2: “Controversy Exemption”

Agency Party to Controversy

Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter.

RCW 42.56.290

“The first thing we do, let's kill all the lawyers' was spoken by a rebel, not a friend of liberty.”

Walters v. Nat'l Ass'n of Radiation Survivors, 473 U.S. 305, 371 (1985)

(Stevens, J., dissenting) (citing W. Shakespeare, *King Henry VI*, pt. II, Act IV, scene 2, line 72).

No. 1: Attorney-Client Privilege

When the legislature amended the P[R]A to include the “other statute” exemption, it could have easily trumped the attorney-client privilege by excluding it from consideration as an “other statute.”... It did not do so. [W]e consider both the P[R]A's mandate that exemptions are interpreted narrowly and the statutory language used in creating the exemptions. Because RCW 5.60.060(2)(a) is unquestionably a statute... that prohibits the disclosure of certain records, documents that fall under RCW 5.60.060(2)(a) are exempt from the public disclosure act.

Hangartner v. City of Seattle, 151 Wn.2d 439, 453, 90 P.3d 26 (2004)

No. 1: Attorney-Client Privilege

An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

RCW 5.60.060(2)(a)

Not privileged:

- Merely copying a lawyer
- Lawyer not acting as legal counsel
- Non-confidential communications
- Invoices, but some redactions allowed
- When privilege is waived
 - Joint defense/common interest
- Crime/Fraud exception
- Date and time of communication

Aren't sure? Ask.



Second Interlude

Agency Suits

An agency seeking adjudication that it is in compliance with the PRA can file a complaint for declaratory judgment. *Benton County v. Zink*, 191 Wash. App. 269, 277-78, 361 P.3d 801 (2015) (Zink II) (affirming by declaratory judgment that no duty exists under the PRA to provide a record response in electronic versus paper format). Injunctive relief may be sought if the agency or person named in the responsive records would be harmed by the release of those records.

***Cantu v. Yakima Sch. Dist. No. 7*, 23 Wn. App. 2d 57, 80, 514 P.3d 661 (2022)**

Exemptions in Court

- Burden of Proof
- Specific Wording
- Requester Communication
 - Disclose Exemptions
 - Estimate Time
- Know the Elements – Cases
- What record do you need? Who can provide it?
- Log
- What is the purpose of the exemption?
 - Is it mandatory?
 - Whose rights are at issue?
 - What is the risk?

Questions?

REMEMBER:

***Exemptions are the
Exceptions***

